

Accommodating conscientious objection in health care: The approach in England & Wales

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I have no financial interests or other relationships that could be considered a conflict of interest

Introduction

- ◆ Approach taken in England & Wales to accommodating conscientious objection (CO).
- ◆ Highlight some of the issues raised by our approach.
- ◆ Practical matters around **how** we accommodate CO.
- ◆ Consider:
 - (i) whether it is preferable to accommodate CO via statute, professional guidance, or some other means,
 - (ii) some of the problems which may be associated with these avenues,
 - (iii) wherever it is situated, what should be included in a CO provision.

Statutes

◆ Abortion Act 1967, s 4(1):

- no duty 'to participate in any treatment authorised by this Act' to which you have a CO.

◆ Human Fertilisation and Embryology Act 1990, s 38(1):

- if have a CO 'to participating in any activity governed by this Act', under no duty to participate.

◆ *Janaway v Salford Area General Authority* [1989] AC 537 (HL):

'participate' = 'actually taking part in treatment'.

◆ *Greater Glasgow Health Board v Doogan and Others* [2014] UKSC 68:

'participate' = 'taking part in a "hands-on" capacity'.

The Regulators

- ◆ Nursing and Midwifery Council (NMC) - Nurses and midwives can:
 - CO to a 'particular procedure'.
 - only make a CO 'in limited circumstances' – 1967 Act and 1990 Act.

- ◆ General Medical Council (GMC) – Doctors can:
 - 'choose to opt out of providing a particular procedure' because of personal beliefs and values.

 - 'withdraw from providing care' if their beliefs about providing life-prolonging treatment lead them to object to complying with:
 - (i) 'a patient's decision to refuse such treatment', or

 - (ii) a decision that providing life-prolonging treatment is 'not of overall benefit to a patient who lacks capacity to decide'.

❖ General Pharmaceutical Council (GPhC) - A pharmacy professional's:

- religion, personal values or beliefs may influence 'whether they feel able to provide certain services'.
- including 'services related to: contraception (routine or emergency), fertility medicines, hormonal therapies, mental health and wellbeing, substance misuse, sexual health'.

Professional association and trade union

◇ British Medical Association (BMA):

- doctors should only have a right of CO to:
(i) procedures covered in statute and

(ii) 'to the withdrawal of life-sustaining treatment from a patient who lacks capacity'.

But - there is 'no reason why reasonable and lawful requests by doctors to exercise a CO to other procedures should not be considered'.

- in that case, CO is not a right 'but individual requests should be assessed on their merits'.

N.B. 'doctors with a CO to providing contraceptive advice or treatment ...'

Accommodating CO in practice: (i) Referral

Greater Glasgow Health Board v Doogan [2014] UKSC 68:

- ♦ If have a CO, are 'under an obligation to refer the case to a professional who does not' – part of the HP's duty of care to the patient.

More than referral?

- ♦ GPhC - referral to another HP 'may be an appropriate option' but not in every situation - 'can include handover to another pharmacist'.
- ♦ NMC - nurses and midwives must 'arrange for a suitably qualified colleague to take over responsibility for that person's care'.
- ♦ GMC - if a patient can't arrange to see another doctor, 'you must make sure that arrangements are made – without delay – for another suitably qualified colleague to advise, treat or refer the patient'.

◆ BMA - doctors with a CO to providing 'contraceptive advice or treatment' have an 'ethical duty to refer their patients to another practitioner or family planning service'.

- doctors can have a CO to procedures covered by the 2 statutes and to withdrawing LST from patients who lack capacity, 'where other doctors are in a position to take over the care'.

- if doctors have a CO to withholding/withdrawing LST, they 'should, wherever possible, be permitted to hand over care of the patient to a colleague'.

(ii) Telling others

- ◆ NMC - nurses and midwives must 'tell colleagues, your manager and the person receiving care' if they have a CO to a 'particular procedure'.
- ◆ GMC – doctors should be 'open with employers, partners or colleagues' about their CO.
 - doctors must 'do their best' to ensure that patients 'are aware' of their CO in advance.
- ◆ GPhC – pharmacy professionals must 'tell their employer, as soon as possible' if they are prevented from 'providing certain pharmacy services'.
- ◆ BMA – if doctors 'oppose contraception or the TOP' they should 'inform patients who want those services how they can access them from another doctor'.

- ◆ GMC - doctors should explore how they can practise in accordance with their beliefs 'without compromising patient care and without overburdening [their] colleagues'.
- ◆ GPhC - pharmacy professionals must 'work in partnership with their employer to make sure adequate and appropriate arrangements are put in place'.
- pharmacy professionals must 'think in advance about the areas of their practice which may be affected and make the necessary arrangements, so that they're not in the position where a person's care could be compromised'.

Concluding thoughts

◊ *Conscientious Objection (Medical Activities) Bill 2017-19.*

◊ JV McHale, 'CO and the nurse: A right or a privilege?' (2009) 18 *British Journal of Nursing* 1262:

'there is a danger in allowing "opt-out" to be seen as an entitlement gradually through guidance, without the legitimacy and the boundaries of such an opt-out being subject to a thorough reconsideration'.

References

- ◆ BMA, *Medical Ethics Today: The BMA's Handbook of Ethics and Law*, 3rd ed (2013); 'Expression of doctors' beliefs' (2018): <https://www.bma.org.uk/advice/employment/ethics/expressions-of-doctors-beliefs>; *Withholding or Withdrawing Life-prolonging Medical Treatment* (2007).
- ◆ GMC, *Good Medical Practice* (updated 2019); *Personal beliefs and medical practice* (2013); *Treatment and care toward the end of life: Good practice in decision making* (2010).
- ◆ GPhC, *Standards for pharmacy professionals* (2017); *In practice: Guidance on religion, personal values and beliefs* (2017).
- ◆ NMC, *The code: Professional standards of practice and behaviour for nurses, midwives and nursing associates* (updated 2018); 'CO by nurses, midwives & nursing associates': <https://www.nmc.org.uk/standards/code/conscientious-objection-by-nurses-and-midwives/>