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Assisted Suicide Policy Team
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16 December 2009

Dear Sir/Madam,

JUSTICE response to public consultation on the DPP's interim policy for prosecutors on assisted suicide

Having considered the DPP's interim policy for prosecutors on assisted suicide, we think it is a humane, pragmatic and sensible document and we welcome it. We believe that the right factors in favour of and against prosecution have been identified in this policy.

The only specific comment we would make is that we are concerned that there may be misunderstanding on the part of readers of the document as a result of the wording of paragraph 12 in the section headed 'The Evidential Stage'. Paragraph 12 reads as follows:

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.

This paragraph could be understood as meaning that where a person who had expressed their intent to commit suicide was awake/conscious, it would not be murder or manslaughter for another person to cause their death. This, however, is untrue. The dividing line between assisting suicide and murder/manslaughter is surely that, as implied in paragraph 10 of the interim policy, in assisted suicide there must be *an act* of suicide or attempted suicide which the suspect *assists*. However, in murder/manslaughter it is an act *by the suspect* which causes death. Therefore, if a person is awake/conscious but it is an act by the suspect which causes their death rather than their own act (assisted by the suspect) then, subject to mens rea etc, the crime is one of murder or manslaughter rather than assisted suicide.

As this interim policy may be used as guidance by those who wish to take their own lives but are concerned at the possibility that a family member or friend who assists them may be prosecuted, it is particularly important that the policy is accurate and clear. We therefore recommend that the above point be clarified. The above paragraph may be particularly important where the person who wishes to commit suicide is awake/conscious but is physically unable to take their own life due to, for example, paralysis.

We also assume that the policy will be reviewed, and revised as necessary, as a result of the enactment of the s59 Coroners and Justice Act 2009 offence of encouraging or assisting suicide. We believe that the policy should mention the fact that the new offence has been enacted, provide a link to it (for the benefit of members of the public), and advise that the interim policy may be replaced by a new policy once it is brought into force. We also believe that this new policy should be the subject of a further consultation process.

Yours sincerely,

Sally Ireland
Director of Criminal Justice Policy
JUSTICE

Chairman of Council Baroness Kennedy of The Shaws QC Director Roger Smith

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