



Terminally Ill Adults (End of Life) Bill Committee

Uncorrected oral evidence

Wednesday 29 October 2025

2.05 pm

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Members present: Lord Hope of Craighead (The Chair); Baroness Berger; Baroness Berridge; Baroness Finlay of Llandaff; Lord Goddard of Stockport; Lord Goodman of Wycombe; Baroness Hayter of Kentish Town; Lord Markham; The Lord Bishop of Newcastle; Lord Patel; Baroness Scotland of Asthal; Baroness Smith of Newnham; Lord Winston.

Evidence Session No. 7

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Questions 83 - 96

Witnesses

I: Sarah Sackman KC MP, Minister of State for Courts and Legal Services, Ministry of Justice; Paul Candler, Policy Director, Ministry of Justice.

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Examination of witnesses

Sarah Sackman and Paul Candler.

Q83 The Chair: Good afternoon and welcome to this, the seventh session of our inquiry into the Terminally Ill Adults (End of Life) Bill. We are joined in this session by Sarah Sackman KC MP and Paul Candler. You are both very welcome and we look forward to your evidence. We would be grateful if you would introduce yourselves briefly before we put questions. I remind you that today's meeting is being broadcast and a transcript will be available later for publication. When the transcript is available, we would be grateful if you would check it to be sure that the record of your evidence is accurate. May I call upon you, Minister Sarah Sackman?

Sarah Sackman: Good afternoon, sir. Thank you so much for having us. I am just going to turn up my opening statement. I would like to begin by thanking the committee for inviting this panel to discuss the Terminally Ill Adults (End of Life) Bill. I am appearing today with my official, Paul Candler, from the Ministry of Justice, in my capacity as a Government Minister. This is the role that I also played when this Bill was in the other place and, to be clear, I will not be making remarks today in my personal capacity.

I recognise the seriousness of the subject matter of the Bill and that the Government would be responsible for implementing an assisted dying service, should Parliament decide to pass this legislation. As such, I am pleased to be here today to help provide any information to assist this committee and, in any way, to support the noble Lords in their consideration of the Bill. The Government are neutral on the principle of assisted dying. The Government have decided, as noble Lords will be aware, that this Bill should be treated as a matter of conscience for Parliament.

Following the Second Reading of the Bill in the House of Commons, the Government have been providing technical support to the sponsor. This includes providing advice on the technical and legal coherence of the Bill and of individual provisions within it and on proposed amendments. It also includes advice on practical and operational considerations relevant to the effective implementation of the Bill and of individual provisions.

The policy choices within the Bill are the choices of the sponsors and, ultimately, of Parliament. We have sought to maintain a clear distinction between the technical advice provided by the Government and the policy choices made by the sponsors and Parliament.

The Government, as you know, have also provided various documents such as the impact assessment to support parliamentary debate. These are not intended to justify any specific policy choices and I hope that they have proven useful in your deliberations.

I understand that, next week, you will be hearing evidence from a Minister from the Department of Health and Social Care, and I will

indicate if there are any questions that I consider would benefit from discussion with him.

Paul Candler: Good afternoon, Chair. Thank you very much for having me along with the Minister. My name is Paul Candler. I am a policy director in the Ministry of Justice, and one of the areas that I have responsibility for is the co-ordination of the MoJ's interests in this Private Member's Bill.

Q84 **Baroness Scotland of Asthal:** First, can I say how delighted I am that you are here to assist us, not least in your current capacity but as a former Law Officer? That is very important for our understanding. Can I say also that I absolutely accept that the Government and your position is one of neutrality at this stage, but it is right, and I am sure you have been aware, that there has been a lot of concern about the practicality of this Bill and the difficulties there may be on implementation, so it is those issues that I would be really grateful if you could assist us upon.

Can I start first with a matter of concern that has been expressed throughout in relation to the way in which this Bill will be funded, and in particular, as far as the MoJ is concerned, funding in relation to the legal component that has been identified in terms of how the legal person—the KC or the judge—is going to be afforded? Is that something that your department has already looked at?

Sarah Sackman: If Parliament decides to pass this Bill, then Government will deliver it. As you have yourself recognised, our job throughout has been to ensure that any Bill that is before Parliament is workable. In respect of the justice impact, and as you allude, there is the impact in respect of the legal members of the panels, the voluntary assisted dying commissioner, but also concomitant impacts there might be in respect of justice impacts in relation to, say, the prison service resulting from the creation of new criminal offences.

All of that has been the subject of high-level analysis in the impact assessment. As the impact assessment sets out—I think it is on page 76—particularly in relation to the recruitment impacts, the Government considers that the proposition in this Bill for a voluntary assisted dying commissioner headed up by a judge is deliverable. If Parliament passes this Bill, Government will deliver it.

Baroness Scotland of Asthal: Do you know which department is going to be responsible for it? This is not a judicial panel. It is not a tribunal. It is outside the judicial structure, and it is a new creature. Who is going to be responsible for funding it, and what levels, for example, of legal aid or other remuneration are there going to be for those who may be invited to participate in this process?

Sarah Sackman: You are absolutely right that it is not a judicial body. It is not a tribunal. It is not adjudicating in that sense. It is discharging the requirements that are set out currently in the Bill at Clauses 16 and 17. Again, I will repeat the point—and this may become something of a

mantra this afternoon—that, if Parliament passes it, Government will deliver it. I will not specify at this stage whether it will remain within the purview of the Ministry of Justice or, indeed, be delivered by some other arm of Government, but it will be delivered as set out in the Bill.

Baroness Scotland of Asthal: Do you understand the anxiety that people have now, saying, “But how?” We know that legal aid is under huge stress. We know that there is a real issue in terms of specificity of those who have expertise. I have taken it that there has been an acceptance that anyone who participates, either to become the commissioner or take up the legal role in the panel, will have to have the specificity of legal expertise that would enable them to assist in this process, which is likely to be at a high quality, or should be at a high quality and at a high level.

Sarah Sackman: There are two different points. First of all, the appointment of the voluntary assisted dying commissioner is envisaged to be a prime ministerial appointment of someone who either is currently serving as a High Court judge or above, if you like, or has previously served in that capacity.

In terms of legal aid, that presupposes a different model to the one that is envisaged by these panels, because what you have not got here, as you would in a tribunal or court, is an adversarial model where you have got two parties being legally represented and an adjudication on points of fact and law. That is not what is set out in the Bill as the function of the panel. The function of the panel is to establish whether the individual applying for a voluntary assisted death has met the eligibility requirements. As such, on the face of this primary legislation, the necessity of legal aid, for example, is not envisaged.

Baroness Scotland of Asthal: This has been described by the sponsors as a judicial panel. It has been described as something performing that function, but there is no element in relation to interrogation of this matter in the normal way that we would expect. For example, there is an opportunity for the person seeking this relief to appeal if it is not granted, but there is no opportunity for the family or other members who may be resistant to this order being made for them to appeal. Do you think, in terms of your role as fairness, that that is an appropriate process that we should be considering?

Sarah Sackman: The policy choice that the sponsor has indicated and that, thus far, a majority in the Commons has passed is for the function of the panel to be this. Clause 16(2) says that the commissioner must appoint a panel for the determination of the person’s eligibility to be provided with assistance and, in Clause 17, what that entails—the determination of eligibility and whether the panel is satisfied of all the relevant matters. That is the function that they are undertaking. You might describe that as an administrative function.

There are inquisitorial powers. We are told that there are mandatory steps that the panel must undertake. For example, we know they must

hear from the co-ordinating doctor. They must hear from the person in question, save in exceptional circumstances. That is not an adjudication. In that sense, the panel is distinct from a court or tribunal.

To your point about fairness, the procedures governing the processes of the panel will be for the commissioner to develop. The decisions of the panel, in the normal way, we would expect to be amenable to judicial review. That is the policy intent that the sponsor has indicated, and I do not think there is any suggestion—or put it this way: the Government do not take a view on whether that is desirable or whether another format might have been preferable, but it is deliverable and it is compatible as a whole with the European Convention on Human Rights, including Article 6.

Baroness Scotland of Asthal: That is a matter that has been hotly debated in terms of whether it is, indeed, compatible or not. I am sure you have read all the criticisms that have been made of it in terms of James Munby, the former president of the Family Division, et cetera. If the Government were going to do this, surely you would have to look again to see whether that which is being sought is compliant and the best procedure we could deliver.

Sarah Sackman: As I said, Parliament and the sponsor have indicated what the function of this panel is. That function is to determine the eligibility. There are a series of tests that have to be met by the applicant. The architecture of the process that has to be undertaken by the panel as it develops its procedures through Schedule 2 are set out at Clause 17(4). That is a choice that Parliament has made in terms of who the panel must hear from and who they may hear from.

That supposes that, if the panel is not satisfied that any number of the tests in Clause 17(2) are not met, further information will need to be sought, including, for example, from the person's family or other people close to them. That will be a matter for the panel, but that is a policy choice that Parliament has thus far made and the sponsor has made.

Q85 **Lord Patel:** Good afternoon and thank you for coming today to help us. I am not a lawyer, but my question is related to some issues that came up in one of the evidence sessions. To start with, do you have any concerns about the practical application of the new offences on coercion proposed under the Bill? Are all the terms—"pressure" and "coercion"—that are used in the Bill clearly understood in the law? How would the courts interpret the provisions in the Bill?

Sarah Sackman: Thank you for that question. The role of Government in this, and specifically on the criminal offences, has been to work with the sponsor to ensure that the drafting of the criminal offences is workable and effective. That has included the use of terms which came under considerable scrutiny in the Commons committee, such as "pressure" and "coerce" or "coercion".

What we have sought to do is ensure that the way in which the offences are drafted not only reflects the sponsor's intent, but is consistent with the statute book in general and with the workings of the criminal law. As such, the point that we made both to the sponsor and then that I articulated at committee for Members who were concerned about this issue was that, by giving the words "pressure" and "coerce" their natural, ordinary meaning, as the courts are used to do in a number of different contexts, that would capture a wide range of behaviours, which is what the sponsor says these offences are designed to do. From a governmental point of view, we consider that the drafting of the offences is workable and enforceable.

Lord Patel: How would the courts interpret the words?

Sarah Sackman: The courts typically interpret and construe these kinds of terms in a way that is in accordance with their ordinary, natural meaning. We know from case law that "pressure" can take many forms. It may take the form of acting in a forceful way to persuade or pressure someone to do something they are unwilling to do. It can capture behaviours such as isolating someone from their family and friends. It can capture all sorts of behaviours. That is what the case law tells us.

One of the matters that was discussed at committee was that there were various Members who tabled amendments that seek to put a statutory definition on terms like "pressure". The advice that I gave on behalf of the Government was that the risk with doing so would not only create potentially confusion and inconsistency with where those terms are used elsewhere in our criminal law, but that, inadvertently, it would narrow the type of behaviour that could be captured by the criminal offence, which is contrary to the intent that lay behind those amendments.

Lord Patel: Another issue that came out in one of the evidence sessions is a proposal that all assisted dying cases should be referred and investigated by the coroner and that they should bypass the medical examiner, as proposed in the Bill. Do you think that breaches any human rights convention?

Sarah Sackman: The choice that the default position under the Bill that an assisted death be treated as, effectively, a natural death and, therefore, be examined by an independent medical examiner rather than being the subject of coronial investigation is a policy choice for the sponsor and for Parliament. In terms of the choice or the principle, Government are neutral on that question.

In answer to your question as to whether Government take the view that that is compatible with the convention, we do consider it as both workable and compatible, not least, in part, because of the reason that, while, under the current provision as drafted in the Bill, a voluntary assisted death would fall to be considered and certificated by a medical examiner, there is always the possibility that, where a concern is raised, a coronial investigation can take place. Under such a regime, we think that that is compatible with the ECHR.

Lord Patel: Is it compatible if there was a mandatory requirement for all cases to automatically go to the coroner?

Sarah Sackman: Would that be compatible? I am not going to give legal advice on the fly. That is not in the Bill before us. I cannot see, on the face of it, a problem with that, but, again, that is not the provision we have got here, so I am not going to speculate exactly how that would interact with the ECHR. The choice that has been made under the current provisions of the Bill is compatible, in the Government's view, with convention rights and, indeed, with other aspects of domestic law.

Q86 **Baroness Berridge:** Minister, thank you so much for coming this afternoon. Minister, in law, a person may be a body corporate. As a body corporate cannot be sent to prison, do you agree that the offence in Clause 34, as presently drafted, lacks the ability for the trial judge to give any sentence on conviction, as it lacks the ability to administer a fine?

Sarah Sackman: Clause 34 is, again, reflecting the policy intent that the sponsor has brought forward, which is intended to capture behaviours, dishonest or coercive, or displays of pressure that have induced another person to act in a particular way. I am happy to take away the particular question that she raises and give the Government's legal view, but, again, I am not going to offer my own legal advice on this.

Baroness Berridge: For the record, the Interpretation Act 1978, Schedule 1, defines a person as a body corporate. I have provided you with Section 184 of the Online Safety Act, which you mentioned in correspondence with Rebecca Paul MP, because that very clearly defines each offence under that act of encouraging or assisting serious self-harm has a sentence of imprisonment and a fine. Under that Bill, as I am sure you are aware, having referenced it in your correspondence, you can either be prosecuting the internet service provider or a human person as a director. Do you accept that there could be a serious flaw in the Bill, and that we are in the situation where, as drafted, a trial judge has no way of sentencing a body corporate?

Sarah Sackman: I was handed the provision that you refer to just as I literally came into the room. The Government take the view that the clause, as drafted, which has had the input of government lawyers in the drafting, working with the sponsor to reflect her policy intent, as it stands, is workable. If I need to come back to her and other members of the committee on this specific point, then I am very happy to do so.

Baroness Berridge: Thank you. Minister, to give you some context for the next question I am going to ask you, I am going to read a section from the Suicide Act 1961 and a clause from this Bill. I have given you copies of those documents. First, Section 2(1)(b) of the Suicide Act states that a person commits an offence if their act was "intended to encourage or assist suicide". Clause 34 of this Bill—and I am quoting again—says that if "A person ... by ... pressure, induces", and there are various acts that can be induced. Do you agree, Minister, that, by the use of the word "intended", there is a mental element—guilty mind—in the offence under

the Suicide Act that is absent from Clause 34?

Sarah Sackman: The terminology and the use of the word “intent” under Section 2—again, I am looking at this as you have just pointed out to me—does include a word that is not specifically used in Clause 34. As was indicated at the committee, there is a degree of overlap between the criminal offence as currently drafted in Clause 34 and what is currently criminalised under the Suicide Act. There is a degree of overlap there. What, essentially, the Bill before us is doing is carving out from the Suicide Act what is currently criminalised—an exception that has to be followed in order to come within that exemption.

Baroness Berridge: Perhaps I can help you with the evidence of Lord Falconer from last week. I ask this question to give context to his answer. “Are you accepting, Lord Falconer, that you are introducing”—this is Clause 34—“a strict liability offence into the criminal law with a sentence of life or 14 years’ imprisonment?” He replied, “Yes, I am. It is the same as the current law in relation to assisted suicide”. Minister, do you agree, by the inclusion of the word “intended” in the Suicide Act, that Lord Falconer’s statement of the law last week is incorrect?

Sarah Sackman: I think what I will do, with the Chair’s permission and with your permission, is I will come back on that specific point. I have not heard in full how he put his evidence, and I would want to take advice from government lawyers as to the interaction between these two provisions.

Baroness Berridge: Do you accept that Clause 34, as Lord Falconer has said, is a strict liability offence and that it is highly unusual in our criminal law—in fact, unique—to introduce a strict liability offence with a life sentence of imprisonment?

Sarah Sackman: I am just going to repeat what I have just said and, if it is appropriate to provide the answer in that way, I will.

The Chair: Minister, I think, in fairness to you, you are required to think about this. I do not know whether Baroness Berridge would accept, if you were prepared to write in, that you have to do it by next Tuesday, please.

Sarah Sackman: That is absolutely fine. These are points of law, if you like, and I think it is important that we do get them right. I do not want to give a legal view *ex tempore*, on the fly, if you like. I do not think that would be appropriate, given what we are discussing.

There is a whole body of criminal law. The offence under Clause 34 imports a concept of dishonesty, which, typically, where it is used in other areas of the criminal law, or theft and what-have-you, imports a mental element. These are matters of criminal law on which, as I said, the sponsor of the clause has worked with criminal lawyers, specialists in the department, and I would want to take that away. With your permission, I am very happy to write to the honourable Lady and get her

the answer in time that allows her, if she wishes for me to come back and speak to it. I am very happy.

The Chair: I was going to say by Tuesday next week, but would you be content with that?

Baroness Berridge: Yes, that is fine. Can I put a question to the policy adviser?

The Chair: Yes.

Baroness Berridge: Thank you. In terms of policy, could you confirm that the policy in law is not to have strict liability offences except in things like food hygiene and those kinds of regulatory offences? Is that our policy?

Paul Candler: I think I will advise, in the context of the Minister's commitment, to come back to you by next Tuesday.

Q87 **Lord Goddard of Stockport:** Three former directors of public prosecutions wrote to MPs calling for a change in the law, and I believe the fourth one—the Prime Minister—also supports the Bill. Can you comment on the current adequacy of the current law in protecting vulnerable people and respecting the choice of dying people?

Sarah Sackman: I am going to answer that in, I suppose, a slightly circumspect way, which is that the Government are neutral in relation to this Bill. We know that the policy intent that the sponsor has contended for throughout this process is that the status quo—the current regime—gives rise to a mischief in which behaviour that some might describe as compassionate is, effectively, criminalised, and where some feel compelled to take their own lives because of the way in which the system operates.

Ultimately, it is a policy choice that this proposition in the Bill before us ameliorates that. I am not going to comment on whether what we have before us is better than the status quo, but, as he points out, it has certainly been the view—and it was the view that we heard in the Commons committee during the evidence sessions from former DPPs—that the current operation of the law and some of the conundrums that directors of public prosecutions are faced with present very real difficulties for the criminal law.

Lord Goddard of Stockport: Thank you. The other question that I wanted to put to you is that there was a suggestion in the impact assessment that we should not take any lessons learned from Australia, for instance, who have assisted end-of-life legislation ongoing. The purpose of this scrutiny committee is to gather evidence that would be helpful to the Lords, and perhaps the Commons later, on making a decision. Do you think we should learn from other jurisdictions? If we are unable to do that, do you think that the report we would write would be balanced?

Sarah Sackman: The impact assessment that the Government have carried out has been designed to assist parliamentarians, whichever side of the debate one is on, to make informed choices. The scheme proposed in the Bill is, by definition, novel. It does not currently exist in this country, but we know that there are comparable—I say “comparable”; they are not the same—voluntary assisted dying regimes in a number of jurisdictions, including common law jurisdictions. It is right and responsible for the Government, in presenting their impact analysis of this Bill, to draw on evidence, on data from other jurisdictions, particularly as regards considerations such as the likely take-up, were a Bill of this nature to be passed by Parliament. It is important that we look at all the evidence and put it before Parliament. People can base their choices off that evidence.

Lord Goddard of Stockport: So we really should have got evidence from far and wide, as opposed to just strictly down to what the Bill says.

Sarah Sackman: I think, if I might say so, that parliamentarians need to do both. This is a Bill that reflects the policy choices made thus far by the sponsor, by Members of Parliament, added to by members of the committee in the Commons.

We are analysing this piece of legislation and assessing the impact that this piece of legislation could potentially have, but that sits in a policy context, and part of that context is informed by this not being the first law of its kind that attempts to establish a voluntary assisted dying service. It is different from all those schemes, because I have analysed those schemes, and this bears certain resemblances, but it is different and it is set in the context of our society, with our particular law and its features. Some of those will mirror aspects of certain jurisdictions. Others will not, but it is right that an impact assessment draws from the evidence that is out there.

Q88 **Baroness Smith of Newnham:** Minister, I understand that you are speaking on behalf of the MoJ and not in a personal capacity, which we completely understand, but I understand that, at Second Reading, you said that the Bill was “clear, precise and well drafted”. Was that in your personal capacity as an MP or was that in your role as a Minister?

Sarah Sackman: I think you are quoting from a letter that I wrote to my constituents as a constituency MP, so that reflected my personal view of the first iteration of the Bill.

Baroness Smith of Newnham: I will not probe you any further on those points then, but what I would like to ask is whether the Ministry of Justice would envisage any concerns with some aspects of the Bill. You have been very clear that the Government wish to or would deliver this legislation, if passed by Parliament, as passed by Parliament. As you have already pointed out, there are some novel aspects to the Bill, by definition. One is to say that a death by assisted dying would not be counted as an unnatural death and, therefore, would not be sent to a coroner.

Is there a danger that abuse could go unrecognised for some time, as we have seen in other cases like the Shipman case, which is why medical examiners were introduced? Are there any further caveats that we, as a committee, could or should be looking at to ensure that the Bill, if it goes through all stages of the legislative process, is to be passed and come into law?

Sarah Sackman: That choice, as I said earlier, as between a medical examiner route rather than a coroners' route was a choice for the sponsor, and it will be a choice for Parliament. It is important, again, as I said earlier, that, notwithstanding that, under the current Bill, the medical examiner route is the default, there is, where there is concern, the ability for third parties to raise that concern and for that to trigger then an investigation by a coroner.

In terms of concerns around abuse, that has, quite rightly, dominated the concerns of parliamentarians across both Houses as to how we achieve the appropriate safeguards for that. All I would say is a contextual point, and forgive me if this is obvious. Maybe I should describe it thus. The certification of death at the end of this process is exactly that. It comes at the end of a process that, as the Bill currently sets out, necessarily involves the assessment by two medical practitioners that the person electing for an assisted death is doing so in a manner that is free from coercion, the panel stage, which is that multidisciplinary panel, where, again, part of the eligibility test under Clause 17 requires that the panel be satisfied that coercion is absent, and then, of course, we come to the medical examination stage.

Look, there can be, of course, no complacency about coercion in whatever form, whether it is in the form of domestic abuse or whatever, but I think it is important to set the choice that has been made, at least until now, in the context of that process.

Baroness Smith of Newnham: Thank you. One aspect is coercion by family or carers. The other could be questions of medical negligence or other issues that might go unseen if there is an assisted death that is certificated as such. There is very little way of coming back in terms of, once somebody has had an assisted death, there is little opportunity to explore the circumstances of that death and any prior medical malpractice that may have happened.

Is there any way in which we could be strengthening the legislation in that regard? For example, precisely because unnatural deaths at the moment would normally go to a coroner, would it not be stronger if the legislation said deaths that have medical intervention should also go to a coroner, systematically, not on an ad hoc basis?

Sarah Sackman: I think that that comes down to a policy view on whether that is preferable under the existing Bill, which, as I have said, Government simply take the view that it is workable and that it is deliverable. Under the existing provision in Clause 38, any concerns that a death that has occurred is outwith the Bill, which, as we know, includes

a requirement in relation to the first doctor, that medical options, palliative care and all of that is explored. That is a mandatory requirement of the Bill, but anything that occurs outwith the Bill—the sort of negligence that you raise—can be referred to a coroner under the existing provision. I am not going to offer a view on whether it would be stronger or more desirable if a different choice were made. That will be a matter for Parliament. The point is that Government consider that, as things stand, this is workable.

Q89 Lord Winston: I want to just follow up on a point that my noble friend here, Lord Goddard, made about the issue of overseas sovereignties. It is a fact that Australia has been running very effectively in five different states, with slightly different legislation in each state, without any problems, with public approval. It has been really successful and, as far as I know, all the evidence I have seen has shown that it really does work very well, and yet we have not really looked at that evidence. I wonder, really, why that should be excluded from the impact assessment. It does not seem to me to be reasonable. I know the impact assessment certainly mentions Australian practice in one or two places, but it is certainly not very critical. It just mentions what is happening there. I wonder if you might be kind enough to speak about that.

Sarah Sackman: I sat through the many hours—and I do not say that in a negative way; they were fascinating and important hours—that we spent in committee. The first week we spent in committee was hearing evidence from a range of different experts. That included experts practising in Australia, with experience of the regimes that you are referring to.

Again, I do not offer a view on whether what is operating in different states in Australia is desirable or not, but the committee heard that evidence, or at least heard of examples from different jurisdictions as to how that operated, and that will have informed the debate in the Commons. It certainly informed the members of the committee. In addition to that, we also have the impact assessment documents that Government have produced. All of this, I suppose, is building up a picture on which parliamentarians can make an informed decision about the policy that Parliament should or should not pursue.

Lord Winston: On another point entirely, given the British experience and the British environment, I understand this is a Private Member's Bill and not a government Bill, but would not regulation, when there are so many different areas of expertise, be needed to make sure the Bill worked better? We would like to see it work better on this side of the House. The model, perhaps, of, let us say, a body like the regulatory authority for human fertilisation would be an interesting issue. That kind of model could be used for a Bill of this sort, where you have very different skills joining together to work very successfully with an Act of Parliament that has now worked very well for getting on for 30 years.

Sarah Sackman: Again, I think that would be a policy choice for the sponsor of the Bill. What I can say is that the proposition we have before

us, as it stands, which might, indeed, be changed as the Bill makes its way through Parliament, works. Reflecting the sponsor's intent, the establishment of the voluntary assisted dying commissioner, the fact that that is responsible not only for the panel's functions that we discussed in our earlier exchange, but the fact that the commissioner is responsible for setting up a disability advisory board, the fact that the commissioner is also responsible for collecting and monitoring data about the operation of the scheme and reporting—that will be a significant feature of this regime.

Whether that does what you have just asked me is a matter for debate. That is a policy choice. All I can say is that, under the Bill as it stands, the commissioner's function ranges beyond simply determining the eligibility in individual applications, but it does include, if you like, an evaluation/monitoring element, which Parliament and future Parliaments may find is useful.

Q90 Lord Goodman of Wycombe: Minister, I am a member of the Delegated Powers Committee, and you will have read our report into the Bill, which was extremely critical of its use of delegated powers. One of the most important delegated powers I would like to raise with you is the relationship between VAD services and the National Health Service, because we simply do not know from the Bill whether VAD services will be provided on the NHS or not.

Can I now draw your attention to what the Attorney-General said when questioned about delegated powers by the Constitution Committee earlier this year? He has been very critical of the use of delegated powers, by the way. He said, "you should not take powers because you have not worked out the policy yet", and the proponents of the Bill have not worked out the policy, have they?

Sarah Sackman: First of all, can I thank him and his team for the report? It is something that myself and my officials have digested, cognisant of the concerns that he raises. On the back of those concerns, we will continue to provide ongoing technical and workability advice to the sponsor of the Bill as it makes its passage through Parliament.

I hear what he says in relation to the Attorney's general view that we should be careful, cautious and circumspect in our use of delegated powers and, in particular, Henry VIII powers. Having worked with the Attorney for a number of months, I know that is a principled view that he takes, but, of course, Government do recognise the need for delegated powers in limited cases. Given that this is a new service, there is a degree of flexibility that is needed to ensure that it is deliverable, but, as I said, the report is helpful in identifying areas where further technical and workability work can be done, and that is what we will continue to do with the sponsor.

Lord Goodman of Wycombe: Just to be clear, you are not suggesting that it is in any way appropriate that the House should not be able to debate the relationship between VAD services and the NHS on the Floor

in committee. You are not suggesting that is inappropriate, are you?

Sarah Sackman: I am not saying it is inappropriate, but what I am saying is that whatever comes forward in terms of the final version of the Bill necessarily will contain some delegated powers in order to afford the degree of flexibility that will be needed to develop the delivery model, potentially through the NHS or whatever, to deliver the scheme that Parliament wishes to see come to fruition. What I am saying is I am cognisant of the challenge presented by his report. We will act on that through our work with the sponsor, but I envisage that a degree of flexibility will need to be retained by this Bill.

Lord Goodman of Wycombe: You have had discussions with the sponsors of the Bill. Have they indicated to you what their aim is? Would they like these services to be provided on the NHS?

Sarah Sackman: We are having discussions with the sponsor of the Bill. I think that is probably better a question for my colleague from DHSC—from the Department of Health—when I think he comes here next week, because I do not know. I have not been privy to those conversations. What I do know is, as I have said already now a couple of times, that the specific concerns that your report raises is informing ongoing conversations that are happening between officials and the sponsors.

Lord Goodman of Wycombe: The Secretary of State has said, and I quote, "There is no budget for this".

Sarah Sackman: That is something he has said. Is there a question that goes with that?

Lord Goodman of Wycombe: I am asking you to confirm that. We are discussing whether the NHS could or could not deliver VAD. I am asking you whether it is correct that there is no budget for this.

Sarah Sackman: First of all, I am a Minister in the Ministry of Justice, so I have not had those discussions with the Secretary of State for Health. What I will say is what I said right at the start: that, if Parliament passes this Bill, the Government will deliver it and will be responsible for delivering it within the timeframe set under primary legislation. I do not consider that to be a radical statement. As the members of the committee will know, there are processes through spending review for allocating resources. If Parliament wills it, then the Government will deliver it.

Lord Goodman of Wycombe: Just finally, you are a Minister with a view on policy. Were this service not be delivered by the NHS, VAD services would risk becoming simply a service for the rich, would they not? Would you be satisfied with that?

Sarah Sackman: Once again, I think that is a question better directed to my colleague in health. We did have extensive discussions in the Commons committee about a shared desirability to see mixed provision—provision through NHS services free at the point of use, but also

recognising that there are other bodies and other settings in which this sort of regime and this sort of service could be delivered. I am not going to get drawn on the particular delivery model that is being worked through, particularly where that sits between the sponsor's choice and her discussions with the Department of Health, but certainly the tenor of the debate, within both the Commons in general but the Commons committee specifically, was around a vision that included that mixed provision.

Q91 Baroness Berger: Thank you Minister for being with us today. The Government have rightly made it one of their missions to halve violence against women and girls in a decade, and have committed to using all the levers of Government and a whole-society approach to achieve this laudable and important aim.

Your department, the Ministry of Justice, is jointly responsible for leading that mission alongside the Home Office. We have heard significant concerns raised throughout the progress of this Bill that, under the process outlined, the professionals on the panel will not be able to adequately detect where someone is subject to domestic abuse and coercive control all of the time, and is either coerced into assisted dying or even chooses it as a means of escape. We have heard that from a wide range of stakeholders, including Age UK this morning. We have heard it from the former chief coroner, domestic abuse charities, and so on.

We also know that this Bill will mean that some assisted deaths where domestic abuse is a factor will not be thoroughly examined by a domestic abuse-related death review, because, as we have also established, under Clause 38, a coroner will not be under a duty to investigate them. As we heard in the evidence last week, medical examiners do not investigate. That is not what they are trained to do.

Do you believe it is consistent for the Government to champion the important, ambitious approach to violence against women and girls while also allowing this Bill to pass in its current form?

Sarah Sackman: You are absolutely right. We do take incredibly seriously the intolerable scale of violence against women and girls in this country. We do have a landmark mission to halve violence against women and girls, which we are working through our cross-government strategy, and we remain really focused on that.

The Bill, as currently drafted, provides a number of safeguards at various stages. The first co-ordinating doctor must make an assessment that there is not coercion and that the person in question is, essentially, acting out of free will, displaying a clear and settled and informed wish to end their own life. That is then layered on with a second co-ordinating doctor. You then reach the panel, where the Bill tells us that domestic abuse training in order to identify the coercion that she rightly highlights is mandatory for all panel members.

Now the adequacy and the sufficiency of those safeguards, and the focus that the Bill places on domestic abuse and coercion in particular, is ultimately a policy choice, but the fact that experts must receive training in respect specifically of domestic abuse, including coercive control and financial abuse, to my mind, is significant. When she asks me, "Is it, in principle, compatible with the Government's commitment around violence against women and girls?", that is there. It will ultimately be for Parliament to decide whether it is sufficient or whether it should go further, but it is there in the Bill.

Baroness Berger: We have certainly heard a number of concerns raised about the length of training and what would need to be included in that training to adequately detect coercion and control. If assisted dying approval was given, but abuse became evident later, after death, where would responsibility lie if the panel had declined to hear from people who knew the patient or the family?

Sarah Sackman: In circumstances where the panel had not deemed it necessary to satisfy themselves of the person's eligibility, they would have spoken to the person themselves. They would have spoken to the co-ordinating doctor who would have had to have made that assessment. As I said earlier, the panel's decision itself would be amenable to judicial review.

On the point I made earlier in relation to any perceived limitations around the medical examiner's role, there is provision, where there are concerns—for example, the sorts of concerns that she raises—for a third party to raise that concern and for that to go to a coroner. There are avenues. I understand the point that the Bill, as drafted, does not require the panel to hear from family or any other particular members. What it requires is hearing from the doctor and from the person themselves, and then, if there are still lingering doubts, to then carry out their inquisitorial function and speak to whoever is relevant, but there is, as I read it, provision for those issues to be raised at different stages in the process.

Baroness Berger: Can I just ask you one question on the judicial review point? To be very clear, in what circumstances and on what grounds could a panel decision be subject to a judicial review? Specifically, would that be the case simply if there was compelling evidence that the panel got the facts of the case wrong, such as the person then believing they were not subject to coercion and it emerging afterwards that they were?

Sarah Sackman: Any public law decision can be amenable to judicial review. It would have to be on public law grounds, whether the decision reached was rational, whether it accorded with this scheme, whether there were other procedural deficiencies. Those would be the sorts of grounds that could form the basis of a judicial review challenge. Any decision by the panel or, indeed, the commissioner, not just the final decision in relation to whether to approve the application for an assisted death or not, but other decisions they might make along the way, could themselves be amenable to judicial review. That is the sort of basis on which it could, in theory, be challenged.

The Chair: Before I take supplementary questions, is there anything either of you would like to add in the light of our discussion so far?

Sarah Sackman: No, I think we are fine.

Q92 **Baroness Scotland of Asthal:** Can I just take you up on that last matter on judicial review? I think the whole point of the questions that have been made is that the regulations do not put any mandatory requirement on the panel to see or hear from any person. It says "may". If you are going to judicial review, how would a person establish that the panel acted in a way that no reasonable panel could have acted within the ambit of reasonable disagreement? You would not be able to do a judicial review, would you?

Sarah Sackman: I am not going to speculate on a hypothetical set of facts. It would completely depend on what has happened, what has gone on, what the panel has or has not failed to do. One can imagine scenarios in which, in the absence of a reasonable basis for determining that one can be satisfied of the eligibility requirements, the panel did not avail itself of the ability to go further and gather that evidence where it has got the power to do so—the failure to exercise the power.

One can imagine a scenario, but I am not going to speculate on a set of facts. The fact is we have got a regime, and the question that was put to me is, "What are the sorts of grounds that could form the base of judicial review?" I have sought to set those out in general terms. I cannot get into the specifics without having the facts.

Baroness Scotland of Asthal: The Attorney-General, of course, is the guardian of the rule of law and the public interest. Is it envisaged that he would have any role in either identifying the process or, indeed, creating a panel of those who would be fit to adjudicate—or rather, participate—in these processes?

Sarah Sackman: That particular matter is not addressed on the face of the Bill. We do know that the Bill envisages that these panels will take place in public, so people can see what has happened. The other point to make, I suppose, in this context is that the commissioner, in establishing the office of the commissioner, will be responsible for producing the procedural rules governing the panel's activity and, potentially, guidance that will govern how they go about their work.

One can well envisage a situation where guidance has been departed from without proper justification or a failure to give proper reasons. These are all the sorts of things that could form the basis of legal challenge, but, in terms of her question in relation to the role for the Attorney-General, I cannot speculate. It is not on the face of this Bill, so I do not know.

Baroness Scotland of Asthal: That is the problem we raise, is it not? If you do not have the policy definition, it is very difficult to make an assessment as to whether the rules you are putting in place are actually effective.

Sarah Sackman: Just on that point, again, it will be a matter of policy or a matter of opinion, I suppose, whether you think what we have here is sufficient. The Government consider that the Bill as it stands is workable. That includes, in this primary legislation, the provisions that relate to the establishment of a voluntary assisted dying commissioner under the commissioner set out in Clause 4 and the requirements set out in 44, 47, 48, 49, 50 and then, of course, Schedules 1 and 2, which contain a not inconsiderable degree of detail.

She is absolutely right that what it does then is give the commissioner the powers to go away and develop the governing practices of the panel, but that, I would suggest, is not unusual in the establishment of bodies of a similar nature.

Q93 **Lord Markham:** I wanted to come back to the issue on safeguarding. We have heard quite a bit of evidence on how, in the current status quo, there is not sufficient safeguarding in place. We heard from a professor this morning who had done some research. There are a number of instances where carers might have assisted the killing of someone and these things are not looked into because of the current inadequate safeguards.

Of course, this Bill is designed to increase the level of safeguards. First, do you agree that, versus the status quo, this Bill will increase the level of safeguards in these circumstances?

Sarah Sackman: Again, at the risk of sounding like a broken record, I am not going to give a view on whether the status quo versus the future regime envisaged by this Bill is more or less desirable.

What I would say, putting it as neutrally as I can and as a statement of fact, is that clearly this proposed regime introduces a degree of regulation of end of life that does not currently exist on our statute book. To that extent, the safeguarding and the requirements that it imposes on medical practitioners—the training that they will have undergone, the assessment of capacity and all the rest of it—is additional, significantly so, to what we have now.

Lord Markham: I assume that, if this Bill were not to pass, the Government would not have any particular plans to put similar safeguards or regulations in place in future legislation.

Sarah Sackman: I cannot comment on what the Government might do in those circumstances. One thing I would say—we reflected on this in the Commons committee; others have made the point—is, if nothing else, the introduction of this Private Member's Bill has initiated not just a parliamentary conversation but a national conversation about end of life, which I think has been heartfelt, contested but, if I might offer a personal view, quite healthy for our society.

In terms of government plans as to what they would do if this does not pass, I am not going to speculate on that.

Q94 Baroness Finlay of Llandaff: Thank you, Minister, for coming. Can I just ask you about something completely different? I am not a lawyer. What are the international obligations across the UK? The Isle of Man legislation, the proposed Scottish legislation and the Jersey legislation have different criteria, and yet a lot of patients are treated across the border. What is the position of a doctor in Liverpool treating someone from the Isle of Man, or Southampton from Jersey, or indeed England from Scotland, where they are arranging transfer of a patient back to one of these areas? If the patient's eligibility criteria are not fulfilled under England and Wales law, will their actions be a criminal offence under this Bill?

Sarah Sackman: From the example she gives—I am trying to follow it—I think the answer is yes.

Paul Candler: Can I answer? I think what the Bill does is, of course, essentially carve out from prosecution people who are acting within England and Wales in conformity with the scheme set out in the legislation. Therefore, as I understand your scenario, it would involve an assisted death being arranged outside England and Wales and outside the parameters of this scheme, and so therefore it would be caught by the Suicide Act.

Baroness Finlay of Llandaff: Thank you. Actually, many patients from the Isle of Man are treated in Liverpool. Similarly, a lot of complex cases are treated in Southampton. Those patients may well want to go back to avail themselves of the legislation in their home areas.

Can I also ask you about a different situation where you have a lone care worker? Lots of care workers go into people's homes on their own, one to one. Let us say that somebody in their own home has lots of conversations and then proceeds to seek and have an assisted death. Afterwards, the family says, "That carer put pressure on the person who was the patient". That carer will be very poorly paid and may well be working for an agency that provides remarkably little support for them. What defence would they have?

Are we now getting into a situation where any conversations around assisted death that happen in a patient's home need to be video-recorded using a body cam, like our security people have, or whatever? Otherwise, that carer could be accused or will be accused by the family of pressurising the patient. The patient will be dead and so cannot come to their defence. As the Bill is written, if they are found guilty, that is an imprisonable offence.

Sarah Sackman: In all of these cases, which are envisaged to be criminal cases, it will turn on the facts. If this is a person who, looking at the words of Clause 34, by "Dishonesty, coercion or pressure" has induced another person either to make the declaration or to self-administer the substance, if the behaviour we are talking about falls within that definition, clearly, it is caught within the scope of the criminal law. Of course, what you describe, at first blush, has not followed the

proper process set out by this Bill. It has not followed the first and second medical assessment; it has not followed the panel stage.

All of this is going to turn on the facts, but, if the behaviour reaches a threshold where it comes within the scope of Clause 34, then obviously criminal enforcement will be required. If, actually, the behaviour falls short of that, if there is a reasonable belief defence and there is no public interest in pursuing a prosecution, that is the sort of thing that the Crown Prosecution Service deals with every day.

Baroness Finlay of Llandaff: They have their guidelines, which Keir Starmer wrote. They seem to be working really well. It almost falls to ask you this question. How many wrongful deaths do you feel would be acceptable, if this law goes through and there are wrongful deaths? We got rid of capital punishment because of wrongful deaths. What is the problem that we are trying to solve, given that those guidelines seem to be working well in detecting homicide but not in appropriately prosecuting?

Sarah Sackman: We touched on this earlier. It is a policy question. You may see, as the sponsor sees, that there is a mischief with the status quo. There are several hundred people a year who are taking their own life outside a medical setting because they think they have no other choice. You have families, even if they are not actually being prosecuted or their prosecution is not going ahead, whose behaviour is being conditioned by the fact that our criminal law captures the sorts of behaviours that they are engaging in or thinking of engaging in to help a loved one who is terminally ill end their life.

Either you see that as a mischief or you do not. That is a policy question. The sponsor has come forward and articulated that she does see it as a mischief. Indeed, somebody else mentioned earlier that a number of the previous directors of public prosecutions who had to operate the current criminal regime and guidance also found it problematic.

Again, I am not offering a view on whether that is the case, but one can take a view on that. That is a policy question. If you think it is a problem, it needs to be remedied. If you do not see it as a problem, plainly, one would not regard this as necessary.

The other thing to say is that the criminal offences that we are discussing in this Bill in Clauses 34 to 36 operate within the context of this regime. Obviously, the regime does not exist already, but what they are designed to do, if I understand the policy intent correctly, is to deter those who might wish to abuse this regime of voluntary assisted death for their own criminal ends. That is how they are operating in this scheme. They are different from the criminal law as it currently operates under the Suicide Act.

Q95 **Baroness Hayter of Kentish Town:** There are two questions arising about the issue of whether it should go to a coroner by default. First—you may not want to put a view on this, but I will ask you—it involves

defining the death as an “unnatural death”, but actually this person is dying. I wonder whether that phrase, which needs to be used, would be difficult for the family because this person is dying anyway.

The question really is more about the coercion that was raised by Baroness Berger. I am interested in what a coroner could do after the person is dead to measure whether there was coercion that could not have been done when the person was alive. It seems to me a much better way of evaluating whether they are under coercion if they are there to answer questions. From a legal point of view, what could a coroner do or ask that the doctors beforehand, the panel and the people that they listen to and everyone else could not have done. What could a coroner offer that would not have happened before?

Sarah Sackman: To your first point, I am not going to offer a view on how we should categorise someone who might in future avail themselves of the right to a voluntary assisted death. It is a policy choice to treat it as a “natural death” rather than an “unnatural death”. That is a policy choice, but, clearly, having made the choice that the current draft of the Bill makes, the consequence that flow from that is that the death is then subject to certification by an independent medical examiner rather than a coroner.

As I said in answer to Baroness Berger, there is provision, as I read it in the Bill, at a number of stages for the interrogation or assessment of whether the choice being indicated by the person is free from coercion or not. By the time you reach the certification stage and that choice has been made, whether freely or subject to coercion, plainly the physical consequences are too late.

Of course, a coronial investigation, which the Bill does still allow for if there are concerns, clearly would not bring the person back, but it would shine a light on the truth of what had happened. If there has been abuse and coercion that has been missed at the various earlier stages by the two medical practitioners and the panel, then, frankly, that would shine, in my view, a very concerning light on what had gone before and indeed uncover wrongdoing by the abuser. It would have the potential to do that at that stage, but that is in circumstances where, as you say, it was missed at an earlier stage.

Baroness Hayter of Kentish Town: The family can ask for the coroner as well, if the family had worries about the carer or anyone else.

Sarah Sackman: That is right. It is not just the family. As I understand it, any third party can raise a concern that might lead to an investigation.

Q96 **The Lord Bishop of Newcastle:** I have a brief question, if I may, to the Minister. The MoJ has responsibility for prisoners. I am changing tack a little bit here. The Independent Advisory Panel on Deaths in Custody reported that self-inflicted deaths are expected to rise disproportionately compared to the rise in the overall size of the prison population between now and 2029. Currently, the Bill as drafted would allow the prison

population to access assisted death, if they meet the other eligibility criteria. I wonder whether the Minister has considered whether this might bring additional challenges to the suicide prevention work already happening in prisons.

Sarah Sackman: She rightly highlights something very important. It is covered to some extent, to the extent possible at this stage in the Bill's evolution, in the impact assessment. The policy choice that the option of a voluntary assisted death be extended to those in prison is just that. It is a policy choice on which the Government are neutral.

Of course, if the Bill passes, we will need to ensure that it operates, interacting with the wider prison regime and some of the challenges that lie therein, in a way that conforms with all the safeguards in the Bill and does not lead to abuse or is not misused.

The Chair: I have to bring this session to an end now on account of running out of time. Can I thank you both very much for coming and remind you that the transcript will be available for you to check? Please, if you find any inaccuracies, let us know and they can be corrected. With that, thank you both very much indeed and good afternoon.