

PE1712/F

Scottish Government submission of 16 January 2020

I am writing to provide the Public Petitions Committee with a response to your letter of 9 December 2019 regarding petition PE1712: Soul and Conscience letters.

This follows the Committee's receipt of the Scottish Government's response to the petition, dated 7 January 2019. I note the Committee also received responses from the Crown Office and Procurator Fiscal Service, the Law Society of Scotland and the British Medical Association ('BMA').

The Committee has asked whether the Scottish Government has any plans to update guidance on the use of soul and conscience letters for the medical profession, and if so, whether the guidance would take into account the underlying issues raised by the petition, which the Committee has identified. These are a perception that people can avoid justice because they have a soul and conscience letter and that such a letter is easy to obtain from a doctor. The Committee also notes GPs may not fully recognise the significance of the impact of their agreeing to write such letters.

It may be helpful to highlight the response to the Committee by the BMA dated 18 April 2019, which states that soul and conscience letters,

"...are written by doctors in the full knowledge that they may still be required to attend court to provide the evidence in their letter in person. No GP would write such a letter lightly and it is well understood that a GP would have to answer the contents of the letter if required to do so."

They further explain,

"...GPs are well aware of the significance of the evidence they are providing in the context of ongoing criminal cases, that will no doubt involve serious consequences for potential victims and those set to undergo trial."

The BMA state on the issue of improved guidance that they have not had any particular concerns raised with them around the quality of guidance as it stands.

From the evidence offered to the Committee, it appears that the medical profession has a clear understanding of the purpose and implications of a soul and conscience letter. In any event, the guidance in this area does not come under the responsibility of the Scottish Government and so any suggestion that the guidance could usefully be updated should be directed to the relevant medical professional bodies such as the General Medical Council.

With regards the Committee's concern there may be a perception that people can avoid justice because they have a soul and conscience letter, it might be helpful to reiterate that a medical certificate or letter produced to the effect that a person is unfit to attend court is not conclusive evidence of that fact. Rather, in every case it is for the court to decide, from the certificate and any other relevant circumstances, whether it is persuaded that the person concerned is unfit to attend and, if so, what the consequences of that should be.

We also note the Law Society in their response to the Committee emphasised that they are unaware of any current abuse of the process.