

Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide

Issued by The Director of Public Prosecutions

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Introduction

1. A person commits an offence under section 2 of the Suicide Act 1961 if he or she does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and that act was intended to encourage or assist suicide or an attempt at suicide. This offence is referred to in this policy as "encouraging or assisting suicide". The consent of the Director of Public Prosecutions (DPP) is required before an individual may be prosecuted.
2. The offence of encouraging or assisting suicide carries a maximum penalty of 14 years' imprisonment. This reflects the seriousness of the offence.
3. Committing or attempting to commit suicide is not, however, of itself, a criminal offence.
4. This policy is issued as a result of the decision of the Appellate Committee of the House of Lords in *R (on the application of Purdy) v Director of Public Prosecutions* reported at [2009] UKHL45, which required the DPP "to clarify what his position is as to the factors that he regards as relevant for and against prosecution" (paragraph 55) in cases of encouraging and assisting suicide.
5. The case of *Purdy* did not change the law: only Parliament can change the law on encouraging or assisting suicide.
6. This policy does not in any way "decriminalise" the offence of encouraging or assisting suicide. Nothing in this policy can be taken to amount to an assurance that a person will be immune from prosecution if he or she does an act that encourages or assists the suicide or the attempted suicide of another person.
7. For the purposes of this policy, the term "victim" is used to describe the person who commits or attempts to commit suicide. Not everyone may agree that this is an appropriate description but, in the context of the criminal law, it is the most suitable term to use.
8. This policy applies when the act that constitutes the encouragement or assistance is committed in England and Wales; any suicide or attempted suicide as a result of that encouragement or assistance may take place anywhere in the world, including in England and Wales.

The investigation

9. The police are responsible for investigating all cases of encouraging or assisting suicide. The Association of Chief Police Officers (ACPO) intends to provide all Police Forces with guidance on dealing with cases of encouraging or assisting suicide soon after the publication of this policy. Prosecutors who are involved in such cases should ensure that they familiarise themselves fully with the ACPO guidance when it is available.
10. The ACPO guidance will specifically recommend that police officers liaise with the reviewing prosecutor to seek his or her advice at an early stage and throughout their enquiries so that all appropriate lines of investigation, in the context of the individual case, are discussed and agreed by the Prosecution Team. This is to ensure that all relevant evidence and information is obtained to allow a fully informed decision on prosecution to be taken.
11. The reviewing prosecutor must ensure that he or she has sufficient evidence and information in order to reach a fully informed decision about the evidential and public interest stages of the Full Code Test (see paragraph 13 below). The reviewing prosecutor will need detailed information about the mental capacity of the person who committed or attempted to commit suicide and about any relevant public interest factor.
12. The reviewing prosecutor should only make a decision when he or she has all the relevant material that is reasonably capable of being obtained after a full and thorough investigation. The reviewing prosecutor should tell the police if any further evidence or information is required before a decision can be taken.

The decision-making process

13. Prosecutors must apply the Full Code Test as set out in the Code for Crown Prosecutors in cases of encouraging or assisting suicide. The Full Code Test has two stages: (i) the evidential stage; and (ii) the public interest stage. The evidential stage must be considered before the public interest stage. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. Where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
14. The DPP will only consent to a prosecution for an offence of encouraging or assisting suicide in a case where the Full Code Test is met.

The evidential stage

15. Section 2 of the Suicide Act 1961 was amended with effect from 1 February 2010. It is therefore essential that prosecutors identify the timing of any act of encouragement or assistance that it is alleged supports the bringing of a criminal charge relating to the suicide or attempted suicide of the victim.
16. Where the act of encouragement or assistance occurred on or after 1 February 2010, section 2 of the Suicide Act 1961 as amended by section 59 and Schedule 12 of the Coroners and Justice Act 2009 applies.
17. In these cases, for the evidential stage of the Full Code Test to be satisfied, the prosecution must prove that:

- the suspect did an act capable of encouraging or assisting the suicide or attempted suicide of another person; and
 - the suspect's act was intended to encourage or assist suicide or an attempt at suicide.
18. "Another person" referred to in section 2 need not be a specific person and the suspect does not have to know or even be able to identify that other person. The offence of encouraging or assisting suicide can be committed even where a suicide or an attempt at suicide does not take place.
 19. It is no longer possible to bring a charge under the Criminal Attempts Act 1981 in respect of a section 2 Suicide Act 1961 offence by virtue of paragraph 58 of Schedule 21 of the Coroners and Justice Act 2009. Attempts to encourage or assist suicide are now captured by the language of section 2, as amended.
 20. In the context of websites which promote suicide, the suspect may commit the offence of encouraging or assisting suicide if he or she intends that one or more of his or her readers will commit or attempt to commit suicide.
 21. Section 59(4) of the Coroners and Justice Act 2009 adds section 2A into the Suicide Act 1961.
 22. Section 2A provides that a person who arranges for someone else to do an act capable of encouraging or assisting the suicide or attempted suicide of another person will also be liable alongside that second person for the encouragement or assistance.
 23. Section 2A also makes it clear that a person may encourage or assist another person even where it is impossible for the actual act undertaken by the suspect to provide encouragement or assistance - for example, where the suspect believes he or she is supplying the victim with a lethal drug which proves to be harmless.
 24. Finally, section 2A also makes it clear that a suspect who threatens or puts pressure on the victim comes within the scope of the offence under section 2.
 25. The amendments to section 2 of the Suicide Act 1961 are designed to bring the language of the section up-to-date and to make it clear that section 2 applies to an act undertaken via a website in exactly the same way as it does to any other act.
 26. Prosecutors should consult the Ministry of Justice Circular 2010/03 which provides further detail about the changes made to section 2 of the Suicide Act.
 27. Where the act in question occurred on or before 31 January 2010, the former offence of aiding, abetting, counselling or procuring the suicide of another, or an attempt by another to commit suicide, contrary to the then section 2 of the Suicide Act 1961, applies.
 28. In these cases, for the evidential stage to be satisfied, the prosecution must prove that:
 - the victim committed or attempted to commit suicide; and
 - the suspect aided, abetted, counselled or procured the suicide or the attempt.

29. 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.
30. In relation to an act done prior to 1 February 2010, it is possible in law to attempt to assist a suicide. Such an offence should be charged under the Criminal Attempts Act 1981.
31. This enables an individual to be prosecuted even where the victim does not go on to commit or attempt to commit suicide. Whether there is sufficient evidence of an attempt to assist suicide will depend on the factual circumstances of the case.

Encouraging or assisting suicide and murder or manslaughter distinguished

32. The act of suicide requires the victim to take his or her own life.
33. It is murder or manslaughter for a person to do an act that ends the life of another, even if he or she does so on the basis that he or she is simply complying with the wishes of the other person concerned.
34. So, for example, if a victim attempts to commit suicide but succeeds only in making him or herself unconscious, a person commits murder or manslaughter if he or she then does an act that causes the death of the victim, even if he or she believes that he or she is simply carrying out the victim's express wish.

Explaining the law

35. For the avoidance of doubt, a person who does not do anything other than provide information to another which sets out or explains the legal position in respect of the offence of encouraging or assisting suicide under section 2 of the Suicide Act 1961 does not commit an offence under that section.

The public interest stage

36. It has never been the rule that a prosecution will automatically follow where the evidential stage of the Full Code Test is satisfied. This was recognised by the House of Lords in the *Purdy* case where Lord Hope stated that: "[i]t has long been recognised that a prosecution does not follow automatically whenever an offence is believed to have been committed" (paragraph 44). He went on to endorse the approach adopted by Sir Hartley Shawcross, the Attorney General in 1951, when he stated in the House of Commons that: "[i]t has never been the rule... that criminal offences must automatically be the subject of prosecution".
37. Accordingly, where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
38. In cases of encouraging or assisting suicide, prosecutors must apply the public interest factors set out in the Code for Crown Prosecutors and the factors set out in this policy in making their decisions. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.

39. Assessing 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. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed.
40. The absence of a factor does not necessarily mean that it should be taken as a factor tending in the opposite direction. For example, just because the victim was not "under 18 years of age" does not transform the "factor tending in favour of prosecution" into a "factor tending against prosecution".
41. 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.
42. Once all reasonable enquiries are completed, if the reviewing prosecutor is doubtful about the suspect's account of the circumstances of the suicide or the state of mind of the victim which may be relevant to any factor set out below, he or she should conclude that there is insufficient information to support that factor.

Public interest factors tending in favour of prosecution

43. A prosecution is more likely to be required if:
 1. the victim was under 18 years of age;
 2. the victim did not have the capacity (as defined by the Mental Capacity Act 2005) to reach an informed decision to commit suicide;
 3. the victim had not reached a voluntary, clear, settled and informed decision to commit suicide;
 4. the victim had not clearly and unequivocally communicated his or her decision to commit suicide to the suspect;
 5. the victim did not seek the encouragement or assistance of the suspect personally or on his or her own initiative;
 6. the suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that he or she or a person closely connected to him or her stood to gain in some way from the death of the victim;
 7. the suspect pressured the victim to commit suicide;

8. the suspect did not take reasonable steps to ensure that any other person had not pressured the victim to commit suicide;
 9. the suspect had a history of violence or abuse against the victim;
 10. the victim was physically able to undertake the act that constituted the assistance him or herself;
 11. the suspect was unknown to the victim and encouraged or assisted the victim to commit or attempt to commit suicide by providing specific information via, for example, a website or publication;
 12. the suspect gave encouragement or 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 his or her encouragement or assistance;
 14. the suspect was acting in his or her capacity as a medical doctor, nurse, other healthcare professional, a professional carer [whether for payment or not], or as a person in authority, such as a prison officer, and the victim was in his or her care;
 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 acting in his or her capacity as a person involved in the management or as an employee (whether for payment or not) of an organisation or group, a purpose of which is to provide a physical environment (whether for payment or not) in which to allow another to commit suicide.
44. On the question of whether a person stood to gain, (paragraph 43(6) see above), the police and the reviewing prosecutor should adopt a common sense approach. It is possible that the suspect may gain some benefit - financial or otherwise - from the resultant suicide of the victim after his or her act of encouragement or assistance. The critical element is the motive behind the suspect's act. If it is shown that compassion was the only driving force behind his or her actions, the fact that the suspect may have gained some benefit will not usually be treated as a factor tending in favour of prosecution. However, each case must be considered on its own merits and on its own facts.

Public interest factors tending against prosecution

45. A prosecution is less likely to be required if:
0. the victim had reached a voluntary, clear, settled and informed decision to commit suicide;
 1. the suspect was wholly motivated by compassion;
 2. the actions of the suspect, although sufficient to come within the definition of the offence, were of only minor encouragement or assistance;

3. the suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide;
 4. the actions of the suspect may be characterised as reluctant encouragement or assistance in the face of a determined wish on the part of the victim to commit suicide;
 5. the suspect reported the victim's suicide to the police and fully assisted them in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing encouragement or assistance.
46. The evidence to support these factors must be sufficiently close in time to the encouragement or 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 led to the suicide or the attempt.
47. These lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.
48. If the course of conduct goes beyond encouraging or assisting suicide, for example, because the suspect goes on to take or attempt to take the life of the victim, the public interest factors tending in favour of or against prosecution may have to be evaluated differently in the light of the overall criminal conduct.

Handling arrangements

49. Cases of encouraging or assisting suicide are dealt with in Special Crime Division in CPS Headquarters. The Head of that Division reports directly to the DPP.
50. Any prosecutor outside Special Crime Division of Headquarters who receives any enquiry or case involving an allegation of encouraging or assisting suicide should ensure that the Head of Special Crime Division is notified.
51. This policy comes into effect on 25 February 2010 and supersedes the Interim Policy issued on 23 September 2009.