The fight goes on

Calls for those who accompany people abroad for assisted suicide to be immune from prosecution were defeated in the House of Lords this month. Clare Dyer talks to Lord Falconer, who proposed the change in the law.

You’re a peer with a cause close to your heart. A legislative opportunity arises to tack on an amendment to a bill coming from the Commons to the House of Lords. Who better to ask to put it down than someone who until two years ago headed the justice system as lord high chancellor of Great Britain?

It was his good friend, fellow Labour peer, former health minister, and former leader of the House of Lords, Margaret Jay, says Charlie Falconer, who suggested that he might table the amendment to the Coroners and Justice Bill. The amendment, which she co-sponsored, would give those who accompanied loved ones abroad for assisted suicide immunity from prosecution. After a highly emotive debate, it was defeated this month by 194 votes to 141. But far from giving up, Lord Falconer is considering a comeback as soon as October or November, this time via a private member’s bill.

Strong and polarised views

The matter of assisted dying attracts strong and polarised views, and Falconer was not previously known to be in either camp. It would have been inappropriate, he points out, to express a view while he was still in government. Now that he has gone back to legal practice he is free to speak his mind.

Lady Jay, who was leader of the House of Lords under Tony Blair when Falconer was lord chancellor, was the “most significant” influence on his decision to put forward the amendment, but he also spoke to Mary Warnock, the philosopher and crossbench peer, which is a specialist position not allied to a political party, who has become an influential voice in the movement to legalise assisted dying in the United Kingdom.

Falconer’s amendment was a narrow one and would not affect the rest of the Suicide Act 1961, which criminalises helping someone to commit suicide. What motivated him, he told the BMJ, was the thought that people would opt to die alone in a strange place rather than expose their loved ones to the risk of prosecution for a crime that carries a maximum sentence of 14 years in England and Wales. “The idea of dying alone struck me as so horrific. I was very driven by that. I became involved and became enthusiastic in trying to deal with something that was, in my view, an anomaly.”

Although about 115 Britons have been helped to die in Switzerland, where assisted suicide is legal and where there are no residence requirements, no relatives have so far been prosecuted. But the threat remains, creating what Lord Falconer describes as “a legal no man’s land.” Under his amendment, assisting a suicide in the UK would remain a crime, but those who helped a friend or relative go to a place where assisted suicide is lawful would have a defence if certain conditions were met. The person who planned to die would have to be a mentally competent adult, be declared terminally ill by two doctors, and make a declaration witnessed by an independent person that he or she intended to commit suicide.

Slippery slope

It would be possible to support the Falconer amendment while opposing the legalisation of assisted suicide in the UK. But inevitably those who spoke on either side in the Lords debate expressed strong views on the wider matter of assisted suicide and voted accordingly. Many opponents saw it as a staging post on the slippery slope and were worried about the potential for families to hasten off a lingering relative. Lord Falconer points out that the current system has no safeguards, and his proposal would at least introduce an element of independent oversight.

During the debate and in the letters’ columns of the Times, opposing peers, including the former Conservative lord chancellor James Mackay, tore apart his drafting and branded the safeguards too weak. Fellow QC Alex Carlile, a Liberal Democrat peer who sits as a deputy High Court judge and a leader of the against camp, said that some elements of the amendment made him “shudder.”

The suggestion of a private member’s bill came from justice minister Lord Bach, who argued that, although the government was neutral on the issue, it believed the Coroners and Justice Bill was the wrong vehicle for any change.

Lord Falconer, who insists that he wants the law only to reflect what already happens in practice, refuses to be defeatist. “I think one needs to be persistent about this. I need to find out what other people think, but I’d be keen to persist on this issue. There were lots of criticisms made about the potential safeguards, and I can see that we could strengthen the safeguards.”

One of the most heartfelt speeches in the debate came from Jane Campbell, a crossbench peer born with spinal muscular atrophy and campaigner for the rights of disabled people. If the amendment were passed, she said, “despair would be endorsed as a
Debbie Purdy has multiple sclerosis and wants her husband to accompany her to Switzerland without prosecution. She is awaiting the law lords’ ruling.

**Unnecessary amendment?**

Meanwhile, a group of five peers, the law lords, are crafting a judgment which just might render the amendment unnecessary. Debbie Purdy, who has progressive multiple sclerosis and when the time comes wants her husband Omar to accompany her to Switzerland without fear of prosecution, has taken her case to the UK’s highest court and awaits the law lords’ ruling.

Her case went through the High Court and the Court of Appeal with everyone accepting that the Suicide Act makes it illegal for someone in England and Wales to do acts that facilitate a suicide, even if the suicide happens abroad. For the first time, when the case reached the Lords, the senior law lord, Lord Phillips, wondered whether that was a correct interpretation of the act. Its framers five decades ago clearly had not contemplated the possibility of a visit to Zurich, but did the wording of the act cover it nevertheless?

Lord Phillips asked Mrs Purdy’s lawyers and those for the director of public prosecutions, Keir Starmer, to make submissions on the matter. Both sets of lawyers are understood to have concluded, however, that helping someone to go abroad for suicide is a crime under the act.

As for the prospect of legalising assisted suicide in the UK, Lord Falconer thinks such a step is “miles” away and would need much more public debate. Public opinion polls suggest considerably more support for legalised assisted dying among the general public than among parliamentarians—or for that matter doctors. The BMA’s annual representative meeting this month voted against the legalisation of assisted dying, as well as against the Falconer amendment. The medical royal colleges remain opposed.

**Debate needed**

Lord Falconer says that detailed proposals should be produced to facilitate a debate and not just a bill. Ideally, the government would produce a green paper, not as a matter of policy but as the basis for debate, although he acknowledges that this is unlikely to happen. Bringing forward a bill just encourages the debate to focus on specific wording rather than principles, he argues.

“Abolition of capital punishment, abortion reform, homosexual law reform, reducing the age for voting—all these things occurred because there was a long public debate which then led to the production of a bill. There hasn’t been that sort of debate about assisted dying here. There’s no strong groundswell of public opinion that would justify the change.”

His co-sponsor Lady Jay was on the select committee for Lord Joffe’s private member’s bill, the Assisted Dying for the Terminally Ill Bill, which took evidence from Oregon, the Netherlands, and Switzerland, the jurisdictions which have pioneered assisted suicide. That bill was defeated in 2006 by a vote of 148 to 100, after a procedural motion that denied it a second reading, proposed by Lord Carlile, who was also a member of the select committee. He told the BMJ that Lord Falconer will face just as determined a fight in the autumn if he comes back with his amendment reframed as a private member’s bill.

“The amendment in my view was part of a much larger picture, and I thought Lord Falconer was deceiving himself in saying it was not part of a slippery slope. I don’t regard it as an appropriate or ethical change in our law. I see no necessity for it. I know there’s a demand but I don’t see a necessity.”

Lord Carlile dismisses opinion polls that show widespread public support for assisted dying, arguing that the results are strongly influenced by what happens to be in the news. “We never have a poll that doesn’t follow a hard case,” he said. A former Liberal Democrat MP, he contends that any future legislation on assisted dying should start in the Commons, the democratically elected chamber, and only come to the Lords if the Commons sends it there.

Lord Falconer would be making a “bad mistake,” he says, in reintroducing his amendment as a private member’s bill in the Lords. “But if we have to have a fight, we’ll have a fight.”

Clare Dyer is the BMJ’s legal correspondent.

ClareDyer@aol.com

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Searching for Lazarus

South Africa’s public health system is in disarray. Can the new government revive it? Caroline Lambert reports

Jacob Zuma was elected president of South Africa in April, promising to improve public services and make health and education top priorities. He faces an uphill struggle. When former president Thabo Mbeki was pushed out of office last year, his controversial health minister, Manto Tshabalala-Msimang—famous for her faith in garlic and lemon juice to combat the country’s catastrophic AIDS epidemic—left a sinking ship that had been drifting without compass or captain for years. Although South Africa spends more per capita on its public health system than other countries of comparable income, health outcomes are far worse. Stories of babies sleeping in cardboard boxes in hospitals have been splashed across newspaper front pages. Ms Tshabalala-Msimang’s deputy was asked to leave—officially for taking an unauthorised trip—after she publicly exposed neglect and incompetence at the Frere Hospital in the Eastern Cape. During years of budget austerity, numbers of doctors and nurses in the public sector plummeted: 36000 left the public health system between 1997 and 2002.¹ Last year, after a few years of fatter budgets, the head count had recovered to its 1997 level, but hospitals remain severely understaffed.

Health challenges
South Africa is facing a severe health crisis. Life expectancy has fallen to about 52 years.² Local audits show that South Africa is one of only 12 countries where child mortality has increased since 1990,³ and it seems unlikely to meet the millennium development goals for health.

AIDS kills about 1000 South Africans every day. Prevention efforts have failed to stem the epidemic, and between 5.3 million and 5.5 million people are infected with HIV. Although about half a million people are receiving antiretroviral drugs in the public sector, over twice as many urgently need the drugs, says the Treatment Action Campaign, an AIDS activist group. The rollout of antiretroviral drugs remains largely confined to hospitals, and, unlike in countries such as Malawi, Mozambique, and Lesotho, South Africa has made little progress in delegating the prescription of antiretroviral drugs to nurses.¹

Reported cases of tuberculosis increased from 151239 in 2000 to 353879 in 2007. Three quarters of total estimated cases are either not cured or not reported.¹ The incidence of drug resistant strains is increasing. At the same time, non-communicable diseases—including cardiovascular conditions, diabetes, and cancer—are on the rise.

Shortly after the interim health minister, Barbara Hogan, took over last year, the Free State province announced it had run out of money and turned down all new patients seeking AIDS treatment for four months. According to the Southern African HIV Clinicians Society, the moratorium was responsible for another 30 deaths a day.² Angry doctors, who are still waiting for pay rises promised two years ago, have defied the legal ban on striking for essential services and walked out.

A popular cartoon by Zapiro depicting Jacob Zuma with a shower head, a satirical reference to the politician’s earlier claims that post-coital showers could prevent HIV infection
New start
So it is a critical patient that Mr Zuma’s new minister of health, Aaron Motsoaledi, now has to revive. A former provincial minister of agriculture, Dr Motsoaledi is an untested choice. But there are good signs. The tune has radically changed. Gone from the public discourse are Mbeki’s dissident views about HIV and AIDS. A week after his appointment, the new health minister announced his priorities and the immediate launch of new initiatives on HIV and AIDS, standards, cost containment, and salary disputes. “Our health outcomes are very unsatisfactory and rank among some of the worst in the world,” he admitted. In his state of the nation address on 3 June, Mr Zuma also expressed serious concern over the deterioration of the quality of health care.

This candour is a breath of fresh air. Pillo- ried a few years ago for having unprotected sex with an HIV positive woman and saying he took a shower to limit the risks of infection, Mr Zuma is now given the benefit of the doubt. Even Zapiro, a popular cartoonist, recently detached the shower head he had permanently grafted on Mr Zuma’s skull in his drawings.

It is still too early to say whether good intentions and honesty will translate into tangible results. Saddled with an economic recession, the new government has limited financial elbow room. Taking into account the larger population and heavier burden of disease, another 80000 staff—at an additional cost of 12bn rand (£900m; €1bn; $1.5bn)—would be needed to maintain 1997 standards. Meeting the government’s goals of reducing new HIV infections by half and providing antiretroviral treatment to 80% of those who need it by 2011 will not come cheap either.

But spending more money is not the only answer, says Alex van den Heever, an independent health economist. Indeed, financial controls and information systems need to be repaired and authority decentralised. Officials need to be held accountable and those who are not performing well or obstructing change replaced—a prospect that trade unions are unlikely to welcome. The broken levers of transmission between central health authorities, where policy is decided, and provincial ones supposed to implement them also have to be mended for good words to become reality.

Yet a heated debate over the introduction of a universal national health insurance threatens to divert attention from the much needed reform of public health care. Proponents of the national health insurance, an African National Congress electoral promise, argue that gross inequalities must be corrected. Few would disagree. But critics fear that advocates of national health insurance risk weakening South Africa’s world class private health system rather than improving the public sector.

To put the public health system back on course requires the government, the private sector, activists, and health professionals to work together, argues Fatima Hassan, an AIDS activist and former special adviser to Ms Hogan. Pockets of excellence, innovation, and dedication need to be tapped into. But many bridges carelessly burnt by Mr Mbeki’s erratic health minister have to be rebuilt.

By the time Ms Hogan had got her head around her portfolio’s huge challenges, she was moved to the department of public enterprises. Less than two months into office, the new health minister is already fighting several fires, including angry doctors. But Dr Motsoaledi will have to move from firefighting to systemic overhaul if South Africa’s public health is to mend.

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