



A survey of doctors at a UK teaching hospital to assess understanding of recent changes to consent law



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HIGHLIGHTS

- A survey of doctors at a UK teaching hospital regarding consent law changes.
- The majority of respondents were not familiar with the concept of material risk.
- More guidance and education may be necessary at a national and local level.

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ABSTRACT

Background: The UK Supreme Court recently ruled that when consenting patients for treatments or procedures, clinicians must also discuss any associated material risks. We surveyed medical staff at a large UK teaching hospital in order to ascertain knowledge of consent law and current understanding of this change.

Materials and methods: Email survey sent to medical staff in all specialities at Norfolk and Norwich University Hospital in February 2016.

Results: 245 responses (141 Consultants and 104 junior doctors, response rate 32%). 82% consent patients for procedures at least monthly and 23% daily. 31% were not familiar with the concept of material risk. 35% were familiar with the recent change in consent law, 41% were not. 18% were "very uncertain" and 64% "a little uncertain" that their consenting process meets current legal requirements. >92% think that landmark cases and changes in law should be discussed through professional bodies and circulated better locally.

Conclusion: The majority were not familiar with the concept of material risk and recent legal changes. A majority were not confident that their practice meets current requirements, suggesting that recent changes in consent law may not be widely understood at this hospital. We suggest more guidance and education may be necessary than is currently available. Increased understanding of recent changes to consent law will reduce the risk taken by NHS trusts and offer patients a service compliant with Supreme Court guidance.

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1. Introduction

The Montgomery v Lanarkshire Health Board judgement has been widely discussed in the medical literature and indeed the broader UK media because it definitively marks an end to the Bolam

test era which followed Sidaway v The Royal Bethlem Hospital [1]. The Bolam test deemed that medical negligence and by extension, alleged failure in consenting practice, is judged against the position or practice that would be taken by a responsible body of medical opinion. The Supreme Court deemed that there is a 'duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended medical treatment, and of any reasonable alternative or variant treatments' [2]. A material risk is described as one that 'a reasonable person in the patient's position would be likely to attach significance to ... or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to'. This has been described as a shift from

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'doctors know best' to a 'particular patient' approach [3]. Despite legal judgements from the mid 1990's onwards increasingly questioning Bolam [4,5], and championing more patient orientated approaches with regards to the depth and amount of information discussed with patients during the consenting process, Bolam persisted and was indeed supported by the Scottish courts before the Supreme Court appeal. The General Medical Council guidance began to reflect the shift in legal position regarding consent, with guidance in 2008 explicitly calling for a patient centered approach [6], reflecting the process of departure from Bolam started by *Chester v Asher* and *Pearce v United Bristol Healthcare Trust* [4,5]. Hence, *Montgomery* has been described as 'not a new direction' in consent law [3]. Despite this, the response to *Montgomery* has been divided with differing interpretations of the verdict itself and there have been a variety of predictions regarding clinical practice and the changes that may be required [7]. We suggest this reflects the detailed nature of legal verdict and the intricate clinical nature of the consenting process itself. We aimed to assess current understanding of the recent changes and consent law in general amongst practicing doctors at a large UK university hospital.

2. Materials and methods

An 11 item online questionnaire (SurveyMonkey, USA) was emailed to the Consultant and junior doctor mailing lists (containing 417 and 347 recipients respectively) at Norfolk and Norwich University Hospital in February 2016. The survey was kept open for three months and data was collected anonymously. A pilot study of five Consultant surgeons was carried out prior to this, from which no changes were made to the final survey. The findings were reported according to the SRQR standards for reporting qualitative research [8].

3. Results

After three months the survey was closed and all responses interpreted (see Tables 1–10). 245 doctors completed the survey (141 Consultants and 104 junior doctors (31% and 30% response rate respectively, total response rate 32%)). The majority of respondents were from surgical (38%) and medical (36%) specialities. 82% of the respondents' consent patients for procedures at least monthly and of these 64% consent patients several times a week. 23% of all the correspondents consent patients for procedures or surgery on a daily basis. 35% were not familiar with the *Sidaway* case. 12% of respondents were not familiar with the *Bolam* test. 45% were not familiar with the *Montgomery* case. 31% were not familiar with the concept of material risk. 35% were familiar with the recent change in consent law, 41% were not familiar. 18% were "very uncertain" and 64% "a little uncertain" that their current consenting process meets current legal requirements. 95% of respondents think that landmark legal cases and changes in consent law should be discussed through professional bodies such as defence unions. 93% think this information should be circulated better at a local level such as during patient safety or governance meetings. There was no significant difference between Consultant and junior doctor responses to any of the questions.

Table 1
Respondents by hospital specialty.

Surgical	94 (38.37%)
Medical	89 (36.33%)
Radiology	13 (5.31%)
Anaesthetics/critical care	38 (15.51%)
Other	11 (4.49%)

Table 2

How often do you have to take consent from patients for procedures/surgery?

Yearly	44 (17.96%)
Monthly	20 (8.16%)
Several times a month	25 (10.20%)
Several times a week	99 (40.41%)
On a daily basis	57 (23.27%)

Table 3

Are you familiar with the *Sidaway v Bethlem Royal Hospital* case (1985), which set legal precedent?

No	86 (35.10%)
Yes	80 (32.56%)
Vaguely	79 (32.24%)

Table 4

Are you familiar with the *Bolam* test for assessing reasonable care in negligence cases?

No	30 (12.30%)
Yes	181 (74.18%)
Vaguely	33 (13.52%)

Table 5

Are you familiar with the *Montgomery v Lanarkshire Health Board* case (2015)?

No	110 (44.90%)
Yes	87 (35.51%)
Vaguely	48 (19.59%)

Table 6

Are you familiar with the concept of "material risk" in relation to a recommended treatment and any reasonable alternative or variant treatments?

No	75 (30.74%)
Yes	90 (36.89%)
Vaguely	79 (32.38%)

Table 7

Are you familiar with the recent change in consent law?

No	99 (40.57%)
Yes	85 (34.84%)
Vaguely	60 (24.59%)

Table 8

How certain are you that your current verbal and written consenting process meets current legal requirements?

Very uncertain	44 (18.18%)
A little uncertain	155 (64.05%)
Certain	43 (17.77%)

Table 9

Do you think landmark legal cases and changes in consent law should be highlighted and discussed with doctors of your grade, for example through pan-specialty meetings with relevant bodies (e.g. medical defence unions)?

No	12 (4.90%)
Yes	233 (95.10%)

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