



CPS

Interim Policy for Prosecutors in respect of Cases of Assisted Suicide

**Issued by
The Director of Public Prosecutions**

September 2009

INTERIM POLICY FOR PROSECUTORS IN RESPECT OF CASES OF ASSISTED SUICIDE

INTRODUCTION

- 1 A person commits an offence if he or she aids, abets, counsels or procures [referred to in this policy as “assists”] the suicide of another, or the attempt by another to commit suicide. The consent of the Director of Public Prosecutions [DPP] is required before an individual may be prosecuted.
- 2 While the DPP can issue a policy which sets out the factors he will take into account in deciding whether to prosecute in individual cases, only Parliament can change the law on assisted suicide. The DPP cannot assure a person in advance of committing a crime that a prosecution will not be brought, and nothing in this policy can be taken to amount to such an assurance.
- 3 It has never been the rule that a prosecution will automatically follow whenever an offence is believed to have been committed. The way in which prosecutors make their decisions in all cases whether or not to prosecute is set out in the Code for Crown Prosecutors. However, the courts have decided that prosecutors should have further guidance setting out additional factors that may be relevant when deciding whether a prosecution for assisted suicide is needed in the public interest in a particular case.
- 4 For the purposes of this policy, the term “victim” is used to describe the person who may have committed or attempted to commit suicide. Not everyone may agree that this is an appropriate description but in the context of the criminal law it is probably the most suitable term to use.
- 5 This policy applies when the acts that allegedly constitute the assistance are committed in England and Wales; the suicide or attempted suicide may occur anywhere in the world, including in England and Wales.

THE INVESTIGATION

- 6 The police are responsible for investigating all cases of assisted suicide and they are encouraged to ask for the advice of prosecutors at an early stage and throughout their enquiries to ensure that all appropriate lines of investigation have been undertaken. Prosecutors should only make a decision when they have all the relevant material that is reasonably capable of being obtained after a full and thorough investigation.

THE DECISION-MAKING PROCESS

- 7 Prosecutors will apply the Code for Crown Prosecutors in making their decisions: there must be sufficient evidence to provide a realistic prospect of conviction in respect of an offence of assisted suicide. If there is sufficient evidence, prosecutors should consider whether a prosecution is needed in the public interest.
- 8 The factors taken into account in deciding whether a prosecution is needed in the public interest also determine whether or not the DPP will consent to a prosecution.

THE EVIDENTIAL STAGE

- 9 A person commits the offence of assisted suicide if he or she aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide.
- 10 For the evidential stage to be satisfied, the prosecution must prove that:
 - the victim committed or attempted to commit suicide; and
 - the suspect assisted them in doing so.
- 11 The prosecution also has to prove that the suspect intended to assist the victim to commit or attempt to commit suicide and that the suspect knew that those acts were capable of assisting the victim to commit suicide.
- 12 The act of suicide requires the victim to take his or her own life. It remains murder or manslaughter to cause the death of someone who wishes to commit suicide but is unable to do so for him or herself. Even genuine and clear expressions of intent from someone who wishes to end his or her life do not entitle another person, even acting wholly out of compassion, to carry out those wishes if the person who wishes to commit suicide is asleep or is not conscious.
- 13 It is possible in law to attempt to assist a suicide. This means that there may be an offence committed even where a suicide does not occur or where there is not an attempt to commit suicide. Whether there is sufficient evidence of an attempt to assist suicide will depend on the factual circumstances of the case.

THE PUBLIC INTEREST STAGE

- 14 Prosecutors must consider the public interest factors set out in the Code for Crown Prosecutors and the factors set out in this policy.
- 15 Deciding on the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction.
- 16 Some public interest factors set out below appear in both lists, because their presence or absence is either a factor in favour of or against prosecution, to be taken into consideration in each case. Others are only either a factor in favour of or against prosecution and they therefore only appear in the appropriate list.
- 17 It may sometimes be the case that the only source of information about the circumstances of the suicide and the state of mind of the victim is the suspect. Prosecutors and investigators should make sure that they pursue all reasonable lines of further enquiry in order to obtain, wherever possible, independent verification of the suspect's account.

- 18 Once all reasonable enquiries are completed, if prosecutors are doubtful about the suspect's account of the circumstances of the suicide and the state of mind of the victim which are relevant to any factor set out below, they should conclude that they do not have sufficient information in support of that factor.

Public interest factors in favour of prosecution

- 19 The public interest factors in favour of prosecution are set out below.

- (1) The victim was under 18 years of age.
- (2) The victim's capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty.
- (3) The victim did not have a clear, settled and informed wish to commit suicide; for example, the victim's history suggests that his or her wish to commit suicide was temporary or subject to change.
- (4) The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide.
- (5) The victim did not ask personally on his or her own initiative for the assistance of the suspect.
- (6) The victim did not have:
 - a terminal illness; or
 - a severe and incurable physical disability; or
 - a severe degenerative physical condition;from which there was no possibility of recovery.
- (7) The suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim.
- (8) The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim's decision to do so; and did not take reasonable steps to ensure that any other person did not do so.
- (9) The victim was physically able to undertake the act that constituted the assistance him or herself.
- (10) The suspect was not the spouse, partner or a close relative or a close personal friend of the victim.
- (11) The suspect was unknown to the victim and assisted by providing specific information via, for example, a website or publication, to the victim to assist him or her in committing suicide.

- (12) The suspect gave assistance to more than one victim who were not known to each other.
- (13) The suspect was paid by the victim or those close to the victim for their assistance.
- (14) The suspect was paid to care for the victim in a care/nursing home environment.
- (15) The suspect was aware that the victim intended to commit suicide in a public place where it was reasonable to think that members of the public may be present.
- (16) The suspect was a member of an organisation or group, the principal purpose of which is to provide a physical environment [whether for payment or not] in which to allow another to commit suicide.

Question 1 which appears at the end of this document seeks your views about the public interest factors we have identified as being in favour of a prosecution.

Question 2 which appears at the end of this document seeks your views about whether there are any other public interest factors which you consider are in favour of a prosecution.

- 20 In most cases, factors (1) to (8) above will carry more weight than the other factors in deciding that a prosecution is needed in the public interest.

Question 3 which appears at the end of this document seeks your views about public interest factors (1) to (8) which we have identified as carrying more weight than the other factors in deciding that a prosecution is needed in the public interest.

Question 4 which appears at the end of this document seeks your views about whether there are any other public interest factors which you think should carry more weight than the other factors in deciding that a prosecution is needed in the public interest.

Public interest factors against prosecution

- 21 The public interest factors against prosecution are set out below.
- (1) The victim had a clear, settled and informed wish to commit suicide.
 - (2) The victim indicated unequivocally to the suspect that he or she wished to commit suicide.
 - (3) The victim asked personally on his or her own initiative for the assistance of the suspect.

- (4) The victim had:
- a terminal illness; or
 - a severe and incurable physical disability; or
 - a severe degenerative physical condition;
- from which there was no possibility of recovery.
- (5) The suspect was wholly motivated by compassion.
- (6) The suspect was the spouse, partner or a close relative or a close personal friend of the victim, within the context of a long-term and supportive relationship.
- (7) The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was as a consequence of his or her usual lawful employment.
- (8) The victim was physically unable to undertake the act that constituted the assistance him or herself.
- (9) The suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide.
- (10) The victim has considered and pursued to a reasonable extent recognised treatment and care options.
- (11) The victim had previously attempted to commit suicide and was likely to try to do so again.
- (12) The actions of the suspect may be characterised as reluctant assistance in the face of a determined wish on the part of the victim to commit suicide.
- (13) The suspect fully assisted the police in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing assistance.

Question 5 which appears at the end of this document seeks your views about the public interest factors we have identified as being against a prosecution.

Question 6 which appears at the end of this document seeks your views about whether there are any other public interest factors which you consider are against a prosecution.

- 22 In most cases, factors (1) to (7) above will carry more weight than the other factors in deciding that a prosecution is not needed in the public interest.

Question 7 which appears at the end of this document seeks your views about public interest factors (1) to (7) which we have identified as carrying more weight than the other factors in deciding that a prosecution is not needed in the public interest.

Question 8 which appears at the end of this document seeks your views about whether there are any other public interest factors which you think should carry more weight than the other factors in deciding that a prosecution is not needed in the public interest.

- 23 The evidence to support these factors must be sufficiently close in time to the assistance to allow the prosecutor reasonably to infer that the factors remained operative at that time. This is particularly important at the start of the specific chain of events that immediately lead to the suicide or the attempt.
- 24 These lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

HANDLING ARRANGEMENTS

- 25 Cases of assisted suicide are dealt with in Special Crime Division in CPS Headquarters. The Head of that Division reports directly to the DPP.
- 26 Any prosecutor outside Special Crime Division of Headquarters therefore who receives any enquiry or case involving an allegation of assisted suicide should ensure that the Head of Special Crime Division is notified.
- 27 This interim policy comes into effect on the day of its publication and is to be applied in all current and future cases. It will be reviewed in the light of the public consultation exercise currently being undertaken.

Question 9 which appears at the end of this document invites you to let us have any other comments that you would like us to consider.

CONSULTATION QUESTIONS

Please complete the following information.

Manner of preferred address: Mr/Mrs/Ms etc	Dr.
First Name	Calum
Family Name	MacKellar
Any organisation you represent	Scottish Council on Human Bioethics
Postal Mailing Address	15 Morningside Road, Edinburgh EH10 4DP
Contact telephone number	0131 447 6394
E-mail Address	mail@schb.org.uk

QUESTION 1

We have identified the factors that we consider to be relevant in deciding whether a prosecution is needed in the public interest in paragraph 19. We have set out those factors again below.

Please indicate alongside each factor, using the drop down menu whether you agree or disagree that it is a factor in favour of prosecution.

Please can you reply using “Y” for yes and “N” for no; if you do not want to let us have your views on any particular factor, please ignore the drop down menu in the appropriate box.

	FACTORS IN FAVOUR OF PROSECUTION	Y/N
(1)	The victim was under 18 years of age.	Y
(2)	The victim’s capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty.	Y
(3)	The victim did not have a clear, settled and informed wish to commit suicide; for example, the victim’s history suggests that his or her wish to commit suicide was temporary or subject to change.	Y
(4)	The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide.	Y
(5)	The victim did not ask personally on his or her own initiative for the assistance of the suspect.	Y

(6)	<p>The victim did not have:</p> <ul style="list-style-type: none"> ➤ a terminal illness; or ➤ a severe and incurable physical disability; or ➤ a severe degenerative physical condition; <p>from which there was no possibility of recovery.</p>	Y
(7)	The suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim.	Y
(8)	The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim's decision to do so; and did not take reasonable steps to ensure that any other person did not do so.	Y
(9)	The victim was physically able to undertake the act that constituted the assistance him or herself.	Y
(10)	The suspect was not the spouse, partner or a close relative or a close personal friend of the victim.	Y
(11)	The suspect was unknown to the victim and assisted by providing specific information via, for example, a website or publication, to the victim to assist him or her in committing suicide.	Y
(12)	The suspect gave assistance to more than one victim who were not known to each other.	Y
(13)	The suspect was paid by the victim or those close to the victim for their assistance.	Y
(14)	The suspect was paid to care for the victim in a care/nursing home environment.	Y
(15)	The suspect was aware that the victim intended to commit suicide in a public place where it was reasonable to think that members of the public may be present.	Y
(16)	The suspect was a member of an organisation or group, the principal purpose of which is to provide a physical environment [whether for payment or not] in which to allow another to commit suicide.	Y

QUESTION 2

IF YOU CONSIDER THAT THERE ARE OTHER FACTORS IN FAVOUR OF PROSECUTION, PLEASE SET THEM OUT HERE:

Additional factors in favour of prosecution are:

- The suspect denied and rejected the inherent value, worth and dignity of the victim's life, conferred by relatives, friends and other members of society, by helping to end this life.

Commentary:

1. It is wrong to suggest that any person can ever lose his or her human dignity

Advocates of assisted dying have suggested that individuals should be able to determine their own dignity and quality of life, unrestricted by the moral, cultural, religious, or personal beliefs of others. For example, it has been proposed that persons who fear that they will lose their dignity during the final stages of a terminal illness should be able to 'die with dignity' before these stages occur.

In response to this, the SCHB notes that:

It is incorrect to suggest that any person can ever lose his or her human dignity. Though human dignity is not a scientific concept, it is something that everyone should always accept is found in everyone to an equal extent. This is in accordance with the United Nations' Universal Declaration of Human Rights which affirms in its preamble "the inherent dignity and...the equal and inalienable rights of all members of the human family" as "the foundation of freedom, justice and peace in the world".

In other words, even though sick people can become incontinent or cannot feed themselves and become dependant on the care of others, this does not mean that they lose their human dignity.

Moreover, with assisted dying, as opposed to suicide, another person must also believe that it would be preferable for a person wishing to die not to continue living. In other words, assisted dying, is a reflection of the unacceptable belief by a person that another person has lost, or will lose, his or her dignity to such an extent that his or her life is not worth living and should be ended.

If assisted dying was made possible, it would mean that society would accept that some individuals can actually lose their human dignity and have lives which no longer have any worth, meaning or value.

It would also mean denying the human dignity which is due to an individual in order for him or her to be legally killed. In other words, it would give the message that human dignity is only based on subjective choices and decisions and whether a life meets certain quality standards.

No government should ever go back to the abuses of humanity in the past in which human dignity was not believed to be present in certain persons because of certain physical characteristics and that they could therefore be exploited or killed.

In this regard, it should be noted that a society that does not believe in the inherent dignity of human life cannot offer any valid argument against murder. It becomes a society that has lost its trust in the intrinsic value and meaning of life and cannot comprehend why it should be endured. A society where the values of life have been completely undermined and where the killing of a persons is acceptable.

This is in complete opposition to a responsible benevolent and compassionate society which continues to affirm and defend the lives of all its members and the notion that every human life is full of value, meaning and richness even though persons may be aged, dependent on others or may have lost their autonomy.

2. Full and complete autonomy undermines the concept of human dignity

Advocates of assisted dying have suggested that a person's fear of disability and dependency should enable him or her to die while he or she is still autonomous and that assisted dying would enable self-determination to exist. In other words, that individuals have the right to take decisions concerning their own life and death situations in accordance with their own values and beliefs. These should not be imposed by a court, a physician or a family member. It is a question of freedom and equality in the face of death.

Thus, advocates of assisted dying have suggested that nobody has the right to impose on the terminally-ill and the dying the obligation to live out their lives where they themselves have persistently expressed the wish to die.

In response to this, the SCHB notes that:

The recognition of every person's full, complete and total autonomy does not enable the concept of human dignity nor, for that matter, an interactive society to exist. Instead, it would mean the atomisation of each human being whereby everybody would live as completely free and independent individuals.

But the very concept of human dignity is dependent on persons having relationships with one another in an interactive society and is not based on an individual's own personal subjective views.

Moreover, being dependent on others should never be associated with a loss of dignity. All are born dependent on others and many will die dependent on others. Being dependent on others is a characteristic of who a person is.

3. The concept of human dignity cannot exist independently of others

Some supporters of assisted dying have indicated that they should be able to choose whether or not they have lost their dignity and that this does not have any consequences on others.

In response to this, the SCHB notes that:

In an interactive society, making a choice about the value of a life (even one's own) means making a decision about the value of other lives.

Indeed, persons who consider that their lives are no longer worth living or believe that they have lost their dignity are, in a way, indirectly indicating that the lives of persons in similar or in worse medical situations than themselves are also not worth living and should be ended.

In the same way, persons who consider that their lives are no longer worth living or believe that they have lost their dignity have to reject the worth, value and meaning that others, such as their family, friends and even society, are giving to their lives. To consciously deny and reject (without attenuating circumstances such as mental disorders) the value, meaning and worth given by others to our lives can be considered as an extremely nihilistic, self-centred and insensitive behaviour.

Thus, personal opinions about worth, meaning and value of human life matter to the whole of society.

QUESTION 3

We have identified factors (1) to (8) as carrying more weight than the other factors in deciding that a prosecution is needed in the public interest. We have set out those factors again below.

Please indicate alongside each factor whether you agree or disagree that the factor should carry more weight than the other factors.

Please can you reply using “Y” for yes and “N” for no; if you do not want to let us have your views on any particular factor, please ignore the drop down menu in the appropriate cell.

	FACTORS IN FAVOUR OF PROSECUTION	Y/N
(1)	The victim was under 18 years of age.	Please select
(2)	The victim’s capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty.	Please select
(3)	The victim did not have a clear, settled and informed wish to commit suicide; for example, the victim’s history suggests that his or her wish to commit suicide was temporary or subject to change.	Please select
(4)	The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide.	Please select
(5)	The victim did not ask personally on his or her own initiative for the assistance of the suspect.	Please select
(6)	The victim did not have: ➤ a terminal illness; or ➤ a severe and incurable physical disability; or ➤ a severe degenerative physical condition; from which there was no possibility of recovery.	Please select
(7)	The suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim.	Please select
(8)	The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim’s decision to do so; and did not take reasonable steps to ensure that any other person did not do so.	Please select

QUESTION 4

IF YOU THINK THERE ARE OTHER FACTORS THAT FALL INTO THIS CATEGORY THAT WE HAVE NOT IDENTIFIED, PLEASE SET THEM OUT HERE:

QUESTION 5

We have identified the factors that we consider to be relevant in deciding whether a prosecution is not needed in the public interest in paragraph 21. We have set out those factors again below.

Please indicate alongside each factor whether you agree or disagree that it is a factor against prosecution.

Please can you reply using “Y” for yes and “N” for no; if you do not want to let us have your views on any particular factor, please ignore the drop down menu in the appropriate cell.

	FACTORS AGAINST PROSECUTION	Y/N
(1)	The victim had a clear, settled and informed wish to commit suicide.	N
(2)	The victim indicated unequivocally to the suspect that he or she wished to commit suicide.	N
(3)	The victim asked personally on his or her own initiative for the assistance of the suspect.	N
(4)	The victim had: <ul style="list-style-type: none">➤ a terminal illness; or➤ a severe and incurable physical disability; or➤ a severe degenerative physical condition; from which there was no possibility of recovery.	N
(5)	The suspect was wholly motivated by compassion.	N
(6)	The suspect was the spouse, partner or a close relative or a close personal friend of the victim, within the context of a long-term and supportive relationship.	N
(7)	The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was as a consequence of his or her usual lawful employment.	N
(8)	The victim was physically unable to undertake the act that constituted the assistance him or herself.	N
(9)	The suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide.	N

(10)	The victim has considered and pursued to a reasonable extent recognised treatment and care options.	N
(11)	The victim had previously attempted to commit suicide and was likely to try to do so again.	N
(12)	The actions of the suspect may be characterised as reluctant assistance in the face of a determined wish on the part of the victim to commit suicide.	N
(13)	The suspect fully assisted the police in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing assistance.	N

QUESTION 6

IF YOU CONSIDER THAT THERE ARE OTHER FACTORS AGAINST PROSECUTION, PLEASE SET THEM OUT HERE:

QUESTION 7

We have identified factors (1) to (7) as carrying more weight than the other factors in deciding that a prosecution is not needed in the public interest. We have set out those factors again below.

Please indicate alongside each factor whether you agree or disagree that the factor should carry more weight than the other factors.

Please can you reply using “Y” for yes and “N” for no; if you do not want to let us have your views on any particular factor, please ignore the drop down menu in the appropriate cell.

	FACTORS AGAINST PROSECUTION	Y/N
(1)	The victim had a clear, settled and informed wish to commit suicide.	Please select
(2)	The victim indicated unequivocally to the suspect that he or she wished to commit suicide.	Please select
(3)	The victim asked personally on his or her own initiative for the assistance of the suspect.	Please select
(4)	The victim had: <ul style="list-style-type: none">➤ a terminal illness; or➤ a severe and incurable physical disability; or➤ a severe degenerative physical condition; from which there was no possibility of recovery.	Please select
(5)	The suspect was wholly motivated by compassion.	Please select
(6)	The suspect was the spouse, partner or a close relative or a close personal friend of the victim, within the context of a long-term and supportive relationship.	Please select
(7)	The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was as a consequence of his or her usual lawful employment.	Please select

QUESTION 8

IF YOU THINK THERE ARE OTHER FACTORS THAT FALL INTO THIS CATEGORY THAT WE HAVE NOT IDENTIFIED, PLEASE SET THEM OUT HERE:

QUESTION 9

PLEASE LET US KNOW HERE IF YOU HAVE ANY OTHER COMMENTS THAT YOU WOULD LIKE US TO CONSIDER:

Issues on assisted dying involving minors are not discussed in an appropriate manner. There have been high profile court cases involving parents and doctors regarding the ending of the life of a child on ventilators who have been considered unable to live normally without dependence on others i.e. poor quality of life.

It may be important to fully explain what should happen if a victim of assisted dying felt no dignity while his/her family felt otherwise. What intervention should occur in this case? Is there any role for spiritual/social counselling?

This is a public document.
It is available on the CPS website: www.cps.gov.uk
Further copies of this document may be obtained from:
CPS Policy Directorate
50 Ludgate Hill
London EC4M 7EX
Telephone: 020 7796 8000
Email: hqpolicy@cps.gsi.gov.uk

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