



Joint Committee on Human Rights

Uncorrected oral evidence: Terminally Ill Adults (End of Life) Bill: Potential impact on the human rights of disabled people (HC 1462)

Wednesday 12 November 2025

2.15 pm

Watch the meeting

Members present: Lord Alton of Liverpool (The Chair); Lord Dholakia; Tom Gordon; Afzal Khan; Lord Murray of Blidworth; Lord Sewell of Sanderstead; Peter Swallow; Sir Desmond Swayne.

Questions 1 - 9

Witnesses

I: Professor Liz Wicks, Professor of Human Rights Law, University of Leicester; Paul Bowen KC, barrister, Brick Court Chambers; Lord Carlile of Berriew CBE KC, barrister, Cross-Bench life peer, House of Lords.

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Examination of witnesses

Professor Liz Wicks, Paul Bowen and Lord Carlile of Berriew.

Q1 The Chair: Good afternoon and welcome to the 35th meeting under my chairmanship of the Joint Committee on Human Rights. Today we are having a hearing into the Terminally Ill Adults (End of Life) Bill and potential impacts on the rights of disabled people. The hearing is held under the auspices of the JCHR. It is a bicameral committee comprising 12 members drawn from diverse political traditions and in equal numbers from both the House of Commons and the House of Lords. As its name implies, it delves deeply into issues relating to human rights within the United Kingdom. It holds thematic inquiries, most recently on issues such as transnational repression, modern-day slavery in supply chains, and the role of British nationals who joined Daesh and ISIS in the Yazidi genocide. One of our reports on the Hillsborough law has led to a debate that will be held tomorrow in the House of Lords.

The JCHR also scrutinises government legislation for its compatibility with human rights standards, including the Mental Health Bill, the Crime and Policing Bill and the Border Security, Asylum and Immigration Bill, which completed its Report stage proceedings in the House of Lords yesterday. On 15 July, we opened a new inquiry into the human rights of children in social care and we are also looking at artificial intelligence and human rights. We scrutinise the Government's compliance with international human rights treaties to which the UK is a signatory. Our reports and correspondence with Ministers can be read on the JCHR website.

Our hearing today is a one-off evidence session investigating the potential impacts of the Bill in its current form, as it passes through the House of Lords, on people with disabilities. We are seeking further opinions from a range of stakeholders and experts to inform the Committee stage, which begins in the House of Lords on Friday.

Today's proceedings will fall into two parts, with two panels. The committee is extremely grateful to everyone who is going to take part in our proceedings. Panel 1 will comprise Paul Bowen KC, Lord Carlile of Berriew KC and Professor Liz Wicks. Panel 2 will consist of Jean Eveleigh, Liz Carr, Dr Henry Marsh and Baroness Hollins.

I will give further information about the second panel when we get there, but for now let me give you the witness biographies of our first three panellists. Paul Bowen KC is a barrister at Brick Court Chambers. He practises across the spectrum of public and administrative law, often with significant human rights, EU or other international law elements. He appeared for the appellants in the cases known as Purdy and Nicklinson, involving the UK prohibition on assisted dying.

Lord Carlile of Berriew CBE KC is a Cross-Bench life peer and barrister. He has served as a Deputy High Court Judge, head of Foundry Chambers and a bencher at Gray's Inn. He is currently chair of the House of Lords Northern Ireland Scrutiny Committee and served as the independent

reviewer of terrorism legislation in the Commons. He represented Montgomeryshire and was leader of his then party in Wales.

Professor Liz Wicks is a professor of human rights law at the University of Leicester's law school. Her research expertise focuses primarily on issues of human rights in healthcare, especially the European Convention on Human Rights, the right to life, bodily autonomy and aspects of medical law, in particular beginning and end-of-life issues.

Welcome to you all. We greatly welcome your wisdom and your expertise. Before we get to the specifics of the Bill and we hear from my colleagues, I would like you to explain how human rights law protects people with disabilities and deals with disability discrimination and what concerns, if any, you have about how those human rights may be impacted by the Bill.

Paul Bowen: I understand that the committee is most interested in the protections under the European Convention on Human Rights, which of course are given effect under the Human Rights Act in the United Kingdom.

Disabled people benefit from the same rights as other people. That includes the right to private life under Article 8, which is particularly protected in this context as the right of autonomy, the right to choose the manner in which one ends one's life, which was first recognised as a qualified right under Article 8 in *Pretty*. It includes the right to life under Article 2, both the right not to have one's life intentionally taken by the state and the positive obligations to have one's life protected, which is something that is particularly relevant in this context as well.

Perhaps the most important specific right that disabled people enjoy is the right not to be discriminated against in the enjoyment of their rights, either by being treated differently on the grounds of their disability in terms of the protection that they enjoy or not to be treated differently for reasons when they ought to be treated differently because of their disability in the enjoyment of their rights. I hope that is a clear enough summary.

The Chair: Thank you very much. One of my colleagues has asked whether I have any interests to declare. For the sake of the record—I am told I am not required to because it is not a pecuniary interest—I do have a link with a group called Living and Dying Well. I know Lord Carlile does too, but that is, as I say, not a pecuniary or other interest.

Lord Carlile of Berriew: As you say, I too have a non-pecuniary interest in Living and Dying Well. I am opposed to the Bill in principle, but I am here today as a person who is looking for safeguards in the Bill on the basis that it may be passed.

I agree with what Paul Bowen has said about the European Convention on Human Rights. We have Article 2, which is a fundamental right to life that

cannot be removed, save in war, in reality, ever since hanging was abolished in the United Kingdom and indeed elsewhere.

Mr Bowen also referred to the right for respect of family life. In my view, the provisions as they are drafted before us in the TIA Bill, as I will call it, invade Article 8. Mr Bowen also referred to Article 14, which is not quite specific as to disability but can be taken as specific to disability.

I should also mention at this point the United Nations Convention on the Rights of Persons with Disabilities, the CRPD. That is not part of our law under the Human Rights Act in the way that the ECHR is, but it must be reflected in domestic law. Article 10 of the CRPD protects the right of life to persons with disabilities on an equal basis with others.

At this stage, the only other comment I would make—we may get into specificity in a moment—is that, in my practising life, which has been both as a criminal and civil lawyer, I have seen cases, and indeed in my own family's life I have seen one case, in which the protections that the law provides at the moment have been inadequate to deal with outrageous frauds committed on people by others whom one would not have expected for a moment to commit such frauds.

The Chair: We will turn to the issue of coercion a little later in the proceedings, but thank you for flagging that.

Professor Liz Wicks: I agree with everything that has been said. The key provision for our purposes today is Article 14 of the ECHR, which prohibits discrimination on a variety of grounds. Disability is included in that. It is important to remember that that provision always links with another right within the convention. In the context that we are considering today, it would mean that there should not be discrimination in the protection of the right to life, but it would also mean that there should not be discrimination in relation to Article 8 rights, such as the right to make one's own choices about the end of one's life.

Q2 **Afzal Khan:** Is there any overlap between the definition of terminal illness in the Bill and the definition of disability in the Equality Act? Does this have any implications for the Bill's impact on disabled people?

Lord Carlile of Berriew: In technical terms, the answer may be no. In practical terms, there is a huge factual overlap because you have to look at each individual as an individual. In all the cases that I have ever been in—there have been many of them—involving disabled people, depressed people or people with other major life-affecting issues, those issues have been part of every decision that has been made.

If somebody has one of those conditions—let us say they are disabled—and they are considering terminating their life under this proposed legislation, they are bound to be vulnerable to thoughts and suggestions. The obvious one is, "I do not want to be more trouble to the family". There are plenty of cases abroad, in other jurisdictions where there is assisted suicide, which is what I prefer to call this, where people have gone to their death because it was clear that they did not want to cause

trouble, spend the inheritance of their family or feel that their family did not want to look after them anymore. One can think of countless examples of that overlap.

Professor Liz Wicks: There is a clear distinction between terminal illness in the Bill and the concept of disability. Indeed, there is a provision in the Bill, as it stands, that explicitly says that a person is not to be regarded as terminally ill merely because they have a disability. The key aspect of terminal illness in the Bill is the six-month prognosis, which completely distinguishes it from much broader issues of disabled persons. Of course, there may be and there will be a few people who are both disabled and have a terminal illness with a six-month prognosis, but that is a very small category of overlap.

Paul Bowen: I agree. There is a Venn diagram. People with a terminal illness are clearly disabled, but there is a very large group of people who are disabled and not terminally ill.

Q3 **Lord Murray of Blidworth:** I wonder whether the panel could help us by letting us know whether there is any domestic case law or European Court of Human Rights case law that specifically addresses whether laws permitting assisted dying discriminate on the grounds of disability or whether they otherwise impact the rights of disabled people in this particular area.

Paul Bowen: The two most recent cases that provide perhaps the best illustration of how the Strasbourg court would deal with this question are the cases of *Mortier* in Belgium and *Karsai* in Hungary, which helpfully represent perhaps the most liberal assisted dying regime that you will find within the Council of Europe, in Belgium, and perhaps one of the most restrictive regimes, in Hungary.

In *Mortier*, the issue that was being considered was whether the applicant's mother, who had taken advantage of Belgian laws, had her rights under Article 2 violated. She suffered from mental illness, not physical illness. She was not terminally ill, but she qualified under the Belgian assisted dying law, which was more generous in terms of those who can take advantage of it. Interestingly, the court did not analyse the case in *Mortier* by reference to whether the legislation discriminated against her on the grounds of her disability. The court went on to find that the law had sufficient safeguards to protect her as a vulnerable individual with a mental illness, and therefore there was no breach of Article 2. They did not then go on to consider the question under Article 14.

In other cases, the court has gone on to consider Article 14 after having looked at the substantive issues. Generally, if they have found that there is no breach of the substantive provision, as they did in *Diane Pretty's* case way back in 2000, for example, when they have looked at it through the lens of discrimination they have found no breach either. There is a balancing exercise that they carry out both under the substantive provision and the discrimination provision.

There are cases where the courts have looked at discrimination, but they have not specifically looked at this question of whether a permissive regime violates Article 14. There have been very few cases that have looked at permissive regimes. *Mortier* is your best case in terms of looking at a permissive regime and what Strasbourg will say about it. Interestingly, they did not analyse it through the prism of Article 14. They will have made that decision deliberately, because the Strasbourg court sees itself as master of its own procedure. Had they felt it was necessary to give it separate analysis under Article 14, they would have done so.

I am not sure whether that necessarily answers my Lord's question because I understood that you were driving at the question, "Is there a case that analyses the question of whether a permissive regime violate the rights of disabled people?"

Lord Murray of Blidworth: The answer is no.

Paul Bowen: As I understand the law as it stands, the answer is no.

Lord Murray of Blidworth: I will ask the other two witnesses to reflect on that and consider that there has been writing on the impact of Article 14 in this context. Some commentators contend that Article 14 could be utilised to extend the effect of the ban to those who are not terminally ill with less than six months to live, while others say that Article 14 has the reverse effect, in that it will mean that those who are not eligible for assistance under the Bill, for example because they are too disabled to self-administer, will be the subject of a violation of Article 14 read with Article 8. Lord Carlile, you might have some thoughts on that.

Lord Carlile of Berriew: We are beginning to swim in the ECHR and its different interpretations in different cases. The cases that were cited by Mr Bowen, which are the leading cases, demonstrate that circumstances alter cases even in the European Court of Human Rights.

My own view about the position of the convention is that, yes, as we all did earlier, the convention can be cited in favour of the proposition that it protects disabled people and is not being respected sufficiently in the proposed Bill.

On the other hand, we spend far too much of our time, generally speaking, agonising about what the convention says, because there is a margin of appreciation, which is a phrase that is often forgotten when it should be at the forefront of people's minds. Countries that have different margins of appreciation of the issues under discussion can have very different policies. What we have to determine in this country is our margin of appreciation of the three articles that have been referred to already.

I would commend to you, if you have seen it—you have certainly seen it because it was sent to me this morning—the letter from Alasdair Henderson, who is a commissioner at the Equality and Human Rights

Commission, who touches on these issues very clearly. I agree with what he says.

The Chair: Could you just explain to the committee what the gist of his argument is?

Lord Carlile of Berriew: Yes, there are several arguments in it. It is quite a long letter. He referred in particular to the equality impact assessment, the EIA, that was produced for this Bill. He did not describe it as weak; he was politer than that. He said the Bill could be strengthened in relation to the potential impact of the Bill on people with protected characteristics, including disability, which includes in relation to mental ill health, which is very important, in my view, in this context. He said it should include relevant evidence about health inequalities between different groups, potential impacts of the Bill on different groups and barriers to assisted dying services as well as any evidence gaps.

To do this job properly, we have to look at that equality impact assessment and see whether it has been sufficient for Parliament to consider this Bill in a carefully thought-out way. I think probably not, but that will be a matter for discussion in the Committee stage starting on Friday.

The Chair: Professor Wicks, do you have a response to Lord Murray's point and the issues that Lord Carlile has just touched on?

Professor Liz Wicks: The other panel members have set out the relevant law from the ECHR very well. I agree with that. I agree that a wide margin of appreciation is likely to be given to each state.

It is also important to bear in mind that Article 14's prohibition of discrimination is subject to proportionality requirements. As with other aspects of the law in this area, it is really all about balance. It is about trying to respect Article 8 more by providing more opportunities and choices at the end of life and ensuring that the state adequately protects the lives of people who are not making their own choices.

The European Court of Human Rights very much focuses on that balance between Article 2 and Article 8, regardless of whether the provision is cited by the parties. The Court seems to hone in on those and regards that as the key aspect of the issue.

The Chair: Beyond the margin of appreciation, what is your reading of the point being made about the Equality and Human Rights Commission and the equalities impact assessment?

Professor Liz Wicks: I have not seen that letter. I am not familiar with the arguments, so I am not sure I can help you on that.

Q4 **Tom Gordon:** A core slogan in the disabled community is, "Nothing about us without us". There seems to be a broad understanding that most polling shows that disabled people are in favour of a change in the law. Throughout this process, we have had various opportunities for

people to give input. I sat on the Bill Committee in the House of Commons. We saw a number of amendments passed to the Bill, including the inclusion of an independent advocate and a disability advisory board. Could you comment on how the safeguards within this Bill compare to other jurisdictions?

We keep talking about the rights of disabled people in relation to this Bill and how we should protect them from it, but do we not also accept that disabled people have autonomy and should be able to have that choice, if they so wish? How do we square that circle without being overly paternalistic and make sure we do not end up discriminating inadvertently against disabled people who wish to have an assisted death, should they meet the criteria?

Professor Liz Wicks: That last point is really important. It is important not to be too paternalistic. The Bill is trying to provide an extra choice at the end of life. It is not compulsory; it is not an expectation; it is not to be used as a weapon.

In terms of other jurisdictions, there are certainly jurisdictions that have gone much further than this Bill would go with much weaker safeguards and provisions. A key part of this Bill is the terminal illness eligibility requirement. There are other jurisdictions, such as Belgium and the Netherlands, that focus more upon unbearable suffering as an idea. I can see there is potentially a closer link between that and concepts of disability.

It is important that the eligibility requirement in this Bill is quite strict. The role of capacity in the Bill is also really important. The Bill adopts the usual Mental Capacity Act definition of capacity. We have to see that as an additional protection not just for disabled persons but also for disabled persons. If a disabled person is not able to make a decision to end their life, they will not be eligible for assisted dying.

Paul Bowen: The safeguards in this Bill are significantly greater than they are under the Belgian scheme. As I have explained, in the case of *Mortier* the Strasbourg court has already given that scheme a clean bill of health.

This idea of the margin of appreciation is the area within which both the Strasbourg court and also the domestic courts will not interfere. If the safeguards are at least as good as those in Belgium, you can be confident that the Strasbourg court is not going to intervene.

By the same token, in the *Karsai* case, a very restrictive regime in which it was a criminal offence to assist in any way, even to assist somebody to travel abroad for an assisted death, which goes further than the law here, was found to fall within the state's margin of appreciation as well.

What, if any, message the panel could come away with from this is that, whether you legislate or not, it is unlikely that the Strasbourg court or the domestic courts will find that there is a breach because it will fall within the margin of appreciation of the United Kingdom.

Lord Carlile of Berriew: We have to determine first what our margin of appreciation is. My view is that the margin of appreciation that this country would require is much stronger than any other margin of appreciation that I have seen in other countries, including those outside Europe, that have assisted suicide.

I absolutely agree that we should not be paternalistic. It is a rather loaded word, however. In my view, we are seeking to ensure that the person, with whatever mixture of issues they have, whatever influences them, is making an autonomous decision of their own.

I was on a previous committee in relation to another of these Bills about 20 years ago. This short anecdote may help. I went to a place in Belgium run by nuns where euthanasia was practised. The paradigm example we were given was a young father who had considered the advice he was given and decided that he did not want his young child to see him going through the last few months of his suffering. It immediately struck approximately half of our committee that one might say those might have been the most important months of that child's life, helping his father through the final months of his suffering. It is too simplistic to focus on single examples.

My view is that the safeguards in this Bill are very poor indeed. Just to put it in context, I have tabled an amendment that returns the decision-making and scrutiny procedure to the Family Division of the High Court plus a satellite of the High Court, which is 42 designated judges around the country who try the most serious family-related cases. In my view, that cohort of people could deal with these cases. They would be able to hear whatever evidence the judge thought was required. The judge would have a medical expert assigned to each case, and interveners, subject to a test of proportionality, would be allowed to intervene in cases. For example, a member of the family who did not agree with what was happening would be allowed to intervene either in writing or orally, whatever the judge thought, and the court would be able to give directions.

By that means, we would obtain the only scrutiny that would produce a system that would come up to the margin of appreciation that I would expect from this country.

Tom Gordon: Can I just respond to that point?

The Chair: Yes, very briefly. This is not an opportunity for us to put our views as a committee.

Tom Gordon: Lord Carlile, you mention it being in family court and that people in the wider family would be able to express their views. One of the things that the Bill Committee in the House of Commons looked at was the fact that not everyone has good positive relationships with their family. They might not want them to have input or pressure either way. How do you reconcile that with what you were proposing?

Lord Carlile of Berriew: That is what judges are for. They are there to make an assessment on the basis of evidence. They do it every single day of the week. They do it on very serious issues. Those who might be malevolent in their view and those who might be benevolent in their view would have an equal opportunity, if they wished and were allowed on proportional grounds, to make those representations.

The huge advantage of a judicially based system is that it is justiciable. It has to be justiciable at a speed that is proportionate to the case. If somebody is in the last six months of their life, which by the way is a very elastic and not always accurate test, the case would be heard on appeal, if an appeal was necessary, very quickly. I sat as a Deputy Judge of the High Court doing judicial review cases for many years. The system can move at speed if it needs to.

Paul Bowen: May I just respond to one of the points Lord Carlile made?

The Chair: Sometimes it is easier to do it in the context of your reply to the next question, if you do not mind. I am just anxious to bring in all my colleagues or I will be in trouble at the end of this session.

Q5 **Lord Sewell of Sanderstead:** The Bill requires the person seeking assistance to have capacity to make a decision to end their life. Can capacity and the assessment of it be affected by a person's disability? Does this raise any concerns about the Bill?

The Chair: Can we go to Mr Bowen first, if you do not mind? Given what happened just a moment ago, it is important that we bring you in while your point is still fresh in your mind.

Paul Bowen: I will answer the question first. The answer is yes. If somebody has an impairment or disturbance in the functioning of their mind or brain, that is the starting point for determining whether in fact they have lost capacity. A mental disability can impact upon a person's ability to give their consent. That is the short answer to my Lord's question.

To deal very quickly with the point that I wanted to make earlier, Lord Carlile mentioned the margin of appreciation and he suggested that it might be different in this country from other jurisdictions. That is the wrong analysis. The margin of appreciation is the breadth of judgment that the Strasbourg court allows to domestic authorities to choose how they strike the balance. That is the margin of appreciation.

If you know that the margin of appreciation is wide enough that your Bill fits within it, whether it needs other safeguards is not a question of human rights; it is a question of political judgment. There may be very good reasons, which my Lord has given, for having additional safeguards, but they are a question of political judgment, not human rights.

The Chair: We can come back to that, but I want to hear from Professor Wicks on this issue of capacity, to answer the point that Lord Sewell was asking.

Professor Liz Wicks: It is possible that a person's capacity might be infringed because of their mental disorder, but it is not inevitable that that will be the case. English law has long taken the approach that mental health law is separate from mental capacity law.

The Mental Capacity Act also takes the view that a person can have capacity in relation to one decision but not in relation to another decision because it is all about the ability to make a particular decision. It is about the ability to understand the relevant information and to use that information in making a decision of one's own.

It seems to me that that provides the kind of protection or safeguard that we might want. If a person suffering from depression, autism or something similar is unable to look beyond their disorder in order to make a genuine decision about this, they will lack capacity and they will not be able to access assisted dying.

If they can, despite their disorder, meet the requirements and use that information to reach a final decision, they should not be discriminated against simply because they have a disorder. They should be treated the same as anybody else that would pass the capacity test.

Lord Carlile of Berriew: My answer to Lord Sewell's question is yes, like my two colleagues here. We could have an interesting case analysis about this, but the margin of appreciation is uniform, in a sense, conceptually, because the European Court of Human Rights will decide whether the line that a particular member country takes is within the margin of appreciation that it is prepared to allow. The margin that that country is testing before the court is subjective. I do not accept that it is merely a political decision. It is a decision based on that country's analysis of how they wish to apply the relevant articles of the convention. It is quite a difficult conceptual programme.

The Chair: That is very helpful. Let us go to Sir Desmond Swayne. We heard earlier on about the issue of coercion, and I know Sir Desmond is very anxious about this.

Q6 **Sir Desmond Swayne:** I will come back to coercion, if I may. I am just struck by the possibility that a person with any number of disabilities might make the decision, "Yes, let us do it", but when it comes to the moment that it is to be done, they might not have capacity. Does capacity alter? Does the Bill have any remedy for that?

Paul Bowen: I am very happy to answer the question. The answer to your first question is yes. Capacity can fluctuate depending upon a person's condition. Of course, it is inevitable that different people might reach different conclusions about a person's capacity. The first doctor might assess the person as having capacity. The second doctor might say they do not. They both might say they do, but the review panel might say they do not. There is always a possibility that the fourth or fifth time that capacity has to be assessed, the doctor will reach a different conclusion.

The answer to your first question is, yes, there can be a different answer. What is the solution? The solution in the Bill, as I understand it, is that there is a series of gates that a person is required to go through. If the answer at any of those is, "No, they lack capacity", that is the end of the discussion.

Sir Desmond Swayne: Let us come to coercion. The Bill requires that the decision be made voluntarily and has not been coerced or pressured by any other person. I am not sure there is any clear definition of "pressure", but, given the dynamics of families where additional pressures are put on the family because of the disability of a person, are you confident that the assessing officers and the panel of doctors have the ability and time to interview family members and make sure that coercion of that sort has been absent? Is that the very reason why you have placed the amendment that you told us earlier about, Lord Carlile?

Lord Carlile of Berriew: It is. The word "pressure", as I understand it, has never appeared in a criminal statute. There was an exchange between Lord Falconer and Sarah Sackman, who is the criminal law Minister, as you know, in the House of Commons, in which Lord Falconer said that pressure was an absolute offence and Sarah Sackman said, "I will write to you", and then wrote and said it was not an absolute offence.

If Lord Falconer, who was proposing a clause with the word "pressure" in it, is correct, the problem is that somebody might be convicted of an offence that had no animus within it at all. For example, let us say my great-niece or great-nephew is sitting with me and I was feeling at death's door. If I said, "I really want to go and I am absolutely determined to go", my great-niece or great-nephew might say, "It is up to you. If that is what you want, you should go". That great-niece or great-nephew could be convicted of applying pressure by what they said in reply, according to the nuances of the reply. I would avoid that kind of word like the plague, to be frank.

There are loads of examples, many anecdotal but some in cases of other kinds, where people have made wills because pressure has been applied to them and the will has been written by a solicitor and witnessed by a solicitor. I know of one very real example, because it happened in my family, where somebody agreed to convey a house to the person who was caring for him. It turned out that the person who was caring for him had a long history of fraud and influencing people for whom he had cared. It took legal intervention to have the conveyance cancelled so that the proper heir was able to inherit the house.

I took part in a case many years ago in which the matron, as she was called, of a nursing home obtained a legacy as a result of pressure. There are all kinds of scenarios in which pressure can be applied. They are often very difficult to winkle out.

Whatever system we have to ensure that there is real autonomy, if this becomes law, must be as near to foolproof as we can get. Otherwise, we

will have cases that are as serious as someone being hanged for an offence they did not commit.

Sir Desmond Swayne: Of course individuals can bring pressure to bear. What about the possibility of systemic pressure? This is the argument of, "You would be better off dead". Services are not available that would make your passing significantly easier as a disabled person. This is the feeling of being a burden that is brought about by the absence of services being available to you. Is that something that the Bill could address with some sort of remedy?

Lord Carlile of Berriew: It is very difficult to address it. It is a real question. What I was told in a meeting earlier this week by those who represent hospices is that some hospices are already cutting their services on the understanding that there will be less money for them and therefore fewer hospice places and, above all, fewer hospice services in the community and in people's own homes. That is so easily turned into systemic pressure.

Professor Liz Wicks: I share the concerns around coercion and pressure. Of course, it is notoriously difficult to identify that. As it stands, the Bill makes an effort to do that. It has this new offence of coercion or pressure in convincing somebody to make a declaration. There is also the existing criminal offence of encouraging a suicide. This is not a new issue.

The Bill also has a very clear timeframe, does it not? It has two different declarations; it has separate cooling-off periods; it has separate doctors assessing these issues. There is some effort to address this issue and to determine whether it is a free decision or not, but it is going to be notoriously difficult.

I also share the concerns about the lack of funding in palliative care. I am very much in favour of the Bill, but it is absolutely essential that there is a well-funded palliative care system alongside it so that there is genuinely a choice at the end of life as to which of those options you want to take.

The Chair: What if that did not exist?

Professor Liz Wicks: It has to exist.

The Chair: If it does not, what is your view about the implementation of the Bill in those circumstances?

Professor Liz Wicks: What is the saying? Two wrongs do not make a right. I would still be in favour of the Bill because choice and autonomy is really important at the end of life, but we should not put up with there not being a well-funded palliative care system.

Paul Bowen: I am not in a position to advance any views about whether there should be more safeguards in relation to preventing coercion. There are plenty of opportunities at the moment in relation to people who are at the end of life who want to have life-saving treatment withdrawn. That is

already legal and there are no particular safeguards around that. If that is an issue, it is an issue that exists now.

I would just come back to the point that I made a little bit earlier. It is a question for political judgment as to what further safeguards are required. It seems to me that the safeguards in the Bill fall within that broad margin of appreciation. That is perhaps not for this committee but for the wider House sitting on Monday.

The Chair: Indeed, we are part of that parliamentary debate. That is why we are meeting you today: to pick your brains and try to arrive at a wise choice.

Lord Murray of Blidworth: May I ask one quick question on the safeguards to prevent pressure with respect to disabled people? Kim Leadbeater and Lord Falconer have said that Clause 2(4) protects those with disabilities and mental disorders. All three of you are probably familiar with Clause 2(4), but, for those watching, it says that a person with a disability or a mental disorder is not to be considered terminally ill as a result. Do you regard that clause as, of itself, an effective safeguard? If you do not, what changes would you make?

The Chair: Before answering that, let us bring in Mr Gordon as well. You can take these points together.

Q7 **Tom Gordon:** I just want to build on the point that was made about hospices, safeguards and the current choice that people face. We already have a situation where people have access to an assisted death, if they choose to go abroad. That is disproportionately a barrier for disabled people, who might not be able to travel abroad. Could you comment on that sort of systemic approach and on the fact that we already have barriers that disabled people face under the current lack of legislation? What more could be done to try to ensure equity?

Lord Carlile of Berriew: My name is on that amendment, is it not? The names on that amendment are mine and Lord Falconer's. It is an attempt to provide a safeguard for disabled people, but it does not alter the fact that I do not think it is sufficient. It was simply an attempt to find common cause on an issue of this kind with Lord Falconer, for whom I have great respect as a lawyer.

So far as travelling abroad is concerned, I am not really interested in travelling abroad. I am a British lawyer. I am a British parliamentarian. I am interested in what happens in my country. What happens in other countries is up to them. I can approve it or disapprove it, but I cannot do any more.

Paul Bowen: The point being made is that disabled people who want to end their lives are effectively discriminated against at the moment because they cannot travel. The same would be true of anybody who lacks the means to do so. From a legal standpoint—that is the question that I am being asked—the current system falls within the state's margin of appreciation. That is not a breach of human rights, but, by the same

token, if you were to change the law, that would not breach human rights either.

Professor Liz Wicks: Yes, I agree. There is already not discrimination that would be contrary to the convention but unfairness in the fact that there are extra hurdles for somebody with a disability to obtain assisted dying, if they had to travel abroad. There is also the mere fact that suicide is lawful, if you are able to end your own life yourself without assistance. If you are not able to do that because of a disability, we currently prohibit all forms of assistance. There seems to be an inequality there as well.

You did have another point, but I have forgotten it.

Lord Murray of Blidworth: Is Clause 2(4) an effective safeguard for disabled people?

Professor Liz Wicks: Yes, it is helpful. It makes the point clearly that we should not confuse a terminal illness with other disabilities. Again, let us remember that six-month prognosis point because that is important. It is not so much about defining the illness; it is about saying that there is a reasonable expectation that you will die within six months.

Q8 **Lord Dholakia:** My question relates to mental health. There are high rates of suicide among people with mental health problems, such as depression or bipolar disease. Does the Bill need some sort of carve-out or special treatment for these people to avoid having a discriminatory effect and breaching Article 14 of the ECHR?

Lord Carlile of Berriew: In what was by yesterday 128 pages of the marshalled list of amendments—I have not read yet the ones that came between last Friday and yesterday—there are a number of attempts to carve out people with mental illnesses. I think that is right. It is such a complex and difficult problem that it is very difficult to categorise. A carve-out that does not leave the categorisation of mental health to the courts is probably a pretty sensible suggestion.

Paul Bowen: The existing safeguard of having to test capacity allows for a person's mental illness to be taken into account as part of the capacity assessment. If you were to have a carve-out that excluded anybody with mental illness from being able to take advantage of the procedure to end their lives, that would be discriminatory. You already have a mechanism by which their mental condition can be taken into consideration in deciding whether they are eligible.

Professor Liz Wicks: I agree entirely with Mr Bowen, so I have nothing to add on that.

Q9 **Lord Murray of Blidworth:** The last question is a short one but important. We have been focusing on our obligations under the European convention, but Lord Carlile touched on our obligations as a nation under the Convention on the Rights of Persons with Disabilities. To what extent does the panel think the present Bill meets the UK's obligations under

that treaty?

Paul Bowen: That is not a question that I have prepared for and I would be loath to express an opinion that I have not given considerable thought to. What I can say is that, as Lord Carlile indicated earlier, the provisions of the UN Convention on the Rights of Persons with Disabilities, which are not given effect directly in the United Kingdom by an equivalent of the Human Rights Act, are given indirect effect through the mechanism of the European convention and the Human Rights Act. A lot of those provisions are referred to and taken into account when the Strasbourg court and our courts interpret the European Convention on Human Rights.

To the extent that it has been taken into account in the judgments that I have already referred to, the Convention on the Rights of Persons with Disabilities has not been found to be violated either by a permissive regime such as Belgium's or a restrictive regime such as Hungary's.

Lord Carlile of Berriew: I referred earlier to the views of the commissioner from the Equality and Human Rights Commission, Alasdair Henderson. He refers, as I referred earlier, to the UN Convention on the Rights of Persons with Disabilities. There are two requirements, in my view. I take this with due attribution to Mr Henderson. There has to be the free and informed consent of persons with disabilities, which must be secured on all matters relating to assisted dying, and all forms of undue pressure and undue influence must be prevented. Access to appropriate palliative care, rights-based support, home care and other social measures must be guaranteed.

Those two requirements are applicable to everyone, but particularly perhaps to people suffering from mental illnesses. There is a danger of those grey areas being unobserved in the decision as to whether somebody was giving consent with full capacity. I am not sure that answers your question. It is the best I can do.

Professor Liz Wicks: I am afraid the Convention on the Rights of Persons with Disabilities is not really in my area of expertise either, but I will just add that I am aware that it does protect a range of rights within it. It protects things such as the right to life for persons with disabilities, but it also protects autonomy-based rights for persons with disabilities, with the prohibition of discrimination at the core of it. I agree with Mr Bowen. I am not aware of cases that have dealt specifically with this issue. I am not sure it adds much beyond what the ECHR rights would add.

The Chair: Thank you. In preparation for today's hearing, I did take the trouble to go back to the Convention on the Rights of Persons with Disabilities, which consists of some 50 articles. It says, "Discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person". What today's session has demonstrated is that, wherever we come from on the substantive issue of the Bill, that is a principle that unites all three of our panellists this afternoon and unites everyone who serves on this committee. It is a high

bar to reach. It is the job of the Joint Committee on Human Rights to concentrate minds on questions of this enormity. As Mr Bowen was saying, the political discussion about this continues and will continue for a long time to come, I suspect.

With those words, I will thank Professor Wicks, Lord Carlile and Mr Bowen for joining us this afternoon.