

Policy Document Control Page

Title

Title: Disclosure/Discovery of Assisted Suicide Policy

Version: 4

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Supersedes

Disclosure, discovery, assisted, suicide, mental capacity, legal competence, Crown Prosecution Service (CPS).

Supersedes

Supersedes: 3

Description of Amendment(s): Minor edit to numbering and format. URL links (6.4, 6.8) updated for final policy. New 6.10 re MP vote on the right to die. Related policies (15) and Reference (16) extended.

Originator

Originated By: Matt Walsh

Designation: Patient Safety Lead

Equality Impact Assessment (EAA) Process

**Equality Relevance Assessment Undertaken by: Matt Walsh
ERA undertaken on: 11.05.2016**

ERA approved by EAA Work group on:

Where policy deemed relevant to equality- Yes

**EAA undertaken by Matt Walsh
EAA undertaken on: 11/05/16
EAA approved by EAA work group on:**

Approval and Ratification

Referred for approval by: Matt Walsh

Date of Referral: 11th May 2016

Approved by: SP&SH Group

Approval Date: 11th May 2016

Date Ratified by Executive Directors: 16th May 2016

Executive Director Lead: Medical Director

Circulation

Issue Date: 17th May 2016

Circulated by: Performance and Information

Issued to: An e-copy of this policy is sent to all wards and departments

Policy to be uploaded to the Trust's External Website? YES

Review

Review Date: January 2018

Responsibility of: Matt Walsh

Designation: Patient Safety Lead

This policy is to be disseminated to all relevant staff.

This policy must be posted on the Intranet.

Date: 17th May 2016

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1. INTRODUCTION

- 1.1 The topic of assisted suicide generates debate on a variety of levels and by definition it is an issue that affects healthcare staff both as individuals and as health professionals.
- 1.2 There is a clear distinction between end of life decisions taken as part of palliative care (advance care planning) and acting to end life, a feature of assisted suicide. The Royal College of Nursing believes that when patients are offered skilled palliative end of life care requests for assisted suicide may become less frequent.
- 1.3 As a partner organisation of Local Safeguarding Adults Board this policy was approved by the Trust Safeguarding Adults Working Group, Suicide Prevention Group, End of Life Care Pathway Group and Risk and Clinical Governance Group.
- 1.4 **When and why people express a wish to die may include**
 - People with life threatening illnesses approaching the end of life.
 - Those with progressive irreversible conditions who predict a future situation in which they perceive their quality of life as being extremely poor and who see no potential for improvement
 - Those with mental health, substance misuse and learning disability issues for whom continuing to live feels like a major challenge
 - Individuals coping with complex debilitating or multiple long term conditions.

2. SCOPE

- 2.1 The policy applies to all staff working within Pennine Care NHS Foundation Trust and those service users in receipt of care from Pennine Care NHS Foundation Trust.

3. AIM

- 3.1 The policy aims to provide direction for staff in how to respond to incidents of assisted suicide or information that an assisted suicide may occur.

4. ROLES AND RESPONSIBILITIES

4.1 All Staff

All staff will have responsibility for following the policy in the event that a service user discloses:

- Their intention to commit assisted suicide or
- May be considering assisted suicide
- What to do if staff become aware that an assisted suicide has taken Place.

4.2 Service Managers/Leads will ensure that all staff are aware of this policy and that staff comply with the policy.

4.3 Safeguarding Adults Group

The Safeguarding Adults Working Group will be responsible for reviewing any changes that are required within the policy.

4.4 Trust Solicitor

To offer legal advice and support in the event this is required.

5. GUIDANCE

5.1 Further guidance regarding the application of this policy in practice can be gained from members of the Trust Safeguarding Adult Group or the Professional Leads for Safeguarding Adults. In addition Royal College of Nursing guidance "When someone asks for your assistance to die" is available on the Trust Intranet site for Safeguarding Adults.

6. RATIONALE

6.1 The Local Authority has a duty to investigate a proposed assisted suicide where the individual concerned is considered vulnerable. Statutory Guidance defines a "vulnerable adult" as a person ***"who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of himself, or unable to protect him or herself against significant harm or exploitation"*** (DOH 2000).

6.2 Assisted Suicide is illegal in all parts of the United Kingdom and under the Suicide Act 1961 carries a maximum penalty of 14 years imprisonment.

6.3 An Assisted Suicide is when ***"a person commits an offence under section 2 of the Suicide Act 1961 if he or she does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and that act was intended to encourage or assist suicide or an attempt at suicide"*** (CPS, 2010)

6.3 Further more if an individual (A) arranges for someone else (B) to do an act that is capable of encouraging or assisting the suicide or assisted suicide of another person(C) and B carries out that act the A is treated by the law as having committed an offence.

6.4 A prosecution is more likely to be required if there are public interest factors involved in the case, for example:

- The victim was under 18 years of age

- The victim did not have capacity to reach an informed decision to commit suicide
- The suspect was acting in his capacity as a medical doctor, nurse or other health care professional, a professional carer, or as a person in authority and the person was in his or her care.

For further information regarding public interest factors, please see the [Policy for Prosecutors in respect of Cases of Encouraging or Assisting Suicide](#).

- 6.5 An advance decision to refuse treatment is a statement of future wishes. If it is valid and applicable it has the same effect as if it were made by a patient who has the capacity to make it at the time it becomes relevant. Where an advance decision exists staff should discuss its relevance in a multi-disciplinary meeting and their line manager and if necessary take legal advice. Advance decisions may cover a patient's wish to refuse treatment that might prolong life if they become physically incapacitated or a 'do not attempt cardiopulmonary resuscitation' decision. A patient cannot use an advance decision to insist on any specific treatment or to request anything unlawful such as help committing suicide.
- 6.6 Once the Local Authority is informed of a proposed assisted suicide involving a vulnerable adult it cannot ignore the position. Section 1 of the Suicide Act 1961 abrogates the rule that suicide is punishable as a criminal act. The law does not prohibit or penalise the decision of a competent person to take his or her own life. As such the Court has no basis in law for exercising its jurisdiction so as to prevent a competent person from taking his or her own life. It is, however, a criminal offence as defined above to assist an individual to commit suicide. Section 2 of the 1961 Suicide Act states that *"(1) A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years... (4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions."*
- 6.7 Where an individual who intends to commit suicide requires the assistance of another by reason of his or her disability to carry out the decision alone it follows that that will require criminal conduct of another.
- 6.8 In February 2010, the Crown Prosecution Service produced a policy for Prosecutors in respect of cases of assisted suicide (CPS, 2010). This policy was issued as a result of the decision of the Appellate Committee of the House of Lords in *R (on the application of Purdy) v Director of Public Prosecutions* (2009). This case required the DPP to clarify his position as the factors relevant for and against prosecution in cases of assisted suicide. See link to the CPS policy.
http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html
- 6.9 As a result of this guidance the Law has not been changed or decriminalised the activity but is there to assist in deciding what circumstances will be taken

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

6.10 MPs have rejected plans for a right to die in England and Wales in their first vote on the issue in almost 20 years. In a free vote in the House of Commons on 11 September 2015, 118 MPs were in favour and 330 were against plans to allow some terminally ill adults to end their lives with medical supervision.

7. WHAT TO DO IF YOU BELIEVE THAT A VULNERABLE PERSON MAY BE CONSIDERING ASSISTED SUICIDE

7.1 If staff, are made aware of an individual's intention to commit suicide with the assistance of another, staff must report this to a senior manager and to their Local Authority Safeguarding Team and ensure that the following is considered and completed:

- To investigate the position of a vulnerable adult to consider what is his or her true position or intention
- To consider whether he or she is legally competent to make and carry out his or her decision and intention
- To consider whether any other (and if so, what) influence may be operating on his or her position and intention and to ensure that he or she has all relevant information and knows all available options
- To consider whether he or she was legally competent to make and carry out his or her decision and intention
- To consider whether to invoke the jurisdiction of the Court of Protection so that the question of competence could be judicially investigated and determined
- In the event of the adult not being competent, to provide all such assistance as may be reasonably required both to determine and give effect to his or her best interests
- In the event of the adult being competent to allow him or her in any lawful way to give effect to his or her decision although that should not preclude the giving of advice or assistance in accordance with what are perceived to be his or her best interests
- Where there are reasonable grounds to suspect that the commission of a criminal offence may be involved, to draw that to the attention of the police
- In very exceptional circumstances, to invoke the jurisdiction of the Court under Section 222 of the Local Government Act 1972.

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

- Discuss the duties outlined above with your line manager and agree an action plan to include:
- Referral to Local Authority Safeguarding Adult Team

- Inform police in public protection team, in relevant division immediately.
- Gather as much background information about the individual and their family/carers as possible
- Ascertain if the individual is likely to be acting alone. If the person is being assisted to travel to carry out an assisted suicide then the person assisting them to travel needs to be visited jointly by social worker and the police to explain the consequences of assisting somebody to travel
- Arrange a planning meeting. Representation must include Adult Protection Coordinator, the police and a representative County Council's Legal Services Division. Pennine Cares Trust Solicitor should be consulted.

8. DOCUMENTATION

- 8.1 Staff must document all conversations and actions taken in the event they are informed of an individual's intention to commit suicide with assistance from others.

9. CURRENT LEGAL POSITION

- 9.1 Encouraging or assisting another person to commit suicide remains a criminal offence, carrying a potential 14-year prison sentence and all cases will be referred to the CPS in England and Wales, or the PPS in Northern Ireland. Parliament has also made explicit that an offence occurs when individuals disseminate information via media, such as the internet, which would be likely to encourage other people to end their lives.

10. RESPONDING TO PATIENT REQUESTS

- 10.1 The BMA advises doctors to avoid all actions that might be interpreted as assisting, facilitating or encouraging a suicide attempt. This means that doctors should not:
- advise patients on what constitutes a fatal dose
 - advise patients on anti-emetics in relation to a planned overdose
 - suggest the option of suicide abroad
 - write medical reports specifically to facilitate assisted suicide abroad; nor
 - facilitate any other aspects of planning a suicide.
- 10.2 Patients have rights of access to their own medical records under the Data Protection Act, and where a patient makes a subject access request, doctors are obliged to provide the requested information, subject to certain exemptions.

11. PATIENTS WANTING TO TRAVEL ABROAD FOR ASSISTED SUICIDE

- 11.1 In October 2009, it was reported that the Swiss authorities planned to tighten the rules on “suicide tourism” in response to the increasing number of people requesting assisted suicide there.
- 11.2 Patients do not necessarily have to be terminally ill but if Swiss legislation is tightened this may require patients to present two medical opinions, declaring their disease incurable and stating that death is expected within a few months. A medical opinion about the patient’s mental competence is also likely to be required. If these provisions are adopted by the Swiss Parliament, more UK doctors may be asked to provide such reports. While suicide or travelling abroad to receive assisted suicide are not illegal, facilitating suicide, which may include helping someone to receive assisted suicide abroad, is a criminal offence. The BMA advises doctors not to offer or agree to provide medical reports if they are aware that they will be used to obtain assisted suicide, as this could be seen as facilitating that process. Similarly, doctors should not accompany a patient going abroad for assisted dying. Although as yet no doctor providing a report nor any accompanying person has been prosecuted for helping patients to travel abroad to end their lives, doctors need to be aware of the possible legal implications of these, or any other actions, which might be seen as encouraging or facilitating suicide.

12. DETERMINING LEGAL COMPETENCE AND MENTAL CAPACITY

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

13. WHAT TO DO IF YOU ARE AWARE THAT AN ASSISTED SUICIDE HAS TAKEN PLACE

- 13.1 The police are responsible for investigating all cases of assisted suicide. If staff, are made aware of a situation where an assisted suicide has taken place then the following action must be taken:
- Inform senior manager

- Referral to Safeguarding Adults Team
- Inform Adult Protection Police immediately
- Ascertain if any professional knew about the individuals intention to die via assisted suicide
- Complete Trust Incident Reporting Form
- Complete Team Investigation Report.

14. REVIEW AND MONITORING

- 14.1 This policy will be reviewed and changed as in line with any National guidance when it is developed.

15. RELATED POLICIES

- Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide (CPS 2010)
- Safeguarding Adults Policy (CL18)
- Suicide Prevention Strategy (CL50)
- Clinical Risk Assessment & Management Policy (CL19)
- Incident Reporting, Management & Investigation Policy (CO10)
- Conduct and Disciplinary Policy (HR1)

16. REFERENCES

Crown Prosecution Service (2010) Policy for Prosecutors in respect of Cases of Encouraging or Assisting Suicide. Available at: http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html
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Department of Health (2000) No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/194272/No_secrets_guidance_on_developing_and_implementing_multi-agency_policies_and_procedures_to_protect_vulnerable_adults_from_abuse.pdf. Last accessed on 15.01.2016.

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