

A law out of step

The 1961 Suicide Act and Britons travelling abroad to die

"I think we are approaching a point at which the law does not match the expectations of reasonable people. This clinic in Switzerland I think claims to have assisted 100 British people to take their lives... one or two you could say, well that's nothing to worry about, but if it becomes a stream then I think that is a sort

of indication that the law needs overhauling and it may be, I think, that we're approaching the point at which the law does need overhauling."

Lord Bingham of Cornhill, former Master of the Rolls, Lord Chief Justice and Senior Law Lord.¹

Since 2002, at least 115 Britons have travelled to a **foreign country to be assisted to die** at an average of two every month, and as of 31 May 2009 a further 34 British citizens have the 'green light' to be assisted to die overseas.²

Dignitas, the Swiss assisted suicide organisation, has at least 786 members in the UK, many of whom are actively seeking to end their lives there.³ It is not only Dignitas that people are turning to for assisted suicides. At least two Britons are known to have ended their lives at another Swiss organisation that provides assisted suicide, Ex International.⁴

Assisting a suicide in England and Wales is a criminal offence, punishable by up to 14 years imprisonment. That is why hundreds of terminally ill Britons are forced to go abroad to die. But as the law stands, even those who accompany loved ones abroad to die, in a country where it is legal, are liable to be prosecuted.

People like Debbie Purdy,⁵ whose fight for clarification of the law on assisted suicide for those who accompany people abroad to die is now at the House of Lords, face a desperate dilemma. Although nobody has been prosecuted for accompanying a loved one abroad to die, many have been questioned and one person was arrested.

The law has to change

The 1961 Suicide Act changed the law to make committing suicide legal in the UK. Now it is time to modernise the Act, to protect those who act compassionately in accompanying loved ones to exercise their choice to die in a country where assisted suicide is legal. Mentally competent, terminally ill adults should not have to face the anguish of not knowing whether their loved one will be prosecuted.

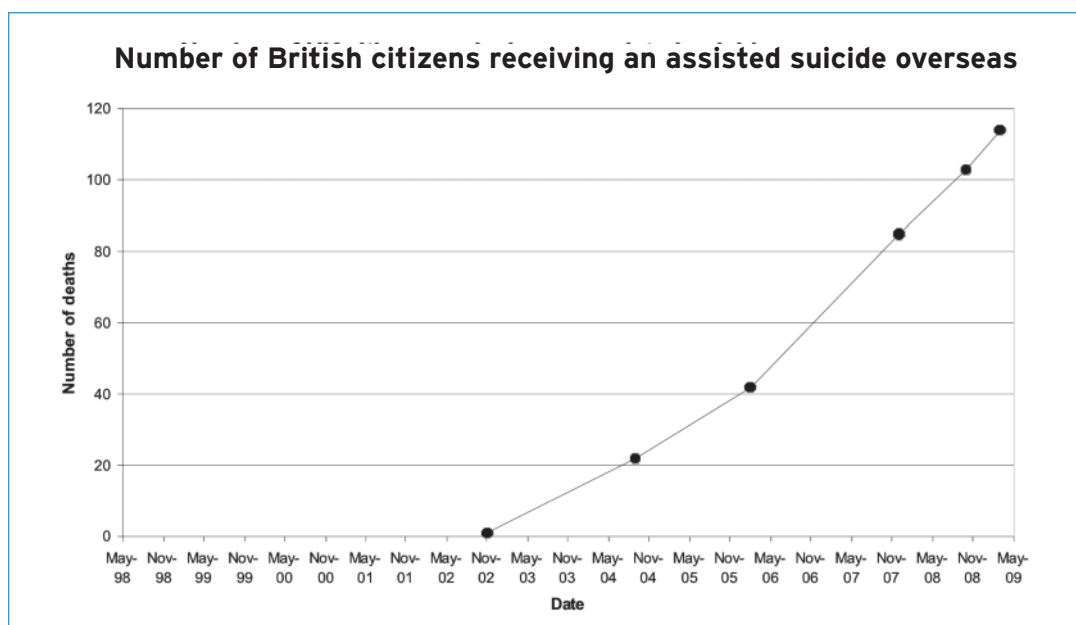
That is why we are calling for:

→ **Parliament to revise the 1961 Suicide Act.**

The law should recognise that helping a terminally ill, mentally competent loved one to

be assisted to die in a place where it is legal is different to other forms of assistance to commit suicide.

- The law to recognise that **different actions should be dealt with differently by statute**, rather than the current 'fudge' of the DPP deciding after the event whether prosecution is in the public interest.
- The law to recognise the fact that people are travelling overseas to die now. It should introduce **safeguards to protect vulnerable people** whilst ensuring that loved ones of terminally ill, mentally competent people who choose this option do not face prosecution.



1. An outdated Act: The Suicide Act 1961

In 1961, the Suicide Act was a progressive piece of legislation. Reflecting the changed attitudes of the time, it decriminalised the act of committing suicide in recognition of the need to treat those who attempted and failed to commit suicide with compassion.

The Act, which applies to England and Wales, also created the crime of assisting a suicide, punishable by up to 14 years imprisonment.

Section 2 (1) of the Act states: **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.**

However, section 2 (4) of the 1961 Suicide Act states: **No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions (DPP).**

The requirement that the DPP should consent to the prosecution is intended to ensure consistency, prevent abuse and take account of mitigating factors. Looking at the law in relation to people travelling abroad to die, in well over 100 cases there have been no prosecutions.⁶ However, there is no guarantee that in subsequent cases this will be the case.

Nearly 50 years on, a lot has changed and it is time that the 1961 Suicide Act is revised and modernised to reflect these changes.

That is why we are calling on Parliament to revise the 1961 Suicide Act. The law should recognise that helping a terminally ill, mentally competent loved one to be assisted to die in a place where it is legal is different to other forms of assistance to commit suicide.

2. The need for reform

The lack of choice for terminally ill people under current law in Britain means that we now live in a society where:

- At least 115 British people have been assisted to die overseas.
- On average four cases of 'mercy killings' go through the courts each year and many more go unnoticed.⁷
- One in 200 deaths, which accounts for approximately 2,500 deaths per year, are accelerated by doctors with the explicit intention of bringing about the patient's death, with or without the patient's request.⁸
- Others stop eating and drinking in order to end their suffering and their lives.

People are being forced into desperate situations due to the lack of choice within the current law for dying people who want to end

their suffering. Regardless of the view on whether a substantive change in the law on assisted suicide is needed, at the very least the current law on people travelling abroad to die should be brought into line with public opinion and current prosecuting practice.

The current situation pleases no one. A change in the law would offer greater protection to vulnerable people, ensure those who, out of compassion, accompany, or provide help to a loved one in some other way to be assisted to die overseas, are not threatened by prosecution.

In a recent interview with the Times, the Director of Public Prosecutions acknowledged that if the law was revised to clarify categories of offence "**that obviously means everyone is in a better position, but that is not in my gift, that is for Parliament**".⁹

"I think if we've reached a stage where prosecutors ... are effectively deciding that in an entire category of case they're not going to apply the public interest in favour of a prosecution, that opens up the question as to whether the law is still appropriately framed in that area and I think it's an indication that we may have moved, society may have moved beyond the law and that the law needs to catch up a bit"

Sir Ken MacDonald, former Director of Public Prosecutions.¹⁰

John Close had Motor Neurone Disease (MND). He chose to die at Dignitas in May 2003. He said:

"I, John Close, being of sound mind but failing body, have decided to make this statement about my wishes, so there can be no ambiguity in the future. I wish to die. I am now prepared to actively seek an end to my life. I have been in contact with Dignitas in Switzerland: if possible I will take that controlled, caring way out. I have Motor Neurone Disease. I have had it two years now since diagnosis. It has taken its own course in that time but since late last year it became

complicated by bowel problems. This has forced me to think hard about my future. I have been aware since day one of my diagnosis of the need to adapt to the progress of my disease. I have done so. I was forced to



give up playing the guitar, to give up walking, to give up eating, to give up normal conversation, now I would like the choice to give up living, but this is against the law in the UK."

That is why the law should be changed to recognise that different actions should be dealt with differently by statute, rather than the current 'fudge' of the DPP deciding, after the event, whether prosecution is in the public interest.

3. Travelling abroad to die: putting vulnerable people at risk

At present, by effectively ignoring the practice of British people travelling to Switzerland for assistance to die, our laws are relying on Swiss law and institutions to provide safeguards. This is simply not sufficient.

Dignity in Dying campaigns for a change in the law on assisted dying for people who are terminally ill and mentally competent. We are extremely concerned people who are not terminally ill, and possibly not mentally competent, are being offered assistance to end their lives overseas.

Although guidance for physicians has been issued by the Swiss Academy of Medicine, many

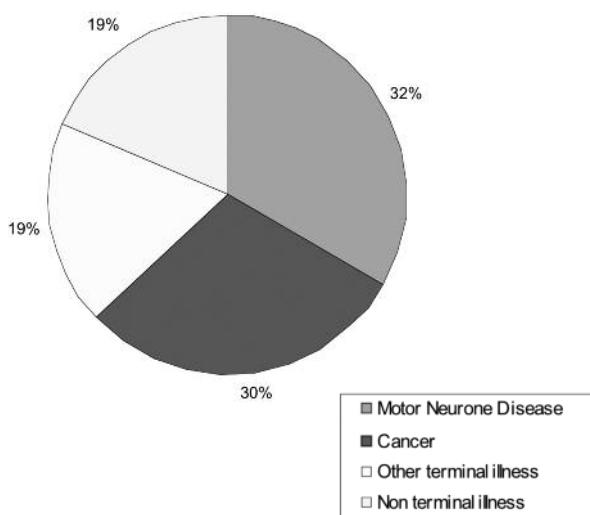
individuals who do not meet these guidelines have received assistance to end their lives. These have included people who have a long, if impaired, life ahead of them, and people who are mentally ill. There does not appear to be much public interest in changing the Swiss law on assisted suicide and an attempt to do so in Zurich Canton in 2005 was defeated by 95 votes to 49.¹¹

Most of the 115 people who have sought an assisted death overseas are not publicly known. However there are 27 instances in which enough information is in the public domain to allow us to determine what illness an individual was suffering from at the time of their trip to

Switzerland. Of these 27 people, nine had Motor Neurone Disease, eight had cancer and another five had other terminal illnesses. However another five were chronically, but not terminally ill, suffering from diabetes and back problems, paralysis, a non-terminal neurological condition, ME and epilepsy.

This is why Parliament must accept the fact that people are choosing to travel abroad to die, and take responsibility by ensuring safeguards are in place as to who can receive help to die overseas, without the threat of prosecution for their loved ones.

Illnesses of British people receiving assistance to die in Switzerland



Anne Turner had Supranuclear Palsy (PSP). She was accompanied to Dignitas by her children Sophie, Edward and Jessica Turner in January 2006. They said:



“Our mother was a wonderful, loving, spirited and courageous woman who chose to die before her illness put her in a position of being unable to make this choice. We have fully respected her wishes, even though her decision has caused us great sadness. Our only consolation is knowing that our mother chose death willingly, has died peacefully and with dignity, and that her suffering is at an end.”

4. Inconsistency and uncertainty: the consequences of a failing law

The current law is failing vulnerable people and there is overwhelming public support for change.¹²

The Debbie Purdy case has highlighted the desire of people considering having an assisted death for clarity on the DPP’s policy. In the Appeal Court judgement, judges told Ms Purdy that it is extremely unlikely that her husband would be prosecuted for helping her get to Switzerland for an assisted death; and that even if he was prosecuted, the courts would not give him a custodial sentence.

But the judgement also noted that without a change in the law, a prosecution could not be ruled out.¹³

In the case of Daniel James, a young man who became tetraplegic following a sports injury, and who travelled to Switzerland with the help of his parents, the DPP concluded that there was sufficient evidence to prosecute Mr and Mrs James for assisting their son’s suicide, but that to do so would not be in the public interest.¹⁴

In short:

→ **The law fails to protect the vulnerable, relying upon what is legal in other countries**

By placing an absolute ban on assisting suicide whilst turning a blind eye to people travelling abroad to die in practice, the law does not judge for itself what should and should not be allowed, but is entirely dependent upon the laws and practice of other countries.

Reports indicate that alongside terminally ill, mentally competent adults, Britons who are not terminally ill have travelled abroad to die. Concerns have also been raised about the mental competence of some who have travelled abroad to die.¹⁵

→ **The law harms the relatives of those seeking assisted dying**

The friends and family of terminally ill people seeking an assisted death overseas also face a terrible dilemma: deciding between helping a loved one end their suffering, and the law which states that they could go to prison for 14 years for doing so.

This lack of legal certainty has damaging consequences. Sydney Robbins was told by his wife of 34 years that she did not want him to face prosecution for assisting her suicide. Dorothy Robbins had MND, and travelled to Switzerland to die in February 2005. Speaking after her death Mr Robbins said: **"The crime wasn't about flying out of the country to die. The crime was not being able to go out with her and hold her hand."**

Michelle Bennett accompanied her husband John Paul who had MND to Dignitas. She said: **"The families suffer too, and we suffer when we come back. It just doesn't all stop there."**

→ **The law denies people choice and is unclear**

Those considering going abroad to die also face a terrible dilemma: balancing their own desire for control and an end to their suffering, with considerations of the legal consequences for anyone who helps them.

The mismatch between what the law says and what the law does means that people are left unclear about what will happen to their relatives if they assist them to get to Switzerland in some way.

→ **The law forces people to end their lives earlier than they would want to**

The desire to protect loved ones means some people die before they are ready: Debbie Purdy has said that she will go abroad to die before her suffering is unbearable, and whilst she is still capable of travelling alone, in order to protect her husband Omar Puente from the risk of prosecution.



Valerie Sliwinski had cancer and MS. Her son Stefan accompanied her to Dignitas in May 2006. Stefan said:

"I just respected her wishes - that's all I did. She was in pain. She was sick and tired of fighting every day - not doing the things that normal people do."

That is why the law must be changed to recognise the fact that people are travelling overseas to die now. It should introduce safeguards to protect vulnerable people whilst ensuring that loved ones of terminally ill, mentally competent people who choose this option do not face prosecution.

Reg Crew had MND. His wife, Win Crew, and daughter Jan Healey, accompanied him to Dignitas where he died in January 2003. Win has written:

"Although I am a Roman Catholic, like many others in my position, when Reg said he wanted medical assistance to die, to avoid a long and painful death, I felt this was the right thing to do. I agreed with him that the disease should not rob him of the ability to choose the manner of his inevitable death. For several months after my return, I had



the threat of legal action hanging over me but what alternative was there?"

Endnotes

1. BBC Radio 4, 'Unreliable Evidence', broadcast on Wednesday 13 May 2009.
2. <http://www.guardian.co.uk/society/2009/may/31/assisted-suicide-reform-uk-switzerland>, 31 May 2009.
3. <http://www.guardian.co.uk/society/2009/may/31/assisted-suicide-reform-uk-switzerland>, 31 May 2009.
4. <http://www.timesonline.co.uk/tol/news/uk/health/article5299216.ece>, 7 December 2008.
5. In May 2008, in connection with the Debbie Purdy case, the Crown Prosecution Service (CPS) identified seven cases in which it had been asked to consider prosecution under the Suicide Act in relation to an assisted death at Dignitas. The CPS statement made clear that no prosecution had ever taken place. Furthermore Dignity in Dying is aware of only one case in which a person was arrested. At this time Dignity in Dying estimate that approximately 94 UK citizens would have received an assisted death in Switzerland.
6. Debbie Purdy's solicitors (Bindmans LLP) carried out research into what happens to people who accompany a loved one to die in Switzerland once they return to the UK. They received responses relating to 39 cases. Of these two-thirds did not have any sort of police contact in the UK; three people were investigated by police both before and after they travelled to Switzerland; and a further 10 were investigated only after their return.
7. Home Office, Homicide victims where the circumstances were described as a mercy killing, 2005.
8. Seale C, "National survey of end-of-life decisions made by UK medical practitioners", Palliative Medicine 2006; 20: 3 - 10.
9. <http://business.timesonline.co.uk/tol/business/law/article5515636.ece>, The Times, 2009.
10. BBC Radio 4, 'Unreliable Evidence', broadcast on Wednesday 13 May 2009.
11. Chris Davies MEP 'A Matter of Human Rights' 2006.
12. http://www.timesonline.co.uk/tol/comment/leading_article/article5337710.ece, 14 December 2008.
13. Court of Appeal, Civil Division judgement, <http://www.bailii.org/ew/cases/EWCA/Civ/2009/92.html>, 19 February 2009.
14. http://www.cps.gov.uk/news/articles/death_by_suicide_of_daniel_james/index.html, 9 December 2008.
15. <http://www.timesonline.co.uk/tol/news/world/europe/article6021947.ece>, 3 April 2009.



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