Briefing Document: Key Themes and Ideas from Consent-Related Discussions

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Overview: This briefing document synthesises the main themes, important ideas, and key facts discussed across the provided transcripts related to patient consent in the healthcare setting, primarily within the NHS in the United Kingdom. The discussions involve surgeons, legal professionals, risk managers, and patient representatives, offering a multi-faceted perspective on the complexities and evolving landscape of informed consent.

Main Themes:

1. **The Evolving Understanding of Consent: Moving Beyond a Form:**

- A central theme is the shift from viewing consent as a mere administrative task involving the signing of a form to understanding it as an ongoing, patient-centred process of shared decision-making.
- **Quote (Ben Thomas):** "I think a lot of clinicians equate consent with a yellow form, with a consent form, whereas actually it's about decision-making..."
- Several speakers emphasise that consent is a journey that starts with diagnosis and continues through treatment and follow-up.
- **Quote (Bryony Lovett):** "Consent is a process. It starts with the diagnostics... But consenting on the day of surgery is a complete waste of time."
- This process necessitates meaningful dialogue, provision of adequate information, and understanding the patient's individual needs and values.

1. **The Impact of the *Montgomery* Ruling:**

- The landmark *Montgomery v Lanarkshire Health Board* case is repeatedly referenced as a pivotal moment that fundamentally changed the legal test for informed consent.
- The focus shifted from what a responsible body of medical professionals would disclose to what a reasonable person in the patient's position would want to know, and what the clinician should reasonably be aware the particular patient would want to know.
- **Quote (Amelia Newbold):** "But the focus, very much historically, was on the doctor knows best. So medical paternalism and that trumped patient autonomy.

That continued until a case called Sidaway, which did not change the law, and then Montgomery..."

- This ruling introduced the concept of "material risks" and the need for both objective and subjective assessment of what information is important to the patient.
- The legal implications of breaching the duty of consent, including causation and potential standalone claims for damages, are also discussed.

1. **Practical Challenges in Obtaining Informed Consent:**

- Despite the legal and ethical frameworks, clinicians face numerous practical challenges in ensuring informed consent.
- These include time constraints, especially in a pressured NHS with long waiting lists.
- **Quote (Simon Parsons):** "You know as patients have been on a waiting list, for sometimes over a year, things might change. And so we also have 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."
- Ensuring patients understand complex medical information, especially when provided in written leaflets, is a significant hurdle, particularly for those with literacy issues or visual impairments.
- **Quote (Helena Durham):** "If you could see my iPad, the font size is 36. That's my comfortable reading. I was given a patient information leaflet. (Holds up and waves a small leaflet) This is the size of the font. There is no opportunity, to take that in. I wasn't given anything in a format that I could read."
- The timing of consent discussions is crucial, with concerns raised about obtaining consent on the day of surgery when patients are likely to be anxious.

1. **The Role of Digital Tools and Resources:**

- Several speakers highlight the potential of digital platforms and resources to improve the consent process.
- EIDO is mentioned as a provider of digital consent leaflets and platforms that offer up-to-date information and facilitate patient understanding.
- These platforms can provide consistent information, incorporate case law updates, and potentially offer accessibility features and multi-language support.
- **Quote (Jonathan Webb):** "So our EIDO platform gives us that ability. What we're also working to, and I'm so excited for 2025, is locally produced leaflets. Where

an EIDO leaflet doesn't exist, can be uploaded into the system, so our clinicians have got a single resource to go to for information on consent."

- The use of questionnaires and pre-assessment tools to gauge patient understanding and identify questions before face-to-face consultations is also explored.

1. **Importance of Training, Competence, and Delegation:**

- The discussions touch upon the responsibilities of surgeons in ensuring that those performing procedures, including trainees, are competent and appropriately supervised.
- The consent process should reflect who will be performing the operation and the level of their involvement.
- **Quote (Martin):** "When consenting as trainees, I mention that I may be doing part of the operation, the whole of the operation... Quite often, I won't know how much of a procedure I'm going to be doing, whether my boss will be directly in the room for all of the procedures, some of the procedure."
- Delegating consent is permissible but should only be to individuals who understand the procedure and its risks. Training junior colleagues in effective consent-taking is crucial.

1. **Documenting the Consent Process:**

- Accurate and comprehensive documentation of the consent discussion is emphasised as essential for both patient care and medico-legal protection.
- This includes detailing the risks and benefits discussed, any alternative treatments considered, and the patient's understanding and agreement.
- **Quote (Bryony Lovett):** "...the importance of documenting the whole process of consent and writing it down, and putting it in the letter to the GP."

1. **Understanding Patient Perspectives and Needs:**

- Gaining insight into what matters to individual patients is a recurring theme, highlighting the subjective element of materiality in risk disclosure.
- Clinicians are encouraged to be "nosy" and understand patients' lifestyles, values, and concerns to tailor the consent discussion effectively.
- **Quote (Bryony Lovett):** "So the core implications for surgeons are that consent is patient specific. You need to know your patient. I'm really nosy, I want to know..."

- Helena Durham's personal account underscores the importance of accessible information and feeling truly informed in the consent process, highlighting the disconnect some patients experience.
- **Quote (Helena Durham):** "I ask the people 'who is this consent process for?' and every single one said something 'to the effect of for the surgeon so that I don't sue them.' Nobody saw it as being really a process for them and I thought that was really sad and sort of quite concerning."

1. **Learning from Claims and Complaints:**

- Analysis of claims data by organisations like the Welsh Risk Pool and NHS Resolution reveals the significant financial costs associated with consent-related issues.
- These cases often highlight failures in communication and information provision, leading to patient harm and erosion of trust.
- **Quote (Jonathan Webb):** "So what the Welsh Risk Pool finds is that of the letters of claim we receive, the single biggest category, year on year, is a failure to obtain informed consent."
- Understanding the patterns and learning from adverse events and complaints is crucial for improving consent practices.

1. **The Importance of Collaboration and Consistency:**

- Collaboration across different healthcare professionals and organisations is seen as vital for developing and implementing effective consent policies and practices.
- The Welsh Risk Pool's "All Wales model consent policy" is presented as an example of a unified approach.
- Standardising the teaching and documentation of consent is advocated to ensure consistency and quality.

1. **Emerging Issues and Future Directions:**

- The potential of AI in supporting the consent process is briefly mentioned, but with a cautious approach.
- The increasing use of robotic surgery necessitates clear communication about the proctoring and competence of surgeons using new techniques.
- The tension between the need to reduce waiting lists and the importance of thorough consent discussions is acknowledged as a potential future challenge.

- The ongoing evolution of legal frameworks and regulatory expectations, such as the proposed individualised duty of candour for NHS managers, will continue to shape consent practices.

Key Ideas and Facts:

- **Financial Impact of Consent Issues:** NHS Resolution data indicates significant costs associated with consent-related claims (e.g., £522 million in damages payments over five years).
- **Prevalence of Consent-Related Claims:** Failure to obtain informed consent is a leading cause of claims against healthcare providers.
- **Accessibility of Information:** Concerns remain about the accessibility of patient information leaflets, particularly for individuals with visual impairments or literacy challenges.
- **Cooling-Off Periods:** In elective cosmetic surgery, a minimum 14-day cooling-off period is often recommended. The applicability of this to other specialties is debated, especially in time-sensitive cases like cancer diagnosis.
- **"No Decision About Me Without Me":** This mantra is highlighted in the context of Multi-Disciplinary Team (MDT) discussions, emphasising that MDT recommendations should facilitate, not replace, the consultant's discussion with the patient.
- **BRAN Framework:** The Royal College of Surgeons advocates using the BRAN framework (Benefits, Risks, Alternatives, Nothing) in the consent process.
- **The "Pub Test":** Bryony Lovett introduces an innovative approach by asking patients to explain to someone else what their planned surgery entails to gauge their understanding.
- **Electronic Consent (E-Consent):** Digital platforms for consent are being implemented in some NHS trusts, offering potential benefits for information provision, documentation, and patient engagement. However, concerns about digital exclusion and ensuring genuine understanding remain.

Quotes for Emphasis:

- **On the changing nature of consent: (Simon Hammond)** "...it recognises those societal changes, that people are becoming more informed... That's not a bad thing. I think that's actually a good thing because it allows people to make those informed decisions..."
- **On the patient perspective: (Helena Durham)** "...nobody saw it as being really a process for them and I thought that was really sad and sort of quite concerning.

But I think that was because for some of them, that link between the information and the consent almost wasn't there."

- **On the importance of knowing the patient: (Jo Clift)** "So this is something that I always say to clinicians, and it plays so crucially into Montgomery, I think, is that you really need to get to know your patients."

Conclusion:

The discussions underscore the multifaceted nature of obtaining valid informed consent in modern healthcare. While legal rulings like *Montgomery* have clarified the ethical and legal obligations, practical implementation remains complex and requires ongoing attention to patient needs, effective communication strategies, adequate resources, and continuous learning from both positive and negative experiences. The integration of digital tools holds promise for enhancing the consent process, but must be implemented thoughtfully to ensure equity and genuine patient understanding. Ultimately, the focus must remain on a patient-centred approach that empowers individuals to make informed decisions about their care.