

NHS Training for
AHP Support Workers

Workbook 9: Consent



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9.1 Aim

The aim of this workbook is to introduce the Healthcare Support Worker (HCSW) to the consent process and to understand their own role in gaining valid consent.

9.2 Learning Outcomes

By the end of this workbook you will be able to:

- Describe what is meant by consent to assessment and treatment in a healthcare setting.
- Name the legislation that governs the consent process and be able to explain what it means for practice.
- Describe the three main factors required for consent to be valid.
- Define what is meant by the term 'incapacity'.
- Explain the factors that might limit the ability of a patient to provide consent and describe ways of overcoming them.
- Describe your responsibilities in relation to your organisational policy on consent.
- Identify the issues surrounding consent in relation to young people and healthcare in Scotland.
- Demonstrate that you can determine whether consent provided from a patient is valid or not.

9.3 What is meant by Consent?

Dictionary definition: “To give assent or permission (to do something); agree; accede.

NHS Scotland defines “seeking consent” as being better described as “joint decision making”. In many cases that patient and the healthcare professional need to come to an agreement on the best way forward based on the patients values and preferences and the health professionals clinical knowledge. Your local consent policy will provide further information.

Why is consent important?

It is a fundamental ethical principle that every person has the right to determine what happens to their own body. This is particularly important for patients who are vulnerable. Patients should be given the choice of whether they wish to have therapy or not. There are three main factors relating to the decision to consent. These factors must be present for consent to be considered valid.

1. Possessing sufficient information relevant to the decision to be made, i.e. informed consent.

Information should be provided in a form that the patient is able to understand. Reasonable steps should be taken to ensure that the patient understands the nature, purpose and likely effects (including any side effects) of the proposed intervention and also the consequences of non-intervention. The patient should have the opportunity to ask questions and be encouraged to do so.

Therapy planning and goal setting should be a joint decision made by the patient and the therapist in partnership. Patients must be informed of their right to decline treatment at any stage without it prejudicing their future care. Patients have the right to make choices and decisions about their own health

and independence. Such choices should be respected, even where they conflict with professional opinion. The decision and reason for the decision should be documented. After initial assessment the therapist should make the patient aware that a proposed intervention is to be carried out by a support worker and ensure that the consent is obtained.

2. The individual providing consent has the capacity to make the decision and understand the consequences of the decision.

For a person to have capacity to consent, he or she must be able to comprehend and retain information material to the decision, especially to the consequences of having or not having the intervention in question. They must be able to use and weigh up this information in the decision making process. Thus patients may have the capacity to consent to some interventions and not to others. Finally they must be able to communicate their decision. A patient's capacity can be judged by the "stage 3 test".

- Can the patient understand and retain the information?
- Is the patient orientated in reality i.e. does he / she believe the information?
- Can the patient weigh the information in the balance to arrive at an informed decision?

3. The decision was made voluntarily and was free from coercion

Although in some environments patients may require encouragement to comply with rehabilitation, in the end it must be the patient's decision to comply or not with the intervention. If a patient, with capacity, makes it clear verbally or by gesture that they do not give their consent to intervention, then the intervention should not take place. Patients have the right to withdraw consent at any time during a treatment session or a period of rehabilitation.

9.4 The Law and Consent

According to Scottish Law, a person aged 16 or over is deemed to be of an age where they are competent to consent to treatment unless demonstrated otherwise. Within England this age is 18. A refusal of treatment by a competent person aged 16+, as an adult in Scottish Law, cannot be overridden.

The Adults with Incapacity (Scotland) Act 2000 safeguards the welfare of adults, aged 16 or over, who lack the capacity to take some or all decisions for themselves because of mental disorder or inability to communicate by any means. No other person can consent on behalf of another adult, even when that person lacks capacity. However, it allows treatment to be given to a person who lacks capacity on the basis that the treatment is in the patient's best interests. The medical practitioner responsible for the patient must certify that in his / her opinion the patient is incapable in relation to a decision about the medical treatment in question.

The act states that all decisions made on behalf of an adult with impaired capacity must:

- benefit the adult in question
- take account of the adult's wishes and the wishes of the nearest relative or primary carer, any guardian or attorney
- restrict the adult's freedom as little as possible while still achieving the desired benefit
- encourage the adult to use existing skills or develop new skills

The act allows medical treatment to be given to safeguard or promote the physical or mental health of an adult who is unable to consent.

Power of Attorney is where a person is appointed to act on, and make decisions, on behalf of another person. A person with power of attorney is usually appointed where a person is anticipating permanent incapacity or has to deal with periods of temporary incapacity.



Describe what you understand by the term “consent”.

Name a piece of legislation that governs consent.

What is meant by incapacity?

What does the law say about consent in relation to young people and in relation to adults with incapacity?

What do you think the need to obtain consent means for your practice as a support worker?

Identify three main factors required for consent to be valid.

9.5 Patients with Mental Health Conditions or Learning Disabilities

Where a patient has a diagnosed mental disorder it should not be assumed that he / she are incompetent. Capacity should be determined using the principles already outlined. Patients with learning disabilities may be competent to make some or all decisions about their own treatment.

9.6 Patients with Communication Difficulties

Communication difficulty should not be confused with incompetence. Every reasonable effort should be made to facilitate communication so that the patient remains in control over his / her treatment decisions e.g. allowing more time for discussion.



Describe ways that problems with communication could be overcome.

From your own practice, provide an example of how communication difficulties were overcome. How do you think this influenced the patient's ability to provide consent?

Remember patients can say "no" using means other than verbal and very often gesture and body language can clearly be used to indicate refusal to consent. Where communication is a problem, the therapy worker requires to be sensitive to situations where a patient may wish to withdraw previous consent.

Who should obtain consent?

The therapist providing the treatment should obtain consent. This task may be delegated, although the person to whom it is delegated must have sufficient knowledge of the risks / benefits involved in the proposed intervention in order to provide the patient with enough information to make an informed decision.

Consent to being treated by another

It is not required by law to gain the patient's consent to treatment by a particular person e.g. a student or an assistant since the nature or purpose of the intervention remains the same (unless an intervention is performed for learning rather than therapeutic purposes). However, the patient does have a

general right to refuse treatment by other persons and as a matter of good practice the patients consent should be obtained.



Give an example in your area of how and when patients consent to treatment would be sought.

Why do you think it would be important to obtain consent to treatment by another member of the therapy team?

9.7 Other Issues Affecting the Informed Consent Process

The Balance of Power

Patients are often in an undressed state, in bed or on a plinth; the therapist is dressed in a uniform and often in a standing position. This means that the therapist is in a position of power and the patient in a position of submission. Additionally the patient may be in pain, anxious and feeling vulnerable in unfamiliar surroundings. It is necessary to reduce this imbalance of power as much as possible.



Activity

Describe practical ways in which this imbalance of power could be addressed.

Environment

Hospitals and therapy departments can be intimidating places and patients may need to be reassured and supported while they become accustomed to unfamiliar surroundings. In the domiciliary setting, the patient may be in the dominant position and sensitivity to the situation is needed to ensure that the appropriate flow of information takes place and the therapeutic relationship is established.

Consent for Sharing of Information

In order to provide an individual with the best possible care, it may be necessary to share information about that individual with other professionals in health, housing, social work and other care providers. Prior to information being shared, the consent of the individual to do so should be obtained and documented on the relevant E-Care form. Guidance for Health and Local Authority Staff in Sharing Information (2005) should be referred to for further information. It should be noted that information sharing is crucial in child protection. For issues around consent in these circumstances see your local Child Protection Policy.

Consent for Research

Patients who may be potential research subjects must make an informed decision as to whether to enrol or continue to participate in any study. Subjects require to be fully informed about the process of research, its procedures, potential risks, potential benefits and alternatives. They should be given the opportunity to ask questions and also be informed of their right to decline to participate in the study at any time without prejudicing their future care.

Consent for Photography and Video Recordings

Confidentiality is the patients right and in order to ensure the patients right to confidentiality are preserved, NHS Scotland requires that patients informed and written consent are obtained.

Documentation

Professional bodies for AHPs e.g. British Dietetic Association (BDA) and Chartered Society of Physiotherapy (CSP) are recommending that consent to assessments and treatment is verbally agreed and documented at the beginning of the episode of treatment. Any subsequent refusal to comply with treatment should then be documented. The College of Occupational Therapy (COT) also recommend consent is documented throughout the assessment and intervention period on a regular basis. Examples of intervention where written consent is essential for Physiotherapy includes:

- Acupuncture
- Grade V mobilisations
- Nasopharyngeal suction (if not life threatening)
- Pelvic floor examination

Although support workers would not be treating patients with the above modalities, they may be involved in a supportive role and should therefore be aware of the recommendations. Individual health boards and departments may have specific protocols relating to the recording of consent and you should therefore refer to your local policy or guidelines.

Important issues relating to religious belief and culture must also be considered. Patient liaison committees can provide literature setting out their policy and members of the local Jehovah's Witness community should be consulted in areas of doubt.



Describe the main requirements of your departmental policy for documentation of consent to assessment / treatment.

What does it mean for your practice?

Young People's consent to therapy in Scotland

The Age of Legal Capacity (Scotland) Act 1991 section 2.4 states that “a person under the age of 16 years shall have the legal capacity to consent on their own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending, her / she is capable of understanding the nature and possible consequences of the treatment.”



Describe two scenarios where you think that an average child of 12 would be able to give informed consent to a therapy or medical intervention and two where you think that they would not be competent to make a decision.

Able

Not Competent

Describe a scenario in your area of work where you would be able to obtain valid consent from a patient and another where it was less clear.

Able

Less Clear

9.8 Consent Workbook Completion

Your mentor / supervisor will sign your portfolio to indicate that you have completed this workbook successfully.

Objective	Supervisors Signature	Date
Describe what is meant by consent		
Naming legislation that governs Consent		
Describe factors required for consent to be valid		
Define what is meant by incapacity		
Explain the factors that might limit a patients ability to provide consent		
Describe own responsibilities in relation to own organisational policy on consent		
Identify issues surrounding consent For young people		
Determine whether consent provided from a patient is valid or not		

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Support worker (name)	
Support workers signature	
Supervisor (name)	
Supervisors signature	
Date	

9.9 Consent Reflection

Suggested KSF Dimensions: C1 and C6

This form should be placed in the appropriate section of your portfolio.

What did you learn from this module?

How has this influenced your work?

Date module completed

