



Government Equalities Office

Rt Hon Penny Mordaunt MP
Minister for Women and Equalities

Rt Hon Maria Miller MP
Chair
Women and Equalities Committee

14 March 2019

Dear Maria,

Thank you for your letter of 7 March, asking about the legality of medical professionals in Northern Ireland referring patients to the scheme that provides funding for abortion services in England for women travelling from Northern Ireland.

You will recall that the UK Government's decision to set up the scheme in 2017 was taken after the Supreme Court's judgement on the A&B case. This made clear that the UK Government had legal powers to fund abortion services in England for women from Northern Ireland.

As you know, in June 2017 the UK Government decided to make use of those powers and, further, to make provision for travel costs in cases of financial hardship to enable women who would not otherwise have afforded it to access the funded services in England. The scheme was designed to be as accessible as possible, so women could make use of the services without the need for any kind of referral from medical professionals in Northern Ireland. We were satisfied that this would not preclude such a professional providing information in relation to such services on the basis of assurances given to the UK Government by the Department of Justice in Northern Ireland, which in turn, relied on the public assurances given by the Director of Public Prosecutions for Northern Ireland (DPP) in 2013 in a radio interview (the Nolan Show, 17 October 2013):

"It is difficult to see circumstances at all in which anyone who gives advice or assistance to someone going to England to do something which is perfectly lawful there falling foul of the criminal law in this jurisdiction. I know of no criminal offence which would be committed in those circumstances".

These assurances were reiterated in 2017, with the DPP specifically stating in correspondence that he did "*not see an issue of criminal liability arising in the context of NHS staff advising or informing patients of the availability of abortion services in England and Wales. The question of 'advocating or promoting' the take-up of this service is a matter of DHSS policy and not a matter for the criminal law as there is no such offence in the law of Northern Ireland*". I attach copies of the relevant correspondence.

However, I am clear that evidence to your inquiry from multiple sources paints a different picture as to the perception of potential criminal liability in this area – this includes evidence from the Chief Medical Officer of Northern Ireland (CMO NI), bodies representing medical professionals and, most crucially, testimony by women directly affected.

Some women have not only not been informed about the services available to them in England, it also seems likely that social and cultural caution about abortion rights in Northern Ireland have led to them not being advised about the potential services available to them within Northern Ireland where there are risks to the mother's own life and well-being.

I am keen to see appropriate actions take place to address the 'chilling effect' that is so evident from the testimony your Committee has received. In particular:

Given the widespread perception of the risk of criminal liability potentially arising for medical professionals providing information on the scheme to women in Northern Ireland, it would clearly be in the public interest for the DPP to put his 2017 assurances on a more formal and transparent footing. Ultimately, the DPP is the independent body that would take any decisions about potential prosecutions. The DPP giving more prominence to its position on this issue is probably the single most useful action that can be taken with immediate effect and that has a chance of cutting through the uncertainties and doubts in an authoritative way. It is interesting that, back in the 2013 interview, the DPP said "*It could be that my views are reflected in the Minister's guidance or it may be considered necessary for us to put out a separate document*". I would suggest that a separate document or statement from the DPP has indeed become necessary.

I am mindful that it took several years for the NI Department of Health, Social Services and Public Safety guidance to be finalised in 2016, due to legal challenges along the way – a delay which meant that the more hard line 2013 draft continued to hold sway, creating the culture of caution that we are still seeing the consequences of. I note, however, that guidance issued by Secretary of State for Northern Ireland, Karen Bradley under section 4 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 states, at para 8.1, that "in light of any relevant emerging legal judgments or other developments, as appropriate, the Department of Health should consider whether its Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland should be reviewed". I would think that action by the NI DPP to reiterate his 2017 assurance would certainly qualify as a 'development' that should trigger the revision and recirculation of this crucial guidance.

Working with the Department of Health and Social Care here in Westminster, we could consider how best to raise awareness of the travel scheme. There may, for example, be more we could do to enable relevant information to feature online.

I am very grateful to you and the Committee for the important work you are doing in this area. I hope that these immediate and sensible steps will be taken.

I am copying this letter to Matthew Hancock and Karen Bradley.

A handwritten signature in black ink, appearing to read 'Penny Mordaunt', written in a cursive style.

Rt Hon Penny Mordaunt MP
Minister for Women and Equalities

Enc. Correspondence between Amnesty International Campaign Manager Grainne Teggart and Director of Public Prosecutions Barra McGrory QC

Cc. Secretary of State for Health, Rt Hon Matthew Hancock MP and Secretary of State for Northern Ireland, Rt Hon Karen Bradley MP

