

# Legal Patient consent

## The impact of the Montgomery ruling

Informed consent is a fundamental principle of health care: anyone receiving medical treatment must agree to undergo that treatment.

**T**HE 2015 SUPREME Court decision on Montgomery vs NHS Lanarkshire (see below) has significant implications for doctor-patient communications, information sharing and informed consent. Since the ruling, the College leadership has been meeting with medico-legal experts to fully understand the impact on the O&G profession and to determine the RCOG's role in supporting our members to work within a shared decision-making model.

### The implications of Montgomery

The key to delivering the shared decision-making model mandated by the Montgomery ruling is providing standardised information to women and healthcare professionals at all points in the care pathway. Shared decisions can only occur if both partners have access to the same information and, above all, the time to make an informed decision. For professionals, this means finding the time to explain the risks and benefits of a recommended course



## The Montgomery vs NHS Lanarkshire case

### The history behind the landmark court ruling

In this case, a Lanarkshire woman (Mrs Nadine Montgomery) whose baby suffered brain damage during birth was awarded £5.25m compensation. This decision followed a 16-year legal fight which concluded with Mrs Montgomery's claim being upheld by the Supreme Court.

Mrs Montgomery has type 1 diabetes, which increases the risk of having a larger than average baby, a risk compounded by Mrs Montgomery's small

stature. This increases the risk of complications from vaginal births, including shoulder dystocia. In Mrs Montgomery's case, her baby's shoulder got stuck, and during the subsequent procedures, her baby suffered oxygen deprivation resulting in brain damage, leading to cerebral palsy.

Mrs Montgomery had expressed concerns about her ability to deliver her baby safely and indicated that, had she been advised

of the risks, she would have chosen to have a caesarean section. Her obstetrician made the decision not to discuss the risks of shoulder dystocia with Mrs Montgomery or to discuss a caesarean.

The ruling makes it clear that any intervention must be based on a shared decision-making process, ensuring the patient is aware of all options and supported to make an informed choice by their healthcare professional.

of action (and the other options), and for women, it requires them to reflect on their treatment options before deciding what is best for them.

### The RCOG's role

The RCOG's role is therefore to:

- Determine what resources women need to be able to make informed choices about their maternity and gynaecological care in a shared decision-making model.
- Determine what resources obstetricians and gynaecologists need in order to guide women through the shared decision-making process.
- Ensure RCOG training and educational materials relating to consent are fit for purpose post-Montgomery.



## “Any intervention must be based on a shared decision-making process”

change (sometimes dramatically) during the contact period, and obstetrics also covers both elective and emergency scenarios and will require a different approach.

### For each topic, the pilots will:

- Review existing relevant clinical guidance, patient information and consent advice
- Develop decision aids for women and accompanying support materials for healthcare professionals
- Pilot use of the above material in real-life clinics
- Provide feedback from women and clinicians about the materials

produced, the shared decision-making process, any obstacles and how they were overcome, and resource implications

The results of the feedback will then inform the College’s future work. We will keep our members informed as this work develops.

### Find out more

- The StratOG tutorial on ethical and legal issues provides information about consent: [stratog.rcog.org.uk/tutorial/ethical-and-legal-issues/the-principles-and-legal-issues-pertaining-to-informed-consent-319](http://stratog.rcog.org.uk/tutorial/ethical-and-legal-issues/the-principles-and-legal-issues-pertaining-to-informed-consent-319)
- The GMC has a collection of resources around consent, including guidance, support, case studies and interactive tools: [gmc-uk.org/guidance/27164.asp](http://gmc-uk.org/guidance/27164.asp)
- NHS Choices provides useful information for patients about consent: [nhs.uk/conditions/Consent-to-treatment/Pages/Introduction.aspx](http://nhs.uk/conditions/Consent-to-treatment/Pages/Introduction.aspx)

- Assess what resources are required to allow the healthcare systems that support delivery of women’s health care to fulfil their legal obligations post-Montgomery.

### Next steps

The RCOG is proposing to carry out a number of pilot programmes to address some of these issues. Our vision is that the pilots will cover both obstetrics and gynaecology, recognising their differing needs. In some respects, shared decision-making in gynaecology fits the same template as that of other surgical disciplines. In obstetrics, however, we are dealing with a unique set of circumstances: there are two individuals concerned in a normal physiological process, which may



## What happened before the Montgomery case?

### The change in assessment that Montgomery has provoked

Before the Montgomery ruling in 2015, the Bolam test was the benchmark for assessing medical negligence.

The Bolam ruling stated: “A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. Putting it another way round, a doctor is not negligent if he is acting in accordance

with such a practice, merely because there is a body of opinion that takes a contrary view.”

Compare this with wording of the Montgomery ruling: “The doctor’s advisory role involves dialogue, the aim of which is to ensure that the patient understands the seriousness of her condition, and the anticipated benefits and risks of the proposed treatment and any reasonable alternatives,

so that she is then in a position to make an informed decision.

“This role will only be performed effectively if the information provided is comprehensible. The doctor’s duty is not therefore fulfilled by bombarding the patient with technical information which she cannot reasonably be expected to grasp, let alone by routinely demanding her signature on a consent form.”