



END OF LIFE CARE: WHEN THE LAW GETS INVOLVED

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TOPICS

- When to involve the Court
- Assisted Dying for Terminally Ill Adults (Scotland) Bill



WHEN TO INVOLVE THE COURT



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- End of life decisions do **not** routinely involve the Court
- Disagreement between clinicians and next-of-kin or clinicians have a reasonable doubt about what to do

LEGAL FRAMEWORK (I)

- Competent adult has the right to refuse treatment, even if that decision is objectively irrational: *R (Burke) v General Medical Council* [2006] QB 273 at §30
- Flip side is a clinician has no legal obligation to provide treatment simply because the patient demands it: *Burke* at §31
- Where patient cannot make the decision, the question for the Court is what is in the best interests of the patient; *Law Hospital NHS Trust v Lord Advocate* 1996 SC 301 at p.316

LEGAL FRAMEWORK (II)

- There is generally a strong presumption in favour of preserving life: e.g. ***Re NR (A Child: Withdrawal of Life Sustaining Treatment)*** [2024] EWHC 910 (Fam)
- ***The NHS Trust v A (a child)*** [2008] 1 FLR 70 at §40: 10 propositions which represent a helpful summary of the law
 - Approved by the Court of Appeal: ***In re: A (a child)*** (2016) 151 BMLR 39 at §33
- Whilst Conventions rights will be engaged, take a patient-centric approach will produce a Convention-compliant decision: ***The NHS Trust v A (a child)*** at §44

PROCEDURE

- In line with advice in *Law Hospital* pp.319-320
 - Petition to the Outer House
 - But should now be advertised and heard in open court
- Is the application urgent (and, if so, why)?
- Evidence required
 - Expert evidence
 - affidavits

SUMMARY

- DO WE NEED TO GO TO COURT?
 - Is there uncertainty over the correct course of action?
- HOW WILL THE COURT DECIDE THE ISSUE?
 - Is it in the best interests of the patient to receive treatment?
- HOW DO WE GO TO COURT?
 - Petition to the Outer House
 - How (and why) urgent
 - Evidence required: experts and affidavits



ASSISTED DYING FOR TERMINALLY ILL ADULTS (SCOTLAND) BILL



ASSISTED DYING FOR TERMINALLY ILL ADULTS (SCOTLAND) BILL

- Currently before the Scottish Parliament
 - Member Bill introduced by Liam McArthur
- Is it within legislative competence?
 - Can the Bill in its current form be enacted by the Scottish Parliament?
- Health professional facilitated assistance with ending life for eligible terminally ill adults



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