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## NEW GUIDELINES ON ASSISTED SUICIDE PROSECUTIONS

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On Thursday 25 February, the Director of Public Prosecutions (DPP), Keir Starmer, published his *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide*. It replaces the interim guidelines issued in September 2009, which were the basis for a public consultation, in response to which nearly 5,000 submissions were received. The new guidelines can be read in full at [http://www.cps.gov.uk/publications/prosecution/assisted\\_suicide\\_policy.html](http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html)

Overall, the guidelines are better than feared. Assisted suicide remains illegal. The case of Debbie Purdy, which forced the DPP to produce guidelines, has not changed the law. All cases of suspected assisted suicide will still be investigated. No-one will be guaranteed immunity from prosecution. As Keir Starmer stated: 'The policy does not change the law on assisted suicide. It does not open the door for euthanasia. It does not override the will of Parliament.'

Even so, there is one insuperable problem with issuing guidelines like these. They tell people in advance that, if certain conditions are met, they are unlikely to be prosecuted. This conveys a subtle message, namely, that assisting suicide can be acceptable; you can get away with it. That is a move in the wrong direction.

The new guidelines, which take effect immediately, list 16 'public interest factors' to be used in favour of bringing a prosecution and just six such factors (reduced from 13 in the interim policy) against such a move. Included in the former is a new factor 14: 'The suspect was acting in his or her capacity as a medical doctor, nurse, other healthcare professional... and the victim was in his or her care.' In other words, there will be no encouragement of doctor-assisted suicide.

Another positive change is the deletion of any reference to whether the victim had 'a terminal illness or a severe and incurable physical disability or a severe degenerative physical condition.' The interim guidelines had singled out those who were disabled or ill with the implicit intention that they would be afforded less protection than other people.

The interim guidelines tended to focus on the condition of the victim, whereas these new guidelines concentrate on the motives of the suspect. As a result, a prosecution would be less likely if, as the new factor 2 states: 'The suspect was wholly motivated by compassion.' However, this will prove to be a stumbling block. How can it be determined, especially when the only reliable witness is now dead? It would be naïve to suppose that every spouse or close family member would always act with compassion.

Words on paper are one thing – practical implementation is another. These guidelines must now be applied, never permissively and always safeguarding the vulnerable. Good laws protect people. We shall see.

Finally, it must be recorded that the DPP did listen and reacted positively to the many responses made by 'pro-life' people during the consultation period. For that, we are thankful. But, of course, this is not the end of the matter. Euthanasia, in all its ugly forms, will remain a touchstone for end-of-life issues. The battle goes on.

*The sixteen public interest factors in favour of prosecution are:*

- The victim was under 18 years of age.
- The victim did not have the capacity (as defined by the Mental Capacity Act 2005) to reach an informed decision to commit suicide.
- The victim had not reached a voluntary, clear, settled and informed decision to commit suicide.
- The victim had not clearly and unequivocally communicated his or her decision to commit suicide to the suspect.
- The victim did not seek the encouragement or assistance of the suspect personally or on his or her own initiative.
- The suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that he or she or a person closely connected to him or her stood to gain in some way from the death of the victim.
- The suspect pressured the victim to commit suicide.
- The suspect did not take reasonable steps to ensure that any other person had not pressured the victim to commit suicide.
- The suspect had a history of violence or abuse against the victim.
- The victim was physically able to undertake the act that constituted the assistance himself or herself.
- The suspect was unknown to the victim and encouraged or assisted the victim to commit or attempt to commit suicide by providing specific information via, for example, a website or publication.
- The suspect gave encouragement or assistance to more than one victim who were not known to each other.
- The suspect was paid by the victim or those close to the victim for his or her encouragement or assistance.

- The suspect was acting in his or her capacity as a medical doctor, nurse, other healthcare professional, a professional carer (whether for payment or not), or as a person in authority, such as a prison officer, and the victim was in his or her care.
- 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.
- The suspect was acting in his or her capacity as a person involved in the management or as an employee (whether for payment or not) of an organisation or group, a purpose of which is to provide a physical environment (whether for payment or not) in which to allow another to commit suicide.

*The six public interest factors against prosecution are:*

- The victim had reached a voluntary, clear, settled and informed decision to commit suicide.
- The suspect was wholly motivated by compassion.
- The actions of the suspect, although sufficient to come within the definition of the crime, were of only minor encouragement or assistance.
- The suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide.
- The actions of the suspect may be characterised as reluctant encouragement or assistance in the face of a determined wish on the part of the victim to commit suicide.
- The suspect reported the victim's suicide to the police and fully assisted them in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing encouragement or assistance.

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