NHS
Mersey Care
NHS Foundation Trust

TRUST-WIDE CLINICAL POLICY DOCUMENT

CONSENT TO EXAMINATION OR TREATMENT

Policy Number:	**SD06**
Scope of this Document:	**All Staff**
Recommending Committee:	**Patient Safety Committee**
Approving Committee:	**Executive Committee**
Date Ratified:	**September 2017**
Next Review Date (by):	**October 2020**
Version Number:	**Version 4**
Lead Executive Director:	**Medical Director**
Lead Author(s):	**Mental Health Law Facilitator and MHA and MCA Lead**

TRUST-WIDE CLINICAL POLICY DOCUMENT

2017 – Version 4

Quality, recovery and wellbeing at the heart of everything we do

NHS
Mersey Care
NHS Foundation Trust

TRUST-WIDE CLINICAL POLICY DOCUMENT

CONSENT TO EXAMINATION OR TREATMENT

Further information about this document:

Document name	**SD06 CONSENT TO EXAMINATION OR TREATMENT**
Document summary	**This policy covers the following key issues:** • **The circumstances in which consent should be sought** • **Standard consent forms for significant procedures** • **Sources of information for service users** • **Clarification of those responsible for seeking consent** • **Guidance on refusal of treatment, capacity to consent, use of human tissue and clinical recordings**
Author(s) Contact(s) for further information about this document	**Jim Wiseman** **MCA & DoLS Lead** **Christine Stanton** **MHA & MCA Lead** **Telephone: 0151 472 4535** **Email: chris.stanton@merseycare.nhs.uk**
Published by Copies of this document are available from the Author(s) and via the trust's website	**Mersey Care NHS Foundation Trust** **V7 Building** **Kings Business Park** **Prescot** **Merseyside** **L34 1PJ** **Your Space Extranet: http://nww.portal.merseycare.nhs.uk** **Trust's Website www.merseycare.nhs.uk**
To be read in conjunction with	• Reference guide to consent for examination or treatment (*Department of Health Second Edition, 2009)* • The Mental Capacity Act 2005 Code of Practice (*Office of the Public Guardian, 2007 edition)* • The Code of Practice Mental Health Act 1983 (*Department of Health 2005 edition)* • Trust Policy MC01: Mental Capacity Act Policy and Procedure for Staff • Trust Policy MH01: Overarching Policy and Procedure of the Mental Health Act 1983 • Trust Policy SD17: Safeguarding vulnerable adults from abuse • Trust Policy SD19: Advance statements and advance decisions

	• Trust Policy HR10: Equality and Diversity • Human Rights Act 1998 (and the European Convention of Human Rights, 1953) • Recommended supplementary reading: Reference Guide to the MHA
This document can be made available in a range of alternative formats including various languages, large print and braille etc	

Version Control:

		Version History:
Version 3	Presented to the Corporate Document Review Group	October 2014
Version 4	Policy Group Executive Committee	August 2017 September 2017

SUPPORTING STATEMENTS

This document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child / adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child / adult;
- knowing how to deal with a disclosure or allegation of child / adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child / adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

Contents

Index	Page No

1. PURPOSE AND RATIONALE

1.1 The policy for consent to examination or treatment was produced by the Department of Health and should be adopted in all NHS Trusts.

1.2 To ensure that the policy is recognisable across the NHS, the text is not to be amended or removed though it can be customised by providing additional information to reflect local needs.

1.3 Additional information that reflects differences between the national and local policy is noted in italics and is cross-referenced with the DoH document.

1.4 Similarly, guidance with respect to Consent to Treatment under the Mental Health Act and Mental Capacity Act has been cross-referenced with the relevant Trust policies.

1.5 The rationale for revising this policy and procedure is to ensure that it remains compliant with the Department of Health publication (*Reference guide to consent for examination or treatment, 2009 ed).*

1.6 In addition its format has been updated to comply with the Trust's current standards for writing documents (as per Policy Reference No. SA01 Development, ratification, distribution and review of policies and procedures – including the insertion of a Safeguarding Statement).

1.7 Changes in practice due to subsequent, evolving statute and case law require some qualification of the guidance provided in the Department of Health 2009 publication.

2. OUTCOME FOCUSED AIMS AND OBJECTIVES

2.1 The aims of this policy and procedure are to describe the standards expected and the supporting processes for:-

2.1.1 The clinical and administrative application of consent

2.1.2 The different legal powers that authorize when and how consent must be obtained … …….. AND

2.1.3 When consent is NOT required

2.1.4 The monitoring of the clinical and administrative application of consent

3. SCOPE

3.1 This policy and procedure is applicable in part and/or whole to:-

3.1.1 Mersey Care NHS Trust staff working with (or on behalf of) all service users receiving assessment care and/or treatment within the organisation.

3.1.2 The Trust's Mental Health Act Managers (Hospital Managers)

3.1.3 The Trust's Mental Health Law Administrators

3.1.4 The Trust's Legal Team

4. DEFINITIONS (Glossary of Terms)

Phrase or Term	Definition and Explanation
Advance Decision to refuse treatment	A decision to refuse specified treatment made in advance by a person who has capacity to do so. This decision will

	then apply at a future time when that person lacks capacity to consent to, or refuse, the specified treatment. Specific rules apply to advance decisions to refuse life sustaining treatment.
Advocacy	Independent help and support with understanding issues and putting forward a person's own views, feelings and ideas
Approved Mental health Professional (AMHP)	A social worker or other professional approved by a local social services authority to act on behalf of a local social services authority in carrying out a variety of functions.
Best Interests Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether deprivation of liberty is in a detained person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm.
Capacity	Short for mental capacity. The ability to make a decision about a particular matter at the time the decision needs to be made. A legal definition is contained in section 2 of the Mental Capacity Act 2005.
Care Quality Commission	The new integrated regulator for health and adult social care that, subject to the passage of legislation, will take over regulation of health and adult social care from 1 April 2009.
Consent	Agreeing to a course of action – specifically in this document, to a care plan or treatment regime. For consent to be legally valid, the person giving it must have the capacity to take the decision, have been given sufficient information to make the decision, and not have been under any duress or inappropriate pressure.
Court of Protection	The specialist court set up under the **Mental Capacity Act** to deal with all issues relating to people who lack **capacity** to take decisions for themselves.
Deprivation of liberty	A term used in Article 5 of the **European Convention on Human Rights (ECHR)** to mean the circumstances in which a person's freedom is taken away. Its meaning in practice has been developed through case law (MCA Code of Practice Cross Refs: 6.13-6.14, 6.49-6.54, 7.44, 13.2, 13.16).
Deprivation of liberty safeguards	The framework of safeguards under the **Mental Capacity Act** (as amended by the Mental Health Act 2007) for people who need to be deprived of their liberty in their best interests for care or treatment to which they lack the **capacity** to **consent** themselves (See MCA Deprivation of Liberty Safeguards Code of Practice)
Deputy (or Court-appointed deputy)	A person appointed by the **Court of Protection** under section 16 of the **Mental Capacity Act** to take specified decisions on behalf of someone who lacks **capacity** to take those decisions themselves. This is not the same thing as the **nominated deputy** sometimes appointed by the **doctor** or **approved clinician** in charge of

	a patient's treatment.
Donee	Someone appointed under a Lasting Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the Lasting Power of Attorney.
European Convention on Human Rights (ECHR)	The European Convention for the Protection of Human Rights and Fundamental Freedoms. The substantive rights it guarantees are largely incorporated into UK law by the **Human Rights Act 1998**
Guiding principles	See **Statutory Principles** below
Human Rights Act 1998	A law largely incorporating into UK law the substantive rights set out in the European Convention on Human Rights.
Hospital managers	The organisation (or individual) responsible for the operation of **the Act** in a particular hospital (e.g. an **NHS trust**, an **NHS foundation trust** or the owners of an **independent hospital**). Hospital managers have various functions under the Act, which include the power to **discharge** a patient. In practice, most of the hospital managers' decisions are taken on their behalf by individuals (or groups of individuals) authorised by the hospital managers to do so. This can include clinical staff. Hospital managers' decisions about discharge are normally delegated to a "**managers' panel**" of three or more people
Ill treatment	Section 44 of the Mental **Capacity Act** makes it an offence to ill treat a person who lacks capacity by someone who is caring for them, or acting as a deputy or attorney for them. That person can be guilty of ill treatment if they have deliberately ill-treated a person who lacks capacity, or been reckless as to whether they were ill-treating the person or not. It does not matter whether the behaviour was likely to cause, or actually caused, harm or damage to the victim's health.
Independent Mental Capacity Advocate (IMCA)	An advocate available to offer help to patients under arrangements which are specifically required to be made under the **Mental Capacity Act 2005**.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the **Mental Capacity Act** and replacing the previous Enduring Power of Attorney (EPA).
Life-sustaining treatment	Treatment that, in the view of the person providing health care, is necessary to keep a person alive.
Managers	See **hospital managers**.
Mental capacity	See *Capacity*
Mental Capacity Act	The Mental Capacity Act 2005. An Act of Parliament that governs decision-making on behalf of people who lack **capacity**, both where they lose capacity at some point in their lives, e.g. as a result of dementia or brain injury, and where the incapacitating condition has been present since birth.
Mental Capacity Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether a person lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment.
Mental Health Act 1983	A law primarily dealing with the management and rights of

	persons detained in hospital for the purpose of assessment, care and treatment against their will. It also has limited application in the community through Community Treatment Orders, Guardianship, Conditional Discharge Leave of Absence and section 117 aftercare
Part 4 (or Part IV) Consent	This refers to specific treatments that may be authorised with consent and a second opinion, with consent alone or without consent for patients detained in hospital under the Mental Health Act 1983. Part 4 refers to Part 4 of the Mental Health Act 1983
Part 4A Consent	This refers to specific treatments that may be authorised patients in receipt of Community Treatment Orders under the Mental Health Act 1983. Part 4A refers to Part 4A of the Mental Health Act 1983
Restriction of Liberty	An act imposed on a person that is not of such a degree or intensity as to amount to a deprivation of liberty.
Statutory Principles	The principles set out in **chapter 2** that have to be considered when decisions are made under the **Mental Capacity Act**
Written statements of wishes and feelings (also referred to as Advance Statements)	Written statements the person might have made before losing capacity about their wishes and feelings regarding issues such as the type of medical treatment they would like (as opposed to medical treatment they might refuse – see Advance Decision), where they may choose to live, or how they wish to be cared for. They are not the same as advance decisions and are not binding.

4.1 References and bibliography

References in relation to the development of this policy include:

- Reference guide to consent for examination or treatment (2nd edition)
- The Mental Health Act 1983
- The Mental Health Act Code of Practice, 2015 edition
- The Mental Capacity Act 2005
- The Mental Capacity Act Code of Practice, 2007 edition
- Trust Policy Reference No. MC01 – Mental Capacity Act Overarching Policy
- Trust Policy Reference No. MC04 – Implementation and Management of the Deprivation of Liberty Safeguards within the Meaning of the Mental Capacity Act 2005
- Trust Policy Reference No. SD17 – Safeguarding Adults from Abuse
- Trust Policy Reference No. SD19 – Advance statements & advance decisions

4.2 Bibliography

1. Reference guide to consent for examination for treatment (2nd edition)
2. The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007)
3. The Code of Practice *Mental Capacity Act 2005 (2007 ed)*
4. The Deprivation of Liberty Safeguards: Addendum to the Mental Capacity Act 2005 Code of Practice
5. The Human Rights Act 1998
6. The European Convention on Human Rights
7. The Care Programme Approach (2008 version)
8. The Mental Health Act 2007
9. The Mental Health Act 1983 (as amended by the Mental Health Act 2007)

10. The Code of Practice *Mental Health Act* 1983 (2015 ed)

4.3 Essential Associated Documentation

This policy must be read in conjunction with:

- Reference guide to consent for examination or treatment (*Department of Health Second Edition 2009)*
- Mental Capacity Act 2005 Code of Practice (*Office of Public Guardian; 2007 edition)*
- The Code of Practice Mental Health Act 1983 (*Department of Health, 2008 edition)*
- Trust Policy MC01 – Mental Capacity Act Overarching Policy
- Trust Policy Reference No. MC04 – Implementation and Management of the Deprivation of Liberty Safeguards within the Meaning of the Mental Capacity Act 2005
- Trust Policy SD19 – Advance Statements and Advance Decisions
- Trust Policy MH01 – Mental Health Act Overarching Policy
- Trust Policy SD17 – Safeguarding Adults from Abuse
- Human Rights act 1998 (and the European Convention of Human Rights, 1953)

5. DUTIES

5.1 Board of Directors

The Board of Directors has a duty to ensure that the Trust is compliant when operating within the framework of consent.

5.2 Medical Director

The Medical Director is the accountable director for this policy and thus adherence to the Department of Health Guidance on Consent to Examination or Treatment.

5.3 The Hospital Managers (Mental Health Act Managers, MHAM)

The Hospital Managers (also referred to as the Mental Health Act Managers) have specific statutory duties, which effectively makes them responsible for the Trust's implementation and management of consent insofar as it interacts with the Trust's core business.

5.4 Procedural Document Author

(also referred to as the Mental Health Act Managers) have specific statutory duties, which effectively makes them responsible for the Trust's implementation and management of consent insofar as it interacts with the Trust's core business.

5.5 Executive Director of Operations

The Executive Director of Operations is responsible for ensuring there are robust governance systems in place for the implementation and management of the Deprivation of Liberty Safeguards in all mental health and learning disability clinical services.

Executive Director of Operations for South Sefton Community Division

. The Executive Director of Operations for South Sefton Community Division is responsible for ensuring that there are robust governance systems in place for the implementation and management of Deprivation of Liberty Safeguards in their areas.

5.6 The Legal Services Manager; Risk Management Department; Learning and Development Team; Clinical Audit Team; Research and Development Team; Knowledge Management Team

5.6.1 The Legal Service Team will be consulted for advice and guidance in relation to the clinical and administrative practice with respect to the law relating to consent.

5.6.2 The Risk Management Department will be consulted when appropriate in consideration of any risks relating to consent.

5.6.3 The Learning and Development Team must be consulted to enable the identification of potential implications for staff learning and development, in relation to consent. This will include a careful consideration of the provision and method of delivery for education and development.

5.6.4 The Clinical Audit, Research and Knowledge Management Teams will be consulted for general advice in relation to consent.

5.7 Managers:

Managers are responsible for ensuring that:-

5.7.1 All staff for which they are responsible are aware of their responsibilities when working within the framework of consent.

5.7.2 An infrastructure is in place to support the training of all staff required to work within the framework of consent.

5.7.3 All staff in their area:-

- Have ready access to the Codes or Practice, and
- Are aware of and understand their duty to apply the 5 Guiding (Key) Principles of the Mental Health Act and the 5 Statutory Principles of the Mental Capacity Act as appropriate, including consent related issues, and
- Are aware of their statutory and common law duties when working within consent related practice that sit outside the framework of mental health (i.e.: examination and treatment of physical disorders)
- Are aware of consent criteria arising from the triangular, clinical-legal framework that exists between the Mental Health Act, the Mental Capacity Act and Common Law when working with patients who have both a mental and a physical disorder that require examination, care and/or treatment.
- Are aware of the need to consider the Human Rights Act and The Equality Act, in particular the statutory duty to make reasonable adjustments to enable access to services for those with protected characteristics.

5.8 Responsible Clinicians (RC's)

All Responsible Clinicians employed within the Trust are responsible for ensuring that they work within the legal framework of consent.

5.9 All Staff:

Staff are responsible for:-

- Ensuring that they pay due regard to the Mental Capacity Act Code of Practice, 5 Statutory Principles and the Mental Health Act Code of Practice, 5 Guiding (Key) Principles, when applying the principles of consent.

- Ensuring that they apply the Mental Health Act 5 Guiding (Key) Principles and Mental Capacity Act 5 Statutory Principles when working within the framework of consent.

- Ensuring that they keep up-to-date with the triangular, clinical-legal framework of consent that exists between the Mental Health Act, the Mental Capacity Act and Common Law when working with patients who have either a mental and/or a physical disorder that require examination, care and/or treatment commensurate with their role.

6 PROCESS

6.2 The procedures of this policy are those provided by the Department of Health document *Reference to consent for examination or treatment.*

6.3 It is important to take note of the additional Trust specific guidance and that this guidance is cross-referenced with the Department of Health document. See Trust specific guidance at points 6.5.1 to 6.5.6 below.

6.4 **The Reference Guide to consent for examination or treatment (Second edition)**
Copy of this document is available on the Trust website policies page as a separate document.

6.5 **Additional supporting guidance, cross-referenced with the DoH document:-**

6.5.1 "Further guidance is available in the Mental Capacity Act (2005) Code of Practice" (DoH, The Reference Guide to consent for examination or treatment, 2nd ed, Paragraph 10, page 7.

6.5.2 *Supporting Guidance*
Due to significant changes in the distinction between restriction and deprivation, the Mental Capacity Act 2005 Code of Practice must be read in conjunction with Trust policies MC01 and MC04.

6.5.3 "Advance decisions to refuse treatment " (ibid, paragraphs 47 – 52, pages 19 – 21)"

6.5.4 *Supporting Guidance*
Paragraphs should be read in conjunction with Trust policy SD19 Advance statements and advance decisions

6.5.5 "Other exceptions to the principles" (ibid, Chapter 5, paragraphs 1-9, pages 43 – 44)

6.5.6 *Supporting Guidance*
This chapter primarily provides an overview of treatment with and without consent under the Mental Health Act 1983. It should be read in conjunction with more comprehensive guidance given in Trust Policy MH01 MHA 1983 Overarching Policy (paragraphs 18.13.2, 8.14.1 and 8.14.2, pages 58-62. This chapter makes no reference to the care and treatment of people who, lacking capacity, may be managed without consent in a way that deprives them of their liberty in circumstances where the Mental Health Act 1983 does not apply. For supporting guidance on this please refer to Trust Policy MC04, Implementation and Management of the Deprivation of Liberty Safeguards within the Meaning of the Mental Capacity Act 2005.

6.6 **Documentation**

6.6.1 ***Physical Disorders***

One of the key reasons for introducing a national policy on consent was the need to standardise practice. This principle remains but currently, the DoH has withdrawn the standardised forms that it had produced.

Since the examination or treatment of physical disorders is not the Trust's core business (as opposed to referring patients within their care to services whose core business it is) it is not considered appropriate to produce consent forms for this purpose.

6.5.2 ***Mental Disorders***

Statutory documentation and forms relating to the examination or treatment of mental disorder can be found:

- *On the Trust website with this policy as a separate document*
- *In Trust Policy MH01*
- *Under Mental Health Law Administration on the Trust T-Drive*
- *Access via Mersey Care favourites link in Explorer.*
  - *Open Explorer*
  - *Click on 'Favourites' in the top menu bar*
  - *Click on 'Mersey Care Links'*
  - *Click on MHA Documents – which will open a table that contains all of the statutory forms, guidance and legislation documentation amongst other things.*

- *Access via EPEX, staff will need to:*
  - *Click on 'MHA 1983 and DoLS' in the blue ribbon on the left of the screen*
  - *Click on 'MHA/DoLS References, Documents and Statutory Forms' – this will open the table as above.*

- *Specialist Learning Disabilities Division: contact the Mental Health Law Administration Team for advice on how to access documents via Carenotes.*

7 CONSULTATION

7.1 This process will continue after ratification and without time-limit.

7.4 Any recommendations for change, at any time, will be seriously considered although it must be recognised that much of this policy is driven by the DoH document and by statutory requirement.

7.5 This policy and procedure is bound by the Department of Health Publication:- *Reference guide to consent for examination or treatment (Second edition, 2009)*

8 TRAINING AND SUPPORT

8.1 A Level 1, Mental Capacity Act E-Learning course has been developed and is currently available through the Learning and Development Team.

8.2 This programme is mandatory for all staff working within the framework of the Mental Capacity Act, Mental Health Act and Deprivation of Liberty (Staff who have completed the level 2 training – see 8.3 and 8.4 below – do not have to complete Level 1)

8.3 A Level 2 classroom-based training programme has been running for many years and this includes Mental Capacity Act Training.

8.4 Level 2 Training targets all qualified professionals working within the framework of the Mental Capacity Act, Mental Health Act and Deprivation of Liberty.

8.5 Staff are further supported by the Trust's Legal Team who advise on live cases.

8.6 Members of the Legal Team also attend Multi Disciplinary Team Meetings, Professionals' Meetings on request.

9 MONITORING

9.1 Monitoring compliance with and the effectiveness of procedural documents

9.1.1 The process for monitoring compliance with the standards outlined in this policy is detailed below:

System for the Monitoring of Compliance with the Policy and Procedure for the Development, Ratification, Implementation, Review and Archive of Procedural Documents.	
Monitoring of compliance with this policy will be undertaken by:	Monitoring of the outcomes of Consent through quarterly/annual audit to be led by Hospital Managers
Should shortfalls be identified the following actions will be taken:	Action plans will be developed for implementation and monitoring through the MHA managers committee
The results of monitoring will be reported to:	MHA managers committee

10. Equality and Human Rights Analysis

Title: SD06 Corporate Policy and Procedure for the Consent to Examination or Treatment
Area covered: Trust Wide

What are the intended outcomes of this work? **The aims of this policy and procedure are to describe the standards expected and the supporting processes for:-** **The clinical and administrative application of consent** **The different legal powers that authorize when and how consent must be obtained** **When consent is NOT required** **The monitoring of the clinical and administrative application of consent**
Who will be affected? **Service Users subject to the to the policy and consent for treatment /Examination** **Staff who facilitate the decision making process**

Evidence
What evidence have you considered? **Full reference list given on page 9 References**
Disability (including learning disability) **For service users who have visual hearing or other disabilities support in place.**
Sex
Race For service users who's first language is not English staff are able to obtain interpreters and translation of information via CAPITA services.
Age No evidence to support inequalities
Gender reassignment (including transgender) No evidence to support inequalities
Sexual orientation No evidence to support inequalities
Religion or belief No evidence to support inequalities
Pregnancy and maternity **No evidence to support inequalities**
Carers No evidence to support inequalities
Other identified groups No evidence to support inequalities
Cross Cutting The Mental Capacity Act 2005 has as one of its principles the provision of support to help people make their own decisions. The Consent Policy includes the need to provide information to patients in different languages and media and to comply with

the Mental Capacity Act 2005 where appropriate. The Mental Capacity Act 2005 Code of Practice gives examples of the kinds of support that could be provided.

Human Rights	**Is there an impact?** **How this right could be protected?**
Right to life (Article 2)	**Article not engaged**
Right of freedom from inhuman and degrading treatment (Article 3)	**Article not engaged**
Right to liberty (Article 5)	**Article not engaged**
Right to a fair trial (Article 6)	**Human Rights Based Approach supported Service users have the right to request a second opinion**
Right to private and family life (Article 8)	**Article not engaged**
Right of freedom of religion or belief (Article 9)	**Article not engaged**
Right to freedom of expression **Note: this does not include insulting language such as racism (Article 10)**	**Article not engaged**
Right freedom from discrimination (Article 14)	**Article not engaged**

Engagement and Involvement *detail any engagement and involvement that was completed inputting this together.*
This policy is a review. Previous polices linked into this have been subjected to the equality analysis

Summary of Analysis *This highlights specific areas which indicate whether the whole of the document supports the trust to meet general duties of the Equality Act 2010*
Eliminate discrimination, harassment and victimisation **No negative impact was determined within the equality analysis**
Advance equality of opportunity **N/A**

Promote good relations between groups **N/A**
What is the overall impact? **1. Positive impact, because it sets out the legal requirements to provide patients with information that they can understand and to support them to make their own decisions.** **2. Staff – compliance with the law means that the risk of staff being sued or prosecuted in connection with the care and treatment they give patients (with the exception of clinical negligence) is reduced. Staff also have a defense if complaints are made about them in relation to treatment and care (again, excepting clinical negligence) to - for example - their professional body.** **3. Service Users – where patients can consent to, or refuse, treatment and care, they will receive the treatment and care that they have agreed to. Where patients aged 16 years and over lack mental capacity to make their own decisions about their treatment and care, decisions will be made for them in line with Mental Capacity Act 2005. Patients receiving treatment for mental disorder may be treated and cared for in line with Mental Health Act 1983. Where patients receive treatment and care under either Mental Capacity Act 2005 or Mental Health Act 1983, there are legally prescribed safeguards in place to ensure that they can contest decisions made about them.**

Addressing the impact on equalities **Staff attitudes about the importance of capacity and consent issues may adversely impact on the Policy's outcomes.** **Staff compliance with undertaking training on capacity and consent issues may also have an adverse impact.** **However, training is available for staff on all aspects of consent and capacity. Mental Capacity Act training is mandatory for clinical staff. Support and assistance is available to staff regarding all aspects of this Policy either from the Mental Capacity Act Manager, or appropriate others – e.g. Mental Health Act Manager, Research Department and NHS Solicitors.** **A review of a set of other Mental health Trust polices was undertaken. All policies could not detect any negative impact on the protected characteristics.**

Action planning for improvement **N/A**

For the record **Name of persons who carried out this assessment:** **Chris Stanton: Mental Health Act and Mental Capacity Act Lead** **Patient Safety Team** **George Sullivan: Secure Services Equality and Human Rights Advisor** **Tracy Evans: Referrals Manager**
Date assessment completed: **05/09/2017**
Name of responsible Director: Medical Director
Date assessment was signed: August 2017

11. IMPLEMENTATION PLAN

IMPLEMENTATION PLAN for the

POLICY AND PROCEDURE FOR CONSENT TO EXAMINATION OR TREATMENT

DOCUMENT NUMBER	SD06
RATIFYING COMMITTEE	Corporate document review group
DATE RATIFIED	
NEXT REVIEW DATE	31st[h] October 2020

ACCOUNTABLE DIRECTOR: Medical Director

DOCUMENT AUTHOR: Mental Health Law Facilitator

	Issues identified / Action to be taken	Time-Scale
1. Co-ordination of implementation • How will the implementation plan be co-ordinated and by whom? *Clear co-ordination is essential to monitor and sustain progress against the implementation plan and resolve any further issues that may arise.*	Working within the framework of consent to examination or treatment is core business and training consistent with this policy and procedure has been (and will remain) in place since the Trust's inception. Training is incorporated within annual Mental health Law and Mental Capacity programmes.	Annual programme
2. Engaging staff • Who is affected directly or indirectly by the policy? • Are the most influential staff involved in the implementation? *Engaging staff and developing strong working relationships will provide a solid foundation for changes to be made.*	All Clinical Staff and clinical support staff Mental Health Law Administrators The original policy and procedure was been devised on the back of consultation with staff and consistent with requests for advice received. This revised version does not alter practice except where dictated by statute and case law.	n/a n/a
3. Involving service users and carers • Is there a need to provide information to service users and carers regarding this policy? • Are there service users, carers, representatives or local organisations who could contribute to the implementation? *Involving service users and carers will ensure that any actions taken are in the best interest of services users and carers and that they are better informed about their care.*	No	

	Issues identified / Action to be taken	Time-Scale
4. Communicating • What are the key messages to communicate to the different stakeholders? • How will these messages be communicated? *Effective communication will ensure that all those affected by the policy are kept informed thus smoothing the way for any changes. Promoting achievements can also provide encouragement to those involved.*	Compliance with Mental Health Law. The application of consent is applied through both the Mental Health Act and the Mental Capacity Act which are both monitored (statutory requirement) by the Hospital Managers and relayed back through the Performance Management Group	On-going
5. Resources • Have the financial impacts of any changes been established? • Is it possible to set up processes to re-invest any savings? • Are other resources required to enable the implementation of the policy e.g. increased staffing, new documentation? *Identification of resource impacts is essential at the start of the process to ensure action can be taken to address issues which may arise at a later stage.*	No changes envisaged in terms of managing consent to examination or treatment	n/a

	Issues identified / Action to be taken	Time-Scale
6. Securing and sustaining change • Have the likely barriers to change and realistic ways to overcome them been identified? • Who needs to change and how do you plan to approach them? • Have arrangements been made with service managers to enable staff to attend briefing and training sessions? • Are arrangements in place to ensure the induction of new staff reflects the policy? *Initial barriers to implementation need to be addressed as well as those that may affect the on-going success of the policy*	From the perspective of consent to examination or treatment there will be little direct impact in terms of barriers. Indirectly, there are barriers that have arisen through changes to mental health and mental; capacity law but these have been addressed in the relevant Trust policies.	On-going
7. Evaluating • What are the main changes in practice that should be seen from the policy? • How might these changes be evaluated? • How will lessons learnt from the implementation of this policy be fed back into the organisation? *Evaluating and demonstrating the benefits of new policy is essential to promote the achievements of those involved and justifying changes that have been made.*	No significant change directly attributable to managing consent	On-going

	Issues identified / Action to be taken	Time-Scale
8. Other considerations	None	

12. ADDITIONAL APPENDICIES

Appendix 1: Statutory Documentation

FORM	TITLE
V:\Admin Office\New Forms\Individual Forn	**T1 Section 57 Certificate of consent to treatment and second opinion**
T2 with checklist box (2).doc	**T2 Section 58(3)(a) Certificate of consent to treatment**
carbonised	**T3 Section 58(3)(b) Certificate of second opinion**
SOAD Request link	https://webdataforms.cqc.org.uk/Checkbox/SOAD.aspx
V:\Admin Office\New Forms\Individual Forn	**T4 Section 58A(3) Certificate of consent to treatment (patients at least 18 years old)**
carbonised	**T5 Section 58A(4) Certificate of consent to treatment and second opinion (patients under 18)**
carbonised	**T6 section 58A(5) Certificate of second opinion (patients who are not capable of understanding the nature, purpose and likely effects of the treatment)**
Urgent Treatment MCT-T7.doc	**MCT T7 Section 62 Urgent Treatment; authorisation to prescribe and administer sections 57, 58 and 58A treatments without consent and/or second opinion**
SCT Urgent Treatment MCT amen	**MCT CTO T8 Urgent Treatment, ss.64A - 64G**