



Consent Practice Guidance

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1. Background

This guidance should be read in conjunction with the [Consent for Children in Care Policy](#). It seeks to collate all current information relating to consent into one comprehensive document.

2. Introduction

Obtaining consent is an important factor when working with children, young people and their families. Consent should be demonstrated in all casework across the realm of social work from the front door within CASS (Child Advice and Support Service), through to the assessment and planning process. Each level of social work activity should review whether consent has been granted and if not, consent should be sought.

Please be aware that GDPR (General Data Protection Regulations) and Data Protection Act 2018 do not prevent, or limit, the sharing of information for the purposes of keeping children and young people safe. The protection of children overrides consent.

3. The Legal Framework for Consent

Everyone has a right to privacy, and the legal framework relating to the protection of personal information and how it is exchanged is set out in:

- The Human Rights Act 1998, which incorporates Article 8 of the European Convention on Human Rights (ECHR), including the right to a private and family life;
- The common law duty of confidentiality;
- The General Data Protection Regulations (GDPR) and the Data Protection Act 2018 which supersedes the Data Protection Act 1998. Practitioners must have due regard to the relevant data protection principles which allow them to share personal information.

4. Consent and Confidentiality

Wherever possible, you should seek consent and be open and honest with the individual from the outset as to why, what, how and with whom, their information will be shared. You should seek consent where an individual may not expect their information to be passed on. When you gain consent to share information it must be explicit and freely given.

There may be some circumstances where it is not appropriate to seek consent, either because the individual cannot give consent; it is not reasonable to obtain consent; or because to gain consent would put a child or young person's safety or well-being at risk. Where a decision to share information without consent is made, a record of what has been shared and with whom should be kept.

In these circumstances the views of the child or young person should be taken into account based on their age and their ability to understand their situation. For further information on capturing the views of children and young people please refer to the [Voice of the Child Practice Guidance](#).

5. Information Sharing and Consent

Social Workers should always seek consent when we want to share information with others and carry out assessments and interventions with children and their families.

Reasonable steps must always be taken to secure consent. This will keep children and their families informed; enable the Trust to be open and transparent with them; and also help us to develop and maintain positive relationships.

In every case, it is important to record the necessity; proportionality; relevance; adequacy; accuracy; timeliness; and security of the information being shared.

There may be occasions when the Trust will need to share information with our partners. Please refer to the [Birmingham Early Help and Safeguarding Partnership \(BEHSP\) Consent, Information Sharing and Threshold Guidance](#).

6. Parental Refusal of Consent

The general rule is that consent must be given unconditionally and with full understanding. In these circumstances the Social Worker should note any issues relating to the capacity of the parents to consent, for example:

- Whether either parent has learning difficulties or mental health issues;
- Whether there are any issues relating to substance misuse;
- Whether anyone may be putting pressure on the parent to consent;
- Any cultural or religious factors relevant to the parents' understanding and awareness of the implications of giving consent; and
- Whether the parents may wish to set conditions to their consent.

Practitioners should respect the wishes of those who do not give consent, except where safety to a child may be a risk or when it is inappropriate to seek their agreement. If consent is not given, a record of why it is believed that the Child's safety overrides consent must be recorded as well as why it was felt inappropriate to seek the agreement of those with parental responsibility.

The Social Worker in this situation should consider the risk to the child(ren) and any potential harm or danger and whether the threshold for Section 47 action is needed. For example, if a parent or person with parental responsibility refuses consent, we must decide whether our concerns are great enough that consent can be overridden or dispensed with.

7. Medical Assessments

A medical assessment should demonstrate a holistic approach to the child and assess the child's well-being, including mental health, development and cognitive ability.

A medical assessment is necessary to:

- Secure forensic evidence;
- Obtain medical documentation;
- Provide reassurance for the child and parent;
- Inform treatment follow-up and review for the child (any injury, infection, new symptoms including psychological).

Consent:

The following may give consent to a medical assessment:

- A child of sufficient age and understanding (Gillick competency/Fraser guidelines);
- Any person with parental responsibility, providing they have the capacity to do so;
- The local authority when the child is the subject of a Care Order (though the parent should be informed);
- The local authority when the child is accommodated under **s20 of the Children Act 1989**, and the parent(s) have abandoned the child or are assessed as lacking capacity to give such authority;
- The High Court when the child is a ward of court;
- A family proceedings court as part of a direction attached to an Emergency Protection Order, an Interim Care Order or a Child Assessment Order.

A child of any age who has sufficient understanding (generally to be assessed by the doctor with advice from others as required) to make a fully informed decision can provide lawful consent to all or part of a medical assessment or emergency treatment.

A young person aged 16 or 17 has an explicit right (**s8 Family Law Reform Act 1969**) to provide consent to surgical, medical or dental treatment and, unless grounds exist for doubting their mental health, no further consent is required.

A child who is of sufficient age and understanding may refuse some or all of the medical assessment, though refusal can potentially be overridden by a court.

Wherever possible the permission of a parent should be sought for children under sixteen prior to any medical assessment and/or other medical treatment.

Where circumstances do not allow permission to be obtained and the child needs emergency medical treatment, the medical practitioner may:

- Regard the child to be of an age and level of understanding to give their own consent;
- Decide to proceed without consent.

In these circumstances, parents must be informed by the medical practitioner as soon as possible and a full record must be made at the time.

In non-emergency situations, when parental permission is not obtained, the Social Worker and Manager must consider whether it is in the child's best interests to seek a court order.

8. Section 20 Accommodation

Social Workers should satisfy themselves that when processing voluntary agreements with parents for the care of their child(ren) under the Children's Act 1989, s20, written and explicit consent to this arrangement should be obtained.

The [Section 20 Accommodation Parental Consent Form](#) should be completed.

9. Pre-Proceedings Court Work

The pre-proceedings and court process require strict compliance with consent and should always be followed. Information relating to this process is available in the [Practice Guidance section](#) in the procedures database/Tri.x. Social Workers should consult with Legal Services whenever further guidance is needed.

The court process requires that an assessment of the parent or person(s) with Parental Responsibility is always considered. This process requires the written consent of the individual(s) concerned. Each person being assessed should have a form [PP1 ASP Consent Form for Disclosure From Agencies](#) completed which will form part of the court papers.

10. Placement Planning

Before a child is placed in foster care or residential care, consent should be obtained wherever possible, usually from the parents. It is important to ensure that contact is made with fathers if they have Parental Consent, or the person with Parental Responsibility, for the following:

- a. Urgent or emergency medical treatment;
- b. First aid, healthcare assessments, advice and treatment, including immunisations;

- c. Allowing the child to participate in swimming, outdoor or other pursuits which have a risk attached to them;
- d. Whether the child can be administered non-prescribed medicines (such as Paracetamol) or Home remedies.
- e. Overnight stays with friends away from a foster home or residential home.

It is preferable to receive consent for these in writing, when completing the Placement Plan; however, this sometimes is not always possible. If verbal consent is given, it should be noted on the child's electronic file and countersigned by the person completing the record.

Having already secured initial overarching consent, it may be necessary for the child's Social Worker to seek further specific consent for the child to participate in activities/events which are outside the normal scope of those which a child in care would usually access through the use of the delegated authority tool.

Specific consent will usually be required for holidays and school/educational visits. Please refer to guidance on [Holidays and School Trips in the UK](#) and [Holidays and School Trips Outside the UK](#).

11. Consents Process for the Adoption of a Relinquished Child

A parent may consent to their child being adopted, and/or to the child being placed for adoption. The consent may relate to specific identified adopters or to any adopter chosen by Children's Services.

When a parent is prepared to consent to the child being adopted, this must be formally witnessed by an officer of the [Children and Family Court Advisory Support Service](#) known as CAFCASS. The Social Worker will make the request to CAFCASS. This request must include the "Schedule 2 information" as detailed in the [Arranging the Adoption of a Relinquished Child](#) policy.

The CAFCASS practitioner will: -

Satisfy themselves that the parents fully understand the consequences of giving consent and that they do so unconditionally;

- Ask the parents to sign the appropriate consent form(s);
- Countersign the form(s) as witness to the parents' signatures, and
- Send the completed consent form(s) (or a standard letter saying that they are unable to countersign the consent) to Legal Services.

When the signed consent form(s) have been received, Legal Services will keep the originals and send copies to the area Social Worker (to be placed on the child's adoption case record) and to the panel adviser. The original consent form, signed and witnessed, must accompany the application to court for an adoption order; a copy will not be accepted for this purpose.

The Social Worker should:

- Note the date on which consent was given (the first adoption review must be within 3 months of this);
- Ensure that the information to be presented to the adoption panel clearly states that consent has been given, including the type of consent given – whether it was consent to placement for adoption, or to adoption, or both, and whether it is given in general or relates only to specific adopters; and
- If consent is refused or any conditions are placed upon the consent, details of this must be recorded in the child's Placement Plan and the process followed in the [Arranging the Adoption of a Relinquished Child](#) policy.

12. CAFCASS – Discharge of a Care Order (Fast Track Process)

Where the Trust wishes to discharge a Care Order, the situation should be fully explained to the parent(s) or person with Parental Responsibility. As part of this process the documents which the Trust sends to CAFCASS should be accompanied by a completed [Consent to Sharing Information with CAFCASS - Care Discharge Fast Track Process](#) form.