

Fighting for our rights, fighting for our future

Medical Ethics Committee report to ARM 2022

Introduction

The BMA medical ethics committee (MEC) is made up of doctors and external experts (including lawyers, ethicists and philosophers). It considers ethical and human rights issues important to the medical profession and helps to ensure that the UK legal and regulatory environment supports and strengthens ethical standards in medicine. The committee is supported by a dedicated medical ethics and human rights team. In addition to supporting the MEC and contributing ethics insight to wider BMA policy, the team provides ethics advice to hundreds of individual BMA members each year. Through the work of the MEC and the ethics team, the BMA continues to advocate the highest standards of ethics and human rights in healthcare, both for clinicians and for patients, at home and abroad.

The MEC provides an ethics resource for all BMA teams and committees across the UK. We are delighted that we have been joined this session by observers from the national councils in Scotland, Wales and Northern Ireland, in order to help us to provide a first-class service to all of our members regardless of where in the UK they live or work. We are always happy to receive requests from other committees or teams within the BMA for a view on specific ethical issues and subsequent policy support.

This report summarises some of the key issues we have been working on this session.

Guidance and support for members

An important part of our work continues to be supporting our members who are confronted with challenging ethical or human rights issues. We do this both

individually, through our ethics advice service, and collectively through our published guidance and seminars/talks on ethical issues. Most of our guidance is based on common enquiries received from BMA members. The following guidance has been developed in the last year.

Children and Young People Toolkit

Questions about children and young people are a significant area of ethical enquiry from members, with doctors facing ever more complex dilemmas. Our children and young people toolkit has therefore been updated and revised. The toolkit sets out the legal and ethical principles relating to the examination and treatment of people in England, Wales, and Northern Ireland who are aged under 18 years, and in Scotland under 16 years. Separate sections have been produced identifying factors to be considered when assessing competence and determining 'best interests' as well as sensitive areas including child protection, access to sexual health services and vaccination.

Conscientious objection and expressing personal beliefs

Our guidance on conscientious objection and expressing personal beliefs has been updated to reflect the change in approach adopted by the ARM in 2021. This is currently stand-alone guidance but will form part of our doctor-patient relationship toolkit (see below) once this is published.

Doctor-patient relationship toolkit ** coming soon **

Work is under way to produce a new toolkit addressing some of the common enquiries received from members through our ethics advice service. This covers a wide range of topics including communication, maintaining professional boundaries, the use of chaperones and honesty and truth-telling as well as the respective responsibilities of doctors and patients within the clinical relationship.

How to approach an ethical dilemma ** coming soon **

Through many years of providing ethical guidance for doctors facing real-life ethical challenges, we have developed a flexible approach to ethical analysis combining practicality, law and ethical reasoning. While there is no single 'right' way to tackle ethical questions, our approach recognises that ethical decision-making in medicine involves balancing a range of clinical, legal, regulatory and practical issues, to achieve the best available outcome. This resource will give members a clear framework for breaking down and analysing ethical dilemmas as and when they arise.

The BMA's ethics guidance can be found [here](#).

Influencing public policy

Confidentiality

We continue our work to uphold high standards for medical confidentiality and handling patient data. Two important examples of this work in 2021 are described below.

Police Crime Sentencing and Court Bill

In conjunction with the National Data Guardian and the General Medical Council, we successfully lobbied the Government to amend the Police, Crime, Sentencing and Courts Bill. As originally drafted, the Bill set aside the common law duty of confidentiality and created a blanket legal requirement for certain health bodies to provide confidential information to the police. Such a change in the law could have

had a serious detrimental impact on the public's ability to trust the NHS to handle confidential data. We persuaded the Government to amend the Bill to ensure that confidential health information remains protected.

[Data protection law in the UK](#)

In its consultation on changes to UK data protection legislation, the Government put forward proposals which represented a departure from the current high standards for the protection of health data – without sufficient evidence of the benefits these changes might bring. Our detailed [response](#) was clear that we did not support changes to the law that lowered the bar in standards for handling health data. We await draft legislation and will lobby strongly against changes to the law that undermine safeguards for health data.

Abortion

[Telemedicine for early medical abortion](#)

Working with key medical and other stakeholders, we successfully lobbied to overturn the Westminster Government's decision to stop the provision of telemedicine for early medical abortion (EMA) in England, in line with BMA policy. A successful amendment to the Health and Care Bill has now made remote access to EMA a permanent choice for patients who seek a termination of pregnancy. In the lead-up to the Government's initial decision we co-signed a range of public and private letters urging it to continue with the service once the COVID-19 regulations lapsed, including to the [Prime Minister](#). On the eve of the vote in the Lords, the Telegraph published an editorial from the BMA, Royal College of Obstetricians and Gynaecologists and Academy of Medical Royal Colleges, setting out the clinical and social benefits of the service and warning that "it would be deeply regrettable if politics were allowed to come before clinical best practice and above what really matters – women's health." We also worked with medical bodies to issue a [joint briefing](#) urging MPs to vote for the amendment. In Wales, the Government had already announced in February that it would make at-home EMA a permanent service, while in Scotland, remote provision continues while an independent review of the service is conducted.

[Buffer zones in Northern Ireland](#)

Since 2019, acting on policy passed at ARM, we have been working with BMA Northern Ireland to lobby for the introduction of protestor-free "buffer zones" around abortion clinics. In November 2021 the then MEC Chair submitted evidence to the Northern Ireland Committee for Health in support of the Private Member's Bill, sponsored by Claire Bailey MLA, to introduce safe access zones around clinics and other relevant premises. By passing the Bill in April this year, the Northern Ireland Assembly was the first legislature in the UK to approve a Bill that would make protesting outside service providers illegal. The Attorney General for Northern Ireland has referred the legislation to the UK Supreme Court to assess whether clause 5(2)(a) of the Bill is a proportionate interference with the rights of those who wish to express opposition to abortion services in Northern Ireland. If the Clause is deemed to be within the scope of competence of the Assembly, the Bill will become law. We will continue to push for the introduction of similar legislation in the rest of the UK.

Physician-assisted dying

Following the vote at last year's ARM, the BMA is now neutral on the question of whether physician-assisted dying should become lawful in the UK or parts of the UK.

We have since communicated this position in briefing on two proposals to introduce physician-assisted dying in the UK: the Assisted Dying Bill [HL] in England, proposed by Baroness Meacher, and, working closely with BMA Scotland, a consultation on proposals for an Assisted Dying for Terminally Ill Adults (Scotland) Bill from Liam McArthur MSP.

In the material provided to the Representative Body ahead of the 2021 ARM vote, we made clear that if the BMA changed its policy to neutral, we would continue to engage with legislative or other proposals as necessary to ensure the rights and professional interests of doctors are protected. To this end, the MEC has developed a set of overarching considerations for any future legislative proposals on physician-assisted dying, including the need for a robust legal and regulatory framework, robust conscience rights, formal oversight, collection of data, and clear guidance and emotional support for health professionals. These principles were approved by BMA Council in April and will now be used in future Parliamentary briefings as appropriate.

Organ donation

In February 2022, Northern Ireland became the final part of the United Kingdom to pass legislation making provision for an opt-out system for organ donation. The ethics team worked closely with staff in BMA Northern Ireland to promote this change and to represent our members' interests in preparatory work in the lead-up to the new system coming into force (expected in Spring 2023). The MEC has led the BMA's work on opt-out for organ donation since this became BMA policy in 1999.

Blocks and slides following Coroners' post-mortem examinations

The BMA has been concerned for some time about the lack of tissue retained from Coroners' post-mortem examinations for teaching, audit, and research purposes. Since 2019, acting on policy passed at the ARM, the ethics team has been working with the BMA's Forensic and Secure Environments Committee (FSEC), the Human Tissue Authority (HTA), and the Royal College of Pathologists (RCPATH) to consider possible solutions.

Although the possibility of legislative change has been explored in various ways, little progress has been made and this approach seems unlikely to provide a solution in the short term. It has also become increasingly clear that there are broader issues with the process for seeking consent for the use of any material that is retained, which need to be addressed across the UK. The aim of this work has therefore been expanded to try to find a solution to some of these practical challenges to allow more tissue to be retained and used following Coroners' PM examinations.

Reform of the NHS clinical negligence scheme

The MEC has been working with the medico-legal committee to develop a comprehensive policy position following the decision at the 2021 ARM to support a New Zealand-style no-fault compensation scheme. The MEC has discussed the ethical challenges with the current system and how a new, fairer, less expensive and less adversarial approach might work in practice, with a strong emphasis on learning from claims. The MEC's views have been fed into the MLC's consideration of the issues and the two committees will continue to liaise going forward.

Human rights

This year has seen the successful publication of a new report on health-related human rights. *Health and human rights in the new world (dis)order* continues our long-standing engagement with global health-related human rights. It addresses a range of emergent or intensifying issues including the health consequences of the conflict-driven displacement of people, the impact of global economic inequalities on health outcomes, providing medical care in conflict zones and the effect of disinformation on health-seeking behaviour. The report was featured in *The Guardian* and was extremely well received among international health and human rights organisations.

This year has also seen us responding to the horrific reports coming out of Xinjiang in China concerning the brutal mistreatment of the Uyghur and other Turkic minority people. The Uyghur People's Tribunal found, beyond reasonable doubt, that medical professionals were directly involved in genocide against the Uyghur population in Xinjiang province. We have written to the UK government and the UN Secretary-General, collaborated on educational webinars, published on the issue and are seeking to work with other national medical associations to raise our concerns at the World Medical Association.

The Russian invasion of Ukraine has seen the indiscriminate shelling of civilian infrastructure. Inevitably this has meant health facilities have been destroyed and public health has been undermined. We continue to press for respect for medical neutrality - and the Geneva Conventions more broadly - in conflicts raging throughout the world.

Information on our work on human rights can be found [here](#).

Other issues considered by the MEC in 2021-22

The committee discussed a diverse range of topics across the spectrum of medical ethics and human rights. In addition to the issues referred to above, the MEC also discussed:

- Prevent: anti-terrorism and safeguarding in health – ethical issues;
- the use of whole genome sequencing in newborn screening;
- clinically-assisted nutrition and hydration (CANH) – promotion and monitoring of good practice in decision-making;
- BMA review of the impact of COVID – ethical issues;
- the General Medical Council's review of *Good Medical Practice*;
- the World Medical Association's review of *The Declaration of Helsinki – Ethical Principles for Medical Research involving Human Subjects*; and
- the impact of overturning *Roe v Wade* on global reproductive rights.

Information about the Medical Ethics Committee can be found [here](#). The ethics team is also happy to speak to any members who are interested in finding out more about the BMA's work on medical ethics and human rights (ethics@bma.org.uk).

Dr Zoë Greaves
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