

Article in *Criminal Law & Justice Weekly*

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Assisted Suicide: Will Mr Starmer QC Obey the Law? Francis Bennion asks a pointed question

The Director of Public Prosecutions, Mr Keir Starmer QC, is about to issue definitive guidelines on how in future he will exercise his judgment over consenting to prosecution for assisted suicide under the Suicide Act 1961 s. 2(1) as amended by the Coroners and Justice Act 2009. These guidelines will replace the *Interim Policy* published by Mr Starmer in September 2009. Will they conform to the law? It should not be necessary to ask that question, but Mr Starmer has form.

- In *R (on the application of Purdy) v Director of Public Prosecutions & Ors* [2009] EWCA Civ 92 the Court of Appeal said (at [79]) 'The DPP cannot dispense with or suspend the operation of s. 2(1) of the 1961 Act'.
- On 9 December 2008 Mr Starmer announced that, while there was sufficient evidence for a realistic prospect of conviction of Mark and Julie James under s. 2(1) of the 1961 Act in relation to the suicide of their son Daniel, such a prosecution was not in the public interest because there was no prima facie case of bad faith or ill intent. That was against the law as stated by the Court of Appeal.
- On 7 July 2009 Baroness Kennedy of The Shaws said in the House of Lords (Col. 615) 'The DPP has indicated that no prosecution in this area will be brought where there is no prima facie case of bad faith or ill intent'. That was against the law as stated by the Court of Appeal.
- If in a proper case a prosecution is not brought in accordance with s. 2(1) of the 1961 Act this infringes the right to life provisions of the European Convention on Human Rights (Art. 2) and the Human Rights Act 1998.

On the first point, it has been decided that a person who contravenes s. 2(1) is guilty of an offence *even if not prosecuted*.¹

On the second point, it is important to note, as a matter of statutory interpretation, the principles upon which Parliament intended the DPP to exercise his judgment. There is case law on this, which is not mentioned in the *Interim Policy*.² One obvious principle is that the judgment must not be exercised in a way that subverts the intention of the 1961 Act (see below).

It is a grave matter deliberately to help a person take their own life, with whatever motive. The specific aim of s. 2(1) was to prevent this happening; it had no other purpose. The ordinary rules of mens rea apply, which means that if it is proved that a defendant intended to do the act in question that is normally enough to secure conviction. A benevolent motive is irrelevant, except in relation to sentencing.

¹ *Dunbar (administrator of Dunbar (decd)) v Plant* [1997] 4 All ER 289 ('Dunbar') at 304.

² See, e.g., *Dunbar* at 312.

Subverting the Act

Deliberately to assist a suicide is to commit an offence against s. 2(1), even though one is not prosecuted. To do so with a 'good' motive still contravenes s. 2(1), which is aimed at altogether preventing persons from committing suicide. If Parliament had intended to permit the giving of assistance with such a motive, the 1961 Act would have said so.

On 5 January 2010 I stated the following in a letter published in *The Daily Telegraph*: 'Mr Starmer has demonstrated misunderstanding of his office in relation to the power given him by the Suicide Act 1961 to refuse permission to prosecute for assisted suicide. This power is intended to prevent inappropriate private prosecutions. Mr Starmer is using it to prevent public prosecutions where the assistance was given on compassionate grounds and there was no indirect motive. That is certainly not what Parliament intended'. Mr Starmer did not reply to this.

Mr Starmer's *Interim Policy* subverts s. 2(1) by stating that the following will carry considerable weight as public interest factors against prosecution.

- The victim had a clear, settled and informed wish to commit suicide.
- The victim indicated unequivocally to the suspect that he or she wished to commit suicide.
- The victim asked personally on his or her own initiative for the assistance of the suspect.
- The victim had incurable illness or incapacity.
- The suspect was wholly motivated by compassion.
- 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.

The promised definitive guidelines will be unlawful if they contain these or similar factors against prosecution. Can we rely on Mr Starmer QC to ensure s. 2(1) is complied with? The signs are not promising.