

## Consent & Mental Capacity policy

The practice follows the GDC guidelines Standards for the Dental Team: 'Principle 3, Obtain Valid Consent'. We treat patients politely and with respect, in recognition of their dignity and rights as individuals. We also recognise and promote our patients' responsibility for making decisions about their bodies, their priorities and their care and make sure we do not take any steps without a patient's consent (permission).

The clinical team member will always obtain valid consent before starting treatment or physical investigation, or providing personal care for a patient, because patients have a right to choose whether or not to accept advice or treatment. Clinical team members are adequately trained to ensure that the patient has:

- Enough information to make a decision (informed consent)
- Made a decision (voluntary decision-making)
- The ability to make an informed decision (capacity)

The nature of treatment [NHS or private] and all charges are clarified to the patient before it commences and the patient is provided with a written treatment plan and cost estimate. All team members are aware that:

- Once the consent has been given it may be withdrawn at any time
- Giving and getting consent is a process, not a one-off event. It is an ongoing discussion between the clinician and the patient
- It is necessary to find out what the patient wants to know, as well as saying what the clinician thinks the patient needs to know. Examples of information which patients may want to know include: why a proposed treatment is necessary; the risks and benefits of the proposed treatment; what might happen if the treatment is not carried out and alternative forms of treatment, their risks and benefits, and whether or not the treatment is considered appropriate
- If an estimate has been agreed with a patient, but it is necessary to change the treatment plan, the patient's consent to any further treatment and extra cost will always be obtained prior to providing the changed treatment. This will be achieved by the provision of an amended written treatment plan and estimate

Everyone aged 16 or over is presumed to have capacity to make their own decisions unless it can be shown that they lack capacity to make a particular decision at the time it needs to be made. If the treating clinician thinks that someone lacks capacity to make a treatment decision, s/he will carry out a mental capacity assessment and, if appropriate, make a decision in the person's best interests.

### **Children's consent**

A child is a person under 18.

Children aged 16 and over are presumed to have capacity and able to consent or, refuse to treatment in their own right. If the practitioner thinks a child aged 16 or over may lack capacity, a mental capacity assessment will be carried out and the results recorded in the clinical notes.

If a child is under 16, it is the first choice to obtain the consent of the parent or carer. But for various reasons this may not be possible. A child who is under 16 can give consent if the practitioner considers that the child is 'Gillick competent'.

### **Consent for processing personal data**

There is a separate policy that covers consent for processing the personal data of non-patients. See the Data Protection and Information Security Policy, which covers marketing and its communication methods.

Training on consent is provided to team members at staff meetings. Consent procedures are reviewed and monitored by the practice manager.

## **Mental Capacity Policy**

In our practice, we treat patients politely and with respect, recognising their dignity and rights as individuals. We also encourage patients to be involved in decisions about their care and, before embarking on any aspect of patient care, we seek their consent to do so – recognising the rights of patients to decide what happens to their bodies. We recognise that patients have the right to refuse advice or treatment.

### **Informed consent**

We aim to provide each patient with sufficient information in a way that they can understand to allow them to make a decision about their care. We will use various communication tools to ensure that the patient understands what is being suggested.

In our discussions with patients, we explore what they want to know to help them make their decisions and explain:

- why we feel the treatment is necessary
- the risks and benefits of the proposed treatment
- what might happen if the treatment is not carried out
- the alternative treatment options and their risks and benefits

We encourage patients to ask questions and aim to provide honest and full answers. We always allow patients time to make their decisions.

We always make sure that the patient understands whether they are being treated under the NHS or privately and what the costs will be. Where a patient embarks on a course of treatment, we provide a written treatment plan and cost estimate.

Where changes to the treatment plan are needed, we obtain the patient's agreement and consent, including to any changes in the costs. The patient is given an amended treatment plan and estimate.

### **Voluntary decision making**

Decisions about their care must be made by the patient, and without pressure. We respect the patient's right to:

- refuse to give consent to treatment
- change their minds after they have given consent.

When this occurs we will not put pressure on the patient to reconsider but where we feel it is important, we will inform the patient of the consequence of not accepting treatment.

### **Ability to give consent**

Every person aged 16 or over has the right to make their own decisions and is assumed to be able to do so, unless they show otherwise. We recognise that, in some circumstances, children under 16 years may be able to give informed consent to examination and treatment. If a child under the age of 16 has “sufficient understanding and intelligence to enable him/her to understand fully what is proposed” (**GILLICK COMPETENCE**), then he/she will be competent to give consent for him/herself. Young people aged 16 and 17, and legally ‘competent’ younger children, may therefore sign a Consent Form for themselves but may like a parent to countersign as well.

### **Mental Capacity**

The Mental Capacity Act 2005 is designed to protect and empower individuals who may lack the mental capacity to make their own decisions about their care and treatment. Dental practitioners are required to act under the provisions of the new act and follow its code of practice when treating mental incapacitated adults. Dentists may be required in most cases to make their own capacity assessments and determine when treatment is in the patients best interests.

Examples of people who may lack capacity include those with;

- DEMENTIA
- A SEVERE LEARNING DISABILITY
- A BRAIN INJURY
- A MENTAL HEALTH CONDITION
- A STROKE
- UNCONSCIOUSNESS CAUSED BY AN ANAESTHETIC OR SUDDEN ACCIDENT

The law says someone lacking capacity CANNOT do one or more of the following four things;

- Understand information given to them
- Retain that information long enough to be able to make a decision
- Weigh up the information available to make a decision
- Communicate their decision

Where we have doubts about a patient’s ability to give informed consent, we will seek advice from our defence organisation.

### **Acting in the patients best interest**

If a patient needs care or treatment someone can give you the care or treatment you need.

This may happen because the patient needs help to decide what care or treatment they want because they cannot decide on your own because they do not have capacity at the time.

The person caring or giving treatment must follow the best interests checklist to decide what is in your best interest. For example in dentistry this could be;

- Treating the patient to get them out of pain (swelling, abscess etc)
- Dealing with trauma from an accident

If the patient has made a Lasting Power of Attorney, an advance decision to refuse treatment, or have a deputy, then they would make these decisions if you lack mental capacity.

### **Lasting Power of Attorney**

Lasting Power of Attorney (LPA) is a legal document where you can say in writing who you want to make certain decisions for you, if you cannot make them for yourself. This person is called an attorney.

You can only make this legal document if you understand what it means.

You can already do this for property and money. You would do this using an Enduring Power of Attorney (EPA).

The Mental Capacity Act has a new kind of power of attorney called a Lasting Power of Attorney (LPA). The attorney must act in the best interests of the person lacking mental capacity.

If a clinician in our practice is treating a patient with mental capacity who has an LPA, we need to ensure that their rights cover Health and Welfare.

If you would like any other information on The Mental Capacity Act, you can google 'Mental Capacity Act: Easy Read' or ask our practice manager for more information.