



Nearest relative

Explains what a nearest relative is, including what powers and rights they have and how you can change your nearest relative

If you require this information in Word document format for compatibility with screen readers, please email: publications@mind.org.uk.

Contents

Overview	2
About the nearest relative.....	3
What rights does my nearest relative have?	5
Sectioning and guardianships	5
Information about me	9
Can my nearest relative ask an independent advocate to see me?.....	10
Changing my nearest relative	10
Useful contacts	14

- This information applies to England and Wales.
- This information applies to adults. It doesn't apply to children unless specifically stated.

Overview

If you have a mental health problem, your [nearest relative](#) will have certain powers and rights related to your care and treatment.

Quick facts

- Nearest relative is a special term used in the [Mental Health Act 1983](#).
- It gives one member of your family [certain rights and responsibilities](#) if you are kept in hospital under sections 2, 3, 4 or 37, on a [community treatment order](#), or under a [guardianship](#).
- The Mental Health Act has a list of [who will be your nearest relative](#). The list is in strict order and the person who is highest on the list is your nearest relative.
- You can [change your nearest relative](#) in certain situations.

This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your individual situation and needs. See our [useful contacts](#) section for organisations which may be able to help.

About the nearest relative

What is a nearest relative?

[Nearest relative](#) is a special term used in the [Mental Health Act 1983](#). It gives one member of your family rights and responsibilities if you are:

- [detained](#) in hospital under sections 2, 3, 4 or 37
- under a [community treatment order](#) or
- under a [guardianship](#).

Your nearest relative is not the same as your next of kin. The next of kin doesn't have any rights under the Mental Health Act.

Nearest relative is an important safeguard for people who are affected by the Mental Health Act. The nearest relative is another way of making sure that your rights are protected when you are unwell and it is normally someone that you trust.

Who is my nearest relative?

Section 26 of the [Mental Health Act 1983](#) sets out who will be your [nearest relative](#). The list is in strict order and the person who is highest on the list is your nearest relative.

List of who your nearest relative is

1. Husband, wife or civil partner (including [cohabitee](#) for more than 6 months).
2. Son or daughter
3. Father or mother (an unmarried father must have [parental responsibility](#) in order to be nearest relative)
4. Brother or sister
5. Grandparent
6. Grandchild
7. Uncle or aunt
8. Nephew or niece

Also, the nearest relative must:

- be over 18 unless they are your mother, father, husband, wife or civil partner

- live in the UK, Channel Islands or the Isle of Man unless you normally live abroad too.

Other situations that affect who your nearest relative might be

- **If you are under 18 and subject to a care order**, the local authority will be your nearest relative, unless you have a husband, wife or civil partner.
- **If you are permanently separated from your partner**, they cannot be your nearest relative.
- **If there are two people from the same group**, the elder person is nearest relative. So for example, if you have two siblings, the elder one would be your nearest relative.
- **If you have lived with a relative or are cared for by one of your relatives**, they will become your nearest relative. So for example, if your sister is your carer but you also have a father, in this situation your sister would be your nearest relative.
- **If you have lived with someone who is not related to you for more than 5 years**, they will be added to the bottom of your list of relatives after niece and nephew. So for example, if you have a friend who has lived with you for 7 years they will be added to the list. If you also have a mother and a brother, in this situation your mother would be your nearest relative.
- **If you have half blood relatives (like a half brother or sister) then they can be your nearest relative.** But a whole blood relationship will take priority over halfblood. So for example, if you have a full brother who is 20 years old, and a half- sister who is 32 years old, normally the elder would be the nearest relative. But because it is a half-blood relationship, here your brother would be your nearest relative.
- **If you have adoptive relationships (like an adoptive mother or father) then they can be your nearest relative.**
- **If you have step-relationships (like a step-mother or step-father) then they cannot be your nearest relative.**

What happens if I do not have anyone to act as nearest relative?

If you do not have anyone on the list that can act as a [nearest relative](#), you can apply to your local county court to appoint one. This could be a friend or could be an [approved mental health professional](#). The process is the same as [displacement](#).

What rights does my nearest relative have?

Under the [Mental Health Act](#), your [nearest relative](#) can:

- apply to [section](#) you or place you under a [guardianship](#)
- object to you being sectioned or placed under a guardianship
- discharge you if you are sectioned and apply to the [Mental Health Tribunal](#) if this is refused
- ask for an independent advocate to give you support
- be consulted and/or given information about you if you are sectioned
- appoint someone else to be your nearest relative.

For more information see our sections on [sectioning and guardianships](#), [independent advocacy](#), [information about me](#) and [changing my nearest relative](#).

Sectioning and guardianships

Can my nearest relative request a mental health assessment?

Yes. Anyone can request a mental health assessment by contacting your local social services or community mental health team.

However, the local social services team only has a duty to consider a nearest relative's request. If they decide not to section you, they must give written reasons.

When can my nearest relative section me or place me under a guardianship?

If your [nearest relative](#) is concerned about your mental health, they can contact your local social services or community mental health team and apply to [section](#) you or place you under a [guardianship](#). In reality though, it is normally an [approved mental health professional](#) who will make this application.

For more information about what happens when you get sectioned see our resource on [sectioning](#).

Your nearest relative can apply to section you or place you under a guardianship in these circumstances:

Section 2

A section 2 is used if you need to be assessed. It is sometimes used if the doctors don't know you or if you are in a different area.

To section you, your nearest relative would need to:

- fill out a [form A1](#) (England) or [form HO1](#) (Wales)
- get two doctors to agree that you should be admitted to hospital. One of the doctors should know you before the assessment, for example, your GP. At least one of the doctors must be a [section 12 approved doctor](#). The doctors need to complete a specific form and give reasons as to why you meet the criteria.

Section 3

A section 3 is used if you have had your mental health assessed before and are already getting mental health treatment. For example, you already have a mental health diagnosis or are receiving support from a psychiatrist or community mental health team.

To section you, your nearest relative would need to:

- fill out a [form A5](#) (England) or [form HO5](#) (Wales)
- get two doctors to agree that you should be admitted to hospital. One of the doctors should know you before the assessment, for example, your GP. At least one of the doctors must be a [section 12 approved doctor](#). The doctors need to complete a specific form and give reasons as to why you meet the criteria.

Section 4

A section 4 is used in an emergency only, when you need to be admitted to hospital under section 2 but cannot wait for the second medical assessment. You could be detained for up to 72 hours.

To section you, your nearest relative would need to:

- fill out a [form A9](#) (England) or [form HO9](#) (Wales)
- get a recommendation from one doctor. The doctor should know you before the assessment, for example, your GP. They must explain why they couldn't get someone who

knows you if they don't.

Guardianship

Guardianship is used for people that can be cared for in the community. It is only rarely used.

To place you under a guardianship, your nearest relative would need to:

- fill out a [form G1](#) (England) or [form GU1](#) (Wales)
- get two doctors to agree that you should be admitted to hospital. One of the doctors should know you before the assessment, for example, your GP. At least one doctor should be a [section 12 approved doctor](#). The doctors need to complete a specific form and to give reasons as to why you meet the criteria.

Can my nearest relative object if I'm going to be sectioned or placed under a guardianship?

Yes. You cannot be detained under section 3 or be placed under a [guardianship](#) if your [nearest relative](#) disagrees.

To object, your nearest relative needs to tell the [approved mental health professional \(AMHP\)](#) and give them reasons why they disagree. This can be done verbally or in writing.

But if the AMHP thinks that your nearest relative is being unreasonable by disagreeing, they can apply to change the nearest relative to someone else (also known as [displacement](#)).

You can be [detained](#) under section 2 and 4 even if your nearest relative disagrees.

Can my nearest relative discharge me from hospital?

Your [nearest relative](#) can write to the [hospital managers](#) to tell them that they want to discharge you if you are on a section 2, 3 or 4 or are subject to a [community treatment order](#) or [guardianship](#) from a section 3. These rules do not apply if you are on a section 37 or have been put on an order from a section 37.

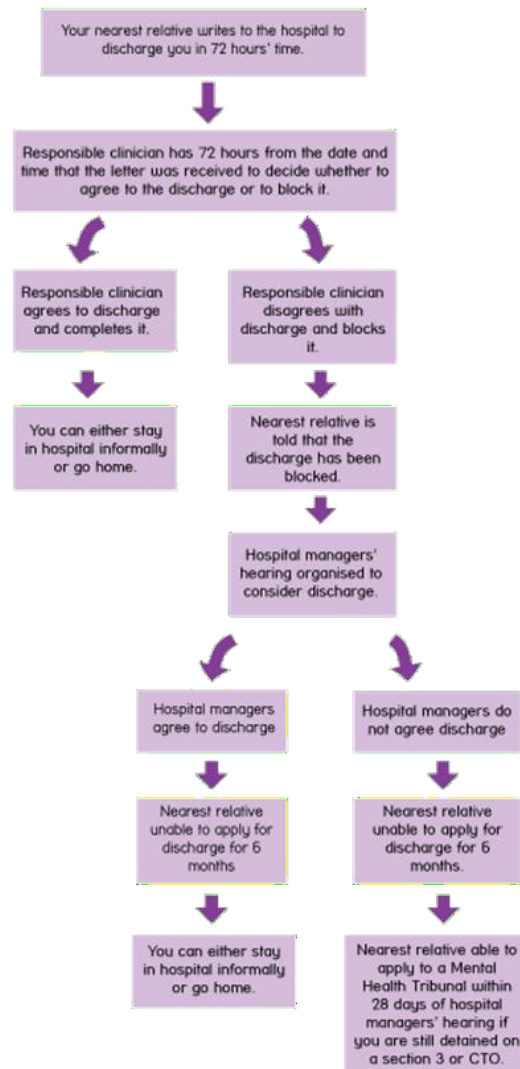
Example discharge letter

Download an example letter for nearest relatives to use which is taken from the [Mental Health Act Code of Practice](#) ([Word](#) or [PDF](#)).

If you are sectioned or on a community treatment order, the nearest relative must wait 72 hours before discharging you so the responsible clinician can decide whether to challenge it.

The [responsible clinician](#) must prove that you are likely to act in a way that would be dangerous to yourself or others if you were discharged.

Flowchart: How can my nearest relative discharge me?



Letter from responsible clinician barring discharge

Download a copy of the letter that the responsible clinician would use to bar the discharge [if you live in England](#) or [if you live in Wales](#).

Can my nearest relative apply for a Tribunal?

Yes. There are different rules for applying for [Mental Health Tribunals](#) depending on which [section](#) you are detained on and whether your nearest relative has been displaced. The [Tribunal Service website](#) has a useful information sheet for nearest relatives.

Information about me

What information about me will my nearest relative be told?

Your [nearest relative](#) has the right to be told certain information about your mental health. This includes:

- if an application is being made to [section](#) you
- the reasons you have been [detained](#) in hospital
- your rights under section, [community treatment order \(CTO\)](#) or [guardianship](#)
- if you are put on a CTO or guardianship order
- if your section, CTO or guardianship is renewed or changed
- if you are discharged.

When might my nearest relative not be informed or consulted?

Your [nearest relative](#) may not be informed if:

- it would take a long time to locate them
- they are unwell
- it will have a negative impact on you
- it is not possible to find out who your nearest relative is.

If you are going to be [sectioned](#), staying in hospital or discharged from hospital, you have the right to say that you do not want information about your care or treatment to be passed on to your nearest relative. You can do this even if you have not gone to court to replace your nearest relative.

For example, normally the [hospital managers](#) must tell your nearest relative when you are due to be discharged, but if you give instructions that they should not tell your nearest relative this or share other information about you, they should respect your wishes.

However, there must be very good reasons why you don't want your nearest relative to be told

information about you. This is because the nearest relative can object to you being put on a section 3, which is an important power that no-one else has, so they could prevent you from being detained.

This is balancing your Article 5 and Article 8 rights of the Human Rights Act. For more information see our resource on the [Human Rights Act 1998](#).

It is important that you let your team know if you do not want your nearest relative to be told information about you.

Example

Hari has a history of being physically abused as a child. His father went to prison because of it and they do not have any contact.

Hari is under section and will be going home in a few days' time. He lives in a flat, which he shares with his friends.

He is told that his father, as his nearest relative, should normally be informed when Hari is going to be discharged from hospital because it is the duty of the hospital managers to do this.

Hari says that he absolutely does not want his father to be told this or any other information about him. The hospital should respect his wishes.

Can my nearest relative ask an independent advocate to see me?

Yes. Your [nearest relative](#) has the right to ask for an [independent mental health advocate \(IMHA\)](#) to see you.

An IMHA is an advocate specially trained to help you find out your rights under the [Mental Health Act 1983](#) and help you while you are [detained](#). They can listen to what you want and speak for you.

You don't have to see an IMHA if you don't want to.

For more information see our resource on [advocacy](#).

Changing my nearest relative

Can my nearest relative give their powers to someone else?

Yes. If your [nearest relative](#) doesn't want to be your nearest relative, they can give their powers to someone else, as long as that person agrees.

To do this, the nearest relative can write a letter to tell the hospital that they are choosing someone else to act in that role. If, at any time, your original nearest relative changes their mind, they can take back their powers in writing.

Example letter for nearest relative to give their powers to someone else

There isn't a specific form to use but here is an example letter you can download in [Word](#) or [PDF](#).

Can I change my nearest relative?

Yes. You can apply for someone else to be your nearest relative if you are a [patient](#) – this is called '[displacement](#)'.

If you are [detained](#) under the Mental Health Act, you will need a [litigation friend](#) to do this. How this works can be quite complicated or expensive so it is important to get specialist legal advice.

- You can suggest one or more people who might be suitable as your nearest relative. Alternatively, it may be an [approved mental health professional](#) or someone from the local social services who is appointed as your nearest relative.
- You can change your nearest relative on a number of different grounds. These are set out in section 29 of the Mental Health Act which says that:

You can change your nearest relative if

- they cannot act because of health reasons
- they have unreasonably objected to a [section 3](#) or [guardianship](#) application
- they have tried to discharge you without considering all of the circumstances
- they are unsuitable to act
- you don't have a nearest relative from the list
- it is not practical to identify them.

- How long the displacement lasts depends on the reason the court order was made. Often the court order will give a date that the court order ends or it ends automatically when you are discharged from your section. It is important to get [specialist legal advice](#) for your situation.
- You could be made to pay the other parties' costs if your case is unsuccessful. So if you want to change your nearest relative, it is very important to speak to your [approved mental health professional](#) and get [specialist legal advice](#).

How do I change my nearest relative?



Fill in the N208 form

- You must use the [N208 claim form](#) to make an application to the county court. You might also find this [guidance on completing the form](#) useful.
- If you make the application, you will be called the 'claimant' and your [nearest relative](#) will be called the 'defendant' on the application form.

Give details about your situation

- There are strict rules about what information you need to give. These are called the Part 8 Civil Procedure Rules. They are very specialised and it is always important to get legal advice to make sure that they are followed.
- You will need to include information like: the details of your nearest relative, why you want to [displace](#) them, who you would like to replace your current nearest relative, the law that lets you make this claim and what role your representative has (if, for example, you have a solicitor or [litigation friend](#)).
- It is always useful to have evidence to support your case. Depending on the facts, this could include reports from your family members, medical practitioner, probation officer, and/or [approved mental health professional](#).

Pay the application fee

- You will need to pay a fee when you submit the application.
- You may be able to get a discount depending on your income. Find out more about how much you will have to pay on the [Gov.uk website](#).

Apply to your nearest county court

- You should apply to the county court which you live in if you want to make an application. If you want to change a court order though, you need to apply to the same court that issued it, which might be different to the one you live in.
- Find your nearest county court by using the [Gov.uk court tribunal finder](#) and putting in your postcode. If you select all areas of law, the courts nearby will be listed with the closest first and you can find the county court.

What happens once I have submitted the application?

- Your nearest relative will be informed. In most cases your [nearest relative](#) will be told if an application has been made to displace them. However, there are some occasions where it is not appropriate. This is called an 'ex parte' hearing.
- If your nearest relative disagrees with the [displacement](#), they can challenge the application and submit their own evidence. If your nearest relative is not capable of acting because they have a [mental disorder](#), they may have a [litigation friend](#) acting for them.
- Your hearing may take place in a court, or somewhere else. It is important that the judge has all of the information that they need to make a decision. This may mean that the judge would like to speak to you. This could be in court or somewhere else. It could be on your own or with other people depending on the situation. If you are [detained](#), the hospital should help you go to court if you want to go.
- Your case will be heard by a circuit judge. The [circuit judge](#) will be referred to as "His/Her Honour Judge [surname]". The hearing will take place in private so that the public cannot attend.
- Your nearest relative will continue to be your nearest relative while the hearing is ongoing, in most cases. However, the court can make an 'interim' order which means that someone else will act as your nearest relative until a final decision can be made.

Can I get legal aid?

In some circumstances you may be able to get legal aid to help you pay for your legal costs. You should contact a solicitor specialising in mental health to discuss your case. See our [useful contacts](#) section for details of how to find a solicitor.

Some insurance policies have legal expenses insurance which could cover your particular case. Check your home or car insurance to see if it does.

Can the displacement be changed once I have been to court?

Yes. You can go back to the court to change or end the court order. You will need to make an application to the court that made the original court order.

You should get [specialist legal advice](#) in relation to your case.

Useful contacts

Mind's services

- [Legal Line](#) – provides legal information and general advice by phone or email.
- [Local Minds](#) – provide face-to-face services, such as talking therapies, peer support and advocacy, across England and Wales.

Find an advocate

To find [advocacy](#) services and groups in your area, you could call Mind's Legal Line or contact your local Mind.

If you're in hospital, you can also contact:

- the [Patient Advice Liaison Service \(PALS\)](#) in England
- the [Community Health Council](#) in Wales.

In some circumstances, you may be legally entitled to get the support of an advocate. See our resource on [your legal rights to advocacy](#) for more information.

Other organisations

Civil Legal Advice (CLA)

gov.uk/civil-legal-advice

Can tell you if you're eligible for legal aid, and give you free and confidential legal advice if so.

Law Society

lawsociety.org.uk

Professional association for solicitors in England and Wales. Includes a searchable directory of solicitors.

© Mind November 2020

To be revised in 2022.

References are available on request.