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ASSISTED DYING : WHAT ROLE FOR THE JUDGE? Some further thoughts

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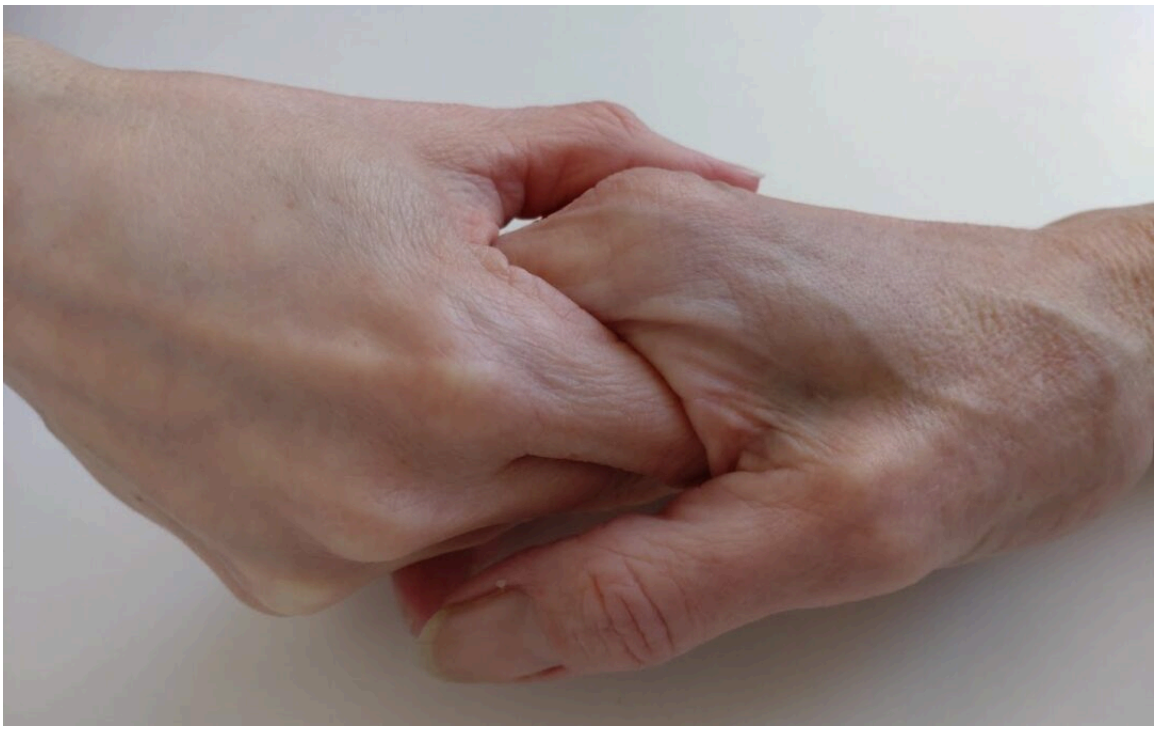

This is a guest post from Sir James Munby, the former President of the Family Division of the High Court of England and Wales. It follows on from his previous piece on this topic here.

In *Assisted Dying : What Role for the Judge?* published by the Transparency Project on 30 October 2024 I raised a number of questions about the suggestion that the scheme proposed to be set out in the Terminally Ill Adults (End of Life) Bill presented by Kim Leadbeater MP in the House of Commons on 16 October 2024 should include, as one of the protections against possible abuse, the involvement of the judges. When I wrote, the Leadbeater Bill had not been published. So I considered the issues as they would have arisen under the Assisted Dying for Terminally Ill Adults Bill introduced in the House of Lords by Lord Falconer of Thoroton on 24 July 2024.

My questions were two-fold: First, I raised a number of questions relating to fundamental aspects of the proposal for judicial involvement none of which had been answered by the Falconer Bill. Secondly, and even more fundamentally, I asked whether the judges should be involved at all in this process and whether what was proposed is a proper judicial function.

Further reflection on these difficult and worrying issues prompts me to expand the analysis in my previous paper in two respects:

- To consider the views on the subject expressed by the Divisional Court and the Court of Appeal (the Supreme Court subsequently refused permission to appeal) in the *Conway* litigation in 2017-2018 (see *Regina (Conway) v Secretary of State for Justice (Humanists UK and others intervening)* [2017] EWHC 2447 (Admin), [2018] EWCA Civ 1431, [2020] QB 1.) That was not something I had considered in my previous paper.
- To provide three points of elaboration and clarification in relation to the issue of whether the judges should be involved at all in this process.

The Leadbeater Bill has now been published, on 11 November 2024 (see here).

This purpose of this follow-up paper is simple: to consider to what extent the concerns expressed in my previous paper, as elaborated in this paper, have now been addressed in the Leadbeater Bill and, to the extent they have, whether what is now proposed is satisfactory.

It is convenient to start with *Conway*, a case where it was being argued that the

> "As part of his case, Mr Conway has put forward the outline of an alternative statutory scheme which he says would safeguard relevant competing legitimate interests and would sufficiently protect the weak and vulnerable in society and which therefore shows that the blanket prohibition in section 2 is an unnecessary and disproportionate interference with his rights under Article 8. The substantive criteria outlined by Mr Conway are that the prohibition on providing assistance for suicide should not apply where the individual is aged 18 or above; has been diagnosed with a terminal illness and given a clinically assessed prognosis of six months or less to live; has the mental capacity to decide whether to receive assistance or to die; has made a voluntary, clear, settled and informed decision to receive assistance to die; and retains the ability to undertake the final acts required to bring about his death having been provided with such assistance. In addition, he has outlined these procedural safeguards: the individual makes a written request for assistance to commit suicide, which is witnessed; his treating doctor has consulted with an independent doctor who confirms that the substantive criteria are met, having examined the patient; assistance to commit suicide is provided with due medical care; and the assistance is reported to an appropriate body. As a further safeguard, Mr Conway also proposes that permission for provision of assistance should be authorised by a High Court judge, who should analyse the evidence and decide whether the substantive criteria are met in that individual's case."

As the Divisional Court commented, the scheme proposed by Mr Conway was broadly equivalent to that in a Bill introduced in Parliament by Lord Falconer of Thoroton on 5 June 2014 and again, in materially similar terms, on 3 June 2015, as indeed, I might add, in his most recent Bill.

The Divisional Court summarised the submissions put forward on behalf of Mr Conway by Mr Richard Gordon QC (para 98):

> "the proposed legislative regime which Mr Conway has outlined would be adequate to address concerns regarding the protection of the weak and vulnerable. In

> decision to die, as can already happen when a person wishes to have life sustaining support switched off: see *In re B (Adult: Refusal of Medical Treatment)* [[2002] EWHC 429 (Fam), [2002] 2 All ER 449]."

The Divisional Court was sceptical (para 100):

> "the involvement of the High Court to check capacity and absence of pressure or duress does not meet the real gravamen of the case regarding protection of the weak and vulnerable. Persons with serious debilitating terminal illnesses may be prone to feelings of despair and low self-esteem and consider themselves a burden to others, which make them wish for death. They may be isolated and lonely, particularly if they are old, and that may reinforce such feelings and undermine their resilience. All this may be true while they retain full legal capacity and are not subjected to improper pressure by others."

It went on to quote Lord Sumption JSC in *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38, [2015] AC 657, para 228:

> "It may be, as Lord Neuberger of Abbotsbury PSC suggests, that these problems can to some extent be alleviated by applying to cases in which patients wish to be assisted in killing themselves a procedure for obtaining the sanction of a court, such as is currently available for the withdrawal of treatment from patients in a persistent vegetative state. But as he acknowledges, there has been no investigation of that possibility in these proceedings. It seems equally possible that a proper investigation of this possibility would show that the intervention of a court would simply interpose an expensive and time-consuming forensic procedure without addressing the fundamental difficulty, namely that the wishes expressed by a patient in the course of legal proceedings may be as much influenced by covert social pressures as the same wishes expressed to health professionals or family members."

It added (para 104):

> External pressures might be very subtle and not visible to the court. For example, it is not difficult to imagine cases of family discussions about money problems, not necessarily intended to place pressure on an elderly relative, in consequence of which they draw their own conclusions that they are a burden and would be better off dead. In any event, it might be difficult to disentangle factors of external pressure from the individual's own internal thought processes and difficult to tell when external pressure is illegitimate or such as to invalidate the individual's own choice to die."

In the Court of Appeal Mr Conway was represented by Ms Nathalie Lieven QC, who submitted (paras 87, 94, 131 and 141) that "a High Court judge, sitting in an inquisitorial role, is well able to decide whether the scheme's five substantive criteria are met in any particular case" and that "it would be possible to devise a structure which would enable the evidence to be fully tested, whether by the appointment of an advocate to the court or in some other way." She went on to emphasise "the regular work of the Family Division and of the Court of Protection in assessing mental capacity and, for example, making decisions as to the best interests of patients in withdrawal of treatment cases."

Like the Divisional Court the Court of Appeal was sceptical as to the efficacy of the proposed judicial safeguard (para 171):

> "Despite Ms Lieven's submissions on the evidence, what remains quite clear is that an element of risk will inevitably remain in assessing whether an applicant has met the criteria under Mr Conway's proposed scheme. The submissions and counter-submissions of counsel on the evidence, limited as it is to the evidence which the parties choose to place before the court, highlight the limitation of the ability of the court to assess with confidence the precise extent of the risk."

It went on (para 174):

> "Another concern is whether and how the proposed inquisitorial role of a High Court judge would work in practice. The judge would only be able to assess such

> appropriate evidential investigation and also, possibly, to play some role in the court hearing. As King LJ observed during the course of the hearing, such an inquisitorial approach would require funding but whether or not such funding would be available is completely unknown."

Central to the concerns articulated by the Divisional Court was the worry that:

> "The court would have to proceed on the evidence placed before it. External pressures might be very subtle and not visible to the court."

In the Court of Appeal, as we have seen, Ms Lieven sought to meet this by referring to the "inquisitorial role" of the judge and to "a structure which would enable the evidence to be fully tested, whether by the appointment of an advocate to the court or in some other way." But this, the Court of Appeal thought, would not be enough. The process "would require some independent person or agency to carry out *the appropriate evidential investigation* (my emphasis)" – in short, to carry out the kind of rigorous independent investigation traditionally carried out by the Official Solicitor in wardship cases and more recently in end-of-life cases.

In my previous paper I asked "what procedures are to be adopted for testing and, if need be, challenging the evidence?" I now see, in the light of *Conway*, that in putting it this way I did not go far enough:

- Does there not need to be an independent evidential investigation?
- If so, is the Official Solicitor to be involved, or if not the Official Solicitor who else? And who is to pay for all this?

Moreover, as was articulated in the concerns of both the Divisional Court and the Court of Appeal, even assuming the adoption in every case of the most rigorous procedures, the ultimate question still remains: how confident can we be that even the most rigorous procedures will be adequate to identify and prevent possible abuses and in particular, to use the Divisional Court's phraseology, be adequate to detect what may be very subtle external pressures?

whether this was a proper function for a judge. I suspect that, given the established role of the judges in life and death cases, everyone simply assumed that there was no difference in the case of assisted dying – a lazy and, as I explained in my previous paper, a fundamentally erroneous assumption.

In relation to the role of the judge, I add one point by way of context and two by way of clarification:

- In *An NHS Trust and others v Y (Intensive Care Society and others intervening)* [2018] UKSC 46, [2019] AC 978, para 126, the Supreme Court held that, as a matter of law, there is no need to involve the court, even in relation to the withdrawing of life-sustaining treatment from a patient who lacks capacity to consent, where there is agreement as to what is being proposed.
- I am not contending that there can never be any role for the judge in the context of assisted dying. My concern was (and is) that under the scheme proposed in the Falconer Bill the function of the judge was not to decide some disputed issue or to resolve some controversy but only to certify that the decision taken by the patient complies with the law. Of course, if there is some dispute then that is something on which a judge can properly be required to rule, having first, if need be, 'held the ring' by granting an interim injunction: *AY v NB* 2024 BCSC 2004 the assisted dying case very recently decided by Coval J in the Supreme Court of British Columbia (judgment delivered on 27 October 2024) is an example. The inherent jurisdiction of the High Court in relation to vulnerable adults is an example of a jurisdiction exercisable in this way in relation to a patient who although having capacity to decide is vulnerable to improper influence: see *Whither the inherent jurisdiction? How did we get here? Where are we now? Where are we going? Part II* [2021] Fam Law 365, 367-369, *Part III* [2021] Fam Law 508, 513, 515.
- I make clear for the avoidance of any misunderstanding that I agree entirely with Sir Nicholas Mostyn's very plain statement (see the Addendum to *Assisted Death: A Person with Parkinson's Perspective*) that "if the judges are to be involved their *competence* to decide the key question cannot be doubted." That said, their *ability* to do so is critically dependent upon the nature of the process they are required to undertake and the practical and procedural safeguards built into it.

The Leadbetter Bill

Against this background I turn to the Leadbeater Bill as published on 11 November

Clause 1 provides as follows:

> "(1) A terminally ill person who—
>
> (a) has the capacity to make a decision to end their own life (see section 3),
>
> (b) is aged 18 or over at the time the person makes a first declaration (see section 5),
>
> (c) is ordinarily resident in England and Wales and has been so resident for at least 12 months ending with the date of the first declaration, and
>
> (d) is registered as a patient with a general medical practice in England or Wales,
>
> may, on request, be provided with assistance to end their own life in accordance with sections 5 to 22.
>
> (2) Sections 5 to 22, in particular, require steps to be taken to establish that the person—
>
> (a) has a clear, settled and informed wish to end their own life, and
>
> (b) has made the decision that they wish to end their own life voluntarily and has not been coerced or pressured by any other person into making it."

Clause 12 (headed "Court approval") provides as follows:

> "(1) Where—
>
> (a) a person has made a first declaration under section 5 which has not been cancelled,
>
> (b) the coordinating doctor has made the statement mentioned in section 7(3), and
>
> (c) the independent doctor has made the statement mentioned in section 8(5),
>
> that person may apply to the High Court for a declaration that the requirements of this Act have been met in relation to the first declaration.
>
> (2) On an application under this section, the High Court—
>
> (a) must make the declaration if it is satisfied of all the matters listed in subsection (3), and
>
> (b) in any other case, must refuse to make the declaration.

(b) the person is terminally ill,

(c) the person has capacity to make the decision to end their own life,

(d) the person was aged 18 or over at the time the first declaration was made,

(e) the person is ordinarily resident in England and Wales and has been so resident for at least 12 months ending with the date of the first declaration,

(f) the person is registered as a patient with a general medical practice in England or Wales,

(g) the person has a clear, settled and informed wish to end their own life, and

(h) the person made the first declaration and the application under this section voluntarily and has not been coerced or pressured by any other person into making that declaration or application.

(4) Subject to the following provisions of this section and to any provision made by Rules of Court, the High Court may follow such procedure as it deems appropriate for each application under this section.

(5) The High Court—

(a) may hear from and question, in person, the person who made the application for the declaration;

(b) must hear from and may question, in person, the coordinating doctor or the independent doctor (or both);

(c) for the purposes of paragraph (b), may require the coordinating doctor or the independent doctor (or both) to appear before the court.

(6) For the purposes of determining whether it is satisfied of the matters mentioned in subsection (3)(g) and (h), the High Court may also—

(a) hear from and question any other person;

(b) ask a person to report to the court on such matters relating to the person who has applied for the declaration as it considers appropriate.

(7) In subsection (5)—

(a) in paragraph (a), the reference to the person who made the application includes, in a case where the person's first declaration was signed by a proxy under section 15, that proxy, and

(b) "in person" includes by means of a live video link or a live audio link.

> (9) The Court of Appeal must—
>
> (a) if it is satisfied of the matters mentioned in paragraphs (a) to (h) of subsection (3), make a declaration that the requirements of this Act have been met in relation to the first declaration, and
>
> (b) in any other case, confirm the High Court's decision.
>
> (10) Subsections (4) to (7) apply in relation to the Court of Appeal as they apply in relation to the High Court.
>
> (11) No appeal lies from a decision of the High Court to make a declaration under this section."

I need also to refer to clauses 23, 30 and 38.

Clause 23(1) provides that:

> "No registered medical practitioner or other health professional is under any duty (whether arising from any contract, statute or otherwise) to participate in the provision of assistance in accordance with this Act."

Clause 30(1)(e) provides that:

> "The Secretary of State may issue one or more codes of practice in connection with … such other matters relating to the operation of this Act as the Secretary of State considers appropriate."

Clause 38(1) provides that:

> "The Secretary of State may by regulations make—
>
> (a) such supplementary, incidental or consequential provision, or
>
> (b) such transitory, transitional or saving provision,
>
> as the Secretary of State considers appropriate for the purposes or in consequence of any provision made by this Act."

On any view the Leadbeater Bill in its proposals for judicial involvement marks a

The short answer is that it does not.

The issues

It may be helpful at this point to recapitulate the issues, discussed in this and my previous paper, as they arise under the Falconer Bill:

- What level of judge is to exercise this jurisdiction? Is it to be a High Court judge? Or a more junior judge?
- What is the function of the judge? To what extent is the judge expected to exercise a discretion?
- Process and procedures:
  - Who can apply to the court and who should be joined as parties?
  - Is there to be a hearing or is the application to be dealt with 'on the papers' and without a hearing?
  - If there is to be a hearing, is this to be in public or in private? Are there to be reporting restrictions? Are the identities of any of the participants, in particular the patient, the witness and the countersigning doctors, to be anonymised?
  - What procedures are to be adopted for testing and, if need be, challenging the evidence? Who should exercise that function?
  - Is there to be an independent evidential investigation? If so, who is to undertake this and who is to pay for it?
  - Should the judge be required to give a judgment in every case and be required to publish the judgment?
  - How are appeals to be incorporated in the process?
  - What public funding arrangements will there be?

- Even assuming the adoption in every case of the most rigorous procedures, how confident can we be that even the most rigorous procedures will be adequate to identify and prevent possible abuses and in particular be adequate to detect what may be very subtle external pressures?
- Does the conscience clause apply to the judges?
- Is what is proposed a proper role for a judge, given that the judge's function is not to decide some disputed issue or to resolve some controversy but only to certify that the decision taken by the patient complies with the law?

This is left unanswered. Moreover, the Leadbeater Bill introduces a further matter of uncertainty. The Falconer Bill made clear that applications were to be made to the Family Division; the Leadbeater Bill provides merely that they are to be made to the High Court? It is wholly unsatisfactory that these matters are left to be resolved either by Rules of Court (clause 12(4)) or by regulations made by the Secretary of State (clause 38).

What is the function of the judge?

To what extent is the judge expected to exercise a discretion? Clauses 12(2) and 12(9) provide welcome clarification: the court is not given any discretion as to its *decision*. So far so good. But, as against that, the court is given an extraordinary degree of discretion in relation to the *process* it is to adopt.

Process and procedures

This vitally important topic – central to the efficacy of any scheme for judicial involvement – is dealt with in clauses 12(4)-(6). What is proposed is wholly inadequate.

Clause 12(1) makes clear that the application is to be made by the patient, but the Leadbeater Bill is otherwise completely silent as to who (if anyone) should be joined as parties or notified of the proceedings. This is an astonishing omission for a number of vitally important reasons. Quite apart from all the other reasons why it might be thought desirable to make such provision in the Bill:

- The participation of others is necessary:
  - if the process is to have that degree of rigour which is essential if it is to be capable of identifying and preventing possible abuses, and in particular be adequate to detect what may be very subtle external pressures, and
  - if it is to command public confidence.
- The Bill is entirely silent as to how the court is to deal with the kind of issue exemplified by the Canadian case of *AY v NB* 2024 BCSC 2004, where the patient's partner intervened and obtained an interim injunction because of concerns about what was happening.
- These difficulties are compounded by the extraordinary proposal in clause 12(11) precluding any appeal if the High Court has made the declaration sought by the

The Bill's overall approach (clause 12(4)) is to permit the High Court to "follow such procedure as it deems appropriate for each application under this section." The *only* mandatory part of the process (the only place where the word "must" appears) is clause 12(5)(b), providing that:

> "The High Court … must hear from and may question, in person, the coordinating doctor or the independent doctor (or both)."

That apart, the Leadbeater Bill provides only that the High Court "may" do various things.

Clause 12(5)(b) is nothing like as clearly drafted as one would wish on such a vitally important point:

- In the first place, what is meant by the words "hear from"? Is this intended to mean "take oral evidence from" – and, if so, why does it not say so in terms – or will this requirement be satisfied by the judge reading some written document? The contrast between "must hear from and may question, in person" suggests the latter is the correct construction. This is not some lawyer's piece of pedantry. It is of fundamental importance. For unless there is a requirement to hear oral evidence there will be no need for a hearing at all and the case will be able to proceed without a hearing and 'on the papers'.
- The unhappy wording – "must" … "may" … "or" … "or both" – makes it very difficult to understand precisely what it is that the judge "must" do.

Clauses 12(5) and (6) provide that the judge "may" do the following:

- "hear from and question, in person, the person who made the application for the declaration"
- "require the coordinating doctor or the independent doctor (or both) to appear before the court"
- "hear from and question any other person" and
- "ask a person to report to the court on such matters relating to the person who has applied for the declaration as it considers appropriate."

With the exception of the third, which is quite properly expressed as a discretionary

absence of any requirement that the judge “must” hear from and question the patient is a quite extraordinary lacuna.

Beyond this the Bill is silent as to the process and procedures to be adopted. It is, as we have seen, ambiguous as to whether there is to be a hearing or whether the application can be dealt with ‘on the papers’ and without a hearing. It says very little about the procedures to be adopted for testing and, if need be, challenging the evidence and nothing about who should exercise that function; nor about the nature of any independent evidential investigation and nothing about who is to undertake this and who is to pay for it.

Other issues

And it has nothing whatever to say about these vital matters:

- If there is to be a hearing, is this to be in public or in private? Are there to be reporting restrictions? Are the identities of any of the participants, in particular the patient, the witness and the countersigning doctors, to be anonymised?
- Should the judge be required to give a judgment in every case and be required to publish the judgment?
- What public funding arrangements will there be?

All in all, in relation to the involvement of the judges in the process, the Leadbeater Bill falls lamentably short of providing adequate safeguards.

Let us consider how an application to the court could be dealt with by a judge in a manner entirely compatible with the requirements of clause 12. The judge could:

- Decide the matter without hearing from the patient and with no input of any sort from the patient’s partner or relatives.
- Deal with the case in private – in secret – and, if I am right about clause 12(5)(b), without holding any kind of hearing and, moreover, without giving any public judgment.
- Adopt a procedure which, beyond whatever little the judge is required to do in accordance with clause 12(5)(b), involves neither testing nor challenging the evidence nor any independent evidential investigation.

- Without the public knowing anything about it – not even the name of the judge.

The fact is that judges are kept up to the mark by two things: having to comply with proper procedure and being exposed to the public gaze.

Open Justice

Over a century ago, in *Scott v Scott* [1913] AC 417, 477, Lord Shaw of Dunfermline, in his timeless denunciation of the evils of secret justice, quoted Bentham:

> "In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice."

> "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial."

If it is said that the public can have confidence in the fact, without more, that the declaration has been made by a High Court judge, then I can only respond with bleak emphasis that even High Court judges are fallible and sometimes make mistakes. Why after all, do we have a Court of Appeal and why are there successful appeals against High Court judges?

As I said in my earlier paper, I am strongly of the view that the integrity of the process and the maintenance of public confidence demand that there be a hearing in public in every case, and with an absolute minimum of reporting restrictions; that there should be no anonymisation of any of the participants (except, perhaps, for the patient during his or her lifetime); that there must be a rigorous procedure in every case for testing and if need be challenging the evidence; and that the judge must be required to give and publish a judgment in every case.

There can be no room here for secrecy or concealment. If there is to be a judicial process, it must be open and transparent.

Some may say: these are all technical points which can appropriately be left for the

jurisdiction is to be exercised will be fundamental to the integrity and efficacy of the scheme. They will be crucial to the confidence which those directly involved and, more generally, society and the public at large must have if the scheme is not to sink into discredit and worse. These are matters on which Parliament must make its intentions plain.

My concerns about the inadequacy of the procedures mandated by the Bill are only exacerbated by the extraordinary provision in clause 12(11) precluding any appeal from a decision of the High Court to make a declaration. What if the judge has adopted a procedure which would not pass muster with the Court of Appeal or, indeed, and even more alarmingly, has arrived at a decision which the Court of Appeal, if given the opportunity, would reverse? There can be no appeal – and the patient dies.

And what if the patient's partner and relatives, excluded from participation in the judicial process, discover only after the judge has made the declaration facts of the kind which in *AY v NB* 2024 BCSC 2004 prompted an eleventh-hour intervention by the Canadian judge? What are they to do? They cannot appeal. Can they somehow apply to the judge who made the declaration but is now probably *functus officio*? Or can they apply to the Family Division and pray in aid the inherent jurisdiction? Who knows, and the Bill does not tell us.

I turn to the next issue.

How confident can we be that the procedures set out in the Bill will be adequate to enable the court to identify and prevent possible abuses and in particular be adequate to detect what may be very subtle external pressures?

My answer, for the reasons I have already given, is very simple. Only those who believe implicitly in judicial omniscience and infallibility – and I do not – can possibly have any confidence in the efficacy of what is proposed.

So much for process.

What about the role of the judge?

those judges appointed at a time when this new jurisdiction was not 'part of the job description'? Is a judge with a conscientious objection to be faced with the choice of compliance or resignation? Or would this fundamental matter of principle be smoothed away by an unprincipled and necessarily secret manipulation of court listing? There must, as I have said, be openness and transparency.

Is what is proposed a proper role for a judge?

Given that the judge's function is not to decide some disputed issue or to resolve some controversy but only to certify that the decision taken by the patient complies with the law, and moreover applying such a potentially defective procedure, I am extremely doubtful.

What is proposed is that a judge by court order should facilitate the administration to a patient of a drug intended to bring about the patient's death. It is difficult to over-emphasise the profound impact of this on what has hitherto been seen to be the proper role and function of a judge.

Quite apart from all the other problems arising under the Bill in relation to the proposal for judicial involvement, the more fundamental problem remains. Is this a proper function for the judges? Is this, indeed, truly a judicial function at all? Many would say that it is not. Where else in our judicial system does one find a judge, sitting judicially as a judge, whose function is not to decide some disputed issue or (as with the declaratory jurisdiction) to resolve some controversy but only to certify, as it were, that some decision taken by a private individual complies with the law? That, it might be said, is not what judges do and not what judges are for.

There is here, I suggest, a fundamental dilemma. If there is to be a judicial process, it must, as I have said, be open and transparent. The very suggestion that the process should be private, confidential, shrouded in secrecy, is surely anathema to any judge who might be involved. But the idea of these cases being heard in public, with all the details being published, is, I suspect, anathema to those who want to be able to slip away quietly and without fuss.

integrity of the scheme and corrosive of the judicial function. Despite it being promoted by its supporters as an important and valuable safeguard in which the public can have confidence, the fact is that the architects of the Leadbeater Bill, however much they may protest otherwise, have chosen to promote a profoundly unsatisfactory scheme for judicial involvement: a scheme which does not provide for an open and transparent process but, on the contrary, permits a secret process which can give us no confidence that it will enable the court to identify and prevent possible abuses.

The impact of the proposals on the judicial system and the administration of justice

A final matter to consider is the impact the proposed judicial involvement will have on the judicial system and the administration of justice. Kim Leadbeater MP suggests that as many as 3% of the adult population might eventually choose assisted dying. In 2023 there were 577,620 adult deaths in England and Wales (total deaths 581,363 of which 3,743 were of children under the age of 18): 3% of that is 17,328 – I round it down to 17,000. Let us assume, in order to illustrate the scale of the problem, that each application takes an average of 2 hours (I make clear that I do not accept that 2 hours would be sufficient). That would require a total of 34,000 hours of judicial involvement. A High Court judge sits in court for 40 weeks a year, 5 days a week, the court day being 5 hours (to be clear: this is the 'sitting time'; High Court judges work for much more than 5 hours a day). So a High Court judge sits for a total of 1,000 hours a year. Including the President of the Family Division there are 19 judges in the Family Division, between them sitting a total of 19,000 hours a year, a figure far short of the 34,000 hours of judicial involvement required on this calculation. The figure speak for themselves. Where are the judges to be found? And what of the impact on the wider administration of justice which, as is unhappily notorious, is already under enormous strain?

Sir James Munby, 14 October 2024

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1 Comment

Veronica Newman on 15 November 2024 at 11:09 am

A powerful analysis. I do not agree with the state becoming involved in assisted dying. The mere fact there need to be safeguards expresses the certain expectation that it will be abused.

Reply