

Professor David Kelly Address

16th April 2008

It is a great honour to make a short speech on the day when we are remembering the courageous Steve Guest.

I hope that the proposed Dying with Dignity Bill will enable anyone else in a similar position to Steve's to obtain equivalent medical assistance when they decide that that is the appropriate thing to do.

Steve himself achieved that, but only at the cost of the ever-present threat to doctors and relatives that they might be investigated, and even be subject to a charge and possible imprisonment. And for what? For acting honourably and with decency in assisting someone to exercise the basic right to choose a dignified death rather than prolonged and intolerable pain and suffering.

The present legal position in relation to this matter is not as clear as some people seem to think. Assisting a person to commit suicide is still a crime, even though suicide itself is not. However, there is one situation in which I believe that a doctor may assist a person to die. A doctor may deliver a terminally ill person a lethal dose of a painkiller, with that person's consent, provided two main conditions are met.

- First, the actual dose is no more than is necessary to stop the pain.
- Second, the doctor does not intend to kill the patient, but only to stop the pain.

Some people say that the exception makes no sense. How can it possibly be said that a doctor who gives a dose, knowing that it will kill the patient, really intended not to kill, but simply to relieve pain?

But the exception does not apply to all cases in which people should be entitled to exercise their right to a dignified death. It has only a narrow compass. It may not apply in the case of an incurable illness that is not terminal. And it may not apply to psychological suffering.

In any event, that exception does not protect a doctor from being challenged about the need for the actual dose or about his or her motives in giving it. It inhibits doctors from providing adequate pain relief, and it threatens them with criminal sanctions, loss of their reputations, and even loss of their rights to practise if their conduct is successfully challenged.

The proposed legislation will cure all these deficiencies in the law.

- It will override the murky, less than coherent, existing law; and
- It will replace it with a set of rules intelligently designed specifically to deal with one issue: under what circumstances and in what ways should a doctor be entitled to assist a terminally or incurably ill person, who is suffering intolerably, to end his or her life.

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There are two main arguments against this type of legislation. The first is religious; the second, practical.

The first argument is based on the view that human beings have no right to bring about their own deaths: god alone may dispose of human life. But that view does not entail the additional proposition that the criminal law can properly be employed to enforce it.

No-one wishes to use the law to force people to seek assistance in dying if they believe it to be morally wrong. Why should they wish to use the law to force intolerable suffering on those who believe that seeking assistance in dying is morally right? Thankfully, few of them do any more.

The second argument against allowing doctors to assist terminally or incurably ill people to die with dignity is based on a fear that the change in the law might increase the danger of abuse. That danger includes the risk that either a corrupt doctor or greedy relatives (possibly acting in concert), might use the new legislation to kill a patient who has not actually asked for that assistance, or who has been pressured into making that request.

The proposed Bill recognises the need to protect people against risks of that kind. It offers a form of regulation that minimises those risks.

At present, the area is not specifically regulated. In fact, the existing law gives a corrupt doctor and greedy relatives a much greater opportunity to dispose of a patient without his or her consent, or to pressure a patient to ask for assistance in dying, than they would have under the stringent protections offered by the proposed Bill.

At present, there is no audit trail that can be followed to ensure that everything that has been done is above board. The Bill will create that audit trail. It will set stringent conditions for offering assistance in dying; and it would make doctors accountable for their actions in doing so.

A treating doctor will become legally entitled to assist an adult patient to die if that person is terminally ill or is suffering from an advanced incurable illness, and is suffering intolerably; but only if the doctor complies with the complex and highly protective procedure set out in the legislation.

If the doctor fails to follow that procedure in any respect, the he or she will not be protected. The legislation also protects nurses and pharmacists who in good faith provide services to a doctor who is assisting a terminally or incurably ill patient to die.

The protections are comprehensive. They include each of the following:

First, the patient must make a formal written request, witnessed by the treating doctor, for assistance to die. That request must be made

- after the treating doctor has informed the patient of his or her condition, of the prognosis, and of the medical treatment that is available including palliative care; and
- after a palliative care doctor has informed the patient of the availability and likely effect of palliative care.

This ensures that the patient makes a fully informed choice.

Second, the treating doctor must be satisfied that the patient is of sound mind and that the request has been made freely, voluntarily and after due consideration. Additional psychiatric advice is required in the case of an incurably ill patient, and must be obtained in the case of a

terminally ill patient if the treating doctor believes that a mental illness may have resulted in the patient's decision to make the request.

This ensures that mentally ill people are protected against making a request that is not the result of a rational, considered choice.

Third, an independent doctor (independent from both the treating doctor and the patient) must review the medical file and examine the patient, and then discuss with him or her the decision to seek assistance in dying. The independent doctor must be satisfied that the proper procedures have been followed and, in particular, that the patient's request for assistance was made with due consideration and without any undue influence. Only then may the independent doctor sign the request for assistance.

This ensures that the patient was not pressured into making the request, and was exercising his or her free choice.

Fourth, the patient must sign a confirmation of the original request. The confirmation must not be signed until 48 hours after the first request is made, and also after the independent doctor signs the original request form. The patient may revoke the request at any time.

This ensures that the patient has an opportunity to think again about his or her decision, and to change his or her mind at any time before the assistance is given.

I spoke earlier of the bill creating an audit trail to hold doctors accountable. That audit trail comprises the various documents that have to be signed by the patient, the treating doctor and the independent doctor. The documents must in every case be given to the State Coroner and any pharmacist who dispensed a drug on a prescription written by the treating doctor to assist a patient to die must forward a copy of the prescription to the State Coroner.

I also spoke earlier of the need, in this contentious area in which conscience plays a vital role, not to enforce views on people of a different mind. The proposed Bill recognises that need. It is open to a doctor to decline a request for assistance. It is open to a nurse to decline to assist a treating doctor who decides to provide assistance. Neither is to be prejudiced in any way for doing so. Freedom of conscience and of choice is recognised and protected.

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In my view, then, the proposed Bill achieves a good balance between the need to protect a patient's right to make rational choices and the need to protect society against abuse. It recognises that the right to die with dignity is an essential flow-on from the ideals of a liberal, democratic society. It is a practical and sensible reform that is desperately needed.

Let's get on with it!

Professor David Kelly