

Rt Hon David Mundell Secretary of State for Scotland

Scotland Office, Scotland Office, Dover House, Whitehall, London, SW1A 2AU

Dear Mr Mundell

Please find **attached** the documents for the case for a public inquiry into patient safety in Scotland and the related breakdown of aspects of the UK constitution; these are reserved matters. The responsibility to deliver public safety in healthcare and social care is that of the Scottish government, but when it refuses to implement the reserved UK legislation that would ensure public safety then it is a UK government matter. This is the case as presented by the pressure group ASAP-NHS. The letter - document 1 deals with main case for the inquiry and the consequences of not having an inquiry.

The case is about the refusal of the Scottish government to deal with one of the major causes of death in Scotland (by Department of Health estimates) and the UK legislation that would prevent them. The failure of the Scottish government to protect its people results from the underlying factors of a breakdown in the essential requirements of the Constitution. These are the loss of the rule of law, the refusal of the Scottish government to govern (take responsibility for devolved matters), and the loss of the separation of powers and other checks and balances on the abuse of power.

The Scottish government, two Scottish First Ministers, three Cabinet Secretaries for health as well as the Justice Secretary have since April 2012 refused to implement the law as it applies to patient safety (such as used at Mid Staffordshire NHS Trust and the public inquiries). The Lord Advocate Frank Mulholland has refused to act, and senior civil servants such as the Director General of the Health and Social Care Directorate and CEO NHS Scotland have also refused. The ministerial and civil service codes have been rejected. With the current elections to Holyrood elections, ministers will be unable to take up their seats unless they commit to complying with, and implementing the UK law on patient safety.

The situation appears to be wholly untenable. **The Scottish First Minister and the Scottish government are failing in their primary duty to ensure the safety of its people.**

The First Minister and her colleagues have rejected the rule of law; senior law officers, and senior civil servants in Scotland have likewise abandoned a main requirement of the Copenhagen Criteria of being a democracy. They refuse to implement the Act that would prevent about 2,000 reasonably preventable premature deaths ('avoidable deaths') a year in Scotland. In refusing to implement the law the Scottish government has written that it does not accept responsibility for the policy for safety and quality of healthcare. Nor does it accept responsibility for the failure of the justice system to act on UK and European law on the primary requirement under Human Rights legislation of 'the right to life' or on patient safety generally.

The absence of the separation of powers particularly with the heads of criminal prosecution being ministers and part of government, means that the Scottish government is beyond the law. The evidence behind this case for an inquiry has been collected as if in preparation for a criminal law investigation. The standard of evidence is of sufficient standard as to be of prosecution grade.

The Constitution has in vital aspects ceased to function in Scotland. This results in the failure to protect the safety and other rights of the people of Scotland and with it the failure to act as a democratic constitutional country. The situation is severe enough already but if not halted and reversed there will be myriad consequences.

Given the complexities and seriousness of the issues we would be please to meet and explain further.

ASAP-NHS

**Documents:**

1. Letter to SoSS on Update to case for 'Patient Safety in Scotland' public inquiry (PSIS) April 2016
2. Update 3 Summary (5 pages) March 2016
3. Update 3 March 2016
4. Scottish First Minister (SFM) Letter 09-03-2015
5. Letter to SoSS Alistair Carmichael 29 January 2015
6. Executive Summary PSIS January 2015
7. 'Patient Safety in Scotland' case for the public inquiry January 2015
8. Update 1 and Analysis of the case for an Inquiry May 2015
9. Update 2 August 2015
10. Ayrshire and Arran NHS Critical Incident Reports '20 Avoidable Deaths'