

# LEGAL EAGLE



WITH PAUL HARBISON

## The role of the 'nearest relative'

**G**overnment figures show that the number of patients detained, commonly known as "sectioned", in hospital under the Mental Health Act 1983 have increased year on year.

Being detained in hospital can be a distressing time for patients, but also for their families.

Did you know that you may have legal rights and responsibilities if a relative or loved one is detained in hospital?

The Mental Health Act 1983 gives the "Nearest Relative" of a patient detained under section in hospital rights and powers in relation to the patient's detention and dis-

charge. In some cases the nearest relative has the right to object to a patient's admission to hospital.

The nearest relative is regarded as a "safety net" for patients who are detained under the Mental Health Act.

The nearest relative is determined by the Mental Health Act and mustn't be confused with "next of kin".

This is a complicated area of law, but there is advice and help out there for you if one of your relatives is subject to detention under the Mental Health Act.

**Am I or could I be, a nearest relative?**

The Mental Health Act sets out a list of close relatives including spouse, children

and parents, who can be a patient's nearest relative.

The nearest relative is normally the person who comes highest on that list.

For example, if the patient is married their nearest relative would be their spouse.

If the patient is unmarried, lives alone and has no children, the eldest of their parents would be the nearest relative.

**What does it mean if I am a Nearest Relative?**

One of the most important powers which the nearest relative has is the power to request the discharge of a patient who is receiving treatment in hospital under certain sections of the Mental Health Act.

Similar powers exist for patients receiving treatment in the community.

The nearest relative can tell the hospital in writing that they wish for the patient to be discharged.

This power can be blocked by the patient's doctor and this can lead to an application being made to court to remove or "displace" the nearest relative.

**Can a person's nearest relative be changed?**

Yes. An application can be made to the County Court to appoint, remove or replace a nearest relative on certain grounds.

For example; if a person has no nearest relative, or one cannot be found, the Lo-

cal Authority can apply to the court to be appointed.

An application to court can also be made in situations where a person's nearest relative is thought to be acting unreasonably, or not having regard to the patient's welfare.

These are known as displacement proceedings.

**I think I may be a Nearest Relative. Can I get advice?**

Yes. This is a complicated area of law and this article is only designed to give you a snapshot of the rights and responsibilities of the nearest relative.

Your role is important and you should make sure that you understand your rights. David Gray Solicitors LLP

has the largest team of specialist Mental Health Solicitors in the North East.

The team is headed by Mike Bishop, a partner in the firm. Mike was awarded the Legal Aid Lawyer of the Year award in the field of Mental Health, and the Newcastle Law Society's Lawyer of the Year Award in 2012. All Solicitors in the team are recognised as specialists in their field by the Law Society.

You can call for an appointment with Paul on 0191 2329547 or Chat Live 24/7 by visiting www.davidgray.co.uk



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