

Consent & Capacity– Family Factsheet

All healthcare professionals (doctors, nurses, Allied Health Professionals (AHP's)) must seek consent for any treatment they plan to provide. The law states that consent must be freely given.



This needs the person to understand all about the treatment before they agree to it. That is called having mental capacity. For every patient /person mental capacity is being able at the time you agree

- to understand the information about the treatment and remember it
- to know why the treatment is planned for you
- to know how the treatment can help you
- to know how the treatment might not help or might give you new problems
- to tell you about any other treatments for your problem
- to explain what may happen if you do not have treatment
- to let the person asking for your consent know if you agree to the treatment or not and if you have questions about it

Some people are not able to understand or make decisions about treatment. That might be because they cannot understand information or know why treatment can help and is worth it for them.

This lack of ability to give consent for themselves means someone else must take the decisions for them. The person is usually someone who knows the person well enough to make good choices for them. They need the same information and must take account of whatever the person is able to share in making decisions.

For young children this person is usually a parent or registered carer. In Scotland children from 12-16 years can give consent for themselves as long as the healthcare professional believes the young person has capacity to do so. From age 16 the law in the UK treats the person as an adult.

For adults who have learning disability or a long-term condition like dementia, a person called a legal welfare guardian is responsible for consenting to treatment, but the patient still has a right to be involved. For those with an acute illness that stops them being able to give their own consent at the time, a healthcare team can start emergency treatment without consent. A close relative or friend who knows the patient can give consent to treatment just until the person is well enough to make their own decisions again.

When a person has a serious mental illness, they can be admitted to hospital without consent if a specially qualified doctor called a Mental Welfare Officer decides the person is not safe to be at home.

Children with Exceptional Healthcare Needs (CEN)

Doctors generally decide about treatment and share that information for consent. Other healthcare professionals can do this when they work with the doctor and follow the same plans. The patient (and any guardian) should share the final decision, they can change their decision any time up till the treatment starts or during treatment if that is safe to do.

How capacity is assessed and the discussions about consent must be recorded in the patient's health record at the time of each decision whether consent is written and signed, verbal or implied by acceptance.



Where Might I Find More Information?

<https://www.nhs.uk/conditions/consent-to-treatment/>

<https://www.nhs.uk/conditions/consent-to-treatment/children/>

<https://www.nhsinform.scot/publications/consent-its-your-decision-leaflet>

For more information about how the law affects children and young people, contact: The Scottish Child Law Centre or Cairn Legal.

Frequently Asked Questions

Q. What if both parents/those with parental responsibility can't agree on consenting to treatment?

A. By law, healthcare professionals only need one person with parental responsibility to give consent for them to provide treatment.

In cases where one parent disagrees with the treatment, doctors are often unwilling to go against their wishes and will try to gain agreement.

If agreement about a particular treatment or what's in the child's best interests cannot be reached, the courts can make a decision.

Q. What if I change my mind about consenting to a medical treatment, test or examination?

A. If you change your mind at any point before the procedure, you're entitled to withdraw your previous consent. Let the medical professional dealing with your care know as soon as possible.

Q. What if I don't understand, can I get a second opinion?

A. You have the right to ask questions if you don't understand or you want to know more. If the person who is asking you to give consent can't answer your questions, ask them if they can find out or get someone else who can help. If you think you need it, you can ask for a second opinion.

Q. How long will I have to make my decision?

A. In emergencies, decisions will have to be made quickly. In other cases, you may be able to take more time. It is important that you are given enough time to make your decision, so you don't feel rushed. If you want time to think about your decision, you should say so