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Losing our grip on death: What now for assisted dying in the UK?

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Abstract

Recent developments on assisted dying in England and Wales are a unique opportunity to engage academics, healthcare professionals, and the public in a fresh round of debate on one of the most controversial subjects of modern times. Assisted dying is currently topical worldwide, with California in the US (2015),[1] Canada (2016),[2] Colorado in the US (2016),[3] and the District of Columbia in the US (2017),[4] recently enacting legislation on physician-assisted dying. Between 2010 and 2015 significant developments also took place in England and Wales, though not leading to legalisation. This article engages in a discussion and evaluation of these developments, namely, the establishment of the Commission on Assisted Dying in 2010 and the publication of its Report in 2012, the ground-breaking Supreme Court case of Nicklinson in 2014, and the Private Members' Bill, the Assisted Dying Bill (2013-2015). In particular, although the Bill's progress was significant, the UK's Parliament and the government were again reluctant and failed to use the Bill as an opportunity to deal with difficult questions. In an area of conflicting societal and individual interests and of great importance for medicine, ethics, and law, this article suggests that a balance between the 'protection' of 'vulnerable' groups potentially affected by the legalisation of assisted dying, and 'choice' in the context of life-expectancy should be considered in future reform.

1. Introduction

Recent developments on assisted dying in England and Wales offer a unique opportunity to engage academics, healthcare professionals, and the public, in a nationwide debate on a matter of interrelated nature and of great importance for medicine and the law. This is largely due to parliamentary activity which spurred a fresh round of debate on the subject in the United

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1 The End of Life Option Act is available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB128 (accessed 24 March 2017).

2 Bill C-14 is available at: http://laws-lois.justice.gc.ca/PDF/2016_3.pdf (accessed 24 March 2017).

3 The End-of-Life Options Act is available at: www.leg.state.co.us/LCS/Initiative%20Referendum/1516initrefr.nsf/b74b3fc5d676cdc9872257ad8005bce6a/99fbc3387156ab5c87257fae00748890/%24FILE/2015-2016%20145bb.pdf (accessed 24 March 2017).

4 The Death with Dignity Act is available at: http://lims.dccouncil.us/Download/33261/B21-0038-Introduction.pdf (accessed 24 March 2017).

Kingdom and abroad. This article focuses on developments in England and Wales in, what is called here, the post-Purdy period from 2010 to 2015.[5]

In England and Wales, assisting or encouraging suicide or attempted suicide is a criminal offence under Section 2(1) of the Suicide Act 1961 punishable by up to 14 years of imprisonment. Despite the criminal prohibition in Section 2(1), and Britain's renowned high-quality palliative care system, financially and physically able individuals who wish to be assisted in prematurely ending their lives, seek assistance to die contrary to the law by travelling abroad.[6] Those individuals who do not wish to die abroad for various reasons, may persuade a family member or a friend to provide what is commonly called 'amateur assistance'. Under the current legislative and policy framework in England and Wales these cases are rarely prosecuted on compassionate grounds under the Director of Public Prosecutions' ('DPP') Policy of 2010.[7] The effect of the October 2014 Policy amendment in relation to 'medical doctors, nurses, and other healthcare professionals or professional carers' remains to be seen.[8] Amateur assistance involves many risks, including the risk of prosecution under Section 2(1) and may, if ineffective, aggravate the individual's physical and psychological state of being. Individuals who find palliative care or other 'options' inappropriate or insufficient may engage in the practice of self-starvation, or if physically able attempt or succeed in taking their own lives. Both these practices can be distressing and, if ineffective, have severe consequences for the individual concerned as well as his or her family and friends. In addition, considering that these actions are carried out outside the remit of the law, amateur assistance, self-starvation, and suicide attempts are carried out without medical and legal safeguards.

This article argues that the time is ripe for the UK Parliament and the government to answer the plea of individuals who wish to be assisted in dying. This article aims to inform the reader of recent developments on assisted dying in England and Wales and suggest that in case of relaxation of the law on assisted

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5 This period has been chosen because the last widely discussed assisted dying development, the publication of the offence-specific prosecution policy on assisting or encouraging suicide, happened in 2010 and because, at the time of writing, the last development on assisted dying was the rejection of the Assisted Dying Bill by the House of Commons in September 2015.

6 DIGNITAS, 'Menschenwürdig leben - Menschenwürdig sterben - Forch-Zürich', http://dignitas.ch/images/stories/pdf/statistik-ftb-jahr-wohnsitz-1998-2014.pdf. DIGNITAS, 'Dignitas members and assisted suicides' (accessed 20 September 2016), https://docs.google.com/spreadsheets/d/1wGnywuF-fD_euq1Bjb88IgIwbFZtuY7dCm0dZ_UbUNE/edit#gid=1&vpid=A2 (accessed 20 September 2016).

7 Crown Prosecution Service, 'Policy for prosecutors in respect of cases of encouraging or assisting suicide', www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.pdf (accessed 21 September 2016).

8 *Ibid.* See also the case of *R (on the application of AM) v. GMC* [2015] EWHC 2096 (Admin) in which it is stated that doctors are unlikely to face criminal sanctions under the Policy when providing assistance on compassionate grounds. The risk of a disciplinary action by the General Medical Council remains however.

suicide or of legalisation on assisted dying (or other related practices), the right balance between *protection* and *choice* must be achieved. As Labour MP Rob Marris emphasised in September 2015 when speaking at the House of Commons, the law fails to strike the right balance between protection and choice.[9] To achieve this, this article suggests that the debate must be furthered and those involved – healthcare professionals, High Court judges, and individual patients – must be actively involved in a comprehensive discussion on the subject.

2. Assisted Dying: Recent Developments

2.1. The Commission on Assisted Dying

Between 2010 and 2015, significant developments on the possible legalisation of assisted dying took place in England and Wales. In September 2010, the establishment of the Commission on Assisted Dying was made possible by funding provided by Mr Bernard Lewis, a businessman, and the late Sir Terry Pratchett, the British celebrated novelist who vocally supported legalisation throughout his life. Demos (the think tank) provided research, secretariat, and administrative support. The campaigning group Dignity and Dying brokered the relationship between Demos and the two funders. Demos agreed to be involved on the understanding that neither Dignity in Dying nor the two funders would be further involved in the investigation by the Commission. The investigation was the first examination of the assisted suicide law in England and Wales since 2005 when the House of Lords Select Committee examined the Assisted Dying for the Terminally Ill Bill first introduced to the House of Lords by Lord Joffe in 2003.[10] The Commission's investigation in 2011 involved: a public call for evidence (1200 responses by practitioners, professional bodies, and the public), six public meetings (specialist evidence gathered by health and social care professionals, practitioners, academics, the police, and individuals affected by the current law), and research visits in four jurisdictions: the Netherlands, Belgium, Oregon in the US, and Switzerland. The overall purpose of the Commission was to investigate; 'what system, if any, should exist to allow people to be assisted to die and whether it might be possible to introduce sufficient safeguards within such a system to prevent abuse and ensure that vulnerable people could not be pressured to choose an assisted death'.[11]

9 UK Parliament, Assisted Dying (No. 2) Bill, www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150911/debtext/150911-0001.htm#15091126000003 (accessed 21 September 2016).

10 The Select Committee reported in April 2005 and produced three Reports available at: www.publications.parliament.uk/pa/ld/ldasdy.htm (accessed 7 September 2016).

11 Commission on Assisted Dying, https://web.archive.org/web/20160325181618/http://www.commissiononassisteddying.co.uk/about-the-commission-for-assisted-dying (accessed 7 September 2016).

Specifically, the Commission studied the current legal and policy approach to assisted suicide in England and Wales by evaluating the legal status quo and by examining the potential form assisted dying may take, taking into consideration health and social care professionals, and the general public.[12] The Commission has been praised for its investigation, but also heavily criticised in particular for the fact that its Commissioners were supporters of the legalisation of assisted dying before joining Lord Charles Falconer and the Commission in 2010. Lord Falconer was approached by Demos to act as the Chairman and coordinator. Subsequently, he personally invited the other Commissioners to join. Prior to his involvement with the Commission, Lord Falconer was involved with one further unsuccessful statutory attempt to reform the law on assisted suicide, an amendment to the Coroners and Justice Bill (now the Coroners and Justice Act 2010). Lord Falconer has pronounced his views on assisted dying on numerous occasions, as have the majority of the other Commissioners. Another criticism that was made against the Commission was that the evidence collected was insufficient as prominent organisations and individuals declined Demos' invitation to submit evidence (e.g. The British Medical Association, or the UK Care Not Killing organisation).[13]

Despite the criticism, the Commission's Report was made publicly available in January 2012[14] highlighting that any final decision for legalisation should rest upon Parliament to make. It was concluded that the legal and ethical status of assisted suicide continues to be an unresolved public policy issue, and that the current law is inadequate and incoherent and should not continue. The Commission maintained that the choice of an assisted death should be given only to terminally ill individuals who experience 'a degree of suffering towards the end of their life' that cannot be alleviated by 'skilled end-of-life care'.[15] Specifically, it was argued that a legal framework should be devised setting out 'strictly defined circumstances' under which terminally ill individuals will be assisted to die with the support of healthcare professionals and by means of robust upfront safeguards to prevent 'inappropriate requests falling outside the eligibility criteria'.[16] The Commission, in addition, referred to certain 'key elements' deemed essential when considering a statutory change in the law; examples include clearly defined eligibility criteria, a good level of care and support services, and 'properly trained health and social care staff'.[17] The Commission's

12 Commission on Assisted Dying 2012 Report, pp. 2, 37.
13 *Ibid.*, p. 39.
14 Demos, *The Report of the Commission on Assisted Dying*, www.demos.co.uk/files/476_CoAD_FinalReport_158x240_I_web_single-NEW_.pdf?1328113363 (accessed 10 September 2016).
15 Commission on Assisted Dying 2012 Report, p. 19.
16 *Ibid.*, p. 20.
17 *Ibid.*

Report led to the drafting of a new piece of legislation by the All Party Parliamentary Group ('APPG') on Choice at the End of Life and Dignity in Dying in 2013, the Assisted Dying Bill ('ADB'). A revised version of the Bill was presented in the House of Lords in May 2013 but run out of time during the 2013-14 parliamentary session.[18] The Bill has since been re-introduced, amended and has been through some parliamentary scrutiny in both Houses of Parliament. It is further discussed later in this article.

The Commission's findings were widely referenced in several parts of the prominent *Nicklinson* case in 2014, discussed below.[19] This shows that, despite the fact that most of the parties involved with the Commission have some interest or previous involvement with the legalisation debate, the Commission's Report is a credible piece of research that should be used as a basis to investigate the current law on assisted suicide and its functionality. The quality of the Commission's Report is also supported by the fact that all Commissioners had expertise relevant to end-of-life issues, as well as the fact that the Commission comprised both genders – six males and five females – of a diverse age range, background and professional qualifications that demonstrates that the investigation was thorough and well-balanced.[20] Therefore, the establishment of the Commission in 2010, the publication of its Report in 2012, and the drafting of the ADB in 2013 are here considered significant developments for the legal and policy status of assisted dying in England and Wales.

2.2. The Nicklinson Saga

The *Nicklinson* case was another significant development for the UK as regards assisted dying. The case raised important moral and ethical, as well as constitutional questions on the relationship and role of the domestic courts and the UK Parliament, the power and future of human rights law in the UK, and the law and practice at the end of life. In June 2014, the Supreme Court issued a direct challenge to the UK Parliament to consider the relaxation or reform of the assisted suicide law. The Justices of the Supreme Court warned that in case of non-intervention by Parliament, the Court 'might step in' and issue a 'declaration of incompatibility' under the Human Rights Act 1998 ('HRA').

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18 UK Parliament, Assisted Dying Bill [HL] 2013-14, http://services.parliament.uk/bills/2013-14/assisteddying.html (accessed 10 September 2016).

19 *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) v. The Director of Public Prosecutions; R (on the application of AM) v. The Director of Public Prosecutions* [2014] UKSC 38, [14], [53-54], [88], [121-123], [175], [185], [224-225].

20 See, for instance, a comparison with the criticism relating to the Commission on a Bill of Rights of 2011.

Mr Tony Nicklinson, a man in his late 50s, became paralysed and unable to speak following a stroke (locked-in-syndrome).[21] He communicated by blinking and by limited head movements. He requested that a doctor terminate his life on grounds of necessity. He essentially requested voluntary active euthanasia, a practice distinct from assisted suicide (Suicide Act 1961) prohibited under the criminal law of murder. Alternatively, he was prepared to commit suicide by means of a machine invented by Philip Nitschke, an Australian doctor, which can be loaded with a lethal drug and digitally activated by the individual. Mr Nicklinson also requested a declaration (of incompatibility) that the law of murder and/or assisted suicide is incompatible with Article 8 of the European Convention of Human Rights ('ECHR'), the right to respect for his private and family life, as both voluntary active euthanasia and assisted suicide are not permitted.[22] Mr Nicklinson was joined by a man known to the courts only as 'Martin', a 47-year-old who suffered brainstem stroke and became quadriplegic. He was similarly only able to communicate by slight head and eye movements. He requested that the DPP clarifies the Policy on assisting suicide on compassionate grounds or alternatively, a declaration (of incompatibility) that the law on assisted suicide is incompatible with Article 8 of the ECHR.[23]

All arguments put forward by Mr Nicklinson and 'Martin' failed in the High Court.[24] For Mr Nicklinson, the High Court held that to permit voluntary active euthanasia (doctor terminating life) would be to go against the will of the UK Parliament by creating a new defence for murder. This, the Court held, would be a major change in an area with strongly held and conflicting views and with Parliament repeatedly rejecting change.[25] On the matter of the declaration, the Court noted that it is within the discretion of the UK Parliament to legislate on controversial matters such as euthanasia and assisted dying, and that even a blanket prohibition is compatible with the Convention as previously held by the Strasbourg court. In other words, Article 8 cannot be interpreted to require the legalisation of voluntary active euthanasia as this would be both inconsistent with what Strasbourg previously said, and with the proper role of the Parliament in each of the Member States of the Council of Europe.[26] In relation to 'Martin's' first claim Mr McGuinness, on behalf of the DPP, commented that it will be unconstitutional for the Supreme Court to order the DPP to further clarify his Policy; it would mean 'crossing a line which constitutionally he should not be

21 *Tony Nicklinson v. Ministry of Justice* [2012] EWHC 304 (QB), [3].
22 *Ibid.*, [5]. His third ground for a declaration that the current law and practice fail adequately to regulate the practice of active euthanasia in breach of Article 2 of the ECHR was not accepted.
23 *Ibid.*, [8-10].
24 *Ibid.*
25 *Ibid.*, [84], [87].
26 *Ibid.*

required to cross'.[27] As regards the second claim, the Court made the same argument as with Mr Nicklinson.[28] Following the High Court's decision, Mr Nicklinson refused all food and died.[29]

In 2013, Mrs Jane Nicklinson joined the legal proceedings and continued her husband's legal claim this time relying exclusively on the incompatibility argument under Article 8 of the ECHR.[30] Mr Paul Lamb, a 57-year-old man who became paralysed following a car accident, also joined the proceedings with a claim identical to Mr Nicklinson. The Court of Appeal upheld and repeated the High Court's arguments.[31] Section 2(1) was fully compatible with Article 8(2).[32] 'Martin's' claim was however successful. The Policy was held not to be sufficiently clear, in particular in relation to healthcare professionals who may, for compassionate reasons, be willing to provide assistance. The Court held that the requirement of legality[33] under Article 8(2) was not satisfied.[34] The case subsequently moved to the Supreme Court which examined two questions: whether Section 2(1) of the Suicide Act 1961 violated Article 8 of the ECHR (or HRA), and whether the Policy should indeed be clarified.[35] The second point was this time appealed by the DPP following the Court of Appeal's decision. It is argued here that the Supreme Court's judgment shows significant development in judicial thinking on assisted dying in England and Wales.

Before the Supreme Court, 'Martin' argued that the lack of clarity of the DPP's Policy, especially in relation to the potential involvement of healthcare professionals, failed to satisfy the foreseeability and accessibility requirements of Article 8(2).[36] The Court disagreed and overruled the Court of Appeal's decision. It was inappropriate 'to dictate' to the DPP what the contents of the Policy ought to be.[37] The Court advised, however, that any confusion should be

27 *Ibid.*, [137-138].
28 *Ibid.*, [148].
29 'Right-to-die man Tony Nicklinson dead after refusing food', *BBC News* (22 August 2012) www.bbc.co.uk/news/uk-england-19341722 (accessed 25 August 2016).
30 *R (on the application of Nicklinson) v. Ministry of Justice* [2013] EWCA Civ. 466. Following her husband's death, the necessity ground became purely academic.
31 *R (on the application of Jane Nicklinson), Paul Lamb v. Ministry of Justice; R (on the application of AM) v. DPP* [2013] EWCA Civ 961, [54-56].
32 *Ibid.*, [88].
33 See *Sunday Times v. UK* (1979) 2 EHRR 245, [49]; *Hasan and Chaush v. Bulgaria* (2002) 34 EHRR 1339, [84].
34 *R (on the application of Jane Nicklinson), Paul Lamb v. Ministry of Justice; R (on the application of AM) v. DPP* [2013] EWCA Civ. 961, [140], [148].
35 *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38, [1-2].
36 Lord Neuberger referred to the speeches of Lord Dyson MR, and Elias LJ in the Court of Appeal in *Nicklinson* [57], [140].
37 *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38, [141], [144-145].

clarified by the DPP.[38] It was in October 2014 that the Policy was revised, a change that seems to imply that a healthcare professional who provides assistance to a patient is more likely to be prosecuted *only* if there is a relationship of care and influence with the victim.[39] This has already been the subject of criticism by anti-euthanasia groups as essentially decriminalising assisted suicide 'by the back door'. Indeed, in April 2015, the High Court granted permission for a judicial review of the DPP's amendment as a result of a claim by a woman who suffers from crippling nerve condition.[40] Nikki Kenward, the claimant, argued that the amendment makes the law 'too liberal'. In December 2015, the High Court unanimously ruled that the case lacked merit, and dismissed the application for judicial review.[41] In *Nicklinson*, the DPP's appeal was therefore allowed, and 'Martin's' cross-appeal dismissed.

Before the Supreme Court, Mrs Nicklinson and Mr Lamb argued that Section 2(1) is a disproportionate, unjustifiable interference with the Article 8 rights of individuals making a voluntary, clear, settled, and informed decision to die and require assistance solely on the basis of physical incapacity.[42] The Supreme Court unanimously held that, according to Strasbourg jurisprudence, even a blanket ban on assisted suicide is within the margin of appreciation of the Member States of the Council of Europe.[43] The Supreme Court, however, noted that it was 'constitutionally open' to domestic courts to discuss whether Section 2(1) violated Article 8[44] and was 'institutionally appropriate', despite the morality and controversy around the subject.[45] Lord Neuberger indeed noted that courts *can,* under the HRA, hold Section 2(1) incompatible with the ECHR.[46] The final conclusion of the Court, however, was that a declaration of incompatibility was, at the time, inappropriate as the UK Parliament should be given the opportunity to consider and discuss the functionality and rationale of Section 2(1).[47] Lord Neuberger noted that amending Section 2(1) raises difficult, controversial, and

38 *Ibid.*, [143].
39 'Policy for Prosecutors in respect of Cases of Encouraging or Assisting Suicide', (February 2010, updated October 2014) www.cps.gov.uk/publications/prosecution/assisted_suicide_Policy.pdf (accessed 28 July 2016).
40 Frances Gibb, 'Alison Saunders faces challenge over "dilution" of assisted dying guidelines', *The Times* (29 April 2015), www.thetimes.co.uk/tto/law/article4425911.ece?CMP=OTH-gnws-standard-2015_04_29 (accessed 25 May 2016).
41 *R (on the application of Kenward and another) v. Director of Public Prosecutions and another (AM intervening)* [2015] EWHC 3508 (Admin).
42 *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38, [55].
43 *Ibid.*, [66] *per* Lord Neuberger, [154] *per* Lord Mance, [218] *per* Lord Sumption, [267] *per* Lord Hughes, [339] *per* Lord Kerr.
44 *Ibid.*, [76] *per* Lord Neuberger, [191] *per* Lord Mance, [299] *per* Lady Hale, and [326] *per* Lord Kerr.
45 *Ibid.*, [90-98], [259] *per* Lord Hughes.
46 *Ibid.*, [100].
47 *Ibid.*, [113], [115-116].

sensitive questions, with moral and religious dimensions meaning that the courts need to take a cautious approach.[48] Nonetheless, arguments raised by some of the Justices of the Supreme Court, and especially by Lord Neuberger are considered below to show that judicial thinking as regards assisted dying in the UK is evolving despite the unhelpful – for the claimants – conclusion of the case.

Lord Neuberger, most notably, suggested that Section 2(1) 'adversely impinges' on the personal autonomy of some individuals, and at the same time 'indirectly cuts short their lives' by forcing them to die, while still physically able to do so.[49] Lord Neuberger made further direct criticism against the current law: the interference with the applicants' Article 8 right is 'grave', he noted, the arguments in favour of the current law are 'by no means overwhelming', the official attitude to assisted suicide in practice comes 'close to tolerating it in certain situations', and the rational connection between the aims and effects of Section 2 are 'fairly weak'.[50] Lord Neuberger suggested that a possible assisted dying framework may include a judicial oversight of the procedure as an additional safeguard. A judge or another independent assessor, he suggested, could make an advance assessment of a voluntary, clear, settled, and informed wish, thus allowing an assisted suicide to 'be organised in an open and professional way', providing greater and more satisfactory protection for 'the weak and vulnerable'.[51] This system, he argued, is preferable to the DPP investigating after death whether the assistance was carried out on compassionate grounds.[52] Lord Neuberger's suggestion was indeed endorsed by the House of Lords when discussing the ADB in November 2014.[53] The President of the Court gave clear notice to the government; 'Parliament now has the opportunity to address the issue of whether section 2 should be relaxed or modified, and if so how, in the knowledge that, if it is not satisfactorily addressed, there is a real prospect that a further, and successful, application for a declaration of incompatibility may be made'.[54] Whilst Lord Neuberger, Lord Wilson, and Lord Mance acknowledged that the Supreme Court *can* make a declaration of incompatibility, they deferred the issue to Parliament to consider.[55] Lord Clarke[56] and Lord Sumption[57] said that they may intervene if Parliament decides not to, and Lord Reed and Lord

48 *Ibid.*, [116]
49 *Ibid.*, [96].
50 *Ibid.*, [111].
51 *Ibid.*, [107-108].
52 *Ibid.*
53 See later discussion on ADB.
54 *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38, [118].
55 *Ibid.*, [190-191].
56 *Ibid.*, [293].
57 *Ibid.*, [233].

Hughes said that the matter is solely for the UK Parliament to consider.[58] Lady Hale and Lord Kerr were the only Justices who delivered dissenting judgments supporting a declaration of incompatibility in the present case.[59] Lady Hale remarked that a declaration of incompatibility will allow Parliament to 'cure the incompatibility' by a remedial order under Section 10 of the HRA, or by an Act of Parliament, or do nothing.[60] The fact that two of the most senior judges in the country were prepared to issue a declaration of incompatibility for Section 2(1) is crucial. Elizabeth Wicks notes that the options presented by Lady Hale do not explain the reluctance of the Justices of the Supreme Court to actually 'present Parliament with these options'.[61] Lord Kerr noted that if a legal provision is incompatible with human rights it is the duty of the courts under the HRA to say so.[62] Lord Kerr further argued that the DPP should not be forced to apply Section 2(1) in 'a way that avoids an actual violation of the Convention'.[63] Lady Hale agreed with some of the other Justices in the case that an assisted dying framework will be sufficient to protect the vulnerable, more efficient than any prosecution Policy, and able to solve problems in advance instead of 'relying on *ex post facto* executive discretion to solve the problem'.[64] Despite the general reluctance in issuing the declaration, a number of the other Justices were similarly critical of the law. It is argued here that despite the clear dissent of only two of the Justices, the real shift in judicial thinking is evident by the observations of a number of judges in the case. Lord Mance, for instance, noted that individual patients in the UK *are* currently assisted in dying *without* prior review or any safeguards.[65] Lord Wilson favoured the judicial oversight argument of Lord Neuberger; British judges are able to ascertain a 'genuine intention' to die by assessing whether the request is 'voluntary, clear, settled and informed'.[66] Most notably, Lord Wilson listed 18 factors which the Court 'might wish to investigate' in identifying a genuine intention. Lord Mance also suggested a prior review framework (involving both the courts and the doctors) that could distinguish between 'a distinct and relatively small group' of individuals who are able to prove that their decision is a free and informed one.[67]

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58 *Ibid.*, [298].
59 *Ibid.*, [299-300], [317], [356].
60 *Ibid.*, [300].
61 Elizabeth Wicks, 'The Supreme Court Judgment in Nicklinson: One Step Forward on Assisted Dying; Two Steps Back on Human Rights', *Medical Law Review* (2014), 1-13.
62 *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38, [327], [342].
63 *Ibid.*, [365].
64 *Ibid.*, [314-316].
65 *Ibid.*, [186].
66 *Ibid.*, [250]. Lord Kerr at [355] also agreed.
67 *Ibid.*, [186].

It is therefore very hard to avoid the conclusion that judges are now dealing not with *whether* the law should change, but with *how* the law should change. The *Nicklinson* judgment is unique as it recognises the flaws of the current prohibition on assisted suicide in a judgment which is indeed the most sympathetic ever seen in the UK as regards assisted dying.[68] This is true despite the fact that in July 2015, Mrs Nicklinson and Mr Lamb had their case declared inadmissible by the Strasbourg court.[69] The various schemes suggested by some of the Justices, the strong criticism of the current law in the case, and the two dissenting judgments show that judicial thinking on assisted dying in the UK is changing. This is, without doubt, an important step in the pathway towards reform.[70]

2.3. The Assisted Dying Bill

The ADB is the closest the UK has ever been to legalisation of assisted dying. The Bill was a Private Members' Bill introduced first in the House of Lords on 15 May 2013 by Lord Charles Falconer.[71] On the day, the Bill went through its first reading, a formality signifying the beginning of the parliamentary procedure, but did not proceed further as the 2013-14 session prorogued. The Bill would enable competent terminally ill adults to be provided at their request with assistance to end their own life (section 1(1)).[72]

The Bill would have allowed a person to receive assistance if the person had clear and settled intention to die, had made the relevant declaration, was aged 18 or over, and had been resident in England and Wales for at least a year before the request (section 1(2)). A terminally ill person is one diagnosed by a registered medical practitioner as having an 'inevitably progressive condition' which cannot be reversed by treatment and as a result, the person is expected to die within six months (section 2(1)). A person has a clear and settled intention if the person has made and signed a declaration in the presence of a 'witness' who is not a relative or directly involved in the person's care or treatment (section 3). The 'witness' must sign the declaration in the presence of the person. The declaration must then be countersigned by 'the attending doctor',[73] the registered medical

68 Wicks, 'The Supreme Court judgment in Nicklinson' 2014 (n. 54).

69 HUDOC, Case concerning UK ban on assisted suicide and voluntary euthanasia declared inadmissible, http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5133986-6337784&filename=003-5133986-6337784.pdf (accessed 20 October 2016).

70 See further on Nicklinson: Alexandra Mullock, 'The Supreme Court decision in Nicklinson: Human rights, criminal wrongs and the dilemma of death', *Professional Negligence* (2015).

71 UK Parliament, Assisted Dying Bill [HL] 2013-14, http://services.parliament.uk/bills/2013-14/assisteddying.html (accessed 25 June 2016).

72 UK Parliament, Assisted Dying Bill (HL Bill 24), www.publications.parliament.uk/pa/bills/lbill/2013-2014/0024/lbill_2013-20140024_en_1.htm (accessed 25 June 2016).

73 The General Practitioner (GP) of the person or a specialist consultant.

practitioner from whom the person has initially requested assistance, and the 'independent doctor',[74] another registered medical practitioner who is not a relative, partner or colleague of the 'attending doctor'. Before signing, both need to separately and independently examine the person and the person's medical records to confirm that the person is terminally ill, has the capacity[75] to make an end of life decision, and has clear and settled intention to end life. The decision also needs to be voluntary and informed, which means that the decision must be free from any coercion or duress.[76] The declaration can be revoked at any time by the person who made it. No person other than the person receiving the assistance would be able to initiate the procedure of requesting assistance in dying.

If the declaration is valid, the attending doctor prescribes the medicines (section 4(1)) which are delivered only to the person for whom prescribed. Medicines are delivered if the person does not revoke the declaration, and only after a period of at least 14 days following the validation of the declaration (section 4(2)). An assisting health professional[77] can prepare the medicine for self-administration by the person, prepare a device enabling self-administration, or assist the person to ingest or otherwise self-administer.[78] The decision to self-administer and the final act *must* however be taken by the person (section 4(4)).[79] The assisting health professional must remain with the person until the person self-administers and dies, or the person decides not to proceed (section 4(6)). The Bill also includes a conscience clause (section 5).

2.4. The Assisted Dying Bill: House of Lords, Second Reading

The ADB was re-introduced to the House of Lords on 5 June 2014.[80] The next stage, the Second Reading is the first opportunity for the House to debate the purpose of a Bill, to express concerns, and highlight proposed amendments. The Second Reading of the ADB took place on the 18 June 2014 with a record number of 133 speakers (and lasting for 10 hours).[81] The Lords

74 The independent doctor must be from a different practice or clinical team and 'suitably qualified' (as specified in regulations) in diagnosing and managing terminal illnesses.

75 As defined in the Mental Capacity Act 2005.

76 Following full disclosure of palliative, hospice and other available care.

77 The attending doctor, or a doctor or nurse authorised by the attending doctor.

78 For instance, by placing medication into a tube or syringe driver.

79 Self-administration usually means swallowing the medication; however, a person can use a feeding tube, syringe driver or other mechanism. The person however *must* take the final act, for instance, by activating the syringe driver.

80 UK Parliament, Assisted Dying Bill [HL] 2014-15, http://services.parliament.uk/bills/2014-15/assisteddying.html (accessed 15 June 2016).

81 UK Parliament, Assisted Dying Bill [HL], second reading, www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140718-0001.htm#14071854000545 (accessed 30 June 2016).

discussed a plethora of issues and were divided on a number of vexed questions: the adequacy of the proposed safeguards, difficulties of diagnosis and prognosis, palliative care, the slippery slope argument, autonomy, compassion, the role of healthcare professionals, etc. The analysis here focuses on two of these questions: the terminal illness eligibility criterion, and the involvement of healthcare professionals.

A number of speakers in the House of Lords underlined problems with the terminal illness definition. Lord MacKenzie, a retired nurse who spoke against the Bill, challenged the principle of compassion promoted by the drafters of the ADB as the terminal illness eligibility criterion means that non-terminally ill patients would be excluded. Indeed, the majority of individuals affected by the current prohibition on euthanasia and assisted suicide – as evident from the high-profile right to die cases in the UK – are not terminally ill and thus would not benefit from a terminal illness eligibility framework.[82] Lord Morrow similarly noted that it is highly problematic that non-terminal but distressing, incurable conditions will be excluded.[83] Baroness Symons expressed strong opposition to the Bill highlighting that a definition of terminal illness was impossible in the 1990s, much less today, considering the advances in medical science. Medical advances mean that what is incurable today, may be curable tomorrow, making the definition of terminal illness almost impossible. Certain conditions and illnesses, for instance AIDS, are today manageable, if not treatable. Moreover, Baroness Finlay of Llandaff highlighted the difficulties in making an accurate prognosis. Prognosis is an essential component of a terminal illness definition, but has an almost impossible relationship with terminal illness. Prognosis has been challenged by scientific evidence as highly inaccurate. A leading study by Christakis and Lamont, for example, shows that only 20% of prognoses are accurate.[84] It is unfortunate that possibly the most significant provision of the Bill, the terminal illness eligibility criterion, was not properly debated further in the House of Lords.

The second question discussed here is the involvement of healthcare professionals with assisted dying, a question which was unfortunately also not properly debated by the Lords. Healthcare professionals are an essential component of the proposed assisted dying framework as evident from the provisions of the

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82 *R (on the application of Purdy) v. DPP* [2009] UKHL 45 (multiple sclerosis, not terminal), *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38 (locked-in-syndrome, quadriplegia, paralysis, not terminal).

83 Similar argument by Sheila McLean, *Assisted Dying: Reflections on the need for law reform* (Routledge-Cavendish 2007), 179-180; and Margaret Brazier, 'Euthanasia and the law', *British Medical Bulletin* (1996), 322.

84 Nicholas A. Christakis/Elizabeth B. Lamont, 'Extent and Determinants of Error in Doctors' Prognoses in Terminally Ill Patients: Prospective Cohort Study', *British Medical Journal* 320 (2000), 469-473.

Bill.[85] Baroness Finlay of Llandaff was one of the few speakers who made reference to healthcare professionals. She referred to their daily workload and hectic schedules to highlight that the majority are unaware of the circumstances of their patients. Moreover, in the UK, unlike the Netherlands for instance, many individual patients regularly change their GPs, a consideration most significant when it comes to the assessment of capacity, coercion, pressure, and influence. That most of the individual patients in the UK do not have a regular GP means that most GPs do not have an established, pre-existing relationship with their parents. Interestingly, Lord Empey noted that most healthcare professionals do not possess the necessary skills and experience to do what the Bill requires them to do. Baroness Murphy was one of the speakers who argued that some doctors *are* actually willing to receive relevant training for assisted dying. Lord Davies, the Earl of Sandwich, and Baroness Richardson spoke about an element of hypocrisy within the medical profession as healthcare professionals already intervene, passively or actively, at various critical points in the treatment or care of patients. In the words of Baroness Richardson, 'we manipulate conception, we permit abortion, we interfere with the processes of birth and we postpone death by surgical intervention and drug therapy, yet we refuse to allow the means which are there to reduce the length of the dying process, even when days of suffering and distress are not alleviated by devoted care'. While I agree that healthcare professionals are already intervening in various stages in the treatment or care of their patients, and that some are indeed willing to receive relevant training, the opposition by most medical professional bodies to euthanasia and assisted dying (including the British Medical Association) and the argument that legalisation may impact on the doctor-patient relationship cannot be ignored. It is therefore suggested that in a future assisted dying proposal that relies so heavily on healthcare professionals, healthcare professionals need to be actively involved in sharing their practical experience as regards diagnosis, prognosis, capacity, voluntariness. As regards the ADB, the Lords were in general supportive of the ADB proceeding to the Committee stage. The Bill indeed proceeded to Committee on the 7 November 2014 with 175 amendments to be considered and voted upon.

2.5. The Assisted Dying Bill: House of Lords, Committee Day 1[86]

There were fundamentally two questions for consideration by the Lords on the 7 November 2014: first, should judges be used as an additional

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85 See 2.3. above.

86 UK Parliament, Assisted Dying Bill [HL] Committee (1st day), www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141107-0001.htm#14110775000728 (accessed 27 July 2016).

safeguard for assisted dying alongside healthcare professionals, and if so, what should be the form of this judicial involvement? The Lords voted in favour of Lord Pannick's amendment which provided that the person, in addition to the two doctors, must satisfy the Family Division of the High Court that a voluntary, clear, settled and informed decision to end life exists. Lord Pannick argued that High Court judges already make these kind of decisions, including for example cases of withdrawing or withholding life-sustaining treatment, or the separation of conjoined twins. Lord Carlile, despite having his own proposal for amendment outvoted, agreed that judges, and especially High Court judges, are experts on issues of moral, ethical, and philosophical importance, thus most suitable to supervise the assisted dying procedure.

Lord Framlingham was one of the Lords who challenged Lord Pannick's proposal; involving the courts, he argued, will result in significant delays and negatively impact on patients, their family, and friends. Lord Carlile, while also concerned with the same questions, argued that creating a model within the judicial system which is both flexible to deal with extreme cases (for instance, dealing with cases in an appropriate, compassionate, and efficient manner), and at the same time sustain its long established principles (for instance, of justice, fairness, impartiality) would make the UK 'an exemplar to the world'. Baroness Tonge was also rightly concerned with the cost of the legal proceedings for the patient and his or her family, as well as the availability of legal aid. Most useful were the remarks of Baroness Butler-Sloss, a former president of the Family Division of the High Court who noted that, if urgent, extreme cases can be dealt within a day, including the appeal. In her own words, it will be 'up to the President of the Family Division to treat all these cases with the utmost seriousness and up to the government of the day as to whether legal aid will be given'. Baroness Mallalieu was also confident that 'selfishness' – greedy relatives who put pressure on sick relatives to end their lives against their wishes – and 'selflessness' – feelings of burden and hopelessness by patients – could effectively be eradicated by judges; 'our judiciary is still, thankfully, totally respected – who by training and expertise is qualified to judge pressure, coercion and genuine or false wishes, and to examine or evaluate evidence'. Even so, the Baroness expressed concerns in relation to the cost of legal proceedings. Under the current legislative and policy framework in England and Wales, she argued, financially able individuals travel abroad to be assisted in dying; under the proposed judicial model, individuals will again need to be able to pay to go through a 'bureaucratic, legalistic obstacle' to be assisted in dying. Similar views were expressed by Lord Phillips, who interestingly proposed that county court judges or judges of the magistrate courts can instead be used to reduce costs. Baroness Wheatcroft generally disagreed with the amendment; judicial involvement will undermine the principles promoted by the Bill. Assisted dying is not about medical or judicial decisions, she noted, but with the individual choosing death over life and with compassion.

Overall, it is significant that the Lords discussed judicial involvement as a possible safeguard for assisted dying. Similar to the *Nicklinson* case, it shows that we are now dealing not with *whether* the law should change, but with *how* the law can change. It is argued here that, if appropriate steps are taken to deal with the concerns of some of the Lords as regards delays and costs, judicial oversight is a pragmatic consideration for safeguarding the assisted dying procedure and an additional safeguard to protect potentially 'vulnerable' groups and minimise abuse. It is also essential that further research is carried out to ascertain the various practical considerations including, for instance, the possible duration of assisted dying case proceedings, or an estimate of the legal costs required, as well as guarantees that there would be support for the patient and his or her relatives and friends throughout the procedure. The ADB moved to a second day of Committee in 16 January 2015.

2.6. The Assisted Dying Bill: House of Lords, Committee Day 2[87]

The most important amendment discussed during the second day of Committee was Amendment 12B which proposed a change of the Bill's name from 'Assisted *Dying* Bill' to 'Assisted Suicide Bill'.[88] Baroness O'Neill, for instance, spoke in favour of the amendment highlighting that the Bill aims to revise the Suicide Act 1961, and therefore should include the word 'suicide'. Lord Brennan agreed that the law should 'speak the truth' by using the 'right words'. The majority of the Lords, however, spoke against the amendment. Perhaps the most powerful speech was given by Lord Cashman. Lord Cashman commented that following the death of his husband from cancer, he himself contemplated suicide. This was, he noted, an example of a healthy man contemplating 'suicide', and of 'a dying man', his husband, destined for 'dying'. The amendment was rightly defeated by 107 to 180. There was no further debate on the ADB by the Lords.

It is argued here that the amendment was an attempt to hinder the process of the Bill by focusing on its title at the expense of a discussion on its substance. In this article, I have used the term assisted suicide *only* when referring to the current law (which indeed uses the term). The term 'assisted dying' is preferred as it implies death as an outcome of a *process*, a process that will involve a number of parties – the patient, healthcare professionals, the High Court – and safeguards, and does not necessarily need to lead to death, therefore allowing patients to withdraw at any time. Dying individuals do not want to die, and as

87 UK Parliament, Assisted Dying Bill [HL] Committee (2nd day), www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150116-0001.htm#15011659001145 (accessed 29 July 2016).
88 Emphasis added.

often argued, are the least suicidal individuals among society. It is unfair to label any individual that suffers from a terminal, or other, condition or illness as 'suicidal'. Suicide is, if successful, a single, isolated and un-safeguarded *act*. Case law also verifies that 'assisted suicide' also includes non-medical suicides.[89] Section 2(1) of the Suicide Act 1961 indeed covers a variety of situations of different moral culpability, from encouraging suicide for inheritance purposes, to assisting suicide for alleviating pain and suffering of a loved one.[90]

2.7. The Assisted Dying Bill No. 2: House of Commons, Second Reading

The ADB No. 2 was introduced in the House of Commons in June 2015 by Labour MP Rob Marris.[91] Marris topped the ballot for Private Members' Bills, with Lord Falconer only securing the 21st place.[92] Marris used Lord Falconer's Bill to draft the ADB No. 2. Similar to the Second Reading in the House of Lords, the debate was passionate and both sides drew on personal experiences and experiences of relatives or friends. The ADB No. 2 was unfortunately hastily rejected by the House of Commons by 330 to 118 votes on 11 September 2015. It was the first time in 20 years the House of Commons had the chance to debate assisted dying.[93] The Commons' vote was overwhelming, perhaps indicating that another assisted dying proposal is unlikely in the foreseeable future.[94] However, even assuming that the vote in the House of Commons was positive, the chances of the Bill becoming law would in any case have been low because of the lack of governmental support for assisted dying at the time.[95]

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89 See for example *A-G v. Able* [1983] 3 WLR 845.

90 David Ormerod, *Smith and Hogan's Criminal Law* (14th edn. Oxford University Press 2015); and *R v. Howe* [2014] EWCA Crim 114. The defendant in the case received ten years in detention in a Young Offenders' Institution for encouraging or assisting suicide after buying and providing the vulnerable victim with petrol which the victim used to set himself on fire.

91 UK Parliament, Assisted Dying (No.2) Bill, www.publications.parliament.uk/pa/bills/cbill/2015-2016/0007/16007.pdf (accessed 15 August 2016).

92 'Lord Falconer: government must clean up assisted dying legal mess', *The Guardian* (1 June 2015) www.theguardian.com/society/2015/jun/01/lord-falconer-government-assisted-dying-legal-mess (accessed 20 October 2016).

93 UK Parliament, Assisted Dying (No. 2) Bill Second Reading, www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150911/debtext/150911-0001.htm#15091126000003 (accessed 15 August 2016).

94 Only recently, however, another Bill was introduced in the House of Lords by Lord Hayward on 9 June 2016 (Assisted Dying Bill [HL] 2016-17). The Second Reading of the Bill is yet to be scheduled according to the Parliament's website. However, it is very unlikely that there would be time for a debate because of the position of the Bill in the Private Members Bill's ballot list.

95 'Assisted dying: David Cameron opposes any move to legalise', *The Guardian* (10 September 2015), www.theguardian.com/uk-news/2015/sep/10/david-cameron-opposes-any-move-to-legalise-assisted-dying (accessed 20 October 2016).

3. Concluding Remarks

This article discussed recent developments on assisted dying in England and Wales and in particular, the ADB. Although the ADB's progress in Parliament was significant, legislators again failed to find the time for thorough scrutiny. Even worse, especially as regards the House of Commons, the Common's overwhelming vote shows that the Commons reject the very idea of change. This comes into stark contrast with the views of the majority of the Justices in the Supreme Court in *Nicklinson* that not only accepted that the law needs to change, but also suggested ways in which the law can be changed.

The article suggests that in a future assisted dying proposal, if any, its drafters, and later the UK Parliament and the government, could consider a 'protection-choice balance'. The debates in the House of Lords and the House of Commons, as well as the Report of the Commission on Assisted Dying in 2012 indicate that the terminal illness eligibility criterion is perhaps the most difficult issue when dealing with a terminal illness-based assisted dying framework. It is indeed problematic that proponents of assisted dying talk about compassion, choice, autonomy, dignity but at the same time suggest that assisted dying should only be available to the terminally ill. The most recent high-profile right-to-die cases in the UK[96] indeed show that the claimants were not terminally ill and therefore would not have benefited under a terminal illness-based framework.[97] As was noted by some commentators[98] and by Lord Neuberger in *Nicklinson*, there is indeed more justification in allowing individuals access to assisted dying if they have 'the prospect of living for many years a life that they regarded as valueless, miserable and often painful, than if they have only a few months left to live'.[99] Other than the two arguments above (the irrationality of excluding the non-terminally ill and Lord Neuberger's argument relating to life expectancy), the terminal illness criterion suffers from two further problems. First, the definition of terminal illness is very likely to be outdated within years because of advances in medicine. What is terminal today may be non-terminal tomorrow, and what is incurable today may be curable tomorrow. Secondly, there are huge problems with prognosis, an essential element of a terminal illness definition. Research suggests that prognoses are often inaccur-

96 *R (on the application of Purdy) v. DPP* [2009] UKHL 45 (multiple sclerosis, not terminal), *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38 (locked-in-syndrome, quadriplegia, paralysis, not terminal).

97 See further: Khawar Qureshi/Catriona Nicol, 'Assisted Dying Bill: Time to reflect', *A New Law Journal* (2014).

98 Samantha Halliday, 'Comparative Reflections upon the Assisted Dying Bill 2013: A plea for a more European approach', *Medical Law International* (2013).

99 *R (on the application of Nicklinson and another) v. Ministry of Justice; R (on the application of AM) (AP) v. DPP* [2014] UKSC 38, [122].

ate, with doctors typically overestimating the time left for patients.[100] If healthcare professionals are unable to accurately predict the time left for patients, how is the terminal illness criterion to be sustained in practice?

The 'protection-choice balance' argument that is promoted in this article may be one way to evade problems with the terminal illness criterion.

A future assisted dying proposal could aim for a balance between protection and choice that can be achieved by means of robust, but appropriate, safeguards, and a *laissez-faire* approach towards the 'six months period' (ADB and ADB No. 2), or the 'twelve months period' (the Commission on Assisted Dying). This could potentially solve problems with the terminal illness criterion discussed above. As regards the safeguards, the judicial oversight amendment in the ADB could be an additional safeguard that can be used in a future assisted dying proposal. Along with the two healthcare professionals, judges could be integrated into the assisted dying procedure to strengthen the safeguards and place the emphasis on 'protection'. By taking a *laissez-faire* approach towards the life expectancy requirement, the assisted dying framework will take a flexible approach towards the life expectancy requirement ('choice'), but at the same time, provide for robust safeguards. It is important, however, that the safeguards are both robust and 'appropriate'; appropriate in the sense that they should not hinder the individual from making an assisted dying request. It is also important to consider the delays and costs, as well as the impact of the legal proceedings on the patient and his or her relatives and friends. To achieve the desired balance between protection and choice promoted in this article, the UK Parliament and the government must also ensure that all parties involved, especially the healthcare professional bodies and High Court judges, are actively engaged in the discussion.[101]

To conclude, despite the House of Commons' overwhelming vote against the ADB No. 2, the assisted dying debate is far from concluded. Sheila McLean is absolutely right to argue that, irrespective of the prohibition on euthanasia and assisted dying 'people will continue to hold strong views about assisted dying and those who are driven to find assistance will continue to seek, and sometimes obtain, assisted deaths, triggering legal and social debate'.[102] It is certainly interesting to see the courts' response in a *Nicklinson*-like case in the future especially on the matter of the declaration of incompatibility, always considering the relentless government plan to repeal the HRA. The current legal challenge by the terminally ill former lecturer Noel Conway (67) who suffers from motor neurone disease is also a significant development for the

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100 Christakis/Lamont, 'Extent and Determinants', 2000 (n. 77), 469-473.

101 See further: Qureshi/Nicol, 'Assisted Dying Bill', 2014 (n. 90), and Alexandra Mullock, 'The Assisted Dying Bill and the role of the physician', *Journal of Medical Ethics* (2015).

102 McLean, *Assisted Dying* 2007 (n. 76), 4.

UK despite its case concerning just terminally ill individuals.[103] In light of the ever increasing numbers of Britons travelling abroad to receive assistance in dying, the potential repeal of the HRA, and the direct challenge of the Supreme Court in *Nicklinson* to the UK Parliament, it is high time that the government promoted, at least, an active discussion on assisted dying. As noted by Lord Falconer, without some form of governmental support and debate time, Private Members' Bills are unlikely to become law.[104] Assisted dying is a pressing and persistent matter that becomes relevant every time a country or state proposes and passes legalisation, every time a case is reported in the news of someone dying isolated and without safeguards, and every time someone travels abroad to receive assistance away from home.

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[103] 'Terminally ill former lecturer challenges UK ban on assisted dying', *The Guardian* (21 March 2017), www.theguardian.com/society/2017/mar/21/terminally-ill-former-lecturer-challenges-uk-ban-on-assisted-dying (accessed 24 March 2017).

[104] 'Lord Falconer: government must clean up assisted dying legal mess', *The Guardian* (1 June 2015), www.theguardian.com/society/2015/jun/01/lord-falconer-government-assisted-dying-legal-mess (accessed 20 October 2016). However, note that major changes to controversial matters, including divorce, homosexuality, and abortion were made through Private Members' Bills.

References list

Books

McLean Sheila, *Assisted Dying: Reflections on the need for law reform*, Routledge-Cavendish, 2007.

Ormerod David, *Smith and Hogan's Criminal Law*, 14th edn. Oxford University Press, 2015.

Journal Articles

Brazier Margaret, 'Euthanasia and the law', *British Medical Bulletin*; 1996: 322.

Christakis Nicholas, Lamont Elizabeth, 'Extent and Determinants of Error in Doctors' Prognoses in Terminally Ill Patients: Prospective Cohort Study' (2000) 320 *British Medical Journal* 469-473.

Halliday Samantha, 'Comparative reflections upon the Assisted Dying Bill 2013: A plea for a more European approach' (2013) *Medical Law International*.

Mullock Alexandra, 'The Assisted Dying Bill and the role of the physician', *Journal of Medical Ethics* (2015).

Mullock Alexandra, 'The Supreme Court decision in Nicklinson: Human rights, criminal wrongs and the dilemma of death' (2015) *Professional Negligence*.

Qureshi Khawar, Nicol Catriona, 'Assisted Dying Bill: Time to reflect' (2014) *A New Law Journal*.

Wicks Elizabeth, 'The Supreme Court judgment in Nicklinson: One step forward on assisted dying; Two steps back on human rights' (2014) *Medical Law Review*.

Reports

Crown Prosecution Service, 'Policy for prosecutors in respect of cases of encouraging or assisting suicide', www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.pdf, accessed 21 September 2016.

Demos, 'The Report of the Commission on Assisted Dying', www.demos.co.uk/files/476_CoAD_FinalReport_158x240_I_web_single-NEW_.pdf?1328113363, accessed 10 September 2016.

DIGNITAS, 'Menschenwürdig leben – Menschenwürdig sterben – Forch-Zürich', http://dignitas.ch/images/stories/pdf/statistik-ftb-jahr-wohnsitz-1998-2014.pdf, accessed 20 September 2016.

DIGNITAS, 'Dignitas members and assisted suicides', https://docs.google.com/spreadsheets/d/1wGnywuF-fD_euq1Bjb88IgI-wbFZtuY7dCmodZ_UbUNE/edit#gid=1&vpid=A2, accessed 20 September 2016.

'Policy for Prosecutors in respect of Cases of Encouraging or Assisting Suicide' (February 2010, updated October 2014) available at www.cps.gov.uk/publications/prosecution/assisted_suicide_Policy.pdf, accessed 28 July 2016.

Cases

A-G v Able [1983] 3 WLR 845.

R (on the application of AM) v GMC [2015] EWHC 2096 (Admin).

R (on the application of Kenward and another) v Director of Public Prosecutions and another (AM intervening) [2015] EWHC 3508 (Admin).

R (on the application of Nicklinson and another) v Ministry of Justice; R (on the application of AM) (AP) v DPP [2014] UKSC 38.

R (on the application of Nicklinson) v Ministry of Justice [2013] EWCA Civ. 466.

R v Howe [2014] EWCA Crim 114.

R (on the application of Purdy) v DPP [2009] UKHL 45.

Tony Nicklinson v Ministry of Justice [2012] EWHC 304 (QB).

ECHR Cases

Hasan and Chaush v Bulgaria (2002) 34 EHRR 1339.

HUDOC, Case concerning UK ban on assisted suicide and voluntary euthanasia declared inadmissible, http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5133986-6337784&filename=003-5133986-6337784.pdf, accessed 20 October 2016.

Sunday Times v UK (1979) 2 EHRR 245.

UK Bills

UK Parliament, Assisted Dying Bill [HL] 2013-14, http://services.parliament.uk/bills/2013-14/assisteddying.html, accessed 25 June 2016.

UK Parliament, Assisted Dying Bill (HL Bill 24), www.publications.parliament.uk/pa/bills/lbill/2013-2014/0024/lbill_2013-20140024_en_1.htm, accessed 25 June 2016.

UK Parliament, Assisted Dying Bill [HL] 2014-15, http://services.parliament.uk/bills/2014-15/assisteddying.html, accessed 15 June 2016.

UK Parliament, Assisted Dying (No.2) Bill, www.publications.parliament.uk/pa/bills/cbill/2015-2016/0007/16007.pdf, accessed 15 August 2016.

UK Parliament, Assisted Dying (No.2) Bill Second Reading, www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150911/debtext/150911-0001.htm#15091126000003, accessed 15 August 2016.

UK Parliament, Assisted Dying Bill [HL] 2016-17, http://services.parliament.uk/bills/2016-17/assisteddying.html, accessed 25 October 2016.

UK Acts

Human Rights Act 1998.

Mental Capacity Act 2005.

Suicide Act 1961.

Non-UK Acts

Bill C-14 2016 (Canada).

The Death with Dignity Act 2015 (District of Columbia).

The End of Life Option Act 2015 (California).

The End of Life Option Act 2015 (Colorado).

Websites

Frances Gibb, 'Alison Saunders faces challenge over "dilution" of assisted dying guidelines', *The Times*, 29 April 2015, www.thetimes.co.uk/tto/law/article4425911.ece?CMP=OTH-gnws-standard-2015_04_29, accessed 25 May 2016.

'Lord Falconer: government must clean up assisted dying legal mess', *The Guardian*, 1 June 2015, www.theguardian.com/society/2015/jun/01/lord-falconer-government-assisted-dying-legal-mess, accessed 20 October 2016.

'Right-to-die man Tony Nicklinson dead after refusing food', *BBC News*, 22 August 2012, www.bbc.co.uk/news/uk-england-19341722, accessed 5 August 2016.

'Terminally ill former lecturer challenges UK ban on assisted dying', *The Guardian*, 21 March 2017, www.theguardian.com/society/2017/mar/21/terminally-ill-former-lecturer-challenges-uk-ban-on-assisted-dying, accessed 24 March 2017.