


VCare Ltd.

# Policies & Procedures

Consent Policy & Procedure v1.0

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## Consent Policy and Procedure

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| **Policy Lead** | **Mrs. Tavleen Sharma (Registered Manager)** |
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# Purpose and Introduction

The purpose of this policy is to enable staff to comply with the legislative requirements and Department of Health guidance on obtaining valid consent to treatment, Intervention, and care so that the process is properly focused on the rights of each individual service user.

The policy describes the processes in place to ensure the VCare Consultancy Services Limited complies with the requirements of the Care Quality Commission Fundamental Standards relating to the Quality of Care, and Regulations 11 (Consent) and 17, (Good Governance) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Service Users have a fundamental legal and ethical right to determine what happens to their own bodies. Valid consent to care or treatment, based upon Service User understanding, is therefore central in all healthcare environments. Seeking consent is also a matter of common courtesy between health professionals and Service Users.

# Scope

The Department of Health has issued a range of guidance documents on consent, and these should be consulted for details of the law and good practice requirements on consent. This policy sets out the standards and procedures required by VCare Consultancy Services Limited staff, which aim to ensure that all health care professionals can comply with the guidance and legal expectations.

This policy applies to all staff who are responsible for explaining, evidencing, and taking consent or, after completing appropriate training, have responsibility for taking and evidencing consent.

The policy includes the requirements under the Mental Capacity Act 2005.

# Role and Responsibilities

**The Registered Manager** within VCare Consultancy Services Limited has overall responsibility for implementation of the Consent policy and procedure.

**Staff** within VCare Consultancy Services Limited - It is the responsibility of all staff providing treatment, intervention, or care to a Service User with capacity to ensure that valid consent has been obtained from the Service User before providing that care.

Staff have a legal duty to have regard to the provisions of the Mental Capacity Act 2005 and the Code of Practice when they must take decisions in the best interests of a Service User who lacks the mental capacity to make that decision for themselves.

# Policy objective

To ensure that all VCare Consultancy Services Limited staff (see above) are aware of their responsibility to Service Users in respect of explaining and obtaining consent before proceeding to provide any intervention, care or treatment.

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- Ensuring staff are aware of the process for obtaining valid consent, written, non-verbal and informed.
- Ensuring clear guidance and reference to the law and good practice documents are available to all staff.
- Ensuring staff are aware of their legal duties under the Mental Capacity Act 2005 in respect of care or treatment intended to be in the best interests of people who lack the capacity to make decisions for themselves.
- Ensure the interests of all Service Users and VCare Consultancy Services Limited staff is safeguarded.

## Definitions

**Good practice in consent**

It is a general legal and ethical principle that valid consent must be obtained before commencing an examination, diagnostic investigation, starting treatment or physical investigation, or providing care.

https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care

Consent is a Service User's agreement for a health professional to provide care/intervention. Service Users may indicate consent non-verbally (for example by presenting their arm for their pulse or blood pressure to be taken), orally, or in writing.

For the consent to be valid, the Service User must:

- Be competent to take the decision.
- Have received sufficient information about treatment options, consequences, and risks to take it; and
- Not be acting under duress/influence of others.
- It is made clear to the Service Users that they have the right to withdraw consent at any time.

'Seeking consent' is better described as 'joint decision-making': the Service User and health professional need to come to an agreement on the best way forward, based on the Service User's values and preferences and the health professional's clinical knowledge.

## Consent

Consent is defined as a voluntary, un-coerced decision, made by a sufficiently competent or autonomous person based on adequate information and deliberation, to accept rather than reject a proposed course of action that will affect him or her.

Consent requires a process of ensuring that the person receives sufficient information in such a manner that he or she can understand the risks, benefits, and likely consequences. The person should also be afforded sufficient time to make a full consideration of the proposal and to consult with others where possible.

Consent can be given orally, in writing or may be implied. Written consent merely serves as evidence of consent. A signature on a form will not make the consent valid if the elements of capacity and appropriate information have not been satisfied.

## Process for Obtaining Consent

Consent is a process that begins as soon as VCare Consultancy Services Limited and the service user discuss their care agreement during the initial assessment. The service user's needs will be discussed and a consent form will be signed as part of the Service User's care plan.

Prior to obtaining consent to care staff should establish if the Service User has capacity. For a person to have capacity, he/she must able to comprehend and retain information material to the decision, especially regarding the consequences of having or not having the intervention in question, the Service User must be

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able to use and weigh this information in the decision–making process.

Service Users also need to be able to communicate their decision. Capacity to consent must be assessed on a case-by-case basis. For example, just because an individual lacks capacity to consent to care, does not mean that they automatically do not have the capacity to make over decisions.

The Mental Capacity Act 2005 defines a person who lacks capacity as a person who is unable to decide for themselves because of an impairment or disturbance in the functioning of their mind or brain. It does not matter if the impairment or disturbance is permanent or temporary. A person lacks capacity if: they have an impairment or disturbance (for example a disability, condition or trauma or the effect of drugs or alcohol) that affects the way their mind or brain works, and that impairment or disturbance means that they are unable to make a specific decision at the time it needs to be made.

The Mental Capacity Act (2005) is applicable for all those who are aged 16 years and above. The assessment of capacity and the test for capacity are now set out in the Mental Capacity Act 2005. The Code of Practice to support the Act is available and staff working with people who lack capacity are required to have regard to the Code (MCA Code of Practice 2005).

https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice

For service users with communication needs VCare Consultancy Services Limited will ensure discussions take place in such a way that supports these needs ie provision of different formats or language ir the use of an independent advocate.

## Process for Recording Written Consent

The standard consent form provides space for a health professional to provide information to Service Users and to sign confirming that they have done so. The health professional providing the information must be competent to do so.

## Associated consequences

Consent is often wrongly equated with a Service User's signature on a consent form. A signature on a form is valuable evidence that the Service User has gone through a consent process and understands what is to happen but is not proof of valid consent. If a Service User is rushed into signing a form, based on too little information, the consent may not be valid, despite the signature. The health professional carrying out the procedure is ultimately responsible for ensuring that the Service User is genuinely consenting to what is being done and they will be held responsible in law if this is challenged later.

Service Users may, if they wish, withdraw consent after they have signed a form: the signature is evidence of the process of consent giving, it is not a binding contract.

Completed forms should be kept with the Service User's care plans. Any changes to a form, made after the form has been signed by the Service User, should be initialed and dated by both Service User and health professional.

## Refusal/Withdrawal of consent

If the process of seeking consent is to be a meaningful one, refusal must be one of the Service User's options. A competent Service User over the age of 16 is entitled to refuse any treatment, except in circumstances governed by the Mental Health Act.

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If, after discussion of possible treatment options, a Service User refuses all proposed interventions, this fact should be clearly documented in their notes. If the Service User has already signed a consent form, but then changes their mind, then the staff member carrying out the assessment (and where possible the Service User) should note this on the form.

## Training

All staff will be trained in the principles of consent and the Mental Capacity Act as part of their induction and will undertake a mandatory refresher course annually.

## Monitoring

The registered manager will ensure service user care plans (including consent forms) are regularly audited in line with VCare Consultancy Services Limited's Quality, Governance and Risk Policy.

## Related Policies and Procedures

- Mental Capacity Act and DoLS Policy and Procedure
- Quality, Governance and Risk Policy and Procedure
- Safeguarding Adults Policy and Procedure
- Safeguarding Children Policy and Procedure
- Freedom to Speak Up Policy and Procedure

## Legislation and Guidance

Good Practice in consent
https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care
Human Rights Act 1998
Mental Capacity Act 2005
The Care Act 2014
The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
NHS https://www.nhs.uk/conditions/consent-to-treatment/children/

CQC https://www.cqc.org.uk/guidance-providers/regulations/regulation-11-need-consent

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# Appendix 1

**Mental Capacity assessment guidance and Best Interest Decision Making checklist.**

**The Five principles of the Mental capacity act**

**What is the 'best interests' principle and who does it apply to?**
The 'best interests' principle underpins the Mental Capacity Act. It is set out in chapter 5 of the MCA Code and states that: "An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests." This principle covers all aspects of personal welfare and healthcare decision- making and actions. For full details see 1.8 to 1.11 of the MCA Code.

- **Principle 1**
  Assume a person has capacity unless proved otherwise
- **Principle 2**
  Do not treat people as incapable of making a decision unless all practicable steps have been tried to help them.
- **Principle 3**
  A person should not be treated as incapable of making a decision because their decision may seem unwise.
- **Principle 4**
  Always do things or take decisions for people without capacity in their best interests.
- **Principle 5**
  Before doing something to someone or making a decision on their behalf, consider whether the outcome could be achieved in a less restrictive way.

**Expansion of the Five Principles**

When a person in the care of professional, or paid staff, needs to make a decision, staff must start from the assumption that the person has capacity to make the decision in question (Principle 1). Every effort should be made to encourage and support the person to make the decision themselves (Principle 2) and there are several factors to assist in the decision making.

These could include:

- Does the person have all the relevant information needed to make the decision? If there is a choice, has information been given on the alternatives?
- Could the information be explained or presented in a way that is easier for the person to understand? Help should be given to communicate information wherever necessary. For example, a person with a learning disability might find it easier to communicate using symbols, pictures, photographs, videos, tapes, or sign language.

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- Are there particular times of the day when a person's understanding is better or is there a particular place where they feel more at ease and able to make a decision? For example, if a person becomes drowsy soon after they have taken their medication this would not be a good time for them to decide.
- Can anyone else help or support the person to understand information or make a choice? For example, a relative, friend or an advocate.

When there is reason to believe that a person lacks capacity to make a decision there is an expectation that the following will be considered:

- Has everything been done to help and support the person to make the decision?
- Does the decision need to be made without delay?
- If not, is it possible to wait until the person does have the capacity to make the decision for himself or herself? For example, a person may be drowsy or disorientated because of the medication they are taking.
- If the person's ability to make a decision still seems questionable then the next phase of assessing capacity should be undertaken.
- Assessment of capacity can be informal through daily conversation, but on occasions where there is concern about an individual's ability to understand health/treatment information, the assessment must be formalised and documented.
- It is accepted in law that in an emergency it would be inappropriate to lose valuable time formally assessing capacity and that emergency treatment must take precedence. Documentation of the event must always include any discussion had with the Service User where this is possible and where the Service User is deemed to have capacity. Any treatment provided must always be in the Service User's best interests in accordance with the MCA 2005.

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**Best Interest Decision Making checklist**

| |
|---|
| Service User details |
| Name and DOB:- |
| NHS Number:- |
| Home address:- |
| Location:- |
| Person completing this form – Decision Maker |
| Name:-<br><br>Organisation:- |
| Role:- |
| Email:-<br><br>Telephone:- |
| Signature:- |
| State the specific decision related to this best interest checklist |
| |
| Best interests' consultation – record your consultation with the Service User. |
| What are the issues that are most relevant to the person who lacks capacity? |
| Specify their past and present wishes, feelings and concerns in relation to this decision. |
| What are their values and beliefs (e.g. religious; cultural; moral) in relation to this decision? |
| Are there any other "relevant circumstances" that should be taken into account in this case? |
| Is there a relevant advanced statement? |

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A person may have previously recorded preferences for their future care. Such requests should be taken into account as strong indications of a person's wishes though they are not legally binding.

Use this section to record who is involved in the consultation.

You must include anyone named by the person lacking capacity as someone to be consulted, another professional, and, where appropriate, anyone engaged in caring for the person or interested in their welfare, e.g. any attorney, Court Appointed Deputy, advocate or other relevant person.

Name:

Relationship to person:

Date consultation was undertaken:

What do they consider to be in the person's best interests on the matter in question? Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?

Name:

Relationship to person:

Date consultation was undertaken:

What do they consider to be in the person's best interests on the matter in question? Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?

Name:

Relationship to person:

Date consultation was undertaken:

What do they consider to be in the person's best interests on the matter in question? Do they have any information about the person's wishes, feelings, values, or beliefs in relation to this matter?

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| Independent Mental Capacity Advocate (IMCA) involvement<br>Where the person lacking capacity has nobody that can be consulted other than paid carers and professionals and faces a decision about serious medical treatment, the law requires you to ensure an IMCA is appointed. You also have discretion to refer the person for an IMCA if this decision relates to a safeguarding concern or a care review. The role of the IMCA is to facilitate the decision making process, they are not the decision-maker. |
| Referral to IMCA service made?<br>Yes ☐No ☐ Date |
| Name of appointed IMCA:<br><br>Organisation: |
| Telephone:<br><br>Email: |
| Best interests decision – balance sheet approach: specify the different options that are being considered.<br>In deciding best interests, you must explore if there is a less restrictive way to achieve what is in the person's best interests but you do not automatically have to take whatever is the least restrictive option overall. This is because the least restrictive option might not<br>be the one that is in the person's best interests. |

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| Option one Description: |
| Benefits for the person: |
| Risks for the person: |
| Can this be achieved in a less restrictive way? |

| |
|---|
| Option two Description: |
| Benefits for the person: |
| Risks for the person: |
| Can this be achieved in a less restrictive way? |

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| Option three Description: |
| --- |
| Benefits for the person: |
| Risks for the person: |
| Can this be achieved in a less restrictive way? |

| Additional information considered by the decision-maker in making the best interests decision specified? |
| --- |
| |

| Final decision.<br>Give the reasons why this option has been selected and why other options have been rejected? |
| --- |
| |

| <u>Comments and additional information considered, include objections.</u> |
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| Decision maker: - |
| Date: - |

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