



**CPS**

# **Public Consultation Exercise on the Interim Policy for Prosecutors in respect of Cases of Assisted Suicide**

**Issued by  
The Director of Public Prosecutions**

## **Summary of Responses**

February 2010

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# 1. Introduction

## Background

- 1.1 In 2009, Ms Purdy sought information about the factors that the Director of Public Prosecutions (DPP) would take into account in deciding whether or not to grant his consent to a prosecution under section 2 of the Suicide Act 1961. Ms Purdy contended that the Code for Crown Prosecutors issued by the DPP under section 10 of the Prosecution of Offences Act 1985 (the Code) was insufficiently precise to provide her with the information that she sought. The case proceeded through the courts until the highest court in the United Kingdom, the Appellate Committee of the House of Lords, found in favour of Ms Purdy in *R (on the application of Purdy) v Director of Public Prosecutions (DPP)* on 30 July 2009 – now reported at [2009]UKHL45.
- 1.2 In supporting Ms Purdy's case, the Law Lords required the DPP: "to clarify what his position is as to the factors that he regards as relevant for and against prosecution" (paragraph 55 of the judgment) in cases of assisted suicide. This was a legal ruling with which the DPP was bound to comply, and it is a sensitive area of the law, which provokes sincere and deeply-held views on both sides of the debate.
- 1.3 As a result, the DPP published his Interim Policy for prosecutors in respect of cases of assisted suicide on 23 September 2009. At the same time, the Crown Prosecution Service (CPS) launched a consultation exercise inviting members of the public to respond with their views on that policy. The consultation exercise ran for 12 weeks until 16 December 2009.
- 1.4 Where prosecutors decide whether a person should be charged with a criminal offence, they do so in accordance with the Full Code Test set out in the Code.
- 1.5 The Full Code Test has two stages: (i) the evidential stage; and (ii) the public interest stage. Normally, the evidential stage must be considered before the public interest stage.

- 1.6 Prosecutors must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. 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.
- 1.7 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.
- 1.8 The Interim Policy on assisted suicide provided further information on the relevant public interest factors involved in this type of case that should be considered by prosecutors in addition to those factors already set out in the Code. These lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits. Neither are the lists of public interest factors in any way a “check-list” which an individual is able to use to arrive at a numerical score. As paragraph 39 of the Final Policy makes clear, 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. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction.
- 1.9 Neither the Interim Policy nor the Final Policy represents a change in the law. Only Parliament can change the law on encouraging or assisting suicide.

## **Responses received**

- 1.10 Responses to the consultation exercise were submitted in a variety of ways, including completed questionnaires, e-mails and letters. The information submitted for consideration during the consultation exercise was consequently categorised into the following groupings:
- completed consultation pro-forma questionnaires;
  - other correspondence which identified specific factors; and
  - other correspondence which contained more general observations.

- 1.11 A total of 4,710 individuals and organisations from England and Wales submitted a response consisting of:
- 2,459 completed pro-forma questionnaires;
  - 1,719 other pieces of correspondence which identified specific factors; and
  - 532 other pieces of correspondence which contained more general observations.
- 1.12 This summary of responses not only sets out a statistical analysis of responses to the questionnaires but also reflects, where appropriate, the entire range of comments – however sent – that the CPS received during the consultation exercise.
- 1.13 A further 157 responses were received from respondents based in countries outside England and Wales. These responses have not been included in this summary as they are from individuals who, or organisations which, are not automatically subject to the law of England and Wales.
- 1.14 The DPP is very grateful to all those who took the time to comment on the Interim Policy. The consultation exercise generated the largest number of responses the CPS has ever received about a single topic and the quality of responses has demonstrated the extent of public interest and concern in this highly sensitive area of the law.

## **Early Day Motion 302**

- 1.15 On 1 December 2009, Early Day Motion (EDM) 302 was laid in the House of Commons. The Motion, which had been signed by 63 MPs as of 17 February 2010, calls for the Interim Policy to be withdrawn on the basis that: it overrides the will of Parliament; indicates to would-be offenders how best to avoid prosecution; and puts the vulnerable at grave risk. The CPS is fully aware of EDM 302 and, although it did not formally form part of the consultation exercise, the CPS has borne it in mind when deciding how best to proceed in drafting the Final Policy.

## **Key themes and CPS response**

- 1.15 Several key themes emerged during the consultation exercise on the Interim Policy, all of which are outlined below in the question-by-question analysis of responses. These are presented in tables and graphs where appropriate, together with a commentary on the data and the CPS response to each question. In general, a

substantial number of respondents indicated a wish to see the CPS prosecute all cases of assisting suicide, although many of these also recognised the role for prosecutorial discretion in exceptional circumstances.

- 1.16 The CPS response sections set out in this document provide an explanation of the relevant changes between the Interim Policy and the Final Policy. Changes made to the Interim Policy have been based on all the relevant responses received, not only on the responses to the consultation pro-forma questionnaires.
- 1.17 Since the publication of the Interim Policy, Parliament has amended section 2 of the Suicide Act 1961. The changes to the wording of the offence are set out in the Final Policy which is being published at the same time as this Summary of Responses. The offence contrary to section 2 is now encouraging or assisting suicide and this is how the offence is referred to in this document.
- 1.18 As a result of the statutory amendments, the Final Policy sets out the law both before and after 1 February 2010 when the amendments came into effect. The relevant text is set out in paragraphs 15 to 31 of the Final Policy.
- 1.19 Further copies of this summary and the Final Policy can be obtained by contacting:

Assisted Suicide Consultation Team  
Policy Directorate  
Crown Prosecution Service  
50 Ludgate Hill  
London EC4M 7EX

Copies may also be obtained by e-mail from: [hqpolicy@cps.gsi.gov.uk](mailto:hqpolicy@cps.gsi.gov.uk)

A copy is also available on the CPS website: [www.cps.gov.uk](http://www.cps.gov.uk)

## 2. Question 1: factors in favour of prosecution

2.1 Question 1 of the consultation document invited those responding to indicate whether or not they agreed with each factor that was identified in the Interim Policy as a factor in favour of prosecution. Respondents were asked to indicate their views using “Y” for “yes” and “N” for “no”; those who did not wish to let the CPS have their views on any particular factor were asked not to complete the relevant box.

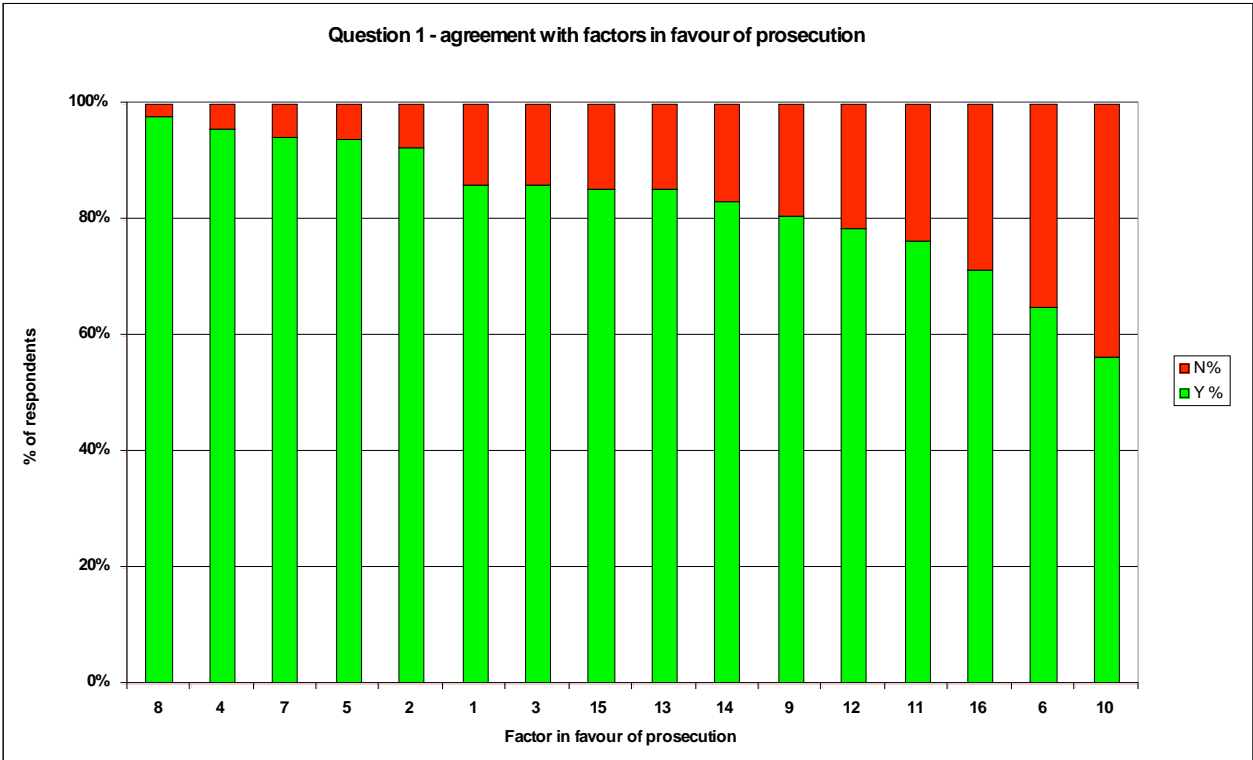
2.2 The views of those who responded to any part of Question 1 are set out in the table below.

**Table 1: Y/N responses to factors in favour of prosecution**

No. in Interim Policy	Factors in favour of prosecution	Yes %	No %	No. of responses
8	The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim's decision to do so; and did not take reasonable steps to ensure that any other person did not do so.	98	2	2,278
4	The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide.	96	4	2,270
7	The suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim.	94	6	2,244
5	The victim did not ask personally on his or her own initiative for the assistance of the suspect.	94	6	2,272
2	The victim's capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty.	93	7	2,261
1	The victim was under 18 years of age.	86	14	2,265
3	The victim did not have a clear, settled and informed wish to commit suicide; for example, the victim's history suggests that his or her wish to commit suicide was temporary or subject to change.	86	14	2,106
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.	85	15	2,095
13	The suspect was paid by the victim or those close to the victim for their assistance.	85	15	2,201
14	The suspect was paid to care for the victim in a care/nursing home environment.	83	17	2,176
9	The victim was physically able to undertake the act that constituted the assistance him or herself.	81	19	2,165
12	The suspect gave assistance to more than one victim who were not known to each other.	78	22	2,190
11	The suspect was unknown to the victim and assisted by providing specific information via, for example, a website or publication, to the victim to assist him or her in committing suicide.	77	23	2,202

No. in Interim Policy	Factors in favour of prosecution	Yes %	No %	No. of responses
16	The suspect was a member of an organisation or group, the principal purpose of which is to provide a physical environment [whether for payment or not] in which to allow another to commit suicide.	71	29	2,186
6	The victim did not have a terminal illness; a severe and incurable physical disability; or a severe degenerative physical condition; from which there was no possibility of recovery.	65	35	2,216
10	The suspect was not the spouse, partner or a close relative or a close personal friend of the victim.	56	44	2,161

**Figure 1: Y/N responses to factors in favour of prosecution**



**Commentary**

2.3 In respect of all public interest factors identified in the Interim Policy as being in favour of prosecution, there was a majority of “yes” responses, indicating there was general agreement that each factor should be taken into consideration as a factor in favour of prosecution.

2.4 Eleven of the 16 factors outlined in Question 1 in favour of prosecution received an agreement rating of over 80%. This agreement rating was also reflected in many of

the additional comments made during the consultation exercise on the Interim Policy through other correspondence.

## **CPS response**

- 2.5 The CPS views the responses to Question 1 as an endorsement of the factors identified in the Interim Policy as being in favour of prosecution under the public interest stage of the Full Code Test. As stated above, eleven of the 16 factors received an agreement rating of over 80%. This left five factors which received less than 80% agreement.
- 2.6 Factor 12 – that the suspect gave assistance to more than one victim who were not known to each other – received an agreement rating of 78%, and did not attract significant comment in the additional feedback received during the consultation exercise. The CPS is of the view that this factor remains worthy of inclusion in the Final Policy, aimed as it is at preventing the provision of a regularised service of encouraging and assisting suicide by one individual with regard to a number of unconnected victims.
- 2.7 Factor 11 – that the suspect was unknown to the victim and assisted by providing specific information via, for example, a website or publication, to the victim to assist him or her in committing suicide – received an agreement rating of 77%. The CPS is of the view that this is clearly a factor which should be considered in favour of prosecution. The provision of potentially detailed information on, for example, methods and techniques of suicide to a person or people not known to the provider is far removed from the compassionately-motivated, one-off assistance that may be less likely to require a criminal prosecution in the public interest.
- 2.8 Factor 16 – that the suspect was a member of an organisation or group, the principal purpose of which is to provide a physical environment [whether for payment or not] in which to allow another to commit suicide – received an agreement rating of 71%. The CPS is of the view that this remains an important factor in favour of prosecution, aimed as it is at making it more likely that an individual involved in any work-related way with an organisation that facilitates suicide will be prosecuted if they provide encouragement or assistance. This also reflects a theme present throughout much of the general correspondence received during the consultation exercise.

- 2.9 However, in the Final Policy, the CPS has amended the wording of this factor to remove reference to the need for the suspect to be a “member” of the organisation: on reflection, this would have led an individual who was simply a member of such an organisation to be captured by this factor, even where his or her encouragement or assistance was wholly separate from, and not influenced by, his or her membership of the organisation in question. Instead, the factor has been redrafted so that it covers those who are employed by, or involved in the management of, such an organisation. The CPS has also accepted the comments of many who considered that it is sufficient for it to be “a purpose” rather than “the principal purpose” of such an organisation to provide a physical environment in which to allow another to commit suicide.
- 2.10 Factor 6 – which related to the health and/or disability status of the victim – and factor 10 – which related to the suspect’s close personal relationship to the victim – both touched on major themes of comment during the consultation exercise. A large number of respondents questioned the inclusion of these factors, arguing that it may be discriminatory to include factors relating to the health and disability status of the victim (over 1,500 respondents argued this in their general comments), and over 1,600 respondents stated in their general comments that close family relationships in particular are not always supportive and could in some circumstances be manipulative or violent. Almost 1,200 respondents specifically asked for the removal of these factors from the Final Policy in their general comments.
- 2.11 As a result of these views expressed during the consultation exercise, and upon further consideration, the CPS has removed both factor 6 and factor 10 from the Final Policy.
- 2.12 With regard to factor 2 – that the victim’s capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty – some respondents recommended that the policy should more clearly define what is meant by “capacity” in the context of the policy. They also considered that the principles and approach of the Mental Capacity Act 2005 should be applied when deciding whether the victim had the capacity to decide that he or she wanted assistance to commit suicide.
- 2.13 Accordingly, paragraph 43(2) of the Final Policy refers to the Mental Capacity Act 2005. This ensures that all people whose capacity is affected by any number of

reasons, including, for example, a “learning difficulty” or a “mental health” issue, are covered by the policy and that the CPS approach is consistent with the Mental Capacity Act 2005.

- 2.14 The CPS has also considered the substantial number of views expressed about factor 7 – that the suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim. Some respondents commented on the adoption of the word “compassion”, indicating that they considered that the Interim Policy misused it. Others suggested that there may be practical difficulties about the phrase “stood to gain” in so far as there will be many instances where some gain is secured as a result of the death of the victim – for example, be that financially through the operation of a Will or the law of intestacy, or more generally through the freeing up of a carer’s time as a result of the death of the victim.
- 2.15 The CPS has considered these concerns. It believes that a majority of people do understand the word “compassion” in the sense that it is used in the Interim and Final Policy and the word therefore continues to be used.
- 2.16 To help to put “stood to gain” in context, paragraph 44 of the Final Policy contains an explanation of the expression.
- 2.17 In the light of more detailed comments received, the CPS has also amended the wording of some of the factors in favour of prosecution to avoid any ambiguity or concern that respondents identified in the original wording of the factors in the Interim Policy, and to reflect the legislative changes in the wording of the offence.

### 3. Question 2: new factors identified in favour of prosecution

3.1 Question 2 of the consultation document invited those responding to indicate whether there were any additional public interest factors in favour of a prosecution that they wished to see included in the Final Policy, in addition to the proposed list of factors outlined in the Interim Policy. There were 537 relevant comments in response to this question.

3.2 These responses have been grouped where appropriate and are shown in the table below.

**Table 2: new factors identified in favour of prosecution**

New factors identified in favour of prosecution	Frequency	% of all relevant comments
The suspect was a nurse, doctor or other healthcare professional and the victim was in their care.	184	34%
The suspect had a history of abuse or violence against the victim.	75	14%
Factors relating to the extent to which the victim had sought treatment or support options.	47	9%
The suspect was not a UK resident or citizen.	46	9%
Factors relating to the personal views or state of mind of the suspect.	42	8%
Factors relating to the vulnerability of the victim.	37	7%
Other factors concerning the relationship between victim and suspect.	22	4%
The act was deliberately publicised to encourage/influence others.	22	4%
Other suspect-related factors.	16	3%
Factors concerning the manner of assistance.	16	3%
Factors relating to the extent of communication from the victim	13	2%
Other victim-related factors.	9	2%
Factors related to the suspect trying to dissuade the victim.	8	1%
<b>Total</b>	<b>537</b>	<b>100%</b>

#### Commentary

3.3 A total of 34% of all relevant comments identified the fact that the suspect was a nurse, doctor or other healthcare professional and that the victim was in their care should be a factor in favour of prosecution and should be included in the Final Policy.

- 3.4 In addition, 75 respondents highlighted the importance of the previous relationship between the victim and the suspect, arguing that it should be a factor in favour of prosecution if the suspect had a history of violence or abuse against the victim (14% of all relevant comments).

## **CPS response**

- 3.5 The CPS has given due consideration to each of the responses received, and in particular, the leading two factors set out in table 2.
- 3.6 The CPS has accepted the concern expressed by many respondents that it was inappropriate in the Interim Policy to single out carers working in a care or nursing home environment when there was no broader factor covering those who work in the healthcare environment generally. The CPS has also reflected on the comment that it was inappropriate to single out just care and nursing homes as places where victims may live. As a result, the CPS has identified a more comprehensive factor which is set out in paragraph 43(14) of the Final Policy.
- 3.7 On reflection, the CPS believes that the emphasis of this factor should be around any healthcare worker who has the victim in his or her care. The fact such a person encourages or assists the suicide of the victim, whilst acting in that capacity, should be a factor in favour of prosecution.
- 3.8 The CPS considers that this factor should be extended to any person in a similar position of authority, for example, a prison officer who has in his or her care a prisoner, and this has also been reflected in the Final Policy.
- 3.9 The CPS also recognises the potential impact that previous violence or abuse by the suspect against the victim may have upon the decision of the latter to want to commit suicide. It has, at the very least, the potential to influence the victim, and to be an improper consideration when arriving at a voluntary, clear, settled and informed decision. It is entirely possible that a seemingly voluntary, clear, settled and informed decision may be based upon unseen pressure from a suspect or reached as a result of the actions of a suspect who has acted violently or abusively against the victim in the past. Accordingly, the CPS considers it appropriate to regard such a history of violence or abuse as a factor in favour of prosecution in its own right.

3.10 The CPS has taken the view that, although many of the other suggested new factors were of interest and worthy of consideration, it would not be appropriate to include them in the Final Policy.

## 4. Question 3: weighted factors in favour of prosecution

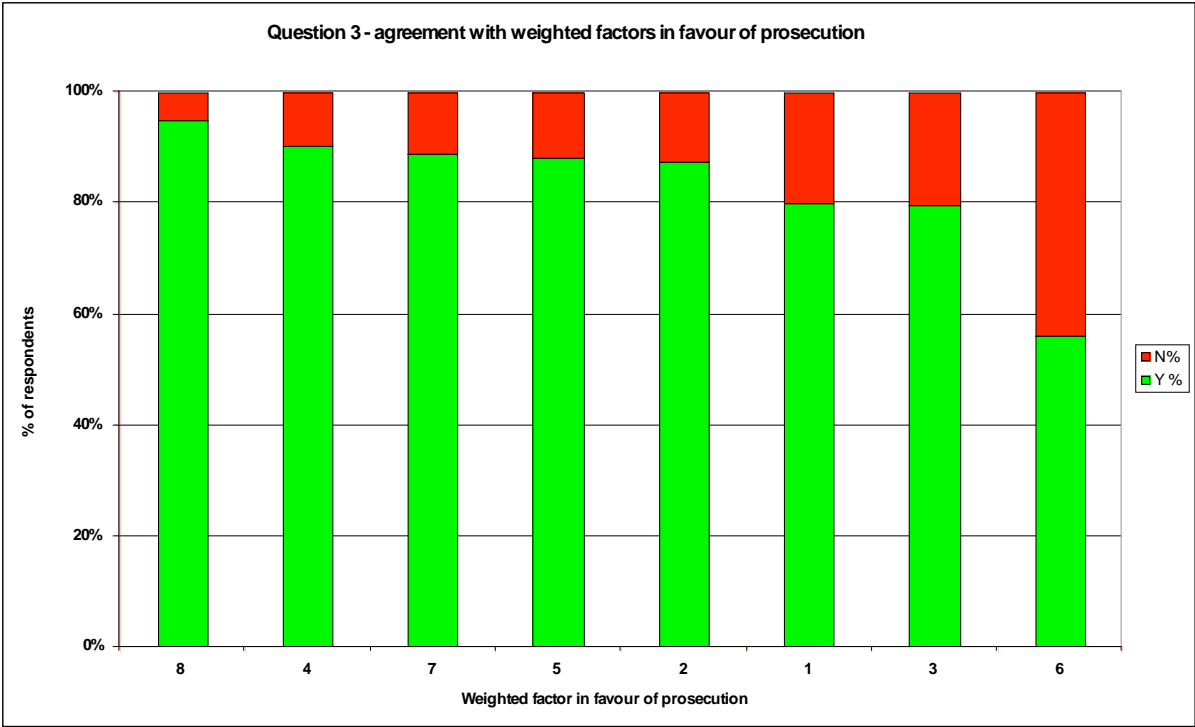
4.1 Question 3 of the consultation document invited those responding to indicate whether or not they agreed with those factors that were identified in the Interim Policy as carrying more weight in comparison with the other factors in favour of prosecution. Respondents were asked to indicate their views using “Y” for “yes” and “N” for “no”; those who did not wish to let the CPS have their views on any particular factor were asked not to complete the relevant box.

4.2 The views of those who responded to any part of Question 3 are set out in the table below.

**Table 3: Y/N responses to weighted factors in favour of prosecution**

No. in Interim Policy	Weighted factors in favour of prosecution	Yes %	No %	No. of responses
8	The suspect persuaded, pressured or maliciously encouraged the victim to commit suicide, or exercised improper influence in the victim's decision to do so; and did not take reasonable steps to ensure that any other person did not do so.	95	5	2,091
4	The victim did not indicate unequivocally to the suspect that he or she wished to commit suicide.	90	10	2,053
7	The suspect was not wholly motivated by compassion; for example, the suspect was motivated by the prospect that they or a person closely connected to them stood to gain in some way from the death of the victim.	89	11	2,052
5	The victim did not ask personally on his or her own initiative for the assistance of the suspect.	88	12	2,038
2	The victim's capacity to reach an informed decision was adversely affected by a recognised mental illness or learning difficulty.	87	13	2,038
1	The victim was under 18 years of age.	80	20	2,034
3	The victim did not have a clear, settled and informed wish to commit suicide; for example, the victim's history suggests that his or her wish to commit suicide was temporary or subject to change.	80	20	1,869
6	The victim did not have a terminal illness; a severe and incurable physical disability; or a severe degenerative physical condition; from which there was no possibility of recovery.	56	44	1,995

**Figure 2: Y/N responses to weighted factors in favour of prosecution**



**Commentary**

4.3 In respect of all the proposed weighted public interest factors identified in the Interim Policy as being in favour of prosecution, there was a majority of “yes” responses, indicating there was general agreement that each of these factors should carry additional weight as a factor in favour of prosecution. However, one factor received markedly less support than the others – this was that the victim did not have a terminal illness; a severe and incurable physical disability; or a severe degenerative physical condition, from which there was no possibility of recovery – which received an agreement rating of 56%.

**CPS response**

4.4 The CPS views the responses to Question 3 as an endorsement of the factors that were outlined in the Interim Policy as being worthy of greater weight when prosecutors assess whether a prosecution is required in the public interest. Seven of the eight factors received an agreement rating of 80% or over.

4.5 Factor 6, which related to the health and/or disability status of the victim, touched upon a major theme of comment during the consultation exercise. A large number of

respondents questioned the inclusion of this factor in the policy, arguing that it was inappropriate and may even be discriminatory to include factors relating to the health and disability status of the victim in the policy.

- 4.6 As a result of its lower agreement rating in this question, and upon further consideration, many of the wider views expressed during the consultation exercise, the CPS has removed factor 6 from the Final Policy.
- 4.7 Following a detailed review of all the responses received during the consultation exercise; after further careful consideration; and in the light of how the CPS has decided to approach the public interest factors against prosecution; the CPS has removed the mechanism of identifying particular factors as automatically carrying greater weight from the Final Policy. The CPS believes that this makes the Final Policy clearer and more accessible, for both prosecutors and members of the public.
- 4.8 It remains the case, of course, that when considering the public interest factors tending in favour of and against prosecution, the particular facts of the case may mean that one factor alone may outweigh a number of other factors which tend in the opposite direction.

## 5. Question 4: other weighted factors in favour of prosecution

- 5.1 Question 4 of the consultation document invited those responding to indicate whether there were any additional public interest factors in favour of a prosecution that they wished to see being given greater weight by prosecutors in reaching their decisions, in addition to the proposed list of weighted public interest factors in favour of prosecution outlined in the Interim Policy.
- 5.2 Overall, there were 1,340 relevant comments in response to this question. They have been divided between those factors which were already in the Interim Policy (1,022) and those which were new factors suggested by respondents (318).
- 5.3 These responses have been grouped where appropriate and are shown in the tables below, as a percentage of all relevant comments.

**Table 4: weighted factors in favour of prosecution – existing factors**

No. in Interim Policy	Weighted factors in favour of prosecution [EXISTING FACTORS]	Frequency	% of all relevant comments (1,340)
14	The suspect was paid to care for the victim in a care/nursing home environment.	242	18%
11	The suspect was unknown to the victim and assisted by providing specific information via, for example, a website or publication, to the victim to assist him or her in committing suicide.	212	16%
12	The suspect gave assistance to more than one victim who were not known to each other.	210	16%
16	The suspect was a member of an organisation or group, the principal purpose of which is to provide a physical environment [whether for payment or not] in which to allow another to commit suicide.	176	13%
9	The victim was physically able to undertake the act that constituted the assistance him or herself.	70	5%
13	The suspect was paid by the victim or those close to the victim for their assistance.	47	4%
1-16	All factors 1-16 should carry equal weight.	37	3%
10	The suspect was not the spouse, partner or a close relative or a close personal friend of the victim.	17	1%
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.	11	1%
	<b>Total</b>	<b>1,022</b>	<b>76%</b>

**Table 5: weighted factors in favour of prosecution – new factors**

<b>Weighted factors in favour of prosecution [NEW FACTORS]</b>	<b>Frequency</b>	<b>% of all relevant comments (1,340)</b>
The suspect was a nurse, doctor or other healthcare professional and the victim was in their care.	123	9%
The suspect had a history of abuse or violence against the victim.	60	4%
The suspect was not a UK resident or citizen.	36	3%
Factors relating to the extent to which the victim had sought treatment or support options.	14	1%
Factors relating to the personal views or state of mind of the suspect.	14	1%
Other factors concerning the relationship between victim and suspect.	14	1%
Other suspect-related factors.	13	1%
The act was deliberately publicised to encourage/ influence others.	11	1%
Factors relating to the vulnerability of the victim.	11	1%
Factors relating to the extent of communication from the victim.	8	1%
Other victim-related factors.	8	1%
Factors concerning the manner of assistance.	5	0%
Factors related to the suspect trying to dissuade the victim.	1	0%
<b>Total</b>	<b>318</b>	<b>24%</b>

## Commentary

5.4 The most widely identified factors from the Interim Policy that were thought worthy of greater weight were: that the suspect was paid to care for the victim in a care/nursing home environment, (18% of all relevant comments); that the suspect gave assistance to more than one victim who were not known to each other (16%); and that the suspect was unknown to the victim and assisted by providing specific information via, for example, a website or publication, to the victim to assist him or her in committing suicide (16%).

## CPS response

5.5 Both the main factors identified by respondents as carrying more weight that were not already in the Interim Policy – namely: that the suspect was a nurse, doctor or other healthcare professional and the victim was in their care; and that the suspect had a history of abuse or violence against the victim – have been included in the Final Policy.

5.6 Following a detailed review of all the responses received during the consultation exercise; after further careful consideration; and in the light of how the CPS has decided to approach the public interest factors against prosecution; the CPS has removed the mechanism of identifying particular factors as automatically carrying greater weight from the Final Policy. The CPS believes that this makes the Final Policy clearer and more accessible, for both prosecutors and members of the public.

## 6. Question 5: factors against prosecution

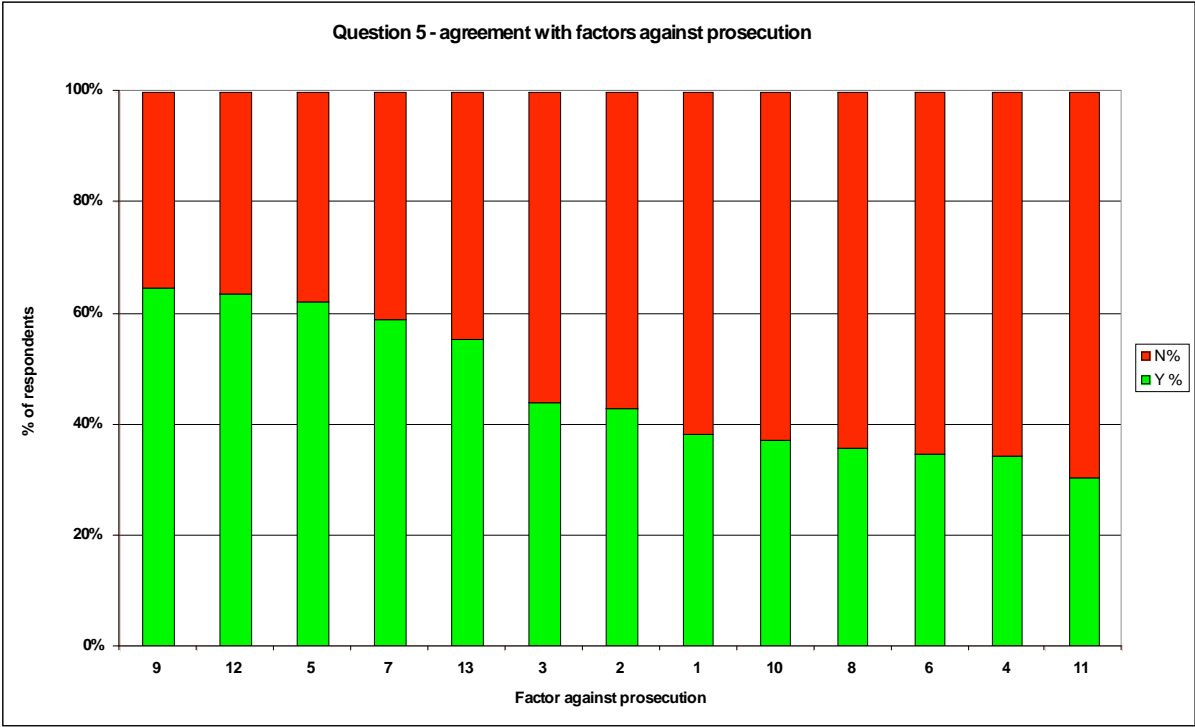
6.1 Question 5 of the consultation document invited those responding to indicate whether or not they agreed with each factor that was identified in the Interim Policy as a factor against prosecution. Respondents were asked to indicate their views using “Y” for “yes” and “N” for “no”; those who did not wish to let the CPS have their views on any particular factor were asked not to complete the relevant box.

6.2 The views of those who responded to any part of Question 5 are set out in the table below.

**Table 6: Y/N responses to factors against prosecution**

No. in Interim Policy	Factors against prosecution	Yes %	No %	No. of responses
9	The suspect had sought to dissuade the victim from taking the course of action which resulted in their suicide.	65	35	2,131
12	The actions of the suspect may be characterised as reluctant assistance in the face of a determined wish on the part of the victim to commit suicide.	64	36	2,133
5	The suspect was wholly motivated by compassion.	62	38	2,181
7	The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was as a consequence of their usual lawful employment.	59	41	1,978
13	The suspect fully assisted the police in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing assistance.	55	45	1,963
3	The victim asked personally on his or her own initiative for the assistance of the suspect.	44	56	2,068
2	The victim indicated unequivocally to the suspect that he or she wished to commit suicide.	43	57	2,086
1	The victim had a clear, settled and informed wish to commit suicide.	38	62	2,340
10	The victim has considered and pursued to a reasonable extent recognised treatment and care options.	37	63	2,192
8	The victim was physically unable to undertake the act that constituted the assistance him or herself.	36	64	2,303
6	The suspect was the spouse, partner or a close relative or a close personal friend of the victim.	35	65	2,343
4	The victim had: a terminal illness; or a severe and incurable physical disability; or a severe degenerative physical condition; from which there was no possibility of recovery.	34	66	2,341
11	The victim had previously attempted to commit suicide and was likely to try to do so again.	30	70	2,288

**Figure 3: Y/N responses to factors against prosecution**



**Commentary**

6.3 In respect of five of the 13 public interest factors identified in the Interim Policy as being against prosecution, there was majority agreement that each of these factors should be taken into consideration by prosecutors. The remaining eight factors against prosecution received an agreement rating of less than 50%.

6.4 A substantial number of those who responded by letter or e-mail also commented on the factors against prosecution and the CPS has considered these comments carefully and in detail, alongside the statistical analysis set out above, in formulating the CPS response outlined below.

**CPS response**

6.5 There was a great deal of comment during the consultation exercise on the factors outlined in the Interim Policy against a prosecution for assisted suicide. Five factors received an agreement rating in the “Y” and “N” answers of over 50% – factors 9, 12, 5, 7 and 13 – as shown in table 6 and figure 3 above.

6.6 A common thread runs through these factors in that each of them relates to the actions of the suspect, as distinct from any characteristic or action of the victim or

any other party. Indeed, there is a marked difference in the agreement ratings received for the lowest of the suspect-related factors (55%) and the highest of the victim-based factors (44%).

6.7 The suspect-related factors are that:

- the suspect sought to dissuade the victim;
- the suspect gave assistance reluctantly;
- the suspect was wholly motivated by compassion;
- the suspect gave only minor assistance; and
- the suspect fully assisted the police in their enquiries.

6.8 The CPS is of the view, based on both the answers to Question 5 and the comments received during the consultation exercise, that these continue to be appropriate factors against prosecution, and they therefore feature in the Final Policy.

6.9 Each of the remaining eight factors received less than 50% agreement ratings, ranging between 30% and 44%, and typically this was reflective of, and reinforced by, the comments made during the consultation exercise.

6.10 The CPS has considered very carefully one of these factors, namely that the victim had a clear, settled and informed wish to commit suicide. That factor received an agreement rating of 38%. The CPS has borne heavily in mind the views of those who responded but remains satisfied that, of all the factors identified in the Interim Policy that related to the actions or characteristics of the victim, this factor should continue to be regarded as a factor tending against prosecution. Accepting other changes to the wording of the factor itself, it now reads: the victim had reached a voluntary, clear, settled and informed decision to commit suicide.

6.11 The CPS considers that, in every case of encouraging or assisting suicide, the decision of the victim to commit suicide is a vital aspect to consider. Its absence is clearly a factor tending in favour of prosecution but its presence is clearly a factor that should be borne in mind by the reviewing prosecutor when considering the factors tending against prosecution. The CPS believes that the fact that the suspect encourages or assists another to commit suicide, while acting in full accordance with the victim's voluntary, clear, settled and informed decision to commit suicide, should be taken into consideration by prosecutors. Accordingly, the CPS has decided that it

is appropriate for that factor, as amended, to be a factor tending against prosecution in the Final Policy.

- 6.12 Factor 11 – that the victim had previously attempted to commit suicide and was likely to try to do so again – received only a 30% agreement rating, and attracted substantial critical comment in other forms of correspondence during the consultation exercise. Many respondents viewed this factor as indicative of the victim suffering from serious mental or physical issues which had prompted him or her to try to commit suicide previously, rather than as evidence of a voluntary, clear, settled and informed intent to end his or her life. Almost 1,000 respondents specifically asked for this factor to be removed from the Final Policy in their general comments.
- 6.13 These respondents typically argued that this could often be seen as a “cry for help” from the victim and that the fact that a victim had previously tried to commit suicide should not later have a bearing on the potential prosecution of the suspect providing assistance. Indeed, many respondents felt strongly that, because the victim had previously attempted suicide, he or she was a particularly vulnerable individual who could more properly benefit from increased care, or support as distinct from being someone who should be assisted to end his or her life. After considering all the responses received during the consultation exercise, the CPS has removed factor 11 against prosecution from the Final Policy.
- 6.14 Factor 4 against prosecution – that the victim had a terminal illness; or a severe and incurable physical disability; or a severe degenerative physical condition; from which there was no possibility of recovery – was one of the most commented upon individual factors during the consultation exercise. Many respondents provided their views, both through answering this question and through many other forms of correspondence with the CPS.
- 6.15 The factor was the subject of a great deal of concern from respondents, who felt that it was inappropriate to include anything in the policy which could be seen as discriminatory against any individual or group, including those with, for example, a serious illness or disability. This factor was also the focus of a number of responses from groups representing those with disabilities. Many felt that the inclusion of the factor gave the impression that the lives of those affected in this way were less valued in the Interim Policy. A significant proportion of the responses received asked the CPS to reconsider the inclusion of this factor, and remove it from the Final Policy.

The CPS has also borne in mind in this regard the terms of EDM 302 which considered that the Interim Policy put the vulnerable at risk.

- 6.16 In addition, the CPS has considered carefully the conclusions of the Equality and Diversity Impact Assessment (Annex B) which concluded that the Interim Policy, if unamended, may have had the potential to cause indirect discrimination against disabled people.
- 6.17 Whilst not accepting some of the arguments put forward, the CPS recognises that any factor which could suggest that encouraging or assisting the suicide of a person who was suffering in this way was somehow less serious simply by virtue of the physical condition of the victim is inappropriate for inclusion in the Final Policy. The factor has therefore been removed.
- 6.18 Factor 6 against prosecution – that the suspect was the spouse, partner or a close relative or a close personal friend of the victim – was also the subject of a substantial amount of comment during the consultation exercise, with many respondents commenting through providing an answer to this question and many others through correspondence sent to the CPS. The factor received an agreement rating of 35% in answer to Question 5.
- 6.19 A significant majority of respondents pointed to the fact that family or other close personal relationships, as referred to in this factor, could not always be relied upon to be supportive. Indeed, a large number of respondents argued that relationships in such circumstances can be subject to change and may on occasion even be antagonistic or manipulative. Further, many respondents questioned whether such a factor against prosecution effectively discriminates against a victim who did not have such close support available to him or her.
- 6.20 Following detailed consideration of all the responses received during the consultation exercise, the CPS has removed factor 6 against prosecution from the Final Policy.
- 6.21 Four other factors received an agreement rating in response to Question 5 of between 36% and 44%. A common thread running through these factors is that each of them relate to the behaviour or capability of the victim. Following detailed consideration of all the feedback received during the consultation exercise, the CPS has removed each of these four factors from the Final Policy.

- 6.22 Accordingly, the factors against prosecution which appear in the Final Policy are now centred on the voluntary, clear, settled and informed decision of the victim and the behaviour of the suspect and the rationale behind his or her encouragement or assistance. The CPS considers this to be a principled way forward which allows prosecutors and members of the public clearly to understand the factors that will now be taken into consideration when determining the public interest.
- 6.23 The CPS has also reflected on the views of those who responded who considered that the phrase “the assistance which the suspect provided was as a consequence of his or her usual lawful employment” was ambiguous and could be applied to health care professionals as well as, for example, public transport workers who may have driven a bus or train which conveyed the victim to the place where they intended to commit suicide, provided the necessary intent of the suspect could also be proved.
- 6.24 The CPS took the view that this factor should cover the latter example rather than the former, but it recognises that there is a degree of uncertainty that is unhelpful. Having considered the matter further and in the light of the fact that the substance of this factor should be more focused on the extent of the encouragement or assistance provided, the CPS has removed this clause from the factor which appears in paragraph 45(3) of the Final Policy.
- 6.25 In the light of more detailed comments received, the CPS has also amended the wording of some of the factors against prosecution to avoid any ambiguity or concern that respondents identified in the original wording of the factors in the Interim Policy, and to reflect the legislative changes in the wording of the offence.

## 7. Question 6: new factors identified against prosecution

7.1 Question 6 of the consultation document invited those responding to indicate whether there were any additional public interest factors against a prosecution that they wished to see included in the Final Policy, in addition to the proposed list of factors outlined in the Interim Policy. There were 265 relevant comments in response to this question.

7.2 These responses have been grouped where appropriate and are shown in the table below.

**Table 7: new factors identified against prosecution**

New factors identified against prosecution	Frequency	% of all relevant comments
The suspect did not stand to gain any advantage, financial or otherwise, by the death of the victim.	67	25%
Factors relating to the vulnerability of the suspect.	37	14%
There was written documentation outlining the victim's request and intentions to commit suicide; for example, there was a Living Will.	35	13%
Other suspect-related factors.	29	11%
Factors relating to the manner of assistance.	26	10%
Notification to a health care professional, or another, of the victim's intentions in advance.	22	8%
The suspect was a member of medical profession.	22	8%
Factors relating to the personal views, situation and/or actions of the victim.	22	8%
Other factors.	5	2%
<b>Total</b>	<b>265</b>	<b>100%</b>

### Commentary

7.3 There were comparatively few relevant comments in answer to this question. The main new factors identified as being against a prosecution included: that the suspect did not stand to gain any advantage, financial or otherwise, from the death of the victim (25% of all relevant comments); and that there was written documentation outlining the victim's request and intentions to commit suicide, such as, for example, a Living Will (13%).

## CPS response

- 7.4 The CPS has given due consideration to each of the responses received to this question. The CPS believes that the underlying principle of the proposed new factor against a prosecution identified in the consultation exercise - that the suspect did not stand to gain any advantage, financial or otherwise, from the death of the victim – is adequately covered by factor 6 in the Final Policy in favour of a prosecution, which states that: “[t]he 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.”.
- 7.5 The CPS considers that, whilst the absence of such a motivation for gain is not a factor tending against prosecution in its own right, such a motivation **is** properly a factor to take into account tending in favour of prosecution. This factor has not, therefore, been included in the Final Policy.
- 7.6 With regard to those other major factors that respondents identified, such as the presence of a Living Will, the view of the CPS is clear. Only Parliament can set out what processes or procedures might be appropriate in the context of encouraging or assisting suicide that may lead to an automatic decision not to prosecute. Any requirement for there to be a Living Will or for a Doctor to confirm that the victim was terminally ill (which was another factor identified by some as a factor against prosecution), for example, is clearly within the scope of processes and procedures that, in effect, create a regime for encouraging or assisting suicide. Only Parliament can determine the legality of such a regime – not the DPP – and accordingly, the CPS has firmly rejected any factor against prosecution that could be said to be a stepping stone towards the creation of such a regime.
- 7.7 The CPS has taken the view that, although many of the other suggested new factors were of interest and worthy of consideration, it would not be appropriate to include them in the Final Policy.

## 8. Question 7: weighted factors against prosecution

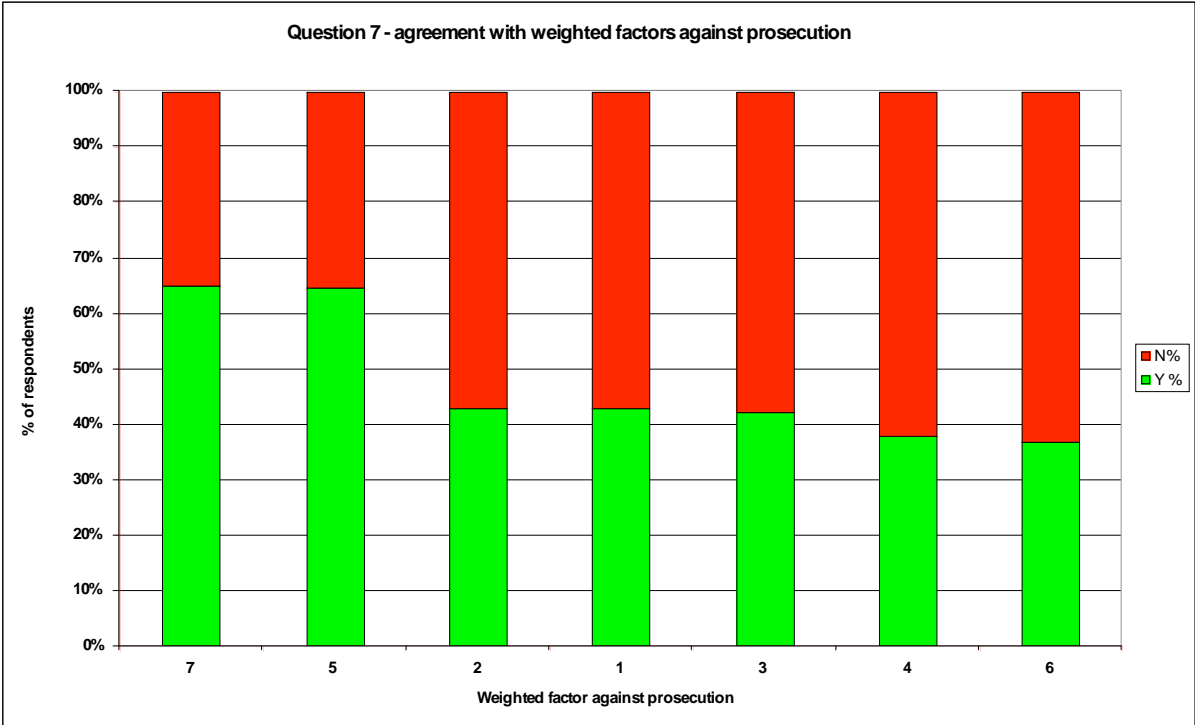
8.1 Question 7 of the consultation document invited those responding to indicate whether or not they agreed with those factors that were identified in the Interim Policy as carrying more weight in comparison with the other factors against prosecution. Respondents were asked to indicate their views using “Y” for “yes” and “N” for “no”; those who did not wish to let the CPS have their views on any particular factor were asked not to complete the relevant box.

8.2 The views of those who responded to any part of Question 7 are set out in the table below.

**Table 8: Y/N responses to weighted factors against prosecution**

No. in Interim Policy	Weighted factors against prosecution	Yes %	No %	No. of responses
7	The actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was as a consequence of their usual lawful employment.	65	35	1,904
5	The suspect was wholly motivated by compassion.	65	35	1,954
2	The victim indicated unequivocally to the suspect that he or she wished to commit suicide.	43	57	1,986
1	The victim had a clear, settled and informed wish to commit suicide.	43	57	2,015
3	The victim asked personally on his or her own initiative for the assistance of the suspect.	42	58	1,982
4	The victim had: a terminal illness; or a severe and incurable physical disability; or a severe degenerative physical condition; from which there was no possibility of recovery.	38	62	2,031
6	The suspect was the spouse, partner or a close relative or a close personal friend of the victim.	37	63	2,002

**Figure 4: Y/N responses to weighted factors against prosecution**



**Commentary**

8.3 There was a majority of “Yes” responses, indicating that that factor should carry additional weight against prosecution, in respect of only two factors: (i) that the actions of the suspect, although sufficient to come within the definition of the offence, were of only minor assistance or influence, or the assistance which the suspect provided was as a consequence of their usual lawful employment; and (ii) that the suspect was wholly motivated by compassion. Both factors received agreement ratings of 65%.

8.4 Each of the remaining five factors that were identified in the Interim Policy as carrying more weight against a prosecution received an agreement rating of between 37% and 43%. Four of these were victim-related factors and the fifth focused on the relationship between the victim and the suspect. These statistics largely reflected the wider comments received during the consultation exercise.

## **CPS response**

- 8.5 Following a detailed review of all the responses received during the consultation exercise; after further careful consideration; and in the light of how the CPS has decided to approach the public interest factors against prosecution; the CPS has removed the mechanism of identifying particular factors as automatically carrying greater weight from the Final Policy. The CPS believes that this makes the Final Policy clearer and more accessible, for both prosecutors and members of the public.
- 8.6 It remains the case, of course, that when considering the public interest factors tending in favour of and against prosecution, the particular facts of the case may mean that one factor alone may outweigh a number of other factors which tend in the opposite direction.

## 9. Question 8: other weighted factors against prosecution

- 9.1 Question 8 of the consultation document invited those responding to indicate whether there were any additional public interest factors against a prosecution that they wished to see being given greater weight by prosecutors in reaching their decisions, in addition to the proposed list of weighted public interest factors against prosecution outlined in the Interim Policy.
- 9.2 Overall, there were 280 relevant comments in response to this question. They have been divided between those factors which were already in the Interim Policy (206) and those which were new factors identified by respondents (74).
- 9.3 These responses have been grouped where appropriate and are shown in the tables below, as a percentage of all relevant comments.

**Table 9: weighted factors against prosecution – existing factors**

No. in Interim Policy	Weighted factors against prosecution [EXISTING FACTORS]	Frequency	% of all relevant comments (280)
9	The suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide.	86	31%
12	The actions of the suspect may be characterised as reluctant assistance in the face of a determined wish on the part of the victim to commit suicide.	69	25%
8	The victim was physically unable to undertake the act that constituted the assistance him or herself.	22	8%
11	The victim had previously attempted to commit suicide and was likely to try to do so again.	12	4%
10	The victim has considered and pursued to a reasonable extent recognised treatment and care options.	7	3%
1-13	All of factors 1-13 should carry equal weight.	6	2%
13	The suspect fully assisted the police in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing assistance.	4	1%
	<b>Total</b>	<b>206</b>	<b>74%</b>

**Table 10: weighted factors against prosecution – new factors**

<b>Weighted factors against prosecution [NEW FACTORS]</b>	<b>Frequency</b>	<b>% of all relevant comments (280)</b>
Other suspect related factors.	21	8%
There was written documentation outlining the victim's request and intentions to commit suicide; for example, there was a Living Will.	16	7%
Factors relating to the personal views, situation and/or actions of the victim.	7	3%
The suspect was a member of the medical profession.	7	3%
Factors relating to the vulnerability of the suspect.	6	2%
Notification to a health care professional, or another, of the victim's intentions in advance.	6	2%
Factors relating to the manner of assistance.	5	2%
Other factors.	3	1%
The suspect did not stand to gain any advantage, financial or otherwise, by the death of the victim.	3	1%
<b>Total</b>	<b>74</b>	<b>27%</b>

## Commentary

9.4 The most widely identified factors from the Interim Policy that were thought worthy of greater weight were: that the suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide (31% of all relevant comments); and that the actions of the suspect may be characterised as reluctant assistance in the face of a determined wish on the part of the victim to commit suicide (25%).

## CPS response

9.5 Following a detailed review of all the responses received during the consultation exercise; after further careful consideration; and in the light of how the CPS has decided to approach the public interest factors against prosecution; the CPS has removed the mechanism of identifying particular factors as automatically carrying greater weight from the Final Policy. The CPS believes that this makes the Final Policy clearer and more accessible, for both prosecutors and members of the public.

## 10. Question 9: issues identified

- 10.1 Question 9 asked respondents to provide any additional comments or further information that they wished as part of the consultation exercise. A significant majority of respondents took the opportunity to do so, and, in addition, the CPS took into account all those responses that it received, other than through the pro-forma questionnaires in completing the analysis of this question.
- 10.2 Where possible and appropriate, the CPS has categorised answers provided to Question 9 and included them in its analysis of Questions 1 to 8. So, if the actual answer provided as part of Question 9 could properly have been provided to any Question from 1 to 8, it was included there. This ensured that the substance of what respondents were saying was properly considered alongside other similar comments, rather than relying rigidly on the way in which the questionnaire had been constructed and requiring them to be considered here under Question 9 simply because that is where respondents chose to place them.
- 10.3 This was possible for a number of comments provided; the remaining answers to Question 9 have been categorised as shown in the table below.
- 10.4 In addition, the CPS received 532 pieces of correspondence in which individuals expressed general views about the issue of assisted suicide but in which they did not identify any particular factors, either in favour or against prosecution. The principal issue in each of these pieces of correspondence was identified and they have also been included in table 11.
- 10.5 Although many of the issues shown below relate to earlier questions in the consultation document, the comments did not provide a specific answer to any question asked. They have therefore been included here.

**Table 11: issues identified in response to Question 9**

Issues identified in response to Question 9	No.	% of all relevant respondents
The DPP has neither the authority nor the right to change the law; as such these matters should come within legislation passed by Parliament.	1,078	23%
Assisting suicide is a criminal offence. The guidelines should make it clear that there will always be a presumption in favour of prosecuting people who assist suicide, unless there are clear and compelling reasons to the contrary; each case should be taken on its merits, as at present.	910	19%
Assisted suicide is illegal and therefore the CPS should prosecute every case, and let a jury decide on the evidence presented / the law should not be changed.	853	18%
All life is sacred and we must preserve the sanctity of life.	447	9%
Comments regarding the consultation document and/ or consultation process overall.	375	8%
Every person should have the right to make decisions about their own life. A change in the law is required; no cases involving assisted suicide should be prosecuted.	339	7%
Discussion of health-related factors of the victim: i.e. terminal illness, degenerative condition, severe disability etc.	327	7%
The guidelines may encourage people to think they are immune from prosecution.	385	8%
Details on personal and/or professional background and experience provided.	264	6%

## Commentary

- 10.6 The main themes identified in answer to Question 9 were that: the DPP has neither the authority nor the right to change the law, and as such these matters should come within legislation passed by Parliament (1,078 respondents); the Interim Policy should make it clear that there will always be a presumption in favour of prosecuting people who assist suicide, unless there are clear and compelling reasons to the contrary (910 respondents); and either assisted suicide is a criminal offence and therefore the CPS should prosecute every case, and let a jury decide on the evidence presented, or that the law should not be changed (853 respondents).
- 10.7 The CPS also considered the terms of EDM 302 in this section and a number of respondents referred the CPS to the fact that they supported its terms. As stated in the Introduction to this report, one of the clauses of the EDM calls for the Interim Policy to be withdrawn on the basis that it overrides the will of Parliament.
- 10.8 A number of respondents commented that they considered the questionnaire to be an over-simplification of complex issues that did not lend themselves to simple “Yes”

or “No” answers. They were concerned in part that it could be misread as a “tick box” approach which might allow would-be suspects simply to consider the factors on both sides of the public interest and assess how best to avoid prosecution. This was also commented on in EDM 302.

## **CPS response**

- 10.9 Many respondents focused on the fact that the law should not be changed and/or that the DPP was seeking to change the law. As stated in both the Interim Policy and the Final Policy, the publication of the policy for prosecutors in respect of cases of encouraging or assisting suicide does nothing to change the law. That is, and can only be, a matter for Parliament. Neither the DPP nor the CPS has the power to change the law.
- 10.10 Further, it is important to place the offence of encouraging or assisting suicide in the context of the criminal law generally. The offence of encouraging or assisting suicide is no different from any other criminal offence created by Parliament.
- 10.11 In respect of every criminal offence, the DPP has a discretion whether or not to prosecute. That discretion has been recognised for generations as Sir Hartley Shawcross, the then Attorney General, made perfectly clear on the floor of the House of Commons in 1951. Then, he stated that: “[i]t has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution”. He added that there should be a prosecution: “wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest” (House of Commons Debates, Volume 483, 29 January 1951). This statement on the public interest and the discretion of the Attorney General and the DPP to decide whether or not a prosecution is required in the public interest has been supported by Attorneys General ever since.
- 10.12 The discretion of the DPP to decide whether or not to prosecute cases of encouraging or assisting suicide is confirmed by Parliament’s decision in 1961 to allow such a prosecution to take place only with the consent of the DPP.
- 10.13 Accordingly, it would be a breach of the duty to consider each case on its own facts and on its own merits to conclude – as a statement of policy – that every case of

encouraging or assisting suicide in which there is sufficient evidence to support a prosecution must be prosecuted. Such a statement of policy would be in breach of the Code – which prosecutors must apply when considering each case of encouraging or assisting suicide – and subject to judicial intervention.

- 10.14 Therefore, whilst the CPS understands the concerns that have been expressed, it is firmly of the view that the requirement to exercise independent judgment in each case and to decide whether a prosecution is required in the public interest means that it is not automatic that every case of encouraging or assisting suicide where there is sufficient evidence will be prosecuted.
- 10.15 The DPP further retains his discretion whether to prosecute such cases based on the need for him to give his consent to all prosecutions under section 2 of the Suicide Act 1961. Decisions on consent in respect of cases of encouraging or assisting suicide are taken on the basis of the evidential and public interest factors set out in the Code and in the Final Policy. The CPS notes the views of those respondents who wished that every case of encouraging or assisting suicide to be prosecuted where there is sufficient evidence; however, each case will continue to be judged by senior and highly experienced lawyers on its own facts and on its own merits.
- 10.16 With regard to the comments received about the potential misuse of this policy by adopting a “tick box” approach, the CPS draws attention to the fact that this was specifically addressed in paragraphs 15 and 16 of the Interim Policy. There, it is clear that the consideration of public interest factors is not to be treated as a numerical exercise. These paragraphs are repeated in the Final Policy at paragraphs 39 and 40.
- 10.17 In order to ensure that all those who apply the Final Policy do so consistently, and to help members of the public, the decision-making process that is set out in the Code relating to the exercise of discretion in the public interest is also set out in the Final Policy in respect of cases of encouraging and assisting suicide. The relevant text appears at paragraphs 37 and 38.

## **Annex A – Respondents**

- 1 The CPS received nearly 5,000 responses to the consultation exercise on the Interim Policy. Of these, over 4,700 were from individuals and organisations from within England and Wales, and over 150 more were received from other countries, including Scotland and Northern Ireland.
- 2 In total, almost 4,000 members of the public responded to the consultation exercise. In addition, the CPS received replies from significant numbers of doctors and other healthcare professionals, representatives of various faiths, academics, lawyers, judges and public servants.
- 3 Several responses were received from Members of the House of Commons and the House of Lords. The CPS also received responses from a number of All Party Parliamentary Groups.
- 4 Over 100 organisations submitted formal responses to the CPS.

## Annex B – Equality and Diversity Impact Assessment

### Background

- 1 In 2009, Ms Purdy sought information about the factors that the Director of Public Prosecutions (DPP) would take into account in deciding whether or not to grant his consent to a prosecution under section 2 of the Suicide Act 1961. Ms Purdy contended that the Code for Crown Prosecutors issued by the DPP under section 10 of the Prosecution of Offences Act 1985 was insufficiently precise to provide her with the information that she sought. The case proceeded through the courts until the highest court in the United Kingdom, the Appellate Committee of the House of Lords, found in favour of Ms Purdy in *R (on the application of Purdy) v Director of Public Prosecutions (DPP)* on 30 July 2009 – now reported at [2009]UKHL45.
- 2 In supporting Ms Purdy’s case, the Law Lords required the DPP: “to clarify what his position is as to the factors that he regards as relevant for and against prosecution”<sup>1</sup> in cases of assisted suicide. This was a legal ruling with which the DPP was bound to comply, and it is a sensitive area of the law, which provokes sincere and deeply-held views on both sides of the debate.
- 3 The DPP published his Interim Policy on prosecuting cases of assisted suicide on 23 September 2009. At the same time, the Crown Prosecution Service, (CPS), launched a consultation exercise inviting members of the public to respond with their views on that policy. The consultation exercise ran for 12 weeks until 16 December 2009.
- 4 The Interim Policy on assisted suicide provided further information on the relevant public interest factors involved in this type of case that should be considered by prosecutors in addition to those factors already set out in the Code. These lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.
- 5 The Interim Policy did not represent a change in the law. Only Parliament can change the law on assisted suicide.

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<sup>1</sup> paragraph 55

6 The CPS Single Equality Scheme, published in 2006, recognises that the CPS is bound by the current public sector duties in relation to gender, race and disability, and extends this protection to religion or belief, age and sexual orientation. It requires the CPS to conduct an Equality and Diversity Impact Assessment (EDIA) for all new policies, and where significant changes to existing policies are proposed. The policy on prosecuting cases of encouraging or assisting suicide is a new policy which required a full Impact Assessment.

## **Methodology**

7 According to the Department of Health, around 5,000 people take their own lives in England every year. The factors associated with suicide are many and varied – including social circumstances, biological vulnerability, mental ill-health, life events and access to means.<sup>2</sup>

8 The CPS recognised at an early stage that this policy might specifically affect disabled people.

9 As a result, the following approach was adopted. The views of the disabled members of the CPS Community Accountability Forum (CAF) were obtained before the consultation document was published. The CAF is a permanent group, comprising 12 external members from various community organisations reflecting a diversity of interests across the equality strands. The purpose of the CAF is to act as a consultative body in relation to equality and diversity across the CPS.

10 The CPS also specifically targeted a number of organisations, including several representing disabled or older people during the consultation exercise.

11 An easy-read version of the policy was produced and made available to learning disability networks and groups.

12 Responses to the consultation exercise were submitted in a variety of ways, including completed questionnaires, e-mails and letters.

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<sup>2</sup> Department of Health (2002) *National Suicide Prevention Strategy for England*  
[www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4019548.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4019548.pdf)

- 13 The details of cases of assisted suicide which have been prosecuted were considered in producing this EDIA.

### **Consultation and involvement**

- 14 The Interim Policy was published on 23 September 2009. A 12 week consultation period was held and was concluded on 16 December 2009.
- 15 The CPS Community Accountability Forum were fully consulted during the consultation period.
- 16 CPS Staff Networks were consulted.
- 17 A total of 4,710 responses were received from a range of sources in England and Wales, including CPS staff, individual members of the public, organisations supporting disabled people and older people, representatives of various faiths, services providing palliative and end of life care, and organisations supporting people with terminal illnesses. Each response was individually considered.

### **Policy implementation**

- 18 The policy for prosecuting cases of encouraging or assisting suicide was published on 25 February 2010.
- 19 All cases of encouraging or assisting suicide will be dealt with by the Special Crime Division in CPS Headquarters. The Head of the Division reports directly to the DPP. The implementation of the policy will be regularly reviewed by the CPS and assessed for further equality impacts.

### **Assessment and analysis**

#### *Positive Impact*

- 20 The policy provides the opportunity to clarify for the public, including all the groups considered in this EDIA, the public interest factors that the CPS will take into account when taking prosecution decisions in relation to encouraging or assisting suicide.

### *Negative Impact*

- 21 The analysis of the evidence from cases prosecuted, research and the consultation exercise found that there is a potential for differential impacts on the grounds of age, religion or belief, gender and disability.
- 22 Age: the evidence suggests that the publication and implementation of this policy, without amendment, might impact on the confidence that older people might have in the CPS, because of the inclusion of public interest factors which, in the view of many respondents, should not be considered when deciding whether to prosecute.
- 23 Religion and belief: the evidence suggests that the publication and implementation of this policy, without amendment, might impact on the confidence of people from a Jewish, Christian or Muslim background might have in the CPS, because of the inclusion of public interest factors which, in the view of many respondents, should not be considered when deciding whether to prosecute.
- 24 Gender: the evidence suggests that previous violence, or abuse, by the suspect against the victim may have the potential to influence the victim, and to be an improper consideration when arriving at a voluntary, clear, settled and informed decision to commit suicide. The CPS recognises that this type of violence disproportionately affects women. Without amendment, this policy might negatively impact on women's confidence that the CPS has identified the correct public interest factors in cases of encouraging or assisting suicide.
- 25 Disability: the evidence suggests that the interim policy on assisted suicide, if unamended, may have had the potential to cause indirect discrimination against disabled people. Including the presence of "a terminal illness; a severe and incurable physical disability; or a severe degenerative physical condition; from which there was no possibility of recovery" as a factor against prosecution, and including the absence of the above as a factor in favour of prosecution may lead to disproportionate outcomes in cases involving victims in this situation, namely, that disabled people are more likely to be involved in cases of assisted suicide as the person requesting assistance. Including these factors in the Final Policy may lead to prosecution decisions that exacerbate this disproportionality to an extent that is unjustified.

26 In addition, some respondents recommended that the policy should apply the principles and approach of the Mental Capacity Act 2005 when deciding whether the victim had the capacity to decide that he or she wanted to commit suicide. This would ensure that all people whose capacity was affected by any number of reasons in addition to 'learning difficulty' or 'mental health' issue are covered by the policy.

### **Action Plan**

27 The CPS carefully considered the responses from the consultation exercise and the findings of this EDIA, and has committed to the actions set out below. The majority of the actions were completed before the publication of the final policy.

28

<b>Recommendations</b>	<b>Responsibility</b>	<b>Actions required</b>	<b>Success Indicators</b>	<b>Target Date</b>	<b>What progress has been made?</b>
Monitoring cases across the equality strands, and for impact on disability in particular.	Special Crime Division	Agree monitoring systems for encouraging or assisting suicide cases.	Monitoring system has been agreed.	3 months following the publication of the policy.	Recommendation has been agreed.
Remove factors 6 in favour and factor 4 against prosecution from the policy.	DPP	Remove factors.	Factors are removed.	Before publication of policy.	Action complete.
Remove factor 11 against prosecution from the policy.	DPP	Remove factor.	Factor is removed.	Before the publication of the policy.	Action complete.
Add, 'a history of violence or abuse' as a factor in favour of prosecution to the policy.	DPP	Add factor to the policy.	Factor is added.	Before the publication of the policy.	Action complete.
Use the definition set out in the Mental Capacity Act 2005 when deciding on the victim's capacity to form a clear and settled intent to commit suicide.	DPP	Revise relevant factor.	Factor has been revised.	Before the publication of the policy.	Action complete.

**This EDIA has been prepared by the Equality and Diversity Unit of the CPS  
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