SERVICE USER CONSENT AND CAPACITY PROCEDURE

PRN-122: Service User Consent and Capacity Procedure
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1. Purpose

This procedure provides guidance for employees and volunteers on obtaining consent, supporting decision-making, and responding appropriately where there may be concerns regarding a service user's capacity to make decisions.

The procedure aims to ensure that:

- Individuals are supported to make their own decisions wherever possible.
- Valid consent is obtained before support is provided.
- Rights, independence, and dignity are protected.
- Legal requirements under the Mental Capacity Act 2005 are followed.
- Capacity concerns are identified and escalated appropriately.

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2. Scope

This procedure applies to:

- Employees
- Volunteers
- Managers
- Directors
- Trustees

It applies when:

- Providing companionship support.

- Planning activities.
- Sharing information.
- Making referrals.
- Obtaining consent for support services.
- Identifying concerns about decision-making ability.

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3. Guiding Principles

All employees and volunteers must follow the five principles of the Mental Capacity Act 2005:

Principle 1

Every adult is presumed to have capacity unless established otherwise.

Principle 2

Individuals should be supported to make their own decisions.

Principle 3

People have the right to make unwise decisions.

Principle 4

Any decision made on behalf of a person lacking capacity must be in their best interests.

Principle 5

Any action taken must be the least restrictive option available.

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4. What is Consent?

Consent means giving permission or agreement for something to happen.

For consent to be valid it must be:

Voluntary

Given freely without pressure, coercion, or undue influence.

Informed

The person must understand what they are agreeing to.

Specific

Consent should relate to a particular activity, action, or decision.

Given by a Person with Capacity

The individual must be able to make the decision at the time consent is sought.

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5. Types of Consent

Verbal Consent

Agreement communicated verbally.

Example:

"I am happy for you to visit me weekly."

Written Consent

Obtained through signed forms or written agreements.

May be required for:

- Service agreements
- Information sharing
- Photography
- Referrals

Implied Consent

Consent demonstrated through actions or behaviour.

Example:

A service user willingly attending an agreed activity.

Where there is doubt, explicit consent should always be sought.

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6. When Consent Must Be Obtained

Consent should normally be obtained before:

- Providing services.
- Sharing personal information.

- Referring to external agencies.
- Taking photographs or recordings.
- Involving family members in discussions.
- Participating in activities.
- Collecting personal information.

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7. Obtaining Consent

Employees and volunteers should:

Step 1

Explain:

- What is being proposed.
- Why it is needed.
- Possible outcomes.
- Any alternatives available.

Step 2

Check understanding.

Step 3

Allow time for questions.

Step 4

Confirm the individual's decision.

Step 5

Record consent appropriately.

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8. Supporting Decision-Making

Individuals should be given every opportunity to make their own decisions.

Support may include:

- Using plain language.
- Providing information in accessible formats.

- Allowing additional time.
- Repeating information where required.
- Using visual aids.
- Involving advocates where appropriate.

Support should maximise independence and participation.

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9. Identifying Potential Capacity Concerns

Employees and volunteers may identify concerns where an individual appears unable to:

- Understand information.
- Retain information long enough to make a decision.
- Weigh relevant information.
- Communicate their decision.

Concerns should be reported to a manager for further consideration.

Employees and volunteers must not undertake formal capacity assessments unless specifically trained and authorised.

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10. Indicators That Further Assessment May Be Required

Indicators may include:

- Significant confusion.
- Memory difficulties.
- Cognitive impairment.
- Dementia.
- Acquired brain injury.
- Severe mental illness.
- Inability to understand information relevant to decisions.

The presence of these factors does not automatically mean a person lacks capacity.

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11. Decision-Specific Capacity

Capacity is decision-specific.

A person may have capacity to:

- Choose activities.
- Decide who they spend time with.
- Consent to companionship visits.

But may require support with more complex decisions.

Capacity should never be judged on appearance, age, diagnosis, or assumptions.

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12. Fluctuating Capacity

Some individuals may experience fluctuating capacity.

Examples include:

- Mental health conditions.
- Delirium.
- Effects of medication.
- Temporary illness.

Where possible:

- Important decisions should be delayed until the individual can participate.
- Capacity should be reassessed at appropriate times.

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13. Refusal of Consent

Individuals with capacity have the right to refuse:

- Support.
- Referrals.
- Activities.
- Information sharing.

Employees and volunteers should:

- Respect the decision.
- Ensure the individual understands potential consequences.

- Record the refusal.
- Inform management where appropriate.

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14. Information Sharing and Consent

Consent should normally be obtained before sharing personal information.

Employees and volunteers should explain:

- What information will be shared.
- Why it will be shared.
- Who it will be shared with.

Consent should be clearly documented.

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15. When Information May Be Shared Without Consent

Information may be shared without consent where:

- There are safeguarding concerns.
- Serious harm may occur.
- Criminal activity is suspected.
- A legal obligation exists.
- Public protection concerns arise.

Any decision to share information without consent should be justified and recorded.

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16. Best Interests Decisions

Where an individual lacks capacity for a particular decision, decisions should be made in their best interests.

Best interests considerations may include:

- The person's wishes and feelings.
- Their values and beliefs.
- Views of family and carers.
- Views of professionals involved.
- Less restrictive alternatives.

The individual should be involved as much as possible.

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17. Role of Family Members

Family members may provide valuable information and support.

However:

- Family members cannot automatically make decisions on behalf of another adult.
- Appropriate authority must exist where legal decision-making powers apply.
- The service user's rights remain central.

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18. Role of Independent Advocates

Advocacy support may be considered where:

- An individual has substantial difficulty participating.
- There is no appropriate family or friend to support them.
- Significant decisions are being considered.

Advocates help ensure the person's voice is heard.

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19. Recording Consent

Records should include:

- Date.
- Decision being consented to.
- Information provided.
- Consent given or declined.
- Any support provided.
- Name of person obtaining consent.

Records should be accurate, timely, and secure.

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20. Recording Capacity Concerns

Where concerns arise, records should include:

- Observations.
- Information provided.
- Responses given.
- Actions taken.
- Referrals made.
- Discussions with managers.

Records should be factual and free from assumptions.

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21. Escalating Capacity Concerns

Where concerns about capacity exist:

Step 1

Record observations.

Step 2

Discuss immediately with a manager.

Step 3

Seek advice from relevant professionals where necessary.

Step 4

Implement any required safeguarding or support measures.

Step 5

Document actions taken.

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22. Consent and Safeguarding

Safeguarding concerns may arise even when consent is withheld.

Where risk of abuse, neglect, or exploitation exists:

- Safeguarding procedures must be followed.
- Advice should be sought from the Designated Safeguarding Lead.
- The safety and wellbeing of the individual should remain the priority.

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23. Case Study

Scenario: Refusal of a Referral

A service user appears socially isolated and would benefit from additional community support.

A volunteer discusses a referral to a local wellbeing group.

The service user understands the information but declines the referral.

Action Taken

- The volunteer respects the decision.
- The conversation is recorded.
- Alternative options are discussed.
- The service user is informed they can reconsider at any time.

Outcome

The individual's choice is respected while ensuring information and support remain available.

Learning Point

Individuals with capacity have the right to make choices others may not agree with.

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24. Consent and Capacity Flowchart

Need for Consent Identified

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Provide Information

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Support Decision-Making

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Can Individual Decide?

Yes

→ Obtain Consent or Respect Refusal

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Record Outcome

No / Concerns Identified

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Discuss with Manager

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Seek Appropriate Advice

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Best Interests Approach Considered

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Record Actions

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25. Responsibilities

Managers

Responsible for:

- Supporting staff and volunteers.
- Providing guidance on consent and capacity issues.
- Escalating concerns where necessary.
- Ensuring records are maintained.

Employees and Volunteers

Responsible for:

- Obtaining consent where required.
- Supporting decision-making.
- Reporting concerns promptly.
- Maintaining accurate records.
- Following this procedure.

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26. Monitoring and Review

The organisation will monitor:

- Consent documentation.
- Capacity-related concerns.
- Safeguarding referrals linked to capacity issues.
- Staff and volunteer training compliance.
- Complaints relating to consent or decision-making.

Lessons learned will be used to improve practice and protect individual rights.

Related Policies

- Mental Capacity Act Policy
- Adult Safeguarding Policy
- Person-Centred Support Policy
- Accessibility and Inclusive Communication Policy
- Confidentiality Policy
- Data Protection and GDPR Policy
- Records Management and Record Keeping Policy
- Safeguarding Reporting and Escalation Procedure