

Feltham Dental Care

Consent policy

We treat patients politely and with respect, recognising their dignity and rights as individuals. We 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 and to refuse advice or treatment.

Valid consent

For consent to be valid it must be given voluntarily by an appropriately informed person who has capacity to consent to the proposed treatment. Those with capacity to consent include:

- The patient
- Someone with parental responsibility for a patient that is under the age of 18
- Someone authorised to do so under a Lasting Power of Attorney (LPA)
- Someone who has authority to make treatment decisions as a court appointed deputy.

If a young person (aged 16-17 years) is capable of giving consent, it is not necessary to obtain consent from a parent. If a child under 16 years has sufficient understanding and intelligence of what is involved in the proposed treatment (ie is Gillick competent), the child may be competent to consent to treatment. However, it is good practice to involve the family in the decision-making process, unless the young person or child wishes to exclude them.

Capacity

When assessing a patient's capacity to make a decision for themselves, we will ensure that they can

- Understand the information that we are giving them
- Retain the information for long enough to make the decision
- Use the information to make a decision
- Communicate their decision (verbally or non-verbally).

Some patients may be able to consent to some treatment, but not to other treatment and may be better at making decisions at some times but not at others. It is important that, for these patients, we assess their ability to take the decision in question and record conclusions in their clinical notes bearing in mind that pain, tiredness, medication, panic and confusion may temporarily affect a patient's capacity to consent.

Relevant information

A person cannot consent to treatment if they have not been fully informed. We make sure that the patient is given sufficient information and in a way that they can understand.

Our discussions with the patient will explore what they want to know to help them make their decisions and explain:

- The type and extent of treatment being proposed

- Why you think that the treatment is necessary
- The advantages and disadvantages of the treatment
- What alternatives are available
- Any significant risks and side-effects
- What might happen if the treatment is not carried out
- The patient's freedom to choose, even if their choice is not your preferred option
- The patient's right to change their mind and withdraw consent at any time.

We will 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, you should give them a written treatment plan and cost estimate.

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

Time to think

We will ask patients what they think of the proposed treatment and encourage them to ask questions. We aim to give honest and full answers. Patients may need to discuss their treatment more than once. We encourage them to write down any questions that they want to ask to ensure that nothing is forgotten. We will allow patients time to make their decisions, even if this means deferring the treatment.

Voluntary decision making

Decisions about their care must be made by the patient, and without pressure. We will make sure that the patient understands that they can refuse to give their consent to the treatment and that they can change their minds at any time – even after the treatment has started.

Although the patient does not need to give a reason for refusing treatment or for changing their mind, understanding their concerns will allow us to give them the best advice and make sure that the patient understands that the consequences. We will make a full record of your discussion with the patient in their clinical notes.

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The Mental Capacity Act Principles

The *Mental Capacity Act 2005* provides a framework for people working in health and social care who are involved in the care, treatment or support of people over the age of 16 years of age who may lack the capacity to make decisions for themselves (generally, for patients under 16 the normal way of dealing with consent issues applies).

Significantly, the Act introduces a new criminal offence of ill-treatment or wilful neglect of people who lack capacity.

The Code of Practice

The Act is accompanied by a Code of Practice (Code) that provides guidance to those working with people who may lack capacity. As a dentist, you have a **legal duty** to consider the Code. Accordingly, you must be familiar with it and follow its guidelines. If you choose not to follow them, you must have a convincing reason for doing so. It is recommended that you obtain and read a copy of the Code.

The Code of Practice is available on <http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf>

Principles

The Act contains five guiding principles that apply when you are providing care or treatment for a patient who lacks capacity:

- A patient must be assumed to have capacity unless it is established that they lack capacity
- A patient must be given all practicable assistance to make their own decision before they are treated as being unable to do so
- A patient is not to be treated as unable to make a decision merely because they make an unwise decision
- An act done or a decision made under this Act for or on behalf of a patient who lacks capacity must be done in their best interests; and
- Anything done for a patient who lacks capacity should be the least restrictive of their basic rights and freedoms.

Definition of a person who lacks capacity

A patient lacks capacity if they are unable to make a decision because of an impairment of, or a disturbance in the functioning of, their mind or brain.

A person is unable to make a particular decision if they are unable to:

- Understand the information relevant to the decision
- Retain that information
- Use or weigh that information as part of the process of making the decision; or
- Communicate their decision (whether by talking, using sign language or any other means).

It does not matter whether the impairment is permanent or temporary. Indeed, lack of capacity may not be a permanent condition. Assessments of capacity should be time and decision specific.

A lack of mental capacity could be due to:

- A stroke or brain injury
- A mental health problem
- Dementia
- A learning disability
- Confusion, drowsiness, or unconsciousness because of an illness or its treatment
- Substance misuse (including drugs and alcohol).

Assessment of capacity

In accordance with the Act, you are required to make an assessment of capacity before carrying out any dental care or treatment.

In order to make a decision on capacity, a dentist must take into account whether or not the patient is able to understand the proposed care or treatment, its benefits and risks and to communicate their decision to accept or decline care or treatment.

The assessment must be decision-specific and you should involve the relevant family, friends, carer or an Independent Mental Capacity Advocate (if one has been appointed). People who know the patient may be able to advise you on the best methods of communication. Sometimes, the use of simple language, pictures and objects may be helpful.

You should not express your opinion without first conducting a proper assessment of the patient's capacity to make the decision.

You must begin your assessment with the assumption that the patient has the capacity to make the decision in question.

The 'functional test' of capacity:

In order to decide whether a patient has the mental capacity to make a particular decision you must:

- first determine whether there is an impairment of, or disturbance in, the functioning of the mind or brain of the patient.

If the answer is 'yes', you must:

- consider whether the impairment or disturbance make the patient unable to make the particular decision.

A patient will be unable to make the particular decision if, after having been provided with the necessary support, they are unable to:

- understand the information relevant to the decision and the consequences of making or not making the decision

- retain the information
- consider the information as part of the decision making process
- communicate their decision by talking, using sign language or other means.

Your assessment must be made on the balance of probabilities. You *must ask: is it more likely than not that the patient lacks capacity?*

The results of the assessment must be recorded in the patient's clinical record and you should state how you have reached your conclusion. This is also important because your assessment of capacity may be challenged by the patient or someone acting for them. More information regarding this issue can be obtained from the BDA.

Making decisions for patients who do not have capacity – best interests

If a patient is assessed as lacking the mental capacity to make their own decision, then any decision or action that you take must be in the best interests of the patient. Specifically, you must consider whether it is possible to act in a way that would be less interfering with the patient's rights and freedoms. The first question you ask may be whether treatment is necessary at all.

The Act and Code provide a list of non-exhaustive factors to consider when determining what is in the best interests of the patient. Such factors include:

- you should not make assumptions about the patient's best interests merely on the basis of their age, appearance, condition, or any aspect of their behaviour
- you must consider all the relevant circumstances relating to the decision in question
- you must consider whether the patient is likely to regain capacity
- you should consult other people (i.e. the patient's family, carers, close friends) if appropriate to do so.

Once again, it is important to keep clinical patient records and notes detailing the reasons for your decision or course of action. This is important because a dispute may arise regarding your decision or action. You will want to be able to demonstrate in your recordkeeping that the decision made was reasonable in all the relevant circumstances and that it was reasonable to believe that the action was in the best interests of the patient.

Liability for acts in connection with care or treatment

The Act provides you with legal protection from liability for carrying out certain actions in connection with the care and treatment of a patient who lacks the mental capacity to consent provided that you:

- have observed the principles of the Act
- have undertaken an assessment of capacity and reasonably believe that the patient lacks capacity in relation to the specific decision to be made; and
- reasonably believe that your action is in the best interests of the patient.

Therefore, if you have complied with the Act in assessing the capacity of a patient and have acted in the best interests of the patient, you will be able to diagnose and treat patients who do not have the capacity to give their own consent. You should be aware that the Act will not protect you from liability arising from negligence.

As stated before, it is important that you keep clinical records and notes regarding the decision and/or action taken.

Use of restraint

Sometimes it might be necessary to restrain a patient. The Act defines 'restraint' as:

- using or threatening to use force to do an act which the patient is resisting; or
- restricting the patient's liberty of movement, whether or not the patient resists.

You must take special care if restraint is necessary to treat the patient. In addition to the general criteria for avoiding liability under the Act, you must also:

- reasonably believe that the restraint is necessary in order to prevent harm to the patient; and
- ensure that the restraint is a proportionate response to the likelihood of the patient suffering harm and the seriousness of the harm that the patient may suffer.

It is important to note that the use of excessive restraint may leave you liable to a range of civil and criminal penalties.

You should keep records to show compliance with the Code.

In dental practice the need for physical restraint is very unlikely and should only be used in exceptional

circumstances.

MCA - FIVE STATUTORY PRINCIPLES

5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

1. A person must be assumed to have capacity unless it is established that they lack capacity.

