Consultation on public interest guidance for suicide pact and 'mercy killing' type cases – Response form

Context

The CPS is conducting a public consultation on a proposed revision to the legal guidance on Homicide: Murder and Manslaughter. A copy of the revision is available to read.

The purpose of the consultation is to provide interested persons with an opportunity to provide comments and to ensure the final version of the guidance is informed by as wide a range of views as possible.

The consultation document provides further information about the context and process.

Questions

Please use the questions below to frame your responses and to provide us with feedback.

Where you have identified any public interest factors we have missed, please expand in your answers below.

We'll keep any information that you provide confidential and we'll only use your answers in an anonymised way. You can find out more about how we protect your data in our privacy notice: cps.gov.uk/privacy-notice-crown-prosecution-service-cps.

Closing date for submission of responses

The consultation runs from 14 January to midnight of 8 April 2022.

Please complete this response form and return it to homicideconsultation@cps.gov.uk.

If you would rather submit your responses in hard copy, please send by 8 April to:

Homicide Guidance Consultation

Priority Projects Team

Strategy and Policy Directorate

Crown Prosecution Service

10th Floor 102 Petty France

London SW1H 9EA

Questionnaire

Please complete the following:

Section 1

Manner of preferred address: Mr/Mrs/Ms etc.

Dr

First Name

Rick

Family Name

Thomas

Any organisation you represent

Christian Medical Fellowship

Postal Mailing Address

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Contact telephone number

07792257909

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Rick.Thomas@cmf.org.uk

Section 2

1. Do you think that the categories of cases to which these additional factors apply are appropriate?

   ☐ Yes

   ☒ No

2. Can you expand on your answer to question 1?

   Such cases concern people in extremes of anguish and anxiety. They are often complex and emotive, and rightly deserve careful and empathetic consideration. The Christian Medical Fellowship is an association of around 5,000 UK doctors, nurses and midwives, many of whom have wide experience in caring for people, and their families, in harrowing circumstances. It is our opinion that there is a better response to the needs of those in such desperate states than to assist their suicide or agree to their request to end their lives. The love and support of friends and family, and high quality, specialist palliative care, enabling people to find meaning in the darkest days and to live well until they die naturally, is that better way. An amendment to the Health and Social Care Bill currently going through Parliament gives all patients at the end of life a right to this kind of excellent care (see: https://www.thetimes.co.uk/article/end-of-life-care-will-become-a-legal-right-kjrpqxkkt). 'Death on demand', no matter how well-meaning, is never the answer to loneliness, despair, or deficits in care. Currently, CPS advice states that, where there is enough evidence, 'a prosecution is almost certainly required, even in cases such as the mercy killing of a sick relative.' The wording is strict for a good reason – it serves to uphold a fundamental ethic that affirms and protects the value of human life, whatever the challenges. Under the new proposals, the CPS will soften its stance on mercy killings so that those involved in them would be less likely to face criminal charges. Where a suspect is 'wholly motivated by compassion' or a person has reached a 'voluntary, settled and informed decision to end their life,' prosecutors will be told that it may not be in the public interest to proceed. The same would be the case where

someone had tried (and failed) to take their own life as part of a suicide pact. The legalising of assisted suicide has been a recurring issue that to date Parliament has strongly resisted. The CPS proposals would allow for 'wholly compassionate mercy-killing' by friend or family member, where physician-assisted dying has consistently been resisted, by both the medical and parliamentary communities. Effectively, it would introduce assisted dying by the back door. We cannot support it.

3. Do you agree that the factors considered should be broadly consistent with those set out in the assisted suicide policy?

☐ Yes

☒ No

4. Can you expand on your answer to question 3?

We agree that the public interest factors listed, that are weighed to tend towards or against prosecution, are important to investigate and consider in sentencing, but we do not think they should be used to justify the ending of a life. Results from all jurisdictions where assisted dying is legal agree – it is a sense of burden and a loss of meaning that drive the pursuit of an assisted death, rather than unbearable physical symptoms. A 'sense of aching loneliness,' the 'pain of not mattering,' and a sense that 'my life story has ended' influence the wish for death to come sooner (Van Wijngaarden, E.J., Leget, C.J.W. and Goossensen, A. (2015a) 'Ready to Give Up on Life: The Lived Experience of Elderly People Who Feel Life Is Completed and No Longer Worth Living', Social Science & Medicine 138: 257–64). It is our conviction that these existential feelings can change. New relationships can counteract loneliness and suicidal thinking. Kindness and care can transform the experience of hopelessness. Expert palliation can almost always control pain, anxiety and depression. Treating the symptoms, whether existential or physical, must be better than removing the patient. We are concerned that the proposal around mercy killing is unsafe, for the following reasons: i) there is no test that can conclude unequivocally that the suspect was 'wholly motivated by compassion.' Self-interest/prospect of gain is not the only

factor that can play into motivation. Fatigue, grief, and fear can all cloud judgement. Safeguards to prevent potential suspects taking decisions they might later deeply regret are as important as safeguards against those with dishonourable motives; ii) the phrase 'voluntary, clear, settled and informed decision to end their life' is ill-defined. How will potential coercive factors be excluded? How settled is settled? Should there be a minimum period over which the victim's wishes have persisted? iii) it is a condition of consent that it be fully informed to be valid. How will consent be scrutinised and by whom? There is no provision in the consultation document for assessment by a qualified mental health specialist. Existential angst is the most common reason why people seek assistance to die, yet it is responsive to appropriate treatment. Failure by the suspect to arrange an appropriate mental health assessment, and, where appropriate, a sufficiently long trial of treatment, should make prosecution an absolute necessity; iv) in circumstances where the victim lacks capacity, there is no requirement in the consultation document that family members be consulted about the victim's previously expressed wishes. In many cases it will be a close family member who carries out the 'mercy killing,' but the views of other family members or close friends should be considered in weighing public interest factors.

5. Are there any further factors in favour of prosecution that should be included?

☒ Yes

☐ No

6. What further factors in favour of prosecution should be included if you replied Yes to question 5?

Absence of full mental health assessment by a qualified specialist. Inadequate period of time to confirm the decision as settled - a minimum period of at least 90 days we suggest is needed. Lack of scrutiny necessary to confidently exclude coercive factors. Lack of engagement with family and friends over victim's previously stated wishes, where capacity is lacking.

7. Are there any further factors tending against prosecution that should be included?

☐ Yes

☒ No

8. What further factors tending against prosecution should be included if you replied Yes to question 7?

Click or tap here to enter text.

9. Please provide any other feedback you wish to share around how the revised guidance could be improved?

We are concerned that these proposals, if passed, will lend weight to the movement to legalise assisted dying. If mercy killing can escape prosecution, then why not medical killing? The euthanasia/assisted suicide lobby has long argued for legalisation on the grounds of compassion. To decide that mercy killings are not in the public interest to prosecute cannot but strengthen their case. Sooner or later, someone who wishes to end their life will claim discrimination under the 2010 Equality Act, that a willing physician is not permitted to assist them whilst a mercy killer could.