

**Peter Saunders** looks at five major challenges



# GUARDING THE PRICE OF FREEDOM

## key points

- The march of secular humanism calls for active engagement by Christians in parliaments, courts and institutions.
- After failure to win parliamentary votes to legalise assisted suicide, the courts have now become the battleground.
- Currently there are no bills concerning abortion before Parliament, but proabortion activists may seek to amend a government health bill to achieve their aim of completely decriminalising abortion.
- Compulsory harvesting of organs for transplant is unethical. The final decision must lie with the family based on what the person would have wanted.
- Safeguarding freedom of conscience for healthcare workers is essential and there are gaps in current legislation.

I am struggling to think of a time when UK Christian doctors have faced greater advocacy challenges all at once. This is perhaps not surprising given the march of secular humanism through our parliaments, courts and institutions. I outline here five major areas of activity.

### Assisted suicide

Given that eleven attempts in British Parliaments to change the law to allow assisted suicide or euthanasia have failed since 2003, our opponents, not surprisingly, have shifted their attention to the courts to try and change the law through the back door.

Conway, who has motor neurone disease and is seeking assisted suicide, lost his case<sup>1</sup> in which CNK Alliance intervened in the Divisional Court in October 2017. His appeal to the High Court was initially denied but he has now successfully appealed directly to the Court of Appeal to be heard on 1 May 2018. CNK is seeking to intervene with the help of evidence supplied by CMF members. I've previously reviewed the case.<sup>2</sup>

Omid, who has multiple system atrophy, is also seeking assisted suicide. A preliminary hearing took place on 21 November 2017 with an appeal to the judges to allow a full enquiry in which all witnesses can be cross-examined along the lines of the Carter case in Canada. We still await their decision.<sup>3</sup>

There were also some recent worrying judge-

ments by the Court of Protection.<sup>4,5</sup> Formerly all patients with Permanent Vegetative State (PVS) and Minimally Conscious State (MCS) had to go to court for appeals about the removal of artificial nutrition and hydration (ANH), but now there are moves to withdraw ANH from these and less severely brain-damaged patients who are not imminently dying without going to court provided that both doctors and relatives agree that it is in the patient's 'best interests'. The Official Solicitor appealed these judgements in the Supreme Court on 26-27 February 2018. CNK intervened with written evidence and we await the judgement.<sup>6</sup>

Moves are also afoot on the Island of Guernsey to legalise assisted suicide and possibly also euthanasia with a proposal to be debated on 16 May 2018.<sup>7</sup>

### Abortion

The 'We Trust Women' campaign<sup>8</sup> (masterminded by Ann Furedi, CEO of BPAS) is gaining momentum and now has the support of the RCOG, BMA and RCM. Whilst there is no bill currently before Parliament (and none likely to appear before 2019) proabortion activists may seek to amend a government health bill to achieve their aim of completely decriminalising abortion.<sup>9</sup>

This will most likely involve repealing Sections 58 and 59 of the Offences Against the Person Act 1861 (OAPA)<sup>10</sup> which make procuring an abortion

for oneself or others a crime punishable by life imprisonment. The effect would be to make abortion legal for any reason up to 28 weeks and, if the Infant Life (Preservation Act) 1929<sup>11</sup> is repealed too, up to birth.

Were this to succeed the Abortion Act 1967<sup>12</sup> with all its provisions (two doctors, licensed premises, reporting, conscience clause etc) would fall as it is contingent upon the OAPA.

There are also calls to relax the abortion laws in Northern Ireland, Republic of Ireland (referendum on article 8 on 25 May) and the Isle of Man.

## Organ transplantation

Geoffrey Robinson MP wants to bring in an opt-out system for organ donation in England. His Organ Donation (Deemed Consent) Bill<sup>13</sup> had its second reading (debate stage) in the House of Commons on 23 February 2018 and will proceed to committee stage.

In 'deemed' (presumed) consent, a person, unless he or she specifically 'opts out', is assumed to have given consent to the harvest of their organs after death, even if their wishes are not known. Although relatives may be consulted (a so called 'soft' opt out), to ascertain any wishes of the deceased expressed before death, their views can still be overruled by the state should they decide against transplantation. Wales already operates an opt-out system for organ donation and it is likely that Scotland will follow.

Robinson's private member's bill may be overtaken by a new government bill seeking to achieve the same thing. The government has run a consultation, which closed on 6 March 2018. This proposed 'changing the current law on organ donation consent whilst also allowing people to opt out if they want to'.<sup>14</sup> CMF has made a submission.<sup>15</sup> Both Theresa May, the prime minister, and Jeremy Corbyn, the leader of the opposition, have signalled support and a *Daily Mirror* campaign has given its backing.

However, evidence for the claim that an opt-out system will increase transplants is still lacking. In Wales, where an opt-out system was introduced in December 2015, there has been a small dip in the number of deceased donors. The Nuffield Council advised in October that robust evidence is needed before any change to the law is considered.<sup>16</sup>

But it is also unethical. Donation must be without coercion and the final decision must lie with the family based on what the person would have wanted, if this is known. Organs are not the property of the state and must not be 'taken' without permission, however needy any prospective recipient may be.<sup>17,18,19</sup>

CMF has been working with other groups offering advice toward the launch of a campaign under the title 'My Body, My Gift'.<sup>20</sup>

## Transgender

Under the Gender Recognition Act 2014,<sup>21</sup> to change gender legally, one must have lived in

one's chosen gender for two years, be 18 or over, have a medical diagnosis of gender dysphoria and appear before a gender recognition panel.

Justine Greening, the Secretary of State for Education, Women and Equalities, wanted to allow people to change their gender purely based on self-declaration, without having to see a doctor nor appear before a gender recognition panel.

Greening had the support of both Prime Minister Theresa May and Opposition Leader Jeremy Corbyn, but thankfully the campaign lost some momentum when she lost her position in a recent cabinet reshuffle.<sup>22</sup>

She was intending to launch a consultation towards this end, but with her resignation this appears to have been put on hold. A Scottish consultation<sup>23</sup> aimed at the same end however, to which CMF has made a submission,<sup>24</sup> closed on 1 March 2018.

## Freedom of conscience

Currently, there is statutory conscience protection for health professionals only for involvement in abortion and activities authorised under the Human Fertilisation and Embryology Act. The scope of the former is restricted because of a Supreme Court judgement on the case of two Glasgow midwives.

Freedom of conscience for other activities (eg. Hormones for transgender, abortifacient contraceptives, PrEP, gay adoption, withdrawal of CANH etc) is covered only partially by equality legislation.

There were two significant victories on freedom of conscience last year. The General Pharmaceutical Council, which regulates Pharmacists and Pharmacies, modified new guidance<sup>25</sup> which would have replaced a 'right to refer' with a 'duty to dispense', in response to protests from interest groups.<sup>26</sup>

The Faculty of Sexual and Reproductive Health (FSRH), part of the RCOG, reversed regulations<sup>27</sup> which denied those with conscience objections to some contraceptives from obtaining its diplomas. This appeared to be in response to criticism by CMF.<sup>28</sup> These two wins underline the fact that conscience freedom depends on constant vigilance.

Baroness O'Loan's Conscientious Objection (Medical Activities) Bill<sup>29</sup> (see p4) had its second reading in the House of Lords on 26 January 2018. Although this bill is narrower in scope than we might have preferred (covering only abortion, IVF and related technologies and withdrawal of treatment) it deserves our full support.<sup>30</sup>

## Vigilance

The price of freedom is eternal vigilance and part of our role as Christians is to exercise our responsibility to do what we can – through prayer and persuasive speech and writing – to ensure that the laws on our statute books are fair and just. The battle is certainly not over yet.

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