

LORD MACKAY OF CLASHFERN

It is not right to force medics to act against their beliefs

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A bill to cover conscientious objections in medicine would avoid losing valuable members of staff

James Mackay, QC

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James Mackay, QC: "It is not necessary or right to force people, as part of their employment, to do what they believe to be wrong"

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A fortnight ago Baroness O’Loan’s Conscientious Objection (Medical Activities) Bill passed its second reading in the House of Lords. It now heads to committee stage where it will be scrutinised further.

A large campaign backing the bill has argued that it is necessary to legally safeguard the conscience of all medical professionals, many of whom do not currently have clear rights guaranteed in

life-sustaining treatment; activity under the Human Fertilisation and Embryology Act 1990; and in the context of abortion.

I spoke in support of the bill during the debate prior to the second reading, where many raised concerns about an “unreasonably broad” ability to conscientiously object to the provision of abortion. As far as I am concerned, there is a very simple analysis of this.

A person who has a conscientious objection to abortion has a deeply held belief that it is wrong to carry out an abortion, generally speaking. There is, of course, a provision in the Abortion Act 1967 limiting the scope of conscientious objection where the mother’s life is at risk, which would not be affected by the bill. However, the real question is: to what extent should one be required to participate in activity that is contrary to one’s deeply held beliefs?

One of the stated justifications for the bill is the Supreme Court decision in *Greater Glasgow Health Board v Doogan & Anor*, which concerned two Scottish midwives and the protection afforded under the conscience clause of the Abortion Act. I am very familiar with the judgment of the Supreme Court and I respect the judgement of Lady Hale very much indeed.

In that case, three judges of the Court of Session had previously held that the two midwives — Mary Doogan and Connie Wood — would be able to avail themselves of the conscientious protection as provided in the Abortion Act.

These ladies were proficient in their jobs and had been in the health service for a considerable time. They were happy continuing to do what they had been doing, but they did not want to be involved with anything that they believed to be

of Session sought to provide a common sense solution.

Admitting that many found the process of abortion to be “morally repugnant”, the Court of Session took a wider reading of the Abortion Act, which would have enabled midwives to conscientiously object to the whole process of treatment. The Supreme Court, however, took a different view, and limited the conscientious protection solely to “hands-on” activity. This meant that the midwives felt as though they had no choice but to resign from their posts.

This is a regrettable and, in my view, avoidable outcome that the bill would resolve. So far as I am concerned it is not necessary or right to force people, as part of their employment, to do what they believe to be wrong.

On concerns that the NHS would face collapse if a wider protection for conscience was granted in this way, one would have to believe that the NHS presently depends to a substantial extent on people doing what they believe to be wrong. I find it very hard to see that that can be right.

In the first instance, I do not believe that a critical mass of staff throughout the NHS would avail themselves of a new right to conscientious objection as outlined in the bill, should it pass into law. However, the important point is that the obligation to provide these services is not on the employee, but on the health service itself.

Therefore, it is ultimately the health service that has the responsibility of making the necessary arrangements to accommodate the views of those who think that these activities are wrong. It may well have a cost, but such are the demands of having a genuinely inclusive and broadminded society. I do not believe that it is right that the health service, or any other

to be wrong.

Lord Mackay of Clashfern was the Conservative lord chancellor from 1987-97 and previously served as dean of the Faculty of Advocates and the lord advocate

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