

This response was submitted to the consultation held by the Nuffield Council on Bioethics on *Public Health: ethical issues* between May and September 2006. The views expressed are solely those of the respondent(s) and not those of the Council.

National Institute for Health and Clinical Excellence (NICE)

Professor Sir Bob Hepple QC, FBA
Nuffield Council on Bioethics
28 Bedford Square
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WC1B 3JS

28 September 2007

Dear Professor Hepple,

Consultation on public health: ethical issues

Thank you for your invitation to comment on the ethical issues raised by public health.

As you may know, it is now part of NICE's role to provide guidance on public health interventions and programmes. We have consulted on and discussed questions similar to those raised in your paper as part of clarifying the social value judgements that should influence the recommendations in NICE guidance. I attach a brief note on:

- what we mean by social value judgements;
- our methods for determining what they should be, including the role of the Citizens Council in advising our board; and
- the conclusions of the Citizens Council on questions we put to it in 2005 about mandatory public health measures. These last are particularly relevant to your enquiry.

Our only additional comments are about definitions of the term 'public health' and the factors that influence public health.

We are happy with the Institute of Medicine definition used in your paper. However, it is worth noting the variation on the Faculty of Public Health definition proposed in the 2004 Wanless report, *Securing good health for the whole population*:

'The science and art of preventing disease, prolonging life and promoting health through organised efforts *and informed choices* of society, *organisations, public and private, communities and individuals*.'¹

This definition may be relevant to you in that it reinforces a major theme of the Wanless report - the concept of full public engagement in public health issues - and signals an approach to tackling lifestyle factors that emphasises open debate between government and the public and wider civil society about the reasons and aims behind proposals to use policy instruments to change behaviour.

On the factors that influence public health, we suggest that other public services may be as important as 'preventative and curative health services'. The 1998 public health green paper, *Our healthier nation – A contract for health*, proposed a similar list of factors but usefully included a broader 'access to services' category covering, for example, transport,

¹ See www.hm-treasury.gov.uk/consultations_and_legislation/wanless/consult_wanless04_final.cfm

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Please contact me if any further information from NICE would be useful.

Yours sincerely,

Nick Doyle
Clinical and Public Health Analyst

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² See www.archive.official-documents.co.uk/document/doh/ohnation/title.htm

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A NOTE ON SOCIAL VALUE JUDGMENTS AND NICE GUIDANCE

National Institute for Health and Clinical Excellence (NICE)

The best available evidence is not always very good and is rarely (if ever) complete. It may be of poor quality, lack critical elements, or both. Those responsible for formulating NICE's advice about efficacy, effectiveness, cost effectiveness and safety are therefore inevitably required to make judgements.

The members of NICE's advisory bodies are appointed for their competence in making scientific value judgements but neither they nor NICE's board can legitimately impose their own social value judgements on the NHS and the patients that it seeks to serve. Social value judgements are central to NICE's role, as they take account of the ethical principles, preferences, culture and aspirations that should underpin the nature and extent of care provided by the NHS.

NICE established a Citizens Council to help it develop the broad social values it should adopt in preparing its guidance. It also uses other methods, such as opinion surveys, to gather information about public attitudes to priority setting. In its composition the Citizens Council reflects the age, gender, socioeconomic status and ethnicity of the people of England and Wales. Members do not represent any particular section or sector of society; rather, they bring their own personal attitudes, preferences, beliefs and prejudices. None of the members is a healthcare professional. The Citizens Council goes through a facilitated, deliberative process to reach conclusions on important questions for NICE. NICE's report on social value judgements was strongly influenced by the work of the Citizens Council.³

These social value judgements and the principles for the development of NICE guidance arising from them are important in trying to ensure the appropriateness and public acceptability of guidance. The principles cover both the nature of the processes that underpin NICE's work but also how NICE and its advisory committees integrate into their decision-making considerations about factors such as age, gender and sexual orientation, social class position and social roles, ethnicity, and self-inflicted conditions, and the priority to be attached to health inequalities.

The social value judgements have a bearing on ethical issues arising from public health such as the balance between regulation and individual liberty.

The balance between regulation and individual liberty

As part of the ongoing process of developing social value judgements NICE asked its Citizens Council to suggest principles that should govern the imposition of public health measures on the UK population, paying due attention to:

- the relative roles and responsibilities of individuals to look after the health of themselves and their families, as against the roles and responsibilities of the state

³ NICE (2005) *Social Value Judgements – Principles for the development of NICE guidance*.
www.nice.org.uk/page.aspx?o=283494

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- issues relating to interventions that may sustain or improve the overall health of the population, while nevertheless inconveniencing many, or even harming a minority.

In arriving at its recommendations⁴ the Council considered a number of viewpoints, along with case studies on the limitation of pack sizes for paracetamol as a measure to reduce suicides among young people, fluoridation, and obesity. The recommendations cover responsibilities for the public's health, the balance between needs and benefits versus harm and inconvenience, when and how the state should intervene, how mandatory interventions should be introduced and monitored, and openness and public involvement.

Mandatory public health measures – the Citizens Council's recommendations

1. Who has responsibility for the public's health, individuals or the state?

Principles

Where possible people should have freedom of choice and be responsible for their own health. We should attempt to educate people to adopt a healthier lifestyle and try to persuade them to access the help they need voluntarily. But ultimately, and if necessary, we should adopt mandatory measures.

Freedom of choice is overridden by the responsibility not to cause harm to others. Where others are being harmed by a particular activity the state has a right to intervene.

Points to consider

An individual whose behaviour deliberately puts others at risk could face legal penalties.

2. Where does the balance lie between needs and benefits versus harm and inconvenience?

Principles

Any mandatory measure should lead to overall improvement in the health of the population.

Interventions that provide benefit for the greater number are justified even where a small minority might be disadvantaged.

Minor inconvenience resulting from an intervention should have little bearing on whether or not it is made mandatory.

Mandatory measures should lead to worthwhile benefits compared to the cost. A broad view of costs and benefits needs to be taken as some may not be immediately apparent.

⁴ NICE (2005) *NICE Citizens Council Report – Mandatory public health measures*.
www.nice.org.uk/page.aspx?o=274599

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Points to consider

Care should be taken that interventions address a genuine public health problem rather than the latest media fad.

3. When and how should the state intervene?

Principles

Choice of intervention should be based on the seriousness of the problem, the extent of harm or danger within the population and the number of people it will affect.

It should be accepted that the quality of the evidence needed to justify a public health intervention might be lower in the case of an urgent national emergency, for example bird flu or bio-terrorism.

Mandatory public health measures should aim to promote equality of outcome. This may mean treating some people differently from others in order to reduce health inequalities.

The potential adverse effects of a mandatory public health intervention on vulnerable members of society should always be considered.

Points to consider

If the condition being addressed is common, it is right to target the intervention at the most vulnerable groups. For example, flu vaccinations are targeted at older people and those most likely to suffer serious side effects if they get flu.

Interventions should attempt to address the cause of a public health problem (for example, promoting healthy foods to children) as well as focussing on the problem (for example, prescribing exercise for already obese people).

4. How should mandatory interventions be introduced and monitored?

Principles

Any mandatory measure should be monitored on an ongoing basis once implemented. If monitoring reveals significant harmful consequences, the measure should be reconsidered in order to limit damage.

Where vulnerable groups are at risk, monitoring should be particularly rigorous.

Points to consider

Measures should only be introduced if they are practical and achievable.

Wherever possible, measures should be piloted first before being extended to the whole country.

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There should be a provision to review and stop the measure in the future if it turns out to be unfavourable. It is important that measures are reversible.

5. Openness, trust and public involvement

Principles

There must be openness and transparency in implementing mandatory measures and in explaining the reasons behind them.

Wherever possible, public health interventions should be preceded by public information and/or consultation, debate and feedback.

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