Cross-Party Group in the Scottish Parliament
on End of Life Choices

Convener	**Vice-Conveners**	**Secretary**
George Adam MSP	Jackson Carlaw MSP	Amanda Ward

Minute of the meeting of the Cross-Party Group in the Scottish Parliament on End of Life Choices

Tuesday 6th December 2016 at 6 pm
Committee Room 6, Scottish Parliament

Attendance

George Adam MSP (Chair) (GA)
Jackson Carlaw MSP (JC)
Patrick Harvie MSP (PH)

Apologies:

1. Welcome, introductions and apologies

George Adam (GA) welcomed everyone to the meeting. Those present were invited to briefly introduce themselves.

2. Election of Office Bearers

George Adam MSP explained that there is a need to register the group, and this must be completed within 30 days of the initial meeting. This involves providing details to the Standards Clerks about the purpose, membership, planned frequency of meetings, any financial support and some other administrative details. There is also a need to provide details of at least 5 MSP members of the group, and to elect at least 2 MSP office bearers.

Jackson Carlaw nominated George Adam as Convenor of the group. There being no further nominations, George Adam was appointed Convenor.

George Adam nominated Jackson Carlaw as Vice-Convenor of the group. There being no further nominations Jackson Carlaw was appointed Vice-Convenor.

George Adam nominated Amanda Ward as Secretary. There being no further nominations, Amanda Ward was appointed Secretary.

Patrick Harvie MSP, Tavish Scott MSP, Liam McArthur MSP, Mary Fee MSP and Claudia Beemish MSP had also indicated interest in becoming members of the group although they were not all present.

3. Presentation and Discussion: Professor Alison Britton, Commonalities

Professor Britton (PB), spoke about Commonalities in the Assisted Dying debate and began with the role of medicine;

Introduction:

- Medicine is a triumph, transforming the fatal to curable, terminal to chronic.
- When it cannot cure, or maintain, what is its role then?
- Frameworks tend to be unhelpful. In Hippocratic tradition, the basic tenet is to come for the benefit of the sick; what happens when there is no further benefit? Can benefit be

redefined sufficiently to have a clear a role in the assisted dying process as well as the process of living?

- What of Medical ethics? - the framework around which medicine is practiced.
- A blurring of lines can also be seen between medicine and the political order.
- WHO definitions of health - that of a complete physical, mental and social wellbeing more generally. A tall order to place upon health care professionals.
- Society needs to find a way to address the dilemmas and the emotional arguments behind them, that advances in medicine has brought. New possibilities also bring limitations and difficult choices. We strive not only for a good life but a good ending to our life.
- Excellent palliative and hospice care has evolved to help us address needs beyond the clinical but it is not always a complete answer.
- 'For some years now, I have been involved with the debate concerning law and decision-making at the end of life. So tonight, I wish to put aside, for and against and instead to explore common themes. I believe that it is only when we find and acknowledge common ground that such arguments for or against legislation can be addressed'

People:

- Theories abound that people's views have changed towards the role of medicine and healthcare more generally.
- An important legal milestone was the recognition of the principle of autonomy. Healthcare paternalism is now viewed as outmoded and unwanted. Autonomy cannot and should not be viewed as an absolute. In the 21st century, there is no doubts that medical progress removes constraints and impediments, focus on quality of life dominates how we live.

Legislation:

- Evolution of legislation in assisted dying is an enduring one.
- *Postma* case discussion – Doctor not required to keep patient alive if contrary to their will. 1999 Dutch Govt proposed legislation to codify existing practice. Did not legalise end of life assistance but instead provided statutory assistance against prosecution.
- Today, the Netherlands has been joined by the Benelux nations, countries as diverse as Switzerland and Columbia and 6 US states. Whilst most have reached this point by different means, it is natural that one looks to the experience of other jurisdictions to inform the recent proposals which have been laid before the Scottish and Westminster Parliaments.
- Despite variations in jurisdictional regimes, there are similarities too-; What form should a request for assistance to end life take, minimum age (12, 16, 18), how will the consultation and referral process be monitored, how is capacity to be determined and protected, who will oversee reporting and scrutiny, who will provide the assistance and above all how is transparency, accountability and equity to be insured. Many jurisdictions have experienced difficulties in agreeing upon terminologies and definitions, not least our own.

Jurisdictional Definitions

- In 2010, the late Margo McDonald MSP, proposed the End of Life Assistance (Scotland) Bill which aimed to 'enable persons whose life has become intolerable, under certain conditions, to legally access assistance to end their life.' She sought to achieve this by decriminalising both euthanasia and assisted suicide under the single definition of End of Life Assistance. Fundamental distinction between Euthanasia and Assisted Suicide concerns roles and responsibilities. The 2013 Bill brought forward by PH MSP after

Margo's death, did not include Euthanasia only assistance to die. Netherlands and Luxembourg encompass both Euthanasia and Assisted Suicide, all American states only permit Physician Assisted Suicide for adults, Switzerland permits Assisted Suicide but excludes Euthanasia – the law there also does not require a physician to be involved nor does it require the recipient to be a swiss national.

Dignity

- What also of the concept of dignity? One recurring argument is that the purpose of legislation would allow a dignified death. Is it possible to harness what dignity actually means in legal terms? Opposing views usually centre around whether dignity can ever really be lost through illness and disease or do such conditions of illness or disease emphasise what it means to be human. Two examples were given to illustrate how polarised these views can be.

Legal Clarity: courts or parliament

- A further common and recurring theme is that existing law in Scotland needs to be clarified in relation to assisted dying. It is perhaps better to say that the law needs to be reviewed rather than clarified because opponents in equal measure will say the law is clear. A second issue is whether this clarity would be provided by the courts and the common law or parliament through legislation? Constitutional discretion was discussed.

A Comparison with England and Wales followed:

- The Suicide Act 1961and the DPP
- Prior to 1961 - the law of England and Wales was to treat suicide as contrary to criminal law and, as such, an individual who unsuccessfully attempted to commit suicide could be punished. Section 1 of the Suicide Act 1961 changed this to provide that suicide is not a criminal offence. However, section 2 (1) of the 1961 Act makes it an offence to encourage or assist the suicide or attempted suicide of another. The offence carries a penalty of up to fourteen years" imprisonment. Under section 2(4) of the 1961 Act, the consent of the Director of Public Prosecutions (DPP) is required to initiate proceedings for a prosecution relating to assisted suicide. The DPP can also dispense with prosecution if it deems it so appropriate.
- The first such case was that of Diane Pretty v DPP in 2002. Daniel James (2008). The tide turned a little further in the case of Ms Purdy in 2009. So, is there a need for clarity in Scotland? Do these judgments have any impact here? The Suicide Act does not apply to Scotland. Punishment could be more severe in Scotland than England – 14years under the 1961 act for assisting in a suicide *v* murder or culpable homicide in Scotland and life imprisonment. DPP has produced specific guidelines on assisting in death for England and Wales, Lord Advocate in Scotland has not done so. Consensus is that parliament is best placed and it would be constitutionally appropriate for them to legislate or otherwise for this.

  Medical jurisprudence has settled that we can refuse medical treatment and or to ask for it to be withheld or withdrawn. However, what if there is no treatment to refuse- nothing to be withdrawn?

PB summarised that: 'We should embrace the opportunities that healthcare has brought to us but we do have to be realistic in our approach. In our search for the acknowledgement of our personal autonomy, and discarding paternalism somewhere along the line, we have created void between the two. If we don't address it, it is inevitable that inconsistencies will develop with decisions, taken in a vacuum'. Legislation would not be the end of these issues, it would be the starting point on which to progress discussions.

Group discussion followed and included the following issues:

- Clarification of the law – need to know what law in Scotland actually is before debates

for and against can take place

- Combining palliative care and assisted dying. Everyone present felt very strongly that AD should complement palliative care and be an additional choice, not mutually exclusive.
- Examples of jurisdictions which have seen increase in palliative care provisions, investment etc. since legalising were discussed (Oregon per capita morphine use from 10 to 1, Belgium parallel legislation were examples given)
- Citizens' initiatives, Ballet papers and looking at campaign groups in other jurisdictions who have had an impact on changing the law (Compassion in Choices in America used as example) were discussed and further research into this would be informative to the group
- Compelling evidence that public support is for AD. Comparison with equal marriage where public and parliamentary will supported. Parliamentarians having courage to reflect this and social responsibility discussed. Agreement in principle at stage 1 is paramount to continue discussions re the shape of legislation
- New members of parliament – finding out where they stand on AD is a task currently being undertaken
- Blanket prohibition or permission has to date been unsuccessful. Idea floated by audience member, Scott Kennedy of UWS, re end of life tribunal or court system where the onus of application is on the individual, who would have application reviewed by panel of experts

5. Any other competent business

George Adam advised that he will meet with the standards committee and propose the CPG as an official group.

GA suggested that the first task for the CPG is to construct a strategy to find the political will, and create the political leadership we need to take this issue forward.

George Adam thanked the attendees.

6 Date of next meeting

Future meeting dates will be circulated as soon as possible.