

Informed consent – the Brexit test

The Medical Defence Union (MDU) runs courses on various medicolegal topics. I would guess people only ever attend these courses if they have an exam or an interview approaching as the subject matter is exceedingly dry for clinicians. I myself did a course on medicine and the law prior to my consultant interview in order to dazzle the panel with buzzwords and up to date legislative facts, and the thing that struck me the most during that course was the complexity of the doctrine of ‘informed consent’.

Consent is something that means different things in different societies and there are various models of healthcare in which the process of seeking consent prior to undertaking surgical procedures can vary widely. I witnessed one of the most dramatic clashes of consenting cultures while working with Orbis at the Tilganga Eye Hospital in Nepal. The Americans would produce a consent form that when accidentally unravelled would reach from your hand to the floor of the room and then test the patience of both Nepalese doctor and patient to the limit over the 30 minutes it took to go over each and every point. The

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Nepalese thought the Americans had gone mad as they insisted on discussing everything and at least in the beginning tried desperately to shorten things. The Orbis team thought that the local consent procedure amounted to telling the patient what was going to happen and in the unlikely result of a patient asking a question telling them again only louder the exact same thing as before. The ‘Englishman abroad’ syndrome.

As the course progressed it dawned on me that I was more Nepalese than I thought. If I took consent the way the Americans advised, I might never be sued but the principle reason for that would be that I was only able to do eight cataracts a year after explaining all these things and assessing the capacity of each and every patient to make their own decision. Otherwise the consent was not ‘informed’ and it was apparently the legal equivalent of me running into the street and hitting a random passer by repeatedly in the head with a brick.

Assessing capacity to make such decisions in itself had four elements. Patients needed to understand the information, remember the information, weigh up the validity of the information to decide the right course of action and then communicate that decision. The process for going through each and every step started to seem more and more Byzantine and when it was then said that patients could have capacity for some decisions but not others I quietly lay down the pen, stopped taking notes and resolved to get a box of paracetamol on the way home for my growing headache.

Almost a year later I was feeling very glum indeed. I had taken some leave from Moorfields and having gone home I had decided to do some walking along the new Wales Coastal Path. My week off happened to correspond with the Brexit referendum and on Friday 24 June I had woken up to the news that Britain was to leave the European Union and that even Wales (Wales!) had voted out. So I sat in my car prior

to starting my walk along the (EU funded) coastal path, having parked at the brand new (EU funded) Swansea University Bay campus and driven there on the (EU funded) revamped Fabian Way. I remember Swansea before all the development and to quote Dylan Thomas it was indeed an “ugly, lovely town.” It simply isn’t ugly any more. The castle has been given an EU funded makeover and even the hideous ruin of the copperworks has been given an EU funded revamp, with plans to open a distillery inside it. What could be better? But even Swansea had voted to leave the EU.

I could not fathom such madness. How could this happen? I needed to find a Brexiteer. It turned out that was not difficult. My grandfather’s neighbour had voted out and I asked him why? He looked at me as if I was an imbecile; “because of all the immigrants.” There are hardly any EU immigrants in Swansea I pointed out. But what about the Pakistanis down at Hafod, he retorted. Pakistan is not in the EU I said. But what has Europe ever done for Swansea, he asked triumphantly. I reminded him that practically everything new in the city was made possible by Brussels. But the endless bureaucracy and red tape stifles British industry. Had he felt this? Uh no, he wasn’t a business. Just then, as it seemed I had won a moral victory, he suddenly said “ah ah there is a Polish benefit scrounger living next door to my daughter.” I asked him if he had met the Pole. “No, he’s always at work.” I looked at him and he looked at me for what felt like an eternity but might have been only a few seconds and I congratulated myself on not choking him to death with his grey cardigan. It turned out that my old school friend Rhys, a farmer who relies massively on EU agricultural subsidies to survive, had also voted out. His logic was so bizarre though that if the referendum question had been “Do you wish to return to Bronze Age Britain?” using his logic you would have voted for Bronze.

I was angry. But mostly perplexed. How could the citizens of Swansea make such a mistake? An obvious mistake. A mistake that you would think only a foolish fool who had recently graduated from the McFool City Academy of Fools could make? The only EU immigrants that I know of in Wales are doctors. They have a vital function and we would be worse off without them. This ridiculous result is causing them to think of moving away, to our detriment. On behalf of my city and my nation I felt the greatest shame.

Then I had a brainwave. Those Brexiteers I had spoken to had such obvious lapses of logical thought that if I had been consenting them for an operation I would have deemed them incompetent. They would have required a Form 4. This was a failure of democracy which made the Boaty McBoatface saga pale into insignificance. But perhaps if it

is recognised as just that, a failure of democracy, then perhaps the government can save the day by quietly overruling the electorate and enacting a Form 4 equivalent.

So in future, when consenting patients, I now know I have an obvious screening question that can tell me whether I can go on and explain in the normal fashion what to expect or if I need to undertake special MDU style manoeuvres which may take a lot more time and energy: "Did you vote for Brexit?" Five words that can increase your consenting efficiency manifold. If the answer is 'no' then proceed in the normal way and if the answer is 'yes' then consider a highly disordered and illogical mind a distinct possibility, with utter inability to weigh up simple pieces of information to come to a sensible decision. It is a medicolegal breakthrough. My 'Brexit test' may even be mentioned on the next MDU

course you might attend. Unless Britain actually does leave the EU, in which case it might be a seminar on Bronze Age medicine for a Bronze Age people. Rhys would be proud.

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