

Women and Equalities Committee

Oral evidence: Abortion Law in Northern Ireland, HC 1584

Wednesday 27 February 2019

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Members present: Mrs Maria Miller (Chair); Tonia Antoniazzi; Sarah Champion; Angela Crawley; Vicky Ford; Eddie Hughes; Jess Philips.

Questions 398 – 517

Witnesses

I: Caoilfhionn Gallagher QC; Roger Kiska, Christian Legal Centre; Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission.

II: Rt Hon Karen Bradley MP, Secretary of State for Northern Ireland; Rt Hon Penny Mordaunt MP, Minister for Women and Equalities; and Maura McCallion, Division Head, Office of the Attorney General for Northern Ireland.

Written evidence from witnesses:

- [Christian Legal Centre](#)
- Northern Ireland Human Rights Commission ([ANI0010](#)) ([ANI0684](#))
- [Northern Ireland Office](#)

Examination of Witnesses

Witnesses: Caoilfhionn Gallagher QC, Roger Kiska and Les Allamby.

Q398 Chair: Can I welcome our witnesses today, and those who are watching online or in the gallery? This is our final evidence session for our inquiry into abortion law in Northern Ireland. We have two panels of witnesses today. Legal experts on the first panel will discuss human rights obligations and whose responsibility it is to ensure access to abortion is in line with human rights obligations. The second panel is two Cabinet Ministers from the UK Government and also Maura McCallion from the Office of the Attorney General for Northern Ireland, who will be asked about the evidence that we have heard during the inquiry so far.

A lot of people have shared with us their views and stories over the course of the inquiry and I would like to thank all of them for doing that. All of the information that we have received has been incredibly important in the report that we are pulling together. Thank you to everybody who has taken the time to do that.

Before we move on to our questions, could I ask our witnesses to say their names and the organisations they come from?

Roger Kiska: Roger Kiska, legal counsel of Christian Legal Centre.

Caoilfhionn Gallagher: I am Caoilfhionn Gallagher QC. I am a barrister at Doughty Street Chambers, but I am largely here because I have acted for a number of women and girls affected by the regime in Northern Ireland, including for A and B. I also work with the London-Irish Abortion Rights Campaign.

Les Allamby: I am Les Allamby. I am the chief commissioner of the Northern Ireland Human Rights Commission.

Chair: Thank you all so much for being here today.

Q399 Angela Crawley: I am going to go straight in at the deep end. Following the Supreme Court's finding that the law on abortion in Northern Ireland breaches women's rights under Article 8 of the European convention in relation to cases of rape, incest and fatal foetal abnormality, is it clear in legal terms who should be doing what to remedy that breach?

Les Allamby: It is fair to say that the water is more muddy than it would have been if there had been a declaration of incompatibility. As you know, we lost by a narrow majority on the standing issue. It is most unusual for the Supreme Court, having decided you do not have standing, to then offer their views. Those views are advisory in legal terms, in my view, but they are significantly authoritative. It is the Supreme Court.



HOUSE OF COMMONS

All seven judges, in very different ways, made it clear that if a fact-specific case came back to them, they anticipate that they are almost certainly likely to make the same decision around Article 8. On Article 3, which is the issue of inhuman and degrading treatment, two judges, in the views they offered, said that in all of those circumstances it amounts to inhuman and degrading treatment. The other five judges decided they really would prefer to have a fact-specific case before them.

Q400 Angela Crawley: Do you think that if the HRC in Northern Ireland had the same standing and the same recognition it might have been more persuasive in this instance?

Les Allamby: We felt, and interestingly at the time the NIO and all the judges in Northern Ireland felt, that we did have standing to take a case in our own name. We use those powers exceedingly sparingly. We have used them once before, and that was a case around, again, a Northern Ireland law that prevented unmarried couples or same-sex couples from even being considered for adoption. That eventually led to a change in law.

We would much prefer to have a case before us, but the reality with abortion is that the idea of asking a woman who has been a victim of a sex crime and is pregnant, or has a fatal foetal abnormality at maybe an advanced stage, to bring a case to the court, on top of everything else she is dealing with, is frankly not practical, which is why we decided to bring the case in our own name.

Q401 Chair: The question is really about what happens next rather than the case itself. We have the details of the case. What happens next?

Les Allamby: We are in a difficult position in the absence of a Northern Ireland Assembly. We know that this is a transferred matter. It is the responsibility, normally, of the Assembly. Our view is that, in the absence of the Assembly, and given it is clear from the Supreme Court's decision that in certain circumstances there is a breach of human rights, this is a matter for the Secretary of State to deal with. She can issue guidance at the moment.

I do not think there is an absolute legal imperative that forces the Secretary of State. Even with a declaration of incompatibility, which would have said very clearly, "You are in breach of human rights", it would have still been a matter for Parliament. In 20-plus cases where a declaration of incompatibility has been issued, Westminster has always dealt with changing the law, save where it took considerable time in the case of prison voting rights. Generally speaking, the Government will abide by declarations of incompatibility, but it is still a matter for Parliament.

Q402 Eddie Hughes: There is not a declaration of incompatibility at the moment. You say that they would if there were, or they might if there were, but there is not.



HOUSE OF COMMONS

Les Allamby: I started by saying the waters are muddied as a result, in that sense. There is no declaration of incompatibility. I do not need to go into any of the details, but there are cases now starting again in the courts in Northern Ireland. It is almost inevitable that this issue will end up back with the Supreme Court.

We know where this is going in the absence of dealing with this in a legislative way, either in Westminster or in Belfast. It is inevitable that this will end up again in the Supreme Court. When you read the judgments, it is quite clear what the Supreme Court is likely to say, in at least the circumstances where they have already ruled. They may also go beyond that, depending on the fact-specific circumstances that apply before them.

Caoilfhionn Gallagher: I have two headings. First of all, very briefly, the position—and you have heard substantial evidence on this—is that the UK is, as a matter of fact, in breach of its international law obligations in respect of the regime in Northern Ireland. It has been a year since the CEDAW Committee's very damning findings on that point. It has now been many months since the Supreme Court and an enlarged Supreme Court made the findings that it did, which Les has just summarised. The position we are in is that there is a violation of international law and, indeed, there is a violation of convention rights, which applies a matter of domestic law.

The key question, secondly, is about what is next and who should be doing what, as you put it. We are in circumstances where we have no functioning Executive in Northern Ireland and have not had a functioning Executive since January 2017, there is no Minister of Health and no Minister of Justice, and, in breach of various provisions of the Northern Ireland Act, the offices of First Minister and Deputy First Minister have not been filled. The Secretary of State for Northern Ireland has failed to propose a date for the election of the next Assembly.

The position now is that public decisions are being taken by Northern Ireland Departments who do not have the benefit of a Minister's direction and control and are not accountable to the public. The law on devolution in Northern Ireland, as set out in the Northern Ireland Act and related secondary legislation, is very clear that the whole scheme of devolution is predicated on there being in place a functioning Executive, a First Minister, a Deputy First Minister and Northern Ireland Ministers. In the absence of those bodies for this very extended period, and given the grave violation of rights that is taking place, it seems to me that the headline that abortion is a devolved matter fails to engage with the issue. There is no constitutional impediment to the UK Parliament, Westminster, legislating to reform the law on abortion. Parliament is sovereign.

UK Ministers also have a number of specific powers under the law of devolution to intervene in transferred matters. Indeed, the Secretary of State for Northern Ireland has recently used that, introducing legislation



HOUSE OF COMMONS

in the Westminster Parliament as regards rates and budgetary provisions, matters that are within the powers of Northern Ireland Ministers. More narrowly, the Secretary of State has the power to direct Northern Ireland Departments to take such action as may be required under international obligations. In the circumstances that we are now in, it seems, in the absence of a constitutional impediment to Westminster acting, and with no indication of the position of the power vacuum in Northern Ireland changing, the residual power Westminster has should now be activated and Westminster should take action.

Q403 Eddie Hughes: Did the Assembly have some discussion and some vote about this in 2016? Did they vote then on fatal foetal abnormality?

Caoilfhionn Gallagher: Yes. Les might want to answer that first and I can chip in.

Les Allamby: They did. It was an amendment to a Justice Bill. There were significant discussions about whether that was an appropriate vehicle for dealing with it, in terms of both fatal foetal abnormalities and sex crimes. Both fell in terms of the vote.

Q404 Eddie Hughes: Just so I am clear: both fell in terms of the vote and they voted not to change the law?

Les Allamby: Both of the amendments fell. There was not a majority in favour of either.

Q405 Eddie Hughes: They voted not to change the law as recently as 2016.

Les Allamby: They did. Two of the main parties in Northern Ireland have changed their stance politically on abortion since then—both the SDLP and Sinn Féin. It would be a matter of speculation as to if similar amendments came.

Q406 Eddie Hughes: It would, but what we know for a fact is that they voted in 2016 and they voted not to change the law. You can speculate all you like, but if we are going to stick to the facts, those are the facts.

Les Allamby: Those are the facts but the facts are also that—

Eddie Hughes: It is speculation.

Les Allamby: No. The political parties have formally changed their policies. Some of the Assembly parties have formally changed their policies. The other thing that has probably altered since then is that one of those issues that arose in that debate was that the DUP suggested that there should be an inquiry into fatal foetal abnormality. It was a joint Department of Health and Department of Justice inquiry. The findings of that inquiry included that four royal commissions—obstetrics and gynaecology, psychiatry, GPs and midwives—all said that, in the case of fatal foetal abnormality, the professional duty to care for women is being compromised by the current law in Northern Ireland. The context has changed since 2016.



HOUSE OF COMMONS

Q407 **Eddie Hughes:** I completely understand the point you are making and I completely accept that, but the point that was being made was with regard to constitutional involvement rather than views of people. I completely understand their point but I am saying that, from a constitutional point of view, the case that was being made was that the Secretary of State does have the opportunity to intervene but relatively recently a vote had been taken and there had been no change in the law. I appreciate the case you are making, but that does not fit with the case.

Les Allamby: I will pass you back to Caoilfhionn but the landscape has significantly changed since 2016, and that is the point I am making. Saying that this was a relatively recent vote is probably not the comprehensive picture of what has happened on the ground.

Q408 **Angela Crawley:** On that point, can I ask for your opinion on whether the landscape has changed, as you suggest, with the change to abortion law in the Republic of Ireland? What significance do you think that has had since the last Assembly decision in 2016?

Caoilfhionn Gallagher: Could I chip in first of all with a follow-on point from what Les said, and then I will come back to the issue about Ireland? On the relatively recent vote that you referred to, I entirely agree with what Les has said about the significant changes in the landscape since and also, importantly, the context in which that debate took place.

One key part of the changed landscape is the fact we now have, since that time, the findings of the CEDAW—the Convention on the Elimination of all Forms of Discrimination Against Women—Committee’s findings in February 2018, and we also have the Supreme Court decision in the Northern Ireland Human Rights Commission case. Importantly, it is also worth bearing in mind that, although we have a power vacuum, there are some political decisions being made. You will be aware of the clear majority of the Belfast City Council that passed the motion in April 2018 providing that abortion is a healthcare issue, not a criminal justice issue. There has been some movement also in terms of political decisions.

Q409 **Chair:** I really want to bring Roger in. I do not think he has had an opportunity to answer the original question, which is setting out the steps of what should happen next as a result of the Supreme Court finding.

Roger Kiska: First of all, Lord Reed, in paragraph 334 of the Supreme Court judgment, was correct when he said that with the finding of no standing there should have been no opinion delivered. This judgment has no legal precedent whatsoever. It is highly emotive and certainly the Supreme Court was not naive to the consequences of releasing that to the public square. Qualified convention rights, such as Article 8, belong to individuals as social beings and may be subject to limitations.

Chair: I do not think we want to go through an analysis of the judgment. It is what happens next, if anything.



HOUSE OF COMMONS

Roger Kiska: What I am trying to say is that the underpinning of all of this—the suggestion that this is an international law question—is incorrect.

Q410 **Chair:** Your assertion would be that nothing happens.

Roger Kiska: Yes. The European Court has been very clear in *A, B and C v Ireland* and *P and S v Poland* that Article 8 confers no right to abortion. I can direct the Committee to those provisions. *Martins Ribeiro v Portugal* has suggested that a nation has a right to prohibit abortion. When we look at CEDAW, the word “abortion” is not even mentioned in the Convention on the Elimination of all Forms of Discrimination Against Women. It might be inferred, but to suggest that nations that prohibited abortion somehow would allow themselves to be bound by an abortion provision by a UN committee is just fallacious. Northern Ireland never agreed to be bound by abortion provisions in that document.

The committee themselves are not lawyers. They are not judges. It is not a court. It is a periodic review. It is a non-binding document. The underpinning of this discussion is just misleading.

Q411 **Jess Phillips:** My question is specifically about CEDAW, because they are not lawyers and it is not binding. I am somebody who makes binding laws who is not a lawyer. The CEDAW Committee said very, very clearly that there was a violation of women’s rights and recommended that the Offences Against the Person Act 1861—I am sure we can all agree that might not say the word “abortion”, but it is certainly about abortion—should be amended so that women and medical professionals could not be criminalised. That is relatively explicit. The CEDAW Committee’s findings on human rights breaches were wider than the Supreme Court’s. What is the status of the CEDAW Committee’s report in relation to the Supreme Court finding?

Les Allamby: The Supreme Court and Lady Hale made it clear that CEDAW and other treaties are very important. They are not binding. There are circumstances where in previous judgments, mainly social security ones, they have set out the circumstances where you can take into account international law. One of those is the recognition that the European Convention on Human Rights and judgments of Strasbourg have often drawn significantly on international treaties, including unincorporated ones in UK terms and that, generally speaking, you should interpret the law in the grain of the treaties, but it is not binding. Roger is right that it is not absolutely binding on our domestic law in our dualist system.

What is significant in terms of the CEDAW report was that the UK Government’s response was to say very clearly that they did not accept that there were grave and systemic violations of human rights. Sometimes when we focus on CEDAW, we miss that there are two parts to what CEDAW has to say on this issue. It has recommended



HOUSE OF COMMONS

decriminalisation on the one hand but it has been very clear that this is in conjunction with access to reproductive health services.

This is not simply about decriminalisation. It is about a more holistic approach to these things. The UK Government's response was to say that, while they do not accept that there are grave and systemic violations, they acknowledge that they would need to respond more fulsomely once the Supreme Court judgment was in and once the fatal foetal abnormality review of the Department of Justice and Department of Health was in. They have committed to coming back to this. Both of those are significant developments.

Q412 **Jess Phillips:** They have not yet come back.

Les Allamby: In the absence of a Northern Ireland Assembly, we are left waiting for the Assembly to return for a response.

Q413 **Jess Phillips:** Can the Secretary of State not respond to that?

Les Allamby: She could choose to. The Vienna convention made it very clear that, when it comes to treaties that the UK has signed up to as a UK Government, devolved Administrations' failure to do something still falls at the door of the United Kingdom. Yes, if the Secretary of State was minded to do that, she could, but, again, the question in international law terms is quite clear: the UK is responsible for making sure that it signs up to its obligations and meets them regardless of what happens with devolved Administrations.

Roger Kiska: It is very simple. Yes, the UK signed on to CEDAW. The document was calibrated and debated, and there was never any agreement to be bound by abortion language. If we look at 2007 and the manner in which Pakistan answered the question on its abortion laws, it said that that question was out of bounds. The committee was forced to accept that. Similarly, Honduras merely pointed them to their laws protecting life. That was accepted by the committee.

Q414 **Jess Phillips:** Do you think that we should have the same standards as Pakistan and Honduras in this country?

Roger Kiska: The United Kingdom, not agreeing to be bound by abortion language, should not be bound by abortion language. It is a very dangerous precedent.

Q415 **Jess Phillips:** Can you explain to me what "abortion language" is? I do not understand.

Roger Kiska: "Abortion" is not mentioned anywhere in CEDAW.

Jess Phillips: The word "abortion".

Roger Kiska: The word "abortion". It was debated. Again, I reiterate: why would countries that prohibit abortion agree to be bound by such language? It sets an incredibly dangerous precedent when any nation



HOUSE OF COMMONS

agrees to be bound by language it has not agreed to, not just on this issue but any issue.

Caoilfhionn Gallagher: Following on briefly, I agree with what Les has said. I have three quick points following on from your question, Jess. First, of course it is correct that the CEDAW Committee is not binding. Its findings are not binding but it is, very importantly, taken into account by the European Court of Human Rights in Strasbourg and by our courts domestically. As a matter of domestic law, CEDAW is relevant when you are looking at convention rights. That has been very clear through a series of cases, including *Opuz* in Strasbourg and, indeed, this case here—Les's case, the Northern Ireland Human Rights Commission's case. It is quite wrong to present it as CEDAW being, as a matter of international law, not binding and then to treat domestic law as something entirely separate, because they interact in this way.

The second point is that the Committee has been very clear that CEDAW lands at the door of the UK as a whole. You will have seen that in paragraph 53 of the report in relation to the UK, which concludes by saying that the UK cannot invoke its internal arrangements, the Belfast agreement, to justify its failure to revise Northern Ireland laws that violate the CEDAW convention. The position is—and indeed it almost appeared to be accepted in some of the UK Government's evidence yesterday in Geneva—that, as a matter of public international law, there is a violation. The real question is about what we do next.

Could I make a third point in relation to that? One of the very concerning issues at the moment is that, because we have a situation where the Supreme Court has made a decision in principle but there is not a remedy that has resulted in a change to the law, you now have a situation where individual women are potentially having to take up the mantle—indeed, one has already, Sarah Ewart, whose case I know you are looking at—and to have to go and argue in the courts, and potentially have the case go back up to the Supreme Court again. While that is currently being done in relation to fatal foetal abnormality, I have very serious concerns about cases of sexual violence and how much more difficult it is for individual women in rape and incest cases to come to court and bring an individual account.

Q416 Jess Phillips: Funnily enough, I am about to come on to that. Let us say there was a change as recommended by the joint report of the justice and health groups in Northern Ireland, so if it was decided there that something needed to be done in cases of rape, incest and fatal foetal abnormality. If there was a law to change that, how could that ever be effectively implemented in practice, specifically around rape and incest, bearing in mind the evidential and ethical issues requiring victims of sexual violence to come forward?

Chair: Roger, did you want to comment? I am just conscious of the fact that you have not given him a chance to comment, Jess. Did you want to comment on the evidential issues that we might face in this, Roger?



HOUSE OF COMMONS

Roger Kiska: I would. These issues are obviously difficult. If you have a diagnosis of a fatal foetal abnormality or if you have conceived because of rape, particularly in the case of rape, these are women who are victims. There is no question about that. We have to remember that criminal law already punishes rape. From our perspective, the unborn child has inherent worth. We need to weigh that in the balance.

Q417 **Jess Phillips:** Could I ask you to stick to the law, rather than the opinion? What I want to know is, if in Northern Ireland the report stated that in those cases the law needed to change, how the law would deal with it.

Roger Kiska: In law there is no precision on these issues. The definition of fatal foetal abnormality, as the Supreme Court said, is not very calibrated. It just suggests that there is a serious condition.

Jess Phillips: I am talking about rape.

Roger Kiska: Rape is a criminal matter. The situation is unworkable in the sense that to have a conviction for rape or to prove that it was a rape, there has to be a criminal trial. By the time that that trial is concluded and there is a definitive finding of rape, obviously the pregnancy will be well advanced. The issue of proving that allegation is difficult.

Q418 **Jess Phillips:** Legally, there is not really a way around it. To change the law specifically for rape, you have quite rightly identified, would be incredibly difficult. Hard cases make bad laws.

Roger Kiska: It is a legislative matter. When judges deal with the issue on a case-by-case basis, it becomes difficult.

Q419 **Jess Phillips:** Can you see a way in the law that you could, God forbid, believe a woman when she said she had been raped and that would be enough?

Roger Kiska: We should believe victims, but there are fallacious cases. We look at *Roe v Wade* and Norma McCorvey who was the petitioner in that case. She had fabricated the claim of rape, which she admitted and later regretted having had the abortion.

Q420 **Jess Phillips:** You do not think that there is a case in law for those sorts of cases because it is so ambiguous.

Roger Kiska: You have to weigh the competing interests. The competing interest there is the right of the unborn child.

Jess Phillips: By the bye, I totally agree with you. I think it is too difficult to legislate specifically on this particular contentious issue.

Q421 **Chair:** Does anybody else want to add anything on this?

Caoilfhionn Gallagher: Yes, I do on this point. I find myself not agreeing with much of what Roger has said but I do agree with some of



HOUSE OF COMMONS

the points that have been made about the difficulty in categorisation. There are two points. First of all, the legal position is the Supreme Court has decided by a majority of four to three: Lady Hale, Lord Mance, Lord Kerr and Lord Wilson have found that in pregnancies resulting from rape, sexual violence and incest, there is a violation of Article 8 in the forced continuation in those pregnancies. The legal position is in fact clear.

The second issue is the joint Oireachtas committee in Ireland, when it looked at this issue, did some very good work. The Citizens' Assembly in Ireland have recommended that the termination of pregnancy as a result of rape be lawful up to a 22-week gestational limit.

When the joint Oireachtas committee looked at that, it found that drawing the line was very difficult. A couple of the factors that it highlighted are very relevant here. It highlighted the fact that there was a difficulty presented in the verification of a rape or sexual assault. It did not want to retraumatise victims by making them have to come forward and self-report. It also looked at the material in the European Court of Human Rights in a series of cases about violence against women, which recognised that there is a fundamental under-reporting of rape and sexual offences. The result of that was that it thought it would be unreasonable to insist on any form of reporting as a precondition for exercising a right to access reproductive health services.

Q422 **Chair:** So that I am really clear, you are saying there is not really a situation where you think you could effectively implement a provision for women who have been raped.

Caoilfhionn Gallagher: That is right. Chair, the position is that if members of this Committee were to take the view that there was a powerful case made out in the hard cases in relation to rape and sexual violence, the practicalities mean that that form of categorisation would be problematic and that the route taken by the joint Oireachtas committee in Ireland, having looked at that material, is an appropriate one. That is to recognise that it is instead more appropriate to deal with the issue by permitting termination of pregnancy without a restriction as to reason, even if the core of the reason for many of you may be focused on those hard cases.

Les Allamby: Can I give a slightly more nuanced response to that? First, it would be extremely difficult. I do not think it is impossible. Twenty-five of the member states of the Council of Europe have legislated in some way for termination. They have done it in cases of sexual crimes. They have done it in different ways. In some cases, a single doctor has simply said, "Yes, there has been sufficient for me to decide that this is a case where that should be done". Others have committees of specialists—doctors, lawyers and social workers. Others provide the police.

I start from the position that you would simply believe a woman. To answer Roger's point about fallacious cases, a woman who invented that in order to get a termination in Northern Ireland runs the risk of



HOUSE OF COMMONS

significant other criminal charges being levied against her in terms of the issue. The stakes are very high to issue a fallacious report. I do not think there is any evidence of that.

Q423 Jess Phillips: If a woman were to do that, one could definitely identify her as being vulnerable.

Les Allamby: Yes. We have a difficulty in Northern Ireland as well in that there is section 5 of the Criminal Justice Act 1967, which requires them to report crimes to the police. We have some very sensitive and quite effective guidance. I am not a big fan of the two-child rule, but the Attorney General has issued guidance on how to deal with that in that circumstance, where we have the issue of rape being an exemption to being able to claim, or coercion to claim benefits for a third child.

The Gillen Review, which was the review following a very high-profile rape trial and how the woman in that trial who was a witness and a victim was treated, has recommended repealing section 5, save in cases concerning children or vulnerable adults, though it would still be obliged to report crimes except where there is a reasonable excuse. There is a way you could deal with this.

Where I find myself on the same page as Caoilfhionn is to say when we look at the recent history of what Ireland did, they looked and that issue and what they concluded was that it was better to find a period of time, probably the mainstream within Europe, to say that you do not have to move into those circumstances and then after a 12-week period there are specific circumstances. There is nothing to stop Northern Ireland going beyond human rights requirements. For us, the question is that they are not meeting their human rights requirements at the moment. You do not have to deal with it in that specific way if you choose as a legislature to do so.

Q424 Chair: There are some very clear cases where rape has been committed, and none of you has touched on it: when children are pregnant. We had evidence given to us in an open session about a 12-year-old girl who was pregnant and had to be taken to Liverpool, I think it was, for a termination with an escort to bring back the remains, because obviously it was important for lots of reasons. If the law was changed, presumably the need to take a child to Liverpool would then evaporate. Would that be an instance of rape that would therefore be an acceptable use of abortion law?

Roger Kiska: The law is well calibrated.

Chair: So it is well calibrated for 12-year-old children having to go to Liverpool.

Roger Kiska: In the Ms C case in Ireland in 1997, where there was an underage victim who was then taken to the UK for an abortion, she later regretted having that abortion once the media storm died down. That is well documented. There are provisions in place to respect both the life of



HOUSE OF COMMONS

the mother and the life of the unborn child. There are provisions for women to be able to travel abroad to receive an abortion. There are grants in place for that. The European Court of Human Rights has said that is absolutely lawful. It has left that within the discretion of those member states to do so in order to protect life. This has been debated by the legislature in Northern Ireland. It is a transferred power and that is where it should belong.

Q425 Chair: There is quite a lot of evidence to suggest that 12-year-old girls giving birth is not good for the 12-year-old girl, particularly if it had been the result of a statutory rape. Would you still think the law as it is is satisfactory?

Roger Kiska: Difficult cases make bad law, in fact. When we are liberalising abortion laws based on single incidences, that opens the door for—

Jess Phillips: It is not a single incident; it is an example.

Roger Kiska: As is the Ms C case. If Northern Ireland feels that the worthiness of the unborn child is weighed significantly and that they have provisions in place for such cases that allow health professionals to advise women that they can travel abroad for an abortion, there are grants in place to do so. That meets the threshold under the Human Rights Act.

Q426 Jess Phillips: That does not protect the unborn life either, does it? It just means you have to travel to not protect it.

Roger Kiska: It protects other unborn lives by not creating liberalisation of the law.

Jess Phillips: Evidenced how? There is no evidence for that.

Q427 Chair: Are there any other comments on statutory rape?

Caoilfhionn Gallagher: On the point Jess has just raised in her question, that is something that has been taken into account by the European Court of Human Rights. For example, in the Dublin Well Woman case, they said exporting the problem and having a system that involves people travelling undermines the argument that is made about protection of foetal life in any event.

The second point I wanted to come to is about the example you gave about the 12-year-old girl. It is a very powerful example and I am aware of that case. I have acted in a number of cases where the position is very clear: it is statutory rape, it is a stranger rape, it is sexual violence and there is an associated criminal proceeding. In those cases, if you had an exemption, it would be very easy to tick the box. The concern that I have is with the hard cases that are not in that very clear-cut category. That is what the joint Oireachtas committee was mainly focused on. I would be very concerned about an exception that was so narrowly tailored just to the cases where you can tick the box more easily, because that is not the vast majority of cases of sexual violence in Northern Ireland.



HOUSE OF COMMONS

Les Allamby: I am very mindful always of the actual practical circumstances that face women. The head of paediatric pathology in Northern Ireland resigned after 25 years' service a couple of years ago. She resigned because, effectively—and she went very public with this—of what she saw was happening and what women were having to do, for example, with afterbirth remains when they were travelling. In terms of this issue of whether we simply export the problem somewhere else, whether it is frankly south of the border in Northern Ireland or across the Irish Sea, there are a whole rake of other circumstances that are clearly very unsatisfactory where professional clinicians are unhappy with what they are being asked to do in terms of meeting their healthcare requirements. It is quite clear to me that the professions and the individuals within those professions understand that the current law does not allow them to provide the care that their professional duties require them to do. That is a very significant circumstance that we currently leave ourselves in.

I want to make one very quick further point, which is that even the pathway to getting to the UK is now very clear. It is simply an information pathway. GPs in Northern Ireland have not been given any information by the Department of Health; it has been provided by the British Pregnancy Advisory Service, which clearly does not have the same status as the Department. The Department, when we met them in September last year, almost six months ago, told us they were getting legal advice on whether they could give an information leaflet to GPs on what the UK is doing.

I saw the evidence before you relatively recently. Either this advice is taking an enormous length of time to get to them or they are not acting on whatever the advice is. I would make the point that even for information—straightforward information—there is an inertia within the Department of Health in Northern Ireland that borders on paralysis about offering straightforward information. We cannot continue to go on in these kinds of unsatisfactory circumstances and get caught up in waiting for the Supreme Court again to eventually move this on. We need to find other ways of resolving these issues.

Roger Kiska: Guidance has been given. It was given in 2016. It allowed health professionals to advise women to travel abroad. It informed them that they had a duty of care to those who received abortions abroad. I am happy to provide that to the Committee at a later time.

Chair: We have that information.

Roger Kiska: We have to look at the fundamental issue here. This is a transferred power, one that is left for the Northern Ireland Assembly. They may very well have looked at the law here and what happened in 1967 where they carved out certain exceptions to allow for abortion and how that has been liberalised over the years. We now have 200,000 abortions in this nation a year. Rather than having two doctors sign off on a form, it is customary for forms to be pre-signed and for that first doctor



HOUSE OF COMMONS

to not even see the patient. Perhaps when we want to talk about evidence-based facts here, that is a fact that perhaps weighed very strongly on the decision of the Northern Ireland Assembly.

Q428 Sarah Champion: Les, can I ask a very specific question for a very short answer? It is about bringing back the remains of the child. Are you aware of any guidance given to the women—that that might be something that they need to do, either for a medical or a criminal reason? Is it very much left up to the women to make that decision themselves?

Les Allamby: There is now, following a court case, a requirement, for example, for a coroner to consider investigating still births in certain circumstances. There is no guidance issued by the Department of Health for what women are expected to do. Occasionally, the police become involved in the issue. There are women—in our experience, because we have had cases that have come before us around this—who want to discover what happened. Not every woman or parent does. Many, though, want to bring back the remains and decide what to do with those remains. There is no formal guidance to women as to what is expected of them in those circumstances.

Q429 Tonia Antoniazzi: Section 5 of the Criminal Law Act (Northern Ireland) 1967 requires information about criminal offences to be reported to the police. However, as we know, victims of sexual assault do not want to report to the police. If the law was changed to allow abortion in cases of rape and incest, would section 5 need to be changed to make this work in practice?

Les Allamby: Yes, it probably would. We now have a template for doing it, as a result of the Gillen Review, putting aside the fact that we do not have an Assembly and how it would be dealt with. We have guidance from the Attorney General about how you deal with it in cases of the two-child rule. Recognising that Gillen has said that for vulnerable adults and children there would still be a requirement to report without reasonable excuse, if you were to issue the kind of effective guidance that said, “In these circumstances”, for example, “of victims of sexual crimes and other clear vulnerabilities, the priority would be to deal with the needs of the woman first”, then you could find a route through that. It would be difficult to deal with it without doing something around section 5 as well.

Q430 Tonia Antoniazzi: Do you see any reason why the Attorney General could not produce similar guidance on the disclosures of rape and incest in relation to abortion, like he has on the security claims?

Les Allamby: It would be a matter for the Attorney General to decide to do that. The Attorney General has nailed his colours to the mast in terms of intervening in almost all of the cases that have been involved around abortion, both the current ones and the one that went to the Supreme Court. The current Attorney General has a particular view on these issues. Getting guidance on this issue is a matter for the Attorney



HOUSE OF COMMONS

General. It is difficult to see that you would get the kind of guidance that is needed in the current circumstances.

Caoilfhionn Gallagher: I agree with that. Can I say something brief on section 5? There is a fundamental problem with section 5 in any event in these cases, not only in rape and incest cases. I know you are very aware of the guidance from 2016 and some of the criticisms of it. I am not sure if you have seen the criticisms by Professor Wendy Savage of the British Medical Association. She gave some evidence that is before some of the cases you have been looking at. I can provide a copy of her evidence if that would be helpful. She is very critical about the lack of any clear guidance in that document about the interaction between the duty to report a crime and duties relating to medical confidentiality. It raises some fundamental questions.

Also, in a number of the cases that I have acted in and that I have worked on, which link to the point you made about the 12-year-old earlier, Chair, you have a very odd cultural situation, which is that the obtaining of abortion pills by a mother for her child or the obtaining of abortion pills by a pregnant person over 18 is reported and, in fact, the sexual violence is not reported. I can give you some examples of that, too. There is a differential way in which section 5 is applied in any event, which causes really fundamental problems in this area.

- Q431 **Sarah Champion:** The Royal College of Midwives has expressed that there is fear amongst midwives because of the draft guidance published in 2013, meaning that if a woman presents vaginal bleeding the midwife is very concerned about asking too many questions, because of the information she may receive. Caoilfhionn, you have already started to speak about section 5 and I think this is relevant here. Do you think that the guidance is clear enough, so that a midwife knows when she would or would not be, first, meant to formally put forward the information and, secondly, prosecuted if she does not?

Caoilfhionn Gallagher: The short answer is no, I do not think it is. I am very conscious of those concerns that have been raised by midwives and by other health professionals. The result of that is that there is, first of all, a chilling effect on people coming forward to medical professionals at all. There is very clear evidence of that in some of the cases.

The decision to prosecute the mother in JR76 in itself sends a message that, if you are bleeding having taken abortion pills in Northern Ireland, do not go to a doctor because you or your parent might get shopped. There is a real concern about that. For health professionals, there is a chilling effect on their ability to provide the best possible care to women and girls in these situations. It is not clear and there is a fundamental problem here, the end result of which is that women and girls continue to be failed.

- Q432 **Chair:** This is Northern Ireland. It is not a part of the jurisdiction that we are always dealing with. Who should clarify the law in that instance? You



HOUSE OF COMMONS

have said there is a lack of clarity in the guidance. Whose responsibility is it to clarify it?

Les Allamby: We now know from the Bill that extended the Secretary of State's powers that the Secretary of State can now give guidance to the Department of Health and other Government Departments on a quarterly basis and is expected to do so. If the Secretary of State is so minded, she could offer guidance. I do fall back again on the 2016 guidance and whether it is satisfactory or not.

The Department of Justice and Department of Health committee was very proprietorial in keeping within the terms of reference and only dealt with fatal foetal abnormality. It is quite clear from its conclusion and its findings from medical professionals that the current guidance is not fit for purpose in terms of the professional duty of care to look after women. We do not know whether in other circumstances the same applies or not. All we know is for FFA. I would be very surprised, frankly, if those concerns are confined to simply fatal foetal abnormality.

Q433 **Chair:** For women who are bleeding and need medical attention, we need to have clarification of the guidance, as Caoilfhionn has said. That could be achieved by the Secretary of State intervening. Nobody else could do that. Is there anybody else who could issue that guidance that would mean that the Royal College of Midwives would not tell us that its members fear criminal prosecution if they help women who are bleeding, possibly to death? Is there anybody else who could do it? What other options do we have here? As parliamentarians, we find it quite difficult to hear evidence where women are potentially dying and nobody is doing anything about it.

Les Allamby: Could the Royal Colleges issue guidance to their members? I suspect the answer to that is yes. I do fall back, though, on the point that resolving our issues in Northern Ireland needs to be done holistically. If you had one Royal College issuing guidance, what do the other Royal Colleges do?

Q434 **Chair:** You are telling us that really, other than the Secretary of State, there is nobody with the credibility and the authority to do it?

Les Allamby: I am saying that in an ideal world we would have an Assembly back and the Department of Health would be doing this.

Chair: We do not live in an ideal world. We live in the real world, unfortunately.

Q435 **Eddie Hughes:** It feels like there is more of a need for some immediate action, and it feels like that could be possible from the professional bodies that govern this.

Les Allamby: In the absence of that, it does not stop the Secretary of State consulting with Royal Colleges and deciding to issue something. There are ways in which, if there was a political will to do this, it could be done.



HOUSE OF COMMONS

I remember, not that long ago, in social security reform, Northern Ireland could not agree the social security reforms under the coalition Government. Eventually, the Government decided to withhold money from the block grant that would have been saved otherwise to try to bring the Northern Ireland devolved Government in line. It did not work.

Ultimately, through the Stormont House Agreement, which was not about social security reform, it came up with a solution. It took the powers itself, enacted the changes and pragmatically resolved it. What I am saying is that if there is a political will on this issue to do something, we would find a way through. It is not going to be easy but it can be done. That is the principle that I would apply to this.

Roger Kiska: Again, health is a devolved power. These issues have been debated by the Northern Ireland Assembly where they belong. They have calibrated the law. They feel that protecting life is a worthy endeavour and they have done so. They have made illegal certain abortifacients. Instead of speaking about the consequences, we should look at the antecedent and put in place ways of preventing unlawful abortifacients or counterfeit abortifacients entering Northern Ireland, because if that is the root cause that is an issue as well.

Q436 **Chair:** The UK Government have worked with officials in the Department of Health to deal with things like cannabis and the availability of cannabis on prescription, so it is possible for us to get things sorted as they need to get sorted, if it is about the law not working properly or needing to be updated. That is where our question lies.

Roger Kiska: That is presuming that this is a human rights issue and not a matter devolved exclusively to the issue of health. It is a matter involving health. I do not think that anyone on this panel can point to one case under the European Convention on Human Rights that suggests that abortion is a human right or to the competency of CEDAW. No one can say that that precedent, that case from the Supreme Court, no matter how many judges supported it, had any precedential value at all. The real premise here is that this is a matter for Stormont and only for Stormont.

Les Allamby: That is not what the Supreme Court said. Roger is right that there is no absolute right to abortion, but it clearly is a human rights issue and all seven justices, in their opinion that they gave in the Supreme Court, made it absolutely clear that they saw this is a human rights issue.

Caoilfhionn Gallagher: I agree entirely. It is recognised very clearly, by an enlarged Supreme Court, as being a human rights issue. It is recognised by UN bodies as being a human rights issue, including by the UN Committee on the Rights of the Child, as well as by the CEDAW Committee. It is recognised as a human rights issue by the Human Rights Council also.



HOUSE OF COMMONS

On the issue about the guidance point, I agree entirely with the point Les has made about ideally there being a holistic response. I come back to the point I made at the outset, which is that this is a failure by the UK overall and there is not a constitutional bar on Westminster legislating. There is a real air of unreality to some of the points that have been made about this being a transferred matter in circumstances where there is no Assembly and you simply do not have those devolved roles filled. That has been the case for two years.

In the short term, there is a very immediate issue about women, some of whom are my clients, who are bleeding, in danger and are not able to get the healthcare to which they are entitled. Even though there does need to be a holistic response, there is a case for doing something very quickly and promptly to deal with what is a pressing healthcare and right-to-life issue. On that, I agree with the points that Les has made.

Chair, you referred to working with officials at the Department of Health. That is entirely in keeping with the memorandum of understanding on devolution. In the absence of the devolved Assembly, there has been work done in many areas that involves working with the devolved Administration and working with officials. That is entirely in keeping with the spirit of the memorandum of understanding and supplementary agreements on devolution.

I am a little uncomfortable with the idea of the Royal Colleges issuing guidance and that dealing with the issue, because what we found in relation to the British Medical Association guidance on medical confidentiality was that it is seen as a fudge by some in Northern Ireland, because it does not in fact give them the reassurance they want, when there is a piece of primary legislation saying, "It is a crime if you do not report in these circumstances". While it would be welcome, of course, to have guidance from the Royal Colleges, I do not think that is sufficient. It will not deal with the fears that midwives have, which Sarah Champion mentioned earlier.

Q437 Jess Phillips: Specifically on that issue about the action to report, you might not be able to answer this, but are there any cases, in front of courts in Northern Ireland currently, where health professionals have reported issues around sexual violence and domestic violence? It seems to me the right to report, which is really frightening health professionals—rightly so—is being put in place for issues around abortion law but not at all for any of the violence against women and girls actions, for example?

Caoilfhionn Gallagher: That is a submission that we have made in some of the cases, in fact: that there is a differential way in which section 5 is applied. You can see that in some of the cases. How can you have a situation where a young girl who is the victim of a crime—a victim of statutory rape or a victim of some other form of abuse that results in a pregnancy—ends up in the criminal justice system, or her mother ends up in the criminal justice system, because of a report about the use of



abortion pills in circumstances where the man has not been reported? That is a trend that has been picked up on and it is the subject of some submissions on one of the cases. I am quite happy to provide some more material on that, if helpful.

Chair: I think we could go on for the rest of the day, not the rest of the morning, but we have to move to our next session. You have huge thanks from the whole Committee for taking the time to come before us today. If you do feel there is any additional evidence you could give to us please do that, because this is such an important case. Thank you very much.

Examination of Witnesses

Witnesses: Rt Hon Karen Bradley MP, Rt Hon Penny Mordaunt MP and Maura McCallion.

Q438 **Chair:** Can I thank our second set of panellists of the morning for joining us, and also the people who are joining us in the gallery? We are going to try to run on seamlessly to make use of every second that we have available. Whilst everybody is making themselves comfortable in the gallery behind, perhaps I could ask our witnesses to give their names and the organisations they come from.

Maura McCallion: I am Maura McCallion, from the Office of the Attorney General for Northern Ireland.

Penny Mordaunt: I am Penny Mordaunt, Minister for Women and Equalities.

Karen Bradley: I am Karen Bradley, Secretary of State for Northern Ireland.

Chair: Thank you from the whole of the Committee for taking the time to be with us today and also for coming together as a panel like this. We are trying to hear evidence from as many people as possible and time is not on our side, so I am going to move swiftly to our first set of questions, which are from Angela.

Q439 **Angela Crawley:** There have been a number of surveys on public attitudes to abortion, but the largest is probably the Life and Times Survey, which found that there is public support for reform of the law, particularly in certain circumstances, and that attitudes have liberalised over time. Do you accept that the law is out of step with public opinion in Northern Ireland?

Karen Bradley: Thank you, Angela. What we are dealing with is clearly a very sensitive issue, on which there are strong views on all sides. I am sure the Committee has heard that during the evidence you have received. There are a number of opinion polls that have been carried out to look at public opinion. The latest polling does indicate that there is



HOUSE OF COMMONS

public support for a change in the law in, as you say, certain circumstances, particularly fatal foetal abnormality, rape and incest. There is also evidence in opinion polling that there is not support for the law in other circumstances. This is where the difficulty lies: trying to extrapolate from an opinion poll what public opinion might be and what changes would be acceptable to people in Northern Ireland.

Penny Mordaunt: I would agree with the Secretary of State's assessment there. Although you want to be very focused on Northern Ireland, and I will remain so in the evidence I am giving, there is a wider context here that should exercise us, which is about what it means to be a citizen of the United Kingdom and what our responsibilities as the UK Government towards you are. This is obviously a particularly difficult issue.

There are other issues, such as the fact that we are shortly going to have opposite-sex civil partnerships but Scotland will be a year behind that. You will have the issue of equal and same-sex marriage. If you are a citizen of the United Kingdom, this is getting very complicated. There is a wider issue about how the four nations work together as part of the UK. I am talking to the Secretary of State for Northern Ireland, but also the Secretaries of State for Scotland and Wales, about how we square that, because it is about the social fabric of our country but also, in this case, as well as public opinion and what we think is right, this is an issue about basic services in healthcare and protecting people.

Q440 **Angela Crawley:** I appreciate what you have said, Minister, with regard to the sensitivities around respecting devolution, and I think it is very important. However, in this context the Assembly has not sat for over two years now so you can appreciate that this is a very different circumstance from the constitutional arguments that have been made.

We have heard from women in Northern Ireland whose lives and mental wellbeing have been put at risk by the current abortion law. We have obviously heard of the tragic circumstance of the death in the Republic of Ireland that resulted in a change to their law on abortion. Let me ask you this: are you willing to sit back and wait for someone to die in the north of Ireland for a change in the law to happen there in absence of that Assembly?

Penny Mordaunt: No. A lot of the evidence that your Committee will have heard will have been about under what circumstances the UK Government or other can act. We are clearly awaiting a ruling, and if there is a declaration of incompatibility that will be helpful to a particular course of action.

You have just heard this morning that when things like that have happened, when you have had a declaration, the UK Government have acted. It is a good question as to why we need something like that to happen. We have evidence of women's lives being put in danger. If you have a situation where a 12-year-old girl who has been raped has to be



HOUSE OF COMMONS

accompanied by the Northern Ireland police to Liverpool in order to gather DNA evidence, there is something wrong.

I am sure the Secretary of State for Northern Ireland will outline what we think the preferred route is to try to resolve this. This is a very unique set of circumstances with regard to the status of the Assembly, but there is a question for us as the UK Government when we are faced with this kind of situation. If there were a situation where you had, in a devolved nation, a hospital failing or some other kind of poor care being provided to an individual, there would be systems, healthcare oversight, investigatory powers and all of that, which would kick in. This is exacerbated because it is not regulated as a healthcare issue—it is regulated as a criminal issue—so those things do not kick in.

Q441 **Chair:** Can I bring Maura in here? The Attorney General's Office has a duty to protect the public interest in matters of law. Is the Attorney General's Office concerned about both the disconnect between the opinion of people in Northern Ireland and the law, but also the way the law is working in practice in terms of protecting people from being in quite difficult situations? We heard in the earlier session, which I think you may have heard, of people not being able to access healthcare as a result of the law.

Maura McCallion: The first thing is that public opinion may or may not have shifted but ultimately our model is one of representative democracy. As Lord Mance noted in the Supreme Court case, that can accommodate a difference or a divergence between public opinion and what the elected legislature decides. He gave the example of the death penalty. That is something we can live with in terms of our model if that is the case. As a policy choice for the legislature, how it operates and what it does in terms of abortion law, the Attorney's view is it is not required to do anything by the convention or by international obligations at the moment.

Q442 **Angela Crawley:** Let me ask you this very directly, and I hope that the Secretary of State will be able to answer this question as well: is it going to take a woman in Northern Ireland to die for change to happen in Northern Ireland with regards to abortion law?

Maura McCallion: If a woman's life is at risk or her health is at risk of severe or serious and long-term impact, then abortion is available to her in Northern Ireland.

Chair: Can you repeat what you just said?

Maura McCallion: Our law is different from what it was in the Republic of Ireland before laws were changed there. Our law does allow for people to have abortion when their life is at risk. It should not be that someone's life is at risk because an abortion is not being offered to them.

Q443 **Chair:** You are surprised that we have been receiving not just one piece of evidence, but quite a lot of evidence where people's lives are at risk in reality. Would that not require the Attorney General's Office, if they are



HOUSE OF COMMONS

aware of that information—and hopefully when you read our report you will be—to then act?

Maura McCallion: The guidance is clear. The legislation is clear. The guidance is clear that abortions are lawful in those circumstances.

Q444 **Angela Crawley:** Do you think that women and girls in Northern Ireland know what the law says and in what circumstances abortion would be permitted?

Maura McCallion: The guidance to officials is clear. The guidance to health professionals is clear. It is hard to know why they would not act on that.

Q445 **Angela Crawley:** If it were that clear, though, the UK Government would not be compelled or being currently asked to take action in this regard. If the law was as clear as you state that it is, there would not be the onus on the Secretary of State and the Minister here in the UK Government. The UK Government should not have to intervene in a devolved Assembly matter, surely.

Maura McCallion: It was suggested to the Supreme Court that the law was not clear and they did not accept that argument. The court did not say that there is an Article 8 problem with the clarity of Northern Ireland law. That is not an issue in terms of the law. Whether there needs to be more awareness of that among the professionals is obviously a matter for the Department of Health to look at, potentially.

If someone is unhappy with how a doctor responds to their request for termination, then the guidance says a second opinion can take place or should take place. There is access to the courts if they need to secure that right through the courts. The guidance shows a number of cases where that has been done.

Q446 **Angela Crawley:** It is not realistic, though, is it?

Maura McCallion: It actually is. There have been a number of cases where people have gone to court with an emergency application and had an abortion approved in that circumstance.

Q447 **Angela Crawley:** Take a woman experiencing a troubled pregnancy, whether through fatal foetal abnormality or in the instance of rape or incest. Do you think a woman in Northern Ireland right now would understand that there is a vehicle where they could go court and apply to have a legal abortion?

Maura McCallion: The guidance sets out four examples of when that has been done by the trusts. The trusts have taken cases of 14-year-olds and 17-year-olds to court for court authorisation and the abortion has gone ahead. The guidance is clear.

Penny Mordaunt: Can I give a case study that gets to the heart of this? I do not know if you have heard of this case or you have met Denise



Phelan, but, just for the record, the law as it stands may have made provision—it could have made provision—potentially for her, but because of a combination of the chilling effect, because she then became too ill to travel and was not offered those services in Northern Ireland, she was faced with a situation where her baby died. She was then left with a period of five days before she was able to access the termination, during which time that foetus decomposed inside her, putting her own life in danger. It is absolutely clear that, even where you have the law allowing for the services that an individual needs, that is not happening and women's lives are being put at risk.

Q448 Chair: Does what the Secretary of State has just told you, Maura, make you a bit worried? This is not the first time we have heard that. We have heard it constantly. Going back to what the role of the Attorney General's Office is, it is to make sure the law works in practice. Is this not something you would be curious to look at?

Maura McCallion: I am not sure his role is to make sure the law works in practice. He has specific statutory duties, for example to intervene in cases that are ongoing in relation to public interest. He may have intervened, for example, in the case, had one been brought by Denise Phelan after the event. It seems to me that the risk to her life was after the child had died in the womb, so it was not relating to the law on abortion at all. It was to do with what happened afterwards.

Q449 Chair: It was because she could not have a termination even though she had a fatal foetal abnormality.

Maura McCallion: That might have been about scans and timing of health services.

Chair: No, it was not.

Penny Mordaunt: It was because she was not given the option.

Karen Bradley: It was a common law issue in her case. If you read the letter of the law, it would appear she could have had an abortion but common law prevailed, and therefore the doctor was not prepared to give her an abortion and she was not able to travel due to her existing medical condition.

Q450 Angela Crawley: Secretary of State, specifically what action do you believe the Government should be taking with regard to the breach of human rights with regard to access to abortion in Northern Ireland?

Karen Bradley: This is where the complication comes with a devolution settlement and constitutional arrangements, which I am sure you will understand and appreciate, representing a constituency in Scotland. The institutions that are set up under the Belfast/Good Friday agreement are not suspended. They exist. They could come into being tomorrow if the parties chose that they wished to go back into power-sharing. The Northern Ireland (Executive Formation and Exercise of Functions) Act



HOUSE OF COMMONS

2018, which we passed in late October or early November in this House, allows the Executive to reform at any time without any further legislation. Because of that, I as the Secretary of State, have no executive powers to direct the civil service and the officials in Northern Ireland. I cannot direct a civil servant to do anything under the laws as they currently stand with my constitutional powers, in the same way as the Secretary of State for Scotland cannot direct a civil servant in Scotland to do something.

I know that is frustrating. I do understand that people are frustrated about that, but that is the reality of the legal position. We have not had a declaration of incompatibility in a court judgment, and therefore there is, at the moment, no obligation on the UK Government or UK Parliament to take action to make sure we comply as the body that is responsible for upholding human rights. Even though we are the body that upholds, we ask our devolved Administrations to implement the human rights laws that are needed. My focus is on getting devolution restored. That is the way we deal with this in the most appropriate way, in the way the people of Northern Ireland want, because they want to see their institutions restored and they want Ministers in place.

Q451 **Angela Crawley:** How are you going to deliver that?

Karen Bradley: I am working to get the parties together. I had a meeting 10 days ago where I put all the parties in a room. We are trying to find a way that we can get power-sharing restarted as soon as possible, but that is not what this is about.

Q452 **Jess Phillips:** I want to pick something up specifically about how you do not have the powers to do that. This is specifically about cannabis, medicinal cannabis, which is again a sensitive issue, I am sure we can all agree. The Northern Ireland Department of Health website says that in order to ensure a consistent approach in terms of regulation and patient access across the UK, it worked alongside the Home Office, the Department of Health and Social Care and the Medicines and Healthcare products Regulatory Agency to develop additional frameworks and clinical guidelines to ensure that cannabis-based medicinal products can be prescribed safely and effectively to patients while at the same time ensuring they are not misused. That has happened in this time the Assembly has been out.

Karen Bradley: Drugs policy is a reserved matter. It is a reserved matter for the UK Government. It is not a devolved matter.

Q453 **Jess Phillips:** This was working with the Home Office.

Karen Bradley: Yes, that is right. The Home Office leads on drugs policy across the whole UK. The Home Office changed its position. It did not need a Minister in Stormont to then direct the Department of Health in Northern Ireland to allow them to prescribe medicinal cannabis because of the way the devolution settlement works. I know it is frustrating. I am as frustrated as you are, Jess.



HOUSE OF COMMONS

Q454 **Jess Phillips:** Secretary of State, if I was in your position, do you think it would be different?

Karen Bradley: I have no idea because I am not you.

Q455 **Tonia Antoniazzi:** The issue with medicinal cannabis in England and Wales is down to the Department of Health because the law has been changed.

Karen Bradley: The law was changed at the Home Office level.

Q456 **Tonia Antoniazzi:** It was, but the issue is in the United Kingdom now, specifically England and Wales, it is the BPNA that are stopping this. They are not getting the prescriptions out to the people that need it. There is a block, yet there does not seem to be that block in the health system in Northern Ireland, which is devolved. While it is happening there for medicinal cannabis, it is not happening there for access to abortion.

Karen Bradley: Can I be clear? That was not because of a direction I gave as Secretary of State. That was because of the powers the Department of Health has. In Northern Ireland, the Permanent Secretaries have a different responsibility, role and accountability to the civil service and the Permanent Secretaries in Departments in England, Wales and Scotland.

They are able to do things that a Permanent Secretary would not be able to do in England and Wales without ministerial direction. They are able to do that without ministerial direction. I did not direct them to change the policy on medicinal cannabis. I am very pleased they did but the Hughes judgment, which was this time last year, was very clear that as the Secretary of State I have no powers to direct civil servants in Northern Ireland.

Q457 **Eddie Hughes:** There is a flipside to the law. Because Northern Ireland did not introduce the 1967 Act, I understand there was a campaign in Northern Ireland that suggested 100,000 more people lived as a result of that. Do we think that is a good thing?

Karen Bradley: That is a subjective matter regarding the way that abortion is treated. I have been clear that I would like to see a change in the law in Northern Ireland but, as I say, I am not going to comment on the particular campaign.

Penny Mordaunt: Although, very understandably, we are focused on the law, what is required, guidance and all of these very technical things, what this does boil down to, and why there is an issue that is felt so keenly on the equalities side of things, is that we are really talking about what constitutes good care for somebody. It is not just about a procedure.

Q458 **Eddie Hughes:** Possibly what constitutes a good outcome, like living.



HOUSE OF COMMONS

Penny Mordaunt: In my limited experience, women do not choose to have these procedures without compelling reasons. They are not decisions that people on the whole take lightly. If you are going to have these services provided, you would want the care that is wrapped around that individual to be the best it could be.

We have spoken about people's lives being put in danger and the trauma of very physical things happening to them whilst having to travel and do all those things. It is also about that individual's mental health. I will not repeat cases. I am sure the Committee have heard lots of them. This is about a duty of care that we have to the citizens of our country.

Q459 **Eddie Hughes:** That is 100,000 people who are citizens of Northern Ireland who would not otherwise have been.

Penny Mordaunt: That is separate.

Q460 **Eddie Hughes:** I do not think it is a separate issue. Surely they are inextricably linked. One would have been a consequence of the other.

Penny Mordaunt: No, they are not, and I will tell you why. We are not debating whether these women should have access to these services. We are debating about the legal framework that allows women to access these services with the quality and safety that they should be afforded. That is the difference.

Q461 **Vicky Ford:** Do you think women and girls in Northern Ireland know what the law says and in what circumstances abortion would be permitted? Do you think they know they can travel to other countries to have a lawful abortion? What evidence do you have that they know, because we have heard some say they do not think it is particularly well publicised?

Karen Bradley: The information is available. It is public information. Again, it is a very subjective question as to how well people know. I could pose the question of how well my constituents know what the law is in my constituency about matters like this. I suspect we would get very varied results depending on the school they are at and the family they grow up in, et cetera. We clearly need to make sure they do know and we need to make sure they know what is available to them within the law as it currently stands.

Penny Mordaunt: It would be very hard for me to give you a sight of the answer from my experience, but the cases I have heard of would indicate that awareness is not great. Services that are providing information to people are limited about the ongoing discussions they can have with people because they are concerned about retaining phone records, telephone numbers and so forth. It would certainly appear that healthcare professionals and others are nervous about what advice they can give. The situation is not ideal.



HOUSE OF COMMONS

Maura McCallion: The guidance sets out that information can be given. If a woman is having a discussion with her doctor, that information about availability of services elsewhere can be given. She can be told that she can travel. There seems to be a bit of discussion about when that information becomes assistance. That is where the law is not clear. It is a grey area and the guidance flags that up.

That seems to be what the Department of Health are getting advice on at the moment. One of the ways that they could get clarity is to ask for a declaration from the High Court: "Is this a problem? Clarify this grey area for us. Can we publish information about the pathway to England?" and so on. That is something that could be done, where clarity could be given.

Q462 **Vicky Ford:** It would be very helpful if you could give us the detail on how that would work, so that we could get more public information leaflets that health professionals are comfortable to support and it was clearer what they can give.

Maura McCallion: The court could be asked, "If we were to say this, would it be lawful?" The court may say yes or not, but at least there would be a clarity rather than having to wait for a test case or some kind of advice, which may be equivocal.

Q463 **Sarah Champion:** Maura, can I follow up on that point, because both the Chief Medical Officer in Northern Ireland and the General Medical Council have highlighted that particular grey area, as you referred to it? Would getting clarity on that particular area be helpful to you?

Maura McCallion: It would seem to be helpful to the Department, because at the moment they are trying to get legal advice about how far they can go. It is down to the law of aiding and abetting. At the moment, the jurisdictional limits of law in terms of how it applies to common law would be that, even if the final act takes place in England, if there are harmful consequences in Northern Ireland then assisting could still be an offence.

We have not had it tested in relation to that normal, general rule around jurisdictional law. That has not been applied to the circumstances of Northern Ireland abortion law, but we could test that in court to see how far you can go, effectively, or not without aiding and abetting coming into play. That would be something that might need to be tested, or could be tested to avoid someone feeling that they would have to stick their head above the parapet and be prosecuted, and have the clarity at that stage.

Q464 **Sarah Champion:** Secretary of State, on that particular point the issue is that doctors can pass over information but if it is seen as referring then it could be a crime. On that particular thing, is that an area where you can work with the Department of Health to get proper clarity, as Maura is saying would be helpful?



Karen Bradley: In terms of the guidance legislation, the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, the section 4 guidance is clear that the Department of Health can update its guidance.

Q465 **Sarah Champion:** Could you give them a little shove?

Karen Bradley: As I say, I do not have the power to tell them to do that.

Sarah Champion: No, but you are a very persuasive woman.

Karen Bradley: We have to respect the constitutional arrangements, but it is clear in the legislation and guidance that has been issued, which I have issued as Secretary of State to the Permanent Secretaries, that they can update guidance as appropriate. I am sure I have been heard on that message.

Q466 **Sarah Champion:** In the absence of the Assembly, whose responsibility is it to push through, not just with guidance but when the law is being contested and needs updating perhaps, in this two-year gap that we have at the moment?

Karen Bradley: This is one of the frustrations we have. There is nobody accountable for decisions that are taken. Decisions cannot be taken that are major policy changes, for example, or changes to law. We have had no new legislation in Northern Ireland on devolved matters in that time.

On those matters that are called the transferred powers—and let us be clear that these are powers that have never been in Westminster—the Northern Ireland Civil Service and Stormont constitutional arrangements have always been separate from Westminster, since the instituting of Stormont back in the early 1920s. It has always been the case that there has been a different constitutional arrangement in Northern Ireland than there has in Scotland and Wales. There is nobody who is able to give executive direction to the civil servants. On transferred powers, as the sovereign Parliament, Westminster can take action if it needs to or if it feels it is appropriate to do so.

Q467 **Sarah Champion:** The Chief Medical Officer of Northern Ireland said he had significant concerns that medical professionals say they are not able to fulfil their duty of care to women with a diagnosis of fatal foetal abnormality. A working group was set up and has made recommendations to change the law but because there are no Ministers, nothing has happened. What has Westminster been doing in the last two years to help make that recommendation for a change in the law happen?

Karen Bradley: It is in the same way that there has not been reform of the health service, in the same way that there has not been work towards reforming education, in the same way that infrastructure projects are perhaps awaiting ministerial direction, in the same way that we do not have a suicide strategy and in the same way that there are many things



HOUSE OF COMMONS

that have not happened in Northern Ireland in the last two years. That is because we do not have an Executive.

I truly believe that the best thing for the people of Northern Ireland is that the politicians that they elected make decisions on their behalf. That is the best thing for Northern Ireland. It is the best thing for the United Kingdom. While there is a chance that the institutions could be restored, that power-sharing could be restored and that we could see that long-term sustainable power-sharing in Stormont, I want to make sure we can do that. It is very easy for Westminster to step in and say, "We will start doing these things ourselves". It is very difficult to get out of it.

I would also make that point that, in the period from 2002 to 2008, when there was direct rule because there had been a fundamental change in the politics in Northern Ireland and the two parties that were and still are the two largest parties were not at the time able to come back into power until the St Andrews Agreement in 2007, the decisions that were taken were taken through orders in council. They were not big policy changes. The law on abortion was not touched during that period.

I absolutely understand your frustrations. I absolutely understand why we are all sat here. This Committee's inquiry is incredibly helpful in terms of airing these views and demonstrating one area where the people of Northern Ireland are being failed by their local politicians because their politicians are not in Stormont, but it does not replace the fact that we need to get Stormont back up and running. We need to get the politicians there.

Sarah Champion: I completely understand that.

Chair: We are not talking about that.

Q468 **Sarah Champion:** But we are not talking about that. Thank you, Chair. We have heard the exact opposite when we have been speaking to women and Assembly Members, who are saying that they want Westminster to act.

There are two questions. First, how long are you going to allow this to go on? Is it another two years, five years or two months, or will it, as my colleague said, take a death before you act? Secondly, we have had the CEDAW report that is saying that we are in violation. Surely that is enough of an external impetus on a very specific area to force your hand.

Karen Bradley: We have not had a declaration of incompatibility. That is the key point. I will let Penny answer specifically on CEDAW because that is a Government Equalities Office lead. I want to see Stormont back. I appreciate, Madam Chair, that you say that this is not what the inquiry is about. I absolutely understand that, but it is because if we had politicians in Stormont, you would not be having this inquiry. We have to get politicians there.

Sarah Champion: I agree, but we have not; that is why we are.



Karen Bradley: I want to see this as soon as possible. I am trying to get talks restarted. As I say, I had a meeting with all five parties 10 days ago. I am trying to see that happen. I well understand, and I can see Jess's frustration there. I do understand the frustration but this is true of all policy areas in Northern Ireland. Because of the lack of Ministers and the lack of Executive, there are so many policy areas that simply have not had progress in the last two years, and it is not acceptable.

Q469 **Sarah Champion:** Maura, what do you think should be happening in this gap? Should we, for an indefinite period, let this drift?

Maura McCallion: The Attorney would not necessarily have an opinion one way or the other on that. At the moment, it is a devolved matter and the UK normally does not, without legislative consent, legislate in this area. In terms of talking about the working group recommendation, there is a concern that the Attorney has about legislating for FFA access to abortion because of the EU law restrictions, which we think are in place as a result of the UNCRPD being verified by the EU.

It may be a problem for Westminster as well as for an Assembly, if it were to be up and running again, to legislate to provide for selective abortion on the basis of disability. The UN Committee on the Rights of Persons with Disability has said that even if it is fatal, it is still a selection on the basis of impairment. It recommends that we do not go down that route of selecting for abortion in relation to FFA. It is something that definitely would need to be considered by whoever.

Penny Mordaunt: On the dry technicalities of it, anything short of a European Court judgment does not compel someone to act but we do have CEDAW. We do have that inquiry and that finding. Even if we did not have that, though, we have all these cases and evidence of why these services are failing and the current arrangements are failing women.

There are two further things. A declaration of incompatibility would, given what has happened previously where people have taken action, be a very significant thing. The final point I would make, though, is that as well as the dry technicalities of when the Secretary of State for Northern Ireland can and cannot act—and clearly she is trying to get the Assembly back up and running—there are also some practicalities around this. Ultimately, if there were to be a change and there were to be services, those services would have to operate in an environment that was first of all responding to what women in Northern Ireland and others wanted.

Jess Phillips: Can I interrupt?

Chair: No. We really do need to stick to some structure here. It is becoming quite difficult. Do you want to complete that and then we need to move on to some of the other questions?

Penny Mordaunt: However it is done, it needs to reflect and be done in a way that is responsive to the needs of the community and their wishes. Otherwise, you will have services that people will struggle to access.



HOUSE OF COMMONS

Q470 **Chair:** Can I ask some very, very direct questions? If we could keep answers brief, I would be really grateful. Karen, at what point would the Government consider that a continued absence of the Assembly and Executive required the UK Government to act to address human rights breaches against women and girls in Northern Ireland? There must be a point of time where you say, "We cannot now not act". When does that happen?

Karen Bradley: As Penny has said, if there was a ruling in the European courts, that would be binding. A declaration of incompatibility would be highly persuasive.

Chair: In the Supreme Court.

Karen Bradley: Yes.

Q471 **Chair:** In terms of the Northern Ireland Office's written submission, you say that the UK Government have powers to ensure that devolved Administrations take action to give effect to UK international obligations, but that other than in instances of genuine urgency, these powers will not be exercised unless other mechanisms have been exhausted. We have heard repeated evidence—as a parliamentarian, I have not heard evidence as compelling as this before—that the law puts women's health at risk. We have just heard from individuals who represent these women about their lives being put at risk by potentially bleeding out as a result of a failed abortion. Do you not think this now becomes something that is genuinely urgent? If not, can you define when you think genuine urgency happens?

Karen Bradley: You are asking a very subjective question.

Q472 **Chair:** No, I am not. Do you not think it is genuinely urgent when women are bleeding and are not able to get medical help? If your constituents had that situation, you would be knocking on the door of Matt Hancock and asking for change. Why are you not doing it for the women in Northern Ireland?

Karen Bradley: The key point is that there is a legal framework within which the people and politicians of Northern Ireland have laws around abortion.

Chair: It is failing women on the ground.

Karen Bradley: What we need to understand is why it is failing and what it is that is failing. The Denise Phelan case has been reported, and I have met Denise Phelan and it is an incredibly emotional story. Nobody could be helped but be moved by it, but it was clear to me, from what she told me, that the law should have allowed her to have an abortion in Northern Ireland under the existing arrangements. We need to make sure we are clear on that. As I have said, binding change is required if there is a European Court judgment. A declaration of incompatibility would be highly influential. In terms of our legal position and the constitutional arrangements, they are the things that make a difference.



HOUSE OF COMMONS

Q473 **Chair:** One of the reasons why the law, as the Secretary of State has very clearly articulated, should be working but is not is that we have been told that the Attorney General issued a letter, or some sort of communication, to underline the criminality that would be associated with undertaking abortions in certain circumstances.

We have not seen a copy of that communication, but in these circumstances, where obviously everything is on the record and is subject to the laws of perjury, I would like to hear from the Attorney General's Office whether or not there was any communication sent to medical professionals that would be able to be interpreted as emphasising the criminal nature of abortions being undertaken, which could be seen as outwith the law.

Maura McCallion: This is something has come up from the CEDAW report. There was an error in the report when they said that the Attorney had written to doctors. I do not know where that has come from.

Q474 **Chair:** On the record, under oath, you are telling me that there was never a communication that could have had a chilling effect.

Maura McCallion: We clarified that and the UK clarified it in the factual errors in the UK's observations. If you look at the UK observations, it is indicated that the Attorney General did not write—

Q475 **Chair:** You are telling me that the Attorney General has never written anything that should have had a chilling effect on the clinicians of Northern Ireland.

Maura McCallion: We have no record of him writing a letter to clinicians in Northern Ireland.

Q476 **Chair:** You are choosing your words quite carefully there. There is no record. Was there something that was off the record?

Maura McCallion: I cannot think of what he might be saying. You said there was a letter that he wrote.

Q477 **Chair:** A communication. I am not saying it was a letter.

Maura McCallion: There may be a mix-up with the guidance, which was consulted on in 2013.

Q478 **Chair:** No. I am asking you very clearly whether there is there any communication that has gone to Northern Ireland clinicians that could have been interpreted as accentuating the criminal nature of abortions.

Maura McCallion: He would not be writing to clinicians. He would advise Ministers and work with the Department. He does not write to clinicians.

Q479 **Chair:** That is helpful. Sorry to put you under pressure. In terms of the draft guidance itself that was brought out in 2013, which was then superseded by formal guidance in 2016, which was said to be a little more helpful but still accentuated the criminal nature of the problems



HOUSE OF COMMONS

doctors might face, do you feel, given you have more of a feeling on the ground, that has been well publicised, or could more be done to make sure that people are aware that the 2016 guidance has superseded the 2013 guidance?

Maura McCallion: First of all, the 2013 guidance was never guidance. It was a draft for consideration and consultation in the way that consultation documents are circulated for consideration. The actual guidance was published in 2016. That is the only guidance that anyone can have regard to.

Q480 **Chair:** Would you recognise the comment that it has not been widely publicised?

Maura McCallion: That would not be something I would have personal involvement in.

Q481 **Jess Phillips:** I want to talk specifically around cases of rape and incest. From the panel before, we heard evidence that the Supreme Court specifically stated that they would want an active case. Secretary of State for Northern Ireland, you have yourself said the declaration of incompatibility would be a persuasive move forward. Do you feel, then, that what we need is a woman who has been raped, or raped by her father, who is a child, to go through a court case whilst still pregnant in order to give you the green light to act?

Karen Bradley: The frustration with the Supreme Court case was that it was about the legal standing that the Human Rights Commission in Northern Ireland had. We have now discovered there was an error in the explanatory memorandum in 1998 when the Northern Ireland Act was enacted; it was not clear, unlike for other human rights commissions across the United Kingdom, about whether the Northern Ireland Human Rights Commission had legal standing.

That is something we have committed to rectifying. We will rectify it at the earliest legislative opportunity. It does require primary legislation, unfortunately, but we will ensure that that is appropriately rectified because, like you, I do not want to have to be the case. I would much rather it was a case brought by a human rights commission.

Q482 **Jess Phillips:** What you are working on then is to create the standing—

Karen Bradley: In exactly the same way as in England and Wales.

Q483 **Jess Phillips:** Is there a timeline on when that might happen?

Karen Bradley: We are waiting for a legislative opportunity. It needs primary legislation.

Q484 **Jess Phillips:** I will sit on an SI for you, should you need it.

Karen Bradley: It is not an SI, unfortunately. That is secondary. It needs to be on the Floor of the House, so we are waiting for an opportunity.



HOUSE OF COMMONS

Jess Phillips: There are a number of different Bills going through Parliament soon, so no doubt we can add it into some of those.

Karen Bradley: To be clear, that is part of our commitment under the no diminution of rights under the joint report in 2017 for people on the island of Ireland, as our commitment is under the Belfast/Good Friday agreement.

Q485 **Jess Phillips:** If I could be so bold, you admit that you do not want to wait for somebody to have to do that, because anyone could see that that would be an awful thing to have to do, but it would make you act.

Karen Bradley: It is not binding but, as I say, it would be persuasive.

Q486 **Jess Phillips:** I will ask Maura this. When do you think it is in the public interest to prosecute a woman or girl for procuring an abortion?

Maura McCallion: That is a matter for the DPP to assess. It is not a matter for the Attorney General. The Director of Public Prosecutions would decide on the assessment threshold.

Q487 **Jess Phillips:** Can you give me an example, as someone working in the justice field in Northern Ireland, of a time when it is in the public interest to prosecute somebody trying to procure an abortion?

Maura McCallion: There is a case ongoing at the moment where the Director has assessed that it is in the public interest to prosecute a mother for procuring pills for her daughter. That is an example that is ongoing at the moment.

Q488 **Jess Phillips:** Do you think that case is in the public interest?

Maura McCallion: It is not for me to say.

Q489 **Eddie Hughes:** Surely somebody must have deemed it in the public interest for it to proceed. Is that the case?

Maura McCallion: The DPP.

Chair: We must not talk about specific cases.

Jess Phillips: In that case, can you remind me if anyone is being prosecuted for—

Chair: We should not talk about cases in front of the court. Thank you.

Q490 **Jess Phillips:** I do not think it is in front of the court. I will ask yourself, Karen, the same question.

Karen Bradley: It would not be appropriate for me to comment. Decisions taken by the DPP are the decisions they take.

Q491 **Jess Phillips:** I imagine you are going to say the same thing. I will give you a shot.



HOUSE OF COMMONS

Penny Mordaunt: I would refer to the point I made earlier about this being a criminal framework as opposed to being about healthcare. That is a problem.

Jess Phillips: That is a problem for the whole of the UK.

Q492 **Vicky Ford:** As I understand it, you made it clear that if there was a declaration of incompatibility then action would need to be taken, and that the reason why there was not a declaration of incompatibility was because of the problems of the legal status of the Northern Ireland Human Rights Commission, and that it is the Government's intention, as I understand it, to try to mend that issue as soon as possible. One of the recommendations I would be very supportive of is something that says, "Let us get that done". Is my understanding correct?

Karen Bradley: Yes.

Q493 **Vicky Ford:** The question then is about how we can make that "mending the Northern Ireland Human Rights Commission" action happen PDQ, as my stepfather would say.

Karen Bradley: We are waiting for the first legislative vehicle. That is the terminology used.

Q494 **Chair:** Secretary of State, it does then beg a question, does it not? If you end up having to rectify the law, then you have to take an action as Secretary of State.

Karen Bradley: This is the Northern Ireland Act that we are amending, which is a Westminster Act of Parliament.

Q495 **Chair:** My question is not that. My question is that if you are going to have to act as a result of the Supreme Court ruling that the situation in Northern Ireland has to be changed, you are going to have to act.

Karen Bradley: Not necessarily. If there is devolved Government, devolved Government would act.

Chair: But if there is not a devolved Government there—

Karen Bradley: That is why we are working to get devolved Government.

Q496 **Chair:** My question is this: if there is still no devolved Government, if the Supreme Court rules that the situation in Northern Ireland cannot continue the way it is—and I would hope, as a member of the Conservative Party, that this Government would listen to the Supreme Court—what are you going to do next?

Karen Bradley: As I say, there is a lot of conditionality around that.

Chair: No, there is not.

Karen Bradley: I want to see devolved Government in Northern Ireland. That is what I want to see. That means that lots of the "if"s in your



HOUSE OF COMMONS

question no longer become "if"s, because there is devolved Government. Our constitutional settlement is clear. If it was found that it was a breach in Scotland or a breach in Wales that was a matter for the devolved Administration, we would expect the devolved Administration to rectify it. The UK Government would only step in if the devolved Administration failed to do that.

Q497 **Chair:** The UK Government would only step in if the devolved Administration failed to act. If they are not there, they cannot act.

Karen Bradley: And if it was appropriate to do so at the time. There is another conditionality there, because this is not a binding matter for the UK Government if it is a declaration of incompatibility in the Supreme Court. It is only if it goes to the European Court that it would be binding. We need to be clear legally where this is. What we want to see is a devolved Government in Stormont because that then deals with so much of this.

Q498 **Jess Phillips:** To go back to the public interest test, do you think there is a public interest in prosecuting a child who has travelled for an abortion? I do not mean travelled, because they are allowed to do that, but procured pills at home.

Karen Bradley: As I say, it would not be appropriate for me to say that. It just would not be appropriate in my position as Secretary of State to comment on that.

Penny Mordaunt: I have given you my answer.

Maura McCallion: We do not have any examples of it.

Q499 **Jess Phillips:** I am grateful for that. To go specifically to yourself, Maura, you have published human rights guidance in relation to the duty to report offences and rape disclosures in the context of social security claims, saying that in the vast majority of cases, where the disclosure has not been reported to the police, no offence has occurred. Have you published similar guidance on section 5 in relation to sexual crimes and abortion?

Maura McCallion: The Attorney has not published that. That is the only guidance he has published that relates to section 5.

Q500 **Jess Phillips:** You have not. Is there any reason for that?

Maura McCallion: You will see in there that analogous circumstances may find something useful in this guidance. There is a line in the third paragraph down saying that others might find this useful but it is very much directed at the specific circumstances of rape victims who need to get access to the third-child element of universal credit. It is very tailored to that particular policy issue, which was drawn to his attention.

Q501 **Jess Phillips:** Is there any reason why that is?



HOUSE OF COMMONS

Maura McCallion: It was drawn to his attention. He was very concerned about women being left without money for their third child when that child is conceived through rape.

Jess Phillips: I can see why he would be worried about that.

Maura McCallion: That is why he issued that guidance.

Q502 **Jess Phillips:** But there is no duty to report offences and rape disclosures in the same context. In the case of an abortion, with a woman trying to procure pills for an abortion or whatever, there is not the same concern about a woman being believed and an offence—

Maura McCallion: That is in the 2016 guidance. That situation had been covered by the departmental guidance.

Q503 **Jess Phillips:** What does it say in the 2016 guidance?

Maura McCallion: It says that a reasonable excuse may include patient confidentiality. That is not the Attorney's words. That is the guidance. That is clear. A reasonable excuse is what matters. Effectively, is the prosecution going to prove beyond reasonable doubt there was no reasonable excuse? If you have client confidentiality in there and that has been flagged up, that is something for the professionals to consider.

Q504 **Jess Phillips:** You would be absolutely fine with a health professional saying, "I did not report because of client confidentiality".

Maura McCallion: It is not for me to make that decision.

Jess Phillips: That is clear in the guidance.

Maura McCallion: It is a reasonable excuse. Other facts may be relevant, such as safeguarding policies around children or vulnerable adults. Health professionals are used to working with section 5 and with that reasonable excuse condition. There is no offence if there is a reasonable excuse.

Q505 **Chair:** Can I ask some specifics again? When we met the Chief Medical Officer for Northern Ireland, who is obviously not a politician and is a professional independent individual, he said that medics cannot undertake their duty of care to their patients. Again, I found that quite concerning. In the absence of the Northern Ireland Assembly, whose responsibility is it to ensure the law does not undermine doctors' duty of care to their patients? In the absence of the Assembly or the Executive, do you think there is an argument to be made that the Secretary of State should pick this up as an issue?

Karen Bradley: Again, it goes back to the point we have discussed on a number of occasions about the constitutional arrangements that we have. In the absence of an Executive, we have passed legislation in this House to allow the Permanent Secretaries to make decisions. In specific circumstances, in terms of abortion and same-sex marriage—which was the amendment that was debated and passed by this House—the



HOUSE OF COMMONS

Permanent Secretaries are able to issue guidance with regards to those matters. I well understand, madam Chair, your frustration.

Q506 **Chair:** I do not care about my frustration. The fact is that Permanent Secretaries can issue guidance. You have just said that, yes?

Karen Bradley: Yes, the Departments are able to issue guidance. It is clear that they are able to do that.

Q507 **Chair:** Can I move on to a second question, which is that if Permanent Secretaries are able to issue guidance, would you be urging them to issue guidance in this situation? This is a situation where, again, the Chief Medical Officer for Northern Ireland and the General Medical Council have told us that doctors providing information to women and girls about accessing abortions in another country is lawful whereas referring them—the nuance of not just giving them information but referring them—may be a crime. Do you think that there may be an argument to say that the Permanent Secretary should be issuing guidance to ensure that there is clarity in that situation?

Karen Bradley: It would not be appropriate for me as Secretary of State to make a comment about what the Permanent Secretaries should or should not do. That would be constitutionally unacceptable. We have passed the law. We have passed the Act of Parliament in this House. We have been clear about what this House is expecting the Permanent Secretaries to do in the absence of an Executive. What I want to see is an Executive reformed so that these questions, nuances and technical complications become irrelevant because we have an Executive able to have Ministers making those decisions and directions.

Q508 **Chair:** Who is scrutinising the actions of Permanent Secretaries?

Karen Bradley: We publish monthly the decisions that have been taken by Permanent Secretaries. They are available publicly, but it would be absolutely inappropriate for elected individuals to scrutinise the work of and decisions taken by officials.

Q509 **Chair:** Did you say it would be inappropriate or appropriate?

Karen Bradley: It would be inappropriate, because it would impact very severely on the independence of our civil service. I do want to pay tribute to the civil servants in Northern Ireland, who have acted in an exemplary in the absence of political direction. It is a very difficult situation for them.

Q510 **Chair:** You have told us today that Permanent Secretaries can issue guidance that could clarify these really quite troubling areas, but there is no way to compel them to do so and no way of scrutinising the fact that they have not done so. Do you not understand that that could feel a little bit like anarchy?

Karen Bradley: I do not think it feels like anarchy, but I agree it is not where we want to be. As I said when I passed the guidance legislation



HOUSE OF COMMONS

late last year, this is not a situation any of us want to be in. What we want to see is proper power-sharing in Stormont with decisions being taken by those politicians elected by the people of Northern Ireland. That is what we want to see.

Penny Mordaunt: I take the point about guidance, but part of the difficulty about this is if you were, as the UK Government, going to act to set up services or were looking to change the law, you would have to do that in a way that involved the people of Northern Ireland. I have a great deal of sympathy with the Secretary of State for Northern Ireland's position, because it is not just about exercising a particular power at a particular point; it is also about what then happens in practice.

It is factually correct that a declaration of incompatibility would not be legally binding. CEDAW is not legally binding—only the European Court is—but we are presented with a live situation where we know that people are in danger and we know that people are not being taken care of. It is important, as the Secretary of State has said, that Parliament has clearly exercised its view on this. It is very concerned about this.

My fear—and I understand its position—is that Parliament as it is constituted is not set up to do those practical things. In terms of the things that you might want to follow if circumstances were to go ahead—some way of consulting properly, involving people, a people's assembly or whatever it might be—Parliament is not position to do that; only Governments are. We need to bear that in mind. Parliament has made it very clear that if something does not happen, if Northern Ireland is not in a position to do this, it will do something. That something would be better if it were done by Government.

Q511 **Chair:** Minister, your money from your Department is being used to fund abortions for women in Northern Ireland. You have quite a lot of interest in making sure that money is being used correctly. I do not want our Committee to have to do an investigation into whether that money is being used correctly. If we are being told that doctors are not able to talk to their patients about the use of that money to support them, it does not feel to me that your money is being used well.

Penny Mordaunt: The service that is being provided is an important one. It is supported in that respect. I am very aware that it is far from ideal. Never mind the physical safety issues around it, there is also the psychological support that people need due and the additional trauma that someone has to go through.

I remember hearing the case of a woman where the most traumatic thing about the episode for her was not the procedure itself; it was the humiliation she felt having to hand over the card to the taxi driver of where he was due to take her. That was the thing that she found most distressing. Although this is a needed service and I am pleased we are providing it, it is not in any way, shape or form adequate for the care that we would want these women to have.



HOUSE OF COMMONS

Q512 **Chair:** This will be my final question and then we will close. The evidence we have had is that knowledge of the availability of the service that your funds provide is very patchy. It is probably extremely under-known by women who have less money and who are not living in urban areas. Do you not have a duty to ensure that there is awareness amongst all women in Northern Ireland about the services that you provide? Why can you and your Department not directly communicate with women in Northern Ireland and indeed the medical professionals too?

Penny Mordaunt: Again, the advice that I have been given on this is that I do not have the authority to do that. We can, through central communications, through the GEO, raise the awareness of a service. In terms of issuing guidance and giving confidence to healthcare professionals, or indeed tackling the issues that exist around those advisory and support services being able to offer the kinds of services they would like to be able to but feel that they cannot, because they do not wish to retain people's information or other things, I do not have the authority to change that.

Q513 **Chair:** Would you, as a Secretary of State, have set up a service where it would have been a crime to people to refer patients to, particularly if that would be a crime committed by doctors? Would you have set up a service for the women of Northern Ireland that it would be a crime for doctors to refer their patients to?

Penny Mordaunt: This is getting to the heart of the matter.

Q514 **Chair:** If you have, that is possibly something that Parliament should be aware of.

Penny Mordaunt: We were right to set up that service. Setting up that service is not the part of the proposition you have just outlined that is at fault.

Q515 **Chair:** The service can only be used if people are referred to it.

Penny Mordaunt: I quite agree. It is not just a matter of signposting someone to it. You would want a healthcare professional to be initiating that person's pathway to access these services. It is that end where the issue lies. I have not as much exposure to these issues as others have, but in the cases that I have heard of, there is a real problem with accessing basic information.

Q516 **Chair:** I am not interested in the accessing of basic information; I am interested in the fact that the medical professionals have told us that it could be a crime to refer their patients to your service. I am not sure that Parliament is aware of that. We might take, as parliamentarians, a very different view to making public money available in that way to incite medical professionals to commit potentially a criminal act. I do not think people were aware of that when they agreed to the money being spent in that way.



HOUSE OF COMMONS

Penny Mordaunt: People were probably not aware of that issue when the service was set up, both in terms of the law but also the effect that particular guidance has had on how comfortable and confident healthcare professionals feel about advising a patient or not. I do not think that is in the right place.

Q517 **Chair:** Do you think that needs to be clarified?

Penny Mordaunt: It needs to be clarified, and the reason why this has not been flagged up previously is because parliamentarians and others familiar with how healthcare services work, whether they be Royal Colleges or scrutiny bodies, look and provide scrutiny to how services are being run. There is an assumption that is happening in this case. Because of the way that we regulate this, that is not the case. It is not a healthcare issue and it should be.

Chair: Thank you very much. I fear we are going to have to close there. We have run over; I apologise, because I know it is Prime Minister's Questions and that is inexcusable, but we were talking about something that we all know is very important. I thank each of you for taking the time to be here and for withstanding vigorous questioning from colleagues, because it is something we feel very passionately about. We will be hoping to get a swift response to our report when it is published. Thank you very much.