



Safeguarding Adults: Service User Consent Guidance

1. Introduction

When Safeguarding Adults procedures are being considered, the consent of the adult believed to be at risk should always be sought. Consent should be obtained as early as possible and if appropriate by the alerting agency so that the concerns can be progressed to ensure the safety of the adult at risk

This does not necessarily mean that the word 'Safeguarding' has to be used but the issue should be discussed with him / her using appropriate terminology such as *'in order to make sure you are safe, we wish to share information with other people and possibly hold a meeting to discuss our concerns...'* or similar words.

A signature is not necessarily required, but the person's consent should be clearly recorded in the case file.

2. Ensuring that an Informed Decision is made

Although undue pressure should not be exerted on the adult at risk to change their mind, the issue should be discussed fully and he/she should be given all the relevant information available in order to make an informed decision, including who will be involved and the various possible outcomes which might result from their decision. They should be reassured that their case would be dealt with sensitively and professionally under Safeguarding procedures and any specific concerns that they raise should be addressed.

3. Exceptions

There are four potential exceptions to the general rule outlined above are as follows:

1. If other people appear to be at risk of harm (adults or children)
2. If there is a 'legal restriction' or an overriding public interest
3. If the person is exposed to life threatening risk and they are unreasonably withholding their consent

4. If the person has impaired capacity or decision making in relation to the safeguarding issues and the withholding of consent

A 'legal restriction' in this context means that there may be exceptional circumstances where a service user makes a decision or intends to act in a way that is unlawful or where their care needs to be addressed under the Mental Health Act 1983.

An 'overriding public interest' refers to a situation where it is essential to share information in order to prevent a crime or to protect others from harm (eg 'Hate Crime' – which we have a statutory responsibility to report). This is supported by the Crime and Disorder Act 1998.

4. What to do if consent is withheld

In all cases where an adult at risk is withholding consent and there are concerns about his/her welfare, a senior manager's opinion should be sought on the best way to proceed. This may include taking legal advice where consent has been withheld and where one of the 3 exceptions in Section 3 seem to apply

5. People Who Lack Mental Capacity

If the adult at risk appears to lack mental capacity or to have impaired mental capacity in relation to the issue of consent, the care co-ordinator must assess the person's mental capacity using the 2 stage test as defined in the Mental Capacity Act 2005.

5.1. Best Interests Decisions

If the person is assessed as lacking mental capacity, then the decision as to whether to invoke the Safeguarding procedures must be made by the care co-ordinator in the person's Best Interests in terms of the Mental Capacity Act 2005.

Please note that the reasons for making this decision should be fully documented.

In the event that another person has legal decision making powers in relation to welfare decisions (i.e. under a Lasting Power of Attorney or has been given the status of Welfare Deputy by the Court of Protection), then they will normally be the person to make the Best Interests decision. However, if there are concerns that the person with such powers may be involved in the suspected abuse, legal advice should be sought at an early stage.

6. People with Mental Capacity

If the adult at risk is considered to have mental capacity in relation to a decision about giving or withholding consent, he/she has the right to withhold

consent to the use of Safeguarding Adults procedures – except in very specific circumstances as outlined in 3 above.

7. Mitigating Risk

Where abuse is suspected and - in spite of the fact that they have been given all the information and reassurances described in subsection 2 - the adult at risk has withheld his/her consent to the implementation of Safeguarding Adults procedures, all other alternatives for minimising risk should be considered in discussion with the adult at risk (eg changes to the care package, additional monitoring etc).

8. Consent Withdrawn at a Later Stage

It is important to note that initial consent can be withdrawn **at any time** and that the adult at risk should be made aware of this. In the event that consent is given initially but later withdrawn, exactly the same issues apply as described earlier in this Policy at paragraph 4.

9. Recording

It is essential that all discussions involving consent to the use of Safeguarding Adults Procedures and all decisions are clearly recorded in the case file. The person concerned should be kept up to date about the process and any decisions to be taken as a result of it. Where the person at risk indicates that they have concerns as the procedure progresses, these should be recorded along with the outcome of a further discussion (in terms of paragraphs 1 and 2 above) to confirm that the person continues to consent to the process.

10. Safeguarding Children Issues

Whenever there are any concerns about the welfare of children, these will always override the issues of consent described in this Policy. In the event that a child or young person is suspected of being at risk, the Safeguarding Children procedures must be followed in order that immediate action can be taken to safeguard the child or young person.

11. Domestic Violence

In cases of Domestic Violence, staff should refer to the B&NES Multi-Agency Risk Assessment Conference (MARAC) Partnership Information and Operating Protocol 2011.

For the purpose of the MARAC, the Association of Chief Police Officers (ACPO), Crown Prosecution Service (CPS) and Government definition of **domestic violence** is adopted which reads as follows:

'any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 16 and over, who are or have been intimate partners or family members, regardless of gender and sexuality. This includes issues of concern to black and minority ethnic (BME) communities such as so called 'honour killings'

(Family members are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family.)

Many (but not all), of the data protection issues surrounding a disclosure can be avoided if the consent of the individual has been sought and obtained. The first consideration should be whether the individual has consented to the disclosure. In the main, disclosure to voluntary sector agencies should be made only with consent. Details of victims, witnesses and complainants should not be disclosed without their written consent.

If consent has been withheld or could not be obtained, then the nominated officer for the MARAC should assess whether the lack of consent can be overcome. Consideration must be given as to whether the personal information is held under a duty of confidence, whether there is an overriding **public interest** or justification for disclosing the information (section 29(3) Data Protection Act 1998), and whether the individual was informed that their information would be disclosed to the recipient

V9 25.11.11
Review Date: