

Max Hill QC
Director of Public Prosecutions
Crown Prosecution Service
Rose Court
2 Southwark Bridge
London
SE1 9HS

c/o Rachael Clarke, Chief of Staff
British Pregnancy Advisory Service
Orion House
2 Athena Drive
Tachbrook Park
Leamington Spa
CV34 6RQ

14th July 2022

Dear Sir,

We are writing to ask that, as Director of Public Prosecutions, you issue urgent guidance to stop the prosecution of women who end their own pregnancies with immediate effect.

The need for urgent action

We are aware that at the current time, there are two women facing prosecution in England - one under s58 of the Offences Against the Person Act 1861 and one under s1 of the Infant Life (Preservation) Act 1929 – for ending their own pregnancies.

Both of these crimes carry a maximum life sentence, and both of these women are listed for plea hearings in the next week.

It is our strong belief that in the 21st century, in the shadow of the overturning of Roe v Wade, it is never in the public interest to prosecute women in these circumstances.

The law

While abortion in England and Wales is accessible, it remains a crime at any gestation under a law passed a generation before women even had the vote.

Under the Abortion Act 1967, abortions in England and Wales must be certified by two registered medical practitioners, they must take place at a hospital or premises approved by the Secretary of State for Health and Social Care (or at a woman's home prior to 10 weeks' gestation), and women must meet one of the grounds under which abortion is deemed permissible.

Despite the broad accessibility of care, there are a very small number of women who end a pregnancy outside of these parameters. They are often vulnerable women, in desperate situations, many with a complicated obstetric history or a history of mental health problems. However, due to the approach of the Crown Prosecution Service, rather than being provided with support in this moment, some of these women face a terrifying journey of criminalisation.

The women

Over the past 8 years, at least 17 women have been investigated by police for ending their own pregnanciesⁱ, though the actual number is likely to be higher.

One of the women currently awaiting a hearing self-administered the abortifacient misoprostol in 2021 in an effort to end her own pregnancyⁱⁱ. The other, in the first weeks of the pandemic, sought a legal abortion and subsequently passed a pregnancy at a later than expected gestationⁱⁱⁱ before being subjected to a more than two-year investigation by the police.

Elsewhere, there are reports of a woman arrested in hospital in 2021 and kept in a police cell for 36 hours after a stillbirth at 24 weeks, in a case in which we understand the CPS has recently reopened the investigation^{iv}. In another case a 15-year-old girl was investigated by police after a stillbirth at 28 weeks, accused of illegal abortion, her phone and laptop confiscated during her GCSE exams, and driven to self-harm by the year-long investigation – which concluded only when the coroner found that the pregnancy had ended as a result of natural causes^v.

In 2019, a woman was prosecuted for attempted child destruction after being pressured by the man who got her pregnant to take abortion pills after the 24-week time limit which he had obtained from a friend, claiming that he had cancer and turning up at her house telling her ‘we need to do this’. This was a case in which the CPS proceeded to trial despite the child being safely delivered, and in which the woman was only saved when the judge dismissed the charges mid-trial, saying that she had been in a controlling relationship^{vi}.

The CPS

Whilst the number of women investigated and prosecuted for ending a pregnancy is small, we believe that the CPS is investing an undue amount of resource in criminalising some of the most vulnerable people in society. In 2021, 89% of legal abortions were performed under 10 weeks, the percentage performed at 20 weeks was just 1%, those ending pregnancies at gestations beyond 24 weeks represent a tiny minority of women who are doing so in the most difficult circumstances. The tiny number of these who are ending pregnancies outside of clinical settings are doing so out of sheer desperation. The approach of police and prosecutors in the handling of these cases paints a disturbing picture of a service that is looking to “catch out” women, lacks understanding of – and sensitivity to – the situations of these women, and fails to respond proportionately.

For many women the decision to end a pregnancy is a simple and easy one taken in the first few weeks of pregnancy, for some, the decision of whether or not to continue a pregnancy is a hard one complicated by social factors, personal health struggles and difficult interpersonal relationships. One in three pregnancies will end in miscarriage and it is common to miscarry a pregnancy whilst weighing up the decision of whether to continue a pregnancy. The risk of criminalisation in this instance - as demonstrated in the examples included in this letter - is incredibly worrying.

We believe that, in 2022, it is never in the public interest to charge women who end their own pregnancy, and that no woman should face investigation or prosecution for ending a pregnancy or experiencing unexpected or unexplained pregnancy loss.

We ask that you issue urgent guidance to the Crown Prosecution Service with a clear signal to cease all current proceedings and to not bring any future charges against women or girls who end a pregnancy or experience pregnancy loss.

Yours,

Dr Edward Morris, President, Royal College of Obstetricians and Gynaecologists

Gill Walton, Chief Executive, Royal College of Midwives

Dr Tracey Masters, Abortion Care Lead, Faculty of Sexual and Reproductive Healthcare

Martha Spurrier, Director, Liberty

Lydia Parker, Women's Human Rights Programme Director, Amnesty International UK

Naima Sakande, Women's Justice Advocate, APPEAL

Anthony Metzger QC, Barrister, Goldsmith Chambers
Jude Bunting QC, Counsel, Doughty Street Chambers
Mark Gatley QC, Barrister, Garden Court Chambers
Natasha Rattu, Executive Director, Karma Nirvana
Amy Gibbs, Chief Executive, Birthrights
Amelia Handy, Policy Lead, Rape Crisis England & Wales
Justine Roberts, CEO and founder, Mumsnet
Jemima Olchawski, Chief Executive, The Fawcett Society
Selma Taha, Executive Director, Southall Black Sisters
Declan Owens on behalf of the Haldane Society of Socialist Lawyers, Co-Chair, The Haldane Society of Socialist Lawyers
Frances O'Grady, General Secretary, TUC
Jonathan Lord and Tracey Masters, Co-Chairs, British Society of Abortion Care Providers
Clare Murphy, Chief Executive, British Pregnancy Advisory Service (BPAS)
Richard Bentley, Managing Director, MSI Reproductive Choices UK
Aaron Flaherty, CEO, NUPAS
Helen Marshall, Chief Executive, Brook
Dr Hannah S. Barham-Brown, MBBS, BA Hons, BSC Hons, FRSA, GP Registrar and Deputy Leader WEP, Women's Equality Party
Janey Starling and Seyi Falodun-Liburdu, Codirectors, Level Up
Dr Charlotte Proudman, Barrister, Goldsmith Chambers
Clíodhna Kelleher, Barrister
Mary-Rachel McCabe, Barrister, Doughty Street Chambers
Clare Duffy, Barrister, Doughty Street Chambers
Donnchadh Greene, Barrister, Doughty Street Chambers
Bill Bowring, Professor of Law, Barrister, Birkbeck College; Field Court Chambers
Rebecca Chapman, Barrister, Garden Court Chambers
Helen Curtis, Barrister, Garden Court Chambers
Elena Papamichael, Barrister, Garden Court Chambers
Victoria Meads, Barrister, Garden Court Chambers
Danielle Manson, Barrister, Garden Court Chambers
Jodie Blackstock, Barrister, Garden Court Chambers
Naomi Wiseman, Barrister, Garden Court Chambers
Michael Goold, Barrister, Garden Court Chambers
Carl Buckley, Barrister, Guernica 37 Chambers

Poppy Henderson, Pupil Barrister, Guernica 37 Chambers
Tim James-Matthews, Barrister, Matrix Chambers
Paul Heron, Solicitor, Public Interest Law Centre
Katherine Erskine, Legal Advisor (Solicitor), BPAS
Tana (Christiane) Adelman, Solicitor, Carson Kaye Ltd
Trishna Kerai, Paralegal, Carson Kaye Solicitors
Keshina Bouri, Solicitor, Carson Kaye Solicitors
Patrick Lawrence, Solicitor
Nicola Louise Bailey, CNS
Meredoc McMinn, Barrister
Josephine Macintosh, Associate
Mara Clarke, Founder, Abortion Support Network
Dr Pam Lowe, Senior Lecturer, Aston University
Jayne Kavanagh, Co-Chair, Doctors for Choice UK
Andrew Copson, Chief Executive, Humanists UK
Ros Bragg, Director, Maternity Action
Polly Jackman, Co-ordinator, Sister Supporter
Ian Green, Chief Executive, Terrence Higgins Trust
Stephen Evans, Chief Executive, National Secular Society
Florence Schechter, Director, Vagina Museum
Marge Berer, Coordinator, International Campaign for Women's Right to Safe Abortion
Tilly Fahey, Sexual and Reproductive Health Nurse, Homerton Healthcare
Nick Begley, Sexual Health Adviser / Nurse, Homerton Healthcare Foundation trust
Jacqueline Vennard, Service Coordinator, Homerton NHS
Rebecca Kennedy Flynn, Specialist Nurse, Homerton Sexual Health
Esther Davis, Senior Staff Nurse, Homerton Sexual Health Services- NHS
Dani Anderson, Fundraising and Comms Manager, Abortion Support Network
Angela Costetsos, Outreach Development Practitioner, Open Doors

ⁱ <https://www.nationalworld.com/news/crime/abortion-uk-police-investigate-women-illegal-abortions-england-wales-us-states-bans-3749526>

ⁱⁱ <https://www.oxfordmail.co.uk/news/20083264.woman-24-court-accused-procuring-abortion/>

ⁱⁱⁱ <https://www.thesun.co.uk/news/11690506/police-probe-death-of-unborn-baby-after-woman-has-illegal-abortion-by-post-at-28-weeks-four-weeks-past-limit/>

^{iv} <https://www.independent.co.uk/news/uk/home-news/woman-police-custody-stillborn-birth-b2111991.html>

^v <https://www.theguardian.com/world/2022/jul/02/women-accused-of-abortions-in-england-and-wales-after-miscarriages-and-stillbirths>

^{vi} <https://www.dailymail.co.uk/news/article-7798101/Father-27-jailed-seven-years-manipulating-mother-abortion.html>