



Director of Public Prosecutions (DPP) Consultation on the Interim Policy for Prosecutors in Respect of Cases of Assisted Suicide. Response from the British Humanist Association, December 2009.

About the British Humanist Association

The British Humanist Association (BHA) is the national charity representing the interests of the large and growing population of ethically concerned, non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs. It is committed to human rights and democracy, and has a long history of active engagement in work for an open and inclusive society and for a rational approach to public ethical issues.

The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns.

Introduction

We are pleased to make our response to this important consultation on the 'Interim Policy for Prosecutors in Respect of Cases of Assisted Suicide'¹. We have completed the response form where we have responded to the 'tick-box' answers. However, we would like this memorandum to be taken together with that form as our complete response to the consultation.

In this memorandum we take the opportunity to set out our position in relation to the law on assisted dying in the UK generally and on these interim guidelines specifically.

In sum, we support the development and publication of the 'Interim Policy' as we believe it helps to give considerable clarification on the factors that the DPP will take into consideration when deciding whether or not to prosecute somebody who has assisted another to die. This is especially important in that it gives information that provides people with greater choice over their decisions on these matters. It is welcome that the 'Interim Policy' indicates that it is unlikely that those who compassionately assist another to die would be prosecuted.

However, it is our firm position that the law on assisted dying the UK is in need of extensive reform. We believe that legalisation, with strict safeguards in place, is ethically far preferable than our present law and would be by far the best way to protect vulnerable people.

¹ Hereafter referred to as 'Interim Policy', for brevity

Our position on assisted dying

Humanists defend the right of each individual to live by her² own personal values, and the freedom to make decisions about her own life so long as this does not result in harm to others. Humanists do not share some of the attitudes to death and dying held by some religious believers, in particular that the manner and time of death are for a deity to decide or that interference in the course of nature is unacceptable.

Currently, the needs and autonomy of patients are often disregarded. Compassionate doctors, who follow the wishes of their terminally ill and severely suffering patients by assisting them to die, risk being charged with assisting suicide or murder. The current system sometimes also results in close relatives being faced with immensely difficult choices: whether to assist a loved one who is begging for help to put an end to their suffering knowing that it is unlawful, or to deny their loved one the death they want. We do not believe that anyone should be put into the position of having to make such choices, or indeed into a position where they believe that they have no other option but personally to end the life of someone they love. Those few terminally ill and suffering people who are able to travel abroad to die, often die before it is necessary because they need to do so at a time when they are still able to travel.

The Roman Catholic Church has traditionally expressed the strongest opposition to assisted dying, but it has been a broad religious lobby, led particularly by the Church of England Bishops in the House of Lords, that has blocked attempts to create a humane and ethical law on assisted dying. We know in the context of this consultation that a vocal religious lobby will be responding negatively to this 'Interim Policy'.

We urge the DPP to recognise that, although vocal and well-organised, the position against reform in the law on assisted dying and against the publication of these DPP guidelines are not representative. Around 80% of the public, and the figures are similar for religious and non-religious people, support assisted dying for terminally ill people.

Being able to die, with dignity, in a manner of our choosing must be understood to be a fundamental human right – a position supported by the recent landmark judgment in the Purdy case, where our highest court ruled that Convention rights are invoked at end of life. Legalising assisted dying would ensure that strict legal safeguards are in place which would empower people to utilise their right to make rational choices themselves over their end of life care, free from coercion. The choice of an assisted death would not be instead of palliative care for terminally ill people, but a core part of comprehensive, patient-centred approach to end of life care.

The 'Interim Policy'

While compassionately assisting another to die remains a criminal offence in the UK, the decision whether to prosecute rests with the Director of Public Prosecutions (DPP). Until the publication of this 'Interim Policy', it has not been clear on what basis the DPP will decide whether or not to support a prosecution. That ambiguity places further and unnecessary pressure on those suffering from severe and terminal illnesses or conditions, and their loved

² Read 'her or his'

ones. We believe precisely because this is a sensitive subject that clarification is required. The status quo is deeply unsatisfactory, with the uncertainty of prosecution exerting undue pressure on individuals and next-of-kin that are likely to be in physical and/ or emotional distress. Therefore we welcome the 'Interim Policy' and very much support its publication.

We also reject those arguments against the publication of the 'Interim Policy', such as that it might encourage more assisted deaths or provide information on how to commit murder but evade prosecution. The aims of producing these guidelines is clear – it shows how the DPP make assessments about whether to prosecute somebody for assisting the death of another. It does not in any way encourage such actions and it is absolutely clear that assisting the death of a loved one for compassionate reasons remains illegal. What it does show is that the DPP is placed in the very difficult decision of distinguishing between those acts which are wholly compassionate and those which are malicious when it is clear that distinction should be made in law. However, it is for Parliamentarians to reform the law to one that is more ethical and compassionate in this area and until such time as that takes place, these guidelines will be particularly important.

Guidelines

It is the BHA's position that individual autonomy is one of the most important factors in matters of assisted dying. Individuals should be allowed to decide on such personal matters for themselves; if someone in possession of full information and sound judgment decides that her continued life has no value, her wishes should be respected. We are pleased, therefore, that the 'Interim Policy' recognises takes into account different circumstances where a person is suffering so severely that she is incapable of ending her own life and therefore might choose to have an assisted death.

In general, we support the criteria in the 'Interim Policy' that set out what factors are taken into account in deciding whether or not to make a prosecution. It is clear that the criteria used are aimed to distinguish between those cases where a death was assisted for wholly compassionate reasons – to end the suffering of someone who was incapable of ending her life herself – and those which were not. For example, they seek to assess whether the person who has assisted a death had any reason to do so that was not wholly compassionate. However, there remains a need for objectivity in using those criteria, such as in assessing if the person assisting a death might have gained financially from that death. Family and close friends may well 'gain' through inheritance from the deceased, but that would ordinarily have nothing to do with their decision to help a loved one who was suffering to die.

The criteria attempt to determine that the person choosing an assisted death had the mental capacity to do so and that their decision was free from coercion. As already stated, the BHA holds the autonomy of individuals to make free and informed choices and decisions about their own lives to great importance. It is clear to us, however, that trying to assess capacity and freedom from coercion after somebody has died will always be far less preferable to having proper safeguards in place before an assisted death takes place. Far from increasing pressure on vulnerable people, the legalisation of assisted dying would have to be accompanied strict legal and medical safeguards that would greatly protect vulnerable people from coercion or making decisions when they did not have the mental capacity to do so. Until such time as we have those important safeguards however, the guidelines in the

'Interim Policy' do go some way to give assurance to those who have compassionately assisted a loved one to die that they are unlikely to be prosecuted.

The 'Interim Policy' also makes clear that the DPP will always make decisions on a case-by-case basis. While this is important, far better would be to reform the law on assisted dying so that distinction was made absolutely clear in law, where at present no such distinction is made.

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