

Consent Practice Guide

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 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.

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

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 this decision and what has been shared and with whom should be kept.

Information Sharing and Consent

All practitioners 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 Bradford Children's Services 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.

Parental Refusal of Consent

The general rule is that consent must be given unconditionally and with full understanding. In these circumstances the practitioner should note any issues relating to the capacity of the parents to provide informed 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
- 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.

In this situation, the practitioner in consultation with their manager should consider the risk to the child(ren) and any potential harm or danger and whether the threshold for significant harm is met. 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. For cases where a child has suffered or is likely to suffer significant harm, this decision should be made in a multi-agency strategy meeting.

Good Practice Point	Good Practice Point	Good Practice Point
<ul style="list-style-type: none">• The assessing practitioner should get signed consent from the child and family for each new referral that is received into the service.• IFD to ensure that issues relating to consent are clearly recorded on the referral form when progressing to a Single Assessment.	<ul style="list-style-type: none">• Be clear with parents, carers, children and young people about what they are consenting to.• Are the family aware of the agencies you wish to share and request information from?• Do they understand why this information is required?	<ul style="list-style-type: none">• Record decisions about consent clearly in case notes.• If consent has been refused, record why and what this means for the assessment or plan of work.• Discuss the case with a manager if consent is refused and likely to place a child at risk.

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)

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. In all other cases, persons with Parental Responsibility for the child should provide consent to medical treatment.
- 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 practitioner and their manager must consider whether it is in the child's best interests to seek a court order.

Section 20 Accommodation

Social Workers should satisfy themselves that when processing voluntary agreements with parents / carers with parental responsibility for the care of their child(ren) under the Children's Act 1989, s20, written and explicit consent to this arrangement should be obtained. Section 20 agreements should be used to promote the best outcome for a child or young person by working with families. During the period of accommodation those who have parental responsibility for the accommodated child retain parental responsibility for that child and should be kept fully and promptly informed about the progress and any updated information concerning their child. Section 20 covers a range of placements –

- Abandoned children
- Relinquished babies
- Unaccompanied refugee children
- Children with disabilities
- Adolescents where parents / carers are struggling to meet their needs
- Homeless 16- and 17-year-olds.

Placements under s20 can include short-term respite or short-break care, therapeutic placements, residential and assessment units, secure units, homes of family members, mother-and-baby foster placements, foster care and fostering-for-adoption placements.

Section 20 cannot be used if a person with parental responsibility who is willing and able to provide or arrange for accommodation objects to the proposed plan. A person with parental responsibility may at any time remove the child from local authority accommodation as it is voluntary arrangement. If changing arrangements for the child or young person places them at risk, then a court order is required, either an emergency protection order or an interim care order. Alternatively, the police can exercise their police protection powers.

When considering using s20, the following points should be given consideration as set out in the best guidance issued by the Public Law Working Group (2021) –

- Identify the context and purpose for which s20 is being considered. This may be short-term accommodation during a period of assessment or respite; alternatively, it may be a longer period of accommodation, including the provision of education or medical treatment.
- Have particular regard to the child or young person's age. Different considerations, including the purpose and duration may be heavily influenced depending on the age group of the relevant child or young person. Ensure that the voice of the child is clearly recorded and stated if old enough regarding the proposed arrangements.
- Identify and establish any immigration issues concerning the children, the family and any adults who may be caring for the children.
- As far as it is reasonably practicable identify, locate and consult with every person who has parental responsibility for the relevant child.
- When consulting with the person who holds parental responsibility, satisfy yourself that he / she has capacity to consent. Capacity can change and it should be reviewed as necessary. If there are doubts about any relevant person's capacity, take no further steps until the question of capacity has been addressed. A person may have capacity to agree but have extra needs; consider if these needs can be met by engaging adult services, independent advocacy or an intermediary. Remember the issue of consent and capacity to consent is relevant to medical examination/treatment and obtaining a child's medical records.

- In appropriate cases discussions about the use of s 20 can commence some time prior to birth so that those with parental responsibility have time to consider all the options and be assisted in making an informed decision. However, agreement to a child being accommodated can only be given once the child is born.
- Special care should be taken with mothers who are close to or have recently given birth. The question of capacity should be very carefully address, if appropriate, with medical advice. Put in place such support as is necessary to ensure that the mother in such circumstances can make an informed decision. This may include referral to adult or advocacy services, engaging the services of an intermediary or involving other reliable family members.
- If the relevant person has capacity to consent, the parent / carer should ensure that all the relevant information is available in a form and language that can be understood. This also applies to a child who is capable of consenting to accommodation under the CA 1989 / SSW-b(W)A 2014. Consider if key documents such as the written agreement should first be translated into the appropriate first language having checked that parents / carers can read the required language.
- Ensure that the relevant person who holds parental responsibility is aware of the consequences of giving consent and the full range of available options.
- Inform the parent / carer that they can withdraw their consent at any time without notice to the local authority.
- Ensure that consent is not given under duress or compulsion to agree (whether disguised or otherwise). Consent may not be valid if given in the face of a threat to issue court proceedings.
- The giving of consent is a positive act. Do not treat silence, lack of objection or acquiescence as valid consent.
- Consent to accommodation should be given prior to or at the same time as accommodation. Consent cannot be given retrospectively.
- Where possible, the person with parental responsibility should have access to legal advice.
- Where possible, the purpose and duration of any proposed accommodation should be agreed in advance of the child being accommodated. In case of emergencies, this should be addressed as soon as it is practicable to do so. The purpose and duration of accommodation may change and should be subject to review.
- The purpose and duration of any accommodation should be regularly reviewed whilst the child is accommodated. This may change with the changing circumstances of children. The appropriate frequency will depend on the facts of each case. Generally longer-term provision of accommodation can be reviewed in line with looked-after child reviews; short-term provision of accommodation may require more frequent reviews. The IRO should ensure that the accommodation is reviewed at a frequency in line with the individual needs of the child or young person. The review should involve all persons capable of continuing to give informed consent to accommodation and each review should have a clearly identifiable statement of the voice of the relevant child.

It is good practice to record the agreement in writing in a simple format, which clearly sets out that the persons consenting to accommodation may withdraw their consent and remove the child at any time without giving notice to the local authority. The Section 20 Accommodation Consent Form should be completed in all cases when a child is accommodated in line with this section of the Children Act 1989. See Appendix B.

Appendix A – Consent Flowchart

Has consent for a Single Assessment or Early Help Assessment been granted by the person with Parent Responsibility? This could be the parents or a carer with a court order that grants parental responsibility to them such as a Special Guardianship Order or a Child Arrangements Order. A young person can also provide consent to services if of sufficient age or understanding.

Yes

IFD will evidence that they have discussed consent with the parent/ carer on the case file. Verbal consent will be clearly documented before it is progressed to the locality teams.

For Early Help, the EHM assessment can be started.

No

Has a Strategy discussion taken place?
Has Section 47 threshold been met and, clearly recorded on the Child's case file?

Yes

Progress the s47 enquiries and single assessment.
Decision regarding why consent has been dispensed with recorded clearly on the file, highlighting which agencies have been consulted with as part of the s47 investigation.

No

Referral **cannot** progress to assessment.
For open cases, Child in Need planning can not take place without parental consent.
In the case of Early Help, no Early Help assessment can be completed.

Think GDPR!

Think Human Rights!



**Agreement to a Child’s Admission to the care of Bradford Children’s Services
under Section 20, Children Act 1989**

Child or Young Person’s Details			
Please complete one consent form per child			
Child or Young Person’s Name		Date of Birth	
Age		Ethnicity	

Relationship to the Child / Young Person	Add Name
Child / Young Person’s Mother	
Child / Young Person’s Father who has parental responsibility	
Adult / carer with parental responsibility by virtue of a court order	
Name of Court	
Type of Order	
Date Granted	

I agree to **(add name of child / young person)** being accommodated by Bradford Children’s Services under Section 20 of the Children’s Act 1989. I understand that this means that Bradford Children’s Services will make decisions about how **add name of child / young person** will be looked after with my agreement.

I have been informed that I have the right to say no and that I have the right to seek legal advice before making the decision. I am aware that I have the right to seek independent advice at any time.

I have been informed that I have a right to remove **(add name of child / young person)** from the care of the Bradford Children’s Services at any time but I will give Bradford Children’s Services reasonable notice if I intend to do this.

I consent to Bradford Council arranging emergency surgical, medical and dental procedures or treatments for the **(add name of child / young person)** whilst he or she is looked after by them.

My consent is given on the understanding that any information will be treated as confidential and only shared when it is important to my child’s care or well-being. I agree that this consent may be used for ongoing and continuing assessment and planning for my child, which includes their annual health needs assessment. My consent remains valid unless I withdraw it at a future date.

Placement Arrangements
<p>I agree to add child or young person's name being placed in add details to clarify such as foster care / extended family / residential placement.</p> <p>The purpose of the placement is add details.</p> <p>It is proposed that child or young person name will remain accommodated by the Local Authority for a period of weeks / months. This agreement will be reviewed every – set out timescale in weeks or a date.</p>

Family Time Arrangements
<p>Set out what the family time arrangements will for the child or young person to spend time with the person signing the form.</p>

Signature of Person with Parental Responsibility			
Name and Relationship to the child / young person			
Signature		Date	

Details of worker obtaining consent			
Name		Work Title	
Locality		Office No.	

Location, Date and Time where consent obtained					
Location		Date		Time	