PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TERMINALLY ILL ADULTS (END OF LIFE) BILL

Twenty-third Sitting

Wednesday 12 March 2025

(Afternoon)

CONTENTS

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not later than

Sunday 16 March 2025

The Committee consisted of the following Members:

Chairs: Peter Dowd, Clive Efford, † Sir Roger Gale, Carolyn Harris, † Esther McVey

† Abbott, Jack *(Ipswich)* (Lab/Co-op)
† Atkinson, Lewis *(Sunderland Central)* (Lab)
† Campbell, Juliet *(Broxtowe)* (Lab)
† Charalambous, Bambos *(Southgate and Wood Green)* (Lab)
† Francis, Daniel *(Bexleyheath and Crayford)* (Lab)
† Gordon, Tom *(Harrogate and Knaresborough)* (LD)
† Green, Sarah *(Chesham and Amersham)* (LD)
† Hopkins, Rachel *(Luton South and South Bedfordshire)* (Lab)
† Joseph, Sojan *(Ashford)* (Lab)
† Kinnock, Stephen *(Minister for Care)*
† Kruger, Danny *(East Wiltshire)* (Con)
† Leadbeater, Kim *(Spen Valley)* (Lab)
† Malthouse, Kit *(North West Hampshire)* (Con)
† Olney, Sarah *(Richmond Park)* (LD)
† Opher, Dr Simon *(Stroud)* (Lab)
† Paul, Rebecca *(Reigate)* (Con)
† Richards, Jake *(Rother Valley)* (Lab)
† Sackman, Sarah *(Minister of State, Ministry of Justice)*
† Saville Roberts, Liz *(Dwyfor Meirionnydd)* (PC)
† Shah, Naz *(Bradford West)* (Lab)
† Shastri-Hurst, Dr Neil *(Solihull West and Shirley)* (Con)
† Tidball, Dr Marie *(Penistone and Stocksbridge)* (Lab)
† Woodcock, Sean *(Banbury)* (Lab)

Lynn Gardner, Lucinda Maer, Jonathan Whiffing, *Committee Clerks*

† **attended the Committee**

Public Bill Committee

Wednesday 12 March 2025

(Afternoon)

[Esther McVey *in the Chair*]

Terminally Ill Adults (End of Life) Bill

2 pm

The Chair: Would everyone ensure that electronic devices are turned off or switched to silent mode? Tea and coffee are not allowed in the Committee Room. We continue line-by-line consideration of the Bill. I remind Members that interventions should be short and raise points of clarification or questions; they should not be speeches in and of themselves. Members who wish to speak should bob, and continue to do so throughout the debate until they are called. When Members say "you", they are referring to the Chair.

Kit Malthouse (North West Hampshire) (Con): Or "youse".

The Chair: Yes, "you" or "youse" should not be used to refer to one another during the debate.

Clause 12

Court approval

Question (11 March) again proposed, That the clause stand part of the Bill.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 371, in clause 13, page 9, line 5, leave out paragraph (a) and insert—

"(a) a certificate of eligibility has been granted in respect of a person, and".

This amendment is consequential on NC21.

Amendment 61, in clause 13, page 9, line 5, leave out from "the" to "has" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 372, in clause 13, page 9, line 12, leave out from third "the" to end of line 13 and insert "certificate of eligibility was granted,".

This amendment is consequential on NC21.

Amendment 62, in clause 13, page 9, line 13, leave out from "the" to "or" in line 14 and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 373, in clause 13, page 9, line 17, leave out "declaration was made" and insert "certificate was granted".

This amendment is consequential on NC21.

Amendment 377, in clause 16, page 11, line 12, leave out paragraph (d) and insert—

"(d) a certificate of eligibility has been granted in respect of a person;

(da) a panel has refused to grant such a certificate;".

This amendment is consequential on NC21.

Amendment 63, in clause 16, page 11, line 12, leave out "the" to "has" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 378, in clause 18, page 12, line 9, leave out paragraph (a) and insert—

"(a) a certificate of eligibility has been granted in respect of a person,".

This amendment is consequential on NC21.

Amendment 64, in clause 18, page 12, line 9, leave out from "the" to "has" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 381, in clause 27, page 16, line 16, leave out sub-paragraph (iii) and insert—

"(iii) a certificate of eligibility,".

This amendment is consequential on NC21.

Amendment 65, in clause 27, page 16, line 16, leave out from "the" to "under" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 388, in clause 34, page 20, line 40, leave out paragraph (c) and insert—

"(c) a panel has refused to grant a certificate of eligibility;".

This amendment is consequential on NC21.

Amendment 66, in clause 34, page 20, line 40, leave out from "the" to "has" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 390, in clause 40, page 23, line 24, at end insert—

"'certificate of eligibility' has the same meaning as in section (Determination by panel of eligibility for assistance);".

This amendment is consequential on NC21.

Amendment 391, in clause 40, page 23, line 24, at end insert—

"'the Commissioner' has the meaning given by section (Voluntary Assisted Dying Commissioner);".

This amendment is consequential on NC14.

New clause 14—*Voluntary Assisted Dying Commissioner*—

"(1) There is to be a Voluntary Assisted Dying Commissioner.

(2) The Commissioner is to be appointed by the Prime Minister.

(3) The person appointed must hold or have held office as a judge of—

(a) the Supreme Court,

(b) the Court of Appeal, or

(c) the High Court.

(4) The Commissioner's principal functions are—

(a) receiving documents made under this Act;

(b) making appointments to a list of persons eligible to sit on Assisted Dying Review Panels (see Schedule (Assisted Dying Review Panels));

(c) making arrangements in relation to such panels and referring cases to them (see section (Referral by Commissioner of case to multidisciplinary panel));

(d) determining applications for reconsideration of panel decisions under section (Reconsideration of panel decisions refusing certificate of eligibility);

(e) monitoring the operation of this Act and reporting annually on it (see section 34).

(5) In this Act "the Commissioner" means the Voluntary Assisted Dying Commissioner.

(6) Schedule (The Voluntary Assisted Dying Commissioner) makes provision about the Commissioner.".

This new clause provides for there to be a Voluntary Assisted Dying Commissioner.

New clause 15—*Referral by Commissioner of case to multidisciplinary panel—*

"(1) This section applies where the Commissioner receives—

(a) a first declaration made by a person,

(b) a report about the first assessment of the person which contains a statement indicating that the coordinating doctor is satisfied as to all of the matters mentioned in section 7(2)(a) to (g), and

(c) a report about the second assessment of the person which contains a statement indicating that the independent doctor is satisfied as to all of the matters mentioned in section 8(2)(a) to (e).

(2) The Commissioner must, as soon as reasonably practicable, refer the person's case to an Assisted Dying Review Panel for determination of the person's eligibility to be provided with assistance under section 18.

(3) But where the Commissioner receives a notification that the first declaration has been cancelled—

(a) the Commissioner must not refer the person's case to such a panel, and

(b) if the person's case has already been so referred, the Commissioner must notify the panel of the cancellation.

(4) Schedule (Assisted Dying Review Panels) makes provision about Assisted Dying Review Panels."

This new clause provides for the Voluntary Assisted Dying Commissioner to refer a person's case to a multidisciplinary panel, to be called an Assisted Dying Review Panel.

New clause 17—*Reconsideration of panel decisions refusing certificate of eligibility—*

"(1) This section applies where—

(a) a person's case is referred under section (Referral by Commissioner of case to multidisciplinary panel) to an Assisted Dying Review Panel ("the first panel"), and

(b) the first panel refuses to grant a certificate of eligibility in respect of the person.

(2) The person may apply to the Commissioner for their case to be reconsidered on the ground that the first panel's decision—

(a) contains an error of law,

(b) is irrational, or

(c) is procedurally unfair.

(3) The Commissioner must consider an application without a hearing.

(4) On the application—

(a) if the Commissioner is satisfied that any of the grounds mentioned in subsection (2) applies, they must as soon as reasonably practicable refer the person's case to a different Assisted Dying Review Panel for a fresh determination under section (Determination by panel of eligibility for assistance);

(b) in any other case, the Commissioner must dismiss the application.

(5) The Commissioner must give reasons, in writing, for their decision.

(6) The Commissioner must notify the following of the outcome of the application, and give them a document containing their reasons for their decision—

(a) the person who made the application;

(b) the coordinating doctor;

(c) any other person specified in regulations made by the Secretary of State."

This new clause provides for certain decisions of Assisted Dying Review Panels to be referred to a different panel for reconsideration.

Amendment (a) to new clause 17, leave out subsections (1) to (3) and insert—

"(1) The person applying for assisted dying, their next of kin, any of their relatives (within the meaning of the Family Law Act 1996), the registered medical practitioners who are treating them and anyone who took part in proceedings before the panel or gave evidence to the panel may apply to the Commissioner for the Panel's decision to be reconsidered.

(2) The Commissioner will allow the application for reconsideration if the Panel's decision was—

(a) wrong, or

(b) unjust because of a serious procedural or other irregularity in the proceedings.

(3) The Commissioner may consider the application without a hearing if they consider it in the interests of justice to dispense with a hearing."

New clause 21—*Determination by panel of eligibility for assistance—*

"(1) This section applies where a person's case is referred under section (Referral by Commissioner of case to multidisciplinary panel) or (Reconsideration of panel decisions refusing certificate of eligibility) to an Assisted Dying Review Panel ("the panel").

(2) The panel's function is to determine whether it is satisfied of all of the following matters—

(a) that the requirements of sections 5 to 9 have been met in relation to—

(i) the first declaration,

(ii) the first assessment and the report under section 7 on that assessment, and

(iii) the second assessment and the report under section 8 on that assessment;

(b) that the person is terminally ill;

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

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

(e) that before making the first declaration, but when the person was aged 18 or over, a registered medical practitioner conducted a preliminary discussion with the person;

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

(g) that the person is registered as a patient with a general medical practice in England or Wales;

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

(i) that the person made the first declaration voluntarily and was not coerced or pressured by any other person into making that declaration.

(3) Subject to the following and to Schedule (Assisted Dying Review Panels), the panel may adopt such procedure as it considers appropriate for the case.

(4) The panel—

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

(b) must (subject to subsection (5)) hear from, and may question, the person to whom the referral relates;

(c) in a case to which section 15 applies, may hear from and may question the person's proxy;

(d) may hear from and may question any other person;

(e) may ask any person appearing to it to have relevant knowledge or experience to report to it on such matters relating to the person to whom the referral relates as it considers appropriate.

In paragraphs (a) to (c) the reference to hearing from or questioning a person is to hearing from them, or questioning them, in person or by live video or audio link.

(5) The duty under subsection (4)(b) to hear from the person to whom the referral relates does not apply if the panel is of the opinion that there are exceptional circumstances which justify not hearing from that person.

(6) The panel—

(a) must, if it is satisfied of all of the matters mentioned in subsection (2), grant a certificate to that effect (a "certificate of eligibility");

(b) must refuse to do so in any other case.

(7) The panel must notify the following of its decision—

(a) the person to whom the referral relates;

(b) the coordinating doctor;

(c) the Commissioner;

(d) any other person specified in regulations made by the Secretary of State.

Where it grants a certificate of eligibility, it must give a copy of the certificate to each of these persons.

(8) If the panel is notified that the first declaration has been cancelled, it must cease to act in relation to the referral (and, in particular, it may not grant a certificate of eligibility)."

This new clause provides for a person's eligibility to be provided with assistance under clause 18 to be determined by a multidisciplinary panel (instead of the High Court).

Amendment (d) to new clause 21, in subsection (4), leave out paragraphs (a) to (e) and insert—

"(a) must hear from, and must question, the coordinating doctor and the independent doctor;

(b) must (subject to subsection (5)) hear from, and must question, the person to whom the referral relates;

(c) in a case to which section 15 applies, must hear from and must question the person's proxy;

(d) must consider hearing from and questioning—

(i) persons properly interested in the welfare of the person who made the application for the declaration and other persons they are close to; and

(ii) any other person who has provided treatment or care for the person being assessed in relation to that person's terminal illness; and

(e) may hear from and may question any other person, including any person appearing to it to have relevant knowledge or experience to report to it on such matters relating to the person to whom the referral relates as it considers appropriate."

Amendment (c) to new clause 21, in subsection (4), after paragraph (e) insert—

"(aa) if it considers that the matters mentioned in subsection 2(c), (h) or (i) are established on a balance of probabilities but still considers that there is a real risk that they are not satisfied, then the panel must stay its proceedings until such further inquiries it orders are made,".

Amendment (e) to new clause 21, after subsection (4) insert—

"(4A) Where the panel considers it appropriate for medical reasons, it may make provision for the use of pre-recorded audio or video material for the purposes of subsection (4)."

Amendment (a) to new clause 21, in subsection (6)(a), after "satisfied" insert "beyond reasonable doubt".

Amendment (b) to new clause 21, in subsection (6)(a), after "subsection (2)" insert

"unless it believes that there are particular circumstances which make it inappropriate for the person to be assisted to end their own life,".

New clause 2—*Tribunal authorisation*—

"(1) Where—

(a) a person has made a first declaration under section 5 which has not been cancelled,

(b) the coordinating doctor has made the statement mentioned in section 7(3), and

(c) the independent doctor has made the statement mentioned in section 8(5), that person may apply to the First-tier Tribunal ("the Tribunal") for a declaration that the requirements of this Act have been met in relation to the first declaration.

(2) On an application under this section, the Tribunal—

(a) must make the declaration if it is satisfied of all the matters listed in subsection (3), and

(b) in any other case, must refuse to make the declaration.

(3) The matters referred to in subsection (2)(a) are that—

(a) the requirements of sections 5 to 9 of this Act have been met in relation to the person who made the application,

(b) the person is terminally ill,

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

(d) the person has relevant and available palliative care options available to them,

(e) the person is not liable to be detained under the Mental Health Act 1983,

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

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

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

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

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

(4) The Tribunal—

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

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

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

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

(a) hear from and question any other person;

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

(6) In considering an application under this section, the panel must consist of—

(a) a sitting judge,

(b) a medical practitioner, and

(c) a lay person.

(7) In subsection (4)—

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

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

This new clause would replace the role of the High Court with the tribunal system.

New clause 3—*Tribunals in Wales*—

"(1) For the purposes of this Act, the First-tier Tribunal and the Upper Tribunal, in exercising functions under or arising from this Act in relation to Wales, are to be treated as devolved tribunals within the meaning of paragraph 9 of Schedule 7A to the Government of Wales Act 2006.

(2) The Welsh Ministers may by regulations make provision relating to the procedure to be followed by the First-tier Tribunal and the Upper Tribunal in exercising functions under this Act in relation to Wales.

(3) Statutory instruments containing regulations made under this section may not be made unless a draft of the instrument has been laid before and approved by resolution of Senedd Cymru."

Amendment 67, in schedule 4, page 28, line 32, leave out from "The" to "has" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 68, in schedule 5, page 30, line 6, leave out from "the" to "made" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 69, in schedule 5, page 30, line 10, leave out from "the" to end of line and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

Amendment 70, in schedule 6, page 32, line 3, leave out from "of" to "declaration" and insert "First-tier Tribunal".

This amendment is consequential on NC2 and NC3.

New schedule 1—*The Voluntary Assisted Dying Commissioner*—

"Status

1 (1) The Commissioner is to be a corporation sole.

(2) The Commissioner is not to be regarded as—

(a) the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

(3) The Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.

General powers

2 The Commissioner may do anything the Commissioner considers appropriate for the purposes of, or in connection with, the Commissioner's functions.

Deputy Commissioner

3 (1) The Prime Minister must appoint a person to be the Deputy Voluntary Assisted Dying Commissioner (the "Deputy Commissioner").

(2) The person appointed must hold or have held office as a judge of—

(a) the Supreme Court,

(b) the Court of Appeal, or

(c) the High Court.

(3) The Commissioner may delegate any of the Commissioner's functions to the Deputy Commissioner, to the extent and on the terms that the Commissioner determines.

(4) The delegation of a function under sub-paragraph (3) does not prevent the Commissioner from exercising that function.

(5) The functions of the Commissioner are to be carried out by the Deputy Commissioner if—

(a) there is a vacancy in the office of the Commissioner, or

(b) the Commissioner is for any reason unable or unwilling to act.

Appointment and tenure of office

4 (1) A person holds and vacates office as the Commissioner or Deputy Commissioner in accordance with the terms and conditions of their appointment as determined by the Secretary of State, subject to the provisions of this paragraph.

(2) An appointment as the Commissioner or Deputy Commissioner is to be for a term not exceeding five years.

(3) A person may not be appointed as the Commissioner or Deputy Commissioner if a relevant appointment of them has been made on two occasions. "Relevant appointment" here means appointment as the Commissioner or Deputy Commissioner.

(4) The Commissioner or Deputy Commissioner may resign by giving written notice to the Secretary of State.

(5) The Secretary of State may by notice in writing remove a person from the office of Commissioner or Deputy Commissioner if satisfied that the person—

(a) has behaved in a way that is not compatible with their continuing in office, or

(b) is unfit, unable or unwilling to properly discharge their functions.

Remuneration

5 The Secretary of State may pay to, or in respect of, the person holding office as the Commissioner or Deputy Commissioner—

(a) remuneration;

(b) allowances;

(c) sums by way of or in respect of pensions.

Staff: appointed by Commissioner

6 (1) The Commissioner may appoint staff.

(2) Staff are to be appointed on terms and conditions determined by the Commissioner.

(3) The terms and conditions on which a member of staff is appointed may provide for the Commissioner to pay to or in respect of the member of staff—

(a) remuneration;

(b) allowances;

(c) sums by way of or in respect of pensions.

(4) In making appointments under this paragraph, the Commissioner must have regard to the principle of selection on merit on the basis of fair and open competition.

(5) The Employers' Liability (Compulsory Insurance) Act 1969 does not require insurance to be effected by the Commissioner.

Staff: secondment to Commissioner

7 (1) The Commissioner may make arrangements for persons to be seconded to the Commissioner to serve as members of the Commissioner's staff.

(2) The arrangements may include provision for payments by the Commissioner to the person with whom the arrangements are made or directly to seconded staff (or both).

(3) A period of secondment to the Commissioner does not affect the continuity of a person's employment with the employer from whose service he or she is seconded.

Staff: general

8 (1) Before appointing staff under paragraph 6 or making arrangements under paragraph 7(1), the Commissioner must obtain the approval of the Secretary of State as to the Commissioner's policies on—

(a) the number of staff to be appointed or seconded;

(b) payments to be made to or in respect of staff;

(c) the terms and conditions on which staff are to be appointed or seconded.

(2) A function of the Commissioner may be carried out by any of the Commissioner's staff to the extent authorised by the Commissioner (but this is subject to sub-paragraph (3)).

(3) Sub-paragraph (2) does not apply in respect of—

(a) the Commissioner's function under paragraph 2(1) of Schedule (Assisted Dying Review Panels) of making appointments to the list of persons eligible to be panel members;

(b) the Commissioner's function of determining applications for reconsideration under section (Reconsideration of panel decisions refusing certificate of eligibility).

Financial and other assistance from the Secretary of State

9 (1) The Secretary of State may—

(a) make payments to the Commissioner of such amounts as the Secretary of State considers appropriate;

(b) give such financial assistance to the Commissioner as the Secretary of State considers appropriate.

(2) The Secretary of State may—

(a) provide staff in accordance with arrangements made by the Secretary of State and the Commissioner under paragraph 7;

(b) provide premises, facilities or other assistance to the Commissioner.

Accounts

10 (1) The Commissioner must—

(a) keep proper accounts and proper records in relation to them, and

(b) prepare a statement of accounts in respect of each financial year in the form specified by the Secretary of State.

(2) The Commissioner must send a copy of each statement of accounts to the Secretary of State and the Comptroller and Auditor General—

(a) before the end of August next following the end of the financial year to which the statement relates, or

(b) on or before such earlier date after the end of that year as the Treasury may direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on the statement of accounts, and

(b) send a copy of the certified statement and the report to the Secretary of State.

(4) The Secretary of State must lay before Parliament each document received under sub-paragraph (3)(b).

(5) In this paragraph, "financial year" means—

(a) the period beginning with the date on which the Commissioner is established and ending with the second 31 March following that date, and

(b) each successive period of 12 months.

Application of seal and proof of documents

11 (1) The application of the Commissioner's seal is to be authenticated by the signature of—

(a) the Commissioner, or

(b) a person who has been authorised by the Commissioner for that purpose (whether generally or specially).

(2) A document purporting to be duly executed under the Commissioner's seal or signed on the Commissioner's behalf —

(a) is to be received in evidence, and

(b) is to be treated as duly executed or signed in that way, unless the contrary is shown.

Public Records Act 1958

12 In Part 2 of the Table in paragraph 3 of the First Schedule to the Public Records Act 1958 (bodies whose records are public records), at the appropriate place insert "The Voluntary Assisted Dying Commissioner".

House of Commons Disqualification Act 1975

13 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying person from membership of House of Commons), at the appropriate place insert—

"The Voluntary Assisted Dying Commissioner or the Deputy Voluntary Assisted Dying Commissioner."

Freedom of Information Act 2000

14 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities for the purposes of the Act) , at the appropriate place insert—

"The Voluntary Assisted Dying Commissioner."

Equality Act 2010

15 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities subject to public sector equality duty), at the end of the group of entries for bodies whose functions relate to health, social care and social security insert—

"The Voluntary Assisted Dying Commissioner.""

This new Schedule contains provision about the Voluntary Assisted Dying Commissioner and the Deputy Commissioner.

New schedule 2—*Assisted Dying Review Panels—*

"Introduction

1 In this Schedule—

(a) "referral" means a referral under section (Referral by Commissioner of case to multidisciplinary panel) or (Reconsideration of panel decisions refusing certificate of eligibility) (and similar references are to be construed accordingly);

(b) "panel" means an Assisted Dying Review Panel.

List of persons eligible to be panel members

2 (1) The Commissioner must make appointments to a list of persons eligible to sit as members of panels.

(2) A person may be appointed to the list only if—

(a) the person (a "legal member")—

(i) holds or has held high judicial office,

(ii) is one of His Majesty's Counsel, or

(iii) has (at any time) been requested to act as a judge of the Court of Appeal or the High Court by virtue of section 9(1) of the Senior Courts Act 1981,

(b) the person (a "psychiatrist member") is—

(i) a registered medical practitioner,

(ii) a practising psychiatrist, and

(iii) registered in one of the psychiatry specialisms in the Specialist Register kept by the General Medical Council, or

(c) the person is registered as a social worker in a register maintained by Social Work England or Social Work Wales (a "social worker member").

(3) In this paragraph "high judicial office" means office as—

(a) a judge of the Supreme Court,

(b) a judge of the Court of Appeal, or

(c) a judge or deputy judge of the High Court.

Tenure of persons appointed to list

3 (1) Subject to the provisions of this paragraph, persons on the list hold and vacate their appointments in accordance with the terms on which they are appointed.

(2) An appointment to the list is to be for a period not exceeding five years.

(3) A person who has held appointment to the list is eligible for re-appointment for one further period not exceeding five years.

Membership of panels

4 (1) The Commissioner must make arrangements for determining the membership of a panel.

(2) The arrangements must ensure that a panel consists of—

(a) a legal member,

(b) a psychiatrist member, and

(c) a social worker member.

Decisions of panels

5 (1) The legal member of a panel is to act as its chair.

(2) Decisions of a panel may be taken by a majority vote; but this is subject to sub-paragraph (3).

(3) The panel is to be treated as having decided to refuse to grant a certificate of eligibility if any member votes against a decision to grant such a certificate.

Panel sittings

6 (1) Panels are to determine referrals in public (but this is subject to sub-paragraph (2)).

(2) The chair of a panel may, at the request of the person to whom a referral relates, decide that the panel is to sit in private.

Staff and facilities

7 The Commissioner may make staff and other facilities available to panels.

Practice and procedure

8 (1) The Commissioner may give guidance about the practice and procedure of panels.

(2) Panels must have regard to any such guidance in the exercise of their functions.

Reasons

9 Panels must give reasons, in writing, for their decisions.

Money

10 The Commissioner may pay to or in respect of members of panels—

(a) remuneration;

(b) allowances;

(c) sums by way of or in respect of pensions.

House of Commons Disqualification Act 1975

11 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying persons from membership of House of Commons), at the appropriate place insert—

"Person on the list of those eligible for membership of an Assisted Dying Review Panel.""

This new Schedule contains provision about Assisted Dying Review Panels.

Amendment (c) to new schedule 2, in paragraph 4, after

"(c) a social worker member."

insert—

"(3) The Commissioner must ensure that each member of a panel has had training in respect of domestic abuse, including coercive control and financial abuse."

Amendment (a) to new schedule 2, in paragraph 4, after

"(c) a social worker member."

insert—

"(3) Each member of a panel must have fluent proficiency in the Welsh language if services or functions in the Act are to be provided to an individual in Welsh."

Amendment (b) to new schedule 2, in paragraph 8, leave out sub-paragraphs (1) and (2) and insert—

"(1) The Commissioner must give guidance about the practice and procedure of panels.

(2) Such guidance must prescribe a procedure which in relation to each application appoints a person nominated by the Official Solicitor to act as advocate to the panel.

(3) Panels must have regard to such guidance in the exercise of their functions."

This amendment would require Assisted Dying Panels to follow an adversarial process to test the evidence by appointing an advocate to the panel.

I call Jack Abbott—you left us on a cliffhanger.

Jack Abbott (Ipswich) (Lab/Co-op): I feel huge responsibility for my "EastEnders"-style ending, Ms McVey. Unfortunately, my speech is not going to be as radical as some may have hoped.

I was discussing the bandwidth or capacity of the professionals involved in the process. We have been very good at leaving party politics at the door, but Opposition Members have mentioned the state of the NHS and the wider healthcare system on a couple of occasions. I could probably go further and mention the huge backlogs in the courts and wider criminal justice system. It is fair enough to consider the Bill in that wider context; I have considered that point deeply, as I know Members from across the Committee have.

We asked earlier whether there is capacity in the system to support the panels—that is, are there enough psychiatrists and social workers? However, it is inconsistent to then also say that we need more psychiatrists and social workers in other areas of the process. I am not sure that we can have it both ways. This is something to consider—the Committee has discussed it—but ultimately it is a matter for Members of the House.

The Committee is not here to debate whether the systems in place can deal with an assisted dying Bill. Whether or not assisted dying is introduced into our healthcare and judicial systems, it will not fundamentally change the challenges that the country faces in these areas. We are here to ensure that we present back to the House a Bill that has the safeguards and balances that I mentioned this morning, so that it can progress. I certainly would not want to produce anything that paralyses the system, but new clause 21 would not do so. In fact, in the long run, the panel approach would help the process along. For that reason, I am not sure that the capacity of professionals provides a valid argument against the panel—if anything, quite the reverse. As I said, that point really was not worthy of an "EastEnders" cliffhanger.

We have had positive murmurings and acknowledgments about amendment (e) to new clause 21. The panel approach represents a huge leap forward. I appreciate that Members in the room and across the House may say that the approach does not go far enough. I go back to my earlier point: for some Members, no amendment, change or safeguard will ever be enough for them to support the Bill. As a Committee, we have to come out with a strong, robust process that puts the patient first, and ensure that we are acting in their interests. We must make sure patients are safe and have the capacity to make these decisions, but I do not want any individual looking to go down this route to be stuck in endless meetings or courtrooms, when they should be spending time with their loved ones. I think this strikes the right balance between safeguarding—bringing in all of the professional expertise that we have been looking to do as a Committee—and making sure this process is fair and equitable. I urge Members to support amendment (e) to new clause 21, but I will also be supporting the new clauses today.

Danny Kruger (East Wiltshire) (Con): On Second Reading on 29 November, the hon. Member for Spen Valley said:

"Under the Bill, any terminally ill person who wants to be considered for an assisted death would have to undertake a thorough and robust process involving two doctors and a High Court judge. No other jurisdiction in the world has those layers of safeguarding."—[*Official Report*, 29 November 2024; Vol. 757, c. 1019.]

There can be no doubt that the High Court judge safeguard was presented to the House as globally exceptional, unusually thorough and robust, as compared to other jurisdictions. It was also a prominent feature of the public campaign around the Bill. We were told it was a Bill designed for exceptional circumstances, with robust safeguards—the High Court judge being the

[Danny Kruger]

pre-eminent one. It was not a trivial detail; it was the centrepiece of a safeguarding regime arranged around a small number of vulnerable people. Over 60 Members of Parliament are on the record as saying that it was this safeguard that helped persuade them to vote in favour on Second Reading.

Kim Leadbeater (Spen Valley) (Lab): I will stand corrected if this is not true, but my understanding is that *Hansard* will show a very different story. I do not think that 60 people got up and said on record that this element was why they were voting for the Bill.

Danny Kruger: To be clear, I was not suggesting that they all said so on Second Reading, because not everybody spoke in that debate—nor am I saying that it is only because of this safeguard that MPs voted for the Bill, but there are 60 colleagues of ours who have cited the judicial safeguard as a reason for supporting the Bill. Indeed, I hope the Committee will agree that this was always presented as a very significant aspect of the safeguarding regime, if not the most significant aspect. I suggest it was the most significant, because it enabled people to argue that this was the strongest Bill in the world, given that other regimes do not have a judicial element.

I opposed the Bill on Second Reading and I expect that I will oppose it on Third Reading, but I respect the Committee process enough to accept that the House wanted the Bill debated. Because I respect the process, I have not opposed clauses that concern the heart of the Bill, but we are now going to see the hon. Member for Spen Valley, Government Ministers and their supporters vote against this clause—the essential safeguard in the Bill, and the principal element used to persuade the House that the Bill was safe—standing part of the Bill. It is an extraordinary thing that we are going to see the Bill's promoter and the Government oppose the centrepiece of this Bill.

Kim Leadbeater: I understand the hon. Member's framing of this and it might very well be his perspective, but there were 650 MPs who voted on Second Reading that day, so I think it is unfair to represent colleagues who did not have the view that this is the central component of the Bill. There are lots of other components to the Bill that colleagues have certainly spoken to me about, and it is important to acknowledge that.

Danny Kruger: I am happy to acknowledge that there are many other components of the Bill, but many Members, including the hon. Lady, cited this safeguard as an essential element of the safeguarding regime—if not the most essential. Crucially, it was presented to the House of Commons as such, and it is a central clause of the Bill, and the hon. Lady is now proposing to vote against that element. My view is that a change this substantial—a fundamental and radical change to the structure of the process that is being designed—should be presented on Report. The whole House should have the opportunity to discuss and debate properly whether that element should be changed. Every Member should have the opportunity to have a say on this central point.

Tom Gordon (Harrogate and Knaresborough) (LD): The hon. Gentleman will have to forgive me, because I am a relatively new MP and there are still bits of parliamentary procedure that I have not yet got my head round, but is it not the case that MPs will have a say on Report, when they can table amendments to take the Bill back to how it was? That point could therefore be debated on Report.

Danny Kruger: Of course that is correct: a small number of amendments will be selected for debate and vote on Report, and if somebody wants to table an amendment on this issue it might indeed make it through Mr Speaker's selection, but the point of the Committee process is to consider the Bill that was passed on Second Reading and come back to the House with the Bill either unamended or amended. This is a very substantial change to the Bill that was presented and voted for on Second Reading. As I say, many Members supported this clause, no doubt including the hon. Gentleman.

Kim Leadbeater: The hon. Gentleman is making a point that we hopefully all agree with. The job of the Committee is to take evidence and look at ways of improving the Bill on that basis. This is a really good example of where we have actually done our job and done it very, very well.

Danny Kruger: I do not think the hon. Lady can say she has done her job very, very well if, after presenting a Bill, and after months and months of work and debate, including many hours' debate on Second Reading, she suddenly decides that its central part is deficient. She talks about the opportunity for the Committee to take and debate evidence, but we have not had evidence on this new element—these new clauses and the panel process. There were vague suggestions from some of the people we heard evidence from that it might be appropriate, but although we heard evidence on the High Court stage and the deficiencies therein, we have not had the opportunity to properly examine the panel element that is now being introduced.

Kim Leadbeater: Will the hon. Gentleman give way one more time?

Danny Kruger: With great pleasure.

Kim Leadbeater: I thank the hon. Gentleman for giving way again; I will sit down after this. I will not take it too personally that he thinks I have done a very poor job, but the point is that we heard a broad range of evidence from professionals including legal experts, medical experts, psychiatrists and social workers—lots of different people. We have also had evidence come in over recent weeks and months that has added to that and has talked about these changes. It is important to acknowledge that.

Danny Kruger: The hon. Lady must not apologise for intervening on me. I can hardly be one to object to people intervening. This is a very good forum for the kind of exchanges we are having, so I am very happy to take interventions. She is absolutely right that lots of evidence has been presented. I cite it myself all the time. Further evidence is coming in, and much of it is very critical of the new proposals. That is an absolutely fair point, but my point remains that we invited witnesses

and had three days of evidence on a Bill whose core safeguard has now fundamentally changed—well, it has not changed yet, but I suspect it is about to.

Dr Marie Tidball (Penistone and Stocksbridge) (Lab): I supported the Bill on Second Reading on the basis of the High Court proposal, but then read very closely the evidence from Justice Munby on the need for a strengthened evidentiary process so that this is not just a rubber-stamping exercise. He said, secondly, that it would be better to replace the High Court with another system because of the position that it would place judges in. Having listened to 50 witnesses, I am satisfied with this proposal; I was persuaded through this cross-party process, which is an incredible example of deliberative decision making. Does the hon. Gentleman agree that our ability to amend the Bill where the evidence shows that we must do so demonstrates the strength of this process, and has enabled us to produce something much better and more in alignment with public opinion?

Danny Kruger: I greatly respect the position that the hon. Lady has come to. She has been persuaded that this is an improvement on the Bill, and I respect that. I recognise that that is what the hon. Member for Spen Valley and others think, but I am afraid I do not accept that the process has been adequate. The hon. Member for Penistone and Stocksbridge cites Justice Munby and others who criticised the High Court proposals. I also have my criticisms of them—I think they were inadequate—but the response to that is not to scrap them all together, but to strengthen them, as Justice Munby suggested. The hon. Lady will know that Justice Munby is not supportive of the new proposals either; he thinks they also fail the essential test of being an effective safeguard. Nor does the new proposal—the panel—provide the opportunity for evidentiary investigation, which would indeed be appropriate if we were to have a proper safeguard at this stage. I respect the hon. Lady's position, but I am not persuaded.

Lewis Atkinson (Sunderland Central) (Lab) *rose—*

The Chair: Order. I remind Members that, as I said at the start, interventions should be short, and not speeches.

Lewis Atkinson: The hon. Gentleman says that the way to proceed would have been to strengthen, through amendment, the existing High Court safeguard. I may have missed them, but I cannot see amendments in his name that do that, so will he explain what strengthening of the High Court safeguard he would prefer?

2.15 pm

Danny Kruger: I am about to come to that. I am going to suggest how we could have done it better. I take the hon. Member's point. I do need to answer that question.

Kit Malthouse: I am just intrigued. My hon. Friend is talking a lot about the evidence. Did any evidence on anything in the Bill change his mind on any aspect of it?

Danny Kruger: Was there any evidence that changed my mind?

The Chair: That is out of scope of the group, but you carry on and think, Mr Kruger.

Danny Kruger: Thank you, Ms McVey. I do not want to be facetious because it is a serious point, but lots of new points were made in evidence to the Committee, including some in favour of the Bill as it is and some of the amendments that I have opposed. We have had some helpful evidence that has helped to shore up the case made by the Bill's promoter, as well as evidence that suggested otherwise, and some points in debate have been very well made. I was nearly floored by an intervention by the hon. Member for Chesham and Amersham yesterday, for instance. I do respect the points that have been made in Committee, including at the evidence stage.

My suggestion is that we should be doing this on Report, if we do it at all, because that would reflect the seriousness of the proposal and the fact that the House voted for the clause on Second Reading. There were problems with the High Court stage, as has been acknowledged, and others have referred to it in support of the change. I want to quickly acknowledge, perhaps in response to my right hon. Friend the Member for North West Hampshire, the points made by Lord Sumption, Max Hill, Alex Ruck Keene and Nicholas Mostyn—all senior barristers and judges. It became obvious that there were significant issues, particularly around the power of the court to investigate applications or to hear evidence on them, and about the capacity of the judicial system to cope with the demand.

It was clear that further thought was needed on the High Court stage. Indeed it was apparent that further thought was already under way. There is an interesting exchange in the record of the evidence sessions between the Justice Minister, the hon. Member for Finchley and Golders Green, and those witnesses, particularly Max Hill, who said that he was quite close to the construction of the Bill. That clearly shows, in my view, that there already was thinking under way behind the scenes that have led to these changes.

My view is that, rather than ditching clause 12, we should be seeking to make it work in ways that many hon. Members have proposed. I am afraid we just skipped over those proposals in earlier groupings on the clause because there was no point—we were obviously proceeding to the stand part debate and to eliminate the involvement of the court all together.

There were things the Committee could have set itself to address, but we have not done that. I hope you will excuse me, Ms McVey, for making what might be a cynical observation: I think the High Court stage was recognised as popular and as useful to the campaign to get the Bill through the House of Commons. It was predicated specifically on the point, which was clearly communicated and understood by the public, that this measure of assisted dying is intended for very few people. It is for the most exceptional cases: people at the very end of their life, in desperate circumstances, in desperate pain and suffering. Very few people need it. However, I believe this change is predicated on the real intent of the Bill: far wider eligibility than just that tiny group.

We have seen that through the rejection of a series of amendments that would have restricted eligibility specifically to that group—a group for whom we all understand the

[Danny Kruger]

case for an assisted death; again, the public support it in those specific cases of people at the very end of their life, who are suffering intolerably. The Bill is not restricted to that group only, and that is why we need to redesign the system to enable this larger group to make use of it.

Kim Leadbeater: The hon. Gentleman is been very generous with his time. I am interested in how he can conclude that the eligibility criteria have somehow been expanded by adding an expert panel with a psychiatrist and a social worker.

Danny Kruger: I am sorry; I did not intend to give that impression. That is not what I am suggesting. What I am saying is that we have seen the rejection of a series of amendments that would have restricted eligibility, or ensured that only certain people would be eligible: those for whom we all understand the reason for the case for assisted death. Whether our amendments related to the burden, the pain, or questions around capacity and coercion, our amendments would have restricted access to only the most desperate people.

On that basis, it would have been appropriate to have a High Court stage, because the High Court could have accommodated that lower demand. Given the opportunity that the Bill affords to a larger group of people to gain access to assisted death, it has become obvious—I presume, in the mind of Government and others—that there is insufficient capacity in the court system to accommodate the regime being instituted here.

I think the question of High Court capacity has been driven by the desire for a system that can cope with many thousands of deaths per year. I have seen ranges suggesting between 6,000 and 17,000 deaths per year. If Members have other calculations or estimates, I would be grateful to hear them. In fact, it would be good to know whether the Government have done any estimation of the numbers we are looking at.

It is not simply a case of averting those desperate cases of people who help their relatives to die by going to Switzerland or who assist them in committing suicide in other ways—we heard from Max Hill that only a handful of cases cross his desk every year. It is clearly the intention to greatly widen the scope beyond that desperate group. It is unclear what the overall number is, but my strong sense is that we are looking at many thousands, and for that reason, it has been decided that the High Court would not have the capacity to cope with this.

Jack Abbott: We go back to the inconsistency argument. On the one hand, we are saying that we must have more psychiatrists, social workers and palliative care experts in the process. This change is now being proposed, and the hon. Gentleman is using that as a reason to say that there is bad faith here and the sponsors of the Bill just want to widen the scope. I do not think he can have it both ways.

Danny Kruger: I am not suggesting bad faith here. I think there is a genuine view, and it might well come from the Government's official advice, that the Bill, as drafted and as amended, will allow many thousands of people to gain access to assisted death every year. On that basis, we will need a system that can cope with them. The judiciary clearly communicated that it could not cope, and I understand why it would do so.

Jack Abbott: I appreciate that, but just this morning we heard from the hon. Member for Reigate that, because there are not enough psychiatrists and social workers, this panel is not workable either. Again, there is an inconsistency here. There is either enough capacity in the system or there is not—which is it?

Danny Kruger: I am sorry to disappoint the hon. Member, but I am afraid I am going to have it both ways. I think the Bill is profoundly flawed, particularly if large numbers of people will be going through this system. Whether they are going through a judicial system or a panel system, there will be huge capacity constraints on the professionals involved, and we have transferred that responsibility and that problem from the judiciary to psychiatry and social work—unless, of course, it is a rubber-stamp exercise, which I fear it might be, but even then, we are still involving psychiatrists and social workers in a rubber-stamp exercise.

Jack Abbott: But that demolishes the central argument that the hon. Gentleman is making. On the one hand, he says that we are expanding access, but on the other, he says that the panel system will not be able to expand it. If the motive of the promoter of the Bill was to expand the system to make more people eligible, the hon. Gentleman has just said that the constraints of the panel will mean that that does not happen anyway. He is conflating different things and being totally inconsistent.

Danny Kruger: All right. I regret my failure to assuage the anxieties of the hon. Member.

Let me explain why it was so important that we had a judicial stage. My complaints were never against the principle, but always against the practicalities, for the reasons I have just given and will go on to say more about. The value of a judicial stage is that it gave the doctors certainty and, indeed, protection for the process they were responsible for.

I want to cite the evidence from the Medical Defence Union, which provides doctors with insurance against claims of medical negligence. Responding to the suggestion that judicial involvement could be replaced by some other decision-making body, it stated:

> "The MDU strongly rejects this assertion. The involvement of the judiciary is essential. Its absence leaves doctors unduly exposed. Media reports suggest that an alternative safeguard is being mooted. No 'independent panel', however so constituted, can replace the legal authority of a course of action sealed and ratified by a judge. Doctors deserve that certainty when relying upon this Bill to provide the very best for their patients at the most delicate moment of their duty of care."

I will also cite the evidence that we received from Ruth Hughes, a senior barrister with 17 years of experience in mental capacity law. I cannot say that she is a King's counsel because she does not become one until later this month—congratulations to her. She stated in her written evidence that

> "if there is no judicial declaration because the judicial safeguard is not enacted, then there is a risk that the estates of persons who have been assisted to die will be sent into turmoil. This is due to

the possibility of arguments being made that beneficiaries of the estate have 'influenced' the person into obtaining the assisted death."

She said that

"even if there is no conviction but another person asserts there was 'influence'…not undue influence"—

and certainly not coercion, which is banned by the Bill—

"but a lower standard of 'influence' by a beneficiary of the estate…then the personal representatives will be advised to obtain directions from the Court as to how to administer the estate."

Her point is that, even if the bar for the assisted death is met, in terms of influence, coercion and so on, the testamentary or probate challenges that the estates will then go into are considerable.

The fact is that somebody has to be the judge—somebody has to take legal responsibility for the decision that is made. In the common law system, we do not give powers of life and death to panels; we give them to legally constituted bodies with judicial authority. To cite the MDU again:

"To put it plainly, without judicial involvement someone will have to take responsibility for the legality of the action."

Dr Simon Opher (Stroud) (Lab): Again, I thank the hon. Member for quoting all this, but does it mean that he supports the original clause 12?

Danny Kruger: I will be voting for clause 12 to stand part, because I think it is an essential safeguard, but it is not strong enough. There are all sorts of problems with it around capacity and the way it is constituted, and I will come on now to how I think it can be improved.

Dr Opher *indicated dissent.*

Danny Kruger: The hon. Gentleman does not seem impressed by my straight answer to his straight question. Yes, I do support clause 12. I think we should strengthen it, in the ways that I will now explain. We do need a court, and I think Parliament was right to demand this, or to support it. We have a comparable model in the Court of Protection, which applies when there are disputed decisions about whether to withdraw life support. By the way, I mention to hon. Members who have referred to this—just to go back to an earlier debate—that, with the Court of Protection, one is obliged to notify the family. So even there, when there is a decision to withdraw life support, the family is notified, but we have decided not to notify the family under this Bill. But anyway, the Court of Protection does provide an appropriate comparison.

Whether we are talking about the Court of Protection or the High Court, either would work if the system was set up right. The crucial thing, in my view, is that it needs a proper adversarial arrangement so that the judge can actually judge. The way that judges work in this country, under the common law system, is that they hear arguments and then make decisions. It has been suggested that there could be a role for the official solicitor in acting "for the state", as it were—or indeed "for society", perhaps, or however we would want to put it—to perform the role of challenging the application and taking responsibility for presenting any alternative pieces of information that the judge should consider.

Jack Abbott: I do not want to make implications about what the hon. Gentleman might be saying, but am I correct that, with the adversarial position that he is supporting, a person coming to the end of their life, who had gone through this process, would essentially have to argue their case in front of a judge?

Danny Kruger: No, I do not think it is necessary for the applicant to come to court and present their case—that might be completely impossible or inappropriate—but a case does need to be made to the judge about why it should proceed, which is part of the original proposal. Indeed, that is what is proposed under the panel system as well: the case is made for whether it should go ahead.

My suggestion is that there needs to be representatives of the applicant—who may want to appear themselves—but there also needs to be somebody who is putting the other side of the story: "Maybe this isn't the right thing to do. Has the judge considered these parts of the evidence, or this aspect of the report from the assessing doctors?" That would be an appropriate procedure, which is completely consistent with how these important decisions are taken in other aspects of our system.

2.30 pm

Jack Abbott: There is a difference between an adversarial system and an inquisitorial system, which is what I believe is proposed for this panel. The panel would take not an adversarial but an inquisitive position. I do not think that is a million miles away from what the hon. Gentleman is saying, but there is a distinct difference. If he is arguing for the panel to take an adversarial position, that is very different from where the panel currently is.

Danny Kruger: Yes; it would be inappropriate to ask a panel to operate in an adversarial system. It would be inappropriate to ask a psychiatrist and a social worker to act as a judge. We need a proper court system, as we always do with other important decisions in which two sides make arguments. Let me try to explain. I agree that what is being proposed is an inquisitorial system through a panel, which is completely alien to the British common law model of making important decisions. That is what is being suggested, but I do not think it is appropriate.

I do not believe in assisted dying; I think it is the wrong thing to do. But if we were to do it, we should have a proper multidisciplinary team at the outset—I sort of feel that that is where we have got to through these debates, and if the debates had happened properly and prior to the Bill being drafted, something more like this system might have been proposed. Perhaps a doctor does the first declaration as proposed, but we then go into a proper multidisciplinary team, rather than just having the options to refer to psychiatrists if appropriate or to maybe consult palliative care specialists.

The involvement of all the appropriate specialists in assessing capacity and coercion, making clear the alternatives that the patient has, making a proper diagnosis, and hearing from family members—all the appropriate processes that should be followed in a case like this—should happen at the very beginning of the process. There is no need for a lawyer at that stage on the multidisciplinary team that we have created; it will be a proper combination of clinical and social work professionals. Their reports

[Danny Kruger]

would then feed into the judicial process, which would be the second or third stage, if we have a doctor at the beginning. The judge would then hear arguments from, as it were, both sides. That need not be a distressing or time-consuming process, but it would be an appropriate one under British law to make decisions of life and death. That court would clearly hear arguments made by both sides.

Kit Malthouse: To be clear, does my hon. Friend envisage that I would either be in the hearing, or lying in my bed listening to the hearing—the fungating tumours in my neck restricting my ability to breathe—having gone through all the eligibility criteria, but having to listen to someone argue that I should go through a death that I am trying to avoid, by arguing that I do not have capacity? Does he not see that that could be profoundly distressing to someone who is in the closing moments of their life? In many ways, it might actually be cruel and traumatic for me to hear somebody arguing, frankly, that I should endure the pain, in their opinion.

Danny Kruger: I regret that my right hon. Friend is making that argument. The fact is that the panel is already going to consider whether it is appropriate. There might not be some professional who is there with the purpose of suggesting that there are other things that the panel should consider, but the patient is already lying there waiting for powerful people in another room to make a decision about whether they are going to get an assisted suicide or not. That process is already going on.

On my right hon. Friend's point that it is intolerable for somebody to hear the case made against their assisted death, let me put to him an alternative hypothesis. Rather than somebody in the situation that he describes, let us imagine somebody who is the victim of years of coercive control, who has undiagnosed mental health conditions, who is feeling a burden on their family and whose relatives want their money. None of that has yet been fully identified through the initial doctor's stage of the process, but it has been commented on in some of the evidence that the multidisciplinary team heard. That person might hope that somebody is there making the case for them, as might their family.

It is totally appropriate for a court to hear that this procedure should not go ahead because of those other factors, which are only now being properly understood by the decision maker. That decision maker is doing so openly, not in a private session. The decision is being made not by people who are committed to the procedure and process of assisted suicide, but by an independent judge, sitting in their judicial capacity in open court, with all the safeguards and accountability that the judicial system has. That feels to me like a perfectly appropriate safeguard, and I suggest that it is, in principle, what the House of Commons thought they were getting when they supported this.

Sarah Olney (Richmond Park) (LD): I am just reflecting on the right hon. Member for North West Hampshire's intervention. Does the hon. Gentleman not agree that the purpose either of the panel or the High Court judge is to establish beyond all doubt that if a person is assisted in their death, no crime is being committed, and that in order to establish that, we need to apply the highest standards of evidence? Whether an adversarial or an inquisitorial process is used to collect that evidence, there must be some sort of process. That may be uncomfortable for the patient but it is necessary for their friends, relatives and the doctors being asked to assist. That is really what we are trying to achieve.

Danny Kruger: I am grateful to the hon. Lady for making that absolutely central point. This is a judicial process, and a decision is being made. I recognise that the hon. Member for Spen Valley has correctly abandoned the claim that this is a judge-led process—because it is not—but the function of this panel will be essentially judicial, not least because the decision to proceed with an assisted death entails the people involved in administering it being exempt from criminal law and not being liable to prosecution under the Suicide Act 1961. We have made an exemption for what is otherwise a crime, and if they do not get the go-ahead from this panel, they will be committing a crime if they proceed. So in all essence, a judicial decision is being made, and it is right that we have the protections of a court.

Let me make a couple of brief points about the practicalities, and they have partly been made by others. The central point is that we do not know whether the professionals who will be required to take part in this panel have the capacity to do so. We know that the judges do not have the capacity under the current design of the law, which is an essential flaw—or we think they do not, because that point has been comprehensively argued by the judiciary and I suspect by officials at the Ministry of Justice. What we do not know is whether the psychiatry and social work professions have adequate capacity. There has been no impact assessment, and we have had a lot of comments from representative bodies expressing anxiety about the capacity of these professions to supply the panels.

The point I am trying to make is that we cannot, and should not, legislate in the dark. We should not draft laws in ignorance of these basic facts. We need to know whether the law before us is workable in the real world, and I would be grateful for clarification on that from Ministers when they speak to this clause. In my view, we need robust and clear data on how many professionals might take up the posts, and more importantly, we need the clearest and earliest warning of where there might be deficits that would compromise the entire system, particularly around the capacity of psychiatrists. We have a central problem with ignorance around capacity, but my strong view is that we do have a problem with capacity.

An important point was made by Alex Ruck Keene in evidence around the judge-led process, which we discussed earlier. His point was that it would not be possible for the judge to decline an assisted death on the basis of what he calls service denial—that is, there is not enough social care treatment or medical treatment available for the patient. If the reason why the patient were to receive an assisted death was that the local authority would not provide them with improvements to their home or funding, or that they could not get the medical treatment they wanted early enough, that would be a legitimate reason, or would not be a reason not to proceed with an assisted death. That is a very grave concern to us, and it is what happens in other countries. We heard this morning

about evidence that when a patient is denied the medical or social care that they need to carry on living and living well, they are offered an assisted death. In those circumstances, I would really hope that the decision maker would conclude that it is wrong that we offer an assisted death, and that we in fact need to insist that they get the support they need to live well. I reference that because, as I understand it, there is no opportunity in the new clauses for the panel to decline an assisted death on grounds that it is being sought only because of the inadequacy of the wider care system.

It has been suggested that the judicial option remains, through the judicial review system. Other hon. Members have responded to that point, so I will not labour it. However, I want to make the point that new clause 17 makes judicial review less likely because it offers the opportunity for a sort of appeal. It is an appeal only in one direction—against a refusal—but there is a sort of appeal process in the system. As my hon. Friend the Member for Reigate said, if there is a JR, it is likely to take a long time. There is nothing about whether legal aid will be arranged. The state has proposed to pay for people to go through the assisted dying process, but is not prepared to pay anybody to challenge it, so they would have to raise their own money. It would also take a long time. It would be much simpler and better, whether it is a panel or a judge, to set up the system in a way that allows both sides to be told and that does not rely on a cumbersome judicial review system.

I reiterate that I support the multidisciplinary team. It is a very good thing that the hon. Member for Spen Valley has decided to introduce a proper stage at which a psychiatrist and a social worker will have to consider the application properly. I have concerns about how it would actually work, which I will come on to, but having a multidisciplinary team is in principle the right system. I stress that the professionals who made the case for multidisciplinary teams as part of the assessment process have not endorsed the new clauses. They are not saying that we have adequately met their concerns about the process.

Kim Leadbeater: I am not entirely sure who the hon. Gentleman is referring to, but it is fair to say that there is a range of views across a range of professions. It is important to acknowledge that.

Danny Kruger: I apologise; the hon. Lady is absolutely right. No doubt there are representative bodies, whether it is patients' groups or bodies representing professionals, that are satisfied with the new proposal. I do not know which—genuinely, I just have not come across them—but I have no doubt that there are some.

Kim Leadbeater: To clarify, the point that I am making is that there is a range of views across a range of organisations—many of which are neutral on the issue of assisted dying, full stop—and a range of views within each profession. We heard evidence from people working in palliative care with different views, and from medical people with different views. It is important to acknowledge that.

Danny Kruger: Yes, a number are neutral. I will be grateful if the hon. Lady can tell the Committee if there are any representative bodies working with the professionals who administer end-of-life care that have endorsed either the Bill as it was or the Bill as it is. I do not believe there are.

Kim Leadbeater: I will check.

Danny Kruger: The hon. Lady is going to check. My understanding is that all the bodies that represent palliative care professionals and end-of-life specialists are opposed to the Bill as it was and as it is. I think there are straightforward reasons for that.

Everybody agrees that there is value in the multidisciplinary team approach. The British Association of Social Workers provided evidence setting out what it thought was needed, namely an MDT working at the assessment stage. This is not that. It is very important that we do not confuse the provisions made under the new clauses with a multidisciplinary team operating at the appropriate moment in the process. We have to have public confidence in the process. It is very important that the composition of the new proposed panels is not conflated with the separate matter of a multidisciplinary team model. It would be very unfortunate if that confusion obtained.

The Bill, as drafted, rejects the involvement of a multi-professional team model for the conduct of the assessments, preferring two doctors working alone without input from a multidisciplinary team. I recognise that there are opportunities for them to hear from other professionals, but it is not a multidisciplinary team in any recognisable sense of the term.

Kim Leadbeater: Will the hon. Gentleman give way on that point?

Danny Kruger: I will in a moment. I was going to finish by saying that it is not correct or accurate to give the impression that Dr Cox or the Association for Palliative Medicine supports the proposed approach.

Kim Leadbeater: It is really important to be clear about this. I do not think anyone is suggesting that what is in the Bill will replace existing good practice. That is really important. We probably all have family and friends who are being treated for cancer now, and they are looked after and cared for by a multidisciplinary team. That team does not suddenly disappear, to be replaced by what is in the Bill; it can continue. The assisted dying option involves the two doctors, and I struggle to envisage any situation in which they would not work with the multidisciplinary team and add on, where appropriate and necessary, psychiatric intervention, social care and healthcare professionals. I always come back to the point that I do not think the two things will operate independently.

2.45 pm

Danny Kruger: The hon. Lady does always come back to that point, and I respect it. She imagines that the good practice that is prevalent in the system will obtain automatically, in all cases, under the assisted dying regime, even though that regime is completely new. She says that she cannot envisage a scenario in which the doctors would not hear from all the professionals we all think should be consulted at this stage of the process. I have two points to make on that. First, why not make it explicit that that is required? Secondly, I am

[Danny Kruger]

afraid that I can envisage scenarios in which for doctors—perhaps some years down the line, once this model of death has become normalised, as it has in Canada and elsewhere, with up to 10% of deaths coming through assisted dying—it just becomes a procedure.

Again, we have not ruled out the possibility—the likelihood, in fact—of independent clinics establishing themselves with a business that is about providing the support for people who want to end their life. There will be doctors who are happy to conduct the assessments; to take at face value what they hear from the patient; not to involve a wider multidisciplinary team in their consultations; and to expedite the process as the Bill, as drafted and amended, allows. I am afraid I do foresee a scenario in which the good practice in which all believe does not happen. My concern, and I expect the hon. Lady's is the same, is to prevent that.

Rebecca Paul (Reigate) (Con): My hon. Friend is making a powerful point. One of my concerns is about what happens if someone seeks assisted dying privately through a clinic. I see risks with multidisciplinary teams involving social workers continuing in that instance. Does my hon. Friend share my concern?

Danny Kruger: I certainly do. That is exactly the scenario that I fear, and I fear it within the NHS too. Let us not imagine that every NHS doctor has all the time and the access to the wider specialisms that they would wish. Under the Bill in its current form, there will be a very strong incentive and a very strong personal instinct for compassionate doctors, who believe in the autonomy of patients and in respecting the patient's wishes, to take at face value what they are told and not to seek the expertise that would happen automatically if there were a proper multidisciplinary team at that stage of the process.

My point is that we do need a multidisciplinary team, but what is in the Bill is not it. At best, it is half a multidisciplinary team. There is no doctor on it. There is a lawyer, pointlessly. There is a sort of quasi-MDT—a duo-disciplinary team—but it is in the wrong place, and it will not assess, which is the job it should do, but judge. It will not diagnose or advise in the way that a clinician should; it will simply decide whether the criteria have been met for an assisted death. That job was rightly given to judges in the Bill that the House of Commons voted for, but this Bill does not have the powers, the safeguards, the accountability or the independence of a tribunal, let alone that of a court.

As the hon. Member for Spen Valley candidly says, the panel is not a judicial entity in any sense. It is a weird creature, neither one thing nor the other: a quasi-multidisciplinary team, at the wrong stage in the process, for the wrong purpose. I have said that it is not a multidisciplinary team, but it is not really a judicial entity either, as the hon. Lady has mentioned. It is certainly not "judge-plus", as was originally suggested. There is no judge, just a legal member—not a judicial member but a legal member, who might be a lawyer.

Kim Leadbeater: There is a judge—it may be a retired judge—who is the commissioner, who heads up the entire assisted dying commission, and there is a legal expert on the panel as well, as the hon. Gentleman said. That could be a retired judge, so there is legal expertise there. I think the hon. Gentleman also made the point that there is not a doctor on the panel. My understanding is that psychiatrists are doctors, but I will stand corrected if that is not true.

Danny Kruger: The hon. Lady is absolutely right; I do apologise. There is indeed a doctor—a psychiatrist—but not a doctor specialising in their condition.

Kim Leadbeater: We have had two of them already.

Danny Kruger: No, we have had a couple of GPs. We have not had a doctor who is a specialist in their condition.

Kim Leadbeater: If needed.

Danny Kruger: If needed, there is the opportunity to refer to one. It is perfectly possible that the whole process of an assisted death could be done very well under the Bill—that is good news—but there is a very great risk that the process will not be done well, because there are huge gaps through which bad practice can creep. My specific concern about this stage is that we do not have the appropriate expertise on the panel.

On the hon. Lady's point about there being a judge in the process, there is a distant judge who sits above a quango that appoints the panels. They take a view on a specific case only if there is an appeal against a refusal. They are not directly judging on the case, as the House of Commons was told would happen.

Kim Leadbeater: The reports for the case would go to the commissioner, so he or she would see the reports.

Danny Kruger: Yes, but he or she will consider a reconsideration only on the basis of an application to reconsider made by the applicant. There is only one opportunity for an appeal and it can happen in only one direction: against a refusal. I will come on to the role of the commissioner in a moment, but in the great majority of cases there will not be a judge involved in the decision. There might be a retired judge on the panel, but that is extremely unlikely; it is more likely to be a lawyer. It is a judicial exercise that is being conducted, so it would be appropriate for it to be a judge sitting properly in a court.

Naz Shah (Bradford West) (Lab): Does the hon. Member share my concern that the Bill does not say that the panel can call people and ask them to swear under oath, unlike a mental health tribunal?

Danny Kruger: The hon. Lady is absolutely right. Having said that the panel is not a proper multidisciplinary team, I agree that it is not a proper judicial entity either. It is a panel with judicial power to approve life-or-death decisions, but it is without a judge or the normal judicial processes that would happen in a tribunal or court. There is no oath being taken by members of the panel or by witnesses; there is no independent appointment process, so the members of the panel will be appointed by the commissioner; there is no power to order the

disclosure of information to the panel; there is no power to investigate wills, financial records or anything like that; and there is no requirement to meet the doctors or even to discuss the case with the patient themselves, if the panel considers that appropriate.

There is also no appeal against an approval, just a one-way appeal against a refusal. That appeal goes not to an independent judge sitting in a court, but to a commissioner—an appointee of the Government, who has been set up to facilitate the whole system.

Let me turn to the role of the VAD commissioner, or the Vader as I think of it; I will not labour the point. They can be a sitting judge, which is good, but I suggest to the Committee that it is highly unusual for sitting judges to be appointed to other public functions that are unrelated to a judicial role. I would be interested in the Minister's view on that. Judges can be appointed to a second judicial job, such as chairing the Sentencing Council, but I am not aware of many examples in which a sitting judge sits in a non-judicial function.

Having looked into it, I discovered that there are three exceptions to the rule. First, the Master of the Rolls holds a number of sinecures in relation to the keeping of the public archives and the payment of the national debt, so that is a non-judicial function that a judge carries. Secondly, the chair of the Law Commission is a sitting High Court or Court of Appeal judge. Thirdly, and exceptionally, with permission of the senior judiciary, sitting judges can be asked to conduct public inquiries. A singular public inquiry, which is time-limited and essentially judicial in its purpose of determining what happened, and which will of course operate in an adversarial way, hearing proper evidence from counsel, is the only exception. However, that is not comparable to the model being set out here, in which a sitting judge is being asked to chair a permanent quango—a Government body.

Kim Leadbeater: Does the hon. Gentleman agree that that is exactly the point? This is a unique situation, and therefore we need a unique system. That is the perfect opportunity to use the skills that a judge or retired judge has.

Danny Kruger: Throughout this debate, the hon. Lady and others have frequently made the case that we should stick with the existing systems, such as the Mental Capacity Act 2005 and the use of doctors to make decisions about healthcare. Now the opposite point is being made: that we have a unique system and we therefore need to tear up the current way of working. In this one case, I think we need to stick with the current way of working: in the British judiciary, the High Court of England is the appropriate body to make decisions about life and death. That is how it works in other major decisions of life and death. These are questions that go to court.

On the point about the VAD commissioner being a sitting judge, even when it comes to inquiries that judges conduct outside their role as sitting judges in court, my understanding is that the Executive do not pick whichever sitting judge they want for the role. Instead, they request that the Lady Chief Justice make a judge available, and the Lady Chief Justice will select the appointee. What is proposed here is that the Prime Minister should pick from the bench of judges his or her preferred candidate. That feels like the use of a judge simply to fulfil a role that, frankly, does not need to be carried out by a judge.

For clarity, I emphasise that I am very much in favour of judges deciding on cases, but I do not see why a judge should fulfil the role of chief quangocrat for the administration of the regime. When we look at the functions the commissioner will have, it is quite right that, under the previous version of the Bill, most of those functions were given to the chief medical officer, because most of the required functions have to do with the administration of the medical aspects of the Bill. The collection of data and the monitoring of the operation of the Act are best left to a medic with experience of our healthcare system, rather than to a judge. These are not judicial functions.

The only function carried out by the commissioner that would require one to be a judge, or that is in a sense judicial, is the review of panel decisions, because a judicial decision is being made. Under new clause 17(2), the test is limited to an error of law, irrationality or procedural unfairness; those are the grounds for judicial review. If we did not have new clause 17, the ability for judicial review of panel decisions would remain. It could be argued that the new clause would actually limit judicial review by only allowing the person concerned to apply for reconsideration.

I understand that some courts in Canada, which has a comparable judicial and common law system to ours, have held that family members do not have standing to judicially review decisions to authorise medical assistance in dying. The suggestion has been made that families who are concerned that an error has been made in a decision to approve a death should be able to quickly get an injunction through a JR. I hope that that will be the case, if this law passes as proposed, but it certainly is not the experience elsewhere and I fear it might not be the experience here.

I am afraid that we have a dog's breakfast of a system: all the problems of the High Court system that have been aired, but without any of the benefits. I will finish by quoting Sir James Munby. I know he has been cited regularly, but the hon. Member for Spen Valley said yesterday that, having listened to Sir James, she set herself the task of designing a system that would satisfy a former president of the family division. I am afraid to say that she has not succeeded in her task. I will quote a few points that Sir James made in response to the proposals in these new clauses. He stated:

"The process…is simply not apt to enable the panel to perform its function…The panel is given an extraordinary degree of discretion in relation to the process it is to adopt".

He suggested that the panel is

"little more than a rubber stamp providing a veneer of judicial approbation"—

I do not think that rubber stamps provide veneers, but his point is well made and I respect it—

"and that is fundamentally unacceptable".

Finally, he said:

"If the panel is to perform its function effectively and do more than just 'check the paperwork'—if it is to be the real safeguard intended by its proponents—then its processes must be much more thorough than is currently proposed…All in all, in relation to the involvement of the panel in the process, the Bill still falls lamentably short of providing adequate safeguards."

3 pm

Kim Leadbeater: Many of us have quoted Sir James Munby, for whom I have a huge amount of respect, but there are a number of other views from ex-judges and very highly-regarded legal professionals that conflict with what Sir James says.

Danny Kruger: It would be very helpful if the hon. Lady could—not now; it need not be in the course of these deliberations—publish the evidence of that assertion. Which senior judicial figures have endorsed the new plan? It would be very helpful to hear from them.

We heard many criticisms of the previous regime. In my view, those objections prompted the change of heart that the new clauses derive from. From what I have seen, the weight of evidence indicates that we still have many of the problems that the High Court system had: a lack of effective powers and questions around capacity. We also have a whole new load of problems to do with the essential illegitimacy of a quasi-medical panel of people making an essentially judicial decision without the opportunity to hear in a meaningful way from all the different stakeholders who should be consulted.

Naz Shah: I want to understand and clarify something. The hon. Gentleman said earlier that the commissioner is sitting as a judge, but my understanding is that the commissioner is not sitting as a judge. What did he mean?

Danny Kruger: I think the hon. Member for Spen Valley said yesterday that we had to grapple with this confusion, which is that there is a judge not sitting as a judge. It is slightly like a Minister not sitting as a Minister; the Bill has provided all sorts of interesting hybrid creations of people who inhabit split personalities and dual roles.

The hon. Member for Bradford West is, I think, right. From the evidence we have heard from the hon. Member for Spen Valley, although there will be a judge, which satisfies the cosmetic need to present this as some sort of continuation of the High Court stage that the House of Commons voted for, they will not sit as a judge. It is rather like having a hobby or a second job. I am not sure judges do that, but it is like chairing a football club on the side. Their status derives from their judicial role, but they are sitting as the commissioner in a lay capacity—I think I have that right.

Kim Leadbeater: We have already talked about this, and I think the hon. Gentleman mentioned it himself: there is a similar situation with public inquiries, on which a judge sits because of their skillset and who they are, but not necessarily in a traditional judicial capacity.

Danny Kruger: It will be interesting to hear from the Minister, who is more equipped than the rest of us to opine on this. My understanding is that a judge sitting as chair of a judicial inquiry might not be sitting in court, but they are there because they are a judge; their function, as the chair of the inquiry, is essentially judicial. That is the only comparison and it is essentially different, because the exercise of a public inquiry is time-limited and specific to a particular case, which is to determine the truth or otherwise of what happened in whatever situation it is being asked to inquire into.

Here, we are setting up a quango—an arm's length body of Government—that will sit in perpetuity and oversee a bureaucracy of state. That is something that no judge does in our system and, in my view, would be completely inappropriate for a sitting judge to do, even if we could find a sitting judge prepared to fulfil that function, which I think might be challenging.

The other key difference is that a judge chairing a public inquiry is appointed by the Lady Chief Justice; they are essentially judicial in their appointment and work. The judiciary appoints one of its own to fulfil a judicial function as the chair of an inquiry. It is being proposed here that the Government—the Executive, not the judiciary—appoint the chair of the commission from the Bench of judges.

Naz Shah: What the hon. Gentleman has said creates another concern for me. If we do have a judge, and if the expectation is that they sit in a judicial capacity, does that not raise concerns that an appeal is allowed one way—if an assisted death is refused—but not the other way, if someone wants to appeal against an assisted death? By definition, does that position not become compromised?

Danny Kruger: I am afraid that that is absolutely right. There is an essential problem with the role of the commissioner as the backstop—the Court of Appeal, as it were—for what are effectively judicial decisions made by the non-judicial panel. The fact that appeals can be heard only against a refusal and not an approval confuses the whole question of appeal and judicial review. It is plainly unjust, and does indeed compromise the idea that the judicial figure has the independence that a judge should properly have. I agree with the hon. Member for Bradford West.

Naz Shah: I want to speak to amendment (c) to new schedule 2, tabled by my hon. Friend the Member for Lowestoft. The amendment requires members of the panel to have undertaken training in respect of domestic abuse, including coercive control, and financial abuse. It extends the principle of amendments 20, 21, and 22, also tabled in the name of my hon. Friend, which require the medical practitioners involved in the assisted dying process to have undertaken similar training.

Kim Leadbeater *rose—*

Naz Shah: I am happy to give way to my hon. Friend, the sponsor of the Bill. I am really pleased that she accepted the previous amendments. I do not know whether she will accept this one.

Kim Leadbeater: A strong argument has been made to me that the professionals on the panel would have the skills and training to fulfil their role, but it is important, particularly given the time we have spent discussing this issue, that they do have it, so I am happy to support that amendment.

Naz Shah: I appreciate that. None the less, I will speak briefly to the amendment as I still have concerns. The amendment provides an absolutely necessary safeguard and I welcome the fact that my hon. Friend has accepted it. I am pleased that it extends to panel members, but it does not meet the safeguarding needs when it comes to

people of ethnic minority backgrounds, coercion, cultural competence and so on. People and organisations have raised concerns about that.

The truth is that the Bill is very gendered: the analysis by women's organisation The Other Half has found that if the Bill passes, and trends follow those of Australia, 1.65% of all deaths in this country could take place via assisted dying. If so, as many as 1,400 domestic abuse victims could die each year through that process. It is vital that Members on both sides of the debate are conscious that we are opening up a new avenue for domestic abuse through the Bill. That is what the amendment speaks to. To save the Committee time, I will not go over the detail because it was covered during our discussions of the previous three amendments.

Kit Malthouse: I rise briefly to amplify a couple of points from the excellent speeches by the hon. Members for Rother Valley and for Ipswich. First, in clarification, I understand that there are situations where judges can sit in essentially supervisory positions—not least, for example, on the BBC board—and they can of course be Cross Benchers in the House of Lords. They are allowed to undertake other charitable trustee roles, although they are restricted in their activities.

Danny Kruger: I think this is important. Those roles are what those judges do in their spare time—they could also chair a football club or something as well. The point is that they are being asked here to fulfil a function on behalf of the Government in their working hours, explicitly because they are a judge—yet they are not sitting as one. Surely my right hon. Friend acknowledges that that is essentially unprecedented.

Kit Malthouse: No, I do not acknowledge that at all. Over the years we have started to use judges relatively flexibly—even, for example, for non-statutory inquiries; my hon. Friend has referred only to statutory inquiries—and that is so much the better. I am not a lawyer myself but I believe in the rule of law, so I think that having judges opining on our freedoms or otherwise is generally good for the country.

I want to amplify a couple of points. On Second Reading, I made the case for the High Court to be involved. I agree with my hon. Friend the Member for East Wiltshire: at that stage, I was very happy for there to be effectively a scrutiny and authorisation third layer to the Bill. My understanding of judicial opinion was that, certainly in Lord Sumption's view, that level was unnecessary; I think he referred to it being a profoundly intimate conversation that really should just be between the patient and the doctor. However, I think my hon. Friend the Member for East Wiltshire is right that the weight of the moment and opinion in the House then was that there should be that third layer of scrutiny and opinion.

I also dismiss the argument about the capacity of the judiciary to absorb this. I fear that if we start to accept that argument, we go down a very difficult road for Parliament—not least, for example, because we should then have opposed the Bill that went through the House on Monday night, because of its greater impositions. As many will know, the Crime and Policing Bill went through without a vote. It will impose new burdens on the judiciary and the police, as will the new offence of spiking. No doubt the immigration Bill coming through will also put significant extra burdens on the police and the courts.

There are two separate questions here: one is what Parliament does, and the other is the capacity of the public sector to absorb that. The answer is not to say, "Well, I am afraid all you people have to go through a death you do not want to go through"; it is to say that we do not have enough judges and to recruit more judges, if that is required. In my personal view it is not, but at the time my view was that if as a footballer I could show up in the middle of the night and get an injunction to stop *The Daily Mirror* from publishing unpleasant stories about me, then the judges should be able to find time in their schedule to accommodate the requirements of my death.

Danny Kruger: My right hon. Friend is absolutely right. If Parliament decides that we should proceed, then we should, and the public sector will be obliged to make accommodation and provide the necessary resources. Does he agree that, on that basis, it would be appropriate for the Government to have clarified by this stage what the resource requirements of the new system would be, to make clear that there is the capacity in the system to do it? Does he share my regret that that has not been done?

Kit Malthouse: No, I do not share that regret, because until today, and until we all vote on it, the Government do not actually know what they are facing. They have undertaken that they will produce exactly the assessment that my hon. Friend is talking about between the end of this process and Report, so we can all have a look at what it will be.

At that point, Members can put a price on other people's death and other people's pain if they want to, but there are lots of situations where the House of Commons decides about things on the basis of moral principle and public interest, and then we ask the public sector to absorb it. If that causes operational problems, then we solve those separately. In my 10 years in the House, I cannot remember anybody ever standing up and saying, "We shouldn't do this because the public sector can't cope."

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): I recall being on the Domestic Abuse Bill Committee. We heard time and again from public sector representatives that bringing in changes such as a domestic abuse register would bring extra work and be difficult. It is their job to flag up those points, but it is our job to assess what is the right thing to do in legislation.

Kit Malthouse: The hon. Lady puts it exactly right. These are two separate questions, and we should not conflate them. Certainly, we should not allow the House of Commons to be constrained by those capacity constraints from doing what it thinks is the right thing. We should do the right thing, and then put pressure on the Government to provide the facilities that we think are required.

Daniel Francis (Bexleyheath and Crayford) (Lab): On that point, in our oral evidence we were not able to hear from witnesses about the changes to the clauses, because we did not understand what the repercussions would be at this stage.

Kit Malthouse: As I recall it, there were a number of questions at the oral evidence stage about the notion of there being a panel, specifically when we had the panel of lawyers. We asked about that. But the hon. Gentleman is right; the issue was an emerging one at the time. That is the nature of the kind of iterative policymaking, or legislative process, that we are going through at the moment. The Government have said that they will produce an impact assessment, so we can all have a look. It will not be long—three or four weeks—and then we will all be able to make a judgment.

3.15 pm

I want to separate those two issues and point out that, as I read it, the judiciary's opinion was that we did not need a third layer and that it should stop at two doctors. The House of Commons did not agree with that and thought that we should have a scrutiny and authorisation level. If we were to have a scrutiny and authorisation level, I became convinced by the evidence we heard—including some of the opinions of people opposed to the Bill—about the insertion of greater expertise at that level. I was then willing to say that, if we are going to have scrutiny, let us have expert scrutiny rather than a High Court judge who is, by nature, highly skilled, but a generalist nevertheless. That was the point at which I moved my position to support the amendments tabled by the hon. Member for Spen Valley.

Finally, we have talked an awful lot about the structure. I say to Members proposing amendments to the structure and trying to introduce the notions of an adversarial hearing, of policing the discussion or of increasing the bureaucracy that, as the hon. Member for Ipswich said, we need to take care to tread lightly on people's final moments. At the heart of our thinking must be the notion that we might be filling these people's final days and hours with stress, bureaucracy and a sense of jeopardy about whether they will get permission for what they want—what they have declared to two doctors and on the forms—while they have at the back of their mind that they do not have long left.

While I understand the motivation of the Members trying to amend and restrict that ability and elongate the time, I ask them to bear that in mind and help us to strike a balance between a system that gets to a robust answer and one that treads as lightly as possible on the life that remains to people facing their end. It is perhaps impossible for us to realise what it is like to be in those final six months. I hope that none of us ever gets that call or envelope or has to sit in front of a doctor to be told that, but it must be completely devastating. We must not allow all this to become the primary purpose of people's final six months of existence.

As a number of Members have said, people want assisted dying as a card in their back pocket. They want it as a sense of insurance and security against pain and agony at the end. A large proportion of them will not use it. Striking that balance is critical. After much discussion and work, I think the hon. Member for Spen Valley has done just that, so I will support her.

Lewis Atkinson: I rise to respond to some of the points made by the hon. Member for East Wiltshire. I looked back on the *Hansard* report of the Second Reading debate and his position there, and I am somewhat confused. In his speech in that debate, he was entirely dismissive of the judge as a safeguard, but now, in Committee, he seems to have had a Damascene conversion in favour. That gets to the question of whether, as others have asked, there are any safeguards that would satisfy opponents of the Bill in principle.

I entirely respect the position of principled opponents to the Bill.

Danny Kruger: I look forward to hearing the hon. Member's substantive remarks, but in explanation I should say that there are no safeguards that I think will make an assisted dying Bill adequate. I will oppose the Bill whatever happens because I think it would be dangerous for people however we do it. But if we are going to do it, let us do it as safely as we can. There are definitely ways in which we could improve the safety of the Bill, which have been suggested in the many amendments I have supported.

On the point about the judicial stage, I am very critical of clause 12 as it stands because it does not provide sufficient rigour and there are major questions about the capacity of the judiciary, as has been discussed. But the principle is absolutely right. It is important that, if we are going to do this, we have a judge to make the final decision. I was not satisfied with the Bill as presented, but I think we should be building on it, rather than reducing the judicial safeguard.

Lewis Atkinson: I thank the hon. Member for that point, but when someone cannot describe any version of safeguards that would be possible, and in the light of some of the other conversations we have had, one is led to believe, entirely respectfully, that some people are opposed to the Bill in principle in any instance.

The point that my hon. Friend the Member for Spen Valley made on Second Reading that this was the safest model in the world was not just about the fact that there was a judge, but about the fact that there was a third tier. That is not something that is in place in Oregon, or even in Australia, as we heard in evidence. Now, not only are we going to have a third tier of scrutiny, but we are going to have three professionals who must unanimously accept that the strict conditions for eligibility have been reached. I absolutely refute the suggestion that amending away from a High Court model and towards a panel model means that we have to recant any suggestion that this is the strongest model in the world.

Naz Shah: Will my hon. Friend give way?

Lewis Atkinson: I am going to continue this point, if I may.

The hon. Member for East Wiltshire asked what the purpose of the panel is. As is set out very clearly in new clause 21, it is about determining eligibility for assistance, with reference to the stringent rules and conditions that we will lay out in the Bill. The hon. Gentleman went on to ask about the purpose of the judge and suggested that it is a bureaucratic role. As new clause 14(4)(c) makes clear, the commissioner's role is making arrangements for panels, and new schedule 2 is clear that the commissioner has powers to give guidance about the "practice and procedure" of those panels. Clearly, the commissioner will be a judicial figure with experience of proper process

and procedure, and it is absolutely right that that person, who will set out the procedure for each of the panels, is a judge.

The hon. Gentleman made a point about MDTs. I am not sure whether he has worked in or around healthcare, as I and other members of the Committee have, but I say gently that the suggestion that individuals at the end of their lives are not in contact with multiple professionals is highly implausible. We are blessed in this country that we have some of the best cancer nursing in the world, and that we have palliative care social work. He previously asked which bodies had come out in support of this change. Well, the Association of Palliative Care Social Workers says:

"The inclusion of social workers as core members of these panels shows that Kim Leadbeater and her colleagues have taken on board our arguments that social workers are uniquely qualified and equipped to undertake the complex and sensitive tasks of assessing mental capacity and safeguarding individuals who may be subject to any form of undue influence or coercion."

Naz Shah: Will my hon. Friend give way on that point?

Lewis Atkinson: No, I am in a flow, so I am just going to keep going. I am mainly rebutting at this point, and I do not want to open the debate that much wider.

Invariably, we already have individuals at the end of their lives with multidisciplinary input that is appropriate to them, and we have heard already how the independent doctors and the panels will rightly seek input from all those involved in care.

It has been some time since the hon. Member for East Wiltshire and I had an exchange on our difference on the ventilator test, but I know that we have a fundamental, philosophical difference on that. I believe that a dying person saying, "Please, doctor, turn off my ventilator; I want to die," is not fundamentally different from that person saying, "Please, doctor, let me take that medicine; I want to die." I assert that the person in the street is closer to my view of that situation than to his, although I respect that people have different philosophical opinions about it. However, let us not forget that we sometimes conduct this debate about the correct oversight of the third tier in a theoretical manner, as if these people were not dying anyway, and as if deaths relating to refusal of treatment, and suicide, were not happening anyway.

Danny Kruger: Let us not rehash the argument about whether there is a difference between withdrawing treatment and actively killing somebody or giving them the opportunity to kill themselves. On the point about withdrawal of treatment, does the hon. Member acknowledge that when there is dispute over whether somebody should have their treatment withdrawn, it goes to a court and there is representation from both sides of that argument about whether the treatment should be withdrawn? If he is saying that these measures are essentially identical in principle, surely we should have the same mechanism to resolve disputes.

Lewis Atkinson: I thank the hon. Member for his intervention, but I am afraid he is confused. It goes to the Court of Protection when the individual is not capable of making that decision and there is a dispute about what the best-interests decision may be for that individual. That is entirely different from the dying person saying, "Please turn off my ventilator." In that case, the Mental Capacity Act 2005 applies, as we have discussed at length in the Committee, but there are no further checks for coercion, capacity or motivation in the way that has been described. With the three panel members, we will now have at least five professionals, who must all be satisfied that there is no coercion. How many individuals should there be?

I see speculation, including on social media, about the number of people who might seek an assisted death and who may be subject to coercion. How many people who refuse treatment at the moment, without any of those checks, are subject to coercion? How many people who go to Switzerland, or who end their own lives, are subject to those checks? We do not know because we have no robust oversight of those instances. While I have absolute sympathy with the points raised by my hon. Friend the Member for Bexleyheath and Crayford, who made a very thoughtful and personal speech, as he always does, the exact same instances that he described would be permissible right here and now.

The hon. Member for Reigate shared some upsetting stories, I think from Canada, about the impact on family in speaking to the amendments on that subject. First, I point out that Canada's system is nothing akin to the one that we are proposing, because it does not have the third-tier protections that my hon. Friend the Member for Spen Valley proposes in the Bill.

However, it is also important that we bring the debate back to talking about dying people here in the UK, and that we have some of their voices and experiences, and their families, in the room. We know that already, 650 terminally ill people end their own lives each year in the UK. Anil Douglas's dad, Ian, took his life the day before his 60th birthday. He was in the terminal stages of multiple sclerosis, and he ended his own life without notifying his family, because he felt he had to protect them, due to the state of the current law. He managed to obtain opioids from the dark web and subsequently overdosed. In his final note, he wrote:

"I would like to have to put on record that had we had more sympathetic assisted-dying laws in this country, in all probability I would still be alive today."

I will give one more example. On returning home from a trip to London, Peter Wilson discovered his wife, Beverly, dead in their home. She had terminal oesophageal cancer and had taken her own life, alone at their home in Nottinghamshire, when she knew that Peter would be 120 miles away. Even though Peter could prove that he was not present at the time of death, he was questioned by police for seven hours, and he was fingerprinted and photographed within hours of her death. That is the current situation that families—those we have discussed maximising care for—are facing in the UK. That is why we need a change in the law that includes robust, third-tier oversight.

3.30 pm

I am really pleased that, as Committee members, we have made significant strides in understanding one another and passed some important amendments, but the hon. Member for East Wiltshire said that he would vote against clause 12 on procedural grounds, as if it were outrageous that these amendments had been tabled and

they were not acceptable. In his Second Reading speech, he said—I will quote from *Hansard*—that Members should not

"hide behind the fiction that"

the Bill

"can be amended substantially in Committee and in its later stages. The remaining stages of a private Member's Bill are for minor tweaks, not the kind of wholesale restructuring that we would need".—[*Official Report*, 29 November 2024; Vol. 757, c. 1022.]

I again gently say that I understand there are in-principle opponents of the Bill, but we are working in good faith through these amendments to respond to the evidence that we have heard and to improve the lives of families and dying people in this country. That is why I am proud to be supporting the amendments in the promoter's name.

Naz Shah: I will speak to amendment (b) to new schedule 2, but before I do, I will address some of what my hon. Friend the Member for Sunderland Central just talked about. To clarify something for the record, Glyn Berry, co-chair of the Association of Palliative Care Social Workers, of which there are 200 members—there are 200 social workers for palliative care in the country as it stands—has not given an endorsement, and has categorically said that the association does not support the panel structure, as it fails to support what the Bill is intended to do on assisted dying. I am happy to send my hon. Friend the reference for that.

The right hon. Member for North West Hampshire referred to panels in particular. I tried to intervene and ask him about this directly, but I will mention it now and I will be happy to give way should he wish me to. He told the Hansard Society that he was not supporting palliative care specialists at an earlier stage, simply because the issue of palliative care would be addressed in the structure of the panels, but that has not happened. I just wanted to put those concerns on the record before I moved on to my substantive speech.

Amendment (b) to new schedule 2, tabled by my hon. Friend the Member for Derby North (Catherine Atkinson), would amend the new schedule, tabled by my hon. Friend the Member for Spen Valley, to ensure that the Official Solicitor will nominate a person to represent the applicant before the panel. As it stands, the new schedule does not require the commissioner to give guidance about the practice and procedure of panels. However, if guidance is given, the panels, under paragraph 8(2),

"must have regard to any such guidance in the exercise of their functions."

Amendment (b) would remove the relevant sub-paragraphs and replace them with the following:

"(1) The Commissioner must give guidance about the practice and procedure of panels.

(2) Such guidance must prescribe a procedure which in relation to each application appoints a person nominated by the Official Solicitor to act as advocate to the panel.

(3) Panels must have regard to such guidance in the exercise of their functions."

What effect would this have?

I refer hon. Members to the written evidence submitted by Ruth Hughes, a senior barrister due to be appointed King's counsel on 24 March. The written evidence number is 161. Ms Hughes notes that she has

"17 years' experience of specialising in mental incapacity and the law in relation to vulnerable adults"

and that she has

"advised the Ministry of Justice on capacity related issues."

She describes herself as

"one of the most experienced barristers specialising in the property and affairs of persons who lack mental capacity in the country."

In this context, it is particularly noteworthy that Ms Hughes has frequently appeared in court instructed by the Office of the Official Solicitor and the Office of the Public Guardian. She says:

"In my professional experience, financial abuse of the vulnerable and those who lack mental capacity, or are approaching the borderline, is depressingly common."

Ms Hughes is not someone who opposes the Bill at all costs; she seeks to strengthen its safeguards for those at risk of coercion. She states in her evidence that

"whilst I do not oppose the Bill, I am highly concerned that the safeguards proposed are insufficient to protect vulnerable people from exploitation for financial gain. I suggest it would be profoundly disturbing and wrong for Parliament to enact legislation which put vulnerable people at risk of being killed for financial gain without creating adequate safeguards to protect them."

Those are very strong words from someone who I suspect is not in the habit of crying wolf. If we hear that kind of warning from a senior lawyer with Ms Hughes's specialised knowledge of protecting at-risk adults, we should certainly listen.

Ms Hughes was a strong supporter of the use in the Bill as drafted of a High Court judge as the authority who would decide on assisted dying applications. She wrote:

"I suggest that the judicial safeguard is fundamentally important."

She recommended, however, that the Bill should be amended to include five additional safeguards. I am pleased to say that my hon. Friend the Member for Spen Valley has accepted one of the five proposed protections: the requirement to hear from the person who wishes to die. Ms Hughes's fifth recommendation bears directly on the amendment we are discussing. She says that the Bill should be amended to include an advocate who would

"ensure that the evidence in support of a claim is appropriately tested."

Ms Hughes made that recommendation when my hon. Friend was still advocating for a High Court judge, rather than a panel, as the arbiter, but I do not see that the change from court to panel has in any way weakened the argument she made for an independent advocate. Explaining why she wants to increase safeguards, she says that in the Bill as drafted

"there is likely to be significantly less scrutiny of a decision by the Court in relation to assisted dying than there is for example currently in relation to a decision of the Court of Protection to withdraw life-sustaining treatment from a person, or even a decision as to where a person lacking capacity should live or with whom they should have contact."

Ms Hughes said that one problem was that

"importantly, there is no person appointed to assist the Court to consider and test the evidence before it. Our Court system is inherently adversarial. Generally, two or more parties to a dispute will present evidence and argument to the Court and the Court will make findings of fact on the evidence and come to decisions on the law in accordance with those arguments. The Court is not hidebound, but equally it is not set up to obtain evidence itself. A scheme which does not provide for an independent party to

consider the evidence and present arguments against an application will be unlikely to be robust and will not be well designed to identify, for example, a lack of capacity or the existence of coercion or pressure."

This part of Ms Hughes's evidence seems to be particularly important:

"Doctors, for example, may not be well placed to identify coercion, pressure or control. In my experience they are often missed by solicitors taking instructions for the making of gifts or wills. The best solution, perhaps the only good solution, to this problem would be to require the Official Solicitor to act as advocate to the Court in cases brought under the proposed legislation."

It would be helpful if we explained the term "advocate to the court." The Ministry of Justice published the following explanation of what an advocate to the court is and what they do, based on a 2001 memorandum agreement between the Attorney General and the Lord Chief Justice. The Ministry said:

"A court may properly seek the assistance of an Advocate to the Court when there is a danger of an important and difficult point of law being decided without the court hearing relevant argument. In those circumstances the Attorney General may decide to appoint an Advocate to the Court…It is important to bear in mind that an Advocate to the Court represents no one. Their function is to give to the court such assistance as they are able on the relevant law and its application to the facts of the case."

We should all see the advantage of being able, through the Official Solicitor, to give the panel the assistance of specialist lawyers. We should particularly see the advantage of the Official Solicitor being able to appoint barristers who are experienced in cases where capacity was in doubt or where people were possibly being coerced.

The Ministry of Justice explanation goes on to say:

"An Advocate to the Court will not normally be instructed to lead evidence, cross-examine witnesses, or investigate the facts."

The word "normally" is important in this context. The advocate will perhaps not carry out these functions when acting to advise assisted dying panels, but we should note that the Ministry's guidance does not state that they will never carry out such functions. As we have remarked more than once, we are in unmarked territory here.

I will end by quoting some more of Ms Hughes's evidence, because it is clearly written by an expert in their field. She says:

"In my experience it is not uncommon where a vulnerable person is controlled or is lacking capacity for the person to be apparently expressing wishes in a clear and forceful manner. This can easily be mistaken for a person acting freely and with capacity."

That statement is a powerful counterpoint to some of the confident claims we heard from witnesses about it being relatively easy for doctors to detect coercion. Some of the witnesses from Australia and California were particularly noteworthy in that regard.

Ms Hughes goes on:

"In short, the risks of the Bill are real and substantial. The challenge for Parliament is how to mitigate them. The current drafting is inadequate."

That is evidence we should not ignore. It comes from a distinguished lawyer who is not an opponent of the Bill but who fears that, as drafted, it will not protect the vulnerable. She has offered us what seems to be a workable solution to the problem that concerns her: create a mechanism to involve the Official Solicitor. Amendment (b) to new schedule 2, tabled by my hon. Friend the Member for Derby North, would allow us to put that into practice. I hope that all Committee members can support the amendment and increase the protection that the Bill offers to vulnerable people at risk of coercion.

Sean Woodcock (Banbury) (Lab): It is a pleasure to have you here this afternoon, Ms McVey. I did not intend to make a contribution, but given the number of contributions that have been made, I wanted to respond to them. It has been a really interesting and important sitting.

My hon. Friend the Member for Ipswich is right. I see the panel as a genuine attempt to respond to the evidence we heard in the witness sessions and improve the process. I take that absolutely as read, particularly in respect of the evidence from Rachel Clarke, whose view was that coercion is happening and that we should take the NHS as it is, not as we would like it to be. I see the attempt at introducing a panel as a response to that.

The right hon. Member for North West Hampshire is absolutely right to state that if there is a moral imperative to do something, Parliament should look at passing it and then the public services should figure out how they implement it afterwards. He is right in that. There is obviously a question about whether there is that moral imperative, but he is right to point that out.

Although I take the panel as a sincere attempt to strengthen the Bill, I feel that, as put before us, it is not strong enough. That is why I spoke yesterday to amendment (d) to new clause 21, tabled by my hon. Friend the Member for Derby North, which would ensure that the process was done properly and robustly. Nobody wants to see people dragged in front of a court when they are unwell, but there is the matter of safeguarding, and we do have a concern over coercion. It is integral to ensure we have public trust, so I urge the Bill's proponents to consider those concerns again.

3.45 pm

Jack Abbott: My hon. Friend makes a really good point, especially on the issue of coercion. Amendments on coercion training have been agreed to. Does my hon. Friend think the court system as it stands can deal with his concern about coercion, or will the panel be more able to deal with that kind of concern?

Sean Woodcock: That is my next point—and it is a good question. As I said, the panel is done with the right intention and would improve the process in many ways. My view is similar to that of the hon. Member for East Wiltshire—it is possibly one aspect on which we are in agreement—in that I think it comes at the wrong part of the process. If it was earlier in the process, it would improve things. Court capacity is an issue, but I take the point made by the right hon. Member for North West Hampshire that if we want the courts to do it, they need to get on and do it.

I keep coming back to the issue of what we are asking the state to do. Implementing the wishes and autonomy of the patient is important, but we also need to take very seriously what we are asking the state to allow to be done in its name. There is also the crucial matter of public trust, the condition of the national health service and the issue of capacity in the courts. As my hon. Friend the Member for Ipswich touched on, there is

[Sean Woodcock]

considerable disquiet and concern about how robust this process is going to be. Even though I think having the panel at the start of the process would improve what was put to the House on Second Reading, having judicial oversight at the very end would provide reassurance to the vast swathes of the public who are concerned about this, as well as to Members.

Danny Kruger: The hon. Gentleman is making an important point and I completely agree. Does he agree that the hon. Member for Spen Valley recognised the problems with the lack of a multidisciplinary team in the process and the problems of court capacity, and through her attempt to address both those problems we now have a multidisciplinary team instead of the judicial role? What we really need is both: we need a properly constituted multidisciplinary assessment at the beginning, and then we need the final process to be an approval by a judge. Does the hon. Gentleman agree that that would be a better process?

Sean Woodcock: Having thought about it, that would be my preference. I am in a difficult position in that there is a lot to be said for the panel, and it would improve the process in many ways, but I cannot get around the fact that the judicial aspect was put strongly before Parliament, and ensuring that we would have those safeguards provided reassurance to Members. When I have been out on the doorstep talking to people who are in favour of the Bill—people who wanted me to vote in favour of it—they have said to me that they think the proposal is safe because it includes two doctors and judicial oversight. That does come up, which is why I think we need to keep judicial oversight in the Bill. I do, though, I recognise the very genuine attempt by my hon. Friend the Member for Spen Valley to introduce the panel to improve on some aspects and address the concerns expressed in the witness testimony.

Naz Shah: If I may, Ms McVey, I will speak to the issue of the judicial oversight of the panel and the whole of new clause 21. I would like to understand something, and perhaps the Minister or my hon. Friend the Member for Spen Valley could help me. We have been talking a lot about judicial oversight. My concern is that even if we had judicial oversight, there is no liability if something goes wrong. We would have had judicial oversight, but now we have panel oversight—non-judicial oversight—of the decision. Even then, what if somebody went down the assisted dying route and an issue was raised afterwards? What recourse would anybody—family members and so on—have to hold anybody liable if they did something wrong, including, potentially, the commissioner?

The Minister of State, Ministry of Justice (Sarah Sackman): It is a pleasure to serve under your chairship, Ms McVey.

As my hon. Friend the Minister for Care and I have made clear throughout debate, the Government continue to remain neutral on the Bill and do not have a position on assisted dying. Once again, my remarks will focus on the legal and practical impacts of the amendments, with a view to assisting Committee members. I will first speak to amendments 371 to 373, 377, 378, 381, 388, 390 and 391, new clauses 14, 15, 17 and 21, and new schedules 1 and 2, all tabled by my hon. Friend the Member for Spen Valley.

In executing our duties to ensure that the legislation, if passed, is legally robust and workable, the Government have worked with my hon. Friend the Member for Spen Valley in relation to the amendments, which propose the voluntary assisted dying commission and the panels. They reflect my hon. Friend's intent to replace the court approval process that is currently set out in the Bill. I confirm that this change was driven not by capacity concerns from within Government, but by the Bill promoter's policy intent. Let me be clear: the High Court stage could be made to work, but if the Committee and Parliament elect for the commissioner and panel model, the state will work to deliver that.

New clause 14 and consequential amendment 391 would provide for the establishment of a voluntary assisted dying commissioner. In keeping with other appointments of this significance, the commissioner would be appointed by the Prime Minister, and the individual in post must hold or have held office—so it is not sitting judges, but could be a retired judge—as a judge of the Supreme Court, the Court of Appeal or the High Court.

New clause 14 sets out the central functions of the commissioner, which will be detailed further in new clauses 15 and 17 and new schedule 1. The commissioner would receive documents, including the reports from the co-ordinating doctor and declarations under the legislation, make appointments to the list of persons eligible to sit on assisted dying review panels, and refer cases to those panels, which would replace the role of the High Court in the original draft of the Bill. In addition, the commissioner would have the responsibility for monitoring the Bill's operation and reporting annually to Parliament, which we will no doubt come to in clause 34. It is important to pause there, because that is one aspect in which the commissioner model is distinct from that of a court or tribunal. It will serve multiple functions, not least the monitoring of the Bill's operation and reporting on that annually to Parliament.

New schedule 1 contains practical arrangements for the office of the voluntary assisted dying commissioner, as established in new clause 14. In practice, we anticipate that the commissioner's office will be a non-departmental public body. The establishment of such an office to support the Government-appointed chair or commissioner is common practice for roles of this nature. One such model is the Investigatory Powers Commissioner, which is chaired by a person who is holding or who has held high judicial office. The schedule also introduces the role of a deputy commissioner, who, like the commissioner, must have been appointed by the Prime Minister and hold or have held office as a judge of the Supreme Court, the Court of Appeal or the High Court.

Both the commissioner and deputy commissioner would be appointed for terms of five years, with their remuneration set by the Secretary of State. The commissioner would have the ability to appoint their own staff, having obtained approval from the Secretary of State in regard to the number of staff, the remuneration and the terms, as well as providing an annual statement

of accounts. In the ordinary way, such a public body would be subject to other statutory provisions, not least the Equality Act 2010.

New clause 15 would establish the mechanism for the referral by the voluntary assisted dying commissioner to an assisted dying review panel. When the commissioner receives a first declaration from the person seeking assistance, and reports from the co-ordinating and independent doctors as to their assessments of the person—including a statement by those doctors as to the person's eligibility for assistance—they would be required to refer the case to a panel as soon as reasonably practical. In practice, the task of organising the work of each panel would fall to the commissioner's office. The co-ordinating doctor would be required to inform the commissioner where a first or second declaration is cancelled. Where the commissioner is informed of the cancellation of the first declaration, they must not refer the case to a panel, or must inform the panel to disregard the application if already referred.

Amendments 371, 372, 373, 377, 378, 381, 388 and 390 are all consequential amendments on new clause 21, and together establish the mechanism for the consideration of cases by the assisted dying review panels in place of the High Court. Panels would be required to review each case and issue a certificate of eligibility where they are satisfied that all requirements set out in the Bill have been met.

Sarah Olney: I seek clarification. As drafted, in clause 12(1)(c), the High Court would give

"a declaration that the requirements of this Act have been met",

but in new clause 21(6)(a), the panel is required to issue a certificate of eligibility, to which the Minister just referred. I seek the Minister's guidance on whether it is the Government's view that the High Court declaration has equal weight in law to the certificate of eligibility set out in new clause 21. I ask particularly because that certificate will be relied on for the purposes of suspending the Suicide Act 1961, under which a criminal offence would otherwise have been committed. The certificate of eligibility will need to be relied on to demonstrate that no criminal offence has been committed under that law. Is it the view of the Minister and the Government that a High Court direction, as originally required, can now be fully replaced by, and have equal weight with, a certificate of eligibility?

Sarah Sackman: As I understand it, everything has to be internally coherent in whatever the final draft of the Bill is. Within this structure, because in this case it is a panel that issues the certificate, it is its own sui generis certificate appropriate to this process. The declaration that was referred to in the earlier draft is one that the High Court would normally do. Given that this is on the face of the Bill, and will be in primary legislation, it would have legal force and would, if it were internally coherent with the rest of the legislation, have the legal effect of operating coherently with the criminal offences and, indeed, with the suspension of the Suicide Act, as the hon. Lady just asked. That is my understanding.

Sarah Olney: My original question was more about whether it has the same legal force as a High Court direction.

Sarah Sackman: My understanding is that it would, yes. If I am wrong about that, I will obviously come back to the Committee and correct it, but my understanding is that it would. They are two different things—one is called a certificate of eligibility and one is a High Court declaration—but in terms of how they operate within this legal scheme, my understanding is that they would have the same legal effect, and they are intended to.

Under new clause 21, the panel must hear from, and may question, the person seeking assistance and the co-ordinating doctor, or the independent doctor, or both. The panel may also hear, and may question, the person's proxy if that is relevant, and any other person, including those appearing to have relevant knowledge or experience. This could include family members, or other individuals with an interest in the welfare of the person, as well as other experts. The new clause is explicit that the panel must not grant the certificate of eligibility if it is not satisfied that all the requirements have been met. Further consequential amendments introduce references to the certificate of eligibility throughout the Bill. Once the panel has made a decision, it will be required to notify the person seeking assistance, the co-ordinating doctor, the commissioner and any other person specified in the regulations.

As others have pointed out, the amendments tabled by my hon. Friend the Member for Spen Valley do not spell out every step of the process or the procedure that the panels would be expected to follow. That is left to secondary legislation, and it will be for the commission and the commissioner to produce their own guidance on how the panels and the panel procedure are intended to be governed and regulated. That is in line with the approach to legislation more broadly, with main objectives typically set out in primary legislation, and secondary policy issues and technical and administrative matters, dealt with through secondary legislation, regulations and guidance.

4 pm

If Members want to see a comparable model, they can look to the Parole Board. Its functions and constitutions are set out in primary legislation, but the rules governing it are set out in secondary legislation in the Parole Board Rules 2019. Extensive guidance is produced by the Parole Board itself. Indeed, there might be some analogy that one could draw between that example and the sort of model proposed in the promoter's amendment.

Amendments (a) to (d) to new clause 21 would change the criteria used by the panel when considering whether to grant a certificate of eligibility. Those tabled by the hon. Member for Reigate relate to the appropriate standard of proof.

Amendment (a) would require the panel to be satisfied "beyond reasonable doubt"—the criminal standard of proof—that the Bill's criteria have been met. In law, the balance of probability standard means that a court is satisfied that an event occurred if it considers that, based on the evidence, the occurrence of the event was more likely than not. The civil standard is currently used for end-of-life decisions and in other similar contexts. In addition to being the relevant standard of proof when deciding whether a person has capacity under the Mental Capacity Act 2005, including for serious medical treatment, the civil standard, which would be applied

under new clause 21, is also applied in serious cases such as suicide inquests, withdrawal of life support and childcare proceedings. In practice, the panel would establish a case on the balance of probabilities only on the basis of strong evidence, including contemporaneous documentation, records, or hearing from the relevant persons whom they are required to hear from. The panel's decision must be unanimous.

Naz Shah: We have heard before that the panel's decision must be unanimous. However, I have tried looking in the Bill and it does not state that specifically. My understanding is that two people could nod their head, the other one would not have to, and it would still pass.

Sarah Sackman: I believe it is in there. Let me find the relevant provision so that I can refer my hon. Friend to it.

Naz Shah: It is a majority vote, not unanimous.

Sarah Sackman: It is a majority vote for the other decisions that a panel may make, but in respect of certification, the decision is unanimous. Paragraph 5(2) of new schedule 2 states:

"Decisions of a panel may be taken by a majority vote".

Such decisions include whether to hear from an additional expert, or whether further investigation is required in respect of an aspect that the panel may be concerned about, such as coercion or capacity. While those decisions can be taken by a majority vote, in respect of certification and granting a certificate of eligibility, I refer my hon. Friend to paragraph 5(3), which states:

"The panel is to be treated as having decided to refuse to grant a certificate of eligibility if any member votes against a decision to grant such a certificate."

That is a slightly mealy-mouthed way of saying that if any member of the panel resists the grant of the certificate, no certificate can be issued.

Danny Kruger: I just want to support the hon. Member for Bradford West. She is absolutely right. It is clearly intended that there should be a unanimous decision but, in fact, as the hon. Lady pointed out, if one of the members decides effectively to abstain, the procedure does go ahead. It is not that they all have to actively support the decision; only two of them have to do that. One of them could have their doubts and sit on their hands, and it would still go ahead.

Sarah Sackman: That might be something that other hon. Members wish to take away with them, whatever the policy intent may have been. In fairness, I do not think that the question of whether there is a requirement to give a positive indication of a decision either way is on the face of the Bill. However, I think that clearly the intention behind paragraph 5(3) of new schedule 2 is that there is unanimity in relation to the grant of an eligibility certificate.

Daniel Francis: I was once on a planning committee in which one member of the committee voted in favour and all the other members abstained, so the recommendation went through one to zero. Technically, given the way in which new schedule 2 reads to me, that could happen, because one member could vote in favour and two could abstain, and that would therefore be considered unanimous. Will the Minister comment on that?

Sarah Sackman: We are discussing how to construe the provision in paragraph 5 of new schedule 2. I should reiterate that, obviously, it is the promoter's intent to have—hon. Members may call it what they will—the safeguard of unanimity behind that provision. If there is any feeling that the drafting does not fully reflect that intent, it can be tightened up. However, under of the Bill, there is clearly an intent to have unanimity in respect of the final decision about certification.

Kim Leadbeater: It absolutely is the policy intent that there should be a unanimous decision of the panel. If there is any lack of clarity, I am very happy to look into working with official draftspeople to tighten that up.

Sarah Sackman: I thank hon. Members for their interventions.

In respect of the standard that would be applied in order for the panel to be satisfied, in practice, as I was saying, the panel would establish a case on the balance of probability in those circumstances only on the basis of strong evidence. In other words, the more serious the issue to be determined, the closer the scrutiny and the stronger the evidence required.

Introducing a requirement for the panel to be satisfied beyond all reasonable doubt at this stage would create a difference to, or a divergence from, the standard applied by professionals earlier in the process, such as by the doctors in the first and second assessments, and—I think the hon. Member for Reigate acknowledged this in her speech—to ascertain whether, among other things, the person has capacity to make the decision to end their own life, whether they have a clear, settled and informed wish to do so, and that they have not been pressured or coerced. Such a requirement would create the problem of making the application of the Bill incoherent because, of course, if a civil standard has been applied earlier in the process, the higher, criminal bar could never be satisfied at the panel stage. The principal decision is what standard should be applied and, as I have said, the civil standard is used in other end-of-life decisions, but there is also a question of the internal coherence of the Bill.

Rebecca Paul: I thank the Minister for the very clear way in which she is explaining everything. I completely acknowledge what she has just said. As she rightly said, I alluded to the fact that I tried to make the change at an earlier stage, but was unsuccessful, and I am now trying to put it through here. Can the Minister comment on the meaning of "satisfied"? If we are not going to have "beyond reasonable doubt", can she expand a little on the meaning of "satisfied" and whether she is comfortable that that is clear enough for these purposes?

Sarah Sackman: The answer is yes. I, on behalf of the Government, am satisfied that that would be commonly and well understood by those applying it, and any court construing it, that the standard to be applied is the civil standard. That would be understood by not just the commissioner in terms of laying down the rules for the

panels, but the panels themselves. It is important to recall that as Lord Bingham, one of the most distinguished judges that this country has ever produced, once said,

"The civil standard is a flexible standard to be applied with greater or lesser strictness according to the seriousness of what has to be proved",

and there is no doubt, based on what Parliament has debated, about the utmost seriousness of these issues. To answer the hon. Member's question, the answer is yes, I think it is clear. That is the Government's position.

Amendment (b) to new clause 21 would give the panel discretion to refuse to grant a certificate of eligibility where the requirements stated in the Bill are met if it believes there are

"particular circumstances which make it inappropriate for the person"

to be provided with assistance. The Government's view is that this could risk unpredictability and inconsistency in the panel's decision making and reduce legal certainty for the person seeking assistance, as well as for the panel.

Amendment (c) to new clause 21 concerns three specific requirements under subsection (2):

"(c) that the person has capacity…(h) that the person has a clear, settled and informed wish to end their own life"

and

"(i) that the person made the first declaration voluntarily and was not coerced or pressured by any other person".

The amendment would mean that despite finding that those criteria had been met on the balance of probabilities, the panel could stay proceedings when it believed there was a real risk that they have not been satisfied. As with amendment (b) to new clause 21, this could result in uncertainty for the applicant and in terms of what is required of the panel in its decision making.

As I referred to earlier, in a lot of these decisions, the question of whether somebody has capacity or is being coerced is ultimately a binary decision for each panel member. The person has capacity or they do not. In applying the civil standard with the rigour that Lord Bingham spoke about in the most serious cases in circumstances when the panel or its members identify that there is a real risk, one would expect them to exercise their discretionary powers to seek more evidence to remove that risk and doubt, and if that persists, to refuse and make the binary choice that the person does not have capacity or is being coerced, or vice versa.

Amendment (d) to new clause 21 would require the panel to hear from and question both assessing doctors, as opposed to the requirement that the person must hear from, and may question, one of the doctors, and may hear from and question both. The amendment would also require the panel to hear from and question the person seeking assistance and the person's proxy when clause 15 applies. Under new clause 21, the panel must hear from and may question the person seeking assistance and would have the ability to hear from and question their proxy.

The amendment would also make it explicit that the panel must consider hearing from and questioning parties interested in the welfare of the person and those involved in the person's care. Under new clause 21, the panel would have the ability to hear from any other person, which could include family members, caregivers and whomever else it deems appropriate.

Naz Shah: I appreciate that, under the new clause, the panel can hear from anybody. Can the Minister confirm that the panel is unable, unlike a mental health tribunal, to summon people to appear before them or insist that witnesses appear, and to make them swear under oath when presenting their evidence?

4.15 pm

Sarah Sackman: My hon. Friend is absolutely right. Under the Bill as drafted, a panel and the commission are not invested with powers of summons, and the evidence that is heard and requested is not conveyed under oath. It is not a court or a tribunal. Those provisions do not apply, so she is absolutely right. They can make the request, but they cannot compel someone to attend.

Amendment (e) to new clause 21 would make it explicit that, when considered appropriate for medical reasons, the panel would be able to use pre-recorded audio or video material when considering evidence for the purposes of determining a person's eligibility for assistance. Panel procedure would be set out in guidance issued by the commissioner, which would detail the processes governing the panel process in general, but also for the use of that form of evidence.

New schedule 2, which was tabled by my hon. Friend the. Member for Spen Valley, builds on the new clause 21. The new schedule further details the composition and the intended proceedings of the assisted dying review panels. As we have heard, panels would be formed of three members, including a legal member sitting as chair, a psychiatrist and a social worker.

Thanks to the hon. Member for Richmond Park, we have dealt with the provision on decisions to grant the certificate of eligibility and how they will be determined by members of the panel. We heard from the promoter herself, my hon. Friend the Member for Spen Valley, that the intention is that such decisions are unanimous.

The commissioner would be responsible for making appointments to a list of persons eligible to sit as members of the multidisciplinary panels, and for establishing those panels. Under the schedule, the legal member as chair of the panel must hold or have held high judicial office, be one of His Majesty's counsel—that is a KC—or have been authorised as a temporary judge in the High Court. The psychiatrist member must be a registered medical practitioner and a practising registered psychiatrist, and the social worker member must appear on the register maintained by Social Work England or Social Work Wales.

Naz Shah: The Minister is being generous with her time. I just want to confirm that the Bill does not require the social worker to be a palliative care specialist. Am I right in thinking that?

Sarah Sackman: I think the hon. Lady is right that that is not specified as a requirement. All three panel members would be drawn from the relevant professions and would therefore be subject to the standards pertaining to those professions. In the legal profession, they will be practitioners who are experienced in analysis and reaching decisions based on facts and law. The professional standards for all three regulated professions place a

[Sarah Sackman]

high value not just on integrity, but on impartiality. For the commissioner and for any judges on the panel, the "Guide to Judicial Conduct" makes the principles explicit.

Naz Shah: The Minister mentions impartiality. As things stand, the doctors who take part in the process will have made the choice to do so. Would the same yardstick be applied to the panel, or would its members just be appointed? Could they choose not to participate in the process?

Sarah Sackman: I anticipate that members of the professions will apply to be members of the panel. There will have to be a recruitment process, which is something that the commissioner, who is appointed by the Prime Minister, will undertake. I emphasise the point that all the professions, in their different ways—I am obviously most familiar with the legal profession, particularly the Bar—are governed by professional standards that specify the need for and place a high value on not just integrity, but impartiality.

Naz Shah: I struggle to agree that there would be impartiality, because there are people who are committed, believe in, agree with or are advocates for assisted dying. Does that not raise a concern about potential bias—subconscious bias, even?

Sarah Sackman: There is no doubt that, as we will see later, the panel would be subject in all its decisions to public law principles, including procedural propriety. The absence of any suggestion of bias—even of the appearance of bias—is an important public law principle. In any event, given the recruitment process, the interviews that would be undertaken and the professional standards to which all these people would be held, I think that they would apply their independent and impartial skills and judgment to the decision making and the assessment of eligibility in a manner appropriate to the task set out in the Bill.

One would expect professionals on the panel to adhere to their professional standards and act with impartiality in ascertaining whether the eligibility criteria have been met. Speaking as the Minister—indeed, even speaking for myself—I have no reason to doubt the independence, impartiality and professionalism of the panel or see any suggestion of bias.

Danny Kruger: I appreciate that an impact assessment is due to come later, after we have debated whether we should have this system or not. Nevertheless, will the Minister tell the Committee whether officials in her Department or in the Department of Health and Social Care have informed the hon. Member for Spen Valley whether the workforce will have sufficient capacity to provide the professionals required? Has any estimate been made of the number of people who will be required to step forward to take part in these panels?

I note the point that the reason why the proposed High Court stage was dropped was not that Ministry of Justice officials had informed the hon. Member for Spen Valley that the family court system would be overwhelmed. Can the Minister confirm that there was no communication to the hon. Member that the courts would not be able to cope with the demand? That was clearly reported in the media at the time, but can she confirm that it was not the case?

Sarah Sackman: The hon. Gentleman's first point is a matter for the impact assessment itself. Clearly both Departments have data on the state of the professions, on how many KCs there are in the country and on how many people will be needed to provide the service. As I say, if Parliament wishes it and legislates for it, the state will work to deliver it, but the detail will come in the impact assessment.

On the hon. Gentleman's second question, as I made clear earlier, the effective shift away from the High Court model in clause 12 to the model in the new clauses has been driven by the policy intent of my hon. Friend the Member for Spen Valley. I will not get into the precise chronology of when the matter was raised, but it came from my hon. Friend.

Yesterday, I hotfooted it from the Committee to Justice questions, where I was delighted to see the hon. Member for Reigate. We discussed capacity issues in our Crown courts and civil courts. Those issues are well reported in the media, but there is no connection between them and the policy shift here. If this is what Parliament chooses to legislate, the state will work to deliver it.

Kim Leadbeater: It is important to acknowledge that it will be a number of years before this law will be implemented. Hopefully, the Government will continue the fantastic job that they are doing to improve capacity in our courts, so that even if capacity is an issue now, a few years down the line it will not be.

Sarah Sackman: I thank my hon. Friend for that encouragement. The Government's position throughout the entire process, in so far as we have worked with her on these amendments and others to give effect to her intent, is to ensure that they are workable and operable. If this were not workable, we would not be here discussing it.

There are several examples across Government of judges or senior lawyers and KCs sitting on decision-making panels or in organisations or bodies that sit outside the framework of His Majesty's Courts and Tribunals Service. We have discussed some examples, such as public inquiries. I say this as the Minister for courts: it speaks to the trust and public confidence in both judges and KCs that when there is a public policy challenge to which many of us as politicians struggle to find a resolution, we so often turn to judge-led and KC-led inquiries to establish either what has happened or how systems can be improved. That is partly because of the impartiality and integrity that they bring to that work. I offer the example of the judicial commissioners who operate on behalf of the Investigatory Powers Commissioner and who provide independent authorisation of application for the use of the most intrusive investigatory powers.

We have mentioned inquiries; I have also mentioned Parole Board panels as an example of inquisitorial rather than adversarial panels. They are often multidisciplinary, and many of their members are current or retired judges. They sit and hear issues of the most complex nature, assessing the risk that prisoners may present to the public on release.

Danny Kruger: I appreciate the Minister's point about the Parole Board. Does she acknowledge that in the Parole Board example there is the essence of an adversarial system, because the victim is invited to give a statement? The board therefore hears opinions from, as it were, both sides of the case. Who will fulfil that second role in the proposals before the Committee?

Sarah Sackman: I drew the comparison for the purpose of showing where judges and legal experts are deployed in a multidisciplinary forum that is not a court or tribunal. I was not suggesting that there is a straight-line analogy. After all, a Parole Board panel is performing a different function to make a global assessment of risk. That is what it is ultimately doing; it is not strictly speaking an adversarial process in that sense.

The situation that the Bill addresses is that of an individual seeking to establish their eligibility for a right that—if the Act is passed—Parliament will have conferred on those who meet the criteria. It is not an adjudication. It is the panel's function to assess, through the various conversations and provisions and by interrogating the information that has been provided, whether it is properly satisfied that the eligibility of the person's election to avail themselves of that right is sound.

Sarah Olney: I am trying to clarify this for my own benefit, because I am not familiar with some of these procedures. Is there a difference between a High Court judge leading an inquiry or sitting on a panel, using their legal experience to provide advice or recommendations or give an opinion, and having a judge sitting in the High Court, who, under the original wording of clause 12, would be giving a direction? If there is a difference, have we not crossed from one role to the other by introducing a panel rather than a High Court direction? Does that matter for the purposes of the legislation?

Sarah Sackman: To be absolutely clear, what we are discussing reflects the intent of my hon. Friend the Member for Spen Valley. It is important to break it down. We have a judge in the role of the commissioner, and the commissioner will set up the framework and guidance for how the panels will operate and will lend their expertise. Our judges often sit on the Civil Procedure Rule Committee, developing the appropriate practice to govern the process in question. In this case, it would be the process of providing the third layer and the assessment whether the eligibility criteria have been met.

The commissioner would also—and this is where the role is distinct from that of a court or tribunal—provide a monitoring and reporting function to Parliament on the operation of the Act. That is a fundamental distinction from the model that we will have if we pursue clause 12, because in that case each application for an assisted death would go to whichever High Court judge happened to be sitting on that day. There would be no requirement for particular expertise on the part of the High Court judge, and that judge would not have to report on the operation of the Act. It is a different model that my hon. Friend has elected.

4.30 pm

To answer fully the question from the hon. Member for Richmond Park, the panel making determinations in respect of individual applicants seeking a certificate of eligibility would include a legal member, who might or might not be a judge or a KC. As my hon. Friend the Member for Spen Valley says, they are not there as a judge; they sit as a panel member, exercising the function of the panel alongside the other experts. I hope that that provides some explanation of how the Government see the model that she has chosen operating.

I turn to amendment (a) to new schedule 2, the Welsh language amendment. New schedule 2 details the composition and proceedings of assisted dying review panels. The amendment sets out the following requirement:

> "Each member of a panel must have fluent proficiency in the Welsh language if services or functions in the Act are to be provided to an individual in Welsh."

As we have discussed, panels must consist of a legal member, a psychiatrist and a social work member. Under the amendment, they would all be required to be fluent in the Welsh language. From the Government's point of view, the amendment would cause significant operational challenges. It would require there to be enough members of all three professions who are fluent in Welsh and who have applied and been appointed to the pool of panel members, in order to convene a panel that, given the circumstances, may be required at short notice.

Liz Saville Roberts: The situation exists already in Wales. For example, people are prepared to travel in order to facilitate Welsh-medium coroner inquests. There are local authorities such as my own, Gwynedd, that have a requirement that all social workers be able to work in the medium of Welsh. The requirement will already be there, but this is a process of acknowledging those psychiatrists who are able to meet it. It is critical for the Bill, if we are to put the person and their needs first.

I urge the Minister to consider the amendment. We are already familiar with this matter in relation to digital technology and the operations that we already need to put in place to allow people to use their language in Wales. The amendment recognises the dire situation. It recognises the absolute urgency of people who are at the most stressful time in their life being able to use the language that they prefer.

Sarah Sackman: I want to reassure the right hon. Lady about the provisions that will apply even if her amendment is not accepted. The Welsh Language Act 1993 requires public bodies that are either named in the Act or named by Welsh Ministers, and which provide services to the public in Wales, to prepare a Welsh language scheme setting out the steps that the body will take in relation to the use of the Welsh language while providing those services. As I understand it, this approach is used all the time in legal proceedings in Wales.

In an instance in which a party wishes to speak in Welsh at the proceedings, section 22 of the 1993 Act will apply. Any party to the legal proceedings can express themselves in Welsh, at which point a Welsh interpreter would be commissioned to facilitate the discussion. That will happen. That will be the status quo—the backstop, if you like—without the amendment. Requiring all members of the panel to speak fluent Welsh would, in the Government's view, be a significant operational challenge that could lead to undue delay at the end of life.

Tom Gordon: I speak only one language and it is definitely not Welsh, even though I did have a stint working in Wales. With any language, things can be lost in translation. When we are talking about something like assisted

[Tom Gordon]

dying, does the Minister acknowledge that even with very skilled interpreters, there would have to be a suitable level of training to make sure that everything was fully thought through and there were no cracks—that nothing would slip through the net. That is not covered under the Welsh Language Act currently, and that is why the amendment has been tabled. Does she appreciate the severity of that?

Sarah Sackman:]The right hon. Member for Dwyfor Meirionnydd and the hon. Members for Chesham and Amersham and for Harrogate and Knaresborough have all put their case incredibly powerfully. In emphasising the operational difficulties that the Government have identified, I will make this point. The approach under section 22 of the Welsh Language Act is that the ability to speak in Welsh and have interpretation services is adopted in very serious legal proceedings indeed. The hon. Gentleman is right: we are talking about nuances that can determine civil or criminal liability; those are very serious issues indeed. I am not saying that that is quite as serious as matters of life or death, but getting right the sorts of things that interpreters need to ensure they are getting right, as well as vindicating the person's ability to express themselves in their mother tongue or their preferred tongue, is something that happens already and would happen under the operation of this legislation.

Liz Saville Roberts: I wonder whether the Minister appreciates that when it comes to Welsh speakers using their language in the face of the majority language, English, with its status, what we are doing here is putting another barrier in their way: "I am making a nuisance of myself; I have to ask a favour and get interpreters." That is not what we should be doing with this legislation. We should be putting those people first and making sure that they can express themselves at this most emotional time as effectively as possible. Interpreters should not be in the room with the assisted dying panels. That is fundamentally against the nature of the Bill.

Sarah Sackman: I appreciate the passion and force with which the right hon. Lady makes that point. I have set out the Government's concerns about deliverability—the operational challenges around delivering what has been suggested. This is a case of applying section 22 of the Welsh Language Act to the commissioner, who under the promoter's new schedule 2 would be able to give guidance to panels on how exactly they should facilitate exactly what the right hon. Lady is seeking—the ability of the dying person who is seeking an assisted death to express themselves through the Welsh language within those most sensitive of proceedings. There could be facilitation by the commissioner in order to commission an interpreter and assist the person to speak in Welsh.

I appreciate that the right hon. Lady feels that that would create a barrier that is not appropriate to this context, but I think it is a reflection of the fact that certainly the Government are not seeking to stand in the way of people expressing themselves in Welsh. We want to vindicate that. It is in line with our wider commitment to devolution and to working with the devolved Governments in the context of the Bill. The right hon. Lady has made her point forcefully, and no doubt the Committee will come to vote on this amendment, but I have to, on behalf of the Government, acting responsibly, lay out some of the challenges that it would mean to the operability and deliverability of the Bill.

Sarah Green (Chesham and Amersham) (LD): I accept that the Minister is in a difficult position, because she is presenting the case for the Government's position and cannot take a position herself. I will just gently ask whether she accepts the weariness of Welsh language speakers and campaigners over generations, who have been faced time and again with the same argument—of operational challenges, whatever that issue may be. I suggest to her that perhaps it is time that the Government stopped using that excuse.

Sarah Sackman: I thank the hon. Lady for that intervention. She has heard the Government's position on the operation of the Bill. As I said, it is important that, in the event that this amendment is not taken forward, the points and the force with which they are made are fed into the commissioner's modus operandi in order, as far as possible and within what resources allow, to allow people to express themselves in the Welsh language. As I said, I want to put on record our continued commitment to devolution in that context, and to working with the Welsh Government to resolve in a thoughtful and constructive way any of the outstanding legal, technical and constitutional issues that may arise.

Liz Saville Roberts: Surely many of the constitutional issues that we are discussing should be decided by the Senedd and the Welsh Government. It is a matter of urgency now that we discuss the "appropriate authority", which is a term used in other legislation. I believe that in the Crime and Policing Bill, "appropriate authority" is used in relation to England and Scotland. We need to have clarity on these decisions as we move ahead.

Sarah Sackman: The right hon. Lady is absolutely right that we do need clarity. As my hon. Friend the Member for Spen Valley has made clear, the intention is for the legislation to apply across both England and Wales, and the model being proposed under these provisions is a single commission. We need to ensure close working to resolve those technical and legal issues.

Amendment (b) to new schedule 2 deals with the issue of the Official Solicitor. It seeks to establish a process through which a person nominated by the Official Solicitor acts as an advocate to the panel. It is important to remind ourselves of the role that the Official Solicitor typically plays. They act as a litigation friend, and where they do act as an advocate to the court, the purpose of that function is to assist courts on a difficult or novel point of law. The focus of the Official Solicitor is in representing adults who lack mental capacity, and children. Both groups are plainly out of the scope of the Bill. The Bill applies to someone who has capacity and who is applying for an assisted death.

The amendment would require a significant and radical change in the function and focus of the Official Solicitor. Under new schedule 2, assisted dying review panels would have their own powers to determine whether the requirements of the Bill had been met, including the ability to hear from and question any other person.

Naz Shah: The Minister is being very generous in giving way. I want to understand something. She says that the Official Solicitor is there to help with adults who lack capacity, but in the cases before the Court of Protection of the girls who had anorexia, the judges took a decision that they should not continue to be force-fed. The judges concluded in nine of 10 cases that they lacked capacity, and yet accepted that these girls were inevitably going to die. In that case, would the role of the Official Solicitor not be helpful as a further safeguard?

Sarah Sackman: It is important to look at this issue in the context of what my hon. Friend the Member for Spen Valley is setting out to do through the legislation, and what the panel's function is, which is the function that was discussed in the debate. This is not a trial or an inquiry. That is not what is being undertaken by the panel. The panel's purpose is to ensure that the eligibility criteria process has been followed in a correct, lawful and safe way. As others have pointed out, it is not adversarial, and will not be described as such in the Bill.

All that I am saying on behalf of the Government is that the Official Solicitor's role is most frequently to assist in court with a difficult or novel point of law when the person cannot do it themselves. Well, we do not have that here. We are not determining points of law; we are determining whether this person has met the eligibility criteria. Secondly, the Official Solicitor's role is for when individuals lack capacity. In the Bill, by definition, the person who is applying has already satisfied two doctors that they have capacity. Of course, the question of capacity may be something that the panel wishes to explore further—it has the three panel members and the ability to draw on its powers to seek further information to test that—but it is not clear, without altering the current role that the Official Solicitor plays within our legal system, what role they would be serving.

Naz Shah: I appreciate the Minister's position and am grateful for her explanation, but it does not address the central point, which is that nine girls were deemed not to have capacity. Despite all the amendments that have been tabled and the letter from all the charities about anorexia, that has not been addressed. In absence of any impact assessment on one of the issues that most frustrates me, how do the Government conclude that the workability of the Bill is sufficient? Will it work, given that we do not have the protection for those girls who may have anorexia? There is precedent for such girls who did not have capacity. How will the Government safeguard those girls in particular?

4.45 pm

Sarah Sackman: I thank my hon. Friend for her intervention. She has brought up that case a number of times in various debates on the Bill. In this context, part of the provision—in terms of the design and operation of the commissioner and the panels to which the various cases are referred—is the development of guidance. If the commissioner deems specific processes appropriate to the consideration of applications for assisted death where anorexia is an issue, that guidance can be developed. Again, that is a matter for the promoter of the Bill, but one might have thought that having a dedicated body in relation to assisted death—which also has the monitoring function that we will come to in clause 34—means the development of expertise in dealing with cases, in particular those especially difficult cases of the nature my hon. Friend the Member for Bradford West raises. From a Government point of view, that would not necessarily flow—it is hard to see why it would at all—from the High Court, if we revert to that. That is a distinction between the two models that the Bill's promoter has explored.

Kim Leadbeater: That is another important argument for having the panel. Where a terminally ill person with an eating disorder has been deemed to have capacity by two doctors and—I surmise, as we now have the compulsory referral—a psychiatrist, we will have on the panel another psychiatrist and a social worker. The panel does help to address concerns about capacity. Does the Minister agree?

Sarah Sackman: My hon. Friend has developed her thinking, and the Government have worked with her to reflect that policy intent. I think she is right that the panel is capable of doing just that and it could operate in that way.

Amendment (c) to new schedule 2 relates to the issue of domestic abuse training. It would make the voluntary assisted dying commissioner responsible for ensuring that all panel members had received training on domestic abuse, including coercive control and financial abuse. Persons appointed to the list of eligible panel members would already be qualified in the field of law, psychiatry or social work, and would have done all the training that pertains to receiving a professional qualification in those fields.

In addition, under new schedule 2 tabled by my hon. Friend the Member for Spen Valley, the commissioner would be able to give guidance to the panels, which could include training requirements, and the panels must have regard to that guidance in the exercise of their functions. That is all I propose to say about that. It might be seen as an example of something that would typically—I am not saying it has to—be left to regulation or the guidance, rather than being in primary legislation.

Amendment (d) to new schedule 2 relates to the panel sitting in private or in public. It seeks to ensure that panels sit in private by default.

Kit Malthouse: I am not sure that my amendment (d) was selected—unfortunately, I missed the deadline—so the Minister does not need to cover it.

The Chair: Order. I will suspend the sitting—

Sarah Sackman: Put us all out of our misery!

The Chair: I did not wish to say that, but the Minister did. We will come back at 5.10 pm.

4.50 pm

Sitting suspended.

5.10 pm

On resuming—

[Sir Roger Gale *in the Chair*]

Sarah Sackman: It is a pleasure to serve under your chairship, Sir Roger.

New clause 17, tabled by my hon. Friend the Member for Spen Valley, will establish an internal review process. Where a panel refuses to grant a certificate of eligibility, the person seeking assistance would have the option to apply to the commissioner for their case to be reconsidered on the grounds that the first panel's decision contains an error of law, is irrational or is procedurally unfair—essentially public law grounds. If the commissioner is satisfied that any of those grounds apply, having considered the case without a hearing, they must refer the case to the second panel for a fresh determination. The commissioner will be required to give reasons for their decision in writing. The decision should be shared with the person seeking assistance, the co-ordinating doctor and any other person specified in regulations.

In addition to this internal review process, decisions made by the commissioner or a panel will be amenable to judicial review. It will be for the court to decide whether an individual or group is sufficiently impacted to have standing.

Amendment (a) to new clause 17 proposes a change to who can apply for reconsideration of the initial panel's decision. This amendment, tabled by the hon. Member for Reigate, seeks to make changes to the process of applying to the commissioner for reconsideration of a panel's decision, as set out in new clause 17. It would widen the range of persons eligible to apply for a reconsideration, to include not just the person seeking assistance but their next of kin and other relatives, the medical practitioners treating them, and any other person who engaged in the first panel's proceedings.

Secondly, the commissioner would be able to allow the application for reconsideration on the basis that the first panel's decision was wrong or unjust because of a procedural or other irregularity in the proceedings. This could include scenarios where a person wishes to challenge the panel's decision to grant a certificate of eligibility. "Wrong" is an unspecific, subjective and uncertain term that is not typically used in legislation for these reasons: it is a far broader criterion than that set out in new clause 17 and would give the commissioner a significant degree of discretion on whether to exercise the power to have the matter reconsidered.

Lastly, amendment (a) to new clause 17 would make it mandatory for the commissioner to consider each reconsideration with a hearing, unless they consider it to be in the interests of justice to proceed without a hearing. This could increase the time it takes to complete the process, as well as the complexity of the process.

In addition to the internal review process under new clause 17, any decision made by the commissioner or any individual panel would be amenable to judicial review. It would be for the court to decide in each and every case whether an individual or group challenging any such decisions is sufficiently impacted to have standing for the purposes of judicial review.

Danny Kruger: I would be grateful for the Minister's advice on whether she thinks a family member will always have standing. I appreciate her point that it will be for the panel to consider, but is it her view that in law, as in our experience, family members, in the normal understanding of the term—again, we are conscious of the definition of "family members"—will have sufficient standing? Or can she foresee circumstances in which it might be concluded that family members do not have sufficient standing to make a representation?

Sarah Sackman: The hon. Gentleman asks about standing and the process of judicial review. It is fair to say that, in our corpus of administrative law, the rules of standing are fairly liberal. On having a sufficient interest to bring a case, the case needs to be meritorious and would need to meet the permission threshold, which again is a relatively low standard: does one have an arguable case? A family member who has identified a procedural irregularity or a public law error that is arguable will have standing, I would have thought, to bring a judicial review.

The hon. Gentleman also asks about the potential for judicial review of individual decisions to issue a certificate of eligibility, but of course any decision by the commission, the commissioner or any of the subordinate panels will be amenable to judicial review. For example, the decision to issue guidance or policy documents relating to the commission's operations will be amenable to judicial review. One can imagine that, under our broadly liberal rules of standing within the administrative court, a range of bodies not pertaining to the case of an individual and their family, but having an interest in those rules, might be eligible. Ultimately—as the Minister for courts, I would say this—that will be a matter for the independent judiciary, but it is right that, within our public law system, the rules of standing are fairly broad.

5.15 pm

New clauses 2 and 3 and amendments 61 to 70, in the name of the hon. Member for Runnymede and Weybridge (Dr Spencer), relate to the creation of a tribunal. That is a further alternative to what we have already heard about: we have had the High Court, the commission, and now a proposed tribunal. The tribunal would replace the High Court stage with the first-tier tribunal. Tribunals are designed to be more informal and accessible than courts, with subject matter expertise represented on the panels. We are familiar with employment tribunals, immigration and asylum tribunals, property tribunals and so forth. Under the proposed change, people seeking assistance would be required to apply to the first-tier tribunal for a declaration that the necessary requirements in the application for an assisted death had been met. Indeed, there are parallels with the process that would be followed under the panel and commission models.

The requirements would be the same as those under clause 12(3), but with the addition of two further requirements: that

"the person has relevant and available palliative care options available to them",

and that

"the person is not liable to be detained under the Mental Health Act 1983".

The tribunal would have the same powers as the High Court in the original draft of the Bill, in relation to making an assessment, including the ability to speak to the patient and the co-ordinating and independent doctors.

The tribunal panel considering each case would be required to be formed of a sitting judge, a medical practitioner and a layperson. Specifying a tribunal panel's membership departs from normal tribunal arrangements, under which responsibility for determining panel composition is delegated to the senior president of the tribunal.

The tribunal model set out in these amendments and new clauses shares some similarities with the amendments in the name of my hon. Friend the Member for Spen Valley on introducing voluntary assisted dying panels. However, tribunals are typically, although not always, adversarial in nature, with two opposing sides. They adjudicate in a dispute. The Government's policy is that any tribunal should fall within the unified tribunal structure, and therefore be governed by the Tribunals, Courts and Enforcement Act 2007.

As we have discussed, an assisted dying commissioner would have greater flexibility than a tribunal to set the procedure of the panels, because they would be outside the tribunal structure. Under clause 34, additional duties can be placed on the commissioner in terms of the operation of the Bill, including a reporting and monitoring function. Those features all apply to the commission model, but they would not apply to a tribunal model, so therein lies the difference. My hon. Friend the Member for Spen Valley has given her reasons for preferring the commission model.

As I said earlier, the Government have taken a neutral position on the substantive policy questions pertaining to how the law in this area could change. It is ultimately a matter for the Committee and Parliament as a whole, but I hope those observations have been helpful to Committee members in considering this important clause.

Kim Leadbeater: It is a pleasure to serve under your chairmanship, Sir Roger. It was a delight to see the mum of the hon. Member for East Wiltshire. Sadly, I think she is no longer in the Public Gallery, but I hope they had a really good chat.

Danny Kruger: I am sorry to report that my mother could not hear a word of the proceedings. I am exaggerating, but she grumbled about the mumbling, which is a lesson for us all.

Kim Leadbeater: We have all been told off, and quite rightly.

I thank colleagues for another powerful, robust and thorough debate on this important subject. I thank the Minister for providing such an excellent and clear description of the changes to clause 12 that I have proposed this afternoon—I will not repeat that description. The Bill is already the strongest of its kind anywhere in the world. My amendments will make it even more robust. As we have heard, the Bill is much safer than the existing ban on assisted dying, which leaves terminally ill people and their families without any such protections at all.

The proposal to have a multidisciplinary panel, appointed by a judge, to examine each request, following earlier assessments by two independent doctors and, where necessary, a psychiatrist, reflects the expert testimony we have heard during our proceedings. It strengthens the Bill by adding more varied expertise to the decision-making process, with judicial oversight, and it includes an important monitoring and reporting function in the commissioner.

My amendments show the Committee process working exactly as it should, reflecting on evidence from the UK and around the world, and making a strong Bill even stronger. I appreciate that, for procedural reasons, we will not vote on the replacement of clause 12 until the new clauses are put, but I am encouraged that colleagues have offered positive responses and comments to the proposal for a commissioner and a multidisciplinary panel, regardless of how they voted on Second Reading. That tells me that, whatever our views on the Bill, there is a shared commitment to getting protections for terminally ill adults right, which means that we are doing our job.

Amendment (c) to new schedule 2 was tabled by my hon. Friend the Member for Lowestoft (Jess Asato). I was pleased to support my hon. Friend's amendment on additional training on domestic abuse, coercive control and financial abuse for doctors who take part in the assisted dying process. As members appointed to the panel will already be very well qualified in the fields of law, psychiatry and social work, I am confident that they will have the necessary expertise to determine referrals, but I appreciate the challenges in detecting the subtleties of coercion, as the Committee has discussed at length. As such, I support amendment (c).

Amendment (a) to new schedule 2 was tabled by the right hon. Member for Dwyfor Meirionnydd. I am fully supportive of her position on ensuring accessibility and equality for Welsh speakers, but in this instance I have some concerns about the barrier her amendment may create for patients in accessing the assisted dying process in a timely manner, and therefore about the workability of the amendment.

Under the Welsh Language Act 1993, as the Minister said, all public bodies operating in Wales must create a Welsh language scheme with the aim of ensuring that Welsh and English are treated equally in all aspects of public service delivery. The Ministry of Justice's Welsh language scheme, for example, sets out where services can be provided in Welsh, typically through translation services.

I take on board the right hon. Lady's comments about the limitations of using translators. Given the sensitivity of the conversations and deliberations we are discussing, we need to be sensitive to that. It is, of course, the patient's prerogative to request a fully Welsh-speaking panel, if that is what they want at such a difficult time—as long as they are made aware of the potential delays this may or may not create. That is my concern.

My reading of amendment (a) is that it is not the right hon. Lady's intention that this will be required in every case. However, it will ensure a very patient-centred approach, in which I believe passionately. I take on board the Minister's concerns, which I appreciate may need to be considered further down the line, but I am minded to support amendment (a) to new schedule 2.

Finally, amendment (e) to new clause 21, tabled by my hon. Friend the Member for Filton and Bradley Stoke (Claire Hazelgrove), in on audio and video material. I think this comes from a really personal, sensitive and important place, and demonstrates a very patient-centred approach, so I am also minded to support it this afternoon.

I would welcome the clarity from the Minister regarding some of the legal language and terminology around other amendments, and as such, I will not be supporting

[Kim Leadbeater]

them this afternoon. We have had another thorough debate, and I welcome the contributions from colleagues across the Committee.

The Chair: That concludes the debate on clause stand part. Members will understand that we shall now vote only on clause stand part. The other amendments, new schedules and new clauses will all be voted on as they are reached in the course of the programme.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 15.

Division No. 49]

AYES

Campbell, Juliet	Paul, Rebecca
Francis, Daniel	Shah, Naz
Kruger, Danny	
Olney, Sarah	Woodcock, Sean

NOES

Abbott, Jack	Leadbeater, Kim
Atkinson, Lewis	Malthouse, rh Kit
Charalambous, Bambos	Opher, Dr Simon
Gordon, Tom	Sackman, Sarah
Green, Sarah	Saville Roberts, rh Liz
Hopkins, Rachel	Shastri-Hurst, Dr Neil
Joseph, Sojan	Tidball, Dr Marie
Kinnock, Stephen	

Question accordingly negatived.

Clause 12 disagreed to.

Clause 13

CONFIRMATION OF REQUEST FOR ASSISTANCE: SECOND DECLARATION

Amendment proposed: 371, in clause 13, page 9, line 5, leave out paragraph (a) and insert—

"(a) a certificate of eligibility has been granted in respect of a person, and".—*(Kim Leadbeater.)*

This amendment is consequential on NC21.

Question put, That the amendment be made.

The Committee divided: Ayes 18, Noes 4.

Division No. 50]

AYES

Abbott, Jack	Leadbeater, Kim
Atkinson, Lewis	Malthouse, rh Kit
Campbell, Juliet	Olney, Sarah
Charalambous, Bambos	Opher, Dr Simon
Gordon, Tom	Richards, Jake
Green, Sarah	Sackman, Sarah
Hopkins, Rachel	Saville Roberts, rh Liz
Joseph, Sojan	Shastri-Hurst, Dr Neil
Kinnock, Stephen	Tidball, Dr Marie

NOES

Francis, Daniel	Shah, Naz
Kruger, Danny	Woodcock, Sean

Question accordingly agreed to.

Amendment 371 agreed to.

Kim Leadbeater: I beg to move amendment 469, in clause 13, page 9, line 11, leave out "subsection (1)" and insert "this section".

This amendment is consequential to Amendment 472.

The Chair: With this it will be convenient to discuss the following:

Amendment 470, in clause 13, page 9, line 26, at end insert—

"(3A) Regulations under subsection (3)(a) must provide that a second declaration contains—

(a) the following information—

(i) the person's full name and address;

(ii) the person's NHS number;

(iii) contact details for the person's GP practice;

(iv) specified information about the certificate of eligibility;

(b) the following further declarations by the person—

(i) a declaration that they have made a first declaration and have not cancelled it;

(ii) a declaration that they understand that they must make a second declaration in order for assistance to be provided under this Act;

(iii) a declaration that they are making the second declaration voluntarily and have not been coerced or pressured by any other person into making it;

(iv) a declaration that they understand that they may cancel the second declaration at any time.

In this subsection 'specified' means specified in the regulations."

This amendment provides that regulations about the form of a second declaration must make the provision mentioned in paragraphs (a) and (b).

Amendment 472, in clause 13, page 9, line 41, at end insert—

"(6A) Regulations under subsection (6)(a) must provide that a statement under subsection (5) contains—

(a) the following information—

(i) the person's full name and address;

(ii) the person's NHS number;

(iii) the coordinating doctor's full name and work address;

(iv) specified information about the certificate of eligibility;

(b) the following declarations by the coordinating doctor (in addition to a declaration that they are satisfied of all of the matters mentioned in subsection (4)(a) to (d))—

(i) a declaration that they are satisfied that a certificate of eligibility has been granted in respect of the person;

(ii) a declaration that the second declaration was made after the end of the second period for reflection;

(iii) if the second declaration was made before the end of the period mentioned in subsection (2)(a), a declaration that they have the belief mentioned in subsection (2)(b);

(iv) a declaration that they are satisfied that neither the first declaration nor the second declaration has been cancelled.

In this subsection 'specified' means specified in the regulations."

This amendment provides that regulations about the form of a statement under subsection (5) must make the provision mentioned in paragraphs (a) and (b).

Kim Leadbeater: The amendments serve simply to set out clearly what the regulations must include with regard to the second declaration and the subsequent statement from the co-ordinating doctor. They replace the schedules and are consistent with the advice I have received that matters of this nature are not suitable for the face of the Bill. They are simple and straightforward amendments.

5.30 pm

The Minister for Care (Stephen Kinnock): It is a pleasure to serve under your chairship, Sir Roger. We have been working with my hon. Friend the Member for Spen Valley on these amendments, and changes have been mutually agreed by her and the Government. The amendments aim to ensure that the Bill, if passed, is legally and operationally workable. I offer a technical and factual explanation and rationale for the amendments.

Amendments 469 and 472 are supplementary to amendment 208, which provides that the form of the statement made by the co-ordinating doctor, in relation to the second declaration, is to be set out in regulations. Amendment 472 sets out the information that the regulations must require the statement to include, as well as some additional declarations by the co-ordinating doctor.

Amendment 470 is supplementary to amendment 207, which provides that the form of a second declaration is to be set out in regulations. Amendment 470 sets out the information that the regulations must require the second declaration to include, as well as some additional declarations by the person. That applies to regulations made under clause 13(3)(a). I hope that was useful for the Committee.

Amendment 469 agreed to.

Amendments made: 372, in clause 13, page 9, line 12, leave out from third "the" to end of line 13 and insert

"certificate of eligibility was granted,".

This amendment is consequential on NC21.

Amendment 373, in clause 13, page 9, line 17, leave out "declaration was made" and insert "certificate was granted".—*(Kim Leadbeater.)*

This amendment is consequential on NC21.

Sarah Olney: I beg to move amendment 457, in clause 13, page 9, line 17, after "made," insert

"and have not voluntarily stopped eating and drinking".

The Chair: With this it will be convenient to discuss the following:

Amendment 471, in clause 13, page 9, line 27, leave out from "if" to "that" in line 28 and insert

"the coordinating doctor is satisfied (immediately before witnessing it)".

This amendment removes wording which would suggest that a second declaration is made before it is witnessed.

Amendment 316, in clause 13, page 9, line 36, at end insert—

"(5A) If, when making the statement under subsection (5), the definition of "second period of reflection" under subsection (2)(b) applies, the coordinating doctor must make refer the person for urgent specialist palliative care."

This amendment will ensure that there is an immediate referral to a specialist in palliative care due if the patient is likely to die within a month of the declaration from the Court.

Amendment 374, in clause 13, page 10, line 2, at end insert—

"(8) Where the coordinating doctor has—

(a) witnessed a second declaration, or

(b) made or refused to make a statement under subsection (5),

the doctor must notify the Commissioner and give them a copy of the second declaration or (as the case may be) any statement under subsection (5)."

This amendment requires the coordinating doctor to notify the Commissioner of witnessing a second declaration, and of having made or refused to make a statement under clause 13(5).

Sarah Olney: It is a pleasure to serve under your chairmanship, Sir Roger. I have tabled the amendment to exclude the possibility that somebody could render themselves, if that is the appropriate language, terminally ill by the mechanism of voluntarily stopping eating and drinking.

The Bill before us is based on the principle that assisted suicide should be limited to those who are already dying—those with a terminal illness and a prognosis of six months or less—but there is growing evidence that that safeguard could be undermined by a practice known as voluntary stopping of eating and drinking, or VSED. That is when a person with mental capacity deliberately chooses to stop eating and drinking with the intention of hastening death. VSED is sometimes framed as an exercise of choice at the end of life, but in jurisdictions where assisted suicide is legal, it is increasingly being used as a means to an end—a way for individuals who do not meet the legal definition of terminal illness to qualify for lethal drugs.

The logic is simple: a person has the right to refuse food and water, and if they do so, their health deteriorates and they may die within six months. Some doctors have accepted this as grounds to certify a patient as terminally ill—not because their underlying condition would have led to imminent death, but because of the self-imposed effects of dehydration and malnutrition. The strategy has become viable only because many jurisdictions have shortened or removed waiting periods for assisted suicide. The loophole works only if the time it takes to obtain lethal drugs is shorter than the time it takes to die from refusal of food and water. Under the Bill, the same loophole exists.

Clause 13(2)(b) states that if a doctor

"reasonably believes that the person's death is likely to occur"

within one month, the standard 14-day waiting period can be reduced to just 48 hours. If a person stops eating and drinking, their death will almost certainly be likely within one month. In other words, a person who is not terminally ill could make themselves eligible for an assisted death within 48 hours simply by refusing sustenance. Proponents of assisted suicide have been explicit: this is not simply a theoretical possibility—it is a co-ordinated strategy.

Kim Leadbeater: I might be missing something—it has been a long day—but, presumably, by the time the patient has got to that point, they have been through the eligibility criteria with the two doctors. The hon. Lady said that they would not be terminally ill, but they would have been through all the assessment criteria at this point.

Kit Malthouse: And the panel.

Sarah Olney: The point is that we want to preclude the possibility, at whatever stage it might happen, that somebody could deliberately render themselves terminally ill by the voluntary stoppage of eating—

Kit Malthouse: But they already are terminally ill.

The Chair: Order. Does the right hon. Gentleman wish to make an intervention?

Kit Malthouse: Forgive me, Sir Roger. Will the hon. Lady give way?

Sarah Olney: I will.

Kit Malthouse: I share the confusion of the hon. Member for Spen Valley. By the time we get to clause 13, my understanding is that the two doctors and the panel are already satisfied of the person's eligibility, so they are by definition terminally ill. I do not understand why they would then seek to render themselves doubly terminally ill by adding the characteristics the hon. Lady is talking about. Maybe I am getting confused. I could understand the hon. Lady's case if she had made it way before, but at this stage the person has been through two doctors and the panel and got permission to go ahead. I do not understand why they would then starve themselves.

Sarah Olney: The point is that they may take the opportunity to use the further provision that exists for people whose death is expected within one month.

Kit Malthouse: But they do not need to if they have got to this stage.

The Chair: Order. The right hon. Gentleman is speaking from a sedentary position again.

Kit Malthouse: Sorry, Sir Roger.

Sarah Olney: I take the point, but I still think it is necessary to have this additional safeguard to close a loophole that means that people could render themselves terminally ill within the space of a month and use the opportunity presented by the additional provision in the Bill for reducing the 14-day waiting period. This is a real concern of people who have reviewed this legislation. There is a possibility, as has been seen in other jurisdictions, that people could—I do not necessarily want to adopt the right hon. Gentleman's language—hasten their eligibility for assisted dying through this particular method. All I am asking is that we close the loophole so that people will not be tempted to follow that very damaging path.

Ordered, That the debate be now adjourned.—*(Bambos Charalambous.)*

5.38 pm

Adjourned till Tuesday 18 March at twenty-five minutes past Nine o'clock.