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Dear Dr McBride

Re: Guidance on the Termination of Pregnancy in Northern Ireland

The Women's Resource and Development Agency (WRDA) welcomes the opportunity to comment on the 'Guidance on the Termination of Pregnancy in Northern Ireland. WRDA is a regional organisation whose mission is to 'advance women's equality and participation in society by working to bring about social, political and economic change'. The organisation was established in 1983 and continues to focus its efforts on working with and through women and community organisations located within disadvantaged and/or divided communities.

Before commenting on the actual Guidance, and acknowledging that no change in will take place, we feel that it is necessary to draw to your attention to aspects of international and European law that these Guidelines breach as a result of the continued reliance on the 1861 Offences Against the Person Act and the Criminal Justice Act (NI) 1945, relying on *R –v- Bourne* for interpretation. These Guidelines do not meet international standards, are at variance with opinion of Council of Europe and leaves women in Northern Ireland with lesser rights than other women in the United Kingdom

International Aspects

The Platform for Action, agreed at the Fourth World Conference on Women in Beijing in 1995, stated that,

"... the neglect of women's reproductive rights severely limits their opportunities in public and private life, including opportunities for education and economic empowerment. The ability of women to control their own fertility forms an important basis for the enjoyment of other rights. Shared responsibility between women and men in matters related to sexual and reproductive behaviour is also essential to improving women's health."

Article 12 of CEDAW in referring to 'access to health care,' specifically includes family planning; and the General Recommendation 24: on Health states that, "*it is discriminatory for a State Party to refuse to legally provide for the performance of certain reproductive health services for women*¹." The General Recommendation points to barriers such as criminalising medical procedures only needed by women

¹ General Recommendation 24, "Health," 1999 CEDAW Committee

who undergo those procedures as well as high fees, requirement of spousal, parental or hospital authorisation and inaccessibility because of distance or travel.

Concluding comments from the Committee on hearing the 4th Periodic Report in 1999, were highly critical of the failure to provide abortion services to women of Northern Ireland and,

“...noted with concern that the Abortion Act 1967 does not extend to Northern Ireland where, in limited exceptions, abortion continues to be illegal. It recommends a process of public consultation on reform of the abortion law²”.

The Government representative at the hearing of the 4th Periodic Report stated that there was *“strong public opposition to changing the existing law in Northern Ireland.”*³

The UK recently presented its 6th Periodic Report to the CEDAW Committee in New York in July 2008. The Committee concluded:

“The Committee also notes that the Abortion Act (1967) does not extend to Northern Ireland where, with limited exceptions, abortion continues to be illegal with detrimental consequences for women’s health.

The Committee in its concluding comments in line with its previous recommendation, the Committee reiterates its call to the State party to initiate a process of public consultation in Northern Ireland on the abortion law. In line with its general recommendation 24 on women and health and the Beijing Platform for Action, the Committee also urges the State party to give consideration to the amendment of the abortion law so as to remove punitive provisions imposed on women who undergo abortion.”

The European Convention on Human Rights

The European Convention on Human Rights (ECHR) has also been tested on the issue of abortion. Recently in *Tysiac v. Poland*⁴, the European Court (ECrHR) held that failure to provide an abortion to a woman where her pregnancy threatened her health was a violation of Article 8, ‘Right to Respect for Private and Family Life’. The Court held that the ‘chilling effect’ on doctors due to the uncertainty of the law and the possibility of them incurring criminal responsibility must be alleviated. The legal framework, *“...must first and foremost, ensure clarity of the pregnant woman’s position.”*

In June 1993, the Standing Advisory Commission on Human Rights (SACHR) issued a public consultation document on the issue of abortion. Written by Simon Lee, Professor of Law at Queen's University of Belfast, it observed that: *“The law on abortion in Northern Ireland is so uncertain that it violates the standards of*

² Committee on Elimination of Discrimination Against Women concludes Consideration of UK Reports, WOM/1132, 10 June 1999

³ ibid

⁴ *Tysiac v. Poland* 5410/03 20th March 2007

international human rights law. It could not withstand a challenge before the European Court of Human Rights at Strasbourg.”

A pamphlet produced by the Northern Ireland Human Rights Commission in 2001, ‘The Bill of Rights: Women’⁵ states that it is probable that the current law in Northern Ireland is likely to be in violation of the European Convention on Human Rights, for failing to provide for abortion and for not being clear as to the legality of the current situation. The Commission considered the right to reproductive health as a package of rights, intended to safeguard the freedom to make choices about reproduction and sexuality⁶.

The Equality Commission in its Shadow Report⁷ to the 6th Periodic Report of the United Kingdom, Great Britain and Northern Ireland recognising the differential and discriminatory access for women in Northern Ireland to abortion called for the same access to reproductive health care services as are available in Great Britain.

The Council of Europe in a recent opinion on ‘Access to Safe and Legal Abortion in Europe’⁸, invited member states of the Council of Europe to decriminalise abortion and to guarantee women’s effective exercise of their right to abortion and lift restrictions which hinder, *de jure* or *de facto*, access to safe abortions.

The Guidelines as currently drafted do not meet international standards, are not compatible with the European Convention of Human Rights. It is important that a review of the current legal situation is undertaken to redress this situation as soon as possible.

Purpose of Guidance

We note that the purpose of the Guidance is to explain the law relating to the termination of pregnancy and a number of elements have been listed, such as:

- (a) Good Clinical Practice
- (b) Referral Procedures
- (c) Informed Consent
- (d) Provision of Aftercare Services
- (e) Right to Conscientious Objection.

It is regrettable that the Department have ignored the needs of women, who for example when giving informed consent or requesting aftercare services for terminations elsewhere, also need to have the law explained.

Current Law on Termination of Pregnancy

⁵ NIHRC, January 2001, ‘The Bill of Rights: Women;’ p. 13

⁶ NIHRC, September 2001 ‘Making a Bill of Rights for Northern Ireland’

⁷ Equality Commission for Northern Ireland, Response to the 6th Periodic Report of the United Kingdom of Great Britain and Northern Ireland, June 2008.

⁸ Council of Europe, Access to Safe Legal Abortion, 8 April 2008. DOC. 11537 rev,

The Guidance states that the, *'grounds on which abortion may be carried out here are more restrictive....'* Some commentators have suggested the contrary and argued that Section 58 of the Offences Against the Person Act 1861, in light of the *Bourne* judgement and McNaghten J comments covering circumstances where continuation of the pregnancy would result in the women becoming a 'physical and mental wreck,' can be interpreted as liberally as the 1967 Abortion Act since there are no structural requirements for the imposition of time limits or the need for two doctors. We will comment on this later.

2.4 refers to foetal abnormality and that this is not recognised as grounds for termination of pregnancy. Women whose foetus is deemed to be unviable or that severe foetal abnormality has been diagnosed have to meet the criteria of becoming a *'physical and mental wreck,* in the first instance.' It is of concern that on the one hand we offer pre-natal and genetic screening, but on the other hand leave women having to travel to England to terminate on a finding of foetal abnormality as a result of this screening. We seek clarification on whether women in this situation can avail of the Out of Area Contract and how do you define a 'physical and mental wreck in these circumstances? It is imperative that the Guidance covers this issue for both women and their medical practitioner.

Paragraph 2.7 and the assessment by two doctors, is in our view a change in the law as outlined above. It is imperative that this Guidance, if its intention is to clarify the current situation in relation to the termination of pregnancy, keeps within the current legislative framework and not attempt to bring in additional criteria that is beyond the scope of that framework. We will comment further on this issue in relation to clinical assessment and the right to conscientious objection.

Clinical Assessment

As we have noted above we believe that the requirement for the assessment of two doctors moves beyond the scope of the current legislative framework. We question the practical element of two doctors having prior knowledge of the woman. This may be problematic for women in rural areas and younger women. We feel that this is an unnecessary requirement, outwith the provisions of the current legislative framework and should be removed.

Paragraph 3.2 states that, *"it is rare for pregnancy to cause adverse impacts on mental health which are real and serious, long-term or permanent."* This is a very subjective statement and should be removed. An unwanted pregnancy and forced motherhood can and does cause adverse impacts on a women's mental health which can be long, real and serious, long-term and permanent. We would be grateful for the evidence used to substantiate this statement.

Paragraph 3.2 further states that a psychiatrist should be involved in circumstances where the woman in question has a known history of mental illness or when women with no prior history of mental health. We find this confusing and seek clarification on the following issues:

- Is this in addition to the assessment by two doctors with a prior knowledge of the woman?

- Given the urgency of the situation and the timeframes involved can these assessments be carried out in a timely fashion?
- Can the woman identify a psychiatrist or will one be allocated to her?
- Again this is beyond the interpretation of *Bourne*.

Conscientious Objection

We welcome this protection for the medical profession, however we are not convinced that this is not sufficient and call for the extension of the 1967 Human Fertilisation and Embryology Bill to ensure that the medical profession are afforded the same protection as their counterparts in other parts of the United Kingdom. Interestingly the BMA has called for the extension of the 1967 Abortion Act to Northern Ireland. In addition, it is important that the Department monitors this centrally to ensure that there is consistent and even coverage across Northern Ireland. Evidence suggests that there are practices where all the GP's are opposed to abortion on any ground and have refused to refer women onto other colleagues. If a circumstance arises where a woman is referred to another practice or Health and Social Care Trust, how can the criteria of assessment by two doctors with prior knowledge be fulfilled in this instance. Will women who happen to belong to a group practice where all the GP's are opposed to abortion be penalised? Clarification on this is needed and the need for monitoring by the Department across Northern Ireland to ensure a consistent and even spread across Northern Ireland. Mechanisms also need to be established to ensure that where a particular area is problematic in terms of access to abortion services, services are maintained to ensure a postcode lottery is averted.

Good Practice Issues

5.1 refers to the need for all healthcare professionals to be aware of the legal framework relating to the termination of pregnancy. Will training be provided and who is responsible for the provision of training across the disciplines? We recommend that a comprehensive training programme is rolled out across Northern Ireland, covering in the first instance, those whose work will bring them into direct contact with this issue.

Consent

Clarification is sought on how a woman is able to give consent without prior knowledge of the law and what her rights are in relation to the termination of her pregnancy. It is vital that the initial information given also includes information on abortion.

Counselling

It appears that not only will a woman have to get an assessment from two medical practitioners that have prior knowledge, get a psychiatric assessment and in addition undergo counselling. Similar concerns arise in terms of who will provide this counselling; will it be non-directive; will it be available in time and if not what will happen; can the woman choose her own counsellor; are counsellors subject to similar conscientious objection rules and procedures?

5.9 refers to post-termination follow-up counselling to, “*help her come to terms with the emotional impact of her choice, on herself and in some cases her partner and children.*” We find this subjective and somewhat contradictory. Again access to the evidence to support this statement would be welcome.

Aftercare

We welcome this section, but remain concerned that women who undergo terminations elsewhere should have access to aftercare services whether or not they have symptoms or complications as a result of terminations elsewhere. The Department has a duty of care and need to ensure that this service is available for women across Northern Ireland. This may entail setting up specialised services in various locations for those women who would not at any cost contact their GP for a number of reasons.

Service Arrangements and Information

Access to information that is non-judgemental is important for all those concerned, especially women. However we seek clarification on who is responsible for compiling and disseminating this information?

Conclusions

In conclusion, our concerns can be summarised as follows:

- As the current situation in Northern Ireland breaches International standards as established by the United Nations and the European Convention on Human Rights it is important that women in Northern Ireland are no longer subject to lesser standards as other women in the United Kingdom. The Human Fertilisation and Embryology Bill should be extended to Northern Ireland;
- It is important that the Guidelines, whilst inadequate, do not attempt to go beyond the confines of the legislative by introducing additional and unnecessary criteria;
- Training and dissemination of information is vital, not only to the medical profession, but women as well, to ensure that the law is clear on when a termination is legal.
- The Out of Area Contract should be used to ensure that women as citizens of the United Kingdom, can avail of this service on the NHS and within the framework of the 1967 Abortion Act, as their counterparts in other parts of the UK do.

I would be grateful if you could respond to the queries and questions outlined in our response. Should you require any further information of clarification on any of the issues raised, please do not hesitate to contact me.

Yours sincerely

Dr Margaret Ward

Director