



# Research Ethics Training

## UKRIO Research Integrity Webinar: Consent in Research in the Arts, Humanities and Social Sciences 9<sup>th</sup> September 2020

David Carpenter

Independent Consultant and Trainer in Research Ethics -HRA, ARMA, UKRIO

Chair – South Central, Berkshire NHS REC

Chair – Google DeepMind Human Behavioural Research Ethics Committee

Member – BPS Ethics Committee

Lay Member of Chapter – Portsmouth Cathedral

[www.ukrio.org](http://www.ukrio.org)

[info@ukrio.org](mailto:info@ukrio.org)

 [@UKRIO](https://twitter.com/UKRIO)



## Abstract

Consent has its origins in medical treatment. It effectively operates as a defence for what would otherwise be a tort of trespass to the person. Acts which might be seen as posing significant risks or, indeed, potential harms become defensible as a result of the consent of the subject (in this context 'participant' is probably a misnomer). The concept has been adopted in medical research; not surprisingly evidence of consent and a clear record of it provides legal safeguards for researchers in biomedicine. Many information sheets and consent forms are contractual in their formats. This model has been widely adopted in the Arts, Humanities and Social Sciences but its application is clearly questionable. Research 'participants' (and here the term makes sense) are rarely exposed to risks and potential harms; they are typically co-producers of research rather than subjects of it- at least in the best, ethically sound, examples. Does consent have any place at all in the Arts, Humanities and Social Sciences? If it does, is its fundamental nature distinctly different? I will argue that consent might readily be substituted by simple agreement, consensus and collaboration in the context of mutual respect and the absence of hierarchies.



## Outline

- Consent as a predominantly legal concept
- Long -standing debate about the inappropriateness of the biomedical approach to research ethics to research in the Arts, Humanities and Social Sciences – noting that little progress has been made
- Posit a more radical overhaul, starting with questioning the role of consent – does it have any role in the Arts, Humanities and Social Sciences? Is it conceptually incoherent?
- Suggest alternatives to consent – loosely based on virtue ethics



## Consent in Common Law

### Consent

Consent refers to situations in which the claimant can be regarded as having consented to a risk which then manifests itself. This is sometimes referred to via the Latin maxim *volenti non fit injuria* (to a volunteer, injury is not done). Consent is a complete defence – if consent is found, a claim will be defeated.

Consent defences can be broken down into two categories:

In the first are situations of negligence where a claimant agrees that the defendant will not be held liable for any injuries they might incur whilst undertaking a particular activity.

In the second are where the claimant effectively tells a defendant to do something.

<https://www.lawteacher.net/modules/tort-law/general-defence/lecture.php#:~:text=Consent%20is%20a%20complete%20defence,whilst%20undertaking%20a%20particular%20activity.>



## Consent in Criminal Law

The **defence of consent** in criminal law may operate to defeat an element of the *actus reus* of a crime and thus render the action lawful as oppose (sic) to unlawful. For example the offence of **battery** requires the application of 'unlawful' physical force, where the person **consents** to being touched the application of force is 'lawful'. ..... In some crimes, **consent** will absolve the defendant of criminal liability. For example rape, assault and battery.

<http://www.e-lawresources.co.uk/Defence-of-Consent.php#:~:text=The%20defence%20of%20consent%20in%20criminal%20law%20may%20operate%20to,lawful%20as%20oppose%20to%20unlawful.&text=In%20some%20crimes%2C%20consent%20will,example%20rape%2C%20assault%20and%20battery.>



# Consent – a Legal Defence for prima facie harm

## Harms in Biomedical Research

- Administration of noxious substances
- Various intrusions on bodily integrity etc etc

Key changes in normal relationships and expectations which would be indefensible in the absence of consent – doctor becomes researcher and patient becomes subject

- RECs –concerned with the validity of consent and risks of harm

## Harms in Research in the Arts, Humanities and Social Sciences

- Mostly none, beyond those encountered in everyday life
- Harms are typically secondary – e.g. data mismanagement

Relationships tend to be ‘as expected’ – little or no anticipated harms in need of defence

- **RECs –still concerned with validity of consent and risks of harm**



# Inappropriateness of the biomedical model of research ethics in the Arts, Humanities and Social Sciences

## A very long running debate!

- [Developing Generic Ethics Principles for Social Science Research](#)
- [Podcast: How do we conduct research ethics reviews that really work? Ron Iphofen FAcSS](#)
- Regulation by RECs modelled on healthcare research
- Critique of the pre-emptive approach to review
- Focus on **harm** (or risk of it) as a proxy for ethics
- Limiting academic freedom
- Just bureaucratic hurdles – obstructive
- More about protection of institutions than ethics

## **The Five Principles are:**

- 1.** Social science is fundamental to a democratic society and should be inclusive of different interests, values, funders, methods and perspectives.
- 2.** All social science should respect the privacy, autonomy, diversity, values, and dignity of individuals, groups and communities.
- 3.** All social science should be conducted with integrity throughout, employing the most appropriate methods for the research purpose.
- 4.** All social scientists should act with regard to their social responsibilities in conducting and disseminating their research.
- 5.** All social science should aim to maximise benefit and minimise harm.

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# Towards a new model of research ethics in the Arts, Humanities and Social Sciences

**START WITH REMOVING THE EMPHASIS ON CONSENT**





# Alternatives to Consent

Some research will require formal consent

- Harms
- Some experiments
- Where deceit is necessary

Many examples where consent is neither necessary nor appropriate

- We could just ask!
- We could form other sorts of relationships – not legalistic / contractual
  - Sharing, open
  - Co-producers / Co-researchers
  - Collaborators
  - Mutual respect – non-hierarchical
  - Friendships - see Ann Oakley



## A Few Examples

- Most qualitative research
- Ethnography
- Participatory action research
- Experimental art
- Immersive drama



## Emerging Virtues as an Alternative to Consent

- Polite requests / invitations
- Respect
- Transparency
- Solidarity / mutuality
- Trust
- Lack of hierarchies