



# Guidance on Consent

This guidance must be read in conjunction with The Code (2016) prepared by the General Chiropractic Council (GCC), which sets out standards for conduct, performance and ethics for chiropractors to ensure the competent and safe practice of chiropractic.

This guidance is not intended to cover every situation that you may face. However, it does set out broad principles to enable you to think through and act professionally, ensuring patient interest and public protection at all times.

To note: The GCC will review this guidance as necessary and update it as appropriate, and reapply the principles of the Code to any critical changes or new situations that may emerge.

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Standards within the Code with reference to consent:

E: Obtain informed consent for all aspects of patient care.

Other Standards in The Code that reinforce and link to the above:

Refer to all Standards of The Code under Principle E: E1 through to E7. Also,

- C7 Follow appropriate referral procedures when making a referral or a patient has been referred to you; this must include keeping the healthcare professional making the referral informed. You must obtain consent from the patient to do this.
- C8 Ensure that investigations, if undertaken, are in the patient's best interests and minimise risk to the patient. All investigations must be consented to by the patient. You must record the rationale for, and outcomes of, all investigations. You must adhere to all regulatory standards applicable to an investigation which you perform.
- F3 Involve other healthcare professionals in discussions on a patient's

care, with the patient's consent, if this means a patient's health needs will be met more effectively.

H2 Only disclose personal information without patient consent if required by law.

## Consent

For the purposes of this guidance consent refers to the acceptance by a patient of a proposed chiropractic intervention after having been informed about the benefits and risks, in a way that they can understand and having the opportunity to discuss this and other factors that the patient may see as relevant to their decision about that intervention.

It is a general legal and ethical principle that valid consent must be obtained (see below about obtaining consent) before starting assessment or care of a patient. The process of seeking consent is a fundamental part of respect for patients' rights to be involved in decisions about their treatment. A chiropractor who does not obtain valid consent from a patient may be liable both to legal action by the patient and to fitness to practise proceedings by the GCC. It is important to note that a patient has the right to withdraw their consent at any time.

## Types of consent

There are two types of consent:

- (i) explicit (or 'express') consent: when a patient gives you specific permission either in writing or orally to do something. This is only valid consent if the patient knows and understands to what they are consenting;
- (ii) implied consent: when a patient indirectly indicates their agreement to undergo a procedure, for example non-verbal actions such as offering their arm in response to a proposal to carry out a blood pressure test. Implied consent amounts to valid consent if the patient knows and understands what they are agreeing to. If you are not sure whether you have valid consent, then you should seek explicit consent before proceeding.

## Obtaining consent

For consent to be valid you must ensure that the patient:

- (i) is acting voluntarily;
- (ii) has sufficient and balanced information to enable them to make an informed decision;
- (iii) is capable of using and weighing up the information provided; and
- (iv) has the capacity to give consent.

The information you provide to the patient must be clear, accurate and presented in a way that the patient can understand. For example, when giving a patient specific information you must consider how to meet any need for support that arises from any disabilities, literacy or language barriers they may have.

You must not make assumptions about a patient's level of knowledge nor assume that all patients are able to comprehend information in the same way. You must be sensitive to varying levels of ability to understand and assimilate information. You must give patients the opportunity to ask questions and reflect on their options. Some patients may need more time to absorb the information you are providing and to reflect before making a decision, it is important that you allow the patient time to do this.

Patients must be fully informed about their care. You must not rely on a patient to ask questions about their care, the responsibility to fully inform patients about their care lies with you. When discussing with patients the expected outcomes of their care, chiropractors must fully discuss the risks as well as the benefits and explore with the patient what other factors they may see as relevant to making a decision.

When explaining risks, you must provide the patient with clear, accurate and up-to-date information about the risks of the proposed treatment and the risks of any reasonable alternative options, in a way that the patient can understand. You must discuss risks that occur often, those that are serious even if very unlikely and those that a patient is likely to think are important. You must encourage patients to ask questions, so that you can understand whether they have particular concerns that may influence their decision and you must answer honestly.

### **Recording consent**

You must use the patient's medical records or a consent form to record the key elements of your discussion with the patient. This record should include all of the information you discussed, any specific requests or concerns expressed by the patient, any written, visual, audio information or other support given to the patient, and details of any decisions that were made. The recording of all information discussed applies to new patients and first appointments as a minimum; after such and at each appointment thereafter you are required to update the patient's record and record all relevant and pertinent information and discussions. You must obtain a patient's written signature accompanied by the date at the initial appointment before any treatment commences.

A written copy of the patients record of initial discussions, detailing what decisions were made and why should be offered to every patient. Every patient should also be asked if they want an additional copy of this record and details of their treatment sent to their GP and/or other medical carers as appropriate.

## Capacity to give consent

For consent to be valid it must be given by a patient who has the capacity to give consent. Capacity refers to the ability of a patient to understand, retain, use or weigh up information that is relevant to his or her health needs and the examination and/or treatment that you are proposing and communicate their wishes.

You must not assume that a patient lacks capacity to make a decision solely because of their age (see below regarding children and young people), disability, appearance, behaviour, medical condition (including mental illness), their beliefs, their apparent inability to communicate, or the fact that they make a decision that you disagree with.

You must only regard a patient as lacking capacity once it is clear that, having been given all appropriate help and support, they cannot understand, retain, use or weigh up the information needed to make a decision or communicate clearly their wishes. Making decisions about treatment and care for patients who lack capacity is governed by law across the UK. The legislation sets out the criteria and procedures to be followed in making decisions when patients lack capacity to make these decisions for themselves.

England and Wales are governed by the Mental Capacity Act 2005, Scotland is governed by the Adults with Incapacity (Scotland) Act 2000 and Northern Ireland is governed by common law which requires that decisions must be made in a patient's best interests.

If a patient in England and Wales does not have capacity, the Mental Capacity Act 2005 enables someone who is over 18 years of age and authorised to make decisions for them under a Lasting Power of Attorney (LPA). The LPA must hold the explicit power to make medical/care decisions. Alternatively, someone who has authority to make treatment decisions for that person as a court appointed deputy can give consent. In Scotland the Adults with Incapacity (Scotland) Act 2000 enables someone to hold Power of Attorney and in Northern Ireland it is also known as Power of Attorney.

You must take account of the advice on assessing capacity in the Codes of Practice that accompany the Mental Capacity Act 2005<sup>1</sup>, and the Adults with Incapacity (Scotland) Act 2000<sup>2</sup>.

The decision or action taken on behalf of the patient who lacks capacity must be in their best interests.

You must record in the patient notes your reasons for deciding that:

- (i) the treatment is in the patient's best interests;
- (ii) the patient lacks capacity.

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<sup>1</sup> Department for Constitutional Affairs (2007) *Mental Capacity Act 2005, Code of Practice*, [www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf](http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf)

<sup>2</sup> Adults with Incapacity (Scotland) Act (2000) *Revised Code of Practice For persons authorised under intervention orders and guardians*, [www.gov.scot/Resource/Doc/216558/0058064.pdf](http://www.gov.scot/Resource/Doc/216558/0058064.pdf)

## **Ensuring that consent is voluntary**

You must ensure that the consent of a patient is given voluntarily and not under any form of pressure or undue influence. It is your duty to ensure that a patient has all the necessary information and support they need in order to give their consent.

Patients may be put under pressure by employers, insurers, relatives or others, to accept a particular investigation or treatment. You should be aware of this and of other situations in which patients may be vulnerable. Such situations may be, for example, if they are resident in a care home, subject to mental health legislation, detained by the police or immigration services, or in prison.

You should do your best to make sure that such patients have considered the available options and reached their own decision. They have a right to refuse treatment, and you should make sure that they know this and are able to refuse if they so wish.

If you have doubts about whether a patient has given valid consent to a treatment, you must consider whether they have been given the information and support that they need and want and how well they understand the details and implications of what treatment is proposed.

## **Discussing treatment options and continuing treatment**

The exchange of information between chiropractor and patient is central to good practice. Good communication is based on listening, you must share with your patients' accurate, clear and relevant information to enable them to make informed decisions about their treatment options but it is also extremely important that you listen well to the patient and explore their perspectives.

You must take into consideration a patient's capacity to understand and obtain and record consent from a patient prior to starting their treatment and plan of treatment.

You must make sure that patients are kept informed about the progress of their treatment and are able to make decisions at all stages, not just at the initial stage. If treatment is ongoing, you should make sure that there are clear arrangements in place to review decisions with the patient and, if necessary, to make new ones.

You must also ensure the patient continues to consent to treatment when the circumstances of the patients care changes and that the reviewing process involves the patient as much as possible, ensuring the treatment remains correct for the patient's needs.

## **Removal of the patient's clothing**

For the purposes of examination and/or treatment, an alteration and/or removal of items of the patient's clothing may be necessary.

Before doing this, you must always obtain the patients consent prior to any adjustment and/or removal of clothing. You must also ensure you have clearly explained why it is necessary to do so, and that the patient fully understands.

Extra care must be taken if an adjustment or removal of patients clothing is necessary in a sensitive area, for example the lowering of a patient's underwear or adjustment of a bra strap. Ideally the patient must do this for themselves, but, if they are unable to do so, you must receive the patient's permission.

You must only remove or alter clothing that is necessary for the treatment. You must also offer a gown to the patient and a suitable and private place for them to change.

### **Treatment of children and young people**

You should involve children and young people as much as possible in discussions about their care, even if they are not able to make their own decisions. The capacity to consent depends more on the patient's maturity and ability to understand and consider the implications of a decision than on their age.

You must always seek parental consent if a child is to be seen without someone else being present, unless the child is legally competent to make their own decisions.

In clinical practice in the UK, patients over the age of 16 years are treated as independent adults and are assumed to have sufficient capacity to decide their own healthcare treatment. They are permitted to give their consent to or to refuse treatment without parental involvement, unless there is significant evidence to suggest otherwise.

In general, patients under the age of 16 are not deemed to be independent adults and consent is required from the parent(s) or guardian(s). However, some recognition has been given to those under 16 years of age who may be mature enough to make competent decisions for themselves. UK law introduced the concept of the 'Gillick competent' child, meaning a child who is under sixteen but deemed mature, intelligent and competent enough to understand the nature and implications of a treatment. Such a child can therefore give consent as an independent adult. The law leaves it to you – the healthcare professional – to decide whether the child is 'Gillick competent.' It is therefore imperative that you assess maturity and understanding individually.

If you do not believe a patient of 16 or under is competent and does not have the capacity to consent to their treatment, you must gain consent from someone with parental responsibility for that individual and that person must have the capacity to give consent.

To summarise, when assessing a young person's capacity and competence to make decisions, you must bear in mind that:

- (i) a young person under 16 may have capacity to make decisions, depending on their maturity and ability to understand what is involved; and
- (ii) a young person at 16 can be presumed to have capacity to make most decisions about their treatment and care.

### Essential Reading:

- *Hyperlinks to relevant legislation and important information*, GCC April 2015, [www.gcc-uk.org/UserFiles/Docs/Legislation%20Relevant-Reference-Links-April15.pdf](http://www.gcc-uk.org/UserFiles/Docs/Legislation%20Relevant-Reference-Links-April15.pdf)
- *Mental Capacity Act 2005*, Government Legislation, 2005, [www.legislation.gov.uk/ukpga/2005/9/contents](http://www.legislation.gov.uk/ukpga/2005/9/contents)
- *Mental Capacity Act 2005: Code of Practice*, Department for Constitutional Affairs, 2007, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224660/Mental\\_Capacity\\_Act\\_code\\_of\\_practice.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224660/Mental_Capacity_Act_code_of_practice.pdf)
- *Mental Health (Care and Treatment) (Scotland) Act 2003*, Government Legislation, 2003 [www.legislation.gov.uk/asp/2003/13/contents](http://www.legislation.gov.uk/asp/2003/13/contents)

### Additional Information:

- *Reference Guide to Consent for Examination, Treatment or Care*, Department of Health, Social Services and Public Safety, Northern Ireland, 2003, [www.dhsspsni.gov.uk/public\\_health\\_consent](http://www.dhsspsni.gov.uk/public_health_consent)
- *Patient Consent to Examination and Treatment – Revised Guidance*, Welsh Assembly Government, 2008, [www.wales.nhs.uk/sites3/Documents/465/WHC%282008%29010.pdf](http://www.wales.nhs.uk/sites3/Documents/465/WHC%282008%29010.pdf)
- *Consent: patients and doctors making decisions together*, GMC, 2008, [http://www.gmc-uk.org/guidance/ethical\\_guidance/consent\\_guidance\\_index.asp](http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp)
- *Obtaining Consent Patients' capacity to give consent: guidance for osteopaths practising in England and Wales*, GOC 2013, [www.osteopathy.org.uk/news-and-resources/document-library/osteopathic-practice-standards/obtaining-consent-patients-capacity-to-consent--practical/](http://www.osteopathy.org.uk/news-and-resources/document-library/osteopathic-practice-standards/obtaining-consent-patients-capacity-to-consent--practical/)
- *Reference guide to consent for examination or treatment*, Department of Health England, 2009,

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/138296/dh\\_103653\\_1\\_.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/138296/dh_103653_1_.pdf)

- *A Good Practice Guide on Consent for Health Professionals in NHS Scotland*, Scottish Executive Health Department, 2006, [http://www.sehd.scot.nhs.uk/mels/HDL2006\\_34.pdf](http://www.sehd.scot.nhs.uk/mels/HDL2006_34.pdf)