The Whittington Hospital NHS
NHS Trust

WHITTINGTON POLICY FOR CONSENT TO EXAMINATION OR TREATMENT

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Review:	**May 2005 or as required**
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APPENDICES

ANNEXES

I Introduction

Why consent is crucial?

1. Patients have a fundamental legal and ethical right to determine what happens to their own bodies. Valid consent to treatment is therefore absolutely central in all forms of healthcare, from providing personal care to undertaking major surgery. Seeking consent is also a matter of common courtesy between health professionals and patients.

This policy

2. The Department of Health has issued a range of guidance documents on consent (see overleaf), and these should be consulted for details of the law and good practice requirements on consent. This policy sets out the standards and procedures in The Whittington, which aim to ensure that health professionals are able to comply with the guidance. While this document is primarily concerned with healthcare, social care colleagues should also be aware of their obligations to obtain consent before providing certain forms of social care, such as those that involve touching the patient or client.

What consent is – and isn't

3. "Consent" is a patient's agreement for a health professional to provide care. Patients may indicate consent non-verbally (for example by presenting their arm for their pulse to be taken), orally, or in writing. For the consent to be valid, three conditions must be met.

    - be competent to take the particular decision;
    - have received sufficient information to take it; and
    - not be acting under duress.

4. The context of consent can take many different forms, ranging from the active request by a patient of a particular treatment (which may or may not be appropriate or available) to the passive acceptance of a health professional's advice. In some cases, the health professional will suggest a particular form of treatment or investigation and after discussion the patient may agree to accept it. In others, there may be a number of ways of treating a condition, and the health professional will help the patient to decide between them. Some patients, especially those with chronic conditions, become very well informed about their illness and may actively request particular treatments. In many cases, 'seeking consent' is better described as 'joint decision-making': the patient and health professional need to come to an agreement on the best way forward, based on the patient's values and preferences and the health professional's clinical knowledge.

5. Where an adult patient lacks the mental capacity (either temporarily or permanently) to give or withhold consent for themselves, **no one else can give consent on their behalf.** However, treatment may be given if it is in their best interests, as long as it has not been refused in advance in a valid and applicable advance directive. For further details on advance directives see the Department of Health's *Reference guide to consent for examination or treatment* (chapter 1, paragraph 19).

Guidance on consent

6. The Department of Health has issued a number of guidance documents on consent, and these should be consulted for advice on the current law and good practice requirements in seeking consent. Health professionals must also be aware of any guidance on consent issued by their own regulatory bodies.

- *Reference guide to consent for examination or treatment* provides a comprehensive summary of the current law on consent, and includes requirements of regulatory bodies such as the General Medical Council where these are more stringent. and may be accessed on the internet at www.doh.gov.uk/consent.

- *12 key points on consent: the law in England* (*Appendix A of this policy*) has been distributed widely to health professionals working in England. This one-page document summarises those aspects of the law on consent which arise on a daily basis and is attached at Appendix A. Further copies are available from www.doh.gov.uk/consent.

- Specific guidance, incorporating both the law and good practice advice, is available for health professionals working with children, with people with learning disabilities and with older people. Copies of these booklets are available from the Internet at www.doh.gov.uk/consent.

Further guidance can be obtained from the publications listed below:

General Medical Council. *Good medical practice*. London: GMC, 2001:10.

Bristol Royal Infirmary Inquiry. Learning from Bristol: the report of the public inquiry into children's heart surgery at the Bristol Royal Infirmary. In: Summary and recommendations. London: Stationery Office, 2001:16

NHS Executive. *Disciplinary procedures for hospital and community medical and dental staff*. Department of Health Circular HC (90)9, Annex D. Leeds: NHS Executive, 1994.

British Medical Association. *Confidentiality and the disclosure of health information*. London: BMA, 199:30-31

II Documentation

1. For significant procedures, it is essential for health professionals to document clearly both a patient's agreement to the intervention and the discussions, which led up to that agreement. This may be done either through the use of a consent form (with further detail in the patient's notes if necessary), or through documenting in the patient's notes that they have given oral consent.

Written consent

2. Consent is often wrongly equated with a patient's signature on a consent form. A signature on a form is *evidence* that the patient has given consent, but is not *proof* of valid consent. If a patient is rushed into signing a form, on the basis of too little information, the consent may not be valid, despite the signature. Similarly, if a patient has given valid verbal consent, the fact that they are physically unable to sign the form is no bar to treatment. Patients may, if they wish, withdraw consent after they have signed a form: the signature is evidence of the process of consent giving, not a binding contract.

3. It is rarely a legal requirement to seek written consent[1] but it is good practice to do so if any of the following circumstances apply:

   Treatment or procedure is complex, or involves significant risks (the term 'risk' is used throughout to refer to any adverse outcome, including those which some health professionals would describe as 'side-effects' or 'complications')

   The patient will under go surgery

   The patient will undergo an invasive procedure

   The procedure involves general/regional anaesthesia or sedation

   Providing clinical care is not the primary purpose of the procedure

   There may be significant consequences for the patient's employment, social or personal life (eg some fertility treatments, see Appendix B: **Consent Form 5.)**

   The treatment is part of a project or programme of research. The research should always be approved by this Trust

   > ➢ **For further guidance on type of consent, please refer to Annex 1 of this policy.**

4. Completed forms should be kept with the patient's notes. Any changes to a form, made after the form has been signed by the patient, should be initialled and dated by both patient and health professional.

The Mental Health Act 1983 and the Human Fertilisation and Embryology Act 1990 require written consent in certain circumstances.

5. It will not usually be necessary to document a patient's consent to routine and low-risk procedures, such as providing personal care or taking a blood sample. However, if you have any reason to believe that the consent may be disputed later or if the procedure is of particular concern to the patient (for example if they have declined, or become very distressed about, similar care in the past), it would be helpful to do so.

Procedures to follow when patients lack capacity to give or withhold consent

6. Where an adult patient does not have the capacity to give or withhold consent to a significant intervention, this fact should be documented in **Consent Form 4** along with the assessment of the patient's capacity, why the health professional believes the treatment to be in the patient's best interests, and the involvement of people close to the patient. The standard consent forms should never be used for adult patients unable to consent for themselves. For more minor interventions, this information should be entered in the patient's notes.

7. An apparent lack of capacity to give or withhold consent may in fact be the result of communication difficulties rather than genuine incapacity. You should involve appropriate colleagues in making such assessments of incapacity, such as specialist learning disability teams and speech and language therapists, unless the urgency of the patient's situation prevents this. If at all possible, the patient should be assisted to make and communicate their own decision, for example by providing information in non-verbal ways where appropriate.

8. Occasionally, there will not be a consensus on whether a particular treatment is in an incapacitated adult's best interests. Where the consequences of having, or not having, the treatment are potentially serious, a court declaration may be sought. See Appendix D for details of how to do this.

> ➢ **For guidance on establishing capacity to make decisions, please refer to Annex 2 of this policy.**

Availability of forms

9. Standard consent forms and forms for adults who are unable to consent for themselves are reproduced in *Appendix B of this policy* and are available in all clinical areas and from the Patient Information Officer in PALS. There are five versions of the standard form**: Consent Form 1** for adults or competent children; Patient agreement to investigation or treatment, **Consent Form 2** for parental agreement to investigation or treatment for a child; **Consent Form 3** Patient/ parental agreement to investigation or treatment (procedures where consciousness is not impaired), for cases where it is envisaged that the patient will remain alert throughout the procedure and no anaesthetist will be involved in their care. The use of form 3 is optional but may be thought more appropriate than form 1 in situation where patients do not need to be aware of issues surrounding general or regional anaesthesia and do not need to make any advance decisions about additional procedures because they will be in a position to make any such decisions at the time if necessary. **Consent Form 4** For adults who are unable to consent to investigation or treatment. **Consent Form 5** Patient agreement to sterilisation or vasectomy.

- Consent forms and information leaflets are available from the Patient Information Officer x3282 in the PALS office.

III When should consent be sought?

1. When a patient formally gives their consent to a particular intervention, this is only the *endpoint* of the consent process. It is helpful to see the whole process of information provision, discussion and decision-making as part of 'seeking consent'. This process may take place at one time, or over a series of meetings and discussions, depending on the seriousness of what is proposed and the urgency of the patient's condition.

Single stage process

2. In many cases, it will be appropriate for a health professional to initiate a procedure immediately after discussing it with the patient. For example, during an ongoing episode of care a physiotherapist may suggest a particular manipulative technique and explain how it might help the patient's condition and whether there are any significant risks. If the patient is willing for the technique to be used, they will then give their consent and the procedure can go ahead immediately. In many such cases, consent will be given orally.

3. If a proposed procedure carries significant risks, it will be appropriate to seek written consent, and health professionals must take into consideration whether the patient has had sufficient chance to absorb the information necessary for them to make their decision. As long as it is clear that the patient understands and consents, the health professional may then proceed.

Two or more stage process

4. In most cases where *written* consent is being sought, treatment options will generally be discussed well in advance of the actual procedure being carried out. This may be on just one occasion (either within primary care or in a hospital out-patient clinic), or it might be over a whole series of consultations with a number of different health professionals. The consent process will therefore have at least two stages: the first being the provision of information, discussion of options and initial (oral) decision, and the second being confirmation that the patient still wants to go ahead. The consent form should be used as a means of documenting the information stage(s), as well as the confirmation stage.

5. Patients receiving elective treatment or investigations for which written consent is appropriate should be familiar with the contents of their consent form before they arrive for the actual procedure, and should have received a copy of the page documenting the decision-making process. They may be invited to sign the form, confirming that they wish treatment to go ahead, at any appropriate point before the procedure: in outpatients, at a pre-admission clinic, or when they arrive for treatment. If a form is signed before patients arrive for treatment, however, a member of the healthcare team **must** check with the patient at this point whether they have any further concerns and whether their condition has changed. This is particularly important where there has been a significant lapse of time between the form being signed and the procedure. When confirming the patient's consent and understanding, it is advisable to use a form of words which requires more than a yes/no answer from the patient: for example beginning with "tell me what you're expecting to happen", rather than "is everything all right?"

6. While administrative arrangements will vary, it should always be remembered that for consent to be valid, the patient must feel that it would have been possible for them to refuse, or change their mind. It will rarely be appropriate to ask a patient to sign a consent form after they have begun to be prepared for treatment (for example, by changing into a hospital gown), unless this is unavoidable because of the urgency of the patient's condition.

Seeking consent for anaesthesia

7. Where an anaesthetist is involved in a patient's care, it is their responsibility (not that of a surgeon) to seek consent for anaesthesia, having discussed the benefits and risks. The Trust recognises that it is good practice for the patient to receive information about anaesthesia before their pre-operative visit from the anaesthetist: at such a late stage the patient will not be in a position genuinely to make a decision about whether or not to undergo anaesthesia. Patients should therefore either receive a general leaflet about anaesthesia in outpatients, or have the opportunity to discuss anaesthesia in a pre-assessment clinic. The anaesthetist should ensure that the discussion with the patient and their consent is documented in the anaesthetic record, in the patient's notes or on the consent form. Where the clinician providing the care is personally responsible for anaesthesia (eg where local anaesthesia or sedation is being used), then he or she will also be responsible for ensuring that the patient has given consent to that form of anaesthesia.

8. In addition, where general anaesthesia or sedation is being provided as part of dental treatment, the General Dental Council currently holds dentists responsible for ensuring that the patient has all the necessary information. In such cases, the anaesthetist and dentist will therefore share that responsibility.

> ➢ **For further guidance on the scope of consent, please refer to Annex 3 of this policy.**

Emergencies

9. Clearly in emergencies, the two stages (discussion of options and confirmation that the patient wishes to go ahead) will follow straight on from each other, and it may often be appropriate to use the patient's notes to document any discussion and the patient's consent, rather than using a form. The urgency of the patient's situation may limit the quantity of information that they can be given, but should not affect its quality.

Treatment of young children

10. When babies or young children are being cared for in hospital, it will not usually seem practicable to seek their parents' consent on every occasion for every routine intervention such as blood or urine tests or X-rays. However, you should remember that, in law, such consent is required. Where a child is admitted, you should therefore discuss with their parent(s) what routine procedures will be necessary, and ensure that you have their consent for these interventions in advance. If parents specify that they wish to be asked before particular procedures are initiated, you must do so, unless the delay involved in contacting them would put the child's health at risk.

11. Only people with 'parental responsibility' are entitled to give consent on behalf of their children. You must be aware that not all parents have parental responsibility for their children (for example, unmarried fathers do not automatically have such responsibility although they can acquire it). If you are in any doubt about whether the person with the child has parental responsibility for that child, you must check.

> ➢ **For further guidance on the treatment of older children, parental refusal and emergencies involving children, please refer to Annex 4 of this policy.**

IV Provision of Information

1. The provision of information is central to the consent process. Before patients can come to a decision about treatment, they need comprehensible information about their condition and about possible treatments/investigations and their risks and benefits (including the risks/benefits of doing nothing). They also need to know whether additional procedures are likely to be necessary as part of the procedure, for example a blood transfusion, or the removal of particular tissue. Once a decision to have a particular treatment/investigation has been made, patients need information about what will happen: where to go, how long they will be in hospital, how they will feel afterwards and so on.

2. Patients and those close to them will vary in how much information they want: from those who want as much detail as possible, including details of rare risks, to those who ask health professionals to make decisions for them. There will always be an element of clinical judgement in determining what information should be given. However, the *presumption* must be that the patient wishes to be well informed about the risks and benefits of the various options. Where the patient makes clear (verbally or non-verbally) that they do not wish to be given this level of information, this should be documented in the patient's notes.

Sources of Patient Information at The Whittington

3. Sources of patient information are available in this Trust from the Whittington Patient Liaison Advisory Service. The service provides information leaflets for specific treatment and procedures.

   - For more information contact the Patient Information Officer x3282 in the PALS Office.

Provision for patients whose first language is not English

4. This Trust is committed to ensuring that patients whose first language is not English receive the information they need and are able to communicate appropriately with healthcare staff. It is not appropriate to use children to interpret for family members who do not speak English.

   - The Whittington Patient Advisory Service provides an interpreting service. For further information, please contact the PALS Office. A list of interpreters has been listed by PALS and can be found on the Intranet.

Access to more detailed or specialist information

5. Patients may sometimes request more detailed information about their condition or about a proposed treatment than that provided in general leaflets. This Trust has made the following arrangements to assist patients to obtain such information:

   - Please contact the Patient Advisory Liaison Service for further information form within the hospital. PALS staff will also be able to help enquirers with useful sources of information on the Intranet and elsewhere.

   - NHS Direct can be telephoned on 0845 4647

Access to health professionals between formal appointments

6. After an appointment with a health professional in the out-patients department, patients will often think of further questions which they would like answered before they take their decision. Where possible, it will be much quicker and easier for the patient to contact the healthcare team by phone than to make another appointment or to wait until the date of an elective procedure (by which time it is too late for the information genuinely to affect the patient's choice).

- Written information to patients given by specialist departments provides contact telephone numbers in case of queries.

- Patients requiring information about appointment dates and times should be directed to the Appointments Office on Ext 3950.

- Patients who have clinical questions should be offered contact telephone numbers of specialist nurses or clinical secretaries who can then liase with medical staff and where necessary and respond.

Open access clinics

7. Where patients access clinics directly, it should not be assumed that their presence at the clinic implies consent to particular treatment. You should ensure that they have the information they need before proceeding with an investigation or treatment.

- It is good practice to check what information a patient has been given by their GP/ Primary Care Worker and discuss the procedure further if required.

> ➢ **For further guidance on the provision of information, refer to Annex 5 of this policy.**

V Who is responsible for seeking consent?

1. The health professional carrying out the procedure is ultimately responsible for ensuring that the patient is genuinely consenting to what is being done: it is they who will be held responsible in law if this is challenged later.

2. Where oral or non-verbal consent is being sought at the point the procedure will be carried out, this will naturally be done by the health professional responsible. However, teamwork is a crucial part of the way the NHS operates, and where written consent is being sought it may be appropriate for other members of the team to participate in the process of seeking consent.

> ➢ **For further guidance on seeking consent, refer to Annex 3 of this policy.**

Completing consent forms

3. The standard consent form provides space for a health professional to provide information to patients and to sign confirming that they have done so. The health professional providing the information must be competent to do so: either because they themselves carry out the procedure, or because they have received specialist training in advising patients about this procedure, have been assessed, are aware of their own knowledge limitations and are subject to audit.

4. If the patient signs the form in advance of the procedure (for example in out-patients or at a pre-assessment clinic), a health professional involved in their care on the day should sign the form to confirm that the patient still wishes to go ahead and has had any further questions answered. It will be appropriate for any member of the healthcare team (for example a nurse admitting the patient for an elective procedure) to provide the second signature, as long as they have access to appropriate colleagues to answer questions they cannot handle themselves.

Please see *Section XI: Training* of this policy for non-medical clinical staff training at The Whittington.

- Staff who are involved in confirming the patient's consent should have appropriate access to the consultant/ health professional who is carrying out the procedure where they are personally not able to answer any remaining questions. The health professional taking consent must be capable of doing the procedure and therefore should have full knowledge of risks and benefits, though the health professional carrying out the procedure is ultimately responsible for ensuring that the patient is genuinely consenting to what is being done. In an unusual case, the consultant should automatically be involved.

Responsibility of health professionals

5. It is a health professional's own responsibility:

- To ensure that when they require colleagues to seek consent on their behalf they are confident that the colleague is competent to do so; and

- To work within their own competence and not to agree to perform tasks which exceed that competence.

6. If you feel that you are being pressurised to seek consent when you do not feel competent to do so please contact the Medical Director for Surgery, Women's & Children's Health at the Whittington on Ext 5047.

Professional Support

7. Support and advice can also be obtained from professional bodies. These include:

British Medical Association
020 7387 4499
info.web@bma.org.uk

Royal College of Nursing
RCN Direct 0845 772 6100
www.rcn.org.uk

VI Refusal of treatment

1. If the process of seeking consent is to be a meaningful one, refusal must be one of the patient's options. A competent adult patient is entitled to refuse any treatment, except in circumstances governed by the *Mental Health Act 1983*. The situation for children is more complex: see the Department of Health's *Seeking consent: working with children* for more detail. The following paragraphs apply primarily to adults.

2. If, after discussion of possible treatment options, a patient refuses all treatment, this fact should be clearly documented in their notes. If the patient has already signed a consent form, but then changes their mind, you (and where possible the patient) should note this on the form.

3. Where a patient has refused a particular intervention, you must ensure that you continue to provide any other appropriate care to which they have consented. You should also ensure that the patient realises they are free to change their mind and accept treatment if they later wish to do so. Where delay may affect their treatment choices, they should be advised accordingly.

4. If a patient consents to a particular procedure but refuses certain aspects of the intervention, you must explain to the patient the possible consequences of their partial refusal. If you genuinely believe that the procedure cannot be safely carried out under the patient's stipulated conditions, you are not obliged to perform it. You must, however, continue to provide any other appropriate care. Where another health professional believes that the treatment can be safely carried out under the conditions specified by the patient, you must on request be prepared to transfer the patient's care to that health professional.

> ➢ **For further guidance on advance statements, please refer to Annex 6 of this policy.**

VII Tissue

1. The legal position regarding the use of human tissue (including blood samples and other bodily fluids provided for testing) raises some difficult issues and is currently under review. Such tissue can be very valuable in education and research, and its use may lead to developments in medical knowledge and hence improvements in healthcare for all. At present, this Trust requires that patients should be given the opportunity to refuse permission for tissue taken from them during surgery or other procedure to be used for education or research purposes. Patients should be asked to sign the section: *Consent for research on removed human tissue* on the consent form (Appendix B), where there is provision for patients to record their consent or objection to the use of such tissue. The laboratory must be notified where this is the case and a record made in the patient's case note along with a record of any objections to particular uses or use of particular tissues.

2. Explicit consent is not necessary for public health surveillance using the unlinked anonymous method, but a well-publicised opt-out policy must apply. Please indicate whether the patient has chosen to opt out on the consent form and in the case note.

3. Pending the outcome of the review of the law governing the use of human organs and tissue, the Department of Health believes that tissue samples may be used for quality assurance purposes without requiring specific patient consent *provided* there is an active policy of informing patients of such use. This is essential to ensure the high quality of service which all patients have the right to expect. Wherever possible, samples of tissue used in this way should be anonymised or pseudonymised. [Insert local details of policy.]

   - The Whittington Hospital NHS Trust consent forms include a section on signed consents for removed human tissue. Please ensure the patient signs this section before tissue is removed.

   - Useful further information:
     www.doh.gov.uk/tissue

VII Clinical photography and conventional or digital video recordings

1. Photographic and video recordings made for clinical purposes form part of a patient's record. Although consent to certain recordings, such as X-rays, is implicit in the patient's consent to the procedure, health professionals should always ensure that they make clear in advance if any photographic or video recording will result from that procedure.

2. Photographic and video recordings which are made for treating or assessing a patient must not be used for any purpose other than the patient's care or the audit of that care, without the express consent of the patient or a person with parental responsibility for the patient. The one exception to this principle is set out in paragraph 3 below. If you wish to use such a recording for education, publication or research purposes, you must seek consent in writing, ensuring that the person giving consent is fully aware of the possible uses of the material. In particular, the person must be made aware that you may not be able to control future use of the material once it has been placed in the public domain. If a child is not willing for a recording to be used, you must not use it, even if a person with parental responsibility consents.

3. Photographic and video recordings, made for treating or assessing a patient and from which there is no possibility that the patient might be recognised, may be used within the clinical setting for education or research purposes without express consent from the patient, as long as this policy is well publicised. However, express consent must be sought for any form of publication.

4. If you wish to make a photographic or video recording of a patient specifically for education, publication or research purposes, you must first seek their written consent (or where appropriate that of a person with parental responsibility) to make the recording, and then seek their consent to use it. Patients must know that they are free to stop the recording at any time and that they are entitled to view it if they wish, before deciding whether to give consent to its use. If the patient decides that they are not happy for any recording to be used, it must be destroyed. As with recordings made with therapeutic intent, patients must receive full information on the possible future uses of the recording, including the fact that it may not be possible to withdraw it once it is in the public domain.

5. The situation may sometimes arise where you wish to make a recording specifically for education, publication or research purposes, but the patient is temporarily unable to give or withhold consent because, for example, they are unconscious. In such cases, you may make such a recording, but you must seek consent as soon as the patient regains capacity. You must not use the recording until you have received consent for its use, and if the patient does not consent to any form of use, the recording must be destroyed.

6. If the patient is likely to be permanently unable to give or withhold consent for a recording to be made, you should seek the agreement of some one close to the patient. You must not make any use of the recording which might be against the interests of the patient. You should also not make, or use, any such recording if the purpose of the recording could equally well be met by recording patients who are able to give or withhold consent.

XI Training

Whittington Programme: Staff training on consent.

Medical Staff

- Induction training for Pre Registration House Officers & Senior House Officers
  (Annual training: February)

- Induction training for Pre Registration House Officers
  (Annual training: August)

- SpR Medical staff training induction (monthly)

All Clinical Staff

- Mandatory annual update days
- Specifically focused study days
- E-learning
  Guidance on the Intranet

Please contact your manager for further information for training and how to attend study days.

X Policy accountability

The Whittington Hospital NHS Trust undertakes to audit this consent policy on a yearly basis with practice according to national recommendations for patient safety. This will be carried out as part of the Surgical Audit Programme.

Dated:
March 03

Person responsible for policy:
Paula Reeves (Acting) Head of Clinical Audit and Effectiveness

Policy approved by:
Clinical Governance Steering Group March 03

Policy to be reviewed by [date]:
Head of Clinical Audit and Effectiveness on an annual basis.

Appendix A

12 key points on consent: the law in England

When do health professionals need consent from patients?

1. Before you examine, treat or care for competent adult patients you must obtain their consent.

2. Adults are always assumed to be competent unless demonstrated otherwise. If you have doubts about their competence, the question to ask is: "can this patient understand and weigh up the information needed to make this decision?" Unexpected decisions do not prove the patient is incompetent, but may indicate a need for further information or explanation.

3. Patients may be competent to make some health care decisions, even if they are not competent to make others.

4. Giving and obtaining consent is usually a process, not a one-off event. Patients can change their minds and withdraw consent at any time. If there is any doubt, you should always check that the patient still consents to your caring for or treating them.

Can children give consent for themselves?

5. Before examining, treating or caring for a child, you must also seek consent. Young people aged 16 and 17 are presumed to have the competence to give consent for themselves. Younger children who understand fully what is involved in the proposed procedure can also give consent (although their parents will ideally be involved). In other cases, some-one with parental responsibility must give consent on the child's behalf, unless they cannot be reached in an emergency. If a competent child consents to treatment, a parent **cannot** over-ride that consent. Legally, a parent can consent if a competent child refuses, but it is likely that taking such a serious step will be rare.

Who is the right person to seek consent?

6. It is always best for the person actually treating the patient to seek the patient's consent. However, you may seek consent on behalf of colleagues if you are capable of performing the procedure in question, or if you have been specially trained to seek consent for that procedure.

What information should be provided?

7. Patients need sufficient information before they can decide whether to give their consent: for example information about the benefits and risks of the proposed treatment, and alternative treatments. If the patient is not offered as much information as they reasonably need to make their decision, and in a form they can understand, their consent may not be valid.

8. Consent must be given voluntarily: not under any form of duress or undue influence from health professionals, family or friends.

Does it matter how the patient gives consent?

9. No: consent can be written, oral or non-verbal. A signature on a consent form does not itself prove the consent is valid – the point of the form is to record the patient's decision, and also increasingly the discussions that have taken place. Your Trust or organisation may have a policy setting out when you need to obtain written consent.

Refusal of treatment

10. Competent adult patients are entitled to refuse treatment, even when it would clearly benefit their health. The only exception to this rule is where the treatment is for a mental disorder and the patient is detained under the Mental Health Act 1983. A competent pregnant woman may refuse any treatment, even if this would be detrimental to the fetus.

Adults who are not competent to give consent

11. **No one** can give consent on behalf of an incompetent adult. However, you may still treat such a patient if the treatment would be in their best interests. 'Best interests' go wider than best medical interests, to include factors such as the wishes and beliefs of the patient when competent, their current wishes, their general well-being and their spiritual and religious welfare. People close to the patient may be able to give you information on some of these factors. Where the patient has never been competent, relatives, carers and friends may be best placed to advise on the patient's needs and preferences.

12. If an incompetent patient has clearly indicated in the past, while competent, that they would refuse treatment in certain circumstances (an 'advance refusal'), and those circumstances arise, you must abide by that refusal.

This summary cannot cover all situations. For more detail, consult the *Reference guide to consent for examination or treatment,* available from the NHS Response Line 08701 555 455 and at www.doh.gov.uk/consent.

Appendix B

Current forms in use in this organisation:

Consent Form 1: For patient agreement to investigation or treatment, (standard form for competent adults).

Consent Form 2: For parental treatment for investigation or treatment for a child.

Consent Form 3: For procedures where consciousness is not impaired.

Consent Form 4: For adults who are unable to consent to investigation or treatment.

Consent Form 5: Patient agreement to treatment to sterilisation or vasectomy.

- Consent forms are available from the Patient Information Officer in the PALS office.

Patient agreement to investigation or treatment

Patient's surname.....Patient's first names.....
Date of birth.....NHS / hospital number.....
Male Female Special requirement (language/communication method).....
Responsible health professional.....
Job title.....

Proposed procedure or course of treatment (include brief explanation if medical term not clear).
.....
.....
.....

Statement of health professional (who has appropriate knowledge of proposed procedure as specified in the consent policy)
I have explained the procedure to the patient. In particular I have explained:
The intended benefits .....
.....
.....
Serious or frequently occurring' risks.....
.....
.....
.....
The procedure will involve:
general anaesthesia regional anaesthesia local anaesthesia sedation

Any extra procedures that may become necessary during the procedure
Blood transfusion.....
Other.....

A leaflet/tape has been provided (name & code)…….....
Consenting to treatment leaflet has been provided.....

I have also discussed what the procedure is likely to involve, the benefits and risks of any available alternative treatments (including no treatment) and any particular concerns of the patient.

Signed .....**Date**.....
Name (PRINT).....**Job title**.....
Contact details.....

Statement of interpreter, (where appropriate). I have interpreted the information above to the patient to the best of my ability and in a way, which I believe she/he can understand.
Signed.....**Date**.....
Name (PRINT).....

Top copy accepted by patient: Yes/No (Please ring)

Statement of patient **Identifier label**

Please read this form carefully and make sure that you understand the benefits and risks of the proposed treatment. If you have any further questions please ask – we are here to help you. You have the right to change your mind at any time, including after you have signed this form.

As this is a teaching hospital, medical and nursing students may accompany the consultant during your treatment for training purposes. If you have any objection to this, please tell your doctor/nurse. This decision will not affect your treatment or care.

I agree to the procedure or course of treatment that is described on this form.

I understand that you cannot give me a guarantee that a particular person will perform the procedure. The person will, however, have the appropriate experience.

I understand that I will have the opportunity to discuss the details of general or regional anaesthesia with an anaesthetist before that procedure, unless the urgency of the procedure prevents this.

I understand that any procedure in addition to those described on this form will only be carried out if it is necessary to save my life or to prevent serious harm to my health.

I understand that human tissue (such as skin, muscle, organs) removed during the procedure may be sent to the laboratory for tests. Only with my express consent may any of the remains of these tissues be used for research or education. **(see signature below).**

I have been told about additional procedures, which may become necessary during my treatment. I have listed below any procedures that **I do not wish to be carried out** without further discussion.

.....
.....
.....

Patient's signature.....**Date**.....
Name (PRINT).....

Signed consent for research on removed tissue.....

A witness should sign below if the patient is unable to sign but has indicated his or her consent. Young people/children may also like a parent to sign here (see notes).
Signed.....**Date**.....

Confirmation of consent (to be completed by a health professional when a patient is admitted for a procedure, if the patient has signed the form in advance)

On behalf of the team treating the patient, I have confirmed with the patient that she/he has no further questions and wishes the procedure to go ahead.
Signed.....**Date**.....
Name (PRINT).....**Job title**.....

Important notes: (tick if applicable)

- See also advance directive/living will (e.g. Jehovah's Witness form)
- Patient has withdrawn consent (ask patient to sign/date here)

Consent form 2 **The Whittington Hospital *NHS* Trust**

Parental agreement to investigation or treatment for a child

Patient's surname…… Patient's first names…….
Date of birth…… NHS / hospital number…….
Male Female Special requirement (language/communication method)
……..
Responsible health professional……
Job title……

Proposed procedure or course of treatment (include brief explanation if medical term not clear)…….
……
……
……..
Statement of health professional (who has appropriate knowledge of proposed procedure as specified in the consent policy)
I have explained the procedure to the child and his or her parents(s). In particular I have explained:
The intended benefits…….
……..
serious or frequently occurring' risks…….
……
……

A leaflet/tape has been provided (name & code)….....
Consenting to treatment leaflet has been provided.....

The procedure will involve:
general anaesthesia regional anaesthesia local anaesthesia sedation

Any extra procedures that may become necessary during the procedure
Blood transfusion.....
Other.....

I have also discussed what the procedure is likely to involve, the benefits and risks of any available alternative treatments (including no treatment) and any particular concerns of the child or his/her parent(s).

Signed .....**Date**.....
Name (PRINT).....**Job title**.....
Contact details.....

Statement of interpreter, (where appropriate). I have interpreted the information above to the patient to the best of my ability and in a way, which I believe she/he can understand.
Signed.....**Date**.....
Name (PRINT).....

Top copy accepted by patient: Yes/No (Please ring)

Consent form 2 **The Whittington Hospital *NHS* Trust**

Statement of patient **Identifier label**

Please read this form carefully and make sure that you understand the benefits and risks of the proposed treatment. If you have any further questions please ask – we are here to help you. You have the right to change your mind at any time, including after you have signed this form.

As this is a teaching hospital, medical and nursing students may accompany the consultant during your treatment for training purposes. If you have any objection to this, please tell your doctor/nurse. This decision will not affect your treatment or care.

I agree to the procedure or course of treatment that is described on this form and **I confirm** that I have parental responsibility for this child.

I understand that you cannot give me a guarantee that a particular person will perform the procedure. The person will, however, have the appropriate experience.

I understand that my child and I will have the opportunity to discuss the details of general or regional anaesthesia with an anaesthetist before that procedure, unless the urgency of the procedure prevents this.

I understand that any procedure in addition to those described on this form will only be carried out if it is necessary to save the life of my child or to prevent serious harm to his/her health.

I understand that human tissue (such as skin, muscle, organs) removed during the procedure may be sent to the laboratory for tests. Only with my express consent may any of the remains of these tissues be used for research or education. **(see signature below).**

I have been told about additional procedures, which may become necessary during my child's treatment. I have listed below any procedures that **I do not wish to be carried out** without further discussion.

.....
.....
.....

Signature.....**Relationship to child**……..
Name (PRINT)..... **Date**.....

Signed consent for research on removed tissue.....

Child's agreement to treatment (if child wishes to sign)
I agree to have the treatment I have been told about.
Signed.....**Date**.....

Confirmation of consent (to be completed by a health professional when a child is admitted for a procedure, if the parent/child has signed the form in advance)

On behalf of the team treating the patient, I have confirmed with the child and his or her parent(s) that they have no further questions and wish the procedure to go ahead.
Signed.....**Date**.....
Name (PRINT).....**Job title**.....

Important notes: (tick if applicable)

See also advance directive/living will (e.g. Jehovah's Witness form)

Patient has withdrawn consent (ask patient to sign/date here)

Consent form 2 The Whittington Hospital *NHS* Trust

Parental agreement to investigation or treatment for a child

Patient's surname……. Patient's first names…….
Date of birth……. NHS / hospital number…….
Male Female Special requirement (language/communication method)
……..
Responsible health professional…….
Job title…….

Proposed procedure or course of treatment (include brief explanation if medical term not clear)…….
……
……
……..
Statement of health professional (who has appropriate knowledge of proposed procedure as specified in the consent policy)
I have explained the procedure to the child and his or her parents(s). In particular I have explained:
The intended benefits…….
……
serious or frequently occurring' risks…….
……
……

A leaflet/tape has been provided (name & code)….....
Consenting to treatment leaflet has been provided.....

The procedure will involve:
general anaesthesia regional anaesthesia local anaesthesia sedation

Any extra procedures that may become necessary during the procedure
Blood transfusion.....
Other.....

I have also discussed what the procedure is likely to involve, the benefits and risks of any available alternative treatments (including no treatment) and any particular concerns of the child or his/her parent(s).

Signed .....**Date**.....
Name (PRINT).....**Job title**.....
Contact details.....

Statement of interpreter, (where appropriate). I have interpreted the information above to the patient to the best of my ability and in a way, which I believe she/he can understand.
Signed.....**Date**.....
Name (PRINT).....

Top copy accepted by patient: Yes/No (Please ring)

Consent form 2 **The Whittington Hospital *NHS* Trust**

Statement of patient **Identifier label**

Please read this form carefully and make sure that you understand the benefits and risks of the proposed treatment. If you have any further questions please ask – we are here to help you. You have the right to change your mind at any time, including after you have signed this form.

As this is a teaching hospital, medical and nursing students may accompany the consultant during your treatment for training purposes. If you have any objection to this, please tell your doctor/nurse. This decision will not affect your treatment or care.

I agree to the procedure or course of treatment that is described on this form and **I confirm** that I have parental responsibility for this child.

I understand that you cannot give me a guarantee that a particular person will perform the procedure. The person will, however, have the appropriate experience.

I understand that my child and I will have the opportunity to discuss the details of general or regional anaesthesia with an anaesthetist before that procedure, unless the urgency of the procedure prevents this.

I understand that any procedure in addition to those described on this form will only be carried out if it is necessary to save the life of my child or to prevent serious harm to his/her health.

I understand that human tissue (such as skin, muscle, organs) removed during the procedure may be sent to the laboratory for tests. Only with my express consent may any of the remains of these tissues be used for research or education. **(see signature below).**

I have been told about additional procedures, which may become necessary during my child's treatment. I have listed below any procedures that **I do not wish to be carried out** without further discussion.

.....
.....
.....

Signature.....**Relationship to child**……..
Name (PRINT)..... **Date**.....

Signed consent for research on removed tissue.....

Child's agreement to treatment (if child wishes to sign)
I agree to have the treatment I have been told about.
Signed.....**Date**.....

Confirmation of consent (to be completed by a health professional when a child is admitted for a procedure, if the parent/child has signed the form in advance)

On behalf of the team treating the patient, I have confirmed with the child and his or her parent(s) that they have no further questions and wish the procedure to go ahead.
Signed.....**Date**.....
Name (PRINT).....**Job title**.....

Important notes: (tick if applicable)

See also advance directive/living will (e.g. Jehovah's Witness form)

Patient has withdrawn consent (ask patient to sign/date here)

Consent form 3 **The Whittington Hospital *NHS* Trust**

Patient/parental agreement to investigation or treatment

(procedures where consciousness is not impaired)

Patient's surname.....Patient's first names.....
Date of birth.....NHS / hospital number.....
Male Female Special requirement (language/communication method)
.....
Responsible health professional.....
Job title.....

Proposed procedure or course of treatment (include brief explanation if medical term not clear)……
.....
.....
.....

Statement of health professional (who has appropriate knowledge of proposed procedure as specified in the consent policy)
I have explained the procedure to the patient. In particular I have explained:
The intended benefits .....
.....
.....
Serious or frequently occurring' risks.....
.....
.....
.....

A leaflet/tape has been provided (name & code)…....
Consenting to treatment leaflet has been provided.....

The procedure will involve:

local anaesthesia sedation no anaesthesia

I have also discussed what the procedure is likely to involve, the benefits and risks of any available alternative treatments (including no treatment) and any particular concerns of the patient.

Signed .....**Date**.....
Name (PRINT).....**Job title**.....
Contact details.....

Statement of interpreter, (where appropriate). I have interpreted the information above to the patient to the best of my ability and in a way, which I believe she/he can understand.

Signed.....**Date**.....
Name (PRINT).....

Top copy accepted by patient: Yes/No (Please ring)

Identifier label

Statement of patient/person with parental responsibility

Please read this form carefully and make sure that you understand the benefits and risks of the proposed treatment. If you have any further questions please ask – we are here to help you. You have the right to change your mind at any time, including after you have signed this form.

As this is a teaching hospital, medical and nursing students may accompany the consultant during your treatment for training purposes. If you have any objection to this, please tell your doctor/nurse. This decision will not affect your treatment or care.

I agree to the procedure or course of treatment that is described on this form.

I understand that you cannot give me a guarantee that a particular person will perform the procedure. The person will, however, have the appropriate experience.

I understand that procedure will/will not involve local anaesthesia.

I understand that human tissue (such as skin, muscle,) removed during the procedure may be sent to the laboratory for tests.

Patient's signature.....**Date**.....
Name (PRINT).....

Signed consent for research on removed tissue.....

Confirmation of consent (to be completed by a health professional when a patient is admitted for a procedure, if the patient has signed the form in advance)

I have confirmed that the patient/parent has no further questions and wishes the procedure to go ahead.

Signed.....**Date**.....
Name (PRINT).....**Job title**.....

Important notes: (tick if applicable)
Patient has withdrawn consent (ask patient to sign/date here)

Consent form 4 **The Whittington Hospital *NHS* Trust**

Form for adults who are unable to consent to investigation or treatment

Patient's surname.....Patient's first names.....
Date of birth.....NHS / hospital number.....
Male Female Special requirement (language/communication method)
.....
Responsible health professional.....
Job title.....

All sections to be completed by the consultant who requested the procedure and countersigned by a second clinician carrying out the operation, investigation or treatment.

A) Details of procedure or course of treatment proposed

……
……
……
……
……
……
……..
(NB see guidance to health professionals overleaf for details of situations where court approval must first be sought)

B) Assessment of patient's capacity

I confirm that the patient lacks capacity to give or withhold consent to this procedure or course of treatment because:

the patient is unable to comprehend and retain information material to the decision;
the patient is unable to use and weigh this information in the decision-making process; or
the patient is unconscious.

Further details (excluding where the patient is unconscious): for example, how the above judgements were reached; which colleagues consulted; what attempts made to assist the patient make his or her own decision and why these were not successful.

……
……
……
……
……
……
……..

C) Assessment of patient's best interests

To the best of my knowledge, the patient has not refused this procedure in a valid advance directive. Where possible and appropriate, I have consulted with colleagues and those close to the patient, and I believe the procedure to be in the patient's best interests because:

……
……
……

(Where incapacity is likely to be temporary, for example if patient unconscious, or where the patient has fluctuating capacity)

The treatment cannot wait until the patient recovers capacity because:

……
……
……

D) Involvement of the patient's family and others close to the patient.

Please note, the final responsibility for determining whether a procedure is in an incapacitated patient's best interest lies with the health professional performing the procedure .
However, it is good practice to consult with those who are close to the patient, (e.g. spouse/partner family and friends, carer, supporter or advocate); unless you have good reason to believe that the patient would not have wished particular individuals to be consulted, or unless the urgency of the situation prevents this. 'Best interests' go far wider than 'best medical interest', and include factors such as the patient's wishes and beliefs when competent, their current wishes, their general wellbeing and their spiritual and religious welfare.

The procedure has/has not been discussed with the patient's next of kin, relatives or carers. (delete as necessary).
Signed by health professional……..

Please note: the patient's next of kin cannot sign this form on the patient's behalf.

E) Signature of health professional proposing treatment

The above procedure is, in my clinical judgement in the best interests of the patient, who lacks capacity to consent himself or herself. Where possible and appropriate I have discussed the patient's condition with those close to him or her, and taken their knowledge of the patient's views and beliefs into account in determining his or her best interests.

Name of consultant requesting the procedure.	**Name of second clinician carrying out the procedure.**
(PRINT) ……	(PRINT) ……
Date……..	Date……..
Signature……	Signature……
Designation……	Designation……

Consent form 5 **The Whittington Hospital *NHS* Trust**

Patient agreement to sterilisation or vasectomy

Patient's surname.....Patient's first names.....
Date of birth.....NHS / hospital number.....
Male Female Special requirement (language/communication method)
.....
Responsible health professional.....
Job title.....

Proposed procedure or course of treatment (include brief explanation if medical term not clear)……
.....
.....
.....

Statement of health professional (who has appropriate knowledge of proposed procedure as specified in the consent policy)
I have explained the procedure to the patient. In particular I have explained:
The intended benefits .....
.....
.....
serious or frequently occurring' risks:
It might not be possible to reverse the effects of the operation.
Sterilisation/vasectomy can sometimes fail
.....
.....

A leaflet/tape has been provided (name & code)…....
Consenting to treatment leaflet has been provided.....

The procedure will involve:

general anaesthesia regional anaesthesia local anaesthesia sedation

Any extra procedures that may become necessary during the procedure

Blood transfusion.....

Other.....

I have also discussed what the procedure is likely to involve, the benefits and risks of any available alternative treatments (including no treatment) and any particular concerns of the patient.

Signed .....**Date**.....
Name (PRINT).....**Job title**.....
Contact details.....

Statement of interpreter, (where appropriate). I have interpreted the information above to the patient to the best of my ability and in a way, which I believe she/he can understand.

Signed.....**Date**.....
Name (PRINT).....

Top copy accepted by patient: Yes/No (Please ring)

Statement of patient **Identifier label**

Please read this form carefully and make sure that you understand the benefits and risks of the proposed treatment. If you have any further questions please ask – we are here to help you. You have the right to change your mind at any time, including after you have signed this form.

As this is a teaching hospital, medical and nursing students may accompany the consultant during your treatment for training purposes. If you have any objection to this, please tell your doctor/nurse. This decision will not affect your treatment or care.

I agree to the procedure or course of treatment that is described on this form.

I understand that you cannot give me a guarantee that a particular person will perform the procedure. The person will, however, have the appropriate experience.

I understand that I will have the opportunity to discuss the details of general or regional anaesthesia with an anaesthetist before that procedure, unless the urgency of the procedure prevents this.

I understand that any procedure in addition to those described on this form will only be carried out if it is necessary to save my life or to prevent serious harm to my health.

I understand that human tissue (such as skin, muscle, organs) removed during the procedure may be sent to the laboratory for tests. Only with my express consent may any of the remains of these tissues be used for research or education. **(see signature below).**

I have been told about additional procedures, which may become necessary during my treatment. I have listed below any procedures that **I do not wish to be carried out** without further discussion.

……
……
……

Patient's signature.....**Date**.....
Name (PRINT).....

Signed consent for research on removed tissue.....

A witness should sign below if the patient is unable to sign but has indicated his or consent.
Signed.....**Date**.....

Confirmation of consent (to be completed by a health professional when a patient is admitted for a procedure, if the patient has signed the form in advance)

On behalf of the team treating the patient, I have confirmed with the patient that she/he has no further questions and wishes the procedure to go ahead.

Signed.....**Date**.....
Name (PRINT).....**Job title**.....

Important notes: (tick if applicable)

- See also advance directive/living will (e.g. Jehovah's Witness form)
- Patient has withdrawn consent (ask patient to sign/date here)

Appendix C

Useful contact details at The Whittington

Director of Nursing & Clinical Development	Ext 3589
Director of Medicine	Ext 5033
Medical Director, Surgery, Women's and Children's Health	Ext 5047
Medical Director, Medicine	Ext 3174
Medical Director of Clinical Audit & Effectiveness & Risk	Ext 5470
Trust Risk Manager	Ext 3443/
Or air call the Risk Manager through the hospital switchboard	
Risk Management Administrators	Ext 5818/3282
Director of Medical Education	Ext 5730
Medical Education Project Co-ordinator	Ext 5979
Assistant Director of Nursing for Education & Training/ R&D	Ext 5035
Nursing Education & Development Assistant	Ext 3645
Assistant Director of Training & Development (Human Resources)	Ext 5718
Learning & Development Advisor (Human Resources)	Ext 3015
Local Research Ethics Committee (Chair)	Ext 5520
R&D/ Ethics Support	Ext 5676
Patient Advisory & Liaison Service (Manager)	Ext 5784
Patient Advisory & Liaison Service (Patient Information Co-ordinator)	Ext 3282
Head of Clinical Audit & Effectiveness	Ext 5469/3281

Appendix D

How to seek a court declaration

Any legal advice must be obtained through Risk Management.

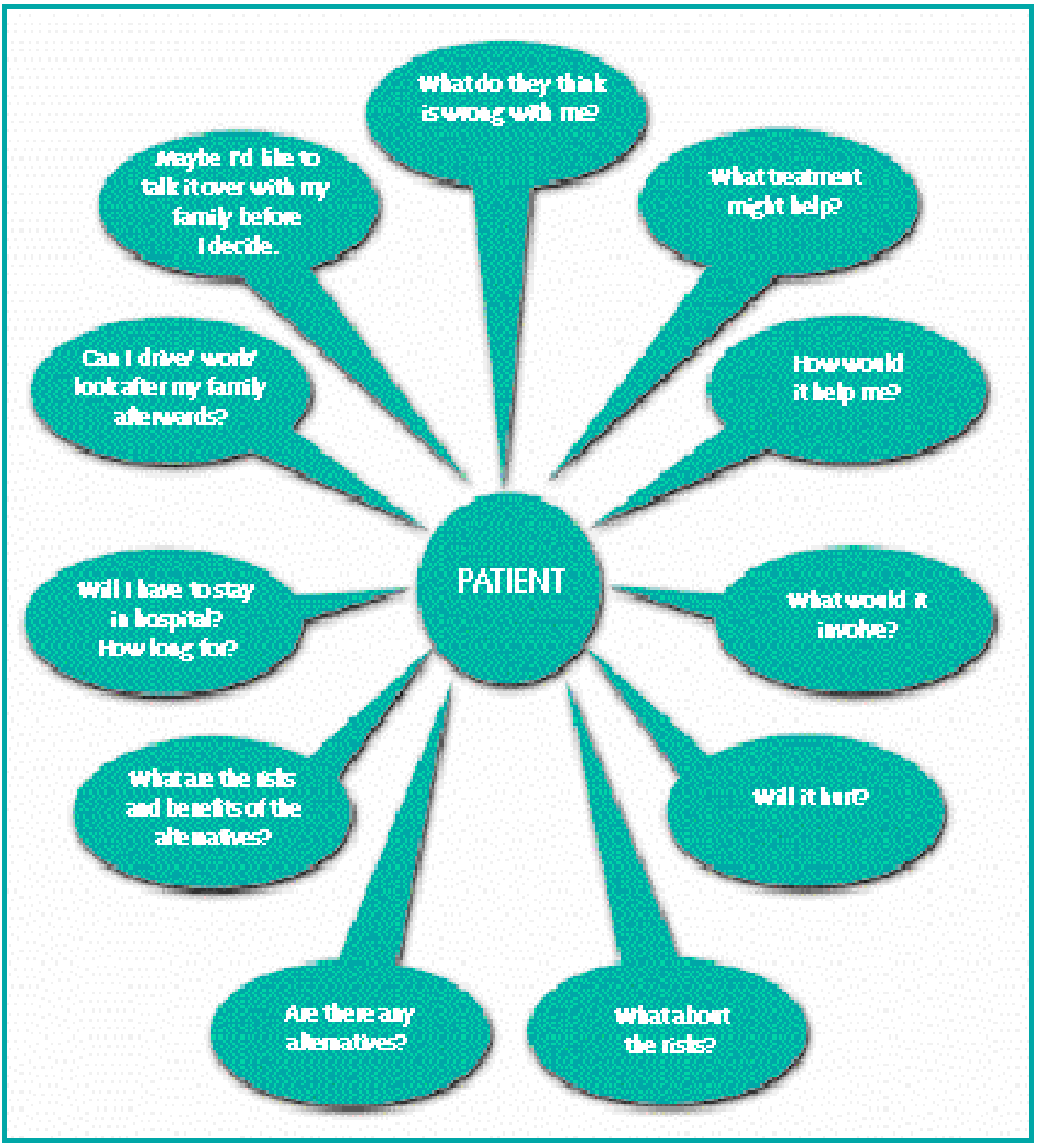
The Risk Manager can be contacted on Ext 3443/ or air call the Risk Manager through the hospital switchboard

The Gold team bleep holder can be contacted through the hospital switchboard if the Risk Manager is on leave.

Telephone numbers of a team of solicitors can also be obtained through switchboard. The Risk Manager will co-ordinate this.

Appendix E

Seeking consent: remembering the patient's perspective



Appendix F The Whittington Hospital NHS Trust: Patient Information Leaflet on Consent

Consenting to treatment, investigation or operation

Information for all patients, parents or guardians to consider before being asked to consent to any treatment (operation or investigation).

Why do we need your consent?

1. Competent adult patients have the right in law to agree to or refuse any treatment. The hospital cannot carry out any treatments without your consent. This can be verbal consent for minor procedures, or written consent for more significant procedures.

What is 'informed consent'?

2. It is having enough information and understanding of your proposed treatment, to make a decision to go ahead with it or not.

It is important:

- That you know the **benefits** as well as the **significant risks**, **side effects** or **possible complications** of any treatment, before you decide to go ahead. Some common examples of risks are infection, a blood clot or a reaction to a drug.

- That you are **involved** in the decision making process with the doctor, nurse or health professional.

- That you know how to get the **information** you need to make that decision.

Getting the information you need

- The GP surgery and/or outpatient visit offer a very important opportunity to find out as much as possible about the planned treatment and what you are agreeing to.

- You may not be able to take in everything that is said at first; but you will get other opportunities to ask questions both at your medical check up with a nurse specialist; or immediately before your treatment with a doctor, nurse specialist or health professional.

- Please remember that the doctor, nurse and other health professionals are here to help you, and to answer any questions you may have.

- General anaesthetic and sedation have their own special risks: if you have any worries about this you will have the opportunity to talk to your anaesthetist (also a trained doctor) before your operation.

- If you prefer, you can have a friend or relative with you at your medical check up to support you.

- In many cases you will be given a written patient information leaflet, to reinforce what the doctor has explained to you about your treatment.

- **If English is not your first language** – we may be able to arrange an interpreter/advocate to help you if you phone 020 7288 5459, 10 days before your medical check-up.

When should you give your consent to a procedure?

3. Only when you have enough information from the person obtaining your consent for you to understand:

- What is planned,
- Why it is planned,
- Possible alternatives (one of which may be to do nothing), and
- Any significant risks.

Please use this information to decide whether or not to agree to treatment.

How final is it?

4. Once signed or agreed it is **not irreversible**, you can change your mind and you can cancel the treatment.

5. **You can refuse treatment;** but you cannot insist that the doctor provides a treatment that is **different to that proposed**, if she/he feels that it is not in your best interest.

Other things to consider when signing the consent form

Teaching and further training

6. Experienced doctors and nurses will have overall responsibility for your treatment. However, teaching medical and nursing students and qualified specialist, is an important part of the work of the hospital. During the time that you are being treated you may be asked to give your permission (consent) for students to examine you and/or present clinical information about you to others. If you have any objection to this please tell your nurse or doctor. A decision to refuse permission will not affect your treatment or care.

Doctors

7. We cannot guarantee that the same doctor who has been treating you so far will actually perform the treatment; but we can assure you that the doctor will be fully qualified.

Specialist Nurses

8. Specialist nurses perform certain treatments where the same consent criteria apply. However, a specialist nurse will not carry out any procedure under general anaesthetic.

Research

9. You will not be involved in research without your consent.
Any research on human tissue (such as diseased skin, muscle, or organs) removed for medical reasons during an operation or investigation, will also require your separate written consent form.

Extra procedures

10. Do write on the form any extra procedures that you do not want the doctor to include in your treatment.

Any further questions?

11. If you have any further questions about consenting to operation, investigation or treatment, please write to the Risk Management Department, The Whittington Hospital, London N19 5NF.

Annex 1

Type of consent

(Please refer to Section II Documentation: Written consent, of this policy)

Patients can indicate their consent in various forms:

Written consent
Written consent is obtained using the appropriate consent form (*Appendix B*). It is rarely a legal requirement to seek written consent[2] but it is good practice to do so if any of the following circumstances apply:

- treatment or procedure is complex, or involves significant risks (the term 'risk' is used throughout to refer to any adverse outcome, including those which some health professionals would describe as 'side-effects' or 'complications')
- the patient will undergo surgery
- the patient will undergo an invasive procedure
- the procedure involves general/regional anaesthesia or sedation
- providing clinical care is not the primary purpose of the procedure
- there may be significant consequences for the patient's employment, social or personal life
- the treatment is part of a project or programme of research. The research should always be approved by this Trust
- Any procedures for which there is a statutory requirement for written consent, (e.g. some fertility treatments *see Appendix B:* **Consent Form 3**)

Verbal consent

Verbal consent is suitable for those procedures where there is little risk
(e.g. injections).

Where consent has been obtained verbally, key elements of the discussion (information given, specific requests by the patient, scope of the consent given) must always be recorded in the patient's notes.

The Mental Health Act 1983 and the Human Fertilisation and Embryology Act 1990 require written consent in certain circumstances.

It is good practice to explain to why the patient is undergoing an examination/ test/ procedure, who will see the results and who is responsible for informing the patient about these results.

Implied consent

Implied consent applies where it is reasonable to assume that patient's consent by their actions e.g. undressing and lying on a couch.
Care should be taken when relying on a patient's apparent compliance with a procedure. For example, lying on an examination couch does not in itself indicate that the patient has understood what you propose to do and why. Always consider that need for an explanation and record it in the patient's notes.

Intimate Examinations

Intimate examinations, that is examinations of the breasts, genitalia or rectum, can be stressful and embarrassing for patients. When conducting intimate examinations, please:

- Explain to the patient why an examination is necessary and give the patient an opportunity to ask questions.
- Explain what the examination will involve, in a way the patient can understand, so that the patient has a clear idea of what to expect, including any potential pain or discomfort[3]
- Obtain the patient's permission before the examination and be prepared to discontinue the examination if the patient asks you to. You should record that permission has been obtained.
- Keep discussion relevant and avoid unnecessary personal comments.
- Offer a chaperon or invite the patient (in advance if possible) to have a relative or friend present. If the patient does not want a chaperon, you should record that the offer was made and declined. If a chaperon is present, you should record that fact and make a note of the chaperon's identity. If for justifiable practical reasons you cannot offer a chaperon, you should explain that to the patient and, if possible, offer to delay the examination to a later date. You should record the discussion and its outcome.
- Give the patient privacy to undress and dress and use drapes to maintain the patient's dignity. Do not assist the patient in removing clothing unless you have clarified with them that your assistance is required. [4]

Anaesthetised patients

You must obtain consent prior to anaesthetisation, for the intimate examination of anaesthetised patients. If you are supervising students, valid consent must be obtained before they carry out any intimate examination under anaesthesia.[5]

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[3] Paragraph 13 of GMC booklet *Seeking patients' consent* gives further guidance on presenting information to patients

[4] *GMC December 2001*

[5] *(GMC Dec 2001)*

Annex 2

Establishing Capacity to Make Decisions

(Please refer to Section II: Documentation; Procedures to follow when patients lack capacity to give or withhold consent)

Fluctuating Capacity

Where patients have difficulty in retaining information, or are only intermittently competent to make a decision, you should provide any assistance they might need to reach an informed decision. You should record any decision made while the patients were competent, including the key elements of the consultation. You should review any decision made whilst they were competent, at appropriate intervals before treatment starts, to establish that their views are consistently held and can be relied on.

Mentally Incapacitated Patients

No one can give or withhold consent to a treatment on behalf of a mentally incapacitated adult patient. You must first assess the patient's capacity to make an informed decision about the treatment. If patients lack capacity to decide, provided they comply, you may carry out an investigation or treatment, which may include treatment for any mental disorder, that you judge to be in their best interests. The best interests test will be satisfied if a competent body of your clinical colleagues would make a similar judgement; therefore it is crucial to obtain a second opinion, and have this noted in the records before proceeding except in an emergency. However, if they do not comply, you may compulsorily treat them for any mental disorder only within the safeguards laid down by the Mental Health Act 1983, and any physical disorder arising from that mental disorder, in line with the guidance in the code of Practice of the Mental Health Act Commission. You should seek the courts' approval for any non-therapeutic or controversial treatment, which are not directed at a mental disorder.

Annex 3

Scope of consent

(Please refer to Section III: When should consent be sought, of this policy).

You must give the patient a clear explanation of the scope of consent being sought. This particularly applies where:

- Treatment will be provided in stages with the possibility of later adjustments
- Different healthcare workers provided particular elements of an investigation or treatment
- A number of different investigations or treatments are involved
- Uncertainty about the diagnosis or range of options for treatment may only be resolved once investigations or treatment is underway and when the patient may be unable to participate in decision making.
- There should be clear agreement about whether the patient consents to all or only parts of the proposed investigation or treatment and whether further consent will have to be sought at a later stage.
- Scope of consent must be documented on the consent form or recorded in the case note.
- You must not exceed the scope of the authority given by the patient except in an emergency.

NB: Consent can only be obtained from the patient. No one may consent to medical treatment on behalf of another adult. This includes situations where patients themselves request that you or a relative make the decision on their behalf.

Who should seek consent?

(Please refer to Section V: Who is responsible for seeking consent? of this policy)

The person obtaining consent must:

- Be capable of performing the proposed investigation or treatment
- Be able to explain the risks and benefits
- Consent for major operations should never be obtained by a Pre-Registration House Officer
- No one should be consenting patients for procedures with which they are unfamiliar

Reviewing consent

A signed consent form is not conclusive evidence that a patient has given, or still gives, informed consent to the proposed treatment in all its aspects. A member of the clinical team must review the patient's decision close to the time of treatment and especially where:

- Significant time has elapsed between obtaining consent and the start of the treatment
- There have been material changes to the patient's condition or in any aspects of the proposed treatment plan which might invalidate the patient's existing consent.
- New potentially relevant information has become available, for example about the risks of the treatment, or about other treatment options.

Annex 4

Treatment of Older Children, Parental Refusal and Emergencies Involving Children

(Please refer to Section III: When should consent be sought of this policy).

At age16 a young person can be treated as an adult and can be presumed to have the capacity whether to consent to or refuse treatments and investigation. Under the age of 16, the following applies:

Under the age of 16, you must assess whether the child has the capacity to decide to consent to or refuse treatment before you provide it. A competent child is one who is able to understand the nature, purpose and possible consequences of treatment or non-treatment. If the child is considered competent, he or she can give consent. If the circumstances arise, a competent child can consent to treatment without the knowledge of the parent.

Where a competent child refuses treatment, a person with parental responsibility or the court may authorise investigations or treatment, which is in the child's best interests.

Where a child does not have the capacity to decide, consent may be obtained from a parent or legal guardian.

Parental refusal

The parent has the right to refuse consent except in the circumstances listed below. Legal advice must be sought in these circumstances.

- Non- treatment would result in deterioration of the child's health and
- Treatment is clearly in the best interests of the child.

Emergencies involving children

In a life-threatening situation where parental consent cannot be obtained, the clinician may proceed with the treatment. The manner in which consent is obtained must always be documented in the child's notes.

Annex 5

What information to provide

(Please refer to Section IV: Provision of information of this policy)

Details of information, which patients want or ought to know before deciding whether to give informed consent to treatment or an investigation, is listed below. This list is not an exhaustive list and will depend on the individual patient's needs.

- Details of the diagnosis and prognosis and the likely prognosis if the condition is left untreated
- Uncertainties about the diagnosis including opinions for further investigation prior to treatment
- Options for treatment or management of the condition (including the option not to treat).
- For each option, explanation of the likely benefits and probabilities of success, common and serious risks or side effects and any lifestyle changes caused by, or necessitated by the treatment and the likely timescale for recovery/recuperation
- How and when the patient's condition and any side effects will be monitored
- The name of the doctor who will have overall responsibility for the treatment
- Who will be involved in the treatment (other healthcare workers, doctors in training or students)
- A reminder that patients can change their mind about a decision at any time
- A reminder that patients have a right to seek a second opinion

Presenting Information

Treatment options should be discussed with the patient at a time when the patient is best able to understand and retain the information. If this is not possible, details should be recorded in the patient's notes.

The patient must be given sufficient time to ask questions and consider their decision

Use up to date written information where possible. The hospital produces a wide range of patient information leaflets. These can be obtained from the Patient Liaison Service.

Make arrangements, wherever possible, to meet particular language or communication needs e.g. using interpreters or patient advocates.

Where appropriate discuss with the patient the possibility of bringing a relative or friend. It is preferable that all members of the healthcare team should be involved in the process, where possible.

Withholding information

You should not withhold information necessary for decision making unless you judge that disclosure of some relevant information would cause the patient serious harm. In this context serious harm does not mean the patient would become upset, or decide to refuse treatment.

No one may make decisions on behalf of a competent adult. If patients ask you to withhold information and make decisions on their behalf, or nominate a relative or third party to make decisions for them, you should explain the importance of them knowing the options open to them, and what the treatment they may receive will involve.

If the patient insists they do not want to know in detail about their condition and its treatment, you should still provide basic information about the treatment. If a relative asks you to withhold information, you must seek the views of the patient. Again, you should not withhold relevant information unless you judge that this would cause the patient serious harm.

In any case where you withhold relevant information from the patient you must record this, and the reason for doing so, in the patient's medical records and you must be prepared to explain or justify your decision.

Annex 6

Advance Statements

(Please refer to Section VI: Refusal of treatment, of this policy)

If you are treating a patient who has lost capacity to consent to or refuse treatment, for example through onset or progress of a mental disorder or other disability, you should try to find out whether the patient has previously indicated preferences in an advance statement ('advance directives' or 'living wills'). You must respect any refusal of treatment given when the patient was competent, provided the decision in the advance statement is **clearly applicable to the present circumstances**, and there is no reason to believe that the patient has changed his/her mind. Where an advance statement of this kind is not available the best interests principle will apply.