

CARE NI

Response to Justice Committee Consultation on proposed Clause 11A of the Justice Bill

Introduction

On the 2nd of June 2014, Jim Wells MLA informed the Justice Committee of his intention to introduce an amendment to the Justice Bill to restrict lawful abortions to National Health Services premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. CARE Northern Ireland fully supports this proposed amendment.

In this consultation response, we will outline why we believe that this amendment is the right way forward for Northern Ireland. We believe that two major arguments can be made in favour of the amendment. Firstly, we do not believe that there is any credible or compelling need within Northern Ireland for private companies to provide abortion services. Secondly, even if there was such a need, we do not believe that it is appropriate that this need be filled by a campaigning organisation such as Marie Stopes, who have promoted liberalised abortion regimes worldwide.

Do we need private companies to offer abortion services in Northern Ireland?

Northern Ireland has strict laws on abortion. It is important that we are clear on precisely when abortion is legal in Northern Ireland in considering whether or not we require charities like Marie Stopes or private companies to offer abortion services in the province. It is pertinent to consider the legal principles in this area. A useful summary of the current law can be found in the draft version of the guidelines for the termination of pregnancy published in April 2013.¹ It is important to note that this is only a summary of the law and that the final version of the guidelines is yet to be published.

“i. In Northern Ireland termination of pregnancies are unlawful unless performed in good faith only for the purpose of preserving the life of the woman. The life of the woman in this context has been interpreted by the courts as including her physical and mental health;

ii. A termination of pregnancy can therefore be lawful only where the continuance of the pregnancy threatens the life of the woman, or would adversely affect her physical or mental health in a manner that is real and serious and permanent or long term.

iii. In any other circumstance it would be unlawful to perform such a procedure. Health and social care professionals have a legal duty to refuse to participate in, and

¹ <http://www.dhsspsni.gov.uk/guidance-limited-circumstances-termination-pregnancy-april-2013.pdf>

must report, any procedure that would not be lawful in Northern Ireland. A person who has knowledge of the carrying out of a procedure which is not lawful in Northern Ireland and who has information which is likely to be of material assistance in securing the apprehension, prosecution, or conviction of any person in relation to that lawful procedure is under a duty to give that information, within a reasonable time, to the police. If that person fails to do so without reasonable excuse, he or she may be liable, upon conviction, to maximum penalty of ten years imprisonment.

iv. Fetal abnormality is not recognised as grounds for termination of pregnancy in Northern Ireland.”

The table below outlines the number of medical abortions were conducted in Northern Ireland over the last 7 years.²

Medical Abortions and Terminations of Pregnancy: 2006/07 to 2012/13³

Year	Medical Abortion	Termination of Pregnancy
2006/07	76	57
2007/08	76	47
2008/09	71	44
2009/10	64	36
2010/11	73	43
2011/12	56	35
2012/13	75	51

What is abundantly clear is that abortions are rare in Northern Ireland, especially in comparison with the situation on the UK mainland.

The question that therefore needs to be asked is why is there a need for private companies or charities to offer abortion services in Northern Ireland. If there was evidence that the NHS did not have the capacity to offer the necessary abortion services, perhaps it could be argued that private companies should be allowed to provide abortion services. However, there is no evidence whatsoever that the NHS lacks the capacity to conduct abortion services in Northern Ireland within the law that applies here. Consequently, we do not see any compelling case for permitting private companies to provide abortion services in Northern Ireland.

There are four additional points that need to be made:

First, legislators have never made express provision in law for the provision of abortion by private providers. Given the scope for abortion in Northern Ireland and the absence of any capacity problem it has previously been assumed that abortions would only be permitted in NHS hospitals. Marie Stopes, however, have in recent years presented themselves as a provider and when challenged about the

² <http://www.dhsspsni.gov.uk/termination-statement>

³ http://www.dhsspsni.gov.uk/northern_ireland_termination_of_pregnancy_statistics_1213.pdf p1

appropriateness of this have simply pointed out that there is nothing in statute expressly prohibiting private providers.

Second, it should be further noted that the private charity which is offering abortion services in Northern Ireland, Marie Stopes International, does not offer its services for free. Marie Stopes International, who have stated that they will operate within the law in Northern Ireland, charge £450 to conduct a medical abortion and operate within the strict confines of the law here.⁴ However, if a woman in need of abortion services goes through the NHS she will be able to obtain one for free if she fulfils the criteria for a termination.

Third, there are very real concerns about transparency where private providers are concerned. This has been clearly illustrated with regard to Marie Stopes in Belfast. When pressed for how many abortions they had conducted in the province so far in their appearance before the Justice Committee, representatives of Marie Stopes International consistently refused to inform the committee of how many abortions they had conducted. They further failed to offer any more information than what the law strictly requires them to offer.⁵ Indeed, it appears that no-one outside of Marie Stopes knows if an abortion has been conducted at the clinic since it opened.

Fourth, and in some ways more importantly, if there was a capacity problem and Northern Ireland legislators decided to make express legal provision for private providers with appropriate regulation, those regulations would need to be very clear that it would not be appropriate to permit a campaigning organisation like Marie Stopes to perform this role. Marie Stopes International does not hold a neutral view of abortion. They want to see 'abortion on demand' abortion laws and have advocated for legislative change to this end in various countries across the globe. (According to their website Marie Stopes International operates over 600 centres in 37 countries.⁶)

The mission of the organisation, which was re-iterated by Marie Stopes representatives when they appeared before the justice committee, is "children by choice not chance."⁷ Marie Stopes International has a "Policy and Partnerships Team" whose aim is to "work to transform policy environments and increase access to safe abortion and family planning services globally. As a team they do this through developing and strengthening relationships with key high profile and relevant stakeholders and support our programmes to develop their own strategic partnerships, **reduce policy restrictions and maximise in-country donors.**"⁸ This

⁴ <http://www.guardian.co.uk/uk/2012/oct/11/northern-ireland-first-abortion-clinic> and http://www.mariestopes.org.uk/Our_centres/Belfast.aspx

⁵ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/January-2013/Marie-Stopes-International-Compliance-with-Criminal-Law-on-Abortion-in-Northern-Ireland/>

⁶ <http://mariestopes.org/where-in-the-world>

⁷ http://www.mariestopes.org.uk/About_us/Goal%2c_Mission_%5E_Vision.aspx

⁸ <http://www.mariestopes.org/careers/meet-teams>

team actively seeks legislative change in the area of abortion law. What is patently clear from this is that Marie Stopes International is not a neutral organisation: it is in fact a campaigning organisation seeking to promote more widespread access to abortion services worldwide and in Northern Ireland in particular.

It is pertinent to consider how Marie Stopes operate on the UK mainland in particular, where they provide abortion services on behalf of the state. Although the legal situation is very different on the UK mainland, it is useful to consider the activities, the values and aims of the organisation, and to gain an insight into what would be likely to emerge in Northern Ireland if the legal regime was to change to make abortion more generally available.

Since 1991, there has been a massive increase in the number of abortions provided on the UK mainland by private providers. There are two main private providers - Marie Stopes International and the British Pregnancy Advisory Service. In 1991, the NHS in England and Wales only funded 9,197 abortions carried out by the private sector.⁹ By 2012, this had increased to 114,999, an increase of 1250 per cent.¹⁰ In 1991, private providers only performed around 50 per cent of abortions but by 2012 that figure had increased to 97 per cent.¹¹ The growth of NHS-funded but privately-provided abortions entirely accounted for the increase.¹² In 2010, abortion services provided by the private sector were worth an estimated £60 million in England and Wales.¹³ It is likely that it remains of a similar value today.

It has been conclusively illustrated that Marie Stopes International has a financial motivation to grow revenues (though not for profit, see below) and increase the number of abortions that they perform. Marie Stopes International stated that one of their key goals for 2011-2015 is to “enhance revenue generation.”¹⁴ Undoubtedly it is true that Marie Stopes International do offer services beyond abortion services (particularly with regard to sexual health) and that they would be seeking to enhance revenue generation in those areas as well but it is clearly the case that a very significant part of this is through increasing the number of abortions they provide. Marie Stopes International has a “Global Marketing Team” that “focuses on demand creation for our reproductive health products and services using recognised communication techniques and channels. Their work helps clients choose the services which are right for them.”¹⁵ Marie Stopes International uses conventional advertising techniques to promote the services they offer. In England and Wales since 2000, Marie Stopes International has invested significant resources in public

⁹ <https://www.cmf.org.uk/publications/content.asp?context=article&id=26066>

¹⁰ http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140312/text/140312w0001.htm#140312w0001.htm_wqn87

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307650/Abortion_statistics_England_and_Wales.pdf

¹² Ibid.

¹³ <http://www.telegraph.co.uk/health/8727344/The-pregnant-pause.html>

¹⁴ http://www.mariestopes.org/sites/default/files/MSI_financial%20statements%202011_1.pdf p8

¹⁵ <http://www.mariestopes.org/careers/meet-teams>

advertising online, on the London underground and in TV adverts to promote their services.

Marie Stopes International is a charitable organisation and does not operate for the purposes of profit in the same way as a business enterprise does. A fair question to ask therefore is what does Marie Stopes do with the revenues it produces? It is highly likely that part of the answer to this is that Marie Stopes International subsidises their clinics which are operating in other parts of the world where they are not state funded and or where the legal framework is such that don't have the opportunity to provide all the services they would like to. This probably includes the clinic situated on Great Victoria Street in Belfast.

So, in conclusion, if the NHS in Northern Ireland did not have the capacity to offer all of the requisite abortions necessary in the province, it would not be appropriate for Marie Stopes International to fill in the gap. Marie Stopes International is a campaigning organisation that has a clear desire to liberalise abortion laws worldwide. They further have a business ethos which seeks to promote the take up of abortion services. Consequently, if there was a lack of capacity in Northern Ireland to provide legal abortions, which we don't believe there is, Marie Stopes would be the very last organisation that should be providing that additional capacity.

It is important to be cognisant of the fact that Marie Stopes in Belfast does not solely provide abortion services. They do offer other services, particularly with regard to sexual health, and would be entitled to continue to offer these services even if this amendment was passed. This amendment would not lead to the closure of Marie Stopes in Belfast if the organisation decided that they would like to keep their operation open.

Conclusion

CARE in Northern Ireland does not believe that there is any need for private providers to offer abortion services in our province. Abortions only occur rarely in Northern Ireland **and we have not encountered any evidence that there is a lack of capacity in the NHS in Northern Ireland with regard to abortion provision.** If evidence becomes available in the future that there is a lack of capacity to provide legal abortions then **the law could be further amended to make provision for this but any future amendment should make it absolutely clear that additional service providers should not be campaigning bodies that promote a legal framework different from our own.**

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