



Policy For Determining How To Respond To
Incidents Of Assisted Suicide
Or Information That An Assisted Suicide May Occur

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2008		Impact Analysis (Equality & Diversity)	
31/5/10	V2	New Guidance CPS added and Impact Analysis (Mental Capacity Act)	Nicky Barry
8/5/17	V3	Update to Care Act terminology	Suzanne Hardy

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1.0 Rationale

The Local Authority has a duty under the Care Act 2014 to investigate a proposed assisted suicide where the individual concerned is an adult, aged 18 or over, who:

has needs for care and support (whether or not the local authority is meeting any of those needs) and;

is experiencing, or at risk of, abuse or neglect; and

as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.

(The term 'Adult at Risk' will be used throughout this document to cover the above definition)

An Assisted Suicide is when:

"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"

(CPS, 2010)

Once the Local Authority is informed of a proposed assisted suicide involving an adult at risk it cannot ignore the position.

Section 1 of the Suicide Act 1961 abrogates the rule that suicide is punishable as a criminal act. The law does not prohibit or penalise the decision of a competent person to take his or her own life. As such the Court has no basis in law for exercising its jurisdiction so as to prevent a competent person from taking his or her own life. It is, however, a criminal offence to assist an individual to commit suicide under Section 2 of the Suicide Act 1961.

The law relating to the aiding, abetting, counselling or procuring suicide under Section 2 of the Suicide Act 1961 has been amended by Sections 59 Coroners and Justice Act 2009 and came into force on 1st February 2010 under Coroners and Justice Act 2009 (Commencement No. 3 and Transitional Provision) Order 2010.

The Ministry of Justice released Circular 2010/03 detailing the purpose of the change in the law and this can be seen at www.justice.gov.uk

The amendment does little to alter the actual offence which was contained in Section 2 of the 1961 Act as enacted, but in recent years there has been growing concern about misuse of the internet to

promote suicide and suicide methods. In particular, there has been widespread condemnation of the sort of internet sites which might assist mentally vulnerable but otherwise healthy people – particularly young people – to take their own lives. The amendment under Section 59 of the 2009 Act attempts to clarify that such acts will be caught by Section 2 of the 1961 Act this means that the person committing the offence need not know the other person or even be able to identify them for the offence to take place under the amended Section 2. The amendment also incorporates inchoate offences i.e. incomplete acts such as aiding and abetting, attempt etc. that are prohibited by the criminal law and may now be prosecuted under the 1961 Act.

Section 2 of the 1961 Act as amended provides:

Section (2) Encouraging or assisting Suicide (England and Wales)

(1) A person (“D”) commits an offence if:

(a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and

(b) D's act was intended to encourage or assist suicide or an attempt at suicide.

(1A) The person referred to in subsection (1) (a) need not be a specific person (or class of persons) known to, or identified by, D.

(1B) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

(1C) an offence under this section is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years."

(2) If on the trial of an indictment for murder or manslaughter of a person it is proved that the deceased person committed suicide, and the accused committed an offence under subsection (1) in relation to that suicide, the jury may find the accused guilty of the offence under subsection (1)."

2A Acts capable of encouraging or assisting

(1) If D arranges for a person (“D2”) to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and D2 does that act, D is also to be treated for the purposes of this Act as having done it.

- (2) Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this Act it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act or had subsequent events happened in the manner D believed they would happen (or both).
- (3) A reference in this Act to a person ("P") doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to P doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

2B Course of conduct

A reference in this Act to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly."

Where an individual who intends to commit suicide requires the assistance of another by reason of his or her disability to carry out the decision alone it follows that that will require criminal conduct of another.

In February 2010, the Crown Prosecution Service produced a policy for Prosecutors in respect of cases of assisted suicide (CPS, 2010) which is available on their website

www.cps.gov.uk

This policy was 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 (2009). This case required the DPP to clarify his position as the factors relevant for and against prosecution in cases of assisted suicide. As a result of this guidance the Law has not been changed or decriminalised the activity of assisting someone to commit suicide but is there to assist in deciding what circumstances will be taken into account when prosecution is being considered. There is no general definition or distinction as to the 'type' of people who would be more or less likely to be prosecuted under Section 2 of the 1961 Act, however paragraph 43(14) on page 6 of the CPS policy states that a person is **more** likely to be prosecuted where:

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

It is therefore important that when staff, are informed of a case of assisted suicide that the case is dealt with appropriately and in a timely manner.

2.0 What to do if you believe that a vulnerable person may be considering assisted suicide

If staff, are made aware of an individual's intention to commit suicide with the assistance of another then a Safeguarding Adult Alert must be raised in accordance with ***Safeguarding adults: multi-agency policy and procedures for the West Midlands***

www.scie.org.uk

the Local Authority then incurs the following duties in such cases:

1. To investigate the position of an adult at risk to consider what is his or her true position or intention;
2. To consider whether he or she is legally competent to make and carry out his or her decision and intention;
3. To consider whether any other (and if so, what) influence may be operating on his or her position and intention and to ensure that he or she has all relevant information and knows all available options;
4. To consider whether to invoke the jurisdiction of the Court of Protection so that the question of competence could be judicially investigated and determined;
5. In the event of the adult at risk being mentally competent to give effect to his or her decision, that should not preclude the giving of advice or assistance in accordance with what are perceived to be his or her best interests;
6. Where there are reasonable grounds to suspect that the commission of a criminal offence may be involved, to draw that to the attention of the police;
7. In very exceptional circumstances, to invoke the jurisdiction of the Court under Section 222 of the Local Government Act 1972.

In addition to the above workers must take the following action if a proposed assisted suicide comes to their attention;

- Discuss the duties outlined above with your line manager and agree an action plan to include:
 - Referral to Adult Protection Team
 - Inform police in public protection team, in relevant division i.e. north or south.

- Gather as much background information about the individual and their family/carers as possible
- Ascertain if the individual is likely to be acting alone. If the person is being assisted to travel to carry out an assisted suicide then the person assisting them to travel needs to be visited jointly by social worker and the police to explain the consequences of assisting somebody to travel
- Arrange a planning meeting. Representation must include Adult Protection Co-ordinator, the police and a representative from the County Council's Legal Services Division.

3.0 Determining Legal Competence and Mental Capacity

It is of key importance to determine if the individual has the mental capacity (Mental Capacity Act 2005) and is legally competent to make the decision to end their life. There is a legal presumption in favour of capacity and people can make unwise decisions. The presumption of capacity can be rebutted by evidence of an individual's inability to assimilate the issues, or to fully appreciate the consequences, or being unduly influenced by the views of others or by undue concern of the burden the individual's condition imposes on others. If the individual is deemed not to have capacity then advice should be sought from legal services to ascertain if the Local Authority should apply to the Court of Protection and or the High Court for an injunction to restrain a criminal act, for example, a prohibition preventing a party from removing the adult at risk from the country.

4.0 What to do if you are aware that an assisted suicide has taken place

If staff, are made aware of a situation where an assisted suicide has taken place then the following action must be taken;

- Discuss with line manager
- Referral to Adult Protection Team
- Inform Adult Protection Police
- Ascertain if any professional knew about the individuals intention to die via assisted suicide

5.0 Application of the Policy

Mental capacity must be determined and the assessment recorded on the relevant documentation. This policy will be reviewed and changed as in line with any National guidance when it is developed.

6.0 Bibliography

- "Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide" (CPS 2010) http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html
- The Ministry of Justice Circular 2010/03
<http://www.justice.gov.uk/publications/docs/circular-03-2010-assisting-encouraging-suicide.pdf>
- Care Act 2014
- Suicide Act 1961
- Local Government Act 1972
- Mental Capacity Act 2005
- Coroners and Justice Act 2009