



## CONSENT POLICY

### Scope

- **Policy Statement**
- **The Policy**
- What is Informed Consent?
- Ongoing Consent as a Process
- Reviewing Informed Consent
- The Legal and Ethical Framework
- Informed Consent in Special Circumstances
- Delayed Consent
- Implied Informal Consent
- The Process of Gaining Informed Consent
  - The Discussion
  - Acknowledging Diversity
  - Re-enforcing the Discussion
  - Consent Form
  - Service Users
  - Recognising Special Needs
  - Capacity to Decide
  - Service User with Learning Disabilities
  - Conclusion
- **Related Policies**
- **Related Guidance**
- **Training Statement**

### Policy Statement

This organisation needs to ensure that suitable arrangements are in place for obtaining and acting in accordance with the consent of service users in relation to the care, treatment and support they receive.



## The Policy

The aim of 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.

### 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 service users should receive before consent is agreed, in order to ensure that the consent is valid.

For truly informed consent, the service user 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 care plan should be prepared which uses language appropriate to the service user and avoids the use of technical language or jargon.

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. There may be circumstances where video pens, podcasts, recordings or other means of sharing information may be more appropriate.

All of the above contribute to an informed consent decision.

### Ongoing Consent as a Process

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



- 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.

## **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

## **The Legal and Ethical Framework**

“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”

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

Sensitivity and care must be taken when going through the process of gaining informed consent. When the service user has made the decision relating to their care, treatment or support this organisation will respect that autonomous decision even if they disagree with it.

This respect for autonomous and informed decision making also requires that service users are never coerced into informed consent decisions. It is important to remember that service users are potentially vulnerable to such coercion by nature of their relationship with this organisation

UK case law on consent has established 3 requirements that need to be satisfied before a service user can give informed consent:

- Consent should be given by someone with the mental capacity to do so



- Sufficient information should be given to the service user
- Consent must be freely given

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

### **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:

### **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.

### **Implied Informed Consent**

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

### **The Process of Gaining Informed Consent**

Below are the factors to be considered when going through the process of obtaining informed consent.

### **The Discussion**

It is important to make service users, 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. 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.



It is also important to think about the timing and context of the discussion, e.g. service users 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.

### **Acknowledging Diversity**

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

### **Re-enforcing the discussion**

It is not enough to give service users 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.

### **Consent Form**

The signing of such a form has become standard practice in confirming that the service user has freely given their informed consent to care, treatment or support they receive. Service users should not be asked to sign the consent form until they have been given adequate information and time to consider their decision. It is important to explain verbally all aspects of their care, treatment or support and check their understanding.

During the assessment of needs process, it is important to engage with the service users, their families or representatives in a meaningful and professional manner in order to make the process work

### **Service Users**

The "Statement of Government policy on Adult Safeguarding", issued by the Department of Health, introduces 6 principles of safeguarding adults.

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.



Assessing a service user'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 service user 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.

The provision of accurate and meaningful information is at the very heart of acquiring informed consent.

Below are factors to consider when working with service users or groups who may be considered vulnerable.

### **Recognising Special Needs**

Service users can have a range of special needs which should to be taken into account, but which are not always obvious: some service users may conceal them; some service users 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 service user'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.

### **Capacity to Decide**

Service users 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 a service user lacks capacity a best-interest decision involving those, who know the service user should be instigated using the *Mental Capacity Act 2005* Code of Practice and the local Mental Capacity team guidance

### **Service User with Learning Disabilities**

Service users with learning disabilities must be accorded the same respect as anyone else. Some may not be able to exercise fully their right to self-determination, but nonetheless should be offered choices within their capabilities.

Care should be taken in evaluating each individual's comprehension; use plain language, supported if necessary, by using other materials such as pictures. Dependent upon the needs of the service user, it may be necessary to present the information in different formats or over a longer duration.



Every effort should be made to seek informed consent. It may be necessary to involve a range of multi-agency partners who are knowledgeable about the service user's situation and can contribute to an assessment of their best interests.

## **Conclusion**

The key principles in obtaining informed consent are to put the service user's needs first. To participate effectively in informed consent processes all staff should have the knowledge, expertise and competencies to give sufficient information in an appropriate format and be able to answer any questions raised by the service user, their family or representative.

It is vital that the relevant staff be able to assess a service user's capacity to give informed consent. If staff are open, honest and ensure the service user's understanding, then truly informed consent will be obtained.

## **Related Policies**

Accessible Information and Communication

Adult Safeguarding

Assessment of Need and Eligibility

Care and Support Planning

Cyber Security

Data Protection Legislative Framework (GDPR)

Deprivation of Liberty Safeguards

Mental Capacity Act 2005

Record Keeping



## Related Guidance

- Regulation 11 Need for Consent <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-11-need-consent>
- Mental Capacity Act 2005 Code of Practice [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/497253/Mental-capacity-act-code-of-practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf)
- SCIE Mental Capacity at a glance <https://www.scie.org.uk/mca/introduction/mental-capacity-act-2005-at-a-glance>
- NICE guideline 108 Decision-making and mental capacity <https://www.nice.org.uk/guidance/ng108>

## Training Statement

All staff, during induction are made aware of the organisations policies and procedures, all of which are used for training updates. All policies and procedures are reviewed and amended where necessary and staff are made aware of any changes. Observations are undertaken to check skills and competencies. Various methods of training are used including one to one, on-line, workbook, group meetings, individual supervisions and external courses are sourced as required.