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Deputy Tom Binet
Minister for Health and Social Services

07 February 2024

Assisted dying in Jersey

Dear Minister,

I am contacting you on behalf of the British Medical Association, a professional association and trade union with members across the UK and the Crown Dependencies.

You may be aware that since 2021 the BMA has taken a position of neutrality on assisted dying, including physician-assisted dying. This means that we neither support nor oppose a change in the law. We have been clear, however, that this does not mean that we will be silent on the issue, and that we have a responsibility to represent the views of our members in discussions on any legislative proposals. In order to do this, our Medical Ethics Committee (MEC) has recently completed a significant piece of work to consider how we can best represent our members in debates on assisted dying, including our members working in Jersey.

To develop these positions, we reviewed what we already knew about our members' views (from previous engagement work including our member survey and dialogue events); communicated with other national medical associations about the issues their members were concerned about and how they were engaging in the debates; spoke with individuals working in jurisdictions where assisted dying is lawful (both providers and opponents); and carried out a literature review. With these considerations in mind, we identified those issues that would significantly impact on our members, should the law change, and considered what, if any, view the BMA should take on those issues. As the work developed, the MEC sought views from other BMA committees – across all branches of practice – and our patient liaison group. This work was then approved by the four BMA Councils across the UK.

As was evident from our survey of BMA members, conducted in 2020, we represent members with a diverse range of views; as doctors we also have responsibilities to our patients. Central to the MEC's work, therefore, was the need to balance the different, and sometimes competing, interests of three different groups:

- BMA members who would be willing to provide assisted dying if it were legalised;
- BMA members who, for whatever reasons, would not be willing to participate in assisted dying; and
- patients who may wish to access a lawful assisted dying service.

We note the 'in principle' decision of Jersey's States Assembly to allow assisted dying. We have now reviewed your proposals for the provision of an assisted dying service in Jersey, alongside the work

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we have conducted, and wish to offer the comments below. For ease we have grouped and ordered these comments under the headings and proposals set out on your website. Please be aware that by commenting on these proposals, we are not supporting or opposing the States Assembly's decision to change the law. These comments are provided solely to inform you of some key issues the BMA would want to see addressed in any legislation. Where we have not commented on your proposals, this is because it is not an issue that we have currently taken a position on – it should not be interpreted as support for or acceptance of those provisions.

Jersey Assisted Dying Service

- *The assisted dying service will be available free of charge to any person who meets the eligibility criteria.*

The BMA has not considered the detail of how any future assisted dying service should be funded, but supports the principle that, if legalised, assisted dying should be made available to all those who meet the eligibility criteria on an equitable basis. Furthermore, we believe any change in the law to permit assisted dying must be accompanied by additional funding to ensure that the service is properly resourced, and that funding and workforce are not diverted from other healthcare services.

- *The Jersey Assisted Dying Service will:*
  - *provide a point of contact for anyone who wants information about assisted dying or is considering requesting an assisted death*
  - *support people to navigate the assisted dying process*
  - *support the loved ones of people who have requested an assisted death*

The BMA supports the provision, in any assisted dying legislation, of an official body (with legal accountability) to provide information to patients and to help them to navigate the system. This should provide factual information to patients about the range of options available to them, to enable them to make informed decisions. From our members' perspective, it is important that doctors who do not wish, or do not feel confident, to provide information to patients about assisted dying have somewhere they can direct patients to, in the knowledge that they will receive accurate and objective information. It is also important that patients who may meet the eligibility criteria know where and how to obtain the information they need without the requirement to go through their doctor.

  - *coordinate and deploy the professionals engaged in the assisted dying process*

The way in which any lawful assisted dying service would be delivered, in practice, is a very significant issue for our members. The BMA supports the proposal that this should be established as a separate service to which patients are referred, or can self-refer, rather than being carried out as part of the standard care and treatment doctors provide. As we understand the proposals, this would allow doctors who are registered with the service to assist their own patients, if both parties wish that to happen, but it would be organised and managed through a different clinical pathway.

From our perspective, the advantages of having this separation include that it would:

- help to reassure those doctors who did not want to participate that there would be no pressure on them to do so;

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- give patients a clear pathway to access the service that would not be dependent on the views of their treating doctor; and
- help to ensure consistency and facilitate oversight, research, and audit of the service.

The BMA would hope to see the Jersey Assisted Dying Service being given explicit responsibility for ensuring that those doctors participating in assisted dying have the specialised training, guidance, experience and both practical and emotional support they need.

- *A Delivery and Assurance Board will oversee the clinical and corporate governance of the Jersey Assisted Dying Service, which means making sure that:*
  - *the assisted dying service is safe*
  - *standards of care are high*
  - *the service is well run and person centred*
  - *there is fair access to the service*

it is not appropriate for the BMA to comment on the detail, but we strongly support the principle of having an independent and transparent system of oversight, monitoring and regulation of assisted dying if it were legalised. This is essential to ensure appropriate standard-setting, quality assurance and to maintain public confidence.

- *Health professionals can choose to work in the assisted dying service. To be an assisted dying practitioner, they must:*
  - *be registered with the Jersey Care Commission to work in Jersey*
  - *have completed assisted dying training*
  - *be able to demonstrate they meet the required competencies (the competencies refer to the knowledge, skills, and attributes required for each assisted dying role)*
  - *make a decision to opt-in to work as assisted dying practitioner with the Jersey Assisted Dying Service*

The BMA strongly supports the proposal that assisted dying, if legalised, should be set up on an opt-in basis, so that only those who positively choose to participate are able to do so. We also believe that doctors who opt in to provide the service should be able to choose which of the roles they are willing to carry out (for example, to be the independent doctor but not the co-ordinating doctor, or to be any one of the assessing doctors but not the administering practitioner).

From the information we have gathered about other jurisdictions, it appears that in practice assisted dying is usually only provided by those who positively choose to participate (by choosing to register or undertake the necessary training), even though it is often not explicitly presented in this way. Making this explicit in any legislation would provide reassurance to both doctors and patients. From our members' perspective, if assisted dying were to be legalised, having an opt-in model has the advantages of:

- giving doctors the greatest amount of choice about whether, and if so the extent to which, they were involved;
- providing reassurance to those doctors who did not want to participate that they would not face pressure to do so;

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- ensuring that those who wanted to participate had the proper training and experience to do so; and
- making the service easier to audit which would help to build confidence and maintain trust.

This model also works better for patients who would be able to easily identify a doctor who might be willing to assist them.

Conscientious objection

- *A right to conscientious objection makes sure people are free to act in accordance with their own personal beliefs about assisted dying.*

The BMA believes that, if assisted dying were legalised, doctors should be able to refuse to carry out any activities that are directly related to assisted dying for any reason. Therefore, there should be a general right to object which does not need to be based on matters of conscience.

We are aware (including from responses to our survey) that there are some doctors who do not oppose assisted dying in principle (and so do not have a 'conscientious' objection in the way that is normally understood) but who would not personally want to participate in the process. There is some evidence from Quebec that supports this position; many doctors who claimed a conscientious objection did not cite moral or religious objections to assisted dying but expressed other reasons for not wanting to participate such as the emotional impact of participation, lack of time, and lack of confidence in their competence to carry it out. [1]

For these reasons we would want to see this framed as a general right to refuse to directly participate in assisted dying (see below for the scope of this right) rather than having a conscientious objection clause such as that in the Termination of Pregnancy (Jersey) Law 1997.

- *The assisted dying law will state that no one can be compelled to directly participate in the assessment, approval or delivery of an assisted death.*

Doctors who do not opt-in to provide assisted dying themselves may, nonetheless, receive requests from patients or other health professionals for actions that are an intrinsic part of the assisted dying process. These include activities that would require them to use their professional skills and judgement to facilitate a request for assisted dying, such as a request to assess an individual's capacity, or make a judgement about their life-expectancy, specifically in order to assess their eligibility for assisted dying. In our view, doctors should be able to refuse to provide these types of assessment for any reason and this right should not be restricted to matters of conscience (see our comments above).

For some people, however, their refusal will be based on matters of conscience. In terms of moral complicity, there is a difference between requests for doctors to use their professional skills as part of the process of assisted dying, which we believe they should be able to refuse for any reason, and requests to provide existing information from the medical record, which we believe all doctors should

[1] A qualitative study of physicians' conscientious objections to medical aid in dying - Marie-Eve Bouthillier, Lucie Opatrny, 2019 (sagepub.com) Palliative Medicine Vol 33(9)

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comply with, without delay. Irrespective of their personal views, if approached about assisted dying, we believe that all doctors should also be expected to direct patients to the Jersey Assisted Dying Service.

Assisted dying process

- ***Step 9. After an assisted death***
  The process for the registration of the death and the burial or cremation of a person who has had an assisted death would be the same as with all deaths in Jersey

The BMA has not expressed any views on the process for death registration, burial or cremation after assisted dying. We believe, however, that any legislation should include provision for the routine review of all assisted deaths. This is an important part of the oversight and monitoring required, to maintain trust and confidence in the service.

Review committees, to assess all deaths following assisted dying, have been set up in a number of countries including New Zealand, Australia, the Netherlands and Canada. Their role is to retrospectively review each individual case after a death has occurred, to ensure that the correct process had been followed. Any problems or breaches identified and requiring further investigation or action are then referred on to the relevant organisations. Reviewing the details of individual deaths – including identifying the time to death and any complications or unforeseen circumstances that arose – can also lead to improvements in how cases are managed from a medical perspective and help to identify learning points for those delivering the service.

Regulation and oversight

- *The Jersey Care Commission will:*
  - *provide independent regulation and oversight of the Jersey Assisted Dying Service*

As stated above, the BMA has not discussed the detail, or the form it should take, but we strongly support the principle of having an independent and transparent system of oversight, monitoring and regulation of assisted dying if it were legalised.

  - *publish an annual report on assisted dying, setting out the number of assisted deaths and requests for an assisted death*

The BMA strongly supports the need for openness and transparency, and this includes a requirement for data to be collected centrally about all assisted deaths and for aggregated data to be published on a regular basis.

Other issues

The BMA is concerned that the proposals do not currently provide any explicit protection for doctors from discrimination or abuse as a result of their views and actions in relation to assisted dying. There are two specific provisions the BMA would want to see in any legislation to permit assisted dying: 'statutory protections from discrimination' and the 'provision for safe access zones'.

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Statutory protection from discrimination

If assisted dying were to be legalised, the BMA would want to see specific provisions in the legislation making it unlawful to discriminate against, or cause detriment to, any doctor on the basis of their decision to either participate, or not participate, in assisted dying.

Through the work we undertook with our members, it became clear that some doctors were concerned about how their decision to participate, or not to participate, in assisted dying (if it were legalised) might impact on them both personally and professionally. This included concerns that they might be ostracised by colleagues, or their career prospects might be jeopardised, because of their decision. We also heard anecdotally about some healthcare institutions in other countries, that are opposed to assisted dying, using contractual terms to prevent their doctors from participating in assisted dying in their own time. Any discrimination, or detriment to doctors, as a result of their views, and/or intentions, regarding assisted dying is unacceptable and should be prohibited.

Provision for safe access zones

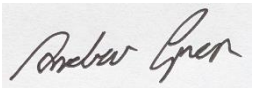
The BMA believes that any Bill to legalise assisted dying should include provision for safe access zones that could be invoked should the need arise, to protect staff and patients from harassment and/or abuse.

Although there is no evidence of harassment outside establishments in other countries, the BMA strongly supports the need to protect both staff and patients in the event of any harassment taking place. Safe-access zones can only be put in place if the relevant legal powers exist. Therefore, we would want any legislation to include legal provision for safe access zones that could be invoked if the need arose.

I hope this information is helpful to committee's consideration of the proposals for assisted dying in Jersey. Should you require further explanation of, or wish to discuss, any of the points raised, please do not hesitate to contact my colleague Veronica English at ethics@bma.org.uk.

We are very keen to keep our members informed of the work we are doing on their behalf. Could you please, therefore, confirm whether you are content for us to publish this letter on our website alongside our other resources and updates (www.bma.org.uk/pad).

Yours sincerely



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