Ethics briefings

"Assisted dying"

In April 2005, the House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill published its findings.[1 2 3] The committee's remit had been to consider whether the second bill on "assisted dying" introduced by Lord Joffe in March 2004 should proceed, fall or be amended. Since it was clear, however, that the bill could not progress in that parliamentary session because of shortage of time, the committee chose to report on the evidence it had received rather than rule on the acceptability or otherwise of the bill. Volume two set out the evidence and volume one gave the committee's views on the testimony received, including information about Holland, Switzerland, Belgium, and Oregon where either euthanasia, assisted suicide or both are already legal.

Sixty organisations submitted evidence to the committee. Among these were organisations representing UK health professionals. In an earlier *Ethics briefing*,[4] we drew attention to the disparity of views expressed. At that point, the British Medical Association (BMA) had firm policy opposing the legalisation of all forms of assisted dying (both euthanasia and assisted suicide). The Royal Colleges of General Practitioners (RCGP) and Physicians (RCP) had dropped their objections to the Assisted Dying Bill. This caused one of the committee members, Baroness Jay, to confess that she found herself confused by the profession's position. She argued that it would be "more sensible, more professionally legitimate" for the BMA and General Medical Council (GMC) to take a "studiedly neutral position" as the colleges had done (House of Lords, [2] p 118, q 300). To add to the confusion the position of the BMA and that of the RCGP subsequently changed.

After discussion, the RCGP decided that it would not continue to adopt a neutral position on assisted dying but did not agree what its position would be or, indeed, how it would determine its position. The matter was referred to the college's central executive committee which was asked to consider what the policy should be, how it should be reached, and to consider the option of carrying out a referendum among college members. At the time of writing, no further information is available.

Although the BMA had long and robustly opposed assisted dying, it was increasingly evident that a wide range of opinions existed within its membership. In 2005, almost equal numbers of BMA constituencies submitted motions to its annual meeting (the BMA's policy making body) calling for the association to support or oppose the legalisation of assisted dying. (Five motions were in favour of legalisation, four were against, one called for neutrality, and three others called for more discussion and research on the subject.) There was an open debate at the annual meeting followed by a vote on three options. These were: (a) to reaffirm BMA opposition to physician assisted suicide and euthanasia; (b) to withdraw opposition to assisted dying, recognising the law is primarily a matter for society and for parliament but press for robust safeguards if legal change occurred, and (c) to support an open and transparent system that allowed terminally ill competent patients to receive assisted dying within robust safeguards. The meeting voted by a narrow margin in favour of option (b) (53% in favour, 47% against). As had previously been made clear in debate and in a briefing paper, the term "assisted dying" includes both voluntary euthanasia and assisted suicide. Speakers argued that no significant distinction could be drawn between them. Therefore the BMA is now neutral on both of these issues.

As the annual meeting recognised, many BMA members continue to oppose assisted dying. Therefore, although the focus of policy has changed, the association needs to devote considerable attention to ensuring that any future legislation provides robust safeguards for patients and for doctors who are opposed to any involvement with assisted dying. Lord Joffe has indicated his intention to introduce a third bill on this subject following the parliamentary debate of the select committee in October.

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Abortion time limits

The debate about abortion time limits has continued to gather momentum in the UK. At the end of June the BMA's annual representative meeting debated a motion calling for a reduction in the 24 week time limit in the Abortion Act. This debate was informed by a briefing paper prepared by the BMA's medical ethics committee and circulated in advance to all delegates.[5]

Those who supported the motion focused on developments in medicine that had led to a reduction in the gestational age at which a fetus could be considered viable, and also referred to the effect on public perceptions of the developing fetus following publication of 3/4D images of fetuses at 18–26 weeks' gestation. It was argued that it was unacceptable to deliberately end the life of a fetus that was capable of being born alive. Those opposing the motion stressed the very small number of abortions that took place after 20 weeks and the reasons why women opted for abortion at this stage of pregnancy. The evidence cited, subsequently backed up by research published by Marie Stopes International,[6] was that the majority of women in this situation did not find out about the pregnancy until an advanced stage while others faced a significant change in their circumstances such that they felt unable to continue with the pregnancy. Some abortions took place later than necessary because the women experienced delays in accessing the service. It was argued that compassion demanded provision for this small number of women who found themselves in this desperate and distressing situation. The motion to support a reduction in the time limit was rejected by three to one.

In July, Dr Evan Harris MP secured a House of Commons debate on abortion. He called for a joint House of Lords and House of Commons committee to consider the scientific evidence about fetal viability and report to the UK parliament. Although there was considerable cross party support for parliament to review abortion legislation, after a gap of 16 years, the public health minister Caroline Flint said the government had no plans to make time available to debate abortion. She said that in 1989 there had been a consensus between bodies such as the BMA and the Royal College of Obstetricians and Gynaecologists (RCOG) that the time limit needed to be reduced and this was the reason that parliamentary time had

been made available; there were no such calls for a reduction at the current time.[7]

The regulation of assisted reproduction

Whether, and if so how, to regulate assisted reproduction continues to occupy the minds of policy makers and other commentators. Shortly after the House of Commons science and technology committee called for partial deregulation of assisted reproduction in the UK and the abolition of the Human Fertilisation and Embryology Authority (HFEA) in its present form,[8] the Commission on Assisted Human Reproduction in Ireland recommended regulation of assisted reproduction by statute.[9] The Irish commission published its report calling for legislation and the establishment of a statutory regulatory body, in May. The report's recommendations also permit:

- IVF/intracytoplasmic sperm injection (ICSI)
- Donation of gametes and embryos
- Storage of gametes and embryos
- Preimplantation genetic diagnosis
- Surrogacy (in terms of legal parentage, the majority of the commission recommended that the child born through surrogacy should be presumed to be that of the commissioning couple.)
- Embryo research using ''spare'' embryos from IVF treatment
- The creation of embryos by cell nuclear replacement (so called ''therapeutic'' cloning)

It recommends that the following should be prohibited:

- Reproductive cloning
- The creation of embryos through IVF specifically for research
- Sex selection for social reasons
- The generation and use of interspecies human embryos

One of the particular issues the commission had to take into account was the guarantee of the right to life of the unborn in article 40.3.3 of the Irish constitution. The report points out that there is a lack of clarity about the stage of development at which this legal protection begins and that this can only be clarified by the Supreme Court or by way of constitutional referendum. The conclusion of the report was that the embryo formed by IVF should not attract legal protection until placed in the human body. One member of the committee expressed a reservation in relation to the recommendations concerning the embryo and one member expressed a reservation in relation to the recommendations on surrogacy. The report has been referred to the Oireachtas joint committee on health and children for consideration. The committee is expected to make recommendations to the government by the end of 2005.

Government response to joint scrutiny committee

In July 2005, the UK government published its response to the report of the joint committee on the draft Mental Health Bill 2004.[10] The joint committee was highly critical of the draft bill. In relation to the ethics of psychiatric treatment, it was particularly concerned that there was an excessive concentration on managing risk rather than providing appropriate health services for those suffering from mental disorders. Despite pressure from user groups, and, in contrast to sister legislation in Scotland, the draft bill made no mention of a patient's decision making capacity in relation to compulsory treatment.[11] Crucially as well, the draft bill dispensed with the ''treatability criterion'' in the existing legislation, which holds that treatment must be available that alleviates, or prevents a deterioration in, the patient's condition before compulsion can be justified. Furthermore, under the draft bill, where the patient presents a risk of harm to others, his or her ability to consent to treatment, rather than receive treatment under compulsory powers, is lost.

The joint committee made 107 recommendations in its report.[12] Although in the introduction to its response, the government states that ''it agrees, or agrees in part'' with many of the recommendations, and that some of the changes the report recommends are welcome, the government makes it clear that it will not be changing its underlying approach. ''We must state very firmly'' it says, ''that we disagree with the committee's criticism that the bill places too much emphasis on public safety'' (Department of Health, [10] para 11).

Although it is not possible to predict the exact outline of the new draft bill from the government's responses, it is reasonably clear that, in stark opposition to the recent Scottish legislation, compulsory treatment will in future concentrate on the management of patients who present a risk. The new bill is likely to have broad criteria for admission to compulsory treatment, limited exclusion criteria, and no statutory obligation that beneficial therapy be available to those subject to its powers. It remains to be seen how professional and user groups respond. Whether it will survive scrutiny by human rights experts must also be an open question.

REFERENCES

1 **House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill**. *Assisted Dying for the Terminally Ill Bill (HL) vol I: report*. London: The Stationery Office, 2005.
2 **House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill**. *Assisted Dying for the Terminally Ill Bill (HL) vol II: evidence*. London: The Stationery Office, 2005.
3 **House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill**. *Assisted Dying for the Terminally Ill Bill (HL) vol III: evidence—individual submissions*. London: The Stationery Office, 2005.
4 **English V**, Mussell R, Sheather J, *et al*. Politics and end of life issues. *J Med Ethics* 2005;**31**:61.
5 **British Medical Association**. *Abortion time limits—a briefing paper from the British Medical Association*. London: BMA, 2005.
6 **Marie Stopes International**. *Late abortion—a research study of women undergoing abortion between 19 and 24 weeks gestation*. London: Marie Stopes International, 2005.
7 *House of Commons official report (Hansard)*. 2005 Jul 19: cols 385WH-407WH.
8 **House of Commons Science and Technology Committee**. *Human reproductive technologies and the law. Fifth report of session 2004–05 (HC 7-1)*. London: The Stationery Office, 2005.
9 **Commission on Assisted Human Reproduction**. *Report of the Commission of Assisted Human Reproduction*. Dublin: Department of Health and Children, 2005.
10 **Department of Health**. *Government response to the report of the Joint Committee on the draft Mental Health Bill 2004*. Norwich: The Stationery Office, 2005.
11 Mental Health (Care and Treatment) Scotland Act 2003.
12 **House of Lords, House of Commons Joint Committee on the Draft Mental Health Bill**. *Draft Mental Health Bill vol 1*. London: The Stationery Office, 2005.