

# Consent and children



## The College of Podiatry Standard 2 - Patient Consent sets out comprehensive guidance on this issue

It is a legal, professional and ethical obligation to obtain valid informed consent either from the patient, or somebody with the legal authority to provide consent on their behalf, before any examination or treatment is undertaken. The consent and the discussions which underpin it should be recorded appropriately – whilst a verbatim transcript would be ideal it is accepted that this is not practical but a detailed note should be made of the discussion.

### What is valid consent?

Consent is only valid if it is informed and freely given by a person who has capacity to consent:

- Patients should be given the information they require to make a decision in a format which is clear and easily understood by them.
- Patients should be given sufficient time to consider the decision before treatment is provided and not be rushed into making a decision.
- The consent process should be supported by clear, accurate and contemporaneous notes which include details of the information provided to the patient in respect of the diagnosis, prognosis and treatment along with the risks and benefits associated with the proposed treatment, reasonable alternatives (including no treatment) and any concerns or queries raised by the patient. The patient's reason for choosing their preferred option should also be recorded.

Consent must be given voluntarily and not under any form of duress or undue influence from health professionals, family or friends.

A failure to obtain valid informed consent exposes the practitioner to a serious risk of criminal or civil liability along with a risk of action by their regulatory body.

It is important to note that consent can be withdrawn at any time.

### How can consent be given?

Patients can consent verbally or in writing. Silence does not constitute consent and practitioners should not rely on the patient's actions indicating 'implied consent' e.g the patient removing their shoes should not be taken as consent to undertake an examination. A written record must be made in the notes about how consent was obtained.

### How should it be recorded?

It should be noted consent forms are useful but a signed form is not incontrovertible evidence that the patient has provided valid informed consent. The College Consent Standard identifies a number of specific procedures where a signed consent should be obtained from the patient. This is in addition to the record of the consenting discussions in the clinical records.

The College has produced template consent forms for the following:

- Consent for investigation and treatment
- Consent for photography or video recording
- Consent for examination and treatment by a student or someone in a training situation

### Who can give consent?

Adults aged 18 and over are legally presumed to have capacity to consent (aged 16 in Scotland) but this can be rebutted if there is evidence that the individual lacks capacity.

Young adults (age 16 or 17) can give valid consent without parental approval but parental involvement should be encouraged. The position is more complex where a young adult refuses to consent to treatment that is in their best interests.

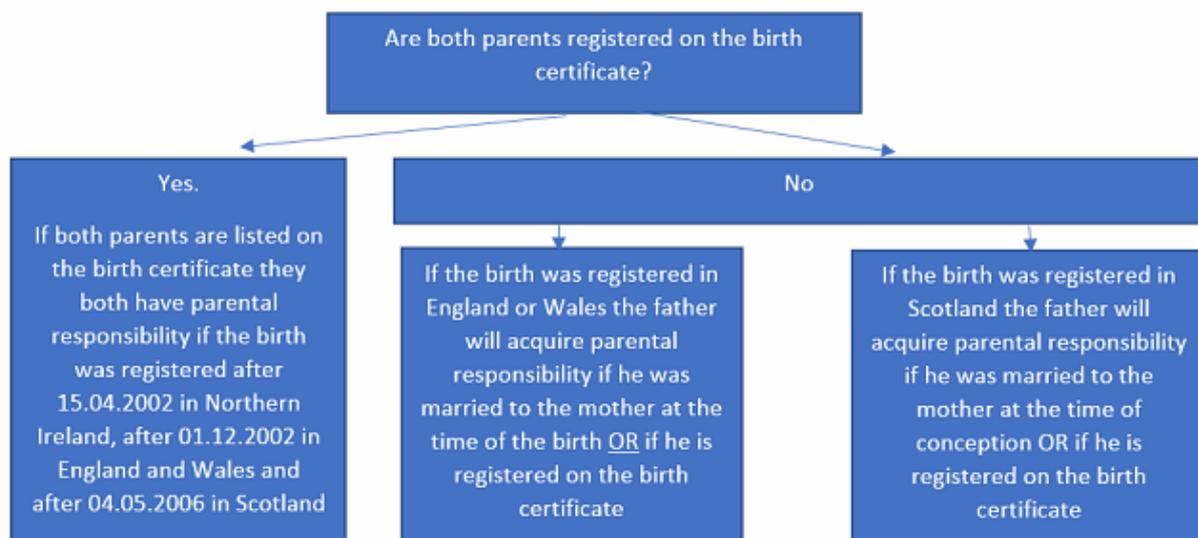
Children aged 15 and younger can consent to treatment which is in their best interests if they are 'Gillick competent' – that is they are able to understand the risks and benefits as well as the options available to them.

Where the patient is under 18 and the practitioner has judged that the young person is able to understand the relevant information the patient should sign the consent form. If their parent has also participated in the decision making they should counter-sign the consent form.

### Parental Responsibility?

If the patient is aged 16 or 17 and lacks capacity to give consent, or has chosen to leave it to their parents to decide, then parental consent is required. If the patient is aged 15 or under and not 'Gillick competent' then parental consent will be required.

Only people with 'Parental Responsibility' may give consent on behalf of a young person. This is a strict legal term, the definition of which differs between England and Wales and Scotland. A mother automatically acquires parental responsibility at birth but this is not the case for the father. This flow chart below may assist:



Parental responsibility can also be acquired by the father by way of:

- Court registered parental responsibility agreement made with the mother
- Parental Responsibility Order
- Residence Order

Others may acquire parental responsibility in the following situations:

- A testamentary guardian acquires parental responsibility if no one with parental responsibility survives the testator.
- A guardian is appointed by the Court.
- A child is adopted – the adoptive parents acquire parental responsibility.

- If the child is subject to a care or supervision order the local authority acquire parental responsibility.
- A surrogate will retain parental responsibility until a parental order is made or the child is adopted by the intended parents.

### Refusal to consent

A competent adult is entitled to withhold their consent and if this is the case an appropriate note must be made. A person aged 17 or younger may have their refusal overridden by an adult with parental responsibility if the treatment is considered to be in the patient's best interests (note the position in Scotland is that it is unlikely that the parents or the court are entitled to override the decision of a competent young person).

Treating any patient against their express wishes is a serious matter. You should seek advice from the College before treating a patient who has declined their consent.

### Contact

**Keara Bowgen-Nicholas**  
**Solicitor, Healthcare Professionals**  
E. keara.bowgen-nicholas@rlb-law.com  
T. 029 2034 8721

### Disclaimer

This briefing is for guidance purposes only. RadcliffesLeBrasseur LLP accepts no responsibility or liability whatsoever for any action taken or not taken in relation to this and recommend that appropriate legal advice be taken having regard to a client's own particular circumstances.



rlb-law.com