

Belfast Feminist Network

Written evidence on the proposed amendment to the Justice Bill brought before the Justice Committee by Jim Wells MLA on 2 July 2014

Belfast Feminist Network is a community collective representing the views of over 1400 people. Established in April 2010, the group is committed to providing an open and inclusive space for discussions of gender inequality in Northern Ireland. Belfast Feminist Network have been responsible for organising a range of public events on issues affecting women's lives such as rape and sexual violence, political participation, reproductive justice and human trafficking. We have engaged a number of MLAs and Ministers of the NI Executive through our events and campaigning.

This response to the proposed amendment to the Justice Bill, brought before the Committee by Mr Wells, reflects a number of discussions involving Belfast Feminist Network (BFN) members, through the medium of our online community, our regular group meetings and at a public consultation event hosted in August 2014.

BFN asks the Committee to consider the following objections to this proposed amendment:

1. Incompatibility with the Justice Bill aims

BFN calls on the Justice Committee to reject the proposed new clause 11A as it is incompatible with the aims of the Bill. The Explanatory Memorandum of the Justice Bills states the following core aims:

- To improve services for victims and witnesses;
- To speed up the justice system;
- To improve the efficiency and effectiveness of key aspects of the system.

This amendment would run contrary to these aims as the wording of the amendment could lead to overlapping offences and would cause confusion in an area where clarity is needed. In addition, by attempting to criminalise the operation of private health clinics performing legal abortions this amendment is liable to create a dual offence, both under the Offences against the Persons Act 1861, the Criminal Justice (NI) Act 1945 and under this proposed amendment. This conflicts with the aim of improving the effectiveness of the Criminal Justice system by potentially creating duplicitous charges

and causing ambiguity.

2. Lack of consultation on a contentious issue

For these reasons of obvious incompatibility BFN considers Mr Wells' proposal to be an attempt to tack on a contentious issue to an unrelated Justice Bill disposing of the need for consultation. This is an unacceptable way to create legislation on an area that will have such an acute impact on vulnerable women. It is important to remember that those women seeking abortions under the current legal framework in Northern Ireland are facing devastating impacts to their long-term physical or mental health and the state has a duty of care towards those women who are facing severe risks to their lives, health or well-being. If the Northern Ireland Assembly were to introduce new legislation as part of an unrelated bill that does not adequately deal with the complexity of the provision of reproductive healthcare services in these circumstances, this would represent a failure of the state to uphold that duty of care.

3. Risk of judicial review due to potential breach of human rights law

The European Court of Human Rights has established very clearly that states are under an obligation to facilitate access to abortion to the extent that it is provided for in domestic law. States that have been found to have taken action to block an individual's access to an abortion where the domestic law should have allowed for it or have failed to implement the necessary legal and procedural arrangements to facilitate effective access, have been found to be in breach of Article 8 of the European Convention on Human Rights; the right to private and family life. (E.g. P. and S. v Poland, October 2012; A., B. and C. v Ireland, December 2010) BFN is extremely concerned that the proposed clause represents an attempt to block access to abortions for those individuals who should currently be able to have the procedure under Northern Ireland's legal framework. We believe it constitutes an interference with the right to private and family life of women seeking abortions that cannot be justified as a necessary or proportionate action and would therefore leave the Department of Justice open to the risk of being subject to a judicial review.

It is important to highlight that numerous international human rights bodies to which the Northern Ireland Executive Departments are all accountable, take a very dim view of any attempts to further criminalise women seeking abortions or to restrict access to this important healthcare service. For example, the **CEDAW Committee** expressed concern about the criminalisation of abortion in Northern Ireland in their concluding observations on the UK in the last two examinations:

"In line with its general recommendation No. 24 on women and health and

the Beijing Declaration and Platform for Action, the Committee urges the State party to give consideration to amending the abortion law so as to remove punitive provisions imposed on women who undergo abortion.”

Paragraph 14 of general recommendation No. 24 requires that states act to remove, “*other barriers to women's access to appropriate health care includ[ing] laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.*”

The **Committee on Economic, Social and Cultural Rights** has also called on the UK government to de-criminalise this vital healthcare service in their 2009 concluding observations:

“The Committee calls upon the State party to amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality.”

The **Council of Europe** has also been clear in its requirement on states to provide access to this service. In April 2008 the Parliamentary Assembly of the Council of Europe issued a report entitled “*Access to Safe and Legal Abortion in Europe*”, which called upon all member states to decriminalise abortion, to guarantee women’s effective exercise of their right to a safe and legal abortion, and remove restrictions that hinder *de jure* and *de facto* access to abortion.

When the **UN Special Rapporteur on the right to health** issued a report into sexual and reproductive health in 2011, it stated more clearly than ever that laws restricting access to abortion and criminalizing women seeking abortions are not acceptable within the international human rights frameworks and states refusing to change such laws must be held to account:

“Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women’s right to health and must be eliminated. These laws infringe women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system. Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfil the right to health.”

(Para. 21)

4. Equality impact on vulnerable and marginalized women

An equality impact assessment of this proposed legislation would obviously highlight that the amendment would disproportionately affect women over men as the only people seeking abortions will be women and some trans men. The restriction on access to a legal reproductive health procedure will have an adverse effect on this group that cannot be justified as men face no similar restrictions to their healthcare options. Furthermore, it will particularly impact women with specific vulnerabilities for whom access to this procedure from private providers can be extremely important. For example, women suffering domestic violence for whom confidentiality is a key concern may use a private provider for the purpose of increased anonymity and expediency. Women with acute or life threatening health conditions may choose this route due to expediency. Trans men may find the private route offers more confidentiality. Women who have insecure immigration status would have even fewer options than other women as they cannot travel to Great Britain. The proposed law would have a disproportionate impact on these groups because of their increased vulnerability.

Conclusion

BFN is opposed to the privatisation of healthcare services and would like to see Executive policy that strengthens and develops the NHS in all areas. However, we are acutely aware of the fact that the current lack of any clear or effective legal framework governing access to abortion in Northern Ireland has devastating effects on the lives of women who are already experiencing serious physical and mental health risks. With the current tug-of-war over the publication of DHSSPS guidance for medical professionals still ongoing and the intense media scrutiny of the disgraceful treatment some women have received in state hospitals in recent years, both here and in the Republic of Ireland, it is perfectly understandable that women might seek abortions from a legal provider who they know will have a consistent, unbiased approach. Using the law to prohibit private healthcare providers from delivering a legal service to the public in this one area alone, appears to be a selective and nonsensical action clearly driven by an agenda to obstruct women in desperate circumstances from accessing the abortions they are entitled to.

BFN urges the Justice Committee to reject the proposed amendment on the grounds that it is incompatible with the aims of the bill, incompatible with international human rights law and standards, leaves the Department of Justice at risk of judicial review and has a disproportionate adverse effect on vulnerable and marginalised women and trans

men. It is unacceptable for individual MLAs to use important legislation that has been designed to address key needs of the public in the area of justice as a vehicle for pursuing their own moral agendas. It is notable that the language of the 'unborn child' is used throughout the draft of the amendment which underlines the motives of the author in promoting a concept of personhood that has no legal or medical standing in our contemporary society. BFN expects, as do the vast majority of the public, that our legislation and policy will be evidence based and fair which this proposed amendment is clearly not.