

# Abortion Law in Scotland

## Review of Pathways, Regulation, Data & Reporting and Conscientious Objection

The Christian Medical Fellowship (CMF) is grateful for the opportunity to contribute to this Review process. CMF exists to unite Christian healthcare professionals, to encourage them to live in ways consistent with the example of Jesus Christ, and to equip them to promote Christian values in their workplaces. CMF has many members who live and work in Scotland.

We have been invited to contribute to the section on Conscientious Objection and are glad to accept.

## Responding on behalf of CMF

### Introduction

We note, from the minutes of the Expert Group meeting on 8 August 2024, that *'the Scottish Government's aim in establishing the review was to consider reframing abortion as solely a healthcare matter.'* The assumption throughout the review documents is that the only person whose 'healthcare' is under consideration is the pregnant woman. Our position is that in any pregnancy the care of two lives should be considered – mother and baby. When abortion is presented as a woman's right ('my body, my choice'), the baby is not in view. Our view is that both lives matter, and that healthcare should value the lives of women and unborn children and pursue the wellbeing of both. Our contention is that many healthcare professionals share this conviction at an intuitive level, quite apart from any religious belief they may hold. Our appeal to the Scottish Government is not to lose sight of this in their review of abortion and in the wording of any new law. We suggest that failure to do this would be out of step with the instincts of the Scottish people generally and would alienate the very people trusted with the responsibility to implement change – Scotland's healthcare professionals.

### Medicine as a moral enterprise

Practising good medicine is a moral, and not just a technical activity. Ever since Hippocrates, the practice of medicine has been founded on core ethical values. These values have provided the basis for historic codes of medical ethics, from the

Hippocratic Oath<sup>1</sup> to the Declaration of Geneva<sup>2</sup> and the General Medical Council's Good Medical Practice.<sup>3</sup>

Whether inspired by a personal religious faith or not, ethical values form part of the health professional's personal identity, moral welfare, and their understanding of the reasons that they entered their profession. If a person is coerced by employers or by the power of the state to act in a way that transgresses such values, then their internal moral integrity (congruence and cohesion between their personal and professional values) is damaged. Any definition of health that fails to uphold patients' and care providers' ethical well-being is flawed.

We note recommendations made by the advisory group, including that the abortion law review *'should be based around human rights standards.'* It is an essential safeguard for the moral health of medicine that legal and regulatory systems are maintained that protect the right of health professionals to refuse to take part in practices that violate their most profound moral convictions. This is a right enshrined in Article 9 of the European Convention on Human Rights,<sup>4</sup> which states, *'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to manifest his religion or belief in worship, teaching, practice and observance.'* Similarly, the 2010 UK Equality Act<sup>5</sup> also prohibits discrimination on the grounds of religion and belief.

## The inviolability of conscientious objection

To practise medicine in ways that would contravene sincerely held beliefs, religious or otherwise, would be to subvert conscience to secular society and its values, to act hypocritically, and to violate moral integrity intolerably. On this basis, we argue that conscience rights should apply to participation in the procedure itself, but also to routine administration and preparation of patients for termination procedures. We are greatly concerned that the ruling in the so-called 'Glasgow Midwives' case<sup>6</sup> coerces nurses and midwives into having to choose between maintaining personal moral integrity and losing their jobs. An enlightened abortion law should permit sincerely held beliefs to be respected, no matter who holds them.

Of course, we would expect objecting doctors still to provide normal care for women, and care for them in the case of complications of abortion such as infection or haemorrhage.

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<sup>1</sup> [https://www.nlm.nih.gov/hmd/greek/greek\\_oath.html](https://www.nlm.nih.gov/hmd/greek/greek_oath.html)

<sup>2</sup> <http://www.cirp.org/library/ethics/geneva/>

<sup>3</sup> [http://www.gmc-uk.org/guidance/ethical\\_guidance/21177.asp](http://www.gmc-uk.org/guidance/ethical_guidance/21177.asp)

<sup>4</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>5</sup> [http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga\\_20100015\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf)

<sup>6</sup> <https://www.supremecourt.uk/cases/docs/uksc-2013-0124-judgment.pdf>

Similarly, to require those who would refrain from onward referral to colleagues, who would provide the disputed treatment or procedure, to act contrary to their consciences is also intolerable. To cooperate in an act which a person regards as inherently morally wrong is to be a moral accomplice. The right of conscientious objection must protect the integrity of all those who hold minority beliefs from discrimination or coercion by the majority.

To guard against the ‘every conscience a law unto itself’ scenario we suggest, with Magelssen,<sup>7</sup> that conscientious objection should be acceptable when the objection has ‘a plausible moral or religious rationale’ such that providing health care would ‘seriously damage the health professional’s moral integrity by constituting a serious violation of a deeply held conviction.’

We understand the particular challenge in Scotland of providing accessible care to young people in remote parts of the country. However, we would argue that increased investment has to be the answer. In our view, removing the right of conscience protection would reduce the number of clinicians willing to train and work in this specialty at a time when increased provision is needed.

## The importance of trust

We read with concern the WHO recommendation to the Expert Group meeting on 8 August 2024 that ‘*there is a need to protect services from the impacts of conscientious objection.*’ We believe this strikes at the heart of medicine as a moral enterprise. Doctors are not just paid artisans who do whatever their paymasters require. They are not civil servants whose first loyalty is to the state. They are not salesmen whose job is keep the customer satisfied. There is no doubt that the high levels of trust that doctors and nurses still retain in our society stem in part from their reputation as independent, caring professionals who have an openly stated duty to act with moral integrity, in the best interests of their individual patients. If doctors and nurses are perceived to be merely state apparatchiks, contracted by, and obliged to carry out the bidding of politicians, we believe it will undermine patients’ trust and confidence in them, and threaten the very basis of the doctor/patient relationship.

The 1967 Abortion Act was far from perfect, but it did at least provide statutory protection for doctors. We urge the Scottish Government not only to retain this statutory protection in any ‘reformed’ law on abortion, but to extend it to cover nurses and other healthcare professionals at every stage in the care pathway of women seeking abortion, not just for the surgical procedure itself.

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<sup>7</sup> Magelssen M. When should conscientious objection be accepted? *Journal of Medical Ethics* 2012;38:18-21

At its crudest, there are only two alternatives. Either the state has the right to define what medical practice shall consist of and then coerce all practitioners to comply or to leave their professions, or individual professionals retain the right to practise in accordance with the traditional values of the profession, which have been defined and protected for centuries.

## Conclusion

In summary, the right of conscientious objection helps to preserve the moral integrity of the individual clinician, preserves the distinctive characteristics and reputation of the health professions, acts as a safeguard against coercive state power, and provides protection from discrimination for those with minority ethical beliefs. We urge the Expert Group not to exclude it from any new law on abortion.

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