

PE1442/A

Professor R.A.Wood

Calling on the Scottish Parliament to urge the Scottish Government to amend the law to provide that a person's dead body is part of their estate and in effect clearly invokes their will.

The Public Petitions Committee considered the above new petition at its meeting on 30 October 2012. The purpose of this letter is to seek a written response to—

- o the specific issues raised in the petition itself
- o those raised during the discussion on the petition and
- o the specific written questions to you (all the questions asked by the Committee are set out in the document 'Written questions' which is available on the petition's webpage).

I have been asked to comment on a call for the Scottish Parliament to amend the law such that a person's dead body is part of their Estate and in effect invokes their Will. Respectfully, it may be that 'invoke' is the wrong word. What is intended is that the disposal of the body must be as directed in a Will just as the distribution of assets should be as set out by the Testator.

It is apparent that the concern applies to Bodies Willed to an Anatomy Department but which, because of objections by surviving family members of the deceased, are not made available. The issue is a real one and because in many such cases there will be no contact with an Anatomy Department it is difficult to quantify just how many Bodies that were Willed are not put to the purposes intended by the Testator.

Donation of a Body to an Anatomy Department via a Will is in fact an unreliable method by which to attain the utilisation of the Body for 'Medical Science'. When an individual makes a Will leaving his/her Body to Medical Science there may have been no contact with the local/nearest Anatomy Department and, following death, no family member will have any idea how to proceed. In the stress and distress of a family death time can go by and when a solicitor or next of kin gets round to finding out how to proceed the Body may often have been at an Undertaker for over two days by which time it can no longer be accepted/used by an Anatomy Department. In some cases, unsurprisingly, a Will may not be looked at for several days. Tissues begin to decompose very quickly and Anatomy Departments strongly prefer to receive a Body within 24 hours of death; once in a Department embalming will be undertaken without delay. Because Willing a Body without the knowledge of an Anatomy Department so regularly results in the Donation not taking place I took steps in 2009 to write an article for the Journal of the Law Society of Scotland; the purpose of this was to get Solicitors to refer clients wishing to leave their Body to Medical Science to the Bequeathal Secretary of the local Anatomy Department. There was no wish to deter clients from making testamentary donation - the purpose was to make known the route through which such Donation would more

likely take place. I believe that family Solicitors are now more widely aware of the need to refer intending donors to a Bequeathal Secretary.

Bequeathal to an Anatomy Department **does not need any back -up statement in a Will** . An individual contacting an Anatomy Department does not necessarily have to visit the Bequeathal Secretary and can be supplied with the Bequeathal documents for completion, witnessing, and return.. Usually, and preferably, the intending donor will meet with the Bequeathal Secretary and can have the various relevant matters discussed. Although a Body cannot remain in an Anatomy Department for more than three years it is permissible , providing the donor has agreed at the time of Bequeathal that this may be done, for an especially interesting Part to be retained when the rest of the Body goes for Cremation or Burial. . The Bequeathal document also asks donors if they wish to agree that Images may be taken (subject of course to strict rules), to agree that if the Body is not needed by the Department at the time of death that it can be transferred to a Department in another University, and establishes if there should eventually be Burial (not all Departments offer Burial) or Cremation and , if the latter, should the ashes be made available to the family. It will be apparent that none of these details are addressed when there has only been a Will leaving the Body for Medical Research.

The Bequeathal documents are in triplicate and once they are completed, witnessed, and returned to the Bequeathal Secretary she keeps a copy on file, and passes two copies back to the intending donor advising that one be kept at home with important family papers and the other (should there be a Will) sent to the family Solicitor. When the death eventually takes place it is clear from the document what phone number to ring. The Anatomy Department will immediately speak with either the GP or a hospital doctor to establish that the Body is suitable (when there have been certain infections, e.g. tuberculosis, a Body will not be accepted), and once the Death Certificate is available (usually within hours of death) the Anatomy Department arranges for an undertaker to convey the Body to the Department. It is underlined that all that the bereaved family has to do is make one phone call to the Anatomy Department as soon as possible after the death.

The Scottish Government Health Department, both on a Body Donation in Scotland Website and in a leaflet issued in bulk to GP Surgeries, supplies the names, addresses, telephone number and e-mail contact for all the Bequeathal Secretaries. The Government position, my position as HM Inspector of Anatomy for Scotland, and the position of all the Anatomy Departments is that Bequeathal directly arranged with an Anatomy Department is the best way to attain donation of a Body.

In the five years since I became HM Inspector direct Bequeathal to Departments has been becoming more detailed. We have not to date included in the documentation a section asking the intending donor to confirm that he/she has discussed their intentions with next of kin and family members and that none object to what is intended. There are often comments to this effect by the Bequeathal Secretaries but the question raised by the Petitioner does cause me to think that we should include this issue as a formal

section of the documents and I will discuss the matter with the Scottish Anatomists at their next Meeting.

Given the above background let me set out my response to the suggested legislative change from the Petitioner.

1. If it were enacted that , if a Body was Willed to Medical Science, such must take place even if there were objections by surviving family Members, there might be some awkward issues. Firstly, what would happen if the Body was unsuitable; presumably it would have to go to Anatomy, and the costs of Cremation would have to be met by the University without there having been any use of the Body. Exactly the same would result if there had been a delay of more than two days in contacting the Anatomy Department. Secondly , even if there was prompt notification of the death, family objections could not be overcome without due legal process that would inevitably take days or weeks by which time the Body would not be utilisable
2. The practical reality, even if the Law were changed as is suggested, is that families who objected to what their deceased relative had stipulated in a Will would simply fail to notify Anatomy of the death. The terms of the Will might in such circumstances make it difficult for the family to arrange conventional Cremation or Burial and legal costs might be incurred.
3. Anatomy donation, either by Bequeathal or by Will, depends upon Anatomy Departments having a good public image. Legal wranglings about ownership of a Body might well arouse adverse media comment that damaged the public image. I do not believe that any of the five University Departments accepting Bodies under the Anatomy Act 1984 as Amended in 2006 in Scotland would wish to enforce the Law change suggested by the Petitioner. Families are upset and emotional when there has been a death and that is no time for legal processes that might add further to distress.
4. Any testamentary statements about what is to be done with a person`s body may currently be overruled by a Procurator Fiscal with the responsibility of looking into the causes and circumstances of a death. It would be unacceptable to create legislative pre -eminence to the wishes of the deceased that prevented the investigation of deaths by accident, from violence, or following medical misadventure.
5. More than 90% of Bodies currently donated to Anatomy Departments stem from the Bequeathal route involving the deceased in life making the above-described arrangements with a Department of Anatomy. Such donations do not need any statement in a Will and, even if a proportion of those Bequeathing do make reference to the matter in their Will that is immaterial and unnecessary.
6. All of the above arguments would apply if it were suggested that Bequeathal by an individual could not be disallowed by family members after death of the intending donor

For these reasons I advise that no legislative changes are pursued.

However, I appreciate the strength of feeling of the Petitioner, and he has caused me to think (as discussed above) that we would do well to approach the matter of potential objection by relatives at the time of Bequeathal. It may well be that if there are full family discussions at that time the intending donor will both make known and explain his/her decision, and there will also be opportunity for relatives to ask questions of the Bequeathal Secretary. I undertake to pursue this matter with the Scottish Anatomists Group.

If the Petitioner has any questions for me I will be pleased to respond and discuss. I am grateful to him for his interest and desire to assist. He may be interested to know that the numbers of Bequeathals have been rising year by year and that at the moment there has also been a steady increase in the number of Bodies actually being received. This is very important and necessary at a time when Bodies donated under the Anatomy Act are now a valuable resource for surgical training as well as medical, dental, and scientific education. These favourable and necessary trends have not required new legislative initiatives.

If the Petitioner finds my arguments satisfactory and compelling it might be that he could save time and effort by withdrawing his legislative proposal.

I have said nothing about a similar set of discussions about a possible Law change to prevent families from disallowing donation of organs for transplantation. In that matter there is very strong opinion in some quarters that lives could be saved by Law change; however, it is noticeable that those at the sharp end – intensive care physicians – see the practical difficulties, do not wish legal arguments proceeding about the tissues of those who may still technically be alive or who have just died in distressing circumstances, and do not want such legislation. It is clear that people signing donor cards should in all cases make their views and intentions clear to family members and maybe, as in the current matter regarding Anatomy, that would achieve more than legislation.

11 November 2012

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