



# **House of Lords inquiry into the issues raised by the European Commission Communication: Organ donation and transplantation – policy actions at EU level**

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**A response by the Muslim Burial Council Of Leicestershire (MBCOL)**

**Q1. Please would you describe any particular aspects of organ donation and transplantation which are considered ethically problematic within the contact of your organisation’s religious beliefs – as these are perceived: (a) within the UK; or (b) in the EU Member States?**

1. The interference and or the violation of the human body, whether living or dead, are prohibited in Islam. This concept has been applied in many differing ways by the Muslim community with regard to matters that relate to organ donation and transplantation.

The application of this concept has in some cases been more rooted in cultural attitudes than strict application of Islamic (Shariah) Law.

One fundamental aim of Shariah Law is the positive injunction for believers to save life. Islam places a very high value on life.

As with some of the prohibitions there is a balance that needs to be struck. This balance is achieved by the prohibition being waived in some instances. These are in cases of necessity; to preserve the life of others and of one self. This is the Islamic legal maxim of “al-darurat tubih al-mahzurat” (necessities

overrule prohibition). This has great relevance to organ donation. This can be seen in the Quran when Allah declares:

**"Whosoever saves the life of one person it would be as if he saved the life of all mankind."**

**Holy Qur'an, chapter 5 vs. 32**

Many Scholars in Islam have examined this issue and the points that flow from opinions appear to be as follows:

- a. Medical professionals should be entrusted in defining "death" by clinical criteria and this is a question of medical fact rather than one of religious analysis.
- b. We should accept brain stem death as the proper definition of the end of life.

The ethical questions in transplantation relate to the source of donor organs e.g. anencephalic donors, cadaveric donation which is still controversial in some countries, paid living donors, donation under coercion or by minors, and by patients in a persistent vegetative state as well as organs from animals (xenotransplantation). The other major ethical issue has to do with equitable distribution of organs.

For these opinion makers the facts point to the fact that organ donation is permitted.

The issue therefore would also require analysis of all cultural perspectives in the UK.

**Q2. Please would you explain if there is any significant tendency for individuals from your faith group to oppose organ donation either for themselves or for a family member on the basis on the basis of their own**

**interpretation of the religious teaching of the group, rather than on the basis of that teaching is more generally interpreted. If so, how, if at all, do you think this tendency might best be addressed?**

2. The tendency for opposition to organ donation tends to be based on both individual application of what individuals believe and what some Muslim scholars say about the human body and parts. The human body is a trust (amanah) that has been given to us by God as such; it will be impermissible for one to donate any organs of his body. In view of the above and other evidences, according to these scholars, it is unlawful to donate and transplant organs, whether it be of a living person or a dead body, and whether there is a need or otherwise. In other words, there is no permissibility whatsoever for the transplantation or donation of organs.

One way to address this would be for institutions to engage with the Muslim community in order to clarify the particular aspects of Sharia (law) relating to this area. It must be understood that, even in this instance, people will still want to exercise their own personal right to refuse for their own personal reasons. This personal choice of course may be true of all people regardless of their faith.

**Q3. To what extent would a change to a system of presumed consent of organ donation in the UK (under which everyone would be assumed to have consented to donate their organs after death unless they explicitly opted-out from the system) be ethically acceptable for your faith group?**

3. We do not believe that a system of “presumed consent” would be appropriate. The idea of people having to “opt out” is in our view inappropriate when we look at the fact that ones organs are being used. Personal and cultural feelings about ones body are intrinsically very problematic. We can envisage families raising legal, moral and ethical challenges against the medical profession when they are opposed to one of their loved ones bodies being used in this

way. We all sensed that extreme concern and discomfort when we learnt of the Alder Hays organ retention scandal. It would not be ethically or religiously acceptable to us.

**Q4. If presumed consent were to be introduced in the UK, what would be your views about the idea that members of any particular groups should be assumed to be opted out as a whole without the need for individual opt outs? (An example of this is in the case in Singapore, where Muslims are assumed to have opted out unless they expressly opt in).**

4. We do not accept that the concept of “opting in” or “out” would be acceptable. What we would recommend is that all GP’s and Hospital Doctors should be placed under an obligation to get each of their patients to declare their decision as to organ donation. There also has to be a distinction between those donations that are for the purpose of helping to save a life and organ donations for the purpose of clinical research only. There should be a clear instruction as to what part of the body or organ (or part of an organ) is being donated. The patient should be able to withdraw any such consent given at any time and this can also be determined in any testamentary document such as a Will. Lawyers should be encouraged to advise their clients to draw up Wills and to address this issue in it. This is creating a system where people are encouraged to apply their minds to the issue of donating their organs and to make an informed decision, which is what Islam requires. The intent of the deed is paramount, rather than the issue being determined on your behalf by others. It also follows that we firmly believe that organ donation must be given freely, without reward, and trading in organs is strictly prohibited.

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