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16 September 2002

Dear Jennifer

DEATH WITH DIGNITY (VOLUNTARY EUTHANASIA)

Thank you for your letter of 27th August 2002 requesting the Department of Health to provide information on Voluntary Euthanasia. I attach our comments below as well as the Government Response to the Report of the Select Committee on Medical Ethics.

It is right that dying patients should be relieved of suffering through the provision of adequate care and support. However, euthanasia, the intentional taking of life at the patient's request or for a merciful motive is unlawful in the United Kingdom. Anyone alleged to have undertaken it would be open to a charge of murder or manslaughter. Similarly, medical treatment which is given to a patient with the specific intention of hastening or inducing death, whether at the patient's wish or not, is an illegal act. The Government has no plans to change the law in this respect.

The question of whether or not to legalise euthanasia was considered in great detail by the House of Lords Select Committee on Medical Ethics in 1993. The experience of, or fear of pain, was thought to be one of the reasons why a person might wish to request euthanasia and the Committee heard extensive evidence on that point. The Committee concluded for several reasons that the practice of euthanasia could not be supported, in particular because vulnerable people might feel pressure, whether real or imagined, to request early death. Having reached that conclusion, the Committee thought that it was a compelling responsibility to provide appropriate care for those who are elderly, dying or disabled and the issue of pain relief was particularly emphasised. The Government shares these views.

I hope this information is useful.

Yours sincerely

Adetola Akinfolajimi
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14 January 2003

Dear Jennifer

DEATH WITH DIGNITY (VOLUNTARY EUTHANASIA)

Thank you for your letter of 16th December 2002 requesting the Department of Health's comments on the above subject. After consultation with colleagues, we have the following comments to make:

The subject of voluntary euthanasia has proved very controversial in the United Kingdom. The matter is regularly debated in Parliament, and there are strong views both for and against legislation. Any legislation on this subject will clearly raise a number of complexities. Officials offer the following views based on our experience in England of certain key relevant issues, but would not suggest that this is a comprehensive list. We would be pleased to engage in discussions on these and any other relevant matters.

As I am sure you are aware, the term "voluntary euthanasia" is defined differently by different groups. The United Kingdom Government has always used the term to mean "the intentional taking of life at the patient's request or for a merciful motive." It should be noted that this definition requires an intentional action to be taken. Hence, withholding and withdrawing of treatment is specifically excluded from the definition; however, certain groups have also described withholding and withdrawing treatment as "euthanasia" if the patient subsequently dies. Therefore we consider it is vital that there is clarity of the meaning of the term "voluntary euthanasia" in any legislation you develop.

You will be aware that England and Wales, Scotland and Northern Ireland are separate legal jurisdictions. The law governing medical interventions on adults who lack capacity to consent is notably different in Scotland compared to other legal jurisdictions. It may be helpful, if you have not already done so, to involve the other legal jurisdictions in discussions. Any references to the current law below refer to the law of England and Wales only.

You sought comments on the possibility of making progress on the questions of double effect and advance directives prior to addressing the question of euthanasia. It is certainly likely that such matters would be raised in the context of any legislation on euthanasia. Whilst it is our impression that there is little disagreement with the principle and use of the "double effect",

and hence that dealing with that may be relatively uncontroversial, the same would not be true of advance directives. For the avoidance of doubt, we would be concerned if legislation were to suggest or imply that the use of the principle of double effect was regarded as a form of euthanasia. Certainly it is not so regarded in the UK, and the appropriate use of medication which may have a “double effect” is an important part of good palliative care.

The subject of advance directives is however much more controversial. The subject was raised in the Lord Chancellor’s Department’s 1997 consultation paper *Who Decides?* The public responses were very divided on the question of legalisation of such directives. It is clear from our continuing Parliamentary debates that opinion is still very divided. In the UK, we certainly do not see respecting a valid and applicable advance directive as a form of euthanasia, and would be concerned if it was so regarded elsewhere. There are clearly a number of people who, whatever the state of the law, consider that advance directives are morally wrong, which may mean that even if you address this matter prior to addressing the question of euthanasia the debates will still be repeated in the latter situation. Clearly this is a handling question which you will be considering carefully.

If you address certain questions prior to addressing the main question of euthanasia, it may be helpful to be clear about a patient’s right to refuse treatment, and about the circumstances in which treatment can be withheld or withdrawn from a patient if the patient is no longer able to decide for him or herself. In England and Wales, in the absence of a valid and applicable advance directive, treatment may be withheld from an incapacitated adult if it is not, or is no longer, in the best interests of the adult to receive that treatment.

Another aspect of the issue that our experience suggests will prove controversial concerns the use of artificial nutrition and hydration. Under English law, artificial nutrition and hydration (ANH) is regarded as medical treatment and the principles governing its use are the same as those governing medical treatment in general. However, we are aware that certain groups disagree profoundly with this position. They would argue that ANH should never be withdrawn from an incapacitated adult (for example a person in a permanent vegetative state), even if the person has made a valid and applicable advance directive directing such a course of action. Equally, other groups strongly support the existing English law position on this issue. This issue is very likely to be raised, and be very controversial, in any legislation on euthanasia.

In the passage of any legislation I am sure you will have regard to the European Convention on Human Rights.

The question of the safeguards that would be necessary to ensure that vulnerable individuals did not feel pressurised to request voluntary euthanasia in certain circumstances was an issue that considerably exercised the House of Lords Select Committee on Medical Ethics. I believe you already have a copy of their 1993 report, and I am sure that you will be giving considerable thought to this matter.

Officials have had the opportunity to discuss the question of voluntary euthanasia with representatives of the Netherlands on an informal basis over the years. One point that has

been raised that you may wish to consider is that at the time of the introduction of the Netherlands' policy, there was very strong support for such a policy among the medical profession of that country. I am sure you will be considering the question of who would perform voluntary euthanasia should it be permitted in Guernsey, and if this was to be the medical profession, the extent of the willingness of the professionals practising in your jurisdiction to perform voluntary euthanasia.

Officials from the Department of Health would be interested in attending the suggested meeting with Guernsey to discuss this issue.

I hope this information is useful.

Yours sincerely

Adetola Akinfolajimi
International Branch.