# What are we conscientiously objecting to?

Dr Lucy Frith

# Introduction

- In this talk I will consider the issue of  conscientious objection with a focus on  what we might be conscientiously objecting *to*
- I will look at two areas:
  - Fertility treatment
  - Abortion
- I will then go on to discuss some ethical questions that need to be addressed about the role of conscientious objection

# Human Fertilisation and Embryology (HFE) Act 1990 (as amended)

38 Conscientious Objection

(1) No person who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so.

(2) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

# HFEA Code of Practice 9th Edition

29.15 The centre should give prospective employees a full description of the centre's activities, and at the interview draw their attention to the provision that anyone who has a conscientious objection to participating in a particular activity done in the centre must not be obliged to do so.

29.16 If a staff member has a conscientious objection to providing a particular licensed activity governed by the act, they should inform the person responsible. The person responsible should ensure that the patient, patient's partner or donor is given information on or referred to alternative sources of the treatment.

29.17 The person responsible should satisfy themselves that the staff member has a conscientious objection to providing a particular licensed activity, and is not unlawfully discriminating against a patient on the basis of a protected characteristic.

29.18 If all staff at the centre conscientiously object to providing a particular licensed activity, the person responsible should:

a) try to refer the person to another centre for treatment, and

b) provide the patient with a written explanation of why the centre cannot treat them.

29.19 The person responsible should record:

a) the reason(s) for the conscientious objection of any member of staff

b) their efforts to provide the particular activity at the centre, and

c) if that activity cannot be provided at the centre, efforts they have made to ensure the patient receives treatment elsewhere.

# Professional advice - GMC

You may choose to opt out of providing a particular procedure because of your personal beliefs and values, as long as this does not result in direct or indirect discrimination against, or harassment of, individual patients or groups of patients. This means you must not refuse to treat a particular patient or group of patients because of your personal beliefs or views about them.* And you must not refuse to treat the health consequences of lifestyle choices to which you object because of your beliefs.

# Professional advice – BMA

Doctors should have a right to conscientiously object to participation in abortion, fertility treatment and the withdrawal of life-sustaining treatment, where there is another doctor willing to take over the patient's care;

Doctors should be able to request that arrangements are made to accommodate their conscientious objection to participating in other medical procedures, provided that patients are not disadvantaged. All requests should be considered on their merits;

Doctors should not claim a conscientious objection to treating particular patients or groups of patients;

Professional guidance not to conscientiously object to treating ‘types/classes’ of patient, but certain activities

# Tensions in regulation

# The Equality Act

Section 29 of the HFEA Code of Practice (9th edition) ‘Treating people fairly’

This includes guidance on the Equality Act

The person responsible should ensure that the centre’s systems, policies and procedures comply with current equality legislation and guidance.

Centres should provide or arrange investigations and treatments based on professional assessment and clinical judgment.

Refers to the Human Rights Act

# Welfare of the child

Human Fertilisation and Embryology (HFE) Act 1990 (as amended)

Section 13 (5): A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for supportive parenting), and of any other child who may be affected by the birth.

CoP - Medical history, where the medical history indicates that any child who may be born is likely to suffer from a serious medical condition

# Equality versus welfare of the child

A number of the protected characteristics covered by the Equality Act could create ethical controversy in the provision of infertility treatment (age, disability, gender reassignment, religious beliefs and sexual orientation).

The welfare of the child provision, suggests that a judgement must be made about:

what kind of life the child may have if s/he comes into being and;

which individuals are likely to provide adequately supportive parenting.

# What kind of life?

The HFEA Code of Practice says that the possibility that the future child will suffer from a ‘serious medical condition’ is an acceptable criteria upon which to refuse treatment

This could fall foul of the Equality Act, as it could be seen to be discriminating against someone with a protected characteristic

Therefore requiring clinicians to choose which of these regulations to give priority

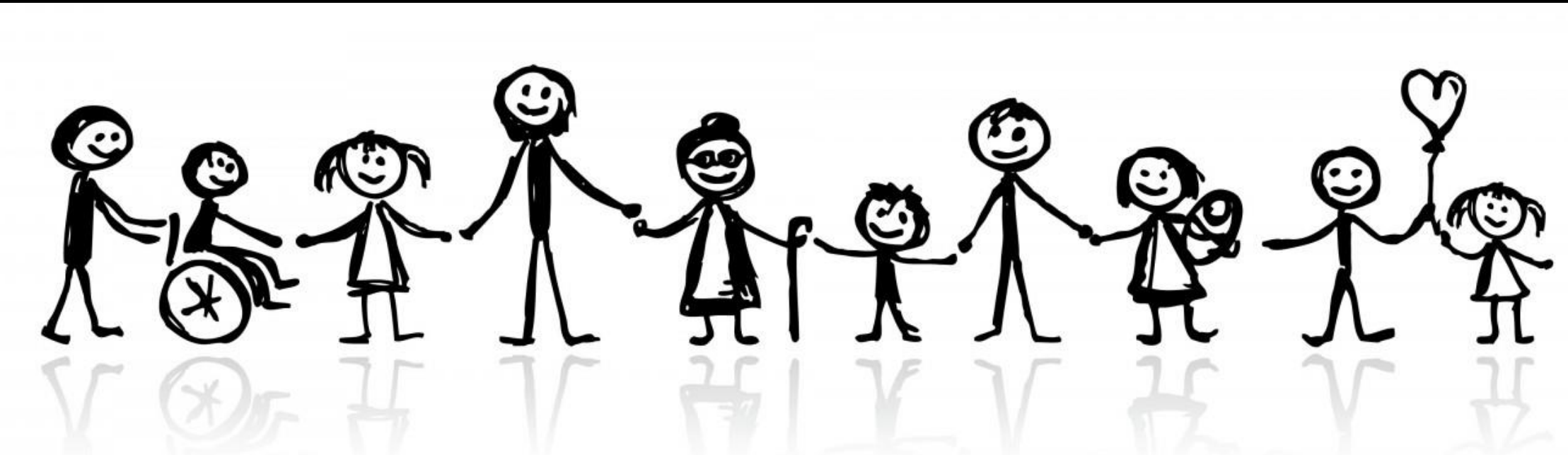
# Who or what?

‘Could, for example, a doctor refuse to treat a lesbian woman by artificial insemination because he ‘objected’ to her life-style and sexual orientation even though he has no objection to artificial insemination in principle? In our view, he could not. There are two reasons. First, it could be argued that that the doctor’s objection is not conscientious as usually understood since it appears to be the product of prejudice rather than principle. Secondly, and more importantly, his objection is not to participating in an activity governed by the 1990 Act, but rather to treat this patient.’ Medical law Kennedy I and Grubb A eds (2000 p 1282)

There are two issues here:

Is such an objection one of principle or prejudice?

What conscientious objection covers – is it a particular procedure (egg freezing, artificial insemination by donor) or a particular patient (or arguably type of patient)



# Infertility treatment

How do we decide what is prejudice

And what is principle?

# Private versus public morality

There are areas where we are ‘allowed’ to disagree morally (i.e. abortion).

And

Areas where we are not (i.e. discrimination of those with a protected characteristic)

# How do we chose?

I would argue that conscientious objection is possibly red herring

What is at issue is the underlying moral status of the action (i.e. abortion)

Jennifer Jackson: '[I]s it not arbitrary to allow doctors and nurses to refuse to assist on conscientious grounds, but not to allow doctors' secretaries, pharmacists or others to refuse? Imagine a personal secretary of Josef Mengele fending off criticism of her role in arranging for more concentration camp prisoners to be delivered for use in lethal experiments, protesting: 'You can't criticize me, I merely typed the letters.'

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# Conscience reconsidered: The moral work of navigating participation in abortion care on labor and delivery

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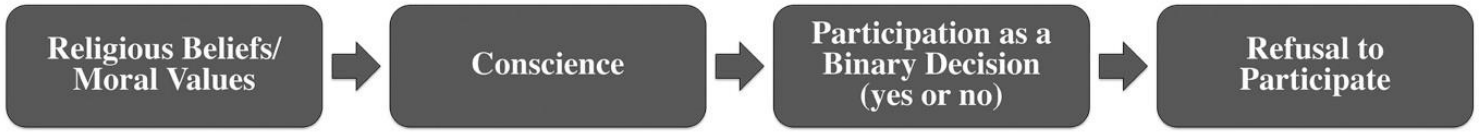
We need to understand participation as a process composed of multiple potential decision points, each subject to multiple definitions, meanings, negotiations, and re-negotiations. We propose thinking of these various parts of care and the moral work they involve as “care moments,” a conceptual tool for rethinking participation in contested care.

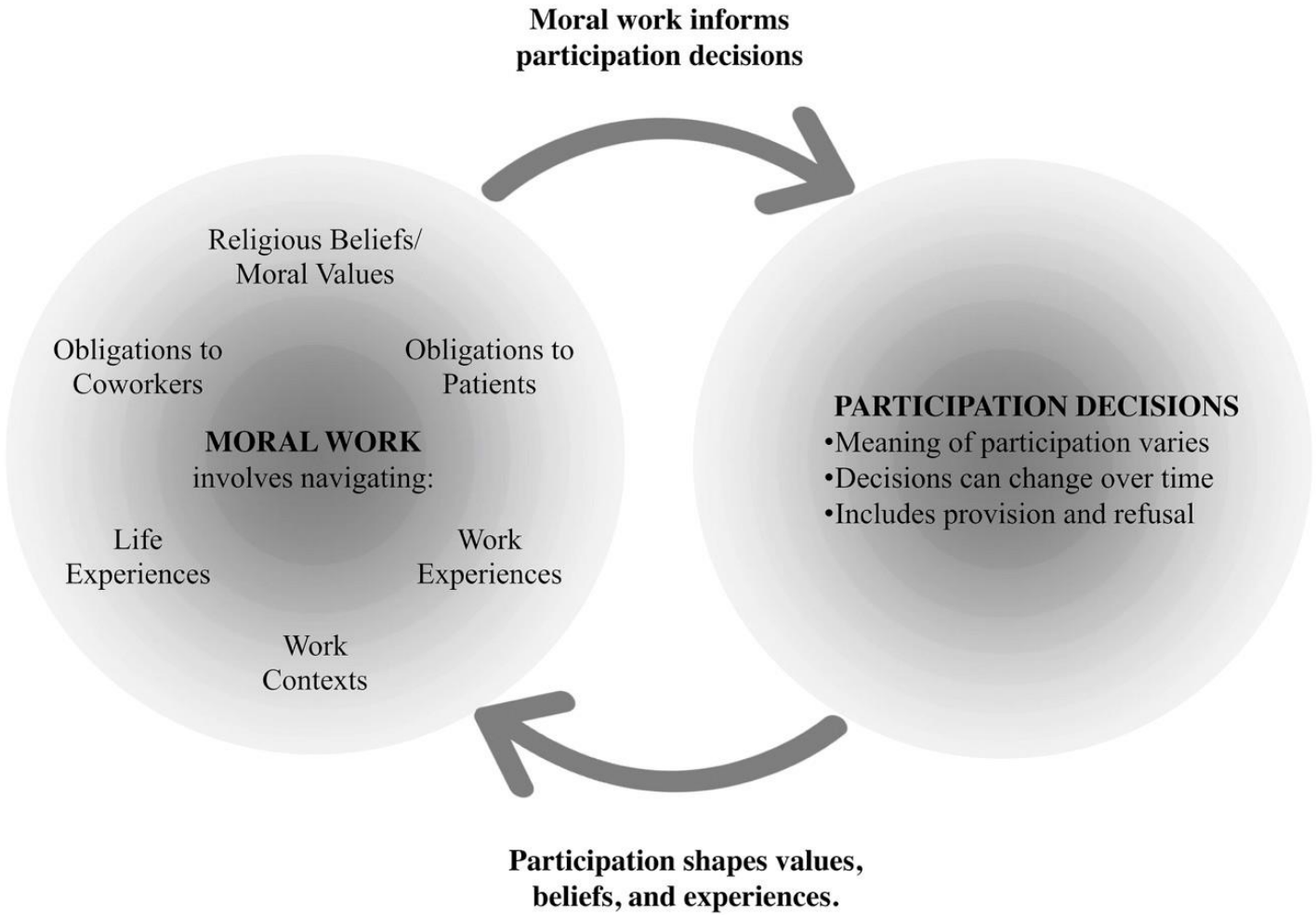
**Conventional Approach**

A linear path where religious beliefs and moral values form the basis of conscience, participation is understood as a binary decision, and conscientious action is limited to care refusal.




**Alternative Approach: Conscience as Moral Work**

Moral work is an emerging, iterative process that involves navigating a range of factors that inform participation decisions, where the meaning of participation varies and includes both refusal and the provision of care.




Bethany and her nephew

# Conclusion

Focus on the what is being objected *to*

How we define participation

What counts as a reasonable ‘offer’

# Thanks to Val Fleming