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	**Mrs**
First Name	**Andrea**
Family Name	**Minichiello Williams**
Any organisation you represent	**Director, Christian Concern for our Nation & Director, the Christian Legal Centre**
Postal Mailing Address	**PO Box 655** **Haywards Heath** **West Sussex** **RH16 9AT**
Contact telephone number	**(020) 7467 5427**
E-mail Address	**andrea.williams@ccfon.org**

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.	N
(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.	N
(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)	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.	N
(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.	N
(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:

Prior to the death of the victim, the suspect was in a position to gain from the death of the victim, whether financially or otherwise.

The suspect assisted in publicising the victim's suicide.

The suspect assisted the victim in a manner that included violence.

The suspect was a professional in the private or public healthcare or care sector, such as a doctor, nurse, healthcare assistant, pharmacist, surgeon, or consultant.

The suspect is known to have acted violently against, or to have abused the victim in some way.

The victim was depressed, elderly, infirm, vulnerable, suggestible or easily influenced.

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.	N
(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.	N
(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)	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.	N
(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

QUESTION 4

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

(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.

(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.

Additional factors:

Prior to the death of the victim, the suspect was in a position to gain from the death of the victim, whether financially or otherwise.

The suspect assisted in publicising the victim's suicide.

The suspect assisted the victim in a manner that included violence.

The suspect was a professional in the private or public healthcare or care sector, such as a doctor, nurse, healthcare assistant, pharmacist, surgeon, or consultant.

The suspect is known to have acted violently against, or to have abused the victim in some way.

The victim was depressed, elderly, infirm, vulnerable, suggestible or easily influenced.

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: ➢ 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.	Y
(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.	Y
(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.	Y

(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.	Y
(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.	Y

QUESTION 6

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

The suspect was not in a position to gain from the death of the victim in any way, whether financially, in time saved, as a matter of convenience, or in kind.

Please see the comments in our further Response in answer to questions 7 and 8.

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.	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: ➢ 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.	Y
(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.	Y

QUESTION 8

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

Please see the comments in our further Response in answer to questions 7 and 8.

QUESTION 9

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

Most of the factors under discussion do not admit of a "Yes" or "No" answer, but require further explanation; several of the factors need to be amended in line with our suggestions, rather than agreed or disagreed with. The "Yes" and "No" answers we have provided are thus wholly inadequate and should be understood only in the light of our further comments.

Please see our attached "Response to the DPP's Consultation on Interim Policy for Prosecutors in respect of Cases of Assisted Suicide", which forms an essential part of our response.

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

© Crown Copyright 2009