New guidelines address the issue of prosecution for assisted suicide in a healthcare context

The laws on assisted suicide have been clarified to put an emphasis on intent, and prosecution policy now specifically mentions nurses and other clinicians

INTRODUCTION
The law on assisted suicide underwent legal change and significant clarification in February, coinciding with the publication of a policy document by the Director of Public Prosecutions (2010).

First, the offences of aiding, abetting, counselling or procuring suicide (section 2, Suicide Act 1961) and the separate offence of attempting to commit a section 2 offence were replaced by a single criminal offence 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.

The Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide (DPP, 2010) was drawn up to guide Crown prosecutors about whether it would be in the public interest to prosecute someone for encouraging or assisting suicide.

It is important that nurses are able to interpret the law, especially as they are specifically mentioned in the DPP’s policy.

The policy was issued as a result of the decision of the Appellate Committee of the House of Lords in the case of Debbie Purdy, well publicised in the media last year, which required the DPP to clarify his position on the factors he considered relevant to prosecution in cases of assisted suicide (House of Lords, 2009).

Following the ruling in Purdy, the DPP’s policy has been broadly welcomed, because it makes the law clearer. It does this by setting out, in some detail, the public interest factors that should be taken into account by the Crown Prosecution Service when contemplating a prosecution for encouraging or assisting suicide. Some of these are highlighted below.

THE NEW POLICY
The policy does not decriminalise encouraging or assisting suicide, nor does it provide an assurance that a person will not be prosecuted. Nor does the policy make euthanasia (ending the life of another) legal. This remains murder or manslaughter, even if one person does this purely to comply with the wishes of the other.

From 1 February 2010, anyone who commits an act which is capable of encouraging or assisting a suicide or an attempted suicide with the intention to so encourage or assist (intention is critical here) commits an offence.

This change reflects growing public concern about the link between suicide and the internet, particularly among mentally vulnerable but otherwise healthy people. The Law Commission (2006) report said there was a strong case for updating the language in section 2 of the Suicide Act 1961 owing to the growth of “suicide websites”. The Byron Review (2008) identified confusion around the application of the law to online activity.

The DPP has to consent before anyone can be prosecuted for encouraging or assisting suicide and this is where its policy is important.

IMPLICATIONS FOR NURSES
Nurses should be aware that, for the first time, specific reference is made to suspects who are nurses, doctors or other healthcare professionals in the DPP’s policy. The policy is clearly flagging assisted suicide in a healthcare context.

The policy uses the term “victim”, which is not liked by everyone, to describe the person who commits or attempts to commit suicide. It uses the term “suspect” to describe the person who encourages or assists.

There are many more factors in favour of prosecution than against. The 16 public interest factors tending in favour of prosecution include where:

- The victim was under 18 years of age;
- The victim did not have the mental capacity, as defined in the Mental Capacity Act 2005, to reach an informed decision to commit suicide;
- 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.

The six factors tending against prosecution include where:

- The suspect was wholly motivated by compassion;
- The victim had reached a voluntary, clear, settled and informed decision to commit suicide.

The factors indicate motive is vital – what motivated the suspect to encourage or assist? If the suspect is the only person who can give evidence about the victim’s state of mind and the circumstances of the suicide, their account should be independently verified.

This could include evidence from people involved in the victim’s healthcare, perhaps even information recorded by the victim themselves in their written statement of preferences and wishes, if they made one.

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REFERENCES