

# CONSENT TO CARE, TREATMENT AND SUPPORT

<b>VERSION No</b>	3	
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<b>NUMBER OF PAGES</b>	7	

## OUR AIM

*The aim of this home is to ensure that all service users are asked for their consent whenever care or treatment services are proposed or changed and that there are effective procedures in place to ensure that they can give or withhold such consent. Furthermore, this policy is to provide an overview and understanding of consent, the process of gaining consent and, in relation to the Mental Capacity Act 2005, the importance of capacity in relation to agreed consent. All staff within this organisation will be kept updated of any changes via legislation or guidance.*

## Background

*Management and staff of this home understand the term 'consent' in the context of health and social care refers to the moral and ethical duty on a service provider to obtain prior agreement from a person before any care or treatment or procedure is performed upon them or before a service is provided. The organisation understands this to be a fundamental human right. Furthermore, it understands 'informed consent' to refer to the need to ensure that the person giving their consent has a clear appreciation of and understanding of the facts, and the implications and consequences of their actions.*

Given that 'informed consent' is therefore desirable before any care or treatment decisions are made, it follows that service users need to be fully informed about the care or treatment that they are being asked to consent to. Where this is not possible, because they may lack the mental capacity to make a decision for themselves, then the organisation understands the need to comply fully with the **Mental Capacity Act (MCA) 2005** that states that where a service user might not have the mental capacity to give informed consent about any care and treatment proposed they should be properly assessed in line with the requirements of the Act. If from the assessment it is clear that the person cannot give their informed consent on account of their mental capacity, a decision must be taken in their 'best interests' following Mental Capacity Act procedures.

To ensure that a decision is in a person's best interests, the organisation will always encourage and enable the person to have the services of an independent advocate if needed. If the care and treatment proposed implies a deprivation of that person's liberty in any way, the organisation will always invoke established deprivation of liberty safeguarding procedures.

In addition to the above, this organisation also recognises that effective procedures for the gaining of consent is an important part of compliance with the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2010** and the Essential Standards of Quality and Safety, and is necessary to satisfy the registration requirements of the Care Quality Commission.

Consent to care and treatment is covered by Regulation 18 of the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014** which states the following: 'The registered person must have suitable arrangements in place for obtaining, and acting in accordance with, the consent of service users in relation to the care and treatment provided for them.'

The desired outcome is that all service users are asked for their consent whenever care or treatment services are proposed or changed and that there are effective procedures in place to ensure that they can give or withhold such consent.

## Definitions

### 1. What is Informed Consent?

*“The process of agreeing to care, treatment or support based on access to all relevant and easily digestible information regarding their care, treatment or support needs”.*

The above definition is straightforward and sets out the importance of the information which individuals should receive before consent is agreed, to ensure that the consent is valid.

*For truly informed consent, the individual must understand the following;*

-  *The purpose of the care, treatment or support*
-  *Who is involved in the delivery of the service*
-  *The practicalities and processes involved*
-  *The benefits and risks*
-  *Data Protection and storage*
-  *The purpose of the consent form*
-  *How information will be provided and updated*
-  *The notice periods which apply*
-  *Contact details should they have any further questions*
-  *Full details of fees and the process of collection*

**In addition:**

- a) a care plan should be prepared which uses language appropriate to the individual and avoids the use of technical language or jargon.*
- b) It is also important to remember that written information is only one method of sharing, and the use of diagrams, pictures, tables and flow charts could make a contribution to understanding the information.*
- c) There may be circumstances where video pens, podcasts, recordings or other means of sharing information may be more appropriate.*

All the above contribute to an informed consent decision.

### 2. Ongoing Consent as a Process

Informed consent is an ongoing process and consequently providers must ensure that individuals:

-  *Continue to understand what they are consenting to*
-  *Are provided with any new information which could influence their decision to consent*
-  *Continue to consent to care, treatment and support in an informed environment.*

### 3. Reviewing Informed Consent

Reviewing informed consent is often done informally, but on occasions it will be appropriate for formal consent to be obtained and recorded, e.g. where there is a significant change to the care plan

### 4. The Legal and Ethical Framework

- a) “The aim of the *Mental Capacity Act 2005* is to balance the importance of care, treatment and support of people who lack capacity with a need to protect their interests and respect their current and previously expressed wishes and feelings”*
- b) The ethical principle relating to informed consent is the belief that everyone should be treated with respect, and that their diverse needs when gaining informed consent must take into account factors such as:*

-  Ethnicity
-  Gender
-  Disability

-  Religious beliefs
-  Culture
-  Language
-  Level of understanding

- c) *Sensitivity and care must be taken when going through the process of gaining informed consent. When the individual has made, the decision relating to their care, treatment or support this organisation will respect that autonomous decision even if they disagree with it.*
- d) *This respect for autonomous and informed decision making also requires that individuals are never coerced into informed consent decisions. It is important to remember that individuals are potentially vulnerable to such coercion by nature of their relationship with this organisation*
- e) *UK case law on consent has established 3 requirements that need to be satisfied before a individual can give informed consent:*

- ✓ **Consent should be given by someone with the mental capacity to do so**
- ✓ **Sufficient information should be given to the individual**
- ✓ **Consent must be freely given**

*If any of these requirements are lacking, then the consent is invalid.*

## 5. Informed Consent in Special Circumstances

The principles and processes in obtaining informed consent are the same, but there are circumstances where it is not possible to gain consent via the usual practices:

### a) Delayed Consent

This usually applies in emergency situations, for instance:

-  At the road side in the event of an accident
-  At a cardiac arrest
-  During the early stages of a person's admission to an Accident and Emergency department.

In these circumstances a "Best Interest" decision will be taken by the emergency team involved.

### b) Implied Informed Consent

This may arise when express written and / or verbal consent is not given, e.g. when a individual is asked to transfer from chair to bed; implied consent is assumed by their participation in the manoeuvre.

## The Process of gaining informed consent

### 1. The Discussion

- a) *It is important to make individuals, their family or representative as comfortable as possible at the assessment of needs stage in order that they are able to concentrate and feel confident enough to ask questions.*
- b) *The location should be private and free of any interruptions, where possible. Where necessary, repeat, explain and re-enforce the information given. Always ask questions to check their understanding of the information.*
- c) *It is also important to think about the timing and context of the discussion, e.g. individuals who have just been given news of a life-threatening illness are unlikely to be able to make informed decisions regarding, care, treatment or support whilst struggling to come to terms with their situation. Such issues will need to be considered at different intervals.*

### 2. Acknowledging Diversity

It is important to acknowledge diversity alongside other factors when gaining informed consent. Asking questions can help to understand individual's needs and how these can best be met.

### 3. Re-enforcing the discussion

It is not enough to give individuals a verbal explanation of their care, treatment or support; their understanding of the, frequently complex and detailed, information which they have been given

must also be ensured. To this end, it may be necessary to prepare information material in different formats and languages, where appropriate.

#### 4. Consent Form

- a) *The signing of such a form has become standard practice in confirming that the individual has freely given their informed consent to care, treatment or support they receive.*
- b) *Individuals should not be asked to sign the consent form until they have been given adequate information and time to consider their decision.*
- c) *It is important to explain verbally all aspects of their care, treatment or support and check their understanding.*
- d) *During the assessment of needs process, it is important to engage with the individuals, their families or representatives in a meaningful and professional manner in order to make the process work*

#### 5. Individuals

- a) The “Statement of Government policy on Adult Safeguarding”, issued by the Department of Health, introduces 6 principles of safeguarding adults.
- b) The principle of empowerment is based on a presumption of person-led decision making and informed consent. This new principle should be prioritised in working with adults. This includes safeguarding, but must also be seen as the individual being able to take person led decisions, and that their views and wishes are to be listened to and respected. Where lack of capacity is an issue the *Mental Capacity Act 2005* Code of Practice must be observed.
- c) Assessing a individual’s capacity to give informed consent autonomously is an essential part of the informed consent process. This can prove challenging, however, so it is important to involve multi-agency partners and others who know the individual in making such decisions. It is important to remember that the *Mental Capacity Act 2005* begins with the presumption of competence, and that capacity can fluctuate and be affected according to the manner in which information is conveyed.
- d) The provision of accurate and meaningful information is at the very heart of acquiring informed consent.
- e) Below are factors to consider when working with individuals or groups who may be considered vulnerable.

##### i. Recognising Special Needs

*Individuals can have a range of special needs which should be taken into account, but which are not always obvious: some individuals may conceal them; some individuals with reading or writing difficulties may conceal their limitations due to embarrassment (e.g. “I’ve forgotten my glasses, I will read it later”) while others may have visual or hearing impairment, illness or emotional difficulties. It is vital therefore to explore the individual’s abilities sensitively. The ability to process information can slow with age so older people should be given plenty of time and opportunity to ask questions, and to think about whether they desire the care, treatment and support. It is important, however, that older people are encouraged to participate fully in the consent process.*

##### ii. Capacity to Decide

*Individuals can only give consent if they are capable of choosing between alternative courses of action. This means they must be able to understand the information given to them. Where an individual lacks capacity a best-interest decision involving those, who know the individual should be instigated using the *Mental Capacity Act 2005* Code of Practice and the local *Mental Capacity* team guidance.*

#### Procedure

This organisation believes that every service user has the natural moral and ethical right to be asked whether or not they consent to care or treatment options which affect them.

Therefore, in this organisation:

- Service users (or their representatives) should always be asked for their explicit, informed consent whenever care or treatment services are being proposed to meet their needs, which

include personal, health (including medication), social, psychological and spiritual needs. Written consent should be requested and documented except in the case of minor, day-to-day decisions which may be subject to verbal consent.

- ☑ Service users should be given adequate information about the proposed care or treatment. This should be supplied in a format and a way that the person can understand and should be sought by a person who has sufficient knowledge about them – and about the care, treatment and support options they are considering – in order that the service user can make an informed decision.
- ☑ The information provided to the service user about the care or treatment should include information about the risks, benefits and alternative options as well as information about how they can withdraw consent if they so wish.
- ☑ Service users and their representatives should be asked to read and sign all basic agreements about the service they receive and should be consulted on any proposed changes to these.
- ☑ Service users (or their representatives) should always be asked to sign their plan of care as an indication that they are in agreement with the services being proposed to meet their needs, which include personal, health (including medication), social, psychological and spiritual needs.
- ☑ Any proposed changes to a plan of care should always be discussed with the service user and, where appropriate, with their representatives. Consent should be obtained and this should be recorded in the care plan and by using an appropriate form. Service users' agreements and signatures should always be obtained following regular reviews.
- ☑ Where verbal consent is being sought for what are usually day-to-day care and treatment proposals or changes, the reasons for the need to seek consent, the fact that it has been obtained, and how, should all be recorded in the person's care plan.
- ☑ Service users' consent should always be sought in relation to any proposed participation in social and community activities, either directly from the resident or as a 'best interests' decision taken in discussion with their relatives and representatives.
- ☑ The organisation expects other healthcare professionals or organisations to be responsible for seeking consent for any care and treatment that they provide and the organisation will help to implement such care or treatment only on the basis that the service user has given their consent to the proposed treatment or a 'best interests' decision has been taken and recorded.
- ☑ Service users should always be given enough time to think about their consent decisions where requested, except in an emergency when this may not always be possible. In a life threatening emergency situation, when receiving consent is not possible, decisions should be made which are in the best interests of the service user and with reference to any advance decisions which they may have made.
- ☑ The confidentiality of service users' consent decisions and deliberations should be respected at all times.
- ☑ Consent decisions should be made subject to regular review taking into account the changing needs of the service user.
- ☑ Where a service user is suspected of lacking the capacity to make an informed decision relating to a consent issue then a 'best interests' decision may have to be made for them – in such cases the full provisions of the **Mental Capacity Act 2005** should be followed, the fact that they have not been able to give their valid consent should be fully recorded using an appropriate form and, where necessary, deprivation of liberty safeguarding procedures should be implemented.

- ☑ Where it is considered that the care and treatment provided might restrict a person's ability to exercise choice or their freedom of movement, such as when bed rails are proposed, their written consent is always obtained or a 'best interests' decision fully recorded.
- ☑ Where a service user is found to lack the capacity to give their consent over one particular care or treatment option it should never be assumed that this applies to all decisions and further appropriate attempts should be made to inform them about treatment options and to obtain informed consent. A service user must be assumed to have capacity unless the contrary is established and should not be treated as unable to make a decision unless all practical steps have been taken without success to help them take the decision.
- ☑ Any refusal to give consent, or difficulty in obtaining it because of suspected mental incapacity, should be recorded in the service users' care plan together with an account of the actions taken to address the consequences of the decision or difficulty.
- ☑ Any valid decision by a service user to refuse or withdraw consent should always be fully respected.
- ☑ The organisation should support, enable or facilitate advocacy for any service user who might require it by being undecided about giving consent or by lacking the capacity to give their informed consent.
- ☑ Valid advance decisions about wishing to refuse care and treatment in the event of a loss of mental capacity will be disclosed and acted upon under the appropriate circumstances in order for a decision to be made in line with the person's wishes.
- ☑ Consent should always be sought if any proposal or request is made to take part in any research project and 'best interests' meetings should be held in the cases of anyone who cannot give their informed consent about taking part.
- ☑ Consent should always be sought in advance of any Care Quality Commission inspection where service users' notes or records are to be viewed and 'best interests' meetings should be held in the cases of anyone who cannot give their informed consent about taking part.
- ☑ Only staff who have accessed training in the **Mental Capacity Act 2005** and have shown that they are competent should take part in 'best interests' decision-making in relation to service users who cannot give their informed consent.

### **Management duties**

Managers and supervisors in the organisation have a duty to:

- ☑ Regularly audit the use of this policy and the effectiveness of procedures to obtain consent
- ☑ Monitor complaints and compliments relating to consent issues, taking action as required and fully investigating any complaints
- ☑ Ensure that service users, and their relatives and representatives, have adequate processes in place to be able to register queries or complaints about consent issues and to have their thoughts listened to and acted upon.

### **Staff duties**

Staff in this organisation have a duty to:

- ☑ always act in full compliance with the **Mental Capacity Act 2005** and with the associated Deprivation of Liberty Safeguards
- ☑ understand the importance of obtaining consent and acquaint themselves with the procedures for obtaining consent operated in this organisation
  - a) *RGN staff must ensure that the following verbal and written consent records, within the service users care plans, are completed and signed:*

<b>RECORD No</b>	<b>RECORD HEADING</b>
<b>F5</b>	<b>Involvement and Information provided by Service Users and / or Family / Representative</b>
<b>C2</b>	<b>Self - medicating</b>
<b>C5</b>	<b>Flu / Pneumonia Vaccination consent / refusal</b>
<b>D3</b>	<b>Diagnostics – verbal consent for obtaining specimen from a service user for lab. tests</b>
<b>F5</b>	<b>Family / representative communication notes</b>
<b>F6</b>	<b>Consent for care, treatment and support and for sharing information with other service providers</b>
<b>F7</b>	<b>Service user care plan access and agreement</b>
<b>F8</b>	<b>Planning ahead (PPC, LPA, ADRT)</b>
<b>ADL1</b>	<b>‘Best interest decision’</b>
<b>DNACPR</b>	<b>DNACPR form</b>
<b>ADL4h</b>	<b>Door locking</b>
<b>ADL6b</b>	<b>Consent for blood sugar level tests and administration of insulin</b>
<b>ADL12a</b>	<b>End of life care (EoLC)</b>
<b>J</b>	<b>Terms of business and contract of admission</b>
<b><i>Including of obtaining verbal consent for the administration of medicines and anything else. Verbal consent must be always obtained prior to providing any care, treatment and support</i></b>	

*b) HCA staff must ensure that the following verbal and written consent records, within the service users care plans, are completed and signed:*

<b>RECORD No</b>	<b>RECORD HEADING</b>
<b>ADL3e</b>	<b>Meeting service user personal needs - verbal consent</b>
<b><i>Verbal consent must be always obtained prior to providing any care, and support by all care staff, including for: position change; assisting during meal times; food preferences; clothes preferences, etc.</i></b>	

- comply fully with organisational policies on confidentiality and data protection
- attend appropriate training.

### **Training**

In this organisation:

- induction will include guidance on the obtaining of consent
- all staff will be trained in the requirements of the Mental Capacity Act and with the associated Deprivation of Liberty Safeguards.

### **Applicability and scope**

This policy applies to all staff and volunteers working in or for the organisation without exception. All staff have responsibility for ensuring that they work within the remit of this policy and in the manner in which they have been trained.

### **Related Policies**

*Mental Capacity Act  
Deprivation of Liberty Safeguards  
Cyber Security  
Data Protection  
Service Users' Records  
Advocacy  
Advance Decisions*