



living and dying well

Clear thinking on the end-of-life debate

Assisted Dying No. 2 Bill
Should Parliament License Assistance with
Suicide
A Supplementary Report

Introduction

In our last report¹ we examined proposals by Lord Falconer and Rob Marris MP for legalising what is being called 'assisted dying'. Though we had not intended to issue a further report, a memorandum circulated by Mr Marris, whose bill will be debated at Second Reading in the House of Commons on 11 September, contains some serious misconceptions which in our view cannot be allowed to pass unchallenged. We are therefore issuing this short supplementary report to put the record straight.

The Law

In his memorandum Mr Marris refers to the policy for prosecutors issued in 2010 by the then Director of Public Prosecutions (DPP). The policy describes how prosecuting decisions are made in cases of assisted suicide and it lists a number of circumstances which might incline towards or against a decision to prosecute. Mr Marris states that "*the DPP is doing the best she can*" but that "*in a democracy it is elected representatives who should make the laws, not an unelected civil servant*".

There seems to be a misunderstanding here about how laws are made and put into effect. It is, indeed, the role of Parliament to make the law, and the law in question (the 1961 Suicide Act) was made by Parliament. However, the Act specifically requires the DPP to consider any case where there is evidence of assisted suicide and to decide whether a prosecution should be undertaken. Prosecutorial discretion is a normal feature of the criminal law. Mr Marris's inference that the DPP is somehow usurping the role of Parliament is both unfounded and unfair.

¹ "Should Parliament License Assistance with Suicide?" July 2015

Deaths

Mr Marris states that the law "*does not prevent assisted deaths*". That is so: there is no such thing as a law that is never broken. But breaches of the law in this area are very rare: less than 20 cases of assisted suicide throughout the whole of England and Wales cross the desk of the DPP in any one year. Mr Marris writes that "*about 300 suicides a year are by a person with a terminal illness*". This figure is derived from an extrapolation, by the campaigning group Dignity in Dying, of data from just 6 out of 139 local health authorities. It is also a red herring. It refers, not to assisted suicide, which is the subject of Mr Marris's bill, but to suicide. And it is not supported by any evidence that the suicides in question were linked with terminal illness.

However, even if these questionable data are accepted at face value, they are dwarfed by the death toll to be expected as a result of changing the law to license assisted suicide. The US State of Oregon, one of the handful of jurisdictions to have gone down the 'assisted dying' road, has seen a near-sevenfold rise in such deaths since legalisation. Oregon's death rate from legalised assisted suicide in 2014 is the equivalent of over 1,500 such suicide deaths in England and Wales annually if we were to have a similar law here. Oregon's law is the model for Mr Marris's bill.

Social Attitudes

Mr Marris doubts that the law as it stands accords with social attitudes to suicide and he quotes opinion polls favouring legalisation of 'assisted dying'. These polls are in many cases sponsored by campaigning groups and are often worded in such a way as to incline respondents to give desired answers. They use phrases such as 'assisted dying', a manufactured term with benevolent overtones, rather than assisted suicide, which is the legal term for what is being proposed. They refer to 'medicines' rather than (more accurately) lethal drugs, and they give spurious assurances of 'strict safeguards'.

Public attitudes to suicide are all too clear. While people who attempt to take their own lives are, rightly, treated with understanding, suicide itself is not regarded as something to be encouraged, much less assisted - as evidenced by suicide watches and suicide prevention strategies. It is perhaps ironic that 10 September is World Suicide Prevention Day.

Oregon

In the covering email to his memorandum Mr Marris refers to Oregon's assisted suicide law and he states that "*every such death has been and is investigated and there is absolutely no evidence of pressures being*

brought to bear". This is a remarkable statement. Oregon's law does not establish any system of investigation into assisted suicides. It requires simply that two doctors should be satisfied that an applicant meets the conditions laid down in the law. How the doctors concerned reach those conclusions - whether they conduct careful investigations into such things as family pressures or mental capacity or whether they simply tick the required boxes in a consulting room interview - is left up to them. There is no case-by-case investigative machinery to shine a light on how these decisions are being made.

Covert Euthanasia

Mr Marris claims that "*some doctors are complicit in hastening patients' deaths*" and that the law is turning a blind eye. His claim is contradicted by Sir Graeme Catto, Chair of Dignity in Dying, the campaigning group for legalising 'assisted dying'. At a meeting in Parliament in July to launch Mr Marris's bill, Sir Graeme stated that "*that is highly unlikely*" because "*doctors now work in teams*". Sir Graeme's statement confirms independent research, which has concluded that covert hastening of deaths of patients by doctors in the UK is "*rare or non-existent*"².

Safeguards

Mr Marris says his bill requires "*intense scrutiny*" of assisted suicide requests. It does nothing of the sort. It lists certain conditions for assisted suicide but it mandates no minimum steps to be taken to ensure that those conditions are met. The role it envisages for the High Court is little more than that of a rubber stamp. The Court is not required to undertake any inquiries of its own and Mr Marris's bill sets a timescale for Court decisions which would make proper scrutiny all but impossible.

Conclusion

Mr Marris's bill is proposing a major change both to the criminal law and to the principles underpinning medical practice. Laws are more than just regulatory instruments. They send social messages. An 'assisted dying' law sends the message that, if you are terminally ill, taking your own life is something it is appropriate to consider. The law as it stands is in line with social attitudes to suicide - that it is not something to be encouraged or assisted. Most doctors want nothing to do with assisting the suicides of patients. The evidence emerging from the few jurisdictions where these practices have been legalised is not reassuring. Our focus should be on helping terminally ill people to live and die with dignity, not on clearing the way for them to take their own lives.

²Seale C. End-of-Life Decisions in the UK involving medical practitioners, Palliative Medicine 2009;00:1-7

