**Mental Health Act: guidance for when the Nearest Relative is the County Council as corporate parent**

**Version: 0.3 DRAFT 04may2023**

**Effective from: tbc 2023**

**Next review date: tbc 2026**

# Document details

**Prepared by:** West Sussex County Council

**Project: Nearest Relative, corporate parent, children in care**

**Scope:** Mental health law and statutory practice

**Version: 0.3 DRAFT (04 May 2023)**

**Issue date: tbc 2023**

**Owner: Director of Adult Social Services; Director of Children’s**

**Services**

**Authors: Greg Slay, Cara Davis**

**Status: New**

**Legal check: Prity Patel, Principal Solicitor, 27 April 2023**

 **Philip Wood, Senior Solicitor (Adults), 3 May 2023**

**Sign off by: Linda Steele**, Assistant Director – Safeguarding,

Quality and Practice (Children, Young People and Learning) +date

 **Loretta Rogers, Assistant Director – Adult Operations**

 **+ date**

# Document history

|  |  |  |  |
| --- | --- | --- | --- |
| Version | Date | Author(s) | Details |
| 0.1-0.2 | Jan-April 2023 | Greg Slay, Cara Davis, Melanie Spencer | Guidance initiated and drafted, based on guidance produced by Kent County Council. Draft reviewed by Cara Davis, Melanie Spencer and Linda Steele (Children’s Services). Additional comments by Loretta Rogers (Adults’ Services) |
| 0.3 | April 2023 | Greg Slay, Cara Davis | Revised draft to Legal Services for review pre-sign-off by Assistant Directors  |
|  |  |  |  |

# Feedback

We welcome feedback about our policies, procedures and practice guidance. If you have any comments about this document please E-mail: as.webpage.requests@westsussex.gov.uk

**Contents**

[Document details 2](#_Toc134022921)

[Document history 2](#_Toc134022922)

[Feedback 2](#_Toc134022923)

[1. Why this practice guidance? 4](#_Toc134022924)

[2. The Council’s Mental Health Act duties 5](#_Toc134022925)

[3. Nearest Relative identification and role 6](#_Toc134022926)

[4. Actions required: AMHPs 8](#_Toc134022927)

[5. Actions required: Integrated Front Door 9](#_Toc134022928)

[6. Actions required - Assistant Directors 10](#_Toc134022929)

[7. Other Nearest Relative activities 12](#_Toc134022930)

# Why this practice guidance?

1.1 The County Council is the lead agency across the health and social care system in West Sussex with the statutory responsibility for the Approved Mental Health Professional (hereafter, AMHP) Service. The Mental Health Act 1983, revised 2007 (hereafter, MHA), aims to make sure people, of any age, get the right care and support when they are having a mental health crisis. A statutory component to MHA assessments, co-ordinated by AMHPs, is the involvement of the person known as a ‘Nearest Relative’.

1.2 This local practice guidance has been prepared for two distinct audiences. Primarily it has been prepared for staff in Children’s Services in the County Council (at the Integrated Front Door, and at Assistant Director level). AMHPs will also find it helpful to understand the approach set out in this practice guidance.

1.3 This practice guidance has been prepared to facilitate understanding of the contribution, and legal role, of Children’s Services in the County Council specifically in the context of MHA assessments of children and young people.

1.4 This guidance only applies to such children and young people when they are subject to Care Orders (interim or full) as the Council will be acting in its statutory role as a Corporate Parent for the relevant young person. For the purposes of the MHA, the Council takes precedence as the Nearest Relative over any parent or other relative listed in the hierarchy as set out in S.26 MHA and shown in paragraph 1.6 below.

1.5 The term “Nearest Relative” is defined in law and is specific to the MHA. Substantial authority is vested in the role. For instance, in some situations, the agreement of the Nearest Relative is required before a statutory application can be made under the MHA.

1.6 The hierarchy listed in S.26 MHA says that, in all other circumstances, the Nearest Relative is identified according to the list below, starting with the first of these, and then working down the list. There are also other legal factors to consider including their blood relationship status with the person being assessed, their age (they must always be an adult, that is over 18 years old), their place of residence (they must be living in the UK and not overseas), and whether they have [parental responsibility](https://www.gov.uk/parental-rights-responsibilities) (and in what circumstances):

1. Husband or wife (or civil partner)
2. Son or daughter
3. Father or month
4. Brother or sister
5. Grandparent
6. Grandchild
7. Uncle or aunt
8. Nephew or niece.

1.7 However, S.27 MHA states that where:

**“A patient who is a child or young person is in the care of a local authority by virtue of a care order within the meaning of the Children Act 1989… the authority shall be deemed to be the Nearest Relative of the patient in preference to any other person except the patient’s husband or wife [or civil partner][if any].”**

1.8 It has been locally determined that the role of Nearest Relative in S.27 MHA matters is delegated to the Assistant Director in Children’s Services. The role will not be delegated below Assistant Director level in Children’s Services in the County Council.

# The Council’s Mental Health Act duties

2.1 S.114(1) Mental Health Act states that councils with social services responsibilities must appoint a sufficient number of Approved Mental Health Professionals to discharge this duty – as well as to ensure that members of the public are assessed and are able to access the mental health care and treatment they need. In discharging this duty, the County Council is also required to ensure that it provides sufficient and robust cover arrangements to prevent the person identified as the Nearest Relative from having to exercise the assessment and application powers invested in that role.

2.2 The consideration of MHA assessments in West Sussex is co-ordinated through a 24-hours a day AMHP Service, seven days a week, including bank holidays. Assessments are undertaken by AMHPs working alongside doctors with relevant professional expertise in assessing mental health conditions. The case recording of MHA assessments is completed on Mosaic.

2.3 The individuals who work as AMHPs on behalf of the Council are approved to do so having completed a recognized and accredited postgraduate training course in the understanding of mental ill-health and in the application of the MHA.

2.4 Any queries about the Nearest Relative role that cannot be answered through this practice guidance should be addressed in the first instance to the duty manager of the West Sussex AMHP Service.

2.5 The AMHP Service can be contacted 24/7 by telephone (0330 22 28866).

# 3. Nearest Relative identification and role

3.1 A child or young person is entitled to a Nearest Relative if they are:

* detained in hospital under Sections 2, 3, 4 or 37 MHA;
* under a Community Treatment Order of the MHA; or
* are aged 16+ and subject to Guardianship under the MHA (note: this is not the same provision as a Special Guardianship Order under the Children Act 1989).

3.2 When a local authority has Parental Responsibility for a child or young person through either an Interim Care Order or Care Order (S.31 Children Act 1989) that local authority will be the Nearest Relative.

3.2 The local authority does **not** have Parental Responsibility for any child or young person accommodated under S.20 Children Act 1989. In such cases, an AMHP must use the stepped approach set out in S.26 MHA to identify the Nearest Relative. See section 1, paragraph 1.6 above of this practice guidance for further information.

3.3 The agreed arrangements in West Sussex, for when Children’s Services is identified as the Nearest Relative under S.27 MHA, are that:

* Between 0900-1700 hours, Monday-Friday, the person who will undertake this role will be an Assistant Director.
* Outside working hours during the week, and over weekends and bank holidays, the person who will undertake this role will be the on-call Assistant Director.

3.4 This Assistant Director, identified as the Nearest Relative, has the right to:

* Request an AMHP to consider the needs of a child or young person in terms of detention in a hospital where their mental health can be further assessed and/or treatment be provided;
* Be informed by the AMHP either before, or within a reasonable time afterwards, a statutory application has been made to detain a child or young person under S.2 MHA (admission for assessment);
* Be consulted before an AMHP completes a statutory application to detain a young person under S.3 MHA (admission for treatment);
* Object to any statutory application by an AMHP to detain a child or young person under S.3 MHA.

3.5 The Nearest Relative has other rights. These include (and this list is not exhaustive) to:

* Order the discharge from hospital for a child or young person, by writing to the managers of the hospital, if they are detained under the MHA and then to apply to the Mental Health Tribunal if this request is refused;
* Order the discharge of a child or young person from a Community Treatment Order put in place following a period of detention under S.3 MHA;
* Be consulted and/or given information by the admitting hospital about the child or young person if that person has been detained under the MHA - unless the person objects to the provision of this information;
* Be given seven days’ notice of the intention by a hospital to discharge a young person from hospital premises - unless the person objects to this notification being provided;
* Confirm that a child or young person detained under the MHA has been offered the opportunity for an independent advocate.

3.6 The legal status of a child or young person subject to a Care Order is not affected by any subsequent detention under the MHA. However, it is good practice that the allocated Conference and Reviewing Officer is alerted and consideration is given to bringing forward a ‘child we care for’ review. This is because the circumstances of a MHA assessment will likely have a significant impact on the child or young person’s care plan. A review can then consider the current circumstances and determine what changes may be needed to the care plan to enable the child or young person to maintain family and social relationships and how their health, education and other needs will be met.

3.7 The sequence of actions required of the Assistant Director in Children’s Services are described in section 6 below of this practice guidance.

# Actions required: AMHPs

4.1 On receipt of any referral for a MHA assessment, the Lead / Night AMHP on duty for the AMHP Service will notify Children’s Services. This will be to inform them by email that a child or young person has been referred for such an assessment (email: WSChildrenServices@westsussex.gov.uk).

4.2 The Lead / Night AMHP will endeavour to identify the person who is likely to be the Nearest Relative and also anyone who has Parental Responsibility.

4.3 Once a referral has been allocated to a named AMHP to arrange an assessment under the MHA, the allocated AMHP (you) must identify and confirm the Nearest Relative. In relation to the S.27 MHA situation covered by this practice guidance, only, the Nearest Relative will be an Assistant Director in Children’s Services. No other managers in Children’s Services will undertake this role.

4.4 To contact the Assistant Director, you must telephone or email the Integrated Front Door in Children’s Services (email: WSChildrenServices@westsussex.gov.uk) and request assistance. This email address is monitored 24/7. Depending on the time of day and week you may need to be put in contact with a specific Assistant Director. Outside office hours you will need to speak with the on-call Assistant Director.

4.5 In your contact with the Integrated Front Door you must clearly state the reasons for your contact, the name of the child or young person involved, and their Mosaic ID. You must also advise that this request is in connection with a Nearest Relative query under S.27 MHA and that you need to be put through to the relevant Assistant Director for the specialist area associated with the child or young person. If you are arranging a MHA assessment today on that child/ young person, you should state this as a reason for expediting the involvement of the Nearest Relative. You should provide information that will enable the Assistant Director to contact you as soon as possible to discuss the child / young person’s mental health and care needs.

4.6 Contacting the Assistant Director will be in addition to contacting any involved or allocated social worker in Children’s Services.

4.7 You must document your contact with Children’s Services and with the Nearest Relative in your AS493 assessment report on Mosaic.

4.8 If you make a formal statutory application under the MHA – such as a S.2 MHA or S.3 MHA application – you will record the name and job title of the Assistant Director on the statutory paperwork. You will show their name and address as:

West Sussex County Council (*and insert in brackets immediately following the name of the person consulted and their job title*), County Hall, West Street, Chichester, West Sussex PO19 1RQ.

# Actions required: Integrated Front Door

5.1 You are unlikely to be contacted very often by an Approved Mental Health Professional who needs to speak with an Assistant Director in Children’s Services in the context of a Mental Health Act assessment.

5.2 It has been agreed by the statutory Director of Children’s Services in the County Council that the relevant Assistant Director should be put in touch with the AMHP if this is requested. This will be in order to discuss the views of the Nearest Relative (S.27 MHA) in relation to a child or young person who is subject to a Care Order (S.31 Children Act 1989).

5.3 You should be able to identify the relevant Assistant Director in Children’s Services from the information supplied to you by the AMHP. You may want to check the Mosaic case record for more details. The AMHP should have explained the relevant circumstances and timings in their contact with you. If the AMHP phones you, you must ask them to confirm the request by email.

5.4 You should identify the most appropriate Assistant Director who will be available today to have a one-to-one telephone discussion with the AMHP. You will need to forward the AMHP email to the Assistant Director (during working hours or the on-call assistant Director out of hours); ideally you should follow this up by telephone or instant message to confirm receipt.

5.5 The AMHP will probably be one who has been approved by West Sussex County Council and is acting on its behalf. There may however be some occasions when the AMHP is acting on behalf of another local authority, for example, Norfolk. This will likely be the case where the child or young person is placed out of county and is subject to a MHA assessment in that geographical area.

# Actions required - Assistant Directors

6.1 It has been agreed by the statutory Director of Children’s Services that you will act as Nearest Relative (S.27 Mental Health Act 1983) in relation to a child or young person who is subject to a Care Order (S.31 Children Act 1989). This applies during working hours and also at all other times through the on-call Assistant Director arrangements.

6.2 You are unlikely to be contacted very often by an Approved Mental Health Professional (AMHP) who needs to speak with you about a MHA assessment. The AMHP may be one approved by West Sussex County Council and acting on its behalf or they may be acting on behalf of another local authority (if the child or young person is placed out of county – for example in Norfolk - and is subject to a MHA assessment in that geographical area).

6.3 When you are contacted however there are a number of actions required of you:

* You will need to be familiar with the statutory role of the Nearest Relative – read more about this in section 3 of this practice guidance;
* You will need to make yourself available for a telephone conversation with the AMHP;
* You should agree a timeframe with the AMHP in which they can expect to have this conversation with you (you may want some time to review the Mosaic case records first, for instance). You will bear in mind that most MHA assessments take place as soon as possible after a referral has been received by the Council’s AMHP Hub in Worthing - telephone 0330 22 28866, 24/7 – and that the AMHP can reasonably be expected to have already consulted the Mosaic case record for the child / young person;
* Your conversation with the AMHP will involve you as the Nearest Relative under the MHA: it will be focused on your views of the child or young person’s mental health care needs at the present time and will involve consideration of whether a compulsory admission to a hospital is required or whether this can be delayed or prevented;
* You should not need to contact the Council’s Legal Services for advice on your responsibilities as the Nearest Relative - because these are set out in section 3 of this practice guidance;
* The AMHP will add your name and title to any formal statutory application that is made by them under the MHA for the compulsory admission of the child or young person to a hospital for the purpose of assessment and/or treatment;
* You will need to add a senior manager decision / oversight case note to the Mosaic case record for the child / young person. The case note should have the title / heading 'Mental Health Act assessment: Nearest Relative discussion’. In the case note you should explain the reason why you were contacted, and by whom, and what was the agreed outcome in terms of next steps;
* When ‘finishing’ the case note on Mosaic, you should send a case note alert to any allocated frontline worker in Children’s Services. The case note should then form part of the chronology of the Council’s contact with the child or young person.

6.4 A note of the communication that has taken place with you, the Nearest Relative, will be added to the AMHP’s AS493 assessment report. This is completed as a Mosaic workstep and will show in the person’s case record under ‘Documents’.

6.5 The AMHP is required by law to inform you of your MHA rights as the Nearest Relative. West Sussex County Council has produced and published a rights guide for Nearest Relatives. This is available in pdf and printed formats. Other local authorities may not have this information in these formats. If you are not offered information about this by the AMHP, please do ask the AMHP for an explanation. (You can also find information about Nearest Relative rights and responsibilities in sections 3 and 7 of this practice guidance).

6.6 If the child or young person is admitted to a hospital under the MHA, the admitting hospital will also write to you with further information.

# Other Nearest Relative activities

7.1 If you, as the Nearest Relative, want to express an objection to the AMHP in connection with a proposed application for the child or young person to be admitted to hospital under S.3 MHA or placed under Guardianship (MHA), you will need to explain your rationale on Mosaic.

7.2 (Given that you work for the County Council, and the AMHP is authorised to work on behalf of the Council or another similar local authority, a professionals’ discussion may need to be held to explore next steps. The advice of Legal Services may also be required. If the child or young person is not be detained under the Act, what non-MHA care arrangements can be put in place as an alternative?)

7.3 If you want to order the discharge of the child or young person from MHA detention, you will need to write to the hospital managers at the hospital concerned. The hospital would need to respond within 72 hours. If the hospital does not meet this legal time limit to reply to you the child or young person’s MHA status is automatically rescinded. The hospital however has the legal authority to either ‘bar’ your discharge request or to agree to it.

7.4 If you disagree with the decision by the hospital relating to your request for the child or young person to be discharged from MHA detention, you can make an application to the Mental Health Tribunal and request the Tribunal reviews the case. You will need to contact Legal Services for advice on how to proceed with this.

7.5 If you want to order the discharge of the child or young person from a Community Treatment Order (MHA), you will need to contact Legal Services for advice on how to proceed.

7.6 If you are concerned that the child or young person would benefit from the support of an Independent Mental Health Advocate, you should ask the hospital to arrange this for them. You will need to record this request on the Mosaic case record.

7.7 Where the child or young person who has been detained under the MHA decides they do not want their Nearest Relative (Children’s Services in this case) informed of their stay in hospital or subsequent discharge from hospital, you will need to reinforce to the hospital that the welfare of the child or young person is paramount. You will need to record the objection to the information-sharing on the Mosaic case record.