Policy & Procedure:

Consent to examination or assessment

Introduction

Consent to examination and treatment is central to all forms of healthcare. Valid consent must always be obtained before carrying out an assessment for a person. Any action taken in the absence of consent or other legal authority may be unlawful and possibly also a crime.

Definition

Before providing care or treatment, a health professional should be satisfied that the service user has given their valid consent. Consent will only be valid if the service user has been given sufficient information to make an informed decision, they have the capacity to make such a decision and are not making the decision under duress. Consent can be given in writing, verbally or non-verbally.

In the process of obtaining consent, service users should be encouraged to ask questions and should expect professionals to answer them frankly and truthfully.

Capacity to give consent

By definition, a person who lacks capacity is unable to consent to assessment, even if they co-operate with the assessment or actively seek it.

Health professionals will apply the principles set out in the Mental Capacity Act 2005 (MCA) and the Mental Capacity Act 2005 Code of Practice when assessing whether an adult lacks the mental capacity (either temporarily or permanently) to give or withhold consent for themselves. It is the responsibility of the person carrying out the intervention to assess and determine capacity, bearing in mind the presumption of capacity principle. No one can give consent on behalf of an adult unless they have the appropriate legal authority, namely that they have been appointed as an attorney under a Lasting Power of Attorney (LPA) or are a deputy appointed by a Court. Where a person does not have the capacity to consent to treatment, has not made an advance decision to refuse treatment, and there being no one legally appointed to make the decision, a decision can be made in the person's best interest under the provisions in the MCA.

Seeking consent

The health professional carrying out the assessment is ultimately responsible for ensuring that the service user is genuinely consenting to what is being done, as it is they who could be held responsible in law if it is later challenged.

It is a health professional's own responsibility:

- Would it be worth mentioning the assessing clinician's responsibility to adequately inform the service user? Point 10 on the following document may be helpful for that end (https://www.gmc-uk.org/-/media/documents/updated-decision-making-and-consent-guidance-english-09_11_20_pdf-84176092.pdf?la=en&hash=4FC9D08017C5DAAD20801F04E34E616BCE060AAF).
- Would it be worth mentioning that assessing clinicians will make reasonable adjustments in communication to support service users to communicate their needs and to participate in their own care as fully as possible as per the Equality Act 2010? The following may be a helpful reference (https://www.cqc.org.uk/sites/default/files/20191125_9001508_briefguide-good_communication_standards_v2.pdf).
- to ensure that when colleagues seek consent on their behalf, they are confident that the colleague is competent to do so; and
- to work within their own competence, and not to agree to perform tasks that exceed that competence.

Documentation

For assessment procedures, practitioners are to document clearly both a patient's agreement to the assessment, referral details, and the discussions which led up to that agreement. This may be done either through the use of a consent form or initial assessment form. Such documents will be stored securely on the online password protected online platform.