

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

# TERMINALLY ILL ADULTS (END OF LIFE) BILL

*Twenty-second Sitting*

*Wednesday 12 March 2025*

*(Morning)*

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CLAUSE 12 under consideration when the Committee adjourned till this day at Two o'clock.

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Sunday 16 March 2025**

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**The Committee consisted of the following Members:**

*Chairs:* PETER DOWD, CLIVE EFFORD, † SIR ROGER GALE, CAROLYN HARRIS, ESTHER McVEY

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

## Public Bill Committee

Wednesday 12 March 2025

(Morning)

[SIR ROGER GALE *in the Chair*]

### Terminally Ill Adults (End of Life) Bill

9.25 am

**The Chair:** Good morning, ladies and gentlemen. The usual litany: would everybody ensure that all electronic devices are turned off or switched to silent mode? Tea and coffee are not allowed in the Committee Room.

We will now continue line-by-line consideration of the Bill. I remind Members that interventions should be short and should raise points of clarification or questions; they should not be speeches in and of themselves. At this point, I interrupt myself to say that Members may have noticed that on occasion I, at least, have allowed slightly longer interventions. One reason for that is that there is a natural flow in debate that sometimes warrants a slightly longer intervention, rather than a speech later that has become irrelevant. Please do not construe that as an encouragement to make long interventions, however; a ton of bricks may come down upon you.

Members who wish to make speeches should please continue to bob at the appropriate points throughout the debate until they are called. I have a list of Members who bobbed at the end of the last sitting, but it would be helpful to the Clerk and to me to refresh that, so perhaps those who wish to participate in this debate could bob again.

Please remember that when Members say “you”, they are referring to me, the Chair. Members should not use the word to refer to one another. Debate should be through the Chair.

#### 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 trust that that is absolutely clear to everybody. I understand that at the end of the last sitting Ms Paul graciously and courteously sat down in order to enable the Adjournment to be moved—as all Members will have worked out by now, the Adjournment cannot be moved while somebody is speaking—but that she had not finished what she had to say. On that basis, Rebecca Paul has the floor.

**Rebecca Paul (Reigate) (Con):** I rise to speak to new clauses 17 and 21 and to the four associated amendments. There is a lot to say, so please bear with me, but I will do my best not to repeat myself.

How exactly will the panel operate and function? I appreciate some of the explanations provided by the hon. Member for Spen Valley, and I look forward to hearing from the Minister on the point, but I have concerns about exactly what the panel will do and how it will do it. I will do my best not to repeat what others have said, but I reiterate the concerns as to whether it is indeed a better safeguard than the High Court one that was originally envisaged, given that it will have no full judicial role.

On a practical level, I question whether it is even feasible to find sufficient numbers of psychiatrists and social workers who are able and willing to perform this very burdensome role. As we all know, social workers do an incredibly important job, but people with their skillset are in extremely high demand. The hon. Member has made it clear that she is removing the High Court safeguards not because of the capacity concerns raised in oral evidence in January, but because she believes that this is truly a better and safer model.

I am also concerned that something that was originally meant to bring judicial oversight into the process has been replaced with something that is not judicial. I welcome more involvement from psychiatrists and social workers, who have a key role to play in the process, but I have concerns about whether the panel is the right place for it. Its expertise would be more valuable earlier in the process, when the co-ordinating doctor and the independent doctor are performing their assessments, rather than at the stage with the legal oversight component. A panel's involvement in a truly multidisciplinary approach during the clinical stage of the assessment process would have been a gold-standard safeguard, but unfortunately that approach was not put on the face of the Bill.

How the panel will operate is an issue of great significance. If we do not flesh out the detail now, when will we? We must have this conversation. I have looked for this information in the new provisions. According to new schedule 2,

“The Commissioner may give guidance about the practice and procedure of panels.”

That is all there is. I cannot see any further information. Disappointingly, it is not even that the commissioner “must” give guidance—it “may”—so the operation of panels may change depending on who is in the role of commissioner. Given that this is a new approach and process, I urge the promoter and the Government to ensure that it is adequately fleshed out to avoid ambiguity.

[*Rebecca Paul*]

When I imagine the panel, I am not sure what I am supposed to be imagining. Is it an administrative process—three people checking the papers—or is it more like a court, calling in evidence? Yesterday, the hon. Member for Banbury eloquently set out the practical realities of the new provisions with regard to witnesses. According to new clause 21, the panel “must hear from” at least one of the doctors, but it does not need to question him or her, so what is it exactly that the panel is required to hear? What does “hear” mean, and does it cover anything specific? Does it cover all the items in new clause 21(2), or just some? The new clause does not specify.

It is the same for the patient. The panel just needs to “hear” from him or her; it does not need to question them. As I will come to shortly, in exceptional cases, even the patient will not need to be heard from. Again, I would be grateful to the Justice Minister for clarity on what “hear” means and what she would expect would be covered.

We do know that the panel must be “satisfied” of the relevant matters, yet how it is to be satisfied, and even what that means, is not clear. The only person who must be heard from is either the co-ordinating doctor or the independent doctor—just one person. That may be fine, or it may not, but I put it on the record here, because it is important that we are clear-eyed about it.

Compare the process with an employment tribunal. Someone litigating an employment claim would know well in advance the rules that the tribunal would apply, what test the tribunal would apply to the facts, the legal representation they can have, and how and on what basis they can appeal. That kind of clarity is essential, but I cannot find it in the new clause. I also do not know whether the panel is inquisitorial or adversarial.

**Kim Leadbeater** (Spen Valley) (Lab): I am very happy to clarify that the panel is not adversarial, but inquisitorial and investigative.

**Rebecca Paul:** I thank the hon. Member for that confirmation. Now that I have that clarity, I will skip on.

One aspect of the panel that gives me cause for concern is that the panel would not hear from the patient themselves where there are “exceptional circumstances”. What are exceptional circumstances? The Bill does not say or provide any guidance. Many people with a terminal diagnosis who are seeking assisted dying could consider their circumstances exceptional; many undoubtedly will be too unwell to attend. That means that such panels could be making these decisions based on testimony from only one doctor. I am not for one second suggesting that people on their deathbeds should have to attend a panel—that is the point of exceptional circumstances—but I urge the promoter and Ministers to ensure that the much-needed clarity around the meaning of the term is set out in order to reduce ambiguity in this area.

**Danny Kruger** (East Wiltshire) (Con): It was helpful to hear the Bill’s promoter suggest that the system will be inquisitorial—that is not sufficiently apparent in the new clause, as my hon. Friend the Member for Reigate says. Does she agree that the panel must therefore have proper inquisitorial powers and authority? At the moment, there is a lack of genuine power to investigate the

circumstances. If it not going to be adversarial but inquisitorial, it should have proper powers to make an investigation.

**Rebecca Paul:** My hon. Friend makes a good point; I completely agree with him on that front. This goes back to being clear on the face of the Bill about what the panel does and the powers it has in order to avoid ambiguity. It is important that we set that out now, during this process, rather than finding ourselves in a position in two years where it is all starting to happen, if the Bill is approved, and the questions starting at that point. Let us try to answer them now and be really clear about it.

Where a panel does not hear directly from a patient, it may be forced to rely on second-hand accounts. In law, second-hand evidence is known as hearsay and is always handled with a lot of provisions and warnings across our criminal and civil legal systems, because it can be inaccurate or of lower quality than evidence directly from a source. However, the panel is open to depending on such evidence. We must be clear-eyed about the risks that come with that.

In summary, I do not believe that new clause 21 gives sufficient clarity on how the panel will perform its role and what evidential standard it would apply. We do not know if it is an administrative task or a judicial one. We do now know that the panel is inquisitorial—I thank the Bill’s promoter for that—but we do not know how much it will rely on hearsay evidence in practice. I will say this again, because it is really important: the panel is required to hear from only one doctor and does not need to question them. Under the Bill, would it be legally acceptable for the doctor to turn up, say, “No concerns”—and that’s the end of that? I am here to tell Committee members who think that that will not happen if the Bill allows it: somewhere, with some panel, it absolutely will—particularly as our society gets desensitised and more comfortable with the concept of assisted dying.

I urge the Committee to be precise with the legislation it is passing for the sake of the statute book and, more importantly, for the sake of all the people who may find themselves being assessed by such a panel.

**Lewis Atkinson** (Sunderland Central) (Lab): The hon. Lady sketches out a very short exchange. Does she think that we should specify in primary legislation the exact nature of interactions in these sorts of matters elsewhere—in the High Court, employment tribunals and so on? In my understanding, we do not: we trust regulated professionals to have appropriate interactions. It is not for Parliament to say that a lawyer or doctor should ask x or y question. Does she agree?

**Rebecca Paul:** I am afraid I do not agree. I do not think that we should not put in place precise legislation because we trust that everyone will do the right thing. Our job as lawmakers is to always think about the worst possible situation that could arise and legislate accordingly to protect against that as best as possible. In 99 cases out of 100, it will work perfectly fine and people will do their job as they are meant to. The point I am trying to draw out is about exactly what the Bill says, and what it says is required is actually very little. The panel is required to “hear” from only one of the doctors. I still do not know what “hear” means. Exactly what content

are they meant to provide? That is the point I am making. It is important that we make legislation for the worst-case scenario. That is our job.

**Lewis Atkinson:** I am not going to pursue that exact line of argument. The point of discussion, and the point of the vote, is whether we think this proposal, which, to me, is robust—the panel “must hear” from doctors and “must...hear” from the patient unless there are exceptional circumstances, and three professionals are involved—is stronger than the previous draft that involved the High Court and had no such requirements. Even if the hon. Lady does not think the new clause is perfect, does she think it is a stronger set of safeguards—surely it is—and will she support it?

**Rebecca Paul:** Again, I am not sure I agree that that is what I am here to do today. I think my job is to set out the strengths and weaknesses of the proposed amendment, and I do think that the High Court judge safeguard, on the face of it, was probably safer. I appreciate, value and truly welcome what the new clause attempts to do by bringing in psychiatrists and social workers, but it has come in at the wrong phase of the process. I am not sure we are really getting the value of that expertise at the judicial point; we would have got that value at the clinical stage.

I ask Members to take what I am saying in the good faith that it is meant. My intention is to make sure that the Bill is as safe as possible. I do not profess to have all the answers, but I do have questions, and sometimes it is useful to ask questions, because there are others here who can answer them. I hope that, by asking questions when we are uncertain whether something is the right way forward, we will get a stronger piece of legislation.

**Kim Leadbeater:** The hon. Member is absolutely right that we are here to ask questions, and I appreciate those questions being asked. On what happens earlier in the process, I hope she is reassured by the fact that we will now have compulsory referral to a psychiatrist if there is a doubt about capacity, and we have specified in the Bill doctors consulting other health and social care professionals, to provide for a holistic approach earlier in the process.

**Rebecca Paul:** I absolutely welcome those amendments. I do think they improve the safety of the Bill. As I have mentioned, I would have liked to see a truly multidisciplinary approach. At the moment, we have just included something in the Bill, as the hon. Lady says, stating that a doctor can refer to another specialist if they so wish. I would have liked to see that team pulled together, and that recognised in the Bill—we heard strong oral evidence about that.

**Kim Leadbeater:** The other point I would reiterate is that none of that stops happening. We have heard from professionals and experts that that happens. Someone who has cancer will have a multidisciplinary team around them as part of their natural treatment process. Nothing in the Bill stops that happening.

**Rebecca Paul:** I take that point. In an ideal world where our public services were not under pressure, I might be more reassured, but I am a local councillor, and I am well aware how difficult it is to get social workers involved in all the things that they need to be

involved in, because they are spread so thin. The hon. Lady lays out very well how things should work, but when I take off my rose-tinted glasses, I am concerned that they will not work like that in the real world. That is why I always go back to putting things in the Bill, because that forces them to happen—doing so here would force that treatment to happen.

The Committee will be pleased to hear that I now turn to my amendments—but I am afraid there are four of them, so bear with me. Amendment (a) to new clause 17 may be one of the most important amendments that I will speak about. This is something that I feel very passionately about. One of the most important questions we should ask is how the panel might deal with a family member with concerns, for example, that a relative was being coerced. Would the family member be afforded the status of a party to proceedings? Would they have a right to see the relevant documents before the panel? Would they have a right to be informed that a panel was taking place? If they are not a party to proceedings, is their status that of a witness? If they are a witness, do they have the right to observe proceedings when a panel sits in private? Do they have a right to be heard by the panel? Again, I am asking questions. I am not necessarily saying one way or the other what the answer should be, but those are questions I have.

None of this is laid out in the new clauses that we are considering. In fact, I suggest that in the struggle to balance autonomy with the rights of impacted others in the Bill, autonomy is very much winning the fight. I was struck yesterday by various Members setting out their fears that the first a family could know about an assisted death is when they are called upon to make arrangements for the burial. That would be an awful situation, and I strongly believe that families and loved ones should not be cut out of the process without good reason, especially when, no doubt, they will be required to bury the person and pay for it, as I assume the state will not take on that responsibility. I suggest that this point on funeral arrangements and expenses needs further thought as the Bill progresses.

From reading the Bill, all we know is that the panel may “hear from and question any other person”.

There is no mechanism for family members to have a right to be heard or even to submit information. That needs to be rectified. The panel could reach its conclusions without hearing at all from the family. That is unacceptable. If someone’s mother, father, son or daughter were going in front of an assisted dying panel, that person would at least want to know and be clear about their rights and available options to feed into the process.

We then come to the big issue. What if a mistake is made and a relevant piece of information is not provided to the panel by the people it hears from? My amendment (a) to new clause 17 seeks to help the panel to avoid making the wrong decision, and give time for it to be remedied before the patient is dead.

9.45 am

When approaching scrutiny of the Bill, I have always done so from the perspective of asking, “Is this law good enough for my children? Does it protect my children?” If the answer is no, it is not good enough for anyone. That is a good test for lawmakers. When considering the panel, then, the worst-case example that comes to mind for me is if my child—long grown—has fallen into a

relationship with an abuser and they have isolated my child from me and the rest of the family. My child no longer communicates with me, but I have seen and know the abuse, and I know what their partner is capable of—but the doctors do not know any of that and, of course, the partner is not going to tell the panel. There is no obligation for the panel to hear from me, even if I contact them in desperation to try to warn them. Under new clause 21, the panel is not required to hear from me. I cannot even imagine the agony of not being able to intervene and share relevant information with a panel that holds my child's life in their hands.

My amendment would give a family member or other relevant person the right to apply to the commissioner for the panel's decision to be reconsidered. New clause 17 is already designed on that assumption—it allows for an appeal when the panel has refused an application—but the appeal process only goes in one direction: no one can appeal if the panel accepts the application. Only one kind of mistake can be corrected. I am very uneasy about that. It seems to say that we are more concerned about making death possible than about preventing wrongful death. My amendment would ensure that any wrong decision can be challenged, rather than just one in which an assisted death is rejected.

There are problems that the panel may not see but others might. Let us take an example from Victoria in Australia, reported by psychiatrist Professor David Kissane and carefully anonymised. He describes a communication from the spouse of an assisted dying applicant whose application had been accepted and who had the lethal substance at home. The spouse said that their adult child “was applying pressure” for the substance to be taken. The child, on a three-week visit from abroad, wanted the medication taken soon, but the spouse thought that the couple might enjoy a few more months together:

“A direct question was asked of the patient: ‘Do you feel pressured by your child to take the medication?’ Perceiving that the child was being challenged, the patient denied any sense of pressure, but took the medication the very next week so that the child could return overseas again. The bereaved spouse was left to struggle with an angry and complicated grief.”

To be clear, I am not saying that that is a situation in which an appeal might have been upheld. What Professor Kissane's story demonstrates is that families can see things very clearly, in a way that professionals, even with training, cannot. Families know the person well, they understand their relationships and they know the subtleties of the situation.

**Kim Leadbeater:** Is the hon. Lady reassured by the fact that, under the Bill, coercion becomes a criminal offence with a serious prison sentence? If any family members are in any doubt as to whether coercion is taking place, it is straightforward: they go to the police.

**Rebecca Paul:** I welcome the hon. Lady's intervention, but the point I am making is not about coercion; it is about the subtleties in families' relationships. I was trying to bring to life a situation—sometimes it is families who understand the relationships, the dynamics and the pressure points. It is very hard for professionals to get underneath that.

In a sense, families are the greatest experts, but the process as drafted excludes that expertise. Under my amendment, if a family member had knowledge that could make the difference between life and death, they

would be able to apply to the panel. If there had been a clear error in applying the eligibility criteria, the application would be reconsidered. It is true that the panel will be informed by at least one of the doctors and that it has the option of hearing from others. Perhaps the panel will always be incredibly thorough and explore every avenue, but we have to legislate for every situation, including situations that are not ideal.

We can learn a lot from other jurisdictions. In written evidence, the academic Christopher Lyon from the University of York describes his experience in Canada. Dr Lyon writes that his father, who was “openly suicidal” and had a “history of mental illness”, qualified for medical assistance in dying in 2021. In Dr Lyon's words:

“He was classed as having a ‘foreseeable natural death’ (i.e., terminal illness), my family was told, because he had momentarily skipped some meals at his residence and had an elevated but unremarkable white blood cell (WBC) count that the AD doctor suggested might be an infection that, if untreated, might become lethal, despite being a common side effect of his arthritis medication.”

Dr Lyon says that when he was informed two days before the event, he pushed for an urgent psychiatric assessment to be carried out. Dr Lyon has obtained a copy and says that it is

“full of errors. It claims he wasn't suicidal, when he had a whole history of suicidality. It states he didn't think he was depressed, and yet on the list of medications there was listed antidepressants.”

Dr Lyon's concerns about his father's prognosis, the assessment and other aspects of the events were widely shared, he says:

“After he died, the provincial regulatory college, police, and even other AD clinicians suggested his death was questionable or even wholly unlawful. However, privacy law and the continuing resistance from the local health authority have so far succeeded in blocking access to his medical records necessary for a full investigation”.

In Ontario, meanwhile, the chief coroner has published a report detailing the assisted death of an anonymous patient, Mr A, who had inflammatory bowel disease. He was unemployed, dependent on his family for housing and financial support, and struggled with alcohol and opioid misuse. He received an assisted death on the basis that his illness was advanced, irreversible and causing intolerable suffering. According to the coroner, the family were not consulted by those involved with processing the application, even though it was recorded that the family expressed concerns. Most members of the death review committee thought that shutting the family out was a mistake. The committee concluded:

“Engagement with family and/or close relations in the MAiD process should aim to be a key component of MAiD practice.”

We can hope that these were exceptional events, but they are the kinds of situation in which a panel might have benefited from a family perspective, which is the reason why I cite them.

**Kit Malthouse** (North West Hampshire) (Con): As my hon. Friend heard yesterday from the hon. Member for Rother Valley, there are multiple points in the new system at which family could make their views known. Indeed, they could apply very quickly for an injunction if they thought something was untoward.

My hon. Friend has talked a lot about families knowing best. Surely it should be the dying person who chooses how best to handle their family. The evidence overseas is that giving dying people choice about the manner and time of their death also gives them the choice about how to handle their family, and particularly their children.

My hon. Friend might have a particular approach, and mine might be completely different, but I should have that choice. She seems to think the family know best for the dying person—how come she does not think the dying person knows best for their family?

**Rebecca Paul:** My right hon. Friend makes an important point. I do not think family always know best. There are situations where someone rightly will want to exclude their family from the process, and I totally respect that choice. I am saying that there will be other situations in which family do have something valid to input that could impact the panel's decision making. My right hon. Friend also mentioned injunctions; I am keen to understand more about how that process works as a protection, so perhaps the Minister could respond on that, because that may well give me some reassurance. I will come to judicial review in a moment.

My right hon. Friend is right that this is not easy. I am not saying that family should be involved in all situations. I am saying there is a balance to be struck, and I do not think we are getting it right, because at the moment it is all about full autonomy. The working assumption is that input from family must always be ignored if the patient wants that. There must be a balance, and it is difficult to say where that should sit, which is why we have such an incredibly difficult job with the Bill.

**Jake Richards (Rother Valley) (Lab):** I have a genuine question: is the hon. Lady of the view that families' views about whether the decision is right for the individual should be considered by the panel, tribunal or judge, or is it just their views about eligibility under clause 1?

**Rebecca Paul:** I thank the hon. Gentleman for that important point. My point is that the family should be listened to and should have a route to legally provide information to the panel. Right now, they have no right to do that. In reality, I think most panels would take that information. I would like to think that, 99 times out of 100, if a family member contacted the panel saying, "I have really important information," it would listen to that. But I am legislating for the one case in 100 or 1,000 in which, for whatever reason, the panel refuses to engage with a family member who has a relevant bit of information, and not having the right information leads to someone's death.

The amendment is about protecting panel members too. If I were a panel member, I would want this process in place, because it would protect me when I make a decision. I would take great comfort from knowing that a family member with relevant information has a legal right at least to communicate it to the panel.

**Danny Kruger:** This is a very helpful exchange, for which I am grateful to my hon. Friend. In response to the hon. Member for Rother Valley, does my hon. Friend agree that although there should be an obligation to help the decision maker to conclude as to whether the eligibility criteria have been properly met, there is no best-interest consideration, as there might be if some of us were designing the Bill? Nevertheless, the role of the family is to enable the decision maker to conclude as to whether there have been issues of coercion or lack of capacity, to ensure the decision is properly informed. We are concerned that the Bill as drafted does not do that.

**Rebecca Paul:** I completely agree. Some of the amendments were tabled because there is not a best-interest component in the Bill. In an ideal world, I would have liked it to have included a best-interest component; that would have given me some reassurance. Some of the amendments that I will discuss today were tabled because other amendments were voted down. I would not have tabled them had we taken different decisions earlier. I am trying to put the safeguards in somewhere, although we can have an argument about whether they are in the right place. They were ruled out when we debated earlier clauses, so I have been left in this situation.

We can hope that the events I have described were exceptional, but they are the kinds of situation in which a panel may have benefited from a family perspective or, as my amendment (a) would allow, for second thoughts from one of the assessing doctors or any of the other people whose expertise the panel calls on. The amendment would protect not just the family but the doctors. If a family member suddenly became aware of something, there would be another avenue by which they could appeal the decision, so the amendment would be positive for the co-ordinating doctor, the independent doctor, social workers, psychiatrists and anyone else who had been involved throughout the process.

I would like briefly to outline two additional practical benefits to my amendment. First, it would resolve issues before legal disputes arise. In Belgium, the long-running case of Tine Nys has been pursued in both criminal and civil courts after her family argued that she did not meet the eligibility criteria for euthanasia. In Canada, a man's family launched a legal challenge after he received medical assistance in dying while on a day pass from a psychiatric ward. They claim that he lacked mental capacity. It is all too easy to imagine similar cases coming to court here, but if there were a chance to challenge the decision earlier, that might allow families to come to terms with the decision before having to launch legal action.

Secondly, my amendment could help families to come to terms with grief. There are several stories from other jurisdictions about the grief felt by relatives at being cut out of the assisted dying process. In written evidence, the National Bereavement Alliance said:

"We believe that as currently drafted, the Bill overlooks the needs of families and friends... While it rightly includes safeguards to protect people against coercion, it does not include reciprocal clauses to address the health, welfare and wellbeing of the family and friends who will be bereaved... As drafted, the Bill prioritises the autonomy of the person who is choosing to access an assisted death. This is appropriate: however, it does not mean that the Bill should not also address the needs of family members and friends in relation to the decision."

10 am

How to improve the Bill in this respect is a complex question, but it would surely help if at least some families knew that they could appeal if something went wrong. Having the option there—even if they never come close to using it—would help them to feel less powerless and less excluded from an event that might deeply affect them for the rest of their lives.

When the Bill was debated on Second Reading, the hon. Member for Spen Valley told the House:

"If there is any evidence of coercion, the court will not approve the request, and if evidence emerges subsequently, the court order could be revoked."—[*Official Report, Second Reading Committee*, 29 November 2024; c. 1019.]

That was a sensible position, but it does not seem to be in new clause 17. And it is not just coercion we are worried about: it could be any relevant information that the panel was not aware of when it made its decision.

Sir James Munby, former president of the family division, has written an important analysis of the new clause. He said that

“the Bill is entirely silent as to how the panel is to deal with the kind of issue exemplified by the Canadian case...where the patient’s partner intervened and obtained an interim injunction because of concerns about what was happening. What if the patient’s partner and relatives, excluded from participation in the panel process, discover, only after the panel has granted a certificate...facts of the kind which...prompted an eleventh-hour intervention by the Canadian judge? What are they to do? They cannot appeal. Can they somehow apply to the panel but which is now probably *functus officio*? Or can they apply to the Family Division and pray in aid the inherent jurisdiction? Or do they apply to the Administrative Court by way of judicial review? Who knows, and the Bill does not tell us.”

**Tom Gordon** (Harrogate and Knaresborough) (LD): The hon. Lady has highlighted a few different legal cases from around the world; is she aware of the case currently going on in Spain, where a family member is challenging his daughter’s wish to have an assisted death? That challenge has been funded by religious groups—Christian groups—and is not actually going through the parent. He had the option and ability to raise the case, and it has then been funded and hijacked by outside groups. How would the hon. Lady see her amendment as helping to protect against that sort of thing?

**Rebecca Paul:** This is a really important opportunity to share all these examples. I have to be honest that I am not sure I see the relevance of how a case is funded, and I cannot speak on that person’s behalf. I am going to talk about some of the inequalities that come from this, because there will be people—we will come to this when we discuss judicial review—who will rely on legal aid to challenge a decision. If we do not get this right, we are in danger of creating a situation in which poor families cannot appeal and rich families can. That could give rise to the less than ideal situation the hon. Gentleman has raised. If we get this right and make sure that an appeals process is available on an equal basis to everyone in the country, that will prevent the kind of situation the hon. Gentleman has raised. I thank him for that, because he has helped to support the case for my amendment.

**Kit Malthouse:** I have to say that my concern about the hon. Lady’s amendment is growing. We have talked in the past about policing the conversation and the process to the point that it becomes guarded. Say I had a strong, long-standing conviction that I wanted assisted dying if I was in extremis, but I had a child who I knew was violently against assisted dying; if the hon. Lady’s amendment were in place, and there was the possibility of appeal, surely my tendency would be to keep my disease and diagnosis, and my approach to the system, secret from that person. By opening this formal door, I would effectively be encouraged to conceal the process from a family member who I know may object.

I say that particularly in the light of the fact that, as we heard from overseas experience, coercion more often than not comes the other way. That is certainly what they see in Australia, where families try to persuade somebody not to do it. I think the hon. Lady has

good motivations, but I am concerned that she might actually produce the opposite effect and drive people into secrecy.

**Rebecca Paul:** I thank my right hon. Friend for that alternative perspective. The appeal process is valid only if there is new and relevant information that the panel did not have. For someone who is absolutely eligible, nothing has been excluded from the process that would change their eligibility. There is nothing to worry about here, so I am not sure that I concur that my amendment would prevent sharing information. However, it would provide important protection when a bit of relevant information has not been shared with the panel, which I think is the greater harm. We are trying to weigh up the harms to make sure that they do not outweigh the benefits; I honestly believe that the amendment would help to balance the scales a little better.

**Danny Kruger:** The scenario that my right hon. Friend the Member for North West Hampshire suggests implies that the patient has no faith in the panel. The patient would be concluding that they did not want to go through the formal process for an assisted death and explain it to their relatives, because they fear that the panel’s decision might be overturned on application by their relative. That objection is predicated on a lack of faith in the process that is being decided. If we are to have confidence in the process, we should trust that people will expect it to work properly. There is nothing wrong with giving a family member the right to make an application to the panel or the commissioner, because they would have every right to reject that family member’s application if they concluded that the original decision was valid.

**Rebecca Paul:** I completely agree. While I was preparing my speech, as is often the way, I found myself wishing that I had tabled an amendment to add a legal requirement that the family be able to feed into the panel and share information. Perhaps that is something that can be picked up at a later stage. The nature of the process is that as we debate these things and think about them in detail, other ideas come through.

**Kim Leadbeater:** The hon. Lady mentioned a few moments ago that the family would make such an appeal only if there was new information, but her amendment does not say that, and it has no explanatory statement. Could she clarify what she meant?

**Rebecca Paul:** That comes under subsection (2) of my amendment:

“The Commissioner will allow the application for reconsideration if the Panel’s decision was—

- (a) wrong, or
- (b) unjust”.

It is implied that the decision is wrong because there is missing information. Missing information is one example; other things would enable an appeal, but the obvious and most likely reason in this instance would be that a certain bit of information had not been shared.

I am not saying that the amendment is perfect in any way. It is set out clearly in guidance on the private Member’s Bill process that amendments will not necessarily be drafted perfectly and that it is incumbent on the Government to take the spirit of what is intended and

get the clause to an appropriate place to deliver that. I am happy to work with the Government to ensure that the wording works and is clear. I think the hon. Lady's point may be that it is unclear; I am happy to work in any way to improve that clarity.

**Kit Malthouse:** Through my hon. Friend, may I respond to the point made by my hon. Friend the Member for East Wiltshire? It is not necessarily about not having faith in the panel. Somebody may, for example, have a relative driven by a strong religious faith who wants to create some form of delay in the system, just to put off the awful day. Even if a commissioner were to take that relative's application and decide that it was not valid, that would inject delay into what is naturally a time-limited process.

A person may want to retain the right to handle their family themselves, and have the choice about how to do that. If the state, rather than the dying person, is effectively deciding how the family should be handled, we are naturally giving that person an incentive to keep this thing quiet until they are ready to tell their family, which may be well towards the end of the process. As the hon. Member for Rother Valley said, there are multiple points at which the family can intervene if they know. My concern is that this kind of—what is the word we have been using?—embroidery actually drives people in the opposite direction to the one my hon. Friend the Member for Reigate wants to achieve.

**Rebecca Paul:** I thank my right hon. Friend for raising that point, because it gives me a wonderful opportunity to draw everyone's attention to subsection (3) of my amendment, which states:

“The Commissioner may consider the application without a hearing if they consider it in the interests of justice to dispense with a hearing.”

My right hon. Friend is absolutely right that time is of the essence and that there will be situations in which it is right that things move as quickly as possible. I hope that that goes some way towards reassuring him that I am trying to come up with amendments that are balanced. I am aware that we have two different examples here; I am genuinely trying to make sure that I do not make it harder for those genuine cases, because I totally understand how important it is and I understand that there is a lot of pain and suffering, for all the reasons that have been set out. I hope that I am getting the balance right, but I am always happy to have further discussions.

Sir James Munby was one of the first to criticise the High Court safeguard; the hon. Member for Spen Valley says that she has taken those criticisms on board. His criticisms of the panel seem similarly acute. I hope that the Committee will agree that my amendment answers a real need and recognises the important role of family in the death of a loved one in most situations, although I accept not in all. It has a profound and long-lasting impact on them too, and their needs should not be entirely disregarded in the name of autonomy. The hon. Member for Rother Valley gave a very powerful speech yesterday on the subject, setting out that the amendment is not required because any decision could be judicially reviewed. I am not qualified to opine on whether judicial review would be relevant with this panel, but I look forward to the Minister covering the matter in her closing remarks. We need to be clear on that front.

Judicial reviews are a challenge to the way in which a decision has been made, rather than to the rights and the wrongs of the conclusion reached. It is important that this is understood. A judicial review just checks that the process was followed, not whether the right decision was made. That is why our role in setting the process is so important. If the new clause remains unchanged and there is no requirement for a panel to accept relevant evidence from a family member, there will be no avenue for appeal under judicial review if such information is not taken into consideration when making the decision, because the process will have been followed.

Our role on this Committee is a heavy one. It is about getting it right and setting the process for judicial review to work as it should. We have an appeal process in the new clause for when a panel wrongfully turns down an application, but not for when it wrongfully approves one. Why not, if judicial review is available and suitable? I suspect that it is because, as the hon. Member for Rother Valley is aware, the judicial review is not the best way to do it. It is a long, onerous process involving application for permission and, in some situations, the securing of legal aid, which is fraught with difficulty. I say gently to the hon. Member that if judicial review is not suitable when the panel has wrongfully turned down an application, then why is it suitable when they have wrongfully approved someone for an assisted death?

I think it is clear that my amendment is needed as a safeguard to prevent wrongful deaths under the Bill. It is a helpful safeguard. No panel will ever want to see someone assisted to die who should not have been, just because it did not have all the information. I suggest that the safeguard will help to secure panel members, because they will feel reassured that a process is in place to avoid mistakes. If my amendment is not agreed to, and if wrongful approvals have to rely on judicial review for a remedy, I suggest that the impact assessment will need to take into account the likely impact on socioeconomic groups that rely on legal aid for funding. I suspect that, owing to a lack of funds, they will find themselves with no avenue at all to appeal. I do not think that any of us wants a two-tier system in which rich families can intervene and poor families cannot.

**Jake Richards:** I have been rightly and fairly challenged in the hon. Member's speech, but the difference is that if a family member has a right to appeal in the internal process, that family member would have to be a party in the original hearing. The whole point of the panel is that a person comes to it with their application. The family have the right to put information before the panel, but they do not have the right to make their case to the panel, because their views on the application are not relevant. Information that they might have is relevant, but their views are not. That is why there is a disparity between the person's ability to appeal internally against a refusal of their application, and third parties having to take other routes. I hope that that offers some clarity as to why I am comfortable with the difference between the two. I reassure the hon. Member that I have thought about it long and hard as well.

10.15 am

**Rebecca Paul:** I thank the hon. Member. I would just clarify that currently there is no legal right for a family to provide information to the panel, which is part of the issue.

[Rebecca Paul]

I turn to my amendment (c) to new clause 21. New clause 21 includes provision that, among other things, the panel's function is to determine whether it is satisfied that the person has capacity, that they have a clear, settled and informed wish to end their life, and that they have not been coerced or pressured. However, it is not entirely clear what "satisfied" means in the new clause. My amendment assumes that, as in a civil court, it means "on the balance of probabilities".

As I understand it, the leading case on the meaning of "satisfied" is a 1964 House of Lords case, in which the court held that "satisfied" meant "on the balance of probabilities", rather than the tougher test of "beyond reasonable doubt". In a later amendment, I will propose that we adopt that tougher standard, but this amendment assumes that the current wording will stand.

My view, as we have already established in lengthy debate, is that the capacity bar is low, because the doctor need only be 51% sure. On the clear, settled and informed wish and coercion test, the standard is only "to the best of the doctor's knowledge", which is not a particularly high bar to meet. We are therefore applying a low bar to a low bar. That certainly leaves us with a highly accessible process, but I suggest that that is not a positive or safe thing.

My amendment would bring in a further safeguard. As I have said several times, I would have preferred to see such safeguards in clauses 1 to 3, but as they were not accepted there, I am forced to propose them here, because it is better to have them than not. The amendment would give the panel the ability, if there is a "real risk" that the criteria have not been met, to pause and make further enquiries. They would not be obliged to give a decision that day, but would be obliged to look into the matter further, ask for more testimony, request more documents and consult experts.

The real risk test is taken from the jurisprudence of the European Court of Human Rights. Doctors will already be familiar with it, as they are already required under the Human Rights Act to assess when there is a real risk of suicide. It is not a strange novelty. The objection has been raised that introducing a real risk test to the doctors' assessments would complicate matters, but the panel stage is a distinct stage with a distinct set of rules. I hope that the amendment will be seen not as introducing a complication but as filling a gap, particularly as this stage is meant to be more akin to a judicial stage.

Difficult situations will not necessarily be as rare as we hope. On coercive control, those with decades of experience of working with the most vulnerable have warned us time and again what the Bill could mean. Jane Monckton-Smith, one of the leading academics in the area, has said:

"Unless we do take this incredibly seriously, this Bill is going to be the worst thing, potentially, that we have ever done to domestic abuse victims."

The consultant clinical psychologist Sue Smith, who specialises in cancer and palliative care, has submitted written evidence from which I will quote at length, because it vividly brings out the scale of the risk of coercive or controlling behaviour:

"In my clinical experience working with people who have cancer, a cancer diagnosis and treatment effects can amplify CCB...A woman asking for her needs to be seen and met alongside her increased physical and psychological vulnerability creates a change within the couple, which can lead to violent acts or CCB. The seriousness of the cancer diagnosis may be systematically and actively denied or minimised, claims can be made by the male partner that she is attention seeking, or she is accused of making up the effects of treatment, and can be left isolated and alone when in physical need, e.g. managing treatment effects like nausea or pain that restrict the ability to wash, dress and where she is reliant on others for help. At the same time a male partner may also state, 'You are better off dead anyway,' 'Your children don't care, and no one else in your life cares about whether you die.' They may also threaten to leave. This pattern is extremely confusing, harmful and threatening. It continues over time, and a woman learns to doubt her reality and experience, and is extremely isolated. This can lead to heightened anxiety, hopelessness and helplessness, and abject despair, which can lead to a person wishing they were dead. The confidence and ability to know what one needs and wants is severely compromised when her reality is continually minimised or denied and will impact informed decision making."

We can hope that the existing safeguards will catch some of those cases, but they will not catch all cases, so my amendment would go a little way towards improving the safeguards.

Amendment (a) to new clause 21 tries to pin down a missing detail, namely the standard by which the panel makes its decision. In a criminal trial, a jury is sent away to consider its verdict. The members of the jury know that they must be certain, beyond reasonable doubt, of the defendant's guilt. It is not enough to think it likely on balance, nor is it enough that they have an opinion that they can justify with good reasons. It must meet a high threshold. Why is there such a high standard? Because we have to be sure about the decision, given the grave consequences. We are now considering a similar question: what is the right standard for a decision that will make the difference between life and death?

I turn to subsections (2) and (6) of new clause 21. We are told that the panel must be satisfied that the eligibility criteria have been met. The word "satisfied" is doing a lot of heavy lifting in the Bill. If a question subsequently comes to court, as has happened in Belgium where there was a wrongful assisted suicide, we will be asking the court to rule on whether the panel should have been satisfied. That raises an obvious question, which my amendment is designed to answer: what does "satisfied" mean?

I turn to a real-life example. In a famous case in Oregon, an elderly woman called Kate Cheney sought assisted suicide. She had a terminal cancer diagnosis; she also had dementia, so she was referred to a psychiatrist to establish whether she had capacity. She was accompanied to the appointment with the psychiatrist by her daughter Erika, who seemed extremely assertive about the assisted death. Kate Cheney denied that she was being pressured. However, the psychiatrist noticed that the daughter was coaching her mother. Referring to Kate, the psychiatrist wrote in his report:

"She does not seem to be explicitly pushing for this."

He concluded that she did not have capacity to make the decision. The daughter was, in her own word, "incensed" that the psychiatrist was casting such a judgment on her mother. Kate applied for a second opinion and was assessed by a clinical psychologist. He found that Kate did have capacity, but he added that her



“choices may be influenced by her family’s wishes, and her daughter, Erika, may be somewhat coercive”.

Nevertheless, he gave the green light to the application and Kate received the go-ahead.

I ask members of the Committee whether they would be satisfied that Kate Cheney was eligible for an assisted death. Are they confident that colleagues would share the same judgment about being satisfied? Can they be sure that every social worker, legal figure and psychiatrist would be satisfied in the same direction? After all, the psychiatrists in Oregon were divided on it.

In written evidence, the most experienced clinicians have urged us to recognise that abuse is difficult to pick up. Sarah Grove, a consultant in palliative medicine, says:

“Over my years in practice, I have witnessed families acting for financial gain and not in their loved one’s best interests but in this kind of situation, this has always been impossible to prove.”

Dr Kathryn Myers, a retired palliative medicine consultant, says:

“I have seen coercion in the contexts of decision-making around the best place of care for patients and of money and property. Perpetrators are usually family members...Occasionally it has been overt and easy to detect, for example, threatening or manipulative words or actions. Most frequently it has been very subtle, one might even say, gentle. It can take skilled clinical nurse specialists highly trained in communication skills and in detecting coercion, who know the person well and who have a relationship of trust with them, several conversations over several days if not weeks to uncover that coercion has occurred.”

In such a case, with limited time, a panel may not be certain whether to give the green light to an application. That uncertainty will be even greater if it does not know what evidential standard to employ.

My amendment would clarify that grey area. It would bring in a standard that has been tried and tested and is well understood. To be clear, “beyond reasonable doubt” merely means that the panel is sure. The courts have said that the two phrases are equivalent, as has the Judicial College in its guide to judges, “The Crown Court Compendium”:

“What is required is a clear instruction to the jury that they have to be satisfied so that they are sure...if an advocate has referred to ‘beyond reasonable doubt’, the jury should be told that this means the same thing as being sure.”

The Crown Prosecution Service says:

“the magistrates or district judge in a magistrates’ court or the jury in a Crown Court must be sure that the defendant is guilty. Sometimes you’ll hear this described as ‘sure beyond a reasonable doubt’ or ‘satisfied so you are sure’.

Importantly, the word “satisfied” by itself is not enough. Juries must be not just “satisfied”, but

“satisfied so you are sure”.

The wording in the amendment would be equally strong. It opts for “beyond reasonable doubt” because it is a better known phrase and more widely understood than

“satisfied so you are sure”.

I do not want to get too hung up on which of those phrases to use. The point is to adopt the tried and tested standard that has worked in the courts. We want the Bill to have the highest standards and to protect people. Amendment (a) to new clause 21 would help to achieve that.

Members will all be delighted to know that I am moving on to the last amendment.

**Jake Richards:** I know that the hon. Lady has been on her feet for some time, but I just want to explore the difference between what a jury is doing and what this panel is doing. Let us, for example, consider the issue of coercion and a case where there is no evidence that the person is being coerced in any way, but of course the panel has not asked everyone in that person’s life. It has not heard evidence from everyone. There is no factual matrix determining what has happened or what has not happened. Can the panel sit there and say, “We are sure,” or do you think it would have to investigate all the circumstances of that person’s life and interview everyone that is in and around their social circle to be sure that they have not been coerced? Can you see why, as I set out in my speech, the “beyond reasonable doubt” burden is not appropriate for the task of this panel?

**The Chair:** Order. Can I gently again remind Members that “you” means me? Please refer to the hon. Lady.

**Jake Richards:** Forgive me, Chair.

**Rebecca Paul:** I thank the hon. Member for sharing that. It is useful to have these debates and conversations, but I would suggest that the panel needs to be sure off the back of the information that it has been given and the witness testimony, which goes back to why it is so important to ensure that we have that coverage and the right things feeding into the panel so it can get to that high threshold. I would expect the threshold to be at court level, given the huge, significant ramifications of this decision for that person.

**Naz Shah (Bradford West) (Lab):** The hon. Lady is making a powerful point. I refer back to the point on jury trials. When we have criminal trials and jury trials, they go through not every single thing in somebody’s life, but the actual act of criminality itself and what is relative to that criminal act. That does not mean to say they trudge through a person’s whole life.

**Rebecca Paul:** I thank the hon. Member for that intervention. She eloquently explains exactly the point I was trying to make. That is absolutely right. Clearly, we do not expect the panel to pore over everything. It can only be sure based on the evidence put before it, so I reiterate: that is why it is really important that all the right and relevant information can be fed into the panel in order to get a good, robust, solid decision.

Members will all be relieved to know that I am now coming to the last amendment, amendment (b) to new clause 21. It puts in an additional mechanism for the panel not to grant an application when particular circumstances make it inappropriate. I do not think many in the Committee are going to like the amendment. I make the point again that, in an ideal world, there would have been a best interest clause or something similar in the Bill to protect patients from opting for assisted dying due to some other perfectly solvable challenge in their life, such as being homeless, but, given our amendments were not accepted, I am putting this amendment forward again as a responsibility of the panel, given its oversight role. This is likely to be where the social worker on the panel can play an important part.

[Rebecca Paul]

In Ontario, assisted dying is monitored by a team of nurse and coroner investigators who review every reported death. The state has also established a death review committee. A recent report shows some of the difficulties for a panel in making its decision. A patient referred to as Ms B successfully applied for an assisted death. She suffered from multiple chemical sensitivity syndrome, which made it difficult for her to find appropriate accommodation. The report found that

“As a result of her housing situation and conditions, necessary to address her MCSS, Ms. B experienced social isolation, which greatly contributed to her suffering and request for MAiD.”

10.30 am

In other words, that could be seen as assisted dying as a solution for a housing problem. That request split the death review committee. I want to make clear that this Bill is very different, and the process is different from medical assistance in dying, but I am trying to make the point about other factors. According to the report:

“Some members cautioned that a social issue, housing, was at the forefront of this request”,

so it should not have resulted in her death. Others disagreed. The report continues:

“Consensus was not achieved amongst MDRC members about whether Ms. B was eligible.”

This Bill is really different from the legislation used in Canada, because Canada requires an applicant to be facing unbearable suffering that cannot be relieved. The Bill before us requires a terminal diagnosis, so it does not open up the question of other kinds of suffering and whether they can be relieved. However, it will certainly confront the panel with the same kind of dilemma: what should be done when an applicant wants an assisted death, not because of illness, but because of personal vulnerability or social issues—housing problems, for instance? The panel will know that, if that person’s housing problems or some other crisis were to be resolved, the desire for an assisted death might diminish or even evaporate. It will nevertheless have to decide whether to issue a certificate confirming eligibility for assisted death.

**Kim Leadbeater:** I might have misheard, but I believe the hon. Member asked what happens when a patient asks for assisted death not as a result of illness. If that was the case, then they would not fall under the criteria of the Bill.

**Rebecca Paul:** I am making a point regarding if a person fitted the diagnosis in that they are terminally unwell, but it is actually the fact that they have got nowhere to live that is really driving the decision rather than the terminal illness. My apologies if that was not clear.

In Oregon there was the case of Barbara Wagner, who had recurring lung cancer. She had been prescribed a drug, Tarceva, which had an excellent record. It increased patients’ one-year survival rate by 45%. Oregon’s state Medicaid provider sent Wagner a letter saying that her insurance plan would not cover the drug, but would cover other options, including assisted dying. Wagner said:

“I got a letter in the mail that basically said if you want to take the pills, we will help you get that from the doctor and we will stand there and watch you die. But we won’t give you the medication to live.”

Those are her own words, not my words. Recently in Australia, similar cases have been reported of people choosing assisted dying because they were put on too long a waiting list for a home care package. One man said of his mother:

“Her pride wouldn’t allow any of her boys to take care of her or to bathe her so she got approved for the assisted dying”, and a few months ago proceeded with it.

There are many other situations where everyone would benefit from the panel having broader discretion. Think of one of the cases I talked about earlier—and have done throughout the various Committee sessions—where somebody appears to be a possible victim of coercion, or a case where someone with diabetes, for instance, wishes to bring themselves within the six-month definition by stopping treatment, or someone with anorexia brings themselves within the definition by stopping eating and drinking. The capacity safeguard would not defend them. The courts have found that people have capacity to refuse lifesaving treatment, even if their decision is strongly influenced by other factors.

Hon. Members may worry that giving the panel discretion is too open-ended. The truth is that, in our legal system, discretion is the norm. Whether in sentencing guidelines or in custody cases, the law nearly always recognises that sometimes a general rule has to be departed from. If the panel is compelled to make its decisions only by a checklist with no other option, the Bill is saying that the panel is less trustworthy than the courts. If this panel is to be a safeguard, we should be clear about how it functions. It needs to be open to correcting mistakes. It needs to have a clear standard of proof, which will protect people and not just hastily steer them towards assisted death, and it needs a wide degree of discretion if it is truly to be more than a tick-box exercise. I hope the Committee will agree and support these amendments.

**The Chair:** It is open to any Member to speak more than once in a debate, as the Committee knows. Naz Shah has indicated to me that, because of the size and complexity of the groupings of amendments, she wishes to speak not once but three times to break her comments into bite-sized chunks. I draw that to the Committee’s attention to put down a marker in case anyone else feels the same way.

**Naz Shah:** It is an honour to follow the hon. Member for Reigate, who takes the record for being on her feet the longest in this Committee.

**Rachel Hopkins** (Luton South and South Bedfordshire) (Lab): Oh no—that’s yours!

**Naz Shah:** She beats my record for sure. I assure the Committee that my comments on new clause 17(a) will be brief in comparison with my previous speech.

Yesterday, my hon. Friend the Member for Ipswich and I disagreed on a point of detail. In fact, he was right and I was wrong. As he said, a provision in paragraph 4 of new schedule 1 allows the Secretary of State to dismiss a bad commissioner if the circumstances merit it. Although I still maintain my position that too much power is

being given to a single person, I thank my hon. Friend both for pointing that out and for the courteous way in which he did so.

The hon. Member for Reigate has spoken very eloquently in defence of her amendment. Just to recap, new clause 17, tabled by my hon. Friend the Member for Spen Valley, would allow a person seeking an assisted death to appeal to the commissioner if a panel refuses their request. However, it would not allow any other person to lodge such an appeal.

By contrast, new clause 17(a) would allow several other parties to lodge such an appeal, including the two doctors who took part in the process, the applicant's next of kin or relatives, or anyone who took part in the proceedings before the panel or who gave evidence to the panel. I acknowledge that there are genuine arguments against accepting new clause 17(a), and I have listened to them in detail and given them sincere thought. The family members who might appeal against a decision could perhaps have little or no contact with the person on whose behalf they say they are appealing; I note that the hon. Member for Harrogate and Knaresborough made a very honest and personal intervention on that subject yesterday, and I accept that that is a real possibility. As we all know, families are complicated.

There is also a likelihood that allowing more people to appeal against a panel's decision, both for and against an assisted death, could mean that the commissioner will need considerably more resources. Otherwise, it is very likely that appeals will not be heard within a reasonable period.

Those are genuine arguments, but there are equally strong counterarguments. If the Bill passes, we simply do not know how many coercive or abusive people will seek to drive others towards assisted death. My hon. Friend the Member for Spen Valley spoke about coercion being a criminal offence, but the last figures I have seen show that only 4% of cases result in a conviction. However, it is worth noting that many people with experience in this area are very concerned about the possibility.

We also do not know how many people will opt for an assisted death because their palliative or social care needs are not being met. Again, as I referred to extensively in previous speeches, many people with first-hand experience of this field are extremely concerned about that.

We also do not know how many people will opt for an assisted death partly because they do not want to be a burden on their loved ones. We do not know how many of those loved ones would, in fact, be ready to care for the person who feels like a burden, nor do we know what safeguards, if any, will prove effective against any of those dangers.

One thing we do know is that relatives or carers of someone seeking an assisted death may be able to bring those dangers to light. A family member, a GP or even a paid carer may have seen someone come under coercive control. As new clause 17 stands, they might feel that the panel had made a terrible mistake in ignoring the evidence of that. The hon. Member for Reigate's amendment (a) to the new clause would give those people the chance to bring their evidence before the commissioner.

I have to say that, as it stands, new clause 17 seems to make some fairly odd assumptions. It would allow an appeal if the applicant's request for an assisted death

were turned down, which means that my hon. Friend the Member for Spen Valley acknowledges that the panels may on occasion get things wrong. But the right of appeal is only one way, which seems extremely odd. It surely cannot be the case that the panels might get things wrong when they turn down a request for assisted dying, but are always right when they accept them.

There surely needs to be an amendment that allows people with knowledge of the situation to appeal if they think the panel has made a mistake in allowing an assisted death. Amendment (a) to new clause 17 would also reduce some of the dangers that we first faced. On that basis, I urge the Committee to support the amendment.

**Daniel Francis** (Bexleyheath and Crayford) (Lab): It is a pleasure to serve under your chairship, Sir Roger. I will be speaking to new clauses 14 to 17 and 21, new schedules 1 and 2, and amendments 371 to 373, 377, 378, 381, 388, 390 and 391—although I assure you I will not speak for as long as the hon. Member for Reigate did.

Yesterday, my hon. Friend the Member for Spen Valley referred to the Law Society's neutral position on the new clauses and new schedules. I will not read out all four pages of its most recent submission on the matter, but, although it is neutral, it does continue to have concerns and queries about the new provisions. I will just read out the headlines.

The Law Society remains concerned about the role of the review, whether it would be accessible and workable for people seeking assistance, and the resourcing required. It seeks clarification on the nature of the functions to be exercised by the commissioner and by panels. It still seeks clarity on how panels will deal with cases and asks us to consider where lawyers may need to play a role and the availability of legal aid. We touched on that matter this morning. I accept that the Law Society's position was used in evidence on the other side of the argument yesterday and that it is neutral, but I could have read all four pages of its response if I had really wanted. That is its position.

I will oppose some of the new clauses and raise concerns about others, including some of the amendments to new clauses tabled by my hon. Friend the Member for Spen Valley. As we have heard, the new clauses and amendments would replace the High Court judge mechanism in the original draft of the Bill with a three-person panel. As we said yesterday, that fundamentally changes the Bill from what the House voted for on Second Reading last November.

The panel will consist of a consultant psychiatrist, social worker and legal member who would chair it. I concur with those who have said that it would help if those individuals were involved earlier in the process. Several concerns have been raised about the High Court judge mechanism in the evidence that we have received. Although I accept that the new panel mechanism would address some of those, it would also leave some untouched and in some cases it could make the position worse.

During oral evidence, we asked witnesses whether and how the High Court judge system would work. Some said that they did not believe that it would. I credit my hon. Friend the Member for Spen Valley for listening to those points, but our problem and predicament now is that we were not able to seek oral evidence on the

[*Daniel Francis*]

panel arrangement now before us, and that a large amount of the written evidence had already been submitted beforehand. I will come to this again later, but if we had gone through the normal process of a Government Bill—I accept that this is not a Government Bill—we would not be in this position now.

As a group, the 23 of us are now debating these schedules and clauses before Report, but we have not had any oral evidence on what is before us, and I would argue that we have also had a lack of written evidence. The panel system has complications, and it will be of life-and-death importance. We should have been able to ask witnesses whether a system would work, and how, but we have not been able to do that.

10.45 am

If this had been a Government Bill, the civil service would have undertaken months of consultation with experts and stakeholders and, as we have commented previously, the civil service would have published a number of documents, including an equality impact assessment and a human rights assessment, for us to consider. We are dealing with these complex matters of state in a very different way than we would with a Government Bill.

I now turn to some queries and concerns about what is before us.

**Danny Kruger:** Before the hon. Gentleman moves on, I want to reiterate the value of his point. This is an enormous change to the Bill and totally transforms it, but we did not have the opportunity to hear evidence on it. Is he also aware that many of the distinguished people who gave evidence against the traditional stage, which has now been scrapped, have not endorsed the proposal to change it? In fact, some of them are equally opposed to the new proposal. We have not had confirmation that this is the right system, and we did not get the opportunity to hear proper evidence on it.

**Daniel Francis:** Yes, I am aware of some of those submissions from those individuals. I will come to this, but clearly even some people who were in support of making changes did not recommend the ones that we have now incorporated.

First, I would argue that people giving evidence to the panels should be doing so under oath. In my 20 long years as a local councillor, I gave evidence under oath to an investigation by a health and safety executive into the demolition of a building. I would say that the demolition of a building and this matter are very different, and therefore I query why this evidence is not being given under oath.

**Lewis Atkinson:** My hon. Friend is making a thoughtful speech. Has he had the chance to consider the situation with mental health tribunals that I mentioned yesterday, which usually do not take evidence under oath? Clearly, they make very serious decisions regarding sectionings and deprivations of liberty without invoking oath-taking powers.

**Daniel Francis:** I accept what my hon. Friend says, but there are differences of opinion. I accept that that is a very serious matter, but I would argue that a matter of

life and death is more serious, and there are processes that we know. As I said, I gave evidence under oath about the demolition of a building and whether someone had followed the correct health and safety regulations, yet we would not be doing so in this case.

**Naz Shah:** My understanding is that, at the mental health tribunal, a person would be entitled to legal representation, which would be an officer of the court or a lawyer, so the bar is very different. Does my hon. Friend agree that actually this is like comparing an apple to a pear?

**Daniel Francis:** Indeed, these are complex matters and these comparisons are made. We have heard a lot about Spain, which I will briefly refer to later, but Spain has a very different legal process from us.

Returning to my comments, currently an individual would not have to give evidence under oath. As I said, the matters discussed by a panel are as important as they can be. In my opinion, people should be giving evidence to the same standards that they do so in a civil or criminal court.

My second concern relates to the procedures for investigating any doubts that the panels may have, and we have heard about that. The panel must hear from at least one doctor and from the applicant under this new set of proposals. They must read the two doctors' statements and the applicant's declaration, and then they can decide to ask questions of the applicant and/or one or both of the doctors. The panel can also hear from and ask questions of any other person. How is the panel going to know which people to talk to? Will the panel be asking the right questions of applicants? Applicants will have different circumstances in different cases. Will those professionals also be skilled investigators? I accept the evidence we had on the skills those people have and bring, but it is not clear to me whether they will be acting in a quasi-judicial way. We have heard that it will not be an adversarial system. Although I can see the problems with creating an adversarial system for the panel, there are systems in other countries where that is allowed, and a different appeal system also exists elsewhere.

On the third point, which is about the standard of proof, if the panel finds matters that worries it, but does not find actual evidence of coercion, then it is not clear to me what it does. The panel could find that a patient qualifies for assisted dying on the balance of probabilities, and then approve that request. Three members of the panel could decide that a patient is, on the balance of probabilities, free to make the decision. People have heard my concerns about capacity, and whether the process for determining that is correct. We talked yesterday about how decisions are made in new schedule 2, and particularly subsection 5. There are differing views on the Committee about subsection 5(2), which talks about a "majority vote", and how that may align with subsection 5(3).

My fourth concern is that there is no provision made in the new schedule or amendments for how the panels will deal with people with learning disabilities. There may be a further amendment to come on that matter. I accept that we agreed to an amendment regarding training for individuals, but I have concerns about how learning disabilities could be judged by the panel. I

referred yesterday to how people with learning disabilities could go through this process with no support from friends and family, and then be presented before a panel. Under the Mental Capacity Act 2005 and its code of practice, would the panel have to assist the person in making a decision? That is what, in my mind, the Mental Capacity Act states: that if someone requires help to make that decision, individuals with the power should help them to do so.

There are wide differences in how professionals talk to, listen to and interpret people with learning disabilities. I know that first hand, on a day-to-day basis. The Bill should set out best practice in this field from the start, so that we do not see discrepancies between how panels undertake their work with learning disabilities. I do not think I need to spell out how a bad decision in this field could lead someone choosing assisted death to a place where others may not want to take them.

The fifth area relates to appeals, and that they can only go one way. A person whose application for assisted death is rejected can appeal to the voluntary assisted dying commissioner. The commissioner can then either uphold the decision or allow the person to have an assisted death. We have discussed what happens if a person who knows that that person applying for assisted death has grounds for concern about the case. We have discussed the legal means of people wishing to seek a judicial review, which causes me grave concern. Under the Bill as written, the person known to the person seeking assisted death cannot appeal against a decision. I heard the debate this morning on the amendments tabled by the hon. Member for Reigate. The Bill says that the panel can choose to hear from any person who has a relevant connection, but there appears to be no mechanism for someone to apply to register any concerns with the panel.

In the oral evidence we received we heard concerns from Sir Nicholas Mostyn and Alex Ruck Keene that both sides should have the right of appeal. We heard that from a legal background, from supporters—I hear that Alex Ruck Keene was referred to as an objector, but I think he would say he is neutral in the process. People who have differing views about the process said to us in their oral evidence that both sides should have the right to appeal.

**Naz Shah:** My hon. Friend is making very important points. Is he aware that Professor Mark Elliott, one of the UK's leading professors of public law and a former chair of the Cambridge law faculty, has spoken about the

“asymmetrical nature of appeals under the Bill,” and said:

“At best, suggestions that judicial review is an adequate substitute for families who wish to challenge decisions indicate a fundamental misapprehension about the nature of JR.”

On the suggestion that injunctions might work, is my hon. Friend aware that between January 2017 and 2021, the administrative court has issued only one injunction?

**Daniel Francis:** I thank my hon. Friend for that statistic, which I was not aware of. It relates back to concerns that I have had through the process, particularly on learning disabilities and how a family member finds out during the process what processes would be open to them. In my opinion, it is unclear how the proposed

panel fits into our legal system. Again, there are all kinds of quasi-judicial panels that do fit into our legal system, and they have an appeal process, of course. They would normally see two parties in a case. I hear what has been said this morning about Spain. It was put to us in oral evidence from a supporter of the Bill that we should look at that part of the Spanish model about having both sides of the process, although I accept that Spain has a very different legal system from the United Kingdom.

**Kim Leadbeater:** I am interested in exploring the characterisation of the two sides referred to, because this is not about two sides. This is about an individual patient with a terminal illness. I am just interested in how we can explore that a little further.

**Daniel Francis:** I hear that. As my hon. Friend knows, yesterday when there was an amendment on individual autonomy, I voted the same way that she did. But I will put the scenarios that I put in that debate yesterday when I came to my decision. The scenario that I have always considered is: what if the person with a learning disability in their 40s or 50s says, “I want to make the decision to relieve the burden on my parent in their 70s or 80s”, and the parent in their 70s or 80s is not involved in the process, but finds out about the process and there is no way they can intervene in the process? I hear what was said about JR, but there is no way, as is laid out in the Bill, that they can then intervene in the process and say, “There has been a mental capacity assessment, but we think that, given there is a borderline level of capacity, there may have been a position where a doctor has had to, under the Act, assist that decision to be made.” What would be the legal process for the parents in that case? These are the scenarios. As Members know, I am not somebody who opposes the principles of the legislation, but these are the scenarios that have brought me to this place.

**Kim Leadbeater:** The quick answer is that there would be an injunction. I hope my hon. Friend will also be reassured that the panel is coming towards the end of this very long process. In the situation he describes, the patient would have gone through all the other stages with the doctor. I imagine in that situation, in a psychiatric referral, the doctor would have said, “Would you consider speaking to your next of kin?” There are a lot of other stages prior to getting to this point, which I hope provides some reassurance.

**Daniel Francis:** I hear that. As my hon. Friend knows, I supported amendment 6, as she did, and other amendments that strengthen the Bill in that way. I accept the right to autonomy. The hon. Member for Harrogate and Knaresborough gave the example of an appeal in Spain, but I do not think the fact that a religious group was funding the appeal in one case is an excuse for taking that right away, because there will be other people in Spain who have genuine concerns and want to go through the appeal process.

11 am

**Sarah Olney (Richmond Park) (LD):** To pick up on what the hon. Member for Spen Valley said, the multidisciplinary panel comes at the very end of the process. She has talked about the different stages, but they all occur in isolation. There is a doctor, then there is

[Sarah Olney]

another doctor, and then there might be a psychiatric referral. We heard clearly in oral evidence about the value of the multidisciplinary panel referring to each other and taking evidence collectively. The strength of it would be that it occurred at the beginning of the process. I wonder whether the hon. Member will reflect on that.

**Daniel Francis:** I think that is the case. As the hon. Member said yesterday, people from those professional fields—in their written evidence, particularly—asked to be included in the process, but I do not think they were asking to be included at the end of the process; I think they were asking to be included earlier.

**Danny Kruger:** The hon. Gentleman has explained clearly in personal terms why it is important to involve the family, and I concur with the hon. Member for Richmond Park. I want to take the hon. Gentleman back to the rather abstract question of whether there are two sides to these cases. In contradiction to the hon. Member for Spen Valley, I think there are two sides to these cases, as she herself recognises whenever she says that this is a finely balanced judgment. The fact is that a decision can go either way, and it is very important that the decision makers are considering two sides. It is not just the immediate stated wish of the applicant that is the only consideration, as the Bill acknowledges. Does the hon. Gentleman agree that it is important to have the widest possible input into the decision, so that both options—to proceed or not—can be properly considered?

**Daniel Francis:** I hear what the hon. Member says. My concern has always been the scenario that I described. If this legislation is passed and we push it forward, one death that occurs where somebody has concerns about the process would be one too many. I said that clearly when we debated clause 3, and that remains my principal concern. It is not necessarily about two sides, but in cases where there are concerns, we need to do everything we can to ensure that that does not happen.

I have a query about the resourcing of the panel. Part of the reason why we ended up here was the queries about the resourcing of the judicial role in the process. We would need to find skilled professionals, especially consultant psychiatrists and social workers, to sit on the panel. If we look at the per capita rates in the Australian and American states that have assisted dying, we can estimate that the number of cases of assisted dying each year in England and Wales would be in the low thousands. Any consultant psychiatrist or senior social worker who sits on these panels will have to spend hours on each case. We do not yet know how many hours it would be on average, but for complicated cases, it could be many hours. What analysis has been undertaken of the capacity of consultant psychiatrists and senior social workers? Their professional bodies are beginning to look at that, but again, we were not able to ask them that during oral evidence, and because the written evidence was submitted so heavily in advance of these amendments and new clauses being tabled, we do not have that information in front of us.

We hear about the resourcing of our NHS mental health services and the fact that we do not have enough psychiatrists, so I query whether we have enough senior

social workers. A senior social worker visits my house every year, but I have never seen the same social worker twice, because of the turnover issues, capacity issues and the lack of staff.

What will the Government do to ensure that the panels fulfil their responsibilities? We would be dealing with applicants who have very little time left, and being able to properly staff the panels must be a priority. We must not take psychiatrists and social workers away from their other work, while ensuring that people seeking an assisted death do not wait a long time. That is another matter on which we would have benefited from oral evidence from expert witnesses. We would also have benefited from the normal consultation that there would have been on a Government Bill, because we would have been looking at that matter for several months.

In summary, I accept that this set of new clauses and amendments is an effort to fix problems with the Bill, but problems remain, and there are probably some new ones as well. I will therefore not support a number of the provisions.

**Jack Abbott (Ipswich) (Lab/Co-op):** It is a pleasure to serve under your chairship, Sir Roger. I rise to speak to several new clauses and to amendment (e) to new clause 21.

There were many comments yesterday about the fact that a number of Members across the House had cited the judicial stage as an important reason why they supported the Bill. I challenge the notion that they voted for it exclusively for that reason, but I recognise the strength of feeling. To be frank, I was not one of them. I was not persuaded, not least because of a number of points made yesterday by my hon. Friend the Member for Rother Valley, that the judicial stage would be anything other than a rubber-stamping exercise. I am certainly not going to go into “good judge, bad judge”. I hugely respect the legal profession, of which there are many representatives present.

The legal profession has a huge range of expertise and experience, but it could not be expected to cover in depth the psychiatric and social care aspects of the process, about which we have been raising concerns for weeks. For that reason, and especially given that we are retaining legal experience on the panel alongside social workers and psychiatrists—a triple-threat approach, as it were—I fail to see how anyone could reasonably argue that this approach is weaker. In my eyes, it is much stronger.

Of course, some people will always say that it does not go far enough; we have heard that several times. As has been acknowledged, we will never convince everybody that an amendment is safe or good enough. An uncomfortable truth that is rarely recognised but is worth mentioning—I am sure that I will shortly be misrepresented on social media for saying it—is that no safeguard that we could put in any Bill, on any subject, will 100% ensure that there will never be any mistakes.

We have to do our level best to ensure that the probability is reduced to an absolute minimum. However, when someone goes into surgery, there may always be complications that cannot be foreseen, and we know that there have been awful miscarriages of justice; as a new Government, we have spoken about them, from the Post Office scandal to infected blood. We also have to rely on the fact that we are entrusting experienced,

trained professionals with carrying out this work. Not only more often than not, but in nearly every situation, bar the awful cases of which we are all aware, they do their work to the best of their ability, and we have to be absolutely honest about that.

We should not look at the new clauses in isolation. They are part of a package. A number of amendments have been agreed to, about coercion and about ensuring that medical professionals are trained to the right standard. Like my hon. Friend, I hope we will see further amendments on special educational needs and learning disabilities. Those things are really important, so it is worth recognising that in addition to the new clauses, which in my view ensure a much stronger approach to the final judgment, we have agreed to a number of other amendments.

I want to pick up the issue of whether the process should be adversarial or inquisitive. I am sure that hon. Friends who have served at the Bar will tell me if I am wrong, but in my view an adversarial process is one of competition: it pits someone trying to prosecute an argument against someone trying to defend it. In contrast, an inquisitive approach is about asserting the truth. In my view, people who are not only going through agonising pain but making agonising decisions about what to do with the remaining days of their life should not be on trial. We should approach them from a position not of suspicion, but of support. Of course, that is caveated by all the things we have talked about, particularly on things like coercion. If there is any idea that a person has been coerced into the decision, of course we should investigate that, but the process should not be adversarial.

The connecting element is that we should ensure that we get the balance right between safeguards and safety. We should not add so many barriers and layers that a person can never access the process because it is too cumbersome. I do not want people to spend the remaining days of their life sitting in endless meetings, consultations and an adversarial court process, or whatever it might be. But we absolutely have to have all the right safeguards: as we have said, if there is any suspicion that someone may have been coerced or does not have mental capacity, of course we should go down the relevant routes to ensure that that is not the case.

Part of the reason why people will make the decision is that they want the autonomy to go out on their own terms, plan their remaining months and enjoy experiences with their family. We must ensure that those precious days are spent with their family, not in endless meeting rooms, so we absolutely have to get the balance right. As has been acknowledged, the diagnosis is a really important part of it. We regularly talk about the six-month point in the diagnosis, but we know when many people receive their diagnosis, their final days will be much shorter, so in the main people do not have time to go through a lengthy, difficult process.

**Danny Kruger:** Is the hon. Gentleman not making a case against a third stage altogether?

**Jack Abbott:** No.

**Danny Kruger:** I would be grateful if the hon. Gentleman could explain that. If his concern is about asking patients to go through a third stage, after the doctor's assessment—

**Jack Abbott** *indicated dissent.*

**Danny Kruger:** In that case, what is the difference? It is not necessarily the case that the judicial stage has to be incredibly time-consuming, onerous or distressing for the patient. It is about the legitimacy of the process and the rigour that is applied to it. If the hon. Gentleman wants people to be sped through the process without going through the distress of further explanations, surely he should be objecting to the panel too.

**Jack Abbott:** I thank the hon. Gentleman for that question, but he is entirely misrepresenting my position. I have said that there should be a balance between safeguarding and ensuring that the process works for people. I have just spoken in support of the panel stage, and I think it is important that it is robust. We are including social care workers and psychiatrists alongside legal professionals. I have not for a moment used any language that suggests that I am not in favour of that. I am talking about the idea that it does not go far enough. We have spoken a number of times about adding additional layers beyond the processes that are already in the Bill, which we are debating today.

**Danny Kruger:** I was not suggesting that the hon. Gentleman opposed the panel. I recognise that he is speaking in support of it. My concern was that he was suggesting that there was a problem with the High Court stage. I now appreciate that he is objecting to some sort of fourth stage that some people might be suggesting on top of the panel. I personally am not proposing that; I think that there should be a multidisciplinary team as part of the assessment process and then a judicial stage, as originally planned.

11.15 am

**Jack Abbott:** In case I was not clear enough about my misgivings about the judicial stage, I will set them out again. In my view, the people making a High Court judgment probably do not have the breadth of knowledge and experience to pick up a number of the things that we have debated over the past few weeks. One cannot expect legal professionals also to be experts in palliative care, psychiatry or whatever it might be. I was saying that I had misgivings for that reason and that the approach that the panel is taking is more broadly in line with some of the Committee's misgivings. It is an enormous improvement. I was not saying that we should remove that stage, dilute it or anything else. In fact, I am saying that it is much more robust and that it puts in the right safeguards, while getting the balance between safety and a recognition that people do not want to spend the last days of their life in perpetual meetings.

We have spoken about coercion a number of times. It is an incredibly powerful and important argument. I am sure my comments will be misrepresented, but we have to be clear that in some abusive relationships—which are pernicious, evil and subtle, as an hon. Member has mentioned on a number of occasions—someone might encourage their partner, or whoever it might be, not to go through with assisted dying so as to extend their days in pain and agony. We have to recognise that abuse takes many forms and is endemic in our wider society. That goes back to my point about why it is important to have a wider range of expertise on the panel. It is crucial to have psychiatrists and experts in fields beyond law. It is important to look at new clause 21 not in isolation, but

[Jack Abbott]

in parallel with other amendments that we have agreed to, such as amendment 21, which specifically refers to coercion, training and so on. It is incredibly important to look at it in the main.

Finally, I will talk broadly about the questions of capacity and burden. We have spoken about not being able to police discussions. I would not necessarily go that far; I recognise that the relationship between the assessing doctors and the patient in the immediate term should approach this in the right way. However, these conversations take many forms and can be articulated in many ways, beyond what we can legislate for.

We have talked about the question of burden. If I, as someone who has just received a terminal diagnosis, have said, “I don’t want to spend my remaining days in absolute agony and fear, and I don’t want my family to go through that either,” that should not preclude my going through the decision-making process. However, I appreciate the nuance and the difference between that and someone saying or hinting that the decision has been taken out of their hands.

Another reason could be depression. I am sorry to put this incredibly glibly, but if I got a terminal diagnosis, I would feel pretty depressed about it; I might also be clinically diagnosed as depressed. Some previous amendments were about whether my past medical history—let us say that I had suffered from depression a number of times in my life—should preclude me from going through with the process.

The argument about family and friends saying, “Actually, Jack has suffered from depression at two or three moments in his life—maybe he should not access this,” although I think I am making the right decision, is powerful. To a degree, we have to rely all the time on a doctor, psychiatrist or anyone else to use their good professional judgment as to whether a person’s depression or otherwise is impairing their fundamental judgment on going down this route. I do not think that we can ever legislate 100% for that. We have to trust and rely on good practice, while giving people the training, skills and safeguards that we need to go down this route.

There is particular interest in the role of the commissioner. It is fairly regular procedure to have individuals being ultimately held to account in their various guises across the board. If there were not that single point of reference, people would be equally upset that no one could ultimately be held accountable for the wider system. It would be the same if the High Court system were retained; people would quite rightly ask who is actually overseeing the process. As well as the commissioner, with safeguards, the people ultimately responsible would be the Prime Minister, the Secretary of State for Health and Social Care or the appropriate authorities.

One question that perhaps my hon. Friend the Member for Spen Valley can answer is what the role is for the commissioner in Wales. Would there be separate commissioners for England and for Wales, or would the Secretary of State appoint one commissioner for both jurisdictions?

Amendment (e) to new clause 21, tabled by my hon. Friend the Member for Filton and Bradley Stoke (Claire Hazelgrove), is on a similar theme to my amendments 414 and 415; I am grateful to my hon. Friend the Member

for Spen Valley and the rest of the Committee for supporting them in order to ensure that there is an informed consent procedure in the Bill. The amendment seeks to ensure equity for everyone who otherwise meets the eligibility criteria and who wishes to request assistance as set out in the Bill.

The Bill makes provision that the eligibility panel “may hear from and question, in person, the person who made the application for the declaration.”

It clarifies that

“‘in person’ includes by means of a live video link or a live audio link.”

That is sensible because, for a number of people, travelling to a specific venue simply would not be possible, owing to their medical condition. However, the challenge around equity arises because several terminal illnesses also mean that people face significant, prolonged and unplanned pain episodes. It may make appearing before a panel via a live link at a specific, booked time slot all but impossible for some people. It would unduly and unfairly delay or at least make more difficult their wish to request consideration for assistance while they are in pain. Further panel appointments may not be straightforward to arrange, because of the number of people who would need to attend. A similar pain episode may happen again. Pain is not plannable, as we all know.

I am sure that none of us in this room thinks that the unintended consequence of excluding people who suffer from such pain episodes is in keeping with the intention of the Bill. This simple but important amendment would ensure that there is provision, where necessary, for otherwise eligible adults to pre-record their answers to the questions set by the panel in advance.

**Kit Malthouse:** The amendment is very sensible, not least because there are some conditions in which people experience a very significant decline at the end. In a matter of days, they may lose the ability to speak, while retaining capacity, so the ability for people in a small number of cases to give pre-recorded answers is incredibly sensible.

**Jack Abbott:** I agree wholeheartedly. It is important to emphasise that this provision will apply only in a relatively small number of cases, but it is a very important one. It would be subject to clear guidance developed following the passage of the Bill, as with the schedules and other related items, and would be subject to the same safeguards as the live link provisions already included in the Bill. Essentially, it would provide equity of access to request assistance for all otherwise eligible adults, no matter the pain or any other specifics of their terminal condition. Nobody should have to wait longer because of the pain that they are in.

My hon. Friend the Member for Filton and Bradley Stoke has tabled the amendment based on her experience. A close family member of hers, who has a terminal illness, has been experiencing pain episodes that would make it impossible to plan to join a meeting with a panel at a specific time slot via a live link. To require her to do so would only increase stress and distress at what is already an incredibly difficult time for her and her family. If the Bill becomes law, it would not be right to exclude anyone eligible from being able to request assistance as a result to the impact of the terminal illness itself. I encourage Committee members to join me in supporting the amendment.



I appreciate that bandwidth has come up several times. I admit candidly that it was a small factor in my thinking when I voted on Second Reading. By “bandwidth”, I mean the bandwidth of the professionals we are asking to do this work. By and large, I think we have done very well to keep politics out of this room, which is extraordinary, given the length of time that we have spent in here. However, there were a couple of moments of candour

from Opposition Members on the Committee when they expressed concerns about whether the NHS has the capacity—

**The Chair:** Order.

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*





