Anscombe Centre Briefing: Consultation on Assisted Suicide in Scotland

The Health, Sport and Social Care Committee has opened a call for evidence on the 'Assisted Dying for Terminally Ill Adults (Scotland) Bill'. The purpose is to inform the Committee's scrutiny of the Bill.

There are only two ways to submit evidence, either by a short survey or via a more detailed call for evidence.

The Anscombe Bioethics Centre strongly encourages individuals and organisations that are opposed to the Bill to submit evidence. The following is provided to help people to do so.

To submit evidence go to the Committee website here and see links at the bottom of the page. The deadline for submissions is 16 August 2024.

Short Survey

For those with less time, the short survey is easier. It comprises just 5 questions:

1) Do you live in Scotland?
2) Which of the following best reflects your views on the Bill?

The view of the Anscombe Bioethics Centre is **'strongly oppose'**.

3) Which of the following factors are most important to you when considering the issue of assisted dying? Please rank up to three options.

For this question, the Centre strongly recommends that in addition to two options from the list provided, you include at least one **'other'** reason. In this way the Committee will broaden its considerations beyond the few factors it has listed.

Examples of 'other' factors would include: coercion of healthcare professionals; disability rights; 'doctor shopping'; elder abuse; encouraging suicide; impact on palliative care; risk of closure of hospices; risk it would lead to euthanasia; use as a way to save money. But it is best to think of your own reasons in your own words.

4) Do you have any other comments on the Bill?
5) How did you find out about this consultation?

For the fourth question, the Centre would encourage you to give evidence or arguments for your views. For example:

- Your own experience of elder abuse or disability discrimination or decisions you suspect were made on the basis of funding during the pandemic.
- Your experience of the positive difference that palliative care can make or of the importance of suicide prevention, and your concern that one or the other could be undermined by a change in the law.
- Evidence from the media or from research online, for example, from Liz Carr's documentary 'Better Off Dead?', from the website of the Anscombe Bioethics Centre or that of Living and Dying Well.

Even if you are referring to evidence from some other source, you should first give the reason in your own words, to show that it is your view. Then show how the evidence supports your view.

Detailed Call for Evidence

The Centre strongly encourages organisations, and individuals with more time or with specialist knowledge, to respond to the detailed consultation. This has 8 questions, each of which has space for comment and sometimes also a follow-up question.

1) Overarching question

Which of the following best reflects your views on the Bill?

The view of the Anscombe Bioethics Centre is **'strongly oppose'**.

Space for further comment on your answer

This is the first opportunity to state the key reasons for opposing the Bill, which will be spelled out further in the follow up question and in Question 8. It is also an opportunity to state that the term 'assisted dying' is ambiguous between 'assisted suicide' (when the person takes the lethal substance themselves) and 'euthanasia' (where a healthcare professional administers the lethal substance) and is sometimes confused in the general public with the right to refuse treatment and the right to receive palliative care. If used at all it is best used as an umbrella term for all forms of assisted suicide and euthanasia.

Which of the following factors are most important to you when considering the issue of assisted dying?

For this question, the Centre strongly recommends that in addition to two options from the list provided, you include at least one **'other'** reason. In this way the Committee will broaden its considerations beyond the few factors it has listed.
Examples of 'other' factors would include:

- Coercion of healthcare professionals;
- Disability rights;
- 'Doctor shopping';
- Elder abuse;
- Encouraging suicide;
- Impact on palliative care (e.g.risk of closure of hospices);
- Risk it would lead to euthanasia;
- Use as a way to save money.

These are only a few suggestions; it is best to think of your own reasons in your own words.

Space for further comment on your answer

This is an opportunity to spell out a little more the three factors given in the previous question and also to add more factors (as the previous question only allows three choices). A summary of the argument can be provided here, for example, that assisted suicide normalises suicide, that voluntary euthanasia leads to non-voluntary euthanasia, or that intending death is contrary to the ethos of palliative care. For reasons of space however, supporting evidence for these arguments is best given in answer to Question 8.

2) Eligibility

Which of the following most closely matches your opinion on the terminal illness criterion for determining eligibility for assisted dying?

In the view of the Anscombe Bioethics Centre it would be best to put **'other'**: **'The law should not change and if the law does not change then the question of eligibility does not arise.'**

Space for further comment on your answer

For those who oppose the Bill, it might seem that 'no-one should be eligible for assisted dying'. However, even to speak of being 'eligible' seems to imply access to something beneficial or desirable: a prisoner may 'be eligible for' parole, a resident may 'be eligible for' housing benefit. To speak of being eligible for assisted dying thus begs the question of whether encouraging or assisting suicide or performing euthanasia are benefits. Hence it is more neutral and accurate to say that the question of eligibility does not arise.

It is worth noting that the definition in the proposed Bill is very like the Canadian law in 2016, which was interpreted very loosely and is not what many would understand by 'terminal illness'. More to the point, of the three countries that in 2016 limited assisted suicide or euthanasia to

terminal illness more or less broadly construed (Canada, Colombia and parts of the United States), two have since expanded their laws to cover people who did not have a terminal illness (Canada and Colombia, both in 2021). So, whatever is in the Bill, if this passes into law then there is a real danger that it will later be extended to people without a terminal illness. The Committee should advise Parliamentarians to consider the Bill on the assumption that eligibility criteria will be extended after the law is passed.

Which of the following most closely matches your opinion on the minimum age at which people should be eligible for assisted dying?

As above, **'other'**: **'The law should not change and if the law does not change then the question of eligibility does not arise.'**

Space for further comment on your answer

For reasons of legal consistency, it also seems questionable whether an age limit of 18 would withstand legal challenge in Scotland. It would likely be extended to 16 year olds. Indeed, the more that assisted dying is claimed to be a part of healthcare or end-of-life care, the more difficult it is to exclude competent minors, and even patients who cannot consent.

It should be noted that, just as Canada and Colombia extended their assisted dying laws from terminal illness (broadly defined) to non-terminal illness, so the Netherlands and Belgium have extended their assisted dying laws from adults to competent minors and, in some circumstances, to non-competent infants. The Bill begins with a proposed age of 16, which would be a minor in most countries of the world. The Committee should advise Parliamentarians to consider the Bill on the assumption that eligibility criteria will be likely extended after the law is passed.

3) The Assisted Dying procedure and procedural safeguards

Which of the following most closely matches your opinion on the Assisted Dying procedure and the procedural safeguards set out in the Bill?

In the view of the Anscombe Bioethics Centre it would be best to put **'other'**: **'The law should not change and if the law does not change then the question of purported 'safeguards' does not arise.'**

Space for further comment on your answer

The current law in Scotland is a safeguard for those vulnerable to suicide, and there is an important sense in which anyone can become vulnerable to suicide. The right to protection from suicide applies to all. The proposed Bill does not apply to all and its procedural requirements are not effective safeguards against harm, nor would they be if they were 'strengthened' by similar but narrower requirements. The problem is that in practice the strength of the requirement depends on the attitudes of doctors. In most jurisdictions with assisted dying there are a small number of doctors who prescribe or administer a disproportionate number of lethal doses and who are known to interpret the regulations very loosely. Even when doctors flagrantly

ignore the regulations is it exceptionally rare for them to be disciplined. For example, research shows that 50% of euthanasia cases in Belgium are not reported and yet, in more than 20 years, no doctor has been disciplined for failure to do so.

On the other hand, where requirements do have some impact in practice then what were termed 'safeguards' before the law comes into force are afterwards termed 'barriers to access'. Pressure then grows to amend or abandon the requirements. In the United States between 1998 and 2020 no State with assisted suicide had amended its laws, but since 2020 there have been 7 amendments across 5 States, all to weaken requirements. For example, two have dropped the residence requirement. The Committee should advise Parliamentarians to consider the Bill on the assumption that procedural requirements will either be followed inconsistently or will eventually be amended or abandoned.

4) Method of dying

Which of the following most closely matches your opinion on this aspect of the Bill?

In the view of the Anscombe Bioethics Centre it would be best to put, **'It should remain unlawful to supply people with a substance for the purpose of ending their own life.'**

Space for further comment on your answer

Any means of supplying or administering a lethal substance will end life prematurely by months or in some cases by years. However, euthanasia is more dangerous than assisted suicide, for at least three reasons. In the first place it is associated with far higher rates of death. In the second place it ultimately takes power away from the patient and gives it to the doctor. Finally, and of most concern, it is associated with ending life without consent, for example evidence shows that in Belgium every year 1,000 people have their life ended by lethal drugs without explicit request.

It should also be noted that no country outside the USA has restricted its law to assisted suicide for people with a terminal illness. All others either include euthanasia or include people who are not terminally ill or both. Furthermore, only one jurisdiction in the world (the Australian State of Victoria) has included euthanasia but restricted this to people who are physically incapable of assisted suicide. No other Australian State followed the example of Victoria and there is currently pressure on Victoria to drop this requirement. On the basis of international experience it is quite possible that a law restricted to assisted suicide could expand to euthanasia and it seems certain that if euthanasia were permitted for people who were not physically capable of assisted suicide, this would expand to euthanasia for those who have difficulty doing it themselves for psychological reasons. The Committee should advise Parliamentarians to consider the Bill on the assumption that means of assisted dying will be extended after the law is passed.

5) Health professionals

Which of the following most closely matches your opinion on how the Bill may affect the medical profession? Tick all that apply.

In the view of the Anscombe Bioethics Centre it would be best to put:

'Legalising assisted dying risks undermining the doctor-patient relationship'.

'Other': **'Medical professionals should not be involved in assisted dying at all because, while they are not always obliged to sustain life, it is contrary to medical ethics to end life intentionally.'**

Space for further comment on your answer

It is not true that all healthcare professionals have a duty to preserve life. Many medical specialisms concern improvement of function and palliation of symptoms rather than extension of life. Further, even for specialisms focused on saving life, such as emergency medicine, the duty to preserve, sustain or extend life is relative to the burdens of treatment. It is not an absolute. In contrast, within medical ethics as expressed in the ancient Hippocratic Oath or the modern Code of Practice of the World Medical Association, a doctor should never intentionally end life or intentionally encourage or assist suicide.

The potential harms to the medical profession, and thus to patients, are much greater if assisted suicide or euthanasia are regarded as part of healthcare and thus to be offered proactively to patients or even given to those who cannot consent. Suicide is not a medical act and it is doubly dangerous for assisting or encouraging suicide to be construed as part of healthcare. It should not be done anywhere but it is worse for it to be done in a healthcare setting or by a healthcare professional. Not only should individual doctors be able to object to direct participation in prescribing or administering, but the whole practice must be excluded from the health service and properly regarded as a judicial not a medical matter.

6) Death certification

Which of the following most closely matches your opinion on recording the cause of death?

In the view of the Anscombe Bioethics Centre it would be best to put: **'I do not support this approach because it is important that the cause of death information is recorded accurately.'**

Space for further comment on your answer

There is stigma associated with death by suicide and suicide prevention organisations have sought to lessen this stigma while maintaining that every suicide is a tragedy. There are good

personal and public policy reasons for coroners to investigate deaths that are not by natural causes and to be able to give an official determination of suicide where death is by the person's own hand and where there is clear evidence of the intention to end life.

Coroners may express the ambivalence of the deceased person's action by giving an open or narrative verdict, but they can and do make determinations of suicide. It can be important for loved ones to know how the person died and it also reflects wider social concern. In relation to 'assisted dying' – that is, assisted suicide – it also seems that relatives have an interest in knowing how their loved one died (especially if they were not aware at the time or if they have concerns about the person's state of mind and whether official process was followed).

There is no less a social concern in relation to assisted suicide than in relation to unassisted suicide. Indeed there would seem to be more reason for concern because of the involvement of the State in causing the death. In relation to suicide, it is not thought necessary or helpful to falsify the cause of death on official documents in order to reduce stigma. It is hard to see why it should be appropriate for assisted suicide.

7) Reporting and review requirements

Which of the following most closely matches your opinion on the reporting and review requirements set out in the Bill?

In the view of the Anscombe Bioethics Centre it would be best to put **'other'**: **'The law should not change and if the law does not change then the question of reporting and review should be independent of the legal situation.'**

Space for further comment on your answer

Irrespective of whether the law changes, there is value in knowing how doctors have made end-of-life decisions and whether they are following the current law. Large scale systematic research in the Netherlands and in Belgium has provided a picture of medical practice which can be contrasted with official reports. It is because of this research that we know that 50% of deaths were not being reported in Flanders and that 1,000 people died by life terminating acts without explicit request. This kind of research is best done by independent researchers in universities but could and should be funded by Government.

In contrast the official reporting that is envisaged in the Bill, and which is reflective of official reporting in many jurisdictions, is of very limited value. It is based on self-reporting but with an incentive not to report problematic cases. At the same time it would not help identify and prosecute bad practice. It would give the appearance of scrutiny but not the reality. As a general rule, false assurance is worse than honest acknowledgement of ignorance.

8) Any other comments on the Bill

Do you have any other comments in relation to the Bill?

This is an opportunity to provide references for responses to previous questions but also to provide information in a format outside that of the questions.

For those giving an individual submission it is also an opportunity to reflect directly on your own experience that informs you view of the current state of health and social care, and the danger of introducing assisted suicide or euthanasia in this context.

You might also wish to draw from evidence from the media or from research online, for example, from Liz Carr's documentary 'Better Off Dead?', from the website of the Anscombe Bioethics Centre or that of Living and Dying Well.

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