

**Non-therapeutic
male circumcision (NTMC)
of children – practical
guidance for doctors**



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About this toolkit

Circumcision of male children including those who are competent, for non-therapeutic reasons, is a controversial area and a wide spectrum of views on circumcision is found within society and within the BMA's membership. For example, there are differing views over whether it is a beneficial, neutral or harmful procedure, and whether it should ever be done on a child who is not capable of deciding for himself or undertaken by non-medical practitioners.

A wide spectrum of views can also be found in men who have undergone non-therapeutic male circumcision (NTMC) themselves as children – some feel aggrieved that they were circumcised before they could decide for themselves, whereas others are pleased if, for example, they believe it is an important part of their identity and/or religion, with many going on to arrange the circumcision of their own children.

The BMA has never taken a position in the debate about the acceptability or otherwise of NTMC. Instead, as with other procedures involving children who lack the capacity to consent, we have made clear that those wishing to authorise the procedure for their children need to demonstrate that it is in the child's best interests.

Our guidance focuses on providing practical advice for doctors, including the professional standards expected of doctors performing the procedure, good practice guidelines and safeguards, and the type of factors that might be relevant in an assessment of 'best interests' in this context.

The guidance is not intended to be a comprehensive detailed reflection on all the international and UK debates on the issue. As noted earlier, the guidance is primarily practical, although it also highlights, in brief, some of these debates, to illustrate the diversity of views and the context in which doctors will be making these decisions.

Our guidance does not cover circumcision carried out by non-doctors. We note that there is no requirement in law for these practitioners to have proven expertise, although there are standards that some practitioners ascribe to set by external collectives, associations and societies.

There have been rare cases in the UK where non-doctor practitioners have been imprisoned due to gross failings in the way the circumcision has been carried out, resulting in the death of, or life-changing injuries to a child. We urge parents who are considering having their child circumcised, to ensure that the practitioner who carries out the circumcision has undergone relevant training and has proven experience and competence in the practice.

The guidance also does not cover FGM (female genital mutilation), which is a separate issue and is a crime in the UK under the Female Genital Mutilation (England, Wales and Northern Ireland) Act 2003 (as amended by the Serious Crime Act 2015) and the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (as amended by the Serious Crime Act 2015) and is addressed in governmental child safeguarding policy and statutory guidance.

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Card 1

Background

What is NTMC (non-therapeutic male circumcision)?

Male circumcision is the removal of part or all of the foreskin (prepuce) that covers the penile glans. If it is undertaken for any reason other than current physical clinical need, it is termed non-therapeutic (or sometimes 'ritual') circumcision.

What is the structure and function of the foreskin?

The foreskin is often described simply as a loose fold of skin in medical textbooks, with an inner surface containing modified sebaceous glands that secrete smegma.

The London School of Hygiene and Tropical Medicine, World Health Organization (WHO) and Joint United Nations Programme on HIV/AIDS (UNAIDS) joint publication on male circumcision goes further, noting that:

'There is debate about the role of the foreskin, with possible functions including keeping the glans moist, protecting the developing penis in utero, or enhancing sexual pleasure due to the presence of nerve receptors. The foreskin is part of our phylogenetic heritage; non-human primates, including our closest living relatives, chimpanzees, have prepuces that partially or completely cover the glans penis.'

Why is it performed?

Some people ask for NTMC for their children or themselves as they believe it is a defining feature of their identity and/or faith. For example, it is traditionally recommended in the Jewish and Muslim religions that followers observe the practice, and so it is common in those religious groups.

Others ask for NTMC to incorporate a child into a practising community, and some want their sons to be like their fathers. For example, NTMC is routinely carried out on newborn males in a number of countries, including the USA.

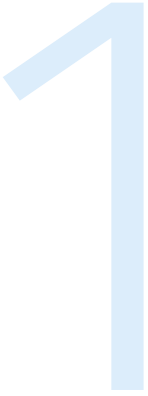
It should not be assumed, however, that because a child is born into a practising community, the parents will automatically seek NTMC and are supportive of the practice.

How prevalent is NTMC?

The routine circumcision of male infants and children has been practised across the globe for centuries. The practice is deeply embedded in the family life of some populations. The WHO estimates that 30% of males aged 15 years old and over are circumcised worldwide.

The prevalence of NTMC in the UK is unknown. Hospital Episode Statistics (HES) showed in 2016-17 that just under 10,000 males under the age of 18 underwent circumcision on the NHS in England. It is not known however, how many of these operations, if any, were for non-therapeutic reasons as opposed to being carried out to rectify a medical condition.

In addition, the rate of circumcisions carried out privately or by religious practitioners is not recorded, although indicatively, the WHO notes that 99% of Jewish males in the UK are estimated to have undergone NTMC and it is likely that there is similar prevalence for Muslim males. The 2011 Census for England and Wales found 2.7 million people identifying themselves as Muslim (4.8% of the population) and 263,000 identifying themselves as Jewish (0.5% of the population).



Who carries out NTMC?

Male infant circumcision does not require a medical professional and, indeed, is often done by special practitioners within religious groups who are not medically qualified. We urge parents who are considering having their child circumcised, to ensure that the practitioner who carries out the circumcision has undergone relevant training and has proven experience and competence in the practice. As with other areas of clinical practice, doctors may have professional obligations to notify authorities if they become aware of medical or non-medical practitioners falling below the expected standards of care when performing NTMC.

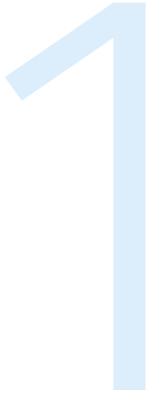
Doctors do carry out NTMC, sometimes but rarely on the NHS (see Card 10), but also privately or primarily as a religious practitioner. All doctors who perform NTMC, wherever and in whatever capacity, are obliged to adhere to professional standards, including having the necessary skills and experience to perform the procedure; and to be registered in England with the Care Quality Commission (CQC), in Wales with Healthcare Inspectorate Wales (HIW) and in Scotland with Healthcare Improvement Scotland (HIS). (In Northern Ireland, there is no requirement to be registered with The Regulation and Quality Improvement Authority (RQIA) to carry out circumcision.)

The BMA is aware of reports of individual doctors who perform NTMC being harassed for their involvement in the provision of NTMC. The BMA respects the right to peaceful protest and to democratic processes to challenge accepted norms. However, the BMA abhors the harassment of individual doctors through intimidating and threatening behaviour on the basis of their involvement in the provision of NTMC.

Why is it controversial?

In recent years, some overseas medical organisations have published new or updated statements on NTMC, which illustrate the diversity of opinion on the issue:

- The Danish Medical Association (Lægeforeningen) 2016 statement outlines its view that NTMC is ethically unacceptable if the procedure is performed without the informed consent of the person undergoing it. It takes the view that NTMC should only be done with the informed consent of the person himself. The Association does not believe there is evidence that there is a health benefit in NTMC. It notes that the process towards the elimination of NTMC is complex, and should be conducted in dialogue with the populations for whom boys' circumcision has a religious or cultural significance.
- The American Academy of Pediatrics (AAP) 2012 statement notes that the current evidence suggests that the health benefits of NTMC outweigh the risks. (This analysis of the benefits and risks has been heavily criticised by some.) The AAP argues that this justifies the procedure for families who choose it but not the routine circumcision of all male newborns. NTMC is commonplace in the US, with approximately 80% of the male population being circumcised. The statement goes on to say it is for parents to decide what is in the best interests of their son: 'they will need to weigh medical information in the context of their own religious, ethical, and cultural beliefs and practices. The medical benefits alone may not outweigh these other considerations for individual families.'
- The Royal Dutch Medical Association's (KNMG) 2010 statement outlines its view that NTMC 'conflicts with the child's right to autonomy and physical integrity'. It seeks ultimately 'to minimise non-therapeutic circumcision of male minors'. Amongst other things, it calls on (referring) doctors to explicitly inform parents/carers of the risk of complications and the lack of convincing medical benefits of NTMC. The KNMG statement goes on to express fears that a legal prohibition would result in the intervention being



performed by non-medically qualified individuals, in circumstances in which the quality of the intervention could not be sufficiently guaranteed. This could lead to more serious complications than is currently the case.

Background reading

- London School of Hygiene and Tropical Medicine, World Health Organization and Joint United Nations Programme on HIV/AIDS. *Male circumcision – Global trends and determinants of prevalence, safety and acceptability*, 2007. Available at http://apps.who.int/iris/bitstream/10665/43749/1/9789241596169_eng.pdf
 - Danish Medical Association. *The Danish Medical Association's policy on circumcision of baby boys without medical indication*, 2016. Available at www.laeger.dk/nyhed/laegeforeningen-omskaering-boer-kun-foretages-efter-informeret-samtykke-fra-den-unge-mand-selv
 - American Academy of Pediatrics. Policy Statement: Circumcision Policy Statement. *Paediatrics* 2012; 130 (585). Available at <http://pediatrics.aappublications.org/content/130/3/585.full.pdf+html>.
 - Royal Dutch Medical Association. *Non-therapeutic circumcision of male minors*, 2010. Available at www.knmg.nl/circumcision/
 - Journal of Medical Ethics. July 2013, Special edition: The ethics of male circumcision. *Journal of the Institute of Medical Ethics*. 2013; 7. Available at <https://jme.bmj.com/content/39/7>
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Card 2 Ten good practice points

This Card is intended as a reminder of some of the main good practice points, but doctors are advised to read the whole toolkit.

1. Doctors must act in a child's best interests. (See Card 6 on best interests.)
2. A child's best interests include not only a child's health interests but also a child's social and cultural interests. (See Card 6 on best interests.)
3. Children who are able to express views about non-therapeutic male circumcision (NTMC) should be involved in the decision-making process. (See Card 7 on consent and refusal.)
4. Where a child (with or without competence) refuses NTMC, the BMA cannot envisage a situation in which it will be in a child's best interests to perform circumcision, irrespective of the parents' wishes. (See Card 7 on consent and refusal.)
5. Parental preference alone does not constitute sufficient grounds for performing NTMC. It is the parents' responsibility to explain and justify requests for circumcision, in terms of the individual factors in relation to a particular child's best interests. (See Card 6 on best interests.)
6. Consent for NTMC is valid only where the people (or person) giving consent have (or has) the authority to do so and understand(s) the implications and risks. (See Card 7 on consent and refusal.)
7. Where a child lacks competence, and where there are two parents, both must give consent for NTMC. (See Card 7 on consent and refusal.)
8. Where people, and/or agencies, with parental responsibility for a child disagree about whether he should be circumcised, doctors should not circumcise the child without the leave of a court. (See Card 8 on disputes.)
9. As with all medical procedures, doctors must act in accordance with good clinical practice and provide adequate pain control and aftercare, including being registered in England with the Care Quality Commission (CQC), in Wales with Healthcare Inspectorate Wales (HIW) and in Scotland with Healthcare Improvement Scotland (HIS). (See Card 10 on providing NTMC.)
10. Doctors must make accurate, contemporaneous notes of discussions, details of best interests assessments, consent, pre-operative clinical assessments, the procedure itself and its aftercare. (See Card 11 on record-keeping.)

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Card 3 Circumcision for medical purposes

What if circumcision is recommended for clinical reasons?

Male circumcision in cases where there is a clear clinical need is not normally controversial. Nevertheless, normal anatomical and physiological characteristics of the infant foreskin have in the past been misinterpreted as being abnormal. Doctors should be aware of this and reassure parents accordingly.

What are the clinical indications for circumcision?

In 2016-17, just under 10,000 males under the age of 18 underwent circumcision on the NHS in England, although the indications for these circumcisions are not given in the published data. Clinical indications for circumcision might include phimosis (typically due to severe scarring of the opening of the foreskin or Balanitis Xerotica Obliterans (BXO)), recurrent paraphimosis (i.e. where the foreskin becomes painfully stuck behind the glans); recurrent balanitis (infection of the glans); and prophylaxis of urosepsis in those with underlying structural urological abnormalities. Traumatic (zipper) injury or penile malignancy in adults may also be indications for foreskin removal.

Are there any special considerations?

As with other therapeutic procedures, unnecessarily invasive procedures should not be used where alternative, less invasive techniques are equally effective and available. It is important that doctors keep up to date, and ensure that any decisions to undertake an invasive procedure are based on the best available evidence. Therefore, to circumcise solely for therapeutic reasons where medical research has shown other techniques to be at least as effective and less invasive (and there are no relevant social and cultural interests to take into account for that particular child) would be unethical and inappropriate.

If there is doubt about whether treatment is needed, or what is the most appropriate course of management, advice from a relevant specialist should be sought – for example, if the procedure could or should be delayed, or if there may be contraindications relating to disorders of the genitalia.

It is recommended that circumcision for medical purposes must only be performed by those who are experienced and competent to carry out the procedure, and in an environment capable of fulfilling guidelines for surgical procedures in children.

Resources

- The British Association of Paediatric Urologists on behalf of the British Association of Paediatric Surgeons and the Association of Paediatric Anaesthetists. *Management of foreskin conditions*, 2006. Available at www.baps.org.uk/content/uploads/2014/10/circumcision-final-may-2007.pdf
 - British Association of Paediatric Surgeons. *Circumcision (child) parent leaflet*, 2017. Available at www.baps.org.uk/resources/documents/circumcision/
 - BMJ Best Practice. *Anatomical penile abnormalities*, 2018. Available at <https://bestpractice.bmj.com/topics/en-gb/1049>
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Card 4 The law

What does the law say about non-therapeutic male circumcision (NTMC)?

NTMC is generally assumed to be lawful if:

- it is believed to be in the child’s best interests (see Card 6);
- there is valid consent (see Card 7, particularly on the role of both parents);
and
- it is performed competently (see Card 10).

The lawfulness is not, however, grounded in statute and despite this common law assumption, the legality is not uncontroversial. With the intention of ending all doubt, in 1995 the Law Commission concluded that although in its view ritual circumcision is lawful, law reform to ‘put the lawfulness of ritual male circumcision beyond any doubt’ would be useful. Law reform has not, however, been forthcoming.

Should there be any substantive changes to the law in the future, these will be reflected in updates to this toolkit. If doctors are in any doubt about the legality of their actions, they should seek legal advice.

Has there been any recent case law?

In 2015, Sir James Munby (as President of the Family Division of the High Court of England and Wales) handed down a judgment in care proceedings relating to two children, a brother and sister, which considered both NTMC and FGM (female genital mutilation).

After some consideration in his judgment, Munby concluded that “‘reasonable’ parenting is treated as permitting male circumcision’. He went on to state that ‘although both [FGM and NTMC] involve significant harm, there is a very clear distinction in family law between FGM and male circumcision. FGM in any form will suffice to establish “threshold” in accordance with section 31 of the Children Act 1989; male circumcision without more will not.’

Re B and G (Children) (No 2) [2015] EWFC 3

On threshold, section 31 of the Children Act 1989 notes that for a court to act it must be satisfied:

- ‘(a) that the child concerned is suffering, or is likely to suffer, significant harm;
and
 - (b) that the harm, or likelihood of harm, is attributable to—
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child’s being beyond parental control.’
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Are there any additional legal implications for NTMC?

As with other areas of clinical care, poorly performed circumcisions have legal implications for the doctor responsible. An action could be brought on the child's behalf against the doctor responsible, if the circumcision was carried out negligently. Alternatively, the child could issue such proceedings in his own name on or after reaching the age of 18, and the normal time limit for starting legal proceedings would run from that birthday.

Unless the lawfulness of circumcision, in and of itself, is successfully challenged, however, action cannot currently be taken against a doctor simply because the child is subsequently unhappy, later in life, about having been circumcised.

Doctors undertaking NTMC are strongly advised to make clear and comprehensive notes on the decision-making process for undertaking NTMC, the information given and the discussions that informed those decisions – for example on best interests assessments (see Card 11 on record-keeping). Failure to appropriately undertake and document the decision-making process may leave a doctor at greater risk of legal challenge.

How are a child's human rights engaged?

As with all medical decisions, doctors must consider whether their decisions impact on a person's human rights under the European Convention on Human Rights, as provided for by the Human Rights Act 1998, and, if so, whether the interference can be justified.

The rights in the Act are referred to by both those who support and those who oppose NTMC.

Rights that might be engaged in individual cases include:

- Article 3: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment';
- Article 5(1): 'Everyone has the right to liberty and security of the person';
- Article 8: 'Everyone has the right to respect for his private and family life' except for the 'protection of health or morals, or for the protection of the rights and freedom of others';
- Article 9(1): 'Everyone has the right to freedom of thought, conscience and religion'; and
- Article 9(2): 'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'

How do I balance these rights?

One reason why it is not clear where the balance of rights lies, is that there are conflicting views on whether circumcision is a relatively neutral procedure, that, competently performed, carries little risk but can confer important psychosocial benefits; or whether circumcision has, or can have, profound and long-lasting adverse effects on the person who has been circumcised.

It has been suggested that if NTMC was shown to be prejudicial to a child's health and wellbeing, it is likely that a legal challenge on human rights grounds would be successful; and that it may follow that there would be obligations on the state to proscribe it. The UN Convention on the Rights of the Child, which has been ratified by the UK, requires ratifying states to 'take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children'.

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Of note, one country that has also ratified the UN Convention on the Rights of the Child, and has recently considered the issue of NTMC – Germany – has approved legislation to establish ‘legal certainty’ that NTMC is legal under certain circumstances (section 1631(d) in the German Civil Code).

Case law

- *Re L and B (Children) (Specific Issues: Temporary Leave To Remove From The Jurisdiction; Circumcision)* [2016] EWHC 849 (Fam) (see Card 8 for summary of the case).
- *Re B and G (Children) (No 2)* [2015] EWFC 3 (see Card 4 for summary of the case).
- *A (A Child), Re* [2015] EWFC B131 (see Card 8 for summary of the case).
- *Re S (Children) (Specific issue: circumcision)* [2005] 1 FLR 236. A case in which, following divorce, a Muslim mother applied for permission for her 8-year-old son to be circumcised. The son’s father opposed the application and the opposition was upheld by the court on the basis that the mother’s application stemmed from the mother’s need to portray herself as a practising Muslim rather than the son’s best interests.
- *Re J (Child’s Religious Upbringing and Circumcision)* [2000] 1 FCR 307 (see Card 6 for summary of the case).

Judgments can be found on the BAILII (British and Irish Legal Information Institute) website www.bailii.org/

Other reference material

- Convention for the Protection of Human Rights and Fundamental Freedoms (4. ix. 1950; TS 71; Cmnd 8969). Human Rights Act 1998.
 - United Nations Convention on the Rights of the Child (20. xi. 1989; TS 44; Cm 1976) Article 24(3).
 - Law Commission. *Consent in the Criminal Law. Law Commission Consultation Paper No 139*. London: HMSO, 1995: 119, 128.
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Card 5 Health risks and benefits

Is non-therapeutic male circumcision (NTMC) of overall benefit or harm to a child's health?

There is significant disagreement about whether circumcision is overall a beneficial, neutral or harmful procedure, and different medical organisations have adopted different views (see Card 1). At present, the medical literature on the health, including sexual health, implications of circumcision can be contradictory, and often subject to claims of bias in research.

An evaluation of the research by the BMA's specialists in science and public health has shown, for example, good evidence from international studies that male circumcision can reduce the chances of acquiring HIV infection in some circumstances, although caution must be taken about how this can be extrapolated to the UK; evidence in respect of other STIs (sexually transmitted infections) is more mixed. As well as some, generally relatively low, risks of complication during the circumcision operation itself, there is some weaker evidence that circumcision may give rise to sexual problems.

The BMA considers that the evidence concerning health benefit from NTMC is insufficient for this alone to be a justification for boys undergoing circumcision. In addition, some of the anticipated health benefits of male circumcision can be realised by other means – for example, condom use.

Whether NTMC is neutral, or of overall harm to a child's health, will be based on an individual assessment of a child's circumstances based on the latest clinical evidence, taking into account the inherent risk in any procedure (see section below) and any underlying health issues the child may have. This health assessment will then need to be measured against broader interests (see Card 6 on best interests).

As part of the review of the BMA's guidance on NTMC, the BMA was sent many clinical articles on male circumcision. It should be noted that although representing doctors, the BMA is not a clinical organisation. We would welcome a more comprehensive review of the literature on this issue from an impartial clinical organisation.

What are the risks of the procedure?

There are clearly risks inherent in any surgical procedure: for example, pain, bleeding, surgical mishap and complications of anaesthesia. With NTMC there are associated medical and psychological risks, although it is generally considered a low-risk procedure. Usually risks of surgery are offset by the medical benefits that ensue – where there are no clear medical benefits, some other justification is needed for exposing children to this risk.

The procedure may be higher risk in children with certain underlying health conditions. It may be appropriate to screen patients for conditions that would substantially increase the risks of circumcision – for example haemophilia – and seek advice from a relevant specialist. The procedure will also be higher risk when carried out by individuals lacking the competence to adequately assess the child prior to, during and after the procedure.

All appropriate steps must be taken to minimise these risks.

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Fitness to practise case – importance of assessing the health of the child prior to NTMC

In 2016, a doctor had conditions placed on his registration at a Medical Practitioners Tribunal. The doctor performed NTMC on a child who was subsequently diagnosed with a fistula. The patient's parents began legal proceedings for clinical negligence, which were settled by the payment of damages, with no admission of liability. Nevertheless, in the fitness to practise proceedings, the doctor was found, amongst other things, to have failed to have:

- fully examined and/or assessed the patient;
- made an adequate record of the treatment he provided; and
- informed the patient's GP of the procedure.

GMC reference 5205264

What should I tell parents or patients?

Doctors should ensure that any parents seeking circumcision for their son in the belief that it confers health benefits, are informed of the lack of consensus amongst the profession over such benefits, and how great any potential benefits and harms are.

Doctors performing circumcision must ensure that those giving consent are aware of the issues, including the risks associated with any surgical procedure.

GMC (General Medical Council) guidance – discussing benefits, risks and side effects

'18. If patients (or those with parental responsibility for them) ask for a procedure, such as circumcision of male children, for mainly religious or cultural reasons, you should discuss with them the benefits, risks and side effects of the procedure. You should usually provide procedures [where you have the knowledge, skills and experience to do so safely] that patients request and that you assess to be of overall benefit to the patient. If the patient is a child, you should usually provide a procedure or treatment that you assess to be in their best interests. In all circumstances, you will also need the patient's or parental consent.'

GMC, Personal beliefs and medical practice

Resources

- The British Association of Paediatric Urologists on behalf of the British Association of Paediatric Surgeons and the Association of Paediatric Anaesthetists. *Management of foreskin conditions*, 2006. Available at www.baps.org.uk/content/uploads/2014/10/circumcision-final-may-2007.pdf
- British Association of Paediatric Surgeons. *Circumcision (child) parent leaflet*, 2017. Available at www.baps.org.uk/resources/documents/circumcision/
- The Scottish Government. *Circumcision and your child – parent's leaflet*, 2008. Available at <https://www2.gov.scot/Publications/2008/02/14143159/4>

6

Card 6 Determining best interests

Who decides what is in a child's or young person's best interests?

Where a child lacks competence, there is a presumption that the child's parents have the child's best interests at heart. Although they usually coincide, the interests of the child and those of the parents are not always synonymous. Doctors should be alert to situations in which parents' decisions appear to be contrary to their child's interests.

Where a child is able to express a view about non-therapeutic male circumcision (NTMC), his views on what would be in his best interests are of importance to the decision-making process. The BMA cannot envisage a situation in which it is ethically acceptable to circumcise a child or young person, either with or without competence, who refuses the procedure, irrespective of the parents' wishes.

Doctors should only undertake NTMC where they are satisfied that it is in the best interests of the child. The reasons for this professional judgement should be recorded in the medical record.

Where a child lacks competence, is parental request alone sufficient to justify NTMC in a child's best interests?

Parental preference alone does not constitute sufficient grounds for performing NTMC on a child unable to express his own view. Parental preference must be weighed in terms of the child's interests (see next section).

It is the parents' responsibility to explain and justify requests for circumcision, in terms of the individual factors in relation to that child's best interests. They need to explain why the benefits of NTMC outweigh the risks inherent in any surgical procedure.

What needs to be taken into account when assessing a child's or young person's best interests?

In addition to considering the child's health interests (see Card 5), it is important that doctors consider other matters including the child's social and cultural circumstances, as part of an overall best interests assessment.

Where a child is living in a culture in which circumcision is perceived to be required for all males, the increased acceptance into a family or society that circumcision can confer, is considered to be a strong social or cultural benefit. Exclusion may cause harm by, for example, complicating the individual's search for identity and sense of belonging. Some religions require circumcision to be undertaken within a certain time limit, and so a decision to delay circumcision may also be harmful. Clearly, assessment of such intangible risks and benefits is complex.



What does the GMC say on wider best interests?

'34. Both the GMC and the law permit doctors to undertake procedures that do not offer immediate or obvious therapeutic benefits for children or young people, so long as they are in their best interests ... and performed with consent...

'35. To assess their best interests you should consider the religious and cultural beliefs and values of the child or young person and their parents as well as any social, psychological and emotional benefits. This may be relevant in circumcision of male children for religious or cultural reasons, or surgical correction of physical characteristics that do not endanger the child's life or health.'

GMC, 0-18 years: guidance for all doctors

Furthermore, the harm of a person not having the opportunity to choose not to be circumcised or choose not to follow the traditions of his parents must also be taken into account, together with the damage that can be done to the individual's relationship with his parents and the medical profession, if he feels harmed by an irreversible non-therapeutic procedure.

The following should be taken into account when assessing best interests in relation to NTMC:

- the child or young person's own ascertainable wishes, feelings and values;
- the child or young person's ability to understand what is proposed and weigh up the alternatives;
- the child or young person's potential to participate in the decision, if provided with additional support or explanations;
- the child or young person's physical and emotional needs;
- the risk of harm or suffering for the child or young person;
- the views of parents and family;
- the implications for the family of performing, and not performing, the procedure;
- relevant information about the child or young person's religious or cultural background; and
- the prioritising of options which maximise the child or young person's future opportunities and choices.

What have the courts said on wider best interests?

The courts have confirmed that a child's lifestyle and likely upbringing are relevant factors to take into account. The individual factors of each case need to be considered.

For example, in *Re J*, J was a 5-year-old boy who lived with his mother, a non-practising Christian. His father, a non-practising Muslim, wanted him to be circumcised. Asked to decide whether J should be circumcised, the court considered all the factors relevant to J's upbringing and concluded that J should not be circumcised because of three key facts:

- he was not, and was not likely to be, brought up in the Muslim religion;
 - he was not likely to have such a degree of involvement with Muslims as to justify circumcising him for social reasons; and as a result of these factors,
 - the 'small but definite medical and psychological risks' of circumcision outweighed the benefits of the procedure.
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How do I balance these different types of interests?

Best interests assessments for NTMC can be challenging for some doctors, due to uncertainty over how to broach or consider best interests, specifically weighing up unquantifiable spiritual and cultural risks and benefits (of which the assessing doctor may have limited understanding) along with potential health risks and benefits. In addition to asking parents to explain and justify requests for circumcision, doctors may wish to ask what the implications might be for a child if he is not circumcised, and/or whether circumcision can be deferred until the child can make his own decision (see Card 7 on deferment).

On a more practical level, doctors may be concerned that if they decide not to circumcise, a child may be circumcised in unhygienic or otherwise unsafe conditions. In some cases, a boy's underlying health issues may not preclude NTMC but may increase the risk of performing it. Doctors may consider it better that they carry out the procedure, or refer to another practitioner, rather than allow the child to be put at greater risk. On the other hand, very similar arguments are also used to try to justify very harmful cultural procedures, such as FGM or ritual scarification.

Where a doctor does not believe that NTMC is contrary to the interests of a child but is uncertain over what is in the best interests of a child or young person, further discussion should take place and, where appropriate, a doctor should seek a second opinion. In some cases, it may be necessary to seek legal advice.

As with all best interests assessments, there are no set formulae to follow when weighing different interests; it is a matter of professional judgment. As with any other aspect of care, health care professionals must be able to justify their decisions and should record the basis on which their decisions are made.

Key guidance

- General Medical Council. *0–18 years: guidance for all doctors*, 2007. Available at www.gmc-uk.org/static/documents/content/0_18_years.pdf
 - British Medical Association. *Children and young people toolkit*, 2010. Available at <https://www.bma.org.uk/advice/employment/ethics/children-and-young-people>
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7

Card 7 Consent and refusal

Who needs to consent to a child or young person undergoing non-therapeutic male circumcision (NTMC)?

When there is agreement that NTMC is in a child's best interests (see Card 6 on best interests), consent to carry out the procedure may come from:

- a competent child or young person;
- when the child lacks competence, all parents with parental responsibility or other persons or agencies with parental responsibility;
- a court; or
- an appointed proxy (in Scotland where the patient is over 16 and unable to make decisions for himself).

There may be occasions when a 16- or 17-year-old, who would usually be presumed to be competent to make decisions, may lack capacity or may become incapacitated. In these circumstances, doctors are advised to seek legal advice.

How should I take into account the views of the child?

A competent child may decide for himself whether to undergo NTMC. When assessing competence to decide, doctors should be aware that parents can exert great influence on their child's view of a procedure. That is not to say that decisions made with advice from parents are necessarily in doubt, but that it is important that the decision is the child's own independent choice.

Where a child lacks competence or capacity and can express a view, the child should be involved in decisions about whether he should be circumcised. His wishes and feelings should be taken into account.

In both circumstances, the BMA cannot envisage a situation in which it is ethically acceptable to circumcise a child or young person who refuses the procedure, irrespective of the parents' wishes.

Often, surgery for non-therapeutic reasons is deferred until a child has sufficient maturity and understanding to participate in the decision about what happens to his body. In some cases, however, a doctor may make a professional judgement that the overall social, psychological, emotional and/or clinical benefits of a particular child undergoing NTMC do not allow for the procedure to be deferred until this time. For example, in some religions there are criteria as to when NTMC should be undertaken (although in some circumstances NTMC may be deferred or precluded due to an underlying medical condition).

Legal case – recognition of deferment in some circumstances

In a case in which a Muslim father wanted his sons to be circumcised:

'...I am simply deferring that decision ... [until] each of the boys themselves will make their individual choices once they have the maturity and insight to appreciate the consequences and longer term effects of the decisions which they reach. Part of that consideration will be any increase in the risks of surgery by the time they have reached puberty. I do not regard the delay between now and that point in time significantly to increase those risks. The safest point in time to have carried out the procedure... has long since passed.'

Mrs Justice Roberts at 143, Re L And B [2016] EWHC 849 (Fam)



Can I undertake NTMC with just one parent's consent?

The BMA and GMC have long recommended that consent should be sought from both parents for NTMC. Although parents who have parental responsibility are usually allowed to take medical decisions for their children alone, non-therapeutic circumcision has been described by the courts as an 'important and irreversible' decision that should not be taken against the wishes of a parent.

It follows that where a child has two parents with parental responsibility, doctors considering circumcising a child must satisfy themselves that both have the necessary parental authority and have given valid consent. Where a child has only one parent, obviously that person can give their consent alone.

GMC guidance – consent for circumcision

'20. If the patient is a child, you must proceed on the basis of the best interests of the child and with consent. Assessing best interests will include the child's and/or the parents' cultural, religious or other beliefs and values. You should get the child's consent if they have the maturity and understanding to give it. If not, you should get consent from all those with parental responsibility. If you cannot get consent for a procedure, for example, because the parents cannot agree and disputes cannot be resolved informally, you should:

- inform the child's parents that you cannot provide the service unless you have authorisation from the court
- advise the child's parents to seek legal advice on applying to the court.'

GMC, Personal beliefs and medical practice

If a child presents with only one parent, it is essential that efforts are made to contact the other parent for consent.

Legal case highlighting the need for valid consent

Following the circumcision of a baby boy by a doctor without the mother's consent in 2013, the case was reported to social services, the police and the GMC.

The boy's paternal grandmother had taken the boy for NTMC. The doctor who performed the circumcision reported that he believed the boy's mother had consented.

At the time of writing, the CPS (Crown Prosecution Service) had decided not to prosecute the doctor but the doctor's actions were being investigated by the MPTS (Medical Practitioners Tribunal Service). The possibility of further legal action against the doctor was also reported.

Of note for doctors, in the CPS letter outlining its decision not to prosecute, the following points were made:

- if the doctor had performed NTMC knowing the mother did not consent, his actions may have amounted to an assault;
- the doctor may have failed in his professional obligations to discuss the issue of consent with the mother;
- but 'that in itself is not sufficient for there to be a criminal prosecution'.

Lowbridge C, 'No-consent' circumcision doctor will not be prosecuted, BBC Online, 10 November 2017



What if one parent does not want NTMC to take place?

If parents disagree about having their child circumcised, the parent seeking circumcision could seek a court order authorising the procedure, which would make it lawful, although doctors are advised to consider carefully whether circumcising against the wishes of one parent would be in the child's best interests (see Card 8 on disputes).

To ensure valid consent, what information should I give families about the health risks and benefits of NTMC?

Consent for any procedure is valid only if the person or people giving consent understand the nature, implications and risks of the procedure. To promote such an understanding of circumcision, parents and children should be provided with up-to-date written information about the risks and alternatives. The British Association of Paediatric Surgeons has produced a patient leaflet for parents – see resources below (see also Card 5 on health risks and benefits).

Does NTMC require written consent?

In the case of NTMC it is advisable to obtain written consent. Doctors should ask parents to confirm their consent in writing by signing a consent form. This is simply a document showing that a discussion has taken place and consent has been provided, and does not itself mean that consent is valid.

Resources

- British Association of Paediatric Surgeons. *Circumcision (child) parent leaflet*, 2017. Available at www.baps.org.uk/resources/documents/circumcision/
 - British Medical Association. *Children and young people toolkit*, 2010. Available at <https://www.bma.org.uk/advice/employment/ethics/children-and-young-people>
 - General Medical Council. *0–18 years: guidance for all doctors*, 2007. Available at www.gmc-uk.org/static/documents/content/0_18_years.pdf
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Card 8 Disputes

When do disputes occur?

Ideally, decisions about what is in a child's best interests are made in partnership between the family and the health team, with the parental role gradually fading as the child develops in maturity.

Disputes arise, however, where there is a difference of opinion as to whether circumcision is in a child's or young person's best interests. In relation to non-therapeutic male circumcision (NTMC), disputes have primarily arisen between parents, but there has also been a case of parents in dispute with the local authority whose care their child was under.

Are there examples of disputes that have gone to court?

Additional cases are highlighted elsewhere in the toolkit.

- *Re L And B (Children) (Specific Issues: Temporary Leave To Remove From The Jurisdiction; Circumcision)* [2016] EWHC 849 (Fam): an estranged Muslim father sought NTMC of his young sons, in the absence of the mother's consent. The mother wished the children to decide for themselves whether to undergo circumcision once they were competent to do so. Based on the individual facts of the case, the judge agreed that the decision should be deferred until the boys could decide for themselves (see quote on Card 7).
- *A (A Child), Re* [2015] EWFC B131: an unsuccessful application was made by Muslim parents of a child who was under local authority (LA) care, for the court to make a declaration/injunction, under section 7(1)(b) of the Human Rights Act 1998, for the LA to arrange for the NTMC of the child. The LA was opposed to the child's undergoing NTMC. The judge noted that there were religious and social reasons in favour of the parents' applications, whilst later stating that NTMC was not an essential prerequisite for Islamic religious observance. The judge noted, however, that the child would be growing up with foster carers and his foster family and peers would not all be circumcised.

There may also be a difference in opinion between doctors and the family. Doctors may not wish to accede to a parental request for NTMC as they do not believe it is in a boy's best interests (see Card 9 on responding to requests). Doctors are under no obligation to provide NTMC. If a doctor does not support NTMC they should declare this.

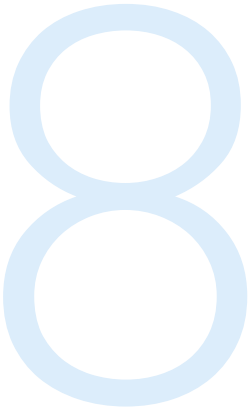
How should a dispute be approached?

Many disputes arise because of poor communication and all efforts should be made to avoid this. An independent second opinion may be helpful in resolving some disagreements, but ultimately, some may have to be resolved by the courts. Health professionals must always focus on the overall best interests of the child or young person.

When should legal advice be sought?

Legal advice should be sought if those with parental responsibility disagree over whether circumcision should take place.

If agreement cannot be reached, lawyers may advise that it is necessary to seek a court order. Families should be informed and told how to seek legal representation.



How can involving the courts help?

Going to court can be distressing for those concerned and it is essential that ongoing support is provided for the child, the parents, and the health care team. There are great benefits, however, in a legal system that can give rulings very quickly when necessary. The law can provide a protective role for both patients and the health care team where there is disagreement that cannot be resolved.

Can the courts approve NTMC?

In England, Wales, and Northern Ireland the courts have the power to give consent on behalf of competent and incompetent patients aged under 18. In other circumstances there have been cases where a court has overridden a parental refusal or a child's refusal, if there was evidence that something would be in the child or young person's best interests (although it is highly unlikely that a competent child's refusal of NTMC would be overridden).

In Scotland, the courts have the same powers to give consent to treatment on behalf of people aged under 16, when the child is not competent to give valid consent for himself or herself. Again, although untested, it is highly unlikely that a competent child's refusal of NTMC would be overridden.

The courts cannot, however, require doctors to perform NTMC contrary to their professional judgement.

In the recent cases that have come to court, as a result of a dispute over whether NTMC was in the best interests of a child lacking competence, the courts have ruled that NTMC was not in the child's best interests at that time, and where relevant, have suggested deferment to when the boy could make his own decision about whether to be circumcised (in addition to cases on this Card, see Cards 4, 6, and 7).

Key guidance

- British Medical Association. *Children and young people toolkit*, 2010. Available at <https://www.bma.org.uk/advice/employment/ethics/children-and-young-people>
 - General Medical Council. *0–18 years: guidance for all doctors*, 2007. Available at www.gmc-uk.org/static/documents/content/0_18_years.pdf
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Card 9 Declining requests for non-therapeutic male circumcision (NTMC)

What if I don't believe that NTMC is in a child's overall best interests?

Doctors can refuse to perform NTMC if they do not believe it is in the overall best interests of a child.

Doctors are under no obligation to comply with a request to circumcise a child. In these circumstances, doctors should explain this to the child and his parents, and, if appropriate, explain their right to seek a second opinion.

Am I obliged to refer the child to another practitioner?

Where the procedure is not therapeutic, there is arguably no ethical obligation to refer on. On a practical level, as NTMC is not routinely funded by the NHS, referring on could be a challenge in some areas.

The family is, of course, free to see another doctor and some doctors may wish to suggest an alternative practitioner.

Of note for doctors working in Scotland, the Scottish government's NHS staff leaflet on NTMC states that 'If the GP does not agree to the referral on non-clinical grounds, he or she should suggest an alternative doctor to the patient, in accordance with the GMC's advice that the patient has the right to seek a second opinion.'

GMC guidance – seeking a second opinion

'9. You must give patients the information they want or need about: ... i) their right to seek a second opinion'

GMC, *Consent: patients and doctors making decisions together*

What if I have a moral objection to the practice of non-therapeutic circumcision?

If a doctor declines a request to perform NTMC solely on the basis of his or her moral beliefs about the practice, irrespective of an assessment of a child's best interests, a doctor is obliged to follow the GMC's guidance on conscientious objection – see below – and should explain this to the parents.



GMC guidance – conscientious objection

'21. If you judge that a procedure is not in the best interests of a child, you must explain this to the child (if he or she can understand) and to their parents... You are not obliged to provide treatments in such cases. If you hold objections to the procedure as a result of your religious or moral beliefs, you should follow our advice on conscientious objection.'

GMC, *Personal beliefs and medical practice*

The GMC's advice on conscientious objection states that doctors must:

- tell the patient that they have a right to discuss options for treatment with another practitioner
- make sure that the patient has enough information to arrange to see another doctor who does not hold the same objection as you
- if it's not practical for a patient to arrange to see another doctor, the doctor must make sure that arrangements are made – without delay – for another suitably qualified colleague to advise, treat or refer the patient.

GMC, *Personal beliefs and medical practice*

In these circumstances, although the BMA recognises the importance of frankness and openness with patients, this does not extend to doctors offering unsolicited opinions about their own moral views. Although all doctors have private moral views, they should not share them unless explicitly asked by patients to do so.

In particular, doctors should avoid making pejorative or judgemental comments about patients' or parents' values or behaviour. Doctors must avoid language or actions that imply discrimination. NHS guidance makes clear that such behaviour in a health care setting could be construed as harassment.

Key guidance

- General Medical Council. *0–18 years: guidance for all doctors*, 2007. Available at www.gmc-uk.org/static/documents/content/0_18_years.pdf
 - General Medical Council. *Personal beliefs and medical practice*, 2013. Available at www.gmc-uk.org/guidance/ethical_guidance/21171.asp
 - General Medical Council. *Good Medical Practice*, 2013. Available at www.gmc-uk.org/guidance/good_medical_practice/apply_knowledge.asp
 - The Scottish Government. *NHS Staff Leaflet*, 2008. Available at <https://www2.gov.scot/Publications/2008/02/14143159/4>
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Card 10 Providing non-therapeutic male circumcision (NTMC)

I am performing NTMC in a religious capacity, not in my role as a doctor. Do I still need to adhere to the same professional standards?

Yes, the GMC makes clear that if a doctor agrees to perform any procedure for religious or cultural reasons, they must meet the same standards of practice required for performing therapeutic procedures, including:

- having the necessary skills and experience to perform the procedure and use appropriate measures, including anaesthesia, to minimise pain and discomfort both during and after the procedure;
- keeping their knowledge and skills up to date;
- ensuring conditions are hygienic; and
- providing appropriate aftercare.

In addition, in England, the carrying out of NTMC by medical providers is a 'regulated activity' for the purposes of the Health and Social Care Act 2008. It is an offence to provide regulated activities in England without registering with the Care Quality Commission (CQC). The CQC *Registration under the Health and Social Care Act 2008: scope of registration states:*

CQC – The scope of registration

'Surgical procedures carried out for religious reasons, such as circumcision, are included where they are carried out by a health care professional. Where a health care professional carries out surgery for religious purposes they will be acting in their capacity as a health care professional rather than in a religious or spiritual role. This is because a registered health care professional's code of practice will prohibit them from disregarding the need to have appropriate skills, experience, equipment and facilities for this procedure and they cannot 'opt out' of their core duties and responsibilities as a registered health care professional, even if they are acting in a spiritual or religious role.'

CQC, Registration under the Health and Social Care Act 2008: scope of registration

Doctors are also expected to be registered in Wales with Healthcare Inspectorate Wales (HIW) and in Scotland with Healthcare Improvement Scotland (HIS).

What if circumcision is outwith my usual clinical area?

Doctors unfamiliar with circumcision who are asked about it, should seek advice about the physical risks from doctors experienced in conducting circumcisions, or a urologist or paediatric surgeon. Religious and cultural organisations may be able to give advice and suggest practitioners who perform circumcisions. It may be necessary to refer a family to a paediatric surgeon, urologist or other doctor experienced in performing the operation for advice and care.

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Are there any specific standards that I should be aware of?

In addition to standards set by organisations which set clinical guidelines (see resources below), there are standards to which some practitioners subscribe, set by external collectives, associations and societies.

The GMC also notes in its guidance on personal beliefs:

GMC guidance – inviting a religious adviser

'23. If you are carrying out circumcision, or another procedure, for religious reasons, you should explain to the patient (or, in the case of children, their parents) that they may invite their religious adviser to be present during the procedure to give advice on how it should be performed to meet the requirements of their faith.'

GMC, Personal beliefs and medical practice

Fitness to practise cases

In 2015, a doctor was erased from the medical register for serious and wide-ranging failings in his clinical practice and repeated instances of dishonesty. Parents of a child he had circumcised claimed that the child was left traumatised and suffered an infection as he did not take hygienic precautions. The circumcision took place at the child's home. The doctor was reported not to have the relevant indemnity insurance for his private work or the necessary registration with the Care Quality Commission (CQC).

GMC reference 5206776

In 2016, a doctor was suspended from the medical register following concerns about his conduct during the circumcision of a four/five-week-old child; placing the patient at unwarranted risk by failing to:

- obtain informed consent;
- make adequate enquiry into a child's medical history;
- carry out a surgical procedure in adequate premises; and
- maintain clean and/or sterile instruments.

Leicester Magistrates Court also fined the doctor £2,700 and ordered him to pay over £30,000 court costs after he admitted performing circumcisions without being registered with the Care Quality Commission (CQC).

GMC reference 3644948

Can patients obtain NTMC on the NHS?

Although non-therapeutic circumcision is not a service which is generally provided free of charge, some doctors and hospitals have been willing to provide circumcision without charge, rather than letting the procedure be carried out outside a health setting and/or without medical oversight. In such cases, doctors must still be able to justify any decision to circumcise a child based on a best interests assessment.

In Scotland, the government has produced guidance which advises that midwives should ask all parents at ante-natal booking if their religion would require their child to be circumcised; and that circumcisions should be undertaken in specialist centres at the children's centres in Aberdeen, Tayside, Glasgow and Edinburgh.

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Checklist for doctors providing NTMC:

- adherence to professional standards expected of doctors, even if acting in a different capacity e.g. necessary skills and experience;
 - considered decision-making process e.g. consent, best interests assessments;
 - appropriate documentation e.g. accurate and legible records, written consent;
 - appropriate equipment and clinical standards e.g. suitable premises. If general anaesthesia is used, full resuscitation facilities must be available;
 - where necessary registration with a regulator e.g. in England with the CQC, in Wales with HIW, and in Scotland with HIS; and
 - adequate indemnity insurance.
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Resources

- British Association of Paediatric Surgeons. *Religious circumcision of male children – standards of care*, 2014. Available at www.baps.org.uk/content/uploads/2014/10/RELIGIOUS-CIRCUMCISION-OF-MALE-CHILDREN.pdf
 - General Medical Council. *0–18 years: guidance for all doctors*, 2007. Available at www.gmc-uk.org/static/documents/content/0_18_years.pdf
 - General Medical Council. *Personal beliefs and medical practice*, 2013. Available at www.gmc-uk.org/guidance/ethical_guidance/21171.asp
 - The Scottish Government. *NHS Staff Leaflet*, 2008. Available at <https://www2.gov.scot/Publications/2008/02/14143159/4>
 - NHS England. *Interim Clinical Commissioning Policy: Circumcision*, 2013. Available at www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2013/11/N-SC010.pdf
 - Medical Protection Society. *Non-therapeutic circumcision*, 2015. Available at www.medicalprotection.org/uk/resources/factsheets/england/england-factsheets/uk-eng-non-therapeutic-circumcision
 - Care Quality Commission. *Registration under the Health and Social Care Act 2008: scope of registration*, 2015. Available at www.cqc.org.uk/sites/default/files/20151230_100001_Scope_of_registration_guidance_updated_March_2015_01.pdf
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Card 11

Record-keeping

The GMC sets professional standards for keeping records that all doctors should follow.

GMC guidance – record-keeping

'19. Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.'

'21. Clinical records should include:

- a. relevant clinical findings
- b. the decisions made and actions agreed, and who is making the decisions and agreeing the actions
- c. the information given to patients
- d. any drugs prescribed or other investigation or treatment
- e. who is making the record and when.'

GMC, *Good Medical Practice*

In addition to the principles above, doctors providing non-therapeutic male circumcision (NTMC) are advised to document on the consent form and/or in the main health record:

- details of the best interests assessment and reasons for making the decision to perform NTMC;
- details of the pre-operative clinical assessment of the child, the procedure, pain relief and anaesthesia and aftercare;
- details of any discussions with the child or young person, and those with parental responsibility;
- what information was offered to the boy and his parents;
- if a second opinion was requested, details of that request and of the response;
- details of any legal advice sought.

As noted on Card 7, doctors are strongly advised to obtain written consent for NTMC. Consent should be obtained from both parents, other than where a child has only one parent.

As well as being fundamental to good clinical practice to support patient care, good documentation will also be useful for clinical audit and monitoring performance. Data quality and accuracy are essential in order for records to be effective for such purposes.

Key guidance

- General Medical Council. *0–18 years: guidance for all doctors*, 2007. Available at www.gmc-uk.org/static/documents/content/0_18_years.pdf
 - General Medical Council. *Good Medical Practice*, 2013. Available at www.gmc-uk.org/guidance/good_medical_practice/apply_knowledge.asp
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Card 12 Useful names and addresses

Medical ethics and human rights department

British Medical Association

BMA House
Tavistock Square
London WC1H 9JP
Email: ethics@bma.org.uk
Web: www.bma.org.uk

General Medical Council

Email: gmc@gmc-uk.org
Web: www.gmc-uk.org

Royal College of Anaesthetists

Email: info@rcoa.ac.uk
Web: www.rcoa.ac.uk

British Association of Paediatric Surgeons

Email: info@baps.org.uk
Web: www.baps.org.uk

Royal College of Paediatrics and Child Health

Email: enquiries@rcpch.ac.uk
Web: www.rcpch.ac.uk

Royal College of Surgeons of England

Email: psd@rcseng.ac.uk
Web: www.rcseng.ac.uk

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