

Introductory Note by FB

The article below is a further addition to my writings on assisted suicide. Others are included within the Topic 'Suicide Act 1961'. The Topic can be found on this website at www.francisbennion.com/topic/suicideact1961.htm

Letters in *Criminal Law and Justice Weekly*

Assisted suicide: an open letter to the DPP and his reply
Suicide Act 1961

Dear Sir,

Readers will be grateful to the Director of Public Prosecutions, Mr Keir Starmer QC, for his letter at p. 463 *ante*. It is helpful for criminal law practitioners to have an explanation at the highest level. If I may, I would like to seek the Director's view on another important matter affecting his department. It concerns the offence of assisting suicide under the Suicide Act 1961 s. 2.

In the House of Lords debate on amendments proposed to the Coroners and Justice Bill on 7 July concern was expressed about the uncertainty of CPS policy on this point. Lord Falconer of Thoroton said (col. 596):

“We know that in the past seven years, 115 people from this country have gone to Switzerland for an assisted suicide. Some of them have been investigated by the police, while some of those cases have been considered by the Director of Public Prosecutions. In none of the cases has a prosecution been brought under section 2 of the Suicide Act 1961, despite the fact that the Director of Public Prosecutions has made it clear that he has considered in a number of cases that the evidential requirements of the Act have been satisfied. Nobody wishes to prosecute in those cases, because nobody, in my view correctly, has the stomach to prosecute in cases of compassionate assistance. The attitude of the police and prosecution authorities means that they have, for entirely understandable reasons, created a legal no man's land. The consequence is that there is no clarity. The lack of clarity has a number of bad effects.”

Lord Falconer also said (col. 633):

“The current situation is that the DPP has made it clear that he will not seek out these cases to investigate. If the cases come before him, he will ensure that they are properly investigated and, as long as he is satisfied that there is good motivation, he will not prosecute . . . That sensible signal that the DPP will not prosecute in those cases, dependent as it is on public interest, has two important impacts. It indicates that he is not prepared to apply the criminal law to its full rigour at the moment . . . The DPP has had, in effect, to change the law to make it work properly.”

Baroness Kennedy of The Shaws said (col. 615): “The Director of Public Prosecutions has indicated that no prosecution in this area will be brought where there is no prima facie case of bad faith or ill intent”. Baroness Warnock said (at col. 616): “We need more clarity about the reasons for which no prosecutions have been made and we need to have that clarity soon”.

A leading columnist erroneously wrote of persons assisting suicide:

“If the people involved are genuinely moved by compassion, what do they have to fear from an investigation and a fair trial? They will be acquitted, even if they are charged. Only those whose motives are suspect are at any risk.” (Peter Hitchens, *Mail on Sunday*, 19 July.)

The leading cases on this matter are *Pretty (Regina (Pretty) v Director of Public Prosecutions (Secretary of State for the Home Department intervening)* [2001] UKHL 61) and *Purdy (R (on the application of Purdy) v Director of Public Prosecutions & Ors* [2009] EWCA Civ 92). In *Purdy*, where the court was asked to require the DPP to say whether in a specified case of alleged assisted suicide the person assisting would or would not be prosecuted, the Court of Appeal said of s. 2 of the Suicide Act 1961 (at [2]):

“We cannot suspend or dispense with the law. That would contradict an elementary constitutional principle, the Bill of Rights itself. Parliament alone has the authority to amend this law and identify the circumstances, if any, in which the conduct of the individual who assists or attempts to assist another to commit suicide should be decriminalized.”

The Court of Appeal also said (at [79]):

“Like this Court the DPP cannot dispense with or suspend the operation of section 2(1) of the 1961 Act, and he cannot promulgate a case-specific policy in the kind of certain terms sought by Ms Purdy which would, in effect, recognise exceptional defences to this offence which Parliament has not chosen to enact.”

The uncertainty seems to relate to this. Parliament decided to enact s. 2 of the Suicide Act 1961 and chose the language in which to do so. That parliamentary language may in effect be substantially varied by the way the DPP chooses to enforce (or not enforce) the section. In other words Parliament intended by s. 2, with its sidenote “Criminal liability for complicity in another’s suicide”, that, despite the abolition of the offence of suicide by s. 1, the criminal liability of a person who “aid, abets, counsels or procures” the actual or attempted suicide of another should continue to exist unimpaired.

For the Director by his prosecution policy to exclude from this operative effect the normal case where the accessory has no improper motive is for him in effect to legislate by reducing the effect of s. 2 in a major way. This, so the argument goes, is an improper interference with the anti-euthanasia policy of the 1961 Act. There have been many attempts since 1961 to persuade Parliament to authorise euthanasia, but all have failed. It is not for the DPP to step in and carry into effect what Parliament itself has consistently refused to do.

It would be very helpful if Mr Starmer could clarify the position.

Yours faithfully,
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173 *CL&J* (8 Aug 2009) p. 511.

Any footnotes are shown at the bottom of each page

For full version of abbreviations click ‘Abbreviations’ on FB’s website

Letter to the Editor

Dear Sir,

I read Francis Bennion's letter on the 1961 Suicide Act with interest and I am happy to provide any clarification I can.

In keeping with any other criminal offence, it has been clear since 1951 that the prosecution has a discretion not to prosecute when it is not in the public interest. The House of Lords has now directed me to publish a policy detailing the factors for and against prosecution for the offence of assisted suicide, which prosecutors will take into account when reaching their decision.

Since Mr Bennion's letter concerning assisted suicide appeared in your publication last week and following the House of Lords' judgement in the case brought by Debbie Purdy, I have announced that the Crown Prosecution Service will issue an interim policy that outlines these factors with regards to the offence of assisted suicide.

I have already set up a team to work through the summer and we will endeavour to produce the interim policy by the end of September and we will seek the views of the public on this sensitive issue before issuing final guidance in the Spring of 2010.

Yours faithfully,
Keir Starmer QC
Director of Public Prosecutions