

AMHP Service

Nearest Relative Displacement Practice Guidance

Organisations	Central Bedfordshire Council (CBC) Bedford Borough Council (BBC) Luton Borough Council (LBC) East London Foundation Trust (ELFT)		
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Right Care, Right Person Statement:

Right Care, Right Person (RCRP) (DoH, July 2023) sets out a collective national commitment from the Home Office, Department of Health & Social Care, the National Police Chiefs' Council, Association of Police and Crime Commissioners, and NHS England to work to end the inappropriate and avoidable involvement of police in responding to incidents involving people.

EDT and the AMHP Service will signpost and respond to contact's taking into consideration the RCRP principles. Meaning, where possible the right person with the rights skills, training and expertise will respond. Staff will use the escalation process in place if they feel this is required. The police have a legal duty to Keep the Kings peace, respond to imminent threat to life and respond where a crime has been committed. All documents will be reviewed and updated in 2025 to include specific details relating to RCRP.

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1. Introduction

- 1.1 The aim of the Nearest Relative Displacement Practice Guidance is to support Approved Mental Health Professionals (AMHPs) when undertaking their role and in the management of individual cases. This will provide clear and precise guidance detailing how AMHPs and other relevant parties should respond when discharging their legal responsibilities to safeguard peoples' interests and to ensure compulsory powers are applied appropriately.
- 1.2 Nearest Relatives have an important role to play (safeguard) in the care of people who may require an assessment and or treatment under the Mental Health Act, (MHA, 1983). It is important to note that the nearest relative as defined within the MHA (1983) may not be the same person identified as the next of kin and the identification of the nearest relative may change in time; for example, if a person marries, enters a civil partnership.
- 1.3 The definition of the nearest relative can be found within s26 of the MHA (1983). Identifying who is the nearest relative can be a complex process and should be undertaken by an AMHP or someone with significant experience of mental health legislation.
- 1.4 The nearest relative under s26 (MHA, 1983), has legal powers to safeguard the interests of the person being assessed and to ensure compulsory powers under the act are used appropriately. If the nearest relative is exercising their powers unreasonably/not acting in the persons' best interests; or where a person is found to, not have a nearest relative as defined in s26, (MHA, 1983), an application can be made to the county court to displace and or nominate, to take on the functions of the nearest relative for the person under s29, (MHA, 1983).
- 1.5 Application to displace nearest relative by the person being assessed – people who are being assessed under the MHA (1983), may express a wish to change/displace their nearest relative, in such cases the AMHP should discuss with the person their reasons for wanting to change/displace. If the AMHP, following discussion agrees that displacement of the nearest relative would be in the best interest of the person, then the AMHP should offer to make an application on the persons' behalf for displacement to the county court.
- 1.6 However, if the AMHP does not find reasons given, to be in the person's best interest, they should provide or arrange support for the person to enable them to make an application to the county court themselves. This could include support from an Independent Mental Health Advocate "IMHA".

2. Purpose

- 2.1 An application to displace a nearest relative can be made by any of the following people:
 - The Patient
 - Any relative of the patient
 - Any person the individual is residing (prior to admission if an inpatient)
 - AMHP
- 2.2 The purpose of this practice guidance is to provide support and guidance to AMHPs with an application to the county court and to the decision as to who is the most appropriate person

to nominate, when making an application to displace nearest relative, (chapter 8.19 Code of Practice (CoP), 2015).

3. Scope

- 3.1 East London Foundation Trust (ELFT); Local Authorities - Central Bedfordshire Council (CBC), Bedford Borough Council (BBC), Luton Borough Council (LBC) are responsible for the development of clear structures, systems, and processes to support AMHPs to fulfil their legal function.
- 3.2 Manager's responsibilities: It is the managers' responsibilities to ensure all AMHPs are informed of this Nearest Relative Practice Guidance and receive sufficient training and support in undertaking their role.
- 3.3 Individual AMHP responsibilities: AMHPs are responsible in ensuring they are aware of this practice guidance and receive sufficient training and information about s29 (MHA, 1983) to undertake the AMHP role.

4. Responsibilities, accountabilities and duties

- 4.1 Legal Framework: s29 Mental Health Act (1983) provides that:

The patient, any relative of the patient, any other person the patient is residing (or, if the patient is then an inpatient in a hospital, resided prior to admission) or an Approved Mental Health Professional; can apply to the County Court on the following grounds:

Section 29(3)

- (a) The patient has no Nearest Relative within the meaning the Act; or it is not reasonably practicable whether he has such a Relative; or who that relative is;
- (b) The Nearest Relative of the patient is incapable of acting in such by reason of mental disorder or other illness
- (c) The Nearest Relative of the patient unreasonably objects to the making of an application for admission for treatment or guardianship application in respect of the patient
- (d) 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.
- (e) The Nearest Relative of the patient is otherwise not a suitable person to act as such.

- 4.2 Managers responsibilities: Ensure that AMHPs receive adequate training regarding the following processes;

- (a) Displacement, appointment, nomination and delegation of the NR role.

- 4.3 Where there are no nearest relative CoP 5.6 Code of Practice 2015 states:

Where an AMHP discovers, when assessing a patient for possible detention under the Act (or at any other time), that the patient appears to have no nearest relative, the AMHP should advise the patient of their right to apply to the county court for appointment of a person to act as their nearest relative. If the patient lacks capacity to decide to apply themselves, the AMHP should apply to the county court.

5. Procedure

5.1 Legal framework- Before making an application for displacement of a nearest relative the AMHP should consider other ways of achieving the same ends, including the following:

1. Will the nearest relative consider delegating their responsibilities as the nearest relative to someone else (s32 (2) (e) MHA, 1983 and Regulations 24 MHA, 1983).
2. Providing or arranging support to the person to make an application to the county court themselves. The support could be provided by an Independent Mental Health Advocate (IMHA)

5.2 Delegation of the functions by the nearest relative- The functions of the nearest relative can be delegated to any other person except:

- The person being assessed
- A person, who under s26(5) MHA (1983) is not eligible to be the persons nearest relative
- A person who would be currently identified as the nearest relative were it not for court order in place displacing them from acting as the nearest relative (unless the order was given when no other nearest relative could be identified)

Note: This authorisation can be revoked at any time in writing by the original nearest relative.

Note: The delegation functions will cease on the death of the person who made it, or if that person ceases to be the nearest relative for any other reason. It also ceases on the delegated persons death (33:6 Reference Guidance Mental Health Act 1983). See Appendix 1 – Delegation Form.

5.3 Displacing the nearest relative- Where a request has been made and received and it appears to the AMHP that there are grounds to displace the nearest relative. The case should be allocated as a matter of urgency as the response required from the AMHP which will extend over, and above time allotted to “AMHP duty”.

5.4 If a request for the displacement of a nearest relative is received for a person detained under s2 (MHA, 1983) and the nearest relative objects to an application for s3 or guardianship (MHA, 1983). The grounds to displace due to unreasonable objection or using nearest relative powers to request discharge without due regard for the person’s welfare or public interest. An application under s29(4) (MHA 1983) will have the effect of extending the s2 (MHA, 1983), until the matter of displacement can be heard in court.

5.5 However, if the person is not placed under s2 (MHA, 1983), and they have a mental disorder of a nature and presenting with symptoms of a degree that increase risks associated to self and/or

the public that necessitates detention under s3 (MHA 1983); The AMHP and the local authority legal department of either BBC, CBC or LBC should discuss a way forward. If there is clear evidence that indicates there is a severe risk to self and/or public, they could consider making an Interim Order. (See Appendix 2 – Legal Department contact details)

5.6 Displacement Application - Where consideration is being made to make an application to the County Court to displace a nearest relative; The AMHP should contact the legal department to the County Council where the person ordinarily resides to discuss the case. Following the discussion with legal representative and if appropriate an application will be made to the county court for an initial hearing, which will be heard by a Judge in chamber (not in open court). The AMHP seeking to displace the nearest relative although working in a personal/independent capacity will be required to attend the County Court hearing; and support will be provided by the Legal representative from the relevant Local Authority (BBC, CBC, or LBC). See appendix 3 Displacement procedure flow chart.

5.7 The following information will be required when making an application for consideration of displacing a nearest relative by the County Court to support the application:

- Current social circumstances report by the AMHP seeking s29 (MHA, 1983) order- following evidence to be included within the report
- Name and professional qualifications
- Short history of involvement with the patient
- Diagnosis of mental disorder (ICD 10)
- Rationale for decision to place under safeguards s3 or s7 guardianship (MHA, 1983)
- Safety-Risk to patient and public/others
- Actions of Nearest Relative; any objections if any
- The proposed care and treatment plan of the patient
- A statement from the proposed nearest relative or a reference in the AMHPs social circumstances report as to why none have been proposed (nominated person).
- A report by a medical practitioner; usually a practitioner s12 (2) approved under MHA (1983). The court will expect a medical examination to have been undertaken by a practitioner experienced in undertaking assessment to determine a person is of “unsound mind”. (Compliant requirements of Human Rights Act 1989.) See appendix 4 - Nearest relative displacement court report template.
- Where the appointment of a nearest relative is being it is good practice for the AMHP to seek advice and to make an application to make sure the persons rights are protected in and out of hospital.

Note: The existing nearest relative will usually be made a respondent to the application and will be told the substance of any part of the reports, which refers to their fitness to act as the nearest relative. The nearest relative should be advised to secure his/her own legal representative.

5.8 Nomination of Person - If the application is made by an AMHP; s/he should nominate someone to be the nearest relative who is acquainted with the person if the application is

successful. Wherever possible the person should be consulted regarding their preference or any concerns they may have regarding the person the AMHP is proposing to nominate and to put any concerns in writing to the court (chapter 8:18 CoP, 2015).

- 5.9 Duration Displacement - A County Court can specify the duration of an order. However, if the County Court does not specify the duration of the order. The order will cease when the person is no longer under detention s3 or s7 Guardianship (MHA, 1983), (if neither of these are 3 months after order came into force).

Note: Only the County Court can vary or discharge the order appointing a nearest relative (section 29(5) and section 30 (MHA, 1983).

6. Appendices

- Appendix 1 -Delegation of nearest relative function form
- Appendix 2 -Legal department contact details for each local authority
- Appendix 3- Displacement procedure flow chart
- Appendix 4 – Nearest relative displacement court report template