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Civil Briefing

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Ashley Tucker is a civil practitioner with a particular preference for Wills, Probate and Property but still retains an interest in commercial law, the Court of Protection and coronal law. From time to time though just to freshen things up he takes on something a little different, such as a criminal prosecution of a landlord in respect of an HMO.



Civil Briefing

By Ashley Tucker

The Forfeiture rule and assisted suicide

No person can obtain, or enforce any rights resulting to him from his own crime and neither can his representative, claiming under him, obtain or enforce such rights (Re Crippen [1911] P 108).

This is a public policy dictum.

It is usual to start this topic with *Cleaver v Mutual Reserve Fund Life Association* [1892] 1 QB 147. As Mrs Maybrick had been convicted of poisoning her husband she could not benefit from the insurance policy he had taken out for her benefit, the case itself was about whether Mr Maybrick's estate was entitled to the proceeds in that circumstance; it was.

In *Re Crippen* the Court took the rule and extended it to a personal representative in order to prevent Dr Crippen's personal representative from being able to act as representative in respect of Dr Crippen's deceased's wife's estate, Dr Crippen having been convicted of her murder; she was to be passed over in favour of a representative of his wife's relatives.

The rule of public policy has applied in circumstances where a person has been the victim of domestic violence (*Re K (Deceased)* [1986] 1 Ch 180), where diminished responsibility has been present (*Re H (Deceased)* [1990] 1 FLR 441) and where death resulted from gross negligence (*Re Land (Deceased)* [2007] 1 WLR 1009).

The Forfeiture Act 1982 modifies this dictum of public policy. The Court did so in *Re K* and *Re H*. In *Re Land* it appears the Court would have applied the 1982 Act to modify the rule if the application for relief had been made within the strict time limit for bringing such applications by those who have been convicted of an offence of unlawful killing (s.2(3)); though the rule continues to apply to those convicted of murder, s.2(5)).

Even where the rule does apply applications may still be made under ss.31(6) and 36(1) of the Matrimonial Causes Act 1973 and the Inheritance (Provision for Family and Dependents) Act 1975 (s.3 of the 1982 Act). The applicant in *Re Land* though unsuccessful under the 1982 Act was successful under the 1975 Act.

By s.1(2) of the 1982 Act the rule of public policy also applies to someone who has unlawfully aided, abetted, counselled or procured the death of another person. S.4(1) of the Homicide Act 1957 makes it an offence of manslaughter for one person, in pursuit of a suicide pact, to kill the other person or be a party to a 3rd person killing that person.

Despite suicide or attempted suicide no longer being offences, pursuant to ss.2(1) and 2(A) of the Suicide Act 1961 it remains a crime to encourage or assist an attempted suicide or for a person to arrange for another to do an act capable of encouraging or assisting. However, a prosecution under s.2 can only be made by or with the consent of the Director of Public Prosecutions (s.2(4) of the 1961 Act).

Pretty v United Kingdom 35 EHRR 1 and *Nicklinson v UK* 61 EHRR SE7 determined that s.2 of the 1961 Act was not a violation of article 8 of the ECHR (right to respect for private and family life). *R (Conway) v Secretary of State for Justice (Humanists UK intervening)* [2020] QB 1 confirmed that s.2 of the 1961 Act was compatible with article 8 as a matter of domestic law under the Human Rights Act 1988.

The forfeiture rule would therefore also apply to those who encourage or assist another person to take their own life by utilising a professional service for doing so, such as Dignitas based in Switzerland. Instances of people wishing to utilise such a service are likely to become more frequent given that people are generally living longer but there remain numerous instances of illness where only palliative care can be offered rather than medical intervention with some prospect of success.

The Guidance of the Director of Public Prosecutions to the Crown Prosecution Service, *Suicide: Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide* (as updated in October 2014) sets out those factors tending both in favour and those against prosecution. It will almost certainly be considered by a Court on an application for relief from forfeiture where suicide has been the cause of death.

The factors referred to by Mummery LJ in his dissenting judgement in *Dunbar v Plant* [1998] Ch 412 at 427H-428B will also provide guidance on the application of the rule in an assisted death case (case of suicide pact).

A CPS decision not to prosecute on grounds that it is not in the public interest to do so (which therefore means there is sufficient evidence for a prosecution) has been considered a powerful factor in favour of the grant of relief, *Re Ninian* [2019] EWHC 297 (Ch) [52], Chief Master Marsh (assistance of someone to get to Switzerland in order to use Dignitas' service).