

Consent Policy

Version 1.1

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Applicability

This policy applies to anyone who is employed by or engaged by Divergence. Recommendations for independent contractors in order to improve the clarity of this policy in relation to professionals who are not directly employed by Divergence, all recommendations stated within this policy apply in their entirety to all contractors.

Purpose

To provide a framework for seeking consent in the operational activities of divergence

The purpose of this policy is to set out the principles and procedures around consent to treatment from Independent Practitioners via the Divergence platform. It is acknowledged that consent can be a complicated issue and is relevant in every area of medical and healthcare treatment. Divergence policy addresses those aspects that are relevant to the provision of online services and so it does not provide for some of the matters that are addressed in larger health organisation’s policies. Nevertheless the broad principles of consent, regardless of the specific context, remain the same and are addressed in this policy.

Introduction

Divergence believes that cooperation and clear open dialogue with clients about their health is key. Clients should be listened to, and their concerns and preferences should be responded to in a respectful, calm, and attentive way. The combined qualifications and experience of the Independent Practitioner shall be drawn on to provide as knowledgeable a response as possible to the healthcare complaint, appraising the client of the various options for treatment, its impact, and management plan going forward. The client’s point of view is central to this and an Independent Practitioner’s ability to help the client understand better supports the client not only in deciding on the immediate course of treatment but engenders a wider sense of client involvement in managing their ongoing health and well-being.

Legal Guidance Framework

- Mental Capacity Act 2005
www.legislation.gov.uk/ukpga/2005/9/contents
- Mental Capacity Act Code of Practice

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

This Act provides a legal framework for making decisions in relation to people who lack capacity. It clarifies:

- who can make decisions, including decisions about medical care and treatment, for people who are unable to decide for themselves.
- how those decisions should be made.

Section 1 of the Act sets out the statutory principles that apply to any action taken and decisions made under the Act. These are:

1. a person must be assumed to have capacity unless it is established that they lack Capacity.
2. a person is not to be treated as unable to make a decision unless all practicable steps to help him do so have been taken without success
3. a person is not to be treated as unable to make a decision merely because he makes an unwise decision
4. an act done, or decision made, under the Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests
5. before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Follow Code of Practice when:

- assessing a person's capacity, or
- reaching a decision in the best interests of a person who does not have capacity.

Treatment for mental disorder without consent : Mental Health Act 1983 (as amended by the Mental Health Act 2007)

www.legislation.gov.uk/ukpga/2007/12/contents

Human Rights: Human Rights Act 1998

Common-law principles of consent

- Clients should be told of any possible significant adverse outcomes of a proposed treatment.
- A small but well-established risk of a serious adverse outcome is 'significant'.
- An individual's capacity to make particular decisions may fluctuate or be temporarily affected by factors such as pain, fear, confusion or the effects of medication.
- Assessment of capacity must be time and decision-specific.
- The fact that a person has a mental illness does not automatically mean they lack capacity to make a decision about medical treatment
- Clients who have capacity (that is, who can understand, believe, retain and weigh the necessary information) can make their own decisions to refuse treatment, even if those decisions appear irrational to the doctor or may place the Client's health or their life at risk.
- A competent pregnant woman can refuse treatment even if that refusal may result in harm to her or her unborn child.
- Clients cannot lawfully be detained and compulsorily treated for a physical condition under the terms of the Mental Health Act.
- A Client's consent to a particular treatment may not be valid if it is given under pressure or duress exerted by another person.
- Doctors are under no legal or ethical obligation to agree to a Client's request for treatment if they consider the treatment is not in the Client's best interests.
- A young person under 16 with capacity to make any relevant decision is often referred to as being 'Gillick competent'.

Guidelines / Statutory standards

- Consent: Patients and Doctors making decisions together (GMC 2008)
- GMC "Interactive online tool": a new interactive online tool will help you identify the steps you need to take. The information in the tool takes account of the different legal frameworks for making decisions with adults who lack capacity to make their own decisions about health and care issues. The new Mental Capacity Act 2016 in Northern Ireland will change some parts of the GMC's guidance, when it comes into force, but in the meantime, this tool remains helpful.
- CQC Fundamental Standard/H+SC Act Regulation (2014) - Regulation 11: "Consent"
- Reference guide to consent for examination or treatment (DoH)
- Reference guide to consent for examination, treatment or care (DoH, Social Services & Public Safety NI, 2003)
- Better information, better choices, better health: Putting information at the centre of health (DoH, 2004)
- NHS Toolkit for producing Client information (DoH, 2003)
- Supporting people with long-term conditions to self care (DoH, 2006)
- Project: Explaining the risks and benefits of treatment options (Royal College of Physicians, Client Involvement Unit, 2004–2006)
- The Mental Capacity Act 2005 Guidance for health Practitioners (British Medical Association, 2007)

Governance and Management

Broad Principles of Consent

- Consent depends upon the provision by the Independent Practitioner of all information necessary for an informed decision by the Client and this will be provided in an exchange with the Client in a clear, respectful manner.
- Consent must be given clearly and voluntarily; it must not be ambiguous or coerced.
- The Independent Practitioner documents consent to the proposed treatment in the Healthcare Record with regards medical intervention. Talk therapy is consented to through the acceptance of user terms and conditions.
- The scope of the authority provided by the Client will not be exceeded, unless the circumstances indicate otherwise. Given the scope and purpose of the Divergence platform, it is unlikely that such a scenario would arise; the policy addresses this below and refers to various scenarios.
- A Client has the opportunity to make a complaint regarding the matter of their consent.

Capacity

An Independent Practitioner should work on the assumption that every adult Client has the capacity to make decisions about care, and capacity to decide whether to agree to, or refuse, an examination, investigation or treatment. An Independent Practitioner must only regard an adult Client as lacking capacity once it is clear that, having been given all appropriate information and support, they cannot understand, retain, use or weigh up the information needed to make that decision, or communicate their wishes. An Independent Practitioner must not assume that an adult Client lacks capacity to make a decision solely because of their age, disability, appearance, behaviour, medical condition (including mental illness), their beliefs, their apparent inability to communicate, or the fact that they make a decision with which the Independent Practitioner disagrees with. For more information on where children are capable of independent consent, please see Appendix 2 and 3.

If a Client:

- has a condition that will affect the length or quality of their life, or
- has a condition that will impair their capacity as it progresses, such as dementia, or
- is otherwise facing a situation in which loss or impairment of capacity is a foreseeable possibility the Independent Practitioner should refer the Client to their UK registered GP to ensure continuity of care that is given by the more regular care provider, who is apprised of the full medical history of the Client and is better able to assess the Client's capacity at that time.

Further guidance is available in the Mental Capacity Policy.

Informed Consent - Provision of Information

The provision of information is central to the consent process. Appropriate and clear language will be used to ensure the Client understands what is being communicated during the Consultation. Before a Client can come to a decision about treatment, they need comprehensible information about their condition / symptoms, diagnosis and possible investigation / treatment and the associated risks and benefits, including the risks/benefits of doing nothing. This can be either written or verbal.

The information must be given in advance of consent, it is prospective not retrospective. Risks can take a number of forms, but will usually be: side effects, complications, failure of an intervention to achieve the desired aim.

Client will vary in how much information they want and in the form they want it or can understand it. There will always be an element of Practitioner judgement in determining what information should be given. However, the presumption must be that the Client wishes to be well informed about the risks and benefits of the various options. The Independent Practitioner will give the Client a choice of options in terms of treatment, where possible. The Independent Practitioner must consider whether she or he has given the information the Client wants or needs, and how well the Client understands the details and implications of what is proposed. This is more important than how their consent is expressed or recorded. If the Client makes clear that they do not wish to be given the full extent of information that the Independent Practitioner has judged relevant to the matter, this should be documented in the Healthcare Record and Discharge Summary.

Information that is necessary for the informed decision will not be withheld unless there is a specific reason to withhold. In all cases where information is withheld then the decision will be recorded in the Healthcare Record.

Guidance for the Client is attached at Appendix 1 which will be available to them on the Divergence platform regarding consent to treatment. Clients will confirm consent to the consultation as part of their acceptance of the service's Terms & Conditions.

Who Is Responsible For Seeking Consent?

The Independent Practitioner carrying out the Consultation is responsible for ensuring that the Client is genuinely consenting to the treatment that is being proposed and to what is being done.

Obtaining consent – its expression

Independent Practitioners will also be mindful of the fact that certain aspects of communication such as non-verbal cues may not be so easily recognised during a remote consultation. This could lead to misunderstandings by the Client or Independent Practitioner.

It is good practice to ask a question that requires a clear yes / no response, and to ask both the Client to repeat their understanding of the proposed treatment and associated risks or benefits.

Refusal of treatment

If the process of seeking consent is to be a meaningful one, refusal must be one of the Client's options. A competent person is entitled to refuse any treatment.

Mental health legislation does provide the possibility of treatment for a person's mental disorder and its complications without their consent. This legislation does not give power to treat unrelated physical disorders without consent.

If, after discussion of possible treatment options, a Client refuses all treatment, this fact should be clearly documented in the Discharge Summary and Healthcare Record. If the Client has already assented to a checkbox digital 'consent form', but then changes their mind, the Independent Practitioner (and where possible, the Client) should make a record of this.

Where a Client has refused a particular treatment, the Independent Practitioner must ensure that any other appropriate care to which they have consented continues to be provided. The Independent Practitioner should also ensure that the Client 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.

Given the remote provision of services over a digital platform Divergence does not intend to provide for at home blood test kits or similar, and therefore protocols around consent to procedures are not included in this policy. If the scope of Divergence services were to change, then the Policy will be updated accordingly. Independent Practitioners are bound to abide by applicable codes of conduct and Practitioner guidance in accordance with relevant laws in any case should the matter of a procedure arise during the course of a Consultation. No photographic, audio or video recordings will be made for treatment purposes, unless expressly and exclusively agreed between practitioner and client.

Safeguarding issues

If the Independent Practitioner believes that the matter of consent is related to any safeguarding issue, then the Independent Practitioner must refer to the Safeguarding Policy and adhere to its procedures without delay. For example, if the Independent Practitioner believes that the adult in question being treated does not have capacity, and is vulnerable, or being coerced to refuse treatment, or feels that a child's illness or symptoms are unexplained by a reasonable line of questioning, these point to safeguarding concerns.

The Independent Practitioner will act with due sensitivity and discretion, and shall notify the relevant Local Authority as set out in the Safeguarding Policy and document this in the Client's Healthcare Record.

Complaints

If a Client has received treatment which the Client believes they did not consent to, then the Client can make a complaint. This is facilitated by the opportunities to make complaints in a number of ways via Divergence platform, all of which are advertised to Clients on the website and made clear in the terms and conditions that govern their use of the Service.

Should a complaint be made, it will be addressed by the Complaints lead in conjunction with the treating Independent Practitioner in accordance with the Complaints Policy.

Patient Identification Procedure

NHS Digital has set a national standard :

[\(DCB 3501 Identity verification and authentication standard for digital health and care services\)](#)

Divergence Website Statement

"We need to make sure that there is suitable local medical support for you, wherever you are. We therefore place some emphasis on being able to contact a local medical service, often a GP, if we feel we really need to. This doesn't mean that we will insist on talking to your GP about you, just that we need to know that you have a local medical service to which we can refer if necessary".

The GP details field is therefore mandatory on the website booking form and new bookings are screened daily to ensure legitimate surgery details are provided.

If a patient is not registered with a GP, then consideration to be made by the Clinical Director or their deputy on a case by case basis if they can be taken on.

Divergence believes that easy access to mental health support is beneficial to people experiencing mental health problems or distress. As such we will not impose unnecessary barriers to accessing our service which may deter some people from accessing our support.

However, in some circumstances it is important to ensure that people seeking a service are providing accurate details about their identity. Such circumstances include:

1. If medication is being prescribed
2. If referral on to other agencies is considered.

Photo ID will be required to confirm identity which will be undertaken at the first video consultation. A copy of this document will then be required to be uploaded to the record system.

Acceptable forms of Identification are:

- Current signed passport
- Residence permit issued by the Home Office

- EU or Swiss national identity photo-card
- Valid UK photo-card driving licence
- Valid armed or police forces photographic identity card
- Photographic disabled blue badge
- Citizen card
- Valid student ID with photograph

If someone seeking a service which includes prescribing medication or being referred to other services is unable to prove their identity, we will not be able to provide this service for them.

For patients under the age of 18 photo ID of the patient themselves and their parent or guardian will be requested.

Seeking Consent from Parents

Where the patient is a child consent must be sought from the parent using the above guidance for adult patients. A proportionate approach must be taken to demonstrate parental responsibility, such as proof of address shared with the child.

In the presence of Gillick competence in a child the ideal is that consent is obtained from all parties.

Appendix 2 provides guidance on Gillick Competence

Monitoring

This policy will form part of the induction process for all relevant Divergence and excludes non-clinical staff. Those members of staff who are required to read this policy must sign as confirming that they have read and fully understood its contents.

This policy will be reviewed December 2024 ensuring that it reflects any relevant new legislation. On completion of the review this policy will be signed by the Divergence Director.

References

In addition to the listed legal and guidance frameworks in this document consideration is given to the following guidance and legislation

Equality Act 2010

Health and Social Care Acts 2008 & 2012

CQC – Essential Standards of Quality and Safety 2010

Appendices

1. Client Information on Consent
2. Assessing Gillick Competence
3. BMA Young Person's Toolkit

Appendix 1 Client Information Leaflet “Consent- it’s up to you”

It should be noted that the following refers to clinical professionals and excludes therapists/non-clinical staff. This document shows the information that the Parent / Guardian and/or Client will access via Divergence Platform about Consent.

About the consent form

Before the Independent Practitioner examines or treats you or your child (together “you”), they need your consent. Sometimes you can simply tell them whether you agree with their suggestions. However, sometimes you might be asked to repeat your understanding of the treatment that a Independent Practitioner has proposed to you. You may be asked to demonstrate your agreement to the treatment by following an on-screen prompt to choose yes/no.

The Independent Practitioner will send to you via your preferred means of contact a copy of the Discharge Summary which will also reiterate the symptoms, diagnosis, and recommended treatment, and will include details of the prescription if any.

What should you know before deciding?

All Health Practitioners must ensure you know enough to enable you to decide about treatment. They will discuss the choices of treatment with you. They will also discuss the associated risks or benefits of treatment options, including doing nothing. Although they may well recommend a particular option, you’re free to choose another. People’s attitudes vary on things like the amount of risk or pain they’re prepared to accept. That goes for the amount of information, too. If you’d rather not know about certain aspects, discuss your worries with whoever is treating you.

Should I ask questions?

Always ask anything you want. You can write any questions you have during the Consultation to remind yourself if you forget to ask anything during conversation.

Is there anything I should tell people?

It’s also important for the Independent Practitioner to know about any illnesses or allergies which you may have or have suffered from in the past. As much information as you can give about your medical history is important.

Who is treating me?

An Independent Practitioner is treating you who has the requisite UK qualifications and is registered as such, where appropriate, for example the nurses with the Nursing & Midwifery Council. All our Independent Practitioners have met other stringent criteria with respect to other Practitioner training, sometimes in association with their current NHS practice and sometimes in association with the Divergence platform in specific connection with providing services via an on-line environment. Other Independent Practitioners who are not drawn from the medical profession are registered with other statutory or recognized bodies with relevant qualifications and significant experience.

All of our Independent Practitioners are DBS checked.

What are the key things to remember?

It's your decision! It's up to you to choose whether or not to consent to what's being proposed. Ask as many questions as you like, and remember to tell the Independent Practitioner about anything that concerns you or about any medication, allergies or past history which might affect your health.

Questions to ask Health Practitioners

As well as giving you information, Health Practitioners must listen and do their best to answer your questions.

Questions may be about the treatment itself, for example:

- What are the main treatment options?
- What are the benefits of each of the options?
- What are the risks, if any, of each option?
- What are the success rates for different options – for this unit or for you (the clinician)?
- Why do you think the planned intervention is necessary?
- What are the risks if I decide to do nothing for the time being?
- How can I expect to feel after the treatment?
- What if the treatment doesn't do what it is meant to? What if I feel no better by a certain time?
- What should be the next step in my management plan?
- When should I worry if my symptoms change or worsen?

Appendix 2: Assessing Gillick Competence

With regards Gillick Competency, our child/young person population will always be accompanied by a Parent or Guardian / adult with parental responsibility or with delegated authority as per the terms and conditions of using the Divergence service. In the infrequent situation where an adult may temporarily leave the consultation and the child were to divulge information to the Independent Practitioner, we expect the following assessment to be carried out by that treating Independent Practitioner and documented in the Healthcare Record in an area which is not accessible to the Parent/ Guardian as it would be redacted since it would contain sensitive data:

1. Has the young person explicitly requested that you do not tell their Parents / Guardians about any part of the symptoms, diagnosis or proposed treatment options, and any services that they are receiving?
2. Have you done everything you can to persuade the young person to involve their Parent(s)/Guardians(s)?
3. Have you documented clearly why the young person does not want you to inform their Parent (s)/ Guardian(s)?
4. Can the young person understand the advice/information they have been given and have sufficient maturity to understand what is involved and what the implications are? Can they comprehend and retain information, especially the consequences of having or not having the treatment in question? Can they communicate their decision and reasons for it? Is this a rational decision based on their own religious belief or value system? Is the young person making the decision based on a perception of reality? E.g. this would not be the case for a chaotic substance misuser.
5. Are you confident that the young person is making the decision for themselves and not being coerced or influenced by another person?
6. Are you confident that you are safeguarding and promoting the welfare of the young person?
7. Without the service(s), would the young person's physical or emotional health be likely to suffer? (if applicable)
8. Would the young person's best interests require that the common assessment is done and the identified services and support provided without parental consent?

The Independent Practitioner should be able to answer YES to the above questions in order to determine the young person competent to make their own decisions about consenting to and taking part in the Consultation and consenting to any proposed treatment, sharing information and receiving services without their Parent / Guardian's consent. Independent Practitioners are required to record details of their decision making.

Appendix 3: BMA Young Persons Toolkit – Card 2

Can competence ever be presumed?

Yes. All people aged 16 and over are presumed in law to be competent to give their consent to medical treatment and to the release of information in England, Scotland, Wales and Northern Ireland (see Card 12 for more information on 16-17 year olds who lack mental capacity). Can a young person be competent under the age of 16?

Yes, but this needs to be assessed in each case on a continual basis. Doctors should aim to involve all children and young people in decisions relating to their medical treatment. It is important to recognise when a young person is able to make a valid choice about a proposed medical intervention or disclosure of personal medical data and is therefore competent to make a personal decision. Doctors should not judge the ability of a particular child or young person solely on the basis of his or her age.

For a young person under the age of 16 to be competent, they should have:

- the ability to understand that there is a choice and that choices have consequences
- the ability to weigh the information and arrive at a decision
- a willingness to make a choice (including the choice that someone else should make the decision)
- an understanding of the nature and purpose of the proposed intervention CARD 2. Assessing Competence
- an understanding of the proposed intervention's risks and side effects
- an understanding of the alternatives to the proposed intervention, and the risks attached to them
- freedom from undue pressure.

Competent under 16 year olds are sometimes referred to as being Gillick competent. In England, Wales and Northern Ireland children who are aged 12 or over are generally expected to have competence to give or withhold their consent to the release of information. In Scotland, anyone aged 12 or over is legally presumed to have such competence (see Card 8 on children and young people's health information).

Who should assess competence?

GPs who have known the young Client for a long time are well placed to assess their development and maturity but because these change, it is unwise to rely on any assessment that is not contemporaneous. Health Practitioners who assess competence need to be skilled and experienced in interviewing young Client and eliciting their views without distortion. The treating doctor may be the most appropriate person, but other members of the health care team who have a close rapport with the Client may also have a valuable contribution to make.

How can competence be promoted?

When assessing a child's competence it is important to explain the issues in a way that is suitable for their age. A young Client may be competent to make some, but not all decisions, and clinical staff

should promote an environment in which young Client are enabled to engage in decisions as much as they are able. The child or young person's ability to play a full part in decision-making can be enhanced by allowing time for discussion.