

Obtaining a Genuine and Valid Consent: Adults



Age

- 16+ years for medical, dental and surgical procedures, Non-Fatal Offences Against the Person Act (1997)
- 18+ years for mental health interventions under the Mental Health Act 2001

Lack of capacity

- If the service user lacks capacity and no other person has legal decision-making authority for her/him, then the health and social care professional should make the decision in their best interests, based on the person's values and preferences if known.

Informed Consent

- Sufficient information should be provided about the nature, purpose, benefits and risks of a proposed intervention/service.
- The amount of information given will depend on the urgency, complexity, nature and level of risk involved.
- Service users should be asked if they understand the information they have been given, and whether or not they would like more information before making a decision.
- Answer questions honestly and, as far as practical, as fully as the service user wishes.
- Consent should be clearly and accurately documented in the service user's records.

Voluntary

- For consent to be valid the service user must not be acting under duress and their agreement should be given freely, they must understand they have a choice.
- Staff should take care to facilitate private discussions with the patient so that ultimately he or she makes their own decision.
- Escalate any concerns you may have regarding the voluntariness of consent.

Capacity

- Every adult is presumed to have the capacity to give consent to or refuse treatment.
- If the service user is clearly unable to understand the information or communicate a decision, a capacity assessment should be undertaken.
- The test of capacity involves assessing
 - Does (s)he understand the reasons, risks, benefits and alternate options?
 - Does (s)he understand the relevance of their decision?
 - Is (s)he able to retain the information long enough to make and communicate a voluntary choice?

Obtaining Consent

- Consent is a process not a once-off event.
- The validity of consent does not depend on the form in which it is given. Service users may indicate consent orally, in writing or in certain limited circumstances by implication (such as where a service user holds out their arm for a blood pressure reading).
- In all situations, courtesy and respect for the service user is required.
- It is essential to document clearly both the service user's agreement to the intervention and the discussions that led up to that agreement.

'Next of Kin'/Role of the Family

- No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so.

Some Exceptions to Refusal of Treatment

- Although a refusal of treatment by an adult with capacity should be respected, there are some circumstances in which legal advice should be sought:
- Refusal of treatment in pregnancy
 - Refusal of treatment for isolation of infectious disease
 - Refusal of treatment by a service user involuntarily admitted under the Mental Health Act 2001
 - Refusal to allow blood/urine samples to be taken for Garda investigations

Delegation

- It is the responsibility of the person providing treatment/service to ensure that informed consent has been given.
- Delegation to another professional is only appropriate where (s)he is sufficiently qualified and trained to be able to accurately communicate the required information to the service user.

Timely Communication Process

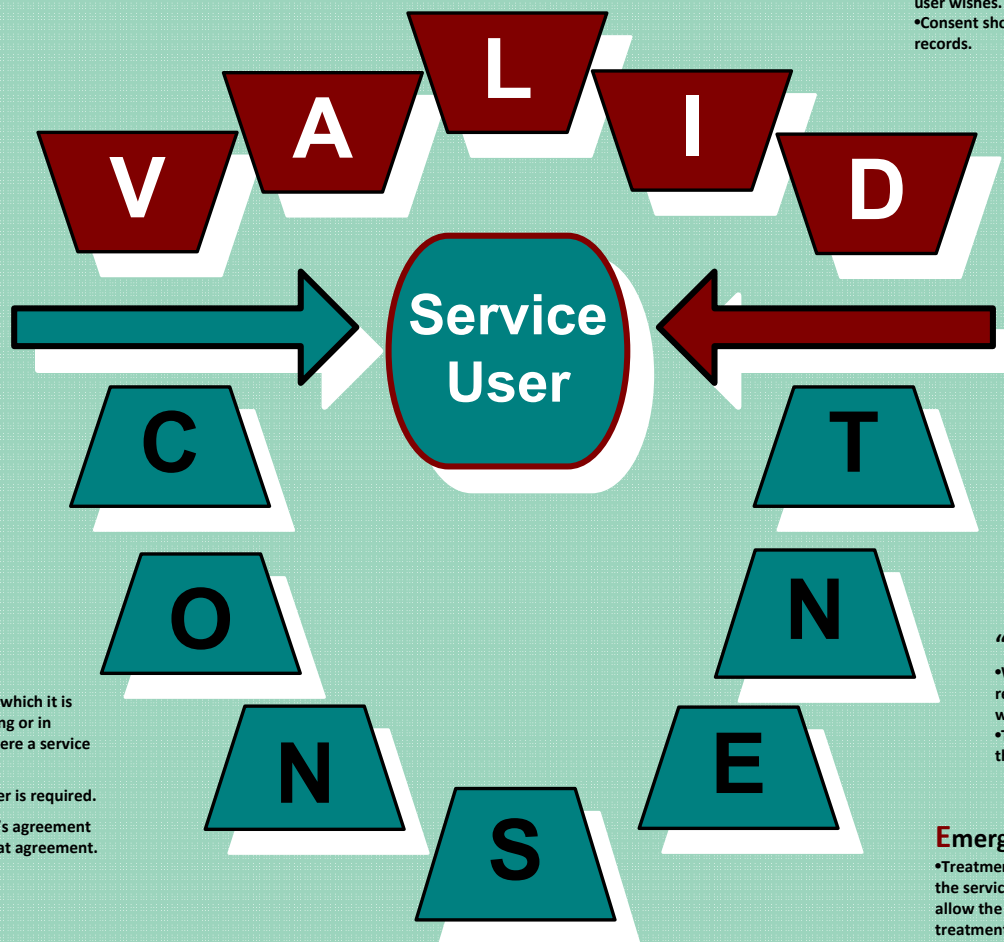
- Seek consent at a time that is appropriate to the service user and their condition, e.g. if it is an elective procedure, the relevant discussion could take place at an outpatient's clinic prior to hospital admission.
- Give the service user time to consider their options and ask questions
- Provide information in a way that facilitates the service users understanding e.g. use simple, clear plain English, avoid medical terminology
- Use an interpreter, sign language interpretation, visual graphs as appropriate
- Check the service user's level of understanding

"No" to procedure/Refusal of Treatment

- Where an Adult with capacity to make an informed decision has decided to refuse a treatment or service; this decision/refusal must be respected, even where the service user's decision may result in his or her own death.
- The discussion of the implications of the decision with the service user and the refusal should be accurately documented.

Emergency Situations

- Treatment may be given without consent in an emergency where the service user lacks the capacity to make a decision or time does not allow the service user to sufficiently understand and appreciate what treatment is required.
- This exception is limited to situations where the treatment is immediately necessary to save the life or preserve the health of the service user.



Please refer to the main HSE Consent Policy for further detailed information