



## **NEXT OF KIN – Glossary of Terms**

### **Introduction**

The term Next of Kin (NoK) can be confusing and persons appointed as NoK will not be aware of how different organisations and legislation affect the role. The person who sees themselves as NoK may believe this brings with it an implied importance which could be in conflict with legislation and other procedures.

The term NoK is widely used, but has no legal definition in the UK. An individual can nominate any person as their NoK. Generally, families are asked by FLOs to name their NoK so that it can be established at an early stage whom they would like to be kept informed and to assist with making decisions. FLOs may find themselves dealing with just one individual or many members of the extended family. This document is intended to assist in understanding some of the meanings and terms used.

### **Funeral Director – ‘the Applicant’.**

A number of disagreements may arise between family members when there are conflicting opinions over funeral plans, lasting resting places for loved ones, and the collection of the ashes after a cremation has taken place, because funeral directors are obliged to follow the instructions of the client, who is known as ‘the applicant’, whoever that may be. Of note, the applicant may be the executor, next of kin (NoK), a relative or another person.

In relation to cremations, when the ashes are handed over they should be signed for. The funeral director should not release the ashes to anyone but the applicant, unless the applicant gives written permission to the funeral director to release to a 3<sup>rd</sup> party, i.e. Local Authority. The applicant will then ‘hold’ the ashes as a trustee; they cannot be the ‘owner’ of the ashes.

Although some funeral homes choose to hold ashes until a family member pays the bill, they are not allowed to retain them until such a time. It is the applicant’s right under Section 7 of the Cremation Act 1902 and Statutory Rules and Orders 1903 to have the ashes returned to them:

“After the cremation of the remains of a deceased person, the ashes shall be given into the charge of the person who applied for the cremation if he so desires. If not, they shall be retained by the cremation authority and, in the absence of any special arrangement for their burial or preservation, they shall either be decently interred in a burial ground or in land adjoining the crematorium reserved for the burial of ashes. In the case of ashes left temporarily in the charge of the cremation authority and not removed within a reasonable time, a fortnight’s notice shall be given to the person who applied for the cremation before the remains are interred”.

It has been known for a funeral home to keep ashes for a time, but then they are at liberty to 'charge' for rent if they are storing them which cannot be indefinitely. It is not the funeral director's responsibility to find the 'right home' for the ashes, they need to arrange correct and efficient disposal.

The NoK does not have an automatic right to dispose of the ashes. Legally, funeral directors can only release the ashes to the individual who applied for cremation (the applicant) or someone appointed by them through appropriate written consent, because they have the contract with, and can only act on the applicant's instruction. This may or may not be the NoK.

If the 'family' is unable to find an amicable solution, they should seek legal, independent advice. One consideration may be splitting the ashes, if both parties agree, however this may cause further issues and the matter may result in the need for a court hearing.

### **HM Coroner – Section 47 'Properly Interested Person'.**

The Coroners and Justice Act 2009, Section 47, defines who a 'properly interested person' is. This is a long list, including: spouse; civil partner; partner; parent; child; brother; sister; grandparent; grandchild; child of a brother or sister; stepfather; stepmother; half-brother or half-sister; and a personal representative of the deceased. The list also considers a number of 'professional people' as well as as 'anyone else who has a sufficient interest' as deemed by the Coroner. - This person may not always be the same person as nominated by the family.

### **Hospital – 'Emergency Contact' (EC).**

In the context of health care, patients are often asked to nominate an 'Emergency Contact' when registering with their general practitioner, or alternatively on admission to hospital. Hospitals will then notify the EC about care, treatment or a change in patient condition.

The term EC means an individual's nearest relative or someone that will be contacted in an emergency. There is no expectation that it has to be a blood relative or spouse, it could be someone else e.g. a close friend and is whoever is nominated on admission.

If the hospital is dealing with an individual who is unconscious or otherwise unable to state who their EC is, then the hospital will usually list the person's nearest blood relative, though there are no specific rules. Doctors may attempt to seek the views of the EC when considering decision making for unconscious patients or those who lack capacity, albeit the EC has no power to make any decisions regarding medical care and can neither override the previously stated wishes of the patient, nor prevent the medical team acting in what they consider to be the best interests of the patient.

The term EC has no legal meaning, therefore when a person is named or chosen to be an EC, they do not automatically assume any kind of responsibilities according to the law. It is important to note that the EC is not the same as someone holding Power of Attorney, which is a legal process whereby someone can be appointed to act on a person's behalf to make decisions about their care.

## **Human Tissue Authority 2004 – ‘Nominated Representative (NR)’ & ‘Qualifying Relationship’ (QR).**

If a deceased person has not indicated their consent (or refusal) to post-mortem removal, storage, or use of their body or tissue for scheduled purposes, nor appointed a ‘nominated representative’, then the appropriate consent can be given by someone in a ‘qualifying relationship’ to the deceased immediately before their death.

These terms are defined as follows:

Nominated Representative – Person appointed to represent someone after their death who is empowered to make decisions about consent on behalf of the deceased.

Qualifying Relationship – Person(s) who can give consent for the deceased person if the deceased person has not indicated their consent.

Those in a ‘qualifying relationship’ to the deceased person are ‘ranked’ as follows:

1. Spouse or partner (including civil or same sex partner)
2. Parent or child (in this context a ‘child’ can be any age)
3. Brother or sister
4. Grandparent or grandchild
5. Niece or nephew
6. Stepfather or stepmother
7. Half-brother or half-sister
8. Friend of long standing

There may be situations where it may not be possible to seek consent from the person in the highest ranking qualifying relationship. The Human Tissue Act allows for this person to be omitted from the hierarchy if they cannot be located, declines to deal with the matter or is unable to give valid consent; for example, because they are a child or lack capacity to consent. In such cases, the next person in the hierarchy would become the appropriate person to give consent and for it to be documented.

## **Intestacy rules – Administration of Estates Act 1925 – ‘Legal or Blood Relationship’**

When a person dies their NoK does not necessarily have the legal responsibility for their estate. If a Will has been made, then the executor(s) or another person (if appointed by the executor) will be responsible for arranging affairs according to the wishes specified. However, if no Will has been made, (a person who dies without leaving a Will is called an intestate person) the law sets out who has the right to deal with their affairs after the person has passed away and who can inherit according to their legal or blood relationship to the deceased person.

Co-habiting partners (‘common-law’ partners) who are not married are not legally entitled to inherit, , under the rules of intestacy. If a parent dies and a child is adopted after death the child does not lose their right to inheritance.

Under intestacy law, the order differs across the UK as follows:

England and Wales: Living husband, wife or civil partner, living children, grandchild or other direct descendant's e.g.

Great grandchildren, living parents, brother or sisters, half-brothers or half-sisters, living grandparents, aunts or uncles or half-aunts or half-uncles. Step-children are not included.

Scotland: Living husband, wife or civil partner, living children, grandchild or other direct descendant's e.g. great grandchildren, living parents, brothers or sisters, aunts or uncles, living grandparents, or living great aunts or uncles. Step-children are not included.

Northern Ireland: Living husband, wife or civil partner, living children, grandchildren or direct descendants e.g. great grandchildren, living parents, brother or sisters, living grandparents or aunts or uncles. Step-children are not included.

The order between England and Wales is slightly different to Scotland and Northern Ireland where 'half' brothers, sister, aunts or uncles are not considered. In Scotland aunts and uncles are considered before living grandparents, unlike in England, Wales and Northern Ireland. Scotland also considers living great aunts or uncles unlike England, Wales and Northern Ireland.

Perhaps the most important thing to understand is that the intestacy rules do not cover step-families unless the parent who died had formally adopted the step-child. At the time of death, if married, both parties can each inherit a certain amount from each other under the intestacy rules, but that does not include any step-children. Only a spouse, a blood relative or an adopted child can inherit automatically from someone who has died without leaving a Will. Therefore, if an individual has been adopted they are an heir of their adopted parents and can no longer inherit from their biological parents, unless a wish has been stated in the Will.

### **Mental Health Act 1993 – Section 26 'Nearest Relative' (NR).**

This arises when someone with a mental disorder has put their own or someone else's health and safety at risk and is placed in a psychiatric hospital for assessment and treatment, the Mental Health Act may be implemented. The Mental Health Act does not use the traditional term 'NoK' but uses instead the wording 'nearest relative' (NR) as most people will have a nearest relative.

The NR has certain rights - they can ask for an assessment to decide if their relative should be detained under the Mental Health Act. They can also request that their relative is discharged from hospital. An application can be made to the County Court to have the NR removed or changed if they do not feel that they are the right person for the role. The NR does not, however, have the right to be told everything about the patient. This could include information about what treatment the patient is taking. This will depend on whether the patient is happy for that information to be shared.

The status of NoK confers no legal rights or powers and has no special responsibilities, except in the specific context of the Mental Health Act, where it is legally defined as 'nearest relative'. NoK and nearest relative are not necessarily one and the same, they can be two different people. NoK is usually a relative or close friend chosen by the person who has been admitted. NR is used for deciding who should make decisions regarding someone who does not

have the capacity and may be detained under the Mental Health Act. It can be challenged and ultimately would be determined if necessary by the Office of the Public Guardian / Court of Protection, but for guidance, NR within the Mental Health Act is ranked and explained in

Section 26 of the Mental Health Act as;:

1. Husband / Wife
2. Son / Daughter
3. Father / Mother
4. Brother / Sister
5. Grandparent
6. Grandchild
7. Uncle / Aunt
8. Nephew / Niece

A patient cannot choose their NR; the general rule is that the NR will be the person who comes highest on the list. However, there are other rules that may affect who the NR will be. Surviving spouses are at the top of the list, followed by those related by blood. Men and women are equal so if there are two people who could be the NR, for example, mother and father, or brother and sister, the eldest person would be the NR. Step-children are not treated as relatives, but can become the NR if there is no other NR and they normally live with the person (and have done for the past 5 years), or a court decides they should be NR, or the current NR asks them to be NR and they agree. This is called delegating the NR.

When determining who is the legal NoK in England & Wales it is likely that Coroners would probably follow the recommendation in **Jervis, section 8-33**, which is as follows:

“But, in considering blood, in the lay mind descent is more powerful than ascent, and lineals are more important than collaterals. In the context of the new coroner legislation, therefore, it is submitted that “next of kin” means the first available adult or adults with capacity in the following classes of person, to the exclusion of those who are minors or without capacity, and of those further down the list: the spouse or civil partner, children, grandchildren (etc.), parents, grand-parents (etc.), siblings, uncles and aunts, nieces and nephews, cousins (etc.). Where there is more than one such person in a class, the whole class is treated together as a single person.”

### **Mental Capacity Act 2005 - Lasting Power of Attorney**

Powers similar to NoK as defined in other areas can be explicitly delegated to another person using lasting Power of Attorney. It is often believed that NoK is the same as having a power of attorney, this is not the case. Obtaining a Power of Attorney is a legal process whereby someone can be appointed to act on a person's behalf to make decisions about their care/welfare and/or finances. (Decisions about providing or withholding treatment of care are usually made by the person concerned). If they can no longer make these decisions then legally this will be left in the hands of the relevant professional i.e. doctor, nurse, social worker who will act upon the persons best interests, unless a Power of Attorney is in place for welfare matters.

### **Parental Responsibility (PR)**

The term NoK should not be confused with Parental Responsibility. PR must be considered and may have an impact on the FLO deployment.

Under the Children Act 1989, Section 3, PR means that a parent has all rights, duties and responsibilities for and towards the child.

Under section 2 of the Act, a biological mother automatically has PR for her child/children from birth, however, a father usually has PR if he is married to the child's mother and listed on the birth certificate (however after a certain date and depending on which part of the UK the child was born in). If they were unmarried, the father can only have PR in the following ways;

Births registered in England & Wales

1. jointly registering the birth of the child with the mother (from 1 December 2003)
2. getting a parental responsibility agreement with the mother
3. getting a parental responsibility order from a court

Births registered in Scotland - if the father is named on the child's birth certificate (from 4 May 2006).

Births registered in Northern Ireland - if the father is named, or becomes named, on the child's birth certificate (from 15 April 2002).

Births registered outside of the UK - If a child is born overseas and comes to live in the UK, parental responsibility depends on the country (i.e. UK) in which they now reside.

### **Same sex parents**

In relation to same-sex parents, if in a civil partnership at the time of treatment e.g. donor insemination or fertility treatment, both will have PR.

If non-civil partners, the second parent will obtain PR:

- if they apply for a PR agreement or
- by becoming a civil partner and obtaining a PR agreement or
- jointly registering the birth.

N.B. if the father or second female does not have PR, NoK issues may arise.

### **Losing Parental Responsibility**

- Parental responsibility (including mother) can be lost, if a child is adopted through an adoption order.
- Parents do not lose parental responsibility if they divorce.

### **Service / Ministry Personnel – 'Emergency Contact' (EC)**

Service personnel are required to give details of the person they wish to be notified in the event of them becoming a listed casualty or of their involvement in an incident of public interest. The person nominated as an Emergency Contact does not give the person any legal rights. For Service personnel the EC is determined in the following order; married or separated, but not divorced, (spouse / civil partner). If single, a widow, widower, divorcee, or an eldest child, a parent, sibling or other relative. If no living relative, it may be a friend.

OFFICIAL

Whilst a partner/fiancée can be the emergency contact, a partner of the same sex and having undergone a civil partnership ceremony cannot be the EC. An estranged spouse remains the EC until a divorce is finalised by decree absolute.

If there is a civil dispute between members of the family (which may be the case), they should be advised that they must seek their own legal remedies should that become necessary via Citizen's Advice or a solicitor.

The police have a duty of care towards all family members and must remain impartial by guiding them to allow the person(s) who has a legitimate interest to deal with their current situation.