ADVANCE STATEMENTS AND ADVANCE DECISIONS TO REFUSE MEDICAL TREATMENT

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Ratifying committee or executive director	**Mental Health Legislation Sub Committee (MHLC)**	
Date ratified	**June 2022**	
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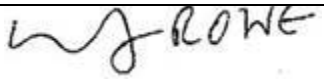
Executive director	**Medical Director**	
Policy lead	**Head of Mental Health Legislation**	
Policy author *(if different from above)*		
Exec Sign off Signature (electronic)		
Disclosable under Freedom of Information Act 2000	**Yes**	

POLICY CONTEXT

To guide and support staff on the use and application of Advance Statements and Advance Decisions to refuse medical treatment under the services provided by BSMHFT.

POLICY REQUIREMENT (see Section 2)

- The principles of engagement and choice for service users receiving support and treatment is a high priority for BSMHFT
- Any service user over 18, whether in receipt of health services or not, is permitted to draw up an Advance Decision to refuse medical treatment or an Advance Statement, preference of wishes
- Advance Statements and Advance Decisions can only be made when a service user has the capacity to make them.
- Advance Statements must be taken into account when making decisions that affect service users
- Advance Decisions to refuse medical treatment can be overridden in some circumstances, specifically by virtue of the provisions made in the Mental Health Act (1983)
- An individual can withdraw or destroy their Advance Statement or Decision at any time while they the capacity to do so
- If there are any doubts about the applicability or validity of an Advance Decision to refuse medical treatment, or the service user's capacity at the time of making those decisions, then the service user should always be treated 'in their best interests' while legal advice is

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1. Introduction

BSMHFT uses the term ***Advance Statement*** to describe the advanced expressions of views, wishes and feelings made by a service user while they have capacity, in preparation for the time when they are in crisis or are unable to make or express those preferences. Although not binding by law, these wishes should be taken into account when making decisions about a service user's care.

An ***Advance Decision to refuse medical treatment (ADRT)*** is a legal entity created by the Mental Capacity Act 2005. It relates to the refusal of specific medical treatment and the circumstances in which that refusal would apply.

1.1 Rationale (why)

1.1.1 Birmingham and Solihull Mental Health NHS Foundation Trust (BSMHFT) is committed to ensuring that, as far as possible, service users are encouraged and enabled to make choices and decisions about their future care, if they so wish.

1.1.2 Advance Statements enable service users to set out their wishes about care, treatment and domestic matters should they become unwell or lack capacity in the future. This encourages service users to think about the future; encourages input into their treatment, care and support; and reduces worry about becoming unwell again and the effects this can have. It also assists communication with professionals who can turn to an Advance Statement for a clear expression of the service user's wishes, when the service user is not capable of expressing them.

1.1.3 Advance Decisions enable service users to refuse specified medical treatment at a time in the future when they would lack the capacity to consent to or refuse that treatment.

1.1.4 Advance Statements and Advance Decision to refuse medical treatment cannot be used when the service user has the capacity to consent to or refuse the proposed treatment.

1.1.5 The aim of this policy is to enable staff to:

i. Understand what Advance Statements and Advance Decisions to refuse medical treatment are, and the differences between them

ii. Understand that Advance Decisions to Refuse Treatment (ADRT), which is not life saving treatment, can be made in any form and need not be recorded in a specific format.

iii. understand that an ADRT can be overridden if the treatment is for a mental disorder and that treatment can be given compulsorily under Part 4 of the MHA

iv. Understand the Advance Statements and Advance Decisions that refuse life-sustaining treatment must be in written form.

v. Notwithstanding the above (iii), to encourage the use of a standard format (see Appendix 3 for a suggested template) for the recording of Advance Statements and Advance Decisions to refuse medical treatment and ensure that a record is kept within the service user's care records.

vi. Ensure that any such documents are discussed and support the assessment and care planning process.

vii. Understand that a service user can still be treated in their best interests when there are reasonable grounds to doubt the validity or applicability of an Advance Decision. In such circumstances, the reasons and rationale should be clearly documented.

1.2 Scope (when, where, who)

This policy applies to all staff working in this organisation.

1.3 Principles – Requirements of Advance Statements

1.3.1 An Advance Statement applies to people over the age of 16 and is a general term for a written statement whereby a person, when they have capacity, specifically indicates the arrangements that they would like put in place about their future treatment and care should they lose capacity or become unable to do this in future. It is a statement of views that should be taken into account by health/social care professionals and carers in the decision-making process at a time when the service user does not have capacity.

1.3.2 Advance Statements are not legally binding.

1.3.3 An Advance Statement aims to make service users' wishes known to health care professionals and carers thereby taking some of the stress out of receiving support and treatment.

1.3.4 An Advance Statement should enable health care professionals and carers to make informed decisions about a service user's treatment and care.

1.3.5 An Advance Statement can identify a 'nominated person' (who may not necessarily be the service users' 'next of kin' or 'nearest relative') who should be consulted, on the service users' behalf, about health care decisions and care. The nominated person does not have the legal authority to consent or refuse treatment for the service user, but their views should be taken into account.

1.3.6 There is provision under the Mental Capacity Act for people to appoint a 'Lasting Power of Attorney'. Nominated Persons should not be confused with someone who has been appointed under a Lasting Power of Attorney. For

further information please refer to the BSMHFT policy on the MCA (MHL14. Policies - Policies (sharepoint.com)

1.3.7 **Principles – Requirements of Advance Decisions**

1.3.8 An Advance Decision is only legally binding in relation to a refusal of specified treatments in specific circumstances.

1.3.9 If the service user is a detained patient, and the proposed treatment being refused is for mental disorder, the refusal of certain treatments may be overridden by the provisions of the Mental Health Act 1983.

1.3.10 Health and social care professionals are reminded that they are legally required to have regard to the guidance in the Mental Capacity Act (MCA) 2005 Code of Practice regarding Advance Decisions.

2. Policy

2.1 **Advance Statements (preference of wishes)**

2.2 All people entering services within BSMHFT should be offered the opportunity to make an Advance Statement if they are deemed mentally capable. To make an Advance Statement, a service user must be aged 16 years old or over.

2.3 Section 4 (6) of the MCA requires a decision maker to consider any relevant written statements made by the service user. Advance Statements are therefore required to be in written form.

2.4 **Advance Decisions to Refuse Treatment**

2.5 An Advance Decision can only be made by a service user who is aged 18 or over.

2.6 The service user must have capacity at the time that the Advance Decision is made. Please refer to section 3.4 (below) for further information about capacity.

2.7 There is no legal requirement about the format of an Advance Decision to refuse medical treatment if it does not relate to life sustaining treatment. The Trust has a suggested template in Appendix 3.

2.8 Advance Decisions, which do not refuse life-sustaining treatment, can be both in written form or oral. There are significant advantages to the service user if Advance Decisions are recorded in writing.

3 Procedures

3.1 Advance Statements

3.2 Staff should facilitate the recording in writing of a service user's Advance Statement if the Service User has the capacity but is unable to write.

3.3 The content of an Advance Statement should be the service users' own views and wishes and should not be unduly influenced by any other person.

3.4 To make an Advance Statement a service user must have 'capacity'. A person is deemed to have capacity if they have the ability to:

- Understand the relevant information
- Retain it
- Use or weigh it in the balance and
- Communicate (by any means) a decision

3.5 For more detail, please refer to Sections 2 & 3 Mental Capacity Act 2005 and Chapter 4 of the Code of Practice.

3.6 The Advance Statement must be clear in meaning. If the statement is unclear or ambiguous it must be discussed and clarified with the service user while they still have capacity.

3.7 The Advance Statement should be regarded as valid if it is clear and unambiguous. It should be taken into account by the health and social care professionals when decisions are being made about the service user's care and treatment.

3.8 An Advance Statement can name or nominate another person who should be consulted at the time a decision by clinical staff has to be made.

3.9 An Advance Statement can be made in conjunction with the Care Co-ordination process and a copy should be kept within the care record.

3.10 All service users will be given information about Advance Statements and provided with the opportunity to develop one if they so wish or update an existing document

3.11 Whether the patient or the professional records the patient's views, steps should be taken, unless the patient objects, to ensure that the information:

- is drawn to the attention of other professionals who ought to know about it, and
- it is included in care plans and other documentation which will help ensure that the patient's views are remembered and considered in situations where they are relevant in future

3.12 For the Trust this means that the Advance Statement is integrated within all Trust care planning forms via a series of hyperlinks.

3.13 Service Users can withdraw or alter their Advance Statement at any time while they have capacity. It is the service user's responsibility to notify the Trust of any changes made to their Advance Statements.

3.14 In the event of a service user losing capacity to make a decision, staff should check the service users' care record to see if any Advance Statements have been made.

3.15 If an Advance Statement has been made, or Trust staff are made aware of the existence of an Advance Statement which is not in the care record, they must:

- Recognise the existence of the Advance Statement in the service user's care record once they have received a copy.
- Use all means possible to obtain a copy of the Advance Statement if it has been made in written form.
- The inclusion of key components of the Advance Statement in the care plan where appropriate, will greatly assist healthcare professionals when treatment, particularly emergency treatment, needs to be provided.

3.16 An Advance Statement is not legally binding. Therefore, any emergency treatment should not be delayed in order to look for an Advance Statement which is not readily to hand in the service user's care record. The care record should clearly record the reasons and circumstances in which the emergency treatment was given.

3.17 The Care Co-ordinator / named nurse should inform the RC of the existence of the Advance Statement.

3.18 The Care Co-ordinator / named nurse should check the content of the Advance Statement with the service user on a regular basis while the service user still has capacity.

3.19 All staff in the clinical team should be made aware of the existence and content of the Advance Statement. A copy of the Advance Statement must be retained on record RiO

3.20 Statements expressing requests, preferences or authorisations for treatment are not legally binding but should be accommodated by the clinical team where possible. The clinical team's final decision must always be based on professional judgement following assessment of the current situation and must be in the person's best interests. If this differs from the Advance Statement, then this must be recorded, and the team must be prepared to justify their actions if challenged.

3.21 Health and social care professionals do not have to provide treatment requested by the service user if they do not believe it is in the service user's

best interests or the treatment is not available from the Trust. Referrals to another service provider may be made in the service users' best interests where appropriate. An Advance Statement cannot require a doctor or member of the clinical team to do anything that is unlawful including involvement in assisted suicide or euthanasia.

3.22 Advance Decisions

3.23 The Advance Decision must have anticipated the particular circumstances that arise.

3.24 Any refusal of treatment made in an Advance Decision must have been clearly understood by the service user at the time the decision was made.

3.25 Obviously, a refusal of health care treatment may have serious implications and ideally, the service user should discuss their refusal of treatment with health relevant professionals and carers before making an Advance Decision.

3.26 The Service user can withdraw or alter their Advance Decision at any time while they have capacity. It is the service user's responsibility to notify the Trust of any changes to their Advance Decision.

3.27 Advance Decisions to Refuse Life-Sustaining Treatment

3.28 Where an Advance Decision refuses life-sustaining treatment, strict formalities must be complied with in order for the Advance Decision to be valid and applicable. The Advance Decision must be in writing, signed, witnessed and signed.

3.29 In addition, there must be an express statement that the decision stands "even if life is at risk" which must also be in writing, signed and witnessed.

3.30 If a service user changes their Advance Decision so that it refuses life sustaining treatment, they must comply with the additional legal requirements set out above

3.31 The rights of the service user are paramount. However, a service user does not have the right to refuse 'basic care' (namely hydration and nutrition offered by mouth; warmth; shelter; pain relief; hygiene and relief from distressing symptoms) which health care professionals always have a duty to provide.

3.32 The health/social care professionals must satisfy themselves that an Advance Decision is valid and applicable before abiding by its content.

3.33 The health/social care professionals must first determine if the service user currently lacks capacity. If the service user has capacity at the time of treatment, then the Advance Decision cannot be used. It can only be used when the patient lacks capacity.

3.34 Health and social care professionals should not delay emergency treatment to look for an Advance Decision if there is no clear indication that one exists. If it is clear that a person has made an advance decision that is likely to be relevant, healthcare professionals should assess its validity and applicability as soon as possible. Sometimes the urgency of the treatment will make this difficult. In such a situation, treatment should be provided until the situation can be clarified.

3.35 The health/social care professionals must establish that the service user was 18 or over when they made their Advance Decision. They must also establish that the service user had capacity at the time that the Advance Decision was made.

3.36 The health/social care professionals should always start from the presumption that the service user had capacity to make the Advance Decision at the time. It may be that a subsequent review of the service user's notes may show that the service user lacked the capacity to make the Advance Decision.

3.37 An Advance Decision will be invalid if:

- The service user withdrew it while they still had capacity
- The service user drew up a Lasting Power of Attorney, after they had made the Advance Decision, which authorised a personal welfare attorney to refuse or consent to the specific treatment to which the ADRT relates. A health/social care professional should check the validity of any LPA with the Trust's legal advisors
- The service user has done something which clearly goes against the Advance Decision and suggests that they have changed their mind

3.38 For an Advance Decision to be applicable it must apply to the situation in question and to the current circumstances. The Advance Decision must apply to the proposed treatment. It is not applicable to the treatment in question if:

- The proposed treatment is not the treatment specified in the Advance Decision.
- The circumstances are different from those that may have been set out in the advance decision, or
- There are reasonable grounds for believing that there have been changes in circumstance, which would have affected the decision if the person had known about them at the time that they made the Advance Decision.

3.39 In summary, when deciding if an Advance Decision applies to the proposed treatment, health/social care professionals must consider:

- How long ago the Advance Decision was made

- Whether there have been changes to the patient's personal life that might affect the validity of the Advance Decision (e.g., a pregnancy which was not anticipated)

- Whether there have been developments in medical treatment that the person did not foresee.

3.40 If the Advance Decision is not valid or applicable the health/social care professionals must consider it as part of their assessment of the person's best interests if they have reasonable grounds to think that it is a true expression of the person's wishes.

3.41 The service user's refusal of treatment should be fully discussed by the clinical team. Detailed notes of the discussion must be made, and a copy retained on the service users record/care plans. The original note must be retained securely by the Trust and be available for the service user to read. The note should be legible, unambiguous, and not contain any abbreviations. The note should be clearly signed by the author. It should be dated, and a note made of the time of the discussion and circumstances wherever possible.

3.42 If it is believed that a valid and applicable Advance Decision refusing medical treatment exists, then not to abide by it could lead to a legal claim for damages or a criminal prosecution for assault.

3.43 If it reasonably believed that there is a valid and applicable Advance Decision to refuse medical treatment, then staff will not be held liable for the consequences of abiding by it and not providing treatment.

3.44 For Advanced Decision to refuse treatment that isn't life sustaining, verbal Advance Decisions are acceptable.

3.45 Although there is no set format, the MCA Code of Practice gives the following guidance to healthcare staff on how to record this type of advance decision:

- A note that the decision should apply if the person lacks capacity to make treatment decisions in the future
- A clear note of the decision, the treatment to be refused and the circumstances in which the decision will apply
- Details of someone who was present when the oral advance decision was recorded and the role in which they were present (i.e., healthcare role, family...)
- Whether they heard the decision, took part in it or are just aware that it exists.

3.46 Disputes and Requirements for Overriding Advance Statements and Advanced Decisions refusing medical treatment.

3.47 Where there is doubt about the validity or applicability of the Advance Statement, the professionals should record whether they make a decision

which is contrary to those previously expressed views. They should also record their reasons for the decision, just as they would if they were going against wishes that a patient was expressing in the present

3.48 Where there is doubt about the validity or applicability of an Advance Decision the health/social care professionals should approach the Trust's legal department for advice. Where time permits, healthcare professionals should make extensive enquiries with the service user's GP, family or other relevant individuals regarding the validity or applicability of the Advance Decision.

3.49 If a disagreement arises within the clinical/care team or between the clinical/care team and people nominated by the service user about the content of the Advance Decision, the RC must consider all available evidence of the service user's wishes. Advice should be sought from relevant Director, on-call manager, or the Trust's legal advisors.

3.50 If the healthcare professionals are satisfied that the Advance Decision is valid and applicable then the Advance Decision should be complied with.

3.51 If genuine doubt or disagreement remains, then it may be appropriate for the matter to be referred to the Court of Protection.

3.52 If circumstances have arisen during which the service user receives a treatment, which had been specifically refused in their Advance Decision, they should be given an explanation as to why this has happened, and it should be written in their care record in clear and unambiguous language. This then allows the service user (when and/or if capacity is regained) to see why such a decision was reached.

3.53 If the service user is not given this information or they are dissatisfied with the explanation given, they may want raise this issue with the Trust. They can do this through the Patient Advice and Liaison Service. By raising an issue, the service user can gain further understanding as to why their Advance Decision was overruled. This may then help to influence practice if they or other service users were in the same situation again. If the service user continues not to be satisfied with the explanation given to them, they can take this matter further by contacting the BSMHFT Complaints Department.

3.54 Advance Decisions and the Mental Health Act 1983

3.55 The requirements of the Mental Health Act (1983) will always have priority and must prevail regarding treatment for mental disorder. Advance Statements or Advance Decisions which refuse medical treatment do not apply where a service user is a detained patient under the Mental Health Act 1983 and the proposed treatment is for their mental illness.

3.56 Even where clinicians may lawfully treat a patient compulsorily under the Mental Health Act, they should, where practicable, try to comply with the patient's wishes as expressed in an advance decision. They should for

example, consider whether it is possible to use a different form of treatment not refused by the advance decision. (Code of Practice, MHA 1983)

3.57 Advance Statements and Advance Decisions refusing medical treatment will apply if the proposed treatment does not relate to the service user's mental illness. Advance Statements and Advance Decision will only take effect if the service user lacks the capacity to consent or refuse to treatment.

3.58 Service users should review and update their Advance Statements of Advance Decisions on a regular basis. As a minimum this can be done with the care co-ordinator as part of the CPA review process.

3.59 It is the service user's responsibility to distribute the Advance Statement or Advance Decision to the Trust, their GP, or any person they believe would benefit from knowing about the document.

4 Responsibilities

Post(s)	Responsibilities	Ref
Responsible Clinician (RC)	To assess for capacity to make an advance statement / decision	
Admitting professional (doctor or nurse)	To determine / assess for capacity to make an advance statement / decision	
Joint responsibility of the named nurse and care co-ordinator	To ensure that capacity issues are regularly reviewed as per the guidance	3.9,3.17, 3.18
All Staff	Must follow the word and spirit of the MHA & MCA	**3.19**
Service, Clinical and Corporate Directors	Must follow the word and spirit of the MHA & MCA	
Policy Lead	Ensure the policy is kept up to date with any legislative / case law changes	
Executive Director	The Medical Director has overall responsibility for ensuring compliance with and timely review of this policy	

5. Development and Consultation process:

Consultation summary	
Date policy issued for consultation	April
Number of versions produced for consultation	1
Committees / meetings where policy formally discussed	**Date(s)**
MHLC	May 2022
PDMG	May 2022
Trust CGC	June 2022

6. Reference documents

Mental Capacity Act 2005
http://www.opsi.gov.uk/acts/acts2005/20050009.htm

Mental Capacity Act 2005 Code of Practice
http://www.justice.gov.uk/guidance/mca-code-of-practice.htm

Mental Health Act 1983
https://www.legislation.gov.uk/ukpga/1983/20/contents

Mental Health Act 1983, Code of Practice (2015)
https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983

7. Bibliography:

8. Glossary consisting of:

Advance Decision	A written advanced decision to refuse medical treatment, legally binding in some circumstances
Advance Statement	A statement of preference of wishes in relation to care and treatment needs
Capacity	The ability to make a decision about a particular matter at the time the decision needs to be made. Some people may lack capacity to make a particular decision (e.g. to consent to treatment) because they cannot understand, retain, use or weigh the information relevant to the decision. A legal definition of lack of capacity for people aged 16 or over is set out in Section 2 of the Mental Capacity Act 2005.
Consent	Agreeing to allow someone else to do something to or for you, particularly consent to treatment. Valid consent requires that the patient has capacity to make the decision and that they are given the information they need to make the decision and that they are not under any duress or inappropriate pressure.
Detained Patients	Unless otherwise stated, a patient who is detained in hospital under the MHA, or who is liable to be detained in hospital
Guiding Principles	The principles set out in the MHA and the MCA which have to be considered when decisions are made under the respective Acts
MCA	The Mental Capacity Act 2005 is an Act of Parliament that governs decision making on behalf of people who lack capacity.
MHA	Mental Health Act
RC	Responsible Clinician - The Approved Clinician (AC) with overall responsibility for a patient's case.

9. **Audit and assurance** consisting of:

9.1

Element to be Monitored	Lead	Tool	Frequency	Reporting committee
There is a copy of the MCA Form 1 on RiO for all new admissions (Information Gathering)	HMLH	MHL monitoring tool	Monthly	QPES / MHLSC
There is a copy of the MCA Form 2 on RiO for all new Detained Patients on Admission for:				
• Admission				
• Treatment				
There is a copy of the MCA Form 3b on First of Administration of Medication for Informal Patients				
Under 16s				
There is a copy of the Form G on RiO for new Admissions for under 16s				
There is a copy of the Form G on First of Administration of Medication for under 16s				
Advance Statements				
All new admissions (with capacity) have been offered an Advance Statement				
If the answer to 1.8 was yes, the outcome was:				
A new advance statement was recorded				
An advance statement was not recorded because the patient lacked capacity				
The patient didn't wish to make an advance statement				
An existing one is already recorded / been updated in the care plan				
MCA & DoLS (DoLS n/a for under 18s)- NEW ADMISIONS				
If the new admission was informal and lacked capacity an IMCA referral was made.				
If the outcome of the capacity assessment ON ADMISSION for an informal patient was **lacks capacity**, is there evidence in the care plan that the following acid test has been applied? (The person is: Not free to leave; and Under continuous supervision and control)				
If the answer to acid test were yes, were the following options considered: • Detention under the MHA; or • DoLS; or The care plan reviewed and made less restrictive				
If a DoLS request was made, the CQC were notified of the outcome				

9.2 Review of Serious Incidents

10. Appendices consisting of:

Appendix 1: Equality Impact Assessment

Appendix 2: Flowchart

Appendix 3: Template for Advance Statement

Appendix 1

Equality Analysis Screening Form

A word version of this document can be found on the HR support pages on Connect
http://connect/corporate/humanresources/managementsupport/Pages/default.aspx

Title of Proposal	**ADVANCE STATEMENT AND ADVANCE DECISION POLICY**		
Person Completing this proposal	**LOUISE MCLANACHAN**	**Role or title**	**HEAD OF MENTAL HEALTH LEGISLATION**
Division	**Corporate**	**Service Area**	**n/a**
Date Started	**APRIL 2022**	**Date completed**	**June 2022**

Main purpose and aims of the proposal and how it fits in with the wider strategic aims and objectives of the organisation.

To ensure all patients who have capacity to do so are offered the opportunity to make an advance statement, and where required, an advance decision

Who will benefit from the proposal?

Patients

Impacts on different Personal Protected Characteristics – *Helpful Questions:*

Promotes equality of opportunity *Eliminates discrimination* *Protects and promotes human rights*	

Please click in the relevant impact box or leave blank if you feel there is no particular impact.

Personal Protected Characteristic	No/Minimum Impact	Negative Impact	Positive Impact	Please list details or evidence of why there might be a positive, negative or no impact on protected characteristics.
Age	**x**			
Including children and people over 65 Is it easy for someone of any age to find out about your service or access your proposal?				

Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
Disability	**x**			
Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability? Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?				
Gender	**x**			
This can include male and female or someone who has completed the gender reassignment process from one sex to another Do you have flexible working arrangements for either sex? Is it easier for either men or women to access your proposal?				
Marriage or Civil Partnerships	**x**			
People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?				
Pregnancy or Maternity	**x**			
This includes women having a baby and women just after they have had a baby Does your service accommodate the needs of expectant and post natal mothers both as staff and service users? Can your service treat staff and patients with dignity and respect relation in to pregnancy and maternity?				
Race or Ethnicity	**x**			
Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees What training does staff have to respond to the cultural needs of different ethnic groups? What arrangements are in place to communicate with people who do not have English as a first language?				
Religion or Belief	**x**			
Including humanists and non-believers Is there easy access to a prayer or quiet room to your service delivery area? When organising events – Do you take necessary steps to make sure that spiritual requirements are met?				
Sexual Orientation	**x**			
Including gay men, lesbians and bisexual people Does your service use visual images that could be people from any background or are the images mainly heterosexual couples? Does staff in your workplace feel comfortable about being ‘out’ or would office culture make them feel this might not be a good idea?				

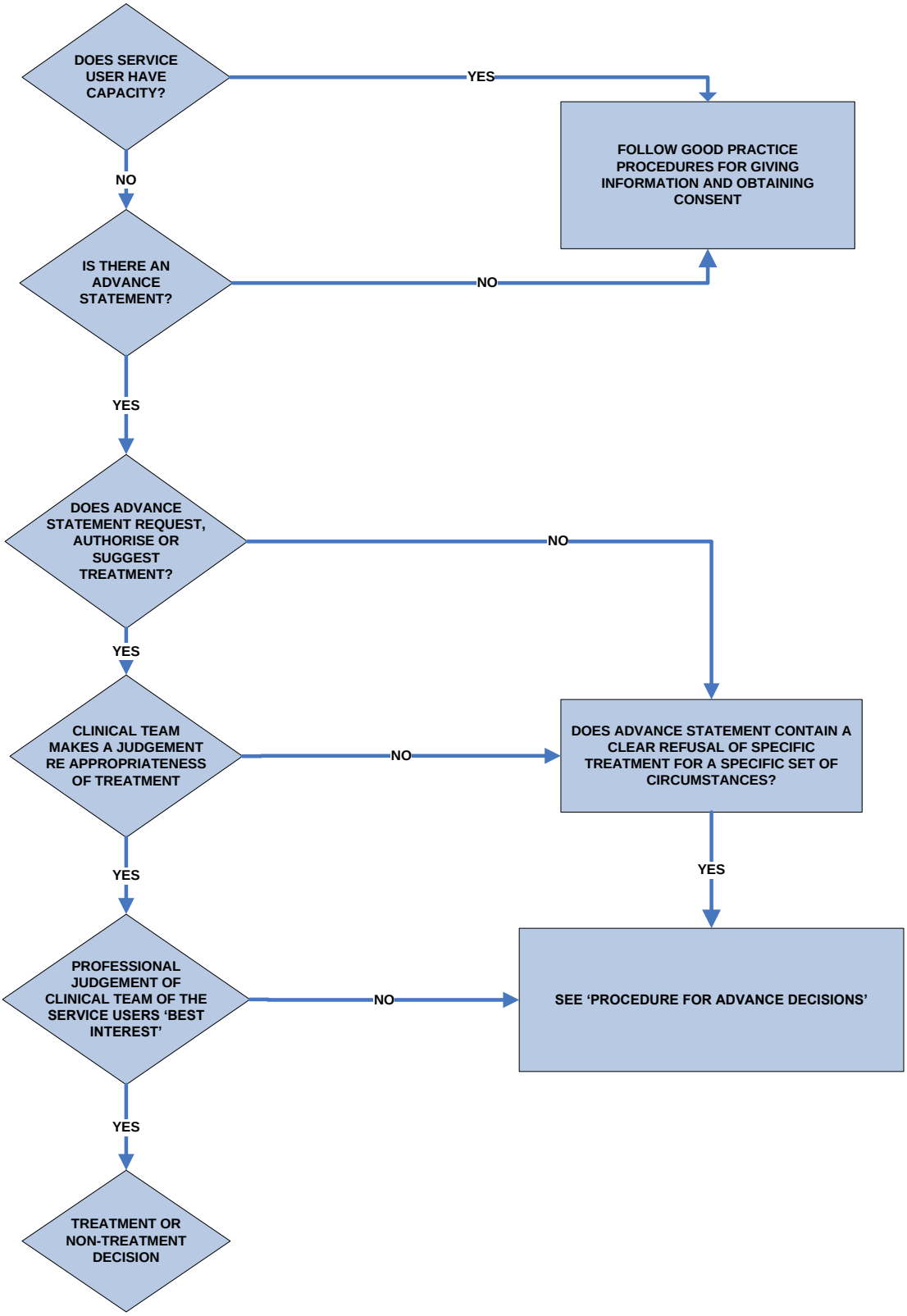
Transgender or Gender Reassignment	**x**			
This will include people who are in the process of or in a care pathway changing from one gender to another Have you considered the possible needs of transgender staff and service users in the development of your proposal or service?				
Human Rights	**x**			
Affecting someone's right to Life, Dignity and Respect? Caring for other people or protecting them from danger? The detention of an individual inadvertently or placing someone in a humiliating situation or position?				
If a negative or disproportionate impact has been identified in any of the key areas would this difference be illegal / unlawful? I.e. Would it be discriminatory under anti-discrimination legislation. (The Equality Act 2010, Human Rights Act 1998)				
	Yes	**No**		
What do you consider the level of negative impact to be?	**High Impact**	**Medium Impact**	**Low Impact**	**No Impact**
				x
If the impact could be discriminatory in law, please contact the **Equality and Diversity Lead** immediately to determine the next course of action. If the negative impact is high a Full Equality Analysis will be required. If you are unsure how to answer the above questions, or if you have assessed the impact as medium, please seek further guidance from the **Equality and Diversity Lead** before proceeding. If the proposal does not have a negative impact or the impact is considered low, reasonable or justifiable, then please complete the rest of the form below with any required redial actions, and forward to the **Equality and Diversity Lead.**				
Action Planning:				
How could you minimise or remove any negative impact identified even if this is of low significance?				
How will any impact or planned actions be monitored and reviewed?				

How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic.
Please save and keep one copy and then send a copy with a copy of the proposal to the Senior Equality and Diversity Lead at hr.support@bsmhft.nhs.uk. The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis.

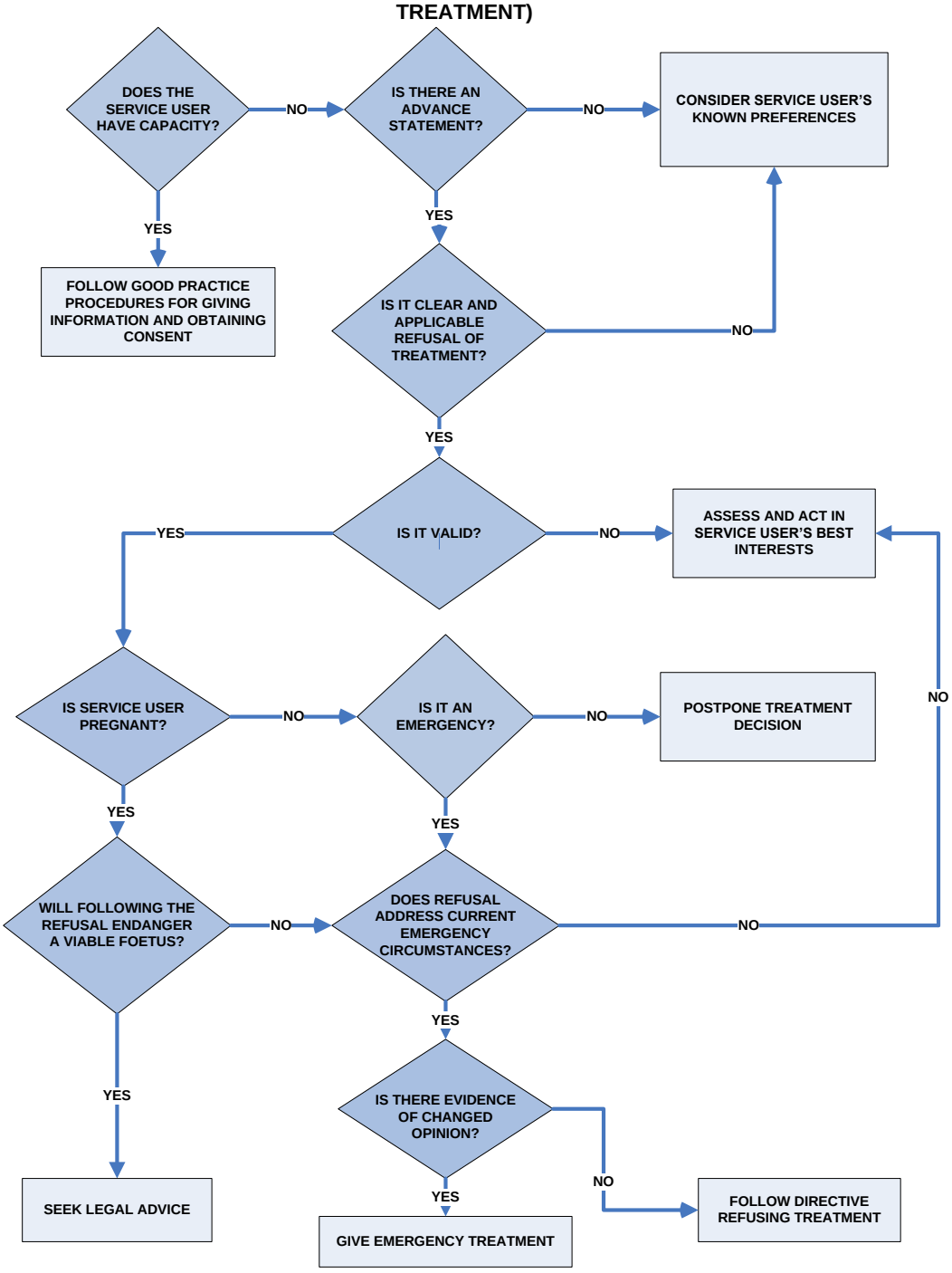
Please save and keep one copy and then send a copy with a copy of the proposal to the Senior Equality and Diversity Lead at hr.support@bsmhft.nhs.uk. The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis

Appendix 2

PROCEDURE FOR STAFF WHEN IMPLEMENTING ADVANCE STATEMENTS



PROCEDURE FOR STAFF WHEN IMPLEMENTING ADVANCE DECISIONS (REFUSAL OF TREATMENT)



Please note:

HEALTH & SOCIAL CARE STAFF CAN TREAT A SERVICE USER FOR THEIR MENTAL DISORDER PROVIDING THEY ARE DETAINED UNDER THE MENTAL HEALTH ACT 1983, EVEN IF THE SERVICE USER HAS MADE AN ADVANCE DECISION TO REFUSE TREATMENT. FOR MORE INFORMATION REFER TO THE MENTAL CAPACITY ACT CODE OF PRACTICE, PARAGRAPHS 13.35-13.37

Appendix 3

ADVANCE STATEMENTS & DECISIONS IN MENTAL HEALTH INFORMATION, GUIDANCE NOTES AND DOCUMENT

WHAT IS AN ADVANCE STATEMENT?

An **Advance Statement** is a record of your wishes and preferences regarding your mental health care. It anticipates a time when you may be in crisis or unwell and no longer have the capacity to make your own treatment decisions. It therefore allows you to communicate and record those wishes before that situation occurs. Advance Statements do not have to be in written format, but can also be expressed verbally. Anyone over the age of 16 can make an Advance Statement.

Advance Decisions are **refusals** of certain treatments, and can be included in an Advance Statement. You do have to be over the age of 18 to make an Advance Decision to refuse treatment. There is more information on this below.

WHY ARE ADVANCE STATEMENTS USEFUL?

An Advance Statement is useful as it not only helps you get the care you want, but, if a copy is held on your health care record and forms part of your Care Plan, it can help those involved in your care to make decisions based on your wishes.

WHAT CAN I INCLUDE?

- Who should be contacted should you become unwell
- Who should not be contacted
- Your wishes and preferences regarding medication and treatments
- Information about the treatments or interventions that have helped you in the past, but also information about what has not been helpful
- Any special needs that you have that people caring for you need to know about e.g. diet, physical health, religion/spiritual needs, disability etc.
- Arrangements that you would wish to be made for your children or other dependents
- Arrangements for your pets
- How you would like to make your home secure, and who should be responsible for this
- Who you would want to look after your finances

CAN I INSIST ON CERTAIN TREATMENTS OR MEDICATION?

You can express preferences - what has helped in the past, or an opinion about what may help you - but you cannot insist on receiving certain medication or treatments.

ADVANCE DECISIONS TO REFUSE TREATMENT

Advance Decisions to refuse specific treatments can be included in an Advance Statement, and the Mental Capacity Act 2005 gives clear guidance on this. Advance Decisions to refuse treatment are legally binding, but they must meet certain conditions. These include:

- That you have capacity at the time the refusal was recorded
- That the specific circumstances referred to in the refusal occur
- That there has not been undue influence by others in that decision
- That you understand the nature and effect of that decision – that is the consequences of refusing a certain treatment has been explained to you

If you need further information or help with this, please do get advice.

HOW DO I MAKE AN ADVANCE STATEMENT?

Anyone over the age of 16 can make an Advance Statement. The forms attached should cover all the areas needed, but you can use **any** format you wish. You can write this document yourself, or can ask for help from another person. A template is available to help you if you wish.

WHO CAN HELP?

It is always advisable to discuss your Advance Statement with your Care Co-ordinator or a member of staff who will be able to advise you on how to complete it. They can make sure that there are up to date copies on your care records.

If you have identified individuals, e.g. a member of your family or friend in your Advance Statement to take responsibility for child care, the security of your home etc., it is always advisable that that you discuss this with them before the document is completed. If not, there is a risk that your wishes may not be followed.

You may wish to seek independent advice on how to complete an Advance Statement from a solicitor or an advocate.

GUIDANCE NOTES FOR ADVANCE STATEMENTS

1. This Advance Statement is for use in the treatment of mental health problems only. Please remember that you cannot insist on receiving certain treatments, but can express your opinion about treatment you do not wish to have.

2. Ensure your writing is clear and be clear about your wishes to avoid misinterpretation.

3. If you are detained under the Mental Health Act 1983, (on Sections 2, 3, 36, 37, 38, 47 or 48), there may be circumstances when you are given treatment without your consent, and that you would prefer not to have. *Even if this is the case your views are very important to us, and you should be not deterred from sharing them.*

4. You must ensure that you check and update your document regularly so that it reflects your most recent views. Your CPA Review may be an ideal opportunity.

5. Ensure that you have signed and dated the document in all the relevant places. If you have chosen to have an independent witness, please ensure they sign where applicable.

6. Please discuss your Advance Statement with your care co-ordinator, named nurse and / or doctor.

7. Please discuss your Advance Statement with your appointees, family and/or carer.

8. It is important that your Advance Statement does not contain anything that is requesting the BSMHT to do anything illegal.

9. If you are unsure of anything, don't hesitate to seek advice from your Care Coordinator, named nurse, doctor, Solicitor, or an advocate.

The form is in 5 parts, apart from parts 1 & 5, you can choose which sections to complete.

Part 1 – Personal Information

Part 2 – Care and Treatment

Part 3 – Personal/social and home life

Part 4 – Other information

Part 5 - Declaration

MY ADVANCE STATEMENT

Part 1 – Personal Information

NAME _____

DATE OF BIRTH _____

ADDRESS _____

_____

CONTACT NUMBER _____

CARE CO-ORDINATOR / NAMED NURSE _____

RESPONSIBLE CLINICIAN_____

GP _____

WHO I WOULD LIKE TO KNOW ABOUT MY ADVANCE STATEMENT?

A copy of this document will be held on your BSMHFT care record.

CARE COORDINATOR'S NAME: _____

RESPONSIBLE CLINICIAN'S NAME: _____

I also wish a copy of this document to be lodged with:

GP

YES ☐ **NO** ☐

NAME _____
ADDRESS _____
_____

ADVOCATE

YES ☐ **NO** ☐

NAME _____
ADDRESS _____
_____

CARER

YES ☐ **NO** ☐

NAME _____
ADDRESS _____
_____

SOLICITOR

YES ☐ **NO** ☐

NAME _____
ADDRESS _____

OTHER (e.g. friend, workplace, educational establishment)

NAME _____
ADDRESS _____
_____

Part 2 – Care and Treatment

MY ADVANCE STATEMENT

It is my wish that, in times of crisis or mental illness that this document is given full consideration before and during my treatment

My wishes regarding medication and treatment are as follows: ***(it is helpful to give reasons why)***

When I was receiving care before, the following worked well for me:

Things that have not worked well in the past are:

Needs which are special to me, which I would like those caring for me to know about:

- Diet
- Physical health
- Spirituality/Religion
- Relationships
- Other

I **would** like the following people to be told immediately that I have been admitted to hospital:

I would **not** like the following people to be told:

Part 3 – Personal/social and home life

Children or dependants

Complete this section if you have children or dependants at home and would like them to be cared for in a particular way;

a. I would like the following people to care for my children and dependants

b. When someone explains where I am to my children, I would like them to be told the following

Family and Friends

Please include any information useful to other members of your family, or people in your support network.

Pets

Complete this section if you have pets to be cared for;

a. I have the following pets

b. I would like the following people to look after my pets

c. People may need to know the following about my pets

Security and home

I would like my home to be made secure by:

Other people to contact and tell that I am not at home:

Part 4 –Other Information

Please use this space to add any further information, needs or matters that you feel have not been covered in other sections of this document.

Part 5 –Declaration

If you need someone to explain the wording of this declaration, please ask

I (*print name*)**,** _____ declare that this has been completed by me and/or in accordance with my wishes, at a time when I retain capacity to understand information about treatment choices and the options available to me and I can make informed decisions regarding my treatment.

In the event that I become incapable of expressing my choices due to mental health difficulties, it is my wish that this document is referred to as an expression of my choices regarding my mental health care. It is my wish that this document precedes all other ways of ascertaining my intent.

I understand that this document will be followed where possible and in the event that the decisions and choices expressed in this document are not followed, I will be provided with a full explanation when I regain capacity

The fact that there may be some blanks in this document, or incomplete sections should not affect its validity in any way. I intend that all completed sections be followed.

This Advance Statement will remain in place until I decide to amend or alter it at a time I have capacity.

SIGNED _____

DATE: _____

WITNESS NAME: _____

SIGNATURE: _____

ADDRESS: _____

_____

Please give this to your Care Co-ordinator or named nurse if an in-patient. The document will then be lodged with the people you have listed on page 5 and will also be kept on your Care Record held by BSMHFT

If you wish to update or change this document, please contact your Care Co-ordinator or named nurse as soon as possible so that records can be updated.