FOI REF: 26/408

19th August 2026

East Sussex Healthcare
NHS Trust

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Further to your recent request for information made under the Freedom of Information Act (FOIA) 2000, I now set out our answers to your specific questions, and any clarifications sought and provided, as follows:

I would be grateful if you could provide me with a copy of your Trust's current policy (or policies/guidance document) relating to patient consent, including consent to treatment/procedures.

If there are separate policies relating to consent for adults with capacity, adults lacking capacity, or consent involving children/young people, I would be grateful to receive these also.

Please see the attached document - '1269-03-Consent to treatment, Examination and Care Policy and Procedure_Redacted'.

Please note that it is the Trust's FOI policy to only provide the names of staff that are grade 8a or above, therefore staff that are below that grade have been redacted from the attached document.

Please also note that we have redacted the names of the Trust's IT Systems, names of staff that no longer work for the Trust, personal email addresses and phone numbers, and are applying Sections and 31(1)(a), 40(2) and 44 respectively, please see below:

Section 31(1)(a)

Under Section 31(1)(a) of the Freedom of Information Act (FOIA), the Trust can confirm that it holds information relevant to your request, however, we are unable to disclose it for the reasons explained below.

Historically, we would disclose information relevant to the Trust's IT systems, infrastructure and software as part of our transparency agenda under the terms of the Freedom of Information Act (FOIA). However, in light of the recent cyber-attacks on NHS hospitals and the serious impact these have had on patient services and the loss of patient data, we are having to reconsider this approach. Please see several links to news articles about these recent cyber incidents provided below for your information.

- *NHS England — London » Synnovis Ransomware Cyber-Attack*
- *NHS England confirm patient data stolen in cyber attack - BBC News*

- *Merseyside: Three more hospitals hit by cyber attack - BBC News*

As a result of these attacks, thousands of hospital and GP appointments were disrupted, operations were cancelled, and confidential patient data was stolen which included patient names, dates of birth, NHS numbers and descriptions of blood tests.

When we respond to a Freedom of Information request, we are unable to establish the intent behind the request. Disclosure under the FOIA involves the release of information to the world at large, free from any duty of confidence. Providing information about our systems or security measures to one person is the same as publishing it for everyone. While most people are honest and have no intention of misusing information to cause damage, there are criminals who look for opportunities to exploit system weaknesses for financial gain or to cause disruption.

In the context of the FOIA, the term ‘’public interest’’ does not refer to the private or commercial interests of a requestor; its meaning is for the “public good”. The Trust receives a significant number of requests each year regarding our IT systems, infrastructure and cyber security measures. Most of these requests are commercially driven and serve no direct public interest. Information relevant to our IT portfolio is often requested by consultancy companies who then pass on this information to their client base. Many of these requests are submitted through the FOI portal whatdotheyknow.com who publish our responses, making this information available to an even wider audience.

As a large NHS Trust we hold extensive personal data relevant to our patients and staff, much of which is considered very sensitive. A lot of this information is held electronically on various administration and clinical systems. We have a duty under the Data Protection Act 2018 and the UK GDPR to protect this personal information and take all necessary steps to ensure this data is kept safe. This means not disclosing information that could allow criminals to gain unlawful access to our systems and infrastructure. The Trust can be heavily fined should it be found to have acted in a negligent way which results in a personal data breach. We need to demonstrate that we comply with our legal obligations under data protection and freedom of information legislation, but we must be careful that too much transparency does not result in harm to our patients or staff, or cause disruption to our services.

Moreover, under the Network and Information Systems (NIS) Regulations Act 2018, operators of essential services such as NHS organisations like ours have a legal obligation to protect the security of our networks and information systems in order to safeguard our essential services. By releasing information that could increase the likelihood or severity of a cyber-attack, the Trust would fail to meet its security duties as stated in Section 10 of the Network and Information Systems Regulations 2018. Should we not comply with these requirements regulatory action can be taken against the Trust. Further information about the Network and Information Systems (NIS) Regulations Act 2018 can be found here – The Network and Information Systems Regulations 2018: guide for the health sector in England - GOV.UK

Your request asks for policy documents which unfortunately mention specific details regarding our IT Systems which, for the reasons explained above, would be inappropriate to release into the public domain. If disclosed, it is possible that patient data as well as other confidential information would be put at risk. Such disclosure could also impact on the security of our systems and result in serious disruption to the health services we deliver to the local community. Section 31(1)(a) of FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice (a) the prevention or detection of crime. In this case, disclosure would be likely to prejudice the prevention of crime by enabling or encouraging

malicious acts which could compromise the Trust's IT systems and infrastructure. The Trust's capacity to defend itself from such acts relates to the purposes of crime prevention and therefore Section 31(a) exemption is applicable in these circumstances. For these reasons, the Trust considers disclosure of the information you are seeking to be exempt under Section 31(1)(a) [law enforcement] of the FOIA and the names of the IT systems within the policy is being withheld. The full wording of Section 31 can be found here: Freedom of Information Act 2000

Section 31 is a qualified exemption and therefore we must consider the prejudice or harm that may be caused by disclosure of the information you have requested, as well as apply a public interest test that weighs up the factors in maintaining the exemption against those in favour of disclosure.

In considering the prejudice or harm that disclosure may cause, as explained should the Trust release information into the public domain which draws attention to any weaknesses relevant to the security of our systems or those of a supplier, this information could be exploited by individuals with criminal intent. Increasing the likelihood of criminal activity in this way would be irresponsible and could encourage malicious acts which could compromise our IT systems or infrastructure, result in the loss of personal data and/or impact on the delivery of our patient services. We consider these concerns particularly relevant and valid considering the increasing number of cyber incidents affecting NHS systems in recent years and the view by government, the ICO and NHS leaders that the threat of cyber incidents to the public sector is real and increasing.

- *Organisations must do more to combat the growing threat of cyber attacks | ICO*

In the Government's Cyber Security Strategy 2022-2030, the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office states on page 7:
"Government organisations - and the functions and services they deliver - are the cornerstone of our society. It is their significance, however, that makes them an attractive target for an ever-expanding army of adversaries, often with the kind of powerful cyber capabilities which, not so long ago, would have been the sole preserve of nation states. Whether in the pursuit of government data for strategic advantage or in seeking the disruption of public services for financial or political gain, the threat faced by government is very real and present.

Government organisations are routinely and relentlessly targeted: of the 777 incidents managed by the National Cyber Security Centre between September 2020 and August 2021, around 40% were aimed at the public sector. This upward trend shows no signs of abating."

With this in mind, we then considered the public interest test for and against disclosure. It should be noted that the public interest in this context refers to the public good, not what is 'of interest' to the public or the private or commercial interests of the requester. In this case we consider the public interest factors in favour of disclosure are:

- Evidences the Trust's transparency and accountability
- Provides information relevant to the IT systems and applications the Trust uses
- Reassures the public and partners that the Trust procures these systems in line with Procurement legislation
- Reassures the public and partners that the Trust's IT infrastructure and systems are secure

Factors in favour of withholding this information are:

- Public interest in crime prevention
- Public interest in avoiding disruption to our health services
- Public interest in maintaining the integrity and security of the Trust's systems
- Public interest in the Trust avoiding the costs associated with any malicious acts (e.g. recovery, revenue, regulatory fines)
- Public interest in complying with our legal obligations to safeguard the sensitive confidential information we hold

In considering all of these factors, we have concluded that the balance of public interest lies in upholding the exemption and not releasing the information requested. Although disclosure would provide transparency about our software systems and IT infrastructure, this is outweighed by the harm that could be caused by people who wish to use this information to assess any vulnerabilities in our security measures and consequently use this information for unlawful purposes. Cybercrime can not only lead to major service disruption but can also result in significant financial losses. As a publicly funded organisation, we have a duty for ensuring our public funding is protected and spent responsibly. Moreover, as a public body the Trust must demonstrate that it keeps its confidential data and IT infrastructure safe and complies with relevant legislation, but at the same time we must be vigilant that transparency does not provide an opportunity for individuals to act against the Trust. In considering the impact that recent cyber-attacks have had on NHS services, including the cancellation of thousands of patient appointments and procedures as well as the loss of confidential patient data, we consider the overriding public interest lies in withholding this information. The private or commercial interests of a requester should not outweigh the public interest in protecting the integrity of our systems and continuity of our essential patient services. Although we appreciate there may be legitimate intentions behind requesting this information, we must take a cautious approach to requests of this nature and appreciate your understanding in this matter.

Section 40(2)

I can confirm that we hold this information, but it is exempt under Section 40(2) of the Freedom of Information Act 2000 – Personal Information of third parties. This is because this information may allow the identification of individuals and disclosure would breach the principles of the Data Protection Act.

This is an absolute exemption and there is, therefore, no requirement to consider the public interest.

Section 44

We are unable to provide the contact details of staff as we consider this information to be exempt from release in accordance with Section 44 of the Freedom of Information Act (Prohibition on disclosure) and would refer to the Privacy and Electronic Communications EC Directive Regulations 2003 which provide specific rules on electronic communication services, including marketing (by phone, fax, email or text) and keeping communications services secure. We will not provide any information that could result in the transmission of unsolicited

communications which may place an unacceptable risk to our email network and could also have a detrimental impact on patient care and treatment.

The contact number for the Trust is accessible on the Trust website http://www.esht.nhs.uk.

This is an absolute exemption and there is, therefore, no requirement to consider the public interest.

I trust this information is helpful in its detail or explanation however, if you are dissatisfied with the response, then you have the right to request an internal review. If you wish to seek an internal review, please write to the Freedom of Information Team at esh-tr.foi@nhs.net quoting the above FOI reference number, within 40 working days. Please note the Trust is not obliged to accept a request for an internal review after this time period.

Yours faithfully

Freedom of Information (FOI) Team
East Sussex Healthcare NHS Trust
0300 131 4716
Core Hours of Business: Monday to Friday 9.00am to 4.00pm

East Sussex Healthcare NHS Trust

Consent to Treatment, Examination and Care Policy and Procedure

Document ID Number	1269
Version:	V3
Ratified by:	Clinical Documentation and Policy Ratification Group.
Date ratified:	09 July 2024
Name of author and title:	Simon Walton Consultant Anaesthetist and Chair Trust Consent and Health Records Group.
Date originally written:	April 2007
Date current version was completed	March 2024
Name of responsible committee/individual:	Consent and Health Records Group
Date issued:	26 July 2024
Review date:	July 2027
Target audience:	All Staff
Compliance with CQC Fundamental Standard	Need for consent
Compliance with any other external requirements (e.g. Information Governance)	N/a
Associated Documents:	Policy for the use of the mental capacity act (MCA) Clinical Guideline for the management of patients who decline transfusion of blood and blood products Advance Decisions Policy Policy for the Supply, Use and Management of Mobile Phones Patient Information Policy and Procedure Safeguarding Adults Policy and Procedure Incident Reporting and Management Policy Planning Care Together Policy respecting patient choice with advised treatments (Adults)

Did you print this yourself?
Please be advised the Trust discourages retention of hard copies of the procedural document and can only guarantee that the procedural document on the Trust website is the most up to date version

Version Control Table

Version number and issue number	Date	Author	Reason for Change	Description of Changes Made
V1 2007194	December 2007	Dr Simon Walton	Generic Consent Policy	Revision of Consent for Hospital Post Mortem
V1 2008253	October 2008	Dr I Boles	Generic Consent Policy	Revision of neonatal consent
V1 2010256	December 2010	[redacted] Sue Allen	Generic Consent Policy	Revision of Nurse led consent within the ophthalmology department cataract surgery
V4 2011065	February 2011	Dr Simon Walton	Generic Consent Policy	Revision of policy for consent to examination or treatment
V4 2011094	March 2011	[redacted]	Generic Consent Policy	Revision of consent for medical illustration
V 1.0 2012165	August 2012	Dr Simon Walton	Generic Consent Policy	Revision of Policy on Consent for radiological examination or treatment
V1.1 2012310	November 2012	Dr Simon Walton	Generic Consent Policy (Chair Approval)	Section 5 slight rearrangement and addition of term Nurse to section 5.2.5 Changing NHSLA to GMC as per NHSLA requirement Updating TORs for Consent Committee.
V1.2 2013126	May 2013	Dr Simon Walton	Alteration to Monitoring	Monitoring table updated and shortened.
V1.3 2013178 (Chair approval)	August 2013	Dr Simon Walton	Alterations to training	Alterations to sections 5.2.1; 5.3; 15.1; 15.2
V1.4 2013199 (Chair approval)	September 2013	Dr Simon Walton	Audit tool addition	Appendix P added, 'Consent Audit Tool'
V1.5 2013240 (Chair Approval)	December 2013	Dr Simon Walton	Audit tool alteration	Audit Tool in Appendix P amended
V2.0	March 2019	Dr Simon Walton	Full revision	Multiple changes
V3.0	March 2024	Dr Simon Walton	Full revision	Multiple changes

Consultation Table

This document has been developed in consultation with the groups and/or individuals in this table:

Name of Individual or group	Title	Date
Simon Walton	Consultant Anaesthetist and Chair of Consent and Health Records Group	December 2023
[redacted]	Deputy Director of Nursing	October 2018
Radiology		April 2019
Consent and Health Records Group		May 2019
[redacted]	Mortuary Manager	June 2019
[redacted]	Senior Medical Photographer	June 2019
[redacted]	Acting Head of Safeguarding	July 2019
Deborah James	Deputy Head of Mortuary	January 2024
[redacted]	Senior Medical Photographer	January 2024
Emma Owens	Radiology	January 2024
Stephanie Gill	Paediatrics	February 2024
[redacted]	Mental Capacity Lead	March 2024

This information may be made available in alternative languages and formats, such as large print, upon request. Please contact the document author to discuss.

Table of Contents

1. Introduction

This policy sets out the standards and procedures relating to consent that this Trust expects its staff to follow in order to comply with the law and best professional practice requirements on consent.

This document has been developed within legislative framework that includes:

The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice

The Human Tissue Act (2004)

The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009)

The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005.

2. Purpose

2.1 Rationale

Patients have a fundamental legal and ethical right to determine what happens to their own bodies. Valid consent to treatment is therefore essential to all forms of health care, from provision of personal care to undertaking major surgery. Seeking consent is also a common courtesy between patient and health professional.

2.2 Principles

This policy aims to ensure best practice throughout this organisation by setting out the standards and procedures in this Trust which aim to ensure that health professionals are able to comply with the law and good practice requirements on consent.

It also aims to set out the training and support provided to staff in pursuit of best practice.

2.3 Scope

This policy covers consent to examination or treatment as part of clinical care.

This document covers the responsibilities of all staff employed not only to provide health interventions but also who provide general care, including care that involves touching a patient.

3. Definitions

Consent

Consent is a patient's agreement for a health professional to provide care. Patients may indicate consent non-verbally (for example by presenting their arm for their pulse to be taken), orally, or in writing. For the consent to be valid, the patient:

- Must have capacity to take the particular decision
- Must have received sufficient information to make it
- Must not be acting under duress

The context of consent can take many different forms, ranging from the active request by a patient of a particular treatment (which may or may not be appropriate or available) to the passive

acceptance of a health professional's advice. In some cases, the health professional will suggest a particular form of treatment or investigation and after discussion the patient may agree to accept it. In others, there may be a number of ways of treating a condition and the health professional will help the patient to decide between them. Some patients especially those with chronic conditions, become very well informed about their illness and may actively request particular treatments. In many cases, 'seeking consent' is better described as a 'joint decision making process' where the patient and health professional come to an agreement on the best way forward, based on the patient's values and preferences and the health professional's clinical knowledge.

Valid consent

For consent to be valid, it must be given voluntarily by an appropriately informed person who has the capacity to consent to the intervention in question.

For written consent to be valid a patient needs to have been given: time to understand the procedure, the risks and benefits of the procedure, written information, any reasonable alternative or variant treatments and the opportunity to ask questions and consider options.

Consent is often wrongly equated with a patient's signature on a consent form. A signature on a form is evidence that the patient has given consent, but is not proof of valid consent. If a patient is rushed into signing a form, on the basis of too little information, the consent may not be valid, despite the signature. Similarly, if a patient has given valid verbal consent, the fact that they are physically unable to sign the form is no bar to treatment. Patients may, if they wish, withdraw consent after they have signed a form; the signature is evidence of the process of consent-giving, not a binding contract.

For additional advice refer to www.dh.gov.uk

4. Accountabilities and Responsibilities

Chief Executive Officer (CEO) – Retains overall accountability for the quality and standards of consent and healthcare services provided by ESHT. On a day to day basis the CEO delegates responsibility for oversight, scrutiny and implementation to his executive team. In relation to consent standards this delegation is to the Medical Director with the Director of Nursing having a delegation around the professional standards for nurses and AHPs.

Medical Director (MD) – Has the delegated responsibility to ensure that all medical staff, including interim / locum staff, are aware of this policy and the required standards of consent ensuring accurate contemporaneous records are in place for all patients. The MD provides the professional leadership to the medical staff and is responsible for ensuring systems are in place to monitor and address any non-compliance with this policy.

Director of Nursing (DoN) – Has the delegated responsibility to ensure that all clinical staff groups including nursing, midwifery, Allied Healthcare Professionals (AHP), biomedical scientists and technical staff, excluding medical staff, are aware of this policy and the required standards of consent ensuring accurate contemporaneous records are in place for patients. The DoN provides professional leadership to all clinical staff, other than medical staff, and is responsible for working with the Medical Director ensuring systems are in place to address any non-compliance with this policy once identified.

Clinical Effectiveness Group – as a working group of the Quality and Safety Committee this group oversees the Consent and Health Records Group and Clinical Documentation Group to provide scrutiny, reporting and assurance to the Trust Board around consent practice including clinical record keeping standards.

Policy and Clinical Documentation Group – this working group focuses on all aspects of patient documentation including the development, approval and review/redesign of Trust approved documentation within the healthcare records. The group oversees task and finish groups set up to develop specific trust wide documentation and receives reports highlighting issues with approved documentation arising from incidents, complaints, litigation, consent audits and the Consent and Health records Group***. It should be noted the Trust does not generally develop local consent documentation, using nationally designed best practice documents instead.***

Consent and Health Records Group – the working group which focuses on all aspects of the health record including consent practice and record keeping standards. This group scrutinises information, reviews and revises relevant Trust policies, national guidance, risks, incidents and complaints relating to the health record, consent and record keeping standards. It identifies actions required to improve practice for the divisions to implement.

Division Triumvirate - Associate Director of Operations, Clinical Chief and Assistant Director of Nursing and Governance – hold the day to day responsibility for ensuring all staff within their division practice consent and document it in the clinical record in line with the standards in this policy and that each of their specialties have robust clinical governance arrangements which support the monitoring and auditing of consent standards. This includes ensuring each specialty has sufficient numbers of trained and competent staff to consent patients in line with best practice.

The divisional leads holds their clinical specialties and clinicians to account, through their clinical governance and managerial structures, for any non-compliance with this policy, including the outcomes from clinical audit and monitoring of consent, including an annual audit of consent practice within each specialty. They have responsibility for sharing learning across their specialties and supporting horizontal learning across the Trust.

All clinical specialties – **Clinical Specialty Lead, Service Manager and Head of / Deputy Head of Nursing / AHP Lead** – are responsible for ensuring all staff are practising and documenting consent in the clinical record in line with this policy. They are responsible for closely monitoring record keeping standards, including an annual audit of consent practice within their specialty, and identifying concerns and actions related to consent through monitoring and from learning opportunities e.g. complaints, incidents, serious incidents, legal claims, coroner's cases. They ensure action plans are developed and implemented, sharing learning across the division at the divisional governance meetings.

Medical Staff taking consent will obtain consent in line with this policy and the best practice standards set by the General Medical Council (GMC) for procedures within their competence and for procedures where they have been trained and assessed, at ESHT as competent to consent for. Prior to commencing any procedure the doctor must ensure they are satisfied properly obtained consent is in place and if not the procedure should not go ahead until it is.

Provide supervision of non-medical staff who are training to take delegated consent for a procedure they are competent in. At ESHT this primarily requires a Consultant to provide supervision to non-medical staff in training for consent.

All healthcare staff – are responsible for reading, understanding and applying this policy in their everyday practice. This includes consenting patients and documenting that consent in the main healthcare records, departmental records and records written in any other form of documentation. Any breaches of this policy must be reported via [redacted] to ensure all issues are identified and learning can be put in place.

5. Who is responsible for obtaining consent?

5.1 General Principles

The health professional carrying out the procedure is ultimately responsible for ensuring that the patient is genuinely consenting to the proposed procedure or intervention. It is they who will be held responsible in law if this is challenged later. See section 7 for the consent procedure.

5.2 Delegation of Written Consent (Completing Consent Forms)

It is appropriate, in some circumstances, for the healthcare professional to delegate consent to another multi-disciplinary team member. Any health professional being delegated the task of obtaining written consent must be competent to do so either because they themselves carry out the procedure, or they have been trained and assessed as competent to take delegated consent for that procedure. In order to undertake delegated consent the health care professional must complete training and assessment and a record of this should be held by the employing specialty/division.

The requirements for delegated consent are:

a) The person giving the information is a registered professional ,conversant with the procedure, understands the risks involved, and has been trained and assessed and is aware of his or her own knowledge limitations
b) The patient is made aware of the implications of the treatment including pre, during and post procedure effects and consequences.
c) The person explaining the treatment has good communication skills
d) The person explaining the procedure is subject to monitoring of practise through ongoing supervision and audit of their practice
e) Adequate literature describing the procedure, its benefits and risks and any alternatives is always given to the patient in a suitable format / language
f) The patient has proper access to the delegating Clinician so that any problems or queries which cannot be answered by the person explaining the treatment can be easily and speedily addressed

5.2.1 Training for delegated consent

If a health care professional is not competent to perform the procedure they can be trained and authorised to obtain written consent if:

- They have completed 3 yearly the trust 'Principles of Consent' online training module provided by the Learning and Development Department or through a training session provided by the Consent Working Group and they maintain high standards of practice (appraisal)
- Received procedure specific consent training by the consultant or a senior practitioner delegating consent.
- Assessed as competent for obtaining consent for that procedure by the delegating consultant or senior practitioner who is assessed as competent in carrying out the procedure
- The assessment, for delegated consent, is registered within the division/ specialty and staff member's records.
- The individual's competence must be reviewed at their appraisal with action as appropriate through the development review process.

5.2.2 Accountability

Any registered health professional undertaking written consent for their own practise or by delegation will be fully accountable for their actions in accordance with their professional

guidance. All health professionals must work within their level of competence, responsibility and accountability.

5.2.3 Responsibility of Consultants

It is the consultant's/practitioner's own responsibility to ensure that when they require junior doctors, colleagues or other health care professionals to seek consent on their behalf they are confident that they are competent to do so and appropriately authorised and trained.

It is the responsibility of the relevant consultant/practitioner to provide training, supervision and to complete an assessment for junior doctors or other health professionals who do not themselves carry out specific procedures but who may be called on by the consultant to obtain written consent from the patient. The relevant consultant must also ensure his/her accessibility if required.

5.2.4 Responsibility of the junior doctors

Foundation Year 1 doctors must not obtain written consent for operative procedures.

It is the responsibility of the junior doctor to work within their own competence and not to agree to perform tasks which exceed that competence. Junior doctors must not obtain written consent for procedures they are either not competent to perform or for which they have not been appropriately authorised.

For many specialities, their relevant training boards and schools have mandated that consent cannot be delegated to trainees below a certain level of training. Trainees and their supervisors are responsible for ensuring they work within the competencies set by their speciality schools.

If an individual perceives that they are being pressurised to seek consent they should raise this with their professional lead or the Chair of the Consent and Health Records Group.

5.2.5 Reporting Issues Related to Consent

Any incidence where someone not authorised to do so has obtained consent should be [redacted] reported using the standard trust incident form. This should be investigated following the relevant Trust policy. If harm has occurred the Legal Team should be informed.

It is the responsibility of the division to investigate and to ensure proper steps are in place to prevent recurrence of the incident.
The Consent and Health Records Group will receive quarterly incident reports and will receive the Root Cause Analysis incident report when completed. Any learning will be reviewed by the Group and shared across the Trust.

The GMC requires the Trust to submit any concerns about improper consent-taking it has identified to the GMC as part of their role in assuring quality in medical education.

5.3 Verbal Consent

Verbal consent must be gained for any procedure no matter how basic, such as providing personal care or taking a blood sample. Verbal consent must be documented in full within the patient notes or integrated care pathway document, whether taken by a physician, nurse or allied health professional. **The communication between the professional and patient (and if appropriate their carer) must be documented clearly within the patient's records).**

6 Who may give consent?

6.1 Adults

Patients have a fundamental legal and ethical right to determine what happens to their own bodies.

The health professional carrying out the procedure is ultimately responsible for ensuring that the patient is genuinely consenting to the procedure/ treatment; it is they who will be held responsible in law if this is challenged later.

6.1.1 Safeguarding Vulnerable Adults

You must treat patients in accordance with the statutory framework set out in the Mental Capacity Act. Refer to Policy for the use of the mental capacity act (MCA) for further guidance.

6.1.2 The Mental Capacity Act

The Mental Capacity Act (2005)

- provides a statutory framework on how to proceed when an adult lacks capacity or for adults who have capacity now, but want to make preparations for a time when they may lack capacity in the future to make decisions for themselves

- is supported by the Mental Capacity Act 2005 Code of Practice and doctors, nurses, social workers and others working in a professional or any paid role, have a legal duty to have regard to this code of practice. Any non-compliance with this Code must be explained and the reasons for this must also be recorded at the same time as you make the decision not to follow the Code.

- Emergencies are exempt from this Act. However, as soon as it is known that the person may lack capacity for a decision, the Act must be followed.

Further Guidance for staff is available on the trusts Intranet: Policy for the use of the mental capacity act (MCA) and in NICE Guidelines Decision-making and Mental Capacity (2018). Staff can also contact the Mental Capacity Lead and Mental Capacity Practitioner in the Safeguarding team (see Trust telephone directory / via switch/MCA Extranet page).

6.2 Young people over 16 under 18

16 and 17 year olds are presumed competent to consent for medical treatment and ancillary procedures (Family Law Reform Act, 1969). Consent is valid only if it is given voluntarily by an appropriately informed young person capable of consenting to the particular intervention.

However, unlike adults, the refusal of a competent person aged 16–17 may in certain circumstances be overridden by either a person with parental responsibility or a court.

If the 16 -17 year-old is capable of giving valid consent then it is not legally necessary to obtain consent from a person with parental responsibility for the young person in addition to the consent of the young person. It is, however, good practice to involve the young person's family in the decision-making process – unless the young person specifically wishes to exclude them – if the young person consents to their information being shared.

16 – 17 year olds who lack capacity cannot give consent. Any decisions made on behalf of this group should be made in compliance with the Mental Capacity Act.

6.3 Children under 16

If children are competent to give consent for themselves then the clinician can seek consent directly from them. For children under age of 16 without “Fraser” competency the law requires the consent of someone with ‘parental responsibility’ for the child. The legal position regarding competence is different for children over and under 16.

6.3.1 Children competent to give Consent (Gillick/Fraser competency)

Children under 16 are not automatically presumed to be legally competent to make decisions about their health care.

However, the courts have stated that children between 13 and 18 may consent to their own medical treatment to a particular intervention if they have “sufficient understanding and intelligence to enable him or her to understand fully what is proposed”. This is sometimes known as “Gillick or Fraser competence”. See NSPCC Gillick competency and Fraser guidelines *(https://learning.nspcc.org.uk/child-protection-system/gillick-competence-fraser-guidelines)* or the GMC Guidance ‘0–18 years: guidance for all doctors’ https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/0-18-years/introduction for more detail on this.

Therefore, if they have this competence, they may provide consent in place or in addition to those with parental responsibility.

For children under age of 16 without “Fraser” competency the law requires the consent of someone with ‘parental responsibility’ for the child.

If over the age of 16 years and in accordance with the Mental Capacity Act (2014), it is appropriate for the child to sign a written consent form if this would normally be required for the proposed procedure or treatment.

6.3.2 Children not competent to give Consent - Who has parental responsibility?

The Children Act 2004 and Children and Adoption Act 2006 outlines who has parental responsibility. This Government page sets out all of the parental responsibilities for differing groups including same sex couples: If they are not included in this group it cannot be assumed they have the parental responsibility rights.

Appendix I provides a useful flow diagram to help you assess who has parental responsibility.

If you are in any doubt about whether the person with the child has parental responsibility for that child, you must check with the Trust legal team and /or Safeguarding Team who should be able to advise/ support you.

Usually, it is only necessary to obtain consent from one person with parental responsibility. However, it is good practice to involve all those close to the child if possible. If there is a difference of opinion between persons with parental responsibility then measures must be taken by the clinician to gain consensus. If agreement cannot be gained then a legal opinion should be obtained.

The courts have indicated the following specific treatments must have the agreement of all parties:

- Sterilisation,
- Non-therapeutic male circumcision

6.3.3 Consent for Children in Care

When a child is made the subject of a care order, the situation regarding who has parental responsibility may be complex. The *Local Authority* has legal responsibility for the child. However Parental Responsibility may remain with the person(s) originally holding it (for example this may be the birth mother) or be shared with the Local Authority or held exclusively by the Local Authority. See Appendix H and I for more information.

Children will often be placed long term with foster carers. It is important that you involve them in any discussions but it should be remembered that they do not have legal Parental Responsibility for the child and cannot solely give consent for complex treatment.

However, the Local Authority may delegate to the foster carer authority to consent to specific assessments/investigations. Foster carers should have this in writing.

The clinician proposing the treatment needs to determine who holds Parental Responsibility and take consent appropriately from them. If you are unclear who holds PR, safeguarding liaison nurses will be able to investigate and advise.

6.3.4 Refusal of Consent by a person with parental responsibility or by a child

A person under the age of 18 does not have a legal right to refuse treatment. A person with parental responsibility or the court can potentially override a child's wishes. The child's view should be considered but any action taken should be in overall best interests of the child. For young persons and children who are considered "Fraser" Competent it may be necessary to bring an application to the court and therefore legal advice should always be sought.

In situations where there is continuing disagreement or conflict between those with parental responsibility and doctors and where the child is not competent to provide consent, the court should be involved to clarify whether a proposed treatment, or withholding of treatment, is in the child's best interests. Parental refusal can only be overridden in an emergency.

6.3.5 Seeking consent for neonatal care

Guidelines should follow the principles set out in the British Association for Paediatric Medicine's leaflet (BAPM) "Enhanced Decision Making in Neonatal Care – A framework for practice" - 2019 https://www.bapm.org/resources/158-enhancing-shared-decision-making-in-neonatal-care as well as relevant legislation stated above.

7 Procedure for obtaining consent

7.1 General Principles

The Department of Health has issued a number of guidance documents on consent and these should be consulted for advice on the current law and good practice requirements in seeking consent. Health professionals must also be aware of any guidance on consent issued by their own regulatory bodies.

Reference guide to examination and treatment second edition 2009 (https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-

treatment-second-edition) provides a comprehensive summary of the current law on consent and includes requirements of regulatory bodies such as the General Medical Council where these are more stringent. Copies are available on the Trust Intranet, in the Libraries on both sites and may also be accessed on the internet.

Consent to Treatment https://www.nhs.uk/conditions/consent-to-treatment/

12 key points on consent: the law in England has been distributed widely to health professionals working in England. This one-page document summarises those aspects of the law on consent which arise on a daily basis and is attached in Appendix B.

The GMC has produced important guidance to help doctors to meet the standards required for good practice in consent:

Decision Making and Consent https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/decision-making-and-consent

Factsheet: Key legislation and case law relating to Decision making and consent https://www.gmc-uk.org/-/media/documents/factsheet---key-legislation-and-case-law-relating-to-decision-making-and-consent-84176182.pdf

The BMA has also produced guidance on the key legal and ethical considerations you need to take into account when seeking consent for treatment or research. https://www.bma.org.uk/media/2481/bma-consent-toolkit-september-2019.pdf?_gl=1*3enyse*_up*MQ..*_ga*MTkwOTg1NzAwNy4xNzA2MTc4MTYw*_ga_F8G3Q36DDR*MTcwNjE3ODE1OS4xLjAuMTcwNjE3ODE1OS4wLjAuMA..

7.1.1 When should consent be sought?

It is good practice where possible to seek the person's consent to the proposed procedure well in advance when there is time to respond to the person's questions and provide adequate information. Clinicians should then check before the procedure starts that the person still consents.

If a person is not asked to sign their consent form until just before the procedure is due to start, at a time when they may be feeling particularly vulnerable, there may be real doubt as to its validity.

In no circumstances should a person be given routine pre-operative medication before being asked for their consent to proceed with the treatment.

When a patient formally gives their consent to a particular intervention, this is only the *endpoint* of the consent process. It is helpful to see the whole process of information provision, discussion and decision-making as part of 'seeking consent'. This process may take place at one time, or over a series of meetings and discussions, depending on the seriousness of what is proposed and the urgency of the patient's condition.

7.1.2 Documentation

It is rarely a legal requirement to seek written consent; The Mental Health Act 1983 and the Human Fertilisation and Embryology Act 1990 require written consent in certain circumstances but it is good practice to obtain written consent if any of the following circumstances apply:

- The treatment or procedure is complex, or involves significant risks.
- The procedure involves general/regional anaesthesia or sedation.

- Providing clinical care is not the primary purpose of the procedure
- There may be significant consequences for the patient's employment, social or personal life
- The treatment is part of a project or programme of research approved by this Trust

A signature on a form is *evidence* that the patient has given consent, but is not *proof* of valid consent.

If a patient has given valid verbal consent, the fact that they are physically unable to sign the form is no bar to treatment.

Patients may wish to withdraw consent after they have signed a form; the signature is evidence of the process of consent-giving, not a binding contract.

Completed consent forms should be kept with the patient's notes and a copy given to the patient. Any changes made to the form after it has been signed by the patient, should be initialled and dated by both patient and health professional and recorded in the patient's notes.

Verbal consent must be gained for any procedure no matter how basic, such as providing personal care or taking a blood sample. **The communication between the professionals and patient (and if appropriate their carer) must be documented clearly within the patient's records.**

If you have any reason to believe that the consent may be disputed later or if the procedure is of particular concern to the patient (for example if they have declined, or become very distressed about similar care in the past), this should be documented.

7.2 Written Consent

7.2.1 "Two or more stage process"

In most cases where *written* consent is being sought, treatment options will generally be discussed well in advance of the actual procedure being carried out. This maybe on just one occasion (either within Primary Care or in a hospital outpatient clinic), or it might be over a whole series of consultations with a number of different health professionals. The consent process will therefore have at least two stages: the first being the provision of information, discussion of options and initial (oral) decision and the second being confirmation that the patient still wants to go ahead. The consent form should be used as a means of documenting the information stage(s) as well as the confirmation stage.

Patients receiving elective treatment or investigations for which written consent is appropriate should be familiar with the contents of their consent form before they arrive for the actual procedure and they should receive a copy of the consent form at the time of signing it.

If a form is signed before patients arrive for treatment a member of the healthcare team **must** check with the patient at this point whether they have any further concerns and whether their condition has changed. This is particularly important where there has been a significant lapse of time between the form being signed and the procedure. The original consent document should be available prior to the treatment/ procedure for confirmation of consent. This may be an original retained paper-based form, a scanned form in the Electronic Patient Record or a form created and signed digitally in the Electronic Patient Record.

Confirmation of consent should be documented in the appropriate space on the consent form or electronic patient record. If the paper based form is not available but a scanned copy exists the appropriate Health Record manager on the Acute site should be contacted in order for a paper copy to be printed off and used.

When confirming the patient's consent and understanding, it is advisable to use a form of words that requires more than a yes/no answer from the patient: for example beginning with "tell me what you're expecting to happen", rather than "is everything all right?"

While administrative arrangements will vary, it should always be remembered that for consent to be valid, the patient must feel that it would have been possible for them to refuse, or change their mind. It will rarely be appropriate to ask a patient to sign a consent form after they have begun to be prepared for treatment (for example, by changing into a hospital gown), unless this is unavoidable because of the urgency of the patient's condition.

7.2.2 Duration of consent

When a person gives valid consent to an intervention, in general that consent remains valid for an indefinite duration, unless the person withdraws it.

If new information becomes available regarding the proposed intervention (for example new evidence of risks or new treatment options) between the time when consent was sought and when the intervention is undertaken, The doctor or member of their healthcare team should inform the patient and reconfirm their consent. The clinician should consider whether the new information should be drawn to the attention of the patient and the process of seeking consent repeated on the basis of this information. Any amendment to the consent should be clearly documented and signed by both patient and clinician.

Similarly, if the patient's condition has changed significantly in the intervening time it may be necessary to seek consent again, on the basis that the likely benefits and/or risks of the intervention may also have changed.

If consent has been obtained a significant time before undertaking the intervention, it is good practice to confirm that the person who has given consent (assuming that they retain capacity) still wishes the intervention to proceed, even if no new information needs to be provided or further questions answered.

7.2.3 Consent Forms

Consent forms can be paper based or digital.

This Trust uses the standard NHS consent form template. Paper blank forms are pre-printed and available in department areas.

No other forms will be used in this Trust unless they have been ratified by the Consent and Health Records Group.

Forms with pre-printed procedural specific information can be used as long as they follow the standard NHS template and format and have been ratified by the Consent and Health Records Group.

Verbal Consent

7.2.4 "Single Stage Process"

In many cases, it will be appropriate for a health professional to initiate a procedure immediately after discussing it with the patient. For example, during an on-going episode of care a physiotherapist may suggest a particular manipulative technique and explain how it might help the patient's condition and whether there are any significant risks. If the patient is willing for the technique to be used, they will then give their consent and the procedure can go ahead immediately. In many such cases, consent will be given orally. This must be documented in the health care records.

If a proposed procedure carries significant risks, it will be appropriate to seek written consent and health professionals must take into consideration whether the patient has had sufficient chance to absorb the information necessary for them to make their decision. As long as it is clear that the patient understands and consents, the health professional may then proceed.

7.2.5 Documenting Verbal Consent

Consent may be expressed verbally or non-verbally; an example of non-verbal consent would be where a person, after receiving appropriate information, holds out an arm for their blood pressure to be taken. However, the person must have understood what examination or treatment is intended, and why, for such consent to be valid. What information has been shared with the patient and that consent was obtained must be documented in the healthcare record.

Where the patient is to undergo a procedure using local anaesthetic, for example in an outpatient setting, verbal consent can be given. The nurse in charge must complete and sign the WHO document. This should be retained in the patient's notes.

7.3 Consent for Special Procedures

7.3.1 Consent for Anaesthesia and Sedation

Where an anaesthetist is involved in a patient's care, it is their responsibility to ensure consent for anaesthesia has been adequately sought. The anaesthetist should document the discussion about anaesthetic technique and associated risks with the patient on the appropriate section of the anaesthetic record. Consideration can be given for obtaining written consent on a separate standard consent form for high risk anaesthetic techniques or if anaesthetist wishes to obtain written consent from the patient as further evidence of the anaesthetic consent process. This is at the discretion of the consultant anaesthetist.

All patients should be informed of the risks of general anaesthesia, including the possibility of Accidental Awareness during General Anaesthesia, before their surgery.

For elective treatment it is not acceptable for the patient to receive no information about anaesthesia until their pre-operative visit by the anaesthetist. At such a late stage, the patient will not be in a position to genuinely make a decision about whether or not to undergo anaesthesia. Patients should therefore either receive general information from the clinician proposing the procedure and a general leaflet about anaesthesia in outpatients, or have the opportunity to discuss anaesthesia in a pre-assessment clinic. The Association of Anaesthetists recommends that patients should be provided with information about their anaesthetic in written form (e.g. leaflet) in advance of their anaesthesia.

Where it is known or can be anticipated that sedation rather than general anaesthesia is planned, separate written information should be provided on what is meant by 'sedation'. It

should be emphasised that sedation does not equate to unconsciousness and may be associated with recall.

Where the clinician providing the care is personally responsible for anaesthesia (e.g. where local anaesthesia or sedation is being used), then he or she will also be responsible for ensuring that the patient has given consent to that form of anaesthesia.

In addition, where general anaesthesia or sedation is being provided as part of dental treatment, the General Dental Council currently holds dentists responsible for ensuring that the patient has all the necessary information. In such cases, the anaesthetist and dentist will therefore share that responsibility.

More guidance is available from:

Consent for anaesthesia 2017. Association of Anaesthetists
https://www.aagbi.org/sites/default/files/AAGBI_Consent_for_anaesthesia_2017_0.pdf

The 'NAP5 Handbook' Concise practice guidance on the prevention and management of accidental awareness during general anaesthesia.
https://www.nationalauditprojects.org.uk/the-NAP5-Handbook

7.3.2 Consent for Emergency procedures

Clearly in emergencies, the two stages (discussion of options and confirmation that the patient wishes to go ahead) will follow straight on from each other and it may often be appropriate to use the patient's notes to document any discussion and the patient's consent, rather than using a form. The urgency of the patient's situation may limit the quantity of information that they can be given, but should not affect its quality.

7.3.3 Consent for Radiology procedures

The health professional carrying out the procedure or examination is ultimately responsible for ensuring that the patient is genuinely consenting to what is being done it is they who will be held responsible in law if this is challenged later. The Royal College of Radiologists have also advised that in the final confirmation of informed consent at the time of the examination remains the responsibility of the doctor involved in the radiological examination or intervention.

For radiological investigations requiring general anaesthesia the situation is more complex. The anaesthetist performing the anaesthetic is ultimately responsible for ensuring adequate consent has been obtained for providing a general anaesthetic. However, the anaesthetist must be confident that the benefits and risks of proceeding with the intervention have been fully discussed by the referring clinician. If an anaesthetist is not satisfied that this aspect of the consent process has been done satisfactorily, then it is appropriate for them to refuse to proceed.

Except in emergencies, patients must be given enough information in a timely manner and in a way they can understand to enable them to exercise their right to make an informed decision. The consent process must not be left until immediately before the procedure is to be carried out.

For low risk procedures that do not require sedation or anaesthesia, verbal consent can be obtained by the radiologist. Verbal consent must be documented in full within the patient notes or integrated care pathway document. The communication between the professional and the patient (and if appropriate their carer) must be documented clearly within the patient's records.

For higher risk procedures or those requiring sedation or general anaesthesia, written consent should be obtained using the Interventional Radiology Consent Form.

The decision to ask for the investigation is made by the referring clinician who should also commence the consent process by giving an initial explanation of the procedure (outline consent). The Royal College of Radiologists also recommend that the initial outline consent to radiological examination or intervention should be started by the referring clinician. This initial explanation should be documented either on the first part of the paper version of the Interventional Radiology Consent Form or completing the Primary Consent Statement Form online. For this stage a signature from the patient is NOT required and the referring clinician is simply indicating they have started the consent process. This first part of the process should be carried out by a senior member of the referring team as the decision to proceed with an interventional radiological procedure involves a high level of understanding of the alternative options with all their risks and benefits. Subsequently the full informed consent form is obtained by the interventional radiologist who is ultimately responsible for ensuring that the patient is genuinely consenting to what is being done.

The referring clinician should explain the reasons why he/she is requesting the examination/ intervention and should outline in general terms the way the procedure is performed and any significant risks or adverse effects. Information for both referring clinicians and their patients is available on the Trust intranet at:

http://www.esht.nhs.uk/service/radiology/patient-informaton-leaflets/

In addition, the British Society of Interventional Radiologists also has information leaflets on specific radiological procedures at:

https://www.bsir.org/patients-1/patient-information-leaflets/

For planned procedures, the Royal College of Radiologists have indicated that patients should be provided with written information about the procedure (including details on general anaesthesia if appropriate). The information should be sent to the patient/parent with sufficient time prior to the procedure to consider it and to consult others if they so wish. Ward staff should print out the appropriate information leaflet from the trust intranet site (see above) and give it to inpatients who are awaiting the procedure.

If the examination or intervention requires general anaesthesia then the anaesthetist must document in their anaesthetic chart the discussion of the anaesthetic risks. If there are significant anaesthetic risks then written confirmation of consent to anaesthesia should be documented.

For patients who lack the capacity to consent to a procedure, the referring clinician is responsible for following the correct process required by the Mental Capacity Act. This includes documenting a formal capacity assessment~~,~~ and the best interest ~~meeting~~ decision. The referring clinician must consult with the patient's family/friends. They must check whether a power of attorney for health and welfare or court appointed deputy is in place and consult them.~~-~~They must involve an Independent Mental Capacity Advocate if the patient doesn't have anyone appropriate or available to consult who isn't a paid professional. It would be appropriate to involve the radiologist and the anaesthetist if requiring general anaesthesia in the best interest decision. Any decision made regarding a patient who lacks capacity should be clearly documented using the appropriate trust forms.

Paediatric radiological examinations requiring general anaesthesia (e.g. CT or MRI):

The decision to ask for the investigation is made by the referring paediatrician who should also commence the consent process and obtain outline consent. This should be documented on a standard NHS consent form.
The referring clinician should explain to the parents the reasons why he/she is requesting the examination and should outline in general terms the way the procedure is performed and any significant risks or adverse effects.

It should be documented in the medical notes and consent form why the examination is being undertaken and what the benefits are.

The referring clinician must be satisfied the child is fit for anaesthesia and that the risks of anaesthesia do not outweigh the benefits of the examination. If in doubt the advice of a consultant anaesthetist must be obtained prior to proceeding.

The anaesthetist must document either on their anaesthetic chart or on the consent form the discussion of the anaesthetic risks. If there are significant anaesthetic risks then written re-confirmation of consent should be documented on the same consent form or a separate consent form if there is no available space on the original.

The radiology department should provide written information to the parent about the procedure including details on general anaesthesia with a telephone number for providing extra information if required. The information should be sent to the parent giving them adequate time to discuss the information with a GP or other healthcare professional.

8 Information for Patients

8.1 General Information about Consent

The provision of information is central to the consent process. Before patients can come to a decision about treatment, they need comprehensible information about their condition and about possible treatments / investigations and their risks and benefits (including the risks/benefits of doing nothing) in a format and language they can understand and/or via an interpreter. Where relevant this could include the use of an interpreter at appointments in line with the Trust Policy. They also need to know whether additional procedures are likely to be necessary as part of the procedure, for example a blood transfusion, or the removal of particular tissue. Once a decision to have a particular treatment / investigation has been made, patients need information about what will happen, where to go, how long they will be in hospital, how they will feel afterwards and so on.

Patients and those close to them will vary in how much information they want: from those who want as much detail as possible, including details of rare risks, to those who ask health professionals to make decisions for them. There will always be an element of clinical judgement in determining what information should be given. However, the *presumption* must be that the patient wishes to be well informed about the risks and benefits of the various options.

Where the patient makes clear (verbally or non-verbally) that they do not wish to be given this level of information, this should be documented, along with a documented record of the discussion.

8.2 Procedure/Speciality Specific Information

Each Speciality should have a patient information leaflet or website that outlines specific advice or information which will include general anaesthetic where appropriate. When a patient information leaflet is given, it should be documented clearly in the patient's

healthcare records. The appropriate place for this would be in the patients consent from where there is a specific section.

If a new patient information leaflet or a review of a current version is required, staff should follow the procedure for developing patient information in the Patient Information Policy and Procedure.

- Patient information that is available on the Trust Intranet can be downloaded directly from the system. Patient information is available via the internet at www.esht.nhs.uk.The patient needs to click on the Speciality service or on 'Caring for you' where there is a list of information leaflets.

- For information on developing accessible or readable patient information, e.g. for people with sensory impairments or learning difficulties, *please refer to the Patient Information Policy and Procedure which can be found on the Extranet.*

- Mental Capacity Advocate (IMCA) in the Staff Mental Capacity Act Guidance

8.3 Archiving Patient Information Leaflets

When a patient information leaflet has been updated internally, the expired information will be archived and the patient/ service user database updated in line with the Patient Information Policy and Procedure.

8.4 Patients whose first language is not English

This Trust is committed to ensuring that patients whose first language is not English receive the information they need and are able to communicate appropriately with healthcare staff. It is not appropriate to
use unqualified interpreters to interpret medical information to patients who do not speak English. Professional interpreters should be used at all times wherever possible.

Clinical staff/ administrators are able to book/ arrange interpreting services or someone to assist with other aspects of communication. Telephone interpreters are available 24 hours a day. Staff should refer to the Trust policy for full details or the Trust extranet for quick reference and for booking face to face and telephone Interpreters. Further resources are available on the Trust extranet to facilitate communication with patients who do not speak English. Friends, family and / or staff should only
b
e used where all other methods of professional interpreting have been exhausted and patient safety would be compromised without communication (e.g. Urgent consent is required for treatment).

Out of Hours
Telephone interpreting should be used during out of hours for community spoken languages and British Sign Language (BSL) interpreters (for Deaf patients) should be requested directly with the supplier - details can be found on the extranet.

8.5 Access to more detail or specialist information

Patients may sometimes request more detailed information about their condition or about a proposed treatment than that provided in general leaflets. This Trust has made the following arrangements to assist patients to obtain such information:

- There is additional help provided from the PALS offices during working hours
- 111 and NHS Evidence (www.evidence.nhs.uk) can be accessed via the internet.
- The relevant specialist nurse, consultant's secretary, or specialty area can be contacted to provide additional information. NHS staff and healthcare students can use the Libraries at EDGH and Conquest Hospital for further information.

8.6 Access to health professional between appointments

After an appointment with a healthcare professional information regarding a relevant specialist nurse to contact should be provided, where appropriate during the consent process. Should further information be required the consultant's must make every effort to respond to any queries.

8.7 Open Access Clinics

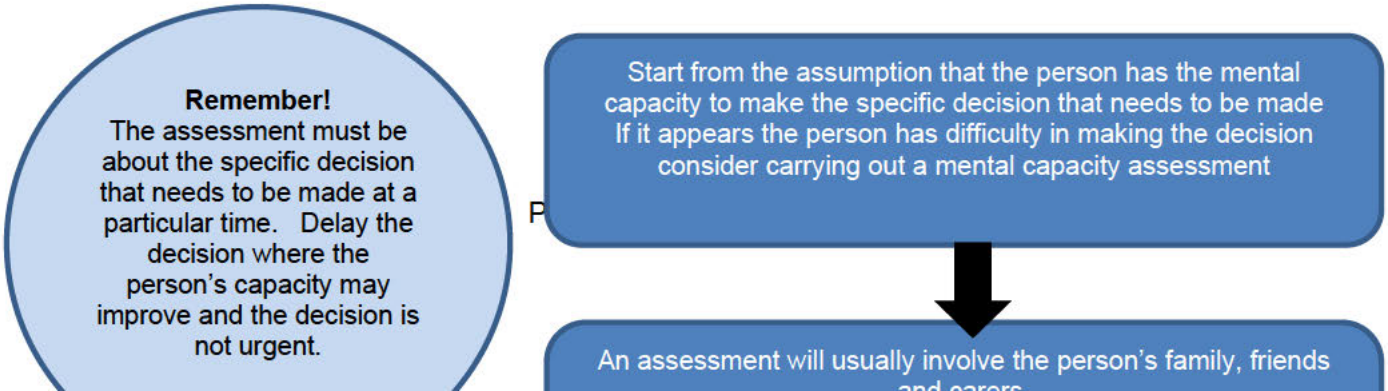
Where patients access clinics directly, it should not be assumed that their presence at the clinic implies consent to particular treatment.

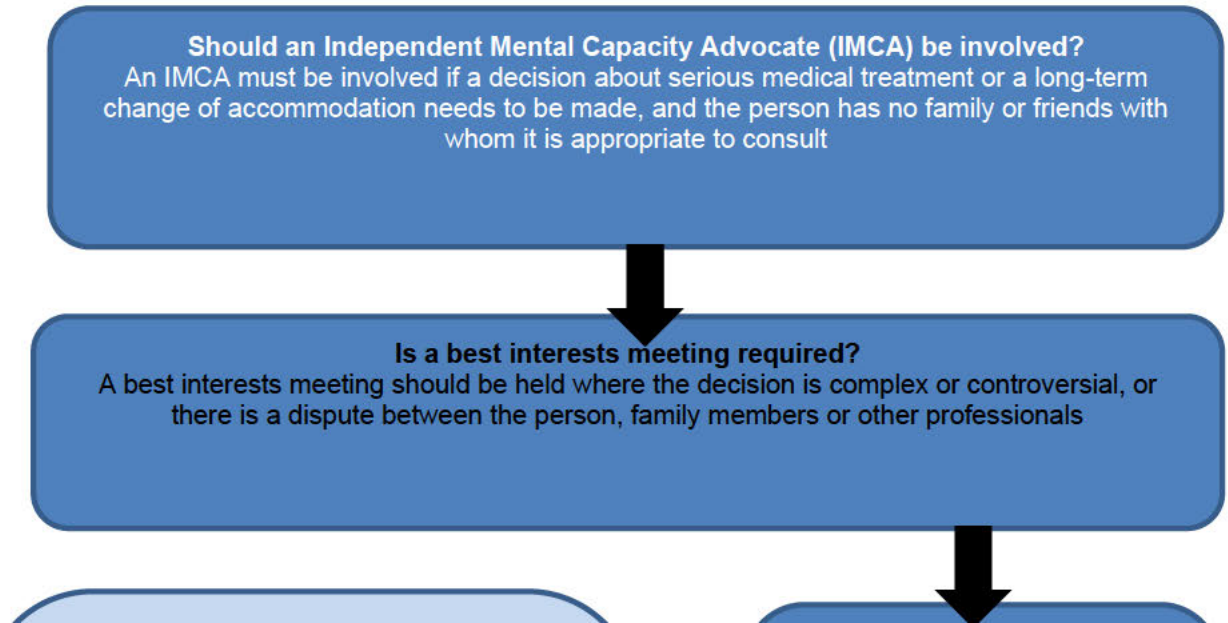
You should ensure that they have the information they need before proceeding with an investigation or treatment.

Appropriate information regarding the procedure should be sent to the patient with the appointment time.

9 Procedures for Patients who lack capacity to give or withhold consent

Mental Capacity Assessment Flowchart




Should an Independent Mental Capacity Advocate (IMCA) be involved?
An IMCA must be involved if a decision about serious medical treatment or a long-term change of accommodation needs to be made, and the person has no family or friends with whom it is appropriate to consult
Is a best interests meeting required?
A best interests meeting should be held where the decision is complex or controversial, or there is a dispute between the person, family members or other professionals

10 Procedures for Patients who refuse treatment

If the process of seeking consent is to be a meaningful one, refusal must be one of the patient's options. A competent adult patient is entitled to refuse any treatment, except in circumstances governed by the Mental Health Act 2007. The situation for children is more complex: see the Department of Health's *Seeking consent: working with children* for more detail. The following paragraphs apply primarily to adults.

If, after discussion of possible treatment options, a patient refuses all treatment, this fact should be clearly documented in their notes. If the patient has already signed a consent form, but then changes their mind, you (and where possible the patient) should note this on the form.

Where a patient has refused a particular intervention, you must ensure that you continue to provide any other appropriate care to which they have consented. You should also ensure that the patient realises they are free to change their mind and accept treatment if they later wish to do so. Where delay may affect their treatment choices, they should be advised accordingly.

If a patient consents to a particular procedure but refuses certain aspects of the intervention, you must explain to the patient the possible consequences of their partial refusal. If you genuinely believe that the procedure cannot be safely carried out under the patient's stipulated conditions, you are not obliged to perform it. You must, however, continue to provide any other appropriate care. Where another health professional believes that the treatment can be safely carried out under the conditions specified by the patient, you must on request be prepared to transfer the patient's care to that health professional.

A person may have made an advance decision to refuse particular treatment in anticipation of future incapacity (sometimes referred to previously as a 'living will or advance directive'). A valid and applicable advance decision to refuse treatment has the same force as a contemporaneous decision to refuse treatment. This is a well-established rule of common law, and the Mental Capacity Act 2005 now puts advance decisions on a statutory basis.

Where an adult patient lacks the mental capacity (either temporarily or permanently) to give or withhold consent for themselves; currently no one else can give consent on their behalf, unless the patient has a Lasting Power of Attorney. 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 Decision (Directive). For further details on Advance Decisions see Appendix G on advance decisions or the Department of Health's *Reference guide to consent for examination or treatment also* available on the Trust Intranet site. If there are concerns about the validity of an Advance Decision, advice must be sought from the Trust Solicitor/Legal Services Department.

The Act sets out the requirements that such a decision must meet to be valid and applicable. Further details are available in chapter 9 of the Mental Capacity Act (2005) Code of Practice and from Appendix G.

11 Consent for deceased patients for Post Mortem Examination, the use of human tissue for scheduled purposes and the Human Tissue Authority

A post mortem examination (also known as autopsy), is an invasive procedure carried out after death to confirm a cause of death, confirm or enhance knowledge of other medical conditions such as the spread of disease, provide the deceased patient and/or their family the opportunity to donate tissues and samples for medical research etc.

There are different Post Mortem Examination Types:
Forensic – is ordered by the police and is carried out without the families consent.
Coroner - can be ordered and carried out without the families consent.
Hospital Consented – is only carried out with written permission from the family. There are a variety of options for the family to consider and only what they agreed to will be carried out.

This section covers Hospital Consented Post Mortem Examinations only which can only be requested if the cause of death is known. It is important to note following a coroners or forensic post mortem examination, if samples have been taken, the family will be asked what

they would like to happen to these after the coroner or police have completed their investigation.

The Human Tissue Authority (HTA) was introduced to uphold the Human Tissue Act. The Act ensures any examination is carried out lawfully and with a defined purpose. There are four guiding principles which must be upheld to ensure any activity carried out involving deceased patients are appropriate and legal. The Trust hold an HTA license which enables post mortem examinations, the removal, storage and use of human tissue and organs for scheduled purposes such as research, audit and further examination, to take place in the mortuaries at EDGH and Conquest.

11.1 Consent

Consent is a process which takes time and enables the families of deceased patients to gather information, ask questions and establish their choices prior to a post mortem examination being carried out. This is often conducted with a multidisciplinary approach to ensure the families questions can be answered in enough detail to enable them to make an informed choice.

The Human Tissue Authority produce seven Codes of Practice. When discussing any procedure taking place for a patient after death the HTA standards and guidance must be adhered to. Code A 'Guiding Principles and the Fundamental Principle of Consent'. Code B '.Post Mortem Examination and Post Mortem Examination, standards and guidance can be found at www.hta.gov.uk

It is not a legal requirement to get consent in writing however no post mortem examination or removal of tissues or organs will take place without written permission.

11.2 Statutory Requirements for the Human Tissue Act for Deceased Patients

Specific consent is needed for the examination, removal, storage and use of tissues and organs for deceased patients. There is a list of scheduled purposes which are detailed on the HTA website and discussed at training.

The HTA advise who in the family is able to give consent by publishing a guide of those in qualifying relationships. The person ranked highest in the relationship must be consulted. www.hta.gov.uk

It is essential that anyone taking post mortem examination consent has been appropriately trained attending a 'Post Mortem Examination Consent Taking Training' session, is competent and confident to discuss all options available with the family and ideally has attended a post mortem examination.

11.3 Obtaining Consent for Hospital Post Mortems

Consent for a Hospital Post Mortem Examination must be obtained in accordance with the Human Tissue Act (2004) and the regulatory guidelines produced by the Human Tissue Authority (HTA).

Usually the clinical team will approach the family for permission to carry out a post mortem examination. This will enable further investigations and potential more detailed diagnosis resulting in extra information for the patient and family. If a dying patient or family request a post mortem examination then this should also be discussed and their reasons established. This is usually asked if the patient wants to donate organs or tissues after death for research, or if there are potential implications (hereditary conditions) for other family members.

There is a Post Mortem Examination Consent Form which must be used to record the family's wishes. This is available from the mortuary. There are two forms one for babies and children aged 2 and under and one for anyone over 2 years old.

The person highest in the qualifying relationship ranking should be consulted if consent is required. They may choose to delegate the choices to another member of the family however this person should still be the next highest in the HTA ranking and this must be documented to ensure the correct person has the final say. If the person highest in the qualifying relationship declines the options of a post mortem examination the next person in the list must not be approached.

Anyone obtaining consent **must have** completed 'Taking Post Mortem Examination Consent' training and have evidence available to demonstrate that this is no more than 2 years old. If clinicians require assistance from the mortuary for the 'Taking Post Mortem Examination Consent' process, trained consent takers can be contacted via [redacted] or alternatively via ext [redacted]

Taking Post Mortem Examination Consent training sessions for Babies and Children under 2 can be accessed at https://www.e-lfh.org.uk/programmes/perinatal-post-mortem-consent

Consent training for post mortems in people aged 2 or over can be accessed at https://www.aaptuk.org/link/events. At this site online training sessions in consent are run by the AAPT in conjunction with the HTA.

Research

Consent is required when tissue is removed and retained specifically for the purpose of research. The general legal principles applying to consent for treatment and examination apply equally to consent for the storage and use of tissues for research.

11.4 For the living

Tissue from the living may be stored for use and/or used without consent, provided that the research is ethically approved and the tissue is anonymised such that the researcher is not in possession of information identifying the person from whose body the material has come and is not likely to come into the possession of it. Tissue from the deceased can only be used for research if there is written consent.

In general, obtaining consent is preferable to developing complex systems for keeping samples unlinked. It represents best practice and has the benefit of facilitating the process of obtaining ethical approval.

12 Consent in Research

The Mental Capacity Act sets out a legal framework for involving people who lack the capacity to consent to taking part in research. The Act provides for when such research can be carried out and for safeguards to protect people involved in the research who lack capacity, for example ensuring that the wishes and feelings of the person who lacks capacity are respected. Anyone setting up or carrying out such research will need to make sure that the research complies with the provisions set out in the Act and will need to follow the guidance given in chapter 11 of the Mental Capacity Act (2005) Code of Practice. The Act does not include clinical trials, which are covered by the Medicines for Human Use (Clinical Trial Regulations) 2004.

The Act requires that a family member or unpaid carer must be consulted about any proposal and agree that the person who lacks capacity can be part of the research. If such a person

cannot be identified, then the researcher must nominate a person who is independent of the research project to provide advice on the participation of the person who lacks capacity in the research. The person consulted should be asked for advice about whether the person who lacks capacity should participate in the research project and what, in their opinion, the person's wishes and feelings about taking part would be likely to be if they had capacity. The person's past or present wishes, feelings and values are most important in deciding whether they should take part in research or not. If the person without capacity shows any sign that they are not happy to be involved in the research, then the research will not be allowed to continue.

Healthcare professionals may be providing care or treatment for a person who is taking part in a research project and may be asked for their views about what the person's feelings are or need to advise the researchers if the person seems upset about any aspect of the research.

13 Clinical photography and video recordings

A visual recording forms part of a patient's confidential medical record. It provides visual information about a medical condition and/or its treatment. The term visual recording in this policy is used to describe photographic images and video recordings of patients, taken on conventional or mobile photographic devices.

The guidelines in this policy should be followed to obtain correct and relevant consent for the taking of, and use of visual recordings.

Informed consent should be obtained and documented when a visual recording is made, regardless of whether the patient's identity is evident in the recording.

It is the responsibility of the requesting clinician to explain to the patient why visual recordings are required. The healthcare professional undertaking visual recordings must check the patient understands and consents to the procedure and use of recordings. Visual recordings, regardless of who is obtaining them, form part of the patients' medical records. They are subject to the same legal requirements as written notes, and must not be revealed to any person not concerned with the healthcare of the patient, without the patient's consent.

If it is known that a procedure is likely to require visual recordings, consent for these should be obtained separately in advance.

Patients have the right to withdraw or amend their consent at any time. However, it must be stressed at the time of obtaining consent for education or publication that it may not be possible to locate recordings that have already been released. If a patient withdraws consent for recordings made for clinical records, these will be made inaccessible to healthcare professionals, but will not be deleted.

If the patient is unable to consent for a recording, you should follow the principles set out in the Mental Capacity Act. Visual recordings can be made in the patient's best interest. In this instance, the requesting clinician should sign on their behalf, but recordings can only be used for the patient's medical records. You must not make any use of the recordings which might be against the interests of the patient.

13.1 Patient consent

Patient consent falls into four categories (all consent levels and forms can be found in Appendix G):

1. **Consent for visual recordings for clinical records.**
Visual recordings are used for the clinical treatment and care of the patient only.

2. **Consent for visual recordings intended for teaching purposes (excluding scientific posters, leaflets or other material that may be publicly accessed).**
Visual recordings, even if the patient is unidentifiable, intended for teaching purposes, require informed consent from the patient. Copies of their recordings will be made available to the Clinician treating that patient.If other appropriate medical staff would like copies, the permission of the treating clinician will be sought.

3. **Consent for visual recordings intended for publication in the public domain.**
Visual recordings, even if the patient is unidentifiable, intended for publication (i.e. reproduction in a journal or textbook, poster, public display or internet) require a written consent and release form signed by the patient. This must which state the exact use of the recording. *Note: Medical Journals may require their own written consent.

4. **Consent for visual recordings in a patient's best interests**
Visual recordings can be made if the patient is unable to give informed consent, but can be used for the medical records only. Next of kin can sign retrospectively for further use, as long as it not against the interests of the patient.

Misuse of visual recordings taken by staff within the Trust can cause huge financial and reputational costs to the organisation**.**

13.2 Exceptions to patient consent

Consent is not required for:

- Visual recordings taken of pathology specimens
- Radiographic Images (ensuring the patients details are removed)
- Laparoscopic images (ensuring the patient's details are removed)
- Visual recordings of internal organs or ultrasound images (ensuring the patients' details are removed)

Such images must clearly lack any personal identifiable information to ensure complete anonymity.

13.3 Copyright

All visual recordings, clinical or non-clinical, are the copyright property of the East Sussex Healthcare NHS Trust. This is irrespective of the author of the recordings, or owner the recording equipment.

13.4 Storage of visual recordings

Original files must be stored in accordance with the Data Protection Act and GDPR, ideally within the Medical Photography department. Original files should not be altered in any way (including additional compression) before storage. All visual recordings must be stored on the Trust's Clinical Image Database.

13.5. Patient identification

A patient's visual recording must not be altered in any way to achieve anonymity in order to avoid the need for consent, such as blackening out the eyes in a facial photograph.

It should be remembered that insignificant features such as scaring, tattoos, birthmarks and piercings, etc. may still be capable of identifying the patient to others.

13.6 Patient confidentiality

Confidentiality is the patient's right - it can only be waived by the patient or by someone legally entitled to do so on his or her behalf. Breaches of confidentiality may well amount to serious professional misconduct with inevitable disciplinary consequences.

In order to ensure confidentiality is preserved, only authorised copies of the original recordings must be made, in adherence with the consent given.

13.7 Transferring visual recordings

Transfer of visual recordings must be done securely and only when necessary. When via email, this must be done to/from authorised accounts e.g.NHS.net to NHS.net email accounts, TRIPS, etc.

Apps unapproved by the Trust must not be used.

Visual recordings taken on mobile devices must adhere to the Supply, Use and Management of Mobile Phones policy. They must be transferred securely to the patient medical record as soon as possible, and immediately deleted from the mobile device.

13.8 Requests for copies from external sources

Requests for copies by police, insurance companies or solicitors must be made in writing and permission from the requesting clinician and patient will be sought for the release.

Under a subpoena, police may obtain copies of visual recordings without consent or permission.

13.9 Further Information

Further information, support and advice can be found:

- **Medical Illustration Department**
  Conquest Hospital – [redacted]
  Eastbourne DGH – [redacted]
- **Information Governance -** [redacted]
- **ESHT Clinical Photography and Video Recording Policy**
- **Making and Using Visual and Audio Recordings of Patient -** General Medical Council Guidelines, May 2011
- **Confidentiality and Consent: A guide to good practice -** Institute of Medical Illustrators, 2020

14 Equality and Human Rights Statement

An equality impact assessment has been carried out to ensure that the document does not discriminate or have any detrimental impact on service users or employees on the grounds of race, gender, disability, age, sexual orientation or religion or other belief. No detriment has been identified and the document clarifies how all patients can access all elements of the policy and procedure for consent.

15 Training

On-going training on consent is available within the trust for relevant staff groups. The training requirements set out in this document will contribute to the annual training needs analysis.

15.1 Consent Training for Nurses who obtain written consent

Nurses can be delegated (authorised) to obtain written consent for procedures they cannot do. Authorisation requires:

They have completed 3 yearly the trust 'Principles of Consent' online training module provided by the Learning and Development Departement or through a training session provided by the Consent Working Group.

The nurse will have undergone a period of supervised practice. Oral examination with a mentor/ delegating clinician to explore the health professional's depth of knowledge relating to a named procedure, its intended benefits and risks.

Must be assessed as competent to obtain informed consent by the delegating clinician or assessor. Competencies must be documented and signed by both nurse and examiner. The nurse must be signed of as still competent within this role on a yearly basis.

The assessment, for delegated consent, is registered within the division/speciality and staff members records

16 Monitoring Compliance with the Document

It is the responsibility of the Trust Consent and Health Records Group to review on a regular basis or as determined by local or national directives this policy for consent and other related documents and make recommendations on amendments to the Trust.

16.1 Process for Monitoring Compliance

On a quarterly basis the risk department will produce a list of all incidents reported concerning Consent. These are reviewed by the Consent and Health Records Group whose responsibility is to identify any deficiencies in the original investigation or where themes and trends are identified and produce additional action plans where appropriate.

In addition the Group will consider the incident profiles within this analysis, i.e. gender, impairment, age, ethnic group, religion or belief and sexual orientation to look for trends or patterns emerging that may reveal inequalities in the application of the Consent policy.

The Group will receive Divisional Consent audit reports and highlight any key areas of concern, develop actions or escalate as required.
In addition individual directorates will be fully supported in performing departmental audits in consent issues by the clinical governance department and Trust consent group.

It is the responsibility of the Trust Consent and Health Records Group to monitor compliance with the consent policy through the annual consent audit and make recommendations to Directorates for improvements where necessary.

17 Monitoring Table

Element to be monitored	Lead	Tool	Frequency	Responsible Individual/Group / Committee for review of results/report	Responsible individual/ group/ committee for acting on recommendations/ action plan	Responsible individual/group/ committee for ensuring action plan/lessons learnt are Implemented
Reported incidents relating to Consent including identification of themes and trends	Head of Governance	Consent Incident Report	Quarterly	Consent and Health Records Group	Consent and Health Records Group and Divisions	Divisional Governance Meetings Consent and Health Records Group
Consent Audit reports	Clinical Effectiveness Facilitator	Consent Audit report	Quarterly	Consent and Health Records Group	Divisions	Divisional Governance Meetings Consent and Health Records Group Clinical Effectiveness Team

18 References

The Department of Health has issued a number of guidance documents on consent and these should be consulted for advice on the current law and good practice requirements in seeking consent. Health professionals must also be aware of any guidance on consent issued by their own regulatory bodies.

Reference Guide to Consent for Examination or Treatment Second Edition 2009. Provides a comprehensive summary of the current law on consent, and includes requirements of regulatory bodies such as the General Medical Council where these are more stringent. Copies are available on the Trust Intranet, in the Libraries on both sites and may also be accessed on the internet at:

(https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-treatment-second-edition)

19 Key Points on Consent: The Law in England

This has been distributed widely to health professionals working in England. This one-page document summarises those aspects of the law on consent which arise on a daily basis and is attached at Appendix B.

Specific guidance, incorporating both the law and good practice advice, is available for health professionals working with children, with people with learning disabilities and with older people. Copies of these booklets are available on the Trust Intranet, in the libraries on both sites and on the internet at:

Seeking Consent: working with children
https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/seeking-consent-guide-children.pdf

Seeking consent: working with people with learning disabilities
https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/seeking-consent-learning-disabilities.pdf

Seeking consent: working with older people
https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/seeking-consent-guide-older-people.pdf

The British Medical Association (BMA) Consent Tool Kit is available on www.bma.org.uk or on request from the Clinical Governance Department.

The National Institute for Clinical Excellence issued guidance in 2003, "Consent – Procedures for which the benefits and risks are uncertain". Available on Internet www.nice.org.ukor on request from the Clinical Governance Department.

The Mental Capacity Act Code of Practice
This useful document is available on the Trust Intranet, in the Libraries on both sites and on the internet at:

https://consult.justice.gov.uk/digital-communications/revising-the-mca-2005-code-of-practice/

Appendix A: 12 Key Points on Consent – The Law in England

12 Key Points on Consent-The Law in England

When do health professionals need consent from patients?

1. Before you examine, treat or care for competent adult patients you must obtain their consent.

2. Adults are always assumed to have capacity unless demonstrated otherwise. If you have doubts about their competence, the question to ask is: can this patient understand and weigh up the information needed to make this decision?" Unexpected decisions do not prove the patient is incompetent, but may indicate a need for further information or explanation.

3. Patients may have the capacity to make some health care decisions, even if they are not competent to make others.

4. Giving and obtaining consent is usually a process, not a one-off event. Patients can change their minds and withdraw consent at any time. If there is any doubt, you should always check that the patient still consents to your caring for or treating them.

Can children give consent for themselves?
5. Before examining, treating or caring for a child, you must also seek consent. Young people aged 16 and 17 are presumed to have the competence to give consent for themselves. Younger children who understand fully what is involved in the proposed procedure can also give consent (although their parents will ideally be involved). In other cases, some-one with parental responsibility must give consent on the child's behalf, unless they cannot be reached in an emergency. If a competent child consents to treatment, a parent **cannot** over-ride that consent. Legally, a parent can consent if a competent child refuses, but it is likely that taking such a serious step will be rare.

Who is the right person to seek consent?
6. It is always best for the person actually treating the patient to seek the patient's consent. However, you may seek consent on behalf of colleagues if you are capable of performing the procedure in question, or if you have been specially trained to seek consent for that procedure.

What information should be provided?
7. Patients need sufficient information before they can decide whether to give their consent: for example information about the benefits and risks of the proposed treatment, and alternative treatments. If the patient is not offered as much information as they reasonably need to make their decision, and in a form they can understand, their consent may not be valid.

8. Consent must be given voluntarily: not under any form of duress or undue influence from health professionals, family or friends.

Does it matter how the patient gives consent?
9. No: consent can be written, oral or non-verbal. A signature on a consent form does not itself prove the consent is valid – the point of the form is to record the patient's decision, and also increasingly the discussions that have taken place. Your Trust or organisation may have a policy setting out when you need to obtain written consent.

Refusal of treatment

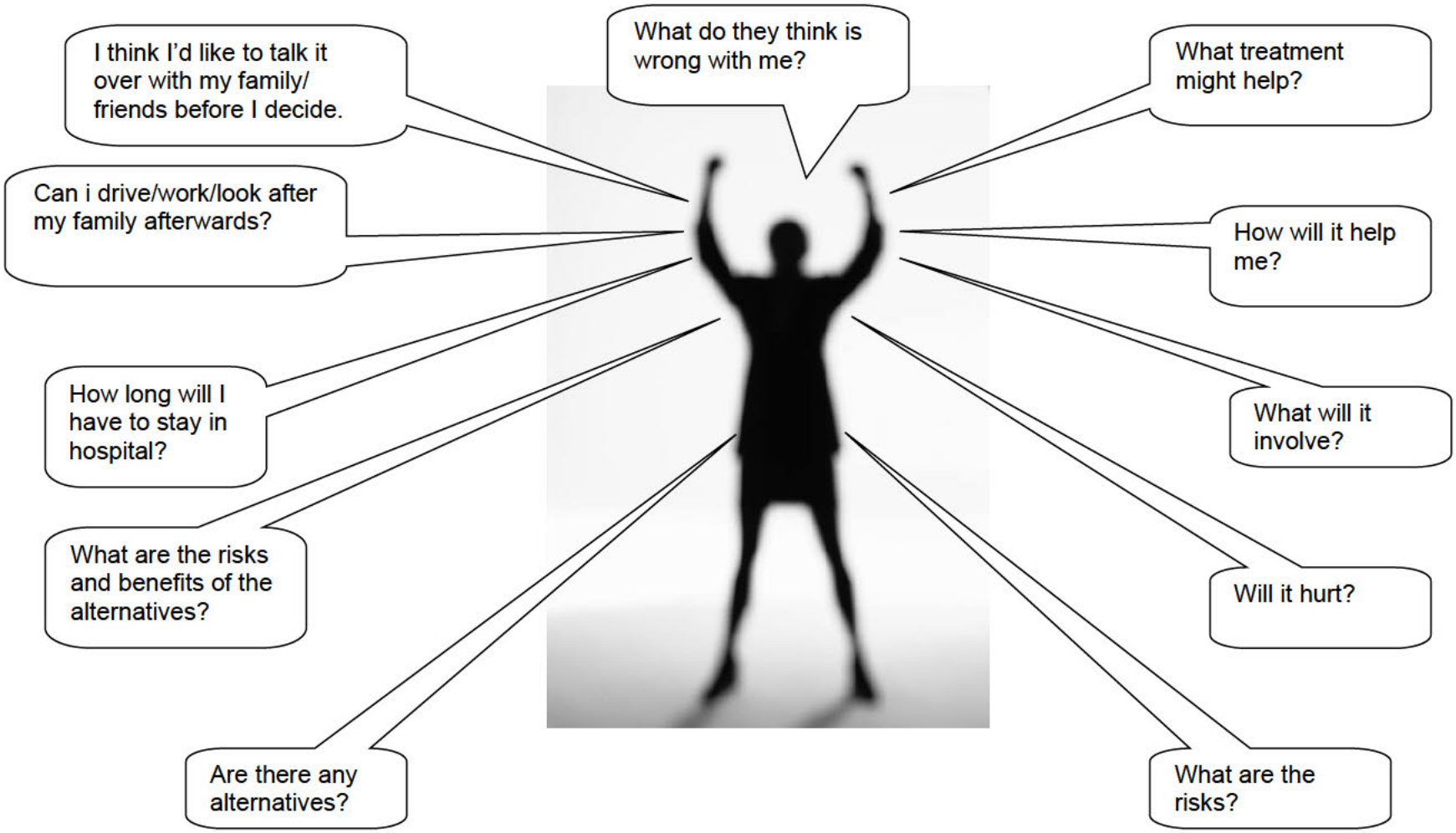
10. Competent adult patients are entitled to refuse treatment, even when it would clearly benefit their health. The only exception to this rule is where the treatment is for a mental disorder and the patient is detained under the Mental Health Act 1983. A competent pregnant woman may refuse any treatment, even if this would be detrimental to the foetus.

Adults who are not competent to give consent
11. *You must treat patients in accordance with the statutory framework set out in the Mental Capacity Act. Refer to the*: *Policy for the use of the mental capacity act (MCA)*

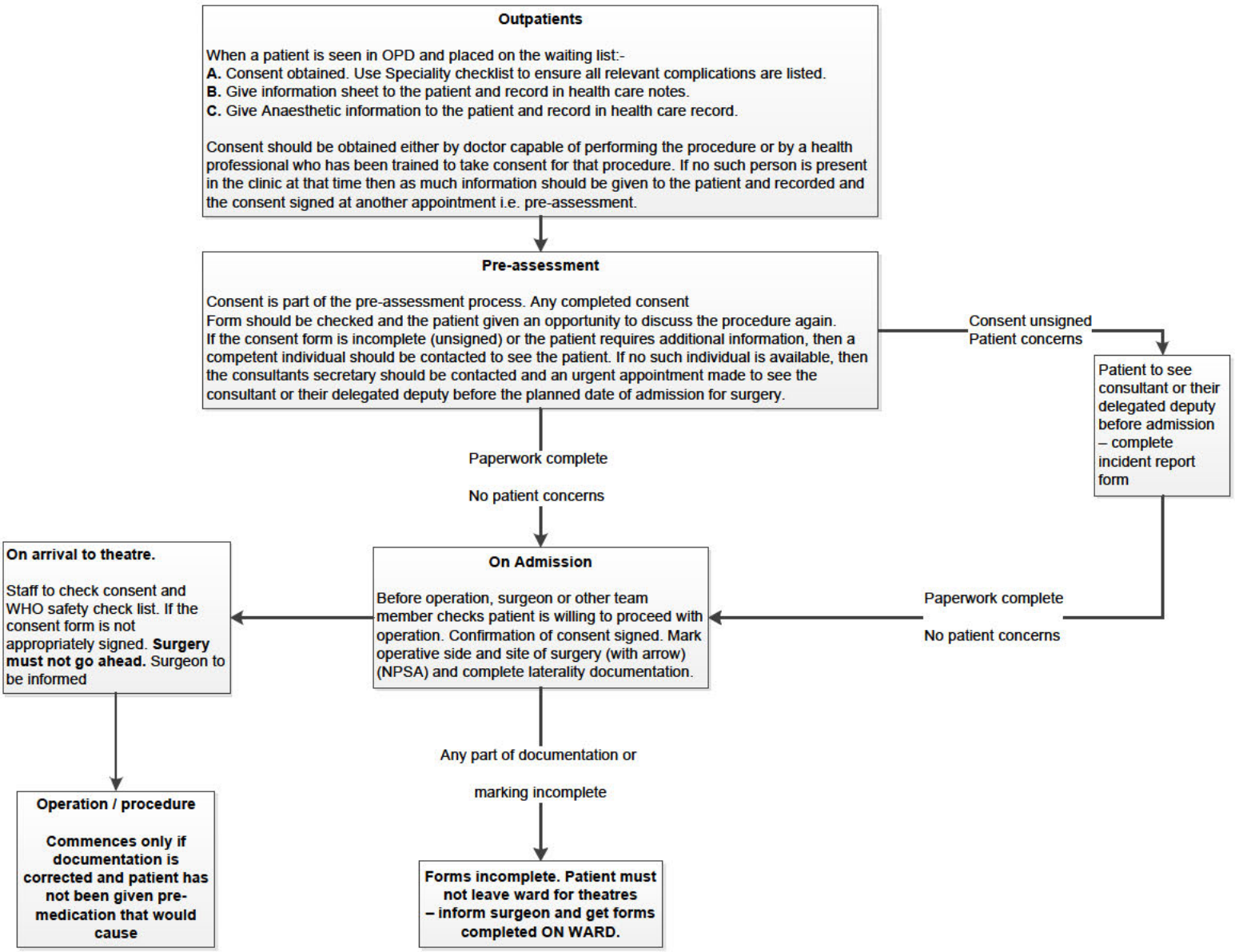
12. If an incompetent patient has clearly indicated in the past, while competent, that they would refuse treatment in certain circumstances (they have produced a valid and applicable 'advance decision to refuse treatment'), and those circumstances arise, you must abide by that refusal.

This summary cannot cover all situations. For more detail, consult the *Reference guide to consent for examination or treatment*

Appendix B: Seeing the Patient's Perspective



Appendix C: Flowchart for consent (Adult)



Appendix D: Form to Document Authorisation to take Consent

Use this form to record the procedures that a junior doctor or other Health Practitioner has been assessed as competent to obtain written consent for.

Name of Practitioner:_____

Department/Clinical Unit:_____

Grade: _____

Procedures for which the practitioner is competent to take written consent for:	**Name of Assessor**	**Date of Assessment**	**Type of Assessment**

1. Signature of Assessor: _____	Department	Date
Signature of Practitioner:		
2. Signature of Assessor: _____		
Signature of Practitioner:		
3. Signature of Assessor: _____		
Signature of Practitioner:		

The assessor will be expected to work with the individual. 3 observations need to be completed and signed as a minimum requirement

Please send a copy of this to the Division/Department Governance Lead/Officer

Appendix E: Advance decisions to refuse treatment

A person may have made an advance decision to refuse particular treatment in anticipation of future incapacity (sometimes previously referred to as a 'living will' or 'advance directive'). A valid and applicable advance decision to refuse treatment has the same force as a contemporaneous decision to refuse treatment. This is a well-established rule of common law, and the Mental Capacity Act 2005 now puts advance decisions on a statutory basis. The Act sets out the requirements that such a decision must meet to be valid and applicable. Further details are available in chapter 9 of the Mental Capacity Act (2005) Code of Practice, but in summary these are:

- The person must be 18 or over
- The person must have the capacity to make such a decision
- The person must make clear which treatments they are refusing
- If the advance decision refuses life-sustaining treatment, it must be in writing (it can be written by someone else or recorded in healthcare notes), it must be signed and witnessed and it must state clearly that the decision applies even if life is at risk
- A person with capacity can withdraw their advance decision at any time.

Healthcare professionals **must follow** an advance decision if it is valid and applicable, even if it may result in the person's death. If they do not, they could face criminal prosecution or civil liability. The Mental Capacity Act 2005 protects a health professional from liability for treating or continuing to treat a person in the person's best interests if they are not satisfied that an advance decision exists which is valid and applicable. The Act also protects healthcare professionals from liability for the consequences of withholding or withdrawing a treatment if at the time they reasonably believe that there is a valid and applicable advance decision. If there is genuine doubt or disagreement about an advance decision's existence, validity or applicability, the case should be referred to the Court of Protection. The court does not have the power to overturn a valid and applicable advance decision. While a decision is awaited from the courts, healthcare professionals can provide life-sustaining treatment or treatment to stop a serious deterioration in the patient's condition.
If an advance decision is not valid or applicable to current circumstances, healthcare professionals must consider the advance decision as part of their assessment of the person's best interests. Advance decisions made before the Mental Capacity Act came into force may still be valid if they meet the provisions of the Act. There are transitional arrangements for advance decisions to refuse life-sustaining treatment made before 1 October 2007. Further information is available on the Department of Health website.

Please see the Trust Policy for Advance Decisions

Appendix F: Medical Illustration Consent Form

Date: JMS:

Department of Medical Illustration

Medical Photography Request

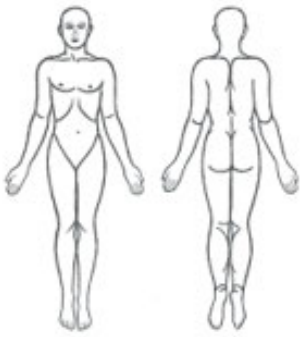
Conquest. 734862; 0300 131 4862 Eastbourne. 735813; 0300 131 5813

Surname _____

First Name _____

MRN _____ Sex _____

Date of Birth _____



Consultant/ Requestor _____

Ward/ Dept _____

Hospital: ☐ DGH ☐ CQ ☐ Other

Photographed by _____

Output Required

☐ Clinical Image Database ☐ Prints

☐ SystmOne ☐ TRIPS

☐ Other _____

Diagnosis _____

Details to be shown

_____

_____

_____

_____

Patient consent to be obtained by clinician

The General Data Protection Regulation gives you the right to control the future use of photographs taken during the course of your treatment. These photographs may be kept indefinitely. **Please sign one of the consent options below.**

I consent to photograph(s)/ video being taken for:

- My personal Medical Records only

  Signature (patient/ parent/ guardian) _____ Date _____

- Medical Records and Teaching (excluding posters) of medical, nursing and healthcare staff and students

  Signature (patient/ parent/ guardian) _____ Date _____

- Medical Records, Teaching and Publication in a research poster, open access journal, textbook or other form of medical publication (which may include the internet), and therefore, may be seen by members of the general public as well as medical professionals. I understand this may include some photographs which could be identifiable.

  Signature (patient/ parent/ guardian) _____ Date _____

Where the patient is unable to sign, this form should be signed by the patient's representative, advocate or member of clinical staff present. In this instance, recordings can be used for the patient's medical records only.

Signature _____ Date _____

Patient Consent

You have been referred to the Medical Illustration Department for clinical photographs to be taken. These photographs (or video) will form part of your medical records and may with your consent, be used for teaching medical/ professional staff. These images are stored on an Electronic Image Database

I consent to photographs being taken for:

1. My personal Medical Records.
2. Teaching medical / professional staff.

Please delete if consent not given

I understand that this consent DOES NOT extend to reproduction in any Journal or textbook, public display, internet or e-mail, should this be required my specific consent will be sought.

Signed: _____ Date: _____
(patient/guardian)

Relationship if not patient: _____

Consent gained by: _____

Position: _____ Date: _____

Patient Consent to be retained by Medical Illustration Department

Photographers Notes

Photographed by: _____

Department: _____

Date: _____ Time: _____

Medical Illustration use only	Date
Henry - Image database	
Prints:	

Department of Medical Illustration

East Sussex Healthcare NHS
NHS Trust

Image release form : public display

Photo No: _____

The form overleaf must be completed for any photographic image/video recording taken within the precincts of East Sussex Hospitals NHS Trust, with the intended use of public display. This includes: Information leaflets, posters, textbooks, journals, public relations, web pages and Email.

The consent gained must be *Informed consent*. Please ensure that a full and clear explanation is given to the subject. Details such as the intended use of the image and the audience should be included as should the name of any journal, title and topic of and posters/leaflets.

Please note and inform the subject that Email and the internet are not a secure domain and there is a possibility that the image can be intercepted and misused.

A separate release needs to be gained for each identifiable person appearing in the photograph / video recording even in general views of waiting areas and corridors.

If the subject is under 16 years old consent must be gained from a parent or legal guardian. If the subject is not competent to give consent the form should be signed by the designated next of kin.

The completed release must be returned to the Medical Illustration Department where it will be retained on file. No Photograph or video recording will be issued without a properly completed release form. The photographs / video recordings will not be passed to outside commercial companies for financial gain by individuals or the Trust.

PLEASE READ NOTES OVERLEAF BEFORE COMPLETING THIS FORM

I (full name)_____ of (address) _____

_____

give my consent to photographs/video recordings being taken of myself/(other)_____ by the staff of East Sussex Hospitals NHS Trust for (requester) _____ (Department) _____ with the intended use of (tick as appropriate):

☐ Poster display (state topic)_____ ☐ Information Leaflet (state topic)_____

☐ Textbooks (give title)_____ ☐ Medical Journal (state journal)_____

☐ Annual report/ Public relations (details)_____

☐ Web page (give details)_____ ☐ Email

☐ Other_____

Brief description of details to be shown _____

_____

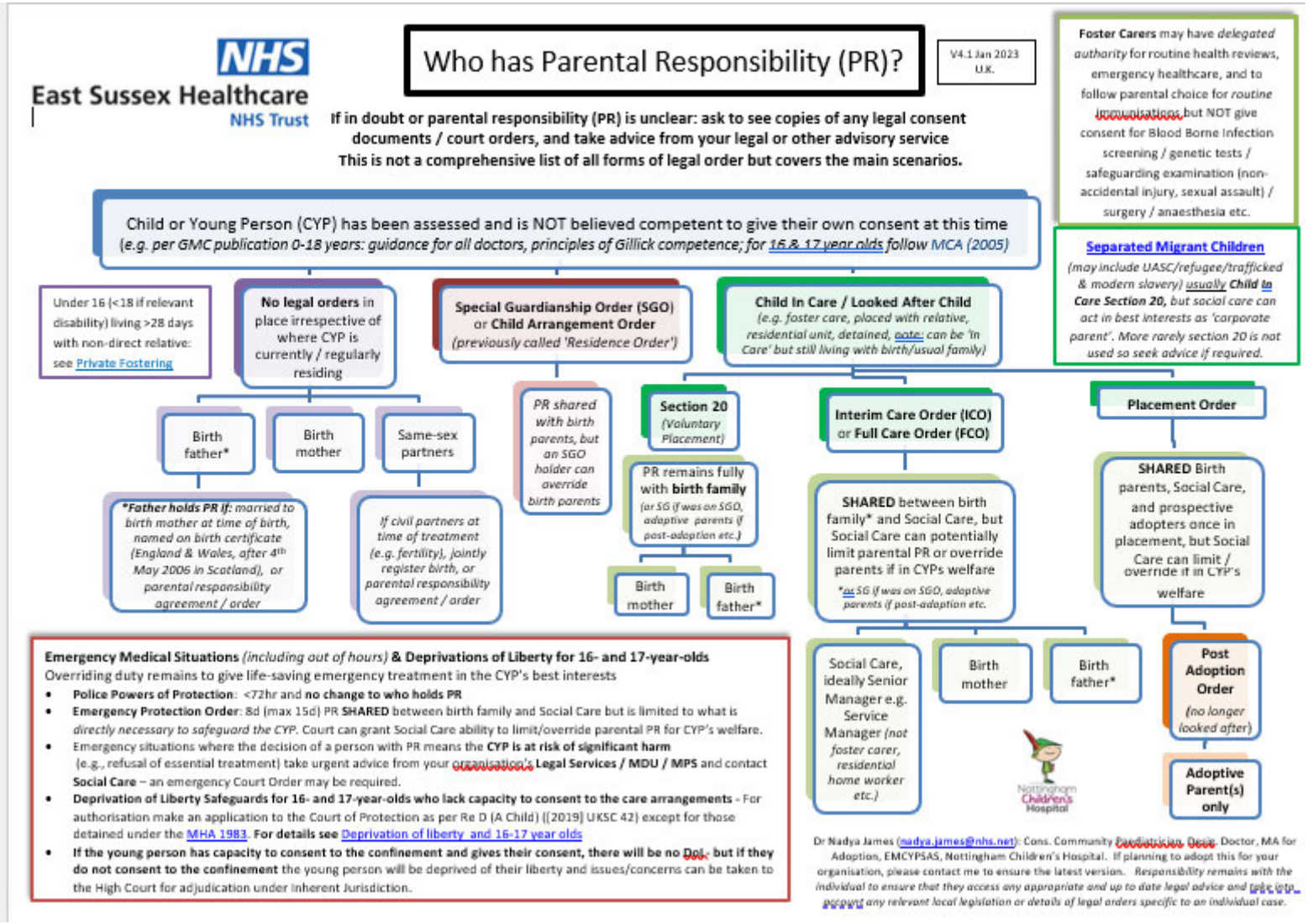
I agree to make no monetary or other claim on the said Trust and assign all rights of the photogråphs/video recordings to the Trust.

Signed _____ **Status**(circle): Patient/visitor/parent/guardian/next of kin

Date: _____ Other_____

Consent gained by: _____ Position:_____ Date: _____

Appendix G: Who has Parental Responsibility?



1 When a child is made the subject of a care order, the situation regarding who has parental responsibility may be complex. The *Local Authority* has legal responsibility for the child. However Parental Responsibility may remain with the person(s) originally holding it (for example this may be the birth mother) or be shared with the Local Authority or held exclusively by the Local Authority.

2 **Children will often be placed long term with foster carers. It is important that you involve them in any discussions but it should be remembered that they do not have legal Parental Responsibility for the child and cannot solely give consent for complex treatment.**

However, the Local Authority may delegate to the foster carer authority to consent to specific assessments/investigations. Foster carers should have this in writing.

The clinician proposing the treatment needs to determine who holds Parental Responsibility and take consent appropriately from them. If you are unclear who holds PR, safeguarding liaison nurses will be able to investigate and advise.

3 There are several types of care order and it is vital that you know which one the child is subject to:

- Section 20: the child is being "*Looked After*" under section 20 of the Children's Act. This is also known as being 'accommodated' or in 'voluntary care'. The birth parent(s) are the only ones who retain parental responsibility. The Local Authority does not have parental responsibility so an application to the court would be required if consent cannot be obtained from the person(s) originally holding Parental Responsibility.

- Section 38: the child is being *"Looked After"* under section 38 of the Children's Act. This is also known as an 'interim care order' as the case has not been completed and is still within the court. Whilst a child is under a Section 38 order parental responsibility is shared between the person(s) originally holding Parental Responsibility and the Local Authority acting on behalf of the Court.

- Section 31: the child is being "*Looked After"* under section 31 of the Children's Act. This is a Care Order where the Local Authority has been granted legal parental responsibility that is shared with the person(s) originally holding Parental Responsibility.

4. **Procedure for looked after children requiring an elective procedure.**

4.1 Obtaining valid legal consent can be complex for children who are subject to a Care Order. Clinicians must ensure they commence the procedure described below as soon as possible (for example at the outpatients appointment) to ensure there is adequate time and no unnecessary delays. Please note, Social Workers, unless given significant advance notice, will not usually be available to attend the hospital.

4.2 Specific written consent should be obtained for procedures that are:

- complex or involve significant risk
- the procedure involves general/regional anaesthesia or sedation
- providing clinical care is not the primary purpose of the procedure
- there may be significant consequences for the patient's employment, social or personal life
- the treatment is part of a project or programme of research approved by this Trust.

4.3. **Procedure:**

Please note the process for obtaining valid legal consent will take time.

1. Discuss procedure with child and foster carer.

2. Ask foster carer for name and contact telephone number of the designated Social Worker.
3. Ask for details of type of care order if known.

4. Contact Social Worker and explain the procedure and the intended benefits and risks. This must be followed up in writing explaining the purpose of the intervention, the benefits of the procedure and the procedure relevant to the individual child.

The Social Worker will require time to attempt to contact the biological parents or if necessary to discuss the procedure with the High Courts.

- If the child is subject to a Section 20 Care Order, consent will need to be obtained from the person(s) originally holding Parental Responsibility (for example this may be the birth mother) if available. Occasionally they may have already signed a generalised medical consent form for some procedures. If consent cannot be obtained from the correct person with parental responsibility, then an application to the court will be required.

- If the child is subject to a Section 38 Care Order, consent will need to be obtained from person(s) originally holding Parental Responsibility (if available), the Local Authority and or the Court.

- If the child is subject to a Section 31 Care Order, it is sufficient to obtain consent solely from the Local Authority although agreement from the person(s) originally holding Parental Responsibility should be obtained if they are available. Note health related information about the parents or wider family cannot be included/ divulged without specific parental consent.

5. For procedures that are highly complex; involve a high amount of risk or involve resuscitation orders, the High Court will be involved in directing medical intervention for a child under any care order. The High Court will be consulted through the Local Authority legal representatives. All potentially complex surgery should be discussed with the Senior Operation Manager for the Local Authority

6. Letters of Authorisation from the Local Authority/ Court and the parental consent if available will be sent to the medical team if the Social Worker is unable to attend in person. Please note that for routine surgery requiring general anaesthesia the social worker is likely to require written authorisation from the Operations Manager and will not solely be able to give consent on behalf of the Local Authority.

7. Any letter of consent/ authorisation should be filed with standard NHS consent form 3 in the child's notes.

Please Note:

Not all looked after children are under the care of East Sussex County Council. Other Local Authorities place children in residential or foster care within our area. This may further delay the process. The Social Worker should be contactable via the child's foster carer or residential unit.

In exceptional cases a child may be made a ward of court instead of having a care order. In all cases the High Court will need to be consulted through the Local Authority and their legal representatives

4.4 **Procedure for looked after children requiring an emergency procedure.**

Do not delay treatment if a delay may lead to a deterioration in the child's health, significant harm or death.

1. Discuss procedure with child and foster carer

2. Ask foster carer for name and contact telephone number of designated Social Worker.

3. During day time, and if time allows, try and contact the designated social worker and obtain verbal consent/ authorisation. Written details of the procedure and risk can be faxed/ emailed to the Social Worker and written authorisation faxed/emailed back. Document any discussion in the notes and proceed.

4. Out of standard office hours, and if time allows, contact the emergency duty social worker for verbal consent/ authorisation and fax written details of the procedure and risks. The Contact number is: 01273 335905. Document any discussion in the notes and proceed.

Please note that Foster Carer's will frequently have in their possession a Placement Part 1 form which will have the biological parents agreement to emergency medical treatment. This means that the parents have signed and agreed for the child to have emergency medical treatment.

4.5 What happens if no one with parental responsibility is available?

Examples
- Children with temporary carers such as a child minder.
- Children temporarily resident at a school
- A child brought to hospital needing emergency surgery after a road accident,
- An unaccompanied asylum seeker who is a minor,
- A child of parents who were not deemed competent to give consent (e.g. drug dependent or drunk)

In such cases, treatment can be given, without gaining specific parental consent providing it is in the child's best interests, and the child would come to significant harm if treatment was delayed.

4.5.1 Procedure:

It is important to discuss procedure with child who may be competent to consent and also discuss the procedure with any temporary carer accompanying the child. Document such discussion in the notes.

Unaccompanied asylum seekers will usually be under a Section 20 care order and therefore parental responsibility will not be conferred to the Local Authority. An accredited interpreter should be used in any discussion as English will frequently not be their first language. Please refer to the Trust Policy and Procedure for Booking Interpreters.

Document the details of the person(s) with parental responsibility and any attempts to contact them.

Delay treatment if appropriate until a person with parental responsibility is contacted and consent can be obtained. In the case of an asylum seeker who lacks capacity a Court Order will be required. Document any verbal consent if those with Parental Responsibility are unable to attend in person.

If a delay in treatment (that is clearly in the Child's best interest), is likely to lead to a deterioration in the child's health or welfare then proceed without waiting for consent from a person with parental responsibility. Document this decision clearly in the notes.

5. Monitoring Compliance

Incidents of non-compliance will be reported to the Hospital Consent Committee and reviewed on an individual basis.

Incidents of non-compliance will be monitored for race, disability, gender, religion and belief, age and sexual orientation.

6. References

Department of Health: Seeking Consent, working with children (2001)
Department of Health: Reference Guide to consent for examination or treatment (2009)
British Medical Association: Consent, rights and choices in health care for children and young people. London: BMA (2001)
British Medical Association: Parental Responsibility BMA (2009)
www.bma.org.uk/consent_and_capacity/Parental.jsp.
Department of Health: Model Consent Policy (2001)
Mental Capacity Act 2005 Code of Practice
Glass v United Kingdom, 09/03/2004 European Court of Human Rights Application 61827/00

Appendix I: Equality and Health Inequalities Impact Assessment (EHIA) template

Undertaking EHIA helps us to make sure that our services and polices do not inadvertently benefit some groups more than others, ensuring that we meet everyone's needs, and our legal and professional duties.

This is important because:

- Assessing the potential for services and policies to impact differently on some groups compared with others is a legal requirement.
- People who find it harder to access healthcare services are more likely to present later when their disease may be more progressed, have poorer outcomes from treatment, and need more services than other groups who have better access.

The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. It is against the law to discriminate against anyone because of:

- age
- gender reassignment
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion or belief
- sex
- sexual orientation.

These are called 'protected characteristics'. The Act requires that public sector organisations meet specific equality duties in respect of these protected characteristics. This is known as the public sector equality duty.

Public Sector Equality Duty

Public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees.

Public bodies must have due regard to the need to:

- eliminate discrimination
- advance equality of opportunity
- foster good relations.

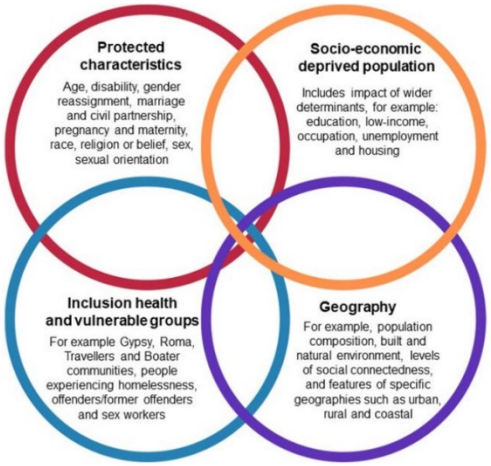
Armed Forces Covenant Duty

The new Covenant Duty raises awareness of how Service life can impact on the Armed Forces community, and how disadvantages can arise due to Service when members of that community seek to access key local services. The Duty requires organisations to pay due regard to the Covenant principles when exercising functions in healthcare. "Due regard" means that we need to consciously consider the unique obligations and sacrifices made by the Armed Forces; that it is desirable to remove disadvantages faced by the Armed Forces community; and that special provision may be justified in some circumstances.

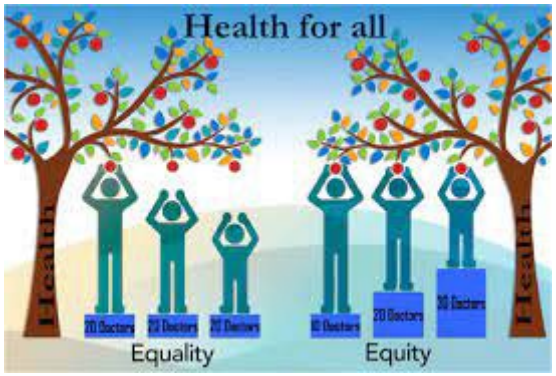
Health Inequalities Duties- Equity for all
In addition to our legal duties in relation to Protected Characteristics, the Health and Social Care Act and other legislation, NHS Planning Guidance and sector specific recommendations require the NHS to have regard to the need to address health inequalities (or differences in access to or outcomes from healthcare) and take specific action to address them.

Figure 1 shows the different population groups, factors associated with where we live, or our individual circumstances, which separately, or when combined, influence access to and outcomes from health care.

Getting equal outcomes may require different inputs (or services). In completing an EHIA its important to think about whether a one size fits all approach will generate the same good outcomes for everyone, or whether we might need to make some tweaks or adjustments to enable everyone to benefit equally. The health tree diagram shows that unless we think about the needs of different people, equal services might generate unequal outcomes.



The Health Tree[1]



The following principles, drawn from case law, explain what we must do to fulfil our duties under the Equality Act:

- **Knowledge:** everyone working for the Trust must be aware of our equality duties and apply them appropriately in their work.
- **Timeliness:** the duty applies at the time of considering policy options and/or before a final decision is taken – not afterwards.
- **Real Consideration:** the duty must be an integral and rigorous part of your decision-making and influence the process.
- **Sufficient Information:** you must assess what information you have and what is needed to give proper consideration.
- **No delegation:** the Trust is responsible for ensuring that any contracted services which provide services on our behalf can comply with the duty, are required in contracts to comply with it, and do comply in practice. It is a duty that cannot be delegated.
- **Review:** the equality duty is a continuing duty. It applies when a policy/process is developed/agreed, and when it is implemented/reviewed.
- **Proper Record Keeping:** to show that we have fulfilled our duties we must keep records of the process and the impacts identified.

[1] https://www.researchgate.net/figure/Equality-and-equity-of-medical-resources-distribution_fig2_323266914

NB: Filling out this EHIA in itself does not meet the requirements of the equality and health inequalities duties. All the requirements above must be fulfilled or the EHIA (and any decision based on it) may be open to challenge. Properly used, an EHIA can be a tool to help us comply with our equality and health inequalities duty and as a record that to demonstrate that we have done so. It is advised that you complete the short EHIA training session on MyLearn before completing this EHIA.

SECTION A ADMINISTRATIVE INFORMATION

This form is a central part of how the Trust makes sure and can demonstrate to others that we are meeting our legal duties; and how we can assure ourselves that all patients will get the best outcome for them from our services.

A completed copy of this form must be provided to the decision-makers in relation to your proposal. The decision-makers must consider the results of this assessment when they make their decision about your proposal. **Function/policy/service name and number:**	This policy sets out the standards and procedures relating to consent that this Trust expects its staff to follow in order to comply with the law and best professional practice requirements on consent. Patients have a fundamental legal and ethical right to determine what happens to their own bodies. Valid consent to treatment is therefore essential to all forms of health care, from provision of personal care to undertaking major surgery. This policy ensures that staff have due regard to the needs of people with protected characteristics when it comes to consent.		
Main aims and intended outcomes of the function/policy/service and summary of the changes you are making (if existing policy/service):	This policy sets out the standards and procedures relating to consent that this Trust expects its staff to follow in order to comply with the law and best professional practice requirements on consent. This policy has been updated with latest legislation and guidance to ensure that staff have due regard to the needs of people with protected characteristics when it comes to consent.		
How will the function/policy/service change be put into practice?			
Who will be affected/benefit from the policy?	All people attending the trust for treatment		
State type of policy/service	Policy **X**	Service	
	Business Case	Function	Existing
Is an EHIA required? NB :Most policies/functions will require an EA with few exceptions such as routine procedures	Yes		
Accountable Director: (Job Title)	Medical Director		
Assessment Carried out by:	Name: Dr Simon Walton		

Contact Details:	[redacted]
Date Completed:	16.5.24

SECTION B ANALYSIS AND EVIDENCE

Analysis of the potential impact – Equality and Health Inequalities Duties
For this section you will need to think about all the different groups of people who are more likely to experience poorer access or have poorer outcomes from health and care services. For each group please describe in the first column the potential impact you have identified, in the second column explain how you have arrived at this conclusion and what information you used to identify the potential impact, and in the third column say what you are going to do to prevent it from happening, or which elements of a service or policy specifically address the potential impact. Key things to remember.

- Everyone has protected characteristics but some groups who share one or more protected characteristics may be more likely to have poorer outcomes or access compared with others – and it is this potential that the EHIA process seeks to identify and address.
- The information included here should be proportionate to the type and size of the policy/service/change.
- An update to a policy should demonstrate that you have considered the potential for the policy to impact differently on different groups and taken steps to address that.
- A minor policy update is likely to need to be much less comprehensive than an EHIA for a major service change.
- You will need to know information about who uses or could use your service/policy will apply to (the population). You can use information about current patients or staff, and about the general population the Trust serves.

3. PROTECTED CHARACTERISTICS - Main potential positive or negative impact of the proposal for protected characteristic groups summarised
Please write in the box below a brief summary of the main potential impact (positive or negative) Please state **N/A if your proposal will not impact adversely or positively on the protected characteristic groups listed below, but make sure you include information on how you know there will be no impact.**

This policy sets out the standards and procedures relating to consent that this Trust expects its staff to follow in order to comply with the law and best professional practice requirements on consent. Patients have a fundamental legal and ethical right to determine what happens to their own bodies. Valid consent to treatment is therefore essential to all forms of health care, from provision of personal care to undertaking major surgery. This policy ensures that staff have due regard to the needs of people with protected characteristics when it comes to consent.

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
Age: older people; middle years; early years; children and young people.	This policy specifically provides guidance for the Consent process for children under 16 young people over 16 and under 18 and Children in Care.	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
Disability: physical, sensory and learning impairment; mental health condition; long-term conditions.	This policy specifically provides guidance on providing patient information in alternative formats and interpretation services e.g. for sign language. It also covers Patient who do not have mental capacity.	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009)	

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
Gender Reassignment and/or people who identify as Transgender	This policy does not have a negative impact on people who identify as transgender	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental	

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
Marriage & Civil Partnership: people married or in a civil partnership.	This policy does not have a negative impact on people who are married or in a civil partnership	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
Pregnancy and Maternity: before and after childbirth and who are breastfeeding.	This policy does not have a negative impact on people who are pregnant or who have recently given birth or breast feeding.	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
Race:	This policy does not have a negative impact on people of different race	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of	

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
Religion and belief: people with different religions/faiths or beliefs, or none.	This policy provides guidance to staff to ensure they do not impact negatively on people with religious beliefs	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance:	

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
Sex:	This policy does not have a negative impact on any specific sex.	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
Sexual orientation	This policy does not have a negative impact on people of different sexual orientation	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
Veterans/Armed Forces Communities	This policy does not have a negative impact on Veterans or the Armed Forces communities.	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of	

Protected characteristic groups	Summary explanation of the *potential* positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	

4. HEALTH INEQUALITIES -Potential positive or adverse impact for people who experience health inequalities summarised

Please briefly summarise the main potential impact (positive or negative) on people at particular risk of health inequalities (as listed below). **If the policy/procedure is unrelated to patients, this sections does not require completion.**

Please state none if you have assessed that there is not an impact, but please make sure you complete the 'how do you know this' column to demonstrate that you have considered the potential for impact. **If you identify the potential for impact for one or more of these groups please complete the full assessment in Appendix A**

Groups who face health inequalities[2]	Summary explanation of the potential positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
This includes all groups of people who may have poorer access to or outcomes from healthcare services. It includes: People who have experienced the care system; carers; homeless people; people involved in the criminal justice system; people who experience substance misuse or addiction; people who experience income or other deprivation; people with poor health literacy; people living in rural areas with limited access to services; refugees or asylum seekers; people in or who have been in the armed force; other groups who you identify as potentially having poorer access and outcomes.	This policy provides specific guidance for groups who may have poorer access to or outcomes from Health Services. In particular it covers Children in Care; patients who do not have mental capacity; And people who do not speak English as a first language	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision-	

Groups who face health inequalities[2]	Summary explanation of the potential positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		making capacity- A toolkit for doctors'	

SECTION C ENGAGEMENT

5. Engagement and consultation

a. Talking to patients, families and local communities can be a rich source of information to inform health care services. If you are making substantial changes it's likely that you'll have to undertake specific engagement with patients. For smaller changes and policies your may have undertaken some engagement with patient groups, gained insight from routine sources e.g. patient surveys, PALS or Complaints information or information from Healthwatch, you may also have looked at relevant engagement that others have undertaken in the Trust, or locally
Have any engagement or consultative activities been undertaken that considered how to address equalities issues or reduce health inequalities? Please place an x in the appropriate box below.

Yes	No
	X

b. If yes, please ensure all stakeholders are listed in the consultation table at the beginning of the policy.

SECTION D SUMMARY OF FINDINGS

Reflecting on all of the information included in your review-

6. EQUALITY DUTIES: Is your assessment that your proposal will support compliance with the Public Sector Equality Duty? Please **add an x** to the relevant box below.

	Tackling discrimination	Advancing equality of opportunity	Fostering good relations
The proposal will support?			
The proposal may support?	X	X	X
Uncertain whether the proposal will support?			

7. HEALTH INEQUALITIES: Is your assessment that your proposal will support reducing health inequalities faced by patients? Please add an x to the relevant box below.

	Reducing inequalities in access to health care	Reducing inequalities in health outcomes
The proposal will support?		
The proposal may support?		
Uncertain if the proposal will support?		

8. Outstanding key issues/questions that may require further consultation, research or additional evidence. Please list your top 3 in order of priority or state N/A

Key issue or question to be answered		Type of consultation, research or other evidence that would address the issue and/or answer the question
1	N/A	
2		
3		

9. EHIA sign-off: (this section must be signed)

Person completing the EHIA:	**Simon Walton**	**Date:16/5/24**
Line Manager of person completing:		**Date:**

Appendix A

Breakdown of Groups who are more likely to experience health inequalities:

Groups who face health inequalities[3]	Summary explanation of the potential positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
Looked after children and young people	This policy specifically provides guidance for the Consent process for children under 16 (section 6.3, young people over 16 and under 18 (section 6.2) and Children in Care (section 6.3.3).	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and	

Groups who face health inequalities[3]	Summary explanation of the potential positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		refusal by adults with decision-making capacity- A toolkit for doctors'	
Carers of patients			
Homeless people. People on the street; staying temporarily with friends /family; in hostels or B&Bs.			
People involved in the criminal justice system: offenders in prison/on probation, ex-offenders.			
People with addictions and/or substance misuse issues			
People or families on a low income			
People with poor literacy or health Literacy: (e.g. poor understanding of health services poor language skills).	People who do not speak English as a first language will require interpreter or information in their first language (section 8.1 and 8.4)	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including	

Groups who face health inequalities[3]	Summary explanation of the potential positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou **BMA Guidance: 'Consent and refusal by adults with decision-making capacity- A toolkit for doctors'**	
People living in deprived areas			
People living in remote, rural and island locations			
Refugees, asylum seekers or those experiencing modern slavery	People who do not speak English as a first language will require interpreter or information in their first language (section 8.1 and 8.4)	The policy has been developed within legislative framework that includes: The Mental Capacity Act (2005) 'Mental Capacity Act 2005 Code of Practice The Human Tissue Act (2004) The Reference Guide to Consent for	

Groups who face health inequalities[3]	Summary explanation of the potential positive or adverse impact of your proposal	How do you know this? (include here a brief explanation of what information you have used to identify potential adverse impact e.g. NICE guidance, local data, evidence reviews, stakeholder or patient feedback	Action that will be taken to address the potential for negative impact.
		Examination or Treatment, second edition 2009. (Department of Health in August 2009) The Mental Health Act (2007) including amendments to the Mental Health Act, 1983 and Mental Capacity Act, 2005. The Children Act 2004 and Children and Adoption Act 200 And following guidance: NICE Guidelines Decision-making and Mental Capacity (2018). NSPCC Gillick competency and Fraser guidelines GMC Guidance '0–18 years: guidance for all doctors' GMC Guidance 'Decision Making and Consent'variou BMA Guidance: 'Consent and refusal by adults with decision- making capacity- A toolkit for doctors'	
People who have served in the Armed Forces			
Other groups experiencing health inequalities (please describe)			

Sources of Information on the East Sussex population and sources of community or patient insight.

Population Data
State of the County 2021 Focus on East Sussex

East Sussex JSNA

Community Insight

Further Reading on Equality and Health Inequalities

Training