## CONSENT TO EXAMINATION OR TREATMENT POLICY

### Documentation Control

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<td>Approving Body</td>
<td>Trust Board</td>
</tr>
<tr>
<td>Date Approved</td>
<td>25 October 2012</td>
</tr>
<tr>
<td>Implementation Date</td>
<td>1 November 2012</td>
</tr>
<tr>
<td>Version</td>
<td>4</td>
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<td>Supersedes</td>
<td>NUH Version 3, February 2010</td>
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| Consultation | Consent Committee  
Human Tissue Management Group  
Clinical Effectiveness Committee  
Safeguarding Children’s and Vulnerable Adults Committees  
PPI Steering Group  
Directors’ Group |
| Date of Completion of Equality Impact Assessment | January 2010  
Reviewed January 2012 |
| Target Audience | All health care professionals involved in the consent to examination and treatment process |
| Supporting Documents and References | See section 29 |
| Review Date | September 2015 |
| Lead Executive | Medical Director |
| Author/Lead Manager | Consent Lead Doctor – Ext 62254  
|                     | Associate Director of Assurance – Ext 76015  
|                     | Safeguarding Vulnerable Adults/ Consent Matron - Ext 61627 |
| Further Guidance/Information | Consent Lead Doctor – Ext 62254  
|                           | Associate Director of Assurance – Ext 76015  
|                           | Safeguarding Vulnerable Adults/ Consent Manager – Ext 61627 |
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Appendices:

A - Equality impact assessment  
B - We are here for you compliance toolkit  
C – 12 key points on consent: the law in England  
D – Useful contact details  
E – Seeking a court declaration  
F – Seeking consent: remembering the patient’s perspective  
G - Definitions of parental responsibility  
H - Certification of employee Awareness
1 **INTRODUCTION**

1.1 **Policy Aims**

Patients have a fundamental legal and ethical right to determine what happens to their own bodies. Valid consent to treatment is therefore absolutely essential for all forms of health care, from providing personal care to undertaking major surgery. Seeking consent is also a matter of common courtesy between healthcare professionals and patients.

This policy aims to ensure best practice in consent by describing that patients must be provided with sufficient information to ensure they understand the nature of the proposed treatment and any alternatives, any significant, unavoidable or frequently occurring risks, the intended benefits and anticipated outcomes of treatment, before they give their consent to it, and that the patient-clinician discussion and agreement is clearly documented.

1.2 The Department of Health and General Medical Council have both issued guidance documents on consent. These should be consulted for details of the law and good practice standards on consent – [www.dh.gov.uk/consent](http://www.dh.gov.uk/consent) and [www.gmc-uk.org](http://www.gmc-uk.org).

This document sets out the NUH procedures, which aim to ensure that healthcare professionals comply with or exceed these standards.

1.3 **Key messages**

- Seeking a patient’s informed consent is a process, not a signature
- Consent must be informed, voluntary and given by a patient with capacity to do so
- Special rules apply for children, young people and patients who lack capacity
- Assessment of ‘capacity’ is decision and time specific
- Consent can be withdrawn at any time

2 **SCOPE OF THE POLICY**

2.1 This policy covers consent to examination or treatment as part of routine clinical care.
2.2 While this document is primarily concerned with the responsibilities of healthcare staff in NUH, social care colleagues in NUH should also be aware of their obligations to obtain consent before providing certain forms of social care, notably those that involve touching the patient or client.

3 ROLES AND RESPONSIBILITIES

3.1 Chief Executive

The Chief Executive has accountability for the safe treatment and care of NUH patients by its staff and contractors.

3.2 The Trust Board

The Trust Board is responsible for ensuring that sufficient resources are provided to support the requirements of this policy.

3.3 Medical Director

The Medical Director is responsible for ensuring there is an up-to-date consent policy and that compliance with the law and professional conduct surrounding consent is maintained.

3.4 Clinical Directors and their Heads of Service

Clinical Directors and Heads of Service are responsible for:

- ensuring that the requirements of this policy are included in local induction and training;
- ensuring that all healthcare professionals in their directorate/specialty understand the principles of consent outlined in this policy;
- ensuring that staff to whom consent is delegated (i.e. staff who are not capable of performing the procedure, but are trained to take consent in it) have undergone the requisite training and competency assessment and that a register of staff to whom consent has been delegated is maintained, updated regularly and subject to annual audit;
- ensuring that all health care professionals in their directorate/specialty involved in taking consent for examination or treatment undertake the Trust’s consent e-learning package as part of role-related mandatory training, as prescribed in the Trust’s training needs analysis (currently every three years)
3.5 **All healthcare professionals**

All healthcare professionals must ensure that the patient is genuinely consenting to what is being proposed. The healthcare professional carrying out the examination or treatment is ultimately responsible for ensuring valid consent has been obtained; it is they who will be held responsible in law if this is challenged later.

3.6 **Committees**

The **Clinical Effectiveness Committee** is responsible for agreeing the terms of reference and annual work plans for, and receiving reports from, the Consent Committee.

The **Consent Committee** is responsible for updating the consent policy and supporting documentation on behalf of the Medical Director; keeping up-to-date with law and practice on consent; providing expert advice on any issue relating to consent and approving corporate training on consent to examination and treatment. The Consent Committee will provide the Clinical Effectiveness Committee with six monthly reports containing evidence of audit results, recommendations and actions taken to improve practice.

The **Safeguarding Children, Young People and Vulnerable Adults Committees** will advise the Consent Committee on any specific issues relating to children, young people and vulnerable adults (eg mental capacity).

4. **EXECUTIVE SUMMARY**

4.1 Healthcare professionals must obtain valid consent before examination or treatment

4.2 Valid consent means obtaining consent from a properly informed person who has the capacity to consent, free from undue influence.

4.3 Assessment of ‘capacity’ is a two stage test involving the patient’s ability to make a particular decision at a particular time. Where a patient’s capacity is in doubt, assessment should be made in writing using the Trust’s mental capacity act two stage test documentation (this is integral to Consent Form 4) or there is a separate capacity assessment document.
4.4 For adults who lack capacity, staff should consult the Trust’s Mental Capacity Act Policy, have regard to the Mental Capacity Act Code of Practice, and be aware that the patient may have an attorney, an independent mental capacity advocate or a court appointed deputy acting on their behalf.

4.5 A patient is free and able to change their mind or withdraw their consent at any time. Patients may change their mind over time; it is for the healthcare professional to ensure that consent is still valid at the time of the procedure.

4.6 A patient is entitled to refuse consent and may also have made an advance decision to refuse treatment.

4.7 The person performing the examination or treatment is responsible for ensuring that valid consent has been given. In some specialties, other staff may seek consent provided they have been trained and assessed as competent to do so, and a register of delegated consent has been completed (see section 8.2).

4.8 Young people aged 16-17 are presumed to be able to consent for themselves. Children below 16 may be competent to give consent depending on their maturity and the nature of the decision. Where a child is not competent to give consent, only a person (or body) with parental responsibility may consent on the child’s behalf.

4.9 Consent may be non-verbal (eg. offering a wrist for taking a pulse), oral or written. Not all consent needs to be written, but written consent can provide evidence that consent has been discussed with the patient.

4.10 There are four generic consent forms for use by healthcare professionals:

- **Form 1** for consent by an adult or competent child or young person
- **Form 2** for parental consent for a child or young person
- **Form 3** for consent where it is envisaged that the patient will remain alert throughout the procedure and no anaesthetist will be involved in their care.
- **Form 4** for adults who are unable to consent to investigation or treatment, i.e. who lack capacity to consent for themselves
4.11 There are also a range of procedure-specific consent forms, approved by the Consent Committee, which combine relevant patient information with the consent form.

4.12 For photographs and video recordings, written patient consent must be obtained using the Trust’s Consent to Photography or Video recording form. Staff should refer to the Trust’s Photography and Video recordings of living patients confidentiality, consent, copyright and storage policy.

5 DEFINITIONS

<table>
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<tr>
<th>Advance decision to refuse treatment</th>
<th>Means a decision made by a patient to refuse a specific medical treatment in the circumstances set out (previously known as a living will or advance directive)</th>
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<tr>
<td>A person who lacks capacity</td>
<td>Means (as defined in the Mental Capacity Act 2005) a person who is unable to make decisions for themselves because of an impairment or disturbance in the functioning of their mind or brain whether permanent or temporary</td>
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<td>Consent</td>
<td>A patient’s agreement for a healthcare professional to provide care. For consent to be valid the patient must:</td>
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<td>• Be competent to make the particular decision</td>
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<td>• Understand information relevant to the decision and be able to retain that information and use and weigh that information in the balance as part of the process of making the decision</td>
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<td>• Have received sufficient information to make the decision</td>
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<td>• Not be acting under duress</td>
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<td>• Be able to communicate their decision</td>
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<td>Term</td>
<td>Definition</td>
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<tr>
<td>Child</td>
<td>Means for the purposes of this policy anyone under 16 years of age</td>
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<td>Court appointed deputy</td>
<td>Means a person appointed by the Court of Protection to make decisions on behalf of a person who lacks capacity</td>
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<td>Independent Mental Capacity Advocate</td>
<td>Means a person appointed to support the person who lacks capacity and represent their views but who is not empowered to make decisions</td>
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<td>Lasting Power of Attorney</td>
<td>Means a legal document, registered with the Office of the Public Guardian, appointing an attorney to act on the patient’s behalf according to the terms of the document</td>
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<tr>
<td>Parental responsibility</td>
<td>Means all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and his/her property. For persons with parental responsibility see Appendix G</td>
</tr>
<tr>
<td>Responsible healthcare professional</td>
<td>Means the clinician providing the treatment, investigation or examination. If this is not the consultant, the consultant responsible for the person’s care, the consultant will remain ultimately responsible for the quality of medical care provided¹</td>
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<tr>
<td>Young person</td>
<td>Means for the purposes of this policy a person aged 16 to 17 years of age (inclusive)</td>
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¹ DH Reference Guide to Consent, 2009, paragraph 30 at page 15
6. **VALID CONSENT**

6.1 **Valid consent**

Consent is valid if given voluntarily and by an appropriately informed person who has the capacity to consent to the intervention in question.

A patient who does not understand what the intervention or procedure involves, cannot give consent.

Consent can take many different forms, ranging from the active request by a patient for a particular treatment (which may or may not be appropriate or available) to the passive acceptance of a healthcare professional's advice.

In some cases, the healthcare 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 healthcare 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 'joint decision-making': the patient and healthcare professional need to come to an agreement on the best way forward, based on the patient’s values and preferences and on the healthcare professional’s clinical knowledge.

6.2 **What does ‘voluntarily' mean?**

It has long been a principle of English common law that consent must be given freely. This means without pressure or undue influence being brought to bear on the patient. This pressure, or attempt to influence, could come from family members, carers or other healthcare professionals. Any attempt at coercion would invalidate the consent.

The responsible healthcare professional should satisfy him or herself that the patient’s decision is truly their own.

Trust staff should be aware of the Trust’s policy on vulnerable adults, which aims to protect against abuse. The term ‘abuse' has a very wide definition and includes acts of omission and neglect as well as other forms of abuse. Full details are included in the policy.
7 **WHO CAN GIVE CONSENT?**

A person has the potential capacity to consent to an intervention if:

a) they are the patient; or  
b) someone with parental responsibility for the patient; or  
c) someone authorised to act on the patient’s behalf such as an attorney (appointed under a Lasting Power of Attorney or a Court Appointed Deputy)

7.1 **Adult patients with capacity**

Adults are always assumed to be competent to give consent unless demonstrated otherwise.

A patient who is judged competent to consent to a procedure must have

- the mental capacity to understand the nature of the procedure to which he/she is consenting; and  
- be in possession of all the material facts regarding the nature of the procedure, the significant, unavoidable and frequently occurring risks involved, including the comparative risks of different procedures; and  
- the ongoing management after the procedure.

They must also be able to communicate their decision to the treating team in some way, by speech, writing, signalling, or some other means (eg eye-pointing).

The level of understanding needed by the patient for them to have capacity to consent may vary from procedure to procedure, and an adult may therefore have capacity to consent to some interventions but not others.

7.2 **Adults without capacity**

**No adult can consent on behalf of another adult unless:**

7.2.1 They have been authorised to act on the patient’s behalf (i.e. appointed under a Lasting Power of Attorney or are a Court Appointed Deputy).

7.2.2 They are a responsible healthcare professional, in which case lack of capacity must have been established and documented by completion of the two stage test of capacity, the proposed care and treatment is
justifiably in the patient’s best interests and this is described, and has not been refused in advance in a valid and applicable advance decision.

7.2.3 For further details about advance decisions to refuse treatment see the Department of Health’s Reference Guide to consent for examination or treatment 2nd Edition (chapter 1, paragraph 47) - http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_103653.pdf and the Mental Capacity Act Code of Practice (chapter 9).

FOR MORE DETAILED GUIDANCE ON CAPACITY PLEASE REFER DIRECTLY TO THE TRUST’S MENTAL CAPACITY ACT POLICY

7.3 Adults with learning disabilities

HELP AND ADVICE FOR HEALTHCARE PROFESSIONALS TREATING PATIENTS WITH A LEARNING DISABILITY IS AVAILABLE FROM THE ACUTE LIAISON LEARNING DISABILITY TEAM ON EXT. 62562 (QMC) OR 56568 (CITY)

7.3.1 Adults with learning disabilities are presumed to be capable of taking health care decisions, including giving or refusing consent, unless the opposite has been demonstrated. Where any doubt exists, appropriate professionals should assess the capacity of the person using the two stage capacity test and best interests checklist.

7.3.2 The health care professional should involve appropriate colleagues such as specialist learning disability teams and speech and language therapists in making assessments of capacity where communication difficulties are suspected unless the urgency of the patient’s situation prevents this. If at all possible the patient should be assisted to make and communicate their own decision, for example by providing information in non-verbal ways where appropriate.

7.3.3 For further information on this, please see chapter 3 of the Mental Capacity Act Code of Practice – http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf

7.4 Patients who have self-harmed

7.4.1 Cases of self-harm present a particular difficulty for healthcare professionals. Where the person is able to communicate, an assessment of their mental capacity should be made as a matter of urgency, using the two stage capacity test and best interests checklist. If the person is
assessed as not having capacity, then they may be treated in their best interests.

7.4.2 Patients who have attempted suicide and are unconscious should be treated if any doubt exists as to either their intentions or their capacity when they took the decision to attempt suicide.

7.4.3 If a patient with capacity has harmed themselves, a prompt psychosocial assessment of their needs should be offered. However, if the person refuses treatment and use of the Mental Health Act 1983 is not appropriate, then their refusal must be respected. Similarly, if practitioners have good reason to believe that a patient genuinely intended to end their life and had capacity when they took that decision, and are satisfied that the Mental Health Act is not applicable, then treatment should not be forced upon the person although clearly attempts should be made to encourage the patient to accept help.

7.5 Young people [over 16 and under 18]

As soon as a child reaches the age of 16 he/she has the right to be treated as an adult. However, until their 18th birthday a parent can still consent on his/her behalf. The refusal of a competent person aged 16 or 17 may therefore in certain circumstances be overridden by a person with parental responsibility (see Appendix G) or by the court. This power to overrule must be exercised on the basis that the mental and physical welfare of the young person is considered first and foremost in the decision-making process.

7.6 Children [under 16]

7.6.1 Following the case of Gillick, the courts have held that children who have sufficient understanding and mental capacity to enable them to understand fully what is involved in a proposed intervention will also have the capacity to consent (or refuse consent) to that intervention.

The concept of Gillick (or Fraser) competence is considered to reflect a child’s increasing development to maturity. In some cases, for example because of a mental disorder, a child’s mental state and capacity may fluctuate significantly so that on some occasions the child appears Gillick competent in respect of a particular decision and on other occasions does not. In cases such as these, careful consideration should be given

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3 Gillick v West Norfolk & Wisbech AHA (1986) AC 112

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to whether the child is truly *Gillick* competent at any time to take this decision.

7.6.2 As the understanding required for different interventions will vary considerably, a child under 16 may therefore have the capacity to consent to some interventions but not others. Where a child under 16 but *Gillick* competent refuses treatment, such a refusal can be overruled by a person with parental responsibility or by the court. This power to overrule must be exercised on the basis that the mental and physical welfare of the child is considered first and foremost in the decision-making process.

7.6.3 A life threatening emergency may arise in situations where consultation with either the person with parental responsibly or court is impossible, or the person with parental responsibility refuses consent despite such emergency treatment appearing to be in the best interest of the child. In such cases the courts have stated that doubt should be resolved in favour of preservation of life and it will be acceptable to undertake treatment to preserve life or prevent serious damage to health.

7.7 **Children with learning disabilities**

As with adults, a child with a learning disability should not be assumed to be incapable of taking health care decisions including giving or refusing consent unless the opposite has been demonstrated. Where any doubt exists, appropriate professionals should assess the capacity of the child.

7.8 **Treatment of children and parental consent (See Appendix G for definitions of those with parental responsibility)**

7.8.1 When babies or young children are being cared for in hospital, it will not usually be practicable to seek their parents’ consent on every occasion for every routine intervention such as blood or urine tests or X-rays. However, in law, such consent is required. Where a child is admitted healthcare professionals should discuss with their parent(s) what routine procedures will be necessary, and ensure that their consent for these interventions is agreed in advance. If parents specify that they wish to be asked before particular procedures are initiated, the healthcare professional must do so, unless the delay involved in contacting them would put the child’s health at risk.

7.8.2 Only people with ‘parental responsibility’ are entitled to give consent on behalf of their children. Healthcare professionals must be aware that not all parents have parental responsibility for their children (for example,
unmarried fathers do not automatically have such responsibility although they can acquire it). If a healthcare professional is in any doubt about whether a person with the child has parental responsibility for that child, they must check.

7.9 **Specific contentious circumstances**

Specific issues may arise in relation to cases involving mental incapacity, sterilisation or Jehovah’s Witnesses. Where doubt exists regarding who may give consent, a cautious approach should be adopted (with the exception of life-threatening / emergency situations) and further advice should be sought from a member of the integrated governance team before proceeding (see Appendix D for contact numbers).

8 **WHO SHOULD SEEK CONSENT?**

8.1 **General principles**

8.1.1 The health care professional carrying out the procedure is ultimately responsible for ensuring that the patient validly consents to what is being done; it is they who will be held responsible in law if this is challenged later.

8.1.2 Where oral or non-verbal consent is being sought shortly before the procedure will be carried out, this will naturally be done by the health care professional responsible.

8.1.3 Teamwork is recognised as a crucial part of the way the NHS operates. Where written consent is being sought it may be appropriate for other members of the clinical team, who may not be competent or scheduled to do the procedure itself, to participate in the process of seeking consent, as long as they are in a position to provide all appropriate advice to the patient and answer any questions they may have about the procedure.

8.1.4 In general, specialist trainees and above are deemed capable of performing procedures and therefore competent to seek patients’ consent for those procedures. Junior doctors (more junior than specialist trainees) will not be considered competent to seek patient consent for procedures they cannot perform, unless they have first completed a formal delegated consent training package relevant to the specialty they are working in and have been formally assessed as competent to take consent for that particular procedure.
8.2 Delegation of consent for elective procedures

8.2.1 The Trust follows the principle that written consent for elective procedures will be sought by staff who are capable of performing the procedure. This generally means that it will be a consultant, specialist trainee, or sometimes a specialist nurse, who will be seeking consent for elective procedures.

8.2.2 It is recognised, however, that in some specialties it may be appropriate for consent to be delegated to a staff member who is not capable of performing the procedure. If this is judged appropriate by the senior medical staff, they are responsible for assessing the competency of the staff to whom they wish to delegate consent and it is they who must apply the following conditions:

- The individual providing the information must be conversant with the procedure and must understand the significant, unavoidable and frequently occurring risks involved
- She/he must have been trained in obtaining consent for the specific procedure and have been formally assessed and signed off as competent to take consent for the procedure
- She/he must have satisfactory communication skills
- She/he must have completed the Trust’s consent e-learning package and passed the final assessment with a score of 70% or more
- The process must be subject to an annual audit
- Adequate literature describing the procedure, its benefits and risks, and any alternatives, must always be given to the patient
- The patient must have proper access to the delegating health care professional, in order to discuss any concerns that cannot be answered by the delegated individual.

8.2.3 A register of staff to whom consent has been delegated must be maintained by the specialty/directorate and be subject to annual audit

8.2.4 Health care professionals must be aware of the limits of their own knowledge and competence. They must not perform tasks that exceed that competence (including taking consent).

8.2.5 Health care professionals who feel pressurised or asked inappropriately to seek consent should contact:

- Their Consultant / Matron
- The Head of Service for the Specialty
8.3 **Interventional Radiology**

8.3.1 Some procedures are primarily technical investigations carried out at the request of the referring clinician (e.g. invasive radiological procedures). In these cases, the referring clinician (or an appropriately trained and delegated individual) must explain to the patient how the procedure fits into the plan of care and what alternatives exist. The referring clinician (or an appropriately trained and delegated individual) must also be able to explain, in broad terms, the significant, unavoidable, or frequently occurring risks associated with the procedure for which they are being referred. These should be identified in any patient information leaflet and given to the patient.

8.3.2 On the day of the procedure, the practitioner performing the procedure must ensure that the patient is validly consenting to the procedure being undertaken, has received an explanation of the significant, unavoidable or frequently occurring risks, and be in a position to answer any further questions the patient may have about the procedure before undertaking it. The practitioner will then be in a position to confirm that valid consent has been given.

9 **GUIDANCE ON CONSENT**

9.1 The Department of Health has issued a number of guidance documents on consent and the General Medical Council (GMC) has also published a guidance document on consent. These may be consulted for advice on the current law and best practice requirements in seeking consent. Healthcare professionals must also be aware of any guidance on consent issued by their own regulatory bodies. Copies are available from the consent intranet site and from:

- QMC Campus – the Patient Advice and Liaison Service (PALS), situated adjacent to the hospital main entrance (telephone 0800 1830204)

- NCH Campus – from the Integrated Governance Team situated above James Unit (telephone 0115 9691169 ext. 56276)
9.2 ‘12 key points on consent: the law in England’ has been distributed widely to healthcare professionals working in England and is attached as Appendix C. This one-page document summarises those aspects of the law on consent that arise on a daily basis. Copies are available from www.doh.gov.uk/consent.


9.4 Mental Capacity Act, 2005 and associated Code of Practice

9.5 NUH Mental Capacity Act 2005 Policy

10 DOCUMENTING WRITTEN AND VERBAL CONSENT

10.1 For significant procedures it is essential that health care professionals document clearly both a patient’s agreement to the intervention and the discussions that led up to that agreement. This may be done either through the use of a consent form (with further detail in the patient’s notes if necessary), or through documenting in the patient’s notes that they have given oral consent.

10.2 The need for written consent

10.2.1 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.

10.2.2 It is good practice to seek written consent, particularly if any of the following circumstances apply:

- The treatment or procedure is complex, or involves significant risks (the term ‘risk’ is used throughout to refer to any adverse outcome, including those which some health care professionals would describe as ‘side-effects’ or ‘complications’)
• 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 from the procedure or its attendant significant risks
• The treatment is part of a project or programme of research (which must have been approved by this Trust)

10.2.3 Completed forms should be kept in the patient’s notes.

10.2.4 If any change is proposed to a consent described on a ‘consent to treatment’ form, the health professional agreeing the change with the patient must ensure that:

• a new consent form is completed,
• the previous consent form is made void, but retained within the health record, and
• any associated waiting list data (manual and computer-held, including operating lists) is changed.

10.2.5 If a change is made to a verbal consent and there is no written consent form, the change must be documented clearly in the health record so that there can be no doubt about the status of consent.

10.3 It will not usually be necessary to document a patient’s consent to routine and low-risk procedures, such as providing personal care or taking a blood sample. However, if a healthcare professional has 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), it would be prudent to do so.

10.4 If the patient has capacity, but has problems reading or writing, the principles of informed consent still apply. Staff should attempt to obtain a unique identifying mark or verbal consent from the patient and document this on the consent form. It would be good practice for the mark to be witnessed by a person other than the healthcare professional seeking consent and for this to be recorded in the patient’s notes.
11. **DOCUMENTATION**

11.1 **Standard Consent Forms**

Consent forms are available in all wards and departments. There are four standard consent forms:

- **Form 1** for consent by an adult or competent child or young person
- **Form 2** for parental consent for a child or young person
- **Form 3** for consent where it is envisaged that the patient will remain alert throughout the procedure and no anaesthetist will be involved in their care.
- **Form 4** for adults who are unable to consent to investigation or treatment

11.2 **Procedure-specific Consent Forms**

There are a number of procedure-specific consent forms in use within the Trust. All procedure-specific consent forms MUST be approved before use by the Trust’s Consent Committee to ensure conformity with extant DH guidance. The Consent Committee will keep a register of all procedure-specific forms they have approved.

12. **DURATION OF CONSENT**

When a patient gives valid consent to an intervention, that consent remains valid for an indefinite duration unless the patient withdraws it. However, if new information becomes available regarding the proposed intervention/procedure (for example new evidence of risks or new treatment options) between the time when consent was sought and when the intervention/procedure is undertaken, GMC guidance states that a doctor or member of the health care team should inform the patient and reconfirm their consent. 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/procedure may also have changed.
13. **SEEKING CONSENT FOR ANAESTHESIA**

13.1 Where an anaesthetist is involved in a patient’s care, it is their responsibility (not that of a surgeon) to seek consent for anaesthesia, having discussed the benefits and risks.

13.2 In elective treatment it is not acceptable for the patient to receive no information about anaesthesia until their pre-operative visit from the anaesthetist; at such a late stage the patient will not be in a position genuinely to make a decision about whether or not to undergo anaesthesia. Patients should therefore receive a general leaflet about anaesthesia from the surgeon at their outpatient, or pre-admission, clinic. The anaesthetist should ensure that the discussion with the patient is documented in the anaesthetic record, in the patient’s notes or on the consent form.

13.3 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.

13.4 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.

14. **EMERGENCIES**

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.

15. **PROVISION OF INFORMATION**

15.1 The provision of information is central to the consent process. Before patients can come to a decision about treatment, they need comprehensible and comprehensive information about their condition, about possible treatments/investigations, and about their risks and benefits (including the risks/benefits of doing nothing) and comparative risks with other procedures. 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. Refer to Appendix F for more information on the patient’s perspective.

15.2 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 care 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.

15.3 The following sources of patient information are available in this Trust:

- Patient information and consent leaflets, available on the hospital intranet site at http://nuhweb/consent/ and EIDO Healthcare: Download Centre

- Patient Advice and Liaison Service (PALS)
  QMC Campus – Hospital extension 64924. Freephone 0800 183 0204
  NCH Campus – Hospital extension 59671. Freephone 0800 052 1195

- Cancer BACUP, 1st Floor, H Block, NCH Campus – Hospital extension 59650 or Freephone 0808 800 1234

- NHS Direct - 0845 4647

- Self Help Nottingham – 0115 911 1661
  Internet site: Self Help Nottingham

15.4 The Trust has a Policy for Producing Written Patient / Carer Information which must be followed by any member of staff wishing to produce such information.

In the absence of commercially / professionally produced patient information leaflets, clinicians and departments have a responsibility to
provide local information for their patients, which must follow Trust policy.

15.5 **Provision for patients whose first language is not English, who are deaf or hard of hearing, are blind or partially sighted or who have a learning disability**

15.5.1 NUH is committed to ensuring that patients whose first language is not English receive the information they need and are able to communicate appropriately with health care staff. It is not appropriate to use children to interpret for family members who do not speak English. In some circumstances, it will not be appropriate to use other family members. If in doubt, an interpreter should be used.

15.5.2 If an interpreter is used in gaining written consent they must be asked to sign the appropriate statement on Consent Forms 1, 2 or 3.

15.5.3 Language interpreting and translation services provided by 'thebigword' can either be via face-to-face interpreters or by a telephone interpreting service. How to access these services can be found via the Trust intranet site on -

http://nuhnet/human_resources/interpreting_translation/Pages/default.aspx

- The telephone interpreting main number is 0800 8620653
- The emergency contact line number is 0800 8620625

15.5.4 NUH is committed to ensuring that patients or people with parental responsibility who are deaf or hard of hearing receive the information they need and are able to communicate appropriately with health care staff. Interpreting services can be accessed through:

- Interpreting Services for the Deaf and Hard of Hearing – Nottingham Sign Language Interpreting Service - Opening hours 9.00 a.m. – 5.00 p.m. Monday to Friday [0115 978 6984]. Out of hours [07974 396 299].

15.5.5 Provision must also be made for blind and partially sighted patients to communicate appropriately in order to obtain informed consent. The consent form should be read to the patient in full and the contents of the form talked through with the patient and the patient asked to confirm their understanding of what is being asked of them. The patient should be given the opportunity to request clarification and ask any
questions. Documentation of all communication between the healthcare professional and the patient must be entered into the medical notes.

For partially sighted patients a large print consent form should be used and consideration given to the use of a tape recorded version of the form with special consideration given to risks and benefits. This will enable the blind or partially sighted person to review the information given to them at their leisure.

As with all consent to examination and treatment, the consenting healthcare professional must satisfy themselves that the patient fully understands the proposed treatment and the potential outcomes.

15.5.6 NUH is committed to ensuring that patients who have a learning disability receive the information they need and are able to communicate appropriately with health care staff. Advice and support can be accessed from the Acute Learning Disability Liaison Team by telephoning:

0115 9249924 ext 62562 or 01159691169 ext 56568

15.5.7 An easy read version of the patient consent information can be accessed at www.easyhealth.org.uk/fileaccess.aspx?id=1096 entitled ‘Questions to Ask.’

15.5.8 The team are also a resource to support staff in planning the admission and discharge of patients with a learning disability.

15.6 Access to more detailed or specialist information

Patients may sometimes request more detailed information about their condition or about a proposed treatment than that provided in general leaflets or have a specific requirement. In such cases, information is available from the following sources;

- Patient Advice and Liaison Service [PALS]
  QMC Campus – Hospital extension 64924.
  Freephone 0800 183 0204
  NCH Campus – Hospital extension 59671.
  Freephone 0800 052 1195

- NHS Direct Online – www.nhsdirect.nhs.uk
16 ACCESS TO HEALTH CARE PROFESSIONALS BETWEEN FORMAL APPOINTMENTS

16.1 After an appointment with a health care professional in outpatients, patients will often think of further questions, which they would like answered before they take their decision. Where possible, it will be much quicker and easier for the patient to contact the health care team by phone than to make another appointment or to wait until the date of an elective procedure (by which time it is too late for the information genuinely to affect the patient’s choice).

16.2 In NUH the consenting health care professional must insert the name and telephone number of the person the patient may contact in the space provided on the relevant consent form (the patient receives a copy).

16.3 Open Access Clinics

Where patients access clinics directly, it should not be assumed that their presence at the clinic implies consent to particular treatment. Health care professionals should ensure that patients have the information they need before proceeding with an investigation or treatment. It is the responsibility of the health care professional treating the patient to ensure that the relevant information is given to the patient, and that they have the opportunity to ask questions before proceeding or refusing to undergo either investigation or treatment.

17 REFUSAL OF TREATMENT

17.1 If the process of seeking consent is to be a meaningful one (and the consent valid), refusal must be one of the patient’s options. A competent adult patient is entitled to refuse treatment, except in circumstances governed by the Mental Health Act 1983. The position of children is more complex: see the Department of Health’s ‘Seeking consent; working with children’ for more detail. Where children or parents refuse recommended treatment health care professionals should seek specialist medico-legal advice via the Trust Secretary. The following paragraphs apply primarily to adults.
17.2 If, after discussion of possible treatment options, a patient refuses all treatment, the consultant with overall responsibility must be informed and the facts should be clearly documented in the patient’s notes. If the patient has signed a consent form, but subsequently changes their mind, the health care professional should note this on the form, and request that the patient countersigns this.

17.3 Where a patient has refused a particular intervention the health care professional must ensure that they continue to provide any other appropriate care to which the patient has consented, and 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, patients should be advised accordingly.

17.4 If a patient consents to a particular procedure but refuses certain aspects of the intervention, the health care professional must explain to the patient the possible consequences of their partial refusal. If the health care professional considers that the procedure cannot be safely carried out under the patient's stipulations, they are not obliged to perform it. The health care professional must, however, continue to provide any other appropriate care.

17.5 Where another health care professional believes that the treatment can be safely carried out under the conditions specified by the patient, the original health care professional must, on request, transfer the patient's care to that health care professional.

18 CONSENT FOR THE USE OF HUMAN TISSUE

18.1 The legal position regarding the use of human tissue (including blood samples and other bodily fluids provided for testing) is described by the Human Tissue Act (HTA) 2004. Guidance has been published by the Human Tissue Authority (2006) http://www.hta.gov.uk. Such tissue can be very valuable for audit, quality assurance of diagnostic tests, education, and research. Such use may lead to developments in medical knowledge and hence improvements in healthcare for all.

18.2 The HTA recognises that tissue may be taken in a variety of circumstances. For example:

- In the course of diagnostic procedures, e.g. taking blood or urine samples, tissue biopsy, cervical screening, etc.
- In the course of a treatment or procedure, e.g. removing tissue (organs, tumours, etc) during surgery.
- When removing tissue specifically for the purpose of research.

18.3 When consent is needed

Consent from the living is needed for use (and storage) of tissue for:

- Obtaining scientific or medical information that is intended to be of principal relevance to another person, now or in future (i.e. where the purpose is storage or use in relation to another person, rather than where it might, incidentally, be of future relevance to another person)
- Research in relation to disorders or functioning of the human body
- Public display
- Transplantation

18.4 Consent for research linked to the medical record

Patients may give permission for tissue taken from them during surgery or other procedure to be used for ethically approved research that is linked to their medical record / clinical data. This can be done in three ways:

- During the normal consent process for the procedure, using the standard consent to treatment form. There is a section relating to research on the consent form and information is provided on the back. This method of consent is suitable for research that is conducted in NUH, the NHS, or Nottingham University.
- Via specially trained professionals associated with the NUH tissue bank. Consent must be taken by this route where tissue is to be made available to users outside the NHS, such as other universities and pharmaceutical companies,
- Via a research project consent (which has appropriate ethical approval).

Further information can be found in the Policy for the Management of Human Tissue for Research Purposes.

18.5 Permissible use of tissues without consent

Once tissue has been taken from living patients, for whatever purpose, it can be stored and used without consent for the following purposes:
• Clinical Audit
• Education or training relating to human health (including training for research into disorders, or the functioning of the human body)
• Performance assessment
• Public health monitoring
• Quality assurance
• Research only where (1) the research has appropriate ethical and R&D approval and (2) the tissue is anonymised so that the researcher does not have information which can identify the person from whose body the material has come (and is not likely to come into possession of such information)

18.6 **Anonymity in research on tissues**

18.6.1 In general, obtaining consent is preferable to developing systems for keeping samples anonymised (unlinked). Consented use is best practice and has the added benefit of facilitating the process of obtaining ethical approval.

18.6.2 Anonymisation does not require that samples are permanently and irrevocably unlinked from the donor (a link can be made through a third party where necessary).

18.6.3 Persons holding the tissue can themselves carry out the research on anonymised samples.

18.6.4 If members of the clinical team take part in the research, links may be retained to the relevant clinical or patient records, but they must not contain information giving direct patient identification (ie there should be an intermediate identification to preserve anonymity).

19. **RESEARCH AND INNOVATIVE TREATMENT**

19.1 The same legal principles apply when seeking consent from a person for research purposes and when seeking consent for investigation and treatment. GMC guidance advises that patients ‘should be told how the proposed treatment differs from the usual methods, why it is being offered, and if there are any additional risks or uncertainties.’

19.2 Clinical trials are covered by the ‘Medicines for Human Use (Clinical Trial) Regulations 2004.\(^4\)

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\(^4\) Medicines for Human Use (Clinical Trials) Regulations 2004, SI 1031.  
www.legislation.gov.uk/si/si2004/20041031.htm
If the treatment being offered is of experimental nature, but not actually part of a research trial, this fact must be clearly explained to a person with capacity before their consent is sought, along with information about standard alternatives. It is good practice to give a person information about the evidence to date of the effectiveness of the new treatment, both at national/international levels and in the practitioner’s own experience, including information about known possible side effects.

19.3 Where the person is an adult who lacks capacity, or a child, then the experimental treatment cannot be given, unless it is in their best interests. Where there is no alternative treatment available and the disease is progressive and fatal, it will be reasonable to consider experimental treatment with unknown benefits and risks but without significant risks of increased suffering to the patient, and where there is some chance of benefit to the patient.

20. **CONSENT REQUIREMENTS CONCERNING GAMETES**

20.1 It is a legal requirement under the Human Fertilisation and Embryology Act 1990, as amended by the Human Fertilisation and Embryology Act 2008, that consent must be obtained in writing before a person’s gametes can be used for the treatment of others, or to create an embryo *in vitro*. Consent in writing is also required for the storage of gametes. Information and an opportunity to receive counselling must be provided before the consent is given. Where these requirements are not satisfied, it is unlawful to store or use the person’s gametes for these purposes. Clinicians should ensure that written consent to storage exists before retrieving gametes.

20.2 Outside specialist infertility practice, these requirements may be relevant to health care professionals whose patients are about to undergo treatment that might render them sterile (such as chemotherapy or radiotherapy), where a patient may wish to have gametes, or ovarian or testicular tissue, stored prior to the procedure.

20.3 Health care professionals may also receive requests to remove gametes from a person who is unable to give consent. Legal advice must be sought in this event by contacting the Trust Secretary on Ext.66429.

21. **CONSENT REQUIREMENTS FOR LIVING DONATION**

The Human Tissue Authority is responsible for the regulation, through a system of approvals, of the donation from living people of solid organs,
bone marrow and peripheral blood stem cells for transplantation into others. Information on the legal requirements and how to proceed is available from the Authority – www.hta.gov.uk.

22. **CONSENT FOR CLINICAL PHOTOGRAPHY AND CONVENTIONAL OR DIGITAL VIDEO RECORDINGS**

Please refer directly to the Trust’s Photography and Video Recordings of Living Patients: Confidentiality, Consent, Copyright & Storage Policy for the consent requirements relating to clinical photography and video recordings.

23. **TRAINING**

23.1 **Corporate (clinical) induction – for doctors, nurses, midwives and allied health professionals**

The core principles of consent to examination and treatment are included in the patient safety element of this programme.

23.2 **Junior doctors – general induction**

The core principles of consent to examination and treatment are included in this programme and an e-learning package has to be completed which includes best practice in consent to examination and treatment.

23.3 **Mandatory training for consultants, SpRs, junior doctors and specialist nurses undertaking or taking consent for procedures**

a) The Level 2 Safeguarding Vulnerable Adults training programme includes training in the principles of consent and the specific consent requirements of the Mental Capacity Act 2005. It is mandatory for this training to be undertaken at three yearly intervals by all clinical staff at Nottingham University Hospitals.

b) Completion of the EIDO consent e-learning package as part of induction (for new staff) and all existing staff at three yearly intervals. The pass rate in the final assessment is 70%. If this is not attained, the test cannot be re-taken without full completion of the requisite modules in the e-learning package.
23.4 **Specialty-specific local induction programmes**

Specialty-specific local induction programmes will include:

- Awareness of the Consent to Examination or Treatment Policy
- Core principles of the consent process, including the specific requirements of the Mental Capacity Act 2005
- Written information available for patients – on specific procedures and on consent itself, including the EIDO informed consent patient information leaflets
- Identification of procedures for which the consent process may be delegated. For each individual procedure, identification of the relevant staff who will be taking delegated consent and provision of training and assessment of competence for those staff.

Records of training and evidence of competency assessments must be maintained.

24. **FURTHER ADVICE**

Advice on consent issues is available from Consultant medical staff, Clinical Leads, Matrons, Service Managers, the Trust Consent Lead Doctor, the Associate Director of Assurance or the Safeguarding Adults and Consent Matron. Please refer to **Appendix D** for further information and contact details.

25. **MONITORING THE EFFECTIVENESS OF THIS POLICY**

25.1 To ensure compliance with this policy each directorate will undertake an annual consent audit in accordance with the agreed tool and methodology.

25.2 The results of the audit will be reviewed locally and any recommendations made will be developed into an action plan and implemented.

25.3 The audit information will be evaluated by the Consent Committee to identify Trust wide themes. Where appropriate, the committee will develop recommendations and work in collaboration with directorates to ensure implementation.

25.4 The Consent Committee will provide the Clinical Effectiveness Committee with six monthly reports containing evidence of audit results, recommendations and actions taken to improve practice.
25.5 Further information and advice regarding the audit tool and methodology can be obtained from the Clinical Audit Office on extension QMC 66035 / NCH 57447.

26. **EQUALITY AND DIVERSITY STATEMENT**

All patients, employees and members of the public should be treated fairly and with respect, regardless of age, disability, gender, marital status, membership or non-membership of a trade union, race, religion, domestic circumstances, sexual orientation, ethnic or national origin, social & employment status, HIV status, or gender re-assignment.

All trust polices and trust wide procedures must comply with the relevant legislation (non exhaustive list) where applicable:

- Sex Discrimination Act (1975 amended 1986)
- Race Relations (Amendment) Act 2000
- Disability Discrimination Act (1995)
- Employment Relations Act (1999)
- Rehabilitation of Offenders Act (1974)
- Trade Union and Labour Relations (Consolidation) Act 1999
- Code of Practice on Age Diversity in Employment (1999)
- Civil Partnership Act 2004
- Fixed Term Employees - Prevention of Less Favourable Treatment Regulations (2001)
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Age) Regulations 2006
- Equality Act (Sexual Orientation) Regulations 2007

27. **EQUALITY IMPACT ASSESSMENT STATEMENT**

NUH is committed to ensuring that none of its policies, procedures, services, projects or functions discriminate unlawfully. In order to ensure this commitment all policies, procedures, services, projects or functions will undergo an Equality Impact Assessment.

Reviews of Equality Impact Assessments will be conducted inline with the review of the policy, procedure, service, project or function
28. WE ARE HERE FOR YOU STATEMENT

This Trust is committed to providing the highest quality of care to its patients, so it can pledge to them that ‘we are here for you’. This Trust supports a patient centred culture of continuous improvement delivered by our staff. The Trust established the Values and Behaviours programme to enable Nottingham University Hospitals to continue to improve patient safety, outcomes and experiences. The set of twelve agreed values and behaviours explicitly describe to employees the required way of working and behaving, both to patients and each other, which would enable patients to have clear expectations as to their experience of our services.

29. REFERENCES AND ASSOCIATED POLICIES AND PROCEDURES

- [www.doh.gov.uk/consent](http://www.doh.gov.uk/consent)
- Mental Capacity Act [2005] and Code of Practice www.dh.gov.uk
- NUH Mental Capacity Act 2005 Policy
- NUH Safeguarding Adults Policy
- NUH Consent to Post Mortem Examination Policy
- Being Open Policy
- Policy for producing written patient / carer information
- Photography and Video Recording of Living Patients Policy
Appendix A

Equality Impact Assessment Report Outline

Remember that your EIA report should demonstrate what you do (or will do) to make sure that your service/policy is accessible to different people and communities, not just that it can, in theory, be used by anyone. A one size fits all approach can often inadvertently exclude.

1. **Name of Policy or Service**
   
   Consent to Treatment

2. **Responsible Manager**

   Associate Director of Assurance

3. **Name of Person Completing Assessment**

   A Kingaby (2009)
   Reviewed by K Kirkwood (2012)

4. **Date EIA Completed**

   22 December 2009
   Reviewed 5 January 2012

5. **Description and Aims of Policy/Service (including relevance to equalities)**

   This policy aims to ensure best practice in consent by describing that patients must be provided with sufficient information to ensure they understand the nature of the proposed treatment and any alternatives, risks, benefits and anticipated outcomes of treatment before they give their consent to it, and that the patient-clinician discussion and agreement is clearly documented.

   This document sets out the NUH procedures, which aim to ensure that health care professionals comply with or exceed these standards.

   While this document is primarily concerned with the responsibilities of health care staff in NUH, social care colleagues in NUH should also be aware of their obligations to obtain consent before providing certain
forms of social care, notably those that involve touching the patient or client.

6. **Brief Summary of Research and Relevant Data**

7. **Methods and Outcome of Consultation**

    Consent Committee  
    Human Tissue Management Group  
    Clinical Effectiveness Committee  
    Safeguarding Children’s and Vulnerable Adults Committees  
    PPI Steering Group  
    Directors’ Group

8. **Results of Initial Screening** or Full Equality Impact Assessment:

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<th>Equality Group</th>
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<td>Social Deprivation</td>
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</table>
9. **Decisions and/or Recommendations (including supporting rationale)**

   This policy has clearly acknowledged and provided information and advice to staff on obtaining the consent to examination or treatment from patients in relation to the strands of equality detailed above.

10. **Equality Action Plan (if required)**

    **N/A**

11. **Monitoring and Review Arrangements (including date of next full review)**

    This policy is to be reviewed in-line with NUH guidelines
### Screening Grid

<table>
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<tr>
<th>Equality Area</th>
<th>Key Equalities Legislation / Policy (See summary sheet)</th>
<th>Is this policy or service RELEVANT to this equality area? YES / NO</th>
<th>Assessment of Potential Impact: HIGH MEDIUM LOW NOT KNOWN</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age</strong></td>
<td>Age Regulations 2006</td>
<td>Yes</td>
<td>High Low NOT KNOWN</td>
<td>The policy refers to and provides information for the consent for treatment of children and the elderly who may not have the capacity to consent. No assessment required.</td>
</tr>
<tr>
<td><strong>Gender</strong></td>
<td>Sex Discrimination Act 1975</td>
<td>No</td>
<td></td>
<td>Regardless of a person’s gender, all patients will be required to give consent to examination and treatment. No assessment required.</td>
</tr>
</tbody>
</table>
## Screening Grid

<table>
<thead>
<tr>
<th>Equality Area</th>
<th>Key Equalities Legislation / Policy (See summary sheet)</th>
<th>Is this policy or service RELEVANT to this equality area? YES / NO</th>
<th>Assessment of Potential Impact: HIGH MEDIUM LOW NOT KNOWN</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>Race Relations Act 1976</td>
<td>Yes</td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td></td>
<td>Race Relations (Amendment) Act 2000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>Equalities Act 2006</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Relevant employment legislation</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In section 15.5 of the policy, it is clearly detailed what proviso is to be made for those whose first language is not English. No assessment required.

Regardless of a person’s sexual orientation, all patients will be required to give consent to examination and treatment. No assessment required.
<table>
<thead>
<tr>
<th>Equality Area</th>
<th>Key Equalities Legislation / Policy (See summary sheet)</th>
<th>Is this policy or service RELEVANT to this equality area? YES / NO</th>
<th>Assessment of Potential Impact: HIGH MEDIUM LOW NOT KNOWN</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Religion and beliefs</td>
<td>Equalities Act 2006 Relevant employment legislation</td>
<td>Yes</td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The policy acknowledges those who may refuse to give consent on the grounds of religious belief in section 7.9 Specific contentious circumstances. No assessment required</td>
</tr>
<tr>
<td>Disability</td>
<td>Disability Discrimination Act 1995 and 2005</td>
<td>Yes</td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The policy clearly states what action is to be taken by staff if a patient is deemed as having or not having the capacity to consent. No assessment required</td>
</tr>
</tbody>
</table>
### Screening Grid

<table>
<thead>
<tr>
<th>Equality Area</th>
<th>Key Equalities Legislation / Policy (See summary sheet)</th>
<th>Is this policy or service RELEVANT to this equality area? YES / NO</th>
<th>Assessment of Potential Impact: HIGH MEDIUM LOW NOT KNOWN</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dignity and Human Rights</td>
<td>Human Rights Act 1998 (relevant articles)</td>
<td>No</td>
<td></td>
<td>All patients are required to give consent for examination and treatment and will be treated with dignity and respect. No assessment required</td>
</tr>
<tr>
<td>Working Patterns</td>
<td>The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000</td>
<td>No</td>
<td></td>
<td>No assessment required</td>
</tr>
<tr>
<td>Social Deprivation</td>
<td>Neighbourhood Renewal Strategy Tackling Health Inequalities Local Area Agreement</td>
<td>No</td>
<td></td>
<td>No assessment required</td>
</tr>
</tbody>
</table>

Consent to Examination or Treatment Policy
Version 4
October 2012
We Are Here For You Policy and Trust-wide Procedure Compliance Toolkit

The We Are Here For You service standards have been developed together with more than 1,000 staff and patients. They can help us to be more consistent in what we do and say to help people to feel cared for, safe and confident in their treatment. The standards apply to how we behave not only with patients and visitors, but with all of our colleagues too.

They apply to all of us, every day, in everything that we do. Therefore, their inclusion in Policies and Trust-wide Procedures is essential to embed them in our organization.

This toolkit has been designed for Policy Owners to assess the compliance of their Policy or Trust-wide Procedure in light of the We Are Here For You values. It is now mandatory for all Policies and Trust-wide Procedures to incorporate the We Are Here For You Values and undergo this compliance assessment.

Please complete the grid below to assess your Policy or Trust-wide Procedure. The toolkit will then advise Policy-owners on the steps they need to take to become We Are Here For You compliant.

To what extent is your Policy or Trust-wide Procedure affected by the following We Are Here For You values?

Please rate each value from 1 – 3 (1 being not at all, 2 being affected and 3 being very affected)

<table>
<thead>
<tr>
<th>1. Polite and Respectful</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whatever our role we are polite, welcoming and positive in the face of adversity, and are always respectful of people’s individuality, privacy and dignity.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Communicate and Listen</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>We take the time to listen, asking open questions, to hear what people say; and</td>
<td></td>
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</tbody>
</table>
keep people informed of what’s happening; providing smooth handovers.

### 3. Helpful and Kind

All of us keep our ‘eyes open’ for (and don’t ‘avoid’) people who need help; we take ownership of delivering the help and can be relied on.

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<tr>
<td>3</td>
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### 4. Vigilant (patients *are safe*)

Every one of us is vigilant across all aspects of safety, practices hand hygiene and demonstrates attention to detail for a clean and tidy environment everywhere.

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<tr>
<td>2</td>
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</tbody>
</table>

### 5. On Stage (patients *feel safe*)

We imagine anywhere that patients could see or hear us as a ‘stage’. Whenever we are ‘on stage’ we look and behave professionally, acting as an ambassador for the Trust, so patients, families and carers feel safe, and are never unduly worried.

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<tbody>
<tr>
<td>2</td>
<td></td>
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</table>

### 6. Speak Up (patients *stay safe*)

We are confident to speak up if colleagues don’t meet these standards, we are appreciative when they do, and are open to ‘positive challenge’ by colleagues.

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<tr>
<td>2</td>
<td></td>
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</table>

### 7. Informative

We involve people as partners in their own care, helping them to be clear about their condition, choices, care plan and how they might feel. We answer their questions without jargon. We do the

<p>| | | |</p>
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<tbody>
<tr>
<td>3</td>
<td></td>
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</tbody>
</table>
same when delivering services to colleagues.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>8. Timely</strong></td>
<td>2</td>
</tr>
<tr>
<td>We appreciate that other people’s time is valuable, and offer a responsive service, to keep waiting to a minimum, with convenient appointments, helping patients get better quicker and spend only appropriate time in hospital.</td>
<td></td>
</tr>
<tr>
<td><strong>9. Compassionate</strong></td>
<td>2</td>
</tr>
<tr>
<td>We understand the important role that patients’ and family’s feelings play in helping them feel better. We are considerate of patients’ pain, and compassionate, gentle and reassuring with patients and colleagues.</td>
<td></td>
</tr>
<tr>
<td><strong>10. Accountable</strong></td>
<td>2</td>
</tr>
<tr>
<td>Take responsibility for our own actions and results</td>
<td></td>
</tr>
<tr>
<td><strong>11. Best Use of Time and Resources</strong></td>
<td>1</td>
</tr>
<tr>
<td>Simplify processes and eliminate waste, while improving quality</td>
<td></td>
</tr>
<tr>
<td><strong>12. Improve</strong></td>
<td>1</td>
</tr>
<tr>
<td>Our best gets better. Working in teams to innovate and to solve patient frustrations</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>25</td>
</tr>
</tbody>
</table>
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 be competent 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 be competent 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 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 override 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 satisfied as much information as they reasonably need to make their decision, and in a form they can understand, their consent may not be valid.

Is the patient’s consent voluntary?

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 record the discussions that have taken place. Your Trust or organisation may have a policy setting out when you need to obtain written consent.

Refusals of treatment

10. Competent adult patients are entitled to refuse treatment, even where 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 detainted under the Mental Health Act 1983. A competent pregnant woman may refuse any treatment, even if this would be detrimental to the fetus.

Adults who are not competent to give consent

11. No one can give consent on behalf of an incompetent adult. However, you may still treat such a patient if the treatment would be in their best interests. ‘Best interests’ go wider than just medical interests, to include factors such as the wishes and beliefs of the patient when competent, their current wishes, their general well being and their spiritual and religious welfare. People close to the patient may be able to give you information on some of these factors. Where the patient has never been competent, relatives, carers and friends may be best placed to advise on the patient’s needs and preferences.

12. If an incompetent patient has clearly indicated in the past, while competent, that they would refuse treatment in certain circumstances (an ‘advance refusal’), 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, available from the NHS Business Line 08705 555 455 and at www.dh.gov.uk/consent

23/18 2P 2006 Aug 01 (COI) 24702

Appendix C
USEFUL CONTACT DETAILS

CITY HOSPITAL – 0115 9691169
QUEEN’S MEDICAL CENTRE – 0115 9249924

Consent Lead Doctor Ext. 62254

Associate Director of Assurance Ext. 76015

Safeguarding Vulnerable Adults/
Consent Matron Ext. 61627/
07812268216

Head of Clinical Quality, Risk and
Safety Ext. 76013

Clinical Quality Risk and Safety
Managers Ext. 56276

Trust Secretary Ext. 76001

Claims Manager Ext. 68474
SEEKING A COURT DECLARATION

1. When there is not a consensus on whether a particular treatment is in an incapacitated adult’s best interests and where the consequences of having, or not having, the treatment are potentially serious, a court declaration may be sought.

2. Where there are concerns about a patient’s competence (capacity) to consent or refuse treatment and the best interests of the patient is unclear, a court order can be sought.

3. In a life threatening emergency, where capacity is in doubt and consultation with either the person with overall (including parental) responsibility or a court is impossible, or where the person with overall responsibility refuses consent despite such emergency treatment appearing to be in the best interest of the individual, the courts have stated that doubt should be resolved in favour of preservation of life and it will be acceptable to undertake treatment to preserve life or prevent serious damage to health.

4. Details about how to seek a court declaration can be obtained from the Trust Secretary (Ext. 76001) or Claims Manager (Ext. 68474) during normal office hours and the on-call Director out of normal office hours (contactable via the hospital switchboard).

5. The Department of Health’s Reference Guide to Consent for Examination and Treatment is also a useful source of guidance – www.doh.gov.uk/consent.
OR CONSIDER A SECOND OPINION
Parental responsibility for children – it cannot always be assumed

According to the Children Act 1989 “parental responsibility” means all rights, duties, powers and authority which by law a parent of a child has in relation to the child and his property.

Who can have responsibility?

(1) Where a child’s father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.

(2) Before December 2003 where a child’s father and mother were not married to each other at the time of the birth the mother shall have parental responsibility for the child. The father may acquire parental responsibility by court order or by agreement with the mother (“a parental responsibility agreement”).

(3) Since December 1st 2003, where both parents register the birth together, the father assumes parental responsibility

(4) More than one person may have parental responsibility for the same child at the same time.

(5) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(6) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; except where there is a requirement for the consent of more than one person in matters affecting the child.

(7) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

(8) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(9) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child concerned.
CERTIFICATION OF EMPLOYEE AWARENESS

<table>
<thead>
<tr>
<th>Document Title</th>
<th>CONSENT TO EXAMINATION AND TREATMENT POLICY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Version (number)</td>
<td>4</td>
</tr>
<tr>
<td>Version (date)</td>
<td>October 2012</td>
</tr>
</tbody>
</table>

I hereby certify that I have:

- Identified (by reference to the document control sheet of the above policy/ procedure) the staff groups within my area of responsibility to whom this policy / procedure applies.
- Made arrangements to ensure that such members of staff have the opportunity to be aware of the existence of this document and have the means to access, read and understand it.

<table>
<thead>
<tr>
<th>Signature</th>
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</thead>
<tbody>
<tr>
<td>Print name</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Directorate/ Department</td>
<td></td>
</tr>
</tbody>
</table>

The manager completing this certification should retain it for audit and/or other purposes for a period of six years (even if subsequent versions of the document are implemented). The suggested level of certification is:

- Clinical directorates - general manager
- Non clinical directorates - deputy director or equivalent.

The manager may, at their discretion, also require that subordinate levels of their directorate / department utilize this form in a similar way, but this would always be an additional (not replacement) action.