
Policy Relating to Obtaining and Providing Employee References

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Purpose of Agreement	This policy aims to provide managers with advice on seeking references as part of the recruitment and selection process, and providing references for former/existing Trust staff who are making applications for alternative employment and other purposes.
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Review Log

Include details of when the document was last reviewed.

Amendments Summary:

Please fill the table below:

Amend No	Issued	Page	Subject	Action Date
1	07/02/14		Policy re-write	01/03/14
2	03/06/15		Updated to reflect changes to references best practice from NHS employers and legal requirements	01/07/14
3	01/09/16		Format of policy updated, changes have been made to who may provide an employment reference. A section has been added to include what an employment references will contain, Fit and Proper Person checks, limitations placed on the period references will be provided to ex-members of staff, changes to the provision of verbal references, and a section on subject access requests have been inserted. Appendices have been update.	20/09/16

Review Log:

Version Number	Review Date	Name of reviewer	Ratification Process	Reason for amendments
1	07/02/2014	H Vowden	JCC, Policy Group, Assurance Committee	Rewrite of policy in entirety to capture all changes to references in line with NHS Jobs and legal requirements
2	03/06/2015	H Vowden	JCC, Policy Group, Assurance Committee	Updated to reflect changes to references in line with NHS Employers and legal requirements
3	28/07/2016	L Bicknell	JCC, Policy Group, Assurance Committee	Changes to Authority to provide employment references, legislative changes, Fit and Proper person checks, changes to the data Commissioners Guidance on accessing references.

Summary of Policy

As a result of some Employment Appeal Tribunal decisions revised NHS Employers guidance on Employment checks and an amendment to the Data Commissioners opinion in relation to the treatment of references it has become necessary for this Trust, like many other employers to review the information given in Employment References, in order to protect individuals and the Trust itself. As a result of these changes this policy outlines the Trust position with regard to references. In particular it explains:

- How many references should be obtained when recruiting employee' s(Section 3.1)
- Who may provide a Trust employment reference (Section 3.3)
- Details of what will be included in Trust employment references (Section 3.4)
- Dealing with requests for verbal references (Section 3.5)
- Character and Other references (Section 3.6)
- The Data Protection Act in relation to references (Section 3.7)

This policy includes Directors and Senior Staff who are required to be registered under Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as amended, who have been investigated or it has been determined that they are not fit to practice.

The appendices have been updated to include a revised employment and character reference form, a suggested format for employment and character reference letters (Appendix A to D)

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Contents

Section	Reason	Page
1.	INTRODUCTION AND PURPOSE	5
2.	SCOPE AND DEFINITIONS	5
3.	PROCESS / REQUIREMENTS	5
4.	ROLES AND RESPONSIBILITIES	9
5.	TRAINING	10
6.	EQUALITY IMPACT ASSESSMENT AND MENTAL CAPACITY	10
7.	SUCCESS CRITERIA / MONITORING EFFECTIVENESS	10
8.	REVIEW	10
9.	REFERENCES AND LINKS TO OTHER DOCUMENTS	10

Appendix

A.	REFERENCE REQUEST FORM	11
B.	MODEL LETTER WITHDRAWAL OF OFFER - UNSATISFACTORY PRE EMPLOMENT CHECKS	13
C.	MODEL REFERENCE REQUEST LETTER	14
D.	PERSONAL TELEPHONE STATEMENT FORM	15
E.	MODEL CHARACTER REFERENCE LETTER	16
F.	EQUALITY IMPACT ASSESSMENT	17

Policy Relating to Obtaining and Providing Employee References

1. INTRODUCTION AND PURPOSE

- 1.1 This policy aims to provide managers with the Trust requirements on (i) seeking references as part of the recruitment and selection procedure, and (ii) providing references for former/existing Trust staff who are making applications for alternative employment, and other purposes.
- 1.2 Solent NHS Trust recognises a requirement to provide references which are true, accurate and fair for its existing/former employees and their prospective employers. Whilst there is no legal obligation for the organisation to provide references on behalf of former employees, it is generally accepted as being good practice to do so.

2. SCOPE & DEFINITIONS

- 2.1 This document applies to all directly employed staff including staff registered with the Bank Staffing Service and those employed on fixed term Contracts within Solent NHS Trust.
- 2.2 This policy also applies to agency workers where it is deemed appropriate for the Trust to provide a reference.
- 2.3 Reference requests concerning financial matters, including mortgages and personal loans will be handled by the HR team and are excluded from the scope of this policy.
- 2.4 References from other parties where for example confirmation of employment, job contract, title and salary are required must be referred to the HR team for action.

3. PROCESS / REQUIREMENTS

3.1 Receiving References

- 3.1.1 References should only be sought with the express permission of the person to whom it relates.
- 3.1.2 Two independent references (three for posts covered under the Very Senior Managers, and Medical and Dental terms) should be sought on behalf of prospective employees as part of the pre-employment screening process. At least one of these must be provided by the individual's present or most recent employer. References provided by friends or relatives will not be considered as suitable for this purpose.
- 3.1.3 For internal candidates who apply for a new role within the Trust the HR team will provide a factual reference to the recruiting manager. In some instances where individuals are applying within their own team the recruiting manager will confirm if it is necessary to undertake a reference.
- 3.1.4 "To Whom It May Concern" references or testimonials should be treated with caution and are no substitute for a current opinion of an individual's ability to perform the duties associated with the job for which they have applied. In certain cases, it may be appropriate to contact the referee by telephone in order to validate the information provided.
- 3.1.5 At interview the Recruiting Manager should ask the individual to confirm the names of the referees that the Trust can contact if the candidate is successful and ask them to confirm the position that these referees hold in relation to their employment. One of which must be the most recent employer. Any potential areas of concern should be fully explored prior to an offer of employment being made, seeking advice from your HR Services Co-ordinator in the first instance.

- 3.1.6 References are intended to enhance the recruitment and selection procedure but are no substitute for effective managerial assessment in this respect.
- 3.1.7 Employers, particularly those outside the NHS are increasingly taking a cautious approach when giving references and will only provide basic factual information to confirm periods of an individual's employment and position held whilst avoiding subjective questions on skills and personal qualities. It is, therefore, crucial that managers use all the appropriate selection tools available to them as part of the recruitment process and relevant to the role in question in order to assess an applicant's suitability for a particular role.
- 3.1.8 References are generally given in confidence, but once they are received by another organisation all factual information can be released to the individual on request. If it is unclear whether the information would not be known by the employee, permission should be sought from the person/organisation that provided them. In cases where the referee refuses to give permission to release the information, further guidance should be sought from the HR team as it may still be necessary to release the information to the individual.
- 3.1.9 Managers must not permit candidates to commence employment until references and other pre-employment checks satisfactory to the Trust have been received.
- 3.1.10 References which may be taken by telephone should be recorded by the line manager using the standard 'Telephone Reference Request' format (see Appendix A). The information provided should also be requested in writing and a copy sent to the HR team to be filed in the appropriate candidate file.

3.2 Recruitment Process in relation to references

- 3.2.1 A prospective employee is given a conditional offer of employment pending the receipt of references satisfactory to the Trust from their former employers and other pre-employment checks. This offer may be withdrawn in the event that this condition is not met, therefore, the manager must not allow this person to commence employment until the contents of the reference or other pre-employment checks are known to be satisfactory.
- 3.2.2 If there are concerns with the content of the reference, the manager should seek guidance from the relevant HR Business Partner and consider the potential retraction of the offer of employment. They should also ensure that the outcome is communicated to the candidate that their offer has been withdrawn due to unsuccessful pre-employment checks. A model letter is attached at appendix B.

3.3 Providing References

- 3.3.1 Employment references may only be provided on behalf of the Trust by the HR team using headed paper. Line Managers and other individuals i.e. work colleagues or peers are not authorised to provide employment references in the name of Solent NHS Trust. Personal references must not be provided on headed paper.
- 3.3.2 References will only be provided once assurance is received that the request is coming from a bona fide potential employer. If there is any doubt regarding the validity of the request, the person making the request will be contacted to verify the authenticity of the request.
- 3.3.3 All references must be accurate and provide factual information only. Information that will be provided in the reference is shown in Section 3.4. It is considered good practice for the employee to see a reference prior to sending it, so that any errors of fact may be corrected in the spirit of openness and honesty.
- 3.3.4 Employers have a duty of care not to give misleading information, either by providing selective details or by the inclusion of facts or personal opinions, which may create a false or misleading impression to a prospective employer.

- 3.3.5 Whilst there is no legal obligation to provide a reference, as a Trust we need to provide references that are not deemed negligently written as they could contain false or derogatory statements about an individual, which results in loss of their livelihood or affects their ability to secure future work. Likewise, by providing information in terms of skills, qualities and levels of competence that an individual does not possess could lead to claims for damages from prospective employers.
- 3.3.6 As the Trust only retains records for a limited period of time after an employee leaves the organisation (six years), references will not be able to be provided if the request is received outside of this timespan.
- 3.3.7 It is expected that any issues of concern highlighted within a reference would be of a formal nature only that would have previously been brought to the individual's attention during their employment with the Trust.

3.4 Contents of Trust References

3.4.1 For employment references the HR team will provide the following information extracted from the Staff Electronic record system:

- Name
- Address of Employee
- National Insurance and Employee Number
- Period of employment with the Trust
- Employment type (Nil Hours (Bank), Without Limit (Permanent), Fixed term contract, etc.)
- Grade/Band of Employee
- Job Title
- Date of Last DBS, Level and result
- Number of days and separate periods of sickness in the preceding 2 years.
- If they have left the Trust the date and reason given for leaving on the termination form.

In addition the HR team will provide the following details:

- Dates and where appropriate basic details, of any formal warnings which have been issued to the employee and are still live in accordance with the Disciplinary Policy, Policy for Managing Performance of Medical and Dental Staff, Performance Management Policy, and the Managing Absence and Wellbeing Policy.
- Dates of any referrals made to a professional body, National Performers List (GP's and Dentists), or Disclosure and Barring (DBS).
- Details of any investigation into, or decision where it is determined a Senior Manager or other manager who is required to be registered under Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as amended, is not fit to practice. (Mainly Directors).
- Confirmation of whether the individual is currently under investigation for conduct, capability or performance.
- Other factual information relevant to the job application.

This list is not exhaustive

3.4.2 A copy of a draft employment reference is included at appendix C

3.4.3 In cases where an individual has been dismissed from employment with the Trust, the details provided for the purpose of future references should be consistent with the information detailed in the dismissal letter. No attempt should be made to provide a favourable or a vaguely-worded reference in order to avoid a situation whereby they are disadvantaged in terms of future employment. If there is any doubt about the suitability of providing a written reference, the HR Business Partner will provide advice and support.

3.5 **Verbal References**

3.5.3 Managers must not provide references over the telephone, as there is a risk that inappropriate comments may inadvertently be made, or the content of the discussion could subsequently be disputed or misinterpreted. If a telephone reference is requested, managers should refer the caller to the HR team who will advise the caller of the Trust position and the action they need to take.

3.6 **Character and other References**

3.6.1 *Character References*

In some circumstances if the Trust is unable to obtain a suitable reference from a previous employer, a character reference may be sought. Examples of where this may be appropriate are shown below but this list is not exhaustive:

- If an applicant has not been in employment for a considerable amount of time but has had previous employment, then the Trust will seek one reference from their last known employer and a personal reference from a person of standing within their community such as a doctor, solicitor or MP.
- Where it is genuinely not possible to obtain references from any of the sources outlined above, they must provide contact details of two personal acquaintances that would be willing to give a reference. Personal acquaintances must not be related to the applicant or have any financial arrangement with them.

Personal character references are personal opinions of a person's character and must not be written on behalf of the Trust. Should employees wish to provide a personal reference in support of a colleague then the referee should state their relationship to the individual (colleague, etc.). The reference should be honest, accurate and fair and the information provided must be able to be evidenced. The person providing the character reference should not use Trust headed paper for this reference. The type of information to be included in a character reference is included at appendix D, and a model character reference is attached at appendix E.

3.6.2 *Academic References*

If providing a reference to undertake higher education the referee should know the applicant well enough, in an official capacity, to write about them and their suitability for higher education. In these circumstances factual information must always be provided.

If an applicant is at school or college, or has recently left, a reference will be sought from their teacher or tutor.

3.6.3 *Volunteers*

If they have not been in employment for a number of years will be required to name two referees (not relatives) to provide a character reference.

3.6.4 *Financial References*

The HR team will release the information requested from a reputable company on receipt of the employee's written consent.

3.7 Data Protection

3.7.1 If an offer of employment has been withdrawn due to unsatisfactory pre-employment checks, a job applicant may request a Subject Access Request (SAR) under the Data Protection Act 1998, as amended, for the disclosure of further information relating to this withdrawal, particularly in respect of references provided by a third party or organisation in respect of themselves. When considering whether it is reasonable in all circumstances to comply with such a request, the Trust will need to take account of factors such as:

- Any express assurance of confidentiality given to the referee.
- Any relevant reasons the referee gives for withholding consent. The potential or actual effect of the reference on the individual.
- The fact that a reference must be truthful and accurate and that without access to it the individual is not in a position to challenge its accuracy.
- The fact that good employment practice suggests that an employee should have already been advised of any weaknesses.
- Any potential risk to the referee.
- Whether it is possible to protect the identity of the referee.

Any decision to release references will need to be taken in conjunction with the advice from the Information Governance Lead for the Trust to ensure compliance against our obligations as an Employer under the Data Protection Act.

4. ROLES & RESPONSIBILITIES

4.1 **Directors, Associate Directors, Clinical Directors and Operational Directors** must adhere to this policy, and ensure managers and staff within their areas of management are aware of the requirements of the policy.

4.2 **Operations Directors/Service Managers/Clinical Directors** should determine who may provide character references for their area on behalf of the Trust (both for internal and external appointments). In the event that a request is made to any other member of Trust staff then this should be passed immediately to the designated manager for their attention.

4.3 The **Policy Steering Group** is responsible for approving this policy.

4.4 **Line Managers** have a responsibility to ensure that two references satisfactory to the Trust are obtained in respect of potential recruits as part of the pre-employment screening process (Appendix A).

4.4.1 All references must be provided by appropriate persons, one of whom should be the individual's present or most recent employer.

4.5 **The HR Team** are responsible for processing reference requests on behalf of the Trust as part of the recruitment procedure, ensuring these references are then stored in accordance with Data Protection Act guidelines on either the successful candidate's personal.

4.5.1 The HR Team will ensure that all new recruits are appropriately vetted prior to their appointment to the Trust.

4.6 **HR Business Partners** are able to offer advice and guidance to line managers in connection with the suitability of references for either potential recruits or former employees.

4.7 **All staff** within the Solent NHS Trust have a responsibility to familiarise themselves with this and other relevant Trust Policies and are responsible for adhering to this policy at all times.

4.7.1 They must notify their line manager immediately if approached to provide a reference they are not authorised to provide on behalf of the Trust.

5. TRAINING

5.1 Although there is no specific training provided in relation to this policy, line managers will be required to ensure their respective staff are made aware of its contents and to cascade through the usual dissemination routes.

6. EQUALITY IMPACT ASSESSMENT AND MENTAL CAPACITY

6.1 Solent NHS Trust is committed to treating people fairly and equitably regardless of their age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

6.2 An equality and human rights impact assessment has been carried out for this policy and no significant issues have been identified (Appendix F). This policy has also been assessed and meets the requirements of the Mental Capacity Act 2005.

7. SUCCESS CRITERIA / MONITORING EFFECTIVENESS

7.1 Recruitment documents will be reviewed on a quarterly basis to ensure compliance with the policy requirements and NHS Employment Standards.

8. REVIEW

8.1 This policy may be reviewed at any time at the request of either staff side or management, but will automatically be reviewed on a three yearly basis or as required following any amendments to national guidance.


9. REFERENCES AND LINKS TO OTHER DOCUMENTS

9.1 This policy is underpinned by the following:

- Pre-employment Checks – An Employer’s Guide (CIPD, December 2013)
- NHS Employers Check Standards (NHS Employers, updated 2012) and NHS Employers, Employment history and reference checks updated April 2016
- CIPD – References, Frequently Asked Questions
- Data Protection Act 1998 (including Subject Access: Codes of Practise)

9.2 It should be read in conjunction with:

- Recruitment and Selection Policy
- Volunteers Policy
- Policy Relating to the Registration of Professional Staff
- Policy Relating to Disclosure and Barring Scheme (DBS) Disclosures

Telephone Reference Request		Solent  NHS Trust	
Name of Applicant:			
Job Reference Number:			
Post Applied for:			
In what capacity have you known the applicant?	<input type="checkbox"/> Employer/Line Manager <input type="checkbox"/> Course Tutor/School or college principal <input type="checkbox"/> Mentor <input type="checkbox"/> Personal/character reference <input type="checkbox"/> Other (please state)		
For how long: Please confirm employment dates:	From:	To:	
National Insurance Number:			
Position held in your employment (if applicable):			
Reason for leaving/considering leaving your employment:			
Are there any current warnings on the applicants record (Disciplinary, Performance or Absence related):	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If yes please give details:			
Is the applicant currently under investigation for any matter (incl. conduct, capability, or performance) under any of your employment policies?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If yes please give details:			
How many day's sickness has the applicant had over the past two years and in how many periods?	Days:	Periods:	
Please provide details of when you last completed a check with the Disclosure and Barring Service:	Date:	Level:	
	Adults <input type="checkbox"/>	Children <input type="checkbox"/>	Both <input type="checkbox"/>
Did the check return any information that required further investigation:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Are you aware of any recent /outstanding allegations that were made against the applicant that relate to any safeguarding issues/ referrals [including any referrals to the DBS]?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If yes please give details:			

Are you aware of any recent/outstanding allegations that were being considered by the individuals professional body [including any referrals to the professional body]?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes please give details:		
If the individual is employed in a position where they are subject to a fit and proper persons check, have they been investigated for, or been found not fit to practice:		
If yes, please give dates and details:		
Relationship, team and individual working In your opinion detail the extent this person's ability to get on with all disciplines of staff and the general public. Detail how well they work within a team and their ability to work independently:		
Professional Competency In your opinion the level of competency with which this person undertakes their professional duties. Whether or not they act as a good role model and whether or not they keep themselves updated in their profession:		
Please enter below any relevant comments you would like to make regarding the above or the applicant's suitability for this post:		
If providing a character reference please confirm in what capacity you have known the individual and what skills and experiences the individual has demonstrated that might be regarded as valuable attributes for the position they are applying for:		
The individual giving the reference must agree with the statement: "The answers given above have been provided in good faith and are correct to the best of my knowledge and belief".		
Name of person giving reference (please print):		
Email Address:		Telephone Number:
Date reference obtained:		
Verbal Reference Only:		
Full Name of Individual recording this information:		
Data Protection This form contains personal data as defined by the Data Protection Act. This data has been requested by the Human Resources Department exclusively for the purpose of recruitment. The Human Resource team must protect any information disclosed within the form and ensure it is not passed to anyone who is not authorised to see this information.		
Do you consent to this information being shared with the candidate	Yes <input type="checkbox"/>	No <input type="checkbox"/>

DRAFT REFERENCE LETTER WITHDRAWAL OF OFFER DUE TO UNSATISFACTORY REFERENCES.

PRIVATE AND CONFIDENTIAL

[NAME OF INDIVIDUAL]

[ADDRESS of INDIVIDUAL]

Dear [NAME]

POST APPLIED FOR: [Name of Post]

Further to your recent application for employment with Solent NHS Trust, I writing to notify you that we are withdrawing your offer of employment for the above post.

As stated in your offer of employment letter dated *[date of offer letter]*, your offer was subject to a number of pre-employment checks.

I would, therefore, like to confirm that the Trust has been unable to carry out satisfactory pre-employment checks for you, in line with this offer of employment, and Trust policy.

I am, therefore, notifying you that after careful consideration of the circumstances we are withdrawing your offer of employment for the above named post you applied for.

I would like to take this opportunity of wishing you every success in your search for a suitable position.

If you have any queries relating to the content of this letter please contact *[Name of person to contact]* on *[email address of person to contact]*

Yours sincerely.

DRAFT REFERENCE LETTER.

PRIVATE AND CONFIDENTIAL

Dear Sirs [Or name of individual requesting reference]

RE: [Name of Employee]

Employee Number: [Employee number of employee when working for the Trust]

Address: [Address of Employee]

I am writing in response to your request for a reference in respect of the above individual.

I can confirm that [first name of employee] was employed by this Trust from [start date in Trust] to [date of leaving] on a [Fixed term, nil hours, without limit] contract. [He/She] was employed as a [job title, for example band 5 registered nurse] within the [name of service, for example: Adult Mental Health Team].

[Please choose one of the following options]

A: The reason given when [he/she] resigned from the Trust was [reason for leaving shown on ESR]

B: [Name of individual] was dismissed from the Trust due to [reason for dismissal given on the letter of termination]

C: [He/She] was made redundant by the Trust as a result of a reorganisation within the service [he/she] was working.

D: [He/She] left the Trust as a result of a mutually agreed resignation scheme.

E: [He/She] transferred to [Name of Employer] under a TUPE transfer.

In the last two years [name of employee] was employed by the Trust [he/she] has taken [number of days] sick leave in [number] episodes.

[Insert whichever is appropriate]

At the date [he/she] left the Trust they had a live [written, final written] penalty which is due to expire on [date] as a result of [his/her] [state reason, their level of sickness, performance, conduct].

or

At the date [he/she] left the Trust they had no live disciplinary or other penalties on file.

[If relevant] I can confirm that it has been necessary to refer [name of employee] to [name of professional body, DBS, or National Performers list] on [date] as a result of [his/her] [conduct, performance], mentioned above.

or

As far as I am aware no investigation is on-going and no referrals have been made to a professional body or DBS.

It is the policy of this Trust to provide limited factual information, which does not imply any comment, negative or positive, about the employee or the course of their employment with the Trust.

This reference is given in strictest confidence and without liability on behalf of Solent NHS Trust or the undersigned. Should you have any queries regarding the content of this reference, please do not hesitate to contact me on the above number.

Yours faithfully [Sincerely]

POSSIBLE WORDING FOR A CHARACTER REFERENCE PROVIDED BY AN INDIVIDUAL

PRIVATE AND CONFIDENTIAL

Dear Sirs [Or name of individual requesting reference]

RE: [Name of Individual]

Address: [Address of Individual]

I confirm that I have known (name) for (number) years from [insert date] to [insert date].

During the period of this reference I knew [name of individual] [state how you knew the individual for example as a work colleague, manager, youth club worker, friend, etc.]

At all times I have found (name/him/her) to be (state characteristics - e.g., dependable, reliable, hard-working, conscientious, honest, peace-loving, courteous, etc. Think about what skills you have observed in the individual that would be beneficial for the role they have applied for). [Remember anything you state must be truthful].

I can confirm that the information I have given above is accurate and true.

This reference is given in strictest confidence and without liability on behalf of the undersigned.

Should you have any queries regarding the content of this reference, please do not hesitate to contact me on the above number.

Yours faithfully [Sincerely]

[Name]

cc: [Name of individual]

EQUALITY IMPACT ASSESSMENT

Step 1 – Scoping, identify the policy’s aims	Answer
1. What are the main aims and objectives of the policy?	To provide managers with advice on seeking references as part of the recruitment and selection process, and providing references for former/existing Trust staff who are making applications.
2. Who will be affected by it?	Staff members, members of the public and those working within partner organisations as applicable.
3. What are the existing performance indicators / measures for this? What are the outcomes you want to achieve?	HR data is subject to monitoring and review to ensure there is no discrimination within the process.
4. What information do you already have on the equality impact of this policy?	Previous information gathered as a result of the existence of former policies within Solent’s predecessor organisations.
5. Are there demographic changes or trends locally to be considered?	No.
6. What other information do you need?	None.

Step 2 – Assessing the impact, consider the data and research	Yes	No	Answer (Evidence)
1. Could the policy be used unlawfully against any group?		X	This policy is designed to ensure equity of treatment and adherence to legal requirements.
2. Can any group benefit or be excluded?		X	All groups would be treated equally in accordance with the stipulations of the policy.
3. Can any group be denied fair and equal access to treatment as a result of this policy?		X	As above.
4. Can this policy actively promote good relations with and between different groups?	X		All groups are treated equally and in accordance with best practice guidelines.
5. Have you carried out any consultation internally / externally with relevant individual groups?	X		Policy is formed by amalgamating those from Solent’s predecessor Organisations. It has since been circulated to staff side colleagues and line management representatives for consultation purposes.
6. Have you used a variety of different methods of consultation / involvement?	X		As above
Mental Capacity Act implications			
7. Will this policy require a decision to be made by or about a service user? (Refer to the Mental Capacity Act policy for further information)		X	Does not impact upon patients directly.