

‘DPP acts unlawfully on assisted suicide 2’

by Francis Bennion

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Introductory Note

On 31 May 2011 *The Times* published my first letter, see www.francisbennion.com/2011/012.htm. Following that letter, on 1 June, *The Times* published a letter from Roger K. Daw, (Director of Policy, Crown Prosecution Service, 2007-10) saying that my earlier letter was ‘wrong’. He said: ‘It was the law lords in the *Purdy* case (2009, UKHL45) who directed the DPP to “clarify what his position [was] as to the factors that he regards as relevant for and against prosecution” in cases of what is now defined as encouraging and assisting suicide. This is what the DPP did in his interim and then final guidelines issued last year. It is difficult to conclude that by complying with the highest court in the land, the DPP acted “unlawfully”.’ This letter is my response.

DPP acts unlawfully on assisted suicide 2

Like other peers, Lord Joffe (letter, 2 June 2011) welcomes the Director of Public Prosecutions’ new guidelines, which provide that “it is not in the public interest to prosecute individuals [under s. 2(1) of the Suicide Act 1961] who compassionately assist a loved one to die”. However there is an overriding public interest in the rule of law, which requires the DPP’s guidelines to be within his powers. I have suggested that they are not (letter, 31 May). Mr Daw (letter, 1 June) says I am wrong, because the House of Lords directed the DPP to produce them.

My answer is that the direction referred only to lawful guidelines. In effect the new guidelines substantially modify the legal meaning of s. 2(1), which contravenes the ruling I quoted in my previous letter: ‘the DPP cannot dispense with or suspend the operation of s. 2(1) of the 1961 Act, and he cannot promulgate a case-specific policy . . . which would, in effect, recognize exceptional defences to this offence which Parliament has not chosen to enact.’

In the Coroners and Justice Act 2009 Parliament modernized the wording of s. 2(1), keeping the main prohibition on assisting suicide and the penalty of fourteen years imprisonment. If Parliament had wished to introduce the compassionate defence it would surely have done so then.

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References

None

¹ Published in *The Times* 3 June 2011 (words in square brackets published as part of letter).