Handout 6: Consent

Some people with an intellectual disability have a reduced capacity to give consent for major life decisions.

Many people generally assume that consent simply means saying 'yes'. However for consent to be considered valid, a number of conditions need to be satisfied.

There are four elements of valid consent:

1. The person must understand that they can refuse to give consent.
2. Consent must be freely given without duress or threat.
3. Consent is specific to the action.
4. The person must be able to understand the consequences of giving or withholding consent.

Consent can be withdrawn at any time.

Although a person may indicate agreement with an action, this does not necessarily mean that they have given valid consent. Many people with a disability have learnt to be compliant with the wishes of others with more power than them.

There are many ways that a person can communicate whether they are consenting to an action even if they are unable to speak. Behaviour is often a clear demonstration of a person's feelings about something e.g., if they continually resist taking a tablet by turning their head it is likely they are saying that they don't want to take it.

To give valid consent a person needs information about what the action is, and what the consequences of the action are. For example, if they are to have surgery they would need to know what some of the side effects might be including what may happen if they do not have the surgery. Providing this information in a manner that is appropriate to them is essential. This may mean having information in picture form, using diagrams and models etc.

Being able to make a decision to give consent is a skill that is developed over time and with experience. People can receive education about making decisions and should have opportunities in every aspect of their lives to apply this to making choices. This can apply to simple decisions such as what to eat to more complex decisions such as relationships.

If there is a question about a person's capacity to give consent for certain things such as medical or dental treatment, access to services, behaviour management strategies or financial management, an application for Guardianship may be appropriate. If a worker is unsure about a person's capacity to give consent it is their responsibility to seek formal advice e.g. from the legal authority that determines Guardianship issues. If a Guardian is appointed for a person they then have the legal authority to make decisions for the person including giving consent.
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