NHS Continuing Healthcare

Full Consent Form for Participating in the NHS Continuing Healthcare Process and for Information Sharing with Family / Friend(s) / Advocates

This form is to enable CCGs to satisfy the Common Law Duty of Confidentiality and for Medico-Legal reasons. Under the General Data Protection Regulation consent is not required for the processing of personal and healthcare data in the context of NHS Continuing Healthcare.[1]

Surname/Family name of individual being assessed	
First name/s	
Date of birth	
NHS number (or other identifier)	
Permanent address	
Telephone number	
Responsible Professional[2] Name	
Job title	
Organisation	
Contact details for responsible professional	
Date form completed	

[1] The lawful basis for the processing of personal and healthcare data for NHS Continuing Healthcare is contained within article 6 (1) (e) and 9 (2) (h) of the General Data Protection Regulation (GDPR) as enacted by the Data Protection Act 2018.

[2] In this context the 'responsible professional' means the professional who is responsible for obtaining consent, normally at Checklist stage. Since the Checklist can be completed by a range of professionals any of these could be the 'responsible professional' in terms of gaining consent.

Name …… NHS No……

DoB ……..... Date……..

To be retained in individual's records/notes. All relevant sections to be completed by the responsible professional.

This form relates to consent to completion of the NHS Continuing Healthcare Checklist (screening tool), the completion of a full assessment for NHS Continuing Healthcare, and the sharing of personal health and social care information in order to[3]:

a) determine eligibility for NHS Continuing Healthcare (CHC)[4]

b) assist in care and support planning[5]

Does the individual have any communication difficulties that may impact upon their ability to consent? ☐ **Yes** / ☐ **No**

If yes, how have these been addressed? Describe what steps have been taken to enable the person to make the informed decision themselves (e.g. use of interpreter or communication aids, ensuring they have all the relevant information in an accessible form, considering times of day when their ability to understand is better, treating a medical condition which may be affecting their mental capacity, involving someone who knows them etc.)

N.B. Under the Mental Capacity Act a person must be assumed to have capacity unless it is established that they lack capacity; a person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success.

[3] Consent is not required to share information within Health and Social Care Organisations, because the Quality and Safety Act 2015 puts a legal duty on these Organisations to share information where it is needed for the direct care of that patient, or to facilitate the provision of care.

[4] 'determine eligibility' includes resolving any dispute regarding eligibility at local level or, where necessary, through the Independent Review Process operated by NHS England.

[5] including care and support planning in situations where the individual is not found eligible for CHC but requires some other publicly funded care

Name …… NHS No……

DoB ……..... Date……..

Assessment of Individual's Mental Capacity

Mental capacity should be assessed at the time the decision needs to be made, bearing in mind that mental capacity is always decision specific and time specific and can fluctuate.

Are there any issues arising that may lead you to suspect that the individual may lack capacity to give their consent to participate in the NHS Continuing Healthcare assessment process and to share information with family/friend(s)/ advocate?

Yes / ☐ **No**

If no, please complete Part 1 only.

If yes, i.e. there is evidence that the person has difficulty consenting or making decisions, proceed to Part 2.

PART 1
Consent for individuals that have mental capacity

Statement from responsible professional:

☐ I have explained the process and purpose of the CHC assessment

☐ I have advised the individual of how their health and social care information may be used, and that it will be shared for this assessment process with a number of different health and social care professionals and, with agreement, relevant family/friend(s)/advocate.

☐ I have explained that if the Checklist indicates that a full CHC assessment is required, this does not mean they will necessarily be found eligible for CHC. Alternatively, where the Fast Track Pathway Tool is appropriate I have explained its purpose and implications.

☐ I have explained to the individual that they can withdraw or amend their consent at any time, should they decide to do so (as well as the potential consequences of doing this).

☐Has the individual been given a copy of the *NHS Continuing Healthcare and NHS-funded Nursing Care Public Information Leaflet*? ☐ **Yes** / ☐ **No**

If the patient has capacity, but is unable to read or write:

If the patient can indicate their consent by making their mark (on the consent form above) this should be encouraged It is good practice for the mark to be witnessed and to be recorded in the case notes.

Where the patient has capacity but is only able to verbally consent, this must be witnessed by two people:

Signature:	Name:	Designation/relationship:	Date:

☐ The individual has given consent but is physically unable to sign the form on the next page for the following reasons:

Signed…….....

Name (PRINT) …….....

Date …….....

Statement of Consent from Individual:

Please read this carefully (or ask someone to read it to you) and tick/confirm those statements below that you agree with. You have the right to change your mind or withdraw your consent at any time.

☐ I consent to participating in the NHS Continuing Healthcare (CHC) assessment as explained to me.

☐ I have been advised and understand that health and social care professionals involved in the assessment to determine eligibility for CHC will need to share information between them about my needs and will store this information securely.

☐ I understand that I can withdraw my consent to participating in the assessment process at any time, and that by withdrawing my consent this may affect the ability to provide me with appropriate services to meet my needs.

☐ I consent to any relevant family/friend(s)/advocate being involved in my assessment as considered appropriate and understand that my personal health and social care information may be shared with them for the purposes of this assessment.

OR

☐ I limit my consent to the following specific family/friend(s)/advocate being involved in my assessment and understand that my personal health and social care information may be shared with them for the purposes of this assessment.

Name	Relationship	Address and telephone number

OR

☐ I do not consent to any family/friend(s)/advocate being involved in my assessment nor to my personal health and social care information being shared with them.

☐ I understand that I can withdraw my consent to sharing information with specific family/friend(s)/advocate at any time.

…….....
Individual's Signature

…….....
Individual's Name (PRINT)

…….....
Date

N.B If the individual has given consent but is physically unable to sign the form please confirm and give reason on page 3 above.

PART 2
Where there is a reasonable belief that the individual concerned may lack mental capacity to consent

1. Assessor Details

……
Name of responsible professional completing the mental capacity assessment on behalf of SW London CCG (Croydon)

…… ……
Job Title Date of Assessment

Before assessing whether the individual lacks mental capacity to consent to participation in the CHC assessment process or the sharing of information with family/friends/advocates, you should consider:

- whether the individual might regain or acquire capacity to consent in the future and, if so,
- whether the NHS Continuing Healthcare assessment process can be delayed until they are able to give consent.
- whether advocacy services would be beneficial to the individual in order to support them in making or being involved in decision-making

2. Mental Capacity Assessment

On the date given above and in relation to the decision whether or not to give consent to participating in the CHC assessment and for the sharing of personal health and social care information with family/friend(s)/advocate for this purpose:

a. Is the person able to understand the information relevant to the decision? *(i.e. Were you satisfied that the person could understand the nature of the decision, why the decision needed to be made at the time and whether they could understand the likely effects of deciding one way or another or making no decision at all?)*

☐ **Yes** / ☐ **No**

Please give reasons:

b. Is the person able to retain the information long enough to use it to make the decision? *(i.e. long enough to complete the decision-making process, including making and communicating their decision. Consideration should be given to the use*

of notebooks, photographs, videos, voice recorders, posters etc. to help the person record and retain the information) ☐ **Yes** ***/*** ☐ No

Please give reasons:

c. Is the person able to use or weigh up this information as part of the decision-making process? *(e.g. to consider the consequences, benefits and risks, of making the decision one way or another or making no decision at all? Understand the pros and cons)* ☐ **Yes** ***/*** ☐ **No**

Please give reasons:

d. Is the person able to communicate their decision? *(Verbally, using sign language or by any other means?)* ☐ **Yes** ***/*** ☐ **No**

Please explain how the decision was communicated or give reasons if answer is 'No':

In order to establish that someone does not have the mental capacity to make a particular decision the assessor must have a ***reasonable belief*** *(i.e. on the balance of probabilities) that they lack mental capacity. If the answer is 'YES' to* ***all*** *the above questions, the person must be assessed to have the mental capacity to make the decision themselves.*

An answer of 'NO' to ***any one*** *of the above four questions indicates that the person lacks mental capacity to make the decision in question if the reason for this is because they have an impairment or a disturbance in the functioning of their mind or brain.*

3. Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain?[6] ☐ Yes / ☐ No

If yes, please state the nature of the impairment (e.g. dementia, acquired brain injury, learning disability, acute confusional state, short-term memory loss, concussion, symptoms of drug / alcohol use) and the basis of this information (e.g. recent clinical assessments, established diagnosis etc.)

Based on the above information, my judgement is that,

…… *(Name of person being assessed)*

has the mental capacity / does not have the mental capacity *(delete as appropriate)*

to make a decision regarding consent to participating in the NHS Continuing Healthcare assessment process and the sharing of personal health and social care information with family/friend(s)/advocate in order for this assessment to take place.

…… ……

Name Signature of Assessor

…… ……

Job Title Date

4. Where the individual, following a mental capacity assessment, is found not to have capacity to make a decision to consent to participating in the NHS Continuing Healthcare assessment process and the sharing of personal health

[6] In the case PC & Anor v City of York Council (2013) EWCA Civ 478 it was clarified that it is important to assess whether the person is able to make the decision in question before considering whether they have an impairment of the mind or brain.

and social care information with family/friend(s)/advocate, please check and confirm whether either of the following have been appointed:

	Yes	No	Name / address / telephone
Someone with a Registered Lasting Power of Attorney (Health and Welfare)			
Court appointed Deputy (Health and Welfare)			

If either of the above have been appointed, the responsible professional must ask to see a certified copy of the relevant legal document and a copy should be made and retained on the individual's file.

If yes to either of the above, then that person has the authority to give or decline consent on behalf of the individual and therefore must be contacted and their decision respected and recorded below:

Does the person with relevant authority give permission on behalf of the individual for them to participate in the NHS Continuing Healthcare assessment and for their personal and healthcare information to be shared with family/friends/advocate as appropriate? Also ,has the individual with relevant authority been advised that information about the individual will be shared between professionals for the CHC assessment process?

☐ **Yes / ☐ No**

Reasons for decision:

If the person with relevant authority has provided a copy of the relevant legal document but can only give authority by verbal consent at that time, this consent must be witnessed by two people:

The person has only given verbal consent for the following reasons:

(Obtain email address if the document can be sent to the person for electronic signature)

Signature:	**Name:**	**Designation/relationship:**	**Date:**

Signature of person with relevant authority ……

Name……

Date……..

Signature of responsible professional ……

Name……

Date……..

If a decision has been made by a court appointed deputy or by someone with lasting power of attorney (health and welfare) the remainder of this form should not be completed.

<u>If the individual lacks mental capacity and there is no-one with an LPA or a Deputy with the relevant authority (i.e. to make health and welfare decisions), a best interest decision must be made by the responsible professional.</u>

The Mental Capacity Act requires the best interest decision maker to consult with family/friends (and/or advocacy service if appropriate) before making a best interest decision. However, as noted in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (see paragraphs 77-81), it is likely that it will be in an individual's best interest to have an assessment for CHC and for information about their health and welfare to be shared for this purpose.

Please give details regarding any consultation you have made with family/friends and the outcome of this:

Decision

Is it in the individual's best interest to be assessed for NHS CHC and for information about their health and welfare to be shared for this purpose?

Yes / ☐ No

Reasons for decision:

Signature of Assessor ……..

Name…….

Date……

Signature of relevant family member/representative……

Name…….

Date……