

# Assisted Suicide

## Question for Short Debate

8.12 pm

Asked by **Baroness Jay of Paddington**

To ask Her Majesty's Government whether they continue to be satisfied with the Director of Public Prosecutions' Guidelines on prosecution for assisted suicide.

**Baroness Jay of Paddington (Lab):** My Lords, I welcome this opportunity to question the Government about their current position on this very difficult and sensitive area of criminal law. This debate is extremely timely. It is exactly four years since the then Director of Public Prosecutions, Keir Starmer QC, issued his policy for prosecutors in cases of encouraging or assisting suicide. At the moment, the Supreme Court is considering two cases which challenge those guidelines. Nine Supreme Court judges heard these cases last December and their judgment is due very shortly. Naturally, I do not expect the Minister to anticipate their findings tonight, but it is relevant to this debate to recognise that it is widely expected that the Supreme Court will say, as so many other judgments have, that it is ultimately Parliament's responsibility to determine the law on assisted dying.

Perhaps I may very briefly outline the law as it stands today. The Suicide Act 1961, which makes assisting suicide a criminal offence liable to 14 years in prison, is still in force. Under this Act, the DPP has always had discretion about whether to prosecute in particular cases, but until five years ago, when Debbie Purdy won her appeal to the Law Lords seeking clarity, that prosecutorial discretion has often been shrouded in obscurity and ambiguity. The Law Lords

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instructed the DPP to produce new, specific guidance, and after public consultation the existing guidelines were published in February 2010.

I must make clear at the outset that I very much support the introduction of those guidelines, and in general I commend the way they have operated. I think the guidance has been particularly useful in making clear that when a relative or friend who is wholly motivated by compassion gives assistance to a person who themselves has made informed decisions about the end of their life, the relative or friend is very unlikely indeed to be prosecuted. On the other hand, someone with malicious or selfish intentions who helps a suicide will almost certainly feel the full force of the criminal law.

Opponents of making any further change find this situation perfectly satisfactory. In their view—and I have heard this expression quite often—the law now has a “stern face but a kind heart”. It is a very elegant phrase, but I do not think that it accurately reflects reality. The existing guidelines, welcome though they are, do not give overall coherence to the law on assisted suicide. They do not offer sufficient legal protection and, most importantly, are inadequate to prevent unnecessary suffering at the end of life.

I have several concerns which I would like to raise with the Minister this evening. The most significant is the position of healthcare professionals. The guidelines state in general terms that prosecution is more likely if a healthcare professional, rather than a relative or friend, helps someone to die. However, the nature of any professional assistance is not defined. We can assume, I am sure, that if someone prescribed lethal drugs, that would result in a prosecution. But to what extent can a doctor or a nurse give counsel to a dying patient who wants to end their life, or, for example, advise and assist them to seek help abroad? These questions are not addressed in guidance and, consequently, considerable ambiguity remains.

Healthcare professionals can often feel unsure of their position. A bizarre illustration of this was told to me recently by Cameron Brown, whose 87 year-old mother was asked to leave her care home when it was discovered that she was a member of the campaign group Dignity in Dying. It was feared that if she did take her own life, the care home could be criminally liable.

It is not surprising, therefore, that suffering patients can be left to sometimes dubious solutions that they access on the internet, or to stop drinking and eating in order to bring forward an inevitable death. Of course, the hard-hearted answer to that, which we also sometimes hear, is that a dying person can always kill themselves without any assistance, and therefore without any possible legal threat to anyone.

Frankly, I have heard too many cases like the recent one of Kevin Davis to find that a remotely acceptable position. Kevin Davis, a middle-aged man with terminal renal cancer, received very good palliative care but was still suffering badly. He knew that he could not ask his health team for help to end his life and so, one evening, having been at home by himself, he was found by his family dead at the bottom of the staircase, I am afraid to say in a pool of blood. Afterwards his family said

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that Kevin was angry that he could not choose a dignified death at a time when his suffering became too much, and so had taken a rather sad and lonely way out. Of course, the paradox is that if his family had helped him, they probably would not have been prosecuted. But surely this is not a satisfactory position. The key question is whether it is sensible for the Government and Parliament effectively to condone compassionate amateur assistance to die while prohibiting professional medical assistance which might be equally compassionate and more skilfully gentle.

I am also concerned about how the guidance deals with the issues of mental capacity and decision-making. The guidelines say that to avoid prosecution, it must be established not only that the motives for assistance are compassionate but that the person who dies, referred to as the victim, must have made a settled and informed decision to do so. But obviously, as these are prosecuting guidelines, the investigation of the circumstances of death occurs only after the fact—after a person is dead. It is worth saying that even in the cases where a prosecution is not pursued, a police inquiry does take place. In an earlier debate introduced by my noble friend Lord Dubs, the noble Lord, Lord Blair of Boughton—who sadly regrets that he had to withdraw this evening due to the re-timing of the debate—described from his police experience the stringent way in which these criminal investigations proceed. As he said, the police treat such a case as a possible homicide. Family and friends are treated as suspects, and the process enormously increases the sadness and stress which follows any death.

However, the fundamental legal problem is this, as the guidelines themselves say:

“It may sometimes be the case that the only source of information about the circumstances of the suicide and the state of mind of the victim is the suspect”.

This seems to be a potentially absurd situation. Does the Minister agree that that kind of after-death investigation offers absolutely no protection to potentially vulnerable people whose relatives could both lie about their own motives and the deceased person’s state of mind? Surely it would be much safer to have a statutory law which allows assisted dying for mentally competent terminally ill adults in restricted and safeguarded circumstances—circumstances which could then be established and assessed while the person is still alive.

My third concern about the present legal framework is that the terms of prosecutorial discretion rest exclusively with the lawyer who holds the office of Director of Public Prosecutions. There is no certainty that the prosecution guidance could not be altered by successive DPPs. As far as I am aware, the newly appointed Director of Public

Prosecutions, Alison Saunders, has not indicated that she intends to make any changes, but that is not a permanent guarantee.

The simple truth is that Parliament should act. Parliament should take the lead and not leave this complex legal and moral issue solely in the hands of the courts and the lawyers. At the very least we need an official assessment of the prosecution guidelines on assisted suicide and how they are working.

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Undoubtedly the guidance has clarified how the law is applied in certain circumstances, but it still causes distress to those who assist compassionately and forces those who cannot get assistance to suffer against their wishes. Beyond this, the statutory law still requires a crime to be committed before any post hoc investigation can take place.

I always say in my role as chairman of your Lordships' Select Committee on the Constitution, "I am not a lawyer—but". My "but" this evening is that this situation seems to me to be both incoherent and inadequate, and, more importantly in policy terms, unworthy of our open, ethically humane, 21st century society which does reflect individual rights. I look forward to the debate and the Minister's response.

### **8.21 pm**

**Baroness Cumberlege (Con):** My Lords, I thank the noble Baroness, Lady Jay, for initiating this debate and for introducing it so competently. I will be brief.

As your Lordships are aware, the policy for prosecutors was published in 2010 in respect of cases of encouraging or assisting suicide. A year after it appeared, the noble and learned Lord, Lord Falconer, chaired a group calling itself the Commission on Assisted Dying. The then Director of Public Prosecutions, Keir Starmer QC, told the group:

"There is a residual discretion for all offences whether to prosecute or not".

He went on to say:

"This is a particular version of it. But it's not unique by any stretch of the imagination; it's the way our law operates".

That is helpful, as it puts this particular policy into perspective. It is sometimes presented to us as something unusual, but it is not. As with many other offences, encouraging or assisting suicide can cover a wide range of criminality, from malicious assistance for personal gain to reluctant assistance after much soul-searching and from wholly compassionate motives. It is impossible to make criminal laws that cater for every conceivable circumstance. That is why we need discretion.

The judgment of the Supreme Court in 2009 was that the DPP should publish a prosecution policy in respect of encouraging or assisting suicide. The draft policy was subjected to a four-month public consultation, to which the CPS received nearly 5,000 responses. The policy that appeared four years ago was not, therefore, put together overnight. It is the result of careful thought and open consultation.

I am not in favour of trying to fiddle with the policy. There is no serious evidence that the law on encouraging or assisting suicide is not working as it should. Thanks to the deterrent effect of the present law, the offence is a rare one, and the few cases that occur tend to be those at the compassionate end of the spectrum, where prosecution is unnecessary. In the words of the former DPP to the group of the noble and learned Lord, Lord Falconer, the law "works well in practice". I agree with him.

### **8.24 pm**

**Baroness Campbell of Surbiton (CB):** My Lords, I, too, thank the noble Baroness, Lady Jay, for her consideration of the DPP guidelines.

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The DPP guidelines were produced only after extensive consultation. I was privileged to be involved in responding to that consultation on behalf of Not Dead Yet UK, the coalition of hundreds of terminally ill and disabled people who formed a group to oppose a change in the current law on assisted suicide.

In the consultation, the DPP asked what weight should be given to any progressive condition or disability experienced by the victim. We argued strongly that that was potentially discriminatory and fed into society's prejudices that terminally ill and disabled people do not require equal protection of the law. I am happy to say that that was adhered to. As someone who from time to time must rely on medical interventions from doctors, I was thoroughly relieved to see that assistance with suicide by a doctor or nurse to a patient under their care is listed in the guidelines as an aggravating factor.

Terminally ill and disabled people are in a worse position today than was the case five years ago. National economic instability means that public support services are under more pressure than ever. That has hardened public attitudes towards progressive illnesses, old age and disability. Words such as "burden", "scrounger" and "demographic time bomb" come to mind, and hate crime figures in relation to vulnerable people have increased dramatically. This is a dangerous time to consider facilitating assistance with suicide for those who most need our help and support. It is not only dangerous for those who may see suicide as their only option, but can be tempting for those who would benefit from their absence.

I am disappointed that there are Members who refuse to accept previous decisions made by this House and relentlessly bring the issue of assisted suicide back for debate again and again. One does not have to look very far to see where the slippery slope of legalising assisted suicide takes a country. Belgium has recently extended its law on euthanasia to include terminally ill and disabled children. That is not a future I want for our children or the most vulnerable, and this House has made it clear that it shares that view.

The DPP's guidelines are to be celebrated as an essential tool in providing protection to society's most vulnerable people. I trust that they will continue to enjoy the support of the Government and this House.

**Lord Ahmad of Wimbledon (Con):** My Lords, before the right reverend Prelate gets to his feet, I briefly remind noble Lords that there is a two-minute limit on each speech and ask them please to keep to that, because this is a time-limited debate.

**8.27 pm**

**The Lord Bishop of Bristol:** My Lords, I add my own voice of gratitude to the noble Baroness, Lady Jay, for introducing the debate tonight. The DPP's guidelines rightly give a central place to compassion in this vexed area. After more than 150 cases have been actively inspected by the DPP, it should now be clear to all that where a suffering patient wishes freely and without coercion to end their life, their family or friends who, motivated wholly by compassion, assist him or her to do so will not be prosecuted. There are

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many reasons for not moving beyond that legal position as some other countries have, but I shall refer to just one.

The fear is that the current delicate balance established by the DPP's guidelines and her continuing inspection of each case, together with a number of important legal judgments, would be damaged by further legislation. Such legislation will need to make some very complicated legal definitions and, going forward, it is difficult not to imagine situations in which there will be slippage from the original intention of the legislation.

Of course, supporters of legislation frequently argue that such legislation need not result in such slippage. However, recent evidence from Belgium is hardly encouraging. The very liberal 2002 law there had three grounds for adults. They should be competent and conscious, repeatedly make the request and be suffering unbearably—physically or mentally—as a result of a serious and incurable disorder. Now the Belgian Senate is extending this to children who are terminally ill and in pain, with no age limit set. The 2012 figure showed a 25% increase in euthanasia cases. Euthanasia is increasingly offered to adults with psychological problems, and there have recently been two cases—one involving a person who was depressed after a failed gender change operation being given euthanasia—which promoted much debate in Belgium. It would be a serious mistake to move away from the DPP’s guidelines and move towards the legal position in Belgium or even Oregon.

**8.30 pm**

**Baroness Hollins (CB):** My Lords, the current policy for prosecutors provides a clear picture of how prosecution decisions are made in this area of the law and what kind of circumstances might influence a decision to prosecute. But it also avoids sending the message that assisting someone to commit suicide is permissible under certain circumstances. Noble Lords will not be surprised if, as a past president of the BMA and the current chair of the BMA Board of Science, I remind the House that the BMA emphasised its opposition to any weakening of the existing prohibition on assisted suicide during consultation on this policy.

One factor listed in the policy for prosecutors as a potential aggravation of the offence is a circumstance whereby assistance with suicide has been provided by a doctor or a nurse to a patient under their care. Some, including the noble Baroness, Lady Jay, have claimed that this factor inhibits discussion between doctor and patient—that doctors are afraid to discuss the subject of assisted suicide with patients who raise it, in case such discussions should be construed as assistance and result in charges being brought against them. This claim is unfounded. The position was made quite clear last year in guidance issued by the General Medical Council, which I quote in full:

“Where patients raise the issue of assisting suicide, or ask for information that might encourage or assist them in ending their lives, doctors should be prepared to listen and to discuss the reasons for the patient’s request but they must not actively encourage or assist the patient as this would be a contravention of the law”.

I will also quote some of the evidence heard by the group chaired by the noble and learned Lord, Lord Falconer, when it examined assisted suicide in 2011.

“We don’t get asked about this very often”,

said a representative of the GMC.

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“It’s a subject which actually is a small issue in terms of numbers for our members”,  
said the Medical Protection Society.

“I’ve not heard any colleagues mention it to me”,

said a consultant in old-age psychiatry. The group was told even more explicitly by the medical director of a hospice that,

“it’s quite clear that we can have discussions with patients. It’s the act of doing something with the intention of causing death that is illegal”.

These are all statements that concur with my own experience as a doctor and a psychiatrist. This is a criticism of the policy for prosecutors which simply will not fly. Doctors are not afraid to talk to patients about death and dying, and clear professional

guidance is available for them, including from the BMA. The policy for prosecutors is carefully balanced. That some have chosen to misread it is regrettable.

**8.33 pm**

**Lord Falconer of Thoroton (Lab):** My Lords, we should move on from the guidance, which does not work legally or practically. Its effect is that the Director of Public Prosecutions essentially decides whether to prosecute based on the defendant's motive, which is not an issue in any trial under Section 2, so the decision is made without the putative defendant having any opportunity to challenge the evidence on which not just the decision to prosecute is made but, essentially, whether guilt or innocence is involved. In 99% of these cases, the issue will not be motive but whether someone committed the act of assistance, and that will not be in dispute—for example, helping someone to go to Switzerland to take their own life.

The idea that that is a fair criminal justice process will not withstand examination as time goes on. In addition to its failure as a criminal justice process, it does not achieve its policy purpose, which is to be compassionate to those motivated by compassion and deter those who are not. In support of that, I rely first on the effect that the guidelines have, which is to encourage amateur assistance only and to drive people to Switzerland. There is no compassion in that. As for deterrence, see the numbers who are joining Dignitas go up and up. It does not work on either basis.

The reason why there are these guidelines is that Parliament will not address the issue. My Bill says that we should look at the issue before the death has occurred and recognise that it is not one that can be dealt with by a botch in the criminal law. It should be dealt with by examining the cases in advance and seeing whether compassion is involved, thereby providing proper protection to people who might otherwise be the victim of coercion. The very patronising approach being taken in relation to this in my view leads to a lack of compassion in cases where, above all, compassion is required, and no protection for the vulnerable.

**8.35 pm**

**Lord Carlile of Berriew (LD):** My Lords, I thank the noble Baroness, Lady Jay, for instigating this debate and for the way in which she introduced it. I am going to say something that I did not intend to say, because I

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have been so shocked by what the noble and learned Lord, Lord Falconer, has just said. He has demonstrated a scant and incomplete understanding of what the Director of Public Prosecutions does in these cases. What actually happened here is that the then Director of Public Prosecutions, Sir Kier Starmer, as I understand it determined these guidelines personally and with enormous care as a result of more than 5,000 representations. There is no case that shows that the guidelines have not worked well. The idea that they are not led by compassion is completely unrealistic. The Crown Prosecution Service considers every case on the basis of all the evidence placed before it. Everybody who is interviewed under caution in relation to such a case has the opportunity to tell their story in full, and is able to make extraneous representations—for example, through their solicitors. As a result, the former DPP and the present DPP consider every case on its facts, and apply the guidelines one by one. If there is an issue of compassion, then it is applied to that case.

The noble and learned Lord should not forget—indeed, the House should not forget—that there is a very important constitutional protection here, and that is the power of the Attorney-General or the DPP, as is appropriate in any given case, not to prosecute. That is exactly what is applied here compassionately in an interpretation of the law that works well and should not be changed.

**8.37 pm**

**Baroness Finlay of Llandaff (CB):** My Lords, the Director of Public Prosecution's policy views, as an aggravating circumstance towards prosecution for assisting suicide, if that assistance is given by a doctor or nurse to a patient under their care—that is, within the duty-of-care relationship. Why is that? It is because—I speak as a doctor—patients are easily influenced by doctors and nurses: a word, a glance, a gesture can infer hopelessness. Patients trust us because they have to. They rely on us for information, believing that we have their best interests at heart. Patients can very easily be made to feel that they are a burden on the system, that the future is unrelentingly bleak, or that they would be better off dead. The subtle influences in a doctor-patient relationship are hard to quantify but very powerful, and hence potentially dangerous.

The Royal College of Physicians wrote to the Director of Public Prosecutions in 2009 during the consultation, stating:

“Our duty of care is to work with patients to mitigate and overcome their clinical difficulties and suffering. It is clear to us that this does not include being in any way part of their suicide”.

The Royal College of General Practitioners reinforced this view after an extensive consultation with its members lasting four months, in which 77% of GPs stated that the law should not be changed.

The policy does not inhibit open discussion about dying. Every day doctors have conversations with patients about their preferences as the end of life approaches, their treatment wishes and communication with the family. The General Medical Council makes it clear that we have a duty of care to listen to patients, discuss dying and explore their fears, and compels doctors to behave with compassion.

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The policy that we are debating tonight was welcomed by all sides of the assisted suicide debate, but is now being criticised as chipping away at the current law on physician-assisted suicide—a means of assisted suicide which the medical profession as a whole does not support.

#### **8.40 pm**

**Lord Joffe (Lab):** My Lords, the DPP guidelines on prosecution for assisted suicide are in general the most just and compassionate that the DPP could draft in the light of the current law. That is why the law needs to be changed to prevent suffering.

In paragraph 11, the DPP draws attention to the issue of mental capacity, the law on which was carefully analysed by Dame Elizabeth Butler-Sloss—the noble and learned Baroness, Lady Butler-Sloss—in 2002 in the case of *Ms B v An NHS Hospital Trust*. She concluded that,

“a mentally competent patient has an absolute right to refuse to consent to treatment for any reason, rational or irrational, or for no reason at all, even where that decision may lead to his or her own death”.

The learned judge then added:

“There is a serious danger, exemplified in this case, of a benevolent paternalism which does not embrace recognition of the personal autonomy of the severely disabled patient”.

It is accordingly clear that even a patient with the most serious physical disabilities, but who has mental capacity, has the same right to make decisions about his or her life as any other terminally ill patient.

Another issue often raised by opponents of assisted dying is the well worn legal maxim that hard cases make bad law. The response of Lord Justice Denning, one of England's most respected judges, to this maxim was:

“It is a maxim that is quite misleading. It should be deleted from our vocabulary. It comes to this: ‘Unjust decisions make good law’: whereas they do nothing of the kind. Every unjust decision is a reproach to the law or to the Judge who administers it”.

Lord Denning, in this case—*Vandervell’s Trusts* 1974—was talking about the use of equity to mitigate the rigours of the common law. Parliamentary intervention can and should fulfil the same role in the case of other areas of the law such as assisted dying, which needs to be changed in order to prevent unnecessary suffering and to conform with the views of society. It is for society as a whole, rather than doctors, to decide this matter through the parliamentary process.

**8.42 pm**

**Baroness Grey-Thompson (CB):** My Lords, the policy we are debating was subjected to a serious public consultation before being finalised. The CPS website states that nearly 5,000 responses were received and the draft policy was modified.

The early policy listed,

“a terminal illness; a severe and incurable physical disability; or a severe degenerative physical condition from which there was no possibility of recovery”,

as a mitigating factor. I am so relieved that this was removed. This was done because it was considered that it could have the unintended effect of discriminating against people who are seriously ill or disabled by

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implying that assisting their suicide was of less concern than assisting the suicides of other people, as my noble friend Lady Campbell said. Disabled people face this discrimination every single day of our lives. As a disabled campaigner, I know that we have fought paternalism.

I refer to this change to the draft policy because it illustrates a wider issue. Those who want a change to the law are anxious to reassure us that their demands are limited to people who are terminally ill and that others such as the chronically ill or disabled people should not feel at risk. This argument does not hold up, as Belgium has shown us. It is the designation of one group that causes concern.

The law we have applies equally to all of us, irrespective of age, gender, race or health. The law that we have rests, as the noble and learned Baroness, Lady Butler-Sloss, has written, on a natural and easily recognisable frontier—the principle that we do not involve ourselves in bringing about the deaths of other people. Once we start redrawing the law arbitrarily around particular groups it becomes just a line in the sand. If it can apply to terminally ill people, why not chronically ill people? If chronically ill people, why not disabled people? Such a law is inherently unstable.

The need for equality of access and equality of protection was clearly recognised by the DPP when the policy was drawn up. We should recognise it if we should be asked, yet again, to consider legalising assisted suicide.

**8.44 pm**

**Baroness Bakewell (Lab):** My Lords, I speak as the writer and presenter of the BBC Radio 4 programme, “Inside the Ethics Committee”, which tells of individual dilemmas faced by those having to make decisions about terminal care.

Tonight I will speak of a particular case to make my point. A man is dying of motor neurone disease. He has written an advance directive saying he wishes his life to be ended when the suffering becomes too great. His lungs have collapsed and he is breathing through medical apparatus. His wife, who is at his bedside, asks that the mask be removed. The medical staff consult each other and consult her. They acknowledge the right of an individual to refuse intervention, but among the doctor and nurses are those



who want no part in the final gesture. At a moment that needs absolute clarity and confidence in the decision-making there is none. How is the situation resolved? The doctor asks the wife to remove the mask. Husband and wife say their farewells, and she does so.

This moment is not only heart-breaking but demonstrates the feelings and thoughts that cloud decision-making at a crucial moment. Doctors are unsure what might ensue from any action they take and nurses are fearful for their professional reputation. This is totally unsatisfactory. Because the guidelines give health professionals so much room for uncertainty as to whether they will be prosecuted, it must be clear that when a lethal disease is killing someone, it is legally permissible that end-of-life care should include steps to minimise that final suffering. Medical practitioners attending dying patients should be required to acknowledge such an option.

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**8.46 pm**

**Baroness Boothroyd (CB):** My Lords, the campaign to reform the law relating to assisted suicide is supported by people from all walks of life and is, I hope, approaching a humane and sensible conclusion. The current Act has become a blunt instrument. It adds cruelly to the suffering of people who want to die with dignity and makes a mockery of a key principle of English justice, which requires the punishment to reflect the crime as specified by statute.

As it is, we are in such a muddle that the Act's failure to meet today's circumstances has to be buttressed by guidelines laid down by the Director of Public Prosecutions for fear of it causing greater controversy. We have abrogated our responsibility as a sovereign Parliament to an employee of the Crown. We should not tolerate this farming out of Parliament's duty any longer, however hard the Supreme Court tries to rectify matters. That is Parliament's job and the current law should be repealed to make way for a better one. It was meant to be a deterrent when desperate people who tried and failed to take their own lives were themselves liable to long terms of imprisonment.

I was struck by a report at the weekend about the trauma following the assisted death of a man suffering from the degenerative disorder Huntington's disease that was slowly killing him, as it had some of his relatives. Responding to his pleas, his mother helped him die painlessly. She was tried at the Old Bailey and paid costs of £20,000. Instead of going to prison for 14 years, she was given a year's conditional discharge and praised for her courage. Even so, the judge warned that others charged with the same offence could not expect such leniency. That cannot be right.

Few people have the means to end their days in a Swiss clinic where suicides are a paying proposition. Of course there must be robust and foolproof safeguards in this country for those who are terminally ill and wish to die with dignity. This is a moral issue whose time has come and Parliament should resolve it. I commend the Bill of the noble and learned Lord, Lord Falconer, for the debate that is long overdue and I hope the Government will provide the time needed for thorough and detailed scrutiny.

**8.48 pm**

**Lord Warner (Lab):** My Lords, however much we compliment the DPP on his guidelines, we have in effect put him in the role of an inquiring magistrate, as the noble Lord, Lord Carlile, made absolutely clear in his elegant address.

Unsurprisingly, the CPS has shown little appetite for bringing forward prosecutions of relatives and friends who assist someone to end their life. There has been only one successful prosecution for attempted assisted suicide since the new guidelines came into effect. However, the threat of prosecution still hangs over everybody, so Parliament now needs to respond to this very uncertain situation and provide an opportunity to consider the Bill of my noble and learned friend Lord Falconer—and, I hope, pass it. We now have

groups of disabled people, health professionals and Christians calling for change—groups that, in the past, were portrayed as opposed to assisted dying.

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In effect, we have seen that this issue is no longer a matter for the chattering classes; it has penetrated the soaps and it has engaged the red tops in consulting their readers about change in this area. Parliament needs to wake up and smell the coffee. It should stop listening to the noisy minority of opponents and start listening to the majority of our fellow citizens who want to see a change in the law in this area. The cruelty of making terminally ill people prolong their lives when they wish not to and then threatening to prosecute their relatives who help them to secure the peaceful end they seek is increasingly seen for what it is: barbaric.

The long-standing opponents of change need to see their opposition for what it is: a denial of personal choice to a small minority of people who wish to control their exit from the world. I gently suggest to them that they are on the wrong side of history on this issue and that they risk ending up like the opponents of abortion, of the abolition of hanging and of gay marriage in a kind of “Jurassic Park” civil society.

**8.51 pm**

**Baroness Murphy (CB):** My Lords, I give my full support to the introductory speech from the noble Baroness, Lady Jay. However, I am abandoning the rest of my speech because I am so cross at what I have heard today, which I know to be totally false and I am tired of listening to it.

First, I say to the noble Baroness, Lady Campbell of Surbiton, that services for terminally ill people have got substantially better over the past five years. There is greater understanding and more talk about the issues surrounding death in hospital. The economic circumstances of this country have not led to greater disadvantage for people who are terminally ill; paradoxically, it has led to an improvement.

I should also like to tell the noble Baronesses, Lady Campbell and Lady Grey-Thompson, that it is impossible to conflate the problems of people who are terminally ill, are already dying and are about to die with those of people who have a chronic long-term disability and are not dying. We must distinguish between these two groups. That is crucial because they are completely and utterly different.

I should also like to say to my two medical colleagues behind me, the noble Baronesses, Lady Finlay and Lady Hollins, that, if their patients do not talk about dying or the wish to die when they are terminally ill, I just do not think they are listening very well.

**Baroness Finlay of Llandaff:** My Lords—

**Baroness Murphy:** I am sorry; I have only two minutes. Of course people talk about this. They do not sit there quietly. I read the BMA guidelines again today to make sure that I was up to speed—being a member of the BMA, I would, wouldn't I?—and I can tell your Lordships that they make it very clear that you must not discuss any of these issues. I believe that the BMA circulated this guidance to everybody today and not just to doctors. Incidentally, we know that the BMA has never asked its members about this—I have never been asked by anybody in the BMA. Of course, it is led by people who are violently opposed to any new policy, so that is hardly surprising.

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My time is up but I must express my anger today. I am for the proposals put forward by the noble Baroness, Lady Jay.

**8.53 pm**

**Lord Alton of Liverpool (CB):** My Lords, in listening to the anger that the noble Baroness, Lady Murphy, has just expressed, I cannot help reflecting that this is not a

new debate that we are having this evening. After all, we have had two Select Committees of your Lordships' House, as well as numerous debates and indeed votes in your Lordships' House, and we have heard the arguments of the British Medical Association—after a vote among its members—and the royal colleges, the disability rights organisations, the palliative care movements and many of the organisations that have been referred to. Once all the arguments were put for grounds of public safety alone, your Lordships decided that it was not safe to change the law.

The noble Baroness, Lady Jay, who introduced the debate quite properly this evening, reminded us that it is only four years since these guidelines were put in place, but we have even debated those on three successive occasions. The criticism of the guidelines largely has come from those who are, reasonably enough—it is legitimate—pressing for a change in law. Instead of shadow-boxing around the guidelines, it would, as the noble and learned Lord, and my noble friend Lady Boothroyd, said, be better for us to be debating whether we want to set aside the Select Committees that we have had and the decisions that we have taken previously, and change our own laws.

We are told that the guidelines have de facto changed the law because it implies that assistance with suicide will not be prosecuted if it has been given from wholly compassionate motives. However, almost in the same breath, we hear the contradictory complaint that the policy is inadequate because it does not give immunity from prosecution. Of course, neither of these contradictory charges has any foundation: the policy has not changed the law and its purpose is not to give certainty to potential law-breakers. To do so would indeed amount to changing the law.

The noble Baroness, Lady Jay, also told us that the policy places decisions in the hands of one person, the DPP, and that when the DPP changes so too could the policy. I think that I need record here only what the Solicitor-General said about this in another place just two years ago. He said:

“If a future DPP overturned the guidelines, he would be judicially reviewed for behaving in a rather whimsical way”.—[*Official Report, Commons, 27/3/12; col. 1380.*]

As your Lordships are aware, there is nothing odd or unique about these arrangements. Prosecutorial discretion is a feature of the criminal law as a whole and there are published prosecution policies on a range of criminal offences other than encouraging or assisting suicide. We should keep the law as it stands for reasons of public safety.

## **8.56 pm**

**Baroness O’Cathain (Con):** My Lords, the DPP guidelines published in 2010 were hailed as a victory by the assisted dying lobby. These guidelines made it

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clear that encouraging or assisting the suicide of another is a criminal offence. Since then that lobby has subjected the policy to all kinds of criticisms. While trying to look at the criticisms dispassionately, I fear that I have come to the conclusion that those in favour of assisted dying saw the policy as a stepping stone to a law licensing assisted suicide.

The guidelines spell out that every case has to be considered in the round and on its own merits. I fear that the euthanasia advocates want to go further than that and seek to fetter this discretion of prosecutors. It seems to me that ultimately it wants a fundamental shift in the law, a shift that would move us away from deterrence and protection. I am increasingly concerned that we may be drifting into a position of seeing suicide in terms of a happy release from suffering and regarding assisted suicide as invariably altruistic.

I just wish that all could see how this would cause uncertainty, fear and jeopardy to great numbers of vulnerable people. The Royal College of General Practitioners recently consulted on this and 77% of GPs opposed changing the law, saying that it would be,

“detrimental to the doctor-patient relationship”,

and could result in patients being coerced into a decision to die. I wish that we would stop talking about killing those diagnosed with terminal illnesses. Sometimes those illnesses are not terminal. We should talk instead about increasing the availability of [palliative care](#) and improving the treatment of [depression](#), which would help us all to live our declining years and end of life with dignity, love and care.

**8.58 pm**

**Lord Brown of Eaton-under-Heywood (CB):** My Lords, I was a member of the court that considered Purdy and gave the last ever judgment in the House of Lords. Whether strictly we were entitled to direct the DPP to issue guidelines as to his prosecution policy may be doubted. However, it was the best we could do and I am very glad we did it. I very well remember Mrs Purdy’s evident delight at the comfort that she felt those guidelines would give her, perhaps even extending her life by giving her the assurance that, even if she left it too late to kill herself, in desperation her partner could come to her help.

As to the substance of the guidelines, as the noble Baroness, Lady Jay, has explained, it may be that a forthcoming judgment from the Supreme Court in two consolidated appeals will throw some further light on these, not least on the position of assisted suicide by doctors, nurses and other healthcare professionals. Obviously, legislation is better than guidelines but we must do the best we can with what we presently have.

My final point is that we should note, in my case with approval, that in certain respects these guidelines go further than the proposed Bill by noble and learned Lord, Lord Falconer, as to what circumstances would be acceptable. That is unsurprising given that one of the truly tragic cases that we looked at in Purdy was that of Daniel James, a young man who suffered an appalling [spinal injury](#) in a rugby match and later was accompanied by his parents to Switzerland to end his life. Given that the boy had already tried more than once to commit suicide, his parents had repeatedly

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urged him not to and that his death caused them, far from any advantage—on the contrary—the deepest distress, surely it was right not to prosecute them. I hope that the House agrees with the view that that was the correct outcome of that case.

**9 pm**

**Baroness Meacher (CB):** My Lords, I applaud the noble Baroness, Lady Jay, for tabling this Question and I express my gratitude to the former Director of Public Prosecutions for doing all that he could, within the constraints of the existing law, to recognise the fundamental principle of autonomy for patients and the right to make the most important decision of their lives: how, when and where they wish to die. Do our opponents really feel comfortable about grieving relatives, immediately after the death of their loved ones, being intrusively investigated as potential murderers?

There is now overwhelming support for legislation to provide for professional help to die well at the end of life. I understand those who believe that the timing of our death is a matter for God. However, a recent YouGov poll showed the majority of people with a religious faith—62%—support the legalisation of assisted dying for terminally ill adults with mental capacity, with only 18% against. Of course, religious supporters of assisted dying can find endorsement of their position in the words of the Bible and in modern interpretations of the Bible.

Very important, too, are the views of disabled people. The overwhelming majority of disabled people—75%—support reform, as in the Falconer Bill. As the Disabled Activists for Dignity in Dying briefing note says:

“Disabled people are not afraid of a new law to give terminally ill people choice in how and when they die”.

Support from the population at large is also solid. Some 82% of the general public agree that a doctor should probably or definitely be allowed to end the life of a patient with a painful, incurable disease at the patient’s request. The population is in fact far more radical than the noble and learned Lord, Lord Falconer. Therefore, people with a religious faith, disabled people and the population at large are hoping for government support for this much needed action.

### **9.02 pm**

**Baroness Hayter of Kentish Town (Lab):** My Lords, this is about giving people choice in what must be the hardest decision of their life. I respect those who would not want assistance to die if they were terminally ill and in pain, but I hope that they do not prevent others having that option.

Suicide is legal, but without professional assistance we risk uncertain or painful suicide attempts, such as the throwing down the stairs that we have already heard about. If I were in that position, I would want to die with the safety and security of family or medical professionals by my side and without their being at risk of prosecution. If I want that, I want others to have that right.

The DPP’s policy has helped by indicating that assistance motivated by compassion is “unlikely” to be prosecuted. However, there is still a risk at the time of the act and an interview under caution, as we have

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heard. The current law is not working. About 250 Britons have travelled to Switzerland to get help, hundreds are illicitly given overdoses without any safeguards in place and countless people are helped to die by family members behind closed doors. These should not be the only options for dying people. We need assisted dying to be legalised, albeit with robust safeguards, so that the terminally ill can take control of their own ending but with society ensuring that there are strict criteria to prevent abuse.

### **9.03 pm**

**Lord Macdonald of River Glaven (LD):** My Lords, I, too, thank the noble Baroness for initiating this debate. It is, as she says, a difficult and sensitive subject. My years as DPP brought home to me, in concrete examples day after day, the power that the law has to protect vulnerable people, but also its great capacity to inspire awe and therefore to deter cruelty and abuse. In the case of assisted suicide, the law must do both.

By law, every prosecutor examining a case must ask not one, but two questions. First, is the evidence sufficient for prosecution? Secondly, if so, would a prosecution be in the public interest? That is why an 80 year-old will not be prosecuted for shoplifting or a careless driver for a collision in which her own child is killed. It is also why, during my time as DPP, no one helping a loved one travel to Switzerland to die was prosecuted, even if the evidence that they had committed the crime was perfectly made out. The DPP’s guidelines, I believe, give clarity to this exercise of discretion.

It would be foolish to assume that everyone counselling a suicide acts from pure motives, or that malice or venality is always absent, but I believe that the equation that we have developed—a broad legal prohibition on the one hand, to deter those acting out of malice, and a carefully explained prosecutorial discretion on the other, to protect those who act from genuine compassion —strikes the right balance. It shields those who

need protection on both sides: the terminally ill from exploitation and those whose compassionate assistance may be sought from prosecution.

Of course, any police investigation is difficult and traumatic, but even if the law is changed, there will be no escape from investigation—nor should there be. After all, even if the law is changed, someone will have died at the deliberate hand of another. The law should of course acknowledge purity of motive and recognise that people face impossible choices, but it does that already. What it should not do is to turn so far one way that it no longer sees the risk of conduct that should properly remain criminal.

**9.06 pm**

**Viscount Craigavon (CB):** My Lords, I am pleased to support the balanced and forceful arguments made by the noble Baroness, Lady Jay, and other noble Lords in this debate. I believe that the path down which the Law Lords started in their last case in this Chamber was quite courageous, and although we have heard today of the shortcomings which still subsist in this process, nevertheless considerable progress has been made. This is so even though overwhelming public demand has not so far been satisfied. We in Parliament need to be courageous also.

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The noble Lord, Lord Blair, who is unable to be here today, graphically highlighted in the previous debate on this subject the cumbersome process that the police are required to follow in any such cases of assisted dying. Under present rules, they cannot show the sensitivity that they might understandably like to tailor to the circumstances that they find in particular cases. Lengthy and distressing police processes are likely to be followed by the uncertainty of possible prosecution processes, even though the guidelines in the end throw up no need to prosecute.

The figure of at least 80% of the population supporting assisted dying has been generally accepted. For me, it is a continuing matter of shame that our fellow countrymen and women still have to go to Switzerland to avail themselves of what should be possible in this country. I feel that we as politicians should apologise to those who might continue to suffer, for some time to come, until legislation with full safeguards can be passed.

Although acknowledging—as everyone does—the role that good but not infallible palliative care can provide, I hope that those who are presently on the wrong side of history may one day also be able to apologise for the suffering they continue to cause.

**9.08 pm**

**Lord Dubs (Lab):** My Lords, I am grateful to my noble friend Lady Jay for initiating this debate. When somebody is terminally ill, and probably in considerable pain, the last thing we want to do is to take away their peace of mind or the certainty of how they are going to face their remaining days. They are entitled to peace of mind, but I believe that the guidelines, helpful though they are, do not give a dying person that peace of mind and that certainty.

I am still haunted by a discussion that I had with a friend of mine shortly before he died of motor neurone disease, when he tapped out on the keyboard what he wanted. His main plea to me was to vote for a change in the law. We have heard today about slippery slopes, but I do not believe that is a good argument. All too often in this House we hear the expression “slippery slope” used as an argument against change. Surely, if we as a country have confidence in the integrity of our legal system, then if we were to change the law—as I hope we shall—we can do it in such a way that it does not represent a slippery slope but a considered change that Parliament has approved.

We have heard this evening that the Crown Prosecution Service considers every case individually. If I were to help somebody who was terminally ill and wanted such help,

would I want the humiliation of having my case considered? Why should I be a case at all? Why should I not be entitled to do something, provided the safeguards are there, that is surely the right of the dying person to want from me?

Public opinion is totally on the side of change. In opinion polls the majority of people consistently say that they want a change in the law. Of course we must have safeguards, and I believe that the Bill of the noble and learned Lord, Lord Falconer, will provide those safeguards. I would not support any change in the law unless I was satisfied that we had adequate safeguards.

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But in voting for change, I will say this: I cannot vote to deny others something I want for myself, and that is why I shall support the Bill of the noble and learned Lord, Lord Falconer.

**9.10 pm**

**Lord Beecham (Lab):** My Lords, the issue of assisted suicide raises profound questions of an ethical, juridical and practical nature. Tonight's debate is not on the general principle of assisted dying, which is of course already the subject of passionate debate—we have had a number of such debates in your Lordships' House—and one to which we will return when we discuss my noble and learned friend Lord Falconer's Bill in due course. Rather, this debate is—or should be—on the narrow or legal issue of how the current criminal law is to be applied.

The DPP's very carefully drawn guidelines reflect current practice. Reading the examples of recent decisions, I am struck by the balanced and sensitive nature of the approach that has been adopted. As the noble Lord, Lord Macdonald, pointed out, there is a two-stage process, setting out the factors that have to be considered—the evidential stage and the public interest stage—should the evidence support a charge that,

“the suspect aided, abetted, counselled or procured the suicide or the attempt”.

It is not quite clear to me what constitutes,

“an act capable of encouraging or assisting”,

to use the phrase in the guidelines. I infer that mere words would constitute an act, but I may be wrong in that inference. Sixteen tests are enumerated but it is not clear how the public interest is actually defined. Perhaps it is impossible to do so.

I was interested in the article written by John Cooper QC that is contained within the Library briefing, which illustrates the complexity of the situation. He says:

“Perhaps it can best be said of the DPP's guidelines that they please no one and for many they were unwanted, not least of all by the DPP”.

Mr Cooper concludes that,

“it is my view that the guidelines can work and will enhance and maintain the existing law”.

This all underlines the desirability of a definitive conclusion on whether the present law should stand or be altered, as in my noble and learned friend's Bill or perhaps in some other way. But we have to bear in mind, as others of your Lordships have pointed out, that a significant majority of the public, as measured by the polling, would support a change. I join with the noble Baroness, Lady Boothroyd, in expressing the hope that the House will be given an adequate opportunity to discuss this fundamental issue when my noble and learned friend's Bill comes to be considered. In the mean time, it will be interesting to hear the Government's response to the director's guidelines.

**9.13 pm**

**The Minister of State, Ministry of Justice (Lord Faulks) (Con):** My Lords, I, too, am grateful to the noble Baroness, Lady Jay, for bringing this immensely important matter before your Lordships' House.

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It is inevitable that any debate on prosecution policy—which is essentially the subject of the debate—in this sensitive area will lead to discussion of the law itself. This evening's debate has been no exception. Whatever view you take of the law, the Director of Public Prosecutions' policy for prosecutors in cases of encouraging or assisting suicide has brought clarity to the practical operation of the existing law and has generally been welcomed. But it is clear that views on the desirability of legislative change remain deeply divided, as is apparent from this evening's debate.

Encouraging or assisting suicide remains a criminal offence. The DPP's assisted suicide policy does not seek to change the law—and cannot do so as that is clearly a change that only Parliament can make. Nor does the policy provide prospective blanket immunity from prosecution—a point made by the noble Lord, Lord Alton—as that is also beyond the powers of the DPP. The policy simply provides guidance to prosecutors on how to apply the law in force. I remind the House of the Government's view—one expressed by others standing at the Dispatch Box in the past few years—that any change to the law in this area is a matter for Parliament to determine as an issue of individual conscience. In amending the Suicide Act by Section 59 of the Coroners and Justice Act 2009, Parliament confirmed that it should remain an offence to intentionally encourage or assist suicide or an attempted suicide.

Of course, a number of noble Lords have mentioned the Assisted Dying Bill introduced by the noble and learned Lord, Lord Falconer of Thoroton, in May 2013. That seeks to legalise in England and Wales assisted suicide for terminally ill mentally competent adults who are reasonably expected to die within six months. The Government will take a collective view on the noble and learned Lord's Bill in order to respond to the debate on its specific provisions at, but not before, Second Reading. As things stand, however, no date has been set for Second Reading of the Bill.

As for the CPS, noble Lords will know that its primary role is to prosecute cases investigated by the police in England and Wales and to advise the police in serious or complex cases. As was helpfully described by the noble Lord, Lord Macdonald of River Glaven, the Director of Public Prosecutions has a statutory duty to issue a Code for Crown Prosecutors. The code provides guidance to prosecutors on the general principles to be applied when making decisions about prosecutions and sets out a two-stage test to be applied in all cases. First, is there sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge? Secondly, is it in the public interest to proceed with a prosecution? It is only when there is sufficient evidence to provide a realistic prospect of success that a case proceeds to the public interest stage of the test. It has never been the rule in this country that suspected criminal offences must automatically be the subject of prosecution since—as the noble Lord, Lord Macdonald, explained—the public interest must always be considered.

In addition, the DPP publishes guidance to prosecutors on particular types of cases. These must be read in conjunction with the code. The *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide* is one of those documents. The guidance is intended

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to assist prosecutors in making decisions on individual cases by setting out in one place the relevant legislation, case law, court sentencing practice, internal operating procedure and any specific evidential and public interest factors to be taken into account. The DPP's assisted suicide policy was published in its present form in February 2010. As the House knows, that followed the judgment of the House of Lords in the case of Debbie Purdy and



a public consultation on an interim policy to which there were 4,700 responses. The circumstances in which the House of Lords in its last case came to its decision were touched on briefly by the noble and learned Lord, Lord Brown.

At the time of its publication, and indeed since, the final policy received broad approval. It is generally acknowledged to be a sensible balancing of the various important considerations that need to be taken into account. It sets out factors that may be relevant when deciding whether a prosecution for assisted suicide is in the public interest, including questions of mental capacity—a matter raised by the noble Baroness—in addition to those already outlined in the code. However, deciding on the public interest is not simply a matter of totting up the factors for or against prosecution and seeing which side has the greater number. Each case is considered on its own particular facts and circumstances. The assisted suicide policy is very clear on that. The prosecutor should make an evaluation in terms of the weight to be apportioned to those factors before deciding whether a prosecution will be in the public interest.

Among the public interest factors tending against prosecution are that,

“the victim had reached a voluntary, clear, settled and informed decision to commit suicide”,

and that the suspect was “wholly motivated by compassion”. This has been interpreted by some as meaning that the CPS will not prosecute those who help terminally ill relatives to die. That is not the case. As the policy makes clear, it does not in any way decriminalise the offence of encouraging or assisting suicide or give an assurance that any person or class of persons will be immune from prosecution.

One of the public interest factors tending in favour of prosecution is that,

“the suspect was acting in his or her capacity as a medical doctor, nurse, other healthcare professional”.

This has been said by some to cause considerable difficulties for healthcare professionals because it is not clear what constitutes assistance. During the course of this debate, we heard several contributions from doctors. I have to say that, listening to the debate, I did not understand the noble Baronesses, Lady Finlay or Lady Hollins, to be suggesting that the matter of dying was not discussed. Indeed, I thought it was regularly discussed; the question was how you approached it.

The issue has given rise to a case, *AM v DPP*. The Court of Appeal, by a majority decision, including a dissenting judgment from the Lord Chief Justice, indicated that there might need to be some clarification of the policy, and the weight that the policy gives to the fact that a helper was acting in his capacity as a healthcare professional and the victim was in his care. The appeal was heard in December, and we await the Supreme

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Court’s judgment. I understand that it is likely to arrive in the next two or three weeks, although I cannot be emphatic about that.

My Lords, in exercising her discretion to decide whether to prosecute someone for encouraging or assisting suicide, the DPP is not doing anything new. Under the Suicide Act, there has always been a requirement for the director’s consent to a prosecution. In exercising that discretion, it has always been necessary to weigh up the public interest factors for and against prosecution on the facts of individual cases. Indeed the exercise of prosecutorial discretion applies to all criminal offences and long pre-dates the 1961 Act. The assisted suicide policy as a public document has clarified that process by informing the wider public how such decisions are made.

Noble Lords might want to know something about the statistics. Records show that from 1 April 2009 to 13 February 2014, 91 cases have been referred to the CPS by the police

recorded as assisted suicide or euthanasia. Of those 91 cases, 65 were not proceeded with by the CPS, 13 were withdrawn by the police and there are currently eight ongoing cases. One case of attempted assisted suicide was successfully prosecuted in October 2013. The facts of the matter would not trouble anyone, whichever side of the argument they were on. It involved someone with lower mental capacity. Four cases were referred onwards for prosecution for murder or serious assault.

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In exercising her discretion to decide whether to prosecute someone for encouraging or assisting suicide, the DPP is not doing anything new. Under the Suicide Act, there has always been a requirement for the director's consent to a prosecution. In exercising that discretion, it has always been necessary to weigh up the public interest factors for and against prosecution on the facts of individual cases. The assisted suicide policy is a public document, which has provided some clarification for the process by informing the wider public how decisions are made.

The DPP's guidance recognises that assisting suicide is a criminal offence. It clarifies how the discretion is exercised. Some would say that the deterrent effect of the present law combined with the compassionate exercise of prosecutorial discretion on a case by case basis, is a sensible balance in this very sensitive area. However, I freely acknowledge that strong views are expressed around the House and in the country about this matter. The fact that, looking back over *Hansard*, a number of contributors to tonight's debate have expressed similar, although not identical, views before is in my view a strength. These matters do not disappear; they recur and will continue to do so. However, this debate, for which I thank all the contributors, has made a significant contribution to an issue which is difficult to resolve. Unfortunately, I cannot give any further guidance than what has been given by the Government before.

*House adjourned at 9.24 pm.*

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