DO WE NEED A NATIONAL ETHICS COMMITTEE?

Imagine that you are worried about whether it is safe to eat a particular food, perhaps because you know you have an allergy to certain things. It would not help if you got different advice from various sources, some of it from an official health agency, some of it from your doctor, some of it from the food manufacturer, and some of it from a self-help organization that lists allergies and their remedies.

So why would it be any the less unhelpful if you found different sources of ethical advice on any matter that concerned you? Yet at the outset of the pandemic doctors found themselves thoroughly confused about such matters as to whether they should prioritize access to life-saving ventilators and, if so, how to determine priorities. There was advice from their professional association the British Medical Association, from a Department of Health advisory committee MEAG, from NICE, and from the Royal Colleges. The status of such advice was not always clear. Was it, for instance, prepared for an eventuality – an exhaustion of available resources – which did not come about?

Doctors could also consult numerous articles in academic journals of medical ethics and law, or perhaps look at what was advised in other countries. And even their own local clinical ethics committee might be there to offer advice.

This was not merely confusing. It was also thoroughly demoralising since doctors might reasonably worry not only about whether they were doing the morally right thing but how they might avoid doing what would expose them to disciplinary measures and perhaps legal action. In some jurisdictions there are official national ethics committees, and these offer clear, authoritative advice on relevant matters. France and Germany provide excellent

examples. The United Kingdom does not have one, although the Nuffield Council on Bioethics that I chair is often described as our *de facto* NEC.

An NEC is not a local CEC. It does not pronounce on particular issues, such as whether some particular patient's treatment is ethically warranted. An NEC will advise on matters of general national policy in respect of such things as the permissibility of new biotechnological developments (for example, gene editing), any need for a change of the law on some matter of ethical concern (for example, assisted dying) and – of most relevance here - the appropriate response of a Government to a public health emergency.

What are the advantages of an NEC? The most obvious is that it can offer authoritative ethical guidance on key issues. At the very least this might in the current context ensure consistency and clarity of advice such that no-one need fear that the treatment they receive for COVID-19 could differ depending on where and from whom they received it and every doctor would be clear as to what they should do.

Yet it remains the case that it is *advice* that is offered. No-one is obligated to follow any advice whether it be personal, professional, or political. Were the guidance of an NEC to be legally binding, then it would need to be shown how an appointed ethics committee can have such delegated powers. Advisory committees, after all, are quite different creatures from those arms-length regulatory bodies that do have legally constrained delegated powers on some matters (such as, for instance, the HFEA in respect of fertility treatment and embryo research).

Moreover, many would feel disquiet about the idea that they could be compelled to do what another person or group thought morally they should do. This disquiet is strengthened by the sense doctors and nurses have that they are under a clear duty to do

what *they* believe to be best for their patients. Most clinical ethics committees are explicit that they do not issue binding determinate decisions as to what should be done in any matter. Rather they advise, guide, and assist clinical staff in reaching their final decision.

But perhaps the advice of an NEC could at least be seen as authoritative, more so than that of any body in civil society? It is after all an official committee. This would give its guidance some weight and influence. But such an official status is a double-edged sword. An NEC may be answerable to those who constituted it; its advice may be commissioned leaving no choice as to what is reviewed; and its conclusions may be construed as welcome to those making the executive decisions only if they take a certain form. Moreover, the advice of an official body may be tainted in virtue of the general mistrust the public feels for Government.

Crucially, the authoritative status of any ethical committee, and its advice, should not derive from its closeness to Government but from the credentials of its members and the integrity of its procedures. Ethics committees are not stakeholder bodies. Edmund Burke, the eighteenth-century politician and philosopher, famously argued that Members of Parliament should be *trustees,* dispassionately serving the public interest, and not *delegates* bound to promote the sectional interests of those they represent. So it should surely be with ethics committees.

But then we face the problem of knowing who is best placed to offer ethical advice and to do so because in Burke's words they can offer 'unbiased opinion …. mature judgment, [and] enlightened conscience'. Of course, we agree, an ethics committee should be populated by the wise and the good. But who feels confident in identifying those?

Last but by no means least is the consideration that a principle of subsidiarity ought to be in play. This captures the idea that the ethics that informs critical decision-making should be close to those who have to make the decisions and who thereby understand what is involved. In the case of clinical staff and medical decision-making this principle commends the thought that professional bodies or hospital-based committees are best placed to advise. There is moreover no reason why membership of a national network of CECs, official licensing, uniformity of procedural standards, and training opportunities, should not obviate some of the significant worries about inconsistency of decision-making across the different committees.

This is not to impugn the excellent and timely advice offered by an NEC such as the Deutscher Ethikrat. Rather this is by way of rehearsing some of the serious issues that are broached by talk of an NEC. Throughout the pandemic, the Government has talked about being led in its decisions by the science. It would be nice to think they were also led by the ethics. What *that* might mean is surely an important topic for discussion at a later time when the pandemic is passed.