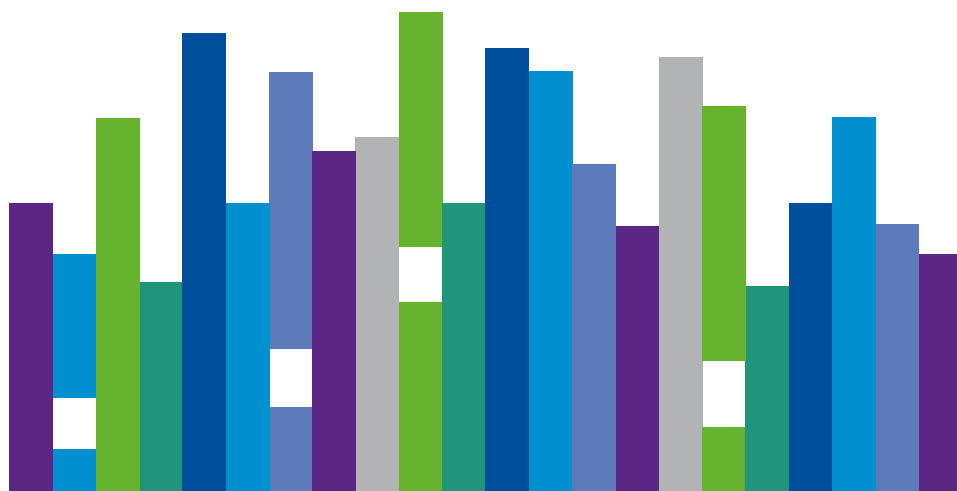


INFORMED CONSENT

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INFORMED CONSENT

This paper describes CFA UK's views on Informed Consent. Informed Consent is the process by which a client makes a decision about an investment program. This process involves the client having a clear appreciation and understanding of the facts, implications and future consequences of an action recommended by an investment professional.

When a client has understood the actions being recommended and agrees to proceed then this should be formalised in written form. Conversely, if the client decides against the recommended action then this too needs to be documented formally as 'informed refusal'.

'Tell me, and I will forget. Show me, and I may remember. Involve me, and I will understand.'

Confucius (551-479 BC)

Definition: Informed consent is the process by which a client makes a decision about an investment program. This process involves the client having a clear appreciation and understanding of the facts, implications and future consequences of an action recommended by an investment professional.

By recommending the course of action the investment professional would disclose why it is suitable for the client and set out the relevant costs, benefits, risks and conflicts associated with the course of action recommended. In order to give informed consent, the individual concerned must have reasoning faculties and be in possession of all relevant facts at the time the consent is given. If this is not the case then the consent would be provided by those empowered to represent the interests of the ultimate beneficiary.

FOR CONSENT TO BE VALID IT MUST BE FULFIL ALL THREE OF THE FOLLOWING CRITERIA:

- » **Voluntary:** the decision to consent or not consent to an investment program must be made by the individual or those that solely represent the ultimate beneficiary. There should be no undue influence from any other party.
- » **Informed:** the beneficiary or those acting on their behalf, must be given full information about what the investment programme involves, including the benefits and risks, whether there are reasonable

alternative actions that could be taken; and what will happen if the recommended course of action does not go ahead. Investment professionals should not withhold information just because it may upset or unnerve the client.

- » **Capacity:** the client or their representatives must be capable of giving consent, which means they understand the information given to them and they can use it to make an informed decision.

When a client has understood the actions being recommended and agrees to proceed then this should be formalised in written form. Conversely, if the client decides against the recommended action then this too needs to be documented formally as 'informed refusal'.

LEADING THE WAY: THE MEDICAL PROFESSION

'Make a habit of two things: to help; or at least to do no harm.'

Hippocrates

In defining the principles of informed consent for investment decision-making, we can learn from the medical profession which first embraced the concept. The term was first used in relation to medical consent. In this context informed consent is the patient making a knowledgeable decision about their treatment based on open communication with their doctor, rather than simply signing a written consent form. The patient and doctor are partners with regard to how the decision for treatment is made and which course of action will be pursued. Sometimes the patient, as is their right, does not agree to the action being recommended.

According to the General Medical Council of the UK (GMC), all healthcare involves collaborative decisions made by patients and those providing their care. The GMC has set out guidance and principles for good practice¹ in making these decisions (see Appendix 1 for the full principles). The principles apply to all decisions about care: from the treatment of minor and self-limiting conditions or decisions about screening, to major interventions with significant risks or side effects.

APPLICATION TO THE INVESTMENT PROFESSION

'The first thing you've got to remember is that it's your clients' money you're spending.'

Richard Morris Hunt

When it comes to investment it is easy to see the relevance of informed consent. The typical saver, and even many an institutional investor, is unaware of the range of possible investment options, their likely 'success' and the risks associated with them. An investment professional has a responsibility for the financial health of their client akin to the responsibility a doctor has for their patient's wellbeing. Like the medical profession, investment professionals should establish and maintain effective partnerships with clients and, where appropriate, their representatives based on openness, trust and good communication. Equally important is that the investment professional respects the rights and preferences of the client.

Investment professionals must be sensitive to their clients' requirements. Some may require different levels of information depending on their levels of sophistication and, experience and knowledge. Where the client is unable to make an informed decision, the investment professional must ensure they have followed the appropriate process. Similarly, where the client lacks the capacity to make an informed decision, the investment professional should be assured that those representing the client are acting in the best interests of the ultimate beneficiary. The approach to gaining informed consent could cover the following steps:

a. The investment professional and his client must make an assessment of the client's financial situation, taking into account the client's objectives, assets, liabilities and their views, experience and knowledge.

- b. The investment professional should use their specialist knowledge and experience along with their understanding of the client's views and financial situation, to identify which investment options are likely to result in overall benefit for the client. The investment professional should explain the options to the client, setting out the expected outcome, potential benefits and the risks of each option. The investment professional may recommend a particular option which they believe to be best for the client, but they must not put pressure on the client to accept their advice.
- c. The client weighs up the potential benefits and risks of the various options and decides whether to accept any of the options.
- d. If the client asks to make an investment that the investment professional considers would not be of overall benefit to them, the investment professional should discuss the reasons they consider the investment unsuitable with the client and explore the reasons for their request.

The investment professional must allow sufficient time to explain investment procedures, risk and alternative options; they must ensure understanding of the investment and associated processes involved; and they must ascertain and respect clients' wishes. Investment professionals must understand that seeking informed consent for an investment mandate is a process, not merely the signing of a form, and one that requires time, clarity of explanation and patience². Conversely, if the client provides informed refusal then this has to be given the same weight by the investment professional as informed consent.

BENEFITS OF INFORMED CONSENT TO THE CLIENT

Informed consent provides the client with the assurance that the investment professional is acting in their best interests. This feeling of trust comes from:

- 1) Empowerment – direct involvement with the decision making process.
- 2) Understanding of and the rationale for the options that they face.
- 3) The client believing that they will be listened to in a manner that respects their rights.

¹GMC Consent Guidance http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_partnership.asp

²Based on the "Relationships with patients," Royal College of Surgeons <http://www.rcseng.ac.uk/standards/good-surgical-practice/relationships-with-patients>

- 4) The exercise of choice – the client will still have the right not to choose the action being recommended and will be aware of the consequences for making a different choice.
- 5) Reassurance that their interests will be placed first by their investment professional.

PROCESS FOR CFA UK MEMBERS

'The most valuable professional service we could provide to almost all investors is effective investment counselling.'

Charles Ellis

CFA charterholders and CFA UK members abide by CFA Institute's Code of Ethics and Standards of Practice Handbook, the core of which is placing clients' interests first at all times. The Standards for Duties to Clients require:

- a. **Loyalty, Prudence, and Care.** Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests.
- b. **Fair dealing.** Members and Candidates must deal fairly and objectively with all clients when providing investment analysis, making investment recommendations, taking investment action, or engaging in other professional activities.
- c. **Suitability.**
 - 1) When Members and Candidates are in an advisory relationship with a client, they must:
 - i) Make a reasonable inquiry into a client's or prospective client's investment experience, risk and return objectives, and financial constraints prior to making any investment recommendation or taking investment action and must reassess and update this information regularly.
 - ii) Determine that an investment is suitable to the client's financial situation and consistent with the client's written objectives, mandates, and constraints before making an investment recommendation or taking investment action.

- iii) Judge the suitability of investments in the context of the client's total portfolio.

- 2) When Members and Candidates are responsible for managing a portfolio to a specific mandate, strategy, or style, they must make only investment recommendations or take only investment actions that are consistent with the stated objectives and constraints of the portfolio.

THE ROLE OF AN INVESTMENT POLICY STATEMENT (IPS)³

Investors have to ask themselves two questions. How much can we grow our investments? And, can we afford our mistakes? (Mohamed El-Erian)

The relationship between the client and the investment professional should be formalised in an Investment Policy Statement (IPS) that sets out the parameters of the investment mandate. The IPS would also demonstrate the client's understanding of the investment program being undertaken to meet their objectives given their circumstances, financial situation and preferences. An IPS is a customised document that is developed in partnership between the investment professional and the client. The IPS serves three key functions:

- 1) Formalises the purpose and rationale for the investment mandate.
- 2) Provides continuity whenever there are changes in the client's circumstances or there is change in the investment professional.
- 3) Provides a reference point whenever there is a difference of opinion between the client and professional or if there are market dislocations.

The IPS should be a living document that evolves as the client's circumstances change; this applies equally to institutional mandates and private clients.

In our view, while the IPS is a customised document there should be features common to all IPS are as follows:

- 1) Background and context for the portfolio
- 2) Investment objectives
- 3) Achievable return – the return should be net of all fees

³CFA Institute guidelines for IPS <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2010.n13.1> <http://www.cfainstitute.org/learning/products/publications/ccb/Pages/ccb.v2010.n12.1.aspx>

- 4) Risk profile including tolerance for loss
- 5) Risk management – manage risks so that align with risk tolerance and capacity for loss
- 6) Asset mix; including assets that should be excluded
- 7) Performance evaluation
- 8) Legal and other constraints that could affect the portfolio e.g whether illiquid assets are permitted
- 9) Other – this is a broad category that cover issues specific to the client
- 10) Fee structure – this should set out the all charges related to the mandate, for example:
 - » Adviser charges
 - » Total Expense Ratio (includes annual management charges)
 - » Portfolio turnover and implementation costs
 - » Charges for the funds used
 - » Custody charges

The IPS becomes a reference document for both client and investment professional to use whenever disagreements arise or if the requirements need to be changed. The IPS also assures the client that any actions being taken on their behalf should be aligned with the contents of the IPS.

GOING FORWARD

To ensure the profession contributes to raising the trust and confidence in our industry it is imperative that we continue to seek informed consent and that the client appreciates the value of providing it. While the majority of clients may have not experienced the detriment felt by some consumers, it is these small number of examples that can influence the public perception of our profession and industry. Seeking informed consent demonstrates that our profession places client interests first and by using an IPS and similar documents for all types of clients; we can also show how we can provide an effective governance mechanism for clients.

APPENDIX 1

The General Medical Council of the UK guidance and principles for informed Consent

1. Whatever the context in which medical decisions are made, the doctor must work in partnership with their patients to ensure good care. In so doing, the doctor must:
 - a. Listen to patients and respect their views about their health
 - b. Discuss with patients what their diagnosis, prognosis, treatment and care involve
 - c. Share with patients the information they want or need in order to make decisions
 - d. Maximise patients' opportunities, and their ability, to make decisions for themselves
 - e. Respect patients' decisions
2. For a relationship between doctor and patient to be effective, it should be a partnership based on openness, trust and good communication. Each person has a role to play in making decisions about treatment or care.
3. No single approach to discussions about treatment or care will suit every patient, or apply in all circumstances. Individual patients may want more or less information or involvement in making decisions depending on their circumstances or wishes. And some patients may need additional support to understand information and express their views and preferences.
4. If patients have capacity to make decisions for themselves, a basic model applies:
 - a. The doctor and patient make an assessment of the patient's condition, taking into account the patient's medical history, views, experience and knowledge.
 - b. The doctor uses specialist knowledge and experience and clinical judgment, and the patient's views and understanding of their condition, to identify which investigations or treatments are likely to result in overall benefit for

the patient. The doctor explains the options to the patient, setting out the potential benefits, risks, burdens and side effects of each option, including the option to have no treatment. The doctor may recommend a particular option which they believe to be best for the patient, but they must not put pressure on the patient to accept their advice.

c. The patient weighs up the potential benefits, risks and burdens of the various options as well as any non-clinical issues that are relevant to them. The patient decides whether to accept any of the options and, if so, which one. They also have the right to accept or refuse an option for a reason that may seem irrational to the doctor, or for no reason at all.

d. If the patient asks for a treatment that the doctor considers would not be of overall benefit to them, the doctor should discuss the issues with the patient and explore the reasons for their request. If, after discussion, the doctor still considers that the treatment would not be of overall benefit to the patient, they do not have to provide the treatment. But they should explain their reasons to the patient, and explain any other options that are available, including the option to seek a second opinion.

5. If patients are not able to make decisions for themselves, the doctor must work with those close to the patient and with other members of the healthcare team. The doctor must take into account any views or preferences expressed by the patient and must follow the law on decision-making when a patient lacks capacity.



CFA Society
United Kingdom

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- **Experience is valuable**
- **High professional and ethical standards are fundamental**

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