

The case
of
Diane Pretty

No Less Human a group within SPUC

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The Case of Diane Pretty

by Alison Davis

Mrs. Pretty's case became famous because she was terminally ill with motor neurone disease, was expected to die soon, and argued that her husband should be legally allowed to kill her (she termed it "help her die") at a time of her choosing.

She made it clear that she thought this action would be *"necessary to avoid her suffocating to death"* which seemed a compelling argument.

She applied first to the Director of Public Prosecutions (DPP), via a letter written to the Prime Minister, Tony Blair, for an advance decision that her husband would not be prosecuted if he killed her. This was refused, and she then fought her case through the High Court, the House of Lords and the European Court of Human Rights. Her appeal was rejected in each of these Courts.

Over this period from June 2001 to April 2002 the case received massive and repeated publicity in the British press and media, almost all of it biased in favour of Mrs. Pretty. These reports led most people to believe that the humane response would be to allow her appeal, so that she could, as she put it, *"die with dignity."*

This booklet will explain why the Law Courts' rejection of Mrs. Pretty's argument was not a heartless rejection of her wish for a peaceful death, nor a legalistic piece of bureaucracy.

The truth was that Mrs. Pretty's arguments were both misinformed and dangerous.

If she had won,

- ⊕ The protection from harm every vulnerable person deserves and currently has would have been compromised,
- ⊕ The assumption that dying and incurably disabled people are, in effect, *"right to want to die"* and *"better off dead"* would have been confirmed.
- ⊕ It would have made all vulnerable people even more vulnerable to a form of fatal discrimination.
- ⊕ It would have diverted resources from the hospice movement, which aims to achieve peaceful deaths for all, to providing death as a solution to the challenges illness and disability pose.

Contrary to media reports, Mrs. Pretty did not in the end die a more painful death than she might have done had she won her case.

She received the best possible care, which had always been available to her, demonstrating that it is not necessary to kill people in order for them to die well..

The case of Diane Pretty, came into the news in June 2001, was rejected in a High Court judgement on 18th October 2001, and then was again rejected by the House of Lords and finally by the European Court of Human Rights in April 2002.

The case was widely reported in the media, and once again, disabled people found their lives described in the most negative terms imaginable, in furtherance of the supposed “*right to die.*”

Mrs. Pretty was 42 years old, lived in Luton, and had motor neurone disease or MND.

What is MND?

MND is a muscle wasting disease caused by the death of “*motor neurone*” cells which deliver signals from the brain and spinal cord to muscles in the body.

- ◆ MND results in a progressive paralysis, due to increasing muscle weakness.
- ◆ In the last stages of the illness people with MND cannot move at all without help, and have impaired or no speech.
- ◆ The muscles that enable swallowing are also impaired, resulting in difficulty in swallowing food and drink and also saliva.
- ◆ Some degree of breathlessness may also be experienced

OVERCOMING THE PROBLEMS OF MND

- Overcoming the problem of communication
This can nowadays be overcome with computerised speech (many readers will have heard on TV or radio the computerised “voice” of Professor Stephen Hawking, the renowned physicist who has MND.)
- Overcoming the problem with swallowing and the resulting inability to take in food and drink can be easily and discreetly done by means of a gastrostomy tube - a tube leading directly into the stomach, through which food and water can be given.

An aspect of MND disability which has particular relevance to the Diane Pretty case (and also played a part in the much publicised previous case of Annie Lindsell in 1997) is:

- Overcoming the problem of breathing difficulty

- 80% of people with MND at St. Christopher's Hospice who reported breathlessness as a problem responded well to the use of morphine and other drugs¹.
- Recently there have been advances in the use of portable ventilators for people with MND, which have proved highly effective².
- The claim by the pro-euthanasia lobby in such cases that people with MND inevitably die by choking or suffocation is completely untrue.
- Dr. Sykes, a hospice doctor, with experience of over 300 MND patients has stated that he does not know of a single patient who choked to death.³

The case of Diane Pretty first came to public attention in June 2001 when a letter about her was written to the Prime Minister, Tony Blair. There is some dispute over whether the letter was written by Brian Pretty, Diane's husband, at her request or whether it was actually written by Liberty (formerly the National Council for Civil Liberties) who backed her case.

- The letter requested an assurance from the Director of Public Prosecutions (DPP), David Calvert-Smith, that Brian Pretty would be granted immunity from prosecution if he "*helped*" his wife die.
- The DPP ruled that he would not grant the requested immunity for the commission of a crime in the future "*no matter how exceptional the circumstances*",
- Mrs. Pretty thus went to the High Court seeking her "*right to die*" at a time of her own choosing.

Both the Voluntary Euthanasia Society and Liberty supported her case.

Note: It seems that the VES and Liberty have seen this case as a way of promoting their own agenda. Mrs Pretty may have been misled into being terrified of choking to death and feeling that no palliative care could prevent this. There was very little mention of the care that the hospice movement has developed especially in relation to MND because the coalition of pro-life groups led by SPUC was prevented from presenting evidence of the work of the Hospice movement to the courts.

- ≈ Mrs. Pretty said that she wanted to be killed
"when she reaches the point where she can no longer communicate with her family and friends."
- ≈ She went on to say that she believed that "*only she can know when her life has no quality and that, when that time comes, she should be able to choose voluntary euthanasia.*"

¹ T. O'Brien, M. Kelly and C. Saunders *Motor neurone disease: a hospice perspective* The Lancet 1992; 304:471-473

² R. Lyall, J. Moxham, N. Leigh. Dyspnoea In D. Oliver, G.D. Borasio and D. Walsh (eds.) *Palliative Care in Amyotrophic Lateral Sclerosis*. Oxford University press 2000: 43-56

³ "The will is not to die but to flee" by Melanie Phillips. *The Observer* 19 March 1995

≈ The inconsistency was clear - if only *she* would know when the moment had come that she wanted to die, and that moment would be when she could no longer communicate, how would she communicate the fact that the moment had come?

Nevertheless the High Court granted Mrs. Pretty a full judicial review, which was based on her claim that refusing her request to be killed at a time of her own choosing breached her rights under the Human Rights Act and the European Convention on Human Rights. Specifically, she cited Articles Three and Eight of the Act.

❖ Article Three gives individuals the right of “*freedom from torture, inhuman or degrading treatment*” and

❖ Article Eight “*respects the privacy of family life without interference from public authorities.*”

Even from the start there was a major inconsistency in her argument:

Diane Pretty maintained that because of the refusal of the Director of Public Prosecutions to grant immunity from punishment to her husband if he killed her, the Government was subjecting her to “*inhuman and degrading treatment*” in breach of both the Human Rights Act and the European Convention on Human Rights.

• This was because it was assumed that she would choke or suffocate to death, because it was claimed death for people with MND is “*usually as a result of respiratory failure.*” (This is actually not the case - see below)

The High Court decided to allow SPUC, and two other pro-life groups, the Medical Ethics Alliance and ALERT to intervene in the case, but, significantly, did not allow the coalition of pro-life groups to submit factual evidence, including information about palliative care.

the Coalition of pro-life groups argued, among other things, that:

If Mrs. Pretty's supposed “*right not to suffer*” compelled the state to permit her husband to kill her, it would follow that the state itself would have a duty to *ensure* that she was killed.

This would, of course, conflict directly with the ban in both the Human Rights Act and the European Convention on Human Rights on intentional killing.

The Coalition also pointed out that relaxing the absolute prohibition on assisting suicide would undermine autonomy - the very thing on which Mrs. Pretty was basing her claim that she had the “*right to die*” at a time of her own choosing.

In other words in her attempt to exercise autonomy, her own autonomy would be forever destroyed.

Similarly, her claim that a “*right to die*” derived from Article Eight in the Human Rights Act, which guarantees “*the right to respect for family life*” would entail destroying the very family and relationships on which the “*right*” she claimed rested.

On 10th October 2001 the case hearing began at the High Court. Mrs. Pretty's Counsel, Philip Havers QC, who represented her without charge, argued that by “*denying her the opportunity to commit suicide which is available to other citizens, the Government was subjecting her to inhuman and degrading treatment, in breach of the European Convention on Human Rights.*”

In effect, he was saying that the law discriminates against those disabled people who are unable to commit suicide unaided.

The truth is that there is no “*right*” for *anyone* to commit suicide.

- * The 1961 Suicide Act decriminalised suicide with the aim of ensuring that those who unsuccessfully attempted to kill themselves would receive help and support rather than punishment.
- * Common sense dictates that the right response to seeing a person about to jump off a high building is to try to persuade them not to do it, rather than simply to say, “*It’s their right. I won’t intervene.*”
- * This response shows that society, as a whole, rightly believes that suicide is not a good thing and that it should be prevented whenever possible.
- * By suggesting that the inability of some disabled people to commit suicide constitutes discrimination against them, Mr. Havers’ argument rested on the view that the suicide of a disabled or terminally ill person is a good thing, to be encouraged -
- * in effect that such people are *right* to want to die, and should receive help to kill themselves, while *non-disabled* people are *wrong* to want to die and should be helped to live.

It is actually this view that is a form of fatal discrimination against vulnerable people, strongly implying that their lives are worthless.

Mr. Havers also argued that Mrs. Pretty was “*distressed at the suffering and indignity which she will have to endure before she dies if the disease is allowed to run its course.*”

This was a reference to the supposed “*inevitability*” of death by choking or suffocation for people with MND which was widely reported in the media⁴.

Mr. Havers also said that by denying her the chance to “*commit suicide with the help of her husband*” the Government was breaching several articles of the Human Rights Act 1998.

Incredibly, he argued that Article 2, which guarantees that

- ▽ “*everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally ...*”
- ▽ **also** “*included a right to die with dignity.*”

⁴ For instance “We’re not giving up” by Laura Edwards. *Luton Herald* 25 October 2001

This sort of thing was described in George Orwell's famous novel, 1984, as “*double-speak*” –

stating two contradictory positions as if both were simultaneously tenable.

This is exactly what Mr. Havers was doing in the Diane Pretty case.

Three judges, Lady Justice Hale, Lord Justice Tuckey and Mr. Justice Silber decided the case, not on their own personal views of it, but regarding the strict interpretation of the law.

I was at the High Court on 18th October 2001

to hear the judges' decision on the case. As you can see by reading the letter I wrote to *The Daily Telegraph* following the judgement, (Pp 22-23) the case affected me in a very personal and serious way, and I had been terrified (a statement of my actual feeling, not a glib turn of phrase) that Diane Pretty might win the case.

In the event the judges ruled unanimously that:

- × while they felt “desperately sorry” for both Diane Pretty and her husband, the DPP could not agree in advance not to prosecute Brian Pretty if he killed Diane, as it would be “*a licence to commit crime.*”
- × Regarding Diane Pretty's claim that Article 2 of the Human Rights Act, which guarantees the right to life, also includes a “*right to die and to choose how and when to die,*” Lord Justice Tuckey said:

“It is to stand the whole purpose of these provisions on its head to say that they are aimed at protecting a person's right to death.”

Lord Justice Tuckey went on to say that:

- × no one has the human right “*to procure their own death*” and that “*In our view the right to human dignity which is enshrined in Article Three (of the Human Rights Act) is not the right to die with dignity, but the right to live with as much dignity as can possibly be afforded until that life reaches its natural end.*”

The judges said that under the law their decision was “*inescapable*” and refused Mrs. Pretty leave to make an appeal to the House of Lords, though the possibility remained for the Law Lords to consider the case, if they themselves decided to hear it.

Following the decision both the Voluntary Euthanasia Society and Liberty said that Mrs. Pretty would be taking the case to the House of Lords, arguing that the High Court misstated the law.

On the other hand, pro-life groups expressed relief that the High Court had correctly stated the law.

For me personally, it was a huge relief, though I realised that this was by no means the end of the story.

On 1st November, Diane Pretty was successful in petitioning a committee of three Law Lords for the right to appeal to the House of Lords against the High Court ruling.

The three Law Lords suggested that previous Directors of Public Prosecution had taken policy decisions not to prosecute for certain types of offences, for instance, blasphemy and, in Scotland the Lord Advocate had promised not to prosecute doctors who stopped feeding people in persistent non-responsive states (usually inappropriately termed "Persistent" or "Permanent Vegetative State"⁵.)

Their statements certainly gave cause for much concern about how they would rule on the Diane Pretty case.

However, the same coalition of pro-life groups which intervened in the High Court hearing were given permission to intervene in her appeal to the House of Lords, which ensured that pro-life arguments were heard and considered during the appeal.

On 29th November 2002, five Law Lords issued their judgement that the Human Rights Act had no effect on a refusal by the DPP to guarantee immunity from prosecution to Brian Pretty if he "helped" his wife commit suicide.

Lord Bingham of Cornhill, in dismissing the appeal, said that

It would have been a gross dereliction of the [DPP's] duty and a gross abuse of his power had he ventured to undertake that a crime yet to be committed would not lead to prosecution. The claim against him must fail on this ground alone⁶

And Lord Hope of Craighead noted that:

The right to which it [the European Convention of Human Rights] refers is the right to life. But it does not create a right to life. The right to life is assumed to be inherent in the human condition which we all share. Nor does it create a right to self-determination. It does not say that every person has the right to choose how or when to die. Nor does it say that the individual has a right to choose death rather than life. What [it] does – and all it does – is to state that the right to life must be protected by law.⁷

The five Law Lords unanimously dismissed Diane Pretty's appeal, saying that human rights legislation was in place to protect life rather than end it.

⁵ "Lords will hear woman's appeal for right to die" by Joshua Rozenberg. *Daily Telegraph* 2 November 2001

⁶ House of Lords – Opinions of the Lords of Appeal in the case of Diane Pretty v the DPP and Secretary of State for the Home Department Paragraph 87 29 November 2001

⁷ Ibid Paragraph 39 29 November 2001

Human Rights Court rules on Diane Pretty case

Mrs Pretty then appealed to the European Court of Human Rights, claiming, as she had in the previous Court hearings, that her “*human rights*” under the European Convention on Human Rights were violated by rulings that her husband would not be immune from prosecution if he killed her.

On 29th April 2002 it was announced that the seven judges who considered the case had unanimously ruled that there was no violation of Mrs. Pretty’s rights in the rulings of previous Courts.

Perhaps most importantly, the European Court ruled that Article 2 of the European Convention on Human Rights, which guarantees “**THE RIGHT TO LIFE**” could not, as Mrs. Pretty claimed, be interpreted as conferring the diametrically opposite “**RIGHT**” namely, the supposed “**RIGHT TO DIE**”.

Following the High Court hearing of the case, the Motor Neurone Disease Society made a very interesting statement.

- ~ The Association's chief executive, George Levvy said that they “*neither supported nor opposed*” Mrs. Pretty's case.
- ~ However he went on to allay fears that people with MND choke or suffocate to death, as had been suggested by Mrs. Pretty's Counsel.
- ~ He said “*This is not the case. The majority of people with MND die from respiratory failure and the death is usually very peaceful and usually when the person is asleep. With the correct palliative care it is very rare for someone to die from choking.*”
- ~ In fact evidence from Hospices show that such a death is almost unprecedented.
- ~ In a series of 124 deaths from MND only one person was thought *possibly* to have died through choking (i.e. through an obstruction of the airways) and a post mortem showed that there was actually no such obstruction⁸.

In a very interesting postscript to the case, it transpired after the High Court decision that Brian Pretty had ambivalent feelings about ending his wife's life. He said, “*...for my own self I would like her to carry on. If you have a special relationship you will do anything to protect it.*” Their son, also called Brian, felt equally strongly that his mother's campaign was wrong⁹.

Shortly after the High Court judgement Mr. Pretty said, “*Personally I'm pleased and overjoyed in one respect because it means I'm with her for longer, but I'm also disappointed because I know what Diane wants and how she feels*¹⁰.”

⁸ O'Brien et al. Ibid

⁹ *The love that dares to ask for death* by Jasper Gerard. The Sunday Times 21 October 2001

¹⁰ “We're not giving up” by Laura Edwards *Luton Herald* 25 October 2001

The court cases seemed to be serving to advance the interests of the Voluntary Euthanasia Society by trying to find yet another way to make euthanasia legal rather than helping Mrs. Pretty to cope with her illness.

Mrs. Pretty's counsel claimed that she had not been offered any palliative care¹¹ but Lord Steyn noted a “*lack of agreement on what palliative care is available to Mrs. Pretty.*” He noted that “*she apparently visits a hospice where she receives some medical and nursing care. In the final stages of the illness she will reside in the hospice and may ... be sedated.*”¹²”

Diane Pretty died on 11th May 2002 at the Pasque hospice in Luton. Brian Pretty claimed that her death was not peaceful and painless, saying that she “*endured breathing difficulties, pain and distress.*”¹³

However, Dr. Rysz Bietzk, Head of Medical Services at the Pasque hospice, who actually cared for Diane Pretty during the last few days of her life, said “Diane died peacefully ... choking or suffocation was never an issue for her.”

He went on to say that in the days before she died, he had increased her medication to the point that she was sedated and Brian Pretty himself admitted that: “*They had trouble getting her comfortable and pain free until Thursday evening [9th July 2001] after which she started to slip into a coma-like state and eventually died.*”

It is difficult to see how she could possibly have suffered a painful or distressing death when “*in a coma-like state.*”

Yet again it seemed that the facts were being manipulated to further the cause of legalising euthanasia.

It is absolutely certain that disabled people, whose lives are already vulnerable to being ended by

- abortion,
- embryo destruction in experiments, cloning & IVF,
- post-natal neglect and
- the withdrawing of food and fluids from people in a persistent non-responsive state,

would be even more vulnerable if a case like that of Diane Pretty was ever won.

⁸ “Husband cannot help sick wife to die, judges rule.” By Joshua Rosenberg *The Daily Telegraph* 19 October 2001

¹² Ibid Paragraph 51. 29 November 2001

¹³ Letter from Brian Pretty to The Congleton Chronicle 1 July 2002

We need to be vigilant and lose no opportunity of speaking out in defence of allowing disabled and terminally ill people to *live* with dignity, rather than permitting the media to spread the lie further that we are “*dignified*” only in death.

Most physical pain and discomfort can be overcome by experts in palliative care, though it is true that even with the best care, a very small number of people do still suffer much pain.

In such circumstances, it is often the loving care of those close to the suffering person which can make the difference between wanting to die, and making the most of whatever life is left.

We can provide this most vital ingredient, with the assurance that pain and dependency is not inherently undignified.

It is the ultimate abandonment of a suffering person to tell them, as pro-euthanasia campaigners regularly do, that they will be dignified only in death.

Alison Davis' letter

The Daily Telegraph Tuesday October 23 2001

High Court was right on euthanasia

Sir – I was relieved at the High Court judges' decision that Diane Pretty's husband is not entitled to automatic immunity if he "helps her die" (report Oct. 20). However, the fear persists that it is only a matter of time before people like me will again be reading about how "inhuman" and "degrading" our situation is, and that death is in our best interests.

I have several severe disabling conditions that make life difficult and, at times, extremely painful. My spine is collapsing, causing extreme pain which is not always controlled, even with morphine. When the pain is at its worst, I cannot move or speak. The pain can go on for hours with no prospect of relief. In addition, I am a full-time wheelchair user because I have spina bifida, and I also have osteoporosis and emphysema. These conditions make me the sort of person many would consider "better off dead" and a suitable candidate for "assisted suicide" or euthanasia if I requested it.

Advocates of such killing say that it is a matter of " individual choice" and I need, thus, have no fear. The problem with this is that some years ago I did want to die. It was a settled wish lasting many years and had euthanasia been legal then, I would have requested it . Under Dutch rules, often cited as a model to be followed, I would qualify for such legal killing.

I am alive now only because my friends refused to go along with my view that my life had no value. Over time, they enabled me to re-establish a sense of my own inherent dignity and worth. Diane Pretty, on the other hand, is surrounded by family and supporters who agree that her life is " undignified" and "degrading" and believe that death is the compassionate answer to human suffering.

The fact that I am not terminally ill, as Mrs. Pretty is, if anything, makes me a more compelling candidate for euthanasia, since I have to live with my suffering for an indefinite time, while Mrs Pretty will soon get her wish to die. The possibility of legalised euthanasia terrifies me, and would only add to the difficulties of living with pain that is unbearable, but for the fact that I have to bear it.

I believe what suffering people need is help to live with dignity, and, eventually, to die peacefully and naturally. If Mrs. Pretty had won her case, the chances of this happening would have receded rather than being advanced.

Yours faithfully,
Alison Davis
Milborne St. Andrew, Dorset

