

Principles of Consent

Briefing Note

What is consent?

Consent is defined as “*permission for something to happen, or agreement to do something*”.

- Oxford English Dictionary

What is informed consent?

The person must be given full information about what the treatment involves, including benefits and risk, alternative treatments, and what will happen if the treatment does or does not go ahead, for them to make an informed decision.

What is valid consent?

For consent to be valid, it must be given voluntarily and freely, without pressure or undue influence, by an appropriately informed person who has the capacity to consent to the intervention in question.

What is capacity to consent?

The ability to make decisions independently is often referred to as ‘having capacity’.

Who can provide consent?

An adult must provide consent for themselves. If the person lacks capacity to consent and there is a lasting Power of Attorney (POA) in place, the Deputy or Attorney can give consent.

Who can seek consent, and when?

The professional providing the treatment or care is responsible for ensuring that valid consent has been given. If consent has been agreed with another professional, the person providing the treatment must be satisfied that the consent is still valid.

[Mental Capacity Act 2005](#)

There are two stages of assessment of consent:

- **Stage 1:** Diagnostic test of capacity.
 - Part 1a: Does the person have a mental impairment?
 - Part 1b: If so, does this impairment mean they are unable to make the decision in question?
- **Stage 2:** Functional test (failure on any one point means the person lacks capacity)
 - Part 2a: Is the person able to understand the information relevant to the decision?
 - Part 2b: Is the person able to retain the information required to make the decision?
 - Part 2c: Does the person have an understanding of the likely consequences of not making the decision?
 - Part 2d: Can the person communicate their decision?

Consent for sharing information

Many professional codes of practice require the professional to respect the person's right to confidentiality. Personal information should not be shared with third parties unless:

- The person has given consent;
- The person lacks consent and it is in their best interests to share information with other statutory bodies; and
- It is in the best interests of the person and/or the public or vital interest.

Vital interest is a term used in the Data Protection Act to permit sharing of information where it is critical to prevent serious harm or distress, or in life-threatening situations. If the only person that would suffer if the information is not shared is the subject of that information, and they have mental capacity to make a decision about it, then sharing it may not be justified.

Public interest is the process a practitioner uses to decide whether to share confidential information without consent. It requires them to consider the competing public interests – e.g. the public interest in protecting individuals, promoting their welfare or preventing crime and disorder, and the public interest in maintaining public confidence in the confidentiality of public services, and to balance the risks of not sharing against the risk of sharing.

Advance Decisions

An Advance Decision must be made whilst the person has capacity. It can only state what treatment the person **does not** want. An Advance Decision cannot ask a medical professional to provide treatment.

Duration of consent

Consent can be given for a course of treatment, however, professionals should satisfy themselves that the person is still consenting before continuing.

An adult with capacity to make the decision can withdraw consent at any point during treatment or care. It is important to remember that consent can be removed within a second.

Professional accountability

Professional accountability means being personally answerable to the law of the land for all actions or omissions (including what is written or is not written, what advice/information/communication is given or not given) whilst fulfilling a contract as an employee.

Seven golden rules for information sharing – Adult safeguarding: sharing information

1. Remember that the Data Protection Act is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately;
2. Be open and honest with the person from the outset about why, what, how and with whom information will or could be shared, and seek their agreement unless it is unsafe or inappropriate to do so;
3. Seek advice if you are in any doubt, without disclosing the identity of the person where possible;
4. Share with consent where appropriate, and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden in the public interest, You will need to base your judgement on the facts of the case;;
5. Consider safety and wellbeing: base your information sharing decisions on considerations of the safety and wellbeing of the person and others who may be affected by their actions;
6. Necessary, proportionate, relevant, accurate, timely and secure: ensure that the information you share is necessary for the purpose of which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion and is shared securely; and
7. Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

For further information contact the Partnership Management Team on 01952 380131 or via email partnerships@telford.gov.uk