

POLICY DOCUMENT

Policy Title:	Consent
Policy Group:	Clinical
Policy Owner:	Director of Nursing services
Issue Date:	March 2023
Review Period:	2 years
Next Review Due	March 2025
Author:	Gina Guo
Cross References:	Health records policy Information Management Policy
Evidence:	Decision-making and mental capacity 2018 GMC Decision making and consent 2020 12 key points on consent: the law in England – Department of Health 2001 The NMC code of professional conduct, performance and ethics - Nursing and Midwifery Council 2015 Mental Capacity Act 2005 – Code of Practice
How implementation will be monitored:	Health records audit Training MDT meetings
Sanctions to apply for breach:	Investigation of circumstances followed by further training and support. Disciplinary action may be necessary
Computer File Ref.	O: risk management: policies: clinical
Policy Accepted by MT	29/03/2023

STATEMENT OF PURPOSE

The purpose of this policy is to enable staff employed by Holy Cross Hospital to ensure valid consent is gained from persons with capacity or all actions taken are in the best interests of persons deemed to lack capacity.

It sets out standards and procedures related to consent which aim to provide staff employed by Holy Cross Hospital with a clear understanding of the relevant issues.

1. POLICY STATEMENT

People have a legal and ethical right to decide what happens to their bodies and to their personal information. Valid consent is essential to all forms of healthcare delivery from the provision of personal care and non-invasive procedures to invasive interventions including surgery. It is the duty of health professionals undertaking procedures to be confident that the person consents or they are acting in the best interests of the person and therefore proceeding on a lawful basis.

2. INTRODUCTION

Consent is a person's agreement for a health professional to provide care or treatment or to make records containing personal sensitive information. Consent may be implied e.g. a person holding out his arm to have his pulse taken, verbal or written.

2.1. Validity

For consent to be valid the person must:

- Understand information relevant to the decision
- Retain the information
- Weigh up information about different options
- Have received sufficient information regarding the procedure
- Not be acting under duress
- Communicate the decision

3. CAPACITY

Decisions regarding capacity should be guided by the five core principles included in the Mental Capacity Act 2005:

Principle 1 - A person must be assumed to have capacity unless he/she have been proven to lack capacity

Principle 2 – A person is not to be treated as unable to make a decision unless all practicable steps to help him/her do so have been taken

Principle 3 – A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision

Principle 4 – An act done or decision made under this Act for or on behalf of a person who lacks capacity must be done or made in his/her best interests

Principle 5 – Before the act is done or the decision made, regard must be given to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action

Capacity is 'decision-specific' concentrating on the matter related to the decision rather than the ability to make decisions generally.

Capacity is 'time specific' focusing on the time the decision is to be made.

In circumstances where an adult lacks capacity no other person is able to consent to or withhold treatment on their behalf unless they have been appointed as Lasting Power of Attorney (LPA) Health and Welfare by the person when they had capacity or Deputy for Health and Welfare by the court.

Mental capacity assessments are carried out and recorded using the Hampshire Mental Capacity Toolkit (2014).

4. BEST INTERESTS

One of the key principles of the Mental Capacity Act 2005 is that any decision made on a person's behalf is in their best interests whoever is making the decision. It may be difficult to decide what is in a person's best interests. The Act requires steps to be followed to determine what is in someone's best interests including:

- Encourage participation of the person
- Identify all relevant circumstances – what would the person take into account if they were making the decision
- Find out the person's views – past and present wishes, beliefs and values as well as any other factors
- Avoid discrimination – do not make assumptions on the basis of age, appearance, condition or behaviour
- Assess whether the person will regain capacity – can the decision wait till then?
- Do not make assumptions on the person's quality of life when making decisions concerning life sustaining treatment
- Consult others
- Avoid restricting a person's rights – are there less restrictive options available?

Unless a person has clearly stated that certain individuals should not be involved or unless the urgency of the situation prevents it attempts should be made to involve close relatives or others who know him/her well in the decision-making process. They cannot insist on a particular intervention being carried out or withheld but are likely to be able to provide valuable information about the person's wishes.

Best Interest assessments are carried out and recorded using the Hampshire Mental Capacity Toolkit (2014). It is best practice to have more than one clinician who knows the patient well and to repeat the assessment at different times of the day to ensure the client has had the best opportunity to understand the decision to be made.

5. GUIDANCE ON CONSENT

5.1. When to seek consent

See Information Management Policy for guidance on consent concerning personal sensitive information.

Consent must be obtained before any treatment or care intervention is delivered. In many cases the intervention will take place immediately after consent has been obtained. This is most likely to be implied or verbal consent.

6. PROVISION OF INFORMATION

A major component of the consent process is the provision of accurate information including benefits, risks and potential consequences of not receiving the care or treatment proposed.

If the person decides they do not wish to receive detailed information it should be clearly documented.

7. DOCUMENTATION

Where a proposed intervention carries a significant risk it is essential that the person's agreement and the discussions that led up to the agreement are clearly documented. This can be achieved by using a consent form¹ with further details in the person's notes. If the person is unable to sign it should be documented in the person's notes that they have given verbal consent.

Treatment options should be discussed in advance of the procedure to give the person time to absorb the information given and an opportunity to ask questions. The consent form is used as a means of documenting the provision of information and confirming the person wishes to proceed.

It must be remembered a signature on a consent form is evidence that the person has given consent it is not proof of valid consent. If a person signs the form on the basis of too little information the consent may not be valid despite the signature. Similarly if a person gives valid verbal consent the fact that they are unable to sign the form is not a bar to treatment. The person may, if they wish withdraw consent after they have signed the form.

Completed consent forms or best interest forms should be kept in the relevant section of the person's notes. Any changes to the form after it has been signed should be initialled and dated by the person and health professional.

8. RESPONSIBILITY FOR SEEKING CONSENT

The health professional carrying out the procedure is ultimately responsible for gaining consent and ensuring it is valid. It is they who will be held responsible in law if consent is challenged at a later date. In some cases it may be appropriate for other members of the clinical team to be involved e.g. Speech and Language Therapist if the person has communication difficulties. In this case it is the responsibility of the aforementioned health professional to ensure that when they require colleagues to seek consent on their behalf they are confident that the colleague is competent to do so.

When there is a lapse of time between consent being given and the actual procedure it is the duty of the person delivering the treatment to ensure consent remains valid.

9. REFUSAL OF TREATMENT

Competent adults are entitled to refuse any treatment except in circumstances governed by the Mental Health Act 1983.

If, after discussion of treatment options a person refuses treatment it should be clearly documented in their notes. It must be ensured that appropriate care to which they have consented is continued. The person should be given the option to change their mind and accept treatment at a later date if they wish to do so.

If the person consents to a particular intervention but refuses certain aspects of the intervention the possible consequences must be explained to the person. If a health professional genuinely believes the intervention cannot be safely carried out under these conditions they are not obliged to perform it. Other appropriate care must be continued.

¹ Consent form 1 (H: Templates)

10. SECOND OPINIONS AND COURT INVOLVEMENT

In situations where treatment is complex and/or close family members are in disagreement with the clinical team a second opinion may be sought unless the urgency of the person's condition prevents this.

The Court of Protection may become involved when there are doubts regarding the person's capacity or best interests.

11. CLINICAL PHOTOGRAPHY AND VIDEO RECORDINGS

Photographic and video recordings made for clinical purposes form part of the person's health records. They must not be used for any purpose other than the person's care, audit of care or internal education without consent from the person even if they cannot be recognised.

Where photographic or video recordings are to be used for external education, publication or research purposes written consent must be gained from the person ensuring they have full understanding of the possible uses of the material and that it may not be possible to control future use once the material has been placed in the public domain.

12. Review

This policy has been reviewed for overt or implied discrimination within the scope of the Hospital's policies on equality and diversity and none was found.

The policy will be reviewed every two years to ensure that the system described continues to provide an effective framework for seeking consent or acting in a patient's best interest.