

Medical Ethics Committee (MEC) Written report to the ARM 2023

Introduction

The BMA medical ethics committee (MEC) is made up of BMA members and external experts (including lawyers, ethicists, and philosophers) with observers from the national councils in Scotland, Wales and Northern Ireland ensuring that our work meets the needs of BMA members across the UK. The committee 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. Through this work, 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 committee is supported by a small, dedicated medical ethics and human rights team. In addition to supporting the MEC and contributing ethics insight to wider BMA policy, the team provides both individual and collective ethics advice and guidance to BMA members. In addition, the MEC and the ethics team provide an ethics resource for all BMA teams and committees across the UK. 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 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. The BMA's ethics guidance, most of which is based on common enquiries received from BMA members, can be found [here](#). The following guidance has been developed in the last year.

How to approach an ethical question

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 gives members a clear framework for breaking down and analysing ethical questions and dilemmas as and when they arise.

Doctor-patient relationship toolkit

This new toolkit provides guidance on the key legal and ethical considerations in common situations that arise in the doctor-patient relationship. The toolkit covers a wide range of topics including maintaining professional boundaries, communication and honesty, conscientious objection and expressing personal beliefs, as well as the respective responsibilities of doctors and patients within the clinical relationship.

Mental capacity toolkit for Northern Ireland ** coming soon **

The Mental Capacity Act (NI) 2016 (MCA (NI)) was passed in May 2016, but currently only the sections relating to research, money and valuables and deprivation of liberty are in force. Apart from these provisions, the care and treatment of adults lacking capacity in Northern Ireland remains largely governed by the common law. This new toolkit contains a series of sections relating to specific areas of the common law, such as the basic principles, how to assess capacity, and advance refusals of treatment, and outlines the specific provisions relating to research and deprivation of liberty under the MCA (NI).

Mental capacity act toolkit for England and Wales ** new edition coming soon **

The Mental Capacity Act 2005 provides a legal framework in England and Wales for decision making on behalf of people aged 16 or over who cannot make decisions for themselves. The updated toolkit will contain a series of sections relating to specific areas of the Act, such as how to assess capacity, the Act's basic principles, advance refusals of treatment, research, and Lasting Powers of Attorney (LPAs).

Adults with incapacity (Scotland) act toolkit ** coming soon **

The Adults with Incapacity (Scotland) Act 2000 introduced a statutory framework for the medical treatment of incapacitated adults (aged 16 or over) in Scotland. It acts alongside the common law power to provide treatment in emergencies to people who are unable to give consent. Our current guidance which is in the process of being updated and revised into a toolkit format will contain a series of sections such as assessment of capacity, authority to treat, proxy decision making, and research.

Core ethics guidance **coming soon**

The MEC has decided to replace its key publication, *Medical ethics today – the BMA's handbook of ethics and law*, by bringing together its toolkits on core ethical issues into a single online resource. This will make it easier to keep the material up to date and will provide a useful core package for both medical students and practising doctors with a single, memorable URL (www.bma.org.uk/core-ethics) ensuring quick and easy access to this important information. We hope to have this resource available by the end of the summer.

External influence and policy development

Confidentiality

We continue our work to uphold high standards for medical confidentiality and the management of patient data.

Data protection law in the UK

The Data Protection and Digital Information Bill (No.2) is currently being debated in Parliament. If the Bill becomes law, it will amend the UK GDPR and the Data Protection Act 2018. We are lobbying against changes to the law which risk lowering standards for the protection of health data. We submitted evidence to the House of Commons Public Bill Committee and the Joint Committee on Human Rights which set out a range of concerns about the potential impact on health data if high standards of data protection are eroded. One issue of particular concern is the potential dilution of requirements to provide transparency information to data subjects which we have made clear is a backward step in terms of promoting public trust and confidence in the use of health data. We will continue to lobby for protections for health data as the Bill makes its parliamentary progress.

Police Crime Courts and Sentencing Act 2022: serious violence duty statutory guidance

Following on from our successful lobbying on the Police Crime Courts and Sentencing Act 2022 (PCCS Act) which resulted in the government excluding patient information from the provisions in the Act which required disclosure to the police, we responded to the Home Office consultation on the serious violence duty. Of particular importance was to ensure the sections on information sharing were clear and would provide certainty to our members and healthcare organisations about obligations under the serious violence duty. Our feedback resulted in increased clarity about the restrictions on disclosure of patient information and, specifically, that the usual rules on confidentiality, as set out in GMC guidance, would continue to apply.

Physician-assisted dying

In September 2021, the BMA adopted a neutral position on whether or not the law should change to permit physician-assisted dying. We have always been clear, however, that we have a responsibility to our members to represent their professional views and interests in any future proposals to change the law. The MEC has spent a considerable amount of time this session considering what this means in practice and how the BMA can best represent our members – whatever their views on this topic – in the event of future legislative proposals.

Following extensive research and discussions, the committee has identified a number of practical issues that would significantly impact on doctors if the law were to change. The MEC has also considered how, on these issues, an appropriate and fair balance could be reached between the interests of:

- members who would wish to provide assisted dying if it were legalised;
- members who, for whatever reasons, would not wish to participate in assisted dying; and
- patients who may wish to access a lawful assisted dying service.

The MEC will be presenting its work to UK and national councils over the coming months. This is an internal piece of work to ensure the BMA is prepared to represent our members as and when the need arises.

Abortion

The MEC and ethics team have led the BMA's work in successfully calling for safe-access zones ('buffer zones') and remote prescribing for abortion, in line with ARM policy.

The BMA has campaigned for many years for national legislation to introduce safe/buffer zones outside services to protect staff, patients and those accompanying them from harassment and intimidating behaviour. Legislation to protect areas outside services has now been passed in England, Wales and Northern Ireland and discussions are continuing in Scotland.

The ethics team also worked closely with other stakeholders to call for the changes brought in during the COVID-19 pandemic, which allowed people to access early medical abortion (EMA) remotely, to be made permanent across the UK. As a result, eligible women can now continue to access EMA remotely in England, Wales, and Scotland, if they choose to. Legal provision is also available to permit this in Northern Ireland, although this has not yet been used.

Clinical negligence reform

Joint work between the medico-legal committee and the medical ethics committee on clinical negligence reform has continued this session. This work has identified clear proposals for how best to take forward the 2021 ARM policy supporting a New-Zealand style no-fault compensation system for the UK.

The two committees have produced detailed proposals for how this could be implemented in practice, including: a gradual move to a no-fault scheme based broadly on the New Zealand model, rather than an immediate wholesale shift, starting with obstetric cases as a pilot to learn lessons and refine the system that could then be expanded to other specialties; reform of the current adversarial clinical negligence system to tackle the rising number and cost of clinical negligence claims including removal of the need for legal representation for the parties (which currently makes up around 26% of the cost of claims); and amendment of S2 (4) of the Law Reform (Personal Injuries) Act 1948 so that it no longer applies to public bodies, meaning that NHS patients would no longer receive compensation in the form of a lump sum to cover the cost of private treatment, with an alternative system put in place to ensure that treatment would be provided without delay.

Legal cases

The MEC monitors cases going through the Courts in the UK to identify any issues that would significantly impact on clinical practice and, where appropriate, may advise that the BMA should seek to intervene to protect the interests of our members. In the last year, there have been two cases in which the BMA has intervened in this way.

Abassi & Anor v Newcastle upon Tyne Hospitals NHS Foundation Trust

This case concerned the power of the court to issue a Reporting Restriction Order ('RRO') prohibiting the identification of any hospital staff involved in the care and treatment of a child. The court at first instance held that the balance came down in favour of the maintenance of anonymity, and the applications by the parents to discharge the RRO's were refused. The parents appealed the judgment. In view of its significance to its members, and on the advice of the MEC, the BMA sought and was granted leave to intervene in the Court of Appeal hearing. Unfortunately, the Court of Appeal ruled in favour of the parents, and the decision to maintain the RRO's has been overturned. The NHS trusts involved in the case have applied for permission to appeal to the Supreme Court.

Jennifer McCulloch v Others and Forth Valley Health Board

This is a Scottish clinical negligence case where leave to appeal to the Supreme Court was granted on the question of what information a doctor must provide to a patient as part of the consent process. The pursuers' case expands on the Supreme Court Judgment of Montgomery v Lanarkshire Health Board and, if successful, would impose a potentially far-reaching obligation on doctors to explain alternative treatments/procedures and the risks/benefits of alternatives, even where the doctor has decided that those are not reasonable options to offer the patient. The MEC concluded that the potential implications of an adverse judgment were sufficiently serious to merit a legal intervention by the BMA. The hearing took place on 9 and 10 May, and we are currently awaiting the outcome.

Human rights

During a year in which armed conflict, political instability and the assertion of untrammelled state power have continued to disfigure the world, the medical ethics committee, and the ethics and human rights team, have

remained vigilant about abuses of health-related human rights. Our work this year has had two main foci: responding to UN reports on medical involvement in serious abuses of health-related human rights in China; and the violation of medical neutrality in armed conflicts.

One major achievement this year has been the passing of a WMA motion condemning medical involvement in serious human rights abuses against the Uyghur people and other minorities in Xinyang province. We will continue to fight for this motion at the WMA's General Assembly in October.

In terms of conflict, we have raised concerns about violations of medical neutrality in the Ukraine conflict and in the conflict in Sudan. We have continued to raise concerns with both the WMA and the Israeli Medical Association about Palestinian access to healthcare and the provision of healthcare services to detained Palestinians. We have also acted in support of medical colleagues whose independence has come under attack in Turkey.

Other issues considered by the medical ethics committee in the 2022/23 session

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 papers on the following topics:

- Industrial action
- Profit/revenue sharing agreements for access to anonymised NHS data for research
- Medical ethics in times of public health emergencies
- Voluntarily stopping eating and drinking
- Climate change, health and ethics
- Gender dysphoria
- Research ethics

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 Jan Wise

Chair, BMA MEC

[Medical ethics committee overview](#)