



# Libertatem Healthcare Group

## Consent to care and treatment

### Policy and Procedure

Notice to employees using a paper copy of this policy  
The company Policies folder on the shared drive holds the most recent version of this document and all employees must ensure that they are using the most recent guidance.

## Document Control

<b>Document Name</b>	Consent To care and Treatment
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<b>Purpose</b>	It is essential that the people we support are afforded the right to determine what happens to their own body at all times. Therefore, prior to providing any type of treatment or care, including personal care, valid consent needs to be obtained from the person themselves or their representative
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## Version Control

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V1.0	6.03.2018	Karen Hodgkinson	New documented implemented
V2.0	03.07.2019	Karen Hodgkinson	Updated with standard document and version control.

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## **Introduction**

Libertatem Healthcare Group recognise that it is a general, legal and ethical principle that valid consent must be obtained before providing care and treatment to any individual for whom we provide care and support.

This principle reflects the right of the individual to determine what happens to their own bodies and is a fundamental part of good practice.

The Care Quality Commission (CQC) include consent as part of their ongoing monitoring process as part of the "fundamental" standards". Regulation 11 sections 11(1) to 11(5). As a provider Libertatem Healthcare Group must make sure that consent is obtained lawfully and that the person who obtains the consent has the necessary knowledge and understanding of the care and treatment that they are asking consent for.

## **Purpose**

The purpose of this policy is to set out the standards and procedures to enable staff to be compliant with the requirements and guidance on consent.

## **Scope**

The policy applies to all employees and workers working on behalf of Libertatem Healthcare Group.

## **Responsibilities**

### The Board of Directors

The company is required to have a policy on consent to care and treatment. It is the responsibility of the Board to approve this policy and ensure that the contents are available to all employees.

### Managers

Managers must make their staff aware of the Consent policy, their adherence to it, including supporting staff to understand the above in relation to their role and service and must monitor its use.

They must ensure that each member of staff has completed the appropriate training to help them understand the principles of consent and care to treatment and offer ongoing supervision and support as required.

### Employees

All care staff must adhere to this policy and inform their managers of any concerns. Seeking consent from patients is a matter of common courtesy between care staff and the person we support.

Training must be completed as allocated in the advised timeframe to support employees in ensuring that appropriate consent is obtained in all circumstances where it is required.

## **What is consent?**

"Consent" is a person's agreement to someone providing the care or treatment to them. However for the consent to be deemed as valid the person must:

- be competent to take the particular decision;
- have received sufficient information to take it;
- not be acting under duress.

Consent is often wrongly equated with a person's signature on a consent form. A signature on a form is evidence that the person has given consent, but is not proof of valid consent.

Consent may be given in writing or verbally.

### **Valid Consent**

To be valid, consent should be freely and voluntarily given. There should be no pressure or undue influence exerted on the individual by relatives, partners or health care professionals. If the carer believes this is a risk, they should arrange to see the patient on their own to establish that the decision is truly that of the patient.

The patient must have the capacity to understand and retain information, and weigh up the risks and benefits involved.

### **Types of Consent - Verbal (explicit) and non-verbal (implied or implicit) consent**

Sometimes verbal consent may be referred to as explicit consent and non-verbal referred to as implied or implicit consent.

An example of non-verbal or implied consent would be where a person, after receiving appropriate information holds their arm out to have their blood pressure taken or opens their mouth to have their teeth examined. However the person must have understood what examination or treatment is intended and why, for such consent to be deemed as valid.

An example of verbal or explicit consent would be where a doctor carries out an internal investigation and tells the person what they are going to do and asks them if they agree to the examination. If they agree this is explicit consent (verbal).

In all cases, staff should be aware of the different types of consent and the importance of making sure the person understands what is going to happen to them and what is involved.

It will not usually be necessary to document the consent of a person we support for routine and low risk procedures, such as providing personal care. However, if you have any reason to believe that the consent may be disputed later or if the procedure is of particular concern to the person (for example if they have declined, or become very distressed about, similar care in the past), it is advisable to do so.

### **Refusal of Consent**

If the process of seeking consent is to be a meaningful one, refusal must be an option. Any refusal should be clearly documented.

An adult is entitled to refuse care or treatment except in circumstances governed by the Mental Health Act 1983. Adults with mental illnesses can refuse to consent to treatment for any procedure unconnected with their mental illness. The Mental Health Act (1983) sets out various legal rights that apply to people with severe mental health problems. The act also contains the powers which, in

extreme cases, enable some people with mental health problems to be compulsorily detained in hospital.

Care staff should be aware of and understand what to do if a person refuses care or treatment or when consent is no longer valid. These details should be included in the person's support plan and agreed with them and their representatives if necessary for example if they have been assessed as lacking capacity.

Where a person we support lacks the mental capacity (either temporarily or permanently) to give or withhold consent for themselves, no one else can give consent on their behalf. However, treatment may be given if it is in their best interests, as long as it has not been refused in advance in a valid and applicable advance directive.

If the person does not have the capacity to give or withhold the consent this fact should be documented in their care plan along with the assessment of the person's capacity and a best interests meeting held. This should be attended by other professional's and people closest to the person and agreements made and recorded.

The person carrying out the care or treatment is ultimately responsible for ensuring that the person is genuinely consenting to what is being done: it is they who will be held responsible in law if this is challenged later.

### **Children and Young People**

Children who understand fully what is being proposed can consent to treatment, but may not be able to refuse treatment. In some cases persons with parental responsibility, or a court, may be able to override the child's refusal. In such cases, it is important that the health professional seek legal advice as the issue may need to be determined by the courts.

### **Gillick Competence**

In 1983 a criteria for establishing whether a child under 16 has the capacity to provide consent to treatment was developed. It was determined that children under 16 can consent if they have sufficient understanding and intelligence to fully understand what is involved in a proposed treatment, including its purpose, nature, likely effects and risks, chances of success and the availability of other options.

For a young person under the age of 16 to be 'Gillick' competent, s/he should have:

- the ability to understand that there is a choice and that choices have consequences
- the ability to weigh the information and arrive at a decision
- a willingness to make a choice (including the choice that someone else should make the decision)
- an understanding of the nature and purpose of the proposed intervention
- an understanding of the proposed intervention's risks and side effects
- an understanding of the alternatives to the proposed intervention, and the risks attached to them
- freedom from undue pressure.

It is important to give children under 16 appropriate information depending on the age and communication skills.

### **Absence of consent**

Although consent is generally required, it may not be needed in the following circumstances:

- Emergency situations where treatment is necessary to preserve health or life. The treatment must be in the best interests of the person we support until they recover, when longer term measures can be considered. This applies to children and adults. Please note: you must not provide treatment if an advance decision has been made, and you know the patient would object to the treatment.
- Mental health: The Mental Capacity Act (2005) is designed to protect people who cannot make decisions for themselves. It explains when a person is considered to be lacking capacity, and how decisions should be made in their best interests.
- Children and young people under 16 years: A child patient should be treated if they are in danger of death or serious disability where there is no one with parental responsibility prepared to consent and no time to make an application to court.

### Points to consider before commencing treatment without consent

It is essential that:

- the decision is made carefully in consultation with the multi-disciplinary team and with relatives where appropriate
- all decisions are made in line with local guidelines and protocols and based on professional and evidence based practice
- any decisions are carefully documented. This includes clear reasons for the decision to treat without consent, how the decision was reached including details of assessment and outcome.

Should care and treatment be required in the above circumstances an incident form must be completed and submitted.