



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Monitoring Report on Reproductive Healthcare Provision in NI

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1.0 Introduction

- 1.1 Northern Ireland (NI) has had long-standing issues in relation to the law and access to reproductive healthcare. Access to termination services in NI continues to be a contentious issue. There have been recent developments that have made it clear that the criminalisation and denial of access of women and girls¹ to termination services in NI, except under the strictest of circumstances, was a violation of human rights.
- 1.2 The NI Human Rights Commission (the Commission) has made the case for ensuring a human rights based approach to reproductive healthcare in NI. This included contributing to the United Nations Committee on the Elimination of All Forms of Discrimination against Women's (UN CEDAW Committee) inquiry into abortion in NI and subsequent recommendations on this issue. It also involved taking an own motion judicial review challenging the human rights compliance of NI's criminal laws regarding terminations and advising the NI Office and Departments of Health and Justice on the implications of the UK Supreme Court's judgment.
- 1.3 The Commission welcomed the UN CEDAW Committee inquiry report into access to abortion in NI and its recommendations alongside the decision of the Westminster Parliament to implement the recommendations in full. This was done through the NI (Executive Formation etc) Act 2019 repealing sections 58 and 59 of the Offences Against the Person Act 1861. The Commission further welcomed the enactment of the Abortion Regulations (NI) 2020 and subsequent Abortion (NI) (No 2) Regulations 2020 (the Abortion Regulations), which allow terminations to be conducted in NI in a range of circumstances.
- 1.4 The UN CEDAW Committee recommendations included one to:

¹ Throughout this report, reference is made to the provision of reproductive healthcare services for 'women and girls'. This is reflective of the language adopted by the UN CEDAW Committee and an acknowledgement that women and girls are disproportionately affected by the denial of access to reproductive healthcare. This language is not used with the intention of ignoring that transgender and non-binary people have a right to equal access to reproductive services. The Commission also engaged with organisations that are representative of transgender and non-binary people to specifically request information from those the Commission met with on any nuanced issues that the Commission should be aware of.

establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions, and ensure enhanced coordination between the mechanism with the Department of Health, Social Services and Public Safety (sic) and the NI Human Rights Commission.²

- 1.5 This report sets out the Commission's findings, conclusions and recommendations based on relevant human rights standards, recent developments in domestic law and its engagement with key stakeholders between July 2020 and January 2021.
- 1.6 The Commission has also committed to examining access to relationship and sexual education in schools, which will be dealt with in a second report.
- 1.7 The Commission acknowledges that the pro-life organisations it engaged with were clear that they did not agree with or accept the UN CEDAW Committee's recommendations and the current legal framework for the provision of termination services in NI. Although the Commission recognises the concerns of pro-life organisations, this monitoring project and resulting report adopts a human rights based approach that is guided by the international human rights standards ratified by the United Kingdom, the recommendations of UN Treaty Bodies (including the UN CEDAW Committee's recommendations), and the expert majority opinion of the UK Supreme Court.

2.0 Setting the scene – where are we now?

- 2.1 Before moving to the main aspects of the Commission's monitoring of reproductive healthcare services in NI, it is helpful to provide an overview of the current context.
- 2.2 The enactment of the Abortion Regulations was a significant step forward in providing human rights compliant access to termination services for

² CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 85(e).

pregnant women and girls in NI. However, the duties set out within these regulations have not been implemented in practice. The Department of Health has not commissioned the required healthcare services to implement the regulations, or provided guidance to healthcare staff on the provision of these services. This includes any guidance on the availability of services during the Covid-19 pandemic, which are impacted by travel restrictions. It has been left to individual health and social care trusts to determine what steps to take and how best to provide a service within existing resources.

- 2.3 Between mid-April and start of June 2020, health and social care trusts in NI started providing certain services within their existing resources and without additional financial support from the Department of Health. Between the start of June and early October 2020, termination services up to ten weeks were available in all health and social care trusts in NI and between ten and twelve weeks in some health and social care trusts, subject to available resources. Termination services for medical reasons up to 24 weeks or without gestational time limit, in line with the Abortion Regulations, are mainly performed by the Belfast Health and Social Care Trust.

From 5 October 2020 to 4 January 2021, the Northern Health and Social Care Trust suspended its termination services as staff had to transfer back into other sexual and reproductive health care services, which were temporarily suspended due to the pandemic. The four remaining health and social care trusts did not have the resources to treat women and girls residing within Northern Health and Social Care Trust area. Those women and girls were forced to access termination services in England through the Central Booking System, which has been provided by the British Pregnancy Advisory Service up until April 2021 and provided by Marie Stopes International thereafter, in Ireland or access unregulated services.

- 2.4 From 5 January 2021 to 1 February 2021, the South Eastern Health and Social Care Trust ceased providing a service due to staffing issues. Again, the remaining four health and social care trusts have not be able to support these women and girls during this time. Women and girls living within the South Eastern Health and Social Care Trust during this time would have had to access termination services in England through the Central Booking System, in Ireland or access unregulated services.

- 2.5 On the 23 April 2021, it was announced that the Western Health and Social Care Trust would cease their Early Medical Abortion service due to staffing issues and would no longer be able to accept any further bookings.³ Again, this means that women and girls from within the Western Trust area will have to access a termination in England or Ireland as the other health and social care trusts do not have capacity.
- 2.6 As a consequence of the limited or non-availability of services, many women and girls, depending on their circumstances and where they live in NI, have to continue to travel to the UK and Ireland or access unregulated services. This has been further complicated by travel restrictions due to the COVID-19 pandemic and puts women and girls' health at risk.
- 2.7 Following pre-action correspondence, on 30 November 2020, the Commission decided to initiate judicial review proceedings against the Secretary of State for NI, the NI Executive and Department of Health for the failure to commission and fund abortion services in NI.
- 2.8 The Commission is raising three proposed grounds of challenge. The first, that the Secretary of State's failure to ensure the full implementation of the UN CEDAW Committee recommendations is a breach of Section 9 of the NI (Executive Formation etc) Act 2019. This requires that the Secretary of State "must carry out the duties imposed by this section expeditiously, recognising the importance of doing so for protecting the human rights of women in Northern Ireland".
- 2.9 The second is that the Secretary of State is in breach of Section 9 of the Act due to lack of guidance on services. Paragraph 86(a) of the CEDAW Inquiry report recommends that, in relation to NI, the UK must "provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion".⁴ Notwithstanding this obligation, no guidance has been provided in NI on the provision of abortion services generally or how they can be accessed during the pandemic.

³ ITV News, 'Abortion services suspended in Western Trust', 23 April 2021 Available at: <https://www.itv.com/news/utv/2021-04-23/abortion-services-suspended-in-western-trust>

⁴ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 86(a).

- 2.10 The final ground is that the failure of the NI Executive to agree to enable the Department of Health to fund and commission services, and the Department's failure to do so, is in breach of Article 8 European Convention on Human Rights (ECHR).
- 2.11 On the 5 May 2021 the Commission received an update from the Department of Health regarding the commissioning of abortion services. The Department outlined that they would be restarting the Abortion Services Commissioning Project to commission abortion services by the Health and Social Care Trusts. The Department outlined that arrangements are being finalised to install a project manager in the Department to lead the abortion services commissioning work from early June 2021. As well as resume the Project Board in mid-June 2021. The Department noted that the Project Board will be cognisant of the implications for any future commissioning model potentially arising from the Severe Fetal Impairment Abortion (Amendment) Bill, the outcome from the Commission's ongoing judicial proceedings, and any decision by the Secretary of State to exercise the powers set out in the Abortion (NI) Regulations 2021.⁵
- 2.12 Further information received from the Department of Health as a result of the Commission's legal proceedings outlined that regarding the timescale for the commissioning process, they estimate it will take eight to twelve months from the commencement of the work of the Project Board. They further stated that the NI Office also advised that any proposals that build on the current model of service provision should be subject to a normal commissioning process to ensure patient safety and compliance with applicable guidelines and standards.⁶

3.0 Monitoring Project

- 3.1 In its consultation on the proposals for the new framework for abortion services in NI, the NI Office referenced the work of the Commission to monitor implementation of the UN CEDAW recommendation on ensuring access to abortion services locally.⁷

⁵ Correspondence from the Department of Health to the NI Human Rights Commission, 5 May 2021.

⁶ Correspondence from the Department of Health to the NI Human Rights Commission, 6 May 2021.

⁷ HM Government, 'A New Legal Framework for Abortion Services in NI – Implementation of the Legal Duty Under Section 9 of the NI (Executive Formation etc) Act 2019: UK Government Consultation Response' (HM Government, 2020), at 43.

3.2 The Commission committed to fulfilling this objective through conducting a reproductive healthcare project and the basis of this report is to:

monitor the provision of reproductive healthcare services in NI, following the introduction of a new legal framework for abortion, and engage with the Department of Health in accordance with the NI (Executive Formation etc) Act 2019.⁸

3.3 The monitoring project aims to establish the extent to which the Department of Health and other relevant public authorities are fulfilling their obligations to provide reproductive healthcare provision and education in NI, in accordance with their human rights obligations and the NI (Executive Formation etc) Act 2019.

Methodology

3.4 In terms of gathering information for the project, the Commission obtained relevant statistics, policy documents and other relevant documentation through its engagement with key stakeholders as well as through desktop research. The Commission also formally wrote to the relevant Departments and public authorities to request they provide the Commission with the relevant data and documentation.

3.5 To ensure the monitoring was as informed as possible, the Commission engaged with key organisations working on delivering services in NI. This included government, public authorities, service providers and civil society organisations. This involved a range of engagements, including individual meetings and a roundtable event for civic society organisations.

3.6 For the purposes of this report, the Commission held meetings with the following public authorities and organisations:

- NI Office;
- Department of Health;
- Health and Social Care Trusts – (Northern Trust, Western Trust, South Eastern Trust, Belfast Trust and Southern Trust);
- Public Health Agency;
- Health and Social Care Board;

⁸ NI Human Rights Commission, 'Our Business Plan 2020–2021' (NIHRC, 2020).

- British Pregnancy Advisory Service;
- Brook;
- Informing Choices NI;
- Royal College of General Practitioners;
- Royal College of Nursing;
- Royal College of Gynaecology and Obstetricians;
- Royal College of Midwifery;
- Doctors for Choice NI;
- NI Abortion and Contraception Taskforce;
- Women Help Women;
- Women on the Web;
- Catholic Church;
- Regulation and Quality Improvement Authority;
- Coroner's Office; and
- Pharmaceutical Society NI.

3.7 The Commission also held a virtual roundtable meeting on 2 September 2020, attended by organisations with a variety of views on the provision of termination services. The Commission outlined the monitoring work done to date and sought the views from participants on a range of issues. The participants were:

- Women's Resource and Development Agency;
- NI Women's European Platform;
- Women's Support Network;
- Reclaim the Agenda;
- Transgender NI;
- Here NI;
- NIPSA;
- Committee on Administration of Justice;
- Equality Coalition NI;
- Alliance for Choice;
- Abortion Support Network;
- Abortion Rights Campaign;
- Evangelical Alliance;
- Both Lives Matter;
- Precious Life;
- Life NI;
- Love for Life;
- Society for the Protection of Unborn Children;

- Church of Ireland;
- Presbyterian Church in Ireland; and
- Methodist Church in Ireland.

3.8 Through engagement with the above organisations, the Commission learned of the direct experience of organisations and clinicians working to provide termination services in NI, as well as those supporting women and girls. This included information on how the provision of termination services were working in practice, including positive developments and barriers in implementing the UN CEDAW Committee’s recommendations and the Abortion Regulations. These findings are set out in Section 5.

3.9 In order to ensure as much information as possible was received and participants could provide evidence with confidence, the Commission informed the health care providers that it met with, that individuals and their organisations would not be personally identified and that no individual would be individually quoted.

4.0 Background

4.1 This section sets out the legal and policy developments, referred to in the introduction, that have led to the current legal framework within NI.

UN CEDAW Inquiry

4.2 In 2010, the UN CEDAW Committee received information from non-governmental organisations alleging that grave and systematic violations of rights under UN CEDAW were occurring, due to restrictive access to abortion for women and girls in NI.⁹ Having found the allegations reliable, the UN CEDAW Committee decided to undertake a confidential inquiry, under Article 8 of the Optional Protocol to the UN CEDAW Convention.¹⁰ Ms Halperin-Kaddari and Mr Bruun visited Belfast and London from 10-19 September 2016 and held meetings with the Commission and relevant stakeholders.

⁹ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 1.

¹⁰ Article 8, UN Convention on the Elimination of All Forms of Discrimination against Women 1979.

4.3 The UN CEDAW Committee published its inquiry report on 6 March 2018. This report made a number of recommendations on the issue of the law governing termination of pregnancy in NI. Paragraph 85 of the UN CEDAW Committee's inquiry report recommended that the UK Government and NI Executive urgently:

- a) repeal sections 58 and 59 of the Offences against the Person Act;
- b) adopt legislation to provide for expanded grounds to legalize abortion;
- c) cease all related arrests and criminal investigations;
- d) adopt evidence-based protocols for health-care professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols;
- e) establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions, and ensure enhanced coordination between the mechanism with the Department of Health, Social Services and Public Safety and the NI Human Rights Commission;
- f) strengthen existing data-collection systems and data sharing between the Department and the police to address the phenomenon of self-induced abortion.¹¹

4.4 Paragraph 86 of the UN CEDAW Committee's inquiry report referred to sexual and reproductive health rights and services, recommending that the UK Government and NI Executive:

¹¹ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 85.

- a) provide information on sexual and reproductive health services, including on all methods of contraception and access to abortion;
- b) ensure the accessibility and affordability of sexual and reproductive health services and products;
- c) provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area;
- d) make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation;
- e) intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;
- f) adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers;
- g) protect women from harassment by pro-life protesters by investigating complaints and prosecuting and punishing perpetrators.¹²

UN CRPD and UN CEDAW Joint Statement

4.5 In October 2017, prior to publication of the UN CEDAW Inquiry report, the UN Committee on the Rights of Persons with Disabilities (UN CRPD) published its concluding observations following its examination of the UK. The UNCRPD Committee raised concerns "about perceptions in society that stigmatise persons with disabilities as living a life of less value than of others and about the termination of pregnancy at any stage on the basis of

¹² CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 86.

foetal impairment”.¹³ It further recommended, “the State Party amend its abortion law accordingly. Women’s rights to reproductive and sexual autonomy should be respected without legalising selective abortion on the ground of foetal deficiency”.¹⁴

- 4.6 In August 2018, the UN CEDAW Committee and UN CRPD Committee released a joint statement with a view to providing clarity. This joint statement provided that:

in order to respect gender equality and disability rights, in accordance with the UN CEDAW and UN CRPD, States parties should decriminalise abortion in all circumstances and legalise it in a manner that fully respects the autonomy of women, including women with disabilities. In all efforts to implement their obligations regarding sexual and reproductive health and rights, including access to safe and legal abortion, [the UN CEDAW and UN CRPD] Committees call upon State parties to take a human rights based approach that safeguards the reproductive choice and autonomy of all women, including women with disabilities.¹⁵

Additional UN Committee recommendations

- 4.7 Following the publication of the UN CEDAW inquiry report, the relevant UN treaty monitoring bodies have continued to highlight the inadequacy of the law in NI in providing human reproductive healthcare that is human rights compliant. In its 2019 concluding observations on the UK, the UN CEDAW Committee called for the implementation of the recommendations contained in the UN CEDAW Committee’s inquiry report. The UN CEDAW Committee stated that it:

remains concerned about obstacles faced by women belonging to marginalised groups, such as asylum-seeking and refugee women, migrant women, Roma and Traveller women, and victims of

¹³ CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 12.

¹⁴ CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI’, 3 October 2017, at para 13.

¹⁵ UN CRPD Committee and UN CEDAW Committee, ‘Guaranteeing Sexual and Reproductive Health and Rights for All women, in particular Women with Disabilities: Joint statement by the UN CRPD Committee and UN CEDAW Committee’, 29 August 2018.

trafficking in gaining access to healthcare services, including as a result of their inability to provide identity documentation, proof of address or immigration status.¹⁶

4.8 The UN CEDAW Committee recommended:

that the State Party strengthen the implementation of programmes and policies aimed at providing effective access to healthcare for women belonging to marginalised groups, in particular asylum-seeking and refugee women, migrant women, Roma and Traveller women, and victims of trafficking.¹⁷

4.9 In June 2019, the UN Committee against Torture (UN CAT Committee) supported this in its concluding observations recommending the UK and NI Executive:

ensure that all women and girls in the State Party, including in NI, have effective access to the means of terminating a pregnancy when not doing so is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest, when the life or health of the pregnant woman or girl is at risk and in cases of fatal foetal impairment. The State Party should also ensure that women and girls in NI have effective access to post-abortion health care and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.¹⁸

4.10 Further support is provided by earlier recommendations issued by the UN Committee on Economic, Social and Cultural Rights (UN ICESCR Committee) and UN Committee on the Rights of the Child (UN CRC Committee). In 2016, the UN ICESCR Committee recorded its concern that termination of pregnancy was still criminalised in all circumstances in NI, save for where the life of the mother was in danger.¹⁹ The UN ICESCR

¹⁶ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019, at para 49 and 50.

¹⁷ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019, at para 49 and 50.

¹⁸ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 46.

¹⁹ E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 61.

Committee noted that this could lead to unsafe terminations and discriminated against women from low-income families who could not afford to travel to access termination services.²⁰ The UN ICESCR Committee recommended that NI legislation on termination of pregnancy was amended to “make it compatible with other fundamental rights, such as women's rights to health, life and dignity”.²¹ The UN CRC Committee also recommended that abortion is decriminalised in NI “in all circumstances” and that legislation is reviewed “with a view to ensuring girls’ access to safe abortion and post-abortion care services. The views of the child should always be heard and respected in abortion decisions”.²²

Commission’s case

4.11 In December 2014, the Commission issued judicial review proceedings in the NI High Court against the Department of Justice maintaining that the law on termination of pregnancy in NI violated the rights of women and girls by criminalising them when they seek a termination of pregnancy in circumstances of fatal and serious foetal abnormality, rape or incest. Recognising how difficult it would be for a woman or girl to challenge the law in the circumstances covered by the case the Commission took the case in its own name. In November 2015 the NI High Court ruled, partially in favour of the Commission, that the inaccessibility for termination services in NI at the time was a violation of the physical and psychological aspects of the right to respect for private and family life (Article 8 ECHR) in cases of fatal foetal abnormality and where the pregnancy resulted from a sexual crime.²³ The case was appealed by the Department of Justice and Attorney General for NI to the NI Court of Appeal, which upheld the appeal in June 2017, holding that among other issues that the matter was one for the NI Executive and NI Assembly to resolve.²⁴ The Commission appealed to the UK Supreme Court and the case was heard in October 2017.

4.12 The UK Supreme Court gave judgment on 7 June 2018. The Supreme Court held, by a majority, that the Commission did not have the standing

²⁰ E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 61.

²¹ E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 62.

²² CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 65(c).

²³ *The NI Human Rights Commission’s Application* [2015] NIQB 96, at para 184.

²⁴ *In the matter of an application by the NI Human Rights Commission for Judicial Review* [2017] NICA 42.

to take the case without a victim.²⁵ The Supreme Court, nonetheless, also gave its views on the substantive issues before it. A majority of the Court recognised that the law on termination of pregnancy in NI was incompatible with Article 8 ECHR in not providing access to abortion services locally in situations of rape, incest and fatal foetal abnormality.²⁶ It further recognised the possibility of an individual case, falling within the scope of Article 3 ECHR and reaching the threshold of severity required to be considered inhuman and degrading treatment, though the matter was not definitively decided in the absence of a specific set of facts.²⁷

4.13 President of the Court, Lady Hale observed “for those women who become pregnant, or who are obliged to carry a pregnancy to term, against their will there can be few greater invasions of their autonomy and bodily integrity”.²⁸ Lord Kerr, former Lord Chief Justice of NI, noted the extreme distress of women and girls in an already vulnerable position.²⁹ Despite not being able to make a declaration of incompatibility, Lord Mance described the current position as “untenable” and in need of “radical reconsideration”.³⁰ He called on those responsible for ensuring ECHR compliance to consider “whether and how to amend the law, in light of the ongoing suffering being caused by it as well as the likelihood that a victim of the existing law would have standing to pursue similar proceedings”.³¹ Given the finding on the Commission’s standing, these views provided no more than guidance on the Supreme Court’s views.

Women and Equalities Committee Inquiry

4.14 In April 2019, the House of Commons Women and Equalities Committee published its inquiry report into abortion law in NI. The Commission gave evidence to inform the Women and Equalities Committee’s findings and

²⁵ *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27.

²⁶ *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27.

²⁷ *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27.

²⁸ *In the matter of an Application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27, at para 6.

²⁹ *In the matter of an Application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27, at para 238.

³⁰ *In the matter of an Application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27, at para 135.

³¹ *In the matter of an Application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27, at para 135.

recommendations.³² At that time, the NI Assembly and NI Executive was in its second year of suspension with no timeframe for reinstatement. The Women and Equalities Committee's recommendations focused on calling for the UK Government to take action in terms of the necessary legislative changes and clarity through guidance on addressing the inaccessibility and criminalisation of termination services in NI.³³ While recognising the principle of devolution, the report noted, "devolution does not remove the UK Government's own responsibilities to comply with its international obligations and internal laws cannot be used to justify a failure to comply with human rights standards".³⁴

4.15 The UK Government responded that healthcare services were transferred matters and devolved in NI, thus it remained "the UK Government's preference that questions of reform or legislative changes to the law or policy in these areas are matters that remain properly within the competence of the NI Assembly and Executive".³⁵ However, the Secretary of State for NI sought to legislate in respect of such devolved matters "where necessary to maintain the delivery of public services and good governance".³⁶

NI (Executive Formation etc) Act 2019

4.16 In October 2018, Stella Creasy MP and Conor McGinn MP tabled an amendment to the then NI (Executive Formation and Exercise of Functions) Bill 2018. This focused on addressing "the incompatibility of the human rights of the people of NI with the continued enforcement of sections 58 and 59 of the Offences against the Person Act 1861 with the Human Rights Act 1998".³⁷

4.17 The NI (Executive Formation etc) Act 2019 received royal assent on 24 July 2019, and provided that if the NI Executive was not restored by 21 October 2019, a number of legal duties would arise for the Secretary of State for NI.

³² NI Human Rights Commission, 'Response to the Women and Equalities Committee Inquiry into Abortion Law in NI' (NIHRC, 2018).

³³ House of Commons Women and Equalities Committee, 'Abortion law in NI' (WEC, 2019).

³⁴ House of Commons Women and Equalities Committee, 'Abortion law in NI' (WEC, 2019), at para 51.

³⁵ NI Office, 'UK Government Guidance for Healthcare Professionals in NI on Abortion Law and Termination of Pregnancy in the period 22 October 2019 to 31 March 2020 in relation to the NI (Executive Formation etc) Act 2019' (NIO, 2019), at 4.

³⁶ NI Office, 'UK Government Guidance for Healthcare Professionals in NI on Abortion Law and Termination of Pregnancy in the period 22 October 2019 to 31 March 2020 in relation to the NI (Executive Formation etc) Act 2019' (NIO, 2019), at 4.

³⁷ Parliament.UK, 'Committee of the Whole House – 24 October 2018: NI (Executive Formation and Exercise of Functions) Bill. Available at: https://publications.parliament.uk/pa/bills/cbill/2017-2019/0275/amend/niefefof_daily_cwh_1023.8-12.html

- 4.18 The NI (Executive Formation etc) Act 2019 decriminalised termination of pregnancy in all circumstances in NI by repealing sections 58 and 59 of the Offences Against the Person Act (attempts to procure abortion) unless the NI Executive was restored by 21 October 2019.³⁸ It also committed the Secretary of State (NI) to ensure that the UN CEDAW Committee's recommendations outlined in paragraphs 85 and 86 of its inquiry report would be implemented in full.³⁹ Regulations aimed at delivering these commitments were to come into force by 31 March 2020.⁴⁰
- 4.19 The NI Office issued interim guidance for healthcare professionals for the period between 22 October 2019 and 31 March 2020.⁴¹ This confirmed that, during this interim period, while terminations were now decriminalised, there would be no routine regional services available in NI, until regulations were introduced. The interim guidance also clarified that it would not be illegal for healthcare professionals to direct women and girls in NI to termination services that are available elsewhere, primarily services available in England.⁴²
- 4.20 The NI Office undertook a six-week public consultation on the proposals for the new framework that would provide lawful access to abortion services in NI.⁴³ The consultation opened on 4 November 2019 and closed on 16 December 2019. The Commission provided its advice on the contents of the regulations.⁴⁴ After having considered responses to the consultation, the UK government provided a response stating it remained committed to delivering on the recommendations made in the UN CEDAW report.⁴⁵
- 4.21 Up until 31 March 2020, for women and girls living in NI, the Central

³⁸ Section 9(2), NI (Executive Formation etc) Act 2019.

³⁹ Section 9(1), NI (Executive Formation etc) Act 2019.

⁴⁰ Section 9(6), NI (Executive Formation etc) Act 2019.

⁴¹ NI Office, 'Report pursuant to section 3(5) of the Northern Ireland (Executive Formation etc) Act 2019', (NI Office, 2019) at 12.

⁴² NI Office, 'UK Government Guidance for Healthcare Professionals in Northern Ireland on abortion law and terminations of pregnancy in the period 22 October 2019 to 31 March 2020 in relation to the NI (Executive Formation etc) Act 2019' (October 2019).

⁴³ NI Office, 'A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern Ireland (Executive Formation etc) Act 2019: Government consultation' (NI Office, 2019).

⁴⁴ NI Human Rights Commission, 'Response to HM Government Consultation on a New Legal Framework for Abortion Services in NI', 19 December 2019.

⁴⁵ NI Office, 'A new legal framework for abortion services in Northern Ireland Implementation of the legal duty under section 9 of the Northern Ireland (Executive Formation etc) Act 2019 UK Government consultation response', (NI Office 2020).

Booking Service in England was the official source identified by the NI Office for advice, support and counselling on termination services in all cases. Funding was also provided by the UK government, for travel and accommodation for all women and girls living in NI using this service. To qualify for free care you must reside in NI (with a BT postcode) and be registered with a NI General Practitioner (with a BT postcode). You must supply both details to receive funded treatment. The travel expenses of all abortion care patients will be paid for and depending on clinical need expenses for overnight accommodation and travel and overnight accommodation of a companion.⁴⁶

Abortion (NI) (No 2) Regulations 2020

- 4.22 On 31 March 2020, in line with the NI (Executive Formation etc) Act 2019, the Abortion (NI) Regulations 2020 came into force. On 14 May 2020, the original regulations were revoked and replaced by the Abortion (NI) (No 2) Regulations 2020. This was for administrative reasons, with no substantive changes to the circumstances in which terminations can be performed in NI and the procedural requirements attached to this. Thus, the current legal framework is governed by the Abortion (NI) (No 2) Regulations 2020, but terminations in a range of circumstances have been legalised in NI since 31 March 2020. Throughout this report, the current legal framework will be referred to as the Abortion Regulations.
- 4.23 Terminations can now be performed in NI under any circumstances up to 12 weeks⁴⁷ and where there is a risk to physical or mental health of the woman or girl up to 24 weeks.⁴⁸ Terminations with no gestational limit are also now legal in NI where there is an immediate necessity, a risk to life or grave permanent injury to the physical or mental health of a pregnant woman or girl, or in cases of severe foetal impairment or fatal foetal abnormality.⁴⁹
- 4.24 Certification from one healthcare professional is required for up to 12 weeks.⁵⁰ For these 'early medical abortions' the first pill is taken at the

⁴⁶ British Pregnancy Advisory Service, 'Funded abortion treatment for women from Northern Ireland' at <https://www.bpas.org/abortion-care/considering-abortion/northern-ireland-funded-abortion-treatment/>

⁴⁷ Regulation 3, Abortion (NI) (No 2) Regulations 2020.

⁴⁸ Regulation 4, Abortion (NI) (No 2) Regulations 2020.

⁴⁹ Regulations 5, 6 and 7, Abortion (NI) (No 2) Regulations 2020.

⁵⁰ Regulation 3, Abortion (NI) (No 2) Regulations 2020.

clinic with the second pill permitted to be taken at home.⁵¹ Between 12 and 24 weeks, certification from two healthcare professionals is required if they are of the opinion that the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman, which is greater than if the pregnancy were terminated.⁵²

- 4.25 Regulation 12 of the Abortion Regulations permits conscientious objection in the context of implementing these regulations in practice. The regulations state, “a person is not under a duty to participate in any treatment authorised by these regulations to which the person has a conscientious objection”.⁵³ This “applies whether the duty arises under contract or under any statutory or other legal requirement”.⁵⁴ However, there is an exception and the “duty to participate in treatment which is necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of a pregnant women” is retained regardless of conscientious objection.⁵⁵
- 4.26 The Abortion Regulations also include sanctions for terminating a pregnancy other than in accordance with the provisions contained within. A failure to comply with the requirements set out in the regulations will be a criminal offence punishable with a level five fine (up to £5000 in NI).⁵⁶
- 4.27 Notably, the Abortion Regulations do not address the educational aspects or the protection of women from harassment by pro-life protestors as recommended within the UN CEDAW Committee’s inquiry report.

Implementation of legislative reform

- 4.28 Notwithstanding the legislative framework set out above, the Department of Health has still not commissioned the services that were the subject of the Abortion Regulations. In addition, the Department has not provided guidance on the provision of services in general or how those services are to be accessed during the pandemic. Through documentation obtained by the Commission in its legal action, the Commission has learned the following action has been taken by the Department and the Executive

⁵¹ Regulation 9, Abortion (NI) (No 2) Regulations 2020.

⁵² Regulation 4, Abortion (NI) (No 2) Regulations 2020.

⁵³ Regulation 12(1), Abortion (NI) (No 2) Regulations 2020.

⁵⁴ Regulation 12(2), Abortion (NI) (No 2) Regulations 2020.

⁵⁵ Regulation 12(3), Abortion (NI) (No 2) Regulations 2020.

⁵⁶ Regulation 11(3), Abortion (NI) (No 2) Regulations 2020.

Committee.

- 4.29 On the 3 April 2020, the Health Minister brought a paper to the NI Executive which identified options for the provision of an emergency Early Medical Abortion service in NI, as legal advice from central government and in NI had made it clear that it would not be possible for women in NI to avail of the emergency service in England.⁵⁷
- 4.30 The Commission understands it is the Department's view that it is required to bring proposals to the NI Executive, in accordance with the NI Act 1998 and the Ministerial Code.⁵⁸ The Ministerial Code sets out the rules and procedures for the exercise of the duties and responsibilities of Ministers and junior Ministers of the NI Assembly as specified in the Belfast (Good Friday) Agreement, the NI Act 1998, the St Andrews Agreement and the NI (St Andrews Agreement) Act 2006. It provides that every Minister is required to bring certain matters to the NI Executive for discussion and agreement, including those that cut across the statutory responsibilities of another Minister, and those which are significant or controversial and fall outside the scope of the Programme for Government.⁵⁹
- 4.30 The Commission understands that the paper on early medical abortion was discussed by the NI Executive, on 6 April 2020, without agreement being reached either on the options proposed, or on the matter of whether the issue needed to be brought before the Executive under the Ministerial Code.⁶⁰ The Secretary to the NI Executive was asked to request further advice from the NI Attorney General.
- 4.31 A NI Abortion and Contraception Taskforce, a clinical advisory multidisciplinary and multi-agency regional group, was set up following the Abortion Regulations, comprised of clinicians, academics, and Informing Choices NI. The group was established separately from the Department of Health to provide input into the commissioning, development and

⁵⁷ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁵⁸ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁵⁹ Ministerial Code, The Belfast/Good Friday Agreement 1998; Section 28A, Northern Ireland Act 1998; Section 6, Northern Ireland (St Andrews Agreement) Act 2006.

⁶⁰ Correspondence from the NI Executive, Departmental Solicitors Office to the NI Human Rights Commission, 25 November 2020.

implementation of termination services in NI. The taskforce also sought to plan a temporary early medical abortion service within existing sexual and reproductive health services in response to the pandemic.⁶¹ Support was offered by the Faculty of Sexual Reproductive Healthcare, Royal College of Obstetricians and Gynaecologists and senior management within two of the five health and social care trusts. However, the initial plans for the service were halted, and ceased following direction from the Department of Health.⁶²

4.32 On the 9 April 2020, the NI Chief Medical Officer sent a letter permitting the health and social care trusts to proceed with an interim service. In the absence of central commissioning from the Department, the service was permitted for a medical practitioner to assess, on a case-by-case basis, using their professional judgement as to whether the individual woman's clinical circumstances meet the grounds for a termination of pregnancy in NI, as provided for in the Regulations.⁶³

4.33 The Commission learned that the Health Minister issued a further paper to the NI Executive in May 2020 advising of the developments; including the correspondence from the Chief Medical Officer, the remote services now operating through Informing Choices and Trusts and the service operated by the British Pregnancy Advisory Service.⁶⁴ The Minister of Health invited the NI Executive to note the position and again requested authority to establish an Early Medical Abortion Service, as set out in his previous paper.⁶⁵ To date this paper has not been discussed by the NI Executive and the authority requested by the Minister has not been provided.⁶⁶ In March 2021, it was reported that a Sinn Féin minister had sought to raise the issue of commissioning a service though it appears that no substantive discussion has been held to date.⁶⁷

⁶¹ Kirk et al., 'Introduction of the National Health Service early medical abortion service in Northern Ireland – an emergency response to the COVID-19 pandemic', 12 January 2021.

⁶² Kirk et al., 'Introduction of the National Health Service early medical abortion service in Northern Ireland – an emergency response to the COVID-19 pandemic', 12 January 2021.

⁶³ Correspondence from the Chief Medical Officer to the Royal College of Obstetricians and Gynaecologists, 9 April 2020.

⁶⁴ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁶⁵ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁶⁶ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁶⁷ Sinn Féin, 'Hargey to challenge to Health Minister to commission abortion services' (14 March 2021).

- 4.34 The NI Executive has outlined that a further update was provided to NI Executive Ministers in May 2020 but that it has not been provided with any new proposals for the commissioning of abortion services since the meeting of 6th April 2020.⁶⁸
- 4.35 In July 2020, the five health and social care trusts submitted an application to the Department of Health for COVID-19 funding for the period 1 September 2020 to 31 March 2021 to continue and expand the Early Medical Abortion Service, to commission late surgical abortion, to provide resources and training, and to establish appropriate patient pathways. However, the Commission understands the application was passed to the Health and Social Care Board and subsequently withdrawn. As a result, no consideration or decision was made on the commissioning or funding the continuation of the service.
- 4.36 The Commission has learned that on the 26 November 2020, the Health Minister wrote to the First and Deputy First Ministers asking for an update on advice sought from the Attorney General, and their views on further NI Executive discussion. It was also reported that the Attorney General has advised that the matter is an issue, which must be brought to the NI Executive for approval.⁶⁹
- 4.37 The Department of Health has maintained that is it is subject to NI Executive agreement to scope, design and commission the necessary abortion services in NI.⁷⁰ The Department of Health has argued NI Executive agreement is required by the Ministerial Code to develop an early emergency abortion service and he has been unable to achieve agreement for that course of action.⁷¹ However, the NI Executive claims it has no power to take these actions and the statutory powers are

⁶⁸ Correspondence from the NI Executive, Departmental Solicitors Office to the NI Human Rights Commission, 25 November 2020.

⁶⁹ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁷⁰ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁷¹ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

exercisable by the Minister of Health, subject to any obligations placed on by him by the Ministerial Code.⁷²

- 4.38 As health and social care trusts have provided interim early emergency abortion services, the Health Minister has also claimed that abortion services are currently being provided in accordance with the 2020 Regulations, and that appropriate instructions have been issued to Health Trusts and professionals while also maintaining that women can access abortion services in England via the British Pregnancy Advisory Service, which has remained operational throughout the COVID-19 pandemic.⁷³
- 4.39 Despite the Health Minister's reference to the need for agreement by the NI Executive to commission services, the NI Executive has stated that the provision of health and social care is largely vested in the Department of Health and exercised by the Minister.⁷⁴ The NI Executive has maintained it has no power to take action in bringing forward the Abortion Regulations, as the statutory powers to do so are exercisable by the Minister of Health.⁷⁵ The Department for Health and Chief Medical Officer have regularly challenged the NI Executive on matters of individual and public health issues during the COVID-19 pandemic. However, there appears to be a substantial lack of political will and desire to resolve the issue.
- 4.40 The NI Office argue it has continued to monitor the situation closely and has continuously engaged with the Department of Health and taken all reasonable steps to enable the provision of a service in NI.⁷⁶
- 4.41 The Secretary of State continues to believe that commissioning of services by the Department of Health would remain the most appropriate way to progress the matter and work accordingly remains ongoing by way of liaison with the relevant NI departments in an attempt to achieve that.⁷⁷

⁷² Correspondence from the NI Executive, Departmental Solicitors Office to the NI Human Rights Commission, 25 November 2020.

⁷⁴ Correspondence from the Department of Health DSO to the NI Human Rights Commission 4 December 2020.

⁷⁴ Correspondence from the Department of Health, Departmental Solicitor's Office to the NI Human Rights Commission, 4 December 2020.

⁷⁵ Correspondence from the NI Executive, Departmental Solicitors Office to the NI Human Rights Commission, 25 November 2020.

⁷⁶ Correspondence from the Secretary of State for NI to the NI Human Rights Commission, 25 November 2020.

⁷⁷ Correspondence from the Secretary of State for NI to the NI Human Rights Commission, 25 November 2020.

- 4.42 The NI Office has maintained that its engagement is increasing in an attempt to make quicker progress including by exploring what further support the UK Government can provide to help the Department of Health to act expeditiously.⁷⁸
- 4.43 On 23 March 2021, the Abortion (Northern Ireland) Regulations 2021 were laid in Parliament providing the Secretary of State for NI the power to direct relevant NI Ministers, departments and relevant health bodies to commission services, as required by the NI (Executive Formation etc) Act 2019 to implement the recommendations in paragraphs 85 and 86 of the UN CEDAW Inquiry report.⁷⁹
- 4.44 In a written ministerial statement to Parliament, the Secretary of State for NI, Brandon Lewis MP, expressed his disappointment that the Department of Health and NI Executive have failed to commission full abortion services following the change to the law in March 2020.⁸⁰
- 4.45 The NI Office has stated that while the UK Parliament considers the Regulations, the UK Government will continue to engage with the Minister of Health for NI and the NI Executive to try and find a way forward before any direction is issued.⁸¹
- 4.46 The Commission's legal challenge against the Secretary of State, NI Executive and Department of Health (NI) is due to be heard on 26 and 27 May 2021.

5.0 Findings: Reproductive Healthcare Provision

- 5.1 This section sets out findings and views of those that the Commission engaged with over the course of its monitoring project in relation to reproductive healthcare provision in NI, since the Abortion Regulations came into effect on 31 March 2020.

⁷⁸ Correspondence from the Secretary of State for NI to the NI Human Rights Commission, 25 November 2020.

⁷⁹ The Abortion (Northern Ireland) Regulations 2021.

⁸⁰ NI Office, 'Statement of Secretary of State for NI, Rt Hon Brandon Lewis MP: The Abortion (Northern Ireland) Regulations 2021, 23 March 2021'. Available at: <https://questions-statements.parliament.uk/written-statements/detail/2021-03-23/hcws875>

⁸¹ NI Office, 'Press release: Progress on Northern Ireland Abortion Regulations', 23 March 2021. Available at: <https://www.gov.uk/government/news/progress-on-northern-ireland-abortion-regulations>

Overview of provision of termination services in NI

- 5.2 Despite the changes in legislation, the Department of Health has not commissioned the required healthcare services to implement the Abortion Regulations. The Department has also not provided guidance on the provision of services in general or to cover services during the pandemic, particularly given travel restrictions imposed.
- 5.3 Between mid-April and start of June 2020, health and social care trusts in NI, guided by the Abortion Regulations, began providing limited termination services within their existing resources and without financial support from the Department of Health. The Commission learned that service providers believe this approach is neither appropriate nor sustainable, but has nonetheless been necessary particularly given the restrictions on travel due to COVID-19 and the impact this has had on women and girls accessing services in other parts of the UK and Ireland.
- 5.4 From the start of October 2020 to February 2021, termination services introduced by the health and social care trusts stopped being provided in some trust areas but these have now resumed. It was further announced on 23 April 2021 that another trust had ceased providing a service.

Early medical abortion in NI

Referral pathway

- 5.5 The referral pathway for accessing terminations within the five health and social care trusts is being facilitated by Informing Choices NI. Prior to the regulations, a sexual health helpline was already operating by Informing Choices NI, but this has now been adapted to implement a Central Access Point into early medical abortion care. As well as the Central Access Point service, Informing Choices NI also provides pregnancy choices and post-pregnancy counselling for those who have experienced pregnancy loss (through abortion, miscarriage or stillbirth), have experienced a traumatic birth, or suffer from postnatal depression or anxiety.
- 5.6 The Informing Choices NI website provides information regarding the Central Access Point for those seeking an early medical abortion, up to 9

weeks and 6 days gestation.⁸² If someone presents post 10 weeks, they would be informed to contact the Central Booking System in England. When a pregnant woman or girl calls Informing Choices NI, some personal details are requested including full name, date of birth, postcode, telephone number and gestation. A call back is arranged to discuss their pregnancy options - continuing with the pregnancy, adoption or abortion. If the person is undecided, pregnancy choices counselling is available. If a woman or girl wishes to proceed with a termination, she is informed of the medical or surgical options available and a referral is given depending on their preference. If the woman or girl is under 10 weeks and wishes to have a medical abortion, she can be referred for this service which is provided through existing sexual and reproductive health services in the health and social care trusts. Priority is given to women and girls that are closer to ten weeks gestation and referrals are made to services available within the health and social care trust in which they live. Informing Choices NI does not publicly provide the location of clinics that offer termination services. This was agreed in conjunction with the healthcare professionals providing the services due to fears that protestors would target the clinics.

- 5.7 When the Informing Choices NI Central Access Point began operating, the Department of Health and Social Care in England and Wales advised the British Pregnancy Advisory Service (who provided the central booking system for England up until April 2021), that women and girls under 10 weeks from NI that sought its assistance should initially be informed that a termination can be provided locally within NI up to 9 weeks and 6 days and be diverted to Informing Choices NI. Unregulated service providers also became aware of the local service and signposted those who contacted them from NI to the Central Access Point. While information on local services in NI is provided on the Informing Choices NI website, it is believed that the main source of information on accessing terminations for women and girls in NI is through the British Pregnancy Advisory Service, unregulated service providers, GPs or through word of mouth.
- 5.8 A particular concern for the continuation of the local referral system is that Informing Choices NI does not have ring fenced funding to facilitate this service. To date, Informing Choices NI has been providing the Central Access Point through its existing advocacy budget, which comes from

⁸² Informing Choices NI, 'Central Access Point'. Available at: <https://informingchoicesni.org/central-access-point>

independent sources. Informing Choices NI receives funding from the Public Health Agency and the Department of Health for their sexual health helpline and counselling service. Due to the demands being placed on the counselling service by providing the Central Access Point, Informing Choices NI has had to seek a small community grant in order to provide some additional counselling support. Informing Choices NI has indicated that the Central Access Point is not sustainable long term and without additional funding, it will not be able to continue throughout 2021. Informing Choices NI has been engaging with the NI Office and has sent several requests for funding to the Department of Health but these remain unacknowledged to date.

- 5.9 General Practitioners are another contact point from where referrals for termination services can be made, which will be directed to Informing Choices NI. It has been reported that referrals through this avenue are relatively low. A number of stakeholders expressed that they felt that some women and girls are still experiencing stigma and fear when discussing abortion with their General Practitioner and consequently women and girls prefer not to discuss available options with their General Practitioner. There have also been some reports of misinformation provided by General Practitioners who referred women and girls to the British Pregnancy Advisory Service, rather than Informing Choices NI, as they may still not be aware that there is a localised Central Access Point in place. Stakeholders also expressed that the lack of guidance for General Practitioners with conscientious objection is a concern.
- 5.10 The Commission noted that several stakeholders voiced concerns regarding organisations that offer pregnancy counselling for women and girls seeking an abortion and providing what, in their view was misinformation, which can lead to a delay in treatment and can consequently limit the options that are available to women and girls. These stakeholders suggested that they believe these organisations have substantial financial resources to enhance positioning within internet search lists and that websites use neutral language to persuade women and girls that they are independent sources of advice and support, providing objective overviews of the options available, when this is not the case.
- 5.11 A clinician, in contact with the Commission, reported seeing the impact of misinformation first hand, confirming that they had treated several women

who had experienced a delay because of their seeking advice and support outside of the referral pathway. This had resulted in gestation beyond 10 weeks, leaving the individuals unable to utilise the limited services available in NI.

Health and social care trusts

5.12 From 9 April 2020, early medical abortion services initially started in two health and social care trusts who took referrals for women and girls regardless of the trust area within which they resided. Initially, some health and social care trusts offered abortion services for women and girls up to 12 weeks gestation where equipment such as scanning was accessible however, this was not sustainable. By June 2020, there was a regional Early Medical Abortion Service for up to 9 weeks and 6 days gestation operating within all five health and social care trusts operating at least two sessions per week.⁸³ Staff who had experience in abortion care from training elsewhere in the UK and online training resources were utilised. Clinic protocols, policies and patient information leaflets were quickly produced in line with the Royal College of Obstetricians and Gynaecologists and the National Institute for Health and Care Excellence guidelines on abortion care.⁸⁴ Templates for telephone consultations and treatment were designed for the online system. Informing Choices NI refer daily into each health and social care trust via email and a telephone consultation is offered within days and a time is then agreed to attend for treatment.

5.13 Early medical abortion treatment involves an initial consultation with the patient, which aims to establish the estimated gestation, eligibility and medical history. Women and girls that present to have an early medical abortion are first provided with information regarding the treatment, follow-up and contraception options going forward. The consent form is also discussed. An appointment time is agreed for the patient to attend the clinic for treatment and, if necessary, this can include an appointment for a scan. When the patient attends, the consent form is read and signed by the patient and clinician. The first tablet, Mifepristone, must be taken in

⁸³ Kirk et al., 'Introduction of the National Health Service early medical abortion service in Northern Ireland – an emergency response to the COVID-19 pandemic', 12 January 2021.

⁸⁴ Kirk et al., 'Introduction of the National Health Service early medical abortion service in Northern Ireland – an emergency response to the COVID-19 pandemic', 12 January 2021.

the clinic and the second part of the treatment, which involves four Misoprostol tablets, are provided to the patient to be taken at home 24 to 48 hours later. A form of contraception can also be supplied or fitted as required.⁸⁵

- 5.14 In terms of aftercare for early medical abortions, no routine follow-up is necessary. The patient is required to take a low sensitivity pregnancy test at home three weeks later. Advice is provided regarding possible complications and heavy bleeding, as well as ectopic symptoms and emergency contact numbers. The health and social care trusts are required to complete a notification form, which must be sent to the Chief Medical Officer within 14 days of patient being treated.⁸⁶
- 5.15 The Early Medical Abortion service was set up by health and social care trusts within existing sexual and reproductive health services, as this was deemed the most appropriate approach. Health and social care trusts stated that the ability to set up an Early Medical Abortion service was only possible due to the temporary suspension of sexual and reproductive healthcare services, such as contraception services, due to COVID-19.
- 5.16 Access to abortion was deemed an essential service during the pandemic by the Faculty of Sexual & Reproductive Healthcare and the Royal College of Obstetricians & Gynaecologists. Health and social care trusts were able to deem early medical abortions an emergency service, as travel restrictions due to COVID-19, meant that women and girls could no longer travel to parts of the UK and Ireland for the purposes of a termination.
- 5.17 With regard to conscientious objection, it was reported that willing and appropriately trained staff were identified within each trust to operate a clinic that would provide the early medical abortion service. Until October 2020, there was one clinic location within each health and social care trust, the location of which was, and continues to be, kept out of the public domain. Each health and social care trust is only treating patients who are registered within its trust area. Initially some women and girls could be referred to other trust areas due to the additional expertise and equipment

⁸⁵ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

⁸⁶ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

when early medical abortion was temporarily available up to 12 weeks gestation or for privacy concerns. However, health and social care trusts reported that this practice had to end after a short period due to resource constraints.

- 5.18 In terms of staffing, it was reported that all health and social care trusts have been relying on minimal staff to provide the termination services available in their respective areas. This can be as limited as one part-time clinician managing the service, creating significant risk of instability of provision. Some concern was also raised that the recommencement of a wider range of sexual and reproductive health services as lockdown restrictions are eased may place a further strain on the maintenance of early medical abortion clinics. Without the commissioned support of the Department of Health, it was suggested that a continuation of the current arrangements within health and social care trusts would negatively impact waiting lists for other services.
- 5.19 Between the start of June to early October 2020, termination services up to ten weeks were available in all health and social care trusts in NI and between ten and twelve weeks in some health and social care trusts, subject to available resources.⁸⁷ Termination services for medical reasons up to 24 weeks or without gestational time limit, in line with the Abortion Regulations, are mainly performed by the Belfast Health and Social Care Trust.⁸⁸
- 5.20 From 5 October 2020 to the 4 January 2021, the Northern Health and Social Care Trust was unable to offer any termination services. This was due to lack of commissioning from the Department of Health and having to reassign resources to enable non-emergency healthcare services that had been suspended due to COVID-19 to be resumed.⁸⁹ Following the news, the Commission wrote to each of the health and social care trusts to ascertain where individuals residing within the Northern Trust area were being directed in the absence of a service and if the remaining trusts were

⁸⁷ Brendan Hughes, 'Central access point launched for abortion services in NI', *Irish News*, 16 April 2020; Meeting between Informing Choices and NI Human Rights Commission, 7 August 2020.

⁸⁸ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

⁸⁹ Informing Choices NI, 'Press Release: Northern Trust Resumes Early Medical Abortion Service'. Available at: <https://informingchoicesni.org/wp-content/uploads/2021/01/Northern-Trust-Resumes-EMA-Service-FINAL.pdf>

able provide any services on referral or otherwise to women who live within the Northern Trust area.⁹⁰ The Northern Health and Social Care Trust confirmed that the interim early medical abortion pathway was only possible due to the downturn of existing Family Planning services and as these services resumed there was no longer staff available. The Trust further explained that, due to capacity, the other health and social care trusts could not assist with referrals and that women within the Northern Health and Social Care Trust area would have to travel outside NI through the existing British Pregnancy Advisory Service pathway and through Informing Choices.⁹¹ This was confirmed by two health and social care trusts who formally responded that they did not have capacity to assist women and girls residing within the Northern Health and Social Care Trust area.⁹²

- 5.21 The early medical abortion service within the Northern Health and Social Care Trust was able to resume from the 4 January 2021 as a locum resource was secured.⁹³
- 5.22 However, from 5 January 2021 to 1 February 2021, the South Eastern Health and Social Care Trust was also no longer able to provide termination services due to staffing issues.⁹⁴ This has since been resolved. Again, during this time those residing within the South Eastern Health and Social Care Trust had to access services through travelling elsewhere in the UK, Ireland or rely on unregulated support.
- 5.23 On the 23 April 2021, the Western Health and Social Care Trust announced that it would be ceasing bookings as of that day for its Early Medical Abortion service due to staffing issues.⁹⁵ How long this applies for remains to be seen. Women and girls within this Trust area will again have to

⁹⁰ Correspondence from the NI Human Rights Commission to Health and Social Care Trusts, 12 October 2020.

⁹¹ Correspondence from the Northern Health and Social Care Trust to the NI Human Rights Commission, 21 October 2020.

⁹² Correspondence from Health and Social Care Trusts to the NI Human Rights Commission, October & November 2020.

⁹³ Informing Choices NI, 'Press Release: Northern Trust Resumes Early Medical Abortion Service'. Available at: <https://informingchoicesni.org/wp-content/uploads/2021/01/Northern-Trust-Resumes-EMA-Service-FINAL.pdf>

⁹⁴ Amnesty International UK, 'Press Release: Northern Ireland: Abortion services cease at South Eastern Trust following Health Department failure'. Available at: <https://www.amnesty.org.uk/press-releases/northern-ireland-abortion-services-cease-south-eastern-trust-following-health>

⁹⁵ Itv News, 'Abortion services suspended in Western Trust', 23 April 2021. Available at: <https://www.itv.com/news/utv/2021-04-23/abortion-services-suspended-in-western-trust>

access services through travelling elsewhere in the UK, Ireland or rely on unregulated support.

- 5.24 Subject to the above, the health and social care trusts continue to provide termination services for women and girls that are registered within their trust areas in cases of less than ten weeks gestation. Some health and social care trusts indicated that over time there is the risk that the other trusts will have to cease offering any termination services due to lack of commissioning by the Department of Health, which could mean that eventually terminations without a medical reason may not be available in parts or throughout NI.⁹⁶
- 5.25 The Department of Health confirmed that regionally, from the 31 March 2020 to the 31 March 2021, there had been 1373 notifications to the Department of Health of early medical abortions under the new provision provided by the health and social care trusts.⁹⁷ The Department of Health confirmed that this data is not disaggregated.
- 5.26 The Commission received statistics from the Belfast Health and Social Care Trust, which show that between the 9 April and 2 June 2020, 170 consultations took place, which resulted in 138 terminations for women and girls aged between 12 and 48 years old. It was recorded that 66 per cent of those treated were not using contraception and 52 per cent opted for a long acting method of contraception with their treatment. An interpreter was also required for seven of the patients who were treated.⁹⁸ The Commission understands that approximately 30 per cent of terminations within the clinic of one health and social care trust were performed at less than six weeks gestation. These statistics were not disaggregated in terms of personal identifiers. Although age range was provided there was no further breakdown.⁹⁹

⁹⁶ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

⁹⁷ Correspondence from the Department of Health to the NI Human Rights Commission, 12 April 2021.

⁹⁸ Correspondence from the Belfast Health and Social Care Trust to the NI Human Rights Commission, 14 September 2020.

⁹⁹ Correspondence from the Belfast Health and Social Care Trust to the NI Human Rights Commission, 14 September 2020.

General Practitioners

- 5.27 Stakeholders confirmed that they were not aware of any General Practitioners providing an early medical abortion service and the most likely outcome would be that a General Practitioner would provide their patient with information to contact Informing Choices NI, if they were aware of the local early medical abortion service, or the British Pregnancy Advisory Service.
- 5.28 A number of stakeholders also reported that if General Practitioners were to provide early medical abortions in NI that this would raise a number of issues. Since April 2019, General Practitioners in England and Wales no longer pay their own indemnity fees to cover NHS work. This removed the need for general practitioners (and practice staff) to arrange and fund their own clinical negligence cover. This change does not apply to General Practitioners in NI who have to pay for their own indemnity fees. It is believed indemnity cover for general medical services is approximately £1,000 per session. The cost of indemnity fees would likely increase if extended to cover early medical abortion.
- 5.29 It was also reported that, while an ultrasound scan is not a routine part of early medical abortion services, it will be required in some circumstances to determine gestation. General Practitioners will not necessarily be trained in conducting scans nor have the equipment within their practices. As a result, General Practitioners would need an agreement in place with gynaecology services in order to facilitate this.
- 5.30 Furthermore, it was acknowledged that General Practitioners would also require community pharmacists to stock and provide the medication. It was reported that this may require a regional protocol, as community pharmacies within NI are not required to stock the medicine, but must provide details of an alternative pharmacist/service.
- 5.31 It was also raised that a General Practitioner may require the consent of their practice partners, which could be difficult if a partner has a conscientious objection to terminations. Furthermore, the lack of guidance by the Department of Health on the provision of such services could create uncertainty and impact on the decision-making process.

Termination services in NI from ten to 12 weeks

- 5.32 Between June and October 2020, it was reported that two of the five health and social care trusts offered abortion services for women and girls up to 12 weeks gestation. For a short time, this included treating patients from other trust areas who did not have local access for up to 12 weeks gestation. However, from October 2020, all Trusts ceased providing terminations for women and girls between ten and 12 weeks. It was confirmed by health and social care trusts, that those pregnant for between ten and 12 weeks in NI are not able to access termination services in NI and face having to travel or use unregulated services.¹⁰⁰
- 5.33 Health and Social Care Trusts stated that due to a lack of resources and the availability of equipment such as scanners, the ability of trusts to carry out terminations between ten and 12 weeks gestation is limited. For terminations between ten and 12 weeks gestation, both sets of pills must be taken under medical supervision. Additionally, patients are not able to go home until the pregnancy has passed, which can take up to six hours. Therefore, patients must have a bed under medical supervision throughout the treatment and in a location that has easy access to gynaecology services. Easy access to gynaecology is not available in all clinic locations, as some clinics are located off main hospital sites.
- .
- 5.34 A number of organisations have raised concerns at the lack of provision for terminations in NI between ten and 12 weeks gestation, highlighting that there is a duty to provide such services under the Abortion Regulations

Termination services in NI after 12 weeks

- 5.35 The Abortion Regulations provide that a termination is legal where there is a risk to physical or mental health of the woman or girl up to 24 weeks.¹⁰¹ Terminations with no gestational limit are also legal where there is an immediate necessity, a risk to life or grave permanent injury to the physical or mental health of a pregnant woman or girl, or in cases of severe foetal impairment or fatal foetal abnormality.¹⁰²

¹⁰⁰ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

¹⁰¹ Regulation 4, Abortion (NI) (No 2) Regulations 2020.

¹⁰² Regulations 5, 6 and 7, Abortion (NI) (No 2) Regulations 2020.

- 5.36 Stakeholders confirmed that currently none of the health and social care trusts has a formal referral pathway or service post 9 weeks and 6 days gestation. The regulations provide that for medical terminations at this gestation stage require medical provision within an appropriate medical facility with access to surgical or medical procedures. Stakeholders confirmed that a few ad hoc medical terminations have been performed on a case-by case basis in most trusts, after discussion with senior management.
- 5.37 Stakeholders expressed that not offering terminations over 12 weeks is neglecting the legal duties set out in the Abortion Regulations, particularly where there are physical and mental health grounds for a termination. The appropriateness of offering terminations beyond 12 weeks without clear guidance and commissioning by the Department of Health was also raised.
- 5.38 Health and social care trusts in NI are obligated to report any termination that takes place at 24 weeks gestation or more to the Coroners' Service.¹⁰³ The Coroner may undertake an inquest in respect of a reported stillbirth.¹⁰⁴ It was reported by healthcare professionals that this is an onerous and unnecessary requirement.

Surgical abortion

- 5.39 Surgical abortion involves a minor operation that may be done under local anaesthetic, sedation or, on occasion general anaesthetic. There are two types of surgical abortion. First, vacuum aspiration, which can be performed up to 15 weeks gestation. Secondly, dilatation and evacuation performed between 15 and 24 weeks of pregnancy.
- 5.40 Stakeholders outlined that surgical options are more likely to be required or requested after ten weeks gestation, but should also be available as a choice for women at lower gestations. These procedures are generally performed within hospital Gynaecology departments. Stakeholders fed

¹⁰³ *The Attorney General for Northern Ireland and Siobhan Desmond v the Senior Coroner for Northern Ireland* [2013] NICA 68. See also DHSSPS, 'Guidance on death, stillbirth and cremation certification following the Court of Appeal decision on the death of a fetus in utero' HSS (MD) 38/2014 (1 December 2012).

¹⁰⁴ *The Attorney General for Northern Ireland and Siobhan Desmond v the Senior Coroner for Northern Ireland* [2013] NICA 68, para 34.

back that the lack of commissioning and ongoing pressures within existing gynaecology services have hindered the development of such a service, therefore surgical abortion is not available in any health and social care trust. A number of stakeholders highlighted that surgical abortion can be an important option for women and girls, as the requirement to take tablets is not always a feasible option.

- 5.41 Feticide (an injection to induce foetal demise) is recommended by the Royal College of Obstetricians and Gynaecologists for abortions beyond 22 weeks and is presently not available in NI, which has been raised as a concern by a number of stakeholders.

Severe foetal anomaly and fatal foetal abnormality

- 5.42 Engagement with clinicians confirmed that terminations for cases of severe foetal anomaly and fatal foetal abnormality are being managed within existing frameworks, which predate the Abortion Regulations. This is managed through a separate service primarily within labour or maternity teams.
- 5.43 Accessibility of terminations for reasons of foetal abnormality in NI has lagged behind the rest of the UK. First trimester screening and Non Invasive Prenatal Testing are not routinely offered in NI, therefore most foetal anomalies are diagnosed following the anomaly scan between 19 and 20 weeks, which in many cases is later in a pregnancy compared to the rest of the UK. This results in time constraints to undertake diagnostic and confirmatory tests and hence in decision-making. It also results in terminations occurring at a later gestational stage.¹⁰⁵ Nuchal translucency scans are not offered in the National Health Service in NI. Amniocentesis is available but only as part of fetal medicine investigations if a potential issue has been identified during the course of routine antenatal care, or following a private sector Non Invasive Prenatal Test which indicates risk of a chromosomal problem.¹⁰⁶

¹⁰⁵ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

¹⁰⁶ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

- 5.44 All health and social care trusts confirmed that there are contingency plans in place to ensure that, if a staff member has a conscientious objection, that this does not impact on a woman or girl's ability to access this service and necessary support. Staff can only conscientiously object to providing abortion treatment itself such as prescribing, administering medication or performing a surgical procedure. This does not include the testing for foetal conditions for which the woman may wish for a termination.¹⁰⁷
- 5.45 On the 16 February 2021, Paul Givan MLA introduced a Private Members' Bill the Severe Fetal Impairment Abortion (Amendment) Bill to amend the Abortion (Northern Ireland) (No. 2) Regulations 2020 to remove the ground for an abortion in cases of severe fetal impairment. The Bill passed the Second Stage on the 15 March 2021 with 48 MLAs voting in favour of the Bill to 12 MLAs voting against. The Bill will now move to the committee stage through the NI Assembly Committee for Health.
- 5.46 The Commission has been asked by the Speaker of the NI Assembly to provide its views on the Bill as well as by the NI Assembly Committee for Health. The Commission will be submitting a separate response to the Bill analysing its compliance with human rights standards.

Regulation and monitoring of the service

- 5.47 The Regulation and Quality Improvement Authority is the independent body responsible for monitoring and inspecting the availability and quality of health and social care services in NI. It also ensures that health and social care services in NI are accessible, well managed and meet the required standards. Health and social care trust hospital services in NI are not required to be registered with Regulation Quality Improvement Authority, unlike its counterparts in the UK where hospitals are inspected at defined intervals. The Regulation and Quality Improvement Authority does not therefore have an annual programme of inspections of NI's hospital services. The Regulation and Quality Improvement Authority undertakes specific reviews and intelligence led inspections under the direction of the Department of Health or in response to specific intelligence or concerns. This means that any future abortion services provided by

¹⁰⁷ Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

health and social care trust hospitals in NI would not automatically be subject to annual inspection with the key means of monitoring and assurance being internal assurance arrangements within health and social care trusts. The Regulation Quality Improvement Authority informed the Commission that they welcome the planned review of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, and consideration of the role of Regulation Quality Improvement Authority in respect of the regular inspections of hospital services and any additional powers to effect improvement.

- 5.48 Nevertheless, one health and social care trust has been conducting a patient satisfaction survey for its early medical abortion service, which recorded receiving positive feedback regarding the treatment provided and the administering staff. Across all health and social care trusts, clinicians reported that the early medical abortion pathway provided within existing sexual and reproductive health services has been working well, within the constraints of lack of funding and advice from the Department of Health. However, the health and social care trusts noted that providing a service without guidance carries a degree of risk and it may only be a matter of time before possible issues could arise.

Access to provision elsewhere in the UK and Ireland

UK

- 5.49 Until April 2021, the British Pregnancy Advisory Service has operated the Central Booking System for women and girls living in NI requiring treatment in England. Women and girls were required to contact the British Pregnancy Advisory Service to make an appointment with a funded UK abortion provider, which includes the British Pregnancy Advisory Service, MSI Reproductive Choices and the National Unplanned Pregnancy Advisory Service. Women and girls will be offered the most appropriate appointment based on their needs. From April 2021, Marie Stopes International operate the Central Booking System.¹⁰⁸
- 5.50 The UK government funds, via the Women and Equalities Office, abortions for women and girls resident in NI. The Department of Health and Social

¹⁰⁸ Marie Stopes International, 'Travelling from Northern Ireland'. Available at: <https://www.msichoice.org.uk/abortion-services/travelling-from-northern-ireland/>

Care England and Wales are responsible for managing the contract for the Central Booking System. The Department of Health and Social Care does not publish statistics on the Central Booking System. The annual abortion statistics for England and Wales are published annually and include a range data for women resident in NI. In 2019, there were 1014 abortions for women in NI, slightly lower than in 2018 when there were 1053 recorded.¹⁰⁹ Statistics for 2020 are due to be published later this year.

- 5.51 The Commission engaged with the Department of Health and Social Care to obtain specific statistics for the Central Booking System from April 2021, since the introduction of the Abortion Regulations, to present. However, the Department of Health and Social Care would not provide these to the Commission within our timeframe for publication. The Department of Health and Social Care indicated that they do not routinely share statistics on the Central Booking System outside of government and would only consider a request made under the Freedom of Information Act.¹¹⁰
- 5.52 Since April 2020 and the introduction of an Early Medical Abortion service, the British Pregnancy Advisory Service reported that there has been a significant reduction in the numbers of women and girls living in NI accessing terminations through its Central Booking System. From April 2020 to April 2021, the British Pregnancy Advisory Service estimated over 300 bookings were made for women and girls living in NI.
- 5.53 A number of stakeholders indicated that one of the reasons that women and girls living in NI were continuing to travel outside of NI for early medical terminations up to ten weeks, was for privacy reasons despite a service that was available across NI until early October 2020. It was reported that women and girls are largely restricted to accessing a service within the health and social care trust area that they were registered and that this in turn meant some feared being recognised when attending an appointment. Women and girls living in NI between 10 and 23 weeks gestation at the time of the booking will not normally be able to access a termination in NI through local health and social care trusts.

¹⁰⁹ Department of Health and Social Care, 'Abortion Statistics, England and Wales: 2019', 11 June 2020.

¹¹⁰ Correspondence between the Department for Health and Social Care and the NI Human Rights Commission, 23 April 2020.

- 5.54 It was reported that call volume to the British Pregnancy Advisory Service between April and October 2020 from women and girls living in NI remained high. However, those who were under ten weeks' gestation were referred back to Informing Choices, unless a particular concern was raised. The British Pregnancy Advisory Service reported that it was not uncommon to receive calls from women and girls in NI that were trying to get access to termination pills by post, which remains an unregulated service within NI. It was also reported that both a lack of understanding of the change in law or the legal limits of the Abortion Regulations was not uncommon. Women and girls could become particularly distressed or angry when informed of the legal limits of the Abortion Regulations or the continued lack of provision for access to terminations for a non-medical reason between ten and 12 weeks in NI, which meant that they would have to travel to access services that are more broadly available in the rest of the UK. It was reported that this could lead to advisors having to spend significant time explaining the legal restrictions, which is not easy for a client or advisor.
- 5.55 With the outbreak of COVID-19 and subsequent restrictions, those having to travel to England from NI to have a termination have faced additional challenges, including lack of accommodation and flight cancellations. This becomes more difficult as women and girls living in NI mainly use the pathway in England and are often referred to clinics located in Manchester and Liverpool, both areas with high risk of infection and with strict lockdown measures in place. Wales, due to its stricter approach to COVID-19 restrictions, and Scotland, due to it not providing travel for the purposes of a termination, are not pathways that are widely used.
- 5.56 Following the periods when services were temporarily suspended in the Northern and South Eastern Trusts, the British Pregnancy Advisory Service witnessed a rise in numbers of women and girls living in NI accessing a service in England. The Commission obtained generalised data for the Central Booking System during this period. Bookings rose from 12 bookings in September 2020 to 28 bookings in October and 39 bookings in November 2020 reflecting when the Northern Trust was not operating its service. In January 2021, the British Pregnancy Advisory Service recorded 36 bookings reflecting when the South Eastern Trust area was not operating its service. When all health and social care trusts were providing a service, the British Pregnancy Advisory Service reported that the Central Booking System was receiving between 10 and 15 bookings per month.

- 5.57 Informing Choices NI recorded that during the 13-week suspension of the Northern Trust Early Medical Abortion Service there were 96 self-referred into the Central Access Point provided by Informing Choices NI from the Northern Trust. Eighty nine of those requested an abortion and there was no local Early Medical Abortion Service to which they could be referred. During the suspension of the South Eastern Health and Social Care Trust service, there were 26 self-referrals from this area into the Central Access Point, 24 of whom requested access to termination services. As with the Northern Trust, there was no local Early Medical Abortion service in which they could be referred.
- 5.58 On 4 January 2021, the Northern Health and Social Care Trust announced it was able to resume its termination services having secured a locum resource. On 1 February 2021 the South Eastern Health and Social Care Trust was also able to resume its service after securing replacement staff. On the 23 April 2021, the Western Health and Social Care Trust announced it was suspending its Early Medical Abortion Service due to staffing issues.

Ireland

- 5.59 For access to early medical abortion services in Ireland, women and girls from NI need to be referred to a General Practitioner in Ireland. Referrals are facilitated through the MyOptions telephone helpline that is facilitated by the Health Service Executive in Ireland.¹¹¹ Those residing outside Ireland can access termination services, but have to pay privately for this service, which costs approximately 450 Euro. Early medical abortion services are also provided by the Irish Family Planning Association and Dublin Well Woman based in Ireland.¹¹²
- 5.60 Statistics for women and girls living in NI that have accessed termination services in Ireland are published by the Department for Health (Ireland). The only statistics available cover 1 January to 31 December 2019, which pre-dates the change in law in NI. This report records that 67 women and girls living in NI accessed services in Ireland during this period.¹¹³

¹¹¹ Health Service Executive, 'Unplanned pregnancy support services'. Available at:

<https://www2.hse.ie/services/unplanned-pregnancy-support-services/my-options-freephone-line.html>

¹¹² Irish Family Planning Association, 'Early Medical Abortion'. Available at: <https://www.ifpa.ie/get-care/abortion/care/> & Dublin Well Woman Centre, 'Crisis Pregnancy'. Available at: <https://wellwomancentre.ie/crisis-pregnancy/>

¹¹³ Department of Health Ireland, 'Notifications in Accordance with Section 20 of the Health (Regulation of Termination of Pregnancy) Act 2018: Annual Report 2019' (DoH, 2020).

Telemedicine

National Health Service

- 5.61 A number of stakeholders raised that the COVID-19 pandemic has presented challenges to women and girls seeking abortions across the UK, particularly in terms of lockdown travel restrictions and increased risk of infection by attending clinics in-person. Following guidance from the Department of Health in England, the Welsh Government and the Chief Medical Officer in Scotland, a 'telemedicine' option is now available through the National Health Service for women and girls seeking a termination up to ten weeks in other parts of the UK.¹¹⁴ This allows for an initial consultation with a doctor by telephone and for early medical abortion pills to be sent by post. An equivalent service commissioned by the Department of Health is not available in NI.
- 5.62 A number of stakeholders raised concerns at the disparity of approach to telemedicine between NI and the rest of the UK, particularly in the context of COVID-19. Independent research conducted into the use of telemedicine in response to COVID-19, found that there was a need for service model changes to make abortion medication more accessible during and beyond the COVID-19 pandemic.¹¹⁵ The research found that remote provision of early medication abortion negates the need to visit a hospital or healthcare facility, thus preserving personal protective equipment, and reducing infection risks for both patients and healthcare providers.¹¹⁶ The research concluded that implementing telemedicine models within the formal healthcare setting in line with World Health Organisation guidelines would help to meet the demand for remote provision and ensure patient-centred care.¹¹⁷
- 5.63 These stakeholders also expressed the view that a telemedicine option commissioned by the Department of Health should be a permanent option

¹¹⁴ Department of Health and Social Care, 'The Abortion Act 1967 – Approval of a Class of Places' (DHSC, 2020); Welsh Government, 'The Abortion Act 1967 – Approval of a Class of Place for Treatment for the Termination of Pregnancy (Wales) 2020' (Welsh Gov, 2020); Chief Medical Officer Directorate, 'Abortion – COVID-19 – Approval for Mifepristone to be Taken at Home and Other Contingency Measures' (CHOD, 2020).

¹¹⁵ Abigail Aiken et al, 'Demand for Self-Managed Online Telemedicine Abortion in Eight European Countries During the COVID-19 Pandemic: A Regression Discontinuity Analysis' (MedRxiv, 2020).

¹¹⁶ Abigail Aiken et al, 'Demand for Self-Managed Online Telemedicine Abortion in Eight European Countries During the COVID-19 Pandemic: A Regression Discontinuity Analysis' (MedRxiv, 2020).

¹¹⁷ Abigail Aiken et al, 'Demand for Self-Managed Online Telemedicine Abortion in Eight European Countries During the COVID-19 Pandemic: A Regression Discontinuity Analysis' (MedRxiv, 2020).

in the provision of access to termination services in NI. Stakeholders reported that telemedicine is a cost-effective and accessible approach to termination services and is consequently being considered as a permanent option for women and girls up to ten weeks gestation in the rest of the UK. However, it has been stressed that face-to-face services should be offered as an alternative to telemedicine to ensure termination services are accessible to and safe for all.

Regulated service by private providers

5.64 For a few days in April 2020, before health and social care trusts in NI began to provide termination services, the British Pregnancy Advisory Service extended its telemedicine service to women and girls in NI.¹¹⁸ This was reported as a reaction to the lack of action by the Department of Health to implement the change in abortion law in NI. However, it was confirmed that this service quickly ceased following direction from the Department of Health.

Unregulated services

5.65 Unregulated service provision, which involves sending termination pills in the post to be taken at home and without formal medical supervision, is provided by web-based organisations. Based on medical advice provided by the World Health Organisation, such providers offer this service up to 12 weeks gestation.

5.66 For the purpose of this project, the Commission engaged with two unregulated service providers – Women Help Women and Women on Web. Both are non-profit organisations that provide such services across the world, including in NI. As these organisations are based outside of NI, under current legislation they are not required to register their services in NI and are consequently not subject to monitoring by regulators in NI, such as the Regulation and Quality Improvement Authority.

5.67 Each organisation operates under a different ethos, but the provision of service is similar. On first contact, women and girls who meet the criteria for treatment in NI are informed that they can access treatment locally and are provided with referral information. If the woman is within the 12 weeks

¹¹⁸ British Pregnancy Advisory Service, 'Abortion pills by post for women from Northern Ireland'. Available at: <https://www.bpas.org/abortion-care/considering-abortion/northern-ireland-pills-by-post/>

gestation period and cannot or does not wish to access local services, an online consultation is conducted. If, after this consultation, it is deemed appropriate for the woman or girl to avail of the unregulated services then information is provided on how to self-manage an early medical abortion at home. The required medication will be posted to the person and can be expected to be received up to 12 days from the consultation. The service relies on donations and people are requested to make a donation of 75 Euro. However, it was confirmed that this can be waived or negotiated on the basis of what is affordable given a woman or girl's financial circumstances. It was explained that the providers tend to not collect personal data in the interests of maintaining the patient's anonymity.

- 5.68 Both unregulated providers stated that the number of women and girls living in NI seeking their services gradually fell from April 2020 when early medical abortion provision had been implemented locally by the health and social care trusts in NI. Nevertheless, Women Help Women and Women on the Web confirmed that they still receive numerous queries from women and girls living in NI. Both unregulated providers reported that it is evident from the continuing queries that not everyone is aware that some termination services are now available in NI. Both unregulated providers stated that it is likely that this can be attributed to a lack of regional public health information that actively informs women and girls and healthcare providers of the services that are available.
- 5.69 Women on Web reported that throughout 2020 they conducted 478 consultations which resulted in their service being provided 250 times, 119 of which were provided after the 18 March 2020. For 2021, up to 8 April 2021, 123 consultations have taken place which has resulted in the service being provided 34 times.
- 5.70 Both organisations provided reasons why women and girls living in NI continue to contact unregulated service providers for assistance vary. For example, the woman or girl:
- falls within the ten to 12 weeks gestation period and cannot access a termination through their trust in NI;
 - does not want to access a termination within the trust area that they are registered in due to privacy concerns, as NI is a small place;

- lives in a rural area and has difficulties in accessing or affording transport to attend the clinic within the trust area that they are registered in;
- cannot access childcare to enable use of local services;
- is in a difficult domestic circumstance, such as an abusive situation or are too young to travel without their partner or family member knowing; or
- has family members who conscientiously object to abortions and do not want them to know that they are having a termination.

5.71 Additionally, it appears that a combination of the temporary removal of the early medical abortion service within the Northern Health and Social Care Trust and the difficulties in physically accessing services in other parts of the UK and Ireland due to COVID-19, has increased queries from women and girls living in that particular health and social care trust area. Notably since 2 October 2020, 21 of the 23 women and girls living in NI that have used the services of Women Help Women were from within the Northern Trust area. The other two were from elsewhere in NI, but were between 10 and 12 weeks gestation and could not access local services. Women Help Women further provided that from the 1 October 2020 to the 30 January 2021, the period during which some health and social care trusts were not offering services, 66 women received their service. This outweighs the figures for the eight-month period between January 2020 and September 2020, during which 42 women received their service.

Conscientious objection

5.72 Conscientious objection is provided for within Regulation 12 of the Abortion (NI) (No 2) Regulations 2020, with the exception that it does not apply while providing treatment that is necessary to save the life, or to prevent grave permanent injury to the physical or mental health, of a woman.

5.73 The current legal precedent on conscientious objection is set out by the UK Supreme Court in *Greater Glasgow Health Board (Appellant) v Doogan and another (Respondents) (Scotland)*. The Supreme Court considered the interpretation of the conscientious objection clause in the Abortion Act 1967, holding that that two Catholic midwives could be required by their employer to delegate to, supervise and support other staff who were involved in carrying out abortion procedures, as part of their roles as Labour Ward Co-ordinators at the Southern General Hospital in Glasgow.

The Supreme Court held that it was unnecessary to bring the context of the right to freedom of thought, conscience and religion (Article 9 ECHR) within the scope of the judgment. The Supreme Court held that:

Article 9 right is a qualified right, which may be subject to “such limitations as are prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”. Refusing for religious reasons to perform some of the duties of a job is likely (following the decision of the European Court of Human Rights in *Eweida v United Kingdom* (2013) 57 EHRR 213) to be held to be a manifestation of a religious belief. There would remain difficult questions of whether the restrictions placed by the employers upon the exercise of that right were a proportionate means of pursuing a legitimate aim. The answers would be context specific and would not necessarily point to either a wide or a narrow reading of section 4 of the 1967 Act.¹¹⁹

5.74 The Supreme Court further held that:

Whatever the outcome of the objectors’ stance, it is a feature of conscience clauses generally within the health care profession that the conscientious objector be under an obligation to refer the case to a professional who does not share that objection. This is a necessary corollary of the professional’s duty of care towards the patient. Once she has assumed care of the patient, she needs a good reason for failing to provide that care. But when conscientious objection is the reason, another health care professional should be found who does not share the objection.¹²⁰

5.75 Conscientious objection, in the context of Article 9 ECHR, has been mainly explored by the ECtHR in relation to military service. However, some key principles have been identified, including that Article 9 ECHR does provide protection for conscientious objection, but under certain conditions. The ECtHR has stated that it is:

¹¹⁹ *Greater Glasgow Health Board (Appellant) v Doogan and another (Respondents) (Scotland)* [2014] UKSC 68 at 23.

¹²⁰ *Greater Glasgow Health Board (Appellant) v Doogan and another (Respondents) (Scotland)* [2014] UKSC 68 at 40.

mindful that where an individual requests a special exemption bestowed upon him due to his religious beliefs or convictions, it is not oppressive or in fundamental conflict with the freedom of conscience to require some level of substantiation of genuine belief and, if that substantiation is not forthcoming, to reach a negative conclusion.¹²¹

5.76 Furthermore:

States are allowed to establish procedures to assess the seriousness of the individual's beliefs and to thwart any attempt to abuse the possibility of an exemption on the part of individuals... At the same time, there is a corresponding positive obligation on domestic authorities to ensure that procedures for establishing whether an applicant is entitled to conscientious objector status are effective and accessible.¹²²

5.77 Article 9(2) ECHR provides that the right to freedom of thought, conscience and religion can only be interfered with in certain circumstances. The interference must be "prescribed by law" and be necessary and proportionate in pursuit of a legitimate aim, which includes the "protection of health" or the "protection of the rights and freedoms of others". On an occasion where a healthcare professional wishes to rely on their conscientious objection to abstain from treating a woman or girl who is in his or her care as the result of a termination this will require consideration of the individual circumstances as to whether the conscientious objection can be relied on. In some instances, the answer is not as clear-cut and a delicate balancing act of rights is required. For example, if there is a risk that enabling the healthcare professional's conscientious objection will impact the woman or girl's right to physical and psychological integrity (Article 8 ECHR).¹²³

5.78 However, some situations are more obvious and there are certain rights that prevail over qualified rights, such as Article 9 ECHR. For example, regardless of conscientious objection, healthcare professionals should

¹²¹ *Dyagilev v Russia* (2020) ECHR 212, at para 62.

¹²² *Dyagilev v Russia* (2020) ECHR 212, at para 63.

¹²³ *Bensaid v United Kingdom* (2001) ECHR 82, at paras 46 and 47.

prevent ill-treatment of the woman or girl in all circumstances (Article 3 ECHR) and take all reasonable steps to prevent real and immediate risk to life of a woman or girl that they knew or ought to have known of (Article 2 ECHR).¹²⁴ This approach is reflected in Regulation 12 of the Abortion Regulations and, through its engagement with healthcare professionals, the Commission welcomes that even in the absence of guidance that healthcare providers are clear there is no question that conscientious objection must be put to one side if a woman or girl's life is at risk.

- 5.79 Through the Commission's engagement with relevant stakeholders for the purpose of the project, the Commission met with representatives from the Catholic Church around their concerns on the implementation of termination services. Although not agreeing with the recommendations of the UN CEDAW Inquiry Report, the representatives expressed that any guidance on conscientious objection should be drawn from Article 9 ECHR and the relevant case law of the ECtHR rather than the decision of the Supreme Court.
- 5.80 A number of stakeholders reported that lack of regional guidance by the Department of Health on the provision of termination of services in NI, including how to define and manage conscientious objection, has created a lack of clarity and risks a disparity of approach across NI.
- 5.81 It was reported that within the health and social care trusts, they had each found a way to manage conscientious objection and it had not yet caused a barrier in terms of patients accessing termination services. The common approach has been to inform and train staff at an early stage on the change in legislation and requirements of the Abortion Regulations. Staff were then encouraged to discuss any queries or concerns with their line manager and instructed to inform their line manager in writing as soon as possible if they had a conscientious objection, and to not wait until a woman or girl presents seeking a termination. This meant that there was then clarity as to what staff members were available to provide termination services and support and which ones were not. However, there is an understanding that those with a conscientious objection may be required to provide aftercare to a woman or girl that has had a termination. One health and social care trust required all staff that could be working with a woman or girl that is accessing termination services to

¹²⁴ *Osman v UK* (1998) ECHR 101, at para 116.

fill out a form stating whether they had a conscientious objection and to indicate what actions they would or would not be comfortable undertaking. The Royal Colleges have provided additional support by discussing the change in law with members and informing all members to raise any issues with their line managers.

- 5.82 Some health and social care trusts indicated that they had sufficient staff to manage a situation where an issue of conscientious objection arose. However, in one health and social care trust the number of staff that conscientiously object is particularly significant. Workforce issues, particularly in midwifery, exacerbate this further. The highest rate of midwifery shortage is 30 per cent in one health and social care trust.
- 5.83 Healthcare professionals identified that conscientious objection is a very personal thing, and what a healthcare professional is willing to do or not do ranges from individual to individual. For example, one staff member may not be willing to take part in any stage of the process, while another may be willing to provide care either side of the actual act of terminating the pregnancy. Stakeholders felt the Abortion Regulations do not offer sufficient clarity in relation to this. Representatives of pharmacists have also raised that there is the impression that the Abortion Regulations are written in respect of doctors and nurses, and do not consider the role of pharmacists and the distribution of medication. The approach taken by pharmacists is that there is not an obligation on pharmacists that have a conscientious objection to stock particular medications or to directly provide information on accessing terminations in NI, but there is a requirement to refer women and girls to alternative pharmacists or healthcare professionals that can assist. Therefore, a number of stakeholders suggested that guidance from the Department of Health is required to provide clarity on what action a healthcare professional in a range of settings can or cannot conscientiously object to.
- 5.84 Some stakeholders reported that the lack of departmental guidance on conscientious objection raises concerns for more bespoke situations, such as nurses in schools. Specific concerns were raised at the lack of clarity on whether school nurses are required to provide information on terminations or to administer termination pills to pupils, whether they could refuse to respond to a pupil's query on termination, and whether the school nurse was required to refer the pupil to a person or organisation that could assist. Additionally, concerns were raised about the steps that a school

nurse could or was required to take in a situation where they did not have a conscientious objection, but termination was contrary the school's religious ethos.

5.85 In the absence of departmental guidance, stakeholders confirmed that they rely on definitions and guidance provided by the General Medical Council and the Nursing Midwifery Council. The General Medical Council published information for doctors on the changes to the abortion law in NI providing that doctors have a responsibility to provide patients with safe and effective care, in line with the standards set out in our guidance, including good medical practice, personal beliefs and medical practice, decision making and consent and confidentiality.¹²⁵ The General Medical Council's guidance on personal beliefs and medical practice outlines:

you may choose to opt out of providing a particular procedure because of your personal beliefs and values, as long as this does not result in direct or indirect discrimination against, or harassment of, individual patients or groups of patients. This means you must not refuse to treat a particular patient or group of patients because of your personal beliefs or views about them. And you must not refuse to treat the health consequences of lifestyle choices to which you object because of your beliefs.¹²⁶

5.86 The Nursing Midwifery Council outlines conscientious objection within its professional standards of practice and behaviour for nurses, midwives and nursing associates. It states that nurses, midwives and nursing associates who have a conscientious objection must tell colleagues, their manager and the person receiving care that they have a conscientious objection to a particular procedure.¹²⁷ They also must arrange for a suitably qualified colleague to take over responsibility for that person's care.¹²⁸

Particular challenges

¹²⁵ General Medical Council, 'Press Release: Changes to the abortion law in NI - information for doctors', 16 April 2020. Available at: <https://www.gmc-uk.org/news/news-archive/changes-to-the-abortion-law-in-northern-ireland---information-for-doctors>

¹²⁶ General Medical Council, 'Guidance for Doctors: Personal Beliefs and Medical Practice' (GMC, 2013), at para 8-16.

¹²⁷ Nursing and Midwifery Council, 'The Code: Professional Standards of Practice and Behaviour for Nurses, Midwives and Nursing Associates' (NMC, 2015), at para 4.4.

¹²⁸ Nursing and Midwifery Council, 'The Code: Professional Standards of Practice and Behaviour for Nurses, Midwives and Nursing Associates' (NMC, 2015), at para 4.4.

Training

- 5.87 Healthcare professionals confirmed that, due to terminations being criminalised in NI until October 2019, training on such healthcare services had not previously been provided by educational institutions and within the health and social care trusts in NI. Therefore, only healthcare professionals that have trained or worked in locations where terminations have been legalised for a significant period have any professional knowledge of such services. Even then, there is no guarantee that knowledge is up-to-date due to the previous lack of practical application in NI. Consequently, knowledge of termination services and support is limited to a small number of staff.
- 5.88 In terms of continuous professional training, it was reported that this is largely determined by the extent of a healthcare professional's role in the service they are providing. For example, only certain staff are reportedly trained in ultrasound scanning and those that are will usually work within gynaecology. Thus, staff working within sexual and reproductive health services, where early medical abortion services currently sit, may not have previously undertaken the required training on how to use such equipment. Furthermore, healthcare professionals raised that a lack of training in providing aftercare for patients after termination procedures was affecting the ability to provide an efficient wraparound service. This can limit the service that a health and social care trust can provide, for example, one of the reasons reported why a health and social care trust stopped providing termination services between 10 and 12 weeks gestation was because it became apparent that their staff felt unprepared due to a lack of training.
- 5.89 It was also reported that due to the lack of direction from the Department of Health on standardising training in preparation for the change of law, it was left to individual healthcare professionals as to whether they undertook training courses available elsewhere in the UK on termination services as part of their professional development, an option that reportedly became unfeasible due to staffing pressures and travel restrictions imposed as a result of COVID-19. Consequently, health and social care trusts reported that knowledge and experience is limited to a small number of staff on abortion procedures, the use of equipment and how to best to support women and girls during and after they access termination services within healthcare professionals in NI, particularly outside of the Belfast Health and Social Care Trust.

- 5.90 Before the Abortion Regulations were introduced, a medical abortion was permitted in very exceptional circumstances in NI, where the continuation of the pregnancy posed a real and immediate risk to the life or mental health of a woman. Unlike other health and social care trusts in NI, the Belfast Health and Social Care Trust provided such services as required for women and girls across NI and was the most prepared health and social care trust for the change in the law by already having the necessary equipment and a cohort of staff that is appropriately trained.
- 5.91 Rolling out the provision of termination services locally has reportedly involved many staff learning on the job, which has been a challenge. Healthcare professionals raised the need for a range of training across NI to ensure a professional, safe and supportive service is provided. For example, training on how to perform scans to determine gestation and understanding that patients may not want to be shown the screen during a scan. Additionally, training on the use of appropriate terminology and language when communicating with patients presenting for a termination.
- 5.92 From the Commission's engagement with stakeholders, it is clear the current provision of termination services relies on a small number of trained professionals and without adequately training more staff it will impair the best possible service going forward.

Equipment

- 5.93 Healthcare professionals raised access to appropriate equipment, particularly ultrasound scanners to determine gestation, as a challenge to their ability to provide seamless and efficient termination services in NI. Although not all patients undergoing early medical abortion require an ultrasound scan, there may be a need where there is uncertainty around dates, use of contraception or signs and symptoms of ectopic pregnancy. It was reported that, in some health and social care trusts in NI, scans are only available through gynaecology or within early pregnancy clinics. Although appointments are safeguarded in the case of this arising, it was raised that this requires complex coordination across clinics to ensure patients are seen as required, particularly when termination services and scans are not available on the same site, which can require separate appointments across multiple locations.

- 5.94 It was further raised that it can be inappropriate to have pregnant women or girls seeking a termination attend an early pregnancy clinic where they may be in the same ward as patients with missed or incomplete miscarriage. However, currently resources are not enabling this.
- 5.95 Issues in accessing equipment and subsequent reliance on gynaecology has been cited as one of the reported reasons why the Northern Health and Social Care Trust could not sustain its early medical abortion service.
- 5.96 As previously highlighted, first trimester screening and Non Invasive Prenatal Testing are not routinely offered in NI. These are not offered by the National Health Service and can only be accessed through the private sector. As a result, most foetal anomalies are diagnosed following the anomaly scan between 19 and 20 weeks, which in many cases is later compared to the rest of the UK.

Accessibility and privacy

- 5.97 A number of stakeholders reported that the current model for providing termination services in NI presents issues for women and girls, particularly in terms of travel and privacy.
- 5.98 A number of stakeholders raised that, currently, women and girls that are accessing termination services in NI can only access the clinic within the health and social care trust in which they are registered. As health and social care trusts cover a wide area, this may cause difficulties in terms of travel, particularly for those experiencing poverty or living in rural areas. For example, the Western Health and Social Care Trust covers a large area where patients from Omagh and Enniskillen and its environs may be required to travel to a clinic in Londonderry/Derry, yet there may be a closer and more accessible clinic in a different health and social care trust. Consequently, a number of stakeholders supported women and girls accessing whichever clinic is closest to them, even if this is within a different health and social care trust area. In practice, this is not happening under the current arrangements due to lack of resources.
- 5.99 Additionally, a number of stakeholders identified privacy as a potential issue for women and girls seeking a termination in NI. Healthcare professionals reported experiences where patients were worried about being recognised if they sought treatment within their own health and social care trust area and had requested treatment in another trust area.

This was linked to patients being aware that NI is relatively small, or that they may have friends or family working within the health and social care trust who they do not wish to know about them accessing termination services. In the first few months of health and social care trusts in NI providing termination services, there was an attempt made to accommodate women and girls that were concerned about their privacy within other health and social care trust areas. However, due to resource constraints this is no longer an option and health and social care trusts are only able to provide termination services to women and girls registered within their own area. Consequently, it was reported that depending on their circumstances, the only alternative options available to the women and girls affected is to travel outside of NI or to seek the support of unregulated services.

Contraception

- 5.100A number of stakeholders raised contraception as an important part of the remit of the early medical abortion service, ensuring that a wrap-around service is provided to women and girls who have had a termination. For example, one health and social care trust reported that around one in nine women or girls who had a termination presented for a further early medical abortion within one year.
- 5.101 Healthcare professionals were clear that contraception is an important aspect in preventing unplanned pregnancy. This is evidenced by healthcare professionals reporting that the temporary suspension of contraceptive services due to COVID-19, which affected women and girls' access to contraception, as the reason for a number of women and girls in NI becoming pregnant and seeking a termination. However, in reporting this development, healthcare professionals stressed that access to and knowledge of contraception was an issue that pre-dated COVID-19. Some stakeholders suggested that poor relationship and sex education in NI was identified as a key factor in this, a view that is also supported by a number of pro-choice civil society organisations. The Commission will be considering the UN CEDAW Inquiry report recommendation on reproductive sex education within a separate report.

Protecting women and girls from harassment

- 5.102 The UN CEDAW Inquiry report recommendation 86(g) requires that the NI Executive "protect women from harassment by pro-life protesters by

investigating complaints and prosecuting and punishing perpetrators.”¹²⁹
The Abortion Regulations do not address this recommendation.

- 5.103 Informing Choices NI and health and social care trusts confirmed that the location of clinics where termination services can be accessed in NI have been intentionally kept out of the public domain. At first, it was reported that a combination of this approach and COVID-19 restrictions on public gatherings helped to ensure that the same problems faced by MSI Reproductive Choices, when it had offices in NI, did not initially arise. However, before the service was suspended in October 2020, it was reported that protestors had started to gather outside the location of the clinic within the Northern Health and Social Care Trust carrying graphic placards and being verbally abusive towards staff.
- 5.104 A number of stakeholders have since informed the Commission that protests at a number of clinics are now being targeted on a weekly basis and have been over the past few months.
- 5.105 On protests, the UN CEDAW Committee recommended that the NI Executive “protect women from harassment by pro-life protesters by investigating complaints and prosecuting and punishing perpetrators”.¹³⁰ Claire Bailey MLA, is developing a Private Members’ Bill with the purpose of introducing legislation that will permit safe zones to be created around family planning and termination clinics to protect women and girls who are accessing such services.
- 5.106 In response to these reports, pro-life organisations in defence of the protests have argued for the right to freedom of expression (Article 10 ECHR). In this context, the right to freedom of expression is closely linked to the right to freedom of assembly and association (Article 11 ECHR). Article 11 ECHR protection requires peaceful assembly and that a protestor does not inflict bodily harm on anyone.¹³¹ However, both Articles 10 and 11 ECHR are not absolute rights and can be limited using proportionate measures that are necessary for the purposes of a legitimate aim, such as

¹²⁹ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW’, 6 March 2018, at para 86(g).

¹³⁰ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW’, 6 March 2018, at para 86(g).

¹³¹ Article 11(1), European Convention on Human Rights 1950; *Gülçü v Turkey* (2012) ECHR 1702, at para 97.

protection of health and for the protection of rights of others.¹³² In a situation where protests are preventing access to necessary healthcare, causing distress or possibly leading to harassment of patients and staff, protecting their right to physical and psychological integrity (Article 8 ECHR) becomes a factor.¹³³ Consideration of the individual circumstances will determine whether a protestor's Articles 10 and 11 ECHR rights or a patient/staff member's Article 8 ECHR right prevails.

5.107 In more extreme cases, if a woman or girl is prevented (physically or psychologically) by protestors from accessing vital reproductive healthcare that is crucial for protecting their right to life (Article 2 ECHR) it is likely that the woman or girl's Article 2 ECHR right will prevail over a protestor's Articles 10 and 11 ECHR rights. Additionally, if the protests have the impact of amounting to ill-treatment (Article 3 ECHR), as an absolute right, an Article 3 ECHR right prevails over a protestor's Articles 10 and 11 ECHR rights.

Groups of women and girls that require specific consideration

5.108 Many stakeholders highlighted that there are women and girls that may face additional challenges and barriers in accessing termination services in NI. These include girls under 18 years old, women and girls living in poverty, in rural areas, with disabilities, experiencing domestic abuse and from a migrant background, particularly where language is a barrier.

5.109 It was raised by stakeholders that these challenges or barriers can result in such women and girls finding termination services in and outside of NI inaccessible. Moreover, challenges or barriers, such as registering with a General Practitioner, can result in delays that cause the affected woman or girl presenting at a much later gestation and consequently being denied access to termination services in NI.

5.110 Healthcare professionals indicated that an ad hoc approach was taken to providing additional support to women and girls that were identified as having specific needs or challenges. Stakeholders indicated that such considerations were only identified if a woman or girl specifically raised the issues they were having or if the individual healthcare professional acted on suspicions that additional support may be required. It was confirmed

¹³² Articles 10(2) and 11(2), European Convention on Human Rights 1950.

¹³³ *Bensaid v United Kingdom* (2001) ECHR 82, at paras 46 and 47.

that guidance and training was lacking to aid a healthcare professional to provide the necessary support when challenges or barriers were raised or suspected.

5.111 Pro-choice civil society organisations voiced concerns that there is a lack of disaggregated data collected by the health and social care trusts, which would assist with identifying barriers to termination services in NI, and that women and girls that are particularly affected by such barriers. Health and social care trusts reported that extensive data collection is difficult without a fully commissioned service, which would assist with providing the resources necessary to undertake such a task.

6.0 Conclusions

6.1 Having assessed all findings and data provided, it is clear that the UN CEDAW recommendations have not been fully implemented in NI, as required under the NI (Executive Formation etc) Act 2019. There are two overarching issues: One is the lack of commissioning and funding of termination services through Department of Health arrangements to meet the Abortion Regulations. Second, is the lack of departmental guidance on how the Abortion Regulations should be implemented in practice. The Department of Health has a duty to ensure effective implementation of the Abortion Regulations and the NI Executive should provide the required support to accommodate this. However, the engagement the Commission has undertaken indicates that there is a lack of political consensus to ensure this happens while the Department of Health has not pursued the issue with any great vigour. As a result, the Commission has once again resorted to legal action to enable a legally required service.

6.2 This section considers the lack of commissioning and guidance in detail. It also considers the effect that the general lack of support from the Department of Health is having on other issues linked to the provision of reproductive healthcare in NI.

Lack of commissioning

6.3 It is important to highlight that the commissioning of termination of pregnancy services is not a matter of a lack of funding within the Department of Health, Health and Social Care Board or the Health and

Social Care Trusts, but rather a failure of government to fulfil the legal obligation to provide termination services.

- 6.4 The Commission commends the steps that the health and social care trusts have taken in an attempt to address the lack of implementation of the UN CEDAW Committee's recommendations and Abortion Regulations by the Department of Health and NI Executive. The Commission acknowledges that this has been at a financial cost and outside normal operational arrangements applied to the health and social care trusts. It has only been made possible through the commitment and dedication of the staff involved. From the barriers highlighted in terms of General Practitioners and pharmacists providing early medical abortions (for example, insurance issues, lack of training, and complexity of navigating conscientious objection across practice partners), the suggestion is that currently health and social care trusts are best placed to provide all termination services in NI. However, despite the efforts of the health and social care trusts and their dedicated teams, a comprehensive system and adequate resources for facilitating equal access to terminations in NI are still lacking and this needs to be addressed.
- 6.5 The lack of commissioning by the Department of Health has created a situation where health and social care trusts are having to rely on using existing resources to provide additional services, which are already stretched due to COVID-19. This has resulted in a disparity of services available to women and girls across NI. From 5 October 2020 to 4 January 2021 there were no termination services available to women and girls registered in the Northern Health and Social Care Trust area and from the 4 January 2021 to 1 February 2021 there were no services available to those registered in the South Eastern Health and Social Care Trust. More recently, from the 23 April 2021 the Western Health and Social Care Trust has ceased providing its Early Medical Abortion service.
- 6.6 At present, none of the health and social care trusts are offering services beyond 10 weeks, except in cases of fatal foetal abnormality and other emergencies. Therefore, the legal requirements of the Abortion Regulations are not being fully met.
- 6.7 Without commissioning there is a lack of resources to upskill existing staff, expand the staff teams and obtain additional specialised equipment.

- 6.8 The lack of central commissioning and guidance from the Department of Health has created a disparity between the health and social care trusts in the ability to access termination services in NI. Without specific directed funding some health and social care trusts had to temporarily cease providing services due to lack of resources.
- 6.9 Furthermore, all health and social care trusts have reduced their services to only up to ten weeks gestation. Informing Choices NI has also indicated that due to lack of ring-fenced government funding there is the risk that it will have to cease facilitating the Central Access Point, currently the only avenue through which women and girls in NI can be referred to the local termination services that are available. Indications from government correspondence is that the barrier to commissioning termination services in NI is a political decision, which raises serious questions of human rights compliance.
- 6.10 The lack of commissioned services is clearly impacting women and girls' access to termination services in NI, which is leaving those affected, whose personal circumstances permit them to do so, to look outside NI to access such services. In the continuing context of a global pandemic, this raises wider public health concerns with women and girls, who would not otherwise be travelling, being placed in a position where they and their points of contact have an increased risk of infection. Furthermore, failing to implement fully the Abortion Regulations that consequently expects some women and girls to travel to access termination services is arguably a violation of the physical and psychological aspect of the right to respect for private and family life (Article 8 ECHR) and UN CEDAW.¹³⁴

Guidance and training

- 6.11 The lack of regional guidance issued by the Department of Health on the implementation of the UN CEDAW Committee's recommendations and the Abortion Regulations is a notable and concerning omission.

¹³⁴ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 33; *In the Matter of an Application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion)* [2018] UKSC 27, at paras 27, 100, 127, 238, 287 and 371.

- 6.12 This creates concerns around safety. Health and social care trusts have been making every effort to ensure that the termination services provided are safe. However, without departmental guidance and additional resources, the trusts are reliant on a piecemeal collection of sources that do not directly and comprehensively address the new laws and practices in NI, and will inevitably lead to gaps that may be exposed over time. This creates an element of unnecessary risk, not only for the health and social care trusts, but for those women and girls that are accessing termination of pregnancy services in NI.
- 6.13 Lack of guidance has created uncertainty, with healthcare professionals continuing to question what is legally required. Consequently, this has contributed to the disparity between the health and social care trusts within NI in terms of what services are or are not being provided.
- 6.14 Lack of guidance has made navigating, managing and facilitating the complexities of conscientious objection difficult.
- 6.15 The lack of clear guidance on signs to look out for and steps to take when faced with women and girls that have specific considerations, runs the risk of leaving staff unfairly unprepared and the women and girls affected inadequately supported.
- 6.16 The need for clear regional guidance is closely linked to the need for mandatory, specialised training for healthcare professionals across NI. The dearth of such training at a local level was at one point driven by the criminalisation of termination services in NI. However, this is no longer the case and the NI Executive and Department of Health's reluctance to take steps to implement the UN CEDAW Committee's recommendations and the Abortion Regulations, which includes ensuring at minimum that all necessary staff are appropriately trained on delivering termination services and providing necessary support, is unacceptable. It has created an undue burden on staff in NI that are appropriately trained to provide the termination services that have been established, often at great personal sacrifice. It has prevented some health and social care trusts from providing the full range of termination services, contributing to a disparity of access across NI. It has hindered how effectively staff can support women and girls through the termination process, including identifying and dealing with special considerations, which in turn can be detrimental to the women and girls affected. The issue of training has also been compounded

by COVID-19, which has removed the previous option of travelling for training outside of NI in the interim, while a proper training structure is established in NI.

Telemedicine

6.17 Unlike in the rest of the UK, currently telemedicine can only be accessed in NI through unregulated service providers that are based outside of NI. With the correct systems in place, it has been asserted by a number of stakeholders that this is a safe service to offer and can be beneficial for women and girls that are in difficult home situations, live in poverty, live in rural areas or wish to retain their privacy. While the unregulated service providers that the Commission engaged with were adamant that this was not an issue, there is the question of whether driving such services underground due to lack of regulation raises safety concerns. It is clear from the figures provided, that even when termination services are available locally, some women and girls prefer to use telemedicine services or find such services more accessible. When matched against the disparity with the rest of the UK, where telemedicine terminations have been introduced up to ten weeks gestation as a response to COVID-19, it means that NI is behind the approach adopted elsewhere in the UK. This is to the detriment of women and girls' reproductive health.

Contraception

6.18 Contraception is an important element of reproductive healthcare. In the context of terminations, it can be crucial in preventing a woman or girl finding themselves in a situation of an unintended or unsafe pregnancy. Contraception services have been temporarily suspended due to COVID-19. It is only through such actions that health and social care trusts have been able to deliver termination services to some degree, nonetheless, it is worrying to hear that this has been at the expense of women and girls accessing contraception. This again highlights the need for the Department of Health to commission termination services in NI, so that other crucial services can be reinstated and maintained. Healthcare professionals have been clear that wrap around services are critical in reducing the number of terminations in NI. As a result, every available step should be taken to ensure health and social care trusts are not faced with the unpalatable choice of delivering one service at the expense of another. This does not

only make practical sense, but is a requirement of the obligation to provide access to “appropriate services in connection with pregnancy” under Article 12 UN CEDAW.

- 6.19 The new legislative framework provides a unique opportunity to develop an integrated sexual and reproductive health service for NI. Access to long acting, reversible contraception is particularly limited in NI. Such contraception can be particularly effective in reducing unintended pregnancies and terminations. Yet, enhanced provision and training for healthcare professionals in secondary and primary care is lacking to ensure this option is available.

Conscientious objection

- 6.20 Within the circumstances of the provision of Early Medical Abortion Service operating within the health and social care trusts, conscientious objection appears to have been accommodated to date. Medical and other staff have largely relied on their own professional bodies approach to this issue. However, without clear guidance it may result in healthcare employers erring on the side of caution, which may unnecessarily impact on the ability to provide reproductive healthcare services, including termination services.
- 6.21 The general approach of healthcare employers has been to request that staff identify when they have a conscientious objection and for this information to be used to ensure the affected staff are not placed in an uncomfortable situation and are equipped with referral information if necessary. However, without guidance there is a lack of clarity over what constitutes a conscientious objection and when this can or cannot be relied on by a staff member to excuse individuals from undertaking certain tasks. The result appears to be that many healthcare employers are removing staff members who have identified that they have a conscientious objection from any possibility of being involved in a particular woman or girl’s care. This increases the burden on other staff and has been identified in some health and social care trusts as affecting the termination services that they are able to offer. This may be unavoidable but, without clear guidance, any mitigation runs too great a risk for employers and becomes impossible to rely on.

Equipment

- 6.22 On equipment, the availability of modern facilities and equipment for scanning and systems that support the quality assurance of scanning is needed. Staff should also be adequately trained in performing and interpreting ultrasound scanning.
- 6.23 The appropriate equipment to enable surgical abortion across all health and social care trusts with the necessary training for staff is required as well as equipment and training for feticide.
- 6.24 Non-Invasive Pre-natal Testing should be introduced in NI through the National Health Service in line with the rest of the UK.
- 6.25 Furthermore, appropriate referral mechanisms into early pregnancy services where there are concerns regarding the scan, or around early pregnancy complications such as ectopic pregnancy, should be considered. More generally, it is important that there are sufficient interfaces between early pregnancy clinics, gynaecology, maternity and emergency departments and that staff should be adequately trained within these services on the needs of women and girls accessing termination services.

Data collection and monitoring

- 6.26 The available figures show that, when available, termination services are accessed locally. However, there is a need for centralised, disaggregated data to interrogate this further, particularly in terms of identifying potential barriers or areas of concern. This would be particularly helpful in developing a more accurate picture in terms of groups of women and girls that require special consideration. In terms of identified best practice, disaggregated data collection that is comprehensively monitored and published are common requirements of international human rights bodies.¹³⁵ It is helpful to disaggregate the data in a way that reflects

¹³⁵ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 85(f); CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 26(d); CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 14; CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017, at para 19.

society and considers groups of women and girls that face particular barriers. The UN CEDAW Committee has specifically highlighted “asylum-seeking and refugee women, migrant women, Roma and Traveller women, and victims of trafficking”.¹³⁶ In addition, throughout the course of this research other factors to consider include, but are not limited to age, rurality, experience of poverty, transgender, non-binary, and experience of domestic violence.

- 6.27 Furthermore, there is a lacunae in legislation that means the initiation of independent monitoring is significantly restricted.¹³⁷ This is a wider issue. In this context, the inability of the Regulation and Quality Improvement Authority to review of its own accord the impact that the current circumstances is having on reproductive healthcare provision is a potential missed opportunity to spur the Department of Health to take action.

Awareness raising

- 6.28 Stigma, fear and misinformation have been identified as preventing many women and girls from promptly accessing termination services in NI when they are available. This does not only apply to women and girls that may be using termination services, but also healthcare professionals that should be equipped to refer to or provide termination services. The need for comprehensive guidance and training for healthcare professionals is addressed above; however, there is a wider need for awareness raising across healthcare professionals and members of the public on all the options available to women and girls in terms of reproductive healthcare presently in NI.
- 6.29 The UN CEDAW Committee required that the NI Executive “intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception”.¹³⁸ The UN CEDAW Committee also required that information was provided on “sexual and reproductive health services, including on all methods of contraception and access to abortion”.¹³⁹ It is clear that the lack of a concerted effort by the

¹³⁶ CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report’, 8 March 2019, at para 49 and 50.

¹³⁷ Article 5, Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003.

¹³⁸ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW’, 6 March 2018, at para 86(e).

¹³⁹ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW’, 6 March 2018, at para 86(a).

Department of Health and NI Executive to support implementation of the UN CEDAW Committee's recommendations and Abortion Regulations has contributed to the lack of accessible, age appropriate, comprehensive and scientifically accurate up-to-date information that sets out what reproductive healthcare services are available, how to access them and the support that is available. This has placed many healthcare professionals in a difficult position and hindered the ability for women and girls in NI to obtain the information that they need to make an informed decision. That a service has been provided at all, is testament to the dedication of health care and other staff at a local level. Nonetheless, the services required by the Abortion regulations to fully meet the recommendations of the UN CEDAW committee report is still not in place.

7.0 Recommendations

Key Recommendations:

7.1	The Commission recommends the Secretary of State take the required legislative action under Section 9 of the Northern Ireland (Executive Formation etc) Act to ensure that the recommendations in paragraphs 85 and 86 of the UN CEDAW report are fully implemented in Northern Ireland.
7.2	The Commission recommends the Department of Health commission and fund abortion services including referral arrangements to fully legally comply with the Abortion (Northern Ireland) (No2) Regulations 2020.

Specific recommendations for the provision of services

7.3 On the basis of its findings and conclusions, the Commission has a number of further recommendations on how to improve the provision of reproductive healthcare services in NI and help ensure that such provision is human rights compliant.

	The Commission recommends that the Department of Health and relevant agencies:
7.4	Issue guidance for healthcare professionals and other staff, which reflects the law and how it should be implemented. The guidance should make provisions for conscientious objection, which reflects United Kingdom case law and human rights principles.
7.5	Ensure clear and accessible information is provided for the public on what termination services are available in NI and how to access these services.
7.6	Provide sufficient, long-term, ring-fenced funding for a Central Access Point as part of commissioning termination services. The Commission recommends the Department ensure the continuation

	and effective delivery of a referral pathway for termination services that upholds the privacy and confidentiality of women and girls.
7.7	Enable and provide the necessary support for telemedicine termination services up to 12 weeks during the COVID-19 pandemic. The Commission further recommends that the Department of Health considers commissioning telemedicine termination services up to 12 weeks on a permanent basis.
7.8	Enable training for all health care professionals and support staff to ensure the legally required services can be effectively delivered.
7.9	That the reproductive healthcare services, partnering guidance and training take account of special considerations and are formulated and implemented in a way that is accessible, age appropriate and sensitive to cultural barriers.
7.10	Collect and monitor disaggregated data on termination services in NI, including for the purposes of identifying and tackling barriers to accessing services.
7.11	Ensure that termination service providers in NI have sufficient resources to obtain and maintain equipment necessary for the provision of all services in line with the Abortion Regulations. The Commission further recommends that all relevant staff are appropriately trained to use this equipment.
7.12	Ensure that comprehensive, accessible information on and access to contraception is available including in the aftercare of a woman or girl that has accessed termination services. This should also include enhancing the provision of and training on long acting, reversible contraception.
7.13	Ensure women and girls are protected from harassment when accessing family planning information and termination services. This includes enabling the creation of safe or buffer zones as required and working with the Department of Justice to ensure that effective laws are in place and fully implemented to enable complaints of such harassment to be effectively investigated and that perpetrators are dealt with in accordance with such laws.

7.14	Provide the Regulation and Quality Improvement Authority with powers to conduct its own motion monitoring and inspections, in circumstances where it considers this is appropriate and necessary.

8.0 Annex: Human Rights Standards

8.1 There are a number of human rights standards that require consideration in the context of reproductive healthcare. These include:

- right to freedom from torture, inhuman and degrading treatment (Article 3, ECHR; Article 7, UN ICCPR; Article 2, UN CAT; Article 37(a), UN CRC; Article 15, UN CRDP);
- right to physical and psychological integrity (Article 8, ECHR; Article 17, UN ICCPR);
- right to freedom of thought, conscience and religion (Article 9, ECHR; Article 18, UN ICCPR; Article 5(d)(vii), UN CERD; Article 14, UN CRC);
- right to freedom of expression (Article 10, ECHR; Article 19, UN ICCPR; Article 5(d)(viii), UN CERD; Article 13, UN CRC; Article 21, UN CRPD);
- right to equal access to healthcare services, including those related to family planning (Article 12, UN CEDAW; Article 5(e)(iv), UN CERD);
- right to the highest attainable standard of healthcare (Article 12, UN ICESCR; Article 24, UN CRC; Article 25, UN CRPD); and
- freedom from discrimination (Article 14, ECHR; Article 2, UN ICCPR; Article 2, UN ICESCR; UN CERD; UN CEDAW; Article 2, UN CRC; Article 5, UN CRPD).

8.2 There are also a number of soft law standards that are relevant. These include:

- UN ICESCR Committee General Comment No 14;¹⁴⁰
- UN CRC Committee 2016 Concluding Observations on the UK;¹⁴¹
- UN ICESCR Committee 2016 Concluding Observations on the UK;¹⁴²
- UN CRPD Committee 2017 Concluding Observations on the UK;¹⁴³

¹⁴⁰ E/C.12/2000/4, 'UN ICESCR Committee General Comment No 14: The Right to the Highest Attainable Standard of Health', 11 August 2000.

¹⁴¹ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016.

¹⁴² E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016.

¹⁴³ CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017.

- UN CEDAW Committee Inquiry Report on Abortion on NI;¹⁴⁴
- Joint Statement by the UN CEDAW Committee and UN CRPD Committee on Reproductive Health;¹⁴⁵
- UN CEDAW Committee 2019 Concluding Observations on the UK;¹⁴⁶ and
- UN CAT Committee 2019 Concluding Observations on the UK.¹⁴⁷

¹⁴⁴ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee', 6 March 2018.

¹⁴⁵ UN CRPD Committee and UN CEDAW Committee, 'Guaranteeing Sexual and Reproductive Health and Rights for All women, in particular Women with Disabilities: Joint statement by the UN CRPD Committee and UN CEDAW Committee', 29 August 2018.

¹⁴⁶ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019.

¹⁴⁷ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

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