

Nearest Relative Information

1. What is a Nearest Relative?

A **Nearest Relative** is someone, usually a family member who has certain rights and responsibilities when an individual is detained under the Mental Health Act 1983 (MHA). The Nearest Relative is an important safeguard for the individual who is detained and is there to ensure the individual's rights are protected when they are unwell.

Please note:

The individual **cannot** choose who this person is

The Nearest Relative is **not** the same as someone's **Next of Kin**. The Next of Kin is usually the individual's closest living relative although it can be **anyone they choose** to nominate when they are admitted to any type of hospital, for example, a friend or a neighbour.

Please note:

The Next of Kin has **no rights** under the MHA.

The Nearest Relative is also **not necessarily** the individual's **carer** although they can be.

Please note:

A carer has **additional rights** under the Care Act 2014.

For more information please see:

<https://www.kent.gov.uk/>



Serving Kent, serving you

2. Who is the Nearest Relative?

Identifying who is an individual's Nearest Relative is both a legal and a complex task, which can only be undertaken by an Approved Mental Health Professional (AMHP). An AMHP is someone who has been specially trained in the MHA and authorised by a Local Social Services Authority - in this case, Kent County Council - to carry out duties under the MHA.

The MHA lays out the legal criteria of who is the Nearest Relative (S.26, MHA). However, an AMHP also has to consider the individual's social situation as well, to take account of any exceptions to these general rules.

The Nearest Relative can automatically change with the passage of time, for example, when the individual enters into marriage.

Alternatively, an individual might not have a Nearest Relative as s/he has no one who fits the legal criteria at that time.

In some circumstances the County Court can appoint a person to become the Nearest Relative or even Kent County Council.

You have been identified by an AMHP as being the Nearest Relative for someone.

Please note:

*You are **not** legally obliged to carry out this role*

For more information please see: S.9, page 8 (below)

You are **not** automatically disqualified from being the Nearest Relative if:

- You are currently experiencing a mental health difficulty or do so in the future
- You are currently detained under the MHA
- You are sentenced to a period of imprisonment

3. What are your Rights as the Nearest Relative?

1. You have the right to make an application to hospital

You can apply for the individual to be admitted to hospital and detained under the MHA for:

- An assessment (S.2, MHA),
- In an emergency (S.4, MHA)
- And/or treatment (S.3, MHA)

This might be useful if you find yourself in a situation where two doctors agree the individual should be detained but the AMHP involved disagrees.

Please note:

You are required to complete a specific form

For a copy of **Form A1, Form A5 and Form A9**
please see:

[http://www.mentalhealthlaw.co.uk/Mental Health Act 1983 Statutory Forms](http://www.mentalhealthlaw.co.uk/Mental_Health_Act_1983_Statutory_Forms)

2. You have the right to request an assessment

If, as an individual's Nearest Relative under the MHA, you are concerned that they ought to be in hospital, you can ask Kent County Council to **consider** carrying out an assessment of them. This request can be made verbally or in writing.

Please note:

It is more helpful if this is in writing

Just because you make this request does not mean that an AMHP **has** to carry out this assessment or even interview the individual. Their response will depend upon what is already known about the individual, but if the AMHP decides **not** to admit the individual to hospital then you have the right to know the reasons for this **in writing**.

3. You have the right to make an application for Guardianship

Guardianship (S.7, MHA) is a way in which someone can receive help in the community instead of him/her being detained in hospital. It enables **the Guardian** to have certain legal powers such as to tell the individual where they must live and/or to see a doctor.

You can apply for an individual to be accepted into Guardianship in the same way as an application to hospital except that it is made to Kent County Council.

Please note:

You are required to complete a specific form

For a copy of **Form G1** please see:

[http://www.mentalhealthlaw.co.uk/media/Form G1 section 7 -
guardianship application by nearest relative.pdf](http://www.mentalhealthlaw.co.uk/media/Form_G1_section_7_-_guardianship_application_by_nearest_relative.pdf)

4. You have the right to certain information

- **To be informed**

When the AMHP is just about to make or has just made an application to detain the individual in hospital for the purpose of an assessment and/or in an emergency (S.2/S.4, MHA).

Please note:

This can be either verbally or in writing

- **To be consulted**

Before the AMHP decides to make an application to either detain the individual in hospital for the purpose of treatment (S.3, MHA) or place them under Guardianship (S.7, MHA).

- **To be informed of your rights as Nearest Relative**

In particular, your right to:

- Object to an application for treatment (S.3, MHA)
- Appeal to the Mental Health Review Tribunal (MHRT)
- Discharge the individual

- **To certain information about the individual**

In particular, you should be given enough information about the reasons for the individual being detained or placed under Guardianship in order to help you to be able to decide whether you wish to exercise your right to:

- Object to the application
- Discharge the individual

If the individual has **capacity** and does **not object** to you having information about them then you also have the right to:

- Any information s/he receives in writing whilst they are detained under the MHA
- Be told when her/his detention is to be renewed or changed
- Be told when s/he is going to be discharged or within 7 days of her/him being discharged
- Be told when s/he is transferred to another hospital

If you are also the individual's **carer** (and s/he does **not object**) you have the additional right to:

- Information about his/her progress in order to help you be able to form and offer your views about their care and treatment.

Please note:

When the individual does **not** want you to have information about him/her the hospital still has a duty of confidentiality and requires the individual's permission.

- **When you might not be informed or consulted**

If the AMHP believes it would not be reasonably practicable or would cause unreasonable delay to do so.

Situations where it might not be **reasonably practicable** include:

- When the AMHP cannot contact you or locate you
- Your own health is a risk or you lack the capacity to understand your rights and responsibilities as Nearest Relative
- When consulting with you might result in significant emotional distress to the individual.

The AMHP might consider it will cause **unreasonable delay** when tracing your whereabouts would involve an excessive amount of investigative work.

5. You have the right to object to an application

When the application being made is for either S.3, MHA or Guardianship the AMHP **cannot** proceed.

However, if the AMHP believes your objection is **unreasonable** then s/he can apply to the County Court to have you **displaced** as the Nearest Relative and a new Nearest Relative appointed. This could be someone else or Kent County Council.

6. You have the right to request an Independent Mental Health Advocate

An **Independent Mental Health Advocate (IMHA)** is someone completely independent of the hospital where the individual is or any of the mental health services within Kent.

They help people who are detained under the MHA to make decisions about their care and treatment.

You have the right to request an IMHA to visit and interview the individual but s/he also has the right to refuse this help.

Having the support of an IMHA does not prevent you or the individual receiving help from a solicitor.

Please note:

Everyone who is detained under the MHA has the right to see an IMHA

For more information and to make a referral please see:
SeAP at:

<https://www.seap.org.uk/services/independent-mental-health-advocacy/>

7. You have the right to discharge the individual

When the individual is detained for:

- Assessment (S.2, MHA)
- Treatment (S.3, MHA)
- Guardianship (S.7, MHA)
- A Community Treatment Order (CTO)

If the individual is subject to Guardianship you do not need to give any prior notice and this cannot be stopped.

Please note:

If the individual is detained in hospital or subject to a CTO you **must** put this request in writing **and** give 72 hours' notice.

- **When your request to discharge might be stopped**

If the individual is detained under **S.3, MHA** the Responsible Clinician may in certain circumstances issue a **barring notice**.

The **Responsible Clinician** is the professional responsible for the care and treatment of the individual. S/he can only stop your request if they write a report to the Hospital Managers explaining how the individual will act in a manner **dangerous** to other people or themselves if discharged.

Alternatively, if the AMHP believes you have exercised your power to discharge the individual **without due regard** to the his/her welfare or the interests of the public then s/he can apply to the County Court to have you **displaced** as the Nearest Relative and a new Nearest Relative appointed. This could be someone else or Kent County Council.

- **When you don't have the right to discharge**

If the individual is either detained in hospital or subject to Guardianship under an **order by the court** (S.35 or S.36 or S.37 or S.38, MHA).

8. You have the right to appeal to a Mental Health Review Tribunal

A **Mental Health Review Tribunal (MHRT)** is an independent panel made up of a lawyer (the Chairperson), a Consultant Psychiatrist and a layperson. It hears the case for and against discharging an individual from their detention.

Please note:

*Generally, **only** the individual can apply to the MHRT*

The **only time** you can apply to the MHRT is:

- When the individual is detained under S.3, MHA

And

- You have requested their discharge

And

- The Responsible Clinician has issued a barring notice (please see above).

- **When you make an application to the MHRT you have certain rights:**

In particular, you have the right to:

- Attend the MHRT
- Appoint an independent doctor or approved clinician
- Submit a written statement
- Address the MHRT
- Request someone else address the MHRT on your behalf
- Receive the decision of the MHRT in writing.

9. You have the right to delegate your functions

You are **not** legally obliged to act as the Nearest Relative for this individual.

If you don't want to carry out this role you can choose to **delegate** these functions either to someone else (with their consent) or Kent County Council. You will still legally remain the Nearest Relative but the other person or Kent County Council will act on your behalf.

Please note:

*If you choose to delegate you **must** put this in writing
and inform the individual immediately*

Please contact kentamhpservice@kent.gov.uk if you wish to delegate your role as
NR

10. You have the right to complain

- **When you are concerned about the care and treatment of the individual**
In particular, you can complain to:

- **The hospital** where the individual is detained under the MHA
- **The mental health service** that has a responsibility for the individual's care and treatment.

Please note:

You can have help and support to do this from an IMHA and/or a solicitor

- **Alternatively, you can complain to us, Kent County Council:**

For more information please see:
<https://www.kent.gov.uk/>

- **You also have the option to complain to:**

The Independent Health Complaints Advocacy Service

For more information please see:
<https://www.seap.org.uk/services/nhs-complaints-advocacy/>

The Care Quality Commission

For more information please see:
<https://www.cqc.org.uk/>

The Parliamentary and Health Services Ombudsman

For more information please see:
<https://www.ombudsman.org.uk/>

The Local Government Ombudsman

For more information please see:
<https://www.lgo.org.uk/>