NHS
East Kent Hospitals University
NHS Foundation Trust

TERMS OF REFERENCE

CLINICAL ETHICS COMMITTEE

1. CONSTITUTION

1.1. This Committee is constituted by the Board of Directors as an advisory body that aims to assist clinicians and all Trust Staff who are struggling with difficult and/or complex ethical decisions, arising from the provision of patient care within the Trust, and potentially assist with moral distress.

2. PURPOSE

2.1. The overall aim of the Committee is to encourage critical analytical thinking concerning ethical aspects of patient care and the operation of the Trust, and related university functions. The Committee is advisory, to assist with complex moral and ethical decisions. It aims to facilitate ethical consideration of the cases referred. The responsibility for decision making rests with the responsible clinician(s).

2.2. The Committee offers a service to clinicians, and other employees of the Trust (referred to as consultees). The committee does not provide legal, human resources, or other advice to consultees.

2.3. The Committee does not offer a direct service to patients or patient's relatives. Rather, patients' or relatives' views are addressed as represented by the clinicians responsible for an individual patient's care. This Committee does not replace available mediation pathways.

2.4. The views expressed by the Committee will be the views of the Committee as a body and not the views of individual members. The personal views of individual members will be protected and not disclosed in any Committee minutes or communication.

3. OBJECTIVES

The Committee will:

3.1. Support clinicians dealing with difficult and/or complex ethical issues arising within individual cases, types of cases and policy or guidance. This can relate to decisions in prospect or can amount to retrospective consideration of a case.

3.2. Improve understanding within the Trust of the ethical aspects of its operation, encouraging Care Groups and Specialities to include clinical ethics within quality governance arrangements. The aim being to improve the response to clinical ethical matters so as to support the delivery of the Trust values.

3.3. Provide a responsive service within two working days; being contactable via the Clinical Ethics Committee generic email address.

3.4. Assist staff in responding to cultural and religious perspectives where these impact upon patient preferences for care pathways.

3.5. Adopt a virtue-based approach (see Appendix 1) and use a recognised framework for ethical discussion (Appendix 2).

3.6. Enhance the referral of cases and issues from services through the Committee membership developing formal and informal links with every clinical and related department.

3.7. Improve understanding of the boundary between the ethical and legal dimensions of clinical and policy issues. The Committee maintains a close relationship in regard to individual cases with the Trust Legal Department and in some instances will signpost consultees to seek legal advice.

3.8. The Committee form strong links with Kent and Medway Medical School in order to assist medical students in developing an awareness of the functions of Clinical Ethics Committees.

3.9. Advise individuals or groups approaching it with concerns to utilise appropriate systems within the Trust, albeit sometimes in parallel with referral to the Committee.

3.10. Provide a confidential service (see section 4.1.2) unless there are serious concerns regarding patient or staff safety. The consultee(s) will be notified should the Committee consider referring identified concerns to another group or individual for management.

3.11. Provide and facilitate education events such as a regular Grand Round devoted to medical ethics and law.

3.12. Identify the recurrent ethical issues and trends in cases reviewed by the Committee, that might properly lead to a review of clinical practice. In so doing, the Committee supports effective quality governance within the Trust.

4. MEMBERSHIP AND ATTENDANCE

4.1. Members

4.1.1. The Committee membership shall, as a minimum, comprise of the following key roles (aiming for a total membership of fifteen).

- Chairperson (ratified by the Board)
- Deputy Chairperson
- Lay person
- Independent Ethics Advisor (Academic from Kent and Medway Medical School holding experience to doctoral level in Medical Ethics or cognate discipline)
- Legal Advisor
- Safeguarding representative
- Non Executive Director

- Spiritual care / religious advisor
- Clinical and non-clinical staff who can demonstrate training and/or expertise in ethics and/or law.

4.1.2. Members (and attendees) are required to adhere to the expected standards of behaviour and conduct:

- All matters discussed at the Committee meeting are confidential and should not be discussed outside the committee, except with consultees or other relevant Trust employees.
- Any member of the Committee shall not (except as authorised by the Committee, or Chair) either during the time of his/her membership or after resigning from the committee, publish or disclose any information discussed within the committee meetings, or arising within Committee correspondence.
- Conflicts of Interests must be declared.
- All members of the Committee should perform their function in good faith, honestly and impartially. The personal view of members and their specific contributions to discussions will not be disclosed.
- The Chair (or Deputy Chair) may, on request, approve the attendance of a maximum of two non-participating attendees as observers at a meeting for their individual educational development. The attendees must be informed of and abide by the expected standards of behaviour and conduct outlined above.

4.1.3. Members will be elected to the Committee following receipt of expressions of interest. The Committee will use the following to inform this process:

- Core competences for Clinical Ethics Committees: A consensus statement from the UK Clinical Ethics Network;
- Chairperson and Deputy Chairperson role descriptions (see Appendix 3).

4.1.4. Recruitment of new members is triggered when the membership falls below fifteen.

4.1.5. Once elected no term limit applies and, with agreement of the Chair, membership may be suspended for career break or other valid purposes.

4.2. Attendees

4.2.1. Foundation Year 2 medical trainee – expressions of interest will be received to enable one trainee to attend the Committee for a period of one year.

4.2.2. Medical students – two per year following approval via an application process.

4.2.3. Attendees must abide by the expected standards of behaviour and conduct outlined in Section 4.1.2).

4.3. Consultees

4.3.1. Clinical staff referring cases requiring ethical consideration.

4.3.2. Consultees must abide by the expected standards of behaviour and conduct outlined in Section 4.1.2).

4.4. Quorum

4.4.1. Four members (including the Chairperson or Deputy Chairperson) are required.

4.5. Attendance by Members'

4.5.1. The Chair or their nominated deputy of the Committee will be expected to attend 100% of the meetings. Other Committee members will be required to attend a minimum of 50% of all meetings. Deputies are not permitted.

4.5.2. Other staff may be co-opted to attend meetings as considered appropriate by the Committee on an ad-hoc basis.

5. FREQUENCY

5.1. The Committee shall meet monthly.

5.2. Additional extraordinary meetings may be convened by the Chairperson to discuss urgent cases. These extraordinary meetings will be a small group of members who can provide independent, balanced facilitation and advice about clinical ethical problems. The Chairperson will ensure this group includes members with substantial clinical experience and ethical training or experience. See also Section 7.3.

6. AUTHORITY

6.1. The Committee is authorised by the Board to undertake the activity within its terms of reference. It is authorised to seek any information it requires from any member of staff and all members of staff are directed to co-operate with any request made by the Committee.

6.2. The Committee does not have any decision making powers with regard to ethical decisions; this responsibility lies with the responsible clinical decision maker.

6.3. The Committee does not have any decision making powers with regard to the operation of the Trust and will refer matters identified as requiring further consideration or management to the appropriate group or individual.

6.4. The Committee is authorised to create sub-groups or working groups, as are necessary to fulfil its responsibilities within its terms of reference. The Committee remains accountable for the work of any such group.

6.5. The Committee shall consider sourcing external legal or other independent professional advice if it considers this necessary or advantageous to its work e.g. peer review for paediatric cases from Great Ormond Street Hospital Ethics Committee. The Committee Chairperson or Deputy shall seek the support from the relevant Executive Director for funding to cover any associated costs.

7. SERVICING ARRANGEMENTS

7.1. The Group will be serviced by the Trust Management (Secretariat) team.

7.2. Agendas will be agreed with the Chair and papers requested at least two weeks prior to the meeting. Papers will be circulated one week prior to meetings.

7.3. The Action and Decision Log from any extraordinary meetings will be reported to the next full Committee meeting.

7.4. The Action and Decision Log will record a summary of cases referred and advice given. The individual views of the committee members and consultees will not be recorded on the Log.

7.5. The relevant excerpt from the Action and Decision Log for a particular case or issue can be provided afterwards to consultees.

8. ACCOUNTABILITY AND REPORTING

8.1. The Committee is accountable to the Board.

8.2. A summary of the Committee's activities will be included in the Chief Medical Officer report to the Board.

8.3. An annual report will be prepared by the Chairperson supported by the membership. This will be presented by the Committee Chair to the Board and include the Committee's activities and learning themes identified and shared to inform improvements in clinical practice.

9. MONITORING EFFECTIVENESS AND REVIEW

9.1. The annual report to the Board (see Section 8.3).

9.2. A survey will be undertaken by the members on an annual basis to ensure that the terms of reference are being met and where they are not either, consideration and agreement to change the terms of reference is made, or an action plan is put in place to ensure the terms of reference are met.

9.3. The terms of reference will be reviewed and approved by the Board on an annual basis.

Appendix 1: Virtue based approach

The following Aristotelian-Thomistic principles guide the content discussion of the Committee. All advice offered by the Ethics Committee will be open and transparent and should have the following four traits:

'controlled knowledge, right intention, unwavering purpose, and sense of situation'.

Aquinas, *Summa Theologiae*.

In addition:

That the advice offered is based upon the virtue theory in which Freedom of the Will is paramount. The patient with capacity should *always* be enables and encouraged to make reasoned, informed choices so as he/she acts autonomously and is not acted upon. At the centre of this theory is the common good of society and respecting and upholding the dignity of every patient, it will be taken for certain that the committee will closely adhere to GMC guidance on capacity and consent in this area.

Virtue theory hinges upon the naturally known first moral principles known by the technical term SYNDERESIS meaning to do good and avoid harm: i.e. beneficence (bene facere), to do good; and non-maleficence (non male facere), not to do harm.

a) Beneficence: the healthcare professional should act in a way that benefits the patient weighing the risks and benefits of each treatment and each decision with the assistance of the four cardinal virtues.
b) Non-maleficence: the intention of the healthcare professional should always be to keep the patient from harm with the assistance of the four cardinal virtues. Treatment can involve some harm, even if minimal, but the harm should not be disproportionate to the benefits of treatment.

The virtues used are The Four Cardinal Virtues:

1) Prudence: is right reason applied to action. The three steps of prudence should always be adhered to, i.e.,
    a. Take counsel
    b. Judge
    c. Command
    d. Gnome, (associated virtue of prudence) meaning, 'to wit or judge when departure from the common rules is called upon' will help with the decision making process. The virtue of prudence does not tie the clinician, clinical ethicist, healthcare worker or lay person to abstract rules because each patient is an individual their case should be treated as such – a prudent judgement in one case may not be prudent in another.

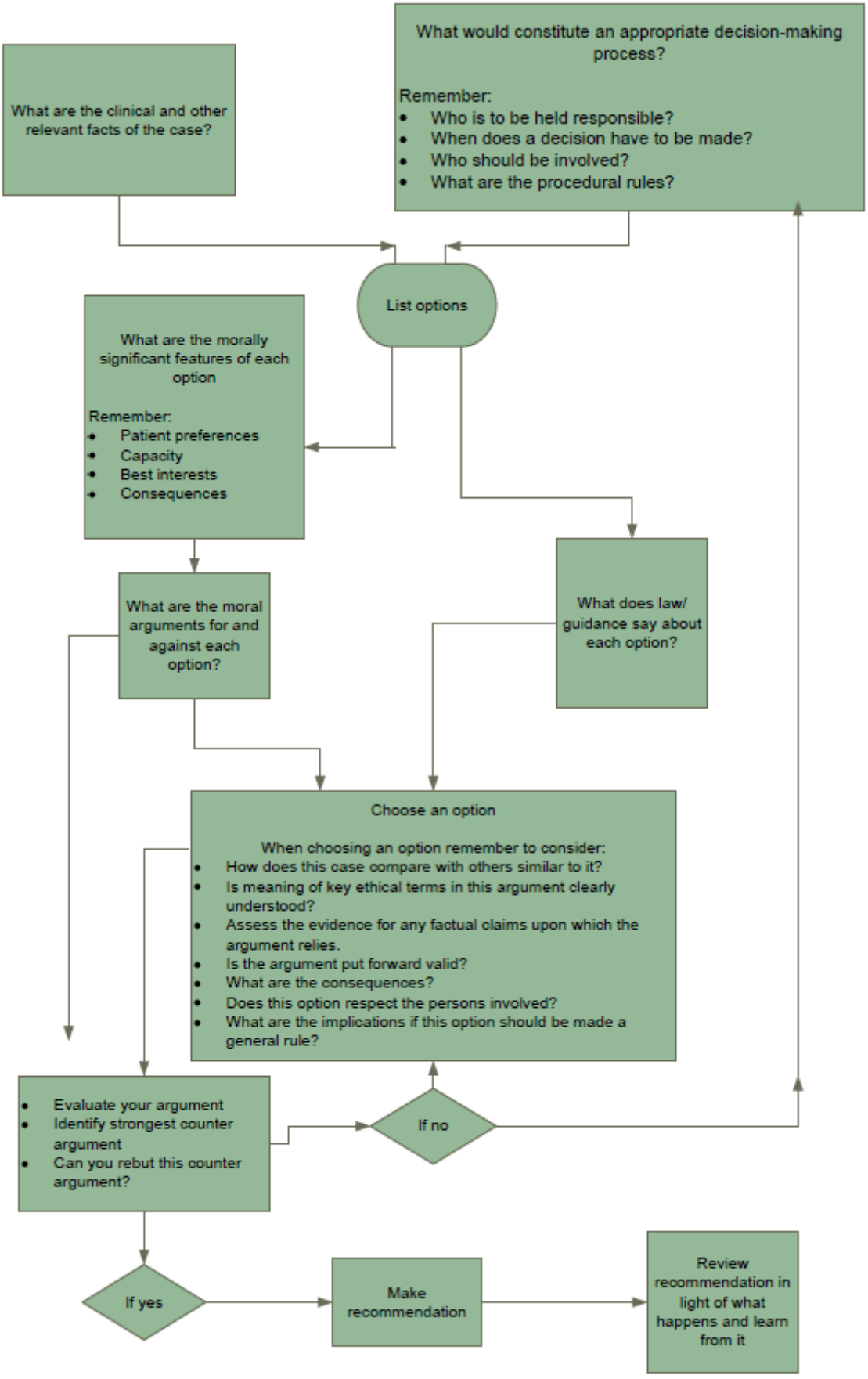
2) Justice: distributing healthcare provisions and benefits fairly; the notion that patients in similar positions should be treated in a similar manner. Justice may be defined as giving to each patient what is due.

3) Moral courage or Fortitude: enables the healthcare professionals to act reasonably and appropriately, with firmness and strength, in the face of difficulties, in particular when a patient is in danger of death.

4) Temperance: all counsel given and decisions made are with sound mind and are well-timed, well-measured and moderated and free from any self-interest. Such decisions look to the unified good of the patient.

All members will give their opinion and conclusions as independent contributors working to the guiding virtues and/or additional ethical theories, namely utilitarianism/consequentialism or deontology, and additional information. All rationale of ethical arguments and conclusions will be fully documented and transparent.

Appendix 2: Framework for ethical discussion – Ethox flowchart



Appendix 3: Chairperson and Deputy Chairperson role descriptions

CHAIRPERSON

Duties

- That the administration of the committee is managed efficiently and effectively.
- The committee undertakes the duties assigned to it.
- That reports to the committee and actions arising from meetings are completed in a timely manner.
- That the Chair, Deputy Chair and Trust Secretariat discuss the setting of agendas and follow-up action points.
- That membership of Committee includes individuals with training and/or experience in ethics and law relevant to clinical practice, such that the Committee as a whole maintains those competencies necessary for its proper functioning.
- That membership of Committee includes representatives of diverse faiths and cultures.
- Liaises with the Chief Medical Officer regarding any financial costs associated with the functions of the Committee e.g. annual membership fee of the UK Clinical Ethics Network; fees for external legal opinion, etc.

Role

- To lead the Committee, agree agendas with the Trust Secretariat, Chair Committee meetings, and act as a leading figure within the Trust.
- To take responsibility for organising the termly Grand Round in Health Care Ethics and Law.
- To be one of those conducting the interview process for new members. In the event that the Chair is unable to fulfil this role, the Deputy Chair may deputise.

Person Specification, Election and Term, Ratification

- Elected for a four-year term, extendable for one further year.
- S/he may, if he/she so wishes, put themselves forward for re-election.
- Should be an employee of the Trust.
- Should possess a substantial understanding of ethical, and related legal issues pertaining to the provision of clinical care, in general accordance with UK Clinical Ethics Network guidance, so as to be able to command respect from clinical, including senior, colleagues in the Trust.
- It will be an advantage to have some formal legal or ethical training, and/or qualification; but this should not override clinical and practical ethical experience as a requirement.
- Should have been a member of the Committee for at least two years prior to the date of election as Chairperson.
- Be able to demonstrate both relevant experience and generic skills in effective chairing.
- Elected by the membership of the Committee but requiring ratification by the Board.

DEPUTY CHAIRPERSON

Role

The Deputy Chair will stand in for the Chair when he/she is not available.

Person Specification, Election and Term

- Elected for a four-year term, extendable for one further year.
- S/he may, if he/she so wishes, put themselves forward for re-election.
- Should be an employee of the Trust.

- Should possess an understanding of ethical, and related legal issues pertaining to the provision of clinical care, sufficient to command respect from clinical, including senior, colleagues in the Trust.
- It will be an advantage to have some formal legal or ethical training, and/or qualification; but this should not override clinical and practical ethical experience as a requirement.
- Be able to demonstrate either relevant experience and generic skills in effective chairing or likely aptitude for relevant development.
- Elected by the membership of the Committee, not requiring of ratification by the Trust.

APPROVED BY BOARD OF DIRECTORS: 2 December 2021