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Consent Policy and Procedure

Regulated by Care Quality Commission

BANQUO
Part of Prospero Group

Consent Policy and Procedure

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Version No.	1.0
Date of issue	October 2024
Date to be reviewed	October 2026
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Introduction

The aim of the policy is to ensure that Banquo Limited is operating effective controls that protect the human rights and safety of service users, and to support good practice. A person has a fundamental legal and ethical right to determine what happens to their own body. Consent is a core component of good care provider. When obtaining consent, this discussion must include the options available to the service user, including the option not to treat. Valid consent is fundamentally crucial in all aspects of health and social care. Where possible, a clinician must be satisfied that a service user understands and consents to a proposed treatment, care or investigation. This policy is in accordance with Regulation 11 and Regulation 17, (Good Governance) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The right to be given clear and transparent information about a recommended care and support, including the risks and benefits associated with that care and support and available alternatives, and the right to accept or refuse care and support is engrained within Banquo Limited.

Objective

This policy is intended to provide supplementary information to national guidance and professional training, setting out the standards that must be upheld. It aims to provide advice and guidance to ensure that all care professionals and trainees working on behalf of Banquo Limited comply with professional and legal standards on seeking consent in their daily practice. Banquo Limited will always work in partnership with their service users to ensure service users are involved in planning and making decisions in relation to their health and care.

This policy is to ensure that all Banquo Limited staff are aware of their responsibility to service users to obtain consent before proceeding to provide any intervention, care or support.

Banquo Limited will:

- Ensure staff are aware of the process for obtaining valid informed consent, including verbal, written or non-verbal.
- Ensure clear guidance, reference to the law and good practice documents, are available to all staff.

- Ensure staff are aware of their legal duties under the Mental Capacity Act 2005 in respect of care or support intended to be in the best interests of people who lack the capacity to make decisions for themselves.
- Ensure the interests of all service users and Banquo Limited staff are safeguarded.

Scope

This policy applies across the organisation of Banquo Limited and to all individuals involved seeking consent to care and support. The policy is intended to protect the rights of service users and ensure good care is followed to ensure shared decision making for social care interventions so service users will receive care and support of most benefit to them personally.

Definitions

Consent is agreement or permission expressed through affirmative, voluntary words or actions that are mutually understandable to all parties involved. Banquo Limited understands the term 'consent' in the context of health or social care to refer to the moral and ethical duty on a service provider to obtain prior agreement from a person before any care or support or procedure is performed upon them or before a service is provided. Banquo Limited 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. Consent can be withdrawn at any time, as long as it is clearly communicated.

Expressed Consent

There are no legal requirements in terms of specific procedures that require written consent. However, as a matter of good practice, written consent should be obtained in cases where the care is complex or involves significant risks and /or side effects (the term 'risk' is used throughout to refer to any adverse outcome, including those which some health and social care professionals would describe as 'side-effects' or complications.

Expressed consent (written or verbal) will be obtained for any procedure which carries a risk that the service user is likely to consider as being substantial. A note will be made in the care plan detailing the discussion about consent and the risks. A Consent Form may be used for the service users to express consent.

The purpose of a consent form is to record the person's decision and provide evidence of the consent process. It is not a binding contract but will confirm that discussions have taken place. A person may withdraw consent at any time after they have signed a form.

Banquo Limited staff will need to obtain written consent from service users before providing any care or support.

Informed Consent

Informed consent is the act of agreeing to allow something to happen, or to do something, with a full understanding of all the relevant facts, including risks, and available alternatives. That full knowledge and understanding is the necessary factor in whether an individual can give informed consent. This type of consent applies to many situations in life, including making decisions about care and support.

Good Practice In Consent

Staff working for Banquo Limited are aware of the legal and ethical principle that valid consent must be obtained before commencing an examination, investigation, starting treatment, physical investigation, or providing care.

For the consent to be valid, staff must be assured:

- That the service user is competent to take the decision.
- That the service user has received sufficient information about care and support options, consequences, and risks to take it; and
- That the service user is not acting under duress/influence of others.
- That they have made it clear to the service user that they have the right to withdraw consent at any time.

Roles And Responsibilities

The Registered Manager within Banquo Limited has overall responsibility;

- For implementation of the Consent Policy and Procedure.
- To update the policy, ensure that it is aligned with national guidelines, distributed appropriately, and ensure that staff are trained at induction and at regular intervals so that they are aware of the principles of consent and the content of the policy.
- To ensure that there is a valid and appropriate consent form available for service users and carers.
- To ensure that there is a secure storage area for retrieval of this information when required.

Staff within Banquo Limited- It is the responsibility of all staff providing care to a service user with capacity to ensure that valid consent has been obtained from the service user before providing that care. Staff have a legal duty to have regard to the provisions of the Mental Capacity Act 2005 and the Code of Practice when they must take decisions in the best interests of a service user who lacks the mental capacity to make that decision for themselves.

All Staff Have A Responsibility To:

- Work with all service users to ensure that they are given the opportunity to consent to examinations, procedures, tests, and investigations.
- Ensure that consent is truly informed when required.
- Ensure that any consent documentation is accurate, complete, and stored appropriately as per the companies Information Governance and Recording keeping Policy and Procedure.
- Treat all adults as having capacity until proven otherwise in line with the Mental Capacity Act 2005
- Assess individual’s capacity on a case-by-case basis (or refer to another competent professional to provide an assessment).
- The service user has been given sufficient time and information to make an informed decision.
- Any additional support or alternative forms of information service users may need about the procedure to reach an informed choice, has been made available to the service user.
- That the interpreting services are utilise if there are language barriers.
- All the other requirements of this policy have been met.

When Is Consent Required

Consent is needed prior to any care and support required, It is a general legal and ethical principle that valid consent must be obtained before commencing an examination, starting treatment or physical investigation, or providing personal care.

Process For Seeking Consent

In order to obtain consent staff at Banquo Limited should follow the following;

- Service users understand their rights around consent to the care and support they are offered.
- Service users views and wishes are taken into account when their care is planned.
- There are systems and practices to ensure that service understand the care and support being offered or recommended. This helps them make an informed decision.
- Service users should be given adequate information about the proposed care or support. Service users receive information about care and support in a way they can understand and have appropriate support and time to make decisions. 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 and support options they are considering in order that the service user can make an informed decision. This may include the use of different formats or languages and may involve others such as a speech language therapist or independent advocate. Consent may be implied and include non-verbal communication such as sign language or by someone rolling up their sleeve to have their blood pressure taken or offering their hand when asked if they would like help to move.

- The information provided to the service user about the care or support should include information about the risks, benefits and alternative options as well as information about how they can withdraw consent if they so wish. The information provided to the service user about the care or support 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.
- Staff understand the importance of ensuring that service users fully understand what they are consenting to and the importance of obtaining consent before they deliver care or support.
- Where necessary, people with legal authority or responsibility can make decisions within the requirements of the Mental Capacity Act 2005.This includes the duty to consult others such as carers, families and/or advocates, where appropriate.
- Service users capacity and ability to consent is taken into account, and they, or a person lawfully acting on their behalf, are involved in planning, managing and reviewing their care and support.
- 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 support 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.
- Banquo Limited expects other care professionals or organisations to be responsible for seeking consent for any care and support that they provide, and Banquo Limited will help to implement such care or support only on the basis that the service user has given their consent to the proposed care 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.
- 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.
- Consent must be treated as a process that continues throughout the duration of care and support, recognising that it may be withheld and/or withdrawn at any time.
- When a person using a service or a person acting lawfully on their behalf refuses to give consent or withdraws it, all people providing care and support must respect this.

When Do We Need To Assess Capacity

Prior to obtaining consent to care staff should establish if the service users have capacity. For a person to have capacity, he/she must be able to comprehend and retain information material to the decision, especially regarding the consequences of having or not having the intervention in question, the service users must be able to use and weigh this information in the decision making process.

Service users also need to be able to communicate their decision. Capacity to consent must be assessed on a case-by-case basis. For example, just because an individual lacks capacity to consent to care, does not mean that they automatically do not have the capacity to make other decisions.

Where a service user is found to lack the capacity to give their consent over one particular care or support option it should never be assumed that this applies to all decisions and further appropriate attempts should be made to inform them about different 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. Banquo Limited 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.

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Valid advance decisions about wishing to refuse care and support 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.

The Mental Capacity Act 2005 (MCA) sets out the statutory framework for making decisions for people who lack capacity to make decisions themselves. Where a person lacks capacity, any decision must be made in that person's best interests.

A standard principle of the MCA is the presumption that the person is able to make their own decisions. All efforts should be made to support and encourage people to make their own decisions. The Act allows people to plan ahead for a time when they may not have the capacity to make their own decisions: it allows them to appoint a personal welfare attorney to make health and social care decisions, including medical treatment, on their behalf or to make an advance decision to refuse care and support.

A person is entitled to make a decision which may be perceived by others to be unwise or irrational, as long as they have the capacity to do so. Under the MCA, the healthcare professional is required to make an assessment of capacity before carrying out any care or support if there is a reasonable belief someone lacks capacity. The assessment of capacity and the test for capacity are now set out in the Mental Capacity Act 2005. The Code of Practice to support the Act is available and staff working with people who lack capacity are required to have regard to the Code (MCA Code of Practice 2005).

Staff may refer to the MCA Code of Practice for additional advice and guidance.

https://www.gov.uk/government/publications/mental-capacity-act-code-of- practice

Assessing Capacity

At the start of each care planning staff working for Banquo Limited will carry out a capacity assessment to ascertain if the service user has the capacity to provide consent regarding their care and support.

They will be guided by the following:

- The person must have an impairment or disturbance (disability, condition, trauma, or the effect of drugs or alcohol) that affects the way their mind or brain works at the time of the assessment.

An assessment of a person's capacity will be based on their ability to make a specific decision at the time it needs to be made, and not the ability to make decisions in general.

A person is unable to make a decision if they cannot do one or more of the following:

- Understand the information given to them that is relevant to the decision,
- Retain the information long enough to be able to make a decision,
- Use or weigh up the information as part of the decision-making process,
- Communicate their decision by any means.

If a service user is found to lack capacity following the assessment a decision would be made through a best interest meeting and consent to service will be sort from an individual who has power of attorney to give consent.

Best Interest Decisions

When a person does not have capacity to make a decision around their care and support, all actions and decisions taken by staff, or where applicable the service users power of attorney for Health or court-appointed deputy, must be done or made in the person's best interests.

Any relevant written statements expressing the individual's views about the decision in question should be taken into account and given appropriate weight.

Banquo Limited will provide staff to carry out and record best interests decisions **(Please See Appendix 1)**.

When making a best interest decision staff will:

- Take into account any decision-making instruments that would have an impact on best interests decision making occurring (for example a lasting power of attorney, advance decisions to refuse care and support, court orders)
- Be aware of when to consult an independent mental capacity advocate
- Ensure the views of interested parties (for example families, friends, advocates and relevant professionals) are taken into account and recorded within the service users notes
- Record the best interests process and decision within the service users notes including any risks and benefits relating to that particular decision.
- When recording the information ensuring it covers:
    - A clear explanation of the decision to be made.
    - The steps that have been taken to help the person make the decision themselves.
    - A current assessment concluding that the person lacks the capacity to make this decision, evidencing each element of the assessment.
    - A clear record of the person's wishes, feelings, cultural preferences, values and beliefs, including any advance statements.
    - The concrete choices that have been put to the person.
    - The salient details the person needs to understand.
    - The best interests decision is made, with reasons.

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.

Lasting Power Of Attorney

A Lasting Power of Attorney (LPA) is a legal tool which allows service users to give someone they trust the legal power to make decisions on their behalf in case they later become unable to make decisions for themself or communicate them.

The person who makes the LPA is known as the 'donor' and the person given the power to make decisions is known as the 'attorney'.

There are two different types of LPA:

- An LPA for property and financial affairs, which covers decisions about money and property;
- An LPA for health and welfare, which covers decisions about health and personal welfare including care and support.

An LPA can only be drafted when service users have capacity and can only be used, unless stated otherwise, when service users lack mental capacity. Banquo Limited recognises that An attorney must act in the donor’s best interests, consider their needs and wishes and keep accounts of any activity. Banquo Limited will work closely with An attorney to ensure the care provided is in the best interest of service user.

Advocacy

In some situations service users may benefit from or be entitled to get the support of an advocate.

Advocates play a crucial role in supporting people who may find it difficult to understand their care and support or find it hard to speak up. They can help with understanding the care and support process, making decisions, challenging decisions about care and support if there is disagreement, and standing up for the individual’s rights.

Staff at Banquo Limited will be able to recognise and refer to any service users they feel may benefit from support from an advocate.

See Banquo Limited’s Advocacy Policy and Procedure for full details.

Process For Recording Written Consent

A consent form provides space for staff to provide information to Service Users and to sign confirming that they have done so. The staff member providing the information must be competent to do so.

Children And Young People

Banquo Limited will be providing personal care to children under the age of 18, and therefore staff should be aware of obtaining consent in children and young people. Young people (aged 16 or 17) are presumed to have sufficient capacity to make their own decisions unless there is significant evidence to suggest otherwise.

Children under the age of 16 can consent to their own care and treatment if they are believed to have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment/testing. This is known as being Gillick competent in England, Wales and Northern Ireland and is covered by the Age of Legal Capacity (Scotland) Act 1991 in Scotland

The young person must receive all the relevant information which has been thoroughly discussed with them before deciding whether or not they have the capacity to consent to the investigation, treatment and care. If the child is deemed as not competent, someone with parental responsibility can consent on behalf of the child.

There is no lower age limit for Gillick competence to be applied. However, it would rarely be appropriate or safe for a child less than 13 years of age to consent to care and treatment without a parent’s involvement.

Otherwise, someone with parental responsibility can consent for them.

This could be:

- The child's mother or father,
- The child's legally appointed guardian,
- A person with a residence order concerning the child,
- A local authority designated to care for the child,
- A local authority or person with an emergency protection order for the child.

Parental Responsibility

Parental responsibility is defined as ‘all the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to the child and his/her property.’ The Children Act 1989 provides for the right of adults who hold parental responsibility to consent to or refuse care and treatment on behalf of a child who does not have the competence to make the decision for themself.

Parental responsibility (PR) is always held by the woman who carries and gives birth to the child. In the case of the father, PR is only held if he was married to the mother when the child was born or if he has either jointly registered the birth of the child with the mother, has a PR agreement in place with the mother or has a PR order which has been made by the court. These criteria also apply in same sex relationships (including civil partnership when referring to marriage).

Parental responsibility is also held by the following parties:

- Adoptive parents (in which case PR is no longer held by the biological parents).
- A person for whom a PR order has been granted.
- A child's legally appointed guardian (appointed either by a court or by a parent with PR in the event of their own death).
- A person in whose favour a court has made a residence order concerning the child.
- A local authority designated in a care order in respect of the child (but not where the child is being looked after under section 20 of the Children Act, also known as being 'accommodated' or in 'voluntary care').
- A local authority or other authorised person who holds an emergency protection order in respect of the child.

Foster parents, grandparents and indeed parents under the age of 16 do not automatically have parental responsibility. In the latter case, the individual needs to be deemed *Gillick* competent **(*See 'Children under the age of 16', below*)** before they can give consent on behalf of their child.

Children who are wards of court will need to have their 'important steps' approved by the court. It is helpful to keep a copy of the ward papers with the medical records, as this will act as a guide as to what routine care and treatment can be offered without reference to the court.

Where health professionals believe that parental decisions are not in the best interests of the child, it may be necessary to seek a view from the courts, whilst meanwhile only providing emergency care and treatment that is essential to preserve life or prevent serious deterioration.

Devolving Parental Responsibility

Parents are not with their children 24 hours a day and there are times when parents might devolve the responsibility to consent to care and treatment to others (e.g., grandparents or childminders) for certain interventions, such as emergency care and support of minor illnesses.

Such consent does not need to be in writing and the staff member does not need to consult the parents, unless there is cause to believe the parent/s' views would differ significantly.

Where there is no specific agreement between parent/s and a third party in any given situation, the third party can give consent, providing it can be justified as being in the best interests of the child.

Obtaining Consent – Competence

When obtaining consent, it is important to establish whether the child is legally competent to give consent.

Children Aged 16 –17

The provisions of the Family Law Reform Act 1969 (s8) provide that children over the age of 16 are presumed to have the competence to consent to care and medical treatment. Although this presumption can be rebutted, it should not be assumed that children with learning difficulties, for example, are unable to take competent decisions, which can be aided by presenting them with information in an appropriate way. If the child over 16 is deemed not to have the competence to provide consent, this can be obtained from an adult with parental responsibility.

The Department of Health recommends that it is good practice to encourage children of this age to involve their families in decisions about their care, unless it would not be in their interests to do so.

The provisions of the Family Law Reform Act do not permit a child over the age of 16 to refuse care and medical treatment, which is deemed to be in their best interests. The legal position for children aged 16 and over who refuse care and medical treatment is not clear. On the one hand, the provisions of the Family Law Reform Act permit an adult with parental responsibility to provide consent on behalf of the child, and on the other hand the provision of the Mental Capacity Act 2005 allow for a best interest decision to be made on behalf of the child. Legal advice should be sought in the event of this scenario.

Once an individual has reached the age of 18, no one can give consent on their behalf. If they are not competent, Banquo Limited would conduct a Mental Capacity Act and Best Interest Assessment in relation to providing treatment and care, in their best interests.
Emergency treatment can be provided without consent to save the life of or prevent serious deterioration in the health of any person.

Children under 16

Assessing Competence

Children under the age of 16 are presumed not to have the competence to consent to medical treatment. Nevertheless, case law, in the form of the case of *Gillick v West Norfolk and Wisbech Area Health Authority* has permitted a scenario in which children under the age of 16 can provide consent. This is known as the *Gillick* test. The *Gillick* test requires that a child has sufficient understanding and intelligence to enable him or her to fully understand what is proposed.

As such, Banquo Limited staff member should document their decision as to the child's competence in their care files. It should be noted that competence is decision-specific and, as such, achieving competence in relation to one decision does not automatically mean that the child is competent to make all decisions relating to their care. A young person who has the competence to consent to straightforward, risk-free care and support may not necessarily have the competence to consent to complex care and support involving high risks or serious consequences. If the child is deemed not to be competent then consent should be sought from an adult with parental responsibility and duly documented.

In practice, much will depend on the relationship of Banquo Limited with the child and the family and also on what intervention is being proposed. Competency is something that can be developed over time by presenting the child with information appropriate to their age and level of education and this process may be a rewarding one in the management of children with long-term conditions that involve several therapeutic procedures or investigations. The emphasis is that the families of children in this age group should be involved in decisions about their care, unless there is a very good reason for not doing so.

If a competent child under the age of 16 is insistent that their family should not be involved, their right to confidentiality must be respected, unless such an approach would put them at serious risk of harm.

If a competent child requests that confidentiality be maintained, this should be respected unless the doctor considers that failing to disclose information would result in significant harm to the child.

If A Young Person Refuses Care and support

Parents cannot override the competent consent of a young person to care and treatment that you consider is in their best interests, but you can rely on parental consent when a child lacks the capacity to consent.

In England, Wales and Northern Ireland, the law on parents overriding young people's competent refusal is complex. You should seek legal advice if you think care and treatment is in the best interests of a competent young person who refuses.

You must carefully weigh up the harm to the rights of children and young people of overriding their refusal against the benefits of care and treatment, so that decisions can be taken in their best interests. In these circumstances, you should consider involving other members of the multidisciplinary team, an independent advocate or a named or designated doctor for child protection. Legal advice may be helpful in deciding whether you should apply to the court to resolve disputes about best interests that cannot be resolved informally.

You should also consider involving these same colleagues before seeking legal advice if parents refuse care and treatment that is clearly in the best interests of a child or young person who lacks capacity, or if both a young person with capacity and their parents refuse such care and treatment.

Incompetent Children

In the case of incompetent children, consent should be sought from an adult who holds parental responsibility and documented in the child’s record. It is not necessary to obtain consent from all adults with parental responsibility, however if there is a disagreement between parents it may be necessary to seek the guidance of the court on the best course of action.

When making a decision relating to a child, the court must be guided by the welfare test outlined in the Children Act (s1(3)). This requires that the court considers:

- The ascertainable wishes and feelings of the child concerned.
- The child’s physical, emotional and educational needs
- The likely effect on the child if circumstances changed as a result of the court’s decision.

- The child’s age, sex, backgrounds and any other characteristics which will be relevant to the court’s decision
- any harm the child has suffered or maybe at risk of suffering
- capability of the child’s parents (or any other person the courts find relevant) at meeting the child’s needs
- the powers available to the court in the given proceedings.

This test is useful guidance for care staff who can sometimes be very focused on the physical health of the child by the very nature of their work and highlights the importance of considering the wider holistic needs of the child.
Those with parental responsibility have a statutory right to apply for access to their children's health records, although if the child is capable of giving consent, he or she must consent to the access.

Associated Consequences

Consent is often wrongly equated with a Service user’s signature on a consent form. A signature on a form is valuable evidence that the service user has gone through a consent process and understands what is to happen but is not proof of valid consent. If a service user is rushed into signing a form, based on too little information, the consent may not be valid, despite the signature. Banquo Limited carrying out the care is ultimately responsible for ensuring that the service user is genuinely consenting to what is being provided and they will be held responsible in law if this is challenged later.

Service users may, if they wish, withdraw their consent after they have signed a form: the signature is evidence of the process of consent giving, it is not a binding contract.
Completed forms should be kept with the service user’s care plan. Any changes to a form made after it has been signed by the service user should be initialed and dated by both service user and care provider.

Refusal/Withdrawal Of Consent

If the process of seeking consent is to be a meaningful one, refusal must be one of the service user’s options. A competent service user over the age of 16 is entitled to refuse any treatment, except in circumstances governed by the Mental Health Act.

If, after discussion of possible care and treatment options, a service user refuses all proposed interventions, this fact should be clearly documented in their notes. If the service user has already signed a consent form, but then changes their mind, then the staff member carrying out the assessment (and where possible the service user) should note this on the form.

Training

All staff will be trained in the principles of consent and the Mental Capacity Act as part of their induction and will undertake a mandatory refresher course annually. During supervisions and appraisal, the registered manager will discuss consent process with care staff and ensure they are competent in obtaining consent correctly.

Monitoring Process

A unified audit of the consent process will be undertaken annually and reviewed by the Registered Manager to agree recommendations for further action. The registered manager will also ensure service user records (including consent forms) are regularly audited in line with Banquo Limited Governance and Risk Policy and Procedure.

Related Policies And Procedures

Information Governance and Record keeping Policy and Procedure

Confidentiality Policy and Procedure

Mental Capacity Act Policy and Procedure

Legislation And Guidance

Good Practice in consent https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care

Human Rights Act 1998

Mental Capacity Act 2005

The Care Act 2014

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

CQC Regulation 11: Need for consent - Care Quality Commission (cqc.org.uk)

NICE Quality statement 4: Best interests decision making | Decision making and mental capacity | Quality standards | NICE

MIND What is advocacy? - Mind

Appendix 1:

Mental Capacity assessment guidance and Best Interest Decision Making checklist.

The Five principles of the Mental capacity act

What is the 'best interests' principle and who does it apply to?
The 'best interests' principle underpins the Mental Capacity Act. It is set out in chapter 5 of the MCA Code and states that: "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 best interests." This principle covers all aspects of personal welfare and healthcare decision- making and actions. For full details see 1.8 to 1.11 of the MCA Code.

- **Principle 1**
  Assume a person has capacity unless proved otherwise
- **Principle 2**
  Do not treat people as incapable of making a decision unless all practicable steps have been tried to help them.
- **Principle 3**
  A person should not be treated as incapable of making a decision because their decision may seem unwise.
- **Principle 4**
  Always do things or take decisions for people without capacity in their best interests.
- **Principle 5**
  Before doing something to someone or making a decision on their behalf, consider whether the outcome could be achieved in a less restrictive way.

Expansion of the Five Principles

When a person in the care of professional, or paid staff, needs to make a decision, staff must start from the assumption that the person has capacity to make the decision in question (Principle 1). Every effort should be made to encourage and support the person to make the decision themselves (Principle 2) and there are several factors to assist in the decision making.

These could include:

- Does the person have all the relevant information needed to make the decision? If there is a choice, has information been given on the alternatives?
- Could the information be explained or presented in a way that is easier for the person to understand? Help should be given to communicate information wherever necessary. For example, a

person with a learning disability might find it easier to communicate using symbols, pictures, photographs, videos, tapes, or sign language.

- Are there particular times of the day when a person’s understanding is better or is there a particular place where they feel more at ease and able to make a decision? For example, if a person becomes drowsy soon after they have taken their medication this would not be a good time for them to decide.
- Can anyone else help or support the person to understand information or make a choice? For example, a relative, friend or an advocate.

When there is reason to believe that a person lacks capacity to make a decision there is an expectation that the following will be considered:

- Has everything been done to help and support the person to make the decision?
- Does the decision need to be made without delay?
- If not, is it possible to wait until the person does have the capacity to make the decision for himself or herself? For example, a person may be drowsy or disorientated because of the medication they are taking.
- If the person’s ability to make a decision still seems questionable then the next phase of assessing capacity should be undertaken.
- Assessment of capacity can be informal through daily conversation, but on occasions where there is concern about an individual’s ability to understand care and support information, the assessment must be formalised and documented.
- It is accepted in law that in an emergency it would be inappropriate to lose valuable time formally assessing capacity and that emergency care and treatment must take precedence. Documentation of the event must always include any discussion had with the Service user where this is possible and where the service user is deemed to have capacity. Any care and support provided must always be in the service user’s best interests in accordance with the MCA 2005.

Appendix 2: Best Interest Decision Making Checklist

<u>Service user details</u>
Name and DOB:-
NHS Number:-
Home address:-
Location:-
<u>Person completing this form – Decision Maker</u>
Name:- Organisation:-
Role:-
Email:- Telephone:-
Signature:-
<u>State the specific decision related to this best interest checklist</u>
<u>Best interests' consultation – record your consultation with the Service user.</u>
What are the issues that are most relevant to the person who lacks capacity?
Specify their past and present wishes, feelings and concerns in relation to this decision.
What are their values and beliefs (e.g. religious; cultural; moral) in relation to this decision?
Are there any other "relevant circumstances" that should be taken into account in this case?
Is there a relevant advanced statement?

A person may have previously recorded preferences for their future care. Such requests should be taken into account as strong indications of a person's wishes though they are not legally binding.

Use this section to record who is involved in the consultation. You must include anyone named by the person lacking capacity as someone to be consulted, another professional, and, where appropriate, anyone engaged in caring for the person or interested in their welfare, e.g. any attorney, Court Appointed Deputy, advocate or other relevant person.
Name: Relationship to person: Date consultation was undertaken: What do they consider to be in the person's best interests on the matter in question? Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?
Name: Relationship to person: Date consultation was undertaken: What do they consider to be in the person's best interests on the matter in question? Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?
Name: Relationship to person: Date consultation was undertaken: What do they consider to be in the person's best interests on the matter in question? Do they have any information about the person's wishes, feelings, values, or beliefs in relation to this matter?

Independent Mental Capacity Advocate (IMCA) involvement Where the person lacking capacity has nobody that can be consulted other than paid carers and professionals and faces a decision about serious care and medical treatment, the law requires you to ensure an IMCA is appointed. You also have discretion to refer the person for an IMCA if this decision relates to a safeguarding concern or a care review. The role of the IMCA is to facilitate the decision making process, they are not the decision-maker.
Referral to IMCA service made? Yes ☐ No ☐ Date
Name of appointed IMCA: Organisation:
Telephone: Email:
Best interests decision – balance sheet approach: specify the different options that are being considered. In deciding best interests, you must explore if there is a less restrictive way to achieve what is in the person's best interests, but you do not automatically have to take whatever is the least restrictive option overall. This is because the least restrictive option might not be the one that is in the person's best interests.

Option one Description:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?

Option two Description:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?
Option three Description:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?

Additional information considered by the decision-maker in making the best interests decision specified?

Final decision. Give the reasons why this option has been selected and why other options have been rejected?

Decision maker: -
Date: -

Comments and additional information considered, include objections.