Assisted Dying

**Question for Short Debate**

7.32 pm

*Asked by Baroness Jay of Paddington*

To ask Her Majesty's Government how they assess the application of the Director of Public Prosecutions's *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide*.

**Baroness Jay of Paddington:** My Lords, I am grateful for the opportunity to ask the Government this important and timely Question. On 25 February, it will be two years since the Director of Public Prosecutions published his *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide*. I think that it is fair to say that those new guidelines were generally welcomed. They relate to a criminal offence which carries a maximum prison sentence of 14 years and, of course, to the general issue of assisted suicide, which, as your Lordships are aware and as we see from the speakers list tonight, continues to be of great interest and concern. Until this evening, the guidelines have not been debated in Parliament, so this is a very appropriate moment to hear the Government's assessment of how they are working, not least because there have been two more recent publications which are pertinent.

In January, the expert Commission on Assisted Dying, chaired by my noble and learned friend Lord Falconer of Thoroton concluded after 12 months' work that the,

"legal status of assisted dying ... is inadequate and incoherent".

The commission proposed an entirely new legal framework. I am very pleased that the noble Baroness, Lady Young of Old Scone, who was one of the commissioners, is speaking in this debate. Just last week, the General Medical Council published new draft guidelines dealing with the circumstances in which a doctor is alleged to have assisted a suicide. Those guidelines are now out for consultation.

As your Lordships can see, this is a very live current issue, but perhaps I may remind the House of the background. The Suicide Act 1961 explicitly gives the Director of Public Prosecutions discretion over whether to prosecute cases of assisted suicide. Over the years, this has led to complicated and difficult ambiguities in a particularly sensitive area. In 2009, the case of Debbie Purdy, who is suffering from progressive multiple sclerosis, came to the House of Lords. She was seeking clarity about her husband's future legal position if he helped her to commit suicide. The Law Lords ruled that the Director of Public Prosecutions must as a result of this case create what they called a "custom-built" statement, indicating the various factors for and against prosecution. I am delighted that the noble Lord, Lord Pannick, who represented Mrs Purdy in that case, is speaking this evening.

The resulting policy guidelines, which we are discussing tonight, included 16 factors where the DPP will be more likely to judge that it is in the public interest to prosecute and six where prosecution is less likely. The six factors weighing against prosecution are: the victim had reached a voluntary, clear, settled and informed
decision to commit suicide; the suspect was wholly motivated by compassion; the actions of the suspect were of only minor encouragement or assistance; the suspect tried to dissuade the victim from committing suicide; the suspect was reluctant to assist; and the suspect reported the victim's suicide to the police and fully assisted them in their inquiries. I should note that many people object to the use of the terms "victim", meaning in this case the person who has died, and "suspect", the assister in this context, but I understand that the DPP feels that these are unavoidable in the criminal law.

As so often, it is probably more helpful to look at individual cases; for example, that of Geraldine McClelland. Last December, Geraldine McClelland died in Switzerland, having been accompanied to the assisted suicide organisation, Dignitas, by both her brother and her sister. Geraldine, who was terminally ill, made clear her desire to control her own death to the extent that she wrote an open letter to the public, telling us:

"I am 61 years old and am dying from lung and liver cancer ... I have chosen to travel abroad to die ... I am not sad that I will die today ... I feel sure this is the right decision for me and I am relieved that I won't be forced to suffer any more".

Frankly, I cannot imagine anyone thinking that it would be in the public interest to prosecute Geraldine's brother and sister, who accompanied her.

It is worth recording that it is estimated that more than 180 Britons have travelled to Switzerland to die in the past decade, but, to date, no one has been prosecuted for accompanying them or assisting with arrangements. Interestingly, it does not look as though the existence of the new prosecuting guidelines since 2010 has led to an increase in the number of Britons going abroad to die. The media have reported that there were fewer in 2011 than in 2010. On the other hand, the Crown Prosecution Service reports an increase in the cases reported to the authorities-50 between January 2009 and December 2011 compared with only eight in the five years between 2003 and 2008. The greater willingness to come forward seems to have been prompted, in part at least, by the new prosecution policy and is certainly to be welcomed. Overall, the legally sanctioned clearer and more flexible approach to what are often emotionally and practically difficult, sad situations is a great step forward.

However, there are two significant problems with the policy as it now stands and I should be grateful for specific comments from the Minister on them. The first and perhaps most obvious is that, although Debbie Purdy brought her landmark case in the hope of protecting her husband from criminal charges—that is, if he helped her in the future to die—the new policy maintains the position that there can be no negotiated immunity before a crime is committed. It would be much more humane and realistic to establish that, when someone has, in the words of the new guidelines,

"reached a voluntary, clear, settled and informed decision to commit suicide",

their circumstances could be investigated before they die. Apart from anything else, if their intention was known in advance, the person wanting to die might be offered alternative care and treatment options, and might even change their mind.
A change in the law or extension of the custom-built guidelines to achieve this would also open up the possibility of involving medical assistance, because the second failing of the guidelines is the lack of advice to doctors and nurses. Indeed, the policy explicitly states that those with professional caring responsibilities are more likely to be prosecuted if they assist a suicide than a lay relative or friend. This is one of the 16 factors which tend to lead to prosecution. There is growing evidence, though, that this creates practical problems for health professionals looking after patients at the end of life. We are in danger of creating a paradox here. Doctors and nurses think that they are still actively precluded from any involvement in assisted suicide, but, on the other hand, patients and their families today feel encouraged to discuss it with the professionals whom they trust. It would be extremely helpful if there could be clear understanding about the nature and limits of any assistance that a healthcare professional might give. To take an example, is a doctor equally liable to prosecution if he prescribes lethal drugs or, on the other hand, he supplies medical records for a patient who has made the decision to travel abroad to die and asks his medical practitioner for them? I very much welcome the General Medical Council’s initiative in consulting on legal issues for the medical profession as it is doing now and I hope that the council gives valuable guidance when that process is completed later this year.

Overall, the prosecuting policy has produced positive effects, which are widely supported by the public where polling suggests that more than 80 per cent are in favour of not prosecuting those who help a relative or close friend to die. I am very grateful to all the distinguished Members of the House who will take part in what may be a slightly breathless debate tonight. The number of speakers who have decided to take part indicates that this House takes this issue very seriously and we should perhaps be asking for government time to discuss it more fully soon. I look forward to the Minister’s reply and particularly his opinion on whether the present policy is regarded as a permanent solution and settled, or whether it may need amendment and extension in the future.

7.41 pm

Lord Ribeiro: My Lords, I thank the noble Baroness for bringing this very important debate to the House. I declare an interest as a past president of the Royal College of Surgeons. In 2005, we made it clear that we did not support assisted suicide. In evidence to the Commission on Assisted Dying in April 2011, the Royal College made two clear statements:

"The law as it currently stands should not be changed and no system should be introduced to allow people to be assisted to die",

and:

"The College does not recognise any circumstances under which it should be possible for people to be assisted to die".
I understand that the policy for prosecutors issued by the Director of Public Prosecutions does not indicate a change in the law, but for me there appear to be ambiguities that require clarification. Under the heading:

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"Public interest factors tending in favour of prosecution",

in paragraph 43(14),

"the suspect was acting in his or her capacity as a medical doctor",

or, "nurse", may be seen as being in danger of prosecution. That seems at odds with the, "factors tending against prosecution", in paragraph 45(2) where,

"the suspect was wholly motivated by compassion".

I hope that my noble friend will be able to clarify this point as it is bound to put doctors and nurses in considerable doubt as to the interpretation of their actions. A good doctor knows when he or she should,

"not strive officiously to keep alive",

and that doctrine should be maintained.

7.42 pm

The Earl of Glasgow: My Lords, death, as we all know, comes to all of us, so there is no point in being frightened of it. What we do fear, though, is the manner of our death. If we are unfortunate enough to contract some terminal illness involving a painful or undignified death, we may well wish to die before the worst hits us. But to achieve that we will need assistance and, as the law now stands, any doctor or relative who helps us to die prematurely is committing a criminal offence.

The only hope of getting away with it is by persuading our loved ones to take us to Dignitas in Switzerland. It is not where we want to die, it is not how we want to die, but it is the only option open to us. More than 100 terminally ill Britons have chosen the Dignitas route and although the friends and relatives who accompany them are committing a crime, the public prosecutor has chosen not to prosecute any of them. He has rightly concluded that they did what they did for compassionate reasons and were complying with the patient's wishes. That ruling, I submit, should apply to all cases of assisted dying. The public prosecutor has chosen compassion over the law and it is time that the law was changed to reflect that.

7.43 pm
Baroness Hollins: My Lords, I express an interest as a past president of the Royal College of Psychiatrists, which issued a statement in 2005 about the law as it relates to assisted dying. The prosecuting policy published two years ago is not the only one of its kind. There are prosecuting policies relating to other offences, including domestic violence, racial hatred, dangerous driving and rape. The Director of Public Prosecutions told the group chaired by the noble and learned Lord, Lord Falconer, last year:

"There is a residual discretion for all offences whether to prosecute or not. This is a particular version of it. But it's not unique by any stretch of the imagination; it's the way our law operates".

We need to remember that and to see the law on assisted suicide and its associated prosecuting policy within the context of the criminal law as a whole rather than in isolation.

The penalties that it holds in reserve provide a powerful deterrent against malicious assistance and like other criminal laws it gives prosecutors the discretion

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not to press charges where it is clear that assistance with suicide has been, to quote the words of the prosecution policy, "wholly motivated by compassion".

7.44 pm

The Lord Bishop of Lichfield: My Lords, the current guidelines on assisted suicide act to protect vulnerable people and to deter others from acting in an unprincipled manner in bringing about the end of another person's life. That so few cases have been brought to the DPP is proof of the deterrent value of the law. That none of these cases has resulted in prosecution is proof that the law is being applied with compassion and good sense.

Last week, the Church of England General Synod passed a motion by 264 votes to nil indicating, among other things, its opposition to a change in the law in assisted suicide and its support for the current DPP's guidelines. The synod represents not only bishops but clergy and lay people democratically elected by their peers. Its decision, taken after careful consideration and debate, bears testimony to the efficacy of the current law and its application.

7.45 pm

Baroness Emerton: The prosecution guidelines make it clear that there does not need to be a change in the law in any way and that encouraging or assisting suicide remains unlawful. The law that we have deters malicious or manipulative assistance with suicide and it ensures that the few cases that occur are generally those where there has been serious soul-searching and which do not need to be prosecuted. There are fewer than 20 cases a year throughout England and Wales. Contrast that with the US state of Oregon, where the current rate of legalised assisted suicide equates to more than 1,000 such cases here. The law that we have is both firm and compassionate and the DPP is on record as having said that the law works well in practice.

7.46 pm
Baroness Morris of Bolton: My Lords, like other noble Lords who have spoken, I believe that the law we have on assisted suicide combines deterrence with compassion. Its effectiveness as a deterrent is shown by the infrequency of the offence, while the discretion that it gives to the prosecutors to assess each case on its merits ensures that there is sensitive handling of genuinely compassionate cases.

It is impossible to legislate in detail for every conceivable human situation. What we have now is a law that makes a firm statement that suicide is not something to be encouraged or assisted, but which allows each case to be dealt with by the prosecutors in the light of all the evidence.

I appreciate that the desire for clarification is driven by decency and concern, but I fear that relaxing the law will lead all too easily to pressure on the vulnerable. That is why I believe fervently that we should leave the law and prosecuting policy where they stand.

7.47 pm

Lord Joffe: My Lords, because the Director of Public Prosecutions can only interpret but not change the law, the policy puts members of society at risk for two reasons. First, patients have to rely not on doctors but on individuals who have no experience to assist them to die, which will result in botched suicides. Secondly, safeguards are needed before the patient ends his or her life and not after it is ended, as required by the policy. The solution is to change the law to allow assisted dying with rigorous safeguards which would protect vulnerable members of society and allow terminally ill patients to end their suffering by ending their lives, if that is what they want.

7.48 pm

Lord Butler of Brockwell: My Lords, the number of speakers in this debate shows that the appetite for debating this issue in your Lordships' Chamber has quite rightly not diminished. We should be grateful to the noble Baroness, Lady Jay, for this—albeit inadequate—opportunity. But the first question for the Government should surely be whether they can provide a proper opportunity for debate.

The existence and the content of the DPP's guidelines are welcome. But unlike other speakers, I feel that the present situation is not satisfactory. People important to someone wishing to end their lives are left in uncertainty about whether they may be prosecuted: principally their inheriting children and their medical carers. All helpers, whether prosecuted or not, face the trauma of a police inquiry. We need a proper framework of law on this very sensitive matter. It is the duty of government and Parliament to make progress sooner rather than later.

7.49 pm

Lord Maginnis of Drumglass: My Lords, suicide was decriminalised 50 years ago, but not because it was regarded as something to be taken lightly. Consider emergency responses to 999 calls, the attempts that are made to resuscitate people who have tried to take their own
lives, suicide watches where people are thought to be at risk of self-harm; society's attitude to suicide is no different from how it was 50 years ago. We may not prosecute those who attempt it and survive, but society does not regard suicide as something to be encouraged and assisted. The law already recognises exceptional circumstances, where helping someone to end their lives for wholly compassionate reasons does not usually need to be prosecuted. The DPP has discretion to look at every case on its merits and to judge whether there has been malice or manipulation or whether there has been evidence that there has been serious soul-searching and to treat the cases accordingly. Thanks to the law's deterrent effect, assisted suicide is a rare offence, with fewer than 20 cases a year throughout England and Wales, many of which do not need to be prosecuted.

To sum up, we have the best of both worlds—deterrence combined with compassion. We tinker with this at our peril.

7.51 pm

**Lord Turnbull:** My Lords, despite the advances made by the DPP's guidance, the new status quo still leaves the dying and their families with three unsatisfactory choices: to soldier on with their suffering; to accept assistance but still with risk of prosecution; or to pay up and travel to Switzerland to die away from home and family.

Parliament should no longer hide behind an official, however enlightened. Any change will face opposition, not just from faith groups and the palliative care sector but also from what might be called the slippery-slopers, who have already concluded that a satisfactory framework can never be found. We should not accept this defeatism; the Bill introduced by the noble Lord, Lord Joffe, was denied a Second Reading, thereby preventing the issues from being explored. With the expertise that we have in this House in medicine, ethics and the law, a robust framework of safeguards must surely be attainable.

7.52 pm

**Lord Patten:** My Lords, for a quick background to my views, some, including me, sense that we are drifting more and more into an ever more eugenic society in this country and that there are those who wish to give encouragement to that direction of travel at every opportunity. While I am concerned about this drift, I am equally convinced in the matter of assisted suicide that the present prosecution policy, making it clear that it does not in any way change the law and that encouraging and assisting a suicide remains unlawful, is clear and good. This is sound principle, and the DPP is on record as stating that the law on assisted suicide "works well in practice". Good again. This is reinforced not just by the Royal College of Surgeons, as we have heard from my noble friend, but by the Royal College of Physicians, in explaining that their duty of care does not include in any way being part of a suicide. Good yet again, my Lords.

7.53 pm
Lord Browne of Belmont: My Lords, assisting someone to commit suicide is a criminal offence, and rightly so. At present, if someone feels that they are a burden on their families because of illness, most people will not consider assisted suicide or feel pressured by that option, for the very simple reason that it is not legal. As soon as you change the law to make assisted suicide legal, even if only in tightly circumscribed contexts, that changes. This must be of huge concern for any civilised society. Of course, I understand that there are a minority of people who really want to be helped to commit suicide; however, any benefit that they might claim to gain from a change in the law would be more than outweighed by the increased pressure towards assisted suicide that would fall on the seriously ill.

The assisted suicide guidance provided by the Public Prosecution Service for Northern Ireland reflects that of England and Wales. While I feel at times that the guidance risks giving the prosecutor rather more room to manoeuvre than suggested by the statute, I accept that in the words of the noble Lord, Lord Carlile, it facilitates the expression of a tough law with a kind face. However, it is important that the Attorney-General for Northern Ireland, John Larkin, and the Northern Ireland Assembly, should closely monitor the conduct of our Director of Public Prosecutions, Barra McGrory, in this regard.

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7.54 pm

Baroness Nicholson of Winterbourne: My Lords, all of us here have the deepest sympathy for individuals who are in the last stages of their lives and in great pain, who are seeking help to shed this life and move on. But that does not mean that we should alter the law to favour what is called assisted suicide. There are good fundamental psychological and religious principles why suicide is always frowned on by almost every society everywhere. Suicide is self-murder, and if you pull other people into that framework you are helping them to kill you, and it is a sort of murderous intention. Let us not think that the medical profession, wonderful though it is, is so spotless in all its ethics that it will not leap on the bandwagon. If you only look at Dignitas and Exit in Switzerland, for example, about a third of the people they treat—and in the case of women nearly half, I understand—are not terminally ill at all but are merely feeling rather miserable and want something to be done to help them.

I urge noble Lords not to go down this slippery slope and to recall quite seriously the early 1930s in Nazi Germany. It is all too close to home.

7.55 pm

Baroness Hayman: My Lords, I do not believe that changing the law in this area needs to frighten us in the sense of these terrible fears of Nazi Germany and eugenics. My experience on the Select Committee on the Bill proposed by the noble Lord, Lord Joffe, led me to believe that regulation was indeed possible and desirable in this area. A benefit of the DPP’s guidelines has been increased reporting in this area; increased reporting means that we can have increased supervision and monitoring and give the protection that good regulation brings.
The noble Earl, Lord Glasgow, said that many people feared the manner of their dying. These guidelines have given some comfort to people thinking ahead who might be faced with terrible decisions about helping their loved ones. If we had a properly safeguarded approach, as they do in Oregon—it is quite different from the approach in Switzerland; they do not have to have the same approach—we could give many people comfort, security and the confidence to go forward. Many people may not avail themselves of the ability to have help but would feel comforted by knowing that it was there if they needed it.

7.57 pm

Baroness Hayter of Kentish Town: My Lords, suicide—thankfully—is legal, but many people need help and support to ensure that it is both pain-free and risk-free and to have a trusted friend at one’s side at that hour of need. That means being able to get such support, safe in the knowledge that one’s chosen friend will neither be interrogated by the police nor face prosecution. For this reason, I would like to see the DPP’s approach given wider endorsement. I am concerned that the present law affects people unequally, given that going to Dignitas costs about £5,000 and is only available to the well-off and those fit enough to travel, and there is no safe way of having assisted death at home without risk of prosecution for loved ones, which is an unfair burden for the dying person to contemplate. I would favour a law to allow people to be helped to die if they meet safeguards and eligibility criteria, are terminally ill and mentally competent. Of course I want to see greater access to high-quality end-of-life care, but part of that comes from knowing that they will be free from suffering.

I finish with the words of the Reverend Dr John Cameron, who said that,

"the time has come ... to look again at the law, because modern medicine is preventing nature from taking its merciful course".

7.58 pm

Baroness Howe of Idlicote: My Lords, some of your Lordships have argued that the prosecution policy on assisted suicide should have listed serious illness as a mitigating factor. In other words, helping a seriously ill person to commit suicide would be regarded more leniently than helping someone else—but that would in effect have meant that the law would offer less protection to seriously ill people than to others. Such discrimination is unacceptable in an inclusive society. Therefore, I was pleased to see that the policy does not list serious illness as a mitigating factor in assessing whether assisting suicide should be prosecuted. The law must apply equally to all of us, irrespective of age, gender, race and state of health.

7.59 pm

Baroness Young of Old Scone: My Lords, I thank the noble Baroness, Lady Jay, for giving us this opportunity tonight. I served on the commission on the future of assisted suicide and we heard a very wide range of evidence, which we considered rigorously over a year and with a very open mind. I support the flexible approach taken by the DPP guidelines, but they are not sufficient, for two reasons among several that I could name. I will stick to only two in
view of the time limit. First, it still leaves compassionate friends and families facing criminal investigation. Secondly and most importantly, it is a real barrier to healthcare professionals discussing with their patients options for their end of life. Much as they discuss options for treatment during their life, options for death need to be a normal part of the care conversation in the future. The result is that in this country, assisted suicide is in the hands of amateurs. I personally would not look forward to that prospect. The Director of Public Prosecutions said that he has done what he can with the current law. Only a change in the law can overcome these very real problems.

8 pm

Baroness Berridge: My Lords, I find tonight's Question troubling as its precursor is: should the Government be assessing the application of DPP policy? I view the DPP rather like the icing in the middle of the judicial sponge cake. The top layer is the independence of judges, and the bottom layer is police operational independence. It is imperative that DPP policy and decisions are free from, and seen to be free from, government interference. I do not envy my noble friend the Minister's task in performing this assessment this evening without creating any perception of political interference in, or inadvertent pressure on, prosecution decisions and policies. These roles would also be blurred if the DPP guidelines had been statutory, as how could he then revise them? The independent DPP would be dependent on the Government or parliamentarians to change the legislation or statutory instrument. If the House were asking how the Government are assessing the application of DPP policy for prosecutions in cases of phone-hacking, constitutional alarm bells would, I believe, have gone off immediately.

8.02 pm

Lord Turnberg: My Lords, I should express my interest as a past president of the Royal College of Physicians. The question I ask myself is whether the experience of the public prosecutor leads us to believe that we should now change the law. Fewer than 20 cases a year have been referred to the DPP and few of those, if any, have led to prosecution. A new law would, in effect, lower the barrier and remove the critical safeguard provided by an independent body making a fair and objective judgment. The question we have to ask ourselves is not whether it is desirable to make it easier for someone with impeccable motives to help a person suffering unbearably to die. They can do that now in the knowledge that the DPP has been shown to act in an entirely appropriate way. The question really is whether a change in the law will make it easier for someone with selfish, ulterior motives to help an elderly, infirm relative to die. A combination of the current law and the DPP provides a safe and humane system that we would jettison to our disadvantage.

8.03 pm

Lord Harries of Pentregarth: The noble Baroness, Lady Jay, referred to the recent commission, which found the present legal status of assisted dying to be "incoherent", but whenever you try to balance two vital principles, as we are here, the result can appear less clear-cut than if one had one principle alone to take into account. On the one hand, the present law expresses and safeguards the fundamental principle of respect for life-the life of
everyone. On the other hand, the guidelines put out by the DPP express the principle of compassion. The present situation gets the balance between law and compassion just about right. In trying to hold these two principles together, I suggest, it is perfectly coherent. Further, when we try to hold two principles together it is important to remember that what we are comparing with the present situation is not some abstract state in which we might have only one principle to uphold. We are comparing it with actual alternatives, and in my judgment the alternatives are more damaging to the public good of this country than the present well-struck balance.

8.04 pm

Viscount Craigavon: My Lords, I speak very much in favour of this policy of the DPP and the clarification provided by the guidelines. My main point is that I believe that more transparency and light can be thrown on the process of decisions that are now being made in this field. That obviously should not compromise any necessary confidentiality but, by revealing more reasoning and the details, it should be possible to assist one of

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the main purposes of this policy stemming from the Purdy judgment: that is, for the public to be more reasonably able to predict whether actions might lead to prosecution. An alternative would be for the DPP to publish an overview of his decisions without revealing identifying details of the individuals involved. That is the direction that we could be taking now, prior to any further legislation.

8.05 pm

Lord Swinfen: My Lords, I congratulate the DPP on the way in which he has produced what in my view is a very compassionate policy. Some people have argued that it would be better to investigate a case of assisted suicide before it has happened, so that the wishes of the victim and the intentions of the assister can be scrutinised, but this would involve handing a licence to the assister based on subjective assessments of the victim's state of mind, and on presumptions about the intentions of the assisters. Such a process is far from foolproof. As one witness, who I understand is a consultant psychiatrist, put it to the group of the noble and learned Lord, Lord Falconer,

"if you want to be devious about it, you can be".

Moreover, once a licence to assist has been granted, there would be nothing to prevent coercion or manipulation. The death would not be investigated, as it would have been officially authorised in advance.

8.06 pm

Lord Warner: My Lords, in the Purdy judgment the noble and learned Lord, Lord Hope, said that there had been two prosecutions up until then. Since the DPP's new guidelines two years ago, as far as I am aware there have been no prosecutions. Perhaps the Minister could tell us how many cases have actually been referred to the DPP in that time. I believe that the DPP's guidelines, while well-intentioned and a sensible way forward in such a controversial area in many ways, have caused real problems for health professionals-doctors, nurses, et
cetera-in discussing end-of-life issues with patients such as their own personal choices about the way they wish to end their life. Do the Government accept that there is a real issue for health professionals, with whom they need to engage in a stronger dialogue? Do they also accept the need to have a parliamentary debate on my noble and learned friend Lord Falconer's excellent commission's report, which dispassionately gives us a mountain of evidence that was not there before and that needs to be tackled by Parliament?

8.07 pm

Lord Pannick: My Lords, the DPP has done a good job. His policy promotes the three main objectives which the Law Lords indicated, in the Purdy case, are vital in this sensitive area of law. First, the policy recognises the autonomy of the individual—a factor ignored by some speakers in this debate. The position is very simple: the able bodied may lawfully seek to end their life but the autonomy of the disabled person, vitally, depends on the assistance of others. The second objective advanced by the policy is to protect the sick and the vulnerable from being put under pressure to end their lives. The third objective is to introduce greater certainty into the law. I hope that the success of this policy—and it has been successful—will now encourage Parliament to show the necessary maturity to address these important issues as questions of legal rights and wrongs, not to continue to leave these matters to prosecutorial discretion, however compassionate its exercise.

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Baroness Finlay of Llandaff: My Lords, I was a member of the Select Committee that looked at the assisted dying Bill. I co-chair Living and Dying Well and have worked as a hospice doctor since 1987. Assistance with suicide by a treating doctor or healthcare professional tends towards prosecution. The Royal College of Physicians advised the DPP in drawing up his guidance that a doctor's role is,

"to work with patients to mitigate and overcome their clinical difficulties and suffering",

and that,

"this does not include being, in any way, part of their suicide".

Some claim the policy encourages amateur suicides. It does not. The policy recognises the asymmetric relationship between doctor and patient, with the patient dependent on professional advice and treatment and being very susceptible to nuances in the doctor's reaction when patients discuss their dying openly. Doctors are in a position of trust; that trust must not be abused. Medical witnesses to Falconer were clear that the present law is not inhibiting open conversations. Indeed, conversations are now more open than ever before, ensuring that healthcare professionals work with their patients to improve living, to cease futile treatments and to support patients during dying. The vast majority of hospice doctors do not want physician-assisted suicide. The policy is clear, firm and compassionate.

8.10 pm
Lord Bach: My Lords, I congratulate my noble friend Lady Jay on securing this debate. She has supported a policy of reforming the existing law for a long time and has been a distinguished advocate for that point of view. I thank other speakers too for expressing their strong views on both sides of this difficult argument. Our view in opposition is the same as it was in government: we think that this is a matter of individual conscience for Members of Parliament to decide on, not one for Her Majesty's Government to propose legislation on at present.

We look forward to the debate in another place next month. We do not think that this sort of debate in this House is appropriate, and we feel that the matter should be debated at greater length as soon as time allows. I look forward to what the Minister has to say in his response. We agree that this is an appropriate moment to hear the Government's view.

8.11 pm

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I congratulate the noble Baroness, Lady Jay of Paddington, on introducing this debate, and those who have contributed to it. Noble Lords have actually left me with 20 minutes but I shall not take up all that time. The succinctness with which some very passionate points of view have been expressed is remarkable. I have heard the comments made by a number of those who have contributed to the debate about the opportunity for a longer debate on this. I would not dream of speaking on behalf of the usual channels' business managers, but I am sure that that will have been noted on this occasion, as indeed on an occasion when the noble Lord, Lord Bach, dealt with this issue in a Grand Committee debate when he was in Government.

Lord Bach: It was not this issue.

Lord Wallace of Tankerness: It was not quite this issue but it was related. There was also a debate in Grand Committee in February 2010 on assisted suicide to which there were many contributors, and the importance of this issue and the salient points that have been made will have been noted. It is evident that this matter generates much passion on both sides of the argument.

At the outset, I would like to make the distinction, as a number of contributors have done, between the form of the law on assisted suicide on the one hand, which is, quite properly, a matter for Parliament-I endorse what the noble Lord, Lord Bach, said: just like the Government of which he was a member, this Government also take the view that a change to the law is an issue of individual conscience. Therefore, it is a matter for Parliament to decide whether there should be a change to the law rather than one of government policy and the prosecution policy of the Director of Public Prosecutions on the other. The DPP discharges his functions and duties within a framework determined by Parliament.

Perhaps it is important to put the position into context to be able to respond to some of the points. To understand how the policy works in practice, the Crown Prosecution Service was established by legislation as an independent public prosecution service for England and Wales. The Director of Public Prosecutions is the head of the CPS, and to reflect the point
made by my noble friend Lady Berridge—the DPP is superintended by my right honourable friend the Attorney-General, who is in turn accountable to Parliament for the work of the CPS. There is a distinction, however, between that accountability, which is quite proper, and having guidelines and policies approved by Parliament that in some respects could fetter the independence of the decision of the prosecutor.

The primary role of the CPS is to prosecute criminal cases investigated by the police in England and Wales and to provide advice to the police in some of the most serious or complex cases. However, I emphasise again that the CPS operates independently of the police.

The Director of Public Prosecutions has a statutory duty to issue a code for Crown prosecutors. This is one of the most important documents for the CPS, as the code provides guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. In particular, the code sets out the full

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code test. That is the test applied by prosecutors to the facts and circumstances of every individual case referred to them by the police. It has two stages to it. First, there is the evidential stage: is there sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge? Secondly, there is the public interest stage: is it in the public interest to proceed with a prosecution?

It is nearly always the case that the public interest is considered only when the evidential stage of the full code test has been satisfied. It is only when there is sufficient evidence to provide a realistic prospect of success that a case proceeds to the public interest stage of the full code test. It is essential that the public interest is considered by prosecutors when making a decision on an individual case. It has never been the rule in this country that suspected criminal offences must automatically be the subject of prosecution—the point that the noble and learned Lord, Lord Hope, made in his judgment in the Purdy case, to which reference has been made as the public interest must always be considered.

The most recent edition of the code was published in February 2010 following public consultation. It is a public document and is written in a way that enables it to be followed by the general reader so that the public are able to understand how prosecution decisions are made. However, with relevance to this particular debate, in addition to the code the DPP also publishes public policies and guidance that provide further advice to prosecutors when considering particular types of cases. The various policies and pieces of guidance are expected to be followed by prosecutors and must be read in conjunction with the code.

The policies and guidance are also available on the CPS website, again to provide transparency. The noble Viscount, Lord Craigavon, asked about transparency. As well as setting out the policy guidance, the website also sets out a few individual cases, giving the facts of the case and the route that the DPP took in coming to his decision not to prosecute. The particular case that I am thinking of is set out there. Hopefully, that will at least to some extent aid the transparency that the noble Viscount and others have asked for. The Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide is one of these documents.
It is important, as has been recognised in many of the contributions to the debate, that the policies and guidance issued by the DPP are not intended to be a substitute for the law or to replace it in some way. A number of those who have contributed to the debate—even those who have called for a change in the law—have reflected on the fact that the policies are imbued with a sense of compassion. More than one contributor talked about the law providing deterrence and the policy guidelines from the DPP enabling the law to be discharged with compassion. The guidelines are there to assist prosecutors in making decisions on individual cases by setting out in one place the relevant legislation, case law, court sentencing practice, internal operating procedures and any specific evidential and public interest factors to be taken into account. That is the purpose of the policies and guidance. They are subservient to and operate within the framework of the law as determined by Parliament.

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The assisted suicide policy was published in its present form following an interim policy and consultation in February 2010. As the noble Baroness said in introducing the debate, we are coming up to the second anniversary of that policy being in place. As has been indicated, it followed the judgment in the House of Lords case of Purdy v Director of Public Prosecutions. Debbie Purdy sought information about the factors that the DPP would take into account in deciding whether to grant his consent to a prosecution under Section 2 of the Suicide Act 1961. Ms Purdy argued that the code issued by the DPP was insufficiently precise to provide her with the information that she sought. In July 2009, the Appellate Committee of the House of Lords found in favour of Ms Purdy. In so finding, the Law Lords required,

"the director to promulgate an offence-specific policy identifying the facts and circumstances which he will take into account in deciding ... whether or not to consent to a prosecution under section 2(1) of the 1961 Act."

As I have indicated, an interim assisted suicide policy was published in September 2009. It was the subject of a three-month public consultation, in which more than 4,700 responses were received from interested individuals and organisations. The interim assisted suicide policy was revised by the DPP following careful consideration of the responses to the public consultation. The final version was published in February 2010. At the time of its publication, the revised policy met with broad approval. It is fair to say that it attracted considerable approval from many sides of the Chamber this evening. It is interesting to note that, while the commission that has been referred to, which was chaired by the noble and learned Lord, Lord Falconer, recommended changes to the law on assisted suicide in cases where a person is terminally ill, in cases where there is a non-terminal illness, it indicated the following in its executive summary:

"Therefore, we suggest that the DPP’s prosecution policy should continue to be applied to those cases that might fall outside the scope of the legislation that we are proposing for consideration (for example assisted suicides involving people with chronic illnesses or serious physical impairments who are not terminally ill)"
Even the commission itself recognised the merit and substance of the policy. It is worth repeating that it does not seek to change the law. Indeed, it cannot change the law, as that is clearly a change that only Parliament can make.

I shall take up some of the specific points that have been made. Prospective immunity was raised. Prospective immunity has never been granted. The DPP told the commission that,

"the position of the prosecutors has been historically that we won't indicate in advance whether conduct is criminal or not. Various rulings of the courts have indicated that that would be a wrong position for the prosecutor to adopt and therefore we haven't done that".

Indeed, it goes beyond the DPP's power because the police are responsible for deciding when an investigation should be instigated. Obviously, if there was no alleged crime, that would not be possible.

With regard to the medical profession, the guidelines try to strike a balance but acknowledge that as the law stands the law does not give immunity from prosecution

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in this regard. I do not wish to quote at great length from the evidence of the Director of Public Prosecutions to the commission. However, he set out the balance that he has sought to apply in the policy. The policy guidelines do not refer to a medical doctor but to a person,

"acting in his or her capacity as a medical doctor".

It would be wrong to confer blanket immunity, if that is how it would be interpreted. That would not only fetter the discretion of the Director of Public Prosecutions who needs to look at the individual circumstances of every case but would be tantamount to a change in the law. As has been said, that is a change in the law that is for Parliament to determine.

With regard to families and doctors discussing end-of-life options, the noble Baroness, Lady Finlay, indicated that she did not think such discussions were taking place. Again, however, that is a matter which would more appropriately require a change in the law rather than indicating, ahead of a potential crime being committed, that there was immunity for it.

It is very difficult to do justice to such a wide issue. In that respect, I have a lot of sympathy with those who think that we should have a much wider debate. I have tried to pick up some of the salient points that have been made. My noble friend Lord Glasgow was not alone in indicating that perhaps the time had come for a change in the law. As I have indicated, that is not a matter of government policy but is a matter for individual conscience and for Parliament. However, I rather suspect that we will be back here debating this issue in days to come.

8.25 pm

Sitting suspended.