The law as it stands could not be clearer

Assisting suicide must remain a crime in order to deter the malicious and protect the vulnerable

Clare Dyer’s recent feature article (BMJ 2009;339:b2868, doi:10.1136/bmj.b2868) attempts to make Lord Falconer’s case for changing the law to legalise assisting the suicides overseas of terminally ill British people. As an opponent of Lord Falconer’s proposed amendment to the Coroners and Justice Bill I would like to highlight some of its misconceptions.

As the Court of Appeal made clear in its February judgment on the Purdy case (BMJ 2009;338:b742, doi:10.1136/bmj.b742), not all cases of assisted suicide involve “loved ones.” There is a darker side to this story as well. For example, in at least two well documented deaths at the Dignitas clinic in Switzerland the deceased people were not terminally ill.

Of at least as great concern is that, if the law’s prohibition were removed, potential would be much increased for the coercion and manipulation of terminally ill people by relatives wanting to be rid of a care burden or anxious to inherit. Such abuse is not common, but it exists; and it is held in check by the penalties that the law holds in reserve to deal with people who have assisted suicides with malicious motives.

Nor should we take at its face value the rather idealised picture that is painted by the advocates of legal change: of terminally ill people who are fully resolved to end their own lives and of doctors who are fully competent and willing to assess patients for assisted suicide. As a result we might expect to see the “doctor shopping” that is such an unhappy feature of the Oregon scene, with assessments being carried out by a minority of physicians who are sympathetic to assisted suicide—a situation hardly conducive to objective outcomes.

Dyer records Lord Falconer’s view that “the current law has no safeguards.” This is nonsense. The law’s prohibition of assisted suicide, along with the penalties it holds in reserve, is itself a powerful safeguard: it causes potential assisters to think very carefully before embarking on such a course and to ensure that, if they do accede to a serious request for assistance with suicide, their motives and actions can stand up to serious investigation. In contrast, Lord Falconer’s proposed licence to assist the suicides of terminally ill people would have provided a “get out of jail free” card to assisters and opened the way to coercion or manipulation of people who might have had second thoughts once the licence had been issued.

Dyer argues, from the support given to Lord Falconer by Lord Low, himself a blind peer, that “not all disabled people oppose [assisted suicide].” But Lord Low is not disabled in the same sense in which, for example, Baroness Campbell, who spoke against Lord Falconer’s amendment, is disabled. Lord Low is far from being in danger of being classified as terminally ill. Baroness Campbell, on the other hand, would (in her own words) “tick every box” of Lord Falconer’s proposals. In any case, while there can be no doubt that disabled people who are also seriously ill would be exposed by legal change, others with loss of faculty (such as sight or hearing) could also be endangered by feelings of being a burden to others. It is hardly surprising therefore that organisations representing disabled people are worried by what they see happening. Lord Falconer claims that his amendment would only (in Dyer’s words) “reflect what happens in practice.” Again, this is only half the story. It is true that no assister of an overseas suicide has been prosecuted to date on return to the United Kingdom. But the numbers involved are very small—less than one in every 50 000 deaths of British people over the past 10 years—and they have occurred against the background of a law that deters all but really serious and resolute requests. In such circumstances the risks of coercion or manipulation are small, and it is hardly surprising that the director of public prosecutions has seen no public interest case for prosecuting in a case of suicide overseas—although currently there is one case in which prosecution is being undertaken for assisting suicide within the UK.

Furthermore, the complaint that the law as it stands is unclear is nonsense. It could not be clearer. A person who assists suicide within the UK. But the numbers involved are very small and they have occurred against the background of a law that deters all but really serious and resolute requests.
Dirty work

The outsourcing of the detention of children takes the obsession with privatisation to new depths.

In 2005 the charity Save the Children estimated that every year in the United Kingdom up to 2000 children are held in administrative detention centres, as members of families identified for enforced removal from the country. The detention centres are run by private companies on behalf of the UK Border Agency, part of the Home Office.

Many people who have spent their working lives providing care directly to patients within the NHS are dismayed and demoralised by the current policy obsession with public-private partnerships and the assumption that only corporate attitudes and powerful economic incentives can drive creativity, innovation, and higher standards in our public services. Such people will always find something distasteful in companies that make huge private profits for directors and shareholders out of the misfortune of the sick, alongside a belief that general taxation should not be making such a direct contribution to these profits and an undercurrent of worry about the rise of perverse incentives. In this context the outsourcing of an undertaking as morally compromised as the detention of children seems to plumb new depths. There will always be something despicable about paying other people to do one’s dirty work.

Nearly 1000 children were detained at the Yarl’s Wood Immigration Removal Centre in Bedfordshire during 2008. At this point it is useful to remember the government’s own definition of safeguarding children as “the process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully.” The detention of children solely for the administrative purposes of the UK Border Agency is clearly incompatible with this aim and definition of safeguarding.

On 16 May 2008 England’s children’s commissioner, Al Aynsley-Green, visited Yarl’s Wood, using the power of entry granted him by parliament. He and his team spoke to children, parents, and staff. The report of their visit was published in April 2009 (www.11million.org.uk/content/publications/content_361). Many of the detained children had been living in the UK for years, and some had been born here and had never known any other environment. The children gave disturbingly consistent accounts of rude and rough handling on arrest, insufficient time to pack their personal belongings, and enforced transportation, often in caged vehicles smelling of urine and vomit, finally ending up at what they clearly identified as a prison behind large metal gates. And these are children whose families have already been subject to displacement, many of whom have been traumatised by war or other forms of political violence. The “escort” service is provided by the private company G4 Securicor on behalf of the UK Border Agency. G4S (“Securing your world”) made a pre-tax profit of £416.4m (£485m; £690m) in 2008, an increase of 23% from the previous year.

Once in detention the children were confronted by an environment that Professor Aynsley-Green’s report describes as “quite bleak and grey,” with serious deficiencies in provision of education, play, and healthcare facilities. The management of Yarl’s Wood was contracted out to the private company Serco in April 2007. Between 4 and 8 February 2008 the chief inspector of prisons made the first inspection since the takeover. Her team noted “a significant reduction in staff” and also that children’s average length of stay in detention had almost doubled from 8 to 15 days. Of the 450 children detained at Yarl’s Wood between May and October 2007, 83 were held for more than 28 days, and the longest single period of detention recorded was 103 days. Serco ("Bringing service to life") gets 90% of its business from national and local governments and made a pre-tax profit of £131.6m in 2008, up 19% from the previous year.

Health care at Yarl’s Wood is provided by Serco Health ("We improve patient care with our health services”), but the Aynsley-Green report comes to the blunt conclusion that the standards failed to meet those of the NHS. No efforts seem to have been made to retrieve existing medical records; vaccinations were missed or given incorrectly; serious diseases, including sickle cell anaemia and insulin dependent diabetes, were inadequately treated; and children were poorly prepared for the health risks they would face on deportation. Serco Health employs nurses, but general practitioners are brought in on a sessional locum basis, which must make it all but impossible to provide the sort of comprehensive and continuing care that vulnerable children need.

The UK is a signatory of the United Nations Convention on the Rights of the Child. Article 37 states that “the arrest, detention or imprisonment of a child . . . shall be used only as a measure of last resort and for the shortest appropriate period of time.” The children’s commissioner found no evidence of this commitment being fulfilled at Yarl’s Wood. The government is currently consulting on “arrangements to safeguard and promote the welfare of children for those exercising UK Border Agency functions.” The apparent determination to bring the Border Agency’s treatment of children more into line with that of other statutory agencies is very welcome. However, the ineradicable challenge is that any detention of children for administrative rather than criminal purposes causes unnecessary harm and further blights already disturbed young lives. Such practices reflect badly on all of us.

Iona Heath is a general practitioner, London aque22@dsl.pipex.com

Cite this as: BMJ 2009;339:b3149