



PROCEDURAL VALUES FOR DECISION-MAKING IN A PANDEMIC

INTRODUCTION

The COVID-19 pandemic has resulted in considerable burdens being placed on human health and, consequently, the health service. Planning for and managing this outbreak has required making difficult decisions in the face of limited information and resources and under significant pressures, including time pressure. This creates ethical challenges for both policy makers and healthcare professionals in relation to how best to organise and deliver healthcare in the context of a pandemic.

All decisions are made in the context of a particular set of concrete circumstances and on the basis of the information available at a given point in time. It should be acknowledged that decisions may need to be made despite incomplete and uncertain information. Because clinical, healthcare and health policy decisions not only rely on factual evidence, but also an evaluation of what is best or most important in a given setting, value-conflicts are inevitable in the organisation, delivery and receipt of care¹. Since these kinds of conflict cannot be resolved by appealing to scientific evidence, a variety of tools are used in the field of healthcare ethics to identify the issues involved, to weigh up competing interests and to reach ethically appropriate decisions. However, because of the complexity and specificity of many ethically challenging situations, no ethical framework can offer a prescriptive solution to a clinical, organisational or policy dilemma. Even where there is broad agreement about the relevant considerations or ethical principles at issue, reasonable, well-informed people may disagree because of different value-commitments or because available evidence may be interpreted in conflicting ways.

Depending on the context and circumstances, there may be more than one justifiable solution to an ethically challenging situation, but what is essential is that any resulting decision is reached using a process which is acceptable to all stakeholders and is publicly defensible. A robust, consistent and deliberative decision-making process will not only show respect for people but will also ensure procedural fairness and will confer legitimacy on the decisions made. While the potential for value-conflicts is a feature of clinical, personal, organisational, institutional, as well as governmental decision-making in a pandemic, the conflict may be

¹ American Society for Bioethics and Humanities (2011). Core competencies for Healthcare Ethics Education. 2nd edition. Glenview, IL.

exacerbated by the additional pressures brought to bear on decision-makers by overwhelming demand and scarcity of resources during a public health crisis.

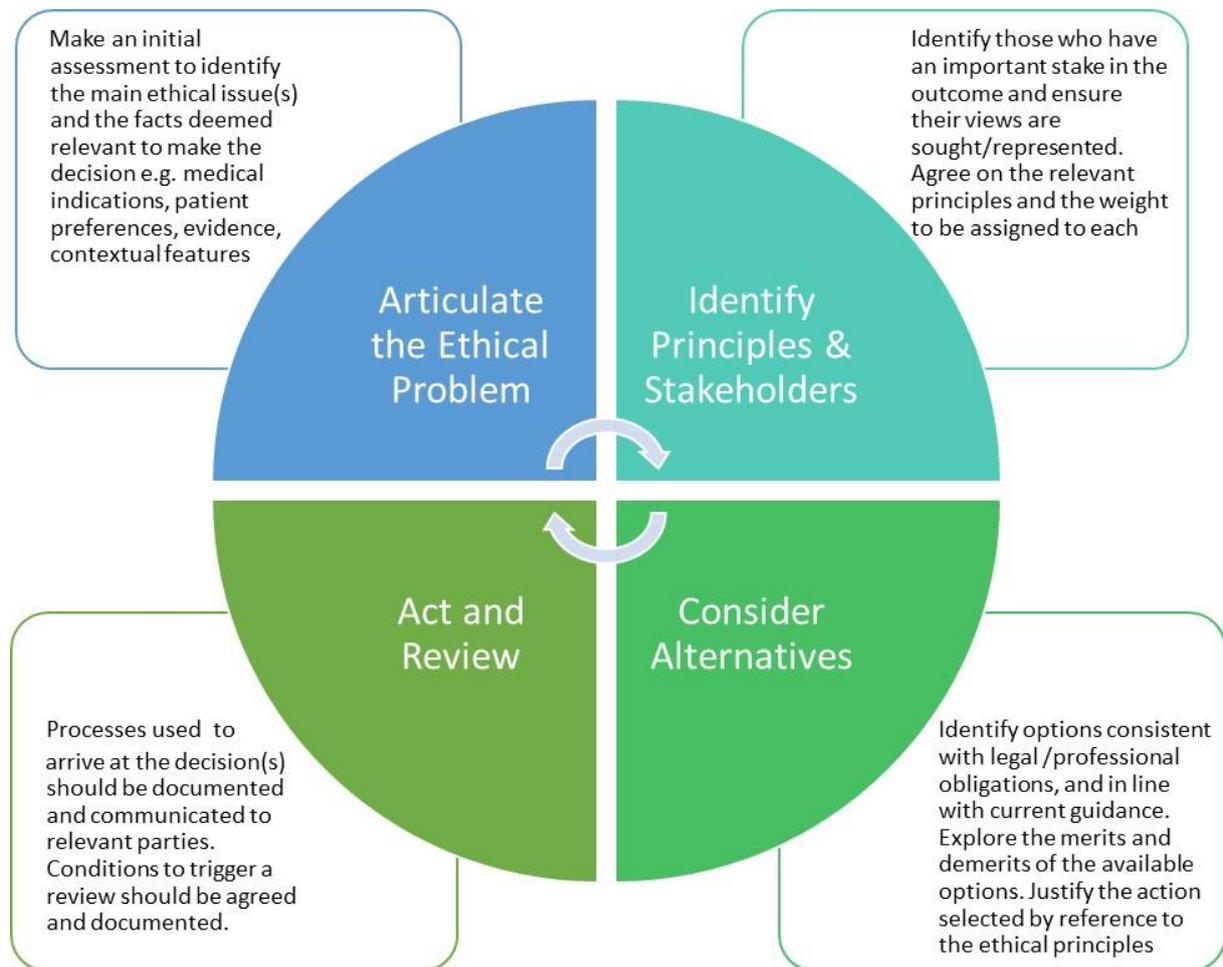
The “Ethical Framework for Decision-Making in a Pandemic”² describes a number of substantive ethical principles and procedural values which are intended to guide and inform the process of making ethically sound decisions during a pandemic. The values are ‘procedural’ because reasonableness, transparency, inclusiveness, responsiveness and accountability are features of any decision-making process which claims to be publicly justifiable. These procedural values are components of the process of making decisions in accordance with the ethical principles outlined in the Ethical Framework. The purpose of this document is to clarify the role of these procedural values for decision-makers at clinical and policy levels and to provide useful tools to guide the decision-making process and the application of the procedural values.

ETHICAL PRINCIPLES TO GUIDE ETHICAL DECISION-MAKING DURING A PANDEMIC

Reasonableness	Minimising Harm	<ul style="list-style-type: none"> • Protection from physical/psychological/social/economic harm. Restrictions should be justified and open to review
Openness/ Transparency	Proportionality	<ul style="list-style-type: none"> • The least restrictive measures required to achieve the public health goal should be applied
	Solidarity	<ul style="list-style-type: none"> • collective commitment to carry the costs to support others and promote the common good
Inclusiveness	Fairness	<ul style="list-style-type: none"> • Resources should be distributed fairly, effectively and in ways that recognise the moral equality of all persons
Responsiveness	Duty to Care	<ul style="list-style-type: none"> • Obligation to alleviate suffering, restore health and respect the rights and dignity of every person
	Reciprocity	<ul style="list-style-type: none"> • Support those who face a disproportionate burden in protecting the public good; take steps to minimise the risk and burdens
Accountability	Privacy	<ul style="list-style-type: none"> • Any disclosure should be limited to that which is absolutely necessary to avoid serious harm to others

² Department of Health, “Ethical Framework for Decision-Making in a Pandemic” (published 27th March). Available at: <https://www.gov.ie/en/publication/a02c5a-what-is-happening/>

DECISION MAKING PROCESS TO IDENTIFY AND ADDRESS ETHICAL ISSUES



PROCEDURAL VALUES

Good decision-making is maintained by using consistent, explicit and transparent processes and having clear lines of accountability. Given the dynamic nature of this pandemic, decisions may have to be made despite considerable uncertainty about relevant facts. Whether a decision is ethically appropriate and justifiable has to be judged in relation to the situation and information that exists at the time the decision is made, rather than by reference to facts which only become apparent at a later point in time. The five procedural values for decision-making outlined in the Ethical Framework are discussed in detail below.

Reasonableness

Decisions should be based on best available evidence at the time, be the result of a fair and transparent process (taking into account the speed and context in which a decision is made), proportionate to the urgency of the situation, and should have a reasonable chance of working. When considering how reasonable a decision is, those making decisions should:

- identify the ethical principles most relevant to the decision and the relative weight to be given to each principle
- weigh the available evidence along with the risks and benefits associated with the available options from the perspectives of all stakeholders
- ascertain that the decision is practicable with a reasonable likelihood of success

Openness and Transparency

The process by which decisions are made must be open to scrutiny, and the basis upon which decisions are made should be publicly accessible. This means that decision makers must:

- make explicit any underlying values, assumptions or motivations of those involved in the decision making
- explain the basis for decisions in clear, accessible language and by reference to relevant ethical principles
- where decisions must be made in the face of uncertain information, the uncertainties should be explicitly acknowledged and conveyed to the public³.

Inclusiveness

Stakeholders are consulted (to the greatest extent possible in the circumstances), views are taken into account, and any disproportionate impact on particular groups is considered. To ensure inclusiveness to the greatest extent possible, those making decisions should:

- ensure that the views of all individuals affected and, where possible in the time allowed, relevant stakeholder groups, are considered. Ensuring those who are affected are given an opportunity to voice what is important to them is a prerequisite of moral engagement⁴
- consider how the decision will affect different groups and if any group or groups will carry a greater burden as a consequence of the decision
- if any individual or group of individuals is carrying a greater burden, be clear on the reasons why
- communicate in a variety of ways (position papers, diagrams, audio-visual media as appropriate) to make the information available to as wide a range of people as possible.

³ WHO Guidance For Managing Ethical Issues In Infectious Disease Outbreaks accessed from <https://apps.who.int/iris/handle/10665/250580>

⁴ Campbell L and McCarthy J. A decision-making tool for building clinical ethics capacity among Irish health professionals *Clinical Ethics* 2017;12(4):189-196.

Responsiveness

There should be an opportunity to revisit and revise decisions as new information becomes available. There should be mechanisms in place to challenge decisions and for dispute resolution⁵. Such processes should be designed to take cognisance of the time sensitive nature of decisions made during a pandemic. To ensure flexibility, those making decisions should be prepared to:

- be adaptable and respond quickly to changes as they happen from a clinical, operational and a policy perspective
- allow decisions to be challenged by those impacted as much as possible in the time allowed
- support staff as they adapt to new processes and changing duties
- review standard operating procedures to assess if these can be adapted to streamline processes while retaining the standard of care.

Accountability

Those responsible for making decisions are answerable for the decisions they did or did not take. Within all accountability relationships, it must be clear who is accountable to whom, what they are accountable for, how accountability will be evaluated, and the consequences associated with that evaluation. Appropriate records should be kept of decisions taken and the justification for them. Those responsible must be accountable for their decisions and actions by:

- being open about the decisions being made and the process followed in making them
- documenting the rationale for these decisions and being prepared to provide that documentation if the decision is queried
- complying with official guidance, statutory duties, and professional regulations
- establish mechanisms to support problem resolution

Procedural justice requires that there be a fair process for making important decisions. The procedural values provide a clear set of criteria against which to weigh these decisions. The values should be used alongside professional codes of conduct and the most recent national guidance and legislation. The procedural values should be used together as no single value on its own can deliver procedural justice.

⁵ Daniels N and Sabin J. (2002) Setting Limits Fairly: Can we learn to share medical resources? Oxford: Oxford University Press.

A TOOL FOR APPLYING THE PRODECURAL VALUES TO THE DECISION MAKING PROCESS

Value	Questions to Consider
Reasonableness	<p>Is the decision consistent with relevant ethical principles? What are the key reasons for the decision made? Does the course of action decided upon have a reasonable chance of working? Is the decision based on the evidence and information available at the time? Have the alternatives been adequately explored? Are the relevant resources available to enact the decision?</p>
Openness & Transparency	<p>How will the decision be communicated, and with whom? Have any value-conflicts been identified? Is the thinking and the rationale that informed the decision been clearly explained? Are there barriers to communicating with key stakeholders? Are any uncertainties around the decision acknowledged and communicated?</p>
Inclusiveness	<p>Who will be affected? Have all the relevant stakeholders been engaged with? Have the appropriate communication methods and formats to reach and include the target audience been used? Will this decision have disproportionate impacts on any particular person/group? Will this decision create, magnify, or remove barriers to service?</p>
Responsiveness	<p>Is the decision being made in a timely manner? Is there any justification for postponing the decision? When and how will the decision be reviewed? What is the mechanism for raising concerns?</p>
Accountability	<p>Who was involved in making the decision? Who is responsible for the decision? Have official guidance, statutory duties and professional codes of conduct been adhered to? Has the decision been appropriately recorded? In situations where there are conflicting opinions, who will act as the final arbiter?</p>