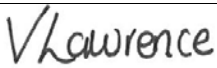



SAFE WELL PROSPEROUS CONNECTED

## Appointment by the Court of Acting Nearest Relative (S29 Mental Health Act 1983) Practice Guidance

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## Contents

1.	Introduction.....	2
1.1	Legal context .....	2
2.	Policy key points.....	3
2.1	Application .....	3
2.2	Nominated person to act as nearest relative .....	4
2.3	Duration of displacement .....	4

Appendix 1: Delegating of performance of functions of NR

## 1. Introduction

The objective of this policy is to provide clear information to support Approved Mental Health Professionals (AMHPs) with an application to the County Court and the decision as to who is the most appropriate person to nominate, when making an application to displace a Nearest Relative (NR). This policy supports the [council's role of prioritising](#) the most vulnerable to achieve better outcomes, supporting people to be safe and well.

An application to displace the NR may be made by either the person / relative of the person or anyone with whom the person is residing, or an AMHP on the grounds stated [under S29 \(3\) MHA'83](#).

### Section 29 (3) MHA 1983

“An application for an order under this section may be made upon any of the following grounds, that is to say—

- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is
- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness
- (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of the patient
- (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient under this Part of this Act, or is likely to do so; or
- (e) that the nearest relative of the patient is otherwise not a suitable person to act as such.”

NR's have an important role to play in the care of people who may require assessment and treatment under the [Mental Health Act 1983 \(MHA\)](#). For the purposes of the Act the NR is not the same person as the next of kin and the identity can change with the passage of time. For example, if a person enters into a marriage or civil partnership.

### 1.1 Legal context

Under the MHA 1983, the NR has legal responsibilities to safeguard the person's interests and to help ensure that the compulsory powers of the MHA 1983 are used appropriately. However, where it is thought that a NR is exercising their powers unreasonably, an application to the County Court may be made to displace a NR.

Where the person appears to have no NR, the AMHP should advise the person of their right to apply to the County Court for the appointment of a person to act as their NR. If the person lacks capacity to decide to apply themselves the AMHP should apply to the County Court. It is **good practice** for the AMHP to seek the appointment of a NR if none exist.

If the above grounds are met then the County Court can appoint a person to take on the functions of NR for a particular person.

## 2. Policy key points

Where a request is received for an Appointment by the Court of Acting NR, the case should be allocated to an AMHP, as required. They will then consider if there are grounds to make an application.

Before making an application to displace the NR under S29 (3) (a) (see above) the AMHP should ensure they have done all that they can to identify a NR. This includes visiting their home address if feasible. In the case of displacing a NR under grounds stated at S29 (3) (b) (see above) the AMHP should ensure that they have taken steps to support the NR and provide them with all the necessary information in order to enable them to make their decision.

The AMHP should also consider other alternatives such as whether the NR will agree to delegate their responsibility (see form at appendix 1) or providing or arranging support for the person (or someone else) to make an application to the court for themselves. This could include the support from an Independent Mental Health Advocate (IMHA). The NR should also be advised to seek their own legal representation.

Where a person wishes to make an application to displace their NR an AMHP should discuss with the person their reasons for wanting to displace their NR. If the AMHP agrees that it is in the best interest of the person that the NR should be displaced then the AMHP should offer to make the application on behalf of the person. Where the AMHP does not agree with the person's decision to displace their NR they should provide or arrange support for the person to make the application themselves. This can include support from an IMHA.

If a request is received for a person already detained under the [S.2 MHA 1983](#) and the NR objects to an application being made under [S.3 MHA 1983](#) under the grounds stated in S.29 (3) (c) or (d) (see above), an application under [S.29 \(4\)](#) of the MHA 1983 will have the effect of extending the section 2 until the matter of displacement is resolved in Court.

Where an application for detention under [S.3 MHA 1983](#) is being sought for persons not detained under [S.2 MHA 1983](#) and the NR objects the AMHP should seek further legal advice to consider an interim order under [S.38 County Court Act 1984](#).

### 2.1 Application

The AMHP should make contact with the AMHP Lead or on-call manager and the local council legal department to discuss the case. If appropriate, an application will be made to the County Court by the local council legal department for an initial hearing. The AMHP will be required to attend but will be legally represented by a member of staff from the local authority legal department.

When making an application to the Court the AMHP will be required to submit a report

giving details of the persons social circumstances and evidence to support the displacement, including:

- Name and professional qualifications
- Short history of involvement with the person
- Why the person should be detained under the act (or accepted into guardianship) and risks to and / or from the person
- Actions of the NR, including a history of any objections
- The proposed care plan for the person
- A statement of agreement from the proposed NR or a reference in the AMHP report, as to why none is proposed
- A report by a medical practitioner approved under [S.12 \(2\) of the MHA 1983](#) confirming medical diagnosis and treatment plan.

## **2.2 Nominated person to act as nearest relative**

If the application is made by an AMHP, they should nominate someone who is acquainted with the person to be the acting NR if the application is successful. The person should be consulted with regard to their preference or any concerns they may have regarding the person who is proposed as NR.

If there is no suitable person able to act, the AMHP should approach the team manager of the service involved with the person, to nominate a willing staff member to represent North Lincolnshire Adult and Community Wellbeing and take on the responsibilities of the NR.

## **2.3 Duration of displacement**

The County Court can specify any length for the duration of an order. However, if clarification is not given then the order will expire at the point that the person ceases to be liable to be detained under section three, or subject to guardianship (if not subject to either of these) then after three months, only a County Court (or another court on appeal) can legally vary or discharge an order appointing an acting NR.

**Appendix 1**

Delegation of performance of functions of Nearest Relative	
Name of Nearest Relative	
Address of Nearest Relative	
Person's Name	

I, ..... being the Nearest Relative of .....

.....

hereby authorise: ..... of address: .....

.....

to perform the functions of the Nearest Relative with regard to the Mental Health Act 1983, in accordance with Regulation 24 of the Mental health (Hospital, Guardianship and Treatment) (England) Regulations 2008.

I wish this arrangement to remain in force until such time as it is revoked by me in written form.

Signed.....Date:.....  
(Nearest Relative)

To Name and address of hospital managers:

.....  
.....

Name and address of Approved Mental Health Professional (AMHP)

.....  
.....

Name and address of delegated NR

.....  
.....

A copy of this form is to be retained by the Nearest Relative