

# General Medical Council:

*Consent: patients and doctors making decisions together*

January 2017

## ***The Medical Protection Society (MPS) response to the General Medical Council's short survey on the review of guidance on "Consent: patients and doctors making decisions together".***

The Medical Protection Society (MPS) welcomes the opportunity to respond to the General Medical Council's (GMC) survey on its *Consent* guidance. On a daily basis, MPS's expert medico-legal advisers support doctors with a wide range of legal and ethical problems that arise from professional practice. Questions around patient consent are a regular occurrence on our member advice line and the GMC's guidance on consent is a very important document for the profession.

### **General comments**

Generally, MPS is of the view that the *Consent* guidance provides a sound set of principles on which good clinical decisions should be based.

However, we believe that the guidance is unnecessarily repetitive and in some parts overly prescriptive. There is room for improvement and we welcome the GMC's intention to review the guidance.

Keeping in mind that health regulation is constantly developing as legal views evolve (for example *Montgomery v Lanarkshire Health Board* [2015] UKSC11), guidelines should not be overly prescriptive and be based on principles, rather than on rules. It should also be explicit that consent scenarios/case studies used in the guidance can never be exhaustive, and therefore the GMC must be clear that they only serve as examples and are not rules for how the principles should be applied. In our view the approach to any consent situation should aim to provide the patient with the information they require, and allow for a case-by-case assessment from the doctor.

MPS looks forward to actively participating in the future phases of the GMC's consultation on its *Consent* guidance, where we can provide more detailed input. At this stage, in response to the short survey, we will outline some general comments below.

### **Survey questions**

- We have identified a number of examples of duplication in the guidance, for example paragraphs 4 and 7 both deal with the tailored approach. Paragraphs 15, 21 and 14 all deal with sharing information in an understandable way and with others supporting the patient. Finally, paragraphs 57, 58 and 68 all deal with changes in the patient's capacity. These paragraphs are unnecessarily repetitive and wordy which could make it difficult for the doctor to easily refer to a particular issue.

- Paragraph 5, which describes the basic model for patients with capacity, is very useful. However, we think that point 5d should be more prominent. The fact that a doctor is allowed to refuse a treatment if he or she considers that this would not be of overall benefit to the patient, is a very important aspect of the consent guidance. It needs to be concisely and clearly articulated that a patient cannot mandate a treatment that is not in his/her best interests, and that should be made more explicit in the text, rather than in a subparagraph.

Furthermore, we recommend the addition of another subparagraph that covers advice on situations where patients no longer attend follow-up consultations, but continue to request repeat prescriptions.

- Paragraph 9 should be updated so it incorporates the common law position, as reflected in *Montgomery* (*Montgomery v Lanarkshire Health Board* [2015] UKSC11) and *Jones* (*Jones v Royal Devon & Exeter NHS Foundation* 2015).
- We would welcome a clearer definition of ‘sufficient knowledge’ (paragraph 26b) and ‘significant time’ (paragraph 52a). The phrases in these subparagraphs are as such that they currently do not provide the doctor with enough information as to what exactly is required. Although we support flexible guidance, the wording in the above mentioned subparagraphs, as it stands, is too vague.
- The guidance should include detail on where discussions should be documented as well as more direction on the issue of advance decisions.
- The *Consent* guidance often unnecessarily refers to other GMC guidance (e.g. *0-18 years*, *Treatment and care towards the end of life* and *Confidentiality*), that is not directly relevant and can distract from its core purpose. The issue of advance care planning is, for example, dealt with extensively in both the *Consent* and the *Treatment and care towards the end of life* guidance documents.

It is striking that in other instances where reference could usefully be made to relevant separate guidance that is directly relevant to the *Consent* guidance, this reference is not made. This is for example the case in paragraphs 9 and 49 that briefly mention aspects of research consent. Reference to guidance on *Consent to research* would be appropriate here.

The overlap with other guidance is often unnecessary and the constant need to cross-reference means that the *Consent* guidance is not as concise as it should be. Therefore, we would recommend reducing the references to other guidance, so the document provides a stronger focus solely on the core consent aspects.

We like the way the guidance is presented online as it allows for a targeted search into relevant paragraphs. The online version should not replace the pdf or printed booklet, as they are more suitable for making notes and to retain for future use. Existing in parallel, it is essential that the PDF document, printed booklet and the online guidance are all up to date and accurate.

In response to the survey question on the online decision making tool, MPS thinks that this is very practical and simple to use. However, the tool should only be used as an instrument that supports better use of the guidance material, and cannot be seen as stand-alone guidance. The online decision

making tool can be very useful as a learning instrument to support Deanery training in understanding how the consent guidance would work in practice.

To summarise, MPS is of the view that the current guidance is useful and provides very detailed principles on clinical decisions in consent scenarios. However, in some parts the guidance is repetitive and it unnecessarily overlaps with information provided in other guidance material, creating complexities. Since every consent scenario is in itself unique, and subject to a healthcare environment that constantly evolves, it must be recognised that guidance will never be able to cover all scenarios, and should not seek to do so. In order for the *Consent* guidance to be applicable to all circumstances that arise, it is essential that it is not overly prescriptive and based on principles, rather than on rules. Managing consent scenarios comes often down to professionalism. It is a matter of professional judgement and expertise to apply the principles effectively on a case by case basis.

There is definite scope to improve the guidance, and MPS is pleased that the GMC is looking at how it can be enhanced.

Given the importance of the consent guidance, MPS is very keen to be closely involved in the public consultation which will be launched in 2017 and also stands ready to provide any assistance you may need in the meantime.

## **About MPS**

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals. We protect and support the professional interests of more than 300,000 members around the world. Membership provides access to expert advice and support together with the right to request indemnity for complaints or claims arising from professional practice.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

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## **Contact**

Should you require further information about any aspects of our response to this consultation please do not hesitate to contact me.

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