

## SPSO decision report



**Case:** 202006891, Borders NHS Board  
**Sector:** Health  
**Subject:** Clinical treatment / diagnosis  
**Decision:** upheld, recommendations

### Summary

C complained about the board's handling of their grandparent's (A) consent for a surgical procedure. A had vascular dementia (a common form of dementia, caused by problems in the supply of blood to the brain) and was resident in a care home. A had Adults With Incapacity (AWI) status and their child had Power of Attorney (PoA) for their welfare and financial needs. A was admitted to hospital due to abnormal liver function tests. It was subsequently decided that they should undergo an invasive procedure.

C complained to the board that A's consultant obtained their consent for the invasive procedure without any contact being made with A's next of kin or listed PoA. In response to C's complaint, the board said that the relevant consultant considered that A had the capacity to make this decision. The board reiterated that the presence of a PoA does not mean that an individual is unable to make their own decisions. They said that it was the consultant's clinical professional opinion at that time that A had the capacity to consent to the invasive procedure as they were aware of being previously offered the procedure and said that they wanted something done.

We took independent advice from a mental health nurse adviser. We found that there was sufficient information available in the clinical records to highlight A's potential capacity issues and it was unreasonable that this was not properly considered. We found that A's consent for the procedure was not properly obtained. In light of this, we upheld the complaint.

### Recommendations

What we asked the organisation to do in this case:

- Apologise to C and their family for not obtaining consent properly and deficiencies in the documentation surrounding the assessment of A's capacity, PoA arrangements and consent process. The apology should meet the standards set out in the SPSO guidelines on apology available at [www.spsso.org.uk/information-leaflets](http://www.spsso.org.uk/information-leaflets).

What we said should change to put things right in future:

- That the board take steps to ensure full compliance with the requirement to assess and review patients' capacity where necessary.
- That the board take steps to ensure that staff fully complete the MDT assessment documentation to ensure full information relating to capacity and welfare arrangements is recorded and available.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.