****

**Guidance for**

**Nearest Relative**

**Name of Author:**

 **Anna Messinger, Social Work Standards Officer**

 **Wilson Banda, Team Manager, Kent AMHP Service**

**Name of Senior Manager Approving: Anita Hiller**

**Date of Issue: 09.2022**

**Date to be Reviewed: 09.2025**

# Guidance for Nearest Relative Protocol

# Contents

|  |  |
| --- | --- |
| Item | Page Number |
| [Mental Health Act, Nearest Relative Definition](#_Mental_Health_Act,) | 3 |
| [Roles and responsibilities of the Nearest Relative](#_Roles_and_responsibilities) | 3 |
| [Who exercises the nearest relative functions on behalf of Kent County Council?](#_Who_exercises_the) | 4 |
| [Additional detail in relation to the rights and functions of the Nearest Relative](#_Additional_detail_in) | 4 |
| [Recording Decision Making](#_Recording_Decision_Making) | 5 |
| [Additional Action to ensure](#_Additional_Action_to) | 6 |
| [Additional information](#_Additional_information) | 6 |
| [Additional links](#_Additional_links) | 7 |
| [Templates](#_Templates) | 7 |

# Additional documents

Nearest Relative template letter requesting discharge – Page 7

Nearest Relative Application to first tier tribunal - Page 8

# Mental Health Act, Nearest Relative Definition

“Nearest Relative” is a term used in the Mental Health Act 1983 (hereafter referred to as “the MH Act”). It gives the member of a young person’s family, identified as the nearest relative, rights and responsibilities if they are detained.

If a local authority has parental responsibility, for a child or young person through either an Interim Care Order or Care Order (within the meaning of the Children Act 1989) it will be the Nearest Relative. The local authority does not have parental responsibility for young people who are accommodated under Section 20 and is, therefore, not the nearest relative.

A young person is entitled to a nearest relative if they are:

* detained in hospital under sections 2, 3, 4 or 37 of the MH Act
* under a Community Treatment Order (CTO) or
* under guardianship (aged 16+)

# Roles and responsibilities of the Nearest Relative

The Nearest Relative has several important rights and functions under the MH Act including the right to:

1. Request an Approved Mental Health Professional [(AMHP) [[1]](#footnote-1)](#_Approved_Mental_Health) to consider assessing the need for a young person’s detention in a hospital.
2. Be consulted where reasonably practicable before an AMHP completes an application to detain a young person under s3 of the MH Act or place a young person (16+) under guardianship. The Nearest Relative can block the application.
3. Be informed by the AMHP either before, or within a reasonable time, after they make an application to detain a young person under s2 of the MH Act.
4. Make an application for a young person to be detained in hospital under sections 2, 3, 4 and for guardianship under s7 of the MH Act if two medical recommendations are provided (one medical recommendation is required for s4).
5. Order the young person’s discharge, by writing to the managers of the hospital, if they are detained under the Act and apply to the Mental Health Tribunal if this is refused.
6. Order the young person’s discharge from a Community Treatment Order.
7. Be consulted and/or given information by the hospital about the young person if they are sectioned unless the young person objects.
8. Be given seven days’ notice of the intention to discharge a young person unless the young person objects.
9. Confirm that a child or young person detained under the Act has been offered the opportunity for an independent advocate.

**See point 4 for additional detail in relation to the rights and functions of the Nearest Relative**

# Who exercises the nearest relative functions on behalf of Kent County Council?

The Act does not specify which officer the local authority should delegate its functions to.

* Kent County Council delegates its functions to Service Managers as they also have responsibility for exercising the local authority’s corporate parenting functions.
* Outside of office hours, including bank holidays and weekends, the functions are delegated to the duty Service Manager
* When young people are placed in Kent by other local authorities the placing local authorities continue to be the nearest relatives not Kent County Council.

# Additional detail in relation to the rights and functions of the Nearest Relative

* **If you need to request an Approved Mental Health Professional** **(AMHP) to consider assessing the need for a young person’s detention in a hospital:**

Contact the AMHP Service on:

03000 422480 (Monday to Friday 0800hrs to 1700hrs)

03000 419191 (Monday to Friday 1700hrs to 0800hrs, weekends and bank holidays)

* **If you wish to object to the application** **for an AMHP to detain a young person** **under s3 of the Act or place a young person (16+) under guardianship:**

Inform the AMHP you object when they consult you (and record your rationale on Liberi). If you object, the AMHP would need to go to Court to displace the Nearest Relative if they thought the objection was unreasonable (within the meaning of s29 of the Mental Health Act 1983). Given that the AMHP works for the LA and the LA would be the Nearest Relative, this would be very unusual

* **Making an application for a young person to be detained in hospital** **under sections 2, 3, 4 and for guardianship under s7:**

In most cases the AMHP will complete an application if two medical recommendations (one medical recommendation is required for s4) are provided. However, if the nearest relative wishes to make an application the AMHP can provide guidance and support on how to do this.

* **If you wish to order the young person’s discharge:**

The request to the hospital needs to be made in writing, using the letter template below. The hospital would need to respond within 72 hours otherwise the YP becomes an informal patient. The hospital makes the ultimate decision to either “barr” or agree to the discharge of the section.

If you disagree with the decision by the hospital an application needs to be made by the local authority for a Mental Health Tribunal, using the relevant form below. (To note the AMHP service is not involved with LA application for a tribunal).

* **If you wish to order the young person’s discharge from a Community Treatment Order (CTO)[[2]](#footnote-2):**

A CTO is very rare for a young person. The AMHP service provides a letter to the Nearest Relative including information on how to order the young person’s discharge from the CTO.

* **If the young person is sectioned and they object to the nearest relative being informed:**

Considering that the welfare of the child is paramount it is envisaged that the hospital would encourage sharing, but ultimately note their objection and say why and what they need to share with the nearest relative.

* **If the young person is being discharged and objects to the Nearest Relative being informed**:

Considering that the welfare of the child is paramount it is envisaged the hospital would encourage sharing, but ultimately note their objection and say why and what they need to share with the nearest relative.

* **Ensuring there is an advocate for the child/young person:**

Check that the hospital or AMHP have informed the child or young person about the advocacy service and a referral is made by the hospital or AMHP, if they want this.

# Recording Decision Making

Any discussion and decision made in relation to the rights and functions of a Nearest Relative for a child or young person must be recorded on Liberi. The decision recorded on Liberi should be in the case note section with the heading 'Nearest Relative Decision” and identify:

* Details of the decision
* Details of who made the decision
* What discussions took place with any other professionals, the child or young person
* When the decision was made

# Additional Action to ensure

If a child or young person is admitted under either section of the MH Act the allocated IRO and IRO Service needs to be alerted so theChild in Care Review can be brought forward. The circumstance of the event has a significant impact upon their Care or Pathway Plan and the review will consider the current circumstances; change of care plan; how the child or young person will maintain family and social relationships; family time; and how their health, education and other needs will be met. [Child in Care Reviews (proceduresonline.com)](https://kentchildcare.proceduresonline.com/p_look_aft_rev.html)

Consideration should be given to contacting family members with Parental Responsibility.

# Additional information

The legal status of children who are the subject of a Care Order is not affected by detention under the Mental Health Act.

A child or young person detained under the Mental Health Act 1983 has a right to have an independent advocate.

Section 2 of the Mental Health Act 1983 allows for a patient (child or adult) to have their mental health needs compulsorily assessed and treated as an in-patient for up to 28 days.

Section 3 of the Mental Health Act 1983 provides for the person to compulsorily receive treatment as an in-patient for up to six months. S.3 can be renewed for a further period of 6 months and then renewed for periods of one year thereafter.

Section 4 of the Mental Health Act 1983 is an emergency order that lasts up to 72 hours, enabling admission to hospital for assessment in cases of emergency. It is implemented by one doctor and an Approved Mental Health Practitioner, in an emergency when there is insufficient time to arrange a second doctor to implement a Section 2 Assessment Order. Once in hospital, a further medical recommendation from a second doctor would convert the Section 4 Emergency Order to a Section 2 Assessment Order. Section 4 Emergency Orders are not commonly used.

Section 5 (2) of the Mental Health Act 1983 gives doctors the ability to detain someone already receiving inpatient treatment, for up to 72 hours. During this time, they should receive an assessment that decides if further detention under Section 2 or Section 3 of the Mental Health Act is necessary.

# Additional links

[Mental Health Act 1983 (legislation.gov.uk)](https://www.legislation.gov.uk/ukpga/1983/20/contents)

[Accountability and Delegation (proceduresonline.com)](https://kentchildcare.proceduresonline.com/pr_accountability.html)

[List of Agency Decision Makers, Designated Managers and Nominated Officers (proceduresonline.com)](https://kentchildcare.proceduresonline.com/pr_desg_man.html)

[What are community treatment orders (CTOs)? - Mind](https://www.mind.org.uk/information-support/legal-rights/community-treatment-orders-ctos/overview/)

Mental Health Act Code of practice:

[Mental Health Act 1983 (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF)

[Mental Health Act Code EasyRead (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421541/MHA_Code_EasyRead.pdf)

# Templates

## Nearest Relative template letter requesting discharge



## Nearest Relative application to first tier tribunal

*To open the file below as a PDF right click on the image, select Acrobat Document Object, select Open. Click on PDF Document on toolbar.*



1. ###  Approved Mental Health Practitioners (AMHPs) - These specifically qualified professionals have been approved by the Local Authority Social Services authority to carry out certain duties under the Mental Health Act. AMHPs are independent decision makers who apply the social perspective and the law to a Mental Health Act assessment and can make an application if an accompanying medical recommendation is supplied to detain someone to hospital.

 [↑](#footnote-ref-1)
2. A CTO is made under s17A MH Act to allow certain patients to be safely treated in the community rather than under detention in hospital. It can be used when a patient is discharged or allowed out on short-term leave. It provides a way to help prevent relapse and any harm to the patient, or to others, that relapse might cause. Along with conditions set, the patient can be recalled if necessary. [↑](#footnote-ref-2)