

## Assisted Dying Bill

**Legislative Council**  
**17 December**

### About the BMA

The BMA (British Medical Association) is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

### BMA position on assisted dying

**Policy position:** The BMA represents doctors and medical students from across the UK and the Crown Dependencies who hold a wide range of views on physician-assisted dying. In September 2021, the BMA's annual policy-making conference (the Annual Representative Meeting (ARM)) **voted to adopt a neutral position on whether the law should be changed to permit physician-assisted dying**; this means that the BMA neither supports nor opposes a change in the law.

Most recently, the BMA's Medical Ethics Committee has undertaken a significant piece of work to determine how we can best protect and represent our members in response to legislative proposals to permit assisted dying. **Within the context of our neutral position on whether the law should change, we have identified those issues that would significantly impact on doctors, if the law were to change, and considered what position the BMA should take on them.** The views arising from this work have been approved by the four BMA Councils across the UK and are highlighted in this briefing.

**Member survey:** In October 2020, the [BMA published the results of an all-member survey on physician-assisted dying](#).<sup>1</sup> This piece of member research is one of the largest surveys of medical professional opinion on physician-assisted dying ever conducted. It provided invaluable insights into our wider membership's views on the matter, including our members' personal views about the law's position on assisted dying. It was one of a number of factors that informed the policy-making vote at our 2021 ARM and our Medical Ethics Committee's work on this topic.

### Outstanding issues to address on the face of the Bill

The BMA is delighted that the House of Keys has made a number of changes to the Bill to give doctors greater choice and protection, should the law change to permit assisted dying. The following commentary, on further amendments we would like to see to the Bill, should not be interpreted as BMA support for, or opposition to, a change in the law on assisted dying – as highlighted above, we hold a neutral stance on this fundamental issue. We do, however, believe the changes highlighted below would improve the legislation for both doctors and patients.

<sup>1</sup> The survey was conducted on our behalf by Kantar, an independent research organisation. The results of our survey can be viewed here: [www.bma.org.uk/advice-and-support/ethics/end-of-life/physician-assisted-dying/physician-assisted-dying-survey](http://www.bma.org.uk/advice-and-support/ethics/end-of-life/physician-assisted-dying/physician-assisted-dying-survey)



## 1. Clause 8 – conscientious objection

**The BMA believes that there should be a general right for doctors to refuse to carry out activities directly related to assisted dying for any reason, not just on grounds of conscience.**

Those doctors who do not register with the Department to provide assisted dying may be asked to provide a professional opinion (for example, on capacity or life-expectancy) to assist those who are making the decision about eligibility. The BMA believes that, if assisted dying were legalised, doctors should be able to refuse to provide such opinions for any reason, not just on grounds of conscience. We are aware from our survey that some doctors do not oppose the legalisation of assisted dying but would not want to participate in any way themselves – these doctors would not be protected by a standard ‘conscientious objection’ clause, such as that at 8(1) of the Bill.

The Bill has been amended by the House of Keys to extend clauses 8(2)-(5), beyond matters of conscience, to include any doctor ‘who otherwise does not intend to exercise functions under this Act’ but this has not given our members the protection they need. The term ‘exercise functions under this Act’ appears to apply only to those activities specified in the Act (attending doctor, independent doctor etc) and would not cover the provision of professional opinions on capacity etc by doctors who had not registered with the Department to provide the service.

In our view, both the title and 8(1) should explicitly refer to both conscientious and ‘any other objection’, and it needs to be made clear that subclause 1 applies whether or not the person has opted in to provide one of the roles specified in the Bill. If these changes were made, subclause (4) would no longer be needed (since doctors would not need to claim a conscientious objection).

It is worth noting that Kim Leadbeater MP’s [Terminally Ill Adults \(End of Life\) Bill](#), which is currently being debated in the House of Commons, includes this protection at clause 23(1):

‘No registered medical practitioner or other health professional is under any duty (whether arising from any contract, statute or otherwise) to participate in the provision of assistance in accordance with this Act.’

The principle that the right to refuse to participate should be extended beyond matters of conscience was also accepted by the States Assembly in Jersey, when it agreed its [final policy proposals](#), and this will be included in the Bill that is currently being drafted.

We would urge Members of the Legislative Council to ensure that doctors in the Isle of Man have the same protection as those in England and Wales, and in Jersey.

## 2. Clause 8(3) and Clause 9(5)

**We are pleased to see that doctors will be protected from discrimination or detriment due to their intention to participate, or not to participate, in assisted dying but would welcome confirmation that this reflects all of the situations we are concerned about.**

Through the work we have undertaken with our members, it is clear that some doctors are concerned about how their decision to participate, or not to participate, if physician-assisted dying were legalised, might impact on them both personally and professionally. For that reason, in the event of legislation, the BMA has called for 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.

This protection is now included in terms of discrimination by employers, but we would welcome consideration of whether this protection would extend to the recruitment process (for example, the denial of employment on the basis of an individual's position on assisted dying); and, also, whether the protection would extend to self-employed contractors and volunteers.

### **3. Clause 10**

**The BMA supports the amendment to omit 'as a treatment option' at line 37 on page 13. This does not change the meaning of the clause but would reduce the risk of a doctor being challenged in court for failing to inform a patient about the option of assisted dying.**

We are very pleased that the House of Keys amended the Bill to state explicitly that no healthcare professional is under any duty to raise the issue of assisted dying with patients. This is necessary to avoid any suggestion that doctors have a legal duty to raise the option of assisted dying with all patients who may be eligible. The intention of clause 10(2) is to confirm that position, but the inclusion of 'as a treatment option' at the end of that clause risks undermining the protection it provides. Therefore, we support the amendment to omit 'as a treatment option' at line 37 on page 13.

#### **Additional issues to consider if the Bill passes**

There are some issues, connected with the delivery of an assisted dying service, that would be important to consider if the Bill passes through its remaining stages to become law.

#### **Assisted dying as a separate service**

The BMA is very pleased that the House of Keys has amended the Bill so that assisted dying is provided only by those doctors who have positively chosen to do so by registering their intention with the Department. Those doctors will receive training and will build up the knowledge, expertise and confidence to provide the service to a high standard, which is what all patients deserve.

Whilst it is not for the BMA to determine exactly how any assisted dying service should be delivered, our overarching view is that it should be provided as a separate service – using this network of specially trained doctors who have chosen to participate. A separate service does not necessarily mean a separate 'clinic' but would provide a centralised system for providing training, guidance and both emotional and practical support for doctors. They could then provide the service in the patient's usual hospital, or their home. Or it could be a combination of a specialist centre and an outreach facility.

The model proposed in Jersey, whereby the Jersey Assisted Dying Service would 'coordinate and deploy the professionals' who would provide the service, provides an example of how this could work in practice.

#### **An official body to provide information for patients**

We would support the establishment of an official service to provide factual information to patients about the range of options available to them, so that they can make informed decisions. This would ensure that doctors who did not wish, or did not feel confident, to provide information to patients about assisted dying had somewhere they could direct patients to, in the knowledge that they would receive accurate and objective information. It would also ensure that patients who may meet the eligibility criteria would be able to access the information they need without the requirement to go through their doctor and would have support to navigate the process.

**Adequate funding and equitable access**

Any assisted dying service would need to be adequately funded and resourced so that funding and workforce are not diverted from other, already overstretched, healthcare services. If assisted dying were legalised, it should be available to all those who meet the eligibility criteria on an equitable basis.

For more information about the BMA's work on physician-assisted dying, please visit our website: [www.bma.org.uk/PAD](http://www.bma.org.uk/PAD)