Ethics tools for decision-makers

NUFFIELD COUNCIL ON BIOETHICS

Responding to public health threats

Summary

- The state has responsibilities to enable people to live healthy lives and reduce health inequalities.
- There are no easy answers, but responses to public health threats can be guided by the values of reducing suffering, treating people with respect, and fairness.
- Options for public health interventions range from doing nothing to removing choice altogether.
- Decision makers should aim for a proportionate response that takes into account the nature and degree of the harm posed, the certainty of the evidence, the intrusiveness of the intervention, and the views of those affected.
- The application of each intervention is likely to generate further ethical questions and decision makers need to be alert to the need for transparency and accountability in decision making processes.

Responding to public health threats such as COVID-19 can be framed as a 'collective action problem'. While individuals can influence some aspects of their own health, there are some threats which individuals can alone do relatively little to control. This applies both at the height of a pandemic and when an infectious disease become a more predictable and potentially manageable presence in our lives.

Public health threats are ethically challenging because:

Public health threats cannot be managed effectively by individuals alone. In the case of infectious disease, the source of the threat is contact with other people. While individuals can certainly take action to reduce their own risk, they cannot avoid risk entirely, other than by withdrawing from society altogether. They are dependent on others' action for their safety. Those who are most vulnerable to serious consequences of contracting COVID-19 may be least likely to be able to protect themselves.

Any action taken at the level of public policy will have broad and relatively indiscriminate impact. It may be possible to segment the way that populations are affected by the imposition of interventions – for example by geography, or by sector such as public transport. However, any public policy action taken will usually, by its nature, apply to large numbers of people.

These two considerations illustrate the complex ways in which ethical and political factors are interwoven in public health policy, because they touch on questions over the proper role of the state.

The Nuffield Council on Bioethics suggests the state has two key responsibilities with respect to public health:

- **Enable people to live healthy lives**

  This involves providing the conditions in which healthy choices and behaviours are possible for people, while minimising measures that are very intrusive or conflict with important aspects of personal life, such as privacy, freedom and choice. In the context of infectious disease outbreaks that pose an immediate threat to life and health, this enabling role further requires states to consider how people can be safeguarded from the threat posed by others.

- **Reduce health inequalities**

  Healthy choices may be constrained by existing disadvantage and therefore action by the state to 'level up' these disparities is justified. It is important to consider differing needs and vulnerabilities, and whether those who are already most disadvantaged are not further disadvantaged by the proposed action.

There are no simple answers as to how to meet these responsibilities, but the three widely shared values of **reducing suffering, treating everyone with respect and fairness** can help guide policy approaches. The question 'What best helps reduce suffering?' will always be important. However, the way policies are developed should also be influenced by considerations of what is fair, and how we can show respect for different people's views, dignity and human rights.[1]

A ladder for public health interventions

The intervention ladder sets out a series of options for public health interventions. The options gradually increase in intrusiveness, with doing nothing at the bottom and removing choice altogether at the top.[2]

- **Remove choice altogether** – mandate particular interventions for all. This might include compulsory wearing of masks in enclosed public places, stay at home orders and visiting bans in care homes.
- **Restrict choice** – mandate particular interventions in particular circumstances, so that people have a choice either not to comply with the requirement, or not undertake a particular activity. This might include requiring proof of vaccination or a negative test for particular activities, such as international travel or requiring vaccination for particular areas of work. In practice, measures that aim to restrict choice might constitute removing choice altogether.
- **Present safer behaviours as a social default** – provision of clear and persuasive public health messaging that goes beyond the neutral provision of information. The aim would be to help create an environment where acting to protect others is presented as the norm and is seen to be valued. This might include public health messaging that strongly encourages people to continue to wear face masks voluntarily in enclosed public places in order to protect others, or clear public guidance on self-isolation after confirmation of COVID-19 infection.
- **Make it easier for people to adopt safer behaviours** – remove disincentives for people to adopt behaviours that are known to help protect others. This could include mitigating financial factors that make it hard for people to remain at home when they know they are infectious; providing access to testing to enable people to make choices to protect others; or ensuring that vaccination is readily available, with a particular focus on reaching out to communities where there is a lack of confidence in vaccines.
- **Provide information** – empower people by making sure that they have access to the information they need so that they can manage their own risk and minimise any risk they might pose to others. This could include ensuring that the latest public health advice about how best to protect oneself and others is readily available in appropriate languages and formats, or publishing information about prevalence by local area to inform personal decision-making.
- **Monitor actively** – for example through robust surveillance and research programmes to ensure that policy makers are alerted to significant changes in prevalence or to the emergence of new variants of concern. It might include monitoring the impact of COVID-19 and any related measures on different sectors such as the NHS, social care, education and parts of the economy, or monitoring the impact of COVID-19 on diverse parts of the population, with a particular focus on those identified as particularly affected by COVID-19. This provides the evidence necessary to inform other policy choices.
- **Do nothing** – this is still an active choice, rather than a default option.

Which rung?

Decision makers should aim for a **proportionate** response to public health threats that takes into account the needs of those who are **most vulnerable**. The most effective public health policy is likely to include a number of interventions from different rungs of the ladder.

The factors to weigh up in deciding on the most appropriate rung(s) on the ladder include:

- The **nature and degree of the harm** and to whom it is posed. This should include consideration of both the threat to health posed by COVID-19 itself, and any harms that may be caused by interventions designed to reduce that threat, such as wider societal and economic consequences for the NHS, business and education.
- The **certainty of the evidence**, with respect to the nature or degree of the harm(s) at stake and the likely effectiveness of the possible interventions.
- The **intrusiveness of the intervention**. This will depend both on the nature of the intervention, and the extent to which personal choice is restricted by introducing it.
- The **views of those affected** on the most effective and acceptable interventions.[3]

The state also can take into account whether actions by others, such as **businesses and third sector organisations**, offer solutions while being less intrusive than state-mandated actions. It remains the duty of the state to monitor whether such actions are effective in practice and to keep under review whether other action is required.

After a decision has been made about which interventions are most appropriate, the **application** of each intervention is likely to generate further ethical questions. For example, when is it appropriate to use incentives to encourage people to adopt safer behaviours and when might consent be required for public health surveillance activities?

Throughout, decision-makers need to be alert to the need for **transparency** and **accountability** in decision making processes. Even in emergency situations, being open about which values are in play and what judgements are being made, by whom and on what advice, enables decisions to be understood and debated by wider society.

References

1 Adapted from the 'ethical compass' to guide decision making in research in emergency situations in the Nuffield Council on Bioethics' report *Research in global health emergencies: ethical issues* (2020): https://www.nuffieldbioethics.org/publications/research-in-global-health-emergencies.

2 Adapted from the intervention ladder in the Nuffield Council on Bioethics' report *Public health: ethical issues* (2007) https://www.nuffieldbioethics.org/publications/public-health; and drawing also on the intervention ladder in the Council's report *Human bodies: donation for medicine and research* (2011): https://www.nuffieldbioethics.org/publications/human-bodies-donation-for-medicine-and-research.

3 Involve, the UK's public participation charity, has information and resources for involving the public in COVID-19 decision making https://www.involve.org.uk/our-work/our-projects/making-case/what-role-should-public-play-covid-19-recovery. See also the UK Pandemic Ethics Accelerator's Pandemic Public Engagement Tracker: https://ukpandemicethics.org/library/pandemic-public-engagement-tracker/.

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