Written Evidence from the British Pregnancy Advisory Service [WRH0036]

The British Pregnancy Advisory Service, BPAS, is a charity which sees over 100,000 women a year for reproductive healthcare services including pregnancy counselling, abortion care, miscarriage management and contraception at clinics across the UK.

It supports and advocates reproductive choice and has been at the forefront of reproductive rights campaigning since its establishment in 1968, most recently working to secure permanent telemedical abortion care in England and Wales, as well as the implementation of harassment-free 'safe access zones' outside clinics providing abortion services.

BPAS also runs the Centre for Reproductive Research and Communication, which seeks to develop and deliver a research agenda that furthers women's access to evidence-based reproductive healthcare, driven by an understanding of women's perspectives and needs.

Introduction

One in three women will have an abortion during their lifetimes[1], making it the UK's most common gynaecological procedure[2] and a cornerstone of reproductive healthcare. Whilst record numbers of women are choosing to have an abortion each year, many elements of care, and the law that underpins it, are no longer fit-for-purpose in 21st century Great Britain.

As it stands, abortion care is governed by a criminal law passed in the Victorian era before women even had the right to vote. This has had chilling effects on both women accessing services and those tasked with providing care, whilst also prohibiting medical care transformation that we have seen across comparable areas of healthcare. It is only with political campaigning that we have been able to begin improving access to abortion care in the past few years, but there is still a significant way to go.

In addition to reforming abortion legislation in favour of a right-based framework, it is crucial that this NHS-funded care remains free at the point of access to women and girls across all

[1] 1 in 3 women has an abortion, and 95% don't regret it – so why are we so afraid to talk about it? | The Independent | The Independent

[2] National Service Specification for Abortion Care in the NHS (rcog.org.uk)

parts of the UK, and is adequately resourced. This submission will focus on some of these concerns, and setting out our proposals for change.

Key points

- The Abortion Act 1967 is outdated. In 21st century Great Britain, women are being prosecuted for ending their own pregnancy under a criminal law dating back to 1861. In many cases, this means that vulnerable **women in extremely difficult circumstances are either not accessing the reproductive health services they need, continuing a pregnancy they do not want, or are unsafely having an 'illegal' abortion due to fear of prosecution**. We believe that patient-centered reform to UK abortion law is desperately needed.

- The **threat of prosecution is stifling innovation in the abortion care sector**. Currently in the UK, only doctors are allowed to carry out abortion and two doctors' must sign off on every single treatment. By removing antiquated requirements like this, and regulating abortion in line with other forms of reproductive healthcare, nurses and midwives will be able to provide care that places women and their preferences at the heart of a rights-based framework.

- Currently, there is a lack of specialist doctors across the UK trained in performing surgical abortion. NHS-funded abortion care must be supported by adequate funding and resourcing to deliver timely and accessible services including the **training of essential healthcare professionals and ensuring that services are commissioned and provided in every part of the country**.

Prosecution as a barrier to accessing abortion services

In the past year, four women have appeared in court charged with crimes under the existing abortion law for either ending or seeking to end their own pregnancies[3]. Since 2015, we have been aware of over 52 instances of women and girls being investigated by the police for these crimes too[4]. These women, and many others, remain at high risk of imprisonment.

[3] Fourth abortion charge in eight months — after only three trials in the past 160 years (thetimes.co.uk)
[4] Rise in women in UK investigated by police over illegal abortions | The Independent

Many women – charged under the Victorian era Offences Against the Person Act 1861 – are vulnerable, for instance being victims of domestic abuse, suspected human trafficking and modern slavery, being under the age of 18, and with a history of mental health problems. The operation of the current law means that rather than being provided with support, they are being unjustly criminalised.

In 2021 89% of legal abortions were performed under 10 weeks. The percentage performed at 20 weeks was just 1%, with those ending pregnancies at gestations beyond 24 weeks representing a tiny minority of women who are doing so in the most difficult of circumstances[5]. In our experience, the small number of those who are ending pregnancies outside of clinical settings are usually doing so out of desperation.

The approach of police and prosecutors in the handling of these cases paints a disturbing picture of a service that is looking to 'catch out' woman, and one which lacks understanding of – and sensitivity to – the situations of these women and fails to respond proportionately.

In June 2023, a Staffordshire mother-of-three was sentenced to 28-months in prison for ending her own pregnancy during the first COVID-19 lockdown in May 2020. Following a successful appeal, the woman's sentence was reduced to 14 months, suspended for its duration. The Court of Appeal Judge Dame Victoria Sharp stated that these cases should be heard with "*compassion, not punishment*"[6]. However, the precedent remains that a custodial sentence is the punishment for women guilty of ending their own pregnancy.

This case has had a chilling effect on women across the UK, and emboldened anti-abortion activists to take aim at our reproductive rights. In order to make sure that all women across the UK can continue to access abortion safely, legally, and locally, we must reform the law to make care patient-centred and remove the threat of criminal sanction.

Constraining healthcare innovation

In a similar way to patients, the Abortion Act 1967 also sets the scene for circumstances which can criminalise providers– limiting clinical innovation and best practice-based care.

[5] Abortion statistics for England and Wales: 2021 - GOV.UK (www.gov.uk)
[6] R -v- Carla Foster - Courts and Tribunals Judiciary

Under current law, abortions must be signed off by two doctors, they must take place in a hospital or premises approved by the Secretary of State for Health, and women must meet one of the seven criteria that allows abortion. Although early medical abortion can safely be offered from GP or other community settings, as it is in other countries, the fact that all non-hospital based services must be specifically licensed and approved by the Secretary of State for Health can be a barrier to improving access. Women who are unable to travel to clinics, because of distance, personal circumstances such as coercive relationships, or medical conditions, are poorly served by the current framework, and if they take matters into their own hands by accessing pills online they risk prosecution and prison.

A study from the University of Kent published in 2017[7] found that doctors providing abortion care were concerned that the threat of prosecution has a negative impact on the recruitment and training of new clinicians in the field and doctors willingness to provide legal authorisation for terminations.

One doctor interviewed stated:

> "*It makes doctors frightened. Apart from the fact that it's a Cinderella position anyway because it's not seen as part of normal obs and gynae and on top of that they're now also frightened because they say, "Well if we don't cross this and if we don't tick that then somebody's going to take our registration away"…it's got nothing to do with good clinical care.*"

BPAS believes strongly that decriminalisation of abortion needs to go hand in hand with efforts to improve the service delivery framework. The Royal College of Midwives, the Royal College of Obstetricians and Gynaecologists, the British Medical Association and the Faculty of Sexual and Reproductive Health all support decriminalisation, alongside dozens of women's advocacy organisations[8].

Together, we also believe in removing antiquated requirements like the two doctors signatures, and believe that abortion should be regulated in line with other comparable forms of reproductive healthcare. By doing so, nurses and midwives will be able to legally provide services that places women and their preferences at the heart of compassionate care.

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[7] https://blogs.kent.ac.uk/parentingculturestudies/files/2012/06/Prelim-Findings-Final-Feb-2017.pdf
[8] Reforming-Abortion-Law-Position-statement.pdf (bpas-campaigns.org)

Sustainable provision of abortion care

Across the whole of the UK there are a lack of specialist doctors with the skills to carry out surgical abortion care. Providers rely on a small pool of trained doctors, with no funding for specialist training. Large swathes of the country do not provide routine abortion services within the NHS – and so junior doctors can lack exposure to and learning provided by experiencing this aspect of essential women's healthcare.

A 2023 study[9] from the London School of Hygiene and Tropical Medicine found that attention was needed at both undergraduate education and professional education level "*to increase knowledge and awareness and to equip new cadres of health care professionals to contribute to abortion care and support*". The study also noted the risk of surgical skill loss amongst the workforce due to an over-reliance on non-surgical, medical abortion.

There has also been a sustained underfunding of surgical care in NHS contracts with independent sector providers – which account for c.80% of NHS-funded abortions provided in England. In some parts of the country, independent sector providers are paid less than 40% of the NHS national tariff, requiring charitable funds to be spend to provide essential care to women. Work with NHS England and individual commissioners has improved the settlement in many parts of the country, but it remains the case across London that chronic underfunding endangers the ability to provide a sustainable service.

NHS-funded abortion care, therefore, must be supported through appropriate funding and resourcing to deliver timing and accessible services. We believe that renewed importance must be placed upon training doctors to be able to provide surgical abortion care in all parts of the country and ensuring that services are commissioned throughout.

Conclusion

Abortion is an essential reproductive healthcare procedure that a third of women will undergo before the age of 45. For many women the decision to end a pregnancy is a simple and easy one taken in the first few weeks of pregnancy, for some, the decision of whether or not to continue a pregnancy is a hard one complicated by social factors, personal health struggles and difficult interpersonal relationships.

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[9] Abortion law should change to reflect current practice, study suggests | LSHTM

When the Abortion Act was passed in 1967, it placed England and Wales at the forefront of global and European efforts to protect women's health. But as law and practice around the world developed, our law fell behind. The UK are no longer at the vanguard of women's health and rights.

To make sure that abortion can continue to remain accessible to all who need it amid rising rates and increased incidence of criminalisation, we need to reform and modernise abortion law to remove barriers to access and support our medical workforce in providing best practice care.

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