**BCC Motion on the Criminalisation of Abortion**

**Proposer: Cllr Kate Nicholl**

**Seconder: Cllr Mary Ellen Campbell**

*This Council notes the increasing number of women who are accessing abortion pills via the internet, which leaves them vulnerable to prosecution.*

*Council further notes the impact on healthcare professionals who under Section 5 of the Criminal Law Act (NI) 1967, may have a duty to provide information to the police. Therefore, if a woman requires medical assistance after accessing these pills the threat of prosecution and life in prison is likely to act as a real deterrent thus potentially having a detrimental impact on her health.*

*Accordingly, Council believes abortion should be regulated like any other medical care and not by criminal law; while still enabling incidents of malpractice to be addressed, as with any other health service, through the general criminal law or medical disciplinary procedures.*

*A woman who has an abortion is not a criminal, nor are healthcare professionals who care for them, and the law should not treat them as such.*

**The law**

In Northern Ireland, abortion is only lawful in extremely limited circumstances, where there is a risk to a woman or girl’s life or the risk of real and serious long-term or permanent damage to her physical or mental health. That makes the legal regime governing abortion in Northern Ireland one of the most restrictive in Europe. It also carries the harshest criminal penalties in Europe.

Northern Ireland abortion laws have been repeatedly found by UN treaty monitoring bodies to be in significant violation of the various Human Rights treaties the UK is state party to.

The practical result of the legal regime is that women who require an abortion have to travel to obtain one, or buy medical abortion pills online, which is illegal and leaves them vulnerable to prosecution.

**Statistics**

There were 13 abortions performed in hospitals in Northern Ireland during 2016/17[[1]](#endnote-1) whereas at least 724 women and girls from Northern Ireland travelled to England and Wales for an abortion in 2016[[2]](#endnote-2). This number does not reflect those who give the address of a friend or relative in England and those who purchase abortion pills online.

Since 2006, a non-profit, online telemedicine service called Women on Web has provided early medication abortion in countries where abortion is restricted. Since 2010 (the first year for which data are available) the number of women from Northern Ireland and the Republic of Ireland requesting early medication abortion through Women on Web has more than tripled, from 548 in 2010 to 1,748 in 2016[[3]](#endnote-3). Buying or taking this medication outside a clinical setting is a criminal offence throughout the UK and there has been an escalation in the number of women from Northern Ireland being prosecuted under Victorian legislation.

**Prosecutions**

In April 2016 a woman was given a three month suspended sentence for self-inducing an abortion because she could not afford the cost of travel to England and the expense of a private procedure[[4]](#endnote-4). In January 2017, a man and a women accepted formal cautions under the Offences Against the Person Act 1861 for the same offences. Charges were withdrawn against the pair after a judge imposed a ban on identifying the woman due to the heightened risk of suicide resulting from any publicity surrounding the case[[5]](#endnote-5).

In the same month a woman being prosecuted for procuring abortion pills online for her 15 year old daughter was granted a judicial review into the decision of the Public Prosecution Service to pursue the prosecution[[6]](#endnote-6).

Her daughter had been in an abusive relationship and became pregnant. After discussing her options with her mother the pregnancy was ended using pills purchased from Women on the Web. This information was disclosed to a GP and in subsequent referrals to social services and CAHMS her medical records were passed without her knowledge and consent to the police.

This case will be heard in April 2018. Both Amnesty and FPA are intervenors in this case.

A number of other individuals are also awaiting trial and on International Women’s Day 2017, the Police Service in Northern Ireland carried out a number of searches connected to the purchase of abortion medication online[[7]](#endnote-7).

**Duty to report?**

Section 5 Criminal Law Act (NI) 1967 creates the offence of withholding information if a person knows or believes an offence has been committed. Section 5 may therefore make it a criminal offence for a healthcare professional or charities such as FPA who provide pregnancy counselling to fail to disclose information to the police where they become aware that a woman has taken or obtained abortifacient medication.

Although disclosure in circumstances of confidentiality may well constitute a reasonable excuse for not reporting, the law and the Guidance for Health and Social Care professionals are unclear on this point:

*“If a health and social care professional knows or believes that a person has committed certain offences, including an unlawful termination of pregnancy, he/she has a duty under the Criminal Law Act (NI) 1967 to give to the police information likely to be of material assistance in securing the apprehension, prosecution, or conviction of that person. However the health and social care professional need not give that information if they have a reasonable excuse for not doing so; the discharge of their professional duties in relation to patient confidentiality may amount to such a reasonable excuse. Professionals should be clear, however, that patient confidentiality is not a bar to reporting offences to the police.[[8]](#endnote-8)”*

If section 5 is enforced strictly, healthcare professionals may be placed at risk of prosecution. If healthcare providers and charities are at risk of criminal prosecution for providing services, it may not be viable for them to continue to do so. This would leave Northern Ireland without an organisation providing non-directive counselling on all pregnancy options.

The ongoing criminal prosecutions in these circumstances are having a much wider effect, in that those who do acquire online pills, are less likely to feel they can seek medical or support services, which in turn aggravates the risk to their health and wellbeing.

Amnesty International and FPA have highlighted the general climate of concern amongst members of the medical profession arising from abortion in Northern Ireland being both highly restrictive and [criminalised](https://www.amnesty.org.uk/files/eur_45_0157_2015_northern_ireland_-_barriers_to_accessing_abortion_services_pdf.pdf/). The current Northern Ireland guidance from Dept of Health in relation to abortion reinforces a climate of concern, nor is it current as it does it reflect the changed working environment for medical professionals and situation for women following the policy change of UK Government to provide women from Northern Ireland with free abortions in England since June 2017.

The summary box at the start of section 5 in the current guidance on ‘Advice and Psychological Support’ states:

*“It is not unlawful to inform a woman of services available in other jurisdictions. However whether it is lawful to ‘promote or advocate’ the use of these services has not been considered by the Northern Ireland Courts.”*

This would appear to be derived from the final sentence of paragraph 5.13, which states:

*“The courts in Northern Ireland have never considered the issue of whether it would be lawful to ‘advocate or promote’ in Northern Ireland the termination of a pregnancy in another jurisdiction (in circumstances where it would not be lawful if carried out in Northern Ireland but would be lawful if carried out in that other jurisdiction).”*

Health professionals do not consider their concerns over the provision of advice to have been allayed by the 2016 guidance, if anything it generated further worry.

In light of this Amnesty, sought clarification from the then Director of Public Prosecutions, Barra McGrory QC, over the risk of prosecution from referring a woman for an abortion elsewhere in the UK so as avail of the free service announced by HM Government. The response was:

*“…I can see no risk of criminal prosecution for NHS employees arising from the circumstances you have described …The question of ‘advocating or promoting’ the take up of this service is a matter for DHSS policy and not a matter for criminal law as there is no such offence in the law of Northern Ireland“*

Given that the then DPP has clearly stated that the law of law of Northern Ireland does not preclude a referral in Northern Ireland for abortion services to be provided in England, it raises the question why it is in there.

Amnesty is engaged in ongoing correspondence with the Department of Health in this matter and they have recently advised they are consulting legal opinion on whether the guidance needs to be updated. This all serves to highlight the difficulties in treating healthcare as a criminal justice matter.

**Confidentiality**

The disclosure of confidential medical information to the police and PPS is damaging to the public interest. It risks deterring women from seeking help following a medical abortion using pills obtained online. In the small number of cases where a woman does experience a side-effect, such as a haemorrhage following abortion, an inability to seek such care aggravates the risk to her health and wellbeing

There is a particular need for confidentiality if vulnerable people are to be able to seek and engage with help. It is obvious, that, in the event that people felt that their intimately private discussions with medical experts would be regularly disclosed to the police and the PPS, then this would seriously undermine the ability of medical practitioners to carry out their role.

There is also a real risk that they will discourage other vulnerable young women, such as those who have been the victims of sexual assaults or domestic abuse, from reporting their circumstances to their GPs, knowing that the most intimate aspects of their lives may be revealed to others against their wishes.

**Conclusion**

The decision to prosecute a mother for facilitating an abortion flies in the face of the recommendation of all major international human rights committees that abortion should be decriminalised.

The criminalisation of abortion is discriminatory and belongs in the past. Women are poorly served by laws that state abortion is a matter for the criminal justice system and doctors are poorly served by a criminal framework that does not apply to other areas of healthcare.

The continued criminalisation of abortion is driving women to access abortion services which are either unsafe or not legal, or both. A woman who has an abortion is not a criminal, nor are healthcare professionals who care for them, and the law should not treat them as such.

For more information **contact** **both**:

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1. Northern Ireland Termination of Pregnancy Statistics 2016/17, (Department of Health, 2018) <https://www.health-ni.gov.uk/sites/default/files/publications/health/hs-termination-of-pregnancy-stats-16-17.pdf> [↑](#endnote-ref-1)
2. Abortion Statistics, England and Wales: 2016 (Department of Health, 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/618533/Abortion_stats_2016_commentary_with_tables.pdf> [↑](#endnote-ref-2)
3. Opening Statement to the Joint Oireachtas Committee on the Eighth Amendment to the Constitution,

   Abigail R.A. Aiken, MD, MPH, PhD Assistant Professor LBJ School of Public Affairs University of Texas at Austin (October, 2017) <http://www.oireachtas.ie/parliament/media/committees/eighthamendmentoftheconstitution/Opening-Statement-by-Professor-Abigail-Aiken,-University-of-Texas.pdf> [↑](#endnote-ref-3)
4. Woman who bought drugs online to terminate pregnancy given suspended sentence (BBC, 2016) <http://www.bbc.co.uk/news/uk-northern-ireland-35962134> [↑](#endnote-ref-4)
5. Woman and man receive caution over 'abortion pills' (Irish News, 2017) <http://www.irishnews.com/news/2017/01/19/news/pair-receive-caution-over-abortion-pills--892355/> [↑](#endnote-ref-5)
6. Woman who bought abortion pills for daughter can challenge prosecution (The Guardian, 2017) <https://www.theguardian.com/world/2017/jan/26/ulster-woman-who-bought-abortion-pills-for-daughter-can-challenge-prosecution> [↑](#endnote-ref-6)
7. Abortion pills: PSNI carry out searches and seizures (BBC, 2017) <http://www.bbc.co.uk/news/uk-northern-ireland-39255534> [↑](#endnote-ref-7)
8. Guidance for health and social care professionals on termination of pregnancy in Northern Ireland, (March, 2016) <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf> [↑](#endnote-ref-8)