

Devon-wide ethics framework – alignment to COVID-19 response

version 1.5, 28/05/2020

In brief

The infectious outbreak of COVID-19 and the resulting pressures on healthcare staff, services and society presents both uncertainty and foreseeable ethical considerations. These require a very active ethical approach for the sake of supporting staff, discharging organisations' statutory and ethical duties, and to reassure the populations we serve at this difficult time.

Although COVID-19 is the epicentre of the current crisis, its impacts span the entirety of healthcare, not just care provided in relation to COVID-19.

Some best practices for the NHS have been provided by the region. Local supplementation of these is required, for the additional, foreseeable, consequential and difficult choices that are arising in the care of patients in COVID-19 and non COVID-19 healthcare. Some of these decisions will affect the whole Devon health system and so an ethics infrastructure that spans the whole system but supports organisations' individual duties is required.

It is of course imperative that the Devon Ethical framework enables exceptionally timely decision-making at the frontline and in organisations, without constant reference to another authority. It must be thorough in the frame of reference and the consistency it brings for Devon's population. It must provide for system-level decisions where these are required and enable timely consideration of complex issues.

Devon's Ethical Framework has three elements: Ethical Principles; Ethics Groups; and Decision-Making Tools.

The British Medical Association has helpfully produced ethical and legal guidelines in the current crisis¹. They assert that it is extremely unlikely that challenges to the care provided and decisions made during the pandemic will be upheld where those decisions are:

- reasonable in the circumstances
- based on the best evidence available at the time
- made in accordance with government, NHS or employer guidance
- made as collaboratively as possible
- designed to promote safe and effective patient care as far as possible in the circumstances

¹ British Medical Association (3 April 2020). [COVID-19 – ethical issues. A guidance note.](#) Retrieved 3 April 2020.

The Devon Ethical Framework seeks to ensure that these criteria are met and that they are embedded into all aspects of decision-making and decision-making groups.

The Devon Ethical Framework is intended for health and care organisational ethics committees and groups in Devon who are providing assurance to their own Board. It is left to organisations to communicate the necessary elements and available support to their staff as appropriate. The Ethical Framework may be of wider, public interest. It will be made publicly available and provided to Council Leaders.

It is noted that relevant national guidance is being published and republished rapidly during the pandemic. This may well continue. Inclusions or gaps within that guidance may influence the work of the Devon Ethical Reference Group.

An ethical framework for adult social care has been published nationally^{2, 3}. It has the same underpinning as the Devon Ethical Framework. Both are derived from the Department of Health & Social Care (2017) *Pandemic flu planning information for England and the devolved administrations, including guidance for organisations and businesses*.

Derivation of the Framework

1. Ethical principles and practices are, of course, not new to the COVID-19 situation.
2. Clinical decisions should continue to be guided by the principles of GMC Good Medical Practice^{4,5}, the standards and guidance of the relevant professional bodies and the available evidence. Clinical teams have a responsibility for decisions about their patients. Organisations have a responsibility for ensuring good governance in the decisions they make.
3. In that context, this framework has been created with a keenly practical focus. Underpinning this approach is the consideration of ethical duties⁶:

² DHSC (19 March 2020) *Responding to COVID-19: the ethical framework for adult social care*. <https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care/responding-to-covid-19-the-ethical-framework-for-adult-social-care>. Retrieved 29 April 2020.

³ For a Local Authority, consideration of the *ethical framework for adult social care* is a component of implementing Care Act Easements in relation to duties under the Care Act (as those duties stood prior to amendment by the Coronavirus Act). For the avoidance of doubt, for adult social care, the *ethical framework for adult social care* takes precedence over the Devon Ethical Framework.

⁴ <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice>. Retrieved 17 April 2020

⁵ <https://www.gmc-uk.org/ethical-guidance/ethical-hub/covid-19-questions-and-answers>

⁶ The Hastings Center (16 March 2020). *Ethical Framework for Health Care Institutions Responding to Novel Coronavirus SARS-CoV-2 (COVID-19) – guidelines for institutional ethics services responding to COVID-19*. Retrieved 31 March 2020.

- Duty to plan: how we prepare for and manage uncertainty.
 - Duty to safeguard: how we support workers and protecting vulnerable populations.
 - Duty to guide: how we approach crisis standards of care, including where resources may not be sufficient to meet clinical needs.
4. The Devon Ethical Framework as a whole has been developed with the input of an expert advisory committee and local organisations.
 5. The Ethical Principles within the Devon Ethical Framework are adopted from the relevant UK pandemic guidance⁷.
 6. The description of Ethics Groups provides for the system level and distributed decision-making that necessarily takes place across many settings of care. Resources and support for local ethics committees are available from the UK Clinical Ethics Network⁸.
 7. The need for decision-making tools will evolve based on rapid gap analysis of the availability and sufficiency of published guidance and issues raised by frontline staff and organisational ethics committees from across the health and social care system.

Ethical Principles

8. These Principles are adopted from the relevant UK pandemic planning guidance. They were developed by the Committee on Ethical Aspects of Pandemic Influenza (2007), updated in 2017. They are cited as source material in the recent BMA guidance note on COVID-19 ethical issues⁹.
9. These will guide the Devon system, organisations and individuals making decisions, making policy and applying policy in a pandemic context. For clinicians, in the context of individual patient decisions, the ethical principles should be considered alongside their own professional codes.

The Ethical Principles are framed within a fundamental principle of **Equal concern and respect**. This means that:

- Everyone matters.
- Everyone matters equally – but this does not mean that everyone is treated the same.
- The interests of each person are the concern of us all, and of society.

⁷ UK Government (2017). [Pandemic flu planning information for England and the devolved administrations, including guidance for organisations and businesses](#). Retrieved 4 April 2020.

⁸ <http://www.ukcen.net/covid-19/>. Accessed 08 April 2020.

⁹ British Medical Association (3 April 2020). [COVID-19 – ethical issues. A guidance note](#). Retrieved 3 April 2020, page 4.

- The harm that might be suffered by every person matters, and so minimising the harm that a pandemic might cause is of central concern.

Using the Principles

10. The principle of Equal Concern & Respect draws together a number of ethical principles. Using the principles systematically as a checklist can help ensure that the full range of ethical issues is considered.
11. Good ethics require good facts. Ethical decision-making should be informed by the evidence available at the time. Evidence might become available later which would lead to a different decision but this alone is not sufficient reason for judging a previous decision to have been ethically inappropriate.

The individual principles

12. Sometimes, there will be tension both within and between these principles – in weighing different sorts of harm, and in trying both to minimise harm and to be fair.
13. There are often no absolutely right answers. A judgement may have to be made on the priority to be given to each element of a principle (such as the potential impact of different types of harm) and to the principles themselves in the context of circumstances.
14. Sometimes, use of the principles may indicate that more than one possible decision would be ethically justifiable and would accord with the fundamental principle of equal concern and respect. In such a case, the principle of good decision-making (below) should be used to decide which one to take. To a large extent, this should simply be viewed as normal practice but with a recognition that the current context could bring decision-fatigue and additional strains. In that context, ethical decision-making support will be available if needed, both in organisations and for the system as a whole.

Respect.

This means:

- Keeping people as informed as possible.
- Giving people the chance to express their views on matters that affect them.
- Respecting people's personal choices about their treatment and care.
- When people are not able to decide, those who have to decide for them take decisions based on the best interests of the person as a whole rather than just based on their health needs.

People's choices about their treatment and care are very important. This does not mean that they are entitled to have treatment that those caring for them consider would not work or is not suitable for them.

Where resources are constrained, it may not be possible to provide all the treatment that people would like and that might benefit them. In such difficult circumstances, decisions should be guided by a patient's capacity to benefit from the intervention.

Minimising the harm a pandemic could cause

During a pandemic, some harm is likely to be unavoidable and choices between harms are likely to be inevitable. An individual's capacity to benefit from treatment considered alongside explicit aims in the health system are helpful in this regard. Those aims are:

- To save the maximum number of lives.
- Judgements of the social value of individual lives should not be made.
- To prevent or reduce irreversible harm.
- To alleviate other suffering.

Where there is a decision that a treatment is not clinically appropriate there is not an obligation to provide it, but the reasons should be explained to the patient and other options explored.

Where the appropriate clinical decision may be to withdraw life prolonging or life sustaining treatment the intention should be to neither hasten nor postpone death. At this point end of life care, including appropriate psychological, social and spiritual support, must be provided.

Fairness

This means:

- Everyone matters equally; people should be treated as individuals and not discriminated for or against.
- People with an equal chance of benefitting from health or social care resources should have an equal chance of receiving them – however, it is not unfair to ask people to wait, if they could get the same benefit from an intervention at a later date.

So, in considering a particular decision, a first question might be: how could harm be minimised? Then it is necessary to ask: Would it be fair to do this? Could the same outcome be achieved in a fairer way?

This involves thinking about the interests of everyone who may be affected by the decision. There need to be good reasons to treat some people differently

from others, which the decision-maker should be prepared to explain. As with all of these Principles, this applies equally to patients with and without COVID-19.

If a situation arises where resources are overwhelmed across a whole healthcare system and it is not possible to offer the treatments by moving resources or moving patients then the treatments offered will have to be allocated fairly on the basis of the capacity of individuals to benefit from the treatment offered. Practically if the benefit gained is only likely to be marginal the resource would be offered to a patient where the benefit gained is likely to be more substantial.

Working together

This means:

- Working together to plan and to respond.
- Helping one another.
- Taking responsibility for our own behaviour, for example, by not exposing others to risk.
- Being prepared to share information (for example, on the effects of treatment) that will help others.

This principle spans all kinds of working together: with patients and families, within and between teams, within and between organisations.

Means of communication should be clear and account for particular communication difficulties and situational stresses.

Reciprocity

The principle of reciprocity is based on the concept of mutual exchange. Therefore, if people are asked to take increased risks, or face increased burdens, during a pandemic, they should be supported in doing so. The risks and burdens should be minimised as far as possible.

For example, staff should be equipped to reduce the risks and burdens, notably through the provision of required training and the provision of necessary personal protective equipment.

Keeping things in proportion

This means:

- Decisions on actions that may affect people's daily lives, or the care they may receive, will be proportionate to the risk and to the benefits that can be gained.

- Those responsible for providing information will neither exaggerate nor minimise the situation and will give people the most accurate information that they can in a medium or format appropriate to their communication needs.
- Where there are resource constraints, patients should receive the best care possible, while recognising that there may be a competing obligation to the wider population.

Flexibility

This means that:

- Plans will be adapted to take into account new information and changing circumstances. This is a feature of good decision-making and a means of responsively upholding the ethical principles in an evolving situation.
- People will have as much chance as possible to express concerns about or disagreement with decisions that affect them.

Good decision-making

Good decisions are about being accountable for the decisions taken or not taken. Good decisions involve reasonableness. This means they should be:

- Rational
- Based on evidence
- The result of a process, taking into account how quickly a decision has to be made, the circumstances in which it is made and the potential for the decision to be actively reviewed in the light of new information.
- Practical – what is decided should have a reasonable chance of working.

Respect for this principle involves openness and transparency. This means those that make decisions will:

- Consult those concerned as much as possible in the time available.
- Be open about what decisions need to be made and who is responsible for making them.
- Be as open as possible about what decisions have been made and why they were made

Good decision-making is inclusive – this means decisions will:

- Involve people as much as possible in aspects of planning that affect them.
- Take into account all relevant views expressed.

- Take into account any disproportionate impact of the decision on particular groups of people.
- Try to ensure that no group is excluded from becoming involved.

Some people find it harder to access communications or services than others, and decision-makers need to think about how these people can express their views and have a fair opportunity to get their needs for treatment or care met.

Records should be kept of decisions taken and the justification for them. This matters for accountability, but such records can also help people learn from experience in order to respond to further pandemic waves, or to a different pandemic in the future.

Ethics Groups

15. At the core of the ethics infrastructure in Devon are organisational-level ethics groups and committees set up under their organisational governance to offer advice on issues arising in those settings and to plan for foreseeable scenarios within their sphere of responsibility. These will provide ethical support to their staff and assurance to their Boards.
16. It is necessary that organisational ethics infrastructures have a flexible approach and are designed to be readily accessible to offer timely support when required. This must also acknowledge that such groups can offer advice about ethical decision-making but the responsibility for such decision-making lies with the relevant professionals: embedded in day-to-day professional practice and day-to-day governance.
17. The organisational ethics groups will typically be able to advise on the ethical dimensions of patient care in cases involving:
 - Complex decisions around withdrawal of care.
 - Situations where clinical decision makers feel uncomfortable with the application of national guidance.
 - Challenging decisions around escalation planning and ceilings of treatment.
 - Complex decisions related to patient discharge due to high clinical demand.
 - Challenges related to reduced ability to provide normal standards of care, in particular in the community or for patients at the end of their lives.
 - Issues in relation to novel treatments

18. Where uncertainty, complexity or disagreement remains after advice has been sought from an organisational ethics group, then advice may be sought from the Devon Ethical Reference Group.
19. This Group may also be approached where the decision to be made or issues arising involve multiple organisations or have other system or population level consequences. Additionally, some frontline decision-making will require a consistent approach to be designed, agreed and put in place to enable consistency across Devon's population and to support parity amongst different groups of patients.
20. The Devon Ethical Reference Group can be contacted via Devonstp.Ethics@nhs.net or on 01392 675124. These methods of contact will be monitored 8am to 8pm seven days per week during the pandemic. Should the extreme stages of pandemic escalation be triggered in the Devon system, these hours of availability will be extended and publicised to the relevant local organisations.
21. The Devon Ethical Reference Group will:
- ensure that a consistent set of Ethical Principles is in place and communicated.
 - seek to anticipate ethical considerations for feasible scenarios which are not yet the focus of system or organisational work and which may need guidance or other planning.
 - provide advice on scenarios and issues which have a system or multi-organisational impact.
 - be available to rapidly offer advice on cases with an ethical dimension where these cannot be resolved within organisations.
22. Some impacts and decision-making associated with the current crisis are organisational; some are within a local healthcare system; and some are regional. The ethics infrastructure spans all of these levels to provide advice and support where it is needed.
23. *Figure 1*, below, depicts the Regional, Devon and local ethics groups. The groups are advisory. There is no line of accountability between them. Sharing of information and support flows both ways for the sake of fairness and consistency across the populations served.

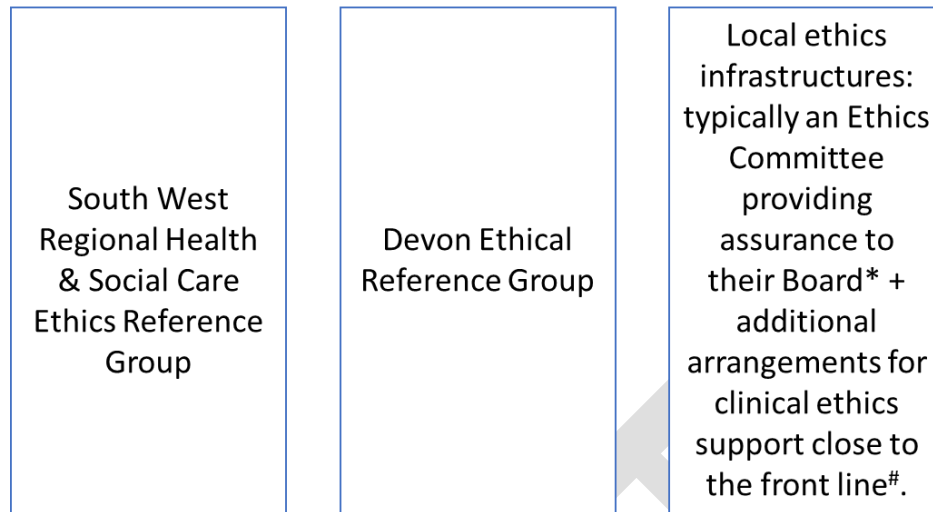


Figure1: Ethics infrastructure

* local ethics Committees may be shared between organisations or span integrated care organisations where governance allows.

known front line support arrangements within the region include rapidly convened Clinical Ethics Groups and on-call rotas of pairs of experienced clinicians able to offer advice.

Ethical Decision-making tools

24. Decision-making tools will result from a gap analysis and on the advice of the Devon Ethical Reference group and other stakeholders.

25. At the present time a gap in national guidance regarding critical care triage and potential discontinuation of critical care treatment has been noted and guidance to fill this particular gap is being prepared.

Key sources:

British Medical Association (3 April 2020). [COVID-19 – ethical issues. A guidance note.](#) Retrieved 3 April 2020.

General Medical Council. [Coronavirus: your frequently asked questions.](#) Retrieved 27 April 2020.

General Medical Council (2019). [Good Medical Practice.](#) Retrieved 17 April 2020.

NHS England & Improvement South West. (7 April 2020). [Interim Advice for Clinicians Regarding a Shared Ethical Approach to Treatment and Referral Decisions During COVID-19 Pandemic](#)

Scottish Government (2 April 2020). [COVID-19 Guidance: Ethical Advice and Support Framework.](#) Retrieved 8 April 2020.

UK Clinical Ethics Network (UKCEN). <http://www.ukcen.net/covid-19/>. Retrieved 07 April 2020.

UK Government (2017). [Pandemic flu planning information for England and the devolved administrations, including guidance for organisations and businesses.](#) Retrieved 4 April 2020.

World Health Organization (2016). [Guidance for managing ethical issues in infectious disease outbreaks.](#) Retrieved 31 March 2020.