



Abortion mis-certification

Mental health grounds as a pretext for therapeutic abortion

A briefing document for SPUC members, health professionals and policy makers on the misuse of mental health grounds to authorise abortions.

- Abortion mis-certification describes doctors authorising abortion on the grounds that a woman's mental health will be at risk if she continues with an "unwanted pregnancy"
- Health officials and doctors are ignoring the evidence that abortion can make mental health worse
- The abortion law is a bad law made worse by the failure to enforce it
- The Secretary of State for Health must be challenged to uphold the rule of law and tell doctors to stop misleading women



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Executive summary

In 2011 the Department of Health commissioned a wide-ranging review of medical evidence to determine the effect of abortion on women's mental health.

This review concluded that:

"The rates of mental health problems for women with an unwanted pregnancy were the same whether they had an abortion or gave birth." Academy of Medical Royal Colleges, *Induced Abortion and Mental Health*, (2011, p8)

Abortion in Britain is legal only on grounds defined in the Abortion Act. Most abortions are certified by doctors on the grounds that continuing the pregnancy entails greater risk to the mental health of the woman than having an abortion. Abortion is widely practised on the basis of doctors certifying that there is a risk to women's mental health from an 'unwanted pregnancy.'

But the Department of Health does not want to tell doctors to stop the practice of certifying 'unwanted pregnancy' as a mental health risk.

The Academy of Medical Royal College's review, quoted above, points to the conclusion that there is a lack of good faith on the part of most doctors certifying abortions most of the time.

In March 2013 the then-Secretary of State for Health (Andrew Lansley) told the Telegraph that abortion on demand was not acceptable. According to the Telegraph, he said:

"It's not what Parliament intended and it's not what the law provides for," he said. "My job is to enforce the law."

Yet leading abortion providers like the British Pregnancy Advisory Service declare that the law has been interpreted to mean that an unwanted pregnancy is a threat to a woman's mental health, and that it therefore permits abortion on the basis of 'unwantedness.'

SPUC supporters are urged to help challenge the Secretary of State for Health to stop the breaches of the law, in the light of the evidence review which the Department of Health funded.

The Abortion Act – an unhappy compromise

The Abortion Act 1967 is designed as a compromise between pro-abortion and anti-abortion viewpoints. Clearly the Act is totally incompatible with the principled defence of a universal right to life upheld by pro-life advocates like SPUC. Equally, it does not give women a right to abortion: nor does it decriminalise abortion. Abortion remains a criminal offence (under sections 58 and 59 of the Offences Against the Person Act, 1861), but the Abortion Act creates exceptions to this law, allowing doctors to perform abortions for specified reasons. There are also various regulations and administrative requirements (e.g. about where abortions may be performed and registering abortions) that must be fulfilled.

Despite the supposed limits in the Abortion Act, it has led to the routine use of abortion for 'unwanted pregnancies'. In addition, the Department of Health insists that doctors must make abortion readily available to women of all social backgrounds (i.e. particularly to those who are poor and unsupported).

There is nothing new in this – this has been the situation since the early 1970s, if not before. But the Department of Health's recent analysis of medical evidence that has accumulated over the decades is now calling this into question.

New abortion guidance

In 2011, the RCOG (Royal College of Obstetricians and Gynaecologists) revised its influential abortion guidance, *The Care of Women Requesting Induced Abortion*, and published a new draft. The RCOG represents the majority of doctors providing abortion in Great Britain. In its draft, the RCOG supported the provision of abortion on mental health grounds, despite (a) increasing evidence that abortion harms mental health¹, and (b) the fact that there was no psychiatrist on the RCOG panel revising the guidance.

¹ Detailed reviews of the evidence have been published in academic journals by Priscilla Coleman, Vincent Rue, David Reardon, David Fergusson, Willy Pedersen and many others. Many of these studies are summarised and full references given in the monograph by Dr Greg Pike, *Abortion and Women's Health*, 2010, SPUC, pp 7-9.

This led to criticism of the RCOG's draft, and the Department of Health subsequently funded a review of evidence which was commissioned by the Academy of Medical Royal Colleges (AoMRC) and undertaken by the National Collaborating Centre for Mental Health. The review, *Induced Abortion and Mental Health*, was published in December 2011. This was a wide-ranging review that was meant to take account of all the published (English language) medical studies in the world into abortion and mental health.

The key point in the conclusions of this review was that a pregnancy being 'unwanted' was not a threat to mental health. And yet, there been no directive to doctors telling them to stop certifying women for abortions where the only issue is that the pregnancy is unwanted.

The Academy of Medical Royal Colleges' review: *Induced Abortion and Mental Health*

SPUC regards the AoMRC review as deeply flawed because it discounts much evidence of damage to mental health following abortion. Nevertheless, even accepting the report at face value, the conclusions explode the legal basis on which most abortions in Britain are performed – that pregnancy involves a greater risk to the woman's mental health than abortion. *Induced Abortion and Mental Health* included this point among its conclusions:

The rates of mental health problems for women with an unwanted pregnancy were the same whether they had an abortion or gave birth. (p.8)

The Abortion Act 1967 permits abortions on mental health grounds in these terms:

that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family
Abortion Act 1967, 1(1)a

It is the risk to the mental health of the pregnant woman that is the pretext for virtually all abortions under this clause, but the AoMRC review, undertaken for the Department of Health, confirms that "unwanted pregnancy" does not fulfil this condition.

Are doctors breaking the law?

Although an abortion which is performed after being certified on false grounds is strictly unlawful, the Abortion Act still protects doctors from prosecution. This is because the Act allows doctors themselves to be the judge of whether the grounds are met, and the only criteria for the judgement is the doctor's opinion, made in good faith, of the case. The doctor is not required to give any reason or justification for his opinion.

So what can be done? Although legal action against abortionists is not feasible at present, the political and departmental health bodies have shown that they can and will seek to ensure that the grounds for abortion are not exploited – as in the case of sex-selection abortions². We address the question of action below: see Political Action Now, page 3.

The extent of the abuse

The vast majority of abortions in Britain (97-98%) take place after doctors certify that the mother's mental health is less at risk from abortion than from giving birth. It is clear that most doctors certifying for abortion are not making individual assessments of the mental health of the woman. They are simply ticking a box for mental health grounds on the abortion certification form. The AoMRC review found that the idea that "unwanted pregnancy" was in itself a threat to mental health was not backed by evidence. It therefore does not meet the test in clause 1(1)a of the Abortion Act 1967³.

Addressing the mental health needs of women

A recommendation of *Induced Abortion and Mental Health* was:

Future practice and research should focus on the mental health needs associated with an unwanted pregnancy, rather than on the resolution of the pregnancy. (p.8)

² See for example: "Gender-selective abortion is illegal, Health Secretary Jeremy Hunt to announce" Telegraph, 22 May 2014 See references, p5

³ This is also referred to as "ground (c)" since this is the designation on the current abortion registration forms.

Some pregnant women do have mental health problems. They may need assessment, referral to a specialist and appropriate treatment. But instead the Department of Health is condoning the use of mental health as a cover-all reason for nearly all abortions. This is undermining the seriousness of women's mental problems and possibly denying them proper treatment.

The department of Health has failed to respond to this recommendation of the review panel, which requires doctors to address the mental health needs of pregnant women rather than simply referring them for abortion. The Department is treating (pregnant) women's mental health issues with utter contempt to justify an unlawful abortion-for-all policy.

What is the policy of the Department of Health?

The Department of Health, along with other medical establishment bodies such as the British Medical Association and RCOG, is driven by the principle that no woman should be refused a legal abortion⁴.

The Department of Health may argue that the Abortion Act requires only that a doctor need form an opinion, made in good faith, on whether a woman should have an abortion and that there is no need for evidence. This is being used to obscure the requirement for the grounds in the Act to be fulfilled.

This can be seen in the approach taken by abortion providers.

In 2001 Joan Greenwood, then Chairman of the private abortion service BPAS, wrote in the Journal of Medical Ethics:

Nevertheless the law, which appears highly restrictive on paper, can be interpreted liberally by doctors who

⁴ See, for example, Department of Health, *A Framework for Sexual Health Improvement in England*, 2013, p.34: "For those women who request an abortion it is important that they have early access to services, as the earlier in pregnancy an abortion is performed the lower the risk of complications. The Abortion Act 1967 sets out the circumstances in which abortions can be carried out in Great Britain. Unwanted pregnancy is experienced by women from all social backgrounds." (The Abortion Act sets out not only "circumstances" in which abortions may take place, but medical indications to which doctors must attest in order for an abortion to be permissible under the law.)

understand that it is detrimental to a woman's health to force her to endure a pregnancy and become a mother against her will. And, because the law has been interpreted in this way, it has met the needs of many women. The vast majority of abortions end unwanted pregnancies and are carried out by doctors who accept that it is damaging to the mental health of a woman to force her to endure a pregnancy against her will.

Journal of Medical Ethics (2001) 27:ii2-ii4

The position of doctors

The General Medical Council (GMC), which is the medical profession's governing body, tells doctors:

You must make sure that any documents you write or sign are not false or misleading. You must take reasonable steps to check the information is correct.

The GMC is clearly telling doctors to act reasonably when signing any forms. Is it reasonable for the Department of Health to argue that doctors may ignore evidence which shows that abortion is a mental health risk and authorise abortions on the grounds of unwanted pregnancy?

This does not mean that we can categorically state that all abortions on mental health grounds are illegal; there could be instances where doctors have sufficiently examined a woman and judges that the risk to her mental health is of the kind and severity that qualifies under the Act. SPUC holds that such cases do not justify abortion, but here we are simply looking at the law.

However, in practice, because doctors are ignoring the AoMRC conclusions, around 500 times a day doctors are signing abortion forms on false grounds.

Political action now

As noted above, the practice of abortion on demand is not new. For many years the response of the pro-life lobby to the practice of abortion on demand was that parliament must tighten the law. However, amending statute law is fraught with difficulties. For example, bills from private members have limited time allocated and so are easily obstructed. Introducing 'compromise'

amendments could actually make the abortion law worse than it already is. The more recent strategy of hitching abortion amendments onto government bills also entails serious risks.

Moreover, the position regarding medical evidence about 'unwanted pregnancy' is new and this conclusion of the AoMRC report should prompt calls to the Secretary of State for Health to uphold the rule of law and stop abortions that fall outside the grounds in the Abortion Act. The evidence review commissioned by the Department of Health itself means that abortion for 'unwanted pregnancy' can no longer be justified as legally permitted on mental health grounds. The situation where 98% of abortions are authorised on the basis of ticking a 'mental health' box cannot be allowed to continue.

The Secretary of State must ensure that his department upholds the rule of law⁵. In the wake of the Care Quality Commission's inspections of abortion clinics in March 2012, the Telegraph reported that:

Mr Lansley [then Health Secretary] warned that so-called abortion on demand was not acceptable. "It's not what Parliament intended and it's not what the law provides for," he said. "My job is to enforce the law." D. Telegraph 22 March 2012.

The present Secretary of State must take effective steps to enforce the law and stop abortions outside the terms of the Abortion Act. MPs must insist again and again that he should do so.

⁵ The 'rule of law' refers to the constitutional principle that no-one (including the government) is above the law: see for example, *Relations between the executive, judiciary and Parliament* (House of Lords, 2007) p. 103, where Professor Paul Craig argues that the principle of rule of law does not imply that all statute laws are consonant with the principle, but says "A state which savagely repressed or persecuted sections of its people could not in my view be regarded as observing the rule of law, even if [savagely practices] were the subject of detailed laws duly enacted and scrupulously observed." The rule of law is not a principle that defends unjust laws (as we hold the Abortion Act to be) but is the constitutional principle that at least if the government regard it as a just law, they must operate within the law.

There are other grounds for insisting that the Secretary of State takes responsibility for this issue:

- The Department of Health funds the NHS which employs doctors – it has a ‘chain of command’ responsibility for what doctors do;
- The Department of Health promotes policies which encourage abortion on demand;
- Abortion on demand harms society in numerous ways
 - o killing the unborn;
 - o hurting their parents (especially their mothers);
 - o encouraging irresponsible behaviour;
 - o generating contempt for women;
- Doctors may be liable to prosecution under the 1861 Offences Against the Person Act and may be susceptible to action relating to professional standards. The Secretary of State should warn them against such risks.

What we want Parliamentarians to do

In the first instance we want MPs and peers to raise this matter with the Secretary of State – by written or oral questions, or by correspondence.

We need MPs to ask the Secretary of State what actions he proposes to take to restrain doctors from performing abortions outside the terms of the Abortion Act. MPs might also ask him to ensure that doctors who decline to provide abortion in cases previously assumed by the Department to be legal are fully supported.

We must envisage a long-term effort to engage the Secretary of State on these issues, and SPUC will provide background research (on medical and legal aspects for example), and drafting for questions, motions, etc. We are also happy to review and comment on correspondence, and to seek legal/medical advice in this regard as appropriate.

Action you can take

Please contact your MP and ask him/her to take this matter up. MPs may wish to write to the Secretary of State or table questions. If they wish to table questions, they are welcome to contact SPUC HQ for assistance in drafting. Please let SPUC HQ know your MP’s response, and in particular, any response that he/she receives from the Department of Health.

Appendix

These are some of the objections that the Department of Health (or other defenders of abortion) may put forward to resist pressure to enforce the law.

Objection 1: “It is clear that the policy Parliament intended to introduce was one where doctors had a wide discretion to perform abortions – and the number of abortions now performed only reflects the fact that many doctors feel them to be necessary.”

Pro-life response: The statute sets down health grounds as one of the conditions for legal abortion. Parliament did not create an unlimited permission for

abortions. Other conditions include the requirement that only a doctor may perform an abortion, and abortions may only legally be performed in specified premises. The Department takes steps to ensure that only doctors authorise abortions, and that abortions are only performed in registered premises, but does nothing to restrain abuse of the grounds.

On the contrary the Department of Health officials, who insist on the premises requirement being enforced, condone, and even encourage, the grounds to be flouted, for example, by insisting that any GP who declines to refer a woman for an abortion must refer her to another doctor in order that she can access abortion services. In so doing, the Department assumes

that the only reason that a doctor would refuse to refer a woman for an abortion is because of a conscientious objection, and that any woman who seeks an abortion has legal grounds. The idea that a doctor might have formed the opinion that an abortion was contrary to the terms of the Abortion Act is not considered.

Other pro-abortion organisations such as the RCOG follow the same pattern in their information for doctors. They insist that any doctor who refuses a woman an abortion must refer her to another doctor. This policy has no legal basis.

Some doctors candidly declare that they provide abortion on request. No action is taken by the Department of Health to restrict them.

Objection 2: “If mental health grounds were strictly enforced, many women with unwanted pregnancies would be forced to bear children they did not want, with adverse consequences for women and children.”

Pro-life response: This argument fails to acknowledge that dividing pregnancies into ‘wanted’ and ‘unwanted’ is too simplistic: a significant body of evidence shows there is ambivalence in decision-making about abortion. Some of the studies in this field have used a variety of terms to distinguish shades of feeling like ‘unplanned,’ ‘indifferent,’ ‘unintended’ and ‘mistimed.’ (cf. Barrett & Wellings, 2002). Furthermore, many pregnancies that are initially unplanned or unwanted lead to births. The fact that a woman does not want to be pregnant, does not necessarily mean that she wants to have an abortion.

Objection 3: “ Clearly there are cases such as women who become pregnant through the trauma of rape, where doctors must be allowed to certify abortion on mental health grounds.”

Response: This argument rehearses the typical ‘hard case’ scenario, which was used to justify the introduction of the Abortion Act. It fails to balance the welfare of the mother or her rights with those of the unborn child. However, even if abortion were wrongly accepted in such cases, the AoMRC’s review calls into question the Department of Health policy of allowing abortion to be routinely performed on

mental health grounds. The review says that focus should be on the mental health needs associated with an unwanted pregnancy, rather than “resolution of the pregnancy”. In cases like rape, this might entail helping a woman to recover from the trauma of the assault, and to relate to the baby as a co-victim and co-survivor of the attack.

Objection 4: “The Minister and the Department of Health insist that the Abortion Act is being strictly enforced – with much better safety and reporting requirements than, say, the United States.”

Response: It is important to distinguish the (relatively) strict enforcement of the administrative regulations for abortion from the lax enforcement of the reasons or grounds for abortion that are at the heart of the Abortion Act

References

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Further appendices to this document can be found online at www.spuc.org.uk

Help ensure that more pregnancies
have a happy ending



*SPUC affirms, defends and promotes
the existence and value of human life
from the moment of conception.*

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