

August 2016

British Orthopaedic Association Guidance on Consent

Scope

This short note provides some context on *Montgomery v Lanarkshire Health Board* (2015) and some straightforward advice for best practice in consent following the case. It is not exhaustive and we recommend attendance at consent themed sessions at the Belfast Congress for further information.

Montgomery v Lanarkshire Health Board (2015)

The 2015 [Montgomery Case](#) has sparked discussion regarding what is, or will be, considered best practice for obtaining consent from patients. Specifically, the Supreme Court's rejection of the Bolam test - that a doctor should be judged by standards accepted by a responsible body of medical opinion - has created a sense of uncertainty over what best practice consists of.

The judgement stated that any risks material to the individual patient should be discussed to inform consent. Material risks are those that "a reasonable person in the patient's position" (*Montgomery v Lanarkshire Health Board* 2015, p.28) would consider material or those that the doctor knew, or reasonably should have known, were pertinent to their patient.

This judgement moves authority away from respected bodies of medical opinion, to the courts: who will interpret what the "reasonable person" would think, or what a doctor reasonably should have known about their patient's needs.

Current position following the case

The GMC's present view (set out in this [blog](#) (GMC 2015a) and this '[Hot Topic](#)' page (GMC 2015b)), is that the judgement has not changed how consent should be obtained – and simply brings the law up to date with [Good Medical Practice](#) (GMC 2013) and their related guidance [Consent: patients and doctors making decisions together](#). (GMC 2008)

The BOA's advice, therefore, is to consider the GMC's post-Montgomery explanatory advice and the existing GMC guidance, summarised below, to help ensure you are practicing in accordance with current standards.

GMC post-Montgomery explanatory advice

This '[Hot Topic](#)' page (GMC 2015b) provides practical advice following Montgomery. Specifically, consenting is not a "tick box exercise" (GMC 2015b) and a signed consent form does not demonstrate you have provided the information required. Key points of discussion with the patient must be recorded in medical records or the consent form. Checklists, or similar, can be used to avoid repeated writing of the same information, but this must not prevent tailored, individual discussion with patients.

Consent: patients and doctors making decisions together.

The approach outlined in this [guidance](#) (GMC 2008) is one where consenting is based on tailored discussion for individual patients to maximise their ability to make their own decisions, based on thorough exploration of the issues. The aim is to make decisions "in partnership" with patients (GMC 2008,p.6).

Information should be tailored on a range of factors including a patient's "needs, wishes and priorities" (GMC 2008,p.11) without making assumptions about the information a patient might want or need, what clinical issues they find significant, their level of knowledge, or understanding of risk.

Building on the above, the BOA's view is that consent should be seen as a process which continues throughout care. Obtaining consent does not just involve the signing of a formal document which, whilst necessary, is not evidence of adequate consent. The BOA advises that it is not best practice to formally obtain consent for planned elective surgery on the day of admission. The implication of this is that the patient undergoing planned surgery should have the opportunity to reflect on that planned surgery and may need to ask further questions at an additional time. This may be particularly necessary when there is a significant delay prior to surgery or when there is a need to clarify the surgical plan, for example when the patient is placed on a list for surgery by a practitioner who is not able to undertake the surgery.

References

1. The Supreme Court *Montgomery v Lanarkshire Health Board* (2015), available via: <https://www.supremecourt.uk/cases/uksc-2013-0136.html> accessed August 2016
2. GMC(2015) *Making decisions together: the implications of the Montgomery judgement* available via: <https://gmcul.wordpress.com/2015/05/29/making-decisions-together-the-implications-of-the-montgomery-judgment/> accessed August 2016
3. GMC (2015) Ten questions about...consent available via: <http://www.gmc-uk.org/guidance/29457.asp> accessed August 2016
4. GMC (2013) Good Medical Practice available via: http://www.gmc-uk.org/guidance/good_medical_practice.asp%20Accessed%20August%202016 accessed August 2016
5. GMC (2008) *Consent: patients and doctors making decisions together.* available via : http://www.gmc-uk.org/quidance/ethical_guidance/consent_guidance_index.asp accessed August 2016