

# Responding to patient requests relating to assisted suicide: guidance for doctors in England, Wales and Northern Ireland\*

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**All forms of assisted dying (euthanasia and assisted suicide) are illegal in the UK. The Crown Prosecution Service (CPS) in England and Wales, and the Public Prosecution Service (PPS) in Northern Ireland, look at individual cases to ascertain whether a prosecution should be brought. Decisions taken by prosecutors are now guided by the factors discussed below.**

**The BMA receives some enquiries from members about where the boundaries lie, in terms of what is or is not permissible for doctors to do in response to patient requests relating to assisted suicide.**

## **Guidelines for prosecutors on assisted suicide**

Encouraging or assisting another person to commit suicide is a criminal offence, carrying a potential 14-year prison sentence.<sup>1</sup> All cases will be referred to the CPS in England and Wales, or the PPS in Northern Ireland.

In September 2009, the Director of Public Prosecutions (DPP) for England and Wales and the DPP for Northern Ireland published an interim policy for prosecutors in response to the July 2009 House of Lords ruling in the case of Debbie Purdy.<sup>2</sup> The law lords in the Purdy case required the DPP to publish clear guidelines on the circumstances in which prosecution would be brought against someone who had helped another person to die. The interim policy was put out to consultation and health organisations were encouraged to express an opinion. No specific reference was made to doctors, but the DPP warned that health professionals should be particularly cautious about getting involved in assisted suicide. He said that various factors meant they were more likely to be prosecuted than relatives assisting a terminally ill person to die. In its response to the consultation, the BMA

\* As yet, no separate guidance has been issued by the Lord Advocate in Scotland, but the BMA similarly advises caution in responding to requests of the nature outlined above from patients in Scotland.



emphasised its opposition to any weakening of the existing prohibition on assisted suicide, but concluded that the suggested factors to be considered by prosecutors appeared reasonable.

In February 2010, the DPP for England and Wales, and the DPP for Northern Ireland, published their definitive guidance for prosecutors.<sup>3</sup> The guidance lists public interest factors, in favour of and against prosecution, with a particular focus on the motivations and actions of the suspect in cases of assisted suicide, rather than the characteristics of the victim. The factors tending in favour of prosecution include where the individual suspected of encouraging or assisting suicide “was acting in his or her capacity as a medical doctor, nurse [or] other healthcare professional.” When the final guidance was published, Keir Starmer QC, DPP for England and Wales, said that “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. What it does is to provide a clear framework for prosecutors to decide which cases should proceed to court and which should not.” He stressed that the factors would not be used in a tick box fashion, and that the decision of whether to prosecute would be a matter of considering each case on its own facts.<sup>4</sup>

In October 2014, following the judgment of the Supreme Court in the Nicklinson case,<sup>5</sup> the DPP issued an update to the 2010 guidance to clarify the position on the likelihood of prosecution of a healthcare professional. The relevant paragraph was amended so that prosecution of a healthcare professional is more likely where the suspect was “acting in his or her capacity as a medical doctor, nurse [or] other healthcare professional...and the victim was in his or her care.” A new footnote states that this addition “does not apply merely because someone was acting in a [professional] capacity described within it: it applies only where there was, in addition, a relationship of care between the suspect and the victim, such that it will become necessary to consider whether the suspect may have exerted some influence on the victim.” By implication, doctors who help severely disabled or terminally ill individuals, who are not their own patients to end their lives are less likely to be prosecuted than those who have an existing relationship of care.

In releasing the guidance, the DPP for England and Wales, Alison Saunders, stated that “each case must be considered on its own facts and merits, and prosecutors must weigh each public interest factor depending on the circumstances of each case and go on to make an overall assessment.”<sup>6</sup> She emphasised that assisting or encouraging suicide remains illegal, and that nothing in the updated guidance offers immunity from prosecution.

### Responding to patient requests

While suicide is not illegal in the UK, it is illegal to “aid, abet, counsel or procure” the suicide of another. The BMA advises doctors to avoid all actions that might be interpreted as assisting, facilitating or encouraging a suicide attempt. This means that doctors should not:

- advise patients on what constitutes a fatal dose;
- advise patients on anti-emetics in relation to a planned overdose;
- suggest the option of suicide abroad;
- write medical reports specifically to facilitate assisted suicide abroad;
- facilitate any other aspects of planning a suicide.

Parliament has also made explicit that an offence occurs when individuals disseminate information via media, such as the internet, which would be likely to encourage other people to end their lives.<sup>7</sup>

Patients have rights of access to their own medical records under the Data Protection Act, and where a patient makes a subject access request, doctors are obliged to provide the requested information, subject to certain exemptions.<sup>8</sup>

## Persons wanting to travel abroad for assisted suicide

Assisted suicide is lawful in Switzerland under s.115 of the Swiss Criminal Code, as long as the motives for assisting are not “selfish.” Swiss law does not require the recipient of assisted dying to be a Swiss national, or even to have a terminal medical condition. The option of ending one’s life with few restrictions has attracted many patients from other countries in a practice which has become known as “suicide tourism.”

While travelling abroad to receive assisted suicide is not illegal, facilitating suicide, which may include helping someone to receive assisted suicide abroad, is a criminal offence. The BMA advises doctors not to offer, or to agree to provide medical reports if they are aware that they will be used to obtain assisted suicide, as this could be seen as facilitating that process. Similarly, doctors should not accompany a patient going abroad for assisted dying. Although as yet no doctor providing a report or accompanying person has been prosecuted for helping patients to travel abroad to end their lives, doctors need to be aware of the possible legal implications of these, or any other actions, which might be seen as encouraging or facilitating suicide.

## Further guidance

BMA members can contact BMA Ethics for further advice on this issue, or to discuss specific requests from patients about which they have concerns, on **020 7383 6286** and at **ethics@bma.org.uk**.

Relevant written guidance includes:

- *End-of-life decisions: views of the BMA* (2009), which covers contemporaneous and advance refusal of treatment; withholding and withdrawing life-prolonging medical treatment; and assisted dying (euthanasia and assisted suicide). It summarises the main points from some of the following BMA publications which deal in detail with aspects of end of life decisions.
- *Withholding and withdrawing life-prolonging medical treatment* (3rd edition, 2007)
- *Advance decisions and proxy decision-making in medical treatment and research* (2007)
- *The ethics of caring for older people* (2nd edition, 2009)

In addition, some of the BMA’s general guidance on the law relating to incapacitated adults and the role of advocates may be relevant to end-of-life decisions. All of this BMA guidance can be found at **bma.org.uk/ethics**.

1 Suicide Act 1961, s.2; Criminal Justice (Northern Ireland) Act 1966, s.13.  
2 R (on the application of Purdy) v Director of Public Prosecutions [2009] UKHL 45.  
3 Crown Prosecution Service (2010) *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide*. London: CPS; Crown Prosecution Service for Northern Ireland (2010) *Policy on Prosecuting the Offence of Assisted Suicide*. Belfast: PPSNI.  
4 Crown Prosecution Service. *DPP publishes assisted suicide policy*. CPS Press Release, 25 February 2010.  
5 R (on the application of Nicklinson and another) v Ministry of Justice; R on the application of AM v Director of Public Prosecutions [2014] UKSC 38.  
6 Crown Prosecution Service. *Director of Public Prosecutions responds to Supreme Court on assisted suicide policy*. CPS Press Release, 16 October 2014.  
7 Coroners and Justice Act 2009, s.61.  
8 For further information, see: British Medical Association (2008) *Access to health records: guidance for health professionals in the United Kingdom*. London: BMA.