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Consent Policy

CP002 Common Policies

July 2023

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1. Introduction

The intention of this policy and associated procedures is to make sure all people supported in MHA’s services, and those lawfully acting on their behalf, have given consent before any care or treatment is provided. As a care provider MHA must make sure that consent is obtained lawfully and that the person who obtains the consent has the necessary knowledge and understanding of the care and treatment that they are asking consent for.

MHA colleagues will work with people supported in our services to make sure that they have the opportunity to make informed decisions about, choose and consent to their care, support, and treatment within the legal frameworks.

Note: Retirement Living colleagues must professionally assess the application of this policy and use the relevant consent form [CP002b].

1. Scope and Purpose
   1. The purpose of this policy is to set out the standards and procedures to be applied within all MHA’s services to enable colleagues to remain compliant with legal requirements, good practice guidance and regulatory conditions regarding the need for lawful consent.
   2. This policy applies to all MHA colleagues, permanent or temporary, who are involved in providing care and treatment. For further information regarding responsibility and accountability refer to section 6 Standards Operating Procedures and section 7 Roles and Responsibilities
   3. The Care Quality Commission (CQC) include consent as part of their regulatory monitoring process within the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 11 ‘Need for Consent’.
   4. Statutory guidance for Wales relates to Parts 3 to 20 of The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 which providers and responsible individuals must adhere to. Care Inspectorate Wales (CIW), as the service regulator, will monitor where service providers and responsible individuals comply and adhere to the legal requirements.
2. Definitions

| Term | Definition |
| --- | --- |
| Consent | A persons’ agreement to, or permission for, a proposed action. Particularly any form of examination, care, treatment, or support |
| Implied Consent | A form of consent that is not expressly granted by a person, but rather inferred from a person's actions and the facts and circumstances of a particular situation (or in some cases, by a person's silence or inaction). The assumed agreement is that the person would approve a course of action if asked in a given situation but is not presently able to be asked.  For example – non verbally, a person may offer their arm for a pulse to be taken |
| Informed Consent | The person must be given all the information about what the treatment involves, including the benefits and risks, whether there are reasonable alternatives, and what will happen if treatment or care does not go ahead. |
| Valid Consent | Must be voluntary and informed, the person consenting must have capacity to make the decision |
| Capacity | The ability by someone to make a specific decision for themselves in each situation.  It is assumed that anyone aged 16 or over has capacity unless proven otherwise |
| Lawfully Acting on an Individual’s Behalf | This refers to authority given under the Mental Capacity Act 2005, such as a valid and applicable advance decision to refuse treatment, Lasting Powers of Attorney for health and welfare containing relevant clauses, Court-Appointed Deputyship including relevant decision-making powers, a decision of a Court, the Mental Health Act 1983, or a best interest assessment in accordance with the Mental Capacity Act 2005. |
| Nominated Individual  (Consent) | This is usually a person identified by an individual, could be their next of kin or a significant other [CP002c] |
| Treatment | In Regulation 2(2) of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, treatment includes:   * A diagnostic or screening procedure carried out for medical purposes * The ongoing assessment of a person's mental or physical state * Nursing, personal, and palliative care, and * Giving vaccinations and immunisations. |
| Human Rights | The basic rights and freedoms contained in the European Convention on Human Rights.  The Human Rights Act 1998 means that most of the convention rights are available to everyone in the United Kingdom, regardless of their age, nationality, race, ethnicity, gender or religion and beliefs. It is an offence for a public body to breach any person's human rights, and under the Health and Social Care Act 2008, 'public body' includes any provider that supplies accommodation together with nursing or personal care on behalf of a local authority. |
| Provider | An individual person, partnership or organisation registered with CQC or CIW to carry on one or more regulated activities. |

1. Obtaining Consent

MHA Colleagues must obtain consent, from people using our services, before giving any type of care, support and / or treatment. Colleagues must make sure that the process of obtaining consent is rigorous, transparent and demonstrates a clear level of professional accountability.

* 1. Discussions about consent must be held in a way that meets people's communication needs. This may include the use of different formats or languages and may involve others such as an independent advocate. Consent may be implied and include non-verbal communication such as sign language or by someone rolling up their sleeve to have their blood pressure taken or offering their hand when asked if they would like help to move.
  2. Consent must be treated as a process that continues throughout the duration of care, support, and treatment, recognising that it may be withheld and/or withdrawn at any time. When an individual or a person acting lawfully on their behalf refuses to give consent or withdraws it, all people providing care, support and treatment must respect this
  3. For the consent to be valid, the person must -
  + have the capacity to agree or make the decision
  + have received all the facts or information to agree or make the decision
  + not be acting under duress (pressured into agreeing)

1. Lacking Capacity to Consent
   1. Where a person lacks mental capacity to make an informed decision, or give consent, colleagues must act in accordance with the requirements of the Mental Capacity Act 2005 and associated code of practice. In such situations colleagues must act in the persons’ best interest and complete the best interest process referring to MHA’s Mental Capacity and Deprivation of Liberty Safeguards policy [CP001].
   2. If the person lacks capacity and is unable to consent, the only legally recognised person is the person’s Lasting Power of Attorney or Court of Protection appointed Deputy. However, if there is no LPA / Deputy, we will consult the person’s next of kin or nominated individual as recorded on MHA’s Consent - Nominated Individual Form [CP001c]
   3. Colleagues must take into account any factors which could affect a person’s capacity to consent, for example fluctuating capacity due to illness or distress. This must be clearly recorded within an individual’s relevant support plan
2. Standard Operating Procedures

Providing information

Colleagues must provide information in a format and way that the individual can understand and should be sought by a person who has sufficient knowledge about them and about the care, support, and treatment options they are considering allowing the person to make an informed decision.

* + 1. Information should include the risks, benefits, and alternative options as well as about how they can withdraw consent if they wish. Encourage the person to get advice from others (when necessary), for example, family and friends, a doctor / financial or legal adviser.
    2. Be aware of cultural, ethnic, or religious factors that may influence decision making or communication. Consider using an interpreter for complex decisions, if possible. This should be a professional as opposed to a family member.

Recording Decisions

Individuals or their representatives should be asked to read and sign any consent agreement records and should be consulted on any changes. This includes their plan of care and support to demonstrate they have provided their consent and are in agreement with the proposed support to meet their needs, which include personal care, health, social, psychological, and spiritual needs.

* + 1. MHA’s consent documents [CP002a/b] must be completed to evidence an individuals, or their representatives, involvement, and decisions regarding consent. This should also be recorded in their relevant support plans and communicated with all colleagues involved in providing care, support, and treatment.
    2. Any administration colleagues who provide support with personal documents, including mail must also be made aware of and individuals decision regarding the management of their personal information. It is also important to record the legal status of any representatives to avoid the risk of sharing confidential information inappropriately by completing MHA’s Power of Attorney Listing [CP001a].
    3. All relevant information and documentation relating to consent and decision making must be subject to regular review and updated with involvement of the individual or their representative, as applicable.

Consent - Day to Day Support

* + 1. Where verbal consent is being sought for what are usually day to day care and support needs this should be documented in their individual records to include how it has been obtained and the individual’s response.
    2. Consent should always be sought for in relation to any proposed participation in social and community activities, either directly form the individual or as a best interest decision in discussion with their respective relatives or representatives.
    3. Any refusal to provide consent, or difficulty in obtaining consent due to possible illness, anxiety or distress should be recorded in the individual’s records, with an account of actions taken to address the consequences of the decision or difficulty.

Special Considerations

* + 1. Emergency Situations

In situations where an individual remains conscious, where possible, consent should be sought for emergency treatment, if they have capacity to be able to provide consent.

If the emergency is so significant i.e., lifesaving, the reason for the treatment must be clearly documented and reported, taking into consideration any advance decisions or DNACPR status. If an individual has representatives listed, they must be contacted immediately.

* + 1. Consent to Research Involvement

In line with published guidance on the conduct of research projects, any research conducted in an MHA Home or Scheme must be with the consent of the people involved [G108] and must have been approved by the MHA Research and Ethics Committee

* + 1. Consent to Search

Colleagues must obtain consent to search a person’s flat, apartment, room, or possessions. This must only be in exceptional circumstances such as preventing serious harm to people. Colleagues must pay particular attention to a person’s best interests, including their privacy and dignity. Colleagues must record the reasons for the search and subsequent actions in the person’s safety (care and) support plan.

1. Process for obtaining evidence of Lasting Power of Attorney (POA / LPA)
   1. All legal documents required by MHA services must be confirmed as originals. Digital confirmation (for example, accessing via a website) is not an acceptable practice. With documents such as Lasting Power of Attorney (LPA), colleagues must retain a full copy of the original or a copy that has been certified by a legal professional or Office of the Public Guardian (OPG).
   2. If the LPA form provided to MHA is stamped by the OPG stating that the form is validated, it can be accepted as proof that the LPA is official.
   3. If the individual does not have evidence of their LPA status, OR there is no stamp from the OPG (regardless of solicitor verification), the form “OPG100 - Find out if someone has a registered attorney or deputy” can be used to verify the LPA.
   4. Download and fill in the OPG100 form to find out if someone has a lasting power of attorney (LPA), an enduring power of attorney (EPA) or a court-appointed deputy acting on their behalf: [Find out if someone has a registered attorney or deputy](https://www.gov.uk/government/publications/search-public-guardian-registers)
   5. If the OPG100 form comes back as no LPA, then there is no valid LPA in place. The individual that states they have LPA should be informed.
   6. On occasion the OPG may not have logged Deputyship by the time the Court Order is presented to the care home.  If a Court Order is presented, this should be accepted as evidence of the LPA.
   7. When evidence of the LPA has been obtained (either OPG stamped or using form OPG100) a photocopy must be taken to be filed in the residents file AND sent to the finance department at central support for LPA / Deputy of Finance and Affairs.
2. Roles and Responsibilities

|  |  |
| --- | --- |
| Role | Responsibilities |
| Area Managers | * Regularly audit the use of this policy and the effectiveness of procedures to obtain consent * Monitor complaints and compliments relating to consent issues |
| Service Managers | * Provide effective communication to disseminate this policy, and any related policies, to MHA colleagues * Regularly audit the use of this policy and the effectiveness of procedures to obtain consent * Assess Compliance through monitoring and regular audit of support plans with a review of all associated documentation * Monitor complaints and compliments relating to consent issues, taking action as required including investigations |
| MHA Colleagues | * Understand the importance of obtaining consent * Always act in full compliance with this policy in seeking lawful consent * Comply with all related policies including Mental Capacity, confidentiality and data protection * Attend appropriate training * Record and report any concerns related to obtaining consent |

1. Training and Monitoring

Each line manager must ensure that all colleagues are aware of their roles, responsibilities and limitation regarding consent, mental capacity and decision making. Colleagues’ knowledge and competence will be maintained using a blended learning approach.

1. Communication and Dissemination
   1. This policy is disseminated and implemented within all MHA services through MHA’s channels of communication.
   2. Each colleague’s line manager must ensure that all teams are aware of their roles, responsibilities.
   3. This policy will be available to the people we support and their representatives in alternate formats, as required.
   4. Any review of this policy will include consultation with our colleagues, review of support planning, incident reports, quality audits and feedback from other agencies.
   5. Queries and issues relating to this policy should be referred to the Standards and Policy Team [policies@mha.org.uk](mailto:policies@mha.org.uk).
2. Impact Assessments (Inc. EDI)
   1. Equality, Diversity, and Impact Assessment to be confirmed.
3. Resources

* CP002a Consent Record Care Homes
* CP002b Consent Record Retirement Living
* CP002c Consent Nominated Individual
* CP001 Mental Capacity Decision making and Deprivation of Liberty Safeguards
* CP001a Mental Capacity Power of Attorney Listing
* IG006 Data Confidentiality
* GDPR Toolbox Talk 6 – Consent for Photos and Videos
* G108 Research Policy

Care Quality Commission (CQC) Regulation 11: Need for Consent

[Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 11](https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-11-need-consent)

Wales: Statutory Guidance for Service Providers and Responsible Individuals

[Wales - Statutory Guidance](https://www.gov.wales/sites/default/files/publications/2019-04/guidance-for-providers-and-responsible-individuals.pdf)

GOV.UK: mental capacity Act Code of Practice

[MCA 2005 Code of Practice](https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice)

1. Version Control

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| --- | --- | --- | --- | --- |
| Version | Version Date | Revision Description / Summary of Changes | Author | Next Review Date |
| 21 | 11/07/2023 | Scheduled Review  Transferred policy to new template  Removed reference to Scotland  Associated forms reformatted  CP002a/b/c | MH/DE/HP | July 2025 |
| 22 | November 2023 | Inclusion in Section 7 - Process for obtaining evidence of Lasting Power of Attorney (POA / LPA) following a review with GDPR lead and legal team | Head of Standards and Policy | July 2025 |