Law Commission
Reforming the law

BIG VOICE LONDON

Model Law Commission Report 2019

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Contents

Big Voice London logo designed by Sarah Roberts.
Cover Artwork: graphic design by Peter Sloper and illustration by Isobel Williams. Edited by Adrianna Wit, Asma Abbarova and Victoria Anderson
Published January 2020 by LexisNexis

Foreward note by the Big Voice London Chief Executive Officer

As we enter 2020, it marks the ninth year since Big Voice London's inception and sees the publication of the seventh annual Model Law Commission report. The purpose of the Model Law Commission is to provide young people between the ages of 16 and 18 years old with the opportunity to mirror the work of Law Commission, by learning about and expressing their views on issues which exist within certain areas of law and in turn, what reform would be beneficial. Over the past seven years, the students have considered and proposed reform of twenty-eight areas of law including: domestic violence, prostitution, cohabitation, genetic confidentiality, electoral law, surrogacy, revenge porn, the environment, sexual assault and consent, divorce, insolvency and offensive weapons. Every year, the students, who bring a unique perspective and thoughtful approach, produce interesting and important reform proposals which I believe Westminster's law makers would be well advised to take note of.

This year's report is no exception. Since October, the students have been exploring the topics of adverse possession, the gig economy, surveillance law and assisted dying. The surveillance law group considered issues such as predictive policing and automated facial recognition and have criticised in their report the potential for discrimination to arise as a result of those forms of surveillance. The students who reviewed the laws which impact upon the gig economy went beyond an assessment solely of employment law to consider the implications for gig workers who described as self-employed for tax purposes, when their status for employment law purposes may be closer to a traditional employee. The property law students, who were tasked with considering the complex law of adverse possession, wrestled with the length of time which should be required before an individual can apply to be the registered owner, weighing up both the rights of the previous owner and the need to ensure that properties are not left unoccupied. Finally, the young people who took up the challenge of assessing the current laws surrounding assisted dying, did so with great maturity, taking stock of all of the competing interests, including medical practitioners' right to conscientious objection, the interests of the individual considering assisted dying and of their family and friends, who are often caught up in existing laws. No doubt you will appreciate that these are not easy subjects for anyone to tackle, but as you will read in this report, these students have done so intelligently and have produced reform proposals that demonstrate that young people's views on these topics should be sought out and respected.

Beyond the importance of the proposals in this report, the Model Law Commission also has a real impact on the students it works with. Ahead of the publication of this report, I reached out to a few of our previous students to ask them what difference participating in the Model Law Commission as a student made to them. One such student, Madiha Hussein, who completed the first Model Law Commission in 2013 and who has recently completed an MA in Human Rights at University College London, told me:

"I participated in the Model Law Commission project in 2013 as an A Level student, as I was interested in twenty-first century legal issues and hoped to be involved in a project that provided me with the first-hand experience of exploring such issues. I attended weekly sessions to scrutinise and discuss the reform of the current law on social media … This project really helped me to develop my attention to detail, critical analysis, and research and writing skills – skills which proved extremely useful to my academic experience. This project has also led me to my chosen career path, as the interest in the rights to digital privacy sparked a particular interest in the field of human rights early on, which I then decided to study at Masters level, and hope to pursue as a career."

Soria Hamidi, who also completed the programme in 2013, explained that while the Model Law Commission was her first step in to law, it is still an experience she refers to in applications and that it *"developed [her] research, communication and presentation skills"*. She is now studying for the Graduate Diploma in Law with the benefit of a scholarship from Lincoln's Inn.

Hearing the difference the Model Law Commission has made to the students who completed the programme makes me exceptionally proud of the work that Big Voice London does. Of course, this positive impact would not be possible without the generosity and hard work of the charity's volunteers and supporters. In particular, I would like to thank Big Voice London's Coordinators, Asma Abbarova, Adrianna Wit and Salisha Baptiste – who all work full time alongside their work running Big Voice London - and whose hard work is invaluable to the charity.

Finally, it is now my pleasure to present you with the report of the Model Law Commission 2019. I hope you enjoy it.

Victoria Anderson, CEO

Introduction

Big Voice London

Big Voice London is a social mobility and legal education charity, which seeks to engage young people from non-traditional backgrounds between the ages of 16 and 18 years old with law and legal policy, with the aim of assisting them in entering the legal profession should they choose to pursue a career in law. To further this aim, we take students from non-fee paying schools and provide them with opportunities to give them insight into the law, such as the Model Law Commission.

Since Big Voice London's inception in 2011, Big Voice London has gone from a small student run organisation, to a registered charity and continues to grow, reaching out to more students each year. We now run a total of six main programmes, namely: a Mooting Competition with the UK Supreme Court, an Introduction to the Legal System project, also in association with the UK Supreme Court, a Summer School in association with Linklaters LLP, the Model Law Commission and a two day student barrister experience with Radcliffe Chambers.

We are delighted to be able to name BCL Solicitors LLP and 11KBW as financial donors and sponsors of the charity, in addition to ongoing support from Lexis Nexis, Linklaters LLP, Middle Temple, Radcliffe Chambers, the Law Commission and the University of Law. We also extend our appreciation to the UK Supreme Court for their continued support of our objectives.

Model Law Commission 2019

The Model Law Commission is a three-month long project that provides A-Level students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. From October to December, the young people undertook a five-stage process: research, formulating recommendations, consulting with their peers, reporting on their proposals and devising their legislation.

Each year, the Model Law Commission begins with a two-day conference, which this year was kindly hosted by the University of Law, Moorgate. It is over the course of these two days that our students are introduced to their respective topics by experts in the field who come from all over the country to speak to them. The young people then take that information and over the following weeks discuss reform ideas with each other, their Group Leaders and their peers. This year the sessions were kindly hosted by the University of Law, Moorgate. Finally, in early December, individuals from the Law Commission itself visited our students and advised on the difficulties in reforming the law and how to write a law reform report.

The results of these weeks of hard work are contained within this report. This is a reflection of what these young people believe should be the law governing these particular issues and is written entirely in their own words.

Our students

When recruiting students, our only requirement is that applicants come from non-fee paying schools, we do not set grade boundaries or have entrance exams, we only ask that students be keen to learn and commit to the project.

All the students that participate in the Model Law Commission apply to this project entirely independently. It is not a school run activity; these are students who want to learn about and have their voices heard in the law. With sessions run every week in the evenings after school, this is not a small commitment to undertake alongside studying for all-important A-Level exams. We hope that as we expand, we will be able to provide this valuable opportunity to more ambitious young people.

The Authors/Commissioners

The young people that have contributed to this briefing paper are:

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Acknowledgment

We are extremely grateful to the LexisNexis team for kindly sponsoring this publication and for their continued support of the Big Voice London project. Additionally we would like to thank the University of Law, Moorgate for hosting our students, volunteers and guest speakers for the duration of this project.

Finally, we would also like to thank the Big Voice Management Board for their assistance in bringing the Model Law Commission to life.

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Big Voice London, January 2020

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Disclaimer

The work, recommendations and opinions contained in this report are solely those of the student authors listed. The views expressed do not represent those of any other external organisation or individuals, including guest speakers listed in this report and the UK Supreme Court and the Law Commission. Big Voice London is an entirely independent organisation, and while we value the ongoing support and guidance of many organisations all views expressed are our own.

Part One: Property, Family & Trusts

Recommendations on the laws governing adverse possession.

Compiled with thanks to:
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Introduction

What is Adverse Possession?

Adverse possession is the occupation of land by a person not legally entitled to it. If someone does this continuously for a number of years (normally 10 or 12 years) then, in certain circumstances, the land may become theirs. Adverse possession requires factual possession of the land (e.g. making change to the land like building a fence), with the necessary intention to possess and without the owner's consent.

Current Law

The doctrine of adverse possession originally arose from the Limitation Act 1980. The Act stated that no action could be brought by any person, known as a squatter, to recover any land after the end of 12 years from the date on which the right of action started.[1] This law of adverse possession was a cause of conflict amongst neighbours and landowners. A squatter could gain the right to be registered as proprietor of a registered estate if they had been in adverse possession of the land for a minimum of 10 to 12 years. This doctrine of adverse possession did not fit well with the system of land registration.[2] Therefore, the Land Registration Act 2002 was passed which has created a new regime. This Act makes it more likely that a registered proprietor will be able to prevent an application for adverse possession of their land being approved.

Need for Change

Whilst this has been an attempt to regulate the current law on adverse possession[3], we suggest that the current law has not gone far enough to reform the law. Over the past few months, we have constructed multiple reform ideas to adjust and improve the current legislation, based on public feedback and valuable expertise provided by legal professionals. Across this report you will see evidence to validate these reform ideas, that we believe will help to reshape this law positively. We believe adverse possession is in need of reform for two main reasons:

1. it is a draconian law that is flawed and lacks clarity;

2. the current law of adverse possession clashes with the legal maxim that the English courts will not enforce a cause of action which arises from illegal or immoral conduct, which is unfair and unjust.

Summary of our proposals

1. **Ensure that any adverse possession claim which has been made through criminal or fraudelent activity is not allowed to be successful:** this is to ensure that the law of adverse possession aligns with the legal maxim explained above;

2. **Compensation from the new owner of the land to the original owner of the land if adverse possession has taken place:** currently, if adverse possession occurs, the original proprietor loses ownership to the new owner who has adversely possessed the land. Therefore, we believe it to be justifiable to provide the original propreitor with compensation. We suggest that the new proprietor pay 10% to 20% of the land or property value, if they have added value to the land or property, or 30% to 40% of the land or property value if they have not added value or damaged the land to the original proprietor;

1 Limitation Act 1980, s15(1)
2 *'Practice guide 4: adverse possession of registered land'*[Online] Available: **https://www.gov.uk/government/publications/adverse-possession-of-registered-land/practice-guide-4-adverse-possession-of-registered-land** [Accessed 20 December 2019]
3 Land Registration Act 2002

3. **Change the time period in which a claim for adverse possession can be made from 12 to 20 years:** increasing the squatting time from 12 to 20 years will ensure that successful adverse possession claims are fair and reasonable;

4. **Ensure that all land is registered land and that landowners have up-to-date contact details:** the importance of up-to-date contact details will eliminate the chance that proprietors are not aware of what is happening with their land and have the chance to defend adverse possession claims;

5. **Increase people's awareness of the possibility of adverse possession:** educating people through contracts and teaching landowners so that they understand what their rights are and what could happen to their land if it is left unoccupied for long periods of time.

Proposal One: Ensure that any adverse possession claim which has been made through criminal or fraudelent activity is unsuccessful

Current Law

In the recent case of *Rashid v Nasrullah*[4], Lord Justice Lewison gave the judgment on the stance of the court in regards to criminal activity occuring in a claim for adverse possession. The registered proprietor of the property, Mohammed Rashid (MR2) travelled for a number of years during which, his friend, also named Mohammed Rashid (MR1), managed to fraudulently transfer the property to himself. A few years later, MR1 gifted the property to his son, Farakh, who was complicit with the fraudulent means by which the property was obtained. Twenty years later, MR2, having arrived back in the UK years prior, sought to get back his property through rectification of the register. However, MR1's son objected to this on the grounds that he had been in adverse possession of the property for the last twenty years. The Court found that the grounds upon which Farakh had defended his claim upon the property took precedence over the fraudulent means of acquiring the property. This resulted in Farakh successfully acquiring the property through adverse possession.

Need for Change

Many view the court's ruling in this case as problematic because it disregards the illicit activity used to obtain the property. The fraud committed by MR1 was completely pardoned as a result, therefore condoning the illegal actions he took. Such an example is paradoxical of the current legal system, which is put in place to maintain order and deter from such behaviour. Seemingly, the criminal behaviour was rewarded by the court as they were able to successfully claim adverse possesion, showing the current law to be out of touch and unfair. The legislation proves favourable to the squatter who is participating in criminal activitiy, rather than the law-abiding homeowner.

Statistics

As a group we decided to ask the general public for their perspective on this. Through the format of a survey we created a number of questions which tested and informed the public about adverse possession and its issues, including their perspective on adverse possession being claimed through criminal activity.

The relevant question relating to this and a sample of results were as followed:

Question: As it stands you can legally possess land through adverse possession even if it has been acquired by criminal activity. What is your opinion on this and why?

Answers:

1) "This is highly unfair as the owner has basically been robbed off their property and cannot get it back without going through tribulations".

2) "The trespasser needs to be put in jail, as it is unjust".

3) "The trespasser shouldn't be able to get the property especially if it's been stolen; it is considered a serious crime and should be treated as such".

4) "It is an incredibly bad thing as this can be seen as breaking and entering into secured land".

These answers clearly show that this is an area of adverse possession which the public think needs to be reformed as it is unfair currently.

4 *Rashid v Nasrullah* [2018] EWCA Civ 2685; [2018] 11 WLUK 493

Reform Proposal

We suggest that altering the court's judgment on criminality in regards to adverse possession claims rests upon altered and reworded legislation. Currently, the legislation does not make any reference to adverse possession which occurs through fraudulent or criminal activity.[5] A section does not currently exist in the Land Registration Act 2002 that dismisses the fraudulent means by which one can gain property. As such, we suggest a section that reads:

"If land has been successfully acquired through adverse possession, yet the process by which they did so includes illegal activity and fraudulent misrepresentation, the applicant should lose their right to successfully claim the land."

This would change the law of adverse possession and ensure that the public are not given free passes to break the law, which is against the legal maxim referred to above. This should then prevent situations such as what occurred in *Rashid v Nasrullah*, where property was acquired through fraudulent activity.

Impact

Cost implications
The cost implications for the reform are small. The rewording of the legislation poses only positive benefits as it allows for the recipient to be actively aware of adverse possession and all that it contains. Rewriting the legislation means that the courts or any officials involved cannot be held accountable for negative outcomes of squatting (i.e. piece of land being taken away from its owner) as they have been made aware of the possibilities of this happening and how to prevent adverse possession claims through criminal activity.

Social Impact
The social impact of this would be positive. This is solely due to the fact that the criminal aspect of adverse possession would decrease. Our survey showed an overwhelming number of respondents believed that it is unfair to be able to be successful in an adverse possession claim which has been claimed through criminal activity.

Proposal Two: Compensation from the new owner of the land to the original owner of the land if adverse possession has taken place

Current Law

Adverse Possession does not currently dissolve the perceived inequality between the status of the squatter and original proprietor.

Need for Change

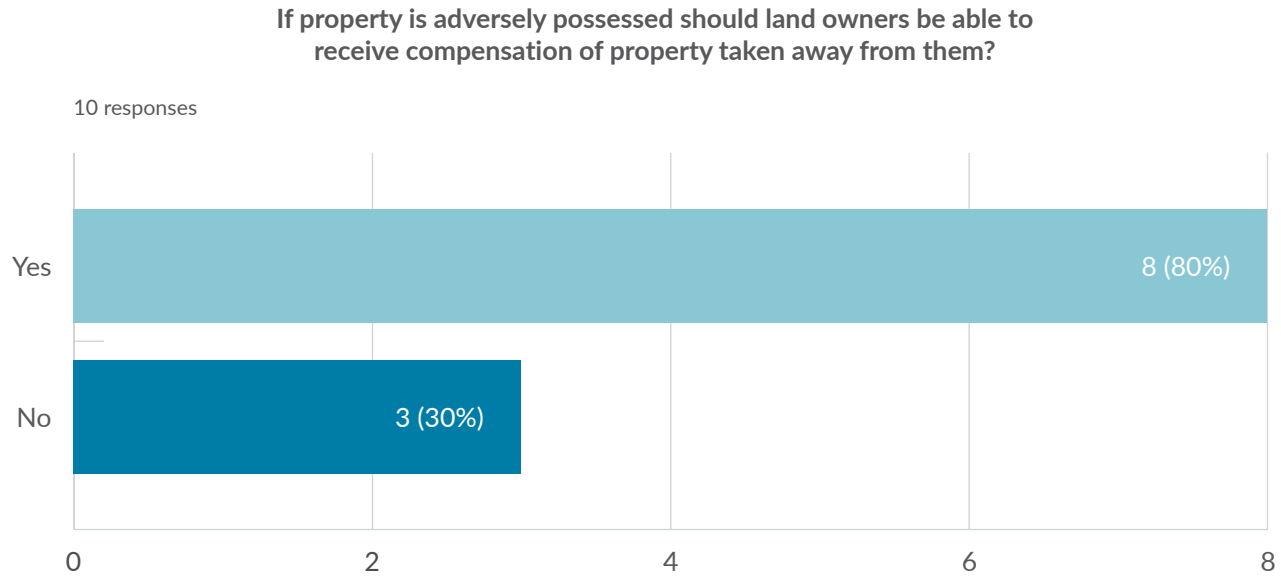
The current law arguably does not offer any solution for fairness. Currently the court simply follow their obligation to explicitly follow the letter of the law. In order to include a sense of justice for property owners, we thought that compensation could be implemented as part of the reform of this area of law, depending on the squatter's input on the value of the property.

Statistics

In our public survey, the results supported our argument that adverse possession is unfair. An 80% majority voted in favour of compensation and voted that property owners should receive compensation because it is unfair that their land has been taken away from them. We had the following suggestions:

1. The squatter should pay "a fraction of the current property price";
2. The squatter should pay the "mid-market value averaged over the time the squatter has been there".

5 Land Registration Act 2002, s1



This confirms why the law needs to be reformed.

Reform Proposals

Main Outline:
If the squatter has increased the value to the property, they should pay 10 to 20% of their profit to the original owner. If the squatter has decreased the value of the property, they should pay 30 to 40% of the current value of the property to the original proprietor.

Why:
If the value of the property increases, the squatter should pay 10 to 20% of the value of the property because it has been improved and demonstrates intention to possess, an essential condition needed to claim adverse possession. If the value of the property decreases, the squatter will need to pay around 35% because they have not only damaged the property but have essentially 'stolen' it from the previous owner.

Impact

Positive impacts:
This would deter people from claiming adverse possession if they cannot afford to obtain the land, as people usually disapprove of the idea of giving someone a portion of their profits, subsequently dissolving the criminal aspect of this law.

Impacts for the Original Owner:
By implementing compensation as a reform for adverse possession, a sense of justice is given to the original proprietor, and resolves the issue of unfairness. However, if the original owner cannot be contacted due to incorrect contact details, this compensation rule may not be implemented and therefore the squatter is provided with the updated title of property owner.

Impacts for the Squatter:
Although the compensation culture would be unfavourable for the squatter, they still receive a fraction of the profits for the property as well as keeping it, and achieves fairness for both the squatter and original proprietor.

Cost implications:
The cost implications are good. The government will not have control over the matter of compensation because it would use government funding ineffectively. There would be no need for an independent body to observe how the value of the land has increased over time. The individuals involved would be required to resolve this issue independently by hiring lawyers to resolve any disputes that may arise between both parties and costs could be claimed by the parties.

Time:
This procedure would also be time-consuming as reviewing the case frequently to make sure it has been resolved utilises the government's time ineffectively. Therefore making it the duty of the claimant is more time efficient. The courts will only need to ensure that some sort of agreement has been made after a period of time, such as after five months, if there has been no compensation paid.

Proposal Three: Change the time period in which a claim for adverse possession can be made from 12 to 20 years

Current law

As we know, a 'squatter' can claim adverse possession after 10 to 12 years.[6] For unregistered land, a 'squatter' can claim possession of land after 12 years. For registered land, a 'squatter' can claim possession of land after 10 years.

Need for change

We believe that currently the law on adverse possession is unfairly biased against the original proprietor. We suggested changing the time period, to being longer than 10 to 12 years, to the public in our survey, to see what the public thought.

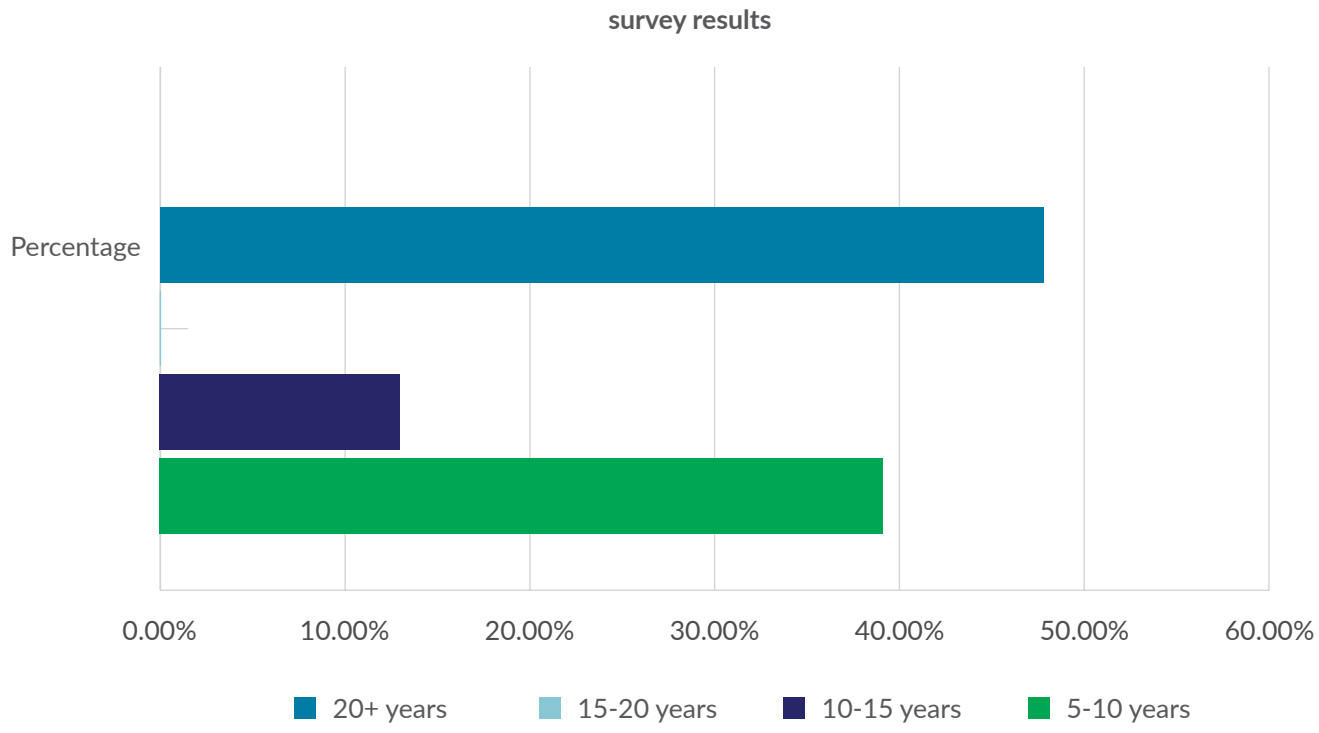
Statistics

We asked the public the below question in relation to the current time period:

Question: How long do you think a person should stay on land before they can possess it as their own?

5 – 10 years: 39.1%
10 – 15 years: 13%
15 – 20 years: 0%
20+ years: 47.8%

Here are the relevant results from our public survey:



6 Land Registration Act 2002, s 1(1) Schedule 6

Reform Proposals

We received a mixed response about changing the time period, some saying that we should reduce the period and others saying we should increase it. Therefore, we explored both options and came to a final conclusion about what would be most beneficial.

Possibility one: increase the time period to 20 years?
We believe this would be important because it will make it difficult for a 'squatter' to claim adverse possession. This will benefit the landowner (the original proprietor) as it'll be easier for them to keep possession of their land which is theirs. A good example of this is in the case of *Pye v Graham*.[7] Pye was the original owner who wanted to put more housing on the land and Graham was the squatter who wanted to put animals on the unregistered land. Graham was granted his claim for adverse possession, as he had had, for more than 12 years[8] sufficient control over the land and had factual possession (the sufficient degree of physical custody and control of the land), by for example grazing animals on the land and building fences. If the time frame were longer, then it would have given Pye longer to have avoided this situation when the land was his in the first place.

Possibility two: decrease the time period to >10 years?
Although this does seem contradictory to our previous point, we also considered decreasing the time period, as adverse possession does allow us to stop unused land from being left for a long period of time and becoming a nuisance. Also adverse possession can be said to protect innocent parties, as if you buy land you want to be sure that the person you are buying it from actually has title to it.

Overall Reform Idea
Our overall judgement is that we should extend the time period to 20 years. This is because it allows more time for a landowner to maintain and use their land, which they do own in the first place, either by paying for it or inheriting it. Also, this gives the owner the chance to show responsibility and ownership for their own land, which seems to only be fair. We believe that this outweighs the benefits of quick adverse possession claims outlined above. Whilst adverse possession claims do still have a place in the law, they should be made harder to be successful.

Proposal Four: Ensure that all land is registered land and that landowners have up to date contact details

Current Law

Land and properties can be categorised into two types; registered and unregistered. These are two systems of recording ownership. Registered land is land governed by a system for registering the title to land. Unregistered land is land that has not been registered with HM Land Registry. For registered land, a claim cannot be made until after 10 years or above and for unregistered land it must be 12 years or above to claim ownership.[9]

Also, when a claim for adverse possession is made, the original owner of the land is notified and given two years to block the application.[10]

Need for Change

Knowing whether your land is registered or unregistered would affect how long you would have before your land could potentially be adversely possessed.

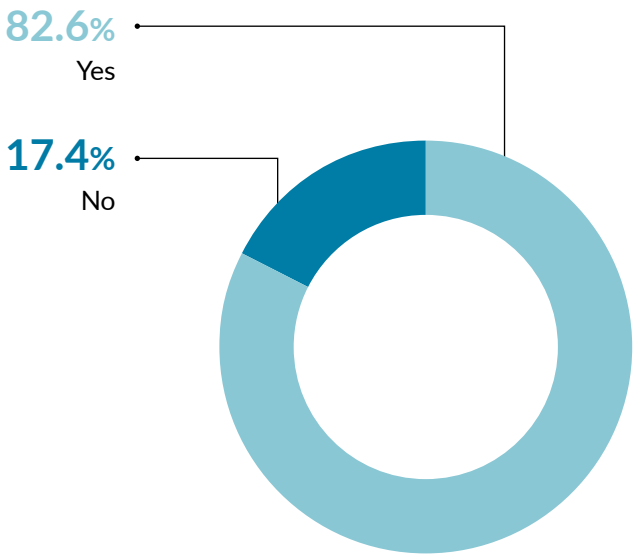
Also, if the original proprietor does not have up to date contact details associated with their land then they may not be aware of the claim for adverse possession in the two year notice period and that means that they could miss the opportunity to stop their land from being possessed.

Statistics

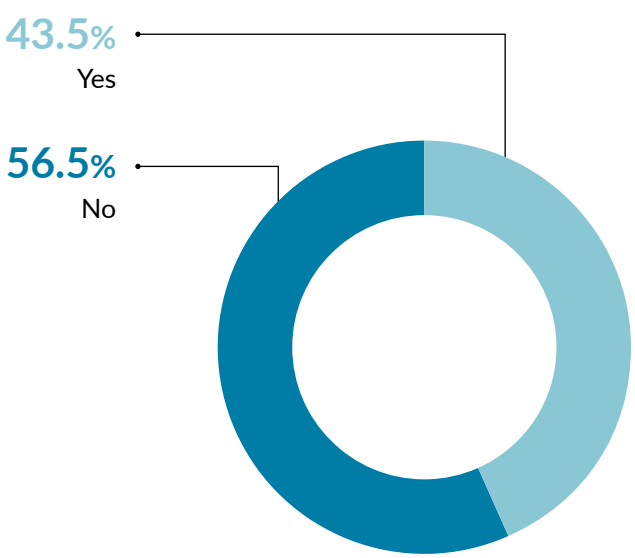
We were concerned as to whether people actually know whether their land is registered or unregistered and whether they have up to date contact details with their land. Therefore, in the group survey that we did we asked who knew what about their land and contact details. Here were the relevant results:

7 J A Pye (Oxford) Ltd v Graham [2002] UKHL 30
8 Limitation Act 1980, s 15(1)
9 Land Registration Act 2002, s1(1) Schedule 6
10 ibid

Are your contact details for your address up to date with the Land Registry?



Do you know if your landlord is registered?



These statistics shows that 82.6% of people have their contact details up to date with the land registry. This still leaves 17.4% room for error.

Furthermore, more than 50% of people in our survey didn't know whether their land is registered which is a cause for concern as this means that more than 50% of people wouldn't know how long it would take for their land to be adversely possessed.

Reform Proposals

We believe that all land should be registered, as it is safer for the owner. This is due to:

- More clear and certain ownership;
- Land registry provides certainty and may compensate if there are mistakes in registry;
- More protection against property.

We also believe that up to date contact details of landowners should be compulsory as it is a simple solution to ensure there is no room for error in adverse possession claims. It will ensure clarity and give more responsibility to the landowner. It would then be the original owner's fault if they do not get back in contact after they've been notified that there is an application for their land to be adversely possessed, as two years is a long time and could not be said to be unfair as they had the chance to stop the adverse possession.

Cost Implications
Cost implications are very low to make it compulsory to keep your details up to date.

Social Impact
If all homeowners are obliged to keep their address up to date, this will prevent properties that they are still intending to keep from being claimed by a second party through adverse possession. This will reduce unnecessary litigation between two parties where one party is attempting to claim adverse possession over property that is intended to be used at some point again by the original owner.

Proposal Five: Increase people's awareness of the possibility of adverse possession

Current Position

Adverse Possession is a legal doctrine which as it stands can result in one's own land or property being taken away.

Need for Change

Many of us had not heard of adverse possession before we started this report and did not know that it could happen. We conducted a survey and asked who else knew what adverse possession is.

Statistics

When asked if they had heard of adverse possession before this survey, the results suggested that 45% of our participants had never heard of adverse possession although it is a law that could affect them, or any member of the public, without their knowledge. This implies that there is not a common understanding of adverse possession.

Reform Proposals

We believe that knowledge of this law would protect everyone. This can be simply implemented through the following suggestions:

1) *Include an explanation of the risk of adverse possession in property or land sale contracts, when someone first starts to own the land.*

We believe that an explanation of adverse possession should be added into tenancy or land contracts as a precaution for the buyer. This is due to the amount of people that go into house or land contracts and do not understand that by owning property or land, they could be affected by their property being adversely possessed unless they take the necessary precautions, simply because of their lack of knowledge on this topic. By writing an explanation or warning into contracts, they will be aware of the consequences that could result from, for example, their contact details not being up to date, or them leaving their property unattended for long periods of time.

2) *Passing knowledge on this law from one owner of land to the next, so that they are then able to pass on this information to future buyers of land;*

Another solution is educating future proprietors. As many people are not aware of adverse possession, individuals such as estate agents, who deal daily with people buying houses or land, should give the land owners this information when they acquire the land. This will allow experts to be able to inform their clients on this law as statistics show that many people may not be aware of this law before purchasing a property or land. By providing people with this information it will make them aware of the possibilities of what could happen when, for example, leaving their land unaccompanied for 10 to 12 years. Also, an essential process of landowners informing future landowners (for example if they are buying land from them) on the existence of the law of adverse possession should become a compulsory part of selling land to others. This will spread knowledge, which will leave less room for uncertainty. Not disclosing this information could become an offence in itself.

3) *Conducting a government consensus*

Lastly, a method that will make the public more aware of the law of adverse possession is through conducting a government consensus. This will be very effective as these surveys are sent nationwide and will be sent to registered homes. It will again, inform these homeowners on possible consequences of what could happen to their registered property if they did leave in unattended for more than 10 to 12 years.

Impact

Cost Implications
There are some substantial cost implications for education of landowners and a government consensus. However, ensuring that an adverse possession clause is included in all sales contracts of land or property could keep costs down with an efficient result.

Summary

We believe that the proposals contained in this report provide an effective response to some of the challenges around current adverse possession law. In summary, we have proposed; no successful adverse possession claims through criminal activity, a compensation culture for successful adverse possession claims and a longer time period before adverse possession can be claimed, for clarity and fairness. We have also called for all land to be registered and for all landowners to have their contact details up to date. Furthermore, we have suggested that there needs to be a greater awareness to the public at large on the law of adverse possession. We hope that this report in itself can help to encourage this and further the understanding of the reader in this area of law.

Part Two: Commercial & Common Law

Recommendations on the laws governing the gig economy.

Compiled with thanks to:

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Introduction

Following three months at Big Voice London, our group have focused on the reform of the Gig Economy. The Gig Economy is a developing sector of employment, with an increasing amount of people finding themselves working in jobs such as Uber drivers or Deliveroo riders. The report aims to bring awareness to the difficulties faced by gig economy workers, who are not afforded adequate protection from the law.

We have focused on three areas of reform: the definition employment status, gig workers and zero-hour contracts. Our pre-consultation involved analysing the current laws and meeting with legal experts to expand our knowledge of the current laws and their application: highlighting issues and identifying areas of reform. We conducted a survey of 90 respondents, collecting quantitative and qualitative data, in order to evidence our proposals.

The Gig Economy: Definition

Background and current law

Under employment law in England and Wales, there is not one single definition encompassing people in employment. Rather, the courts have debated the issue for a number of years to account for the different professions, industries and types of work undertaken every day. Currently, the law states that there are three categories of people carrying out work and/or labour: employee, Limb B worker ('worker') and self-employed.

Under *s230 of the Employment Rights Act 1996*, both employees and workers have a 'contract of employment'. No definition of contract of employment is given; a clear sense of clarity to differentiate the two definitions is absent. Individuals are categorised as 'self-employed' if they run a business by themselves and assume the responsibility of success or failure of the business.[11] Many companies have attempted to pass their workers off as self-employed due to the vague nature of what a worker really is. Instead, case law must be used to provide the answer.

11 'Working for yourself' (Gov.uk) <https://www.gov.uk/working-for-yourself> last accessed 22nd December.

The case Autoclenz v Belcher,[12] lays down some factors allowing a greater distinction between worker and employee. The main issue the case discovered was the *'materially identical definitions of employee and worker'*.[13] The case held they were employees, rather than workers, for the following three reasons:

- They gave work for a wage
- They were under the employer's control
- They personally performed the work

This case provided some clarity in understanding the difference between employee and worker, but there was still great potential for confusion in later cases.

In *Independent Workers of Great Britain v RooFoods Ltd*,[14] the main deciding factor shifting the case in favour of Deliveroo was a subcontracting clause in the terms and conditions: *"Deliveroo recognises that there may be circumstances in which you may wish to engage others to provide the Services"*.[15] This flexibility of subcontracting work meant that Deliveroo riders were not, in fact, workers, but rather self-employed.

In the later case, *Uber BV v Aslam*,[16] the argument was similar, but the outcome was very different. The drivers were held to be workers, and so were entitled to national minimum wage. The case is still awaiting appeal in the Supreme Court.

Issues

The classification of people who work is important as it defines what rights people are entitled to. Self-employed are not entitled to employment rights but have their own set of rights. Employees are entitled to a broad variety of rights; from statutory sick pay to protection against unfair dismissal, from the right to paid holiday to statutory maternity/paternity leave and pay. Workers received fewer rights than employees; for example, workers only get statutory maternity/paternity pay, rather than leave.[17]

Clearly then, someone's status is very important. Theoretically, it would make sense to clarify everyone's employment status, so they know the rights to which they are entitled. This is, however, not the case despite statute and case law. This was all too clear in the Uber case and the Deliveroo case as discussed above; both Deliveroo and Uber drivers are in a sense performing the same role yet are given two different employment statuses.

This lack of clarity poses a problem because employers are able to exploit their labourers. It is a common occurrence for an employer to claim that the worker is self-employed when the worker is clearly working for a company. Again, this was seen in the Uber and Deliveroo cases. By claiming that the worker is actually self-employed, the company reduces the responsibility owed by them to the worker and by doing this, they then cut expenses by only providing rights that a 'self-employed' person would receive. This is clearly unfair for the worker, who is entitled to more rights.

Additionally, the limited precision about the different categories of workers has led to a general lack of awareness amongst the workforce as to which rights they are entitled. In a survey we conducted, we discovered that over a third of all respondents did not know whether they were an employee, worker or self-employed.

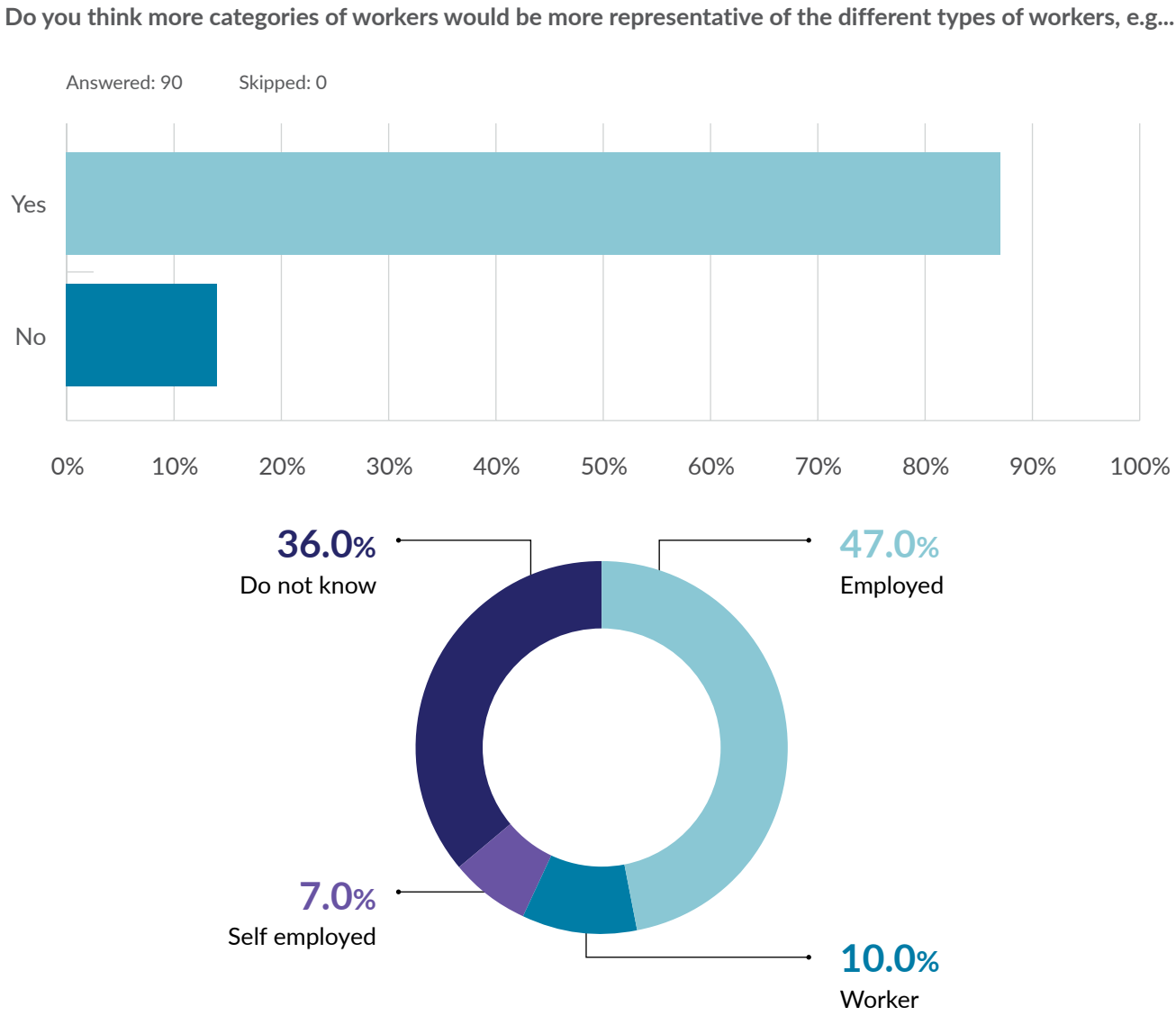
The solution lies in a clearer definition, as it will make it easier to categorise the individual and therefore give the individual the rights that they deserve. This will also allow the definitions to be more representative with the jobs we have today. 87% of the people we surveyed agreed with this.

Possible solution

As a way of making the definition of worker clearer, we suggest that Limb B worker be split into two categories: Level 1 worker and Level 2 worker to provide the necessary clarity and flexibility.

To be classified in these categories, there are a set of checklists for each category. Some will be mandatory, and others will not. These will be explained below.

12 *Autoclenz v Belcher [2011] UKSC 41*
13 *Autoclenz v Belcher*, Lord Clarke judgment, paragraph 2
14 *Independent Workers of Great Britain v RooFoods Ltd* [2019] EWHC 728 (Admin)
15 *Independent Workers of Great Britain v RooFoods Ltd*
16 *Uber BV v Aslam [2018] EWCA Civ 2748*
17 'Employment Status' (Gov.uk) <https://www.gov.uk/employment-status/worker> last accessed 22nd December



Employee

For an employee, the main qualifications remain the same in that:

i. the employee is personally performing the work;
ii. the employee is exempt from working for another business (exclusivity);
iii. the employee is provided with work and equipment by the employee;
iv. the employer has control of how the work is carried out.

Employees, as the highest level of worker, will still be entitled to the full set of employment rights.

Level 1 Workers

To be a Level 1 workers, the current qualifications must be satisfied:[18]

- they have a contract (oral or written) or other arrangement to do work or services personally for a reward;
- their reward is for money or a benefit in kind, e.g. the promise of a contract or future work;
- they only have a limited right to send someone else to do the work;[19]
- they must turn up for work;
- their employer must have available work for them for the duration of their contract or arrangement.

18 'Employment Status' (Gov.uk)
19 *Independent Workers of Great Britain v RooFoods* Ltd

Along with our additional suggestions that:

- the business provides material, tools and equipment;
- the worker consistently works 30 or more hours a week (subject to change based on England and Wales minimum working hours);
- the employer has some control - e.g. set hours, has uniforms - and there are clear consequences for not adhering to this control.

This has the effect of creating a category of workers who are in secure work but have more flexibility than employees. The main difference between Level 1 workers and employees is exclusivity; employees are exempt from working for another business whereas Level 1 workers are not. The level of control that the employee exercises and the hours may differ, but are not a requirement.

Level 1 are entitled a list of minimum rights, these being the current 'basic rights':[20]

- getting the National Minimum Wage
- protection against unlawful deductions from wages
- the statutory minimum level of paid holiday
- the statutory minimum length of rest breaks
- to not work more than 48 hours on average per week or to opt out of this right if they choose
- protection against unlawful discrimination
- protection for 'whistleblowing' - reporting wrongdoing in the workplace
- to not be treated less favourably if they work part-time

They may also be entitled to Statutory Sick/Maternity/ Paternity Pay. Further rights can be allocated depending on the individual contract of employment with the employer.

Unlike employees, Level 1 workers are not automatically entitled to Statutory Redundancy Pay; protection against unfair dismissal (after an employment period of 24 months); time off for emergencies; National Insurance Contributions by employer. Some Level 1 workers may be entitled to these rights, however this may not qualify them as an employee.

Level 2 workers ('Casual or irregular' worker)

Level 2 workers could also be referred to as casual or irregular workers. These are workers that satisfy fewer of the Level 1 worker qualifications, enough that they should not reasonably be entitled to claim those rights. We suggest that if only 25 to 50% of the above qualifications are satisfied, then the worker is more likely to be Level 2. A key distinction in qualification is that Level 2 workers are likely to work less than a certain of hours a week, for example 25 hours a week. Additionally, those who provide their own materials are more likely to be Level 2 workers.

A Level 2 worker could also, but not exclusively, include Zero Hour Contracts to encourage flexibility. The contract may have terms such as 'casual' or 'freelance' or 'zero hours' or 'as required'. However, the worker has to have freedom to refuse the work, allowing for more flexibility.

Level 2 workers are entitled to the basic worker's rights, excluding the following: Statutory Sick/Maternity/ Paternity Pay, protection for whistleblowing, statutory minimum of paid holiday, to not be treated less favourably if they work part-time. This is to reflect the reduced hours of work that they may be doing.

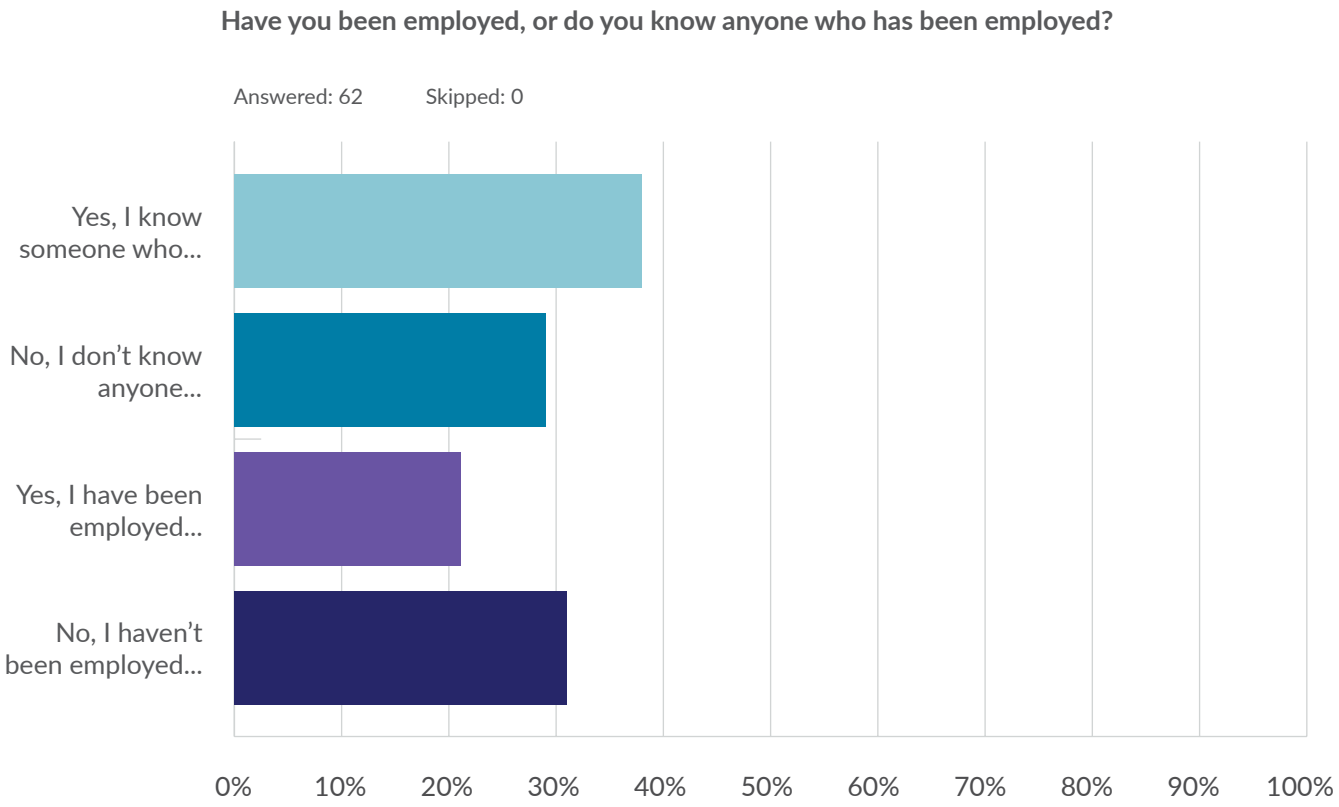
20 'Employment Status' (Gov.uk)

Zero-hour contracts

Overview

A zero-hour contract is a type of contract between an employer and a worker, where the employer is not obliged to provide minimum working hours and the worker is not obliged to accept any work offered. Before the introduction of the Working Time Regulations 1998 and the National Minimum Wage Regulations 1999, zero-hour contracts were used to respond quickly to business fluctuations[21]. They have been increasingly used in the UK Labour Market since the 2008 Financial Crisis and onwards. These contracts offer flexibility to workers who may not want traditional jobs or a set number of hours. The benefits to businesses by employing under these contracts include flexibility, growth and affordability. Businesses can alleviate risks by reducing their labour costs whilst also allowing inexperienced workers to gain experience.

The Office for National Statistics (30 April 2014) found that one million people were on zero-hour contracts[22]. This is supported by our survey, where we found 38% of our participants either were or knew someone employed on a zero-hour contract. This high figure is prominent in many retailers such as Sports Direct, where 90% of their staff are on zero-hour contracts[23]. However, there are disadvantages to these contracts. During the Labour Conference 2018, they proposed to ban them altogether and increase the minimum wage to help those in poverty[24].



Current Law

As of 26 May 2015, the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 were introduced to address zero-hour contracts. This new legislation specifically prevents employers from carrying out exclusivity clauses in a zero-hour contract. Exclusivity clauses can be found in employment contracts and their purpose is to exempt workers from having more than one employer. In this legislation, it states that it is unlawful for a worker to suffer a detriment because they work for another employer[25].

21 M Pennycook, G Cory & V Alakeson, A Matter of Time - The rise of zero-hours contracts' (June 2013) <'https://www.resolutionfoundation.org/app/uploads/2014/08/A_Matter_of_Time_-_The_rise_of_zero-hours_contracts_final_1.pdf> accessed on 28 November 2019

22 Angela Monaghan, 'Zero-hours contracts: 1.4m in the UK, ONS says' (30 April 2014) <https://www.theguardian.com/uk-news/2014/apr/30/zero-hours-contracts-uk-over-one-million-people> accessed on 28 November 2019

23 Simon Neville, 'Sports Direct: 90% of staff on zero-hour contracts' (28 July 2013) <https://www.theguardian.com/business/2013/jul/28/sports-direct-staff-zero-hour-contracts> accessed on 28 November 2019

24 'John McDonnell's full speech to Labour Conference 2018' (24 September 2018, <https://labour.org.uk/press/john-mcdonnells-full-speech-labour-conference-2018/> accessed on 5 December 2019

25 The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015, s 2

As of today, zero-hour workers are entitled to annual leave, the National Minimum Wage and National Living Wage[26]. They also pay for work-related travel in the same way as workers. The law states that individuals can ignore if an employer includes an exclusivity clause in a zero-hour contract. It is not considered legally binding[27].

Issues

Whilst many positive aspects come with zero-hour contracts - such as flexibility, the chance to get permanent work and the freedom to obtain additional work – several issues come with it that range in severity. One of the many consequences is workers struggling to pay their bills. This is due to the fact that they do not have stable cash flow, especially if their sole source of income is the zero-hour contract itself. Therefore, it is unethical when considering there are workers physically and mentally affected by the uncertainty these contracts can cause. For example, many constantly set aside funds or work extensive hours due to the lack of secure hours and fear that rejecting work could affect their future workflow.

Also, another major issue surrounding zero-hour contracts is missing out on certain benefits and rights. For example, the workers will miss out on the benefits that permanent employees are entitled to such as pension payments. This leads to alienation as some workers feel undervalued, especially if they fulfil a job role in which other companies would provide benefits which they are currently not entitled to.

When it comes to the law, there is no set legal definition for a zero-hours contract. This means there may be a lot of misconceptions surrounding the term, leading to implications in court due to subjective interpretations.[28]

Reform

The use of zero-hour contracts raises a number of legal issues. Among these is the question of employment status e.g. whether or not those working under such contracts are employees, workers or self-employed.[29] The lack of clarity derives from not having a legal term and definition of zero-hour contracts, which in turn would remove some of grey areas in a legal perspective.

Workers on zero-hour contracts usually work an average of 25 hours per week, compared to 36 hours for people in employment[30]. Based on the analysis of Labour Force Survey data from 2011 to 2016, it is estimated workers on zero-hours contracts earned on average 6.6% less per hour (93p) than employees with similar characteristics and in similar roles who were not employed on zero-hour contracts.[31] This indicates a prime opportunity for exploitation which enables employers to save on labour costs. Therefore, we believe those who work over a duration of 12 months and regularly complete a minimum of 30 hours a week should be entitled to an enforceable contract and have the choice to become an employee. They would be able to claim a minimum hour contract reflecting the current number of consistent hours already completed or remain on a zero-hour contract. This would give them the opportunity to choose between a consistent income or remain flexible under a zero-hour contract. Furthermore, this permanent contract will allow workers under a zero-hour contract to not experience alienation as they are able to become full-time employees and receive equal rights and benefits.

Additionally, employers should only be entitled to dismiss an employee before their 12-month period if there is reasonable cause. This would prevent loopholes within the reform and ensure employers are unable to take advantage workers under these contracts.

26 Department for Business Energy & Industrial Strategy, 'Zero hours contracts: guidance for employers' (15 October 2015) <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers> access on 28 November 2019

27 Department for Business Energy & Industrial Strategy, 'Zero hours contracts: guidance for employers' (15 October 2015) <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers> access on 28 November 2019

28 Duncan McVicar, 'Zero Hours Contracts, Job Quality and Impacts on Workers' (2017) <http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series6/mcvicar250117.pdf> accessed on 28 November 2019

29 Department for Business Energy & Industrial Strategy, 'Zero hours contracts: guidance for employers' (15 October 2015) <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers> access on 28 November 2019

30 Debra Leaker, 'EMP17: People in employment on zero hours contracts' (12 August 2019) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts> accessed 12 December 2019

31 Resolution Foundation, 'Zero-hours contract workers face a 'precarious pay penalty' of £1,000 a year' (30 December 2016) <https://www.resolutionfoundation.org/press-releases/zero-hours-contract-workers-face-a-precarious-pay-penalty-of-1000-a-year/> accessed 12 December 2019

Gig Workers

Background

The background of the gig economy dates back from the 1920s. It was traditionally used to describe the musical performances of jazz workers.[32] The gig economy is both temporary and flexible, this is ideal for the average student, who may not potentially bear the expense of bills and therefore need a stable and consistent income. The gig economy does have its benefits including flexible working hours, permitting individuals to perhaps work at a time best suited to them. However, the gig economy undermines traditional full-time employment, which has characteristics of stable hours which, aligns with a stable income. In the England and Wales the amount of gig economy works has increased to over 4.7 million workers.[33]

Current Law

Aslam v Uber: In this case Uber employees, past and present, demanded to be paid a minimum wage and holiday pay. The issue of contention was whether switching on the app brought them under the classification of workers, with Uber arguing that the drivers had no obligation to switch the app on. Held: once the app was switched on, they were classified as workers. It does not matter what label someone is given, if you classify as a worker, you receive benefits such as minimum wage.[34]

Pimlico Plumbers Ltd v Smith: Mr Smith was unable to provide a substitute. Held: if you are unable to provide a substitute, you will be considered a worker and able to acquire certain employment rights.[35]

IR35 (2020): The current IR35 is set to be updated in April 2020 in order to further reduce tax avoidance by those who are categorised as 'self- employed' when not necessarily appropriate. Now, IR35 will treat everyone as being an employed person, unless they are able to prove otherwise. In order to fall within IR35; mutuality of obligation, possibility of substitution and control of work must be considered.[36]

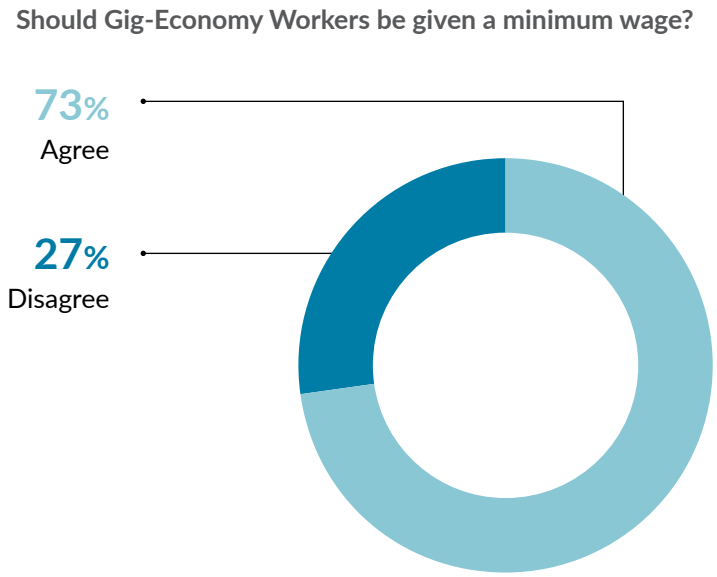
Issues

Exploitation is the main problem experienced with gig economy workers. The lack of clarity and accountability of rights that employers have created has undermined workers and their ability to obtain a sustainable and consistent job. Businesses use workers to maximise profits while simultaneously denying basic employment rights.

This complexity is particularly apparent regarding tax classifications. The updated IR35, to be instated in 2020, will affect gig economy workers who may now be classified as employees and will have to pay the tax associated with this accordingly.[37] This comes after £4.4 billion in unpaid tax was discovered due to confusion on classification of employment; many workers classified themselves as self-employed in order to avoid taxes.[38]

One issue surrounding this new law is who is given the responsibility of deciding who comes under these employment categories, leading to manipulation of the law. Additionally this creates further problems as proving what category you fall under will be difficult to do, especially for gig economy workers who may have multiple jobs with different incomes. This is due to tax law only having two categories of employment (employee and self-employed), compared to employment law where there are three (employee, worker and self employed). Those who will now inaccurately fall under employee status will not be afforded the according benefits, such as holiday and sick pay, despite paying the tax.

32 'Gig Economy' (Merriam-Webster) < https://www.merriam-webster.com/dictionary/gig%20economy> last accessed 22nd December.
33 'Gig economy in Britain doubles, accounting for 4.7 million workers', (The Guardian) < https://www.theguardian.com/business/2019/jun/28/gig-economy-in-britain-doubles-accounting-for-47-million-workers > last accessed 22nd December.
34 *Aslam v Uber [2017] IRLR 4*
35 *Pimlico Plumbers Ltd v Smith (2017) EWCA Civ 51*
36 Income Tax (Earning and Pensions Act) 2003
37 'What is IR35? What your business needs to know' (Axa.co.uk) < https://www.axa.co.uk/business-insurance/business-guardian-angel/how-ir35-changes-will-affect-freelancers-and-self-employed-contractors/> last accessed 22nd December.
38 'IR35guides and help: Do the rules apply to you?' (Contractorcalculator.co.uk) https://www.contractorcalculator.co.uk/ir35.aspx last accessed 22nd December.



Another problem that's been brought to light is their form of payment. Their lack of hourly minimum wage contributes to the instability they are susceptible to. Our desire to reform this aspect is something shared by the people we surveyed. 73% asked think that gig-economy workers should be entitled to this.

Thus through our proposals, we hope to tackle the aforementioned issues and ensure these workers and treated justly.

Reform

We have devised reforms to ensure that laws regarding gig workers are not exploitative to both the workers and employers.

The IR35 amendment will mean workers will be classified as employees if they do not fall within the self-employed category. This will culminate in workers paying tax for rights they are not receiving, progressing the issue of exploitation.

We propose the following two amendments to solve this issue. The first would be an amendment to the new IR35, providing three categories for employees, workers and self-employed, to align with the form of employment law. This will ensure those falling within each category are, firstly paying the correct taxes and ensures that the amount of unpaid taxes decreases, and secondly, the taxes being paid afford the correct and appropriate rights.

The second amendment is to impose sanctions on companies. If a person is classified as an employee for tax purposes, the law needs to ensure that the employer provides the correct rights for which the employees pay. In the case where the employer does not follow the law, they will incur sanctions. The company will be required to publish a detailed report of their employees and worker, evidencing what rights and benefits they have been afforded. This would ensure that employees are receiving their correct rights based on their tax band and that and ensures they are not exploited. The employee will be given the option to opt-out for privacy reasons. The reports will then be published to HMRC.

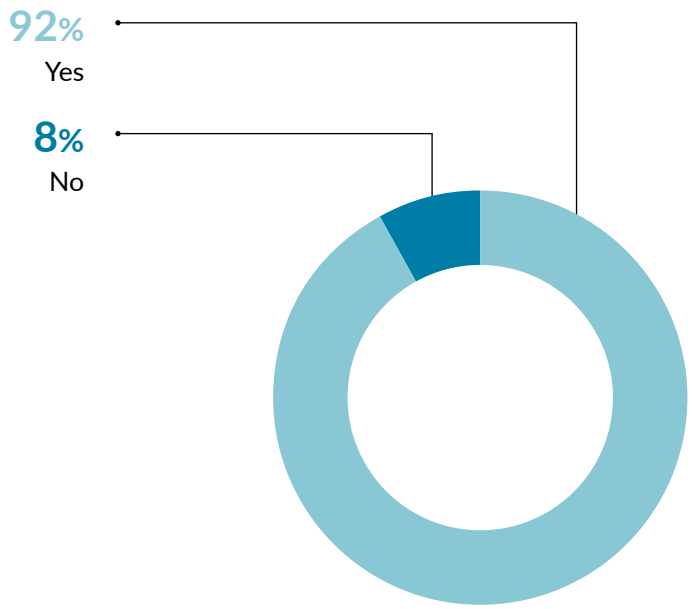
The companies that are found not granting rights to their employees will then be fined or sanctioned. Sanctions, which would entail the HMRC producing a list of the offending companies annually, should be given according to the severity of the lack of rights provided. Both large and small sized businesses will have the incentive of following this reform, as for the larger sized big businesses reputation is incredibly important and want to be seen as being morally right. For small businesses, who have less surplus capital, fines would want to be avoided to prevent paying additional costs. Using both methods of penalisation will ensure compliance from both small and large businesses.

Another potential reform idea would be to officially and legally provide a definition of a 'gig worker' within the Employment Act and the IR35.[39] The definition will provide a clarity for employers. It would fit into the employment law and tax laws and would provide consistency and allow appropriate taxes to be apportioned. This will enhance the amendment of the IR35, providing a better understanding of who can be a worker and the benefits that this brings.

39 Employment Rights Act 1996; IR35

In England and Wales, the minimum wage is usually paid hourly. However, we believe that by abandoning the 'per hour' wage and instilling a 'per gig' wage, we can ensure that gig workers are being paid fairly for the work that they do as opposed to them being exploited. Many 'gigs' may take less than an hour, but may be more labour intensive or may require more precision. If a list is created with every subcategory of a 'gig worker' it will be easier to place different professions on the list and ensure that each 'gig' is paid in respect to its difficulty. However, it may be worth noting that this list will be non-exhaustive as the difficulties of jobs depend on many different factors.

Should Employers be responsible for educating their employees on their rights?



92% of people believe that the obligation of educating employees on their rights should be down to the employers. Every company should make sure to grant employees access to information regarding the rights they are given as well as the rights they are entitled to. This will provide more awareness to all parties and reduce the amount of exploitation occurring.

Part Three: Public Law

Recommendations on the laws governing surveillance.

Compiled with thanks to:

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Introduction

Surveillance law is broad and complex which varies from things such as bulk data collection to automated facial recognition. Despite the existing laws around surveillance law such as the Investigatory Powers Act introduced in 2016, there are no provisions within current legislation stating the amount of communications or data that can be obtained by warrants. In this report, we explore the different types of surveillance law and possible reforms to the laws regarding them. To support our research and ideas, we used professional recommendations, cases and surveyed 100 members of the public.

Relevant Legislation

Investigatory Powers Act 2016

The current legislation around surveillance law derives mostly from the Investigatory Powers Act 2016 (IPA) which replaced the Regulation of Investigatory Powers Act 2000 (RIPA). The IPA 2016 makes provisions on the interception of communications, equipment interferences and the acquisition and retention of communications data, bulk personal datasets and other information, such as the treatment of material held as a result of such interception, equipment interference or acquisition.

The Act sets out the extent to which certain investigatory powers may be used to interfere with privacy, imposing certain duties in relation to privacy and contains other protections for privacy. The protections include offences and penalties in relation to unlawful interception of communications, unlawful obtaining of communications data, requiring Communication Service Providers (CSPs) to retain UK internet users' "Internet connection records" (websites which were visited but not the particular pages and not the full browsing history) for one year, creating a new criminal offence for unlawfully accessing internet data.

General Data Protection Regulation and the Data Protection Act 2018

Other legislation around surveillance law consists of the Data Protection Act 2018 (DPA) which was developed to give protection and lay down rules about how data about people can be used.

The GDPR, a European wide law that applies to the use of 'personal information' which means any information relation to an identifiable person who can be directly or indirectly identified, in particular by reference to an identifier. The GDPR sets out requirements for how organisations need to handle personal data from May 2018. The GDPR imposes a consistent data security law on all EU members, so that each member state no longer needs to write its own data protection laws and laws are consistent across the entire EU.

The DPA 2018 covers personal data, which is information that is related to an identified or identifiable individual, covering information or data stored on a computer or an organised paper filing system about living people. The DPA regulates the processing of personal data, providing seven principles of good information handling with which organisations must comply and provides individuals with rights with respect to the processing of their personal data.

Criticism of the current legislation[40]

The main powers of IPA allow public authorities which are legally empowered to intercept communications on devices such as computers and phones upon approval of a warrant. Companies could be legally obliged to assist these operations and bypass encryption where possible. Security services can acquire and analyse bulk collection of communications data, for example, this could mean a bulk dataset such as private email records.

This now can only be undertaken in cases of serious crime, defined as those which could attract a sentence of 12 months minimum. Oversight for these operations will come with a new "double-lock", where any intercept warrants will need ministerial authorisation before being adjudicated by a panel of judges, who will be given power of veto. This panel will be overseen by a single senior judge, the newly created Investigatory Powers Commissioner.

Some argue the IPA 2016 gives power to the government to collect information about everyone and everything people do and say online, which happens by tapping directly into communications channels on our mobiles and computers. The government will also be ordering companies to hold on to our communication data. In January 2018, the Court of Appeal held that the Data Retention and Investigatory Powers Act 2014 (DRIPA), a previous law covering state surveillance which has been expanded upon with the IPA 2016 to be unlawful.[41] The court ruled that the legislation breached British peoples' rights by collecting internet activity and phone records and letting public bodies grant themselves access to these personal details with no suspicion of 'serious crime' and no independent sign-off.

The UK's previous use of bulk interception powers was also deemed unlawful by the European Court of Human Rights in September 2018. In its judgment, the court deemed the previous regime to have a *'lack of oversight of the entire selection process, including the selection of bearers for interception, the selectors and search criteria for filtering intercepted communications, and the selection of material for examination by an analyst.'*

Privacy campaigners say the bill lays out the mass surveillance powers that would be at the disposal of the security services, and want it amended so that the surveillance is targeted and based on suspicion. The IPA 2016[42] allows not just the security services but also government bodies to be able to analyse the records of millions of people even if they are not under suspicion. Some authorities that are allowed to access internet connection records without a warrant are Metropolitan Police Service, GCHQ, Ministry of Defence, Home Office, HM Revenue & Customs, NHS, Financial Conduct Authority, Gambling Commission and the Serious Fraud Office.

Proposals to improve existing legislation

Our first proposal recommended to improve this legislation is to include GDPR provisions in the IPA. The provisions will be based on Article 13, 15, 17 of the GDPR.

1. Article 13 states the information that is to be provided when personal data is collected from the data subject, this article relates to how British citizens have the right to know how their data is being handled and what it is being used for. This would result in data subjects being made aware that their communication data has been acquired under powers in the IPA 2016. It should inform them which specific public authority has accessed their data.

2. Article 15 states the right of access by the data subject, having this provision in the IPA will give British citizens the rights they deserve to their personal data. The effect would be that data subjects are able to enquire to public authorities and receive confirmation whether they have used powers under the IPA 2016 to access their data.

3. Article 17 gives the right to erasure, this means that the data that has been received from the data subject will be immediately forgotten after used for the required time. This would result in data subjects being able to require the erasure of their data communication (before the 12 month handling period expires) which have already been collected under powers of the IPA 2016.

The second proposal is to have a creation of independent select committees and regulatory bodies to review government authorities' usage of the IPA 2016. Having select committees to review the IPA will reassure the public that their personal data is safe, as currently people's personal data are being sold unknowingly and misused for negative purposes. Therefore the select committees reviewing the IPA will firmly ensure that surveillance on the public is only used for reasonable government purposes.

40 Scott Carey, 'The Snoopers' Charter: Everything you need to know about the Investigatory Powers Act' (Computer World, 31 July 2019) accessed 23 December 2019

41 [2018] EWCA Civ 70

42 Investigatory Powers Act 2016

Predictive policing

Predictive policing refers to usage of data and predictive analytics to be stored and processed so that in any event, it can be used to prevent crimes from taking place or help identify potential criminals who may commit crimes in the future.

The *primary goal* of predictive policing is to:

- Predict future crimes
- Bring together data to create criminological theories resulting in crime reduction and prevention[43]

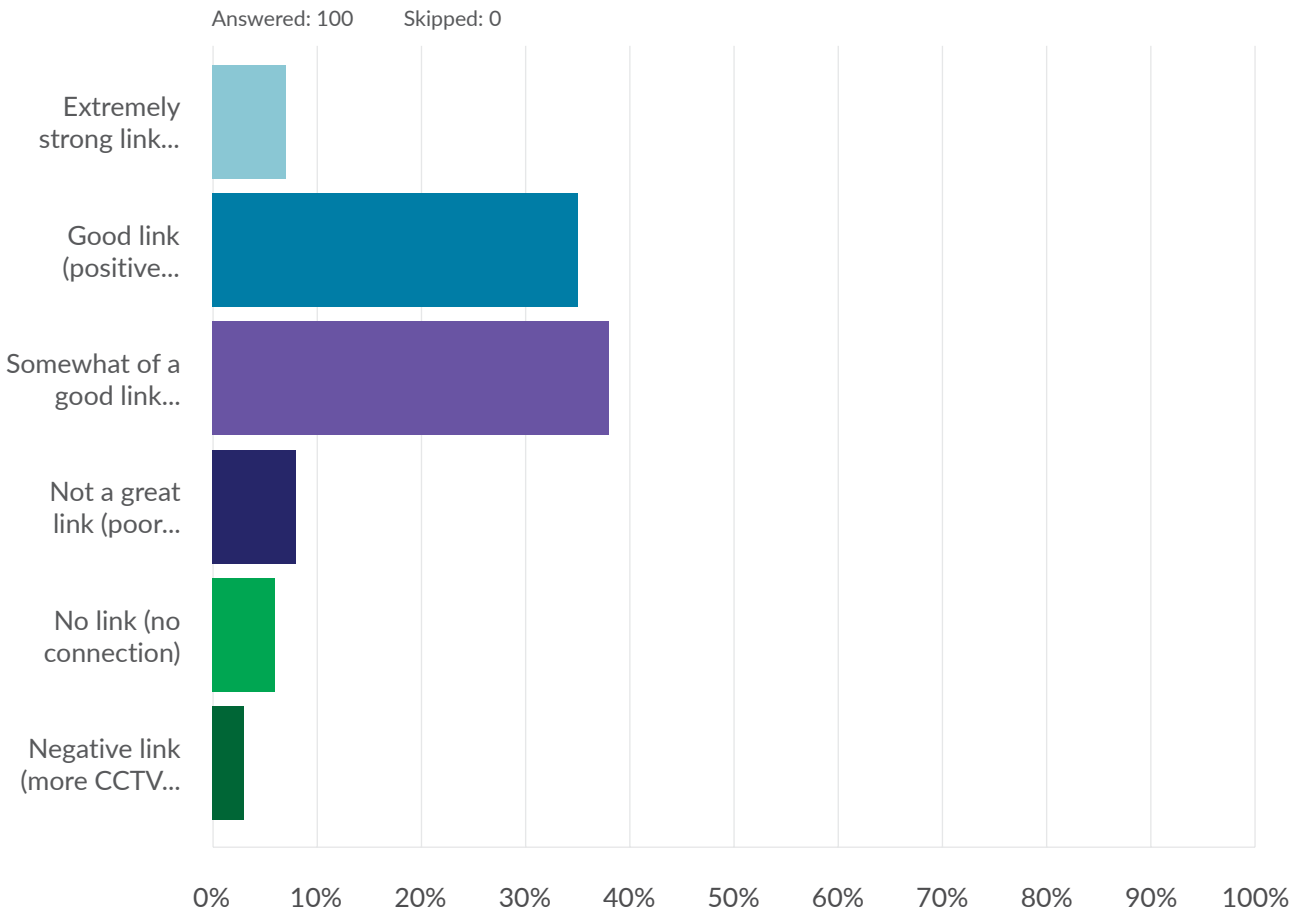
One of the most popular 'Predictive Policing' tools used is the Gangs Matrix.

The Gangs Matrix

The Gang Violence Matrix most commonly known as the 'Gang Matrix' is a tool used to identify and risk-assess suspected gang members across London who are involved in gang violence. It also identifies those at risk of victimisation.[44] The aim is to reduce gang-related violence, protect those who are victims and are somewhat exploited by gangs, as well as preventing vulnerable young lives from being lost.

The 'Gang Matrix' has been used to inform stop and search. It consists of people's names, addresses and photos (if they have been previously arrested). The Gang Matrix measures the harm of those who were mentioned in the matrix pose by ranking them based on evidence of them committing violence and weapon offences. The Gang Matrix identifies gang members who have been repeated victims of violence.[45]

Do you think there is a link between having a high number of CCTV cameras and the decrease in the rate of street crime?



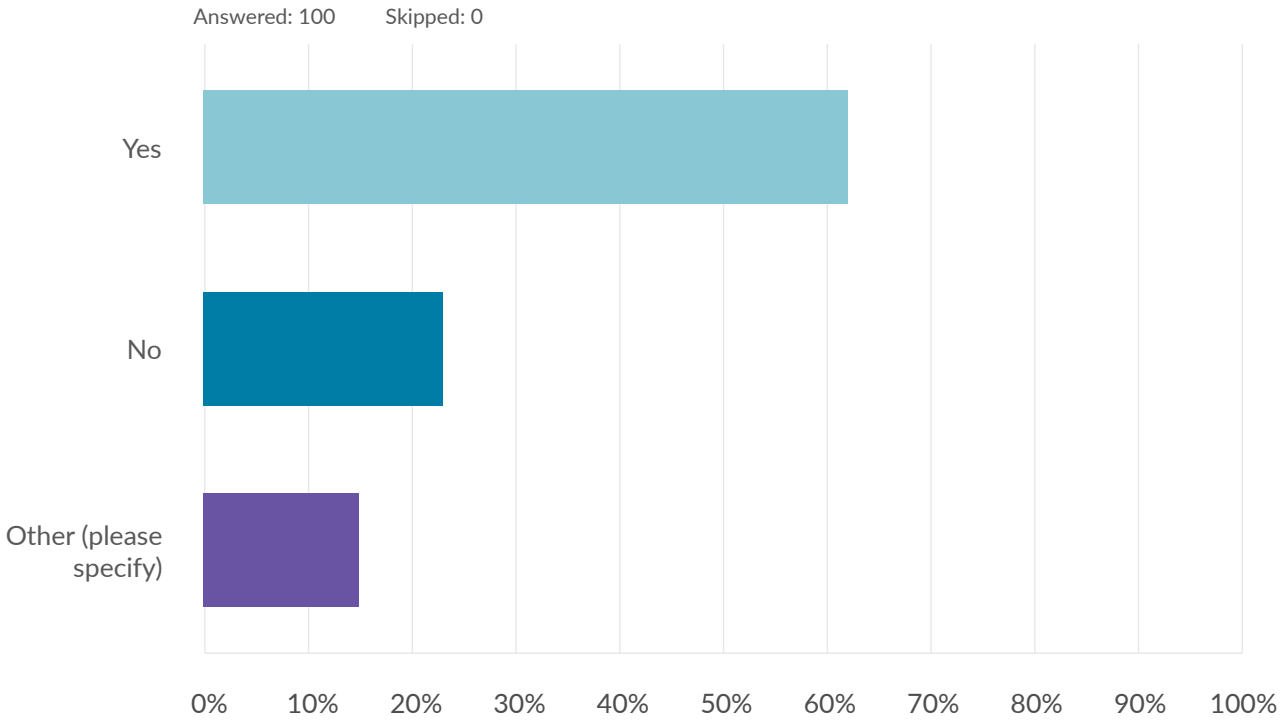
43 Liberty 'Policing by Machine' (January 2019) Last accessed 23 December 2019
44 Metropolitan Police 'Gangs Violence Matrix' Available https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/gangs-violence-matrix/ Last accessed 23 December 2019
45 Ibid

Advantages of the Gangs Matrix

As seen from respondents in our survey, there is a belief from the general public that there is a link between the use of surveillance tools and the reduction of street crimes.

- Identifies gang members in London and prioritises the current most violent gang subjects
- Identifies gang members who have been victims of violence and are at risk of becoming further victims of violence
- Prioritises resources allocation and methods of investigation
- Highlights gaps in activity or intelligence on violent gang subjects

Do you believe that there is discrimination in the way surveillance is used by the police? E.g. CCTV. If yes, why?



Disadvantages of the Gangs Matrix

As seen from our survey, the majority of respondents believed that the police used their surveillance tools in a discriminatory manner.

- A negative impact of the use of the Gangs Matrix is that people are being approached by the police repeatedly and are stopped and searched
- Individuals are put on this scheme simply because they have been seen walking down the road with someone who is perhaps associated with this gang violence. These injustices are a continuous pattern that occurs in society, and if they persist can lead to disproportionate discrimination against a certain group of people or a specific ethnicity and age group. We know there has been an increase of this already.
- As of October 2017, 3,806 people were on the Matrix. More than three quarters (78 per cent) of them are black, a disproportionate number given the Met's own figures show that only 27 per cent of those responsible for serious youth violence are black. The youngest is just 12 years old and 99 percent are male.[46]

46 Amnesty International 'What is the Gangs Matrix?' Available https://www.amnesty.org.uk/london-trident-gangs-matrix-metropolitan-police Last accessed 23 December 2019

- The definition of a 'gang' is quite broad and vague. This has given police officers a large margin of discretion and allowed for the gang label to be used randomly. The Metropolitan Police have defined a gang as a:

  'relatively durable, predominantly street-based group of young people' who:

  4. see themselves (and are seen by others) as a discernible group, and
  5. engage in a range of criminal activity and violence'

  They may also have any or all of the following features:

  - identify with or lay claim over territory
  - have some form of identifying structure feature
  - are in conflict with other, similar gangs[47]

From these definitions, it is evident that the police's aims of tackling 'gang crime' may simply lead to over-policing of ethnic minorities, especially as the 'gang' label is associated with black men and boys. Police officers themselves have shown concern about the increasing conflation of gang crime with serious youth violence.

Other jurisdictions that use predictive policing

Success in Minneapolis, USA
After a series of armed robberies of fast food restaurants in 2009 in Minneapolis, the Crime Analysis Unit started forecasting the next robbery using data on prior robberies, so they developed evidence-based strategies to predict criminal activities and target specific suspects recently released from prison. The Minneapolis Police Department used the information to create patrol zones to reduce criminal opportunities in areas with a high concentration of potential victims. The department estimates that half the city's most serious crimes are now concentrated in 6% of the regional area.[48]

Problematic use in Durham, UK
Durham police have been heavily criticised for using postcodes as part of the process in determining a person's offending behaviour. Information such as post codes and social demographic data can reinforce existing biases in policing decisions and the criminal justice system more broadly.

Automated Facial Recognition

Another kind of predictive policing is Automated Facial Recognition (AFR). This is the use of computers to correctly identify faces. This has been used to match things like photographic IDs to people by looking at the features on the subject's face. Software is being developed that allows one to single out faces out of thousands.

There is no written legislation surrounding AFR, as a result there has been a lot of debate around the way police use this technology and the way the use is being regulated. Most noticeably, Ed Bridges was the first person to bring a legal challenge to the technology. He believed he was scanned by cameras used by South Wales Police at a peaceful anti-arms trade protest in 2018. Mr Bridges said police started using facial recognition 'without warning or consultation'. According to the judiciary of England and Wales his human rights were not violated, as they claimed 'any use of facial recognition must be justified'. Since there is no law about facial recognition the term "justified" can be interpreted in many different perspectives, which would allow the police to manipulate the situation to best suit them.[49]

In *S v United Kingdom*[50], the European Court of Human Rights emphasised the significance of the protection of personal data as part of protecting Article 8 rights and indicated that: '*the mere storing of data relating to the private life of an individual amounts to an interference within the meaning of Article 8*'.

47 As per [5]
48 Issie Lapowsky 'How the LAPD Uses Data to Predict Crime' Wired (22 May 2010) Last accessed 23 December 2019
49 Lizzie Dearden 'Facial recognition technology 'violates human rights and must end', landmark court case hears *The Independent* (21 May 2019) Last accessed 23 December 2019
50 (2009) 48 EHRR 50

Reform should be done with the database that images are compared with analysis for discriminatory bias and effectiveness. There is a surveillance Code of Practice which is based on the performance of CCTV cameras in the UK, established in section 30 of the Protection of Freedom Act 2012. Principle 7 in particular should be upheld that, '*the disclosure of images and information should only take place when it is necessary for such a purpose or for law enforcement purposes*[51]' and '*surveillance camera system images and information should be subject to appropriate security measures to safeguard against unauthorised access and use.*'[52]

Conclusion

The Gangs Matrix has shown its potential for being an effective tool for intelligence gathering and law enforcement methods, however, it is notoriously flawed. If predictive policing is to be used in the future (given that the police is underfunded) to handle the levels of criminal activity faced, there must be regulation and close scrutiny of the police and their methods to prevent further discrimination of people because of their race, identity, or socio-economic background. Furthermore, there must be adequate implementation of government policy to improve relations between the police and marginalised communities through community policing approaches.

Human Rights Considerations

The European Convention on Human Rights (ECHR) protects the human rights of people in countries that belong to the Council of Europe.[53] It is incorporated into the United Kingdom by way of the Human Rights Act (HRA) 1998 which sets out the fundamental rights and freedoms that everyone in the UK is entitled to. The most notable right within the ECHR concerned with surveillance law is Article 8, which states that: '*Everyone has the right to respect for his private and family life, his home and his correspondence.*'

Considering surveillance laws, there are many human rights such as an individual's privacy and freedom of expression that need to be regarded. This is because the line between 'interception' and 'interference' to what is 'necessary' is neither clear nor very transparent. In this section of the report, we will address the human rights concerns regarding surveillance law and possible reforms.

Article 8 provides government authorities with the right to interfere with the individual's right to privacy, if it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Regarding surveillance law, there are many human rights laws regarding an individual's privacy and freedom of expression but there is not much legislation on them. The line between 'interception' and 'interference' to what is 'necessary' is not clear and is not very transparent, allowing the government and businesses to breach many human rights laws.

Since coming into force in 2016, the IPA has been subject to scrutiny on numerous occasions, most notably by the United Nations Human Rights Council (UNHRC). Following a report published by the UNHRC, John Cannataci, the United Nations special rapporteur on privacy, has claimed that these measures could have negative ramifications beyond the shores of the United Kingdom'.[54]

Further to this, the potential misuse of the powers enabled by the IPA serve to infringe rights. For example, it was revealed earlier this year that MI5 had been '*illegally mishandling our data for years, storing it when they have no legal basis to do so*'.[55] These concerns therefore highlight the needed areas for reform, outlined below.

51 Surveillance Camera Code of Practice, presented to Parliament Pursuant to Section 30 (1) (a) of the Protection of Freedoms Act (June 2013) Last accessed 23 December 2019

52 Ibid

53 European Convention of Human Rights

54 Ewen MacAskill, 'UK setting bad example on surveillance, says UN privacy chief' (*The Guardian*, 9 Mar 2016) https://www.theguardian.com/world/2016/mar/09/uk-setting-bad-example-on-surveillance-says-un-privacy-chief Last Accessed 11 December 2019

55 Owen Bowcott, 'MI5 accused of 'extraordinary and persistent illegality'' *(The Guardian, 11 June 2019)* https://www.theguardian.com/uk-news/2019/jun/11/mi5-in-court-accused-of-extraordinary-and-persistent-illegality Las accessed 11 December 2019

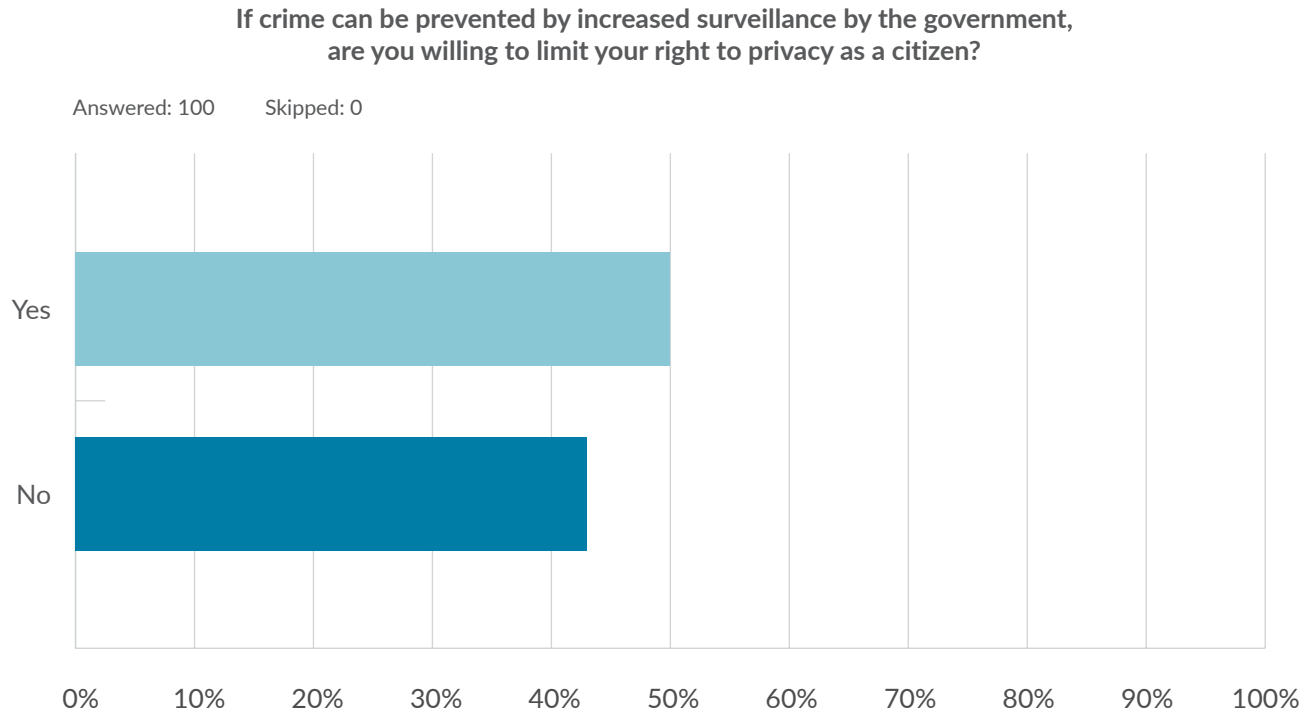
Rotaru v Romania

As seen in the case of *Rotaru v Romania*[56] in which Romanian Citizen Rotaru took Romania to the ECtHR under the alleged violation of his human rights through the Romanian intelligence service's retention of personal information and infringement of his right to access to a court, as well as his right to a remedy before a national authority that could rule on his application to have the file amended or destroyed. Indeed this violates Article 8 and Article 13 (right to an effective judicial remedy for violations of rights under the Convention).

Any actions taken by the Romanian government would have to be justified in accordance with the law and only then could Article 8 for instance, be breached under specific justifications for a legitimate aim which would then have to be proportional; as this would then lead onto the issue of justification without a proportional aim. Although in regards to the *Rotaru v Romania* case no legitimate justification was given thus breaching Article 8 of the ECHR. In this case it was established that the storing of information relating to an individual's private life in a secret register and the release of such information can come within the scope of Article 8.

However through systematic implementations, there could be limitations of a potential violation with regards to safeguarding, through a specific right to examine and have access to information if there is a system put in place for getting rid of it once absolute, or providing justification for keeping it.

With an increasing amount of money and attention being put towards surveillance to prevent crime, we asked the public on their thoughts about the links between their privacy rights and surveillance.



Privacy enables the public to be free from direct state attention constantly but despite this, 50% of people declared that they are willing to limit their right to privacy as a citizen if crime was truly prevented by increased surveillance. From this data, we are able to suggest that citizens are prepared to limit their human rights (for instance Article 8) but not eradicate them, therefore restrictions should be held on how far the state increases surveillance policies.

While 43% of people said no, there was a figure of 11% that stated 'other'. The comments here mentioned how to an extent they are comfortable with increased public surveillance as it wouldn't harm their ability to perform daily tasks as many often forget about public surveillance. Furthermore, the comments showed an element of paranoia from innocent citizens who fear doing anything in front of CCTV. This implies that too much surveillance counteracts what the original purpose was for and it can become invasive despite the aim to resolve crimes quicker.

56 *Rotaru v Romania* 28341/95 [2000] ECHR 192 (4 May 2000)

Reform

Our first recommended reform is a direct incorporation of the EU General Data Protection Regulation (GDPR) provisions into the IPA. This would make for more extensive protection of personal data with regard to its possession by private entities as well as how specific personal data is organised and stored by intelligence agencies once gathered.

Furthermore, with regard to reforms we also believe that it should be illegal for the government to permanently store and collect data on the involvement of individuals in protests and otherwise non-violent, activist demonstrations and groups, as this risks the very concept of the UK being a pluralist democracy that values diversity in opinion and peaceful protest due to the data being potentially used to categorise individuals as 'dangerous' simply due to their dissidence. Whilst there are certainly limits on how long data can be kept by agencies such as GCHQ and MI5, these very limits are set upon said agencies by the agencies themselves, with no true guarantee that said limits are being followed to the letter.

Therefore, our second recommended reform is the creation of independent select committees and regulatory bodies to review IPA and other data protection legislations, in order to ensure stringent supervision of the government's adherence to the limits on the amount of time data can be kept for, with longer periods of time allowed for the intercepted data of individuals with criminal records and terrorist links and absolutely minimal periods of time for lay people (4 days for lay people, 3 years for those with criminal records and 5 years for high-risk persons with suspected terrorist links).

Finally, via the results of our questionnaire we also recognise that much of the public is not aware of the extent of government mass surveillance. Thereby we recommend that measures are also taken to increase said public awareness in order to allow individuals to know and make up their own minds about government surveillance.

Conclusion

Whilst we recognise that in some situations bulk data interception is necessary for the interests of national security, limits must be imposed to protect the majority of people who are innocent individuals that are having their privacy needlessly violated by government agencies.

Part Four: Criminal Law

Recommendations on the law governing assisted dying.

Compiled with thanks to:

Adam McCann, University of Exeter
Hannah Quirk, King's College London
Nataly Papadopoulu, Queen Mary University of London
Sir Jonathan Montgomery, University College London
Thomas Davies, Dignity in Dying

Introduction

This report analyses assisted dying ("AD") as a potential area of reform within criminal law. Our focus has been to review and make recommendations to the Suicide Act 1961 ("1961 Act"). With special thanks to academics and other experts in this field, we have been able to carefully construct our proposals on this controversial area of law into this report.

AD is act of helping someone who wants to terminate their life, thus to relieve them from their pain. Euthanasia goes beyond assistance as it entails one actively taking someone's life on compassionate grounds. For euthanasia, the 'assistor' role is likely to be undertaken by a doctor, while for AD, this also includes any third persons, such as family and friends. In this report we will firstly explore the current law. Secondly, we will highlight the problems with the law. Focus will be on its lack of clarity, inconsistent principles, autonomy and impact on third parties. Here, we will also consider the laws in other countries; giving our recommendations in turn. In doing so, we will consider the rights of the individual and the involved third parties. Thirdly, how the proposed law should be worded to make it sufficiently clear on the stance of AD and the necessary safeguards to address these problems.

Current Law

The 1961 Act decriminalised both the act and attempt of committing suicide.[57] However, per s2(1) of the 1961 Act, a person can still be liable to 14 years of imprisonment if they are found to encourage or assist a suicide or attempted suicide. If a third party seeks the permission of the Director of Public Prosecutions (DPP) to assist in another's death then they will not be prosecuted under the Act.[58] The term 'assistance' can be interpreted very broadly, to include, among many things: giving someone poison to end their life or paying for a flight to Switzerland.[59] Following *Purdy*,[60] the DPP published circumstances to help them decide if it is in the public's interest to prosecute third party assistance.[61]

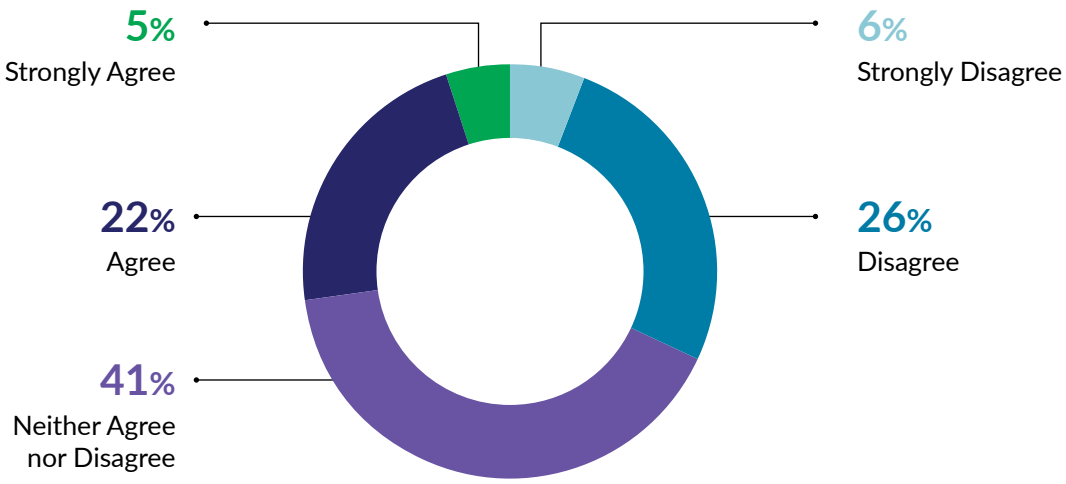
Problems in the current law

Lack of clarity

In our survey, there were a range of views on whether the respondents thought the law was clear.[62]

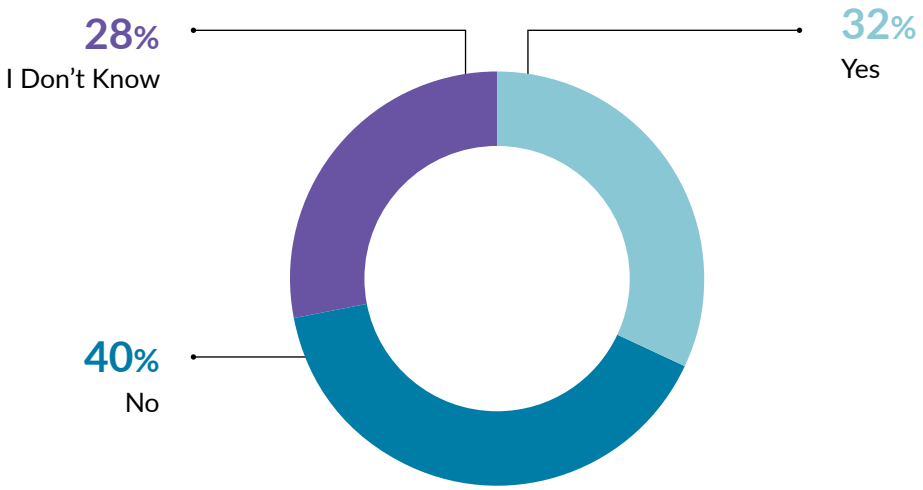
57 Suicide Act 1961, s1
58 Ibid, s2(4)
59 Jeremy Laurance, 'Agony of Helping a Son to Kill Himself' (27th May 2011) <https://www.independent.co.uk/life-style/health-and-families/health-news/agony-of-helping-a-son-to-kill-himself-2289710.html> Accessed 29th December 2019
60 [2009] UKHL 45
61 Sally Lipscombe and Sarah Barber, Assisted suicide (August 2014) <http://researchbriefings.files.parliament.uk/documents/SN04857/SN04857.pdf> Accessed 29 December 2019
62 Survey conducted on 85 people; see Annex 1 for statistics on people surveyed

To What Extent Do You Agree Or Disagree With The Following Statement: 'It Is Clear What It Means To Do An Act Capable Of Encouraging Or Assisting Suicide.'

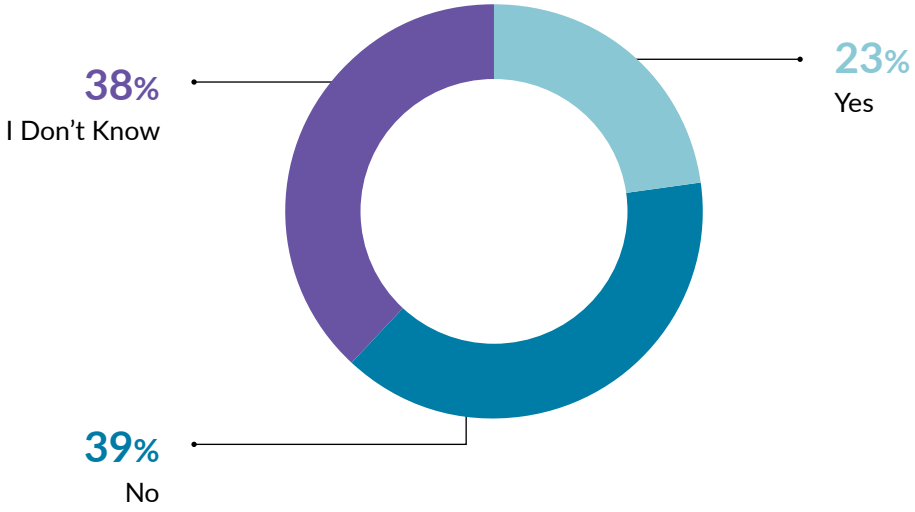


When we asked whether booking flights and/or accompanying the patient would fall within the definition, the results demonstrated a lack of awareness of what constituted AD.

Does Somebody Who Books A Flight For Someone To Fly To A Country, Where Assisted Dying Is Legal To End Their Life, Fall Liable under the Definition of Assisting a Death according to the Law?



Do You Think That Somebody Who Accompanies Someone Abroad To Provide Moral Support Whilst They End Their Life, Fall Liable Under The Definition Of Assisting A Death according to The Law?



Perhaps, the public may not consider something as innocent as booking a flight to Switzerland as blameworthy. This could be because they see that the intention of the law is to prevent malicious intentions in aiding death rather than innocent intentions, founded on compassion.

Inconsistent principles

AD vs euthanasia

AD is the act of helping someone who wants to terminate their life, thus relieving them from pain, for example helping the patient buy a plane ticket to a country where AD is legal. Euthanasia is when the physician takes an active role in carrying out the patients' request by delivering a lethal substance, for example providing patients with a lethal dose of medication.[63]

Active euthanasia vs passive euthanasia

Passive euthanasia can be upon request or due to medical futility. This is when the patient refuses treatment and as a result they die or from a doctor withdrawing treatment. Passive euthanasia is legal because it is from the patients right of autonomy and doctors act of non-maleficence.[64]

Active euthanasia is illegal since it is the taking of one's life. However, cases such as Adams, show doctors acting in beneficence to relieve patients' pain with a high dose of morphine, resulting in the patient's death.[65] It was held that a doctor was not guilty of murder if, despite the patient's life being shortened from the treatment, their intention was not too kill, rather to relieve the patient's pain.

Autonomy

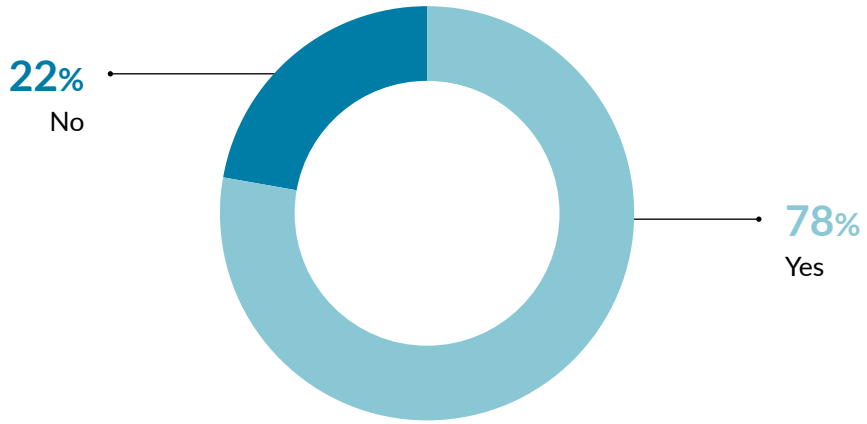
The patient's autonomy refers to giving a competent individual the right to make their own decisions regarding medical treatment. In law, autonomy is a vital principle as the patient's interests should be applied on whether or not they are capable of making the decision of having an assisted death or not. One of the problems with the current law is that the patient's choice is not respected as the act itself is illegal.

Third parties and AD

Doctors

A key question is whether medical professionals should have the right to help an individual, such as approving their request for death. When asked this question in our survey, 78% responded 'yes'.

Should A Professional Be Required To 'Approve' The Request Of An Individual To Be Assisted In Ending Their Life?



This reinforces how most of the respondents want a formal response from a professional in the assistance of someone's death.

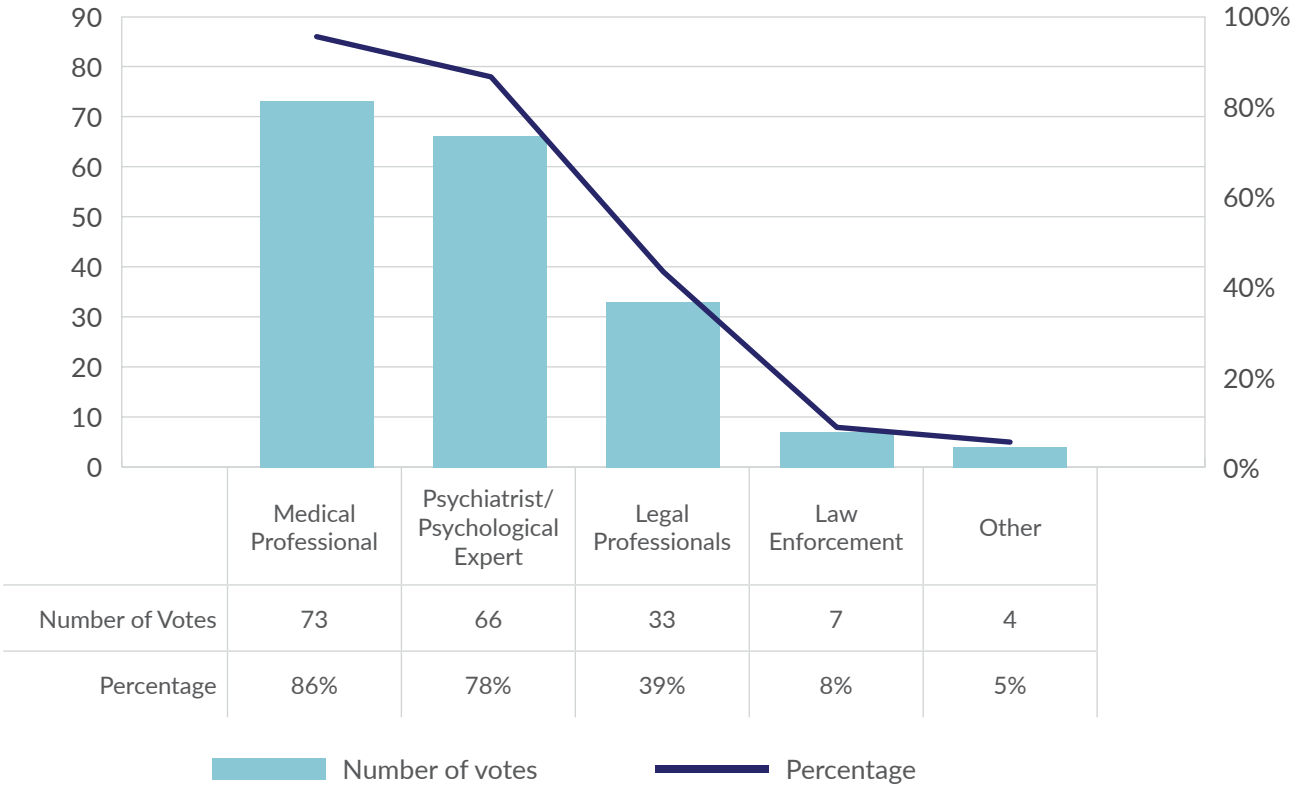
63 BBC, 'What's the difference between assisted suicide and euthanasia?' (8th February 2019) <https://www.bbc.com/news/uk-47158287> Accessed 29th December 2019

64 Compassion in Dying, 'DNAR Forms and CPR Decisions' <https://compassionindying.org.uk/making-decisions-and-planning-your-care/planning-ahead/dnar-forms/ > Accessed 30th December

65 [1957] Crim LR 365

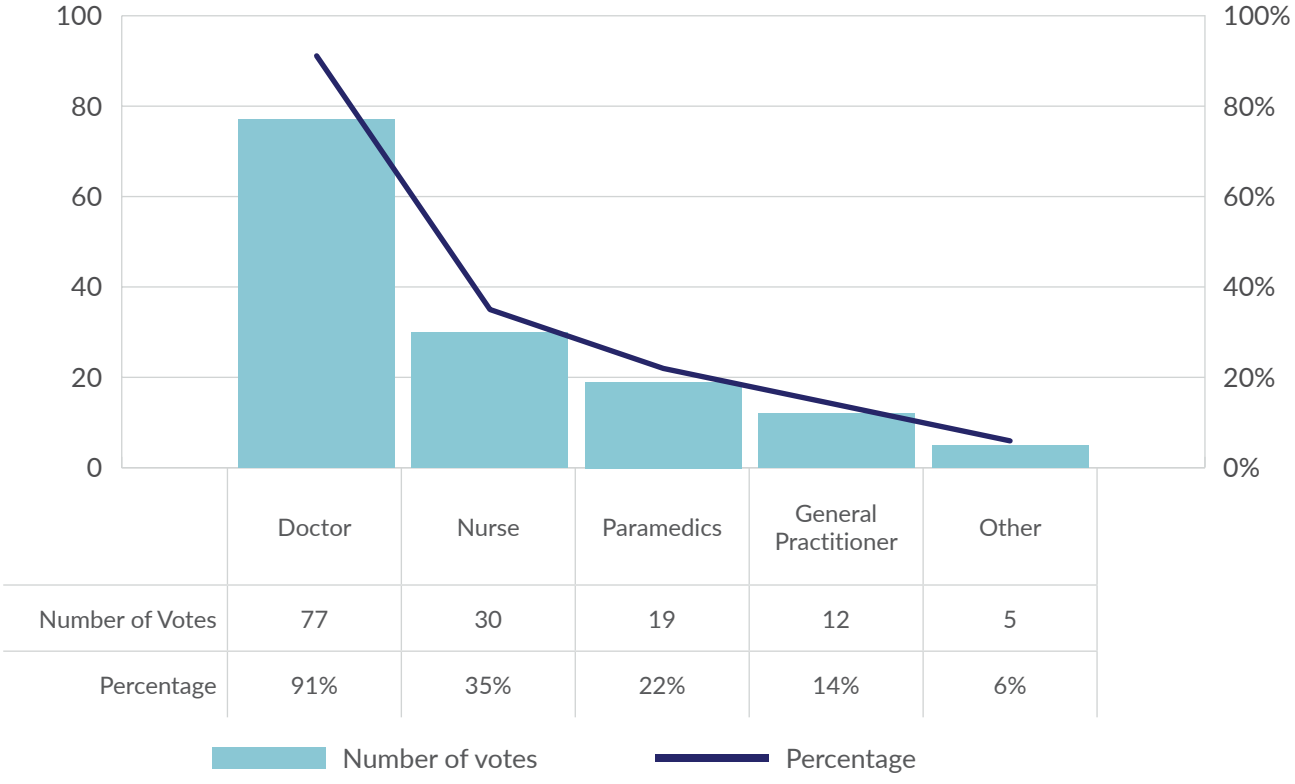
Furthermore, we asked which group of professionals the public favoured more to sign off or approve an assisted death.

Which Professionals Would You Consider As Suitable To Sign Off On/Approve An Assisted Death?



We concluded that even though 86% of the public acknowledged medical professionals more; 78% still preferred psychiatric experts and 39% of legal experts as suitable professionals to 'approve' an assisted death. This shows how the public would also trust the psychiatric profession somewhat equally to medical professionals. However, when asked to select which medical professional should be granted this responsibility, there was clear support for doctors.

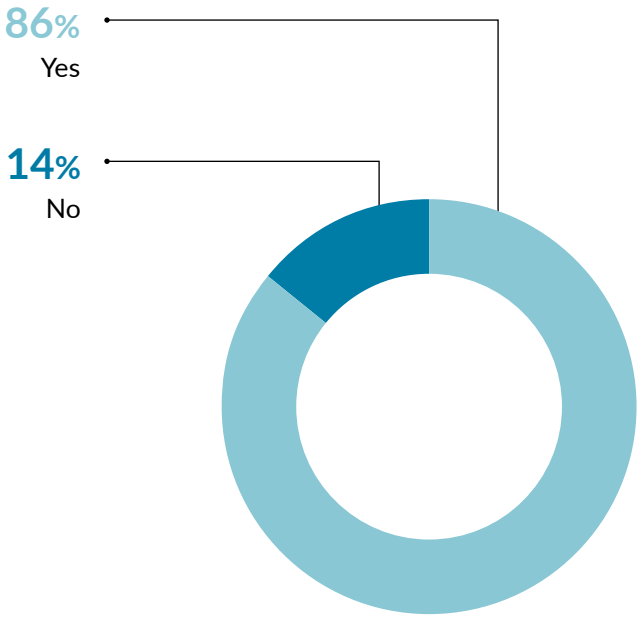
Which Of The Following Types Of Medical Professional Should Be Able To Assist Someone To End Their Life?



This means that the public trust doctors more in physically helping an individual terminate their life as well as approving their request of death. That said, psychiatric experts are also highly favoured to approve an assisted death. Perhaps, the reform should include requiring both a doctor and a psychiatric to formally approve such a request.

Additionally, we recommend that doctors should receive special training on assisting patients to die as 86% said yes.

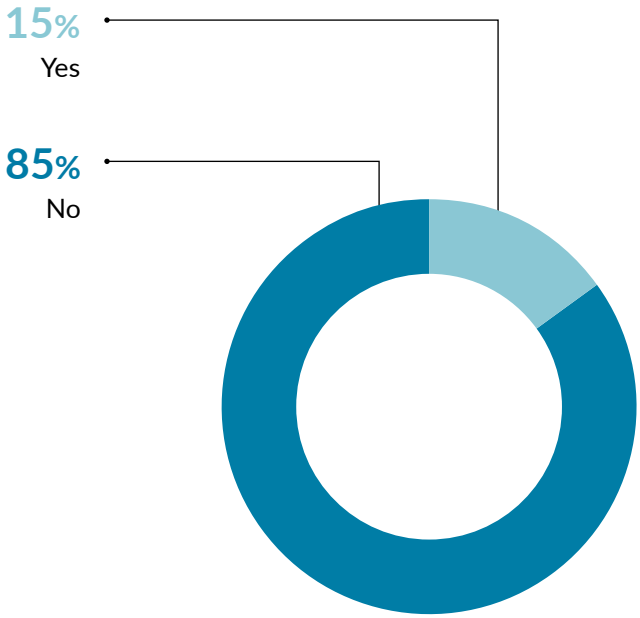
Should Medical Professionals Receive Special Training To Assist Someone In Ending Their Life?



We can infer that people want doctors and medical professionals to take control over how they die. A good doctor and patient relationship is important to ensure that the patient is the one making the decision and that the doctor has no objections. The patient should be discussing any concerns or queries with their doctors, so being comfortable with their doctor is essential. Evidently from the questionnaire, 80% said yes for a professional to approve an assisted death.

Preferably, there should be two doctors working independently to determine if certain criteria have been met. But, it is important for the patient to have capacity to make an autonomous decision. Many problems can arise where the patient can no longer give consent – placing a heavy burden on the doctor to decide whether to proceed or not. If more than one doctor is involved, there may be differing views and possibly contrasting views. However, more than one doctor involved in a case is necessary in case the patient is wrongly diagnosed.

Should Medical Professionals Ever Be Able To Recommend Assisted Dying To A Patient?



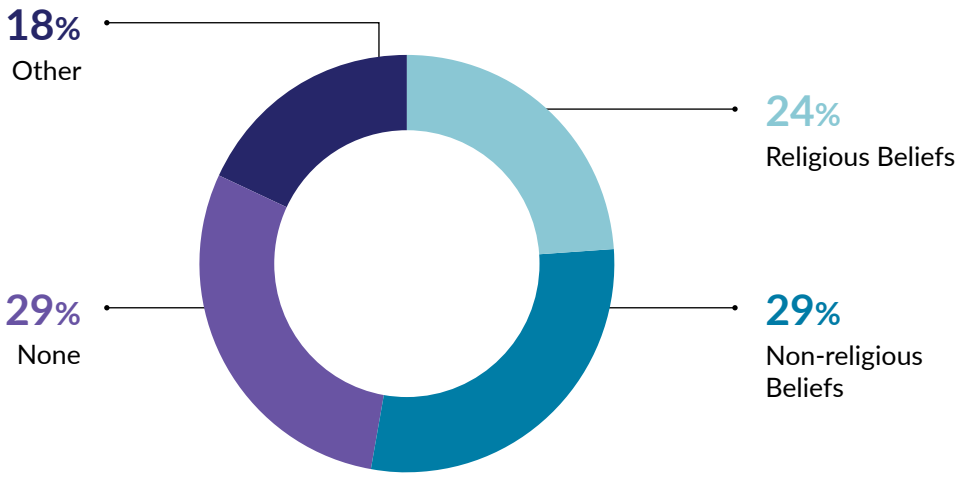
Where doctors' views differ, it may be in the patient's best interest if they hear different points of view and concerns before making their final decision. This confirms that the patient is fully aware and can make a conscious decision without doubt.

From the questionnaire, 85% of people believe that medical professionals should not recommend AD to a patient. This may be due to the risk of a wrong diagnosis, and the dangerous potential of a patient not making an autonomous decision – they may be acting under pressure to take their own life, which ought to remain criminalised. Preventing doctors from recommending a patient to seek AD is meant to act as a safeguard to protect the patient's autonomy.

When it comes to physician-assisted death, a balance must be created between the rights of a patient and of a doctor. Doctors have the right to conscientiously objection (CO) to certain medical procedures, e.g. AD or abortion, by not being involved or having to perform these procedures if they're legalised. This can be due to religious/personal beliefs.

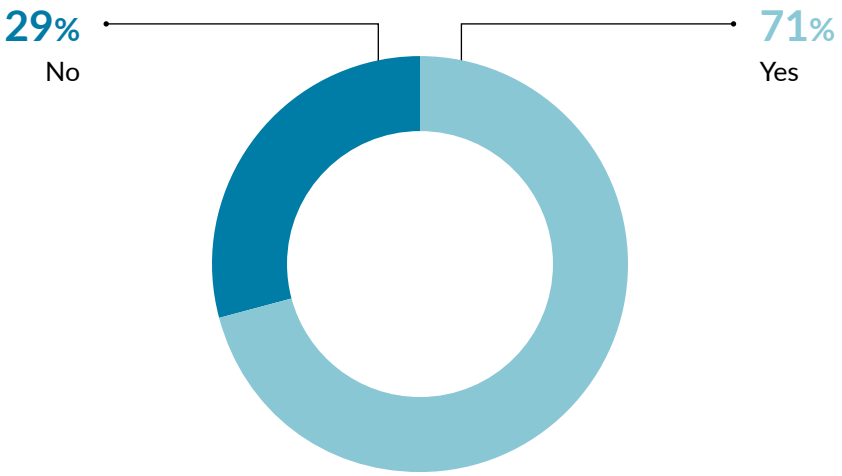
In our survey, 24% supported CO based on religious beliefs, 29% to non-religious beliefs and 29% believe no reason has to be given.

On Which Grounds, If Any, Should Medical Professionals Be Allowed To Object?



For many doctors, it's an internal conflict between beneficence and non-maleficence (acting in someone's best interest versus the duty to do no harm). We must remember that doctors are also autonomous individuals, and the rights of the patient should not override the rights of a doctor. If doctors hold a personal objection to AD, this should be respected.

Should medical professionals be allowed to object to assisting someone in ending their life?



In our survey, 71% of respondents supported a doctor's right to object to assisting in someone's death. Therefore, it is important that any future legislation to consider this as a right for medical professionals.

However, patients should not be prevented from accessing end of life treatment due to their doctor's objection, as it may lead to a lack of doctors available to provide the procedure. Although a doctor's autonomy is important, this must be balanced with their professional duties. A doctor's personal views must not prejudice the assessment of their patient's clinical needs or affect their access to care. The GMC's Good Medical Practice (2013)[66] makes it clear that as a doctor, you must not unfairly discriminate against patients. Where a doctor conscientiously objects to AD, it states that the following conditions must be followed. Firstly, the doctor must explain their position to the patient, and then inform them about their right to see another doctor, giving them enough information to exercise this right. They must not imply or express their disapproval of the patient's lifestyle, choices or beliefs. If it is impractical to see another doctor, they must make sure arrangements are made for another suitably qualified doctor to take over their role. For this reason, it is advised that an opt out register is created so that doctors, who object, are not pressured into assisting a death and the patients can still have access to doctors who would take part.

Friends and Family

To avoid the argument that legalising AD would facilitate both family members and friends to persuade their loved ones to end their lives, we suggest that the proposed act should include a compassion element. This is addressed in *Purdy*, who argued that if her husband faced prosecution after going abroad with her to die then this would go against her human rights. It was ruled by the House of Lords that the DPP should produce guidance which clearly states when prosecution is more or less likely in assisting a death.

Within the guidance, compassion is included so that family/friends are not prosecuted for their loved one's death.[67] The guidance clearly distinguishes between acting out of compassion, in accordance with someone's wishes and encouraging someone to commit suicide. Arguably, this is in line with the intention under the 1961 Act. Therefore, as it is already official guidance, it would be sensible to enact the idea of compassion through law reform.

Law Enforcement

The illegality of AD causes distress and trauma for the police especially when they investigate families and friends after the death of their loved ones. Arguably, the law allows for the activity to be practiced underground or overseas.[68] For example, based on Dignitas figures, over 300 Britons sought their services since 2009, while in this period only 152 cases for assisted suicide was investigated.[69] The investigations that take place are long, distressful and intrusive for families; many taking place after the death.[70] For example, Helen Johnson, who suffered from a rare lung condition was accompanied by her husband, James Howley, to travel to Dignitas in November 2016. Howley claimed that he was made to feel like a criminal, as he was subject to 7 months of police investigations, for helping his wife.[71] Such investigations are distressful for families and police officers. In a letter by 18 police and crime commissioners on October 2019, it said that the current law on AD was "not working" and that officers who investigate such cases find it distressing and painful.[72] This shows that, the traumatic effects on the police should also be accounted for. Therefore, we propose that support and care should be given to the police to avoid any long-term psychological effects.

Laws in other countries

BeNeLux

AD was legalised in 2002 to those suffering from irreversible pain. If a patient is not terminally ill, there is a one-month waiting period before AD is administered. We consider that a waiting period is a suitable reform as it ensures that patients are aware are fully aware of their decision. That said, we recognise that this may be discriminatory towards the disabled as it means their opportunities to end their lives are being temporarily blocked, as they must wait for a period before it is administered. Also, legalising AD could pressure people to end their lives early, as it is easily accessible and quickly ends their suffering. That said, we think that legalising AD will be beneficial for the terminally ill and disabled patients as it can put an end to their long, painful suffering.

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66 "Conscientious objection - The MDU." (9th October 2018) <https://www.themdu.com/guidance-and-advice/guides/conscientious-objection> Accessed 30th December 2019

67 Director of Public Prosecutions, 'Suicide: Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' (CPS, December 2014) <https://www.cps.gov.uk/legal-guidance/suicide-policy-prosecutors-respect-cases-encouraging-or-assisting-suicide> Accessed 30th December 2019

68 Vikram Dodd, 'Law banning assisted dying must be reviewed, say MPs' (*The Guardian*, 30 October 2019) <https://www.theguardian.com/society/2019/oct/30/law-banning-assisted-suicide-must-be-reviewed-say-mps> accessed 31 December 2019

69 Martyn Underhill, 'Assisted dying law does not work' (*The Law Society Gazette*, 30 October 2019) <https://www.lawgazette.co.uk/commentary-and-opinion/assisted-dying-law-does-not-work/5101974.article> accessed 31 December 2019

70 Ibid

71 James Howley, 'My wife ended her life at Dignitas. Then the police came to talk to me' (*The Guardian*, 8 February 2019) <https://www.theguardian.com/commentisfree/2019/feb/08/wife-dignitas-police-ann-whaley> accessed 31 December 2019

72 n (11)

Canada

Canada legalised voluntary euthanasia and AD for terminally ill and non-chronically ill adults, aged 18 and above, across the country in 2016 - Quebec having legalised it on a provincial level in 2014. People eligible for medical assistance in death must be an adult, mentally competent, can give informed consent, eligible for health services funded by the federal government or a province/territory, have a grievous or irremediable medical condition and make a voluntary request for medical assistance in death, that is not due to outside influence or pressure. The change was due to the Supreme Court of Canada who ruled in *Carter v Canada*[73] in February 2015. This was to ensure that the criminal code complies with the Canadian Charter of Rights and Freedoms as denying an individual's right to control their death violated their freedom.[74]

Like Canada, we recognise that the decriminalisation of AD allows a third party to assist without fearing prosecution. Also, that medical professionals have the right to conscientiously object. We are in favour of including such practices into our proposed reform.

Switzerland

Switzerland's Criminal Code 1942 legalised assisting dying if done for unselfish motives. Unlike other jurisdictions, Swiss law does not require a person to be a national or a resident to seek an assisted death. Organisations such as Dignitas and LifeCircle offer AD to foreigner nationals. As a result, since 2003 more than 400 Britons have flown to Switzerland and have died at Dignitas and dozens more at LifeCircle.

The conflict in laws between the UK and Switzerland means that family and friends who return to the UK, are vulnerable to immediate criminalisation and persecution. Therefore, to avoid this problem we favour the legalisation of AD in the UK.[75]

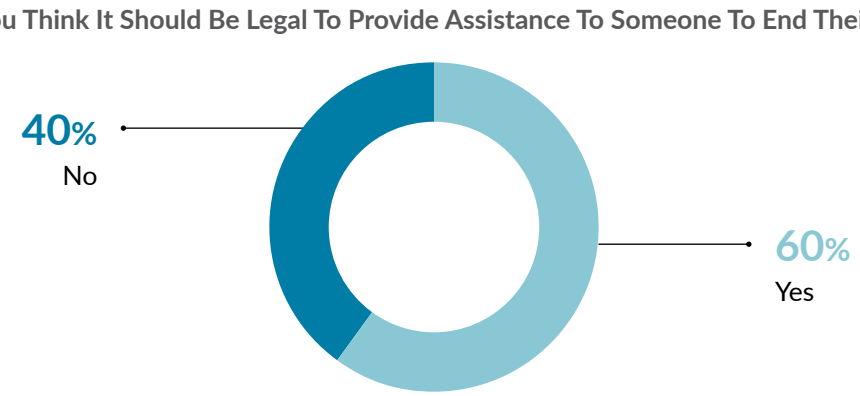
Safeguards and limitations

Why are safeguards important?

AD is a controversial topic with conflicting views on the morals and ethics of the procedure. This means that the law should be clear and predictable, for the benefit of third parties and patients, and have safeguards to ensure that the patient is safe.

Discrimination

Arguably, the illegality of AD in the UK discriminates against the disabled. Particularly the physically disabled, who cannot rely on third party assistance to relieve the pain they face. For example, in *Nicklinson*,[76] the patient suffered from locked-in syndrome and was not allowed the assistance from a doctor to help him die. As a result, he could not choose how to end his life. Had Tony been able-bodied, he would not have faced this dilemma. This is problematic because it places individuals in a situation where they would need to seek third party support to die, with the added complication of 14 years imprisonment for a third-party assistor. This shows that the law is discriminatory because it prevents a disabled person from gaining relief from their suffering in the same way as a physically abled person. Therefore, the law should be amended – a view concurred by 60% of respondents from our survey



73 2015 SCC 5

74 'Medical assistance in dying|' (*Government of Canada*, 25 April. 2019) <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html> accessed 19 December 2019

75 Dignity in Dying, 'Why We Need Change – Suicide' <https://www.dignityindying.org.uk/why-we-need-change/suicides/ > Accessed 30th December 2019

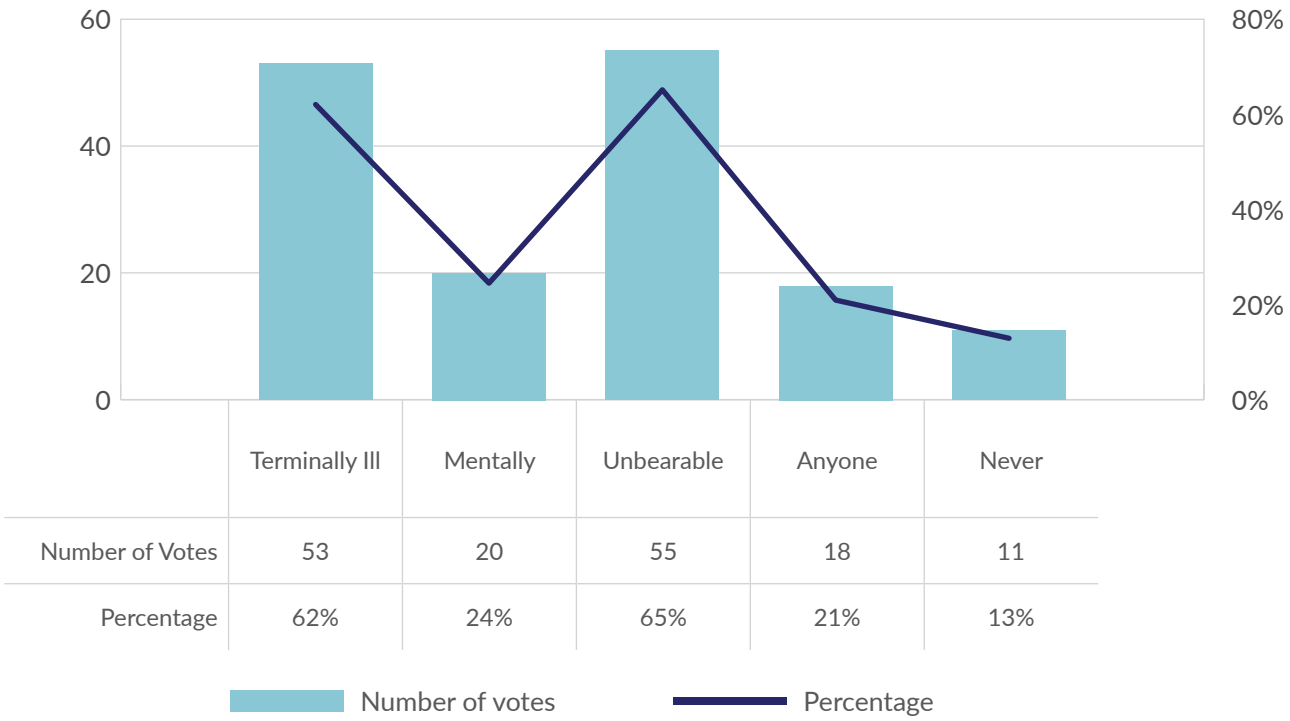
76 *R (Nicklinson) v Ministry of Justice* UKSC 38

Additionally, there are concerns of socio-economic discrimination. Presently, if a UK citizen wants an assisted death, they could travel to Switzerland to attend the Dignitas clinic, where they will be given a fatal dose to help end their life. The whole process costs more than £10,000 – not including travel or accommodation costs.[77] This means that only the wealthy could benefit from the services in Switzerland. Whilst less fortunate individuals may either consider less pleasant means to end their life or continue suffering unbearably. We recognise that the concept of pain should not discriminate between rich and poor. Therefore, we propose for AD to be legalised in the UK to ensure access to end-of-life services, regardless of socio-economic background.

Who Should Be Entitled to Request Assistance in Death?

From our survey, 65% said people in unbearable suffering should be allowed to have an assisted death, 62% for terminally ill and, 24% for the mentally ill. This illustrates that a large number of people favour individuals whose suffering is unbearable to request for an assisted death. That said, 62% of respondents agree that the terminally ill should be entitled to request assistance. Therefore, it can be argued that the terminally ill should also be allowed to request death like those who are suffering unbearably.

If Assisted Dying Was Legal, In Your Opinion, Who Should Be Entitled To Request Assistance In Dying?



Evidently, respondents do not agree that the mentally ill should have the right to request death. This may be because of a lack of confidence in the 'mentally ill' to make a rational decision on 'life and death'. Therefore, our proposals will consider the 'terminally ill' and those whose suffering is 'unbearable'.

We also considered the possible overlap between a terminally ill patient and one who also suffers from a mental illness. We will address the issue on the meaning of "disabled" and "mental illness", because they can be interpreted broadly. For example, a type 1 diabetic can apply for a disability allowance, classing them as disabled. Likewise, clinical depression or anxiety falls under 'mental illness'. In both circumstances they are treatable.[78] Arguably, the broad definition of "disabled" and "mental illness" promotes death as the initial conclusion, without considering other treatment opportunities. We believe that 'death' is a serious topic and preserving life as long as possible is better than making a sudden decision to die. This means that all avenues of treatment should be explored before the topic of 'death', especially with mental illness. Our proposal will focus on legalising assisted death for the terminally ill because we believe that their condition is most likely to worsen, physically and mentally. Therefore, they should get the choice to end their life in a safe and less harmful manner.

77 Dignity in Dying, 'Why We Need Change – Dignitas' <https://www.dignityindying.org.uk/why-we-need-change/dignitas/> accessed 30th December 2019

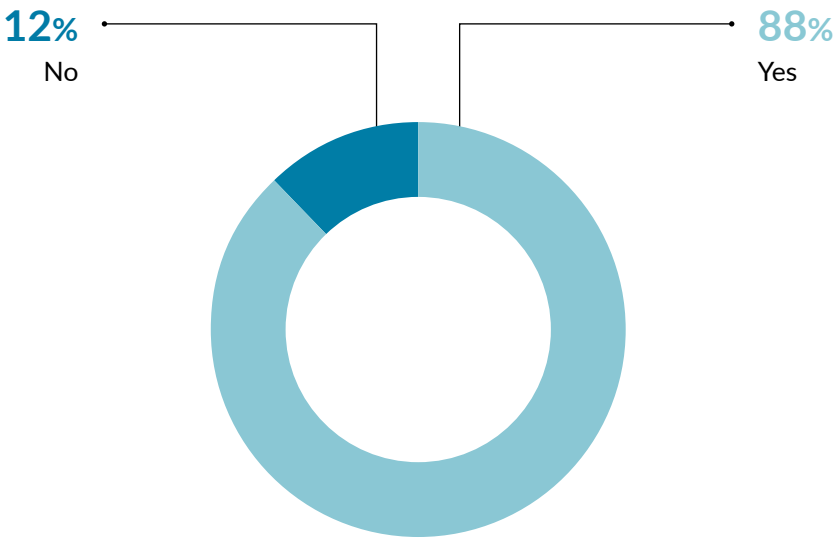
78 'Overview: clinical depression' (*NHS*, 10 December 2019) <https://www.nhs.uk/conditions/clinical-depression/> accessed 31 December 2019

Cooling off period

A cooling off period gives an individual the chance to reflect upon their decision to die, after an appointment with a psychologist - this provides for a simple and cost-effective safeguard. This may protect the patient against any emotional or physical abuse by any third-party individuals.

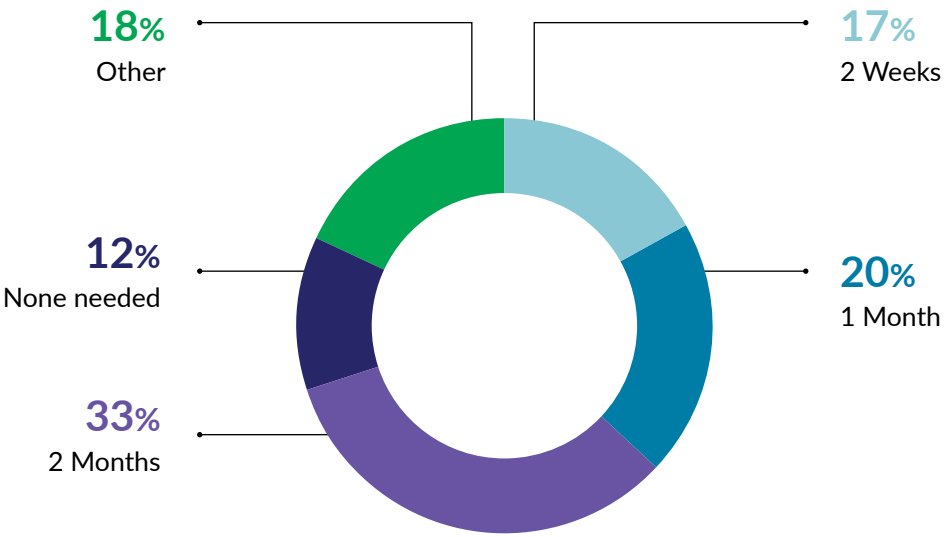
We asked if it was a good idea to include a cooling off period as part of the procedure. 88% of respondents agreed. Therefore, we recommend the adoption of this strategy

Do you think that people who request assistance in dying should be required to wait for a certain period of time to reaffirm their decision (a 'cooling-off period')?



We consider that a 2 month cooling off period is enough time for the patient to be certain about their decision. We acknowledge that it might bring more suffering to the patient or, if in critical conditions, enough time for their death. However, seeking assistance to end one's life requires serious consideration and we feel this is the best length of time for that.

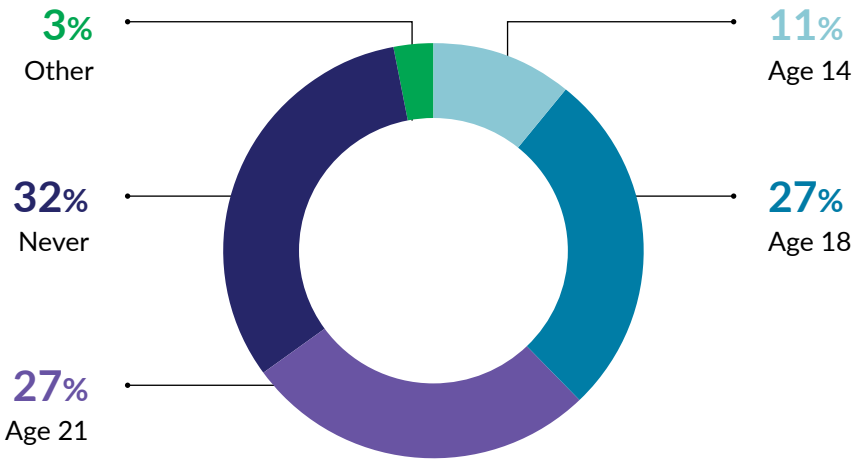
How Long Should The Cooling-off Period Be?



Age

From our survey, 27% of respondents believe that from aged 21 a person can request an assisted death. Arguably, this is reasonable as most would say that at 21 an individual is physically and mentally mature.

In Your View, If It Were Legal, At Which Age Should A Person Be Able To Receive Assistance In Ending Their Life?



However, 27% thought that an assisted death at 18 was fair. This may be because English law recognises an individual is an adult at 18. They have the right to consume alcohol, vote, join the military, file a lawsuit and much more. Serving in the military is interesting because there is a high risk of death involved. Likewise, the right to consume alcohol and purchase drugs, could also lead to death if consumed excessively. To serve and to consume is the choice of the individual. This means that individuals are making active choices on their life from 18. Therefore, since many activities are legalised from age 18, we believe that AD should reflect the same.

Costs

We also considered that the main expense if AD is legalised is the life-ending drug. Depending on income and how quickly you want the drug, will be expensive. If you want a slow-working drug, such as high dosages of morphine, working over weeks or months, then it may be cheaper. However, this may discriminate against individuals on low incomes. Costs can vary between cases, so it is hard to come to an exact estimate. However, the cost of a life ending drug will not cost Britons as much as it currently costs them to go abroad to end their lives.

Should AD be privatised if it's legalised in the UK?

If privatised, there should be a reduction in costs as UK residents will no longer need to travel outside the country. Privatisation can also increase efficiency and patient care, as the patient will be in control of the quality of care they receive in their end of life treatment. Privatisation also means NHS funds can be invested into other sectors of healthcare, as they wouldn't have to shoulder the costs of drug production/imports or distribution. Money from AD clinics will also circulate, as taxes from these companies would have to be paid.

However, privatisation is largely inaccessible to lower socio-economic groups. It also concerns patient care, as wealthy people are in the position of manipulating a system that will favour them. Cost is also important to consider when it comes to accessibility. Legalising and privatising AD could also promote 'suicide tourism', as people from all over the country (and possibly worldwide) will flock to these clinics to receive end of life treatment. Consequently, this may decrease efficiency as waiting lists increase. Unlike Switzerland, we recommend that AD is limited to only those who are residents and/or citizens of the UK.

We consider that the privatisation of AD will ensure that the best end of life treatment is available. The NHS's main focus should be in saving and prolonging patient lives and as AD works outside of this, the procedure should be left in the care of those willing. That said, this treatment should be widely accessible, and costs should be capped to ensure that no one is prevented from using the service.

Conclusion

To summarise our report, we propose the following reforms:

Suicide Act 1961 Amendments

We recommend that the element of 'compassion' is introduced into the Act and a distinction is made between malicious assistance/encouraging and assistance done out of compassion to legalise AD. This is to codify the guidance currently given to prosecutors. It will provide protection to third parties who act in compassion and punish those acting to gain something from the individual's death. Moreover, 'assistance' must be clearly defined and acts, such as paying for a flight for an individual or accompanying an individual to another country to end their life should not be considered as assistance.

Criteria

We recommend that persons who are terminally ill, aged 18, who are residents and/or citizens of the UK ought to be eligible for AD. Their ability to consent should be judged by two independent doctors and potentially a psychiatrist or psychological expert. The individual in question must present the idea to the medical professional at the time; the medical professional cannot promote the idea but can only provide impartial information about how an assisted death will be conducted. Moreover, the individual must wait a period of 2 months before initiating the assisted death procedure to demonstrate that their decision has been thoroughly considered.

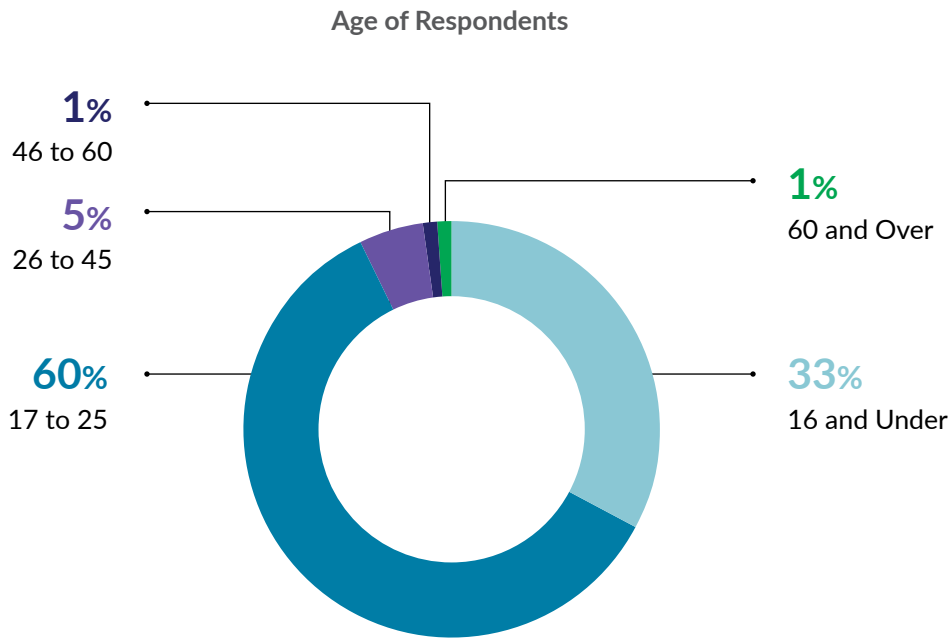
Costs

We recommend that the actual act of AD take place within a private facility, rather than under the NHS, so that the quality of care is at its highest and under the individual's control. The fee should be capped at £1,000 and/or provided for by a special grant by the Government.

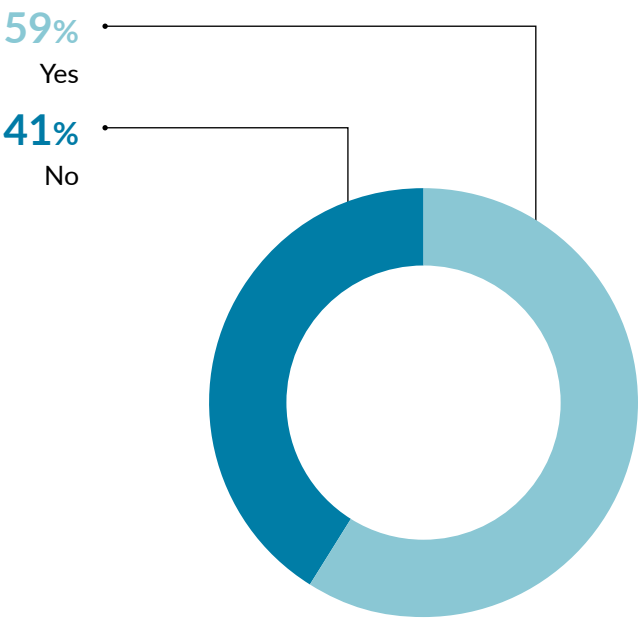
Conscientious objection

We recommend that conscientiously objecting doctors should register their objection so that health care services do not enlist their help when it comes to assisting a patient to die.

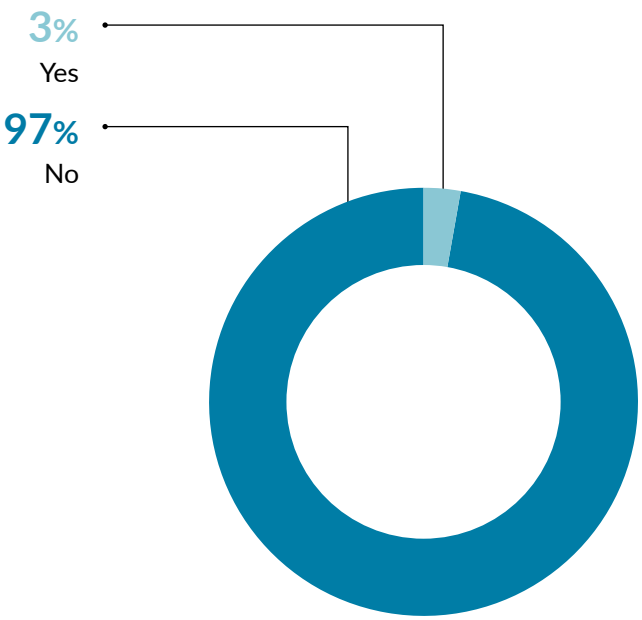
Annex to AD report



Do You Consider Yourself Religious?



Do You Consider Yourself Disabled?



Notes

Big Voice London is always looking to grow our support from organisations and individuals who share our passion for increasing youth access to the legal system. For more information or to view our other publications, please visit our website at **http://bigvoicelondon.co.uk**