

Assisted Suicide (Scotland) Bill

East Dunbartonshire Social Work Group discussion 16 May 2014

Question		Points discussed
1.	Do you agree with the general purpose of the Bill to make it permissible, in the circumstances provided for, to assist another to commit suicide?	<ul style="list-style-type: none"> € Assisted suicide is a controversial issue. The arguments for its legalisation centre around the concepts of personal autonomy, compassion for human suffering and dignity in death. However, those who oppose its introduction would argue it is unethical, open to abuse and unnecessary due to the advancement of palliative care. Any legislation introducing Assisted Suicide would have to strike a balance, being empathetic, but equally, ensuring that adequate procedures are in place to protect the vulnerable. It is difficult to articulate an opinion which represents the views of an organisation as wide and diverse as East Dunbartonshire Council therefore; this response is limited to an assessment of the provisions of the Bill itself, rather than an articulation of a moral judgement on the act of assisted suicide. € The Bill needs to have clear interpretations /definitions of its terms. € The discussion raised concerns in terms of clarification for guardians exercising decision-making on behalf of others who may not have capacity. € The Bill should consider arrangements being put in place for other people who maybe suffering within Social Work care groups such as physical/learning disabilities, mental health, addictions and substance misuse. Local authorities would need to ensure much clearer assessments are carried out in terms of assessing capacity.
2.	Do you have any views on how the provisions in this Bill compare with those from the previous End of Life Assistance (Scotland) Bill?	<ul style="list-style-type: none"> € The End of Life Assistance (Scotland) Bill was poorly drafted and was more far reaching than the Assisted Suicide (Scotland) Bill. The biggest difference between both Bills is that the End of Life Assistance (Scotland) Bill seemed to allow for not only assisted suicide, but also euthanasia. S1 of the End of Life Assistance (Scotland) Bill stated that it was not a criminal offence or a delict, to provide end of life assistance to a person in accordance with the Bill's provisions. S1(2) stated: "In this Act "end of life assistance" means assistance, including the provision or administration of appropriate means, to enable a person to die with dignity and a minimum of distress."

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		<p>€ By contrast, the Assisted Suicide (Scotland) Bill appears to be more restrictive. The Bill states: “s18 Nature of assistance: no euthanasia etc. (1) Nothing in this Act authorises anyone to do anything that itself causes another person’s death. (2) Accordingly, assistance must not be such as to infringe the requirement in subsection (3). (3) That requirement is that the cause of the other person’s death must be (or, in the case of an attempt, would have been) that person’s own deliberate act.”</p> <p>€ There are two possible interpretations of this section. The first interpretation is that the “deliberate act” in question is that of the person seeking the assisted suicide, physically takes the drugs themselves. This would seem to fall into line with the explanatory notes which state that “neither euthanasia nor any other form of direct killing is authorised by the Bill.” If this is the correct interpretation, the Bill expressly excludes from its ambit those with physical conditions who would be unable to physically administer drugs themselves. For example, in the case of R (Nicklinson and others) v Ministry of Justice, two applicants from England sought to end their life as they suffered from “locked-in syndrome.” They were almost completely physically paralysed but remained mentally unaffected. Under the Bill as it stands, someone suffering from “locked in” syndrome would be unable to end their life without fear of prosecution for those involved. It would appear contrary to the spirit of the Bill, to completely disregard a section of society who would potentially seek to benefit from what it has to offer.</p> <p>€ However, there is also an alternative interpretation of the provision. S19(a) of the Bill states that a licensed facilitator must use their best endeavours to provide “such practical assistance” as the person may reasonably request. The question then arises as to whether this “practical assistance” extends to putting the drugs in the hand of the person in question, and lifting their hand to their mouth. Legal opinion advises that this wouldn’t constitute as the person’s “own deliberate act” as it would be the act of the licensing facilitators. It therefore would constitute as euthanasia, which the Bill expressly prohibits. This matter is clearly a grey area, and given that it is a central provision to the Bill, it requires clarification.</p> <p>€ The Bill should be clearer about what constitutes as a</p>

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		“deliberate act” and what is meant by “practical assistance.”
3.	The Bill precludes any criminal and civil liability for those providing assistance, providing the processes and requirements set out in the Bill have been adhered to. Do you wish to make any comment on this?	<ul style="list-style-type: none"> € As already indicated within answer 2, the role of the licensed facilitator has not been adequately described to allow a full and clear understanding of what their role is. Without a clearly defined role, it will be difficult for the licensed facilitator in question to act in a way which ensures that they will not face liability for providing assistance. € Clearer definition of role of facilitators in terms of euthanasia and assisted suicide in circumstances where that attempt at assisted suicide does not succeed. What actions / recourse are advised for daciltator and subject? Is a repeat attempt sanctioned? What safeguards will be put in place? € Responsibility may be placed in law on pharmacist rather than facilitator regarding dosage of medication for individuals to lessen suffering during ending life. € Consider GP willingness to involvement maybe difficult to find GP to participate. In this case would there be an appeals process?
4.	The Bill outlines a three stage declaration and request process that would be required to be followed by an individual seeking assisted suicide. Do you have any comment on the process being proposed?	<ul style="list-style-type: none"> € The three stage declaration process ensures that there are adequate hurdles to pass through to ensure that the person in question is given an adequate amount of time to reflect on the action they are undertaking. However, an important aspect of the three stage declaration process has been omitted from the Bill. The Bill is unclear as to whether a medical professional finding that the person in question is not suitable for assisted suicide would end the process, or whether the matter would be referred to another medical practitioner to make an alternative determination. Clarity in this regard would be desirable.
5.	Do you have any comment on the provisions requiring that the person seeking assisted suicide must have a terminal or life-shortening illness, or a progressive condition which is either terminal or life-shortening?	<ul style="list-style-type: none"> € Having a “terminal or life-shortening illness, or a progressive condition which is either terminal or life-shortening” is a key component in qualifying for assisted suicide. The Policy Memorandum acknowledges that there is dispute within the medical profession about what constitutes such a condition or such an illness. Given this apparent lack of consensus, common sense would dictate that the Bill should seek to define what is meant by “condition” and “illness.” However, it fails to do this, it leaves the potential for inconsistency and uncertainty to arise.

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6.	Are you satisfied with the eligibility requirements as regards age, capacity, and connection with Scotland as set out in the Bill?	<ul style="list-style-type: none"> € There is a spectrum of mixed views as to the lower age of those allowed to make a preliminary declaration. € Capacity is a difficult issue to determine. The fact that there are 4 medical practitioners involved within the process should hopefully ensure that the correct determination is made. However, given the period of time within the 3 stage declaration and request procedure, it will be imperative to ensure that the person in question does not lose capacity throughout the process. There may also be difficult cases where the person in question, has periods of lucidity amongst periods of incapacity, and the issue will be, whether they should be allowed to go through with an assisted suicide.
7.	Do you have any comment on the roles of medical practitioners and pharmacists as provided for in the Bill?	<ul style="list-style-type: none"> € Medical practitioners are best placed to form an opinion about the condition and illness the person seeking the assisted suicide is suffering from. The fact that 4 medical practitioners are involved within the process should ensure impartiality, as it is unlikely that all four practitioners will know the person making the requests. € Medical practitioners and pharmacists may themselves feel they are faced with an ethical dilemma when a patient presents with a request for assisted suicide. Patients have the right to refuse lifesaving treatment or for example, put in a Do Not Resuscitate request, and medical practitioners normally would willingly comply. However, the difference between those examples and assisted suicide is that the former is an omission whilst the latter may be an act. The fact that the medical practitioner in question would be explicitly administering treatment rather than withholding treatment is what is likely to lead to feelings of unease arising. Therefore, the question materialises as to whether medical practitioners and pharmacists can refuse to play their role within the procedure and how many would. If a majority of practitioners opted to not comply with the assisted suicide procedure, this would give rise to many difficulties putting it into practice.
8.	Do you have any comment on the means by which a person would be	<ul style="list-style-type: none"> € Need for clarity of what 'other means' suggests, e.g. does it mean physical means such as hanging, or falling from heights? € Although the means envisaged by the Bill seems to

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	permitted to end his/her life under the Bill?	<p>be drugs, the Bill does not rule other means being used. Therefore, potentially more gruesome options seem to be available. The question then arises as do you allow the person who is seeking the assisted suicide the freedom of choice to select any means they desire, or do you restrict the means in question on public policy grounds. This requires to be specified</p> <ul style="list-style-type: none"> € Might there be a need for specialist anaesthetist to administer medication.
9.	Do you have any comment on the role of licensed facilitators a provided for in the Bill?	<ul style="list-style-type: none"> € The licensing facilitator will be able to act as an independent and impartial observer who will hopefully be able to identify any abuse, or undue influence present in regards to the individual concerned. However, as already indicated, the role that the licensing facilitator has to play in the process of assisted suicide requires to be clarified within the Bill, and clear parameters of their involvement must be set. € Concerns raised in terms of facilitators' expertise and skills and the support they will receive to ensure medication is administered and support when things don't go according to plan. € The cost of the licensing facilitators. If local authorities were to become licensing authorities for the purposes of the Bill, then the costs incurred through this would have to be assessed. As indicated in the Explanatory Notes, the costs could include such elements as as the training and employment of licensing facilitators and as the Scottish Ministers have not committed to providing any funding for the role, would funds have to be found within current budgets to accommodate this? If so, this is unacceptable.
10.	Do you have any comment on the role of the police as provided for in the Bill?	<ul style="list-style-type: none"> € Given that death via assisted suicide is, by its definition, an "unnatural" death, it is also important that police officers are called after the assisted suicide has been completed. Their presence is important as they will be able to identify whether the appropriate procedure has been complied with, and if it has not, they can refer to the Procurator Fiscal. The provision for the police's involvement will hopefully act as a deterrent from deviating from the process outlined within the Bill and hence ensure the safeguards are complied with. € However, although the police can ensure that procedurally the Bill has been complied with, it is unlikely that they will be able to make any sort of determination as to whether there has been undue

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		influence and exploitation within the process which is arguably one of the key things that need to be ensured. Unless previously advised of the intention to undertake assisted suicide, and the time and locus, will the police approach such situations as potential crime scenes unless otherwise specifically determined/ Will they then seek to detain and question participants including facilitators as a matter of course?
11.	Do you have any comment to make about the Bill not already covered in your answers to the questions above?	<p>€ There is no reference within the Bill as to the role of those holding Powers of Attorney or Guardianship.</p> <p>€ There is no reference to significant relevant prior legislation such as the Mental Health (Care & Treatment) Act, the Adults With Incapacity Act, or the Adult Support & Protection Act</p>

Attendees

Andy Martin, Adults & Community Care Services Manager

David Formstone, Fieldwork Manager - Adults

Michael Smith, Legal Services Manager

Billy Henderson, Team Manager – Learning Disability

Kara Gallagher, Trainee Solicitor

Kirsty Kennedy, Adult Protection Coordinator

David Aitken, Team Manager – Mental Health