

Consenting to treatment

Consent: the key facts

Consent means saying yes

When you are you have the right to make your own decisions about your body, just as you do at any other time.

It is against the law to give you medical treatment unless you agree to it.

It is also against the law for treatment to be given to your baby without your consent or the consent of another person with parental responsibility.

Agreeing to treatment is known legally as giving consent.

In law, your consent must be genuine. This means you must understand the treatment well enough to make a decision.

It also means that no one, including your family or healthcare professionals must put pressure on you or bully you into agreeing to have the treatment.

If you are a surrogate you have the same rights as any other woman or birthing person to make decisions about your body.

You cannot be treated unless you agree

No one can treat or touch you against your will. Even if health professionals don't agree with your decisions about your body, they must respect them.

Health professionals must ask if you agree to any medical treatment. For example, they must ask before examining you, before taking your blood pressure, and before giving you pain relief. This is the law.

If you do not agree to treatment, but health professionals still treat you, they may have broken the law.

What happens if I can't give consent?

The only time health professionals do not need your consent to treatment is when you are not able to make a decision. It is very rare in law for someone to be unable to make their own decisions.

It could be because it is an emergency and you are unconscious. In this situation healthcare professionals must only give you treatment and care that you need to stay alive and safe.

Very rarely, you may not be able to give consent because you cannot understand the choice you need to make even when it is very clearly explained. This is called not having mental capacity. Our factsheet *Mental capacity and maternity care* explains.

If you have particular communication needs or are worried about communicating, talk to your doctors and midwives so you can plan the best way for you to give or not give consent.

When should I be asked for my consent?

A healthcare professional must ask you before they examine you, investigate anything, or give you any care or treatment.

You must be asked whether or not you agree to every medical procedure, even if it is as minor as taking your blood pressure. You don't have to speak to show that you agree. You could simply hold your arm out for the blood pressure cuff.

Remember that you do not have to agree. It is not your role to please healthcare professionals. It is their role to look after you in the way that you want.

They must ask you every time they carry out a procedure (this includes things like blood tests, monitoring your blood pressure, internal examinations or offering you medication). Even if you consented to this examination or

treatment before, they must ask you again.

They must be clear about what they are asking.

For example, if your midwife wants to carry out a vaginal examination, they need to tell you in language that makes it clear that they will be putting their fingers inside you. Saying something like, 'Can you just hop up on the bed and we'll have a look and see how you are doing' is not clear. In addition, it is wrong for a healthcare professional to carry out further interventions; for example, I just did a "sweep" while I was there'. They should ask your permission in advance. (A sweep is an internal procedure which is intended to start labour.)

Making a birth plan and having respectful conversations with your healthcare professionals early in your pregnancy can help you think about the treatment and care you may be offered. You can specify in your birth plan any treatment you do not want.

For example, if you do not want vaginal examinations during your care, talk to your midwife about this during your antenatal care. Make sure your choice is written in your notes and birth plan. You do not have to say why you do not want to have vaginal examinations. If you are comfortable explaining why, this can help your midwives suggest care that may work for you.

- **If you do not think your healthcare professionals are listening to you when you refuse consent, you can contact us for advice.**

At some point in your pregnancy and labour your healthcare professionals may think your care or treatment should change. If anything changes, they must tell you what is different and ask you again. If the treatment could now bring

new risks or new benefits, they must ask your consent again.

You need to know who is giving you maternity care and agree. You must be asked before a medical student can be part of your care.

What if I'm asked to give consent in advance?

In some cases you might be asked for consent ahead of time. You can still change your mind afterwards.

If you are going to have an operation such as a planned caesarean section, the doctors should offer you a proper conversation about the risks and benefits ahead of time.

They cannot do anything during the operation that you haven't agreed to unless it will save your life or prevent serious harm.

Even if you have discussed your care in advance, you should still be offered another discussion at the time of the procedure in case things have changed or you have changed your mind.

For example, if you have been booked for an induction you can change your mind and decline the induction at any time, including on the day of the procedure.

You do not have to agree to procedures simply because they are standard in this particular hospital or birth centre.

What information must I be given?

Before you decide about any care or procedure the healthcare professionals must give you information about what will happen.

The information should tell you about any risks that will be important to you. It should tell you if there are other treatments you could have instead and the risks and benefits of those. It should

tell you what could happen if you don't have the treatment.

Your doctor should listen to you and find out what matters to you. For example, if a treatment or procedure might make future pregnancies complicated, they need to talk to you about how important it is to you to have more children so that you have the information you need to make a decision.

It is not enough just to give you a leaflet or a link to a website. You should also have a personal discussion with your healthcare professional.

You might want to use the BRAIN framework to help you get the answers you want:

B – What are the **B**enefits?

R – What are the **R**isks?

A – What are the **A**lternatives?

I – What does your **I**ntuition (gut) say about what's right for you?

N – What would happen if I said **No** or **Not** now?

Your healthcare professional must not give you misleading information. The information must be up to date and based on the most recent evidence. They should give you as much information as they can to help you need to make a decision.

They must make it easy for you to ask questions, and they should answer your questions properly. If there is a question that they cannot answer, they should explain why (for example if the information isn't available). They may be able to help you find out information you need if it is available or point you to where that information might be.

If you need an interpreter or support to communicate the Trust should provide this.

What if I didn't understand?

You can ask for things to be explained again. It is ok to ask questions about what you were told and why during a previous appointment or during a previous pregnancy.

Do I have the right to request certain care?

You have the right to request care but healthcare professionals do not always have to offer care if there is a good reason why they should not.

You should be listened to and taken seriously when you ask for care.

For example, if you ask for pain relief or for your pain relief to be topped up, it should be given unless there are good reasons against providing it. If there is a medical reason for refusing pain relief because it could cause you harm ('a clinical contraindication') then your doctor or midwife should explain this to you and document the discussion.

- You can read about your right to use a birth centre or have a water birth on our factsheet [Can I choose where I give birth?](#)
- You can read about requesting a c-section on our factsheet [Your right to a c-section.](#)

What is the legal status of a birth plan?

You can write a birth plan to tell people what care you want during labour and after.

Your midwife or doctor should help you to make a birth plan that will be included within your maternity records.

You may also want to think about what is important to you and what you would like to happen in various situations. It can help you think about any boundaries you have, for example if you never want to be naked or be examined internally.

You can give your preferences, for example that you want your baby to be placed skin-to-skin with you after the birth.

Making your birth plan should be a collaboration between you and the health professionals supporting you, sharing information and finding out the best way to care for you and meet your wishes.

Your birth plan has no legal status, but if it has been agreed with your midwives and doctors then this should indicate that they are happy with it and will follow it. Even if you have chosen care that is not what they recommend, they should respect it and try to meet your wishes. A birth plan can be used in court as evidence of your wishes and the informed decisions you had taken at the time it was made.

If you have a disability any reasonable adjustments should be recorded in your notes/ birth plan. This could include, for example, room for your wheelchair in the birthing suite, lighting that lets you see better, a quiet or dark room to help with sensory overwhelm, or time after the birth to recover from fatigue. If you need reasonable adjustments under the Equality Act 2010, the Trust has to provide these.

- You can read more about reasonable adjustments on our factsheet *Disability and long-term health conditions: Your right to reasonable adjustments in maternity care.*

No matter what you say in your birth plan you can change your mind and consent to different care at any time.

Your birth plan can include the role you want a birth partner or doula to play.

After giving birth, you can challenge the treatment you received. Your birth plan can be evidence of the consent you gave or did not give.

If there are medical reasons not to give you the treatment in your birth plan, your healthcare professionals should explain them.

Healthcare professionals have a duty to prevent suffering that can be avoided. They must not refuse you pain relief or other support simply because of a hospital guideline or policy.

What is undue influence?

Your healthcare professional's job is to explain the risks of treatment to you. They can recommend one treatment over others and give you their reasons for this. But they must not put pressure on you to choose a particular treatment for yourself or your baby.

If your healthcare professional puts pressure on you to make you choose a particular treatment, this is called undue influence.

Undue influence could mean that your healthcare professional keeps discussing risks even when you have made a decision.

For example, you may have decided that you do not want an induction. You discuss the risks and benefits with the midwife, who is worried about your decision. They call in the senior midwife, who repeats their concerns. Then the consultant obstetrician comes to see you and repeats them again. Unless the risks have changed and your health professionals want to give you new information, this may comprise undue influence.

It may also be undue influence if your health professional threatens to stop caring for you.

For example, if they said, 'Once you are 42 weeks pregnant the home birth team won't be able to come out to you and you will have to give birth in hospital' or 'If you don't

agree to giving birth on the labour ward you will have to find another Trust to look after you.'

It may be undue influence if your healthcare professional tells you to make a decision by a certain time even when there is no clear medical need.

For example, they might say, 'You need to decide in the next twenty minutes' without explaining why.'

They must not put pressure on people in your family to persuade you to change your mind.

For example, they might say to your partner, 'Try and talk them round. If it were my partner I wouldn't want them to do this. We only want what's best for your baby.'

They must not restrain you physically.

- You can read more about undue influence on our factsheet [Social Services and Maternity Care](#).
- If you think your healthcare professionals are using undue influence, you can [contact us](#) for advice.

What if I'm afraid of being referred to social services?

If your healthcare professional threatens to refer you to social services if you do not make the treatment decision they want, this is undue influence. They must never do this. If they do this, you may not legally have given consent. They could be taken to court if they went ahead and treated you.

If you have a disability or long-term illness, you may be worried that social services will take your baby away if you talk about any concerns you have about caring for your baby. They must work with you to find solutions, and you should never feel threatened.

If you are involved in the criminal justice system, you may feel worried that

something you say could be used as an excuse to take your baby away. You have the same rights as everyone else and should never be threatened with social services merely because of your circumstances.

If you are in, or may go to prison during your pregnancy, the charity Birth Companions has a [guide to pregnancy and early motherhood in prison](#).

If a woman is being treated for a mental disorder under the [Mental Health Act 1983](#), or the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), that does not necessarily mean that she lacks capacity in relation to decisions about her maternity care. She should be treated in the same way as any other woman unless she has been assessed to lack capacity.

- You can read more on our factsheet [Social services and maternity care](#).

Must I give consent in writing?

No. You can tell your healthcare professional that you agree to treatment. Or you can agree with a gesture, for example by holding out your arm so they can check your blood pressure.

Usually you will sign a consent form before surgery. Before you sign, you and your healthcare practitioner should talk about the treatment, the risks and the benefits.

It is important that you understand what you are consenting to, and the risks it brings.

For example, if you have a visual impairment and need to read in large print, ask for the form in large print and for plenty of time to read it.

A signed form and medical notes are evidence that you gave consent but not proof. Other evidence may show you did not have enough information or were put under pressure.

Royal College of Obstetricians and Gynaecologists guidance and guidance on consent from the Association of Anaesthetists of Great Britain and Northern Ireland state that special care must be taken when obtaining consent from women who are in labour, particularly if they are under the influence of narcotic analgesics (opiate-derived painkilling drugs).

What happens in an emergency?

If you can't give consent in an emergency, for example because you are unconscious, you can be treated to save your life or stop your condition getting much worse. In a situation like this, if there is time, the healthcare team should talk to your next of kin about any decisions.

- [The Patients' Association](#) has information about next of kin

It is very rare that you would be unable to give consent even if you did need emergency treatment during pregnancy or labour.

Even if healthcare professionals think your baby's life is at risk, they cannot perform procedures, such as assisted birth (forceps or ventouse), without your agreement.

If it feels like an emergency and you feel under pressure to make a decision it can be useful to ask the healthcare professional something like, 'Am I in immediate danger? Is my baby in immediate danger?' This allows you to have a conversation about what the actual risk is, and how urgently you need to make a decision.

Can I say no to treatment?

Yes. You can refuse treatment even if your doctors or midwives think you are wrong.

If you can make decisions, you can say no to treatment for any reason. Your reason

does not have to make sense to other people. You can say no to treatment even where it might lead to your death, or your baby's death.

You can say something like 'I don't want that treatment' or 'I do not consent to this treatment'.

- If you need advice on refusing treatment you can [contact us](#).

Can I change my mind and withdraw consent?

Yes. Even if you gave consent you can change your mind. This is called withdrawing consent.

You can do this at any time. If your healthcare professional suspects you may no longer want the treatment, they must stop as soon as possible. They should talk to you and only carry on if they are sure you consent.

For example, you can say 'Stop'.

If you want some time to process what is happening you can say 'wait a minute, please'.

You can move away, if you are able to.

If you are in labour, you can ask for the healthcare professional to wait till your contraction has finished before they carry out a vaginal examination.

It is always ok to say no.

What if people are worried about my mental capacity?

Mental capacity means that you can understand the choice you need to make about treatment and can make a decision.

In law, everyone has mental capacity unless it can be shown that you do not. It is very rare to not have mental capacity.

The people caring for you cannot say you do not have capacity simply because you do not agree with them.

- You can read more on our *Mental capacity and maternity care* factsheet.

What if I am under 18?

If you are 16 or 17 then the law presumes that you have the capacity to consent to medical treatment.

- You can read more about mental capacity on our *Mental capacity and maternity care* factsheet.

If you are 16 or 17 and you wish to decline care, then in rare and serious cases someone with parental responsibility or the Court could override your decision. This should only happen if declining care would be likely to lead to your death or severe permanent injury.

If you are under 16 then you can consent to treatment if your healthcare professionals believe that you fully understand what is involved. This is called having Gillick competence. Otherwise someone with parental responsibility can consent for you.

- You can read about Gillick competence on the [NHS website](#).
- You can find a summary of who has parental responsibility on the [UK government's website](#).

Will giving birth make it hard for me to give consent?

Labour can be tiring and hard work but it is very unlikely that giving birth will make it hard for you to give consent.

During your pregnancy you should be supported to think about what you might want during labour. You should be given plenty of time and opportunities to discuss decisions that might come up in your case.

If you are in labour your health professionals must take extra care to be sure you have consented to treatment. They must take even more care if you are given painkillers called narcotic

analgesics. These are opioid drugs and can make you sleepy.

If you know you will find it hard to communicate during labour, talk to your healthcare professionals early.

For example, this could be because you use British Sign Language and need an interpreter. Or it could be because you are autistic and pain can make it very hard for you to speak or use your assistive technology.

Providing communication support is called a 'reasonable adjustment'. The Trust or Board must make sure that anyone who is disabled has equal access to all of its services. This applies throughout your pregnancy, labour and postnatal care. It includes making sure you can communicate and give informed consent when giving birth. This applies to written as well as spoken communication.

You are the expert in what you need in order to communicate and your healthcare professionals must listen to you.

Can someone else give consent for me?

Only you can give consent to your treatment or care.

You can ask a birth partner, including a doula, to support you during labour. You can ask them to communicate on your behalf to express the preferences you have made in your birth plan.

If something changes in your labour and you need to give consent to something that isn't covered in your birth plan, only you can make that decision.

Your birth partner or doula can support you in this situation. You can ask for some time to discuss the decision alone with them if you want. Or, for example, they can assist you by asking on your behalf for more information about any new risk the midwife raises, how urgent

a treatment really is, and how important it is.

Some autistic people can find it very difficult to communicate during labour and to give or refuse consent. It can be hard for autistic people to show that they are in pain, and it can be hard for them to speak when in pain or experiencing sensory overload.

If you are autistic, you can ask an advocate to support you from the start of your pregnancy. During labour, if your advocate recognises your personal signs that you are distressed they can ask the health professional to stop by saying, 'Stop', or 'I don't think they want you to continue'.

Can I decide what treatment my baby receives?

Yes. Before treating a baby, healthcare professionals must ask consent from a person with 'parental responsibility' for the baby.

In law, the mother always has parental responsibility for her baby. The father

- You can find a summary of who has parental responsibility on the [UK government's website](#).

has parental responsibility if he meets certain criteria.

A trans man who has given birth will legally be described as the mother under current law. Non-binary birthing people are also described as mother at present.

If parents decline treatment for their baby, healthcare professionals should respect their decision.

No one should threaten parents with a referral to social services to make them consent to treatment for their baby.

A baby should only be referred to social services if health professionals think ('have reasonable belief') that the baby is at risk of significant harm.

In rare and serious cases, including if parents disagree about treatment or doctors feel that the parents' decision is not in their child's best interests, healthcare professionals may ask the High Court to decide. They can ask the High Court to declare that the treatment should be carried out, or not carried out, because it is in your baby's best interests.

Law and guidance

Important legal principles of consent

Everyone has the right to make decisions about their body for themselves. This is called the principle of autonomy.

The principle of autonomy is protected under Article 8 of the European Convention on Human Rights and common law of England and Wales, and common law in Scotland. You can read more on our factsheet *Human Rights in Maternity Care*.

The law says that pregnant women are entitled to make autonomous decisions in the same way as any other person. Even if healthcare professionals disagree with their decisions they must respect them.

The principle of autonomy creates a legal requirement to seek a person's consent whenever they are given any medical treatment.

The only exceptions are rare cases: when a person does not have the capacity to make their own decisions; or in an emergency when a person cannot consent because of their physical condition (for example when they are unconscious).

If a person's consent is not obtained, the medical treatment will be against the law. It will be negligent, and in England and Wales, it will also constitute the crime of battery, and a civil wrong of trespass to the person.

Failure to obtain consent also violates Article 8 of the European Convention. If the harm that occurs as a result is serious, it will breach Article 3 of the European Convention prohibiting inhuman and degrading treatment.

Consent includes knowing who is providing healthcare

In the case of *Konovalova v Russia* (2015), the European Court of Human Rights held that women's consent must be sought for all medical care provided during labour and this included consent for medical students to be present during a birth. As a result, any person who is providing maternity care should be clear about their status and explain if they are a student, so that the patient can decide whether they wish to receive care from them or to have them present.

The law and guidance on seeking consent

The healthcare professional must give the person the information they need before seeking consent. The information should cover any material risks, any alternative treatments that are available, and the risks of doing nothing.

In the Supreme Court case, *Montgomery v Lanarkshire Health Board* (2015), the court stated that the test for whether a risk is a 'material' one is whether a reasonable patient would attach significance to the risk, or whether the doctor should be aware that the particular patient would attach significance to it. This means that there must be an honest conversation between doctor and patient and the assessment of risk must be sensitive to the individual's characteristics.

When thinking about how significant a risk is for a particular patient, statistics are only one factor. For example, the risk of complications for future pregnancies after a C-section might be statistically small, but it would be more significant for someone who wished to have multiple children than for someone who did not. Every person perceives risk differently.

Hospitals cannot only rely on printed leaflets or online material to provide relevant information; there must always

be a personal discussion between the patient and the health professional (*Montgomery v Lanarkshire Health Board* (2015)).

Leaflets and online material can form a useful starting point for an informed conversation. Health professionals must make sure that people have time and any support they need to understand the information, to make notes, and to think about the information. When someone finds spoken communication difficult, it is important to give support and to be flexible about their preferred means of communication, for example using a pain scale or assistive technology.

Giving misleading information about someone's medical condition or the proposed treatment, or not giving them relevant information, may mean that consent was not valid. The failure to provide appropriate information may also leave the healthcare professional open to a successful claim of negligence if the person suffers harm as a result of the treatment.

If the patient asks specific questions, a healthcare professional must give full, honest and objective answers. They should take the time that is needed to do this.

General Medical Council guidance on consent sets out how doctors should support people to make decisions about their care, including how consent should be recorded.

The Royal College of Obstetricians and Gynaecologists also provides advice on consent, and on specific procedures and the risks associated with those procedures, including caesarean section, operative vaginal delivery, and participating in research while in labour.

The National Institute for Health and Care Excellence (NICE), which makes guidelines for health and social care, has guidance on improving the experience of care for people using adult NHS services,

which includes information about how healthcare professionals should communicate with patients and how to present information about risks and benefits, to enable them to make decisions about their care. NICE guidance is not law, but a hospital has to give good, clear reasons if it does not follow the guidance.

Forms of consent

Consent does not need to be recorded in writing. It may be given verbally or with a gesture. Someone might move away from a healthcare professional, shake their head, or simply say, 'No'.

It is usual practice to sign a consent form for surgical procedures, but this does not reduce the need for a fully informed dialogue between the patient and their health professional (*Montgomery v Lanarkshire Health Board* (2015)).

A signed consent form and/or medical notes are evidence of consent but do not prove it was obtained: they may be contradicted by other evidence that consent was not well-enough informed or freely given.

The GMC's guidance, Department of Health's reference guide and the Scottish guide on consent contain further information on the form consent should take.

Declining treatment

The courts in England and Wales have upheld the rights of patients to make important medical decisions affecting their lives for themselves.

A mentally competent patient has an absolute right to decline medical treatment for any reason, rational or irrational, or for no reason at all, even where that decision may lead to his or her own death.

A mentally competent pregnant person may decline treatment during pregnancy

or labour even where that might lead to death or serious harm to them or their baby.

- You can read more about the right to refuse treatment on our factsheet, [Human rights in maternity care](#)

Obtaining consent during labour

[Royal College of Obstetricians and Gynaecologists guidance](#) states that special care must be taken when obtaining consent from women who are in labour, particularly if they are under the influence of narcotic analgesics (opiate-derived painkilling drugs).

Communication support and interpreting

If someone has difficulty understanding spoken English, [NHS England](#) sets out how Trusts should obtain language support. This could include hiring a professional interpreter or translating written material. Everyone needs to be able to communicate fully and understand what consent they are being asked for.

The [GMC guidance on consent](#) says that doctors should use an interpreter or translation service.

If someone's illness or disability means that they need support to communicate, this is called reasonable adjustment. The right to reasonable adjustment is set out in the [Equality Act 2010](#).

The principle of reasonable adjustment is that the Trust must make sure that everyone has equal access to all of its services. They must put in place the support that someone needs to understand the treatment they are being offered, and to communicate their consent. This could include large print information materials for someone who needs this, lighting that enables someone to lip read, or an advocate to support understanding and communication.

The NHS has been trialling [Reasonable Adjustment Flags](#), a way for people's needs for extra support to be highlighted to healthcare professionals every time they use the health service.

About Birthrights

Birthrights factsheets give you information about your human rights when you are pregnant and giving birth.

- Contact Birthrights for help on our [advice form](#) or by emailing advice@birthrights.org.uk.

Birthrights champions respectful care during pregnancy and childbirth by protecting human rights. We provide advice and information to women and birthing people, train doctors and midwives, and campaign to change maternity policy and systems.

We believe human rights are for everyone. The law underpinning our human rights sometimes describes the rights of women and where necessary for accuracy we have used this language. However, our services and advice are for everyone, regardless of how they identify.

We are a charity, independent of the government and the NHS.

www.birthrights.org.uk

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