

Consent to treatment

Introduction

Consent to treatment is the principle that a person must give their permission before they receive any type of medical treatment.

Consent is required from a patient regardless of the treatment, from blood test to organ donation.

The principle of consent is an important part of medical ethics and the international human rights law.

Defining consent

For consent to be valid, it must be voluntary and informed, and the person consenting must have the capacity to make the decision. These terms are explained below.

Voluntary: the decision to consent or not consent to treatment must be made alone, and must not be due to pressure by medical staff, friends or family.

Informed: the person must be given full information about what the treatment involves, including the benefits and risks, whether there are reasonable alternative treatments, and what will happen if treatment does not go ahead. Healthcare professionals should not withhold information just because it may upset or unnerve the person (see below).

Capacity: the person 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. Read about assessing the capacity to consent.

If the person has enough capacity and makes a voluntary and informed decision to refuse a particular treatment, their decision must be respected. This is still true even if their decision would result in their death, or the death of their unborn child.

How to give consent

Consent should be given to the healthcare professional directly responsible for the person's current treatment, such as the nurse arranging a blood test, the DOCTOR prescribing new medication or the surgeon planning an operation.

It can be given:

verbally

non-verbally, for example, raising a hand to indicate they are happy for a nurse to take a blood sample

in writing, by signing a consent form

If someone is going to have major medical intervention, such as an operation, their consent should be obtained well in advance so they have plenty of time to study any information about the procedure and ask questions.

Withholding information

To consent to a treatment or procedure, the person needs to be fully informed about the treatment and understand why it is considered necessary.

Healthcare professionals should not withhold information just because it may upset or unnerve the person. Even if the person specifically requests not to be told about the extent or likely outcome of their condition, the healthcare professional has a moral and legal responsibility to provide them with at least:

a basic overview of their condition

the likely outcome of their condition

their treatment options

Involving the Court of Protection

There are some circumstances where a decision should always be referred to the Court of Protection if the person cannot give their consent. Situations that should always be referred to the courts include:

sterilisation for contraceptive purposes

donation of regenerative tissue, such as bone marrow

withdrawal of nutrition and hydration from a person who is in a persistent vegetative state

where there is serious concern about the person's capacity or best interests

When consent is not necessary

There are a few exceptions when treatment can go ahead without consent.

One main exception is if a person does not have the mental capacity (the ability to understand and use information) to make a decision about their treatment. In this case, the healthcare professionals can go ahead and give treatment if they believe it is in the person's best interests.

When consent is not needed

There are a few exceptions when treatment may be able to go ahead without the person's consent, even if they are capable of giving consent.

These circumstances are outlined below.

Additional procedures

There may be some circumstances when, during an operation, it becomes obvious that the patient would benefit from an additional procedure that was not included in their original consent.

For example, they may be having abdominal surgery when the surgeon notices that their appendix is infected, dangerously close to bursting and needs to be removed.

If it is felt that it would be too dangerous to delay the additional procedure and wake the person up to get their consent, the additional procedure can go ahead if it is considered to be in the patient's best interest.

However, extra procedures cannot be done just because it would be convenient for the healthcare professionals. There has to be a clear medical reason why it would be unsafe to wait to obtain the patient's consent.

Emergency treatment

If a person requires emergency treatment to save their life, and they are unable to give consent as a result of being physically or mentally incapacitated (for example, they are unconscious), treatment will be carried out. Once they have recovered, the reasons why treatment was necessary will be fully explained.

Mental health condition

Under the Mental Health Act, people with certain mental health conditions, such as schizophrenia, bipolar disorder or dementia, can be compulsorily detained at a hospital or psychiatric clinic without their consent.

If the patient made an advance decision, this can potentially be overruled providing it is regarding treatment for a mental health condition and they are being held under the 1983 Act.

If an adult lacks capacity, any physical interventions must be in their "best interests". The healthcare professionals must:

Consider if it is safe to wait until the person can give consent.

Involve the person in the decision as much as possible.

Determine whether the person has previously expressed any opinions regarding certain procedures, perhaps on the grounds of religious or moral beliefs.

If possible, consult other people, such as the person's immediate family.

In situations where there is doubt about what is in the person's best interests, the healthcare professionals can refer to the Court of Protection, which is the legal body that oversees the operation of the Mental Capacity Act (2005).

Risk to public health

Under the Public Health (Control of Disease) Act (1984), a magistrate can order that a person is detained in hospital if they have an infectious disease that presents a risk to public health, such as rabies, cholera or tuberculosis (TB).

Severely ill and living in unhygienic conditions

Under the National Assistance Act (1948), a person who is severely ill or infirm and is living in unsanitary conditions can be taken to a place of care without their consent.

Assessing the capacity to consent

All adults are presumed to have sufficient capacity to decide on their own medical treatment unless there is significant evidence to suggest otherwise.

"Capacity" means the ability to use and understand information to make a decision.

Any evidence that a person does not have this capacity has to show both of the following:

A person's mind or brain is impaired or disturbed.

The impairment or disturbance means the person is unable to make a decision at the current time.

Examples of these conditions include:

mental health conditions, such as schizophrenia or bipolar disorder (manic depression)

dementia

serious learning disabilities

long-term effects of brain damage

physical or mental conditions that cause confusion, drowsiness or a loss of consciousness

delirium (mental confusion)

intoxication caused by drug or alcohol misuse

Someone is thought to be unable to make a decision if they are unable to:

understand information about the decision

remember that information

use that information as part of their decision-making process

communicate their decision by talking, using sign language or by any other means

Assessing capacity

Capacity to give consent needs to be assessed at the time that consent is required.

The person's preferences should be investigated and their agreement to treatment should be sought whenever they are able to make a rational decision. These wishes should be respected if the person cannot give proper consent later on.

If the person lacks capacity and has not previously expressed their wishes, their mental health condition may be treated without consent, as may any related conditions, such as those resulting from self-harm. Unrelated physical conditions cannot be treated without consent.

An advanced decision prohibiting certain types of treatment can be overruled if they are being held under the Mental Health Act (1983), even if they made the advanced decision when they were capable.

Respecting personal beliefs

If someone makes a decision about treatment that most people would consider to be irrational, it does not mean they have a lack of capacity if they understand the reality of their situation.

For example, a person who refuses to have a blood transfusion because it is against their religious beliefs would not be thought to lack capacity. They still understand the reality of their situation and the consequences of their actions.

However, someone with anorexia (an eating disorder) who is severely malnourished yet rejects treatment because they refuse to accept there is anything wrong with them, would be considered incapable. This is because they are regarded as not fully understanding the reality of their situation.

Self-harm and attempted suicide

In cases of self-harm or attempted suicide where the person refuses treatment and was competent when they harmed themselves, it may be necessary to see if they can be treated without consent under the Mental Health Act (1983). This

can happen if a person has a serious mental health condition that requires hospital treatment.

The person's nearest relative or an approved social worker must make an application for the person to be forcibly kept in hospital and treated. Two doctors must assess the person's condition.

Changes in capacity

A person's capacity to consent can change. For example, they may have the capacity to make some decisions but not others, or their capacity may come and go.

In some cases, people can be considered capable of deciding some aspects of their treatment but not others. For example, a person with severe learning difficulties may be capable of deciding on their day-to-day treatment, but incapable of understanding the complexities of their long-term treatment.

Some people with certain health conditions may have periods when they are capable and periods when they are incapable. For example, a person with schizophrenia may have periods when they are considered capable, but they may also have psychotic episodes (when they cannot distinguish between reality and fantasy), during which they are not considered capable.

A person's capacity can also be temporarily affected by:

shock

panic

fatigue (extreme tiredness)

medication

If a person knows that their capacity may change, they can make an "advance decision" (previously known as an advance directive), stating any treatments they would like to refuse in case of future incapacity.

If the person specifically states in their advance decision that they do not want to undergo a particular treatment, this is legally binding. The only exception may be if that person is being held under the Mental Health Act (1983). This is an act that allows some people with mental health problems to be compulsorily detained in a psychiatric hospital.

Children and teenagers

People aged 16 or over are entitled to consent to their own treatment, and their parents can't overrule this.

Children under the age of 16 can consent to their own treatment if it is thought that they have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment. Otherwise, someone with parental responsibility can consent for them.

When their consent can be overruled

If a young person refuses treatment, and by doing so this may lead to their death or a severe permanent injury, their decision can be overruled by the courts. The court used is the Court of Protection, which is the legal body that oversees the operation of the Mental Capacity Act (2005).

In some cases, the parents of a child who has refused treatment have been allowed to consent for them. However, it may be best to go through the courts in such situations.

Parental responsibility

If a child who is under 16 does not have the capacity to consent, someone with parental responsibility can consent for them. See the box on this page for a list of people who can hold parental responsibility. The person with parental responsibility must have the capacity to give consent.

If a parent refuses to give consent to a particular treatment, this decision can be overruled by the courts if treatment is thought to be in the best interests of the child.

If one person with parental responsibility gives consent and another does not, the healthcare professionals can accept the consent and perform the treatment. If the people with parental responsibility disagree about what is in the child's best interests, the courts can make a decision.

In an emergency, where treatment is vital and waiting to obtain parental consent would place the child at risk, treatment can proceed without consent (read when consent is not needed for more information).

Life-prolonging treatments

There are rules governing when life-prolonging treatment can be withheld or withdrawn when the patient's consent is not available.

The relatives and friends of the person receiving the treatment, along with the healthcare professionals responsible for the person's care, should decide whether treatment should be continued. They should consider whether:

the treatment is in the best interests of the person (in terms of quality of life and how long they will live)

how much the treatment is improving their condition

It is important to note that there is a difference between withdrawing the patient's life support and taking a deliberate action to make them die, for example by injecting a lethal drug. The latter is illegal.

If activity in the brain has stopped, it is known as brain stem death. In this case, all treatments can be stopped.