Briefing Document: Themes and Important Ideas in Consent Discussions

Source: Excerpts from "11 Karen Hassell and Ms Lisa Whisker_SRT_English.srt.pdf"

Date: 26th November 2024 [Date of presentation]

Author/Speaker: Karen Hassell, Advanced Clinical Practitioner at Nottingham University Hospitals NHS Trust. Divisional Quality Director Cancer and Associated Specialties. Module Lead Clinical Breast Examination Course. Lisa Whisker, Consultant Oncoplastic Breast Surgeon. Active researcher and guideline developer.

Overview:

This briefing document summarises the main themes and important ideas discussed across the provided transcripts regarding patient consent in a healthcare setting. The discussions involve surgeons, legal professionals, risk managers, patient representatives, and individuals involved in developing and implementing digital consent platforms.

Overarching Theme: The Evolution of Consent - From Paternalism to Shared Decision-Making

A central theme throughout the discussions is the significant shift in the understanding and practice of consent, moving away from a paternalistic "doctor knows best" approach towards a model of shared decision-making centred on the individual patient's needs and values.

- **Historical Context:** Amelia Newbold highlights the historical perspective: "But the focus, very much historically, was on the doctor knows best. So medical paternalism and that trumped patient autonomy." She notes the *Bolam* test, where a doctor acting in accordance with a responsible body of medical professionals would be deemed not to have breached their duty of care.
- **The Impact of *Montgomery v Lanarkshire Health Board*:** The landmark *Montgomery* case is repeatedly referenced as a catalyst for this shift. Simon Parsons mentions it directly: "principle four, 'doctors must try to find out what matters to the patient.' And this has come as a result of the Montgomery case..." Amelia Newbold and Jonathan Fuggle dedicate a significant portion of their discussion to explaining the implications of *Montgomery*, stating it "did not change the law" but clarified the doctor's duty to take reasonable care to ensure the patient is aware of "material risks."
- **Defining Material Risk:** Newbold explains the two-stage approach to determining material risk: "The objective part of this: What risks would a reasonable person in the patient's position be likely to attach significance to? And then the second part, the subjective bit: what risks should a clinician

reasonably be aware that an individual patient would be likely to attach significance to?" This emphasizes the need for dialogue to understand the individual patient's perspective.

Key Principles and Best Practices in Obtaining Consent

Several speakers underscore essential principles and best practices for obtaining valid consent:

- **Consent as a Process, Not Just a Form:** Multiple contributors stress that consent is an ongoing process of communication and information exchange, not merely the signing of a document on the day of surgery. Bryony Lovett states: "I disagree with consent on the day. Consent is a process. It starts with the diagnostics... But consenting on the day of surgery is a complete waste of time."
- **Meaningful Dialogue and Information Exchange:** Simon Parsons emphasizes "that meaningful dialogue and the exchange of relevant information specific to the individual patient." The GMC guidelines, as mentioned by Ben Thomas, with their seven principles, reinforce the importance of this dialogue.
- **Understanding What Matters to the Patient:** Principle four from the GMC, as Parsons highlights, requires doctors to "try to find out what matters to the patient." This aligns directly with the subjective element of material risk established in *Montgomery*.
- **Providing Necessary Information and Support:** GMC principle three states that "all patients have the right to be listened to and to be given information that they need to make a decision and the time and support that they need to understand it."
- **Considering Patient Vulnerabilities and Changes in Circumstances:** Parsons points out the need to be aware that "when they come for their operation, if they've been on a waiting list for a long time, their condition might have changed."
- **Utilising Tools and Resources:** The discussion highlights the value of patient information leaflets (especially those from EIDO, described by Jonathan Webb as the "gold standard"), and the potential of digital platforms to enhance the consent process.
- **Importance of Documentation:** Bryony Lovett notes the importance of "documenting the whole process of consent and writing it down, and putting it in the letter to the GP." Simon Hammond also emphasises the value of good records in the event of a claim.

Challenges and Considerations in Implementing Best Practices

Despite the clear principles, several challenges and considerations in implementing effective consent processes are raised:

- **Time Pressures and Resource Constraints:** Several speakers allude to the pressures within the NHS, particularly around waiting lists, which can make thorough consent discussions more challenging (Helena Durham, Matthew citing pressures). Simon Parsons acknowledges that sometimes "the resources that are available to the clinicians aren’t being used and that’s such a shame, and of course it’s a risk."
- **Ensuring Information Accessibility and Understanding:** Helena Durham, a patient representative, powerfully illustrates the challenges patients face in accessing and understanding information. She highlights issues with font size, format, and the sheer volume of information provided. Her statement, "Nobody saw it as being really a process for them and I thought that was really sad and sort of quite concerning," underscores the disconnect some patients feel.
- **Defining Competence and Delegation of Consent:** The issue of trainees taking consent and performing parts of procedures raises questions about competence and appropriate delegation (Martin, Bryony Lovett). Lovett emphasizes, "only delegate consent to somebody who can actually do the procedure."
- **Dealing with Patients Who Haven't Read Information:** The scenario raised by Charles Ranaboldo about patients arriving for surgery having not read the provided information poses a practical challenge. Jonathan Webb suggests that if the discussion has previously occurred, proceeding may be appropriate.
- **The Role of Patient Preference for Format of Information:** Helena questions whether audits take into account "patient preference for format of information and format of form," highlighting a potential gap in current assessments.
- **Navigating Ethical Dilemmas:** Manoj Shenoy raises the ethical complexity of situations where a parent requests a specific surgeon, highlighting the need to consider the patient's best interests and surgeon competence.
- **The Risk of Defensive Practice:** Simon Hammond raises the concern that the focus on material risk and options might lead to "more defensive in the way that they approach consent," which could detract from a patient-centered approach.

The Role of Digital Platforms in Enhancing Consent

A significant portion of the discussion focuses on the potential of digital platforms to improve the consent process:

- **Providing Pre-Consultation Information:** Simon Parsons and Karen Hassell describe the use of digital platforms (like Isla and EIDO's digital consent platform) to send information to patients in advance, allowing them to review it at their own pace and formulate questions. Parsons notes this can make the "consent consultation… much more meaningful."

- **Facilitating Two-Way Communication:** These platforms can enable patients to ask questions electronically before their appointment and provide feedback.
- **Supporting Electronic Consent and Documentation:** Hassell and Lisa Whisker detail their experience implementing electronic consent in breast surgery in Nottingham, aiming to create a paper-free process. This allows for better integration with electronic health records.
- **Ensuring Access to Updated Information:** Jonathan Webb highlights that the All Wales model consent policy is "regularly updated" within the EIDO platform, ensuring consistency and inclusion of emerging case law.
- **Addressing Language Needs:** Webb also notes the availability of EIDO leaflets in Welsh and the ambition to incorporate locally produced leaflets in various languages.
- **Potential for Integration with Governance Systems:** Simon Parsons mentions the potential for digital consent platforms to interface with governance applications to flag potential issues.

The Patient Perspective

Helena Durham's contribution provides a crucial patient perspective, highlighting several key issues:

- **Information Overload and Inaccessible Formats:** Patients may receive too much information at once, and it may not be in a format they can easily understand.
- **Lack of Perceived Benefit for the Patient:** Many patients believe the consent process is primarily for the surgeon's protection rather than empowering their decision-making.
- **Anxiety Related to Waiting Times Post-Consent:** The period between consenting and the actual procedure can be a source of significant anxiety.
- **The Importance of Knowing the Surgeon:** Patients want to know who will be performing their surgery and what their experience level is.
- **Desire for Involvement in MDT Discussions:** Helena questions whether there could be some level of patient involvement in multidisciplinary team (MDT) discussions or at least presentation of a limited number of options.

Financial and Risk Management Implications

Jonathan Webb and Simon Hammond address the financial and risk management aspects of consent:

- **Significant Costs of Litigation Related to Consent:** Webb highlights the substantial reserves held by the Welsh Risk Pool, partly due to the costs associated with claims related to a lack of informed consent. Hammond reveals that NHS Resolution has paid out £522 million in damages and legal fees in the last five years for cases where damages payments were made, underscoring the financial significance of proper consent.
- **Damage to Patient-Doctor Relationships:** Hammond emphasizes that consent issues can damage the crucial relationship between patients and healthcare providers.
- **Importance of Learning from Claims:** Analysis of claims can provide valuable insights into areas for improvement in consent practices.
- **Peer Review and Audit:** Ben Thomas discusses the importance of peer review processes to assess the quality of the decision-making process around consent.

Conclusion

The discussions reveal a dynamic landscape in the understanding and practice of patient consent. The emphasis has clearly shifted towards patient autonomy and shared decision-making, driven significantly by the *Montgomery* ruling. While clear principles and best practices exist, their consistent implementation faces challenges related to time pressures, resource constraints, and the need to ensure information is truly accessible and understood by patients. Digital platforms offer promising solutions to enhance the consent process, but it is crucial to consider the patient's perspective and ensure these tools are used in a way that empowers them to make informed decisions. Continuous learning, robust documentation, and a focus on meaningful dialogue remain essential to fostering trust and minimising harm and litigation risks.