




CROSS-BORDER ACCESS TO END-OF-LIFE SERVICES IN EUROPE (the UK perspective)



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End-of-life options for individuals with capacity

When an individual has capacity...

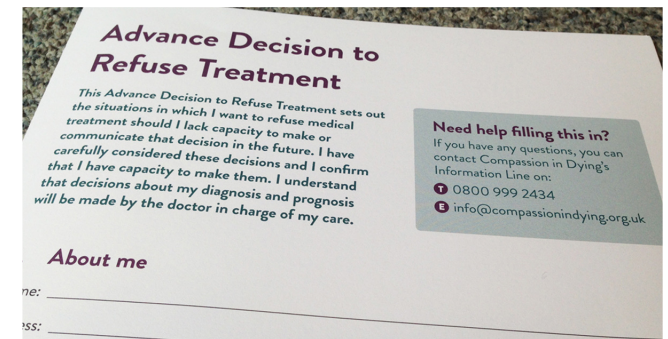
- ‘...the principle of self-determination requires that respect must be given to the wishes of the patient, so that if an adult patient of sound mind refuses, however unreasonably, to consent to treatment or care by which his life would or might be prolonged, the doctors responsible for his care must give effect to his wishes, even though they do not consider it to be in his best interests to do so...” *Airedale NHS Trust v Bland* [1993] AC 789 per Lord Goff (p.864).
- “...it matters not whether the reasons for the refusal were rational or irrational, unknown or even non-existent” *Re T* [1992] 3 WLR 782.

N.B. Presumption of capacity as starting point (Mental Capacity Act 2005).

- End-of-life examples: refusing a ventilator/ feeding tube/ antibiotics/ cardiopulmonary resuscitation (CPR); voluntarily stopping of eating and drinking (VSED*).

When an individual wants to plan for future loss of capacity...

- Advance decisions/ directives (Mental Capacity Act 2005 ss.24-26).
- Special provisions for refusing life-sustaining treatment.



MCA s.62 Scope of the Act


For the avoidance of doubt, it is hereby declared that nothing in this Act is to be taken to affect the law relating to murder or manslaughter or the operation of section 2 of the Suicide Act 1961 (c. 60) (assisting suicide).

Other end-of-life options....

- Pain and symptom management (medication and other therapies to bring comfort).
- Hospice (quality over quantity, a holistic approach).
- Palliative (or terminal) sedation (reducing consciousness through medication, until natural death, no nutrition and fluids).

Medical aid in dying, aid in dying, physician-assisted dying, assisted dying/ assisted suicide, voluntary euthanasia, euthanasia...

- Assisted suicide: providing someone with the means to end their own life (CAD 2012; HLSC, 2005).
- Oxford English Dictionary/ euthanasia: 'the painless killing of a patient suffering from an incurable and painful disease or in an irreversible coma'.



Assisted suicide and the law in England

A brief history of suicide

- Those who committed suicide denied religious burial rites: bodies mutilated and degraded, buried at crossroads overnight with a stake through the heart to ‘pin the evil spirit down’ (563).
- William Blackstone: *‘no man hath a power to destroy life, but by commission from God, the author of it’ [...] ‘a double offence’, ‘one spiritual, in invading the prerogative of the Almighty, and rushing into his immediate presence uncalled for; the other temporal, against the king, who hath an interest in the preservation of all his subjects’* (1775).
- Failed attempts: criminal sanctions for individual (*felo de se*).
- Successful suicides: sanctions re reputation (burial rites), and fortune (forfeiture of property). N.B impact on the individual’s family



Decriminalization: the debate

- Need to show **compassion** and **support** those contemplating suicide:

‘more often than not [those attempting suicide] require the services of a doctor, a psychiatrist, a spiritual adviser, a welfare worker, and in some cases, perhaps, a lawyer, and not the services of a policeman or gaoler’.

‘to protect already distressed relatives from the imposition of additional hardship, and to ensure that people who had unsuccessfully attempted suicide could seek medical [psychiatric] help, without fearing prosecution’ (Suicide Bill legislative debates).

- Lord Bingham, *Pretty*, 2002: the common law offence did not act as deterrent, and casted ‘an unwanted stigma on innocent members of the suicide’s family’ and ‘led to the distasteful result that patients recovering in hospital from a failed suicide attempt were prosecuted, in effect, for their lack of success’.

The Suicide Act 1961: England and Wales

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Suicide Act 1961. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)



Suicide Act 1961

1961 CHAPTER 60 9 and 10 Eliz 2

An Act to amend the law of England and Wales relating to suicide, and for purposes connected therewith. [3rd August 1961]

1 Suicide to cease to be a crime.

The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated.

2 Criminal liability for complicity in another's suicide.

(1) A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.

(2) If on the trial of an indictment for murder or manslaughter it is proved that the accused aided, abetted, counselled or procured the suicide of the person in question, the jury may find him guilty of that offence.

(3) The enactments mentioned in the first column of the First Schedule to this Act shall have effect subject to the amendments provided for in the second column (which preserve in relation to offences under this section the previous operation of those enactments in relation to murder or manslaughter).

(4)¹no proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

S.1: Suicide/attempted suicide decriminalised.

S.2(1): Assisting/encouraging suicide offence created (14 years)

S.2(4): DPP needs to consent for prosecution (factual and public policy stage)



Euthanasia and the law in England

Euthanasia and the criminal law

- Euthanasia (all types but passive): unlawful under common law prohibition of murder.
- A doctor, or loved one (= ‘mercy killing’), who ends an individual’s life to alleviate suffering is **criminally liable for murder**, even if the individual requested it, even if the individual consents, even if the motive is compassion, even if the patient is already dying...
- All elements of criminal liability satisfied: *AR, causation, MR*.

*‘Murder is when a man of sound memory, and at the age of discretion, **unlawfully** killeth within any county of the realm any reasonable creature in rerum natura under the [Queen]’s peace, **with malice aforethought**, either expressed by the party or implied by law, so as the party wounded, or hurt etc. die of the wound or hurt etc. within a year and a day after the same’.* (Edward Coke, *Coke’s Institutes* 1628, Part III, Ch 7, p 47).

Glanville Williams on euthanasia

- On active voluntary euthanasia as murder - Glanville Williams wrote:

*“If the doctor gives the patient a fatal injection with the intention of killing him, and the patient dies in consequence, the doctor is **a common murderer** because it is his hand that has caused the death. **Neither the consent of the patient, nor the extremity of his suffering, nor the imminence of death by natural causes, nor all these factors taken together, is a defence**”.*

The Sanctity of Life and the Criminal Law (Faber & Faber 1958), 283.



Prohibition in practice

- **Diminished responsibility (partial defence)** reduces murder charge to voluntary manslaughter (S.2 Homicide Act 1957), mitigating harshness.
- HCPs: rare convictions if patient requested it/ cannot use DR. Courts lenient to HCPs who kill on compassionate grounds.

R v Inglis [2010] EWCA Crim 2637:

- Mother killed severely brain injured son/ dose of heroin convicted of murder. Did not plead DM/ available on the facts. 5 years.

‘the law of murder does not distinguish between murder committed for malevolent reasons and murder motivated by familial love [...] mercy killing is murder.’


Prohibition in practice

R v Moor [1999] Crim LR 2000 Jul 568-590:

- Retired GP charged with murder of 85-year-old with terminal bowel cancer/ injection with diamorphine. Acquitted.

R v Cox (1992) 12 BMLR 38:

- Rheumatologist convicted of attempted murder for injecting 70-year-old terminally ill woman with potassium chloride. Eventually given a 12-month suspended prison sentence. Was not struck off by the GMC.



Assisted suicide and euthanasia law in Scotland

The law in Scotland



Unclear whether suicide is, or has ever been, a crime

No separate offence of assisting/ encouraging OR
indeed offence-specific prosecutorial guidelines

Offence under the general law of homicide



The law in practice

The law and available 'options' ...

- Assistance by family/ friends/ HCPs

***BUT** serious psychological and physical risks for the individual if ineffective, risk of prosecution for the assistor if effective.*

- Voluntarily stopping of eating and drinking or if able, commit suicide (legal).

***BUT** distressing, with serious psychological and physical risks if ineffective, unfair to expect individual to commit suicide to control end-of-life.*

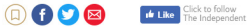
- Travelling abroad, e.g. Switzerland clinics.

***BUT** need to be financially and physically able, risk of prosecution for assistor (N.B. Covid-19 + travelling restrictions).*

Professor 'killed herself with euthanasia kit bought online'

Avril Henry had been accepted at a Swiss clinic but wanted to die at home, euthanasia charity Exit International says

Rod Minchin |

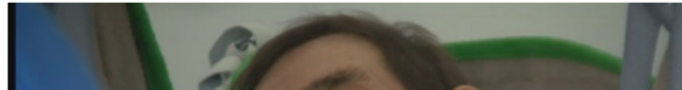


16 Aug 2012

'Starving myself is preferable to a life like this'



Locked-in sufferer Tony Nicklinson, who lost his right-to-die case at the High Court, tells Channel 4 News that politicians reluctant to change euthanasia laws are "cowards".



Philip Nitschke's 3D-printed "death pod" lets users die at the press of a button



Gunseli Yalcinkaya | 22 May 2019 | 19 comments

NORTHWOOD PENSIONER ENDED HIS OWN LIFE IN GARAGE

8th March 2017 14:59 | Darren Toogood

BREAKING NEWS



UPDATED: Motor Neurone Disease sufferer William Maguire, 72, committed suicide by taking a lethal cocktail of drugs in the garage of his home in Northwood, alongside a bid to gas himself in his car after being helped into place by his own son, an inquest has today (Wednesday) concluded.


As [previously reported](#) by *Island Echo*, Police were called to an address

'Dr Death' and his £50 suicide workshops

Philip Nitschke is a former GP who travels the world telling people how to kill themselves

Jessica Berens





Restrictions to cross-
border access to
end-of-life services

Legal measures affecting outflow of citizens

The criminal prohibition in s.2(1) Suicide Act 1961. What it means:

- Police investigation and risk of prosecution for relatives/ friends/ HCPs returning from Switzerland.

“When I eventually got the ‘green light’ from Dignitas, a weight lifted.”

“As I was saying my final goodbyes and preparing myself for the end, the final, biggest bomb dropped and I could no longer keep it together.

“The thought that I might not make it to Switzerland, or that, if I did, Ann might be facing 14 years in jail for helping me, was almost too much to bear.”

Assisted dying: couple tell of anguish over police inquiry

Police quizzed Geoffrey Whaley and his wife, Ann, over plan to end his life at Dignitas



Geoffrey Whaley, 80, arranged to end his life at the Dignitas facility in Switzerland. Photograph: BBC

Assisted dying: Two arrested over death of campaigner

© 21 February



Sharon Johnston had said nothing would change her mind about wanting an assisted death

Two women have been arrested on suspicion of assisting or encouraging suicide, following the death of a 60-year-old woman from Cardigan.

Legal measures affecting outflow of citizens

Police fail to detect up to 30% of assisted deaths, new research finds

At least 3 in 10 people who travel to Switzerland for assisted deaths are unknown to the authorities, [according to new research](#) by the campaign group My Death, My Decision. Campaigners have said the findings raise serious questions about the current law's effectiveness, and underlines the need for a fresh Parliamentary inquiry into assisted dying.

Figures disclosed under the Freedom of Information Act show that between 2015 and 2019, a total of 156 crimes for aiding suicide were recorded by police forces across England and Wales. However, data from the Swiss assisted dying facilities Dignitas and Lifecircle, show that over the same period 225 people from England and Wales travelled to Switzerland and ended their lives – meaning at least 3 in 10 people were not recorded.

Measures affecting outflow of citizens in the context of healthcare processes

- Professional guidelines/ disciplinary action (no known cases)

GMC guidelines 2013 *'When a patient seeks advice or information about assistance to die*

1 Doctors face difficult challenges in responding sensitively, and compassionately, to a patient who seeks advice or information about hastening their death, while ensuring that their response does not contravene the law by encouraging or assisting the patient to commit suicide.

2 Good medical practice makes clear that listening to patients, providing them with information, and respecting their decisions and choices, are integral parts of good practice.....'

- Inconsistency between different GP practices/ access to medical records.
- 

Other measures affecting outflow of citizens

- Financial impediments: £10,000 cf. cost of living crisis.
- Some individuals too ill to travel/ some are unable to find someone to assist them to travel.

Humanists UK mourns death of assisted dying campaigner Omid T who has died in Switzerland

October 4th, 2018

Humanists UK member Omid T, who was awaiting judgement from the High Court on his legal case seeking to change the law on assisted dying, has died this morning at the assisted dying clinic Lifecircle in Switzerland, Humanists UK has announced.

Omid had multiple system atrophy (MSA) and Humanists UK has been supporting his legal case.

Humanists UK Chief Executive Andrew Copson said:

'We are deeply saddened by the death of our member Omid T, who ended his life with medical assistance at Lifecircle in Switzerland today.



Assisted suicide campaigner too ill to fly to Dignitas starves himself to death

Tony Mitchell, 68, had MS and cancer of the oesophagus but a heart attack earlier this month prevented him flying to Switzerland

By **Louie Smith**, News Reporter
22:54, 16 Sep 2015



A campaigner for **assisted dying** who could not travel to a Swiss euthanasia clinic has starved himself to death.

Tony Mitchell, 68, had MS and cancer of the oesophagus.

He was due to end his life at Dignitas but a heart attack earlier this month prevented him flying alone.

The OAP, of Frome, Somerset, feared his family would be arrested for assisting a suicide if they helped him travel.

Access from the UK during Covid-19

- 5 November 2020, House of Commons, Matt Hancock MP, then Secretary of State for Health and Social Care: questioned re impact lockdown restrictions will have on those wishing to access assisted dying services abroad.

N.B. Britons second place in number of ‘accompanied suicides’ in Dignitas (1998-2019).

‘travelling abroad for the purpose of assisted dying is a reasonable excuse, so anyone doing so would not be breaking the law’.

N.B. the inadequacy and incoherence of the law.



Covid-19 practicalities (UK)


Lack of clarity:

- March 2020 – Nov 2020, and the creation of the ‘exception’ in the House of Commons.

Getting to, and back from Switzerland:

- Large airlines postponing or cancelling flights to Switzerland, train journeys, crossing multiple jurisdictions with different restrictions.
- Declining health, private flights, and avoiding suspicion.
- Reports of people bringing forward their plans, or alternatives ‘euthanasia kits’, gas, starvation.

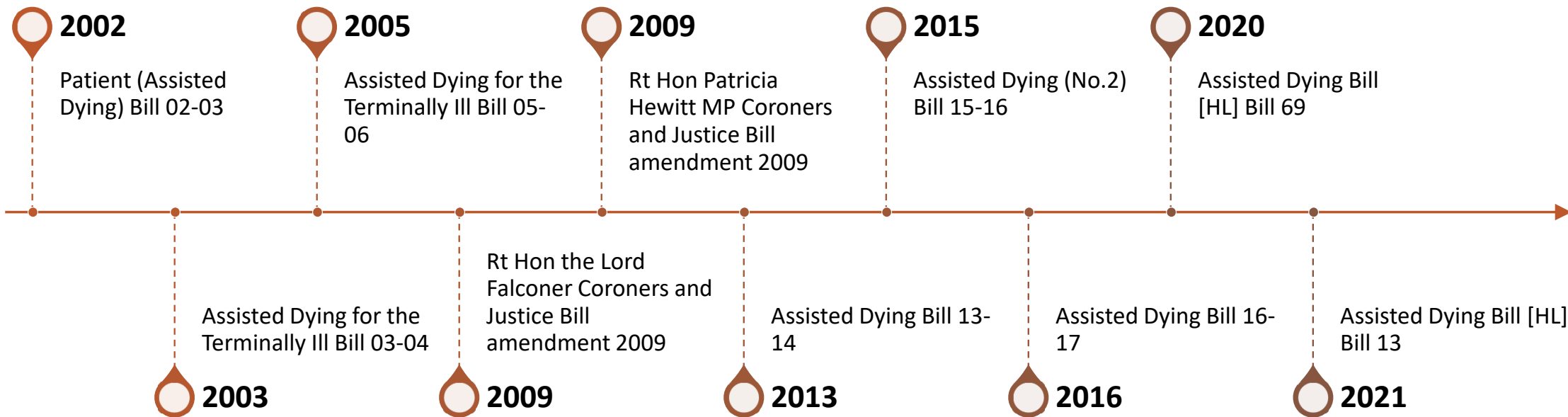
Getting the right documents together during NHS pandemic crisis:

- Inconsistencies raising safety and transparency issues.
 - Range of responses: GP refusing to provide documents, to a GP practice assisting with faxing these to Dignitas from the surgery!
- 



Any prospect of law
reform?

Statutory attempts for reform in England



Statutory attempts outside England



SCOTLAND

- End of Life Assistance (Scotland) Bill 2010
- Assisted Suicide (Scotland) Bill 2013-15
- Liam McArthur MSP leads consultation.
- Closed Dec 2021. Proposal to Scottish Parliament + summary of all responses. If sufficient support, right to introduce a Member's Bill.



JERSEY (SELF-GOV UK DEPENDENCY)

- Citizens' jury examined pros/cons of legalization. Proposed reform.
- Nov 2021: Jersey's States Assembly (the island's Parliament) voted 36 to 10, in principle, to permit assisted dying.
- Jersey's Council of Ministers will draft legislation to be debated by end of next year.

Judicial challenges in England

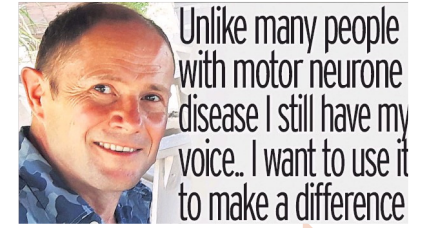


Pretty

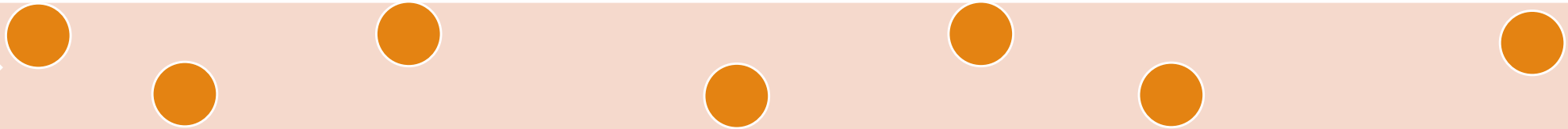
Nicklinson,
Martin,
Lamb



Omid



Phil Newby



Purdy



Conway



Paul Lamb



CAMPAIGN FOR DIGNITY IN DYING.

My Death My Decision

campaigning for assisted dying



Dying Matters

Awareness Week
2-6 May 2022

#InAGoodPlace

Raising awareness of dying, death and bereavement

COMPASSION IN DYING.

SUPPORTING YOUR CHOICES

Political unwillingness vs. a role for Courts and Parliament?

- Conservatism? Multi-culturalism? Religion? Palliative care status in the UK?
- Impact of Brexit, Covid-19, cost of living crisis, government scandals impact on governmental priorities?
- Should courts have an activist role? Status of Human Rights Act/ ECtHR tension.
- Nonetheless, role of Parliament instrumental – declaration of incompatibility vs power of a constitutional court (e.g. Canada). Need for evidence-based debate. Current calls for a fresh governmental inquiry.
- Public referendum (e.g. New Zealand). Would that work in the UK?!

Key points



Different end-of-life options



Law on assisted suicide and euthanasia in England/Scotland



How the law affects individuals in practice, and available 'options'



Restrictions to cross-border access (legal and other measures)



Prospects of reform, including statutory attempts, judicial challenges, and a role for Courts and Parliament