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The Nearest Relative Nominated Person

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The Nearest Relative role

- The Nearest Relative role was introduced into Mental Health law in 1959.
- Resembling the Book of Common Prayer, Church of England) and inheritance laws (Rapaport 2002).
- The role has been retained under the Mental Health Act 1983 (as amended by the Mental Health Act 2007).
- Change is upon us! How are we going to cope with without Sec 26 MHA ??



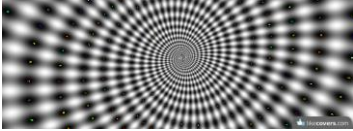
New Mental Health Bill

The government will introduce a new Mental Health Bill to transform mental health care, following publication of the [final report from the Independent Review of the Mental Health Act 1983](#). The government is accepting 2 of the review's recommendations to modernise the Mental Health Act.

- 1) Those detained under the Act will be allowed to nominate a person of their choice to be involved in decisions about their care. Currently, they have no say on which relative is contacted. This can lead to distant or unknown relatives being called upon to make important decisions about their care when they are at their most vulnerable.
- 2) People will also be able to express their preferences for care and treatment and have these listed in statutory 'advance choice' documents.



Laing, j., Dixon, J., Stone, K. and Wilkinson-Tough, M. (2018) [The nearest relative in the Mental Health Act 2007: Still an illusionary and inconsistent safeguard?](#) *Journal of Social Welfare and Family Law* , 40 (1). Pp 37-56. ISSN 1469-9621



Issues in Practice

- NR can provide an important safeguard for patients, however there is longstanding concern about the role, including:
 - Outdated hierarchical list; limited patient control over choice of NR; poor knowledge and awareness and public and professional misunderstanding of the role (Yeates, 2005; Spencer-Lane 2011, Rapaport 2012)
- A number of problems in practice have been identified by legal commentators and researchers (see Laing et al, 2018):
 - It is difficult for AMHPs to identify the correct Nearest Relative using current frameworks;
 - It is difficult for AMHPs to decide when they should consult;
 - It remains unclear how aware Nearest Relatives are of the rights and powers that they have.



The legal & policy context

- WHO advises national governments to involve relatives & carers in national legislation (*Resource Book on Mental Health, Human Rights and Legislation, 2005*)
- Reflected in Mental Health Act 1983 (as amended in 2007) in England and Wales. "Nearest relative" involvement in compulsory mental health admission includes, *inter alia*:
 - Right to request a mental health assessment (s. 13(4))
 - Right to be consulted and object to an application for s. 3 admission (s. 11(4))
 - Power to make an application for compulsory admission (s. 11(1))
 - Right to request discharge of s2/s3 or CTO (s. 23(2))



Final Report of the Independent Review of Mental Health Act 1983

- Patients must be **supported to make choices** for themselves, this includes their 'nearest relative'.
- Creation of the '**nominated person**' which a patient can choose.
- **Challenging 'displacement'** as default option for a nominated person who objects.
- There needs to be a fall-back mechanism if no person is nominated as the 'nominated person'. An '**interim Nominated Person**' appointed by an AMHP. Next of Kin? Or on a **revised list** of current Nearest Relative list. When the patient regains capacity they can then choose, if a relative disputes the selection of a **interim Nominated Person** they can go to court.

I wonder what this revised list will look like?

Sec 26 MHA List

• The following hierarchy of relatives is given under section 26 of the Mental Health Act 1983:

- (a) husband or wife [or civil partner];
- (b) son or daughter;
- (c) father or mother;
- (d) brother or sister;
- (e) grandparent;
- (f) grandchild;
- (g) uncle or aunt;
- (h) nephew or niece.
- 6 months
- 5 year rule



• Any other person with whom the patient has 'ordinarily resides' or 'cares for'

Section 3(2) (MC(DLARPR)2008) DoLS

- (a) a spouse, ex-spouse, civil partner or ex-civil partner;
- (b) a person living with the relevant person as if they were a spouse or a civil partner;
- (c) a parent or child;
- (d) a brother or sister;
- (e) a child of a person falling within sub-paragraphs (a), (b) or (d);
- (f) a grandparent or grandchild;
- (g) a grandparent-in-law or grandchild-in-law;
- (h) an uncle or aunt;
- (i) a brother-in-law or sister-in-law;
- (j) a son-in-law or daughter-in-law;
- (k) a first cousin; or
- (l) a half-brother or half-sister.



Final Report of the Independent Review of Mental Health Act 1983

- **Court only involved** when selection overrides a patient's nomination or is contested by a friend or relative who believes that they would be a more appropriate Interim Nominated Person.
- Applications to the court should be **'permitted' by the AMHP** when intending to overall an existing nomination, or directly by a friend or relative who considers themselves better placed to take on the INP role.
- Power to **temporarily overrule** the Nominated Person, whilst allowing them to stay in place as Nominated Person.
- Applications concerning Nominated Person should be **dealt with by the Mental Health Tribunal** rather than the County Court, since they have greater expertise and experience in this kind of decision making.

Final Report of the Independent Review of Mental Health Act 1983

- **Can nominate** anyone to receive information about them and have this recorded in advance.
- Nominated Persons to be given **improved support**, by recovery colleges, support lines and on-line resources.
- **Children over 16** to choose their own Nominated Person, under 16 is complicated! Default is the parent. Regardless of age parents should have access to information as a minimum.

Research Development

I am a practicing sessional AMHP

My research interest developed from my interest in AMHP decision making and the interaction that professionals have with relatives.


The need for greater research in relation to AMHP practice to understand practice


Raise awareness as AMHP practice as almost invisible in public consciousness, and some professionals consciousness


The impact of the Mental Health Act on the population deserves greater focus than it currently attracts.



Three-part study

1) The experiences of **AMHPs** of the Nearest Relative role. 

2) The experiences of **Nearest Relatives** and the implication for mental health practitioners. 

3) The experiences of **Patients** of the Nearest Relative Role. 



1) The experiences of **AMHPs** of the Nearest Relative role

Research aims

- We aimed to discover:
 - What Approved Mental Health Professionals (AMHPs) believe is the purpose of the Nearest Relative role.
 - How AMHPs interpret law and policy relating to Nearest Relatives role.
 - What AMHPs identify as the strengths and weaknesses of the Nearest Relative role within current law and policy.



Research Methods

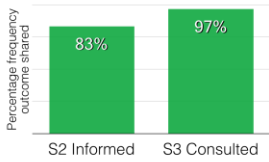
- **Anonymous survey** of AMHPs circulated on professional AMHP forums and advertised through specific AMHP teams within the South-West.
 - AMHPs asked to provide data on their caseload activity over past month to aid accurate recall
 - Survey completed online between April-July 2017
- Seven **focus-groups** conducted with AMHPs in 5 Local Authorities.
 - AMHPs asked to take part in focus groups between May 2017 – January 2018. Focus groups arranged through AMHP managers.
 - Total number of AMHPs contributing to focus groups = 33
 - Qualitative results based on initial coding and analysis of 7 focus groups in total



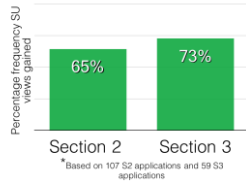
Quantitative Findings: Frequency of nearest relative spoken to for background information



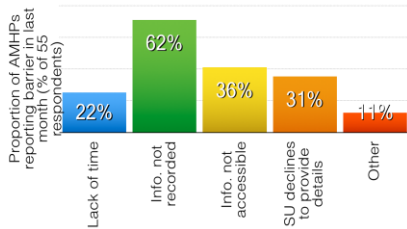
Quantitative Findings: Frequency of 'informing'/'consulting' the Nearest Relative



Quantitative Findings: Asking service user views about involving the Nearest Relative



Quantitative Results: Barriers to Nearest Relative Engagement

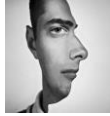


Qualitative Focus Group Findings

Theme 1: AMHP perceptions of the NR role:

Within this theme 1 subthemes emerged:

- (a) Safeguard; (b) knowledge of the law (c) Source of information



Theme 2: The need to balance Service User and Nearest Relative rights.

Within this theme 2 subthemes emerged:

- (a) Deciding when to consult; (b) Considerations during consultations



AMHP Perception - Safeguard

The AMHPs highlighting that the role of the nearest relative acts as a safeguard due to the powers and rights they have:

- **Participant 3** - So a lot of energy goes into this nearest relative thing. That's not to say that it's not important because of the safeguarding issues with it – you know, the rights of appeal and all the rest of it, discharge, but it does cause a lot of fuss and I think it creates a lot of anxiety for the relatives. (Focus Group 6)
- **Participant 6:** I think it's a lot about the rights as well, having that opportunity to have someone else there to prevent us detaining somebody if possible and making sure that they've got that secondary back-up . (Focus Group 1)

AMHP Perception - Safeguard

For this participant the nearest relatives active involvement in the assessment sometimes needs to be reinforced:

- **Participant 3:** I mean I guess, I remember the phrase that I use or try to – what I try to convey to the family is, listen you're not just a bystander, you're involved. You're a participant and you have roles and responsibilities and rights and you can influence this whole process so you know, before and even when the patient is in hospital you're still involved and we want you to know that. Ideally that's what, I guess in terms of, it's informing us. When people get the idea and if we're doing our job properly, they are a significant role in the whole process. You know, what is your family member like? Is this who they are? You know, you know them more than any of us do. (Focus Group 2)

AMHP Perception - Knowledge of the law

AMHPS highlighting that explaining the role to the nearest relative, when then they have no knowledge of the law can be challenging

- **Participant 3** Most carers are baffled aren't they about, it's very difficult to explain it to people, do you mean explain ...?
- **Participant 5** It's easier than explaining DoLS [Deprivation of Liberty Safeguards]
- **Participant 3** Well yes, that's true, yes. It's a difficult thing to explain to people as the first contact with services and it still says next of kin and we say no, no, no not next of kin, something different to that this is actually in the law, you're determined to be this person by the law and you've got rights and responsibilities and I think it freaks people out a bit actually. (Focus Group 1)

AMHP Perception - Knowledge of the law

AMHPs acknowledging that the nearest relative knowledge has an impact on the assessment:

- **Participant 1:** But there's a huge variation in nearest relatives, of course, because people-
- **Participant 2:** Hmm.
- **Participant 1:** I've had people who were alternative therapists, some people who are psychologists, who have a really strong idea on what needs to happen based on their background. So that all has an impact. (Focus group 6)

AMHP Perception - Source of information

AMHPS highlight nearest relatives have knowledge they need:

- **Participant 3:** Yes. I want to know somebody who's been up to speed with the person. Because, you know, sometimes you won't be able to get the RC for that person. Sometimes you won't be able to get the doctor who knows that person. So you want to be able to get into that conversation as quickly as possible and the only way you can do that is if you're familiar with who that person is. And the only people who are going to know that are going to be the nearest relative -
- **Participant 2:** Yes.
- **Participant 3:** – sometimes. Sometimes the nearest relative may be in Scotland somewhere and they haven't seen them for a good couple of years but, you know, you want to go with somebody who knows that person, has grown up with that person. (Focus Group 6)

AMHP Perception - Source of information

Nearest relative information impacting upon the decision making of the AMHP

- **Participant 1:** Yes. I think- I've often found quite useful- Consulting with the nearest relative, sometimes that can be very useful information to help your decision-making as an AMHP. So, you know, what- They might have a very different experience of a person. So no matter how services might have one view about something but, actually, the nearest relative comes from a totally different perspective as a, you know, relative or carer or whatever that relationship might be. So it can be quite useful in informing the decision-making. (Focus group 7)

Balancing rights: Deciding when to consult

The level of consultation before the assessment was seen to be based on the service user's actual or assumed wishes:

- **Participant 1:** 'I would usually speak to the person first before I contacted the nearest relative [in] that time and then make a decision after that depending after the assessment rather than before. That would be what I would do. That is what I do actually.'
- **Participant 2:** 'Well I mean, you know, if you have a situation where it's not an immediate crisis situation, we've had, like the intensive team is working with somebody and they've been talking to the nearest relative [or a] person [who looks like it] I would be more inclined just to kind of, well I'm taking that, that's implicit consent, let's go with that, you know, like unless you start to find something that you think oh my God, this is really iffy...'. (Focus Group 2)

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Balancing rights: Deciding when to consult

AMHPs also focused on the *actual or assumed* capacity of users before deciding whether to consult.

- The venue of the assessment had an impact on deciding whether to consult the NR.
 - **Participant 5:** ...'I will then have a look sort of more closely at sort of the likelihood of detention is and I think that's already been said and then at that point have a conversation with the nearest relative if I think detention is more likely or very likely actually, I wouldn't automatically contact the nearest relative if it was a 136' (Focus Group 3).

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Balancing rights: During consultations

AMHPs highlighted potential risks that the NR might pose to the service user:

- **Participant 4**: 'Yes and recognising that their nearest relative might not always be a safe person you know ...'
- **Participant 5**: '...and suddenly you know, you consult, you knock on the door and say 'by the way, the nearest relative', that kind of thing. So, it's been, the challenges we face have all been around that...' (Focus Group 1)

AMHPs were also concerned about NRs exaggerating risk to cause admission:

- **Participant 5**: 'I've had many situations actually where people have been economical about the information that's been provided, and it feels sometimes because of them wanting a particular outcome. That can be really, really tricky actually because you might not know the person'. (Focus Group 3)

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Balancing rights: During consultations

AMHPs were also mindful of whether relatives were being coerced by service users:

- **Participant 2**: '...and I'm not suggesting that it's everybody but there will potentially be a minority of people who will think, well, this person if I ask them to object or discharge me is more likely to do that...if there's like a co-dependent relationship or something.'
- **Interviewer**: Yeah
- **Participant 2**: Yeah
- **Participant 1**: Or, they're reliant on them for money or other things'. (Focus Group 5)

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Summary

- Descriptive statistics indicate that AMHPs are mindful when consulting Nearest Relatives when undertaking assessments.
- Qualitative data indicates that AMHPs:
 - **Consider a number of factors:**
 - perceptions of the nearest relative including: **(a)** being a safeguard; **(b)** source of information; **(c)** knowledge of the law
 - before consultation including: **(a)** the actual or assumed wishes of the service user; **(b)** the actual or assumed mental capacity of the service user; **(c)** the environment where the assessment would take place.
 - during consultation including: **(a)** Potential risk from the NR; **(b)** Whether NR accounts were exaggerated; **(c)** Potential coercion of the NR by others.

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2) The experiences of **Nearest Relatives** and the implication for mental health practitioners

Research aims

- To gather primary data relating to the experiences of Nearest Relative under the Mental Health Act 1983(2007).



Research Methods

- Twenty Nearest Relatives were **recruited** by the AMHPs in practice sending them a letter asking them to opt into the study.
- Each was **interviewed** using semi-structured interviews at either their home address, café, local authority interview room.
- Interviews professionally **transcribed and analysed** using Nvivo software to look for emerging themes.



Results: emerging themes



Theme 1. Responsibility of being Nearest Relative

Within this theme 1 subthemes emerged:

- Responsibility: (a) Positive (b) not the right choice (c) not explained (d) I'm just family

Theme 2. Emotional Distress (Communication)

Within this theme 2 subthemes emerged:

- Emotional Distress (Communication) : (a) communicating with doctors (b) Communication from doctors & wards (c) communication in writing

Theme 3. Emotional Distress (privacy)

Within this theme 2 subthemes emerged:

- Emotional Distress (privacy): (a) invasion of my home (b) invasion of my work (c) invasion of my lifestyle

1. Responsibility – Positive +

F: Well, I was relieved if it meant that I had more say over what happened to [person named] than what is - than his father would have done.

Q: Okay. Okay.

F: But it kind of like added an extra- added an extra pressure, I suppose.

Q: Mm-hmm.

F: And I also think I just felt, well, of course I'm his next- What could- Why would you even question- Why would you even ask that question? I'm his mother. He lives with me; I've been looking after him; I've been caring for him for the last 20 years. Obviously I'm his nearest relative (NR17).

1. Responsibility – Positive +

M: Yes, perfectly happy to be [Nearest Relative] that and I couldn't do otherwise. Yes it's your duty, it's not that extreme a thing to be asked to do. Yes there is a weird sort of ... it gives you a sort of power over a person which isn't a particularly nice thing. But it was ... again with all the circumstances and all the history it all seemed part of a process that had to happen, so I had no problem with at all (NR5).

1. Responsibility – Not the right person?

F - It's difficult, isn't it? It's difficult to tell. I don't know. I don't know. It hasn't affected my relationship with [person named] because he's my son and I'll do whatever my damnedest when.

F - The trouble is, being that close, maybe you don't always do the right thing, which is what you feel guilty about, because you're not too sure what the hell it is. But what is the right thing? I don't know.

F- But whether he is, he has felt let down by me for allowing it to happen. You know? On a daily basis I get texts and emails. Please get me out; this is awful. You know? I can't bear it here. I'm going to be attacked by one of these loonies or whatever it is that, you know, he's texted. And I think I can't- I can't help you; there's nothing I can do. And that's horrendous (NR 6).

1. Responsibility – Not explained!

• M - Well the thing is I don't know what it meant at the time it was all a bit ... there we are and she told me and said what ... after we went and that's it.

• M - It was only when they was going to try and section him that the AMHP, another one, she was lovely as well. We went up, she drove me up there to [placed named], it was then that she said, no it was said in passing, because as far as they were concerned they were going to section him.

• M - He knew that he was going to be sectioned, she said, it's not a foregone conclusion, [person named] is not ... it was then afterwards I said, well they haven't even told me that they were going to do it.

• M - And she said, you could have appealed, but if you didn't know, it was only then that I would know what to do, how, if, whatever. And she only rang me because I was the nearest relative and she assumed I knew. I didn't know ... (NR1)

1. Responsibility – I'm just family

• F: Oh it's tough, but it's tough being a mum of a son really who's got mental health problems.

• Q: Sure. And has anyone offered you any kind of ... any support? Or has anyone ever said that you can talk to somebody or ...

• F: No a while ago in [place named] they said there's [organisation], so I got to know [organisation], and I went along ... because four years ago we lived up near [place named] so I used to go along to some meetings sometimes in [place named] which were okay. And then when I moved to [place named] I went along to some meetings in [place named], but I found it very negative actually and it didn't really buoy me at all, it made me feel worse so I stopped going, so (NR 2).

2. Emotional Distress – Communicating with doctors

M: Well it is very frustrating, and also the fact that it is actually difficult for us to actually communicate with these consultants, they don't want to talk to us..

F: And they don't want to talk to us until there is trouble, and then if there is trouble it all comes on our shoulders, so as soon as the shit hits the fan which it often does, we have to step in and cope with everything, but they haven't been able to tell us anything all along because of confidentiality, it is ridiculous.

M: We used to get, I mean for the first few years when he was younger, between his first and second episodes, we often used to go to the quarterly consultants meetings, but ..

F: They were terrible, they have a piece of paper and they have got a lists of questions they have got to ask, and they asked us these questions.

Continued:

M: They always go through, I mean yes, there are a list of questions and they ask [person named] so how are you feeling [person named] , are you well? On a scale of one to ten, how do you feel? And of course somebody who has got mental health problems and is possibly psychotic can't actually necessarily give a straight answer, so you are sitting there thinking, well you know, so on a scale of one to ten where are you [person named] ? And [person named] doesn't recognise his illness so he says 'I'm nine out of ten' or something like that, and we'll go oh God, you know, so that gets recorded, and then they do ask if we will attend..

F: No, no first they have to say '[person named] , do you mind if we talk to your parents?'

M: And he never does, and then we have to be wary.

F: Because we have found that some things we have had have backfired and we wished we hadn't said anything.

M: Yes. And of course at the same time we don't want to be seen to be, you know, not supporting our own son **(NR 20)**

2. Emotional Distress – Communication from doctors & wards

F: I think the weakness would probably be that there's hardly any communication between hospitals and the nearest relative, you have to chase any bit of information about your relative.

F: So you have to chase the doctors, you have to chase the people that are on the wards, so I think that's a weakness of it, I think it could be a lot better in terms of communication because if you're the closest relative and you're expected to make informed decisions about your relative and how ill they are you need to know how ill they are and it was only recently that a doctor gave me a diagnosis of her and she's been ill for four years.

F: So I think that's definitely something that could be improved **(NR3)**.

2. Emotional Distress – Communication from doctors & wards

F - But if I'm the nearest relative of somebody who hadn't been in this situation before, and given that [hospital named] are pretty awful about communicating and explaining to people and working with nearest relatives, then I - I don't know what they would do because they wouldn't know what their rights are, they wouldn't know how to interact with people **(NR19)**

2. Emotional Distress – communication in writing

F: And the letter was very heavily worded that your nearest relative, I can find it if you like, that your nearest relative can appeal against this. And that was a bit hard on me as well, because it was like Robbie was saying, look mum, this letter that he received and it was just quite strongly worded saying that your nearest relative could appeal, so that was quite hard ...**(NR2)**

F: They send me stuff in the post after Aaron's been discharged about what my rights are while he's in hospital... **(NR19)**

3. Emotional Distress – invasion of home

It was partly because we didn't want them taking him from here because we had had previous incidents where... they had involved the police and the handcuffs and absolutely horrendous, I mean so horrendous that the early learning chap who was responsible for him, he wanted to complain to the police. He never did, did he? I mean the handled it so, so badly, so we weren't prepared for that to happen. We were adamant he couldn't be taken from here **(NR 20)**

3.Emotional Distress – invasion of home

The worst bits was when he was ... he was taken away'
(NR 1)

I think it was before the assessment because they arrived- Jamal wasn't up- Jamal was still upstairs. So, because that's one of the things that he says. You know? You brought this whole team of people in to my house and I wasn't even out of bed... How could you do that? How could you do that to me? Of course I reacted like this so I was kind of like **(NR17)**.

3.Emotional Distress – invasion of work

F: Yes. So last year she was ill and she came into my work when I was at work having taken an overdose, expressing that she wanted to kill herself. So the paramedics came out and then they took her to hospital and then she was assessed in the hospital and they decided to send her home and then two days later she did the same thing and they assessed her and then they decided to send her home and I think then she was assessed two days after that and then they decided to section her. **(NR 3)**

F: So I've been really fortunate in that my employer's been really supportive in allowing me to work from home or take time to go to his care coordination meetings, his ward round meetings, all of that sort of stuff.**(NR 17)**

3.Emotional Distress – invasion of lifestyle

F - About 25 days ago they said that they would be taking him. I've gone to work; they came; they asked him if he would come with them. He said, why? I haven't done anything wrong. They said, well, we need you to come with us. He said, well, all right. They said if you don't we're going to make you come with us. He said, well, let me see my cats first and as he sort of turned to feed his cats, they put him in a hold and frog marched him down the street to whatever transport was awaiting to take him out- off there **(NR 6)**.

M - It's no good telling me go for nice, long walks and stuff and get other activities going because I'm focused- 53 years on, I'm focused on my wife; my love- my life is my wife. Are you with me? **(NR14)**

Summary

Explored the literature in relation to family burden.

Consider a number of factors:

- Responsibility: (a) Positive (b) not the right choice (c) not explained (d) I'm just family
- Emotional Distress (Communication) : (a) communicating with doctors (b) Communication from doctors & wards (c) communication in writing
- Emotional Distress (privacy): (a) invasion of my home (b) invasion of my work (c) invasion of my lifestyle

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