GUIDANCE FOR APPROVED MENTAL HEALTH PROFESSIONALS ON
APPOINTING AND DISPLACING NEAREST RELATIVES WITHIN THE
CONTEXT OF ASSESSMENTS UNDER THE MENTAL HEALTH ACT
1983 / 2007

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<tr>
<th>Status</th>
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REVISIONS HISTORY (please note that revisions have only been tracked since the 2007 MHA Act. The original 1983 MHA policies were complied by David Pugh and were stored in the former Strategic Planning and Policy Group)

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<th>Issue Number</th>
<th>Date</th>
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<tr>
<td>1</td>
<td>17/10/2008</td>
<td>Wendy Gerrard</td>
<td>Updated/reviewed previous policy to ensure compliance with amended Mental Health Act</td>
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<tr>
<td>2</td>
<td>12/02/2013</td>
<td>Steve Dawson/David Pugh/Karl Gluck</td>
<td>Reviewed current policy in light of CQC inspection and recommendations to strengthen the emphasis on appointment and to ensure compliance with the MCA 2005. Plus explicit policy statement and Appendices C and D</td>
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1. Policy statement

1.1 GCC will ensure that due consideration is always given when necessary to the displacement of a nearest relative where indicated and the appointment of a person to take on the function of a nearest relative for a particular patient. Appointment of a nearest relative is regarded as a positive action to protect the rights and liberties of patients subject to compulsory detention including facilitating individuals to exercise their right to do so.

2. Purpose

2.1 This guidance is intended to provide guidance to assist AMHPs in their consideration of whether to make an application for displacement of a nearest relative and who it would be appropriate to nominate to be appointed as nearest relative.

3. Scope

3.1 All AMHPs, Responsible Clinicians, Approved Clinicians, Acute Ward Managers and Fieldwork Team Managers.

4. Definitions

The Act – the Mental Health Act
AC – Approved Clinician
AMHP – Approved Mental Health Professional
LDS – Legal and Democratic Services
LSSA – Local Social Services Authority, in this case Gloucestershire County Council
MHA – Mental Health Act
NR – Nearest relative
RS – Responsible Clinician
S – Section of the MHA
Suitability – within the context of 5.1.2.e below: a county court decision which could be based on such considerations as: abuse or risk of abuse of the patient; the patient’s fear or distress at the possibility of the nearest relative being involved in their life or care; patient and nearest relative are estranged.

5. Legal Context

5.1 The Mental Health Act 1983 was amended by the Mental Health Act 2007. S29 gives powers to the county court with respect to the displacement of a nearest relative on the basis of specified grounds and to appoint a person to take on the functions of nearest relative for a particular patient. Appendix B lists the
functions of the nearest relative. The accompanying revised Code of Practice Chapter 8:16 requires Gloucestershire County Council as the local social services authority (LSSA) to “provide clear practical guidance to help Approved Mental Health Professionals (AMHPs) decide whether to make an application” to the County Court for the appointment or displacement of a nearest relative and how to proceed.” It suggests that “Before producing such guidance, LSSAs should consult with the county court. LSSAs should ensure that they have access to the necessary legal advice and support. Additionally the “LSSA should provide clear practical guidance to help the AMHP decide who it is appropriate to nominate, when making an application to displace a nearest relative” (Code of Practice Chapter 8:19). S5.2 S29 identifies that:

5.2 The patient, any relative of the patient, any other person with whom the patient is residing (or, with whom the patient was last residing before admission to hospital) or an AMHP can apply to the county court to have another person appointed as the nearest relative on one of the following grounds:

5.2.1
a) The patient has no nearest relative within the meaning of the Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
b) The nearest relative of the patient is incapable of acting as such by reasons 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 a Guardianship application in respect of a patient
d) The nearest relative of the patient has acted 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 the Act, or is likely to do so
e) The nearest relative of the patient is otherwise ‘not a suitable person to act as such’.

5.3 Additionally the provisions of S38 of the County Court Act 1984 provide the county court with the power to make an interim order which is a temporary order and which would require cogent reasons to support the making of an order, though Richard Jones (P 29 1-034 MH Act Manual 14th Ed) cautions against relying on this mechanism which may take too long to conclude in the circumstances of a live MHA Assessment.

6. Mandatory Procedures

6.1 An AMHP will need to consider making an application for appointment or displacement if (Code of Practice Chapter 8:10 -11):
• They believe that a patient should be detained in hospital under S3 of the Act, or should become a Guardianship patient, but the nearest relative objects
They believe that the nearest relative is likely to discharge a patient from detention or guardianship unwisely
The patient has no identifiable nearest relative
The nearest relative is incapable of acting as such
They have good reasons to think that a patient considers their nearest relative unsuitable and would like them replaced and it would not be reasonable in the circumstances to expect the patient or anyone else (i.e. other than the AMHP) to make an application.

6.2 The decision regarding whether to make the application lies with the AMHP.

7. Practice Guidance - on appointment and displacement on grounds of unreasonable objection (S29.3c)

7.1 The AMHP should discuss the case with Social Care Specialist and/or Head of Profession for Social Care and;
- Flag up the possible need for urgent allocation of the case, which will probably need a response over more than one duty day. In line with the Gloucestershire AMHP Service Management Statement, a case of this kind is more likely than most to need an “in team”, rather than “duty” response.
- Flag up also the likely need to involve the County Legal and Democratic Services (LDS). If it is very clear that the case is not allocated at this early stage, allocation may be appropriate now. However, it is probable that an initial assessment is appropriate.
- Advise others involved in the assessment not to pre-determine whether a S2 or 3 might be the right outcome. Once the process for either has begun (e.g. by the preparation of a medical recommendation in advance of assessment) it could be unlawful to change.

7.2 Check:
- That a S3 is the most appropriate detention to be considering. Even if the service user has been in hospital for a while but informally, and is therefore well known, yet not detained, it may be wise to pursue S2.
- The Code of Practice 4.25 – 4.27 legitimises the use of a S2 when e.g. “There is a need to carry out a new rather than initial patient assessment in order to re-formulate a treatment plan or to reach a judgment about whether the patient will accept treatment on a voluntary basis”.
- That the person objecting to the best of your knowledge and belief is the nearest relative.
- That the nearest relative is truly objecting. It can be that an objection represents a misunderstanding that can be resolved.
- Whether the apparently objecting nearest relative would wish to hand over his/her responsibilities to another person who may be better placed to undertake the task (Regulation 14).
7.3 Having already liaised fully with others who know the case well, including the care-coordinator and read the notes, interview the nearest relative. This may need to be done more than once in the light of consultation with others involved.

7.4 Form a view about the reasonableness of any remaining objection.

7.5 Should objections still be raised, make your own preliminary decision about whether the subject of the assessment ought nevertheless to be detained with some urgency.

7.6 Consider a less restrictive alternative at this stage, discuss further with the Responsible Clinician (RC) / Approved Clinician (AC) and team and attempt to agree this alternative course of action.

7.7 Discuss with both recommending doctors.

7.8 If their views coincide with the RC/AC, try to encourage him / her to spend time with the NR and/or others significant to the service user, listening to concerns and explaining the plans in depth.

7.9 If this fails to convince the NR and there is no alternative to detention liaise further with the Social Care Specialist.

7.10 If the case is from a team contracted to provide integrated health and social care, the social care specialist (in conjunction with the relevant community services manager or health and social care team manager) will assist in the process of ensuring that the case is urgently allocated to a 2gether NHS Foundation Trust employed AMHP, ideally within the relevant community team.

7.11 If the case is from a service not contracted for integrated working as above, the Social Care Specialist will assist the duty AMHP in the process of liaison with the relevant Gloucestershire County Council managers to ensure that the case is urgently allocated to a Local Authority based AMHP.

7.12 How safe is the service user now?
It is expected others involved would have seen this difficulty coming and would have made space for a delay in obtaining a S3. All parties should continue to work to bolster existing support systems and, led by the Care Coordinator, operate contingency cover arrangements or arrange for new levels of support in order to ensure patient safety while the S3 process continues.

7.13 It is expected there is now space to allocate the case.
Should the social worker in, or associated with the relevant teams not be an AMHP the case should nevertheless be allocated to this social worker and jointly worked with an AMHP from another team. For cases in integrated services, the jointly allocated AMHP will be employed by 2gether NHS Foundation Trust. For those cases in un-integrated services (often Learning Disability, older people, children/adolescents) the jointly allocated AMHP will be a Local Authority worker. If allocation can happen quickly and safely then any actions below can be handed over.

7.14 Formally consult the County Legal and Democratic Services, who will then guide the process. Likely advice will be that if the person concerned is already detained under S2, an application to displace the NR on the grounds of unreasonable objection or using power of discharge without due regard to the patient’s welfare or public interest (S 29 (3) (c) and (d)) will have the effect of extending the S2 until the matter of displacement is resolved in court. However if the patient is not detained under S2 and use of a S2 has been considered and fully ruled out the AMHP and LDS should discuss the best way forward. If there is clear evidence, (from the documented chronology of risk and the use of multi-professional risk assessment and management tools), that there is serious risk to the patient or others, the AMHP and LDS should discuss the possibility of an interim order. This still may take several days to obtain.

7.15 The AMHP and others involved should continue to seek or be vigilant for a withdrawal of objection throughout.

7.16 Legal and Democratic Services will lead on any court application (or appoint a barrister for the purpose).

- LDS will normally seek reports from the S12 psychiatrist/ RC/AC (P), the AMHP(A) and other relevant professionals (OP)

Required headings for the Reports will be:
- Name: (All)
- Professional Qualifications: (All)
- Short history of involvement with the patient: (All)
- The diagnosis of the mental disorder (P) and (A)
- Why the patient should be detained under the Act or accepted into Guardianship: (P) and (A)
- Risk to/ from the patient (All)
- Actions of the NR, including a history of NR’s objection if any (All)
- The plan for the patient (A)
- Rationale for displacement and rational for appointment (A)
- Patient views and wishes (A or IMHA)

(see Appendix C for AMHP report pro-forma)
• The court action will be on behalf of the named AMHP (reinforcing again the independence of the AMHP role)

• Written authority to put options to the county court, which may commit the LSSA to a course of action, should be obtained by the AMHP from the Director of Adult Social Services of Gloucestershire County Council

• An official solicitor is likely to be appointed to assist the patient (inevitably increasing the costs of the case)

• The official solicitor may request input from an independent psychiatrist and/or social worker.

7.17 The Head of Profession for Social Care and connected community service managers will need to be aware that in any displacement and appointment application a possible outcome is that the LSSA will become the NR and thus have to exercise NR functions.

8. Practice Guidance on appointment and displacement on other grounds (S29 a, b, d, e)

8.1 A key issue when an AMHP is considering making a displacement application on the grounds of a NR’s mental incapacity is that, “an application under S3 can proceed without an application to court” if the AMHP has concluded that consultation with the mentally incapacitated NR would be impracticable (Jones Ed 14 1.396 page 199).

8.2 S29 (5) enables a court to specify a time period for an order made on the grounds specified in S29 (3) (a) and (b).

8.3 If there is no nearest relative or if the nearest relative is regarded by the patient as being unsuitable, the patient may wish to make an application to the county court to appoint and displace a nearest relative. If they require support to do this, consideration should be given to how this support can be provided. Independent Mental Health Advocates (IMHAs) can support this process.

8.4 If the AMHP forms the view that they should make the application to the county court with respect to an unsuitable nearest relative on behalf of the patient, this should be discussed with the Social Care Specialist or Head of Profession for Social Care and referred to the Director of Adult Social Services of Gloucestershire County Council, to seek written authority for funding to take this forward
8.5 When there is no NR or it is not possible to ascertain who this might be, or the NR is incapable, the AMHP should consider making an application to the county court to appoint a NR. This also applies to displacement on the grounds of unreasonable objection (S29.3c). Appendix A offers guidance on choosing a suitable nearest relative. If you proceed on the basis of incapability a MCA2 (significant decision mental capacity assessment) should be completed.

8.5.1 Three Key considerations
- Rule out the possibility of the patient, relative of the patient or the person the patient is living with making the application (with possible IMHA support) (Code 8.15)
- Consider if the patient likely to be subject to the Act provisions for a lengthy period and needs the protective function of a nearest relative? (Jones Ed 14 P199 9.16)
- If a suitable person with potential NR status steps forward this could also encourage an application (Jones Ed 14 P199). See Appendix D for consent pro-forma.

8.6 It is unlikely that such an application will be required urgently in advance of a S2 or 3.

9. Implementation
This policy will be introduced by the Head of Profession for Social Care through the county AMHP forum. Other groups of staff within the scope of the policy will be separately targeted.

10. Monitoring and review
The policy will be monitored through the county AMHP forum and the locality AMHP forum led by the Social Care Specialists. It will be reviewed according to GCC policy review procedures.

11. References
The Mental Health Act 1983 as amended by the Mental Health Act 2007
The 2008 Code of Practice to the Mental Health Act particularly Chapter 8
The Reference Guide to the Mental Health Act particularly Chapter 33
The Mental Health Act Manual 14th Edition: Richard Jones
The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 No 1184
Working with the MHA 3rd edition: Steven Richards and Aasya Mughal.
### Appendix A
#### Choosing a suitable acting nearest relative

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<tr>
<td><strong>1.</strong></td>
<td>Wherever practicable, consult the patient about their preferences and any concerns they have about the person the AMHP proposes to nominate</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>Consider any language, gender, age and cultural needs</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>Identify if there is a suitable person within the patient’s family or social network</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>If there is no suitable person within the patient’s family or social network, seek the allocation of a member of staff with the LSSA for patients in un-integrated services (often older people, possibly with a learning disability or those under 18 years) and of 2getherNHSFT for cases in integrated teams</td>
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<tr>
<td><strong>4.</strong></td>
<td>Care should be taken to ensure that there is no potential conflict of interest in the choice of NR</td>
</tr>
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<td><strong>5.</strong></td>
<td>Does the person understand the purposes of the role of NR and is the person willing to fulfill the functions of NR?</td>
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## Appendix B
### The functions of nearest relative

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<tr>
<th>No.</th>
<th>Description</th>
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<tr>
<td>1.</td>
<td>If a member of staff of the LSSA is appointed to fulfill the functions of NR, S116 (2) c) requires them to arrange visits to the patient and take such steps as would be “expected to be taken by parents”. This requires the allocation of a specific professional.</td>
</tr>
<tr>
<td>2.</td>
<td>To be consulted within the context of a Mental Health Act assessment and advised of the outcome.</td>
</tr>
<tr>
<td>3.</td>
<td>To be able to exercise the right to request discharge of the Section.</td>
</tr>
<tr>
<td>4.</td>
<td>To be consulted regarding plans to discharge the Section and the patient from hospital or Guardianship.</td>
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<tr>
<td>5.</td>
<td>To be consulted regarding a Supervised Community Treatment Order.</td>
</tr>
<tr>
<td>6.</td>
<td>To be consulted within the context of a Mental Health Review Tribunal.</td>
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<tr>
<td>7.</td>
<td>To receive information.</td>
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<tr>
<td>8.</td>
<td>To be able to delegate the functions to another person.</td>
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<tr>
<td>9.</td>
<td>To be able to apply for the patient to be detained under S4,2,3, or placed on a Guardianship order under S7.</td>
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<tr>
<td>10.</td>
<td>To make a S13(4) request for an AMHP to consider a patient’s case with a view to making an application for his admission to hospital and to receive information in writing if the AMHP decides not make an application.</td>
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Appendix C

AMHP Report pro-forma for the Purposes of Appointment and Displacement of Nearest Relative

Patient’s Name:

Address:

Date of Birth:

Diagnosis:

Current Location:

Legal Status:

Date of Detention:

GP:

Responsible Clinician:

Care Co-ordinator:

Current Nearest Relative:

Address:

Report author:

Professional Qualifications:
AMHP Report continued

Short history of involvement with the patient:

Why the patient should be detained under the Act or accepted into Guardianship:

Risk to/ from the patient:

Current/Proposed Care Plan:

Actions of the NR, including a history of NR’s objection if any

Rationale for Displacement

Rationale for Appointment
Appendix D

Mental Health Act 1983/2007
Mental Health (Hospital, Guardianship and Treatment)
Regulations 2008

I hereby agree that I am willing

to perform above the functions conferred upon the Nearest Relative
by the 1983/2007 Mental Health Act.

in respect of

of

I understand the rights and powers of the Nearest Relative as defined
within the meaning of the Mental Health Act 1983.

Signed:

Date:
Appendix E

To use this form you need to be sure (i) that the first person named is indeed the nearest relative, and that (ii) they are not incapable of acting as such through reasons of mental disorder or other illness.

Letter from the Nearest Relative under the Mental Health Act delegating their functions to another person under Regulation 24 of The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 No 1184.

I (full name)

............................................................................................................................

of (address)

............................................................................................................................

............................................................................................................................

............................................................................................................................

(telephone number)

............................................................................................................................

being the nearest relative of

............................................................................................................................

as (state the relationship to patient)

............................................................................................................................

Within the meaning of the Mental Health Act 1983 as amended by the Mental Health Act 2007, hereby authorise

(full name)

............................................................................................................................

of (address)

............................................................................................................................

............................................................................................................................

............................................................................................................................
to perform in respect of the patient the functions conferred upon the nearest relative by Part II of the Mental Health Act 1983 as amended by the Mental Health Act 2007 or the associated Regulations.

This authorisation is to last:  
☐ until further notice  
☐ or until……………………………..(specify date)  
☐ until the end of the current detention/guardianship

I understand that I may revoke this authority at any time (despite whichever box I have ticked above) by giving notice in writing to the person authorised, the hospital managers and, in the case of guardianship, the local authority and private guardian, to act as a notice of my delegation of nearest relative functions under the Mental Health Act 1983 (as amended by the Mental Health Act 2007) and associated Regulations.

(to be signed by donor):

Signed  ……………………………………….  Date  ……………………………..

I acknowledge receipt of this authorisation to act as nearest relative as detailed above (to be signed by recipient):

Signed  ……………………………………….  Date  ……………………………..