10 key Points on Consent and People with Learning Disabilities

5.

WHO CAN GIVE CONSENT**?**

1. No-one can give consent on behalf of another adult with learning disabilities. Parents/relatives or carers should not be asked to sign consent forms.
2. It must be assumed that every adult has the capacity to consent. The presence of a learning disability or a communication difficulty does not in itself imply incapacity.

To enable patients with a learning disability to make valid decision 8. about their health, capacity can be maximised by using the

following techniques:

s

* + Using simple language, (key words).
  + Using illustrations, photographs or practical demonstrations (role play).
  + Present information in small chunks.
  + Allow plenty of time and encourage question asking.
  + Check level of understanding using the preferred method of communication.

WHO DECIDES**?**

**DOH CONSENT FORM 4** – for

adults who are unable to consent to investigation or treatment. This form must be completed for every significant intervention/procedure carried out on a patient who does not demonstrate the capacity to give or withhold their consent

ADVANCE DIRECTIVES

Many people with learning disabilities can make decisions and express their choices 6.

through non-verbal methods of communication.

Consent can be given non-verbally, verbally or in writing.

VALID CONSENT

1. A signature on a consent form does not 7.

itself prove that consent is valid. To give valid consent a person must be able to demonstrate the following 4 stages:

1. Understand and retain the Should this be written as it is presented in the MCA 2005 in section 3 (1)?

information.

1. Communicate their choice.
2. Understand the risks, benefits, alternatives and consequences.
3. Weigh up the information to make a

4.

For consent to be valid it must be

demonstrated that information has been shared with the patient, about the proposed intervention, in a format that is understandable to the patient. For example, if the person cannot read then photographs or symbols or pictures may be appropriate.

The health professional carrying out the procedure or intervention is ultimately responsible for ensuring that the patient is genuinely consenting. If The professional has doubts that the person is able to consent then they must carry out a formal mental capacity assessment in relation to the decision being made However, this should not be a decision made solely, and opinions of significant others including family, carers and other health professionals should be taken into consideration.

BEST INTEREST

The lack of capacity in a person unable to make a decision to a given procedure or intervention, does not imply consent.

It places a duty on health professionals to determine a course of action that is in the person’s best interest by asking the following questions:

1. Will capacity be regained in the future?
2. Has the person been involved to their maximum extent?
3. Has regard been paid to the past and present wishes and beliefs and values**?**
4. Have the views of significant others been taken into account? Including Attorneys under an LPA or deputies, who may be the decision maker
5. Can the procedure be carried out in a less restrictive way?
6. Has the person been appropriately informed of the proposed treatment in a manner understandable to them?
7. Have all practical steps been taken to enable the person to communicate their choice.

9.

10.

Where an adult patient lacks the mental capacity to give or withhold consent, treatment may be given in their best interest as long as it has not been refused in advance in a valid advance directive.

If competent when making the Advance Directive, it is legally binding and treatments can be refused. If adult incapacitated when making advance directives, these are not legally binding but should influence any ‘best interest’ decisions. N.B. Advanced directives can be overridden if a person requires psychiatric treatment under the MHA 1983

MENTAL CAPACITY ACT - 2005

The Mental Capacity Act became Law in 2005. The act places a duty of care on professionals to assess each intervention on a ‘decision – specific’ basis and provides a formal test for mental capacity and a best interest checklist. The Act defines the law around restraint, restriction of liberty and restriction of movement and introduces a five-year prison sentence for the ill treatment of a person who lacks capacity.

**Produced by the Learning Disability Health Facilitation Team – Review Date April 2023**