



Review Sheet		
 Last Reviewed 21 Nov '22	 Last Amended 21 Nov '22	 Next Planned Review in 12 months, or sooner as required.
Business impact	 <p>MEDIUM IMPACT</p> <p>Changes are important, but urgent implementation is not required, incorporate into your existing workflow.</p>	
Reason for this review	Scheduled review	
Were changes made?	Yes	
Summary:	This policy will support in ensuring legal and regulatory responsibilities in relation to consent are achieved. It has been reviewed and section 5.6 updated. References also checked and a new Underpinning Knowledge link added.	
Relevant legislation:	<ul style="list-style-type: none"> • The Care Act 2014 • Children Act 1989 • Children Act 2004 • The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 • Human Rights Act 1998 • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice • Mental Health Act 1983 • Mental Health Act 2007 • Data Protection Act 2018 • The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012 • Coronavirus Act 2020 	
Underpinning knowledge - What have we used to ensure that the policy is current:	<ul style="list-style-type: none"> • Author: CQC, (2021), <i>Regulation 11: Need for consent</i>. [Online] Available from: https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-11-need-consent [Accessed: 21/11/2022] • Author: Office of the Public Guardian, (2009), <i>Making decisions - A guide for people who work in health and social care</i>. [Online] Available from: https://www.ouh.nhs.uk/patient-guide/safeguarding/documents/health-workers-guide.pdf [Accessed: 21/11/2022] • Author: National Institute for Health and Care Excellence, (2018), <i>Decision-making and mental capacity</i>. [Online] Available from: https://www.nice.org.uk/guidance/ng108 [Accessed: 21/11/2022] • Author: Secretary of State for Health and Social Care, (2022), <i>Draft Mental Health Bill</i>. [Online] Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/draft-mental-health-bill-web-accessible.pdf [Accessed: 21/11/2022] • Author: Royal College of Nursing, (2021), <i>First Steps - Consent</i>. [Online] Available from: https://rcni.com/hosted-content/rcn/first-steps/consent [Accessed: 21/11/2022] 	
Suggested action:	<ul style="list-style-type: none"> • Encourage sharing the policy through the use of the QCS App • Share 'Key Facts' with all staff • Ensure relevant staff are aware of the content of the whole policy 	
Equality Impact Assessment:	QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.	



1. Purpose

1.1 To ensure that Master Care Ltd fulfils the legal and regulatory responsibilities in relation to consent to ensure that respectful, compassionate care and treatment is delivered.

1.2 To support Master Care Ltd in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
CARING	C2: How does the service support people to express their views and be actively involved in making decisions about their care, support and treatment as far as possible?
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?
RESPONSIVE	R2: How are people's concerns and complaints listened and responded to and used to improve the quality of care?
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

1.3 To meet the legal requirements of the regulated activities that {Master Care Ltd} is registered to provide:

- | The Care Act 2014
- | Children Act 1989
- | Children Act 2004
- | The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- | Human Rights Act 1998
- | Mental Capacity Act 2005
- | Mental Capacity Act Code of Practice
- | Mental Health Act 1983
- | Mental Health Act 2007
- | Data Protection Act 2018
- | The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012
- | Coronavirus Act 2020



2. Scope

2.1 The following roles may be affected by this policy:

- | All staff

2.2 The following Service Users may be affected by this policy:

- | Service Users

2.3 The following stakeholders may be affected by this policy:

- | Family
- | Advocates
- | Commissioners
- | External health professionals
- | Local Authority
- | NHS



3. Objectives

- 3.1 To ensure that valid consent is obtained from the Service User before any care or treatment is given.
- 3.2 Where the Service User lacks mental capacity to make an informed decision, or give consent, staff must act in accordance with the requirements of the Mental Capacity Act 2005 and associated code of practice.
- 3.3 To ensure that staff understand other occasions when a Service User's valid consent is required and the implications of obtaining valid consent from a young person aged over 16 and the procedures that they must follow.



4. Policy

- 4.1 Master Care Ltd understands the need to only provide care, support and treatment with consent from the Service User. We will ensure that when a Service User is asked for their consent, information about the proposed care and treatment will be provided in a way that they can understand. The information will include details about the risks, complications and any alternatives. Only staff with the necessary knowledge and understanding of the care and treatment will provide this information so that they can answer any questions about it to help the Service User give valid consent.
- 4.2 Where a Service User lacks mental capacity to make an informed decision, or give consent, staff will act in accordance with the requirements of the Mental Capacity Act 2005 and associated code of practice. Master Care Ltd will respect when Service Users, or a person acting lawfully on their behalf, refuses to give consent or withdraws it.
- 4.3 Master Care Ltd recognises that consent may be implied and include non-verbal communication such as sign language or by someone rolling up their sleeves to have a wash or offering their hand when asked if they would like help to move.
- 4.4 Master Care Ltd will ensure that we treat consent as a process that continues throughout the duration of care and treatment, recognising that it may be withheld and/or withdrawn at any time. Staff will be trained to understand that capacity can fluctuate and this needs to be considered in the context of giving or refusing consent.
- 4.5 Discussions about consent will be held in a way that meets the Service User's communication needs. This may include the use of different formats or languages and may involve others such as a translator or independent advocate. The Accessible Information Standard (AIS) Policy and Procedure at Master Care Ltd can be referred to for more information.
- 4.6 Master Care Ltd will ensure that consent procedures do not pressure Service Users into giving consent and, where possible, plans will be made well in advance to allow time to respond to Service User questions and provide adequate information.
- 4.7 Master Care Ltd will uphold the Service User's right to be involved in all decisions about their care and treatment.
- 4.8 Master Care Ltd will work with other members of the multidisciplinary team to ensure that best interest decisions are made and recorded for Service Users who lack mental capacity to give valid consent.
- 4.9 We will ensure that policies and procedures for obtaining consent to care and treatment will reflect current legislation and guidance and that staff follow them at all times.
- 4.10 **Coronavirus**
Master Care Ltd recognises that during times of uncertainty, such as the coronavirus pandemic, staff must also ensure that they adhere to legislation and government guidelines in relation to COVID-19. Staff can refer to the suite of COVID-19 policies within the QCS Management System for further information.



5. Procedure

5.1 Consent Before a Service Commences

Before the service starts or as soon as practical, Master Care Ltd will explain the policies and procedures at Master Care Ltd and discuss the Service User's rights in relation to the service they will be receiving. The Service User will receive information about Master Care Ltd in a format that they can understand.

5.2 The Registered Manager will ensure that the staff responsible for assessing the Service User's needs and creating the Care Plan have the skills and knowledge to answer any questions from the Service User and to discuss valid consent with a Service User.

5.3 Consent and Mental Capacity

A Service User lacks capacity if their mind is impaired or disturbed in some way, and this means the Service User is unable to make a decision at that time.

- | The staff member responsible for the Care Plan assessment will ensure that mental capacity is assessed before the Service User consents to care and support
- | Where the mental capacity assessment identifies that the Service User lacks the mental capacity to give valid consent, consent will be sought from the Service User's legally authorised representative (such as a legal guardian or a person having a power of attorney)
- | The assessor will consider whether the lack of capacity is temporary or permanent and consider if there are occasions when capacity fluctuates
- | The Service User will be supported and encouraged to be involved, as far as they want to and are able, in decisions about their treatment and care
- | Staff must adhere to the policy on Mental Capacity at Master Care Ltd

5.4 The Service User will be given the opportunity to read and understand the information given. Where there are communication or language barriers, measures will be taken to ensure that the Service User can understand the information that is being shared.

5.5 Consent and Best Interest Decisions

Where a Service User is assessed as lacking capacity to give valid consent and has no-one formally appointed to make decisions on their behalf, the assessor will consider a best interest decision. This best interest decision is to consider whether to go ahead with the care, support or treatment. There are many important elements involved in trying to determine what a Service User's best interests are, including:

- | Considering whether it's safe to wait until the Service User can give consent, if it's likely they may regain capacity at a later stage
- | Involving the Service User in the decision as much as possible
- | Trying to identify any issues the Service User would take into account if they were making the decision themselves, including religious or moral beliefs; these would be based on views the Service User expressed previously, as well as any insight close relatives or friends can offer
- | Best Interest decisions will also be undertaken in partnership with the multi-disciplinary team and the best interest decisions must be documented. The decision will be reviewed at regular intervals as agreed with Master Care Ltd and the multi-disciplinary team

5.6 Consent and Care Delivery

- | Master Care Ltd will ensure that the Service User's consent is to evidence that they agree with the care and support that is to be delivered as outlined in the Care Plan. The Service User will be asked to sign the Care Plan or a consent form that clearly indicates what they are giving consent for
- | Where a Service User is unable to sign, Master Care Ltd will ensure that the Service User has provided valid consent
- | Consent is often wrongly equated with a Service User's signature on a consent form. A signature on a form may not amount to valid consent if the Service User is rushed into signing a form on the basis of too little information. Similarly, if a Service User has given valid oral consent, the fact that they are physically unable to sign the form is no bar to care and support
- | Consent can be confirmed or withdrawn by a Service User at any time; staff will log in the record of care notes that consent was obtained for tasks carried out with or on behalf of the Service User at each visit

5.7 Consent to Share Information



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Master Care Ltd will ensure that the Service User gives permission for information to be shared with other professionals or providers. If a Service User lacks capacity to make this decision, Master Care Ltd in consultation with any representatives, will need to make a best interests decision about sharing information. Examples of when information might be shared are:

- | Transferring care between providers
- | Discussing an acute medical condition with a GP
- | Discussing mobility goals with a physiotherapist involved in the Service User's care

Master Care Ltd will also ensure that staff comply with the Data Protection Act and consent is sought from the Service User before sharing any information with inspectors or regulators. Master Care Ltd will be aware of the need to maintain confidentiality and that a Service User's right to confidentiality continues even when they are deceased.

5.8 Consent and Staff Assessments in the Home

Master Care Ltd will ensure that the Service User's consent is sought prior to undertaking the following:

- | Quality checks in the Service User's home
- | Observational competency assessments for staff in the Service User's home
- | Training in the Service User's home

This will be explained to the Service User in a way they can understand.

5.9 Duration of Consent

- | When a Service User gives valid consent to care or treatment, that consent remains valid unless the Service User withdraws it or there are circumstances that mean it can be treated as if it had been withdrawn
- | Such circumstances would include the procedure having taken place or there being a significant gap since the consent was given. In addition, if new information becomes available regarding the proposed intervention (for example, new evidence of risks or new treatment options) between the time when consent was sought and when the intervention is undertaken, Master Care Ltd will inform the Service User and reconfirm their consent
- | Similarly, if a Service User's condition or circumstances have changed significantly in the intervening time, it may be necessary to seek consent again, on the basis that the likely benefits and/or risks of the care or treatment may also have changed

5.10 Consent Refusal

- | If the process of seeking consent is to be a meaningful one, refusal must be one of the Service User's options. A competent adult Service User is entitled to refuse any care or treatment, except in circumstances governed by the Mental Health Act 1983
- | If after discussion of possible treatment or care options, the Service User refuses care or treatment (this includes personal care, medication, etc.) this fact must be clearly documented in their notes and escalated to Master Care Ltd
- | If a Service User has already signed a consent form, but then changes their mind, this must be noted on the consent form, and where possible, it will be noted on the consent form by the Service User
- | When care or treatment is refused and when the Care Worker cannot follow the agreed Care Plan, staff must ensure that they follow the procedure for refusal of care at Master Care Ltd, to ensure that safeguarding issues do not arise

5.11 Consent to Photography and Digital Recordings

- | In unique circumstances where photographic or video recordings are made for the purpose of education, publication, research or marketing purposes for or on behalf of Master Care Ltd, the Registered Manager must seek consent in writing and must ensure that the Service User giving consent is fully aware of the possible uses of the material
- | Service Users must be made aware that it may not be possible to control future use of the material once it has been placed in the public domain
- | This consent must be recorded on the Service User file
- | Staff must not upload images of Service Users or their relatives on social media and must follow the Social Networking Policy and Procedure at Master Care Ltd



- | Staff must not use their own phones to take photographs of Care Plans, visit records, pressures ulcers, injuries, etc. on the Service User without valid consent from the Service User and prior approval from the Registered Manager

5.12 Care Worker Obtaining Consent

- | The Registered Manager will ensure that staff understand the importance of ensuring that they obtain consent each and every time any aspect of care is delivered. Once valid consent has been obtained, for example in relation to administering medication, Care Workers will check before they start to administer medication, that the Service User still consents to have the medication. This consent may be verbal or implied consent, e.g. saying yes or holding out their hand for the medication
- | Care Workers will be trained on what they should do if a Service User refuses consent
- | Where Service Users have communication difficulties or lack capacity, the Care Plan will clearly state how ongoing consent will be obtained

5.13 Advanced Decisions

- | Master Care Ltd will ensure that where a Service User has an advanced decision in place that it is valid and that it is clearly documented what it relates to
- | Where the advanced decision relates to the Service User's decision not to resuscitate, this will be in writing, signed and dated, be witnessed, and state clearly that the decision applies even if life is at risk

Staff can refer to CP31 - Advance Decision Policy and Procedure for further information on advance decisions.



6. Definitions

6.1 Power of Attorney

- | A power of attorney is a legal document that allows someone to make decisions for someone else if the person is no longer able to, or if they no longer want to make their own decisions
- | There are a number of reasons why a Service User might need someone to make decisions for them or act on their behalf:
 - | This may just be a temporary situation: for example, if they are in hospital and need help with everyday things such as making sure bills are paid
 - | Alternatively, they may need to make longer-term plans if, for example, they have been diagnosed with dementia and they may lose the mental capacity to make their own decisions in the future

6.2 Young Person

- | The UN Convention on the Rights of the Child defines a child as everyone under 18 unless, "under the law applicable to the child, majority is attained earlier". However, there are a number of different laws across the UK that specify age limits in different circumstances. These include child protection; age of consent; and age of criminal responsibility
- | **People aged 16 or over are entitled to consent to their own treatment, and this can only be overruled in exceptional circumstances**
- | Like adults, young people (aged 16 or 17) are presumed to have sufficient capacity to decide on their own medical treatment, unless there's significant evidence to suggest otherwise
- | Children under the age of 16 can consent to their own treatment if they're believed to have enough intelligence, competence and understanding to fully appreciate what's involved in their treatment. This is known as being "Gillick competent"

6.3 Advanced Decisions

- | An **advance decision** (sometimes known as an **advance decision** to refuse treatment, an ADRT, or a living will) is a **decision** a person can make now to refuse a specific type of treatment at some time in the future

6.4 Independent Advocate

- | **An independent advocate** involves speaking on behalf of a person(s) to ensure that their rights and needs are recognised

6.5 Consent

- | Consent is demonstrated when the Service User (either verbally or non-verbally) indicates what they are willing to do, or allow a third party to do to, or for them

6.6 Capacity

- | The Service User must be capable of giving consent, which means they understand the information given to them, and they can use it to make an informed decision by considering all the risks and options, and they can remember what has been explained to them and the decision they have made. Capacity refers to having the mental capacity as defined in the Mental Capacity Act

6.7 Valid Consent

- | For consent to be valid, it must be voluntary and informed, and the Service User consenting must have the capacity to make the decision

6.8 Informed Consent

- | A key concept is that consent must be in the form of 'informed consent'. This means that a Service User being asked to give their consent for a procedure or for a care service, must have adequate information given to them so they can understand all the issues involved and weigh up the pros and cons in order to make a valid decision

6.9 Best Interest Decisions

- | If a Service User has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that Service User, must be made in his or her best interests



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | Once written consent is obtained for permission to provide care and support and assist with medication, care staff must always ask for consent before providing any care or support
- | Mental Capacity will be assessed before seeking consent to ensure that the consent is informed and valid
- | Consent from a Service User is needed regardless of the care, treatment or support that is going to take place



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- | Just because you are unable to verbally express your consent does not mean that treatment or care cannot be given. Staff will assess your mental capacity and seek to obtain consent in other ways such as implied consent, i.e. nodding, holding out an arm for a wash
- | You have a right to refuse to provide consent
- | You have a right to withdraw consent at any time



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

NHS - Consent to treatment:

<https://www.nhs.uk/conditions/consent-to-treatment/>



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- | Regular reviews of a Service User's consent take place to ensure that it remains valid
- | The wide understanding of the policy is enabled by proactive use of the QCS App
- | Consent is obtained to provide any care treatment and support
- | There is evidence that staff understand the mental capacity act in relation to consent
- | Information is shared appropriately and in a format the Service User understands to ensure valid consent



Forms

The following forms are included as part of this policy:

Title of form	When would the form be used?	Created by
Consent Form - CR22	When consent is required. When a Service User is unable to give consent a best interest decision is required.	QCS
Issue Specific Consent Form - CR22	To be used to gain consent	QCS

Master Care Ltd

Service User Name:	
ID:	
Date of Completion:	

For your protection and privacy, your consent is required before we request information from you or carry out any type of care or support or share information about you and the care you receive from us.

- Please read the questions below, or ask someone to read them to you, and indicate clearly **YES** or **NO** to each question
- You will be asked to sign each answer at the end. If you cannot sign, our staff will record that you have given your consent and how this consent was given
- You have a right to refuse or withdraw your consent at any time

<p>Part A: For Service Users who have been assessed as having the mental capacity to give valid consent</p>
<p>Consent to Undertake Care, Support and Risk Assessments</p> <p>I have had the reasons for why this information is required and what the information will be used for explained to me and I understand those reasons. I understand that you may discuss my health, my mobility, my memory and understanding, my medication, my skin, any history of falls, my eating and drinking, my overall mental health, any risks to me or the staff who will be providing care and support plus aspects about my life that I need to share with you that is important to me or for me. I understand that my needs will be reviewed if my needs change.</p> <p>I give consent: YES or NO (delete as appropriate)</p> <p>(Signature):</p>
<p>Consent to Undertake Medication Administration</p> <p>I have had the reasons why your assessment of my needs has shown I need support to administer my medication. I understand what type and level of support your staff will be providing. I understand this will be reviewed if my needs change</p> <p>I give consent: YES or NO (delete as appropriate)</p> <p>(Signature):</p>
<p>Consent to the Care and Support Plan in the Home</p> <p>I have had the reasons why the care and support plan and risk assessments are important to ensure that I am safe and your staff understand what care and support they need to provide for me. I understand that I need to leave the Care and Support plan and Visit records in a place where staff can read and complete it easily. I understand that only staff who are involved in my care will be able to have access to this information.</p> <p>I give consent: YES or NO (delete as appropriate)</p> <p>(Signature):</p>
<p>Information Sharing</p> <p>I have had the reasons for information sharing explained to me and I understand those reasons. I agree to information recorded being shared as indicated by those reasons. I agree to:</p> <p>[indicate the range of providers that may be included and the way that this information will be shared, e.g. CQC, GP, Local Authority Quality Compliance Team via email, phone, review of records.]</p> <p>I give consent: YES or NO (delete as appropriate)</p> <p>(Signature):</p>

Part B: If Service Users appear to lack the mental capacity to give informed consent (To be completed by the assessor)

Consent to Undertake Care, Support and Risk assessments

I have given an explanation of what information we need about
and how we will use that information. I have also explained when we will need to share that information, who with and how we might share that information. I discussed the information in a way and format that maximises to be able to make decisions for him/herself **Yes / No**

I can confirm that lacks the capacity to give or withhold consent to the assessment of care, support and risk assessments, to support with medication administration and to sharing of information because the person has an impairment of the mind or brain and cannot do one or more of the following;

- Understand the information about the assessment of care support and risk assessments, the sharing of information or information about the administration of medication **Yes / No**
- Retain the information in their mind **Yes / No**
- Use or weigh up that information as part of the decision-making process including any risks **Yes / No**
- Communicate their consent (by talking, sign language or any other means) **Yes / No**

If the answer is 'no' to any of the above points, then complete the Best Interest section on the next page, otherwise if the Service User has capacity to provide consent return and complete Part A.

Best Interest: lacks the mental capacity to give informed consent and make a decision about the care, support and risk assessments, medication administration and information sharing. It is in their best interest that we create the care and support plan and undertake the risk assessments, staff deliver the care as planned and that information is shared appropriately in line with our policies.

In making this decision I have;

- Considered the MCA Code of Practice and Best Interest Checklist which includes any views they may have expressed in the past including any advanced decisions which would help understand what their views and feelings might be **Yes / No**
- The views of their family members, parents, carers and other relevant people who support them or are interested in their welfare, if this is practical and appropriate **Yes / No**
- If they have named someone or given someone powers to decide for them then they will also be consulted **Yes/No**

continued on next page

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Part B continued	
If you have answered 'No' to anything in the previous sections in Part B, state the reason why. If you have decided it is not in their best interest explain the proposed action.	
No one can give consent on behalf of the Service User unless they have the relevant power (e.g. an LPA) but you can obtain the signature of a family member/friend/carer to evidence they have been consulted and agree with the decision.	
Signature of Relevant Person:	Relationship to Service User:
Print of Relevant Person:	Date:
Print Name of Assessor:	Date and Time:
Signature of Assessor:	

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Personal Information	
Service User Name:	
Date of Birth:	
Address:	

GP / Consultant Information	
GP / Consultant Name:	
NHS No:	
Any Known Allergies:	

Describe the consent that is being sought and why:

Describe the support given to enable informed consent:

Describe how and what information was provided in an accessible format:

Empty text area for describing accessible information.

Was anyone else consulted? Record names and any discussions:

Empty text area for recording consultations.

Record of any documentation in place / reviewed:

Mental Capacity Assessment	Yes	No	N/A	Date:	
Best Interest Record	Yes	No	N/A	Date:	
Care and Support plan	Yes	No	N/A	Date:	
Risk Assessment	Yes	No	N/A	Date:	

Any Comments / Notes:

Empty text area for comments and notes.

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Consent (Circle appropriate response)		
I Do	I Do Not	Consent to the above request
I declare that the information I have given on this form is correct and complete.		

Service User Consent			
Service User Name:			
Date:			
Representative Consent (Circle appropriate response)			
To be completed by the representative if the individual is unable to give consent. Evidence that the representative has power of attorney must be seen.			
Unable to sign:		Reason:	
I Do	I Do Not	Hold a valid Legal Power of Attorney – Health and Welfare	
I can confirm that I am authorised to consent to all the above on behalf of the individual named, in accordance with the individual's "Best Interests" and in line with the Mental Capacity Act 2005.			
Name:			
Relationship:		Date:	