

INDEPENDENT MENTAL HEALTH ADVOCACY – Nearest relative

WHAT IS INDEPENDENT MENTAL HEALTH ADVOCACY?

If you are restricted or being detained under the Mental Health Act, you are legally entitled to help and support from an Independent Mental Health Advocate (IMHA).

An advocate is someone who will speak up for you, or support you to speak up for yourself, if you don't understand what's happening to you, want to challenge a decision about your care or support, express your preferences or assert your rights.

This applies to hospital patients and those who are on a Supervised Community Treatment Order (CTO) or under Guardianship.

Also eligible for an IMHA includes:

-  Those being considered for section 57 treatment
-  Those under 18 and being considered for electroconvulsive therapy (ECT)

What is a “nearest relative”?

Your “nearest relative” is a person who acts as an important safeguard for you under the Mental Health Act.

One member of your family has rights and responsibilities related to your care, if you are being treated at hospital under sections 2, 3, 4 or 37 of the Mental Health Act, or in the community under a community treatment order (CTO) or guardianship.

Your nearest relative can take steps to ensure that your rights are protected whilst you are being treated under the Mental Health Act.

Who is my nearest relative?

Section 26 in the Mental Health Act 1983 identifies who your nearest relative is. Nearest relative is not necessarily the same person who you might identify with as your next of kin.

The list is in order and the person who is highest on the list is your nearest relative.

1. Your husband, wife or civil partner, including someone you have cohabited with for 6 months or more
2. Your son or daughter
3. Your father or mother. If your mother and father aren't married, your father must have parental responsibility in order to be nearest relative
4. Your brother or sister
5. Your grandparent
6. Your grandchildren
7. Your uncle or aunt
8. Your nephew or niece

INDEPENDENT MENTAL HEALTH ADVOCACY – Nearest relative

What happens if I have no one to be my nearest relative?

If there is no one on the list who can be your nearest relative, you can apply to the county court for them to appoint one.

You could ask them to appoint a friend, or an approved mental health professional for instance.

It is a similar process to that used to “displace” your nearest relative.

Changing my nearest relative

If the person highest on the list doesn't want to be your nearest relative, they can give their powers to someone else, if the other person agrees.

Your nearest relative must write to the hospital stating that they are choosing someone else to act as your nearest relative. If your original nearest relative changes their mind, they can write again to take back their powers.

You can also ask for someone else to be your nearest relative if you are a patient, this is 'displacement'.

You may think other people might be more suitable to be your nearest relative, or you may want an approved mental health professional or someone from social services to undertake the role for instance.

The Mental Health Act explains the grounds on which you can change your nearest relative and the county court is the decision maker.

If you want to change your nearest relative, it is important to speak to your approved mental health professional and get specialist legal advice, as you could have to pay court costs as well as the application fee if your case is unsuccessful.

What rights does my nearest relative have?

Your nearest relative has rights in relation to your care and treatment under the Mental Health Act.

They can:-

-  Ask for information about your care and treatment
-  Ask for you to be assessed, because they are worried about your mental health
-  Ask for you to be detained in a hospital
-  Ask for you to be discharged from hospital or to end your community treatment – but your Responsible Clinician can block this.
-  If your responsible clinician blocks discharge, your nearest relative can ask for a Mental Health Tribunal to take place, to determine if you can leave.

Your nearest relative can also ask for support from an Independent Mental Health Advocate (IMHA). You do not have to agree to having this support, but an IMHA could help you to understand information about your rights and help you to express your views, wishes, feelings and choices.

Changing my nearest relative

As well as your nearest relative's right to request discharge, you can also be discharged by:

-  your Responsible Clinician, at any time
-  the Hospital Managers, at a Hospital Managers' Hearing
-  a Mental Health Tribunal

INDEPENDENT MENTAL HEALTH ADVOCACY – Nearest relative

An IMHA can support you to

- Be fully involved in your care planning
- Access Mental Health Reviews and Tribunals, prepare for them and understand decisions made
- Access other support or services
- Discuss appropriate aftercare
- Understand how to raise concerns about your experience/care
- Exercise your rights

An IMHA will

- Listen carefully to what you tell them about your views and feelings
- Support you to speak up or speak up on your behalf if needed
- Make sure you are fully involved in decisions being made about you



TO LEARN HOW ADVOCACY
CAN HELP PLEASE GET IN TOUCH

What is the Mental Health Act?

The Mental Health Act is a law which tells people with a mental health disorder what their rights are and how they can be treated.

'Mental health disorder' means any disorder or disability of the mind.

It is important that you know what happens to you when you are detained, what your rights are and where you can seek help. The Mental Health Act Code of Practice tells everyone how to use this law and what they must do.

How can I make a referral?

Mental Health professionals have a duty to inform patients in their care and their nearest relative about the IMHA services available to them. These measures ensure that each patient who is entitled to receive IMHA support is aware of their right to approach the service.

Referrals to the IMHA service are usually made by Health or Social Care professionals, however, n-compass will accept IMHA referrals from the person themselves or their family.

The n-compass Digital Advocacy Hub provides free and impartial information on a range of common advocacy issues. n-compass delivers several advocacy services across the north of England.

To find out if we deliver in your locality

Website www.n-compass.org.uk/our-services/advocacy
Sign video ncompass.signvideo.net/