

## Is it Time to Bin Next of Kin?

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Dear editor,

The term “next of kin” (NOK) is a legal term defined in statute in the Succession Act 1965 as a means of distributing an estate should an individual die without having a last will and testament in place<sup>1</sup>.

A survey commissioned by Sage Advocacy<sup>2</sup> in 2018 revealed widespread and significant misunderstanding about the meaning of NOK among the Irish public. In an online poll, 52% of respondents believed, wrongly, that anyone named as a NOK could make healthcare or other major decisions on another person’s behalf. Sage, noting that the term is widely used in Irish healthcare settings, called for its removal from computer and paper-based forms.

We conducted an online survey amongst non-consultant hospital doctors (NCHDs) to ascertain their understanding of the term NOK. Potential roles for a NOK endorsed by the 118 respondents were: as an emergency contact (110 (93%)); can provide medical information about a patient (58 (49.2%)); can make medical decisions for an incapacitated patient (44 (37.3%)); can provide consent on behalf of an incapacitated patient (59 (50%)); and has greater legal authority to receive information than other family members or friends (63 (53.4%)).

These findings confirm the Sage report findings of serious misunderstandings and misuse of NOK, in this case among NCHDs. In particular, it is alarming that NOK is misinterpreted as providing a decision-making authority if a patient lacks capacity as this may have an adverse impact on patient care. The HSE National Consent Policy (5.6.1)<sup>3</sup> notes that “no other person can give or refuse consent on behalf of an adult who lacks capacity unless they have specific legal authority to do so”. It is of course helpful to identify someone close to the person who can be contacted in an emergency, but this should be recorded as an ‘emergency contact’ rather than as NOK.

Avoiding confusion about who can make decisions on behalf of someone who lacks capacity is particularly important given that the Assisted Decision Making (Capacity) Act 2015<sup>4</sup> is expected to commence shortly. This will provide a modern legal framework for people who have difficulty making decisions without help, and there will be greater scope for others to have legal authority under different decision support arrangements to make decisions with or on behalf of such people.

We suggest that now is the time to bin the “next of kin”.

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