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'I was going into it blind': Nearest Relatives, legal literacy, and the Mental Health Act 1983

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ABSTRACT

Eligible relatives are given rights and powers in the compulsory treatment of people with mental health problems in several international jurisdictions, including within England and Wales. However, little attention has been given to whether relatives feel legally literate or competent to fulfil such roles. This article examines this issue through focussing on the experiences of Nearest Relatives, who are given rights and powers during Mental Health Act 1983 (MHA) assessments for compulsory admission in England and Wales. Interviews with nineteen Nearest Relatives in England were conducted and were thematically analysed. Three themes were identified. First, NRs spoke about their awareness and knowledge of the role. They predominantly reported negative experiences in which they received no or little information. They also reported that professionals assumed they possessed legal knowledge, and their legal knowledge was largely self-taught. Secondly, NRs reported uncertainty about their own rights and powers, noting the role lacked status or informational or emotional support. Third, NRs highlighted areas for legal reform, stating that the NR role was important, but required specialist support systems for NRs. The findings of this study indicate greater attention needs to be given by law and policy makers to support relatives' understanding of their rights and powers under the MHA, if the NR role is to be effective in helping to safeguard patient rights under the European Convention on Human Rights. These include the right in Article 5 not to be arbitrarily deprived of one's liberty and the right to a private and family life in Article 8. Legislators also need to take account of these factors when considering proposals to reform mental health law in England and Wales.

1. Introduction

Relatives are afforded a range of rights and powers under mental health law in several jurisdictions including China, France, Greece, England, Malaysia, Northern Ireland, Thailand, and Wales (Saya et al., 2019). The rights of patients who are being assessed or detained under mental health law are often dependent on such individuals understanding and enforcing the law correctly. Whilst previous research has focussed on the legal literacy of professionals (Preston Shoot & McKimm, 2013; Ståhl et al., 2021; Willis et al., 2022), much less attention has been given to the legal literacy of relatives involved in the MHA compulsory admission process.

1.1. Legal literacy

The term legal literacy has been used to refer to 'competence in legal discourse' (Boyd White, 1983). It was originally used to highlight the need for lawyers to be educated in the language of law. It was argued that this would enable them to understand the body of law, including how to frame legal arguments, and to read legal texts, such as judgments and legislation (Zariski, 2014: Chapter 2). Boyd White (1983) argued that legal literacy should be viewed as sitting on a 'spectrum'. In his view, formal education of legal professionals sits at one end of the spectrum whilst the ability of lay people to recognise legal terms and phrases from the 'world of Law' sits at the other. He suggested that lay people need a degree of legal literacy to engage with the 'world of Law' and participate in modern society. Professional groups, including health and social care practitioners, arguably sit in the middle of this spectrum

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as they are required to, 'connect legal rules with the professional priorities and objectives of ethical practice' (Braye & Preston Shoot, 2016: 2). Further education may enable all groups to build on legal literacy and to develop 'legal capability' (Zariski, 2014; Chapter 1; Wintersteiger, 2015). This extends beyond a knowledge of the law and involves using legal concepts with confidence and determination (Jones, 2009; Public Legal Education Network, 2013; 1). Such capability is dependent on continuous education; access to legal guidance; and reflective spaces to engage with the law and keep up to date with changes and developments (Braye & Preston Shoot, 2016).

The purpose of this article is to examine the views of 'Nearest Relatives' (NR) in England and Wales about their legal literacy i.e., their understanding and ability to use mental health law.

1.2. The Nearest Relative role in England and Wales

The Mental Health Act 1983 (as amended by the Mental Health Act 2007) allows for patients with a 'mental disorder' to be compulsorily detained for assessment or treatment where specific conditions are met. Applications under the MHA can be made by an Approved Mental Health Professional (AMHP) (usually a social worker) or the patient's NR, supported by the necessary medical recommendations. NRs can make an application for assessment, treatment, or guardianship of the patient under s.11(1) MHA, although this rarely happens in practice due to the AMHP's power to apply for admission. The NHS does not collect data on the number of NR applications under the MHA (NHS Digital, 2024), though some anecdotal evidence from AMHPs suggest they are infrequent (The Masked AMHP, 2013).

The NR is not selected by the patient but is identified by an AMHP from a fixed hierarchical list in section 26 of the MHA. The MHA Code of Practice provides further guidance to AMHPs in England (Department of Health, 2015) and Wales (Welsh Government, 2016) on the process of identifying the NR. NRs also have the power to ask a local authority to request an AMHP to consider the patient's case with a view to making an application for their admission to hospital. If no application is made by the AMHP, the NR can expect the rationale to be sent to them in writing (section 13(4) MHA). Where the AMHP is deciding about MHA detention, they should have regard to the NR's wishes and views in reaching a decision (s.136(1 A) b, MHA) Department of Health, 2015; Welsh Government, 2016)) in so far as is practicable.

Relatives have been involved in the compulsory admission process in this way since the recommendations of the Royal Commission on the Law relating to Mental illness and Mental Deficiency in 1957 (1957). The Royal Commission noted that relatives are often the first to identify symptoms and recognise the need for mental health services and support. The resulting Mental Health Act 1959 (the 1983 MHA's predecessor) placed the NR role on a statutory footing (Laing, Dixon, Stone, & Wilkinson-Tough, 2018: 38). The NR is viewed as a counterbalance to the power of mental health professionals in the compulsory admission process (Laing et al., 2018). In this way, the NR can operate as a safeguard for patients (Spencer-Lane, 2011), which is important in the context of protecting the person's right to liberty under Article 5 of the European Convention on Human Rights (ECHR) (*TMM v London Borough of Hackney, 2011 CX v A Local Authority [2011]*). *JT v UK [2000]* involved a challenge by a NR in the European Court of Human Rights. The case reinforced the need to respect the patient's right to a private and family life under Article 8 of the ECHR by giving them a power to object to a certain person acting as their NR. This is recognised in section 29 of the MHA where the patient can apply to the County Court to displace their NR in certain circumstances. The introduction of the Human Rights Act in 1998, which brought the rights and freedoms in the ECHR directly into domestic law in the UK, has been influential in developing this area of mental health law.

Whilst the NR role can be an important safeguard, several problems about NRs' legal literacy are evident from the research literature. Qualitative research has found that NRs took on the role due to a sense of duty but felt emotionally conflicted when needing to make decisions about the detention of their relative (Dixon, Stone, & Laing, 2022). It has also shown that many NRs experienced problems understanding the role, even where it was explained to them in several formats (Rapaport, 2004, 2012). This may be due to the complexity of the materials, with NRs in Stroud et al.'s (2013) study complaining that information given to them was jargonistic. NRs have also described being 'treated with contempt, rather than [with] the respect normally associated with a legal role' and have reported that they have been excluded from care decisions (Rapaport, 2004, p. 390).

Problems with the NR role have also been highlighted within a recent Independent Review of the MHA in England and Wales (2018), the government's proposals in a Reforming the Mental Health Act White Paper (Department of Health and Social Care, 2021) and the subsequent Draft Mental Health Bill (DHSC, 2022). Stakeholders consulted as part of the Independent Review were of the view that the existing model of family and carer involvement was outdated and insufficient. In addition, the review's sub-group on family and carer involvement recommended that the NR role be replaced by a new Nominated Person role (NP). It was proposed that this person could be a relative or non-relative chosen by the patient and that they should have more extensive powers to advocate for the patient during the compulsory detention process. This proposal was accepted by Government and featured in the White Paper and the Draft Mental Health Bill. However, ongoing education has been seen as being key to the effectiveness of the role, with the White Paper noting that NPs need to be provided with clear and detailed guidance on their powers (2021: 50).

2. Study design and methodology

This study is based on qualitative data from nineteen semi-structured interviews with NRs across four LAs in England carried out in 2018–19 by Author 3. Participants were recruited by AMHP gatekeepers, as it was possible that not all NRs would have been aware they held the role. These gatekeepers passed on an information sheet which explained the risks and benefits of taking part and asked potential participants to contact Author 3 if they wished to take part.

Participants were included in the study if they had been identified as a NR by an AMHP gatekeeper in the preceding six months. This time scale was adopted to aid accurate recall of experiences. Twelve women and seven men were sampled, with ages ranging from 34 to 72 years old. Eighty percent self-identified as being from a White UK background, and 20% from black and minority ethnic groups. Nine of the NRs lived with the person and 10 did not. None of the NRs in the study said they had acted as an applicant for admission under the MHA.

Interviews were conducted at a place selected by the NR. A semi-structured interview schedule was used. Questions focussed on what had led to participants' relatives being detained under the MHA and whether NRs were aware of any concerns about the person's mental health before the MHA assessment took place. They were also asked whether they remembered being contacted by the person carrying out the MHA assessment and how they felt about being identified as NR. Participants were asked about their knowledge and understanding of the MHA and their role within it, whether they felt able to challenge professionals and what their relationship was like with the person who had been assessed. They were also asked their views on the current law and whether they felt any changes were needed.

Interviews were audio recorded and professionally transcribed. Transcripts were coded using thematic analysis. The research team adopted a 'contextualist' position towards the data (Braun & Clarke, 2006), which held that whilst participants' social context influenced the way they interpreted the world, they retained agency to comment on their 'reality.' Coding was agreed through team consensus. Three transcripts were coded by each author to develop an initial coding frame. Transcripts were then rotated between the authors and further codes not included within the original frame were identified. All codes were then discussed before a final coding frame was agreed. Transcripts were distributed equally amongst the authors for final recoding, and there was a further cross-check of transcripts before the final thematic analysis took place. Coded materials were collated into Word documents for each code. These codes were then collated into themes by the research team, with illustrative extracts from the interviews selected by authors and subsequently reviewed by all authors.

2.1. *Ethics*

Ethical approval was gained through the University of the West of England ethics committee, as well as from each Local Authority site. All participants gave written informed consent. As the interview contained potentially distressing questions, participants were de-briefed at the end of the session and given information about local support services. No remuneration was given for taking part.

3. Main findings

Two overarching themes were generated from our findings. First, participants focussed on the emotional impact of the NR role. Second, participants focussed on the difficulties experienced in understanding and using the law. We have focussed on the emotional impact of the NR role in a previous paper (Dixon et al., 2022). In this paper we focus on participants' experiences of understanding and using the law and we identified three sub-themes related to (1) awareness and knowledge of the NR role; (2) experiences of fulfilling the NR role; and (3) views on legal reform of the role.

3.1. *Awareness and knowledge of the NR role within the MHA*

The MHA mandates AMHPs to inform NRs of their role and rights to discharge the patient, in cases when an admission for assessment under section 2 of the MHA is being made (section 11(3) MHA). The MHA Code of Practice says that the AMHP 'must take such steps as are practicable to inform the nearest relative' of the application for admission under section 2 (2015: 123). AMHPs are also duty bound to consult with the NR 'before making an application for admission under section 3' for treatment or for guardianship section 7 of the MHA (section 11(4) MHA; 2015: 123). The Code of Practice in England notes that 'consulting and notifying the nearest relative is a significant safeguard for patients' (2015: 123). Despite this clear advice to professionals in the Code of Practice, there was a division between NRs in our research with some recounting receiving no or poor information about the NR role and others describing more positive experiences.

3.2. *Negative experiences of being informed about the NR role*

Negative experiences of being informed about the NR role were dominant within NR accounts. None of the NRs in the study reported they had acted as an applicant for MHA admission, and several NRs said they had not been made aware of the role when their relative was being admitted to hospital under the MHA following an application by the AMHP. Participant 1 stated that a discussion of the NR role "*didn't come up*" in her interactions with the AMHP. Many NRs only become aware of the role after their relative had been detained. For example, when asked whether they remembered when they had first heard of the NR role, Participant 3 said:

> *"I don't remember hearing it, I just … probably the first time I saw it was when I received the letter stating that I was the nearest relative and where my mum was and how long the section was in place for".*

Other participants said they recalled being asked to be a NR, but they had not understood what this meant, what rights and powers they had, or how they were expected to interact with professionals involved within the assessment and detention process. For example, Participant 10 said: "*To be fair when I first got told I was the nearest relative…I didn't have a clue what it meant really*". Similarly, Participant 4 recalled only a very brief encounter with the AMHP during the assessment with very little mention of NR rights: *"It was brief. It was about five minutes if that… He did tell us what would be happening to her, the logistics of it all, but not really our rights. We feel as though we have no rights because she's over 18."*

These sorts of experiences were shared by other interviewees who commented they did not "*really understand the nitty gritty*" (Participant 3), or that explanations of the NR role "*went over my head a little bit*" (Participant 7). This was illustrated in some cases by participants understanding some of the NR's legal rights but being unclear about others. For example:

> *"So, I understand that- If I felt that [my son] didn't need to be sectioned that my voice has more weight, so I could request that [my son] is released from his section. ……What else do I understand by it? I don't know."* (Participant 17).

Commonly, NRs felt that AMHPs and other professionals assumed they already possessed the required legal knowledge for the role. For example, Participant 18 stated: *"Nothing was explained really, was it? I think the assumption is that we know much more than we did"*. Similarly, Participant 1 said:

> *"I felt with the whole process, everybody knows what they're doing, but they actually don't tell you. It's a bit like they do the job, they all know, but forget to tell you really …. And it was only till later when she told me the implications of it and then later when we went to see him and he wasn't sectioned she [AMHP] said then, you could have appealed…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".*

Several participants in our study were of the view that their knowledge of the NR role was essentially self-directed and taught. For example, Participant 11 said:

> *"No, to be fair, anything I know about nearest relative I have sort of researched myself over the years…no-one has ever sat down and explained to me exactly what the nearest relative's role is".*

Similarly, Participant 7 said they only understood the legalities of the process because they had "*done a little bit of research*" into it, but there was a general lack of "*written correspondence*" about the role, which they would appreciate more of in future. This uncertainty was not necessarily alleviated by experience.

3.2.1. *Positive experiences of receiving information about the MHA role*

Not all NRs in the study were critical of the information that had been provided to them. In exceptional cases, participants spoke positively about the information they had received from AMHPs and other professionals prior to their relative being admitted to hospital under the MHA. Participant 9 said that receiving a leaflet about the NR's powers had resulted in them asking for their relative's discharge from hospital, which is one of the key powers given to the NR. They said:

> *"They gave me some leaflet about [the NR role]…And yes, you know, they say that …I could appeal. I could- And I did, actually. I did appeal".*

In cases where NRs felt they had been informed about and guided through the process by the professionals involved, they commented more positively on their experience. For example, Participant 12 said:

> *"…the whole process I felt that, you know, I've been kept abreast of what was going …so, yes, I felt that it was all pretty well explained. And sort of guided. You know? Guided through it…Rather than just sort of saying this*

> *is happening and not having any kind of in-depth knowledge of the procedure"*.

3.2.2. Uncertainty about the MHA and NR rights and powers

Due to receiving poor information, many participants commented on their general lack of awareness and knowledge about the MHA and how the process of 'sectioning' worked. For example, as Participant 17 pointed out:

> "*You don't learn about the Mental Health Act in school. You don't learn about what that means. You don't really talk about human rights".*

The NRs in our study often had no experience of encountering mental health services prior to their relative being assessed under the MHA. Whilst some NRs had conducted their own research into the NR role, a dominant theme amongst participants was uncertainty about their rights and powers. Participant 19 said:

> *"I know that I have the right to always ask for him to be reassessed. And when he had come off the main section I think, again, do you know, I actually don't know what my rights are so I don't know if he was in hospital whether I could insist on him being discharged if he was no longer under section. I don't know".*

In making this statement Participant 19 showed some awareness of their right to request an MHA assessment under section 13(4), although they expressed uncertainty about their powers to order the discharge of a patient from section 2, 3 or a community treatment order under section 23(2). Similar uncertainties were also reflected by Participant 5 who expressed hesitancy about the nature of their right to object to the application for admission:

> *And I remember that and it was that basically, she [AMHP] said, look you can … not that I could object, but that I could … I got the sense … I can't remember the exact words, I got the sense I could almost stop it if I wanted to, but I don't think that's realistic. I think* ***… I don't think that was true*** *(emphasis added).*

This statement in bold shows a lack of awareness about their right to be consulted and to object to an admission under section 3, which is given to the NR under section 11(4) of the MHA. There were also some misconceptions from other participants about the basic functions of the NR. Participant 2 described it solely in terms of being '*the point of contact really for the mental health team and the medical team*'. Participant 11 also misunderstood the role conflating it with having a power of attorney under the Mental Capacity Act 2005. Similarly, other participants did not seem to understand the difference between the NR and next of kin.

3.3. Experiences of fulfilling legal aspects of the NR role

A dominant view amongst participants was that the NR role lacked status. Several participants felt their views were not valued or considered and they regarded the consultation by professionals as a tick-box exercise. For example, Participant 10 said, "*I really do not think there's a lot of respect for it [the role]"*. NRs in the study commonly spoke of feeling ignored by mental health professionals. Participant 6 stated that their role as NR was minimised within care planning meetings and said:

> *"…you're kind of railroaded along with whatever is being said and you don't really feel that you have an opportunity to speak. Although, you know, you're introduced as the mum, the nearest relative or whatever… there's an awful lot of arrogance in psychiatry. An awful lot of that. But there's nothing you can say, nothing you can do. This is the path. This is the course of action. That is going to happen".*

A few study participants alluded in the interviews to concepts akin to the notion of legal capability, in that they sought to advocate for their rights, with the aim of furthering their own empowerment. For instance, Participant 11 mentioned they had learnt to, *"sort of bang on about my own rights"*. Conversely, other participants felt unable to assert their legal capability, with Participant 6 saying, "[*I] don't know if I'm really strong enough to help him".*

In parallel to indicating that the NR role lacked status, NRs in our study also noted a lack of support for those acting as NRs. Participant 1 said "*the whole experience was not very pleasant really…. and [there has been] no support*". Similarly, Participant 17 said, "*If I'm honest I felt the support has been a bit hit and miss*". In making these claims, NRs highlighted their dual role, both as individuals providing a legal safeguard and as family members who were distressed by the experience of detention. Because of this, some participants felt that the role could only be exercised effectively if emotional support was provided to NRs. For example, Participant 19 said:

> *'…Because I suppose with my job and my role and everything I'm comfortable dealing with authority, and I won't be cowed by it or bullied. But I can see that a lot of people would be…If they're not used to dealing with authority, they need to be encouraged that they have the right to question. They have the right to go and demand that somebody talks to them and that they have the right to be involved'.*

This participant also recounted one positive experience of receiving emotional support. These accounts were exceptional but indicated the type of support valued by some:

> *"…she [the AMHP] at least tried to talk to me about him whereas before people have just told me the legal bits……They haven't really bothered talking to me to understand what I felt about him and his mental state at that time…So this is why I thought she was really good compared to some of the other ones".*

Notably, the AMHP in this example was praised for going beyond their duty to provide information and to provide emotional support which was deemed necessary by the NR to enable them to fulfil the role.

3.4. Legal reform: views on changes to the NR role

Despite concerns expressed by participants about their lack of legal knowledge, several NRs recognised the value of the NR role and their involvement in the compulsory admission process. Participants felt that NRs were an important source of information for professionals. For example, Participant 19 said: "*I actually think that, by involving the family, it gives the person doing the assessing a rounder view of the whole situation"*. They were also clear about the necessity and significance of the NR acting as an advocate for the person being assessed under the MHA. Participant 3 stated:

> *"…the strength is probably that the person who's ill has someone to speak up for them. So people aren't sectioned needlessly or kept in hospital longer than they need to be".*

Participants were asked what changes, if any, they felt should be made to the role. Their responses focussed on legal education which they felt was needed to fulfil the role effectively. Participants also felt that mental health services/professionals should take more time to explain the role to NRs, so the obligations and expectations are clearly set out from the start. For example, Participant 10 stated:

> *"I mean my feeling is as soon as a child or adult gets admitted to mental health and you become the nearest relative, there should be an hour-long session with someone to sit down and explain to you exactly what your role is as that nearest relative. And you know, for them to actually give you, not photocopied little paragraphs and things like that, but actually you know everything to be written down. Your rights, the rights of your loved one, that you are actually nearest relative for. And you know, all these policies and procedures and what CPAs [Care Programme Approach] are and what all of these things mean. And how you, you*

> *know, how you contact wherever they are and who you should be speaking to. Because none of that is laid down, none of that is set out*".

In a similar vein, some participants suggested that a specific support role for NRs should be established. For example, Participant 4 said:

> *"As a nearest relative I think you need- you need some guidance…Maybe there should be a mental health social worker like the- once you have a head injury, they have a head injury specialist nurse who actually saw us through the whole process and kept us involved"*.

Whilst NRs said they needed more specific information about the role from mental health services, several NR participants indicated that emotional support was also needed. Participant 1 stated:

> "*I think they've got to realise that we're laymen…they've got to realise that you're dealing with very vulnerable people, like me, first time… I think they forget, they deal with it all the time…*".

The use of the word 'vulnerable' was used to signal a difference between mental health workers as professionals and NRs as 'vulnerable' lay-people. In denoting NRs as potentially vulnerable, the participant highlights the need for both legal education and for emotional support.

4. Discussion

In line with previous research (*see*, Shaw, Nunns, Briscoe, Anderson, & Thompson Coon, 2018), our study found that NRs often have a poor level of understanding about the rights and powers that they hold, suggesting that the 'positive safeguard potential' of the role continues to be 'seriously compromised' (Rapaport, 2012: 30). Earlier research studies into the NR role emphasised the need for clear information to be given to both NRs (Pinfold et al., 2004) and professionals (Ridley & Cummings, 2009), so that NRs are informed of their rights and powers consistently, and our research suggests that serious problems remain.

Studies exploring AMHP decision-making suggest that the perspectives of family members carry a lot of weight when AMHPs are deciding whether a person should be detained (Abbott, 2022; Buckland, 2016). Research has also found that AMHPs view the NR role as an important safeguard, in that relatives were seen as being able to give a detailed history of the person assessed and had the potential to advocate on their behalf (Dixon, Wilkinson-Tough, Stone, & Laing, 2020). Nonetheless, many NRs in the study reported feeling they were not informed about the role or did not feel their input was actively sought or valued by professionals. As noted above, the MHA Code of Practice in England states that consulting and informing the NR helps to protect their Article 5 right to liberty and is an important safeguard for patients (Department of Health, 2015, para. 14.62). The Code also identifies the need to balance consultation with the NR against the patient's wishes, as to whether they wish the NR to be involved in their care (2015: para. 14.61). Consequently, AMHPs must consider any potential detrimental effects to the patient's health and wellbeing which may be caused by consultation. Previous research with AMHPs has identified that concerns about patient confidentiality can prevent consultations with NRs in some circumstances (Dixon et al., 2020; Rapaport, 2004). Nonetheless, most NRs in our sample reported receiving no, or very little information about the NR role. This makes it unlikely that the level of information they received can be explained by confidentiality concerns alone.

A dominant finding from our research was that NRs received poor or limited information about their legal rights. These findings align with other research findings, in which the relatives of detained persons identified a need for greater clarity about their legal rights (Stuart et al., 2020), and identified poor levels of information about such rights from services (Campbell, 2008; Stroud et al., 2013). A new finding from our research was a belief by NRs that AMHPs and other professionals falsely assumed a level of prior legal knowledge. Because of this, NRs often felt they had to do their own research about what the role entailed. These actions highlight a desire amongst some NRs to gain legal literacy. However, our research also indicated several misunderstandings amongst NRs about the legal rights and powers they and their relative had. These findings echo those of previous NR research (Rapaport, 2004) and are unsurprising given the lack of access to legal education reported. Furthermore, the law has become more complex in recent years, with research noting that even professionals who are educated in the law struggle to understand the complex interface between the MHA and MCA for example (The Kings Fund, 2021). Our study found that family members also struggled to understand the way in which mental health law and mental capacity law interconnected. Whilst positive experiences of interactions with mental health professionals were rare, our findings align with previous research in showing that such experiences have the capacity to improve relatives' experiences of the NR role (Stuart et al., 2020).

A dominant theme amongst participants was that the NR role lacked status and was not respected by mental health professionals. Such experiences contrast with some AMHP accounts which commonly highlight the value of the role (Dixon et al., 2020) but aligned with previous interviews with NR who felt similarly undervalued (Rapaport, 2004). Previous commentary has noted that whilst the NR role is intended to safeguard patient rights, it draws on questionable assumptions that NRs will have the skills to advocate on their relative's behalf (Laing et al., 2018). Our findings present a mixed picture in this regard, with some relatives giving accounts in which they felt able to assert their authority and 'rights' with professionals. However, this was not the case with all NRs in the study. Several NRs revealed they felt ill-equipped to challenge professional decision-making. These findings align with other research, which indicates that carers can feel unable to fulfil the advocacy functions which they are given in law (Emmett, Poole, Bond, & Hughes, 2014). NRs in our study commonly highlighted the emotional burden of caring. They highlighted that they often felt stressed, burdened, or angry; experiences which are commonly reported by mental health carers whose relatives have been admitted to hospital (Stuart et al., 2020). Because of this, the quality of representation they felt able to give depended on both legal education and emotional support. This challenges the view of legal literacy and legal competency as being purely academic skills.

The participants in our study highlighted the value of the NR role but reported that legal reforms were required. Specifically, they identified that the role should be explained in more detail and that professional support should be available to NRs. The findings indicate that proposed reforms to the MHA and changes to the model of family/carer involvement via the Nominated Person (NP) in the Draft Mental Health Bill do not go far enough. Under the proposals, the NP would be expanded beyond family and given extended powers. These changes may, in some respects, better support patient autonomy under Article 8 by giving the patient a greater say in who supports and advocates for them. The proposals might also strengthen the opportunity for external scrutiny and challenge to the compulsory admission process. However, there is very little attention on training and support needs for NPs in the proposals for reform. The Independent Review of the Mental Health Act (2018) had highlighted the need for greater support for NR and NPs:

> NPs should be given improved support, which could include courses provided by recovery colleges, support lines or online materials. (Recommendation 21; 199).

The Review suggested this could be achieved through 'courses provided by recovery colleges, support lines or online materials' (2018; 88). Regrettably, however, this recommendation did not feature in the Draft Mental Health Bill, or in the subsequent Joint Committee on the Draft Mental Health Bill report in January 2022, which scrutinised the proposals in the Bill (House of Commons & House of Lords, 2022). The Joint Committee welcomed the proposal to replace the NR with a NP to support patient choice and autonomy but was silent on the need for NP training and/or support. The Committee recognised some of the practical concerns with the role identified by AMHPs in their evidence to the Committee, which included the bureaucratic process for appointing the NP. It urged the Government to work with relevant professional groups to strengthen the proposal and ensure the benefits would materialize (House of Commons & House of Lords, 2022: para. 270), though it failed to acknowledge what skills and support NP would need to enable them to effectively discharge their role.

As the study suggests, NRs tend to fall into two camps based upon their experience; NRs who are familiar with the role and have already experienced the MHA process, and those where the MHA process and legal concept of a NR are unfamiliar. Additional support for legal literacy for NR/NPs needs to accommodate these differing experiences. The question of the appropriate mechanisms and persons to provide this support is key. It will be important to avoid any potential conflict of interest. For example, the Independent Mental Health Advocate (IMHA) role in the MHA is designed to support the patient. If a dispute arose, it could create a conflict of interest between the nominee and the patient (Department of Health and Social Care, 2021, para. 269). Commissioning dedicated NR/NP legal support from a mental health inpatient/service user advocacy service may heighten those concerns further. This conflict already exists to an extent under the current provisions, given the AMHPs role in relation to both the patient and the NR to inform them of their rights at the point of detention (2015: paras. 4.29, 4.28, 14.64). However, it may be desirable to provide independent and impartial support for NR legal literacy, which could be undertaken by a citizen's rights organisation or carer group, as they are not currently involved in any other aspect of the MHA functions.

5. Conclusion

The role of relatives appears to be central in several jurisdictions where people with mental health problems are compulsorily detained in hospital. This article is the first to explore relatives' own views of legal literacy, through a focus on the NR role in England. Our interviews with 19 NRs found three dominant themes. First, NRs were highly aware of their own (lack of) knowledge of the MHA and related laws and policies. NRs largely reported negative experiences in this regard, identifying that they had been given no or little information about the role, that professionals tended to assume they were already legally literate, and any knowledge of the law they had was largely self-taught. In exceptional cases, NRs gave examples of receiving good information and support about the role, which improved their experience of acting as NR. Secondly, NRs commonly reported uncertainties about the rights and powers they held, saying the NR role lacked status and that little informational or emotional support was available. Third, NRs spoke of the need for legal reform, identifying the importance of the role but also highlighting the need for better information and support systems to help them to exercise their powers effectively.

If we want to recognise the important role and benefits of involving relatives/carers in the compulsory mental health process and continue to give them significant legal responsibility, we need to make sure this is adequately reflected in the law and policy in England and Wales. As Donnelly and Murray (2013) have suggested, we need a more sophisticated legal framework and a more responsive State which recognises the inherent vulnerabilities in us all and provides more support for individuals and families, a point which was also made by several participants in the study. This needs to go beyond tokenism to provide meaningful tools and support. Perhaps it is time to consider reinforcing the duty to inform or consult in the MHA by imposing a further legal duty to explain and support the person acting as a NR, which would extend beyond the current law and guidance in the Codes in England and Wales. This would give greater recognition to the evolving nature of family and wider support networks in mental health law, in line with wider changes taking place on the international human rights stage since the advent of the United Nations Convention on the Rights of Persons with Disabilities (Donnelly & Murray, 2013).

The findings of this study indicate that greater attention should be paid by legal and policy makers to the mechanisms for supporting the legal literacy of the NR. The authors suggest this could be achieved through mandating structures within the primary or secondary mental health legislation, as well providing targeted support and training materials. Without these provisions it is difficult to see how arguments for NR/NP powers being a true human rights safeguard can be made. Regrettably, the Draft Mental Health Bill has not been taken forward by the Government in the current parliamentary session as it was absent from the King's Speech in November 2023 (Prime Minister's Office, 2023; Samuel, 2023). This indicates that mental health law reform is currently not high on the political agenda and the rights of vulnerable patients, and their relatives will continue to be compromised in the compulsory mental health admission process.

CRediT authorship contribution statement

Judy Laing: Writing – original draft. **Jeremy Dixon:** Writing – review & editing. **Kevin Stone:** Writing – review & editing, Data collection and each other analysed and coded the data.

Declaration of competing interest

'I was going into it blind': Nearest relatives, legal literacy and the Mental Health Act 1983.

I confirm there are no declarations of interest.

References

Abbott, S. (2022). A study exploring how social work AMHPs experience assessment under mental health law: Implications for human-rights oriented social work practice. *The British Journal of Social Work, 52(3)*, 1362–1379. Retrieved from https://academic.oup.com/bjsw/article/52/3/1362/6323865 <accessed 23 November 2023>.

Boyd White, J. (1983). *The Invisible Discourse of the Law: Reflections on Legal Literacy and General Education. 54* p. 144). *University of Colorado Law Review*. Retrieved from https://repository.law.umich.edu/articles/2113/ <accessed 23 November 2023>.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology, 3*(2), 77–101.

Braye, S., & Preston Shoot, M. (2016). *Legal Literacy in Adult Social Care* (Dartington, Research in Practice). Retrieved from https://www.researchinpractice.org.uk/adults/publications/2016/february/legal-literacy-in-adult-social-care-strategic-briefing-2016/. <accessed 23 November 2023>.

Buckland, R. (2014). The decision by approved mental health professionals to use compulsory powers under the Mental Health Act 1983: A Foucauldian discourse analysis. *The British Journal of Social Work, 46*(1), 46–62.

Campbell, J. (2008). Stakeholders' views of legal and advice services for people admitted to psychiatric hospital. *The Journal of Social Welfare and Family Law, 30*(3), 219–232.

Department of Health. (2015). *Mental health act 1983: Code of practice*. London.

Department of Health and Social Care. (2021). *Reforming the Mental Health Act*. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951398/mental-health-act-white-paper-web-accessible.pdf <accessed 23 November 2023>.

Digital, N. H. S. (2024). Mental Health Statistics, Annual Figures, 2022–23. Retrieved from https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-act-statistics-annual-figures/2022-23-annual-figures. <accessed 1 March 2024>.

Dixon, J., Stone, K., & Laing, J. (2022). Beyond the call of duty: A qualitative study into the experiences of family members acting as a nearest relative in mental health act assessments. *The British Journal of Social Work, 52*(*7*), 3783–3801. Retrieved from https://academic.oup.com/bjsw/article/52/7/3783/6517149?login=false. <accessed 23 November 2023>.

Department of Health and Social Care and Ministry of Justice (2022) Draft Mental Health Bill. Retrieved from (see webaddress in separate link).

Dixon, J., Wilkinson-Tough, M., Stone, K., & Laing, J. (2020). Treading a tightrope: Professional perspectives on balancing the rights of patients and relatives under the mental health act in England. *Health & Social Care in the Community, 28*(1), 1–9.

Donnelly, M., & Murray, C. (2013). The role of family in mental health law: A framework for transformation. *Child and Family Law Quarterly, 25*(4), 380–405.

Emmett, C., Poole, M., Bond, J., & Hughes, J. C. (2014). A relative safeguard? The informal roles that families and carers play when patients with dementia are discharged from hospital into care in England and Wales. *International Journal of Law, Policy and the Family, 28*(3), 302–320.

House of Commons and House of Lords. (2022). *Joint Committee on the Draft Mental Health Bill, Draft Mental Health Bill 2022, Report of Session 2022-23, HC 696* (19 January 2023).

Independent Review of the Mental Health Act. (2018). *Modernising the Mental Health Act: Increasing choice, Reducing compulsion*. Retrieved from https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review <accessed 23 November 2023>.

Jones, M. (2009). *Legal Capability, London: Plenet*. Retrieved from http://lawforlife.org.uk/wp-content/uploads/2013/05/legal-capability-plenet-2009-147-1-147.pdf <accessed 23 November 2023>.

Laing, J., Dixon, J., Stone, K., & Wilkinson-Tough, M. (2018). The nearest relative in the mental health act: Still and illusionary and inconsistent safeguard, *the. Journal of Social Welfare and Family Law, 40*(1), 37–56. Retrieved from https://researchportal.bath.ac.uk/en/publications/the-nearest-relative-in-the-mental-health-act-2007-still-an-illus. <accessed 23 November 2023>.

Pinfold, V., Farmer, P., Rapaport, J., Bellringer, S., Huxley, P., Murray, J., Banerjee, S., Slade, M., Kuipers, E., Bhugra, D., & Waitere, S. (2004). *Positive and inclusive. Effective ways for professionals to involve carers in information sharing. Kingston-Upon-Thames: Rethink Severe Mental Illness* (pp. 523–528).

Preston Shoot, M., & McKimm, J. (2013). Exploring UK medical and social work students' legal literacy: comparisons, contrasts and implications. *Health & Social Care in the Community, 21*(*3*), 271–282. Retrieved from https://pubmed.ncbi.nlm.nih.gov/23379906/. <accessed 23 November 2023>.

Prime Minister''s Office. (2023). The King's Speech. Retrieved from https://assets.publishing.service.gov.uk/media/654a21952f045e001214dcd7/The_King_s_Speech_background_briefing_notes.pdf. <accessed 23 November 2023>.

Public Legal Education Network. (2013). Measuring Young People's Legal Capability. Retrieved from http://www.lawforlife.org.uk/wp-content/uploads/2013/05/measuring-young-peoples-legal-capability-2009-117.pdf. <accessed 23 November 2023>.

Rapaport, J. (2004). A matter of principle: The nearest relative under the mental health act 1983 and proposals for legislative reform. *The Journal of Social Welfare & Family Law, 26*(4), 377–396.

Rapaport, J. (2012). *Reflections on a 'Relative Affair': The nearest relative under the Mental Health Act,* Social Care Research Workforce Unit, London. Retrieved from https://www.basw.co.uk/system/files/resources/basw_101936-3_0.pdf<. <accessed 23 November 2023>.

Report of the Royal Commission on the Law relating to Mental illness and Mental Deficiency 1954-57. (1957). *Cmnd 169*. London: HMSO.

Ridley, J., & Cummings, L. (2009). *Experiences of the early implementation of the mental health (care and treatment) (Scotland) act 2003: A cohort study*. Scottish Government Social Research.

Samuel, M. (2023). *Mental Health Act Reform ditched, King's Speech confirms, Community Care, 7 November*. Retrieved from https://www.communitycare.co.uk/2023/11/07/mental-health-act-reform-ditched-kings-speech-confirms/. <accessed 23-11-2023>.

Saya, A., Brugnoli, C., Piazzi, G., Liberato, D., Di Ciaccia, G., Niolu, C., & Siracusano, A. (2019). Criteria, procedures, and future prospects of involuntary treatment in psychiatry around the world: A narrative review. *Frontiers in Psychiatry, 10*, 271.

Shaw, E. H., Nunns, M. P., Briscoe, S., Anderson, R., & Thompson Coon, J. O. (2018). *Experiences of the Nearest Relative provisions in the compulsory detention of people under the Mental Health Act: A rapid systematic review*. In *, 6(39). Health Services and Delivery Research*. National Institute for Health Research. Retrieved from https://www.journalslibrary.nihr.ac.uk/hsdr/hsdr06390#/abstract. <accessed 23-11-2023>.

Spencer-Lane, T. (2011). The nearest relative and nominated person: A tale of parliamentary shenanigans. *International Journal of Mental Health and Capacity Law, 21*(Spring), 48–60.

Ståhl, C., Karlsson, E. A., Sandqvist, J., Hensing, G., Brouwer, S., Friberg, E., & MacEachen, E. (2021). Social insurance literacy: A scoping review on how to define and measure it. *Disability and Rehabilitation, 43*(12), 1776–1785.

Stroud, J., Doughty, K., Banks, L., Hayward, M., Ashdown, H., & Sherlock, M. (2013). *An exploration of service user and practitioner experiences of community treatment orders*. London, UK: National Institute for Health Research.

Stuart, R., Akther, S. F., Machin, K., Persaud, K., Simpson, A., Johnson, S., & Oram, S. (2020). Carers' experiences of involuntary admission under mental health legislation: Systematic review and qualitative meta-synthesis. *BJPsych Open, 6*(2), 19.

The Kings Fund. (2021). *Understanding clinical decision making at the interface of the mental Health Act 1983 and the Mental Capacity Act 2005, London, The Kings Fund*. Retrieved from https://www.york.ac.uk/media/healthsciences/images/research/prepare/reportsandtheircoverimages/Understanding%20the%20MHA%20&%20MCA%20interface.pdf. <accessed 23 November 2023>.

The Masked AMHP. (2013). *Powers, rights and functions of the nearest relative*. Retrieved from https://themaskedamhp.blogspot.com/2013/01/powers-rights-and-functions-of-nearest.html. <accessed 1 March 2024>.

Welsh Government. (2016). *The Mental Health Act 1983 Code of Practice for Wales*. Welsh Government. Retrieved from https://www.gov.wales/sites/default/files/publications/2019-03/mental-health-act-1983-code-of-practice-mental-health-act-1983-for-wales-review-revised-2016.pdf. <accessed 23-11-2023>.

Willis, P., Lloyd, L., Hammond, J., Milne, A., Nelson-Becker, H., Perry, E., Ray, M., Richards, S., & Tanner, D. (2022). Casting light on the distinctive contribution of social work in multidisciplinary teams for older people. *The British Journal of Social Work, 52*(1), 480–497.

Wintersteiger, L. (2015). *Legal Needs, Legal Capability and the Role of Public Legal Education*. The Legal Education Foundation. Retrieved from https://research.thelegaleducationfoundation.org/research-learning/funded-research/legal-needs-legal-capability-and-the-role-of-public-legal-education. <accessed 23 November 2023>.

Zariski, A. (2014). *Legal Literacy: An introduction to legal studies*. Athabasca University Press. Retrieved from https://read.aupress.ca/projects/legal-literacy. <accessed 23 November 2023>.

CASES

CX v A Local Authority [2011] EWHC 1918 (Admin).

JT v UK [2000] ECHR 133.

TMM v London Borough of Hackney [2011] EWCA Civ. 4.