



**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.

<b>Manner of preferred address: Mr/Mrs/Ms etc</b>	<b>Ms</b>
<b>First Name</b>	<b>Sarah</b>
<b>Family Name</b>	<b>Wootton</b>
<b>Any organisation you represent</b>	<b>Dignity in Dying</b>
<b>Postal Mailing Address</b>	<b>181 Oxford Street, London W1D 2JT</b>
<b>Contact telephone number</b>	<b>020 7479 7730</b>
<b>E-mail Address</b>	<b>sarah.wootton@dignityindying.org.uk</b>

### 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.

	<b>FACTORS IN FAVOUR OF PROSECUTION</b>	<b>Y/N</b>
(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"> <li>➤ a terminal illness; or</li> <li>➤ a severe and incurable physical disability; or</li> <li>➤ a severe degenerative physical condition;</li> </ul> <p>from which there was no possibility of recovery.</p>	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.	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:**

**Dignity in Dying's position on factor 6 is clarified in the our response to question 9.**

### 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.

	<b>FACTORS IN FAVOUR OF PROSECUTION</b>	<b>Y/N</b>
(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)	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.	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

**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.

	<b>FACTORS AGAINST PROSECUTION</b>	<b>Y/N</b>
(1)	The victim had a clear, settled and informed wish to commit suicide.	Y
(2)	The victim indicated unequivocally to the suspect that he or she wished to commit suicide.	Y
(3)	The victim asked personally on his or her own initiative for the assistance of the suspect.	Y
(4)	The victim had: <ul style="list-style-type: none"><li>➤ a terminal illness; or</li><li>➤ a severe and incurable physical disability; or</li><li>➤ a severe degenerative physical condition;</li></ul> from which there was no possibility of recovery.	Please select
(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.	Y
(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.	Y
(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.	Y
(11)	The victim had previously attempted to commit suicide and was likely to try to do so again.	Please select
(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.	Please select

## **QUESTION 6**

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

Dignity in Dying's position on factors 4, 11 and 13 is set out in our response to question 9.

## 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.

	<b>FACTORS AGAINST PROSECUTION</b>	<b>Y/N</b>
(1)	The victim had a clear, settled and informed wish to commit suicide.	Y
(2)	The victim indicated unequivocally to the suspect that he or she wished to commit suicide.	Y
(3)	The victim asked personally on his or her own initiative for the assistance of the suspect.	Y
(4)	The victim had: <ul style="list-style-type: none"><li>➤ a terminal illness; or</li><li>➤ a severe and incurable physical disability; or</li><li>➤ a severe degenerative physical condition;</li></ul> from which there was no possibility of recovery.	Y
(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.	Y
(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:**

## QUESTION 9

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

### 1. Overview

1.1 Dignity in Dying welcomes this draft prosecuting policy: it is an important step forward for patient choice because it provides much greater clarity in the law on assisted suicide than ever previously available in the public domain, whilst also setting out the need for vulnerable people to be protected from abuse.

1.2 The Director of Public Prosecutions (DPP) was given a very difficult task by the Law Lords when they ruled that he must produce a prosecuting policy (1). The DPP has taken a sensible and compassionate approach. When read as a whole, the factors weighing for and against prosecution provide a coherent picture of the circumstances that will be taken into account in decision-making around prosecutions for assisted suicide. By also reiterating that there can be no immunity from prosecution before the event, and making clear that decision-making in these cases is not a 'tick box' exercise but a case by case analysis, the DPP has outlined the decision-making process encompassed within his prosecutorial discretion without overstepping its limits.

1.3 The draft policy signals for the first time that a person compassionately assisting a loved one to die, in certain circumstances, is very unlikely to be prosecuted. As such the policy reflects what has been the practice of law in England and Wales for decades. This acknowledgement of existing practice in the words of the prosecuting policy will give many terminally ill people considering assisted suicide, (and their loved ones), much greater clarity on the law, and therefore peace of mind, in their final months and weeks of life, whether or not they eventually decide to end their life at a time of their choosing.

1.4 However, even with the prosecuting policy in place, the DPP and the Crown Prosecution Service (CPS) will be looking at the factors involved in a person's death after it has occurred. This is not the best way to protect vulnerable people. Up-front safeguards to make these (and other) checks before a person has been assisted to commit suicide would create a far safer process.

1.5 Dignity in Dying understands that it is beyond the DPP's power to introduce before the event checks, but would like to take this opportunity to strongly state our preference for assisted dying legislation that would give dying people greater choice and protection at the end of life, than the existing law and this policy can provide.

### 2. Comments on the factors weighing for and against prosecution

These comments are in addition to the responses given in questions 1 to 8.

#### a) Factors concerning mental capacity

2.1 Dignity in Dying supports the inclusion of factors 2 and 3 in favour of prosecution and

factor 1 against prosecution. There is a clear ethical difference between assisting the suicide of a person who had the mental capacity to make the decision to end their life, and assisting the suicide of a person who did not have the mental capacity to do so. The Mental Capacity Act 2005 Code of Practice defines mental capacity as the ability to make a decision, and gives guidance about assessing capacity to make specific decisions (2). Dignity in Dying recommends that the final prosecuting policy makes reference to this (this point is explained more fully in paragraphs 4.9 to 4.11 below).

b) Factors concerning terminal illness, disability and degenerative physical conditions

2.2 Dignity in Dying advocates greater patient choice at the end of life. We campaign for adults who are terminally ill and mentally competent to have the option of an assisted death. We do not make judgements on disabled people who have chosen to end their life, or loved ones who have reluctantly assisted them from compassionate motives. However Dignity in Dying's position is that there is an ethical difference between helping someone who is already dying to die at their request, and helping someone who is disabled but otherwise healthy, and who may have decades of life ahead of them, to commit suicide.

2.3 For these reasons the wording of factor 6 in favour of prosecution and factor 4 against prosecution give us serious pause for thought, whilst the final sub clause of both factor 6 in favour and factor 4 against prosecution 'a severe degenerative physical condition' again raises difficulties. Degenerative conditions cover a wide range of illnesses from Motor Neurone Disease and Progressive Supranuclear Palsy at one end of the spectrum to Inflammatory Bowel Disease, Diabetes and Arthritis at the other. Without wanting to diminish the suffering of people with those conditions listed in the second group, they are clearly in a different category to those in the first – progressive diseases which either directly cause death, or weaken the body to such an extent that the individual's death is caused by infection.

2.4 On one hand, as the DPP has stated, the factors listed in the policy need to be seen as a whole rather than in isolation (3). Looking at the high profile case of Daniel James, who was disabled and not terminally ill, it is hard to disagree with the DPP's reasoning in his decision not to prosecute Mr and Mrs James (4). On the other hand, the ethical line between assisting the death of a person who is already dying (which could be as a result of a 'progressive' illness such as Multiple Sclerosis that has entered the terminal phase), and the death of someone who is not, is clear.

2.5 Dignity in Dying's strong preference would be to see the distinction between a person who is dying and a person who is not (who may or may not be disabled) reflected in the prosecuting policy. The DPP could make reference to end-of-life indicators that are currently in use within the health service in his policy. For example, many healthcare professionals use the question: 'Would I be surprised if this patient was to die in the next six months or year?' when considering appropriate care pathways for patients suffering from terminal illnesses, and progressive conditions that are becoming terminal. If the health professional answers no to this question, then they initiate discussions about the end of life, and place the patient on their local or GP practice 'end of life care register' (5). This kind of reasoning could be incorporated in the policy but with clear wording setting the context as terminal illness and not old age.

c) Factors concerning physical ability to undertake the act

2.6 Dignity in Dying supports the principle behind factor 9 in favour of prosecution but there must be flexibility in how this factor is applied. For example, in relation to travelling abroad to be assisted to die in a jurisdiction where it is legal to do so, a person with a degenerative terminal illness may be able to book flights, but only with considerable difficulty. It is understandable that if they were to ask a loved one for help booking the tickets the loved one might help, knowing the stress this was causing their dying family member, and knowing the physical challenges that may lie ahead, such as a journey to Switzerland. This person should not be punished for this action in the context of compassionate assistance to a mentally competent, terminally ill adult.

d) Factors concerning motivation of the assister/s

2.7 Dignity in Dying strongly agrees with the principles set down in factor 7, 8 and 13 in favour of prosecution and factor 5 against prosecution: that those assisting a suicide who are wholly motivated by compassion should not be prosecuted, and that those assisting a suicide for malicious and non-compassionate motives, such as financial gain, should be prosecuted.

2.8 However it must be clear in the wording of factor 7 in favour of prosecution that if assistance to commit suicide is motivated by compassion, and potential financial gain is incidental to the decision to assist, a person should not be prosecuted. Even the most compassionate partner or child/ren could benefit financially from the death of a loved one. Looking at the publicly known cases of British people who have been assisted to die at Dignitas in Switzerland, in almost 80% of cases the person choosing to be assisted to die was accompanied by their partner and/or child or children – people who most likely would have experienced some financial gain as a result of the death of their partner or parent (6).

2.9 Dignity in Dying supports the principle that people should not attempt to make a profit by assisting suicides (factor 13 in favour of prosecution), and would support prosecution of those people whose primary motivation for assisting suicide is financial gain. However, we are concerned that there are some individuals who are terminally ill, and mentally competent, who want to die, but do have not ‘compassionate assister’ to ask. For example, they do not have a partner and do not want to ask so much of a friend. These people may seek out people who they can pay for help to commit suicide. We would suggest that the DPP does retain factor 13 in the policy, but note that there will be a group of people to whom this factor is a disappointment.

e) Factors concerning the provision of information

2.10 Factor 11 in favour of prosecution focuses on suspects providing specific information via the internet or in books to unknown victim/s (factor 12 also covers this point from the perspective of assisting multiple victims not know to each other). It must be clear in the prosecuting policy that providing information on the DPP's policy and legal rights and choices at the end of life is not the same as providing information on how to commit suicide. Dignity in Dying has already received over 250 calls, letters and emails this year from people wanting to know more about the law on assisted dying and a further 300 with queries on rights and choices at the end of life (7). We are a law-abiding organisation and we do not provide any information on how to end life, or on how to contact organisations overseas that provide assisted suicide services. However we do provide information on the law and the potential consequences of assisting a terminally ill loved one to commit suicide. With the prosecuting policy in place it is likely that Dignity in Dying and others (including solicitors and even the

Crown Prosecution Service) will be asked more of these questions.

2.11 It would be helpful if the DPP could clarify in the final version of the policy that providing information on the law and the prosecuting policy is not a crime (i.e. it does not count as ‘counselling’ under the original wording of the suicide Act 1961) whereas providing information on how to end life (i.e. method) does constitute a crime.

2.12 These points on provision of information have particular implications for people working in medical, health and care environments. Dignity in Dying supports the principle of factor 14 in favour of prosecution. However, given that some staff in care or nursing home environments will face questions from service users/clients about assisted suicide, there must be clear guidance on which questions from patients they can answer and which they cannot. Whilst this may be the responsibility of professional bodies, direction from the DPP on these issues raised in this section would be helpful.

2.13 Factor 7 weighing against prosecution seems tacitly to allow doctors to give patients their medical records (necessary for an assisted suicide at Dignitas). However, it is clear from factor 12 in favour of prosecution that anyone (doctors or others) assisting several people to die would be likely to face prosecution. Dignity in Dying is concerned that as a result people will not be able to have open and honest conversations about their wishes at the end of life with the health professionals caring for them, because of professional self censorship. If doctors are allowed by the policy to give people their medical records (which is their legal right anyway) this should be made clear. Whilst patients are hiding their true intentions from doctors there is no opportunity for an open discussion about treatment options. This will not serve to benefit vulnerable people, or prevent assisted suicides – in contrast being able to have an honest conversation with doctors might prevent some people from going on to end their life.

f) Factors concerning the decision-making of the person assisted to commit suicide

2.14 Dignity in Dying supports factors 3 and 4 in favour of prosecution and factors 1 and 2 against prosecution. In these factors the focus is clearly on the state of mind and decision-making of the person seeking an assisted suicide. It is also clear that for somebody to ‘assist’ the suicide of another without being explicitly asked by that person to do so is wholly unacceptable.

2.15 However, Dignity in Dying has concerns about factors 9, 11 and 14 against prosecution. Obviously there needs to have been discussion between the person requesting assistance and the suspect, so that suspect could be sure they had a clear settled wish to end their life. However, some compassionately motivated relatives and friends will have been more concerned to respect their loved one's wishes rather than seeking to dissuade them from ending their life in the manner of their choosing. This point does seem to have less legal weight than many of the others. The most important factors – the “victim’s” state of mind and the suspect’s motivation have already been covered.

2.16 We are also concerned that factor 11 against prosecution may lead some people to feel that they have to attempt suicide alone first before asking someone to help them. This could lead to botched suicides, which can have devastating physical, emotional and psychological consequences both for the victim and their loved ones. It would be better to say that previous suicide attempts are not vital, but if present, are an important factor.

2.17 Factor 13 against prosecution is rather confused, and again, would seem to carry less legal weight than other factors. Whether a person fully assists police in their enquiries does not appear to be relevant to the central questions of whether the deceased had made a clear, resolute decision, and whether the assister assisted for wholly compassionate reasons. It is also unclear what exactly is meant by this factor. For example, would fully assisting the police involve going directly to the police if a loved one's death was not being investigated as a potential assisted suicide, or simply co-operating if the police did investigate. Therefore Dignity in Dying's preference would be to remove or re-phrase this factor.

### 3. Comments on other elements of the prosecuting policy

#### a) Use of the term 'victim'

3.1 Dignity in Dying does not agree with the use of the term "victim" to describe the person who has committed, or has attempted to commit suicide (paragraph 4). In considering circumstances when it may or may not be in the public interest to prosecute for assisting suicide, this policy recognises that the circumstances in which a person may be assisted to commit suicide are highly variable.

3.2 If an individual has made a rational, well-informed decision without being subject to any undue pressure or influence, but needs physical help to end their life, they are not a "victim", and it is inappropriate to describe them as such. This is completely different to a situation whereby an individual is maliciously encouraged and/or assisted to commit suicide. Such an individual certainly would be a "victim".

3.3 Given the range of vastly different circumstances that may lead to someone being assisted to commit suicide, it would be far more appropriate to use neutral language to describe these individuals. As is often the case in legislation, a letter could be used to denote a particular individual, for example: a person, ("T") who commits suicide or attempts to commit suicide, without conferring the kind of value judgment that the use of the term "victim" does.

#### b) The decision-making process and handling arrangements

3.4 The policy should be clearer about the decision-making process and handling arrangements for these cases (paragraphs 7 and 8, 14 and 15, 25 and 26). It would be clearer to cover the decision-making and handling processes together in one section of the policy.

3.5 During the House of Lords hearing of Debbie Purdy's case, Counsel for the DPP stated that CPS internal policy is that all cases of suspected assisted suicide are immediately referred to the Special Crime Division of the CPS, and that whilst the DPP would not necessarily make the decision in every case, he would have to approve every decision (8). If this is the process, it is not fully articulated in the prosecuting policy. It is also subtly different to what has subsequently been reported in the media (9) and stated in Parliament (10).

3.6 In the various slightly different accounts of the decision-making and handling process it is reasonably clear that the beliefs of the individual prosecutor who is allocated their case will not make it more or less likely for individuals to be prosecuted, nor will the decision be based on practice in a given 'Group' (region) of the CPS. However, if people are to be able to understand that the decision-making process for these cases is fair and consistent the whole

process must be set out clearly in the final version of the prosecuting policy, in one section.

#### 4. Implications of the prosecuting policy

##### a) Lack of information on the means of committing suicide

4.1 Dignity in Dying welcomes the prosecuting policy on assisted suicide. The DPP has clarified the law for individuals but he cannot provide a safeguarded means of assisted dying, as this is a matter for Parliament. Whilst a terminally ill, mentally competent person who would like to choose the manner and timing of their death may now feel more confident that they can ask loved ones for help without condemning them to up to 14 years in prison, they may not have access to information about a means of safely ending their life. There are dangers here, as the DPP clearly recognises in his policy – for example by making it clear that provision of information on assisting suicide to several people unknown to each other, through books or over the internet, are very likely to result in prosecution. We agree with the approach the DPP has taken. Without the ability to make ‘before the event’ checks, he clearly has to ensure that those providing information on how to end life indiscriminately are prosecuted.

4.2 However, this lack of information on the means of safely ending life makes the case for further clarification of the role of health care professionals in the policy, even stronger. As the MS Society has acknowledged, if people can’t talk to medical professionals about assisted suicide “their only likely resource is Google” (11). Ultimately this leads to the broader question of whether an assisted dying law is needed in England and Wales.

##### b) Difficulties for those not assisted to die in Switzerland

4.3 This lack of information means that whilst the policy applies to acts done in England and Wales regardless of where the suicide takes place, the policy will be most useful to people who are either in the fortunate position of having a doctor who is a close friend or relative and who is willing to assist them, or those considering being assisted to die in Switzerland. With over 130 British people having been to Switzerland to die, and due to related media coverage, the information on how to get there is relatively easy to access. The fact that a doctor will be involved and that suicide organisations in Switzerland require a patient’s medical notes mean that for those accompanying a loved one to die in Switzerland the process, whilst far from easy, has at least been travelled down by others, and there are some checks in place in Switzerland which would help demonstrate that their assistance fell within at least some of the DPP’s factors against prosecution. So few cases of either assisted suicide by a doctor, or assisted suicide that has taken place in Switzerland come before the DPP (12), it is clear that a person who can be assisted in either of these ways, and their relatives will probably face less stress and fear of prosecution than those who do not have these options open to them.

4.4 This leaves a problem for people who are not able to get to Switzerland physically, or do not have the financial means to get there, and for their loved ones. With no means of ending life safely, the demands placed on relatives asked to assist suicide in England and Wales are potentially far greater. Without the prescription that would be provided overseas, those asked to assist may necessarily become far more involved in both researching how a loved one could be assisted to die, and even in helping them die, which could result in a prosecution for murder. They will have no support from medical professionals or others when their loved one

decides to commit suicide. Without a set process in place as there is in jurisdictions overseas which allow assisted dying, these people are likely to face far greater scrutiny by the authorities if/when the assisted suicide is discovered.

4.5 This all points to the policy being rather more beneficial to those with the financial means to get to Switzerland for an assisted death (which costs in the region of £4,000 before travel and related expenses are taken into account) than those who are not able to afford this. The policy could be seen as discriminatory towards those who cannot afford, or who are not physically able to get to Switzerland by leaving them facing the prospect of a far more drawn out, uncertain and painful suicide, and by continuing to deny them clarity in how the law will treat their loved ones.

4.6 This is reinforced by enquiries that Dignity in Dying has received since the interim policy was released. Those who are not able to go to Switzerland have far more difficulty seeing how the policy applies to their situation.

c) Providing information on how certain factors will be investigated

4.7 This prosecuting policy will be considered by individuals who wish to receive assistance to commit suicide, individuals who have been asked by a loved one to help them die, and by prosecutors investigating assisted suicides, or attempted assisted suicides. Considering all three potential groups of readers, and considering the particular difficulties faced by those who are not able to go to Switzerland to be assisted to die, or do not have a doctor who is a close family member or friend to help them, questions arise as to how some of the factors set out in the policy can be established, particularly after a person has died.

4.8 Dignity in Dying fully understands that the DPP cannot enter the realm of advising people on how to satisfy the policy, but given the particular difficulties likely to be faced by those who cannot for physical or financial reasons access overseas suicide organisations, it would seem reasonable to provide some indication of how certain factors will be assessed.

4.9 The most relevant factors would appear to be around the mental and physical state of the person assisted to commit suicide. It seems reasonable to assume that investigators will consider a person's medical records to check if they were suffering from terminal illness, or other severe physical conditions as set out in the policy. This should be made clear in the policy.

4.10 However, patients and loved ones may be less clear on who should assess and determine whether a person has mental capacity, and how mental capacity or lack of capacity on the part of the person wishing to be assisted to commit suicide can be proved or investigated after the event.

4.11 The MCA Code of Practice (13) sets out the process for assessing a persons' capacity as follows (bold sections are Dignity in Dying emphasis):

#### Assessing capacity

Anyone assessing someone's capacity to make a decision for themselves should use the two-stage test of capacity.

- Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the

impairment or disturbance is temporary or permanent.)

- If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

Assessing ability to make a decision

- Does the person have a general understanding of what decision they need to make and why they need to make it?
- Does the person have a general understanding of the likely consequences of making, or not making, this decision?
- Is the person able to understand, retain, use and weigh up the information relevant to this decision?
- Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?

Assessing capacity to make more complex or serious decisions

- Is there a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)?

4.12 Given this guidance supports the assessment of capacity under statutory law, and the clear importance of the assessment of the Consultant Psychologist that Daniel James had full mental capacity to the DPP's decision not to prosecute Mr James' parents (14), Dignity in Dying would like the DPP to include in the prosecuting policy a reference to the Mental Capacity Act and/or an assessment of capacity by a qualified professional being taken into account by investigators. This may seem like common sense to those involved in the medical or legal spheres but could make a significant difference to the peace of mind of someone choosing to be assisted to die at home.

4.13 Whilst we understand that the DPP will be reluctant to provide 'prompts' on how to 'fit' with his policy, including references to medical records around physical illness and assessment of capacity around mental capacity would simply provide further clarity on how the factors will be assessed without making it easier to somehow 'get around' the policy. In particular the point around assessment of mental capacity would encourage those considering suicide to ensure that they have their capacity assessed before taking further action. This would have the likely effect of better protecting vulnerable people, and would have no benefits to maliciously motivated potential assisters.

## 5. Conclusion

5.1 Dignity in Dying welcomes this draft prosecuting policy. Its overall approach is compassionate and sensible, and read as a whole it gives a clear sense of the kind of factors that will be taken into account around decisions about prosecutions for assisted suicide. As such the policy marks an important step forward for patient choice, and for the protection of vulnerable people.

5.2 We also feel that there is some room for improvement and further clarification with regards to specific elements of the policy, as outlined in our response to the DPP's consultation.

5.3 However, there is a 'demand' for assisted dying that will not go away: at least 132 British

people have been assisted to die at Dignitas in Switzerland (15), and research shows that 0.21% of deaths are deliberately hastened by doctors at patients' request in the UK each year (16) and that 9.8% of patients ask their doctors to hasten their death (17).

5.4 Dignity in Dying has set out the case for a change in the law on assisted dying, in specific circumstances, elsewhere (18). We fully appreciate that the DPP cannot change the law or create legislation, but Dignity in Dying would like to state strongly our preference for a law that makes the kind of checks outlined in the DPP's draft policy: for mental capacity, informed decision making and terminal illness on the part of the person wishing to end their life, before they end their life. This would provide far greater safeguards than a prosecuting policy can possibly offer, and this would be the best way giving dying patients real choice and control at the end of life, whilst also protecting the vulnerable.

5.6 Dignity in Dying recognises the difficulty of the task facing the CPS and the DPP when assessing cases of assisted suicide. As stated in paragraph 17 of the draft policy "sometimes the only source of information will be the suspect". This is the inherent difficulty of after the event investigation, and is one of several reasons why Dignity in Dying would prefer to see an assisted dying law with up-front safeguards to protect the vulnerable, rather the current situation whereby prosecutors and police have to make checks after a person has been assisted to commit suicide.

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