Bwrdd Iechyd Prifysgol Caerdyd a'r Fro

Cynllun Iaith Cymraeg
Adroddiadd Blynyddol 2015-2016

Asesu effaith polisïau
Nifer a chanran y polisïau (gan gynnwys polisïau a adolygwyd neu a addaswyd) lle'r ystyriwyd yr effaith y byddai'n polisi yn gael ei ar ddefnydd a'r Gymraeg. Engraifft o asesiad lle dyfarnwyd y byddai'r polisiau yn cael effaith ar ddefnydd o'r Gymraeg
Ymateb:
Mae 58 o bolisiau wedi cael ei cymeradwyo gan bwrdd yr sefydliad. Mae 100% wedi cael eu hasesu am effaith ieithyddol trwy'r asesiad effaith cydradaddoldeb y sefydliad. Mae **atodiadau 1** yn esiampl o polisi a 'EQIA' a chafodd ei newid oherwydd yr effaith ar yr iaith Gymraeg. Trwy'r asesiad effaith, roedd y polisi wedi ei newid i sicrhau bod y claf yn rhoi caniatad effeithiol, rhaid cynnig y dewis i trafod yn gymraeg gyda staff nyrsiol a meddygol.

Monitro gwasanaethau ddarperir gan eraill
Nifer a chanran y cytundebau trydydd parti gafodd eu monitro er mwyn sicrhau eu bod yn cydymffurfio â gofynion perthnasol y Cynllun iaith Gymraeg. Enghraifft o waith monitro a wnaed er mwyn dyfarnu os oedd cytundeb trydydd parti yn cydymffurfio â gofynion perthnasol y cynllun iaith Gymraeg ai peidio, a manylion unrhyw gamau a gymerwyd o ganlyniad i hynny.
Ymateb:
Mae 164 o chrontractau a 100% o'r cytundebau yn cael ei monitro i sicrhau cydymffurfiaeth gyda ahengion y cynllun iaith. Mae esiampl o cydymffurfiaeth trydydd parti wedi cael ei gynnwys fel **Atodiad 2**.Gan chytuno gyda Cynllun Iaith Gymraeg, mae'r chontractwyr yn mynd i'r cam nesaf o ennill y contract.

Cynllunio'r Gweithlu:
Diweddariad ar y cynnydd wnaed i fabwysiadau/gweithredu strategaeth sgiliau iaith Gymraeg y sefydliad
Ymateb:
Mae'r sefydliad wedi datblygu, mewn cyd-weithrediad gyda Prif Swyddog Gweithredu, set o pwyntiau gweithredu i symud agenda yr iaith Gymraeg ymlaen. Mae adran o'r pwyntiau gweithredu o gwmpas cydnabod a

defnyddio staff sydd yn siarad cymraeg yn mhob adran blaengar a sicrhau bod holl staff wedi cofrestru eu sgiliau iaith ar eu cofnod cyflogaeth.

Yn ail, fel rhan o'r set bydd y byrddau clinigol yn treialu recriwtio gyda Chymraeg yn hanfodol fel rhan o'r manyleb swydd mewn rolau megis derbynfeydd a gyda rhai sydd a chyfrifoldebau mewn croesawu cleifion. Mae manyleb swydd wedi cael ei datblygu.

- Nifer a chanran cyflogeion y mae asesiad o'u sgiliau Cymraeg wedi ei gynnal:

  - ar draws y sefydliad;

  - fesul grŵp blaenoriaeth
  - plant a phobl ifanc;
  - pobl hyn;
  - pobl ac anableddau dysgu;
  - defnyddwyr gwasanaethau iechyd meddwl;
  - gwasanaethau dementia;
  - gwasanaethau strôc;
  - gwasanaethau therapi iaith a lleferydd.

- Nifer a chanran cyflogeion sy'n meddu ar sgiliau Cymraeg (fesul lefel sgiliau)
  - ar draws y sefydliad;

  - fesul grŵp blaenoriaeth
  - plant a phobl ifanc;
  - pobl hyn;
  - pobl ac anableddau dysgu;
  - defnyddwyr gwasanaethau iechyd meddwl;
  - gwasanaethau dementia;
  - gwasanaethau strôc;
  - gwasanaethau therapi iaith a lleferydd

Ymateb:

Mae ffigurau ar gyfer rhain wedi cael ei atodi gyda'r adroddiad yma ar **atodiad 3**.

Training to improve Welsh language skills
Nifer a chanran gweithlu'r sefydliad sydd wedi derbyn hyfforddiant i wella eu sgiliau Cymraeg hyd at lefel o gymhwyster penodol.
Ymateb:
Mynychodd 10 aelod o staff cyrsiau iaith Gymraeg a chafodd ei rhedeg gan Canolfan Prifysgol Caerdydd ar gyfer addysg oedolion yn 2015/16.

Recriwtio
• Nifer a chanran y swyddi newydd a swyddi gwag a hysbysebwyd gyda'r gofynion bod: - Sgiliau Cymraeg yn hanfodol; Sgiliau Cymraeg yn ddymunol; - dim angen sgilau Cymraeg o gwbl. • Engrhaifft o asesiad o swydd sy'n dangos sut dyfarnwyd bod sgiliau Cymraeg : - yn hanfodol; - yn ddymunol; - dim angen sgilau Cymraeg o gwbl. • O'r swyddi hysbysebwyd gyda gofynion hanfodol, nifer a chanran y swyddi a lenwyd gan unigolion oedd yn ateb y gofynion.
Ymateb:
Rydym wedi recriwtio 3011 o aelodau staff newydd rhwng Ebrill 2015 a Mawrth 2016. Mae'r holl swyddi gwag sydd wedi cael ei hysbysebu ar NHS Jobs gan Bwrdd Iechyd Prifysgol Caerdydd a'r Fro yn cynnwys 'yr gallu i siarad Cymraeg yn ddymunol'. Mae esiample ar gael ar **atodiad 4**. Nid yw'r Bwrdd heb hysbysebu swydd gyda'r iaith Gymraeg fel hanfodol yn y swydd disgrifiad eto.

Hyfforddiant Ymwybyddiaeth Iaith
• Nifer a Chanran gweithlu newydd y sefydliad (h.y. newydd ers 1 Ebrill 2015) sydd wedi derbyn hyfforddiant ymwybyddiaeth iaith Gymraeg. • Nifer a Chanran holl weithlu'r sefydliad sydd wedi derbyn hyfforddiant ymwybyddiaeth Iaith Gymraeg ers cyflwyno'r hyfforddiant
Ymateb:
Mae 582 o staff newydd wedi mynychu hyfforddiant ymwybyddiaeth ers Ebrill 2015, sef tua 20% o'r staff newydd. Mae yna cyfanswm o 5746 o aelodau o staff sydd wedi mynychu cwrs cynefino corfforaethol ers ei sefydliad. Mae Mae hyn y golygu 40% o'r staff.

Website
Canran tudalennau gwefan y sefydliad sydd ar gael yn y Gymraeg
Ymateb
mae 5% o'r wefan ar gael yn Gymraeg.
Diweddariad ar y cynnydd wnaed i wella/cynyddu darpariaeth Cymraeg y wefan.
Ymateb:
Mae'r sefydliad yn wedi canolbwyntio ar y meysydd poblogaidd ar y wefan i diweddaru, er enghraifft gwybodaeth am argaeledd doctoriaid teulu sydd yn siarad Cymraeg.
Gwybodaeth am unrhyw ddulliau a defnyddir i sicrhau bod cynnwys cyfredol, diweddariadau a chynnwys newydd, yn cydymffurfio â gofynion cynllun iaith Gymraeg (os yw'r broses wedi ei newid)
Ymateb:
Mae'r broses o asesu cynnwys a diweddariadau newydd y wefan, gan sicrhau ei fod yn cydymffurio gyda y cynllun ddim wedi newid ers 2015-2015. Ond ar y llaw arall, yn dilyn pryder ynglŷn â'r cylchlythyr sefydliadol, rydym yn cymryd camau i wella ii gael mewn fformat dwyieithog.

Welsh Language Services provided
Gwybodaeth am y dulliau a ddefnyddiwyd i hyrwyddo gwasanaethau Cymraeg y sefydliad ac, yn sgil hynny, tystiolaeth o gynnydd yn nefnydd y cyhoedd o'r gwasanaethau Cymraeg. Gwybodaeth am unrhyw ddulliau a defnyddiwyd i asesu ansawdd gwasnaethau Cymraeg y sefydliad (megis asesu profiad unigolion sy'n defnyddio gwasnaethau trwy arolygon, siopwr dirgel ayb)
Ymateb:
Mae *Hafan y Coed,*yr uned iechyd meddwl newydd gael ei adeiladu gyda dwyieithrwydd yn rhedeg trwy'r adeilad. Mae pob ward gyda arwydd croesawu, yn cynnig gwybodaeth hanfodol yn cynnwys dangos i'r defnyddwyr gwasanaethau bod yna groeso a chânt eu hannog i siarad Cymraeg gyda aelodau o staff sydd yn gwisgo bathodyn 'iaith gwaith'. Mae enwau wardiau hefyd yn Gymraeg tra fod y prif gyntedd yn darparu croeso ddwyieithiog ar gyfer cleifion a defnyddwyr gwasanaethau. Hefyd yn neuadd croeswau, mae'r datganiad am genhadaeth a gwerthoedd hefyd yn cael ei arddangos yn ddwyieithog.

Mae'r sefydlad yn parhau i darparu gwybodaeth ar gyfer cleifion a defnyddwyr gwasanaethau sydd eisiau gwasanaethau doctor teuluol ac deintyddol trwy cyfrwng y Gymraeg. Mae rhan o'r wefan yn cynnig gwybodaeth ar prâctîsau yng Nghaerdydd a'r Fro gyda staff sydd yn siarad Cymraeg. Mae gwaith yn parhau gyda datblygiad llythyron apwyntiadau dwyieithog hefyd. Mae'r sefydliad ar hyn o bryd yn cydweithio gyda rheolwyr systemau rheoli cleifion i datblygu yn raddol llythyron apwyntiadau dwyieithog. Er engrhaifft, mae system PARIS yn wrthi'n datblygu llythyron Cymraeg a Saesneg. Yn bellach, mae system RADIS (sydd yn rheoli apwyntiadau cleifion ar gyfer Radioleg) ar fin cychwyn datblygu llythyrau Cymraeg a Saesneg.
Ymateb:
Mae'r sefydliad yn defnyddio 'Yr Arolwg Cenedlaethol' ac yr 'Dwy funud o eich amser' i ofyn am ymateb gan cleifion am ein gwasanaethau. Mae nhw ar yn ddwyieithog gyda'r arolwg cenedlaethol yn gofyn cwestiynau penodol am ein gwasanaethau iaith Gymraeg. Mae'r sefydliad hefyd yn dosbarthu ymysg y cleifion a defnyddwyr gwasanaethau pamffled "Sut rydym yn gwneud ?' sydd yn cynnig ystod eang o ffyrdd i rhoi adborth ar eu gofal. Fe welir hyn yn atodiad 5.

Cwynion
Nifer y cwynion a dderbyniwyd am wasanaethau Cymraeg y sefydliad
Ymateb: Fe derbyniodd y sefydliad 4 cwyn.

Reference Number: UHB 100 Version Number: 2	Date of Next Review: 23rd Feb 2019 Previous Trust/LHB Reference Number: T37

CONSENT TO EXAMINATION OR TREATMENT POLICY

Policy Statement

To ensure the Health Board delivers its aims, objectives, responsibilities and legal requirements transparently and consistently, we acknowledge that patients have the right to provide or withhold consent prior to assessment, imaging, examination, investigation, treatment, care and research. These procedures cannot be carried out without the consent of the person concerned, except in certain circumstances where legislation – for example, the Mental Health Act 1983 - applies. In the case of a child who is not competent, a person with parental responsibility can give consent on the child's behalf. Where there is doubt about an adult patient's mental capacity to give consent, the Mental Capacity Act 2005 must be followed.

We recognise that to undertake assessment, imaging, examination, investigation, treatment, care or research without consent, or outwith statute law, could amount to a criminal offence and/or lead to a civil claim (such as for trespass to the person/ negligence).

Policy Commitment

We are committed to ensuring that the legal framework within which treatment and care can be lawfully provided to patients is understood and adhered to by our staff.

We support staff in this by

- Publishing this policy and keeping it updated
- Providing intranet pages containing useful information on consent and capacity issues
- Providing training for staff on consent and capacity
- Providing support to staff with queries on consent and capacity issues

Supporting Procedures and Written Control Documents

This Policy and the supporting procedures describe the following with regard to consent

- The legal framework within which treatment and care can be provided to patients

Other supporting documents are:

- Independent Mental Capacity Advocacy Procedure (Mental Capacity Act 2005), UHB 186
- Lasting Power of Attorney and Court Appointed Deputy Procedure (Mental Capacity

Act 2005), UHB 113

- Reference Guide for Consent to Examination or Treatment, WHC (2008) 10
- Good Practice in Consent Implementation Guidance: consent to examination or treatment, WHC (2008) 36
- Mental Capacity Act 2005 Code of Practice

Scope

This policy applies to all of our staff in all locations, including those with honorary contracts, who are involved in the assessment, imaging, examination, investigation, treatment, care and research of patients.

Equality Impact Assessment	An Equality Impact Assessment (EqIA) has been completed and this found there to be no adverse impact.

Health Impact Assessment	A Health Impact Assessment (HIA) is not required for this policy.
Policy Approved by	Quality, Safety and Experience Committee
Group with authority to approve procedures written to explain how this policy will be implemented	Health System Management Board
Accountable Executive or Clinical Board Director	Medical Director

Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the Governance Directorate.

Summary of reviews/amendments

Version Number			Date Review Approved	Date Published	Summary of Amendments
1	Approved by Quality and Safety Committee 21/02/2012		Revised document		
1.1	Quality, Safety and Experience Committee 21/05/15		Front page amended to confirm that policy is still current whilst review is underway.		
2	Quality, Safety and Experience Committee 23/02/2016	28/04/2016	7.2 Availability of forms 8.6 Parental responsibility 9.3 Inclusion of Montgomery case 19.3 Transition period Titles, organisations and bodies updated where necessary Weblinks amended where appropriate		

CONTENTS

Appendix E **Further reading**

1. INTRODUCTION

1.1 Cardiff and Vale University Health Board (UHB) has adopted this consent policy in accordance with directions issued by the Welsh Assembly Government (now the Welsh Government) under Welsh Health Circular (WHC) (2008) 10 – Reference Guide for Consent to Examination or Treatment. The UHB recognises that patients have a fundamental legal and ethical right to determine what happens to their own bodies and this is reflected in this policy. Valid consent is absolutely central in all forms of healthcare, from providing personal care to undertaking major surgery. Seeking consent is not only a legal obligation but also a matter of common courtesy between health professionals and patients. Both the UHB and healthcare professionals may be liable to legal action if valid consent is not obtained.

1.2 The Welsh Government also issued the Good Practice in Consent Implementation Guidance: consent to examination or treatment (WHC (2008) 36) which sets out the details of the law on consent and good practice. Health professionals in the UHB must comply with the standards and procedures in this policy which should be applied in conjunction with the principles set out in the Reference Guide. Health professionals should be familiar with the whole of the Reference Guide.

1.3 This policy is primarily concerned with healthcare and refers to health professionals: this includes students, locums and other staff working with patients. 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.

1.4 In this policy reference to an adult patient generally means a patient of 16 years or above, and a child is a person who is under the age of 16. (However, there are exceptions to this – e.g. in the Human Tissue Act 2004, a child is a person under 18 years of age.) If a child is judged to be competent he/she can give consent to treatment. Section 8.5 provides more detail regarding consent and children.

2. AIM

The aim of this policy is to provide information and direction to staff regarding all aspects of the patient consent process, so that UHB staff

deal with consent issues lawfully. This Policy should be read in conjunction with the legislative and local policy documents referenced and with relevant professional codes of conduct and guidance.

3. OBJECTIVES

The objectives of the policy are to -

- Affirm the rights of patients and their autonomy without discrimination
- Outline the relevant legal principles set by case law
- Ensure compliance with relevant legislation
- Clarify the various ways in which consent may be obtained
- Provide guidance on the form of consent that is appropriate in different situations
- Establish the UHB's requirement for documentation of consent and its inclusion within the patient health record
- Follow guidance in Reference Guide for Consent to Examination or Treatment, Welsh Assembly Government, 2008
- Provide compliance with Health and Care Standards, 2015
- Remind staff of the importance of complying with professional requirements, codes of conduct and guidance

4. RESPONSIBILITIES

4.1 All healthcare staff who have contact with patients in the course of providing them with all aspects of examination, treatment and care (including research) have a responsibility to familiarise themselves with and follow the content of this Policy and to ensure that they remain up to date with regard to the law, case law and guidance regarding consent and capacity. This is also a professional requirement of those who are registered with professional bodies. Please see section 10 regarding the delegation of obtaining consent.

4.2 Where staff are unsure about the legal aspects of consent in a particular case, they must seek advice from the Mental Capacity Act Manager/Patient Safety Team in the first instance. If this does not resolve the matter and legal advice is needed, staff must contact the Director of Governance/Board Secretary in order to arrange this. Please see Appendix C for contact details.

4.3 Clinical Board Directors are responsible for ensuring that staff are aware of this Policy, how to access it and what to do if they have related queries about it.

4.4 Each Clinical Board must compile a list of interventions/ procedures/ treatments for which it considers formal written consent must be obtained.

4.5 Directorate/Locality Management Teams are responsible for ensuring that an assessment of staff training needs in relation to this Policy is carried out and where appropriate staff are required to undertake relevant training, including refresher training. Directorates/Localities must monitor staff compliance with undertaking the training. Directorates/Localities must also monitor implementation of this policy, including undertaking audits of patient records, and present and act on their findings.

4.6 Directorate/Locality Management Teams are also responsible for assessing healthcare professionals' understanding of this policy, which could be informed by the Personal Appraisal and Development Review process, Consultants' appraisals, concerns investigations, etc.

4.7 Directorate/Locality Management Teams must also ensure that a list of specialist information on particular treatments or procedures is agreed so that health professionals can provide it to their patients as required.

4.8 The Learning, Education and Development Department is responsible for organising induction and other training programmes, which must include consent and an awareness of this policy. They will also compile quarterly reports on training compliance for Directorate/Locality Management Teams.

4.9 The Mental Capacity Act Manager is responsible for ensuring that this policy is updated as necessary; that relevant training is available; and to provide information, support and training to UHB staff as required.

5. TRAINING

5.1 The following types of training are available to staff:

- Consent and capacity induction module
- EIDO e-learning package on consent and capacity
- All-Wales Mental Capacity Act e-learning course
- Face-to-face training provided by the Mental Capacity Act Manager

5.2 All new staff who provide examinations, treatment and care to patients and who undertake research, including those on honorary contracts, (unless other arrangements prevail – see below) must complete the consent and capacity module of the induction e-learning package.

5.3 Training can also be provided by the Mental Capacity Act Manager on consent and capacity generally or on particular topics – e.g. advance decisions. Where Directorates/Localities identify a need for particular training, they should contact the Mental Capacity Act Manager.

5.4 Requirement for refresher training must be informed by a risk based needs analysis or where there are significant changes to legislation or case law.

6. INTRODUCTION TO CONSENT

6.1 What consent is – and isn't

6.1.1 "Consent" is a patient's agreement for a health professional to assess for and provide care. Before providing care or treatment a health professional should be satisfied that the patient has given his or her valid consent.

6.1.2 For consent to be valid, it must be given voluntarily by an appropriately informed person who has the capacity to consent to the intervention in question. The informed person may either be the patient, someone with parental responsibility (see section 8.6) or a person who has authority under a Lasting Power of Attorney for personal welfare (including healthcare) or a deputy appointed by the Court of Protection for personal welfare decisions (including healthcare) ("Court appointed Deputy"). Consent will not be legally valid if the patient has not been given adequate information or where they are under the undue influence of another. Acquiescence where the person does not know what the intervention entails is not "consent". Where a patient does not have capacity to give consent, treatment may be given providing it is given in accordance with the Mental Capacity Act 2005 (see section 12).

6.1.3 The context of consent can take many different forms, ranging from the active request by a patient for 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. The health professional must provide the patient with sufficient information (see section 9.3) to enable them to make an informed decision. 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.

6.1.4 It is particularly important to take equality issues into account during the consent process. For example, in relation to religious and cultural diversity, members of some faiths are extremely modest in relation to exposure of parts of the body and may only consent to examination or treatment if it is undertaken by someone of the same sex.

6.2 Is the consent given voluntarily?

6.2.1 To be valid, consent must be given voluntarily and freely, without pressure or undue influence being exerted on the patient either to accept or refuse treatment. Such pressure can come from partners or family members as well as health or care professionals. Professionals should be alert to this possibility, and where appropriate should arrange to see the patient on their own to establish that the decision is truly that of the patient.

6.2.2 When patients are seen and treated in environments where involuntary detention may be an issue, such as prisons and mental hospitals, there is a potential for treatment offers to be perceived coercively, whether or not this is the case. Coercion invalidates consent and care must be taken to ensure that the patient makes a decision freely. Coercion should be distinguished from providing the patient with appropriate reassurance concerning their treatment, or pointing out the potential benefits of treatment for the patient's health. However, threats such as withdrawal of any privileges or loss of remission of sentence for refusing consent, or using such matters to induce the patient to give consent, are not acceptable. Consent that has been obtained by fraud will not be valid.

7. DOCUMENTATION

Consent can be given in writing, verbally or even indicated non-verbally (for example by presenting an arm for a pulse to be taken). In all cases, an adequate record of the consent process and the nature of consent should be maintained within the patient's health record for future reference. Each Clinical Board will agree how they should document the consent process for the procedures they undertake and this list should be available for staff. Where the signing of a consent form is not required, health professionals must document the process followed, including details of any documentation given to the patient.

7.1 Written consent

7.1.1 It is often wrongly assumed that a patient's signature on a consent form is valid consent. 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.

7.1.2 It is rarely a legal requirement to seek written consent (The Mental Health Act 1983 and the Human Fertilisation and Embryology Act 1990, as amended, require written consent in certain circumstances), but it is good practice to do so if any of the following circumstances apply:

- the 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') – guidance from professional bodies as to what constitutes "significant risk" must be followed;
- the procedure involves general/regional (e.g. limb blocks) 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 approved by the UHB.

7.1.3 Each Clinical Board must compile a list of interventions/ procedures/ treatments for which it considers formal written consent must be obtained. Where written consent is required, the standard Welsh

Government consent forms must be used (see Appendix B). This must include situations where the staff taking consent are not those who are undertaking the treatment or procedure – see section 10.

7.1.4 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.

7.1.5 It will not usually be necessary to obtain a patient's written 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.

7.2 Availability of forms

7.2.1 Standard consent forms and forms for adults who are unable to consent for themselves are available through Oracle.

7.2.2 There are two versions of the standard consent form:

- **form 1** for adults or competent children;
- **form 2** for parental consent for a child;

The top copy (English) must be filed in the patient's notes. A copy of the consent form (in either Welsh or English) should be offered to the person who has given consent.

7.2.3 Where an adult patient does not have the capacity to give or withhold consent to a significant intervention, **form 4** (form for adults who are unable to consent to investigation or treatment) must be used.

7.2.4 Although consent form 4 is referred to as a consent form it should be noted that no-one, other than a person who has authority under a Lasting Power of Attorney for personal welfare or a Court appointed Deputy for personal welfare, can give consent on behalf of an adult patient. If a person who has authority under a Lasting Power of Attorney or a Court appointed Deputy is giving consent then they should sign the appropriate section of consent form 4. A copy of form 4 should be offered to the person with authority under a Lasting Power of Attorney or deputy, if there is one.

7.2.5 Consent form 4 requires health professionals to document both how they have come to the conclusion that the patient lacks the capacity to make this particular healthcare decision, and why the proposed treatment would be in the patient's best interests, in accordance with the Mental Capacity Act 2005. Where the views of patient's family and friends about the patient's best interests have been taken these must also be recorded on this form.

7.2.6 The standard consent forms (**1 and 2**) 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.

7.2.7 Where Clinical Boards determine that a customised consent form is necessary (e.g. for particular high volume procedures), they must abide by the following -

- Take responsibility for the design of the forms and paying for them. The forms must contain all the information included in the All-Wales template forms and replicate the format (i.e. triplicate forms – English/Welsh/English). The guidance on use of the forms will need to be kept with the forms or printed on the cover of the pad of forms
- Before the forms are printed, they must be sent to the Mental Capacity Act Manager for review
- The customised forms must then be formally approved at the Clinical Board's Quality, Safety and Experience meeting
- In the event of any dispute about the information on the forms, the Medical Director will arbitrate

8. WHEN SHOULD CONSENT BE SOUGHT?

When a patient formally gives their consent to a particular intervention, this is only the endpoint of the consent process. The process of the provision of information, discussion and decision-making are essential components 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. Health professionals should check before the commencement of the procedure that the patient still consents.

8.1 Single stage process

8.1.1 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 – this oral consent should be recorded in the patient's notes.

8.1.2 If a proposed procedure carries significant risks (guidance from professional bodies as to what constitutes "significant risk" must be followed), 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.

8.2 Two or more stage process

8.2.1 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.

8.2.2 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 out-patients, 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;
- new information becomes available regarding the proposed intervention (for example, new evidence of risks or new treatment options);
- the patient's condition has changed significantly in the intervening period between the time when consent was sought and when the intervention is undertaken.
- where the health professional responsible for the patient's care has changed since the original consent form was signed.

8.2.3 Similarly, if a patient is returning on multiple occasions for completion of a course of treatment, a member of the healthcare team must check with the patient on **each** occasion that they still consent to the procedure. This confirmation of consent should be recorded on the consent form, or, if insufficient space, in the patient's notes.

8.2.4 When confirming the patient's consent and understanding, it is important 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?"

8.2.5 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.

8.2.6 A patient's written consent may be obtained by post - this gives the patient time to read and reflect on the consent form and information provided. However, any person carrying out a procedure on a patient must ensure that, immediately before the procedure, the patient has understood the information and that they still give their consent. If the patient has queries or concerns he or she must be given time to consider any additional information.

8.2.7 Patients should not be given pre-operative sedating medication before being asked for their consent to proceed with treatment (although women in labour may be able to consent to a caesarean section even if they have received sedation). If a situation arises where a change to the consent form is required after the patient has received pre-operative sedating medication, this should only be done if the doctor

responsible for the patient's care is clearly able to demonstrate that the patient still has capacity to be involved in the decision to make the required change. The UHB checklist for assessing capacity must be used. The outcome of the assessment, any changes made to the consent form and the reasons for the changes must be clearly documented in the patient's notes. If it is found that the patient does not have capacity due to the administration of pre-operative sedating medication, then any changes to the consent form should wait until capacity is regained. If the urgency of the situation is such that a delay in undertaking the procedure would lead to harm to the patient, any decision that is made about continuing has to be made in the best interests of the patient (the UHB checklist for assessing best interests should be used and the decisions and the reasons for them should be documented in the patients notes).

8.3 Seeking consent for anaesthesia

8.3.1 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. However, in elective treatment it is not acceptable for the patient to receive no information about anaesthesia until 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 out-patients, 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 health professional providing the care is personally responsible for anaesthesia (e.g. 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.

8.3.2 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.

8.4 Emergencies

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 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.

8.5 Treatment of children

When treating children, health professionals should take particular care to ensure that they are familiar with the relevant law and should consider carefully whether the child is competent to give his or her consent to the treatment. If the child is not competent to give consent, then the health professional may give treatment on the basis of parental consent. Parental consent may be given by any person who has "parental responsibility" (Children Act 1989, section 3(1)) for the child which may not necessarily be the parents but, for convenience, "parents" in this policy also includes persons with parental responsibility

8.6 Parental responsibility

8.6.1 Proof should be requested if there is any doubt as to whether the person accompanying the child has parental responsibility.

8.6.2 The Children Act 1989 sets out persons who may have parental responsibility. These include:

1) the child's mother;

2) the child's father if he was married to the mother at the time of the birth;

3) unmarried fathers who can acquire parental responsibility in several different ways:

(a) for children born before 1 December 2003, unmarried fathers will have parental responsibility if they

(i) marry the mother of their child or obtain a parental responsibility order from the court, or

(ii) register a parental responsibility agreement with the court or by an application to the court;

(b) for children born after 1 December 2003 unmarried fathers will have parental responsibility if they:

(i) register the birth jointly with the mother at the time of the birth,

(ii) re-register the birth if they are the natural father,

(iii) marry the mother of their child or obtain a parental responsibility order from the court; or

(iv) register with the court for parental responsibility.

8.6.3 In addition, in accordance with the Children Act 1989, the following will also have parental responsibility:

- a child's legally appointed guardian (whether appointed by the court or appointed by a parent with parental responsibility to act as guardian in the event of their death);
- a person in whose favour the court has made a residence order concerning the child;
- a local authority designated in a care order in respect of the child and a local authority or other authorised person who holds an emergency protection order in respect of the child;
- an adopter of a child;
- an adoption agency.

8.6.4 In the case of foster parents, if the arrangement involves the Local Authority, make contact with that Authority. If it is a private arrangement, consent is required from a parent of the child with parental responsibility. In the case of uncertainty, contact the Local Authority.

8.6.5 Section 4ZA of the Children Act sets out the circumstances in which a second female parent may acquire parental responsibility (where a child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008). The second female parent will have parental responsibility if she:

- is in a civil partnership with or is married to the mother of the child at the time of the child's birth;
- has entered a parental responsibility agreement with the mother of the child (and any other person who already has parental responsibility);
- obtains a parental responsibility order from the court in relation to the child;
- has obtained a residence order in relation to the child.

8.6.6 Section 4A sets out the circumstances in which a step parent may acquire parental responsibility for a child. The child's parent who has

parental responsibility, or, if another parent has parental responsibility, both parents may by agreement with the step parent provide for the step parent to have parental responsibility or a court may, on the application of a step parent, order that the step parent has parental responsibility for the child. Any parental responsibility agreement must be in the form prescribed by section 4(2) of the Children Act 1989.

8.6.7 In some instances a person may not have parental responsibility for a child but may, for the time being, be responsible for their care - for example, a child minder. That person may give consent to treatment on behalf of the child if it is reasonable to act without first obtaining the consent of the person with parental responsibility, for example where the treatment is urgently required.

8.6.8 If you are in any doubt about whether a person has parental responsibility or a parent is acting in the best interests of the child you should seek further advice, by contacting the Patient Safety Team on 029 2074 3652.

8.6.9 In order to provide valid consent on behalf of a child, the person with parental responsibility must have the mental capacity to do so.

8.6.10 When babies or children who are not competent to give consent are being cared for in hospital, it may not seem practicable to seek the consent of the parents on every occasion for every routine intervention such as blood or urine tests or X-rays. However, health professionals should remember that, in law, such consent is required although it is possible for this consent to be given in advance. Where a child is admitted, the health professional should discuss with the parents what routine procedures will be necessary, and, if it is not practicable to seek consent for every intervention, they may ask the parents if they are content to give their consent in advance for these routine procedures. If the parents are not content to give their consent, consent should be obtained on every occasion. If the parents specify that they wish to be asked before particular procedures are initiated, the health professional must do so, unless the delay involved in contacting them would put the child's health at risk.

8.6.11 The law requires that the consent of all those with parental responsibility for a child is required for the very rare circumstances of:

- non-therapeutic male circumcision
- hotly contested issues of immunisation

If all those with parental responsibility do not provide their consent in these circumstances, the decision to proceed must be referred to a Court and you should seek further advice, by contacting the Patient Safety Team on 029 2074 3652.

8.6.12 A child under the age of 16, who has sufficient maturity and intelligence to be capable of understanding the treatment and making a decision based on the information provided (*Gillick* competent) will have capacity to consent to treatment and care. If a competent child consents to treatment a parent cannot over-ride that consent. As with adults, consent will only be valid if it is given voluntarily by an appropriately informed patient who has capacity to consent to the particular treatment

8.6.13 Young people aged 16 or 17 are presumed to have capacity to consent for their own treatment. If a 16 or 17 year old consents to treatment a parent cannot over-ride that consent. This applies equally to young people with capacity that are to be admitted (informally) to hospital for treatment for a mental disorder.

8.6.14 Issues surrounding a child or young person's refusal to consent to examination or treatment are covered in section 11.11 of this policy. Please note that the law relating to a child's refusal to consent differs to the law relating to giving consent.

8.7 Withdrawal of consent

A patient with capacity is entitled to withdraw consent at any time, including during the performance of a procedure. Where a patient does object during treatment, it is good practice for the health professional, if at all possible, to stop the procedure, establish the patient's concerns, and explain the consequences of not completing the procedure. If the patient still wishes to withdraw consent, the health professional must document the patient's decision in the patient's notes and inform all relevant colleagues. If stopping the procedure at that point would genuinely put the life of the patient at risk, and the health professional reasonably believes that the patient is unable to understand the implications of their objection, maybe because the patient temporarily lacks capacity, the health professional may be entitled to continue the procedure until this risk no longer applies, acting in the patient's best interest.

9. PROVISION OF INFORMATION

9.1 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). Drawings, diagrams and models may be used to facilitate this process where appropriate. Patients also need to know the scope of the intended treatment and 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.

9.2 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. The patient should always be encouraged to make the decision for him or herself although 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.

9.3 Has the patient received sufficient information?

9.3.1 To give valid consent the patient needs to be provided with sufficient information to understand in broad terms the nature and purpose of the procedure - for example, information about the risks and benefits of the proposed treatment and alternative options. Any misrepresentation of these elements will invalidate consent.

9.3.2 In *Montgomery v Lanarkshire Health Board* - (http://www.bailii.org/uk/cases/UKSC/2015/11.html), the Supreme Court held that

An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. ***The test of materiality is whether, in the***

circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it. (bold added)

The two exceptions to this are where the doctor considers that disclosure would be seriously detrimental to the patient's health and where a patient needs emergency treatment, but is unconscious or otherwise lacks mental capacity to decide about it. Note that these are exceptions and must not be abused.

9.3.3 Where relevant, information about anaesthesia must be given (see section 8.3) as well as information about the procedure itself.

9.3.4 The use of patient information leaflets can be an effective tool for health professionals to provide patients with the information they need to help them to arrive at an informed decision. Patients can review the information after the consultation, which may prompt the patient to ask further questions of the health professional to more fully understand the treatment being proposed. However, the use of leaflets does not remove the health professional's responsibility to provide a verbal explanation of often much the same information. Where a patient requests more detailed information that should be provided. In this context, the use of patient information leaflets is considered by the Welsh Government and UHB to be an example of best practice. The use and provision of the patient information leaflet should be documented in the patient's health records.

9.3.5 When considering the provision of written information it is necessary to ensure that it is bilingual, of a high quality, age appropriate and takes account of the patient's ability to read and comprehend the information. It may be necessary to translate information into community languages, provide in Braille, large print or audio format. The use of Easy-read leaflets which are specially written to assist people with learning disabilities is also encouraged. The Production of Written Information Policy - http://nww.cardiffandvale.wales.nhs.uk/pls/portal/docs/PAGE/POLICY_PAGEGROUP/LIBRARY/PRODUCTION%20OF%20INFORMATION.PDF - provides details of the approval mechanisms for written information, format, need to provide in alternative languages, etc.

9.3.6 Externally produced information should be validated and agreed in accordance with the above policy before use. EIDO information leaflets have been approved for use unless there is a valid clinical

reason for not using them. Where this is the case the Patient Experience Team must be advised to this effect. Information sourced from searching the internet should only be used if it is known to be UK based, up-to-date, wholly relevant to the procedure in question and is from professional bodies or professionally recognised organisations such as NHS Direct or NICE.

9.4 EIDO

9.4.1 NHS Wales (through the Welsh Risk Pool) has entered into a contract with EIDO who produce high quality, professionally validated leaflets covering a number of procedures. These leaflets do not have to be internally approved for use. There is an expectation that health professionals will make use of these leaflets and provide them to patients as part of the consent process where an appropriate leaflet is available. All have been translated into Welsh and some are also available in other community languages. For further information refer to the UHB clinical portal. The UHB EIDO library can be found at the top centre of the clinical portal. The EIDO library can be accessed by clinicians only to provide information to patients. It is the duty of the health professional to take the patient through the leaflet and record the number of the leaflet in the patient's notes or consent form.

9.4.2 Any other written information provided to patients should be current and should be recorded on the consent form as part of the consent process or within the patient notes.

9.5 Guidance for health professionals

Professional bodies such as the General Medical Council, Nursing and Midwifery Council, and Health and Care Professions Council provide guidance on consent and capacity. Health professionals are required to follow this guidance.

9.6 Patient declines information

Some patients may wish to know very little about the treatment which is being proposed and may ask that the health professional or other person should make decisions on their behalf. In such circumstances, the health professional should explain the importance of knowing about the treatment and try to encourage the patient to make the decisions for him or herself. It should be explained that declining to have information may mean that their consent is not valid and the treatment or care can not proceed. If the patient still declines any information offered, it is essential to record this fact in the notes, and to ask the

patient to sign the record to confirm their decision. It must be made clear to the patient that they can change their mind and have more information at any time.

9.7 Communication Issues

9.7.1 A patient must not be assessed as lacking capacity to consent to the particular investigation, treatment or care merely because they have a limited ability to communicate. Care should be taken not to underestimate the ability of a patient to communicate, whatever their condition. In some cases it may be because English is not the patient's first language or due to the patient's disability. Health professionals should take all steps which are reasonable in the circumstances to facilitate communication with the patient, using interpreters or communication aids as appropriate and ensuring that the patient feels at ease. In particular, careful consideration should be given to the way in which information is explained or presented to the patient.

9.7.2 Where appropriate, those who know the patient well, including their family, carers and staff from professional or voluntary support services, may be able to advise on the best ways to communicate with the person. However, unless there are exceptional circumstances, they should not be used to interpret. Please see Interpretation and Translation Services Policy - http://www.cardiffandvaleuhb.wales.nhs.uk/sitesplus/documents/1143/Interpretation%20and%20Translation%20Services%20Policy.pdf

9.8 Provision for Welsh speaking patients

9.8.1 The UHB has adopted the principle enshrined in the Welsh Language Act 1993 that in the conduct of public business it will treat the English and Welsh languages on a basis of equality. The UHB Welsh Language Scheme shows how the UHB will give effect to that principle when providing services to patients. As such, every effort should be made to ensure that the language preference of the patient is offered, established, recorded, acted upon and relayed to others within the UHB. Whenever possible, discussions with Welsh speaking patients regarding consent should be conducted with Welsh speaking health professionals.

9.8.2 In line with best practice and the commitments made regarding forms in the UHB Welsh Language Scheme, there should be a presumption in

favour of producing bilingual consent forms (the All-Wales consent forms provide a template for this). This is in order to ensure that:

- Welsh and English versions of consent forms are equally accessible to patients
- both patient and health professional are clear about what is being agreed to in circumstances where a non-Welsh speaking health professional is dealing with a Welsh speaking patient; and
- to meet the needs of mixed-language families, other mixed-language audiences and Welsh learners.

9.9 Provision for patients whose first language is not English or Welsh, or who use sign language

9.9.1 The UHB is committed to ensuring that patients whose first language is not English or Welsh receive the information they need and are able to communicate appropriately with healthcare staff. In order to safeguard the consent process, unless the health professional is fluent in the patient's language, an interpreter should always be used when seeking consent from the patient, except for minor, routine procedures. It is not appropriate to use children or relatives to interpret for family members who do not speak English or Welsh other than for minor, routine procedures. A page summary of the services available for staff to access for interpretation and translation is available at Appendix 1 of the Interpretation and Translation Services Policy - http://www.cardiffandvaleuhb.wales.nhs.uk/sitesplus/documents/1143/Interpretation%20and%20Translation%20Services%20Policy.pdf

9.9.2 Where sign language is considered to be the most appropriate method of communication, arrangements should be made for a qualified British Sign Language (BSL) interpreter to be present. Where a family member or friend is used to communicate via sign language with the individual, it could place a burden on them to understand and interpret often complicated procedures. By using the services of a qualified BSL interpreter, health professionals may be more confident that the patient has fully understood the procedures and potential risks involved when giving their consent. It also ensures that the patient's wishes are properly communicated and removes the risk of undue influence by family or friends. An interpreter can be booked through the Wales Interpretation and Translation Service (WITS) - see Appendix 1 of the Interpretation and Translation Services Policy - http://www.cardiffandvaleuhb.wales.nhs.uk/sitesplus/documents/1143/Interpretation%20and%20Translation%20Services%20Policy.pdf

9.10 Access to more detailed or specialist information

Patients may sometimes request more detailed information about their condition or about a proposed treatment than that provided in general leaflets. Each UHB Directorate/Locality must be able to provide more specialist information if a patient asks for it. Directorates/Localities must devise a list of the material to be made available.

9.11 Access to health professionals between formal appointments

After an appointment with a health professional, patients will often think of further questions which they would like answered before they take their decision. Patients should be advised on the arrangements should they wish to raise subsequent queries or questions about the proposed procedure.

9.12 Open access clinics

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

9.13 Consent and in-patients

Irrespective of whether the patient is an in or out-patient, the process of seeking consent must be adhered to. Just because a patient is already in a hospital bed, consent for examination and treatment cannot be assumed.

9.14 Attendance by students and trainees (i.e. pre-registration clinicians from any discipline)

9.14.1 Where a student or trainee health professional is undertaking examination or treatment of the patient where the procedure will further the patient's care – for example taking a blood sample for testing – then, assuming the student is appropriately trained in the procedure, the fact that it is carried out by a student does not alter the nature and purpose of the procedure. It is therefore not a legal requirement to tell the patient that the health professional is a student, although it would always be good practice to do so and consent in the usual way will still be required.

9.14.2 In contrast, where a student proposes to conduct a physical examination which is not part of the patient's care, then it is essential to explain that the purpose of the examination is to further the student's training and to seek consent for that to take place. Again, consent should be recorded in the patient's notes.

9.14.3 A patient's explicit consent should be obtained prior to any occasion when a student or trainee is going to be present during an examination or when treatment is to be given. Patients have the right to refuse consent in these circumstances without any detrimental effect on their treatment. Written consent must be obtained if students or trainees are going to be present during examination or treatment using sedation or anaesthetic.

9.15 Attendance by Company Representatives

On occasions when Company Representatives need to be present for a procedure/treatment (e.g. where equipment is being used for the first time and the Representative is there to assist with its use), consent from the patient must be obtained. Please see Trust Representative Policy Relating to Contact Between Trust Staff and Company Representatives Including Free and Trial Goods - http://nww.cardiffandvale.wales.nhs.uk/pls/portal/docs/PAGE/POLICY_PAGEGROUP/LIBRARY/REPRESENTATIVES%20POLICY.PDF

10. WHO IS RESPONSIBLE FOR SEEKING CONSENT?

10.1 All staff who are involved in carrying out interventions relating to any patient are responsible for ensuring that the patients have provided valid consent.

10.2 Where oral or non-verbal consent is being sought at the point the procedure will be carried out, this should be obtained by the health professional responsible for carrying out the procedure.

10.3 Where it is not practical for the treating health professional to complete the consent process themselves, they may delegate this task to another health professional providing that they make sure that the person they delegate this to is:

- suitably trained and qualified
- has sufficient knowledge of the proposed investigation or treatment, and understand the risks involved in order to be able

to provide information about the treatment or procedure to the patient and discuss the risks

The treating health professional will remain accountable for ensuring that valid consent has been obtained prior to commencing the procedure.

10.4 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.

A health professional who feels that they are being pressurised to seek consent when they do not feel competent to do so, must refuse and, if the situation is not resolved, should contact their post-graduate organiser/educational supervisor/line manager.

10.5 Directorates/Localities **must** develop written guidance on the delegation setting out the following –

- identify the procedures for which delegated consent is undertaken
- the minimum Band/grade of staff able to take consent
- the training the staff member must have undertaken (this must include the on-line EIDO consent training course)
- the minimum level of experience within the relevant clinical area/specialty
- the monitoring/audit process for delegation of the consent process

11. REFUSAL OF TREATMENT

11.1 An adult patient who has capacity can refuse any treatment, except in certain circumstances governed by the Mental Health Act 1983. The following paragraphs apply primarily to adults. Where there is doubt about a patient's capacity, the Mental Capacity Act 2005 must be applied (see section 12). It is a key statutory principle set out in the Mental Capacity Act 2005 that a person aged 16 and over must be

assumed to have capacity unless it is established that they lack capacity.

11.2 An adult with capacity may make a decision to refuse treatment which is based on their religious belief or value system. Even if it is perceived by others that the decision is unwise or irrational, the patient may still make that decision if he or she has capacity to do so.

11.3 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, the health professional (and where possible the patient) should note this on the form.

11.4 Where a patient has refused a particular intervention, the health professional must ensure that he or she continues 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.

11.5 If a patient consents to a particular procedure but refuses certain aspects of the intervention, the health professional must explain to the patient the possible consequences of their partial refusal. If the health professional genuinely believes that the procedure cannot be safely carried out under the patient's stipulated conditions, he or she is not obliged to perform it. They 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, he or she must on request be prepared to transfer the patient's care to that health professional.

11.6 If an adult with capacity makes a voluntary and informed decision to refuse treatment this decision **must** be respected, (except where a statutory exception applies, such as the Mental Health Act 1983) and any attempt to treat that patient against his or her wishes could amount to a criminal offence. It is the right of an adult patient with capacity to refuse treatment even if that refusal might result in the death of the patient. However in cases of doubt, health professionals should always refer the matter to the UHB legal advisers.

11.7 Whilst a patient has the right to refuse treatment this does not mean that they have the right to require a particular course of treatment.

11.8 Advance Decisions to refuse treatment

11.8.1 A person who is 18 or over and has capacity may make an advance decision to refuse specified medical treatment to take effect at a time when he or she no longer has capacity. An advance decision that complies with the Mental Capacity Act 2005 and is valid and applicable to the treatment that is proposed, has the same effect as if that person has capacity and is contemporaneously refusing consent to treatment.

11.8.2 A valid advance decision -

- must not have been withdrawn by the person whilst they had capacity
- may be overridden by the attorney/donee of a Lasting Power of Attorney who is appointed after the decision has been made. This only applies where authority has been conferred on that attorney/donee to give or refuse consent to the type of treatment that is specified in the decision
- will not be valid if the person has done anything that might be perceived as acting inconsistently with that decision

11.8.3 An advance decision is applicable if -

- it applies to the proposed treatment
- it applies to the circumstances in question
- there are no reasonable grounds for believing that had the patient known about his/her current circumstances he or she would not have made the decision. For example, there may be a medical advancement of which a person was unaware at the time he or she made the advance decision, which could significantly improve that person's condition

11.8.4 A health professional must follow a valid and applicable advance decision. If they do not, they could face criminal prosecution and or civil liability.

11.8.5 Further information about advance decisions to refuse is available in chapter 9 of the Mental Capacity Act 2005 Code of Practice.

11.9 Advance statements

11.9.1 If an advance statement has been made that is not a valid and applicable advance decision under the Mental Capacity Act 2005, this does not mean that the statement can be ignored. Although an

advance statement is not legally binding it should at least be noted as an expression of the patient's feelings and wishes about what should happen to them if they lack capacity to decide for themselves, and should be taken into account in deciding what is in their best interests.

11.9.2 As well as an advance statement to refuse treatment, some statements will express the patient's wishes that a particular course of action should be taken or that they should receive a particular type of treatment in the event that they no longer have capacity. Whilst a health professional may have a legal duty to his or her patient, he or she is not under a legal obligation to provide treatment because the patient demands it. The decision to treat is ultimately a matter for his or her professional judgement acting in the best interests of the patient. In making that decision the health professional will, however, be required to take into account the patient's wishes as expressed in determining what is in his or her best interests.

11.10 Self harm and attempted suicide

11.10.1 Cases of self harm present a particular difficulty for health professionals but the same law and guidance, as set out above, applies to treatment of these cases. Where the patient is able to communicate, an assessment of their mental capacity should be made as a matter of urgency.

11.10.2 If the patient is judged not to have capacity, they may be treated in accordance with the Mental Capacity Act 2005 (see section 16). If a patient has attempted suicide and is unconscious, he or she should be given emergency treatment unless the health professional is aware of any valid and applicable advance decision to refuse life-sustaining treatment in these circumstances.

11.10.3 However, except where the statutory exceptions apply (e.g. Mental Health Act), adult patients with capacity **do** have the right to refuse life-sustaining treatment, both at the time it is offered and in the future even if the health professional believes that the patient's decision is unwise or irrational. If a patient with capacity has harmed themselves and refuses treatment, a psychiatric assessment should be obtained. Unless the adult patient with capacity is detained under the Mental Health Act 1983 and the treatment is for, or a symptom of, a mental disorder, then their refusal must be respected although clearly attempts should be made to encourage him or her to accept help and health professionals should consult legal advisers.

11.11 Children or young people with capacity who refuse treatment

11.11.1 Health professionals should be very careful in cases where a young person or child refuses treatment. Such cases can be controversial and raise complex legal issues. Health professionals should have particular regard to Chapter 5 of the Reference Guide and seek advice/support from the Patient Safety Team on 029 2074 3652 in the first instance.

11.11.2 Where a young person of 16 or 17 or a child under 16 who has been assessed as "Gillick" competent, refuses treatment, case law has stated that such a refusal can be over-ruled by a person with parental responsibility for the child. However, this case law pre-dates the Human Rights Act 1998 and the Mental Capacity Act 2005 and any health professional faced with these circumstances should exercise extreme caution. It is the Welsh Government's view that a young person should be treated the same as an adult and treatment should not be given on the basis of parental consent.

11.11.3 If it does not cause undue delay that would be detrimental to the patient then in such cases health professionals should seek legal advice and if necessary refer the matter to the court.

11.11.4 Where a child has refused treatment, if a decision is made to give treatment on the authority of parental consent it must be exercised on the basis that the welfare of the child is paramount. The psychological effect of having the decision over-ruled must also be considered. While no definitive guidance has been given as to when it is appropriate to over-rule a competent child's refusal, it has been suggested that it should be restricted to occasions where the child is at risk of suffering "grave and irreversible mental or physical harm".

11.11.5 A life threatening emergency may arise in connection with a child when consultation with either a person with parental responsibility or the court is impossible, or the persons with parental responsibility refuse consent despite such emergency treatment appearing to be in the best interests of that child. In such cases the courts have stated that doubt should be resolved in favour of the preservation of life and it will be acceptable to undertake treatment to preserve life or prevent serious damage to health.

11.11.6 Where a young person aged 16-17 who has capacity is to be admitted to hospital for treatment for a mental disorder, the Mental Health Act 1983 provides that where that person refuses to be admitted to hospital

for treatment for a mental disorder, a person with parental responsibility cannot overrule that refusal.

11.11.7 Issues surrounding a child or young person's ability to *give* consent to examination or treatment are covered in section 8.5 of this policy.

11.12 Patients who refuse blood or blood components (e.g. Jehovah's Witnesses)

11.12.1 The same legal principles apply to any patient who refuses treatment whether they do so out of religious convictions or otherwise. Some patients (e.g. Jehovah's Witnesses) may be prevented by their religious convictions from accepting blood or blood components (red cells, white cells, plasma and platelets), even when these are considered necessary to sustain life. All health professionals must respect this choice. To administer blood to an adult who has refused to accept it may be unlawful and could lead to criminal and, or, civil proceedings.

11.12.2 In the case of an elective patient or a pregnant woman, the clinician in charge of the patient's care must ensure that they clarify the position regarding the administration of blood or blood components with the patient before they are admitted for the procedure / delivery of the baby. Some Jehovah's Witnesses accept blood salvage (intra and post-operative), haemodilution, haemodialysis, and heart bypass (pumps must be primed with non-blood fluids). Some also accept 'fractions' of plasma or cellular components (e.g. albumin, immunoglobulins and clotting factors). The views of each Jehovah's Witness patient should be ascertained to find out which aspects of treatment are acceptable and which are not. Discussions with individual Jehovah's Witness patients should be fully documented and their acceptance or rejection of treatments recorded and witnessed. On the basis of this discussion, the clinician must decide whether they are able to treat the patient while fully complying with the patient's wishes. If they feel unable to comply with the wishes of the patient, then the patient should be referred for a further opinion.

11.12.3 If the clinician is willing to proceed with treatment in accordance with the patient's wishes, the nature of these wishes should be documented on the consent form. The implications of any refusal to accept blood or blood components should be discussed with the patient before a decision is taken to recommend a procedure, which might, in normal circumstances, require the use of blood or blood components. The content of these discussions should be recorded in the notes.

11.12.4 In the case of a surgical procedure, the surgeon must inform the Anaesthetic Department in advance in order to ensure that a consultant anaesthetist is prepared to oversee the management of the patient's care. Consultant staff (anaesthetists and surgeons) should be directly involved throughout the care of Jehovah's Witness patients wherever possible.

11.12.5 In the case of a pregnant woman, the obstetrician must inform the Anaesthetic Department of the expected delivery date. It is also essential to inform the consultant obstetrician and anaesthetist when a Jehovah's Witness is admitted in labour.

11.12.6 In the management of trauma, when dealing with an unconscious patient whose status as a Jehovah's Witness may be unknown, the Mental Capacity Act 2005 will apply to any decision taken by the health professional who will be expected to provide care in the best interests of the patient. This may include the administration of a blood transfusion. If a relative or friend puts forward the opinion that the patient would not accept a blood transfusion even if that resulted in death, they must be asked to produce evidence of the patient's status as a Jehovah's Witness.

11.12.7 Most practising Jehovah's Witnesses will carry with them a clear, signed and witnessed advance decision card prohibiting blood transfusions and releasing clinicians from any liability arising from this refusal. Many Jehovah's Witnesses have also executed a more detailed healthcare advance decision and have lodged a copy with their GP (who should be contacted) or family and friends. If an applicable and valid advance decision is produced, then this should be acted upon in accordance with the patient's wishes. If the patient does not have capacity or if an applicable advance decision cannot be produced, the clinical judgement of a doctor should take precedence over the opinion of relatives or associates and the patient should be treated as if their status as a Jehovah's Witness is unknown.

11.12.8 Please see the UHB's Blood and Component Transfusion Policy – http://www.cardiffandvaleuhb.wales.nhs.uk/sitesplus/documents/1143/Blood%20and%20ComponentTransfusion%20Policy.pdf

11.13 Children of Jehovah's Witness Parents

11.13.1 Where a parent or parents are Jehovah's Witnesses and intend to refuse transfusion of blood or blood products in the course of treatment of a child under the age of 16, staff must always seek legal advice. The well-being of the child is paramount and, if the parents refuse to give permission for blood transfusion, it may be necessary to apply for a court order in order to administer legally the blood transfusion.

11.13.2 Young people aged 16 and 17 who have capacity have the right to consent to procedures themselves. However, where a young person aged 16 or 17 refuses a blood transfusion on the basis that they are a Jehovah's Witness health professionals should exercise extreme caution. In these circumstances, legal advice should be sought and, if necessary, the matter should be referred to the court.

11.13.3 The management of a child in an emergency situation, who is likely to die or suffer serious permanent harm without immediate administration of blood, is viewed in law in a different light. There may not even be time for emergency application to the court. If no alternative medical management approach can be found, senior clinicians could decide to transfuse without consulting the court. Parents of Jehovah's Witness children may not prevent clinicians from administering blood or blood products to their children if their child's life or health is in imminent danger. Staff may rely on the support of the courts to endorse decisions that are taken in good faith and in the best interests of the child concerned. It is important, however, that two doctors of consultant status should make an unambiguous, signed and dated entry in the medical record that blood transfusion is essential to save life or prevent serious permanent harm. The surgeon who stands by and allows a 'minor' patient to die in circumstances where blood might have avoided death may be vulnerable to criminal prosecution.

If the blood product transfusion did not lead to successful resuscitation it would be defensible to have carried out the intervention. In emergencies treat the child as you would any other.

11.13.4 The courts have often commented that such a situation does not detract from the loving and responsible reputation of the parents involved, and they have stressed the need for parents to be fully informed of the clinical developments regarding their child and of the intended action by clinicians.

11.13.5 When treating children or young people in these circumstances, health professionals should consider carefully the guidance in Chapter 5 of the Reference Guide.

11.14 Further information on Jehovah's Witness Patients

11.14.1 The above information is referenced from the following documents:

- Royal College of Surgeons (2002) Code of Practice for the Surgical Management of Jehovah's Witnesses.
- Association of Anaesthetists of Great Britain and Ireland, 2nd Edition, (2005) Management of Anaesthesia for Jehovah's Witnesses.
- Hospital Information Services for Jehovah's Witnesses (2005) Care plan for women in labour refusing a blood transfusion.
- Joint United Kingdom (UK) Blood Transfusion and Tissue Transplantation Services Professional Advisory Committee http://www.transfusionguidelines.org.uk/

11.14.2Further information or advice on the clinical management of this group of patients can be obtained from:

- A Consultant Haematologist within the UHB
- The local Hospital Liaison Committee for Jehovah's Witnesses, via the Transfusion Practitioner.
- Clinical Board Director for Child Health

12. PATIENTS WHO LACK CAPACITY TO GIVE OR WITHHOLD CONSENT

12.1 In determining whether a patient aged 16 years and over lacks the mental capacity (either temporarily or permanently) to give or withhold consent for themselves, health professionals must apply the principles set out in the Mental Capacity Act 2005 (MCA). It is important to remember that **no-one other than a person who has authority under a Lasting Powers of Attorney for personal welfare (including healthcare) or is a deputy appointed by the Court of Protection for personal welfare decisions (including healthcare) , can give consent on behalf of an adult patient**. A patient who lacks capacity can, however, be given treatment if it is in their best interests in accordance with the MCA, as long as the patient has not made a valid and applicable advance decision refusing that specific treatment.

12.2 When treating patients who may lack capacity, health professionals must have due regard for MCA Code of Practice.

12.3 General principles

12.3.1 Where an adult patient lacks capacity to give his or her consent to treatment, no one can give consent for that person unless they have authority under a Lasting Power of Attorney for personal welfare or have been authorised to make treatment decisions as a deputy appointed by the Court of Protection for personal welfare. However, decisions still need to be made about the person's care and treatment. The MCA provides a statutory basis on which treatment may be given to patients who are 16 years or above and lack capacity, and sets out the principles which must be applied. These principles are as follows:

- A person must be assumed to have capacity unless it is established that he or she lacks 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
- A person is not to be treated as unable to make a decision merely because he or she makes an unwise decision
- 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 or her best interests
- Before the act is done, or the decision is made, regard must be had to whether the purpose of which it is needed can be effectively achieved in a way that is less restrictive of the person's rights and freedom of action

12.3.2 The MCA sets out the circumstances in which decisions may be made on behalf of a person and creates an offence of ill-treatment or wilful neglect of a person who lacks capacity or is believed to lack capacity, Statutory guidance is provided in the Mental Capacity Act 2005 Code of Practice and any person engaged in the care and treatment of an adult who either has, or might have, impaired capacity must have regard to this Code.

12.4 Does the patient have capacity?

12.4.1 The MCA applies in relation to determining whether a patient has capacity to give their consent. It is a key principle of the MCA that a person is assumed to have capacity to make decisions for themselves

unless it is established on the balance of probabilities that they do not. A patient lacks capacity if he or she is unable to make a specific decision for themselves in relation to a matter at the time it needs to be made because they have an impairment of, or disturbance of the mind or brain. This impairment or disturbance can either be temporary or permanent. In ascertaining a patient's capacity, the health professional must not make a judgement on the basis of the patient's age, appearance, assumptions about their condition or any other aspect of his or her behaviour. It is important to take all possible steps to try and help the patient make a decision for themselves (see chapter 3 of the MCA Code of Practice). Where there is doubt about a person's capacity, an assessment should be carried out and the health professional must be able to justify their conclusions.

12.4.2 It is the health professional proposing treatment or examination who should assess the patient's capacity to consent. More complex decisions are likely to need more formal assessments, which may include a professional opinion (for example from a speech and language therapist/psychologist), but the final decision about the patient's capacity must be made by the person intending to carry out the action.

12.4.3 Health professionals who carry out actions related to the care and treatment of patients who lack capacity to consent to them at that time may be protected from liability if they reasonably believe that the patient lacks capacity to make that particular decision at the time it needs to be made and the action is in the person's best interests. (For further guidance see Chapter 6 of the MCA Code of Practice and note that the MCA imposes limitations on acts which can be carried out with protection from liability – including where there is inappropriate use of restraint or where the patient who lacks capacity is deprived of their liberty).

12.4.4 The MCA provides that a person is unable to make a decision, because of an impairment or disturbance of mind or brain, if they are unable:

a. to understand the information relevant to the decision, and
b. to retain that information, and
c. to use or weigh that information as part of the process of making the decision, or
d. to communicate his or her decision, whether by talking, using sign language or any other means

Points a to c should be applied together. If a patient cannot do any of these three things they will be treated as unable to make the decision. Point d only applies in situations where the patient cannot communicate their decisions in any way.

12.4.5 The British Medical Association has published advice on the assessment of capacity - http://bma.org.uk/support-at-work/ethics/mental-capacity/mental-capacity-tool-kit

12.4.6 Capacity should not be confused with a health professional's assessment of the reasonableness of the patient's decision. The patient is entitled to make a decision which is based on their own religious belief or value system. Even if it is perceived by others that the decision is unwise or irrational, the patient may still make that decision if he or she has capacity to do so.

12.4.7 Further information can be found in the Mental Capacity Act 2005 Code of Practice.

12.5 Best interests

12.5.1 In determining what is in the patient's best interests, the health professional must –

- look at the patient's circumstances as a whole and not just at what is in the patient's best medical interests
- try to work out what the patient would have wanted if he or she had capacity, rather than what that professional believes to be in his or her best interests
- encourage the patient to take part or improve their ability to take part in making the decision
- try to find out the patient's past and present wishes and feelings, and any beliefs and values that would be likely to influence the patient's decision
- take account of any other factors that the patient might think relevant if they were making the decision

12.5.2 A health professional must not make assumptions about someone's best interests simply on the basis of that patient's age, appearance, condition or behaviour. They should also consider if the patient is likely to regain capacity and if so if the decision can wait until then.

12.5.3 They must also, so far as is practicable and appropriate, consult other people for their views about the patient's best interests and to see if

they have any information about the patient's wishes, feelings, beliefs and values. In particular they should try to consult:

- any person who is named by the patient as a person who should be consulted on such matters
- anyone engaged in caring for the person or interested in his welfare
- any person who has been granted a Lasting Power of Attorney by the patient; and
- any deputy appointed for the patient by the Court of Protection to make decisions for that patient

12.5.4 The purpose of consulting is to ascertain what the patient would have wanted if they had capacity and what would be in their best interests - not what the persons consulted believe should happen. Where a patient has made a Lasting Power of Attorney for personal welfare (including healthcare), or a deputy of the Court of Protection (for personal welfare) has been appointed, and if it is within their authority, it will be for the attorney or deputy to make the decision on the patient's behalf. However, they too must act in the patient's best interests and, where practicable and appropriate, consult the people indicated above

12.5.5 If a patient has no one who may be consulted then health professionals must consider whether the circumstances are such that an Independent Mental Capacity Advocate (IMCA) should be instructed (see section 12.10).

12.5.6 If the patient has a valid and applicable advance decision made under the MCA, then the question of what is in the patient's best interests is not relevant and the patient's refusal of treatment is binding on the health professional. If the patient has made an advance statement which is not a valid and applicable advance decision, then the health professional should still take that statement into account in deciding what is in the patient's best interests. However, if it is the health professional's judgement that to act in accordance with the advance statement would not be appropriate and not in the patient's best interests, he or she is not bound to do so.

12.6 Temporary incapacity

Patients may suffer a temporary lack of capacity, for example, where they are under a general anaesthetic or sedation, or unconscious after a road accident. As with any other situation, an assessment of that

patient's capacity must only examine their capacity to make a particular decision when it needs to be made. Unless the patient has made a valid and applicable advance decision to refuse treatment of which the health professional is aware, then they may be treated insofar as is reasonably required in the patient's best interests pending the recovery of capacity. This will include, but is not limited to, routine procedures such as washing and assistance with feeding. If a medical intervention is thought to be in the patient's best interests but can be delayed until the patient recovers capacity and is able to consent to (or refuse) the intervention, it must be delayed until that time.

12.7 Fluctuating capacity

It is possible for a patient's capacity to fluctuate. In such cases, it is good practice to establish whilst the person has capacity their views about any clinical intervention that may be necessary during a period of incapacity and to record these views. The person may wish to make an advance decision to refuse certain types of treatment (see section 11.8). If the person does not make any relevant advance decision, the person's treatment when incapacitated should accord with the principles for treating the temporarily incapacitated (section 12.6 above).

12.8 Lasting Power of Attorney

12.8.1 The MCA introduced a Lasting Power of Attorney (LPA). An LPA may be executed by any person of 18 years or over whilst they have capacity and takes effect when they no longer have capacity. An LPA may appoint a person to act as an attorney to make decisions about a person's welfare and medical treatment when that person lacks the capacity to make that particular decision. The attorney acting under a personal welfare LPA must make the decision in the person's best interests. An LPA must be registered with the Office of the Public Guardian before it can be used. An LPA does not, however, authorise an attorney to refuse or give consent to life-sustaining treatment unless this is specifically expressed in the instrument that creates the LPA. If two or more people have been appointed as attorneys, then they may either be appointed to act jointly or jointly and severally. If they are acting jointly then any decision must be by consensus. However if they are acting jointly or severally, then either of the attorneys can make a decision independently of the other. If it is not clear how the attorneys have been appointed, then it is assumed that they are appointed to act jointly.

12.8.2 If the patient has made a valid and applicable advance decision to refuse treatment, then this can be overridden by an attorney providing that his or her authority under the LPA extends to making decisions about treatment that is the subject of the advance decision. An attorney, like any person who is making a decision on behalf of a person who lacks capacity, must act in accordance with the MCA and must have regard to the MCA Code of Practice.

12.8.3 When acting on the basis of a decision by an attorney, a health professional should, so far as is reasonable, try to ensure that the attorney is acting within their authority. Any disputes between a health professional and an attorney that cannot be resolved, or cases where there are grounds for believing that the attorney is not making decisions that are in the best interests of the patient, should be referred to the Court of Protection.

12.9 Court Appointed Deputies

12.9.1 Whilst a decision made by the Court is always preferred, the MCA now provides that the Court can appoint deputies to make decisions on its behalf. This may be necessary if there are a number of difficult decisions to be made in relation to the patient. Deputies will normally be family, partners, friends or people who are well known to the patient.

12.9.2 As with attorneys appointed under a Lasting Power of Attorney, deputies may only make decisions where they have reasonable grounds to believe that the person they are acting for does not have capacity, and any decisions they take will be strictly limited to the terms specified by the Court and in accordance with the MCA. Deputies are also subject to a number of restrictions in the exercising of their powers. For example, a deputy cannot refuse consent to the carrying out or continuation of life-sustaining treatment for the patient, nor can he or she direct a person responsible for the patient's healthcare to allow a different person to take over that responsibility**.** A deputy cannot restrict a named person from having access to the patient.

12.9.3 Health professionals should co-operate with deputies with the aim of doing what is best for the patient. Where a deputy acting within their authority makes a decision that the patient should not receive a treatment that is not life-sustaining or requires that a treatment that is not life-sustaining should be discontinued, that professional must act in accordance with those instructions. However a deputy cannot require a health professional to give a particular type of treatment, as this is a matter for his or her clinical judgement. In such cases where a health

professional has declined to give treatment, then it is good practice to seek a second opinion, although the deputy cannot insist that the health professional steps aside to allow another professional to take over the case. Deputies are supervised by the Office of the Public Guardian, and where a health professional suspects that a deputy is not acting in the interests of the patient, he or she should refer the matter to the Public Guardian.

12.10 Independent Mental Capacity Advocates

12.10.1 If a patient aged 16 years or older who lacks capacity is to receive serious medical treatment, or arrangements are to be made about their accommodation, but that patient has no family or friends to be consulted and support them, then unless a decision has to be made urgently, an independent mental capacity advocate (IMCA) must be instructed. The duty to instruct rests with the UHB in the case of accommodation or treatment provided in hospital, or a local authority in the case of residential accommodation. (Note that there are other situations when an IMCA must be instructed – e.g. under the deprivation of liberty safeguards.)

12.10.2 The role of the IMCA is to represent and support the patient. They will not make decisions on the patient's behalf and such decisions will still be decided by the health professional or hospital managers on the basis of what is in the patient's best interests. However the IMCA will speak to the patient and, so far as possible, try to engage them in the decision process. They will assist in determining what is in the patient's best interests and the health professional must take into account the views of the IMCA in deciding what actions to take. They are entitled to information about the patient and to see his or her relevant health records. Where serious medical treatment is proposed, they will discuss with the professional the proposed course of treatment or action and any alternative treatment that may be available and may, if they consider it necessary, ask for a second medical opinion.

12.10.3 Serious medical treatment for this purpose means treatment which involves providing, withdrawing or withholding treatment in circumstances:

- where there is a fine balance between the benefits and burdens the treatment would have on the patient and taking into account the likely risks
- where there is a choice of treatments, a decision as to which one to use is finely balanced or

- what is proposed would be likely to involve serious consequences for the patient

12.11 Referral to the Court of Protection

12.11.1 Where there are difficult or complex decisions to make on behalf of a patient who lacks capacity, the matter can be referred to the Court of Protection.

12.11.2 Health professionals are most likely to involve the Court of Protection where there is a dispute about a patient's capacity to make a decision about a particular type of medical treatment, or whether a patient had capacity when an advance decision or Lasting Power of Attorney for personal welfare was made. The Court can also make declarations about the lawfulness of a particular course of action such as withdrawing or withholding medical treatment. It can also make orders about a patient's welfare or property and affairs. As with any other person who makes a decision on behalf of the patient, the Court will act in the patient's best interests.

12.11.3 A referral to the Court should always be made in the following circumstances:

- decisions about the proposed withholding or withdrawal of artificial nutrition and hydration from a person in a permanent vegetative state or a minimally conscious state
- cases involving organ or bone marrow donation by a person who lacks capacity to consent
- cases involving non-therapeutic sterilisation of a person who lacks capacity to consent
- certain terminations of pregnancy in relation to a person who lacks capacity to consent to such a procedure
- a medical procedure or treatment to be carried out on a person who lacks capacity to consent to it, where that procedure or treatment must be carried out using a degree of force to restrain the person concerned
- an experimental or innovative treatment for the benefit of a person who lacks capacity to consent to such treatment
- a case involving an ethical dilemma in an untested area

12.11.4 This is not an exhaustive list and the courts may extend the list of procedures that should always be referred. In other circumstances it may be necessary to refer a matter to the Court where:

- there is a dispute between health professionals, members of the family, partners, carers or any other interested persons such as an Independent Mental Capacity Advocate or the attorney of a Lasting Power of Attorney about what is in the patient's best interests
- there is doubt about whether the patient lacks capacity to make a decision for themselves and is not likely to regain capacity in the short term

(Note that there are other issues which are not about treatment that may need to be referred to the Court – e.g. disputes about deprivation of liberty)

12.11.5 The Court has held that therapeutic abortion and sterilisation where there is a medical necessity does not automatically require a referral, although such procedures can give rise to special concern about the best interests and rights of a person who lacks capacity. In the case of a woman with learning disabilities, it is good practice to involve a consultant in psychiatry of learning disability, the multidisciplinary team and the patient's family/partner as part of the decision-making process and to document their involvement. Less invasive or reversible options should always be considered before permanent sterilisation.

12.11.6 A health professional who is faced with a situation that may require the intervention of the Court of Protection should immediately contact the UHB's legal advisers by contacting the Director of Governance/Board Secretary, (see Appendix D for details) or their nominated representative. Where an application to the Court is envisaged the Official Solicitor should be contacted. The duty officer of the Official Solicitor can advise on the appropriate procedure if necessary. The Court has given guidance on making applications to the Court. It is good practice to seek the views of the Court prior to undertaking certain interventions which give rise to particular concern. Guidance on referring matters to the Court of Protection has been issued by the General Medical Council and the BMA.

13. HUMAN TISSUE, ORGANS AND ORGAN DONATION

13.1 The Human Tissue Act 2004 sets out the legal framework for the storage and use of tissue from the living and for the removal, storage and use of tissue and organs from the dead. This includes 'residual' tissue following clinical and diagnostic procedures. This Act also establishes the **Human Tissue Authority** (HTA) as the regulatory body for all matters concerning the removal, storage, use and disposal of human tissue

(excluding gametes and embryos) for scheduled purposes. This includes responsibility for living donor transplantation. Due to its complex nature, additional specific guidance is not represented in this Policy. Guidance is available in the Human Tissue Act 2004 and the HTA Codes of Practice, in particular Code 1 which provides detailed guidance on Consent . These are available on their website at www.hta.gov.uk

13.2 For further information, including consent issues concerning the use of tissue after death, please see the Organ and Tissue Donation After Death Policy - http://www.cardiffandvaleuhb.wales.nhs.uk/sitesplus/documents/1143/Organ%20Donation%20Policy%20v2%20Final%20V2.pdf . Please also see section 17.2 – Fertility and *Legal issues relevant to non-heartbeating organ donation*, Department of Health and Welsh Assembly Government, 2008.

14. TELEMEDICINE

14.1 Telemedicine is the use of technology to provide "at a distance" medical care. There are two main types –

- Real-time; where the patient receives a consultation from a health professional through the use of video-conferencing or by telephone
- Store and forward; where images/data of a patient are sent from one health professional to another to be reviewed and replied to in their own time (asynchronously)

14.2 A telemedicine intervention should be viewed as a form of examination and valid consent should be obtained in the same way as in any other examination, not just to the recording and exchange of information but to the process of telemedicine. There are risks associated with the telemedicine and these should be explained to the patient:

- The patient must be given information about the nature of telemedicine:
  - Appreciate that it is not the same as seeing a health professional in a face-to-face meeting
  - understand that the information/diagnosis received may be compromised by the technology
- Health professionals must abide by the IT Security Policy and the Data Protection Policy, Appendix 1, Patient Data Security Guidance, in the handling of all images/recordings and data

- Patients must be assured that their privacy is being maintained at all times
- The patient must understand that they have a right to decline telemedicine

14.3 Please also see the Quality Standards for Teledermatology (Standard 3) – https://www.bad.org.uk/shared/get-file.ashx?itemtype=document&id=794

15. CONSENT TO SCREENING

15.1 Screening is a process of identifying apparently healthy people who may be at increased risk of a disease or condition. They can then be offered information, further tests and appropriate treatment to reduce their risk and/or any complications arising from the disease or condition.

15.2 Screening can be an important tool in providing effective care. However, the uncertainties involved in screening may be great, for example the risk of false positive or false negative results. Some findings may potentially have serious medical, social or financial consequences not only for the individuals, but for their relatives. In some cases the fact of having been screened may itself have serious implications.

15.3 Health professionals must ensure that anyone considering whether to consent to screening can make a properly informed decision. As far as possible, health professionals should ensure that screening would not be contrary to the individual's interest. They must pay particular attention to ensuring that the information the person wants or ought to have is identified and provided.

15.4 Health professionals must be careful to explain clearly:

- the purpose of the screening
- the likelihood of positive/negative findings and possibility of false positive/negative results
- the uncertainties and risks attached to the screening process
- any significant medical, social or financial implications of screening for the particular condition or predisposition

- follow up plans, including availability of counselling and support services

15.5 If health professionals are considering the possibility of screening adults who do not have capacity to consent to the screening they must act in line with Mental Capacity Act 2005. In appropriate cases, account must be taken of the guidance issued by professional bodies and the Department of Health and Welsh Government.

16. CONSENT TO POST MORTEM

16.1 If a post mortem examination is ordered by the coroner the consent of relatives is not required. This category covers the majority of post mortem examinations carried out in the UHB. Such examinations are performed to investigate:

- Sudden death of unknown cause
- Death where the cause of death is known to be, or suspected to be, due to a cause other than natural disease, or where the circumstances of the death raise the possibility that it might be regarded as an unnatural death

The report from a coroner's post mortem examination is confidential and is sent directly to the coroner.

16.2 Other post-mortem examinations are hospital post-mortem examinations which are done usually at the request of doctors who have been caring for the patient or, sometimes, at the request of close relatives wishing to find out more about how a person died. In some circumstances it may be appropriate to limit the examination to a particular region of the body.

16.3 All post mortems are carried out under a licence held by the UHB from the Human Tissue Authority. It is a requirement of the Human Tissue Act 2004 that appropriate consent is taken before a post-mortem can be carried out or any other tissue removed from the body of a deceased person. This consent must be obtained from a person in a "qualifying relationship". The request for a hospital post-mortem should be made by the Clinician to the duty pathologist at University Hospital of Wales. The duty pathologist is contactable via Cellular Pathology on 2074 3725/3696 who after discussions will liaise with the appropriate persons to ensure all statutory requirements are met.

17. OBSTETRICS AND GYNAECOLOGY CONSENT ISSUES

17.1 Caesarean section (including refusal)

17.1.1 In determining the issues of capacity to consent to or refuse a caesarean section it is important to keep in mind the following –

- Every person is presumed to have the capacity to consent to or refuse medical treatment unless or until that presumption is rebutted
- A woman who has the capacity to decide may refuse to have medical intervention even though the consequences may be death or serious handicap of the child she bears, or her own death. In that event the courts do not have jurisdiction to declare medical intervention lawful
- Temporary factors such as fear, shock, fatigue, pain or drugs may affect capacity and, in some cases, they may be so serious that the woman lacks capacity. If there is reason to doubt capacity, a capacity assessment must be undertaken

17.1.2 There have been a number of cases where doubts have arisen, as to a woman's capacity to make a decision about a caesarean section. Rulings from the Courts have been sought in order to carry out the procedure. The Court of Appeal, in the case of *Re MB* re-affirmed that mentally competent women in labour have the same right under common law to consent or refuse consent to treatment as any other patient. So a woman who has capacity to decide may choose not to have medical intervention, even though (in the words of the Court) "the consequence may be the death or serious handicap of the child she bears, or her own death". In such cases, the Court does not have jurisdiction to declare medical intervention lawful and the question of best interests does not arise.

17.1.3 When a competent woman refuses consent to caesarean section, extensive and explicit entries must be made in the notes indicating the discussion that has taken place. It is good practice to involve another senior colleague to indicate that a body of senior medical opinion considers caesarean section to be the most appropriate course and that the patient has refused consent for a caesarean section.

17.1.4 If a woman refuses consent to caesarean section (or any other intervention) and she has been assessed as lacking the capacity to make such a decision, a declaration from the Court of Protection will be

required to decide whether or not to carry out such treatment. In the case of *Re S*, the Court of Appeal laid down general principles that should be applied in future cases.

17.2 Fertility

17.2.1 It is a legal requirement under the Human Fertilisation and Embryology Act 1990, as amended, that consent to the storage and use of gametes must be given in writing after the person has received such relevant information as is proper and had an opportunity to receive counselling. Where these requirements are not satisfied, it is unlawful to store or use the person's gametes. Health professionals should ensure that written consent to storage exists before retrieving gametes.

17.2.2 Outside specialist infertility practice, these requirements may be relevant to health professionals whose patients are about to undergo treatment which may render them sterile (such as chemotherapy or radiotherapy) where a patient may wish to have gametes, or ovarian or testicular tissue, stored prior to the procedure. Health professionals may also receive requests to remove gametes from a person unable to give consent.

17.2.3 The Human Fertilisation and Embryology Act 1990 as amended makes provision to address cases where the taking of gametes is in the patient's best interests but the patient is unable to give written consent or lacks capacity to consent to the storage of the gametes.

Further guidance is available from the Human Fertilisation and Embryology Authority.

Please also see section 13 – Human Tissue, Organs and Organ Donation.

17.3 Sterilisation

17.3.1 The advantages and disadvantages of this form of contraception must be fully explained to the patient. It should be explained that it may not be possible to reverse the operation and, equally important, that it cannot be guaranteed the operation will be totally effective in preventing conception.

17.3.2 Written consent must be obtained for vasectomy, and the man should be advised to take other contraceptive precautions until there have been two consecutive negative semen analyses. It is important that the possibility of late failure is explained to the patient and his partner

before vasectomy, so they can make informed decision about additional contraceptive methods.

17.3.3 Whilst the consent of the partner is not needed before sterilisation, or any other procedure, clinicians may, however, wish to discuss the proposed treatment with the spouse or partner, provided the patient agrees.

17.4 Termination of pregnancy

Written consent of the patient should always be obtained for termination of pregnancy. This will not be possible only in the most unusual circumstances. The husband or putative father's authority is not legally required.

18. MENTAL DISORDER

18.1 Treatment for mental disorder for informal patients (i.e. those not subject to Mental Health Act 1983) is governed by this Consent Policy.

18.2 Consent to treatment for mental disorder for patients subject to the Mental Health Act 1983, is governed by that Act.

18.3 The Mental Health Act 1983 also covers s.57 treatments – i.e. neuro-surgery and the implantation of hormones to reduce male sex drive. These treatments can only be given if the patient has capacity and consents and they also require a second opinion in support of the treatment.

18.4 For further information regarding consent for treatment for mental disorder, please contact the Mental Health Act Manager, Mental Health Act Office, Whitchurch Hospital, Tel 029 2033 6364 and consult the Mental Health Act 1983 and the Mental Health Act 1983 Code of Practice for Wales.

19. CONSENT TO RESEARCH

19.1 Research is important in increasing health care professionals' ability to provide effective care for present and future patients. Any research undertaken within the UHB must be registered with, and approved by, the UHB Research & Development Office, from where additional advice can be obtained. All research and development must have

formal ethical and MHRA approval (as applicable), before it can commence.

19.2 Consent for research that is a clinical trial (i.e. trials for drugs or treatments) is governed by the Clinical Trials of Investigational Medicinal Products (CTIMPs) which are set out in Schedule 1 to the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004:1031) and subsequent amendments. These Regulations will be replaced by The EU Clinical Trials Regulation 536/2014 which will become applicable sometime after 28th May 2016.

19.3 Transition period

The current legislation will be repealed on the day the new Regulation becomes applicable, although it will still apply three years from that day to:

- Clinical trials applications submitted before the new Regulation becomes applicable (i.e. no earlier than 28 May 2016)
- Clinical trials applications submitted within one year after the Regulation becomes applicable if the sponsor opted for the old system

More detailed information, updates and the Regulation itself can be found at:

http://ec.europa.eu/health/human-use/clinical-trials/regulation/index_en.htm#ct3

Those carrying out Clinical Trials should check the site regularly for updates and to ensure they are aware of the entry into application.

19.4 Consent for intrusive research, where consent would normally be needed from a participant who has the requisite mental capacity, but who may lack the mental capacity to give consent, is governed by the Mental Capacity Act 2005.

19.5 Individuals invited to take part in research must be given adequate information about the research, in a form that they can understand. Potential participants must be given adequate time to reflect on the implications of participating in the study and the opportunity to ask questions and to express any concerns they may have. Any further information they request must be provided, including a copy of the

protocol approved by the research ethics committee and host organisation. Pressure must not be put on anyone to take part in the research. Consent must be obtained in writing and a record of the discussion and the outcome should be kept.

19.6 The information provided as part of the consent process should be in writing and should include:

- The aims of the research, a brief description of the research method, and confirmation that a research ethics committee has approved the project
- Participants' legal rights and the safeguards provided
- The reasons that the individual has been asked to participate
- If the project involves randomisation, the means by which this will be achieved, the reasons for it, and the fact that in double-blind research trials neither the patient nor the treatment team will know whether the patient is receiving the treatment being tested or is in the control group
- Information about possible risks and benefits
- An explanation of which parts of the treatment are experimental or not fully tested
- Advice that they can withdraw at any time and, where relevant, an assurance that this will not adversely affect their future treatment
- An explanation of how personal information will be stored, transmitted and published; what information will be available to the participant about the outcome of the research, and how that information will be presented
- Arrangements for responding to adverse events
- Details of compensation available should participants suffer harm as a result of their participation in the research

19.7 Consent to research in children

19.7.1 The legal basis for consent for therapeutic research in children is similar to that for clinical care, i.e. that treatments being offered must represent the best therapeutic method and therefore be in the child's best interests, and that parental consent must be sought. Children should not be denied the right to participate in research which could benefit them in the future, provided it is subject to all the usual safeguards.

19.6.2 For both adults and children, UHB staff should read the guidance on the Health Research Authority (HRA) website, including the Guidance

for Researchers and Reviewers on Information Sheets and Consent Forms. Staff may also contact the R&D Office for further advice.

Further information may be found here:

International Conference on Harmonisation Guideline for Good Clinical Practice E6 (June 1996)
http://www.ich.org/LOB/media/MEDIA482.pdf

Directive 2005/28/EC April 2005
http://ec.europa.eu/health/files/eudralex/vol1/dir_2005_28/dir_2005_28_en.pdf

Statutory Instrument 2004 No.1031 The Medicines for Human Use (Clinical Trials) Regulations
http://www.legislation.gov.uk/uksi/2004/1031/pdfs/uksi_20041031_en.pdf

https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency

19.7 More detailed information on consent in research, including mental capacity issues and delegation of consent can be found in the Cardiff and Vale UHB R&D Office Consent , Research and Mental Capacity SOP (UHB 147)

APPENDICES

Appendix A

ILLUSTRATIVE CLINICAL RECORDS (ICR) – PHOTOGRAPHY, VIDEO AND AUDIO RECORDINGS

A1. Illustrative clinical records (ICR) – photographs, video and audio recordings – may be made for any of the following reasons:

- As part of treating or assessing a patient, to be kept in the patient's medical record
- For use in education and training (including for use in exams) of fellow health professionals or other appropriate groups e.g. at a conference
- For use in clinical research
- For publication - e.g. in a book, a journal, a patient information leaflet, on a poster or in publicity material, any of which may also be accessible on the internet

- As potential evidence - e.g. following injuries sustained as the result of an accident or an assault or where there is suspected non-accidental injury

A2. Accordingly, there are 3 main types of ICR

- Clinical care – where the ICR is needed to assist with diagnosis, treatment and care
- Teaching - the ICR is used in the education of medical, dental, nursing and healthcare staff and students in the UK and abroad
- Publication – the ICR is featured either in books and journals or on the internet

A3. Because it is sometimes possible for people to be identified by tattoos or other distinguishing marks or features, it is UHB policy that valid written consent must always be obtained prior to making an ICR for any of the purposes described above.

A4. If an ICR is required, Media Resources should be contacted in the first instance (in hours). Out of hours, photographs should be taken on a camera provided by the UHB specifically for this purpose. Health professionals taking and storing ICRs must comply with this Policy and with the IT Security Policy and the Data Protection Policy, Appendix 1, Patient Data Security Guidance

A5. Health professionals (or in the case of a student, the student's supervisor) must always ensure that they obtain a patient's valid written consent, using the appropriate consent form - 'Consent form for use by staff other than Clinical Photographers making photographic/video recordings of patients', which can be obtained from Media Resources (tel. no. 2074 4601). This must be completed in advance if any ICR will result from a procedure and then filed in the patient's notes (unless the patient is temporarily unconscious – see section A11.3).

A6. If consent is only obtained for the use of ICRs in clinical care, they must not be used for any purpose other than the patient's care or the audit of that care, without obtaining further consent from the patient.

A7. General principles

7.1 The following general principles apply to most ICRs:

- The health professional in charge of the particular treatment is responsible for ensuring that valid consent is obtained
- Consent to take/ make the ICR and valid consent to its use or disclosure must be obtained (for exceptions, see A8)
- patients must be given adequate information about the purpose, use and disclosure of the ICR when seeking their consent
- patients must not be under any pressure to give their consent for the ICR to be made
- the recording must be stopped if the patient requests this or if it is having an adverse effect on the consultation or treatment
- staff must not participate in any ICR made against a patient's wishes
- Eyes or faces must **not** be blacked out in an attempt to conceal identity after the ICR has been made. Every effort must be made to conceal the identity of the patient whilst the recording is being taken. The patient must be informed if their face will be visible in the ICR
- Ensure that the ICR does not compromise patients' privacy and dignity
- A record should be made in the patient's notes that an ICR has been requested/taken, by whom and for what reason
- ICRs must not be used for purposes outside the scope of the original consent for use, without obtaining further consent
- Storage of ICRs must be in line with UHB IT security policies and procedures. Agreement must be reached with Media Resources regarding where ICRs should be stored
- Policies and procedures pertaining to the use of mobile phones must be complied with

7.2 Before the ICR is made, health professionals must ensure that patients:

- understand the purpose of the recording, who will be allowed to see it, the circumstances in which it will be shown, that copies are likely to be made if the recording is for educational purposes, and that the recording will be stored securely within the UHB
- understand that, in the case of publication, they will not be able to withdraw their consent or control future use of the material, once the recording is in the public domain
- understand that withholding permission for the ICR to be made, or withdrawing permission during the recording, will not affect the quality of care they receive

- are given time to read any relevant explanatory material that has been provided by the UHB and to consider the implications of giving their written permission. Explanatory material should not imply that permission is expected. They should be written in language that is easily understood. If necessary, translations should be provided
- have signed the relevant consent form or, if they lack capacity, the Mental Capacity Act 2005 has been followed - a best interests decision has been taken that an ICR should be made or an attorney of a Lasting Power of Attorney for personal welfare or a Court Appointed Deputy for personal welfare decisions with the appropriate authority has consented

7.3 After the recording, the health professional must ensure that:

- they ask patients if they want to vary or withdraw their consent to the use of the ICR
- ICRs are used only for the purpose for which patients have given consent
- Patients are given the chance, if they wish, to see the edited ICR (video recordings only)
- ICRs form part of a patient's medical records and, as such, must be used with great care. UHB IT security policies and procedures must be complied with. Images must not be stored on unencrypted computers or in un-password protected folders, instead, they must be stored on the secure backed up UHB server. For example, if images are downloaded to a memory stick/CD, then the memory stick/CD must be encrypted. This includes presentations containing patient images. Images must not be stored on the hard drive of the computer

A8. Recordings for which consent is not required

Consent is not needed to make or use the ICRs listed below, provided that, before use, they are effectively anonymised by the removal of any identifying marks (writing in the margins of an x-ray, for example):

- Images taken from pathology slides
- X-rays
- Laparoscopic images or images from other medical 'scopes'
- Images of internal organs (however, it is best practice to obtain written consent if the ICR is to be used in education or publication and will be accompanied by verbal or written

information which may enable inadvertent identification of the patient)
- Ultrasound images

For further information, please see the GMC guidance "Making and using visual and audio records of patients" (2011).

A9. Children

9.1 Where children lack capacity to give their permission to ICRs, health professionals must get permission to record from the person with parental responsibility. Children under 16 who have the capacity to provide valid consent for an ICR may do so.

9.2 In cases of suspected non-accidental injury (NAI) of a child, consent should be sought from a person with parental responsibility for the child, unless this is deemed by the health professional to be inappropriate. However, these ICRs must only be used as part of the clinical record. They can only be shared with others in line with professional guidance such as the GMC Guidelines on Confidentiality. They **must not** be used for education, publication or research without written consent. If valid consent is given for use in education, publication or research, they must not be used for these purposes before or during likely legal proceedings. The clinician seeking consent for NAI recordings should be a Registrar or higher grade doctor.

A10. Foetal loss, stillbirth and neonatal death

10.1 Photographs taken on behalf of the bereaved must be made with consent of a person with parental responsibility

10.2 If photographs are required for any other purpose (except during the course of a post mortem examination) the valid consent of those with parental responsibility must be obtained.

A11. Adults who lack capacity to consent

11.1 When an adult patient lacks the capacity to make decisions for him/herself, any decisions made for them must be in the patient's best interests (in accordance with the Mental Capacity Act 2005). If the patient has made a Lasting Power of Attorney for personal welfare or a Deputy has been appointed by the Court of Protection and their authority covers this issue, then they will make the decision on the

patient's behalf. This principle applies as much to ICRs as to any other decision made on behalf of a patient who lacks capacity.

11.2 As a general principle, ICRs must not be made if the purpose of the ICR could equally well be met by recording patients who are able to give consent to them.

11.3 The situation may sometimes arise where the patient is temporarily unable to give or withhold consent because, for example, they are unconscious. In such cases, an ICR may be made if it can be demonstrated that it is in the patient's best interests, but if it is to be used for a purpose other than clinical care, consent must be sought as soon as the patient regains capacity. The ICR must not be used until consent is given.

11.4 If it can be demonstrated that it is in the patient's best interests, then ICRs can be made as part of the patient's clinical care, or as potential evidence. If someone holds a personal welfare LPA or is a Court appointed Deputy, they should be asked to consent on behalf of the patient. Otherwise the health professional requesting the recording must sign the consent form to confirm that they have assessed capacity and are acting in the patient's best interests. This should be recorded in the notes.

11.5 If an adult patient lacks capacity to consent to ICRs being taken and used for education or publication then the ICR should not be taken unless it is determined to be in the patient's best interests.

A12. Adults who have capacity but are unable to sign a consent form

Inability to sign a consent form does not detract from an individual's ability to give consent for themselves. Patients can indicate their consent verbally or non-verbally, in the presence of a witness, who should then sign the consent form to confirm that the patient's consent was given. ICRs can then be used in the same way as if the patient had signed the consent form.

A13. Withdrawal of consent

Patients have the right to withdraw consent for the use of their ICRs for teaching or publication at any time. The requesting clinician should be notified, who should arrange for this to be recorded in the notes and other parties including Medical Photography informed This should be documented on the consent form and the form, or the appropriate

section of the form, should be scored through. In the case of publication, it is particularly important to make it clear to patients, when consent is originally obtained, that once the ICR is in the public domain there is no opportunity for effective withdrawal of consent.

As ICRs form part of the patients' medical record, patients cannot request that they be destroyed.

A14. Further information

The above information is drawn from the GMC guidance: Making and using visual and audio records of patients (2011), which gives further detailed advice in the use of recordings when treating or assessing patients. Further information can also be found in the Information Commissioners "Use and Disclosure of Health Data: Guidance on the application of the Data Protection Act 1998" (May 2002).

Appendix B

Current consent forms

Form 1 for patients aged 16 years and over with capacity and also for competent children

Form 2 for parental consent for a child who is not competent

Form 4 for patients aged 16 years and over who lack capacity to consent to investigation or treatment

Please order these forms through Oracle.

Please follow this link to view copies of the forms - http://www.wales.nhs.uk/sites3/page.cfm?orgid=465&pid=11930

Appendix C

Useful contact details

Julia Barrell, MCA Manager, Tel. 029 2074 3652 (for both consent and mental capacity issues)

Maria Roberts, Patient Safety Team Manager, Tel. 029 2074 6387

Graham Shortland, Medical Director, Tel. 029 2074 2130 (Executive Lead)

Peter Welsh, Director of Governance / Board Secretary, Tel. 029 2074 5544 (in relation to obtaining Legal Advice)

Out of hours advice/guidance in emergency situations, via the On Call Senior Manager rota

Appendix D

How to seek a court declaration

D1. If you need advice or to apply for a court ruling in relation to a complex consent/capacity issue during office hours you should contact the UHB Mental Capacity Act Manager/ Patient Safety Team, in the first instance.
D2. Out of office hours, you should contact the Senior Manager on-call, who will contact the UHB Solicitors on your behalf.
D3. You should ensure that you have all the relevant information about the case to hand so that you can brief the Solicitor appropriately. You should also keep a clear written record of the legal advice you have been given.
D4. Where a decision is made to apply to a court the lead clinician should, as soon as possible, inform the patient and his or her representative of the decision and of his or her right to be represented at the hearing. The patient's solicitor should be informed immediately and, if practicable, should have a proper opportunity to take instructions and apply for legal aid where necessary.
D5. There may be occasions when the situation may be so urgent, and the consequences so desperate, that it is impracticable to attempt to comply with these guidelines.
D6. Where delay may itself cause serious damage to the patient's health, or put their life at risk, then rigid compliance with these guidelines would be inappropriate.

APPENDIX E

Further reading

Department for Constitutional Affairs (2007) 'Mental Capacity Act 2005 Code of Practice', TSO, London
http://www.wales.nhs.uk/sites3/Documents/744/Code%20of%20Practice%20E.pdf

Department of Health (2008) 'Mental Health Act 1983 as amended by Mental Health Act 2007'
http://www.wales.nhs.uk/sites3/Documents/816/MHA%20as%20amended.pdf

Department of Health and Welsh Assembly Government (2009) 'Legal issues relevant to non-heartbeating organ donation'
http://howis.wales.nhs.uk/doclib/091120legalguidanceonorgandonationen.pdf

General Medical Council guidance (2007) '0-18 years: guidance for all doctors'
http://www.gmc-uk.org/guidance/ethical_guidance/children_guidance_index.asp

General Medical Council guidance (2013) 'Consent: patients and doctors making decisions together'
http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp

General Medical Council guidance (2011) 'Making and using visual and audio records of patients'
http://www.gmc-uk.org/guidance/ethical_guidance/making_audiovisual.asp

HMSO (2005) 'Mental Capacity Act 2005.' TSO, London
http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpga_20050009_en.pdf

Human Tissue Authority (2006) 'Human Tissue Act 2004 Code of Practice – Consent'
https://www.hta.gov.uk/code-practice-1-consent

Information Commissioner
https://ico.org.uk/for-organisations/health/

UK Government (1989) 'Children Act 1989'
http://www.legislation.gov.uk/ukpga/1989/41/contents

UK Government (1990) 'Human Fertilisation and Embryology Act 2008', HMSO, London
http://www.legislation.gov.uk/ukpga/1990/37/pdfs/ukpga_19900037_en.pdf

UK Government (1998) 'Human Rights Act 1998'
http://www.legislation.gov.uk/ukpga/1998/42/contents

UK Government (2004) 'Human Tissue Act 2004', TSO
http://www.legislation.gov.uk/ukpga/2004/30/pdfs/ukpga_20040030_en.pdf

Welsh Assembly Government (2008) 'Good Practice in Consent Implementation Guide'
http://www.wales.nhs.uk/sites3/Documents/465/Consent%20Implementation%20Guide.doc

Welsh Assembly Government (2008) 'Reference Guide for Consent to Examination or Treatment, Welsh Assembly Government'
http://www.wales.nhs.uk/sites3/Documents/465/WHC%282008%29010.pdf

Welsh Assembly Government (2008) 'Mental Health Act 1983 Code of Practice for Wales' (revised edition forthcoming)
http://www.wales.nhs.uk/sites3/page.cfm?orgid=816&pid=33960

Welsh Assembly Government (2015) Health and Care Standards
http://www.wales.nhs.uk/governance-emanual/how-the-health-and-care-standards-are-st

Equality Impact Assessment - Standard Assessment Template

Section A: Assessment

Name of Policy **Consent to Examination or Treatment Policy**

Person/persons conducting this assessment with Contact Details **Mental Capacity Act Manager, tel. 029 2074 3652**

Date **December 2015**

1. The Policy

Is this a new or existing policy?

Existing.

What is the purpose of the policy?

The Policy sets out the legal framework within which all treatment and care must be provided to all UHB patients. Patients can be lawfully treated either with consent, or through the Mental Capacity Act 2005 or the Mental Health Act 1983. Other legislation covers other particular issues – e.g. research.

How do the aims of the policy fit in with corporate priorities? i.e. Corporate Plan

As a public body providing healthcare, it is essential that the UHB complies with the law. All treatment and care provided to patients must be undertaken in compliance with the law.

Who will benefit from the policy?

Staff – compliance with the law means that the risk of staff being sued or prosecuted in connection with the care and treatment they give patients (with the exception of clinical negligence) is reduced. Staff also have a defence if complaints are made about them in relation to treatment and care (again, excepting clinical negligence) to - for example - the UHB or to their professional body.

Patients – where patients can consent to, or refuse, treatment and care, they will receive the treatment and care that they have agreed to. Where patients aged under 16 years lack competence to make decisions about their treatment and care, decisions will be made for them by a person with parental responsibility for them in their best interests. Where patients aged 16 years and over lack mental capacity to make their own decisions about their treatment and care, decisions will be made for them in line with Mental Capacity Act 2005. Patients receiving treatment for mental disorder may be treated and cared for in line with Mental Health Act 1983. Where patients receive treatment and care under either Mental Capacity Act 2005 or Mental Health Act 1983, there are legally prescribed safeguards in place to ensure that they can contest decisions made about them.

What outcomes are wanted from this policy?

To ensure that all the UHB's patients are treated and cared for in line with the law, thereby protecting both staff and patients.

Are there any factors that might prevent outcomes being achieved? (e.g. Training/practice/culture/human or financial resources)

Staff attitudes about the importance of capacity and consent issues may adversely impact on the Policy's outcomes.
Staff compliance with undertaking training on capacity and consent issues may also have an adverse impact.

However, training is available for staff on all aspects of consent and capacity. Mental Capacity Act training is mandatory for clinical staff. Support and assistance is available to staff regarding all aspects of this Policy either from the Mental Capacity Act Manager, or appropriate others – e.g. Mental Health Act Manager, Research Department and NHS Solicitors.

2. Data Collection
What qualitative data do you have about the policy relating to equalities groups (e.g. monitoring data on proportions of service users compared to proportions in the population)?
What quantitative data do you have on the different groups (e.g. findings from discussion groups, information from comparator authorities)?
Please indicate the source of the data gathered? (e.g. Concerns/Service/Department/Team/Other)
What gaps in data have you identified? (Please put actions to address this in your action plan?)

a) This Policy applies to all patients being treated and cared for by the UHB and sets out the law regarding the provision of health care and treatment. If the Policy is not followed, staff will be treating and caring for patients unlawfully. As the Policy applies to all patients, there is no question of the Policy having a negative effect on any of the equalities groups. There are positive impacts which the policy includes – see the impact section below.

b) The EqIA completed for the previous version of this Policy found there to be no adverse impact on any of the equalities groups. As the law on consent and capacity has not substantially changed since then, it is most unlikely that the effect of this Policy on any of the equalities groups will have changed. There are positive impacts which the policy includes – see the impact section below.

c) A review of NHS Consent Policy EqIAs, conducted on 8/12/15 through Google, found 7 NHS organisations (excluding specialist organisations – e.g. mental health Trusts or ambulance Trusts) that had conducted EqIAs on their Consent Policies in the past 5 years. (This may not be an exhaustive list.) These were –

- Brighton and Sussex University Hospitals NHS Trust 2012 - http://www.google.co.uk/url?url=http://www.bsuh.nhs.uk/EasysiteWeb/getresource.axd%3FAssetID%3D377921%26type%3DFull%26servicetype%3DAttachment&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjCy5Wr3MzKAhVBqw4KHfjTAE8QFggUMAA&usg=AFQjCNELb-1W48K7lv0kke3QJfVAgFsTTQ
- Medway NHS Foundation Trust 2015 - http://www.google.co.uk/url?url=http://www.medway.nhs.uk/EasySiteWeb/GatewayLink.aspx%3FalId%3D128132&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiQhrCD3czKAhVBdg8KHWHZBJYQFggUMAA&usg=AFQjCNGDfPfcjGp3z1i39jpDUAzph2qzTg

- Royal Cornwall Hospitals NHS Trust 2013 - http://www.rcht.nhs.uk/DocumentsLibrary/RoyalCornwallHospitalsTrust/Clinical/Consent/RCHTPolicyForConsentToExaminationOrTreatment.pdf
- Nottingham University Hospitals NHS Trust 2012 - http://www.google.co.uk/url?url=http://www.nuh.nhs.uk/handlers/downloads.ashx%3Fid%3D24899&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwiwpqTq3czKAhUBFw8KHcRACWMQFggUMAA&usg=AFQjCNHGFctAroHyHDRM0r4PYdYw4s6ppQ
- Heart of England NHS Foundation Trust 2010 - http://www.heartofengland.nhs.uk/wp-content/uploads/Consent-to-Examination-or-Treatment-Policy-v5.0.pdf
- North East London NHS Foundation Trust 2011 - http://www.google.co.uk/url?url=http://www.nelft.nhs.uk/download.cfm%3Fdoc%3Ddocm93jijm4n893.pdf%26ver%3D903&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwjw34bx3szKAhVF-A4KHSIUBvcQFgglMAM&usg=AFQjCNH_CeZpBfL4i1KlaiJcGNiSZ3bilg
- South Humber NHS Foundation Trust 2014 - http://www.rdash.nhs.uk/wp-content/uploads/2014/04/Consent-to-examination-or-treatment-April-2014.pdf

All identified that their Consent Policy had no adverse impact on the equalities groups.

3. Impact

Please answer the following

Consider the information gathered in section 2 above of this assessment form, comparing monitoring information with census data as appropriate (see www.ons.gov.uk Office National Statistics website) and considering any other earlier research or consultation. You should also look at the guidance in Appendix 1 with regard to the protected characteristics **stating the impact and giving the key reasons for your decision.**

Do you think that the policy impacts on people because of their age? (This includes children and young people up to 18 and older people)

In the case of a patient under 16 years of age, consent may be given either by the patient, if they are *Gillick* competent, or by someone with parental responsibility for them. For patients who are 16 years and over, treatment and care may be lawfully provided either with the patient's consent, or through the Mental Capacity Act 2005. Patients of any age may be treated under Mental Health Act 1983. The Policy therefore has a positive impact, because patients of all ages are reflected in the policy.

Do you think that the policy impacts on people because of their caring responsibilities?

No evidence. All UHB patients must be treated in compliance with the law, regardless of their caring responsibilities.

Do you think that the policy impacts on people because of their disability? (This includes Visual impairment, hearing impairment, physically disabled, Learning disability, some mental health issues, HIV positive, multiple sclerosis, cancer, diabetes and epilepsy.)

For patients under 16 years of age who have a disability, consent may be given either by the patient, if they are *Gillick* competent, or by someone with parental responsibility for them. For patients who are 16 years and over, treatment and care may be lawfully provided either with the patient's consent, or through the Mental Capacity Act 2005. Patients of any age may be treated under Mental Health Act 1983.

For treatment and care to be provided lawfully, it is essential that patients are able to both receive information and communicate in the medium of their choice, as the Consent Policy makes clear. So, for example, it is essential that UHB staff access BSL interpreters, where appropriate.

The Mental Capacity Act 2005 has as one of its principles the provision of support to help people make their own decisions. The Consent Policy includes the need to provide information to patients in different languages and media and to comply with the Mental Capacity Act 2005 where appropriate. The Mental Capacity Act 2005 Code of Practice gives examples of the kinds of support that could be provided.

The Policy therefore has a positive impact, because it sets out the legal requirements to provide patients with information that they can understand and to support them to make their own decisions.

Do you think that the policy impacts on people because of Gender reassignment? (This includes Trans transgender and transvestites)

No evidence. All UHB patients must be treated in compliance with the law, regardless of whether they are transvestite, transgender or have undergone gender reassignment.

Do you think that the policy impacts on people because of their being married or in a civil partnership?

No evidence. All UHB patients must be treated in compliance with the law, regardless of their marriage or civil partnership status.

Do you think that the policy impacts on people because of their being pregnant or just having had a baby?

No evidence. All UHB patients must be treated in compliance with the law, regardless of whether or not they are pregnant or have just had a baby.

Do you think that the policy impacts on people because of their race? (This includes colour, nationality and citizenship or ethnic or national origin such as Gypsy and Traveller Communities.)

All UHB patients must be treated in compliance with the law, regardless of their race.

For treatment and care to be provided lawfully, it is essential that patients are able to both receive information and communicate in the language of their choice. If patients cannot understand the information about the treatment they are being offered, then any "consent" will be invalid and the treatment will be unlawful. The Policy reflects that patients must be given information and communicate in the language/method of their choice. The Policy may therefore have a positive impact.

Do you think that the policy impacts on people because of their religion, belief or non-belief? (Religious groups cover a wide range of groupings the most of which are Buddhist, Christians, Hindus, Jews, Muslims, and Sikhs. Consider these categories individually and collectively when considering impacts)

Whether patients have a religious faith or not, they cannot be treated without their consent, or outwith the Mental Capacity Act 2005 or the Mental Health Act 1983. The law is clear that people who have the mental capacity to do so, may refuse any treatment on any grounds, including religious beliefs, or for no clear reason. The Policy, in reflecting the law, may have a positive impact.

Do you think that the policy impacts on men and woman in different ways?

No evidence. All UHB patients must be treated in compliance with the law, regardless of their gender.

Do you think that the policy impacts on people because of their sexual orientation? (This includes Gay men, heterosexuals, lesbians and bisexuals)

No evidence. All UHB patients must be treated in compliance with the law, regardless of their sexual orientation.

Do you think that the policy impacts on people because of their Welsh language?

All UHB patients must be treated in compliance with the law, regardless of their being Welsh speakers or speakers of any other language. If patients are unable to understand the information they are given about possible treatments, because of language differences, then any “consent” gained will be invalid and any treatment may well be unlawful. The policy reflects the requirement to ensure that patients are able to receive information and communicate in the language/manner of their choice. The Policy may therefore have a positive impact.

4. Summary.
Which equality groups have positive or negative impacts been identified for (i.e. differential impact).
Is the policy directly or indirectly discriminatory under the equalities legislation?
If the policy is indirectly discriminatory can it be justified under the relevant legislation?

The Policy applies to all of the UHB’s patients. It sets out the law regarding consent to treatment and mental capacity. If the Policy is not followed then the patient will be treated/cared for unlawfully, regardless of whether or not they are protected by equalities legislation.

The policy may have a positive impact on the following equalities groups – age; disability; race; religion and Welsh language.

There is no evidence that the Consent Policy adversely affects any of the equalities groups and it is neither directly nor indirectly discriminatory under the equalities legislation.

Appendix 3

Cardiff and Vale University Health Board
Action Plan

Section B: Action

5. Please complete your action plan below. Issues you are likely to need to address include

•What **consultation** needs to take place with equality groups (bearing in mind any relevant consultation already done and any planned corporate consultation activities)

This assessment, together with the policy will be posted on the intranet for a consultation period of 28 days. It will also be sent to:

Cardiff and Vale Community Health Council
Cardiff and Vale UHB Ethics Committee
Clinical Board Nurses (for dissemination within Clinical Boards)

• What **monitoring**/evaluation will be required to further assess the impact of any changes on equality target groups?

Clinical Boards have a responsibility, set out in the policy, to monitor implementation of this policy, including undertaking audits of patient records, and present and act on their findings. In the event that any impact on any of the equality groups is found, this must be reported to the Mental Capacity Act Manager. Legal advice would then be sought regarding the issue.

Equalities Impact Assessment Implementation Action Plan

Issue to be addressed	Responsible Officer	Action Required	Timescale for completion	Action Taken	Comments

Consent Policy equality issues within Clinical Boards	MCA Manager	Remind Clinical Boards to report any Consent Policy equality issues to MCA Manager	After adoption of Consent Policy		
Consent Policy equality issues arising from patient complaints	MCA Manager	Liaise with Complaints Team	On-going		
Consent Policy equality issues arising from clinical incidents	MCA Manager	Liaise with Patient Safety Team	On-going		

6. Report, publication and Review

Please record details of the report or file note which records the outcome of the EQIA together with any actions / recommendations being pursued (date, type of report, etc)

The outcome of this EQIA will be reported to and noted by the UHB's Quality, Safety and Experience Committee. The minutes of these meetings are available via the intranet. The next meeting of this Committee is due on 19th April 2016**.**

Please record details of where and when EQIA results will be published

On both the UHB's intranet and internet

Please record when the EQIA will be subject to review.

The EqIA and Policy will be reviewed three years after approval unless changes to terms and conditions, legislation or best practice determine that an earlier review is required.

Name of person completing: Julia Barrell
Signed _____
Date: 28th January 2015 (revised 30th March 2016)

Name of Senior Manager Authorising Assessment and Action Plan for publication: Dr Graham Shortland, Medical Director
Signed: _____
Date: _____

Appendix 4
Format for publication of EQIA results
Executive Summary

Responsibility for adhering to this Policy lies with individual clinicians, supported by their Clinical Boards and the UHB.

After considering the available evidence, it is clear that the policy has no negative impact on the equalities groups. This is because, before treatment or care can be provided to any patient, the relevant law (e.g. common law on consent, Mental Capacity Act 2005 or Mental Health Act 1983) must be followed. Where treatment is provided outside of these legal requirements, it is likely to be unlawful.

Background

The aim of this policy is to provide information and direction to staff regarding all aspects of the patient consent process, so that UHB staff deal with consent issues lawfully. The Policy should be read in conjunction with the legislative and local policy documents referenced and with relevant professional codes of conduct and guidance.

The policy sets out the legal framework of England and Wales regarding consent to treatment and care. Treatment and care provided to patients outside of this framework is likely to be unlawful, for which both the UHB and healthcare professionals may be liable to legal action.

This EqIA was put out for consultation on the UHB intranet. It was also sent to the Clinical Board Nurses, the Welsh Language Officer, the Clinical Ethics Committee and Cardiff and Vale Community Health Council.

The scope of the EQIA

Possible effects on equalities groups were assessed through looking at EqIAs undertaken by other NHS organisations; through consultation via the intranet; and with Cardiff and Vale Community Health Council.

No responses were received regarding the EqIA.

Key findings

The EqIA found there to be no negative impact on the equalities groups and positive impact on some of the groups - age; disability; race; religion and Welsh language.

Recommendations

No changes to the policy were suggested regarding the impact on the equalities groups.

Both the policy and the EqIA will be reviewed in 3 years time, unless there are significant changes to legislation or case law. The Policy will be monitored and reviewed by the Quality, Safety and Experience Committee.

It will be issued via the intranet, administrator email and to Clinical Board Management Teams.

Supplementary Terms & Conditions
Cardiff & Vale University Local Health Board
Procurement Services

Contract Title: Open MRI Scanning
Contract Reference No: 15/2145/EC

	Overview
	The following Supplementary Terms and Conditions shall, have effect and are incorporated into the Terms and Conditions of Contract (Appendix D). The Purchase Terms and these Supplementary Terms and any attachments to these Supplementary Terms shall together be known as **"the Contract"**. Any defined terms used in the Purchase Terms shall apply to these Supplementary Terms and any attachments to these Supplementary Terms save where such terms are separately defined in these Supplementary Terms and any attachments to these Supplementary Terms. The Supplementary Terms and Conditions are to be read in conjunction with the Purchase Terms so as to be consistent with them. However, should there be any unavoidable inconsistency or conflict between them; these Supplementary Terms set out below are to prevail.

ALL Sections to be completed by Tenderer to ensure their submission is compliant. A signed copy of this form is confirmation of all terms and conditions. Any response in the negative form will be eliminated from the process.

		Please DELETE as appropriate	
	Please complete this document and upload in the xchangwales e-tendering portal		
1	**PRICE**	**Yes**	
	After the expiry of a period of 12 months from the commencement of the Contract (the date of such expiry the "First Date"), the Prices may be varied in accordance with the paragraph below (2. Price Changes).		
2	**PRICE VARIATION**	**Yes**	
	Without prejudice to its rights under Condition 1 Price, the uLHB may agree to changes in the Contract Price after the expiry of a period of 12 months from the commencement of the Contract (the date of such expiry the 'First Date' subject to additional fixed pricing offered in the ITT. The Contractor shall provide not less than twenty eight days's notice in writing of any proposed changes. Nothing in these Supplementary Terms shall oblige PROCUREMENT SERVICES to accept any price increase whatsoever. In the event that the supplier wishes to propose a Price increase it shall provide in writing justification which must include the following: (a) The proposed increase, not by general % increase, but by actual value to the uLHB, based on the most recent 12 month sales, with a full breakdown showing quantity, product code, current price, proposed price, pack size and description. (b) Information regarding market conditions relating to the factors affecting cost of supply and their role in the pricing decision: this should include any market reports or trends in market indices. c) Outline what steps are being taken to directly reduce or mitigate the cost pressures on prices, in particular what is being done with materials. For instance is there any review of components sourcing and alternative materials. Are there any continuous improvement projects (i.e. 6-sigma, TQM etc) being undertaken that will have a positive impact on prices. In the event that PROCUREMENT SERVICES agrees with the proposed Price increase it shall notify the [supplier] of the date on which such increase may take effect which shall not be less than 2 months from the date on which the information described above was provided.		
3	**ESTIMATED QUANTITIES**	**Yes**	
	Estimated quantities where inserted in the tender documents shall indicate only the probable requirements for the period referred to and the Authority shall not be bound to order such quantities.		
4	**SAMPLES**	**Yes**	
	No samples what so ever are to be sent to any address in connection with this tender. Any request for samples will be made specially by Procurement Services.		
5	**PRODUCT SUPPORT**	**Yes**	

	The contractor will provide inclusive training relevant to the awarded contract; equipment, products, including appropriate educational materials by an appropriate qualified person. All training must be carried out by an appropriate qualified person employed by the supplier. 'An appropriate qualified person' is defined for the purposes of this agreement as a trainer who has undergone formal training and assessment of their knowledge/skills to be able to deliver the training required. Where appropriate, training should be provided to facilitate the transition period from the previous supplier. Details of any potential migration will be disclosed at the discretion of the uLHB. Any migration programme will need to be agreed by uLHB Clinical Leads.		
6	**PRODUCT RECALL**	**Yes**	
	In the event of the goods being recalled, initiated by the manufacturer of the goods, the Secretary of State for Health or the MHRA (or any such similar regulatory body), the contractor shall, without delay and at its own expense, arrange for the collection of such goods and credit the authority for any goods delivered, but unused by the authority, including part used packs.		
7	**PRODUCT AMENDMENT**	**Yes**	
	Where contracted items are no longer available the next available higher specification device should be offered at no additional cost. Any modifications to products that will affect their use will be covered by additional training provided by the Contractor.		
8	**DELIVERY**	**Yes**	
a.	The goods shall be delivered by the Contractor **free of charge** in such quantities in such a manner and at such times and place or places as the uLHB (or any health authority) named in the Contract may order in writing from time to time. Delivery shall be made within 2-3 days of receipt of an order if no time for delivery is named within the tender documents.		
b.	98% of all routine orders must be delivered in full within 2-3 working days of receipt of order. Deliveries to be made to the hospital based store. This requirement is minimal during the contract period.		
9	**DATA PROTECTION ACT 1998**	**Yes**	
	The Contractor Undertakes :-		
a.	to treat as confidential all information which may be derived from or obtained in the course of the contract or which may come into the possession of the contractor or any employee, servant, agent or sub-contractor as a result of or in connection with the contract;		
b.	to provide all necessary precautions to ensure that all such information is treated as confidential by the contractor, his employees, servants, agents and sub-contractors, in accordance with the principles introduced under the 1998 Data Protection Act.		
10	**WELSH LANGUAGE SCHEME**	**Yes**	
	In accordance with the Welsh Language Act 1993, the Cardiff and Vale University Local Health Board operates a Welsh Language Scheme. This Scheme recognizes that the principle of linguistic equality is crucial to the uLHB delivering a quality service. To that end, the uLHB has adopted the principle that, in the conduct of public business in Wales, it will treat the Welsh and English languages on the basis of equality.		
	This principle can and will place obligations on the uLHB's contractors for goods and services, and any tenderer being awarded a contract by the uLHB must comply with the Scheme.		
	A copy of the uLHB's Welsh Language Scheme is an attachment and tenderers are required to confirm their compliance.		

Signed	
Name:	Peter Sharpe
Position:	CEO
On behalf of:	Cobalt
Date:	16th February 2016

Supplementary Terms & Conditions

Cardiff & Vale University Local Health Board

Procurement Services

Contract Title: Dental Gold

Contract Reference No: 15/2090

	Overview
	The following Supplementary Terms and Conditions shall, have effect and are incorporated into the Terms and Conditions of Contract (Appendix D). The Purchase Terms and these Supplementary Terms and any attachments to these Supplementary Terms shall together be known as **"the Contract"**. Any defined terms used in the Purchase Terms shall apply to these Supplementary Terms and any attachments to these Supplementary Terms save where such terms are separately defined in these Supplementary Terms and any attachments to these Supplementary Terms. The Supplementary Terms and Conditions are to be read in conjunction with the Purchase Terms so as to be consistent with them. However, should there be any unavoidable inconsistency or conflict between them; these Supplementary Terms set out below are to prevail.

ALL **Sections to be completed by Tenderer to ensure their submission is compliant. A signed copy of this form is confirmation of all terms and conditions. Any response in the negative form will be eliminated from the process.**

		Please DELETE as appropriate	
	Please complete this document and upload in the xchangwales e-tendering portal		
1	**PRICE**	**Yes**	
	After the expiry of a period of 12 months from the commencement of the Contract (the date of such expiry the "First Date"), the Prices may be varied in accordance with the paragraph below (2. Price Changes).	**Yes**	
2	**ESTIMATED QUANTITIES**	**Yes**	
	Estimated quantities where inserted in the tender documents shall indicate only the probable requirements for the period referred to and the Authority shall not be bound to order such quantities. The total usage per annum is estimated at 1150 grm. On the commercial document this has been split over the six elements for pricing purposes, but could vary over all elements.	**Yes**	
3	**PRODUCT RECALL**	**Yes**	
	In the event of the goods being recalled, initiated by the manufacturer of the goods, the Secretary of State for Health or the MHRA (or any such similar regulatory body), the contractor shall, without delay and at its own expense, arrange for the collection of such goods and credit the authority for any goods delivered, but unused by the authority, including part used packs.	**Yes**	
4	**PRODUCT AMENDMENT**	**Yes**	
	Where contracted items are no longer available the next available higher specification device should be offered at no additional cost. Any modifications to products that will affect their use will be covered by additional training provided by the Contractor.	**Yes**	
5	**DELIVERY**	**Yes**	
	The goods shall be delivered by the Contractor **free of charge** in such quantities in such a manner and at such times and place or places as the uLHB (or any health authority) named in the Contract may order in writing from time to time. Delivery shall be made within 2-3 days of receipt of an order if no time for delivery is named within the tender documents.	**Yes**	
6	**DATA PROTECTION ACT 1998**	**Yes**	
	The Contractor Undertakes :-		
a.	to treat as confidential all information which may be derived from or obtained in the course of the contract or which may come into the possession of the contractor or any employee, servant, agent or sub-contractor as a result of or in connection with the contract;	**Yes**	
b.	to provide all necessary precautions to ensure that all such information is treated as confidential by the contractor, his employees, servants, agents and sub-contractors, in accordance with the principles introduced under the 1998 Data Protection Act.	**Yes**	
7	**WELSH LANGUAGE SCHEME**	**Yes**	
	In accordance with the Welsh Language Act 1993, the Cardiff and Vale University Local Health Board operates a Welsh Language Scheme. This Scheme recognizes that the principle of linguistic equality is crucial to the uLHB delivering a quality service. To that end, the uLHB has adopted the principle that, in the conduct of public business in Wales, it will treat the Welsh and English languages on the basis of equality.		
	This principle can and will place obligations on the uLHB's contractors for goods and services, and any tenderer being awarded a contract by the uLHB must comply with the Scheme.		
	A copy of the uLHB's Welsh Language Scheme is an attachment and tenderers are required to confirm their compliance.		

Signed

Name Tom Cardy

Position Dental Alloy Advisor

On behalf of: Skillbond Direct Ltd.

Date 15/10/2015

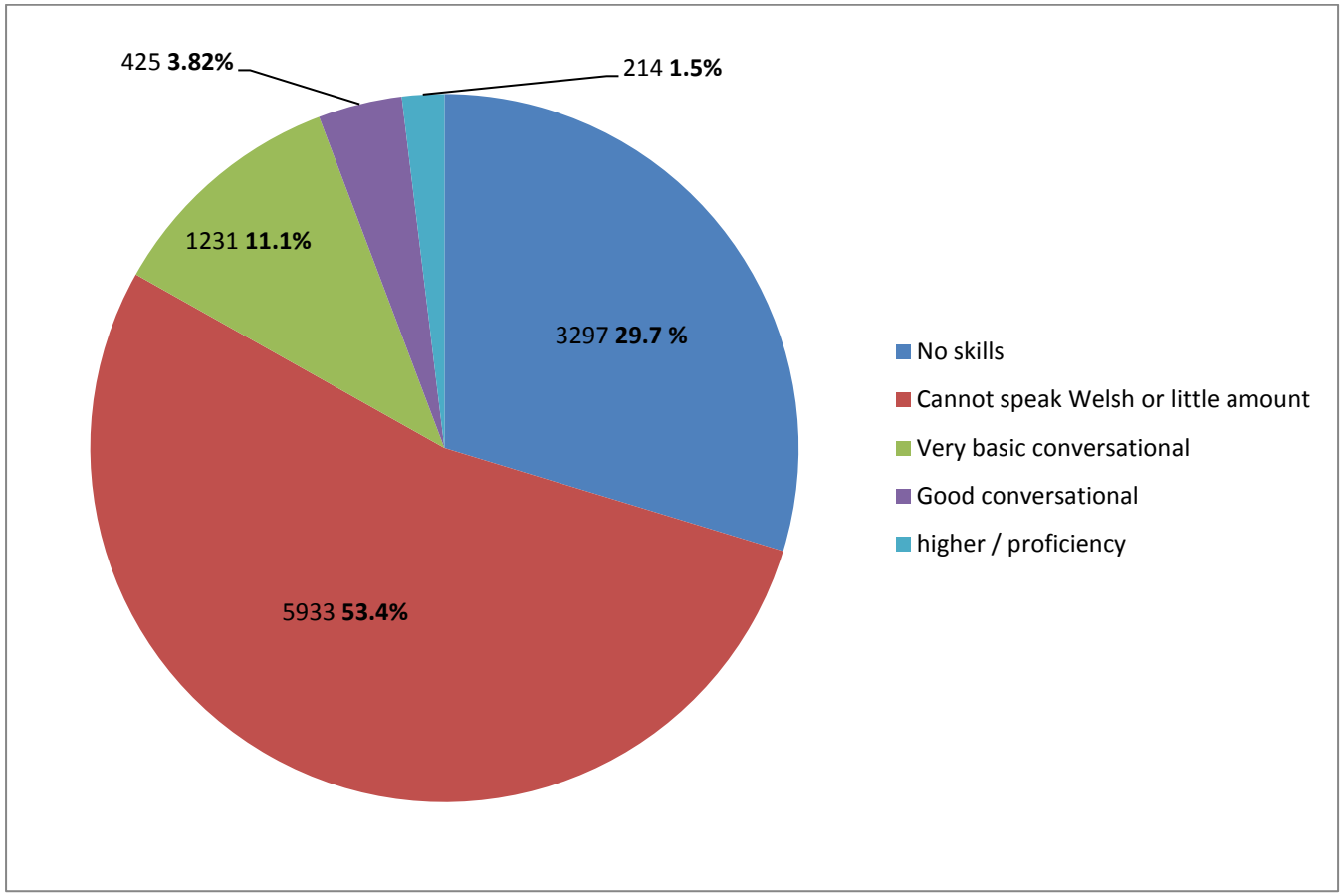
1**. Number and percentage of employees whose Welsh Language skills have been assessed:**

Number of employees who've skills has been assessed:	11,116
Percentage of employees who've skills has been assessed:	76%

Number and percentage of employees whose Welsh Language skills have been assessed as per priority group.

Employees	**Total**	**Percentage of total workforce**
Speech and Language Therapists	83	98.8%
Children and young people	780	81.6%
people with learning disabilities	0	0.0%
mental health service users	1014	74.6%
Dementia services	311	90.7%
stroke services	67	79.8%
Older people	356	74.5%

2. Number and percentage of employees who have Welsh language skills (per skills level)



Number and percentage of employees who have Welsh language skills (per skills level) (per priority group)

Employees	No skills	% of overall staff number	Cannot speak Welsh or little amount	% of overall staff number	Very basic conversational	% of overall staff number	Good conversational	% of overall staff number	higher / proficiency	% of overall staff number
Speech and Language Therapists	28	0.2%	35	0.2%	8	0.1%	6	0.04%	6	0.04%
Children and young people	407	2.9%	92	0.6%	164	1.1%	82	0.57%	35	0.25%
people with learning disabilities	0	0.0%	0	0.0%	0	0.0%	0	0.00%	0	0.00%
mental health service users	303	2.1%	559	3.9%	102	0.7%	34	0.24%	16	0.11%
Dementia services	88	0.6%	191	1.3%	22	0.2%	6	0.04%	4	0.03%
stroke services	28	0.2%	31	0.2%	7	0.0%	1	0.01%	0	0.00%
Older people	95	0.7%	213	1.5%	33	0.2%	11	0.08%	4	0.03%

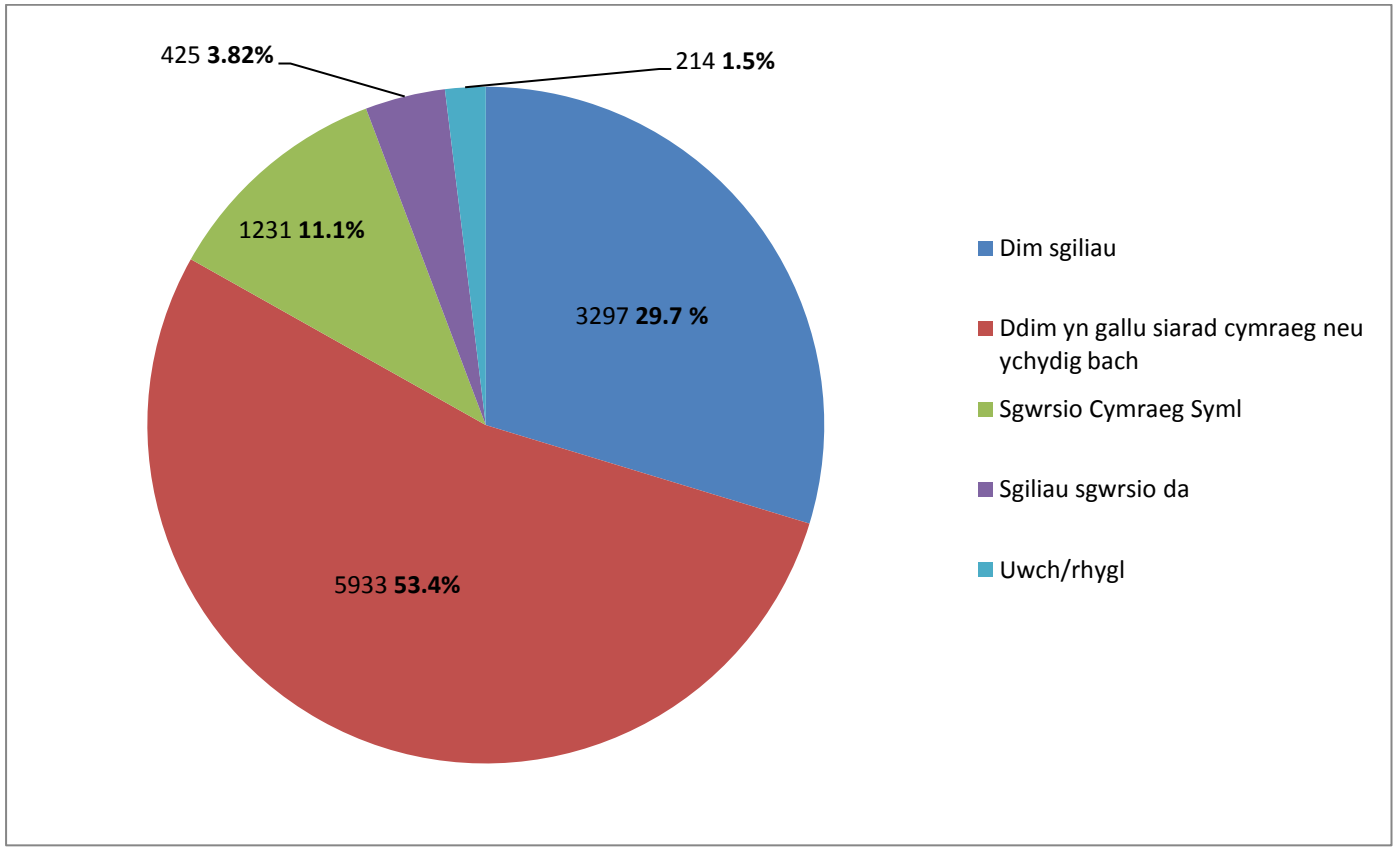
1**.** Nifer a chanran cyflogeion y mae asesiad o'u sgiliau Cymraeg wedi ei gynnal**:**

Nifer o cyflogeion y mae asesiad sgiliau Cymraeg wedi cael ei gynnal:	11,116
chanran cyflogeion y mae asesiad o'u sgiliau Cymraeg wedi ei gynnal:	76%

Nifer a chanran cyflogeion y mae asesiad o'u sgiliau Cymraeg wedi ei gynnal fesul grŵp blaenoriaeth:

Cyflogeion	**Cyfanswm**	**Canran o'r cyfanswm gweithlu**
gwasanaethau therapi iaith a lleferydd	83	98.8%
plant a phobl ifanc	780	81.6%
pobl ac anableddau dysgu	0	0.0%
defnyddwyr gwasanaethau iechyd meddwl	1014	74.6%
gwasanaethau dementia	311	90.7%
gwasanaethau strôc	67	79.8%
pobl hyn	356	74.5%

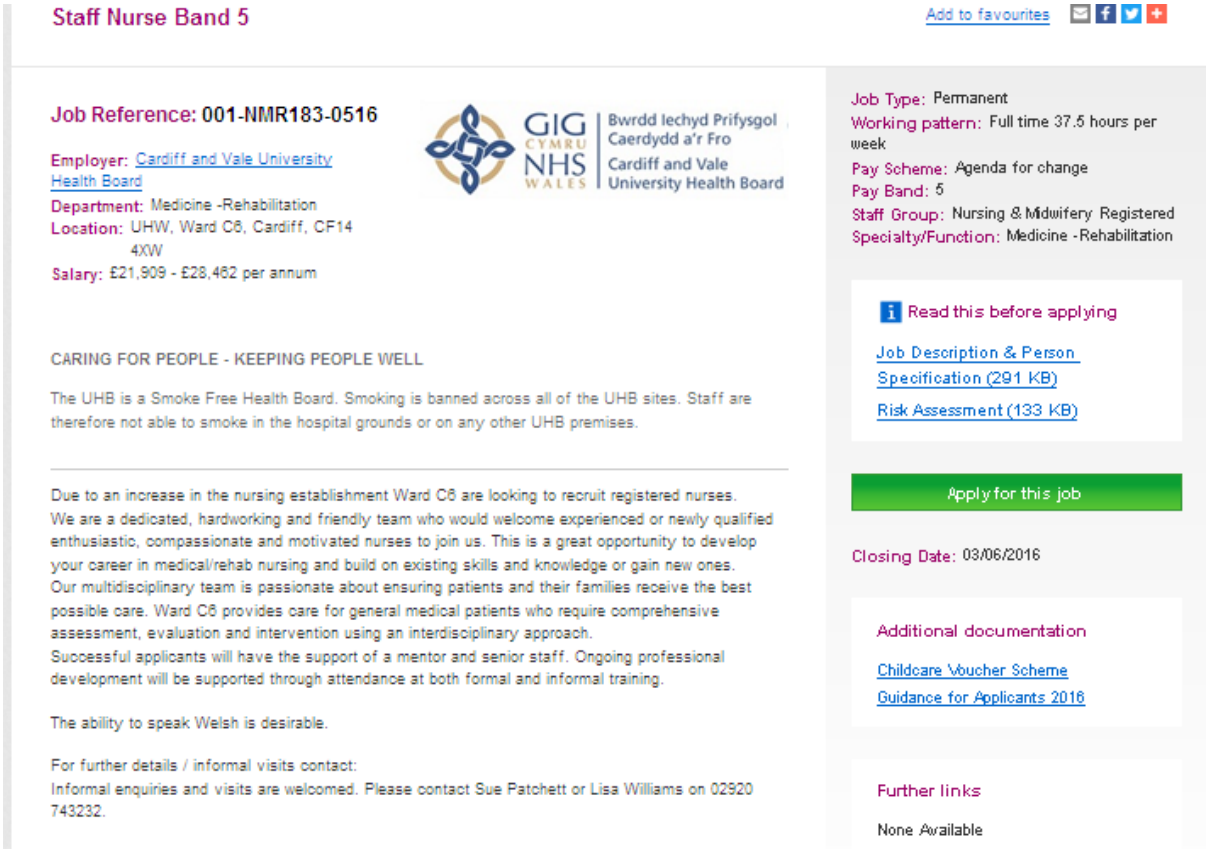
2. Nifer a chanran cyflogeion sy'n meddu ar sgiliau Cymraeg (fesul lefel sgiliau)



Nifer a chanran cyflogeion sy'n meddu ar sgiliau Cymraeg (fesul grwp blaenoriaeth)

Employees	Dim sgiliau	% o rhif staff cyfredol	Ddim yn gallu siarad cymraeg neu ychydig bach	% o rhif staff cyfredol	Sgwrsio Cymraeg Syml	% o rhif staff cyfredol	Sgiliau sgwrsio da	% o rhif staff cyfredol	Uwch/rhygl	% o rhif staff cyfredol
gwasanaethau therapi iaith a lleferydd	28	0.2%	35	0.2%	8	0.1%	6	0.04%	6	0.04%
plant a phobl ifanc	407	2.9%	92	0.6%	164	1.1%	82	0.57%	35	0.25%
pobl ac anableddau dysgu	0	0.0%	0	0.0%	0	0.0%	0	0.00%	0	0.00%
defnyddwyr gwasanaethau iechyd meddwl	303	2.1%	559	3.9%	102	0.7%	34	0.24%	16	0.11%
gwasanaethau dementia	88	0.6%	191	1.3%	22	0.2%	6	0.04%	4	0.03%
gwasanaethau strôc	28	0.2%	31	0.2%	7	0.0%	1	0.01%	0	0.00%
pobl hyn	95	0.7%	213	1.5%	33	0.2%	11	0.08%	4	0.03%

Examples of Job specification with Welsh Language desirable as a skill:



Staff Nurse Band 5

Add to favourites

Job Reference: 001-NMR183-0516

Employer: Cardiff and Vale University Health Board
Department: Medicine -Rehabilitation
Location: UHW, Ward C6, Cardiff, CF14 4XW
Salary: £21,909 - £28,462 per annum

GIG CYMRU NHS WALES
Bwrdd Iechyd Prifysgol Caerdydd a'r Fro
Cardiff and Vale University Health Board

Job Type: Permanent
Working pattern: Full time 37.5 hours per week
Pay Scheme: Agenda for change
Pay Band: 5
Staff Group: Nursing & Midwifery Registered
Specialty/Function: Medicine -Rehabilitation

Read this before applying

Job Description & Person Specification (291 KB)
Risk Assessment (133 KB)

Apply for this job

Closing Date: 03/06/2016

Additional documentation

Childcare Voucher Scheme
Guidance for Applicants 2016

Further links

None Available

CARING FOR PEOPLE - KEEPING PEOPLE WELL

The UHB is a Smoke Free Health Board. Smoking is banned across all of the UHB sites. Staff are therefore not able to smoke in the hospital grounds or on any other UHB premises.

Due to an increase in the nursing establishment Ward C6 are looking to recruit registered nurses. We are a dedicated, hardworking and friendly team who would welcome experienced or newly qualified enthusiastic, compassionate and motivated nurses to join us. This is a great opportunity to develop your career in medical/rehab nursing and build on existing skills and knowledge or gain new ones. Our multidisciplinary team is passionate about ensuring patients and their families receive the best possible care. Ward C6 provides care for general medical patients who require comprehensive assessment, evaluation and intervention using an interdisciplinary approach.
Successful applicants will have the support of a mentor and senior staff. Ongoing professional development will be supported through attendance at both formal and informal training.

The ability to speak Welsh is desirable.

For further details / informal visits contact:
Informal enquiries and visits are welcomed. Please contact Sue Patchett or Lisa Williams on 02920 743232.

Job Reference: 001-ACS079-0516

Employer: Cardiff and Vale University Health Board
Department: Trained Dental Nurse
Location: Ysbyty Cwm Cynon

Salary: £19,217 to £22,458 pro rata per annum

GIG CYMRU NHS WALES | Bwrdd Iechyd Prifysgol Caerdydd a'r Fro | Cardiff and Vale University Health Board

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CARING FOR PEOPLE - KEEPING PEOPLE WELL

The UHB is a Smoke Free Health Board. Smoking is banned across all of the UHB sites. Staff are therefore not able to smoke in the hospital grounds or on any other UHB premises.

THIS POST IS FIXED TERM FOR 2 YEARS

We are seeking to recruit a GDC qualified and registered Dental Nurse. The successful post holder will work as part of the Welsh Government funded, Designed to Smile, Fluoride Varnish programme, in primary schools across Cardiff and the Vale of Glamorgan.

The post holder will work alongside a Dental Health Educator/Dental Hygienist and Dental Health Support Worker. You will be responsible for the organisation of the fluoride varnish programme, to ensure it is run effectively and efficiently in a non clinical environment (school setting).

The post holder will need to be a self motivated individual who is keen to be involved in delivering and developing the programme. A requirement of the post is to liaise with school staff and other health professionals to maintain good working relationships. Excellent communication skills are required.

The post holder will be required to travel between sites on a daily basis.

A full manual driving licence and the ability to drive a UHB vehicle is essential.

The post will be over 3 days, Monday, Tuesday and Wednesday, 8:00am to 4:00pm Term Time Only.

The ability to speak Welsh is desirable for this post.

Job Type: Fixed term (2 Years)
Working pattern: 22.5 hrs Term Time Only (TTO)
Pay Scheme: Agenda for change
Pay Band: 4
Staff Group: Additional Clinical Services
Specialty/Function: Trained Dental Nurse

Read this before applying

Job Description & Person Specification (145 KB)

Apply for this job

Closing Date: 05/06/2016

Additional documentation

Childcare Voucher Scheme
Guidance for Applicants 2016

Further links

Cardiff and Vale University Health Board website

If you have any concerns about this job then please report it to our Customer Service team.

hen we have done well

ou are pleased with your care and
atment, or there is a member of staff who
u think deserves special thanks, please tell
in the box below. If you wish, please give us
ur contact details. You can hand this form to
ember of staff or send it to the Freepost
dress opposite.

ll us about your experience -

Your name and contact details –

When we could have done better

On the other hand, if you are unhappy with the care and treatment you have received, please speak to the staff looking after you. You can also contact the Concerns Team on 02920 744095, email them on concerns@wales.nhs.uk or write, using the Freepost address below. They will listen to what you tell them and will let you know what will be done about it

FREEPOST:RSSC-ELSC-RJAC
Patient Experience
Upper Ground Floor C Block
University Hospital of Wales, Heath Park,
CARDIFF, CF14 4XW.

Version 2 January 2015

How are we doing?

Tell us about your experience of our service

GIG CYMRU NHS WALES
Bwrdd Iechyd Prifysgol Caerdydd a'r Fro
Cardiff and Vale University Health Board

How are we doing?

It is very important to us to give you the best possible care and treatment.

This means making sure that:

- your impressions of us and our facilities, are good
- you are seen and treated in clean, safe surroundings
- you are always warm enough
- you are served good food and have enough to drink
- help is always there when you need it.

We want you to feel involved in decisions about your own treatment or the treatment of the person you care for. We also want you to have enough information to help you make those decisions.

Please let us know if we have done well or if we could have done better. Your feedback helps us to put right the things that need improving. It also helps us to make sure we go on doing things well in future.

Please read on for the ways in which you can do this.

Thank you!

Ways to give us feedback

Complete a survey

If you are an inpatient you might be asked to complete a survey asking you what you think of your stay in hospital.

Some patients receive a more detailed questionnaire through the post when they return home or after an out patient appointment. This is a questionnaire from the clinical team who have been looking after you asking what you think about the care and treatment you have received. A Freepost envelope is included so it can be returned free of charge.

Leave your comments on our website

You can make comments at any time on our website. Please click on the following link or use the QR code:

www.cardiffandvaleuhb.wales.nhs.uk

Join a Patient Group

We listen to the views passed on to us by a wide range of patient support groups. Some these are run by our own clinical staff and others by voluntary organisations. A list of groups can be found at

www.nhsdirect.wales.nhs.uk,

or your clinical team can help you find one. The Patient Experience team can also help Please ring:

02920 745692

Tell us your story

Patients' stories provide us with helpful information about the good and not so good parts of people's experiences.
If you would like to tell us your story, please ring:

02921 847835.

Pan fyddwn wedi gwneud yn dda

Os ydych yn hapus gyda'ch gofal a'ch triniaeth, neu os oes aelod o staff sydd, yn eich barn chi, yn haeddu gair arbennig o ddiolch, dywedwch wrthym yn y blwch isod. Os ydych yn dymuno gallwch roi eich manylion cyswllt i ni. Gallwch roi'r ffurflen hon i aelod o staff neu ei hanfon i'r cyfeiriad Rhadbost a welir gyferbyn.

Dwedwch wrthym am eich profiad –

Eich enw a'ch manylion cyswllt –

Pryd y gallem fod wedi gwneud yn well

Ar y llaw arall, os ydych yn anhapus â'r gofal a'r driniaeth a dderbyniwyd gennych, siaradwch â'r staff sy'n gofalu amdanoch. Gallwch hefyd gysylltu â'r Tîm Pryderon ar 02920 744095, anfon e-bost ato yn concerns@wales.nhs.uk neu ysgrifennu gan ddefnyddio'r cyfeiriad Rhadbost isod. Bydd y tîm yn gwrando ar yr hyn sydd gennych i'w ddweud ac yn rhoi gwybod i chi beth gaiff ei wneud yn ei gylch

RHADBOST-RSSC-ELSC-RJAC
Profiad y Claf
Uwch Lawr Daear Bloc C
Ysbyty Athrofaol Cymru, Parc Mynydd Bychan,
CAERDYDD, CF14 4XW.

Version 2 January 2015

Pa mor dda ydym ni'n gwneud ein gwaith?

Dywedwch wrthym am eich profiad o'n gwasanaeth

GIG CYMRU NHS WALES
Bwrdd Iechyd Prifysg
Caerdydd a'r Fro
Cardiff and Vale
University Health Boa

Pa mor dda ydym ni'n gwneud ein gwaith?

Mae'n bwysig iawn i ni ein bod yn rhoi'r gofal a'r driniaeth gorau posibl i chi.

Mae hyn yn golygu gwneud yn siŵr:

- bod eich argraffiadau ohonom ni a'n cyfleusterau yn dda
- eich bod yn cael eich gweld a'ch trin mewn amgylchedd glân a diogel
- eich bod bob amser yn ddigon cynnes
- eich bod yn cael bwyd da a'ch bod yn cael digon i'w yfed
- bod cymorth ar gael bob amser pan fyddwch ei angen.

Rydym am i chi deimlo eich bod yn cael eich cynnwys mewn penderfyniadau am eich triniaeth eich hun neu driniaeth y person yr ydych yn gofalu amdano/amdani. Rydym hefyd am i chi gael digon o wybodaeth i'ch helpu i wneud y penderfyniadau hynny.

Rhowch wybod i ni os ydym wedi gwneud yn dda neu y byddem wedi gallu gwneud yn well. Mae eich adborth yn ein helpu i gywiro'r pethau sydd angen iddynt wella. Mae hefyd yn ein helpu i wneud yn siŵr ein bod yn parhau i wneud pethau'n dda yn y dyfodol.

Darllenwch ragor er mwyn gweld y ffyrdd y gallwch wneud hyn.

Ffyrdd i roi adborth i ni

Llenwi arolwg

Os ydych yn glaf mewnol efallai y gofynnir i chi lenwi arolwg yn gofyn i chi am eich barn ynglŷn â'ch arhosiad yn yr ysbyty.

Bydd rhai cleifion yn derbyn holiadur mwy manwl drwy'r post pan fyddant yn dychwelyd adref neu ar ôl apwyntiad claf allanol. Holiadur gan y tîm clinigol sydd wedi bod yn gofalu amdanoch yw hwn sy'n gofyn i chi am eich barn ynglŷn â'r gofal a'r driniaeth a dderbyniasoch. Cynhwysir amlen rhadbost fel y gellir dychwelyd yr holiadur am ddim.

Rhoi eich sylwadau ar ein gwefan

Gallwch roi sylwadau ar ein gwefan ar unrhyw adeg. Cliciwch ar y ddolen ganlynol neu defnyddiwch y cod QR:

www.cardiffandvaleuhb.wales.nhs.uk

Ymuno â Grŵp Cleifion

Rydym yn gwrando ar sylwadau a roddir i ni gan ystod eang o grwpiau cefnogi. Caiff rhai o'r rhain eu cynnal gan ein staff clinigol ni ein hunain ac eraill gan sefydliadau gwirfoddol. Gellir gweld rhestr o'r grwpiau yn

www.nhsdirect.wales.nhs.uk

neu gall eich tîm clinigol eich cynorthwyo i ddod o hyd i un. Gall ein tîm Profiad y Claf hefyd helpu.
Ffoniwch:

02920 745692

Dywedwch eich stori wrthym

Mae storïau cleifion yn rhoi gwybodaeth ddefnyddiol i ni ynglŷn â phrofiadau da pobl a hefyd profiadau sydd ddim cystal.
Os byddech yn hoffi dweud eich stori wrthym, ffoniwch:

02921 847835.