



CPD4dentalnurses

YOUR FUTURE IN YOUR HANDS

Consent in Dentistry **(Legal and Ethical)**

Aims: To give an overview of importance of consent in dentistry, considering the relevant legislation and regulations; the validity of consent; stages of consent; and the patients capacity to understand consent and recording consent contemporaneously.

Objectives: On completion of this verifiable CPD article the participant will be able to demonstrate, through completion of a questionnaire, the ability to:

- Define consent and valid consent.
- Identify some of the legislation and regulations that relate to consent.
- Identify some of the information a patient will need to give consent.
- Explain the significance of the Montgomery ruling in the context of informed consent.
- Have knowledge of things to consider when gaining consent from a patient.
- Have knowledge of assessing the patient's ability to consent.
- Have knowledge of when young people are able to give consent.
- Complete a questionnaire, scoring more than 70%.

Introduction

The English Oxford dictionaries defines consent as "Permission for something to happen or agreement to do something."¹ A patient's informed consent to investigations or treatment is a fundamental aspect of the proper provision of dental care.² Clinicians must seek consent before undertaking any investigation or treatment, and certain criteria must be fulfilled for consent from a patient to be valid.³ The Care Quality Commission state that:

" Obtaining valid informed consent for dental treatment is:

- A legal requirement to allow a practitioner to touch a patient;
- Respects patients right to self determination;
- Makes it easier to treat patients with better patient outcomes."⁴

Principle 3 of the General Dental Council Standards (GDC) for the Dental Team is "Obtain valid Consent" and the GDC state, that "You must obtain valid consent before starting treatment, explaining all the relevant options and the possible costs."⁵

- ✓ Options for treatment and why you think a particular treatment is necessary and appropriate for them;
- ✓ consequences, risks and benefits of the treatment you propose;
- ✓ the prognosis and what might happen if treatment isn't given;
- ✓ your recommended option;
- ✓ the cost of proposed treatment;
- ✓ what might happen if the proposed treatment is not carried out; and
- ✓ whether the treatment is guaranteed, how long it is guaranteed for and any exclusions that apply.^{2,6}

The GDC guidance states:

- **"3.1.1** You must make sure you have valid consent before starting any treatment or investigation. This applies whether you are the first member of your team to see the patient or whether you are involved after other team members have already seen them. Do not assume that someone else has obtained the patient's consent.
- **3.1.2** You should document the discussions you have with patients in the process of gaining consent. Although a signature on a form is important in verifying that a patient has given consent, it is the discussions that take place with the patient that determine whether the consent is valid."⁶

The following should be considered when gaining consent:

Give the patient time

- The patient must be given a reasonable amount of time to consider the information to make a decision.
- It is a good idea, particularly in respect of complex, elective or cosmetic treatment, to obtain consent at an earlier date than that of treatment, to allow a 'cooling off' period in which a patient can think over their decision and/or take advice.
- Make sure you are confident the patient is not under any coercion or pressure to give, or withhold, consent.
- It is best to reconfirm consent with the patient immediately before treatment.

Be clear about costs

- Explain the cost of any examination, investigation, or treatment before it starts. This includes whether treatment is being carried out on the NHS, privately or on some other payment basis.
- Note that a patient who agrees to pay the bill has not necessarily consented to treatment.

Look out for change

- If a patient's condition alters significantly between initial consultation and treatment, causing a change in the nature, purpose, or risks of the procedure, you must explain the changes and obtain consent again.
- A change in the cost of treatment should be reviewed with the patient.⁶

Implied consent

Consent to dental examinations is implied when, having been told what is planned and properly advised, the patient voluntarily sits in the dental chair and opens their mouth.⁶

The Care Quality Commission and Consent

The Care Quality Commission (CQC) provides detailed guidelines and standards regarding consent in dentistry to ensure that dental practices in England comply with legal and ethical requirements. Key points from the CQC's guidelines on consent in dentistry include:

1. **Patient Autonomy:** Patients have the right to make informed decisions about their treatment. This includes being given clear, comprehensive information about their condition, treatment options, and potential risks and benefits.
2. **Informed Consent:** Consent must be obtained before any examination or treatment is carried out. It should be informed, meaning that the patient understands what they are consenting to. This includes an explanation of the nature of the procedure, alternatives, risks, and benefits.
3. **Voluntary Consent:** Consent must be given voluntarily, without any form of pressure or coercion from healthcare providers.
4. **Capacity to Consent:** Practitioners must ensure that the patient has the capacity to consent. This involves assessing whether the patient can understand, retain, and weigh the information relevant to the decision and communicate their wishes.
5. **Documentation:** It is important to document the consent process thoroughly. This includes recording the information provided to the patient, their understanding, and their decision.
6. **Children and Young People:** Special considerations are required when obtaining consent from children and young people. For those under 16, consent from a parent or guardian is typically necessary, unless the child is deemed capable of understanding and making their own decisions (Gillick competence).
7. **Ongoing Process:** Consent is an ongoing process, not a one-time event. Patients should be given the opportunity to ask questions and should be informed that they can change their mind at any time.

An assessment of a person's capacity must be based on their ability to make a specific decision at the time it needs to be made, and not their ability to make decisions in general.

A person is unable to make a decision if they cannot do one or more of the following things:

- Understand the information given to them that is relevant to the decision.
- Retain that information long enough to be able to make the decision.
- Use or weigh up the information as part of the decision-making process.
- Communicate their decision – this could be by talking or using sign language and includes simple muscle movements such as blinking an eye or squeezing a hand.⁸

People may have capacity to consent to some interventions but not to others or may have capacity at some times but not others. Under the Mental Capacity Act, a person must be assumed to have capacity unless it is established that they lack capacity.

A person's capacity to consent may be temporarily affected by factors such as confusion, panic, shock, fatigue, pain, or medication. However, the existence of such factors should not lead to an automatic assumption that the person does not have the capacity to consent.⁶

The Mental Capacity Act also requires that all practical and appropriate steps are taken to enable a person to make the decision themselves. These steps include the following:

- Providing relevant information. For example, if there is a choice, has information been given on the alternatives?
- Communicating in an appropriate way. For example, could the information be explained or presented in a way that is easier for the person to understand?
- Making the person feel at ease.
- Supporting the person. For example, can anyone else help or support the person to understand information and to make a choice?⁶

If an adult patient lacks capacity and you are faced with providing treatment without consent, you should take into account:

- The views of relatives, and/or,
- the views of carers, and/or,
- anyone named by the patient, and
- the patient's present and previously expressed wishes in helping to determine if the treatment is in their best interests.

When assessing whether treatment is in the patient's best interests, you should consider whether the patient may regain capacity later. If a patient has fluctuating capacity, it would be very unusual for dental treatment to be appropriate while the

patient lacks capacity, when it could be left until the patient regains capacity and can consent.²

The Mental Capacity Act (2005) suggests a two-stage test for assessing if someone has the capacity to consent. The Care Quality Commission suggest that dental professionals are aware of the following stages:

- **Stage 1:** Be aware of impairments that could affect capacity, such as dementia.
- **Stage 2:** Can the patient:
 - Understand the relevant information?
 - Retain that information, even for a short while?
 - Use or weigh up the relevant information as part of the decision-making process?
 - Communicate their decision to the dental practitioner?⁵

(A full CPD article on the Mental Capacity Act is available in the verifiable CPD section of the website.)

Young Patients and Consent

Consent and children under 16

The ability for children under 16 to give valid consent will depend on their maturity and ability to understand what the treatment involves. In England and Wales, this is referred to as being Gillick competent. Other guidelines that exist are 'Fraser guidelines'. These specifically relate only to contraception and sexual health.

To be Gillick competent, a child must:

- Understand the nature of the proposed treatment, its consequences, and the alternatives, including no treatment.
- Retain that information.
- Use or weigh up that information in making a decision.
- Communicate that decision.⁴

Even in the case of Gillick competent children, you may wish to encourage children to discuss decisions concerning their health with their parents or carers.

Consent and children aged 16-18

Young people aged 16 or 17 are presumed in law, like adults, to have the capacity to consent to medical treatment. However, unlike adults, their refusal of treatment can in some circumstances be overridden by a parent, someone with parental responsibility or a court. This is because we have an overriding duty to act in the best interests of a child. This would include circumstances where refusal would likely lead to death, severe permanent injury or irreversible mental or physical harm.⁵

Parental responsibility

- If a child is not Gillick competent, authority to treat may be given by someone with parental responsibility under the Children Act 1989.
- If one person with parental responsibility authorises treatment, it is not usually necessary to get authority from another person with such responsibility.

If the parents are separated or divorced, and the child is not yet competent to authorise disclosure, information may be disclosed to either parent if it is in the child's best interests.

Consenting to treatment: Scotland

The Children (Scotland) Act 1995 indicates that from the age of 12, children are mature enough to have a view on their treatment, even if they are not competent enough to give consent. Case law is such that it may be that a parent cannot overrule a competent young person's decision.

Best interests

- In deciding whether to treat, your overriding consideration must always be what is in the best interests of the child.
- You **should not delay emergency treatment** required to save life or prevent serious harm if you are unable to get authority from an adult with parental responsibility.

Record Keeping

Dental records should be written accurately, contemporaneously and they should be clear, concise, and easy to understand. Consent should be recorded, and should the treatment plan change you should again record consent to the changes.

The GDC guidance states:

- "4.1.1 You must make and keep complete and accurate patient records, including an up-to-date medical history, each time that you treat patients."
- "4.1.2 You should record as much detail as possible about the discussions you have with your patients, including evidence that valid consent has been obtained. You should also include details of any patient's treatment needs where appropriate."⁶

And to recap:

- "3.1.2 You should document the discussions you have with patients in the process of gaining consent. Although a signature on a form is important in verifying that a patient has given consent, it is the discussions that take place with the patient that determine whether the consent is valid."⁴

Personal Development Plan and Reflective Learning

This CPD is linked to the following GDC Enhanced CPD Development Outcome:

A. Effective communication with patients, the dental team, and others across dentistry, including when obtaining consent, dealing with complaints, and raising concerns when patients are at risk.

C. Maintenance and development of knowledge and skill within your field of practice.

Reflective learning is now a requirement of the GDC Enhanced Professional Development Scheme. As such, you will now be offered the opportunity to answer some reflective learning questions for the CPD you complete. These will be:

- 1) What did you learn (or confirm) from the activity that was helpful or relevant to your daily work and patients?
- 2) Comment on any changes/updates needed in your daily work
- 3) How has completion of this CPD article benefitted your work as a DCP?

Further Reading

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/138296/dh_103653_1_.pdf

References:

1. Oxford Dictionary (2025) Available from: <https://www.oed.com/search/dictionary/?scope=Entries&q=consent> (accessed 29/06/2025).
2. Dental Protection (2015) Available from: [https://mpscduks.azureedge.net/resources/docs/librariesprovider2/default-document-library/consent-\(uk-excl-scotland\).pdf](https://mpscduks.azureedge.net/resources/docs/librariesprovider2/default-document-library/consent-(uk-excl-scotland).pdf) (accessed 29/06/2025).
3. Care Quality Commission (2024) Available from: <https://www.cqc.org.uk/guidance-providers/dentists/dental-mythbuster-23-consent-dental-treatment> (accessed 29/06/2025).
4. Dental Defence Union (2022) Available from: <https://www.theddu.com/guidance-and-advice/guides/quick-guide-to-consent> (accessed 29/06/2025).
5. Care Quality Commission (2024) Available from: <https://www.cqc.org.uk/guidance-providers/dentists/dental-mythbuster-23-consent-dental-treatment> (accessed 29/06/2025).
6. General Dental Council (2025) Available from: <https://standards.gdc-uk.org/pages/principle3/principle3.aspx> (accessed 29/06/2025).
7. Care Quality Commission (2024) Available from: <https://www.cqc.org.uk/guidance-providers/dentists/dental-mythbuster-23-consent-dental-treatment> (accessed 29/06/2025).
8. Medical Defence Union (2025) Available from: <https://www.themdu.com/guidance-and-advice/guides/montgomery-and-informed-consent> (accessed 29/06/2025).