

Impact case study (REF3b)

<p>Institution: King's College London</p>
<p>Unit of Assessment: 20 Law</p>
<p>Title of case study: Assisted dying: legal change, the slippery slope and regulatory safeguards (Professor Penney Lewis)</p>
<p>1. Summary of the impact Whether assisted dying should be legalised is often treated as an ethical question transcending national boundaries and legal systems. Work in this field is dominated by partisan exhortation by proponents or opponents of legalisation. Professor Lewis's comparative research on legal change on assisted dying highlights the central importance of the choice of legal route in shaping regulatory regimes, evaluates the impact of legalisation on non-voluntary euthanasia (the 'slippery slope' argument) and assesses the effectiveness of regulation in permissive jurisdictions. Her critique of the unsatisfactory legal position in the UK coupled with expert interventions, have shaped and informed policy debate, and directly influenced the campaign to legalise assisted suicide and ongoing judicial challenges to the current position. Elsewhere, her work has directly contributed to legal change in Canada and a Bill in Australia.</p> <p>2. Underpinning research Professor Lewis's work (all conducted at King's College London) compares and contrasts the regulation of assisted dying in a wide range of jurisdictions, resulting from both formal and informal legal change. Her research (i) demonstrates the significance of the choice of a particular route towards legalisation, including constitutional rights, defences based on necessity or compassion, and legislative approaches, (ii) assesses evidence for and against the slippery slope argument, and (iii) assesses the effectiveness of different legal and regulatory regimes.</p> <p><i>The significance of legal route</i> One of her most important conclusions is that regimes resulting from necessity or compassion as mechanisms of legal change will include termination of life without request where necessary to relieve suffering. Applying the defence of necessity in cases of termination without request, as in the Netherlands, is often seen as evidence of a slippery slope. Professor Lewis has shown [1] that it is the grounding in the doctor-centred duty-based defence of necessity (rather than the patient's rights) which explains the Dutch legal acceptance of euthanasia where necessary to relieve the suffering of an incompetent patient.</p> <p><i>Evaluating slippery slope arguments</i> Professor Lewis's research [1], [4], [6] evaluates the impact of slippery slope arguments in the context of different regimes. She concludes that current evidence does not indicate either that legalisation causes an increase in the rate of non-voluntary euthanasia (e.g. in the Netherlands and Belgium) or that such rates are higher under a prohibitive approach: in some prohibitive jurisdictions the rates of non-voluntary euthanasia are higher than the Dutch rate, but lower in others. It also seems likely that cultural factors may significantly influence baseline rates.</p> <p><i>Regulatory regimes and evidence of their effectiveness</i> Evidence from jurisdictions that allow assisted dying provides important information about how mechanisms work in practice. To interpret these data meaningfully, however, it is essential to understand the context of different legal frameworks. Professor Lewis's work includes: comparative evaluation of regulation in the permissive jurisdictions of Netherlands, Belgium, Oregon and Switzerland and the evidence for the effectiveness of individual safeguards [2]; an examination of prospective vs retrospective assessment proposing two-track regulation that gives greater weight to prospective assessment than current English law coupled with strong retrospective scrutiny [3]; and a critique of informal legal change in England and Wales resulting from new guidance for prosecutors [4]. This argues that a shift of focus away from the 'victim', and desire to avoid appearing to create a regulatory regime, open the door to assisted suicide in cases which would not be permitted by most regimes, while exposing helpers to the risk of prosecution.</p>

3. References to the research (all available from King's College London on request)

1. Lewis P. *Assisted Dying and Legal Change*. Oxford: Oxford University Press 2007:217pp, positively reviewed in the *Medical Law Review*, the leading UK medical law journal.
2. Lewis P, Black I. Commissioned Briefing Paper. [The Effectiveness of Legal Safeguards in Jurisdictions that Allow Assisted Dying](#). Commission on Assisted Dying (CoAD). 2012, heavily cited by CoAD in its *Report 2012* (7), at 194, 198, 199, 205, 211, 221, 225, 235, 236, 241, 242, 243, 275, 276, 277, 279, 303, 305, 311. Parts of the briefing paper have been adapted, updated and the analysis expanded to form two peer-reviewed journal articles which will be published in late 2013 in the *Journal of Law, Medicine and Ethics* (ranked 3rd internationally among medical law journals) and *Medical Law International* (ranked 2nd among UK medical law journals).
3. Brownsword R, Lewis P, Richardson G. Commissioned Briefing Paper, [Prospective Legal Immunity and Assistance with Dying](#), CoAD, 2011, also published in the *King's Law Journal* in 2012 as part of a special issue: *King's LJ* 2012; **23**:181-193.
4. Lewis P. Informal Legal Change on Assisted Suicide: The Policy for Prosecutors. *Legal Studies* 2011;**31**:119-34, peer-reviewed journal of the Society of Legal Scholars. Based in part on Lewis P. [DPP's new interim guidance on assisted suicide prosecutions](#) 23/9/2009; Lewis P. [The amateur/professional divide in the DPP's interim guidance](#) 30/9/2009; Lewis P. Unfinished business. *Solicitors J* 2009; **153(37)**:11; Lewis P. [DPP's final guidance on assisted suicide prosecutions](#) 26/2/2010; Lewis P. Out of Focus. *Solicitors J* 2010; **154(9)**:10-11.
5. Lewis P. Euthanasia in Belgium Five Years After Legalisation. *Eur J Health Law* 2009;**16**:125-138, reviewed by editorial board; amongst others cited by Sumner W. *Assisted Death*. Oxford: Oxford University Press 2011 at pp 155, 157, 201.
6. Lewis P. The Empirical Slippery Slope from Voluntary to Non-voluntary Euthanasia. *J Law Med Ethics* 2007;**35**:197-210, published in peer-reviewed journal ranked 3rd internationally among medical law journals. The article has been used as a reference point for further research and consequently cited more than 20 times in academic journals across bioethics, law and medicine, including the internationally-leading *American Journal of Bioethics* and *British Medical Journal*.

4. Details of the impact

Professor Lewis's work has enriched and informed public policy and political debate in UK legislatures, an influential commission, and the campaign for the legalisation of assisted suicide in the UK. Her findings have contributed to legal change on assisted dying in Canada and Australia and to a judicial challenge to the current legal position in England and Wales.

Enriching and informing debate

Professor Lewis's work identifying the features of legal regimes that regulate assisted dying, evaluating the effectiveness of individual safeguards, and examining the evidence for and against the slippery slope argument has informed policy debate in the Scottish Parliament, through her oral evidence and written briefings for the End of Life Assistance (Scotland) Bill Committee [12]. The resulting report referred to Professor Lewis's evidence on capacity and length of the physician/patient relationship [13]. Professor Lewis's work was also heavily cited and quoted in the Scottish Parliament Information Centre (SPICe) Briefing paper [14] provided to all members of the Scottish Parliament prior to the final vote on the Bill in 2010, to which she also contributed in an editorial capacity. In particular, her analysis of the slippery slope argument in the Dutch context [6] was accepted in the SPICe briefing [14] (at 18-19).

Outside the legislative context, but still influential in the public policy debate, Professor Lewis's work informed her oral evidence to and written briefings for CoAD in 2011 [2],[3],[8]. It was heavily cited in an earlier 2010 Demos briefing paper prepared for CoAD [9] and in the 2012 CoAD *Report* [7]. Based directly on Professor Lewis's findings on the effectiveness of legal safeguards [2], CoAD reached the key conclusion that assisted suicide for the terminally ill could safely be legalised with

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safeguards to protect the vulnerable [7] (citing [2] 34 times).

Professor Lewis's critique of the informal legal change produced by the Director of Public Prosecutions' new guidance for prosecutors [4], [15] has directly informed and shaped public and political debate, influencing Parliamentarians, the campaign to legalise assisted suicide in the UK and a judicial challenge to the current legal position. To trace the impact of one key conclusion: Professor Lewis contends that factors in the Policy 'ensure that assistance in suicide *remains an amateur activity* carried out by inexperienced individuals without the assistance of professionals or amateur organisations (as in Switzerland)' and identifies the risks associated with this approach ([4] at 129-130). The following year, Patricia Hewitt MP stated in a Parliamentary debate [16]:

In the words of Professor Penney Lewis of the centre of medical law and ethics at King's College, London, the guidelines 'are designed to ensure that assistance in suicide *remains an amateur activity* carried out by inexperienced individuals without the assistance of professionals.

The amateur/professional discussion recurred in Parliament in 2012 (Hansard HL HL Deb, 13/2/2012, c625, c629, c632 (Lord Joffe, Baroness Young, Baroness Finlay)). The critique has also been used extensively by Dignity in Dying (DiD) in its campaign for legal change and was cited in its [briefing](#) on the Final Policy ('assistance in suicide will *remain an amateur activity carried out by inexperienced individuals*, with potentially dangerous consequences for the person being assisted to attempt suicide, and placing a terrible burden on those who assist them from compassionate motives') and subsequent briefings, in its [evidence to CoAD](#) (at 3) and in a recent [paper on a draft assisted dying bill](#) (at 9). The discussion was reiterated by Raymond Tallis, the Chair of Healthcare Professionals for Assisted Dying, in [media interviews](#), a [public lecture](#) and a [press release](#), and by Professor Lewis in interviews with BBC Newsnight, the *International Herald Tribune*, the *New York Times*, the *Washington Post* and *RIA Novosti* (Russia) [17]. Demos quoted extensively from the critique in its briefing for CoAD [9] (at 6, 14, 15, 17, and in its [blog](#)). The 2012 CoAD Report concluded that 'There is significant concern that assisting suicide *remains an amateur activity*' [7] (at 23), and included a lengthy quotation from Professor Lewis's evidence [7] (at 51). The CoAD conclusion was widely reported in national and international press (see eg [Independent](#); *New Law J* 2012; **162(7495)**; *Cdn Med Assoc J* 2012; **184(2)**:E109–E112) and challenged in the [Church of England's official response to CoAD's Report](#). Paul Bowen QC, representing Tony Nicklinson (who was seeking to use the defence of necessity to permit euthanasia), used Professor Lewis's argument in the High Court, explaining why the status quo is unsatisfactory by relying on 'an assertion that the current policy of the [Director of Public Prosecutions], by excluding professionals from assisting suicide, encourages covert and amateur assisted suicides' (*Nicklinson v Ministry of Justice* [2012] EWHC 304, [47]). Bowen also repeated this point to the media in a [widely reported interview](#) during the full hearing in June 2012. Professor Lewis's comments to the Associated Press and the Press Association on Nicklinson's death and the prospects for legal change following his unsuccessful challenge were picked up in over 800 media outlets internationally, and she was interviewed on Al Jazeera, ITN and BBC TV and radio.

Legal change

Professor Lewis's work has contributed directly to legal change on assisted dying. Her affidavit as an expert witness [10] (containing [1],[2],[4] as exhibits) was influential in the 2012 decision of the British Columbia Supreme Court (BCSC) to strike down the criminal prohibition on assisted suicide as unconstitutional (suspended for one year to allow the federal Parliament time to amend the Criminal Code) and craft a 'constitutional exemption' for Gloria Taylor, a seriously ill plaintiff, allowing her to obtain lawful assistance in suicide. The government was subsequently refused a stay of this constitutional exemption by the BC Court of Appeal (*Carter* [2012] BCCA 336, [31], [42]). Professor Lewis's evidence is cited 11 times in the BCSC judgment, in particular, her research explaining the Dutch data on non-voluntary euthanasia which rebut the slippery slope arguments central to the Attorney General for Canada's unsuccessful case.

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A bill to legalise a model of assisted dying is currently under consideration in the Tasmanian Parliament. In an unsolicited email in January 2013, Jessica Radford, the Deputy Chief of Staff to the Tasmanian Premier wrote: 'Research that you have undertaken and published has been very important and informative in preparing the proposed model . . .' Indeed [2] is cited over 50 times in the Consultation Paper [11], more than any other single piece of research or body of research. The proposed model reflects recommendations made in [2] on a number of safeguards including a prospective voluntariness check (pp31, 47-48), a palliative filter (p38), the presence of a health care professional at the end of life (pp44-45) and consultation (p51).

5. Sources to corroborate the impact

7. CoAD, [Report](#) 2012, citing with approval to reach conclusion that safeguards are effective: [8] at 56, 93, 98, 186, 227, 240, 246-7, 248; [2] at 194, 198, 199, 205, 211, 221, 225, 235, 236, 241, 242, 243, 275, 276, 277, 279, 303, 305, 311; [3] at 246 and adopting similar proposal; [4] at 64, 93-94; [1] at 37, 86-87, 204, 233; [4] at 142; [12] at 205.
8. Lewis P. [Public evidence](#) before CoAD, 25/5/2011.
9. Bazalgette, L. & Bradley, W. (for Demos) 2010. *The legal and ethical status of assisted dying in our society continues to be an unresolved public policy issue...CoAD Briefing Paper: Key Research Themes*, citing with approval: [1] at 7, 9, 22 (including quotation), 24 (including quotation), 27, 42 (including quotation), 43, 59; [12] at 23-24 (content of box), 59, 64-65, 72; [15] at 16, 88 (both on advantages of medical involvement and policy re: amateurs), 89-90 on length of relationship with physician; [6] at 44; [4] at 54.
10. Lewis P. Affidavit as expert witness on law and application of the law in relation to assisted dying in the Netherlands, Belgium, Luxembourg, Switzerland, England and Wales, Oregon and Washington state, *Carter v AG Canada and AGBC*, 31 August 2011, 240 pages (containing [1], [2], [4] as exhibits), cited in [Carter v AG Canada and AGBC \[2012\] BCSC 886](#), citing affidavit at [405], [484], [506], [647] (accepting Professor Lewis's analysis of the slippery slope data), [655], [657] and using it and five others as the basis for the analysis of the regimes and data from Oregon, the Netherlands, Belgium, Switzerland and Luxembourg (only one other affidavit is used for all five sections)).
11. Consultation Paper, *Voluntary Assisted Dying: A Proposal for Tasmania*, 2013.
12. Lewis P. Private evidence (8/6/2010) and Lewis P. [Public evidence](#) before the End of Life Assistance (Scotland) Bill Committee (7/9/2010), Official Report, Cols. 13-30; Lewis P. Commissioned Briefing Paper, [Assisted Dying Regimes](#), End of Life Assistance (Scotland) Bill Committee, 2010, ELA080.
13. End of Life Assistance (Scotland) Bill Committee, [First Report](#), Vol. 1, ELA/S3/10/R1, SP Paper 523 (2010) citing [12] at [102], [110], [111].
14. Scottish Parliament Information Centre (SPICe) [Briefing](#), *End of Life Assistance (Scotland) Bill* (2010), citing and relying on: [1] at 3; [6] at 18-19 including quotation; Briefing Paper [12] at 13, 20; 'Personal Communication' (providing evidence of Prof Lewis's input into the briefing).
15. Lewis P. [Response](#) to Consultation Paper issued by the Director of Public Prosecutions entitled *Interim Policy for Prosecutors in respect of Cases of Assisted Suicide*, Sept. 2009, response submitted 12/2009, 8pp.
16. Ms Patricia Hewitt (Leicester, West) (Lab), [Hansard](#), House of Commons, 10 Mar. 2010: Column 403 (quoting Lewis P. Out of Focus. *Solicitors J* 2010;**154(9)**:10-11).
17. Media coverage/press releases: Healthcare Professionals for Assisted Dying [interviews](#), [public lecture](#) and [press release](#); Professor Lewis interviews with the *International Herald Tribune* and the *New York Times*, the *Washington Post* and *RIA Novosti* (Russia); Demos [blog](#); and sample CoAD report coverage eg [Independent](#) and Church of England [press release](#). [Nicklinson interview](#)