



THE ASSOCIATION OF COLOPROCTOLOGY OF GREAT BRITAIN & IRELAND

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26th October 2020

The Association of Coloproctology of Great Britain & Ireland Clinical Governance Board Statement on Consent – Updated October 2020

The Clinical Governance Board would like to remind Association members of the principles of consent, especially for high-risk procedures. A patient-centred approach should be adopted, following the principles laid out in the recently updated GMC guidance on decision making and consent.

<https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/decision-making-and-consent>

The GMC document states seven principles of decision making and consent.

1. All patients have the right to be involved in decisions about their treatment and care and be supported to make informed decisions if they are able.
2. Decision making is an ongoing process focused on meaningful dialogue: the exchange of relevant information specific to the individual patient.
3. All patients have the right to be listened to and to be given the information they need to make a decision and the time and support they need to understand it.
4. Doctors must try to find out what matters to patients so they can share relevant information about the benefits and harms of proposed options and reasonable alternatives, including the option to take no action.
5. Doctors must start from the presumption that all adult patients have capacity to make decisions about the treatment and care. A patient can only be judged to lack capacity to make a specific decision at a specific time and only after assessment in line with legal requirements.
6. The choice of treatment or care for patients who lack capacity must be of overall benefit to them and decisions should be made in consultation with those who are close to them or advocating for them.
7. Patients show right to consent is affected by law should be supported to be involved in the decision-making process and to exercise choice if possible.

Surgeons must establish and maintain effective relationships with patients and, where appropriate, with their supporters. Before surgery, surgeons should strive to have an honest and sensitive discussion with patients about their options for treatment that leads to informed and deliberate consent. They should reflect on their patients' feedback about the care they received and act appropriately and promptly when harm has occurred.

We need to;

- Recognise that seeking consent for surgical intervention is the process of providing the information that enables the patient to make a decision to undergo a specific treatment. It requires time, patience and clarity of explanation.
- Establish whether a patient has a supporter as early as possible in the relationship and record this in your notes. If the patient agrees, you should involve the patient's supporter in the consent discussion.
- Establish that your patient has capacity to give consent as per the requirements of the Mental Capacity Act 2005. If your patient does not have capacity (for example when they are unconscious or ventilated) you must act in your patient's best interests and, where relevant, seek consent from a person authorised with a lasting power of attorney to give consent on behalf of your patient. The Mental Capacity Act 2005 sets out how you should assess your patient's capacity and best interests.

<https://www.legislation.gov.uk/ukpga/2005/9/contents>

- In case you have to act in your patient's best interests without the patient's consent, where possible seek affirmation from a consultant colleague and discuss your intended actions with the patient's supporter.

- Involve young people and children in discussions and decisions around their care as outlined in the GMC guidance 0-18 years: guidance for all doctors <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/0-18-years>

According to the GMC, young people are presumed to have capacity to give consent at 16 years of age. You should assess the capacity of children under 16 years to give consent on a case by case basis, depending on their maturity and capacity to understand the different courses of action involved in their treatment.

- Ensure that consent is obtained either by the person who is providing the treatment or by someone who is actively involved in the provision of treatment. The person obtaining consent should have clear knowledge of the procedure and the potential risks and complications.

- Obtain the patient's consent prior to surgery and ensure that the patient has sufficient time and information to make an informed decision. The specific timing and duration of the discussion should take into account the complexity and risks of the proposed procedure.

- At the consent discussion, provide information on the procedure and its implications. In particular, you should discuss information about:

- The patient's diagnosis and prognosis
- Options for treatment, including non-operative care and no treatment
- The purpose and expected benefit of the treatment
- The likelihood of success
- The clinicians involved in their treatment
- The risks inherent in the procedure, however small the possibility of their occurrence, side effects and complications. The consequences of non-operative alternatives should also be explained.
- Potential follow up treatment

- Where possible, you should provide written information to patients to enable them to reflect and confirm their decision. You should also provide advice on how they can obtain further information to understand the procedure and their condition. This can include information such as patient leaflets, decision aids, websites and educational videos.

- Make patients aware of national guidelines on treatment choices (such as NICE and SIGN guidelines). If your recommended treatment is not in keeping with current guidelines, you must explain your reason for not following current standard guidelines.

- Sign the consent form at the end of the consent discussion, allowing the patient to take a copy for reference and reflection. On the day of the procedure, check with the patient if anything has changed since the consent discussion. If there has been a significant delay since the original signing, sign the relevant section on the form to confirm consent. The patient does not need to sign again.

- In addition to completing the consent form, record in writing the details of the consent discussion with your patient. Any discussions around consent with the patient's supporter and your colleagues should also be recorded in the patient's notes.

- Make sure that the patient understands and is agreeable to the participation of students and other professionals in his or her operation.

- Gain agreement from the patient if video, photographic or audio records are to be made for purposes other than the patient's records (for example, teaching, research, or public transmission).

- Follow appropriate guidance for the retention of tissue, as set out in the Human Tissue Act 2004. <https://www.legislation.gov.uk/ukpga/2004/30/contents>

This process takes time and our Specialist Nursing colleagues should be involved in these discussions whenever possible. We can sometimes saturate our patients with information, especially at a stressful time. Colorectal Specialist Nurses are an invaluable resource for the patient and will further clarify and inform.



James Hill
For the clinical governance board

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A note on Montgomery

MDU advice and GMC guidance

Although Montgomery changed the legal position, the principle of involving patients in their treatment and sharing information with them about risks has been in place for some time.

The MDU has consistently been advising members to that effect for many years, and the GMC does the same in its guidance, Consent: doctors and patients making decisions together (2009).

In particular, paragraph 28 from that guidance states that, 'The amount of information...will depend on the individual patient and what they want or need to know.'

Material risks

The key passages from the Montgomery judgment involve what a patient would consider to be material risk:

'The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments.

'The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.'

Judgment in Montgomery v Lanarkshire Health Board [2015] UKSC 11, paragraph 87.

Some other key points were:

- whether a risk is material doesn't only depend on how frequently it occurs
- your advisory role involves talking to the patient to make sure they understand the risks and benefits of their treatment, so that they can make an informed decision
- simply providing the information or getting a signature on a consent form may not be enough to evidence proper consent, but can be helpful as part of the consent process.

COMES INTO EFFECT 9 NOVEMBER 2020

Decision making and consent

The seven principles of decision making and consent

- Principle one** All patients have the right to be involved in decisions about their treatment and care and be supported to make informed decisions if they are able.
- Principle two** Decision making is an ongoing process focused on meaningful dialogue: the exchange of relevant information specific to the individual patient.
- Principle three** All patients have the right to be listened to, and to be given the information they need to make a decision and the time and support they need to understand it.
- Principle four** Doctors must try to find out what matters to patients so they can share relevant information about the benefits and harms of proposed options and reasonable alternatives, including the option to take no action.
- Principle five** Doctors must start from the presumption that all adult patients have capacity to make decisions about their treatment and care. A patient can only be judged to lack capacity to make a specific decision at a specific time, and only after assessment in line with legal requirements.
- Principle six** The choice of treatment or care for patients who lack capacity must be of overall benefit to them, and decisions should be made in consultation with those who are close to them or advocating for them.
- Principle seven** Patients whose right to consent is affected by law should be supported to be involved in the decision-making process, and to exercise choice if possible.