

**CHRISTIAN CONCERN FOR OUR NATION  
& THE CHRISTIAN LEGAL CENTRE**

***Response to the DPP's  
Consultation on Interim  
Policy for Prosecutors in  
respect of Cases of  
Assisted Suicide***

***November 2009***



Andrea Minichiello Williams, Director  
Christian Concern for our Nation & the Christian Legal Centre  
020 7467 5427  
07712 591164  
<http://www.ccfon.org> and <http://www.christianlegalcentre.com>

**The Consultation can be found at the following link:**

[http://www.cps.gov.uk/consultations/as\\_index.html](http://www.cps.gov.uk/consultations/as_index.html)

**The Closing Date is: 16<sup>th</sup> December 2009**

### **How to Respond**

Both written and electronic responses to the consultation are acceptable.

Please be aware that if you complete and return this document by e-mail, you will be responding over the open internet. If you would prefer, please complete and return the PDF version to the postal address given below.

Please include your name, organisation (if applicable), postal address and email address.  
Closing date for responses: 16 December 2009.

Responses can be sent by post to:

Assisted Suicide Policy Team  
Crown Prosecution Service Headquarters—6<sup>th</sup> Floor  
50 Ludgate Hill  
London  
EC4M 7EX

or by email to: [assistedsuicide.consultation@cps.gsi.gov.uk](mailto:assistedsuicide.consultation@cps.gsi.gov.uk)

### **About Us**

Christian Concern for Our Nation (CCFON) is a policy and legal resource centre that identifies changes in policy and law that may affect the Judeo-Christian heritage of this nation. The team of lawyers and advisers at CCFON conduct research into, and campaign on, legislation and policy changes that may affect Christian Freedoms or the moral values of the UK. CCFON reaches a mailing list of 25,000 supporters. <http://www.ccfon.org>

CCFON is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. <http://www.christianlegalcentre.com>

## **Please Note**

This Response document, together with the “CCFON and CLC Consultation Document” constitutes the response of Christian Concern for our Nation and the Christian Legal Centre to the Director of Public Prosecutions’ Consultation regarding his Interim Policy for Prosecutors in respect of Cases of Assisted Suicide, which was launched on 23<sup>rd</sup> September 2009.

It is vital that both documents should be read and that the “yes”/“no” answers given in the Consultation Document should not be read without taking into account our comments here.

This part of our response is structured as follows:

- Executive Summary
- General Comments on the Approach taken by the Director of Public Prosecutions in his Interim Policy
- Comments on Selected Questions in the Consultation
- Conclusion

## **Executive Summary**

1. A number of factors identified by the Director of Public Prosecutions’ Interim Policy for Prosecutors in respect of Cases of Assisted Suicide (“the Interim Policy”) to be taken into account in deciding whether or not to prosecute are irrelevant, namely, the failing health of the victim; the suspect’s close relationship to the victim; the suspect’s presumed motivation; and the victim’s apparent wish to commit suicide. If these factors were to be taken into account as reasons not to prosecute, then this would remove the protection of the law from very vulnerable people and thus change the law on assisted suicide. The Interim Policy fails to recognise that such people need additional protection, and where suicidal, possibly treatment for a mental disorder. It also fails to take into account the high incidence of abuse and crime that occurs between relatives, especially abuse of the elderly.
2. Parliament has repeatedly rejected legalising assisted suicide for terminally-ill or severely disabled people and it is a fundamental principle of the law that its protection should be afforded equally to all, irrespective of their age, sex, race, religion—**and** state of health.
3. The Interim Policy unwittingly gives the impression of changing the law by allowing those who have assisted the suicide of someone who is very ill or disabled and who has a persistent wish to commit suicide to expect that they will escape prosecution. This approach may exceed the authority given to the Director of Public Prosecutions (“DPP”), contravenes the principles of the Rule of Law and usurps the constitutional role of Parliament.
4. There is no mention in the Interim Policy of the presumption in favour of prosecution that all prosecutors are bound to apply in making their overall assessment as to whether a prosecution should take place.
5. The Interim Policy states that it applies not only to cases like that outlined in the *Purdy* decision, where the victim plans to travel to a country where assisted suicide is

legal, but also to suicides that occur in England and Wales. This goes far beyond the requirement given to the DPP in his mandate from the House of Lords.

6. Some of the factors listed in the Interim Policy contradict the principles that underlie the factors for and against prosecution that are outlined in the Code for Crown Prosecutors.
7. Some of the factors in favour of prosecution for assisted suicide should alert prosecutors to consider a charge of murder, manslaughter or encouraging a suicide instead.
8. Compassion is a concept that is misunderstood by the Interim Policy. In our submission, compassion does not seek to kill those patients medicine cannot cure.
9. In our opinion, the practical effect of the operation of the Interim Policy may well be to partially decriminalise the offence of assisted suicide by discretionary non-enforcement for certain categories of people and in doing so the DPP may have exceeded his discretionary authority, which is limited by the Bill of Rights 1688. The Interim Policy is not fit for its purpose because it would place vulnerable people at risk.

## **General Comments on the Approach taken by the Director of Public Prosecutions in his Interim Policy**

We recognise that the Director of Public Prosecutions (“DPP”) has been ordered to publish his policy on prosecuting cases of assisted suicide by Law Lords and we welcome the fact that he has acknowledged that whilst he can issue a policy on prosecution, only Parliament can change the law.<sup>1</sup> We acknowledge that the DPP has been given a very challenging task. However, the Interim Policy gives the impression of changing the law by making certain categories of cases exempt from prosecution.

Paragraph 2.6 of the current Code for Crown Prosecutors declares that: “Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the [Human Rights] Act 1998”<sup>2</sup>, which means that the case law of the European Court of Human Rights (“ECHR”) must be taken into account in their decision-making in accordance with section 2(1)(a) of that Act.

The practical effect of the Interim Policy is to provide an exemption for particular categories of cases from the enforcement of the law.<sup>3</sup> This comes about both because the motives of those who assist the suicide of someone who is suffering from “a terminal illness; or a

<sup>1</sup> See paragraph 2 of the Consultation Document.

<sup>2</sup> See paragraph 2.6 of the current Code for Crown Prosecutors, which is available at the following link: <http://www.cps.gov.uk/publications/docs/code2004english.pdf>.

<sup>3</sup> The comments of Lord Carlile of Berriew in The Daily Telegraph on 14<sup>th</sup> November 2009 bear repeating:

*We have a right to know what the law is. That is beyond question. But, if the actions we propose are clearly illegal, should we be told what we need to do to avoid being prosecuted for them? That is the question at the heart of this debate. My answer is No.*

Available at: <http://www.telegraph.co.uk/news/newstoppers/politics/lawandorder/6562860/New-guidelines-on-assisted-suicide-could-put-vulnerable-people-at-risk-says-Lord-Carlile.html>.

severe and incurable physical disability; or a severe degenerative physical condition from which there was no possibility of recovery” or of someone who “had a clear, settled and informed wish to commit suicide” are taken into account and because those who are contemplating such assistance will now know in advance how to avoid prosecution.<sup>4</sup>

Although paragraph 2 of the Interim Policy states that “The DPP cannot assure a person in advance of committing a crime that a prosecution will not be brought”, it is hard to envisage a situation where the circumstances of a crime display more of the “factors against prosecution” that are said to carry more weight, but a prosecution is nonetheless brought against the person assisting the suicide. Such an effect is contrary to the will of Parliament as expressed in the Suicide Act 1961, which admits of no explicit exceptions that relate to the suspect’s motive in its ban on assisted suicide<sup>5</sup> and as expressed clearly twice in the last four years, when the House of Lords rejected the legalisation of assisted suicide for terminally ill people (and therefore for everyone). To elaborate a policy that proposes the likely non-enforcement for a class of crimes for certain categories of people that Parliament has clearly and decisively refused to legalise, is tantamount to usurping the constitutional role of Parliament as legislator.

It is also contrary to the thinking of the ECHR, which held in *Pretty* that:

*Strong arguments based on the Rule of Law could be raised against any claim by the executive to exempt individuals or classes of individuals from the operation of the law.*<sup>6</sup>

We therefore submit that the publication of this Interim Policy in its present form, which verges on non-enforcement of the law, is contrary to the will of Parliament as expressed most recently in the House of Lords on 7<sup>th</sup> July 2009.

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<sup>4</sup> See for example the comment by Dignity in Dying on the Interim Policy:

*The policy is significant because it makes clear that under certain circumstances, some people who assist a loved one to die will not be prosecuted.*

The comment is available at: <http://www.dignityindying.org.uk/assisted-dying/dpps-policy-on-assisted-suicide.html>. See also the comments of Catholic Archbishop Peter Smith at: [http://www.catholicchurch.org.uk/ccb/catholic\\_church/legislation\\_and\\_public\\_policy/consultation\\_assisting\\_suicide/archbishop\\_peter\\_smith\\_on\\_the\\_director\\_of\\_public\\_prosecutions\\_consultation\\_on\\_assisting\\_suicide](http://www.catholicchurch.org.uk/ccb/catholic_church/legislation_and_public_policy/consultation_assisting_suicide/archbishop_peter_smith_on_the_director_of_public_prosecutions_consultation_on_assisting_suicide).

<sup>5</sup> See the letter to *The Daily Telegraph* from a retired Parliamentary Draftsman on 14<sup>th</sup> September 2009:

*...section 2(1) of the Suicide Act 1961...clearly states that it is a criminal offence to aid or abet the suicide, or attempted suicide, of any person. There is no let-out for compassion or good faith.*

*In issuing guidelines on prosecution policy, the DPP has no power to change what the Act says. On the contrary, his duty is loyally to enforce the Act.*

Francis Bennion, Budleigh Salterton, Devon. Available at:

<http://www.telegraph.co.uk/comment/letters/6183483/Employers-secretly-told-of-unsubstantiated-paedophile-claims-against-workers.html>.

<sup>6</sup> See paragraph 77, *Pretty v UK* available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=698325&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

## The need for the Presumption in Favour of Prosecution to be Included in the Interim Policy

No mention is made of the presumption in favour of prosecution in the Interim Policy, yet paragraph 7 states that the Code for Crown Prosecutors will be applied by prosecutors. Paragraph 5.7 of the Code for Crown Prosecutors determines:

*Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed. **A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour**, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution [by offering the person a simple or conditional caution] (Our emphasis).<sup>7</sup>*

This presumption is an important principle, because if a prosecutor loses sight of it, he or she is likely to weigh up the factors in favour of and against prosecution as if they were of equal significance and adopt a dangerously neutral stance. The Interim Policy actually proposes such an approach where it states in paragraph 7 that:

*...If there is sufficient evidence, prosecutors should consider **whether** a prosecution is needed in the public interest. (Our emphasis in bold).*

Such an approach makes light of the serious nature of the offence and tends to undermine the Rule of Law. Paragraph 5.9 of the Code affirms that:

*The more serious the offence, the more likely it is that a prosecution will be needed in the public interest....*

Assistance with suicide is a very serious offence that merits up to 14 years' imprisonment. It is of great concern that the Interim Policy thus weakens the enforcement of the Suicide Act 1961 by allowing prosecutors to consider the public interest factors specific to assisted suicide without reference to the presumption in favour of prosecution and perhaps to its exclusion. The Interim Policy therefore requires a clear statement that a prosecution will normally take place for any case of assisted suicide.

## Jurisdiction

The decision in the *Purdy* case should not be interpreted more widely than its words. The House of Lords decided that the Director of Public Prosecutions should publish his policy in relation to cases "such as that which Ms Purdy's case exemplifies",<sup>8</sup> that is, cases "where the offence in contemplation is aiding or abetting the suicide of a person who is terminally ill or

<sup>7</sup> See the current Code for Crown Prosecutors, which is available at the following link: <http://www.cps.gov.uk/publications/docs/code2004english.pdf>. Paragraph 4.7 of the proposed Code is similar:

*A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour...*

See the DPP's Consultation document on the proposed Code for Crown Prosecutors at: [http://www.cps.gov.uk/consultations/rccp2\\_consultation.pdf](http://www.cps.gov.uk/consultations/rccp2_consultation.pdf).

<sup>8</sup> See paragraph 56 of the decision at:

<http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090730/rvpurdy.pdf>.

severely and incurably disabled, who wishes to be helped to travel to a country where assisted suicide is lawful and who, having the capacity to take such a decision, does so freely and with a full understanding of the consequences.”<sup>9</sup> It is therefore unnecessary and undesirable for the Director of Public Prosecutions to determine that the Interim Policy should apply to suicides in England and Wales as he does in paragraph 5.

Allowing the Interim Policy to apply to suicides in England and Wales would “drive a coach and horses” though section 2(1) of the Suicide Act 1961, whose prohibition of assisting suicides has been recently upheld by Parliament. The Interim Policy is not robust enough to protect the weak and vulnerable from abuse, and allowing people to think that they will not be prosecuted for assisting a suicide in this country where such assistance remains illegal is tantamount to usurping the authority of Parliament and gives the impression of re-writing the law by making certain categories of people likely to be exempt from prosecution.

The hurdle of having to travel abroad should act as an important disincentive to those thinking of committing suicide and will stop those who have not thought seriously about it.

### **Public Interest Factors Common to All Prosecutions**

Paragraph 14 of the Interim Policy determines that prosecutors should consider the public interest factors in the Code for Crown Prosecutors as well as the factors set out in the Interim Policy, but the factors in the Code could easily be overlooked, because only those public interest factors specific to assisted suicide are listed in the Interim Policy. For the avoidance of doubt, the Interim Policy should contain in a principal list, all the public interest factors for and against prosecution that are found in the Code for Crown Prosecutors and it should then list the public interest factors that are suitable for cases of assisted suicide once the Interim Policy has been revised.

Public interest factors in the Code that are relevant to the offence of assisting a suicide are listed at paragraph 5.9, which determines that:

*A prosecution is likely to be needed if:*

*e. the defendant was in a position of authority or trust;*

...

*g. there is evidence that the offence was premeditated;*

...

*i. the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;*

...

*q. a prosecution would have a significant positive impact on maintaining community confidence.*

The Interim Policy as a whole seems to ignore the principles in factors “g” and “q” above. Assistance with suicide is by nature premeditated. Prosecution of assisted suicides would have a significant and positive impact on maintaining the confidence of those elderly, disabled and otherwise vulnerable members of the community.

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<sup>9</sup> See paragraph 54 and also paragraph 31.

Factors “e” and “i” tend to contradict certain factors proposed in the Interim Policy. We make further reference to them in our discussion below on the factors listed in the Interim Policy. The Interim Policy should therefore be reviewed in the light of all of these factors and they should be re-stated after paragraph 7 of that Policy.

### **Suspect’s Motivation**

The Interim Policy appears to be based on the assumptions that a suspect’s motivation in assisting a suicide can determine whether a prosecution should take place under the Suicide Act 1961; that such motivation can be ascertained with a degree of certainty necessary to decide on the public interest in instituting a prosecution; and that such motivation can be wholly of one kind or wholly of another.

The Suicide Act 1961, as amended by the Coroners and Justice Act 2009, states that a person can be found guilty of assisting a suicide if he or she did an act that was capable of assisting a suicide (or an attempted suicide) and if the act was intended to assist such a suicide. There is no mention of the defendant’s motivation on the face of the law and we take the view that the written statement of the DPP’s discretionary decision-making in the Interim Policy, with its stated reliance on motivation, may have the unintended practical effect of giving the impression of changing the law on assisted suicide, which only Parliament is entitled to do, as mentioned in the Interim Policy.

### **Practical Objections to Consideration of Motive as part of the Interim Policy**

Motivation is necessarily subjective and difficult or even impossible to ascertain with any degree of certainty. A son may assist with his father’s suicide partly to relieve his father’s suffering, partly so that he is not burdened with having to care for his father anymore and partly in order to obtain his inheritance sooner. He may only be motivated by two of these factors, but it is very unlikely that he will be motivated “wholly by compassion”. It would be impossible to tell whether he harboured some ulterior motive somewhere in his heart when he carried out the assistance. In this respect, the DPP’s Interim Policy gives too little credit to the complexity of human psychology and ingenuity and risks opening the floodgates to assisted suicide because of its apparent naïvety.

### **Characteristics of the Victim Irrelevant to Culpability**

The protection of the law should extend to every person, whatever their age, capabilities, state of health or other characteristics. To set out a policy that advocates prosecution of those who have assisted in the suicide of a particular group of people, or one that suggests allowing suspects who have assisted in the suicide of another type of person escape prosecution is to discriminate against certain types of people and to imply that they are not worthy of the protection of the law.<sup>10</sup> We think that it is wrong in principle to take the characteristics of the victim into account in determining whether a prosecution should take place. The characteristics of the victim are relevant to sentencing policy, and there they might suggest that a higher sentence is merited for assisting with the suicide of a young person, or a vulnerable, suggestible, elderly or sick person, but assisting any person to

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<sup>10</sup> See the comments of Lord Carlile of Berriew in “New guidelines on assisted suicide could put vulnerable people at risk, says Lord Carlile”, *The Daily Telegraph*, 14<sup>th</sup> November 2009, at: <http://www.telegraph.co.uk/news/newstoppers/politics/lawandorder/6562860/New-guidelines-on-assisted-suicide-could-put-vulnerable-people-at-risk-says-Lord-Carlile.html>.

commit suicide remains a serious criminal offence—whatever reasons a person may have for doing so.

The Code for Crown Prosecutors states at paragraph 5.8 that:

*...Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence **or the circumstances of the suspect**.... (Our emphasis in bold).*

The circumstances of the victim should therefore be irrelevant.

If this principle is not accepted, we suggest that it is more serious to assist the suicide of the groups mentioned above, but that it remains serious to assist in any suicide. Therefore, if the first factor in favour of prosecution (“The victim was under 18 years of age”) is retained, we would suggest that any other factor that makes the victim vulnerable should also be a factor in favour of prosecution.<sup>11</sup> Under those circumstances, we would recommend the addition of the following factor in favour of prosecution:

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

### **The Nature of Compassion**

The assumption is made that compassion can legitimately include killing someone who is suffering in order to end that suffering in the same way that one would put an animal to sleep. This is contrary to the principle, still recognised in law, of the sanctity of human life.<sup>12</sup> To allow such a concept of compassion to be used in enforcing the Suicide Act 1961 will give the impression in its practical effect of changing the law on assisted suicide.

In suffering, life can still have meaning and purpose. Even to humanists:

*...the unique human capacities for the exercise of love, rationality, creativity, political union and existential gratitude carry ...inherent ethical weight...it follows...that the preservation of human life is a sacred principle and that no individual enjoys sovereign jurisdiction over his own possession of life.*

*To reject this perspective is to abandon the entire basis of Western humanism over thousands of years. It is to replace the noble ideal of humanity with the bizarre ideal of a*

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<sup>11</sup> See the comments of Baroness Ilora Finlay of Llandaff, a Professor in Palliative Medicine at Cardiff University and the Immediate-Past President of the Royal Society of Medicine, who said in an interview with the BBC on 29<sup>th</sup> August:

*You have to remember that when people are ill it is very, very easy to influence the way that they feel about themselves.*

*If someone is made to feel that they being a nuisance to the NHS, a nuisance to the state and their families are huffing and puffing, perhaps about care costs, perhaps because they want to have a little bit of inheritance, then that person could feel that not only are they a burden but they have a duty to die.*

The interview is available on the following web page: <http://news.bbc.co.uk/1/hi/wales/8228171.stm>.

<sup>12</sup> Per Lord Goff in *Airedale NHS Trust v Bland* [1993] AC 789 at 863-4.

*consuming and self-consuming animal...natural law...grants human existence a unique status. Any laws or judgments that deny the wrongness of self-murder and its abetting in opposition to these principles should be seen as lacking in legitimacy.*<sup>13</sup>

For many Christians, there is the hope that God might heal them and many have been healed—even of terminal illnesses. To cut off such a possibility is presumptuous indeed, especially as even those of no faith are sometimes healed or recover unexpectedly.

As Dr. Trevor Stammers said in his letter to *The Daily Telegraph* on 6<sup>th</sup> August 2009:

*Compassion endures, not kills, when it cannot cure.*<sup>14</sup>

### **Factors in the Interim Policy that Indicate the need for a Prosecution for Homicide or another Crime**

The following factors should be included in the consideration of factors in favour of prosecution in the public interest for assisted suicide, but where they arise, the prosecutor should consider the appropriate homicide charge instead.

In relation to paragraphs 17 and 18 of the interim policy, we submit that where little or no corroborating evidence is forthcoming as to the victim's desire to die, the case should proceed as a prosecution for murder, and the Interim Policy should cease to apply. This is a vital safeguard to ensure that a case like Harold Shipman's cannot repeat itself.

Factors 3, 4 and 5 (in favour of prosecution) are likely to apply to cases where the victim did not in fact wish to be killed and any suspect to whom they apply should be prosecuted for murder or manslaughter, rather than for assisting a suicide. The Interim Policy should cease to apply in such cases.

A suspect to whom factor 8 (in favour of prosecution) would apply because of his or her encouragement of, or influence in the suicide of the victim, should in fact be prosecuted for encouraging the victim's suicide, not for assisting with it. The Interim Policy should cease to apply in such a case and a prosecution for that other offence under section 2(1) of the Suicide Act 1961 should be pursued.

In relation to factor 9 (in favour of prosecution), it stands to reason that if the victim could have undertaken the act that constituted the assistance him or herself, there is no good reason for the suspect to have undertaken the act in assisting the victim. This immediately calls into question the suspect's intention (and motivation) in rendering such assistance and there is therefore good reason to think that the victim did not wish to be assisted to commit suicide in that way. In such a case, it is our view that prosecutors should cease to apply the Interim Policy and should instead proceed with a prosecution for murder.

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<sup>13</sup> See Professor John Milbank's letter to *The Daily Telegraph* dated 6<sup>th</sup> August 2009, "Assisted suicide denies the value of life and is an affront to Western humanism", available at: <http://www.telegraph.co.uk/comment/letters/5978848/Assisted-suicide-denies-the-value-of-life-and-is-an-affront-to-Western-humanism.html>.

<sup>14</sup> See: <http://www.telegraph.co.uk/comment/letters/5978848/Assisted-suicide-denies-the-value-of-life-and-is-an-affront-to-Western-humanism.html>.

## Comments on Selected Questions in the Consultation

### Question 1: Factors in Favour of Prosecution:

- (1) *The victim was under 18 years of age.* N

As detailed above in the section entitled “Characteristics of the Victim Irrelevant to Culpability”, we do not believe this factor is relevant to the decision whether to prosecute or not. It is relevant to sentencing policy. It is not objectionable in itself, but it does tend to suggest that some types of people deserve the protection of the law more than others. If this principle is not accepted, we would suggest the inclusion of the following factor in addition to that above:

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

- (2) *The victim’s capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty.* Y

We agree that this factor is necessary, but the word “recognised” should be removed, because it narrows the factor unnecessarily. We suggest that it should be amended to cover all known mental disorders including all kinds of mental incapacity and those complaints that may affect capacity, such as depression.

- (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

Any persistent wish to commit suicide may well stem from a mental illness or depression, making it incompatible with factor 2 above. Once a suicide has occurred, it will also be difficult to ascertain the victim’s state of mind before death. Please see the section above entitled “Factors in the Interim Policy that Indicate the need for a Prosecution for Murder or another Crime”. Finally, the meaning of “informed” should be clarified.

- (4) *The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide.* Y

Again, this factor is likely to take the decision regarding prosecution out of the ambit of the assisted suicide policy and may instead indicate the need to pursue the case as a prosecution for murder or another crime (see above). It is certainly a factor in favour of prosecution, but the question will be as to the charge that should be put before the court.

- (5) *The victim did not ask personally on his or her own initiative for the assistance of the suspect.* Y

Please see our answer to factor 4 above.

(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

This factor is wholly unacceptable, because it gives this category of vulnerable victims less protection than other members of society.

Additionally, it is also drafted far too widely because it would include sufferers of insulin-dependent diabetes, chronic heart disease, arthritis and many forms of disability that are not fatal in the short-term.

(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

It is impossible to establish the motives of a person with any certainty. This factor should therefore be amended to remove the reference to motivation and to emphasise instead the suspect's prospect of gaining from the death of the victim. We would suggest that the factor should be re-drafted along the following lines:

*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.*

Should this factor be found to apply to a case, it would raise the question whether the death was truly a suicide or homicide. This should alert the prosecutor to consider a charge of homicide instead. Please see our section above entitled "Factors in the Interim Policy that Indicate the need for a Prosecution for Murder or another Crime".

(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

As it is a crime to encourage a suicide, we think that it is essential that the words "maliciously" and "improper" should be removed from this factor. Whilst the factor is acceptable as it stands, the question is once again whether a suspect who has "encouraged" or "influenced" the victim to commit suicide should not be prosecuted for "encouraging suicide" rather than "assistance with suicide", making the operation of the Interim Policy inappropriate. See further, our section above entitled "Factors in the Interim Policy that Indicate the need for a Prosecution for Murder or another Crime".

(9) *The victim was physically able to undertake the act that constituted the assistance him or herself.* Y

Please see our section above entitled “Factors in the Interim Policy that Indicate the need for a Prosecution for Murder or another Crime”. Arguably, a victim who can undertake the act with which he or she was assisted may not have wanted any assistance and may not have wanted to commit suicide. The Interim Policy should not apply in such a case; rather, the suspect should be prosecuted as a murder or manslaughter case.

(10) *The suspect was not the spouse, partner or a close relative or a close personal friend of the victim.* N

The familial relationship of the suspect to the victim is irrelevant to the question of prosecution. Please see also the discussion under factor 6 against prosecution, below. Instead, the Home Office Homicide Index indicates that over 35% of murders are committed by a spouse/lover, offspring or other relative.<sup>15</sup>

(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

This factor is commendable, as it seeks to prevent the promotion of suicide.

(12) *The suspect gave assistance to more than one victim who were not known to each other.* Y

This factor would be acceptable if its qualification was removed—from the word “who” onwards. It should be irrelevant whether the victims knew each other or not.

(13) *The suspect was paid by the victim or those close to the victim for their assistance.* Y

This factor is creditable, because it seeks to deter the establishment of a suicide industry.

(14) *The suspect was paid to care for the victim in a care/nursing home environment.* Y

This is an important and weighty factor in the battle against abuse of the elderly and infirm. It could be improved by removing the reference to payment, as any carer who assisted a suicide would be equally culpable, whether they were paid or not. The factor should also be extended to cover all those in the caring or health professions in whatever setting they perform their duties. We suggest the following additional factor in favour of prosecution:

*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.*

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<sup>15</sup> See: <http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr2604.pdf>.

(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

This is commendable as it seeks to prevent distress to witnesses of the suicide and the negative influence such an event might have on them. In the same way, any element of an assisted suicide that tends towards the promotion of suicide or even its publication should be treated as a factor in favour of prosecution, to prevent “copycat” suicides. We recommend the inclusion of the following additional factor in favour of prosecution:

*The suspect assisted in publicising the victim’s suicide.*

(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

The idea behind this factor is creditable for the same reasons as factors 12 and 13 above, however, it would be better if redrafted as follows (our suggestions are in bold):

*The suspect was a member **or client** of an organisation or group, **a purpose or activity** of which is to provide a physical environment [whether for payment or not], in which to allow ~~another~~ **others, or information or resources to assist others** to commit suicide.*

### **Questions 3 and 4: Factors that should carry more weight than the other factors in deciding that a prosecution is needed in the public interest:**

We believe that factors in this list should:

- seek to protect victims who are particularly vulnerable;
- single out suspects whose status indicates an intention to assist with a suicide for their own benefit;
- advocate the prosecutions of those who assist with the suicides of more than one, or who promote suicide to others, or who publicise suicides in any way; and
- Advance the prosecutions of suspects who have abused positions of trust in assisting victims, or who have used violence in their assistance.

Please see our list of suggestions in our Consultation Document.

It is particularly important to seek to prevent “copycat” suicides, or the promotion of the idea of suicide as a way out of suffering, as demonstrated by the high numbers of teenage suicides in a particular part of Wales. The case of Angela Harrison is also noteworthy: Angela took her own life after watching the drama “A Short Stay in Switzerland”, which was shown in January 2009. Her brother believed that the drama was the “final straw in his sister’s battle against her illness”.<sup>16</sup>

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<sup>16</sup> See “A multiple sclerosis sufferer ‘killed herself after watching a BBC drama about assisted suicide’ ” *The Daily Telegraph*, 8<sup>th</sup> May 2009, available at: <http://www.telegraph.co.uk/health/healthnews/5296898/A-multiple-sclerosis-sufferer-killed-herself-after-watching-a-BBC-drama-about-assisted-suicide.html>.

We believe that there are factors on this list that would not only make a case of assisted suicide more serious, but would indicate that the homicide involved was not a suicide at all. Please see our section above entitled “Factors in the Interim Policy that Indicate the need for a Prosecution for Murder or another Crime”.

### **Question 5: Factors Against Prosecution:**

(1) *The victim had a clear, settled and informed wish to commit suicide.* N

This factor is unacceptable as an excuse not to enforce the law. A persistent wish to commit suicide is likely to indicate a mental disorder and renders the patient particularly vulnerable and in need of the law’s protection. Please see our reasoning under factor 3 in favour of prosecution, above.

Public interest factor “i” in the Code for Crown Prosecutors in favour of prosecution tends to contradict this factor; it reads:

*i. the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;*

We think that victims who are vulnerable because of their suicidal thoughts or tendencies, their state of health or prognosis, their age, infirmity or suggestibility, ought to be better protected from abuse and exploitation, especially when such abuse or exploitation could lead to their deaths. We would strongly suggest, therefore, that public interest factor “i” in favour of prosecution should be applied in preference to factor 1 against prosecution in cases of assisted suicide.

(2) *The victim indicated unequivocally to the suspect that he or she wished to commit suicide.* N

This factor is also unacceptable for the reasons given immediately above, and for those below factor 3 in favour of prosecution. It puts despairing people in a very vulnerable position if they wish to “cry for help” by talking about suicide. How can the prosecution ascertain with any degree of certainty that the indication was “unequivocal” after the event? In a civilised society, people should not be permitted to take the life of another merely because they appeared to wish to commit suicide. Civilised people would seek to dissuade such a person, not to help kill them.

(3) *The victim asked personally on his or her own initiative for the assistance of the suspect.* N

This factor is unacceptable and should be deleted. Please see our reasoning for the two factors immediately above and the answers referred to there.

(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

This factor is unacceptable and should be removed from the list. Please see our reasoning for factor 6 in favour of prosecution, above, and the sections above entitled “Characteristics of the Victim Irrelevant to Culpability” and “General Comments on the Approach taken by the Director of Public Prosecutions in his Interim Policy”. Please also see our reasoning regarding public interest factor “i” in favour of prosecution in the Code for Crown Prosecutors, above, in relation to factor 1 against prosecution.

(5) *The suspect was wholly motivated by compassion.*

Y

This factor would be acceptable if it was realistic to believe that a person’s motivation could be proved to the necessary standard. Please see our reasoning under factor 7 in favour of prosecution, above, and the sections of our comments mentioned there. We would suggest that this factor is redrafted as follows:

*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.*

(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

This factor is unacceptable as it demonstrates the naïvety of characterising a “spouse, partner...close relative or...close personal friend of the victim, within the context of a long-term and supportive relationship” as somehow less likely to be blameworthy in assisting the victim to commit suicide. The contrary must surely be true, given that such a suspect is likely to have been burdened with the care of the victim for some time and that close relationships often lead to the bitterest of resentments and the most secretive of manipulations. The high incidence of domestic violence alone makes this factor entirely unacceptable, quite apart from the many instances of abuse of the elderly known to our society (not to mention the high incidence of murder by close relatives revealed in the Homicide Index referred to above).

Public interest factor “e” in the Code for Crown Prosecutors tends to contradict this factor; it reads:

*e. the defendant was in a position of authority or trust;*

We think that it is more serious if people in positions of authority or trust—relatives or not—assist with the suicide of a person and therefore we think that factor “e” should be applied in cases of assisted suicide instead of factor 6 against prosecution, above.

Factor 6 against prosecution is also contrary to the law on Familial Deaths contained in s. 5 of the Domestic Violence, Crime and Victims Act 2004 (“DVCVA 2004”), which creates an offence of causing or allowing the death of a child under the age of 16, or of a vulnerable adult. This stand-alone offence imposes a duty upon members of a household to take reasonable steps to protect children or vulnerable adults within that household from the foreseeable risk of serious physical harm from other household members.<sup>17</sup>

(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

This factor appears to be acceptable, but requires clarification as to what “minor assistance or influence” means and as to what types of “lawful employment” are envisaged. The factor should not under any circumstances be applied to those who provide care of any kind, whether healthcare or personal care.

Public interest factor “e” in the Code for Crown Prosecutors would also tend to contradict this factor if the “lawful employment” envisaged were to include the caring professions; see our reasoning for factor 6 against prosecution, above.

(8) *The victim was physically unable to undertake the act that constituted the assistance him or herself.* N

This factor is not acceptable because it tends to suggest that those who require assistance with suicide require less protection from the law, when the reverse is true. This factor therefore discriminates against the disabled in offering them less protection against murder and should be removed. Please also see our reasoning regarding public interest factor “i” in the Code for Crown Prosecutors, above, in relation to factor 1 against prosecution.

(9) *The suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide.* Y

This factor is acceptable and indicates a lower level of culpability. It is still difficult to see how such dissuasion could be proved after the event, however.

(10) *The victim has considered and pursued to a reasonable extent recognised treatment and care options.* N

Factor 10 is unacceptable, both because it is irrelevant and because it mimics the stereotype publicised by the pro-euthanasia lobby, who wish to tie ideas of suffering and disability to assisted suicide in order to make it more acceptable to the public. Please see our reasoning below factor 6 in favour of prosecution, above, and the sections above entitled “Characteristics of the Victim Irrelevant to Culpability” and “General Comments on the Approach taken by the Director of Public Prosecutions in his Interim Policy”. Please also

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<sup>17</sup> See: [http://www.cps.gov.uk/legal/h\\_to\\_k/homicide\\_murder\\_and\\_manslaughter/#FAMILIAL\\_DEATHS\\_I](http://www.cps.gov.uk/legal/h_to_k/homicide_murder_and_manslaughter/#FAMILIAL_DEATHS_I).

see our reasoning regarding public interest factor “i” in the Code for Crown Prosecutors in favour of prosecution, above, in relation to factor 1 against prosecution.

*(11) The victim had previously attempted to commit suicide and was likely to try to do so again.* N

This is an unacceptable factor. Any persistent wish to commit suicide may well stem from a mental illness or severe depression, making it incompatible with factor 2 in favour of prosecution, above. Please see our reasoning below factors 1 and 2 against prosecution, above.

*(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

This factor is acceptable for the same reasons as those given for factor 9 against prosecution, above.

*(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

This is an acceptable factor, but should not be allowed to fool prosecutors into thinking that the suspect is innocent.

### **Questions 7 and 8: Factors that should carry more weight than the other factors in deciding that a prosecution is not needed in the public interest:**

Our answers above are based on the practical need to respond to this Consultation. However, we believe that cases of assisted suicide should be prosecuted, as we believe in the importance of the protection of the vulnerable, the sanctity of life and the need to provide proper support and palliative care at the end of life. We do not believe in legalised or non-enforced assisted suicide law or policy. The Bible commandment teaches us “thou shalt not kill”. The case of *Purdy* and this subsequent policy is leading our society in the wrong moral direction away from clear thinking about what is right and wrong. It bases such decision-making on the wrong concept of encouraging beliefs in a moral grey area and gives the green light to a policy that is against the clear will of Parliament and, more importantly, against the Ten Commandments, which forbid the intentional taking of life.

## Conclusion

The Interim Policy is a valiant attempt to comply with the order of the House of Lords in the *Purdy* case. However, it unwittingly gives the impression of changing the law by effectively exempting from prosecution those who assist with the suicides of people who are seriously ill, disabled or suicidal, taking them outside the protection of the law that they so obviously need. In doing so, as in stating that his policy will apply to suicides committed in England and Wales, the DPP may have exceeded his authority and usurped the legislative role of Parliament, which twice rejected the legalisation of assistance with suicide for vulnerable people.

As the House of Lords stated in *Pretty*, the DPP's discretion is limited as "the power to dispense with and suspend laws and the execution of laws without the consent of Parliament was denied to the crown and its servants by the Bill of Rights 1688."<sup>18</sup> Despite the policy stating that the DPP cannot assure a person in advance that there will not be a prosecution, the practical effect of the policy will be that in certain circumstances the execution of the law will be suspended. In our opinion, the DPP has overstepped the power of his discretionary authority, given by Parliament in section 2(4) of the Suicide Act 1961.

The solution to the issue of the DPP's remit would have been to have narrowed the interim policy to include only cases of suicide abroad and in the narrowest of terms in relation to a case such as *Purdy* itself.

The Interim Policy naïvely assumes that a suspect's motives can be ascertained with a degree of certainty prior to the DPP's exercise of discretion and that a victim's family or close friends will always have his or her best interests at heart. The Policy fails to give sufficient weight to the seriousness of persons in positions of trust committing this offence and includes factors that might more properly be used to assess whether a person should be charged with the offence of assisting a suicide, or with the offence of murder or of encouraging a suicide.

The Interim Policy is inconsistent with the Code for Crown Prosecutors and should state that there is a presumption in favour of prosecution. It should be reviewed in the light of the general factors in favour of prosecution in the Code, as it tends to contradict some of the reasoning behind those factors. The policy says it is in addition to the Code, but because the public interest factors in favour of prosecution are not listed, they could easily be overlooked. Finally, the Interim Policy misunderstands the nature of compassion, which is to bear with the suffering of others and to endure, not to kill.

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<sup>18</sup> See *Pretty v. UK* (EHRC), in which paragraph 39 of the House of Lords' decision is quoted in paragraph 14, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=698325&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>. This decision explores the idea that the DPP may have the power to issue a statement on his prosecuting policy other than the Code for Crown Prosecutors, but not a proleptic grant of immunity from prosecution. It is arguable that although there is no clear undertaking of non-prosecution as argued for in the *Pretty* case, the practical effect of this policy could be expected to anticipate that certain categories of offence would not be prosecuted.