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(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY JR76

AND IN THE MATTER OF A CONTINUING DECISION BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO PROESECUTE THE FIRST APPLICANT

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Before: Morgan LCJ, Sir John Gillen and Sir Ronnie Weatherup

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MORGAN LCJ (delivering the judgment of the court)

[1] The applicants are mother and daughter. The mother was prosecuted for counts of unlawfully procuring and unlawfully subscribing a poison or other noxious thing (mifepristone and misoprostol), knowing the same was intended to be unlawfully used with intent to procure the miscarriage of her daughter contrary to section 59 of the Offences Against the Person Act 1861 ("OAPA").

[2] The challenge is to the decision of the PPS to prosecute. The relief sought includes a requirement that the prosecution is discontinued, a declaration that the decision amounted to a breach of the Article 8 rights of the mother and the Article 8 and Article 3 rights of the daughter and an award of damages in respect of those breaches. Nothing should be published which would directly or indirectly identify either applicant.

[3] Ms Quinlivan QC appeared with Mr Devine for the applicant, Dr Mc Gleenan QC appeared with Mr Henry and Ms Curran for the PPS and the Attorney General appeared with Ms McIlveen. Mr Robinson appeared for the PSNI to deal with an allegation that the arrest of the mother was based on illegally obtained evidence. We also received helpful written submissions from Amnesty International, the Royal College of Midwives, a group of service providers and Humanists UK. We are grateful to all counsel for their helpful written and oral submissions.

Background

[4] In or about June/July 2013 the second applicant took a home pregnancy test which was positive. She was 15 years old at the time. She had been in a relationship with a neighbour who was approximately a year older than her. Given her age at the time she was not legally in a position to give consent to sexual intercourse. She had been involved in this relationship for about a year and during the course of the relationship her boyfriend had been abusive to her both verbally and physically. These incidents continued after she had advised him that she believed that she was pregnant and included threats to kick the baby out of her and to stab the baby if it was born.

[5] She discussed with her mother, the first applicant, what she wanted to do about her pregnancy. Her mother reassured her daughter that she would be supported in whatever decision she made. She took time to think about the matter and then discussed with her mother and grandmother her options. It appears that prior to this discussion taking place, a friend of the mother had made her aware of the existence of online medical assistance in the form of tablets which could cause a miscarriage in very early pregnancy as an alternative to travelling to England for a termination. The mother also understood from her sister that a friend of hers had taken these tablets without complication. This led her to believe that they were safe and widely used. She also, in trying to obtain information to assist her daughter, read about the use of the pills on the British Pregnancy Advisory Service website.

[6] The mother's case is that when she was advised about obtaining 'abortion pills' on the internet she was not made aware that it was illegal to obtain them and the information she was given suggested that this was a safe and reliable method of procuring a miscarriage. The applicants discussed all options open to the daughter, including: continuing with the pregnancy and keeping the baby; giving the child up for adoption; and terminating the pregnancy, either by taking pills or travelling to England. They also discussed going to the doctor, however, it is the evidence of both applicants that the daughter adamantly refused to attend a GP at this time.

[7] The mother obtained the pills through a website entitled Women on the Web ("WoW"). That is a charity which enables the provision of mifepristone and misoprostol to women under 10 weeks pregnant in countries where abortion is illegal. Before providing the medication women complete an online questionnaire which asks questions about their pregnancy and health and the website indicates that the information is provided to medically trained doctors who will prescribe the pills if there is no contraindication.

[8] The second applicant has explained why she did not want to go through with the pregnancy in the following terms:

> "I was only 15 years old and I was frightened by the prospect of being a mother. I was still a child myself and I was not sure that I would be able to cope. I was still at School and was in my first year of the GCSE cycle. I had always planned to do A levels and I

> wanted to go to University. I knew that all of this would have been extremely difficult as a single mother.
>
> I had at this stage realised how damaging an influence [my ex-boyfriend] had been in my life. I had begun telling my mother bit by bit about the ways he had treated me and I realised that this behaviour could not be justified and was not normal. The idea of [my ex-boyfriend] being the father of my child and having him in my life in the long term made me physically ill. I was also genuinely afraid that if I did have the child he would continue to use the fact of his being the father to abuse me and I was also fearful that he could physically abuse the child if I decided to go through with a pregnancy."

[9] The mother received the pills in the post and her daughter took them in the manner directed. She has recounted that she experienced heavy bleeding on the day she took the tablets and experienced some abdominal pain and some bleeding over the next number of days. She was upset and distressed both before and after taking the abortion pills. She continued to be subjected to harassment from her former boyfriend at this time and she was persuaded by her mother to attend her GP because of concerns in particular about her emotional wellbeing.

[10] The GP recorded that the mother sourced pills online which were taken by her daughter the previous week. It was noted that the daughter was in a turbulent relationship with her boyfriend, her mood was low and she had thoughts of self-harm and life not worth living. She further noted that the daughter felt 'pressurised' into the termination, and that the mother blamed herself. The accuracy of this note is challenged by the mother and daughter. The GP made a referral to Child and Adolescent Mental Health Services ('CAMHS') and provided contact details for Lifeline.

[11] An initial assessment was carried out at CAMHS on 15th August 2013, in which both the mother and daughter were interviewed. Following this assessment the CAMHS Practitioner completed a UNOCINI referral to Gateway in respect of child protection issues, namely the abusive relationship between the daughter and her boyfriend, her sexual relationship, and the seriousness of the mother's actions in dealing with the pregnancy of her daughter. The UNOCINI records that both applicants were made aware of and consented to the referral. That is also in dispute.

[12] On 2 September 2013 a Detective Constable of the PSNI was made aware of a report of consensual underage sexual activity between minors. This would appear to be following a complaint made by the daughter and her father in August 2013 in respect of the daughter's former boyfriend. On 19 September that officer became aware of a Social Services referral in respect of the daughter, relating to the provision of abortion pills to her by her mother. That appears to have come from the Gateway

referral. Having failed to make contact with the daughter or her parents subsequent to the complaint, on 25 September the officer spoke to a GP at the mother's surgery who provided a synopsis of the daughter's medical history. This caused the officer and her sergeant concern for the welfare of the daughter, and they attended at her school to confirm that she was not in danger and had received medical attention.

[13] The PSNI then served a FORM 81 on the Trust and the daughter's GP requesting specific information in respect of the daughter for the purposes of the investigation. Relevant notes were received by PSNI from the GP and from CAMHS. A Pre-Interview Assessment was conducted with the daughter in the presence of her social worker in relation to any criminal offences arising from this background. She decided not to continue the ABE or further interact with PSNI. Her mother was interviewed by PSNI on a voluntary basis on 24 October 2013. The matter was referred to the Respondent which took the decision to prosecute the mother in November 2014. The decision to prosecute was then issued to the mother on 24 April 2015.

The Abortion Act 1967

[14] The Abortion Act 1967, which was amended by the Human Fertilisation and Embryology Act 1990, applies in England and Wales and Scotland. Section 1 provides that a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two medical practitioners are of the opinion, formed in good faith -

> (1) (a) that the pregnancy has not exceeded its twenty-fourth week and 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 the family; or
>
> (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
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> (c) that the continuation of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
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> (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.
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> (3) [except in cases of emergency]…. any treatment for the termination of a pregnancy must be carried out in a [National Health Service] hospital …. or in a place approved for the purposes of this section by the Secretary of State.

[15] The requirements for a lawful termination in England and Wales and Scotland as set out in section 1 of the 1967 Act include medical oversight, specified grounds for termination and treatment in an authorised place. Sections 58 and 59 of the 1861 Act apply in England and Wales so as to render unlawful the procuring of a miscarriage but do not operate where the conditions outlined in the 1967 Act have been fulfilled.

The use of the "morning after pill".

[16] The legislative scheme, by which the procuring of miscarriage is unlawful under sections 58 and 59 of the 1861 Act, subject to lawful termination of pregnancy under the 1967 Act, has had to address whether the "morning after pill" involves the unlawful procuring of a miscarriage contrary to the 1861 Act.

[17] Clearly the use of the morning after pill would not be saved under the 1967 Act as its use would not be subject to medical oversight nor would its use be limited to the grounds specified in the 1967 Act. However it has been held that the use of the morning after pill is not unlawful under the 1861 Act because its use does not amount to the procuring of a "miscarriage". See the decision of Munby J in *R (Smeaton) v The Secretary of State for Health* [2002] EWHC 610 (Admin) and [2002] EWHC 886 (Admin).

[18] The decision in *Smeaton* arose out of a challenge by the Society for the Protection of Unborn Children to the decision of the Secretary of State for Health on 8 December 2000 to introduce the Prescription-Only Medicines (Human Use) Amendment (No. 3) Order 2000. The effect of the 2000 Order was that the morning after pill, which had previously been available on prescription from a medical practitioner, would now be available from pharmacists without the need for a prescription.

[19] In order to understand the finding that the morning after pill does not occasion a miscarriage it is first of all necessary to understand the working of the morning after pill. The morning after pill operates both by preventing fertilisation of the egg by the sperm and by preventing implantation of the fertilised egg in the womb. It did not operate to de-implant a fertilised egg already implanted in the womb. That stated, it then becomes necessary to understand what is meant by "miscarriage". A miscarriage involves the termination by the loss of a fertilised egg implanted in the lining of the womb. Accordingly, where the morning after pill operates to prevent implantation in the womb, there can be no "miscarriage". Thus the use of the morning after pill cannot offend the 1861 Act.

[20] The morning after pill is a contraceptive and not an abortifacient. This distinction therefore applies to all inter uterine devices that have the effect of discouraging a fertilised egg from implanting in the lining of the womb. Thus in England, Wales, Scotland and Northern Ireland the use of the morning after pill is lawful.

The use of abortion pills.

[21] Abortion pills are of a different character to the morning after pill. The pills are not contraceptives but are abortifacients, in that they de-implant the fertilised egg that has already been implanted in the womb. The medicines mifepristone and misoprostol are used to end the pregnancy. Mifepristone is taken first and blocks the effects of progesterone, the hormone that is necessary to maintain the pregnancy. The following day misoprostol is taken.

[22] Mifepristone and misoprostol have the effect of causing a miscarriage and their use for that purpose is unlawful in England and Wales and Scotland unless the requirements of the 1967 Act have been satisfied. Those requirements extend to the use of the pills under medical oversight, on the specified grounds, with treatment administered in an authorised place. Mifepristone and misoprostol have been lawfully administered in England and Wales and Scotland, in accordance with the provisions of the 1967 Act at approved places, under medical supervision.

[23] However the use of mifepristone and misoprostol that has been obtained online is not lawful in England and Wales and Scotland as such use would not comply with the requirements of the 1967 Act.

[24] Difficulties emerged in England and Wales and Scotland in relation to the women returning to the clinic for the use of misoprostol on the second day. Those difficulties have been addressed, in a manner that satisfies the requirements of the 1967 Act, by permitting the use of the misoprostol at home on the second day after attendance at an approved place under medical supervision on the previous day for the administration of mifepristone.

[25] The manner in which the 1967 Act has been satisfied relies on the power of the Secretary of State under section 1(3) of the Act to approve a place for the treatment for the termination of pregnancy. Section 1(3A) provides that, except in cases of emergency –

> "…. the power under subsection (3) of this section to approve a place includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places."

[26] This power has been exercised in Scotland by the Abortion Act 1967 (Place of Treatment for the Termination of Pregnancy) (Approval) (Scotland) 2017 with effect from 27 October 2017. The Scottish Ministers have exercised the power under the 1967 Act to approve the home of a pregnant woman who is undergoing treatment for the purposes of termination of her pregnancy as a class of place where treatment for termination of pregnancy may be carried out. The "treatment" for this purpose is the taking of the medicine misoprostol. The "home" for this purpose means the place in Scotland where the pregnant woman is ordinarily resident. Clinical guidance for professionals involved in the use of misoprostol to be taken at home, as formulated by the Scottish Abortion Care Providers Network, and relied on by the Scottish Ministers in introducing the new arrangements, stated that the treatment should be within 9 weeks 6 days of the pregnancy.

[27] It is a requirement of the Approval that the treatment must be carried out in the manner that:

(a) the pregnant woman has attended a clinic where she has been prescribed mifepristone and misoprostol to be taken for the purposes of the termination of her pregnancy; and

(b) the pregnant woman has taken mifepristone at the clinic and wants to carry out the treatment at home.

[28] This change was then given effect in Wales from 20 June 2018 when the Welsh Ministers exercised their powers under the 1967 Act to introduce the Abortion Act 1967 (Approval of Place for Treatment for the Termination of Pregnancy) (Wales) 2018. The Approval and guidance contained in a Welsh Health Circular are in the same terms as the Scottish Approval, as applied to Wales.

[29] The Department of Health and Social Care announced the same changes in England by "The Abortion Act 1967 – Approval of a Class of Places" with effect from 27 December 2018. The Approval was accompanied by guidance issued by the Royal College of Obstetricians and Gynaecologists ('RCOG'). The terms of the Approval in England are the same as those in Scotland and Wales, save that in England it is a requirement in the Approval that the gestation of the pregnancy does not exceed 9 weeks 6 days, rather than being included in the guidance as in Scotland and Wales.

[30] The taking of abortion pills obtained online remains illegal in England and Wales and Scotland. The requirements of the 1967 Act are not met. The essential concerns arise from the health implications of the use of the pills and thus there is a corresponding need for appropriate medical oversight and concern for the unsupervised nature of the online provision of abortion pills.

Health issues and the use of abortion pills.

[31] The health concerns are illustrated in the guidance that accompanies the Approvals issued in Scotland, Wales and England. The guidance in Scotland and Wales states absolute contraindications to the use of mifepristone or misoprostol, namely, inherited porphyria, chronic adrenal failure, known or suspected ectopic pregnancy, uncontrolled severe asthma and previous allergic reaction to one of the drugs involved. The guidance also advises caution in specified circumstances which require discussion with senior medical staff, namely, a woman on long term corticosteroids, asthma (to be avoided if severe), haemorrhagic disorder or anti-coagulant therapy, prosthetic heart valve or history of endocarditis, pre-existing health disease, hepatic or renal impairment, severe anaemia, severe inflammatory bowel disease, for example Crohns, or IUCD in place (to be removed pre-procedure). The woman is under direct medical supervision before the treatment commences, on the day of mifepristone administration and on the follow up plan, if such becomes necessary.

[32] The guidance in England issued by the RCOG is in a different form. Again there will be direct medical supervision and all women should be given a letter providing sufficient information about the procedure to allow another practitioner elsewhere to manage any complications. The provider of the service must ensure

procedures for safeguarding and child protection that are managed and delivered consistent with their registration with the Care Quality Commission.

[33] The WoW issue of abortion pills does not involve direct medical oversight. WoW provides for on-line consultation for consideration by a medical doctor who will provide the pills. As a preliminary the pregnant woman is advised to undertake an ultrasound, if possible. The WoW form states that an ultrasound is important because it can determine the exact length of the pregnancy and can diagnose an ectopic pregnancy. The WoW form also refers to the importance of being near basic medical care in case complications occur. Reference is made to the small chance of complications but the absolute necessity of being within one hour of help, referring to the loss of too much blood or infection. It is stated that if there is a problem the woman should always go the hospital or a doctor and adds "The doctor cannot see the difference between a miscarriage and an abortion. If you think the hospital staff might report an abortion to the police, you can tell them that you had a miscarriage." It would certainly seem ill-advised, despite the concern about the police, that a patient might be advised to give an incomplete history when medical assistance is sought.

[34] The WoW form does not include contraindications in the case of uncontrolled severe asthma. Nor does the WoW form apply the caution set out in the Scottish guidance requiring discussion with senior medical staff in all the circumstances indicated in Scotland. Nor does it appear that there is regulation of safeguarding and child protection measures. The guidance issued in the different jurisdictions may differ but what is common is that there are health issues involved in the use of the abortion pills, a recognition of the risk of complications, the requirement for direct medical supervision of the treatment and the need for a follow up plan to address the risks.

[35] The health issues are further apparent from the article referred to by the applicant by Aiken, Digol, Trussell and Gomperts entitled "Self-reported outcomes and adverse events after medical abortions through on-line telemedicine – population based study in the Republic of Ireland and Northern Ireland". The article reports the results of a study of 1000 women who underwent self-sourced medical abortion through Women on the Web in the Republic of Ireland and Northern Ireland from 2010-2012. The research indicates that 92 women self-reported symptoms which the article described as potentially serious complications, with symptoms including bleeding, fever, abnormal vaginal discharge or persistent pain continuing several days after abortion. 26 women were treated with antibiotics and 7 required blood transfusion. The research acknowledged the limitations of the study in that it relied on women's self-reports with respect to the outcome and complications of abortion and the researchers were unable to ascertain whether the treatment women received for potential adverse events was appropriate and necessary.

[36] In those cases where a child is pregnant as a result of sexual crime, the procuring of a miscarriage by the use of abortion pills will present a risk to the health of the mother and will require appropriate medical oversight, which the

legislative scheme in Scotland, Wales and England judges to be absent where the pills are supplied online.

The decision to prosecute

[37] The decision to prosecute the mother was taken in November 2014. In his affidavit Mr Agnew, Assistant Director PPS, set out the basis upon which the evidential test was met. In respect of the public interest test he indicated that there was a general presumption that the public interest test is met where there has been a contravention of the criminal law. He stated, however, that all the facts and circumstances of the case are carefully considered before deciding whether the public interest merits prosecution and consideration is also given to whether the public interest is met by dealing with the case by means of a diversionary disposal.

[38] In his affidavit he set out six factors affecting the public in his consideration:

(i) The offence under section 59 of the OAPA 1861 is one of some gravity and carries a maximum sentence of five years imprisonment. In enacting section 59 the legislature intended that terminations of pregnancy would only be conducted in a manner that was lawful. There was a public interest in ensuring that there was an appropriate sanction for those who sought to terminate pregnancy by sourcing abortifacient drugs from the internet.

(ii) The mother had no criminal record and nothing suggested involvement in other related cases. It was unlikely that an offence of this nature would be repeated. She was pregnant at the time of the offence and had subsequently given birth to a child in October 2013. She said that she was unaware that her actions were unsafe and potentially unlawful and asserted that she was acting in the best interests of her daughter. The website used by her to source the abortifacient did not obviously highlight the fact that use of this medication in Northern Ireland could be unlawful. It appeared that the mother was attempting to be supportive to her daughter and was present with her when she attended with the GP on 30 July 2013. These were public interest considerations against the prosecution.

(iii) Consideration was given to the potential impact upon the health of the child. The materials provided by police recorded that she had suffered from low mood and there was a record made during her attendance with her GP in July 2013 that she had engaged in some acts of self-harm. These incidents were said to be related to her relationship with the father. Police established that there were no further appointments with the Child and Adolescent Mental Health Service subsequent to police intervention in July 2013. There was no other evidence that the prosecution would adversely affect the daughter's mental health other than the stresses that inevitably attend upon a criminal prosecution.

(iv) There are clinical risks of complication with the use of abortifacient drugs which can result in the need for surgical procedure. The risks increase if the medication is taken outside the appropriate gestation period prior to 9 weeks gestation. In this case the evidence suggested that the medication had been taken in accordance with the recommended timescales. The prospect of longer term risk to the mental health of the child to whom these medicines had been administered was also considered.

(v) There was some evidence that the practice of acquiring abortifacient drugs on the internet for administration in Northern Ireland was not uncommon. It was considered that it was in the public interest to deter such practices given the unregulated nature of the activity and the potential risks posed to those taking the medication.

(vi) Consideration was given to the possibility of a diversionary disposal. It was considered that the fact that the offence pursuant to section 59 was triable only on indictment, that it carried a maximum sentence of five years imprisonment and that there had been no guideline judgment in this jurisdiction indicating the type of sentence likely to be imposed for an offence of this type argued against such a course.

The Correspondence

[39] The mother was advised of the decision to prosecute on 24 April 2015. On 15 December 2015 her solicitors served a pre-action protocol letter on the PPS indicating an intention to apply for judicial review of the prosecution decision. It was argued that the decision to prosecute the applicant had been made when many others in a similar position had not been prosecuted. The information relied upon was contained in an FOI response to enquiries about police decisions. The PPS were obliged to treat the applicant in an equal fashion to those in a like position. The decision to prosecute, it was contended, represented unequal treatment and was unlawful. A pre-action protocol letter in the same terms was eventually issued to the PSNI on 3 February 2016 and the PSNI replied on 7 March 2016 indicating that once the evidential test was met it was a matter for the PPS.

[40] The PPS replied substantively on 12 January 2016. It was noted that the suggested comparators were people who had been the subject of police investigation. It was further noted that the FOI response indicated that the information provider did not hold complete details of conviction so that the information could not be said to be complete. The PPS could only take prosecution decisions in relation to investigation files that were actually submitted to it and the information provided by the PSNI by way of FOI did not suggest that all arrests actually resulted in investigation files being prepared and submitted to the PPS by the PSNI. No breach of the application of the Code for Prosecutors in relation to the test for prosecution had been identified. The perception of the applicant that others in a similar position had not been prosecuted did not demonstrate any unequal treatment by the PPS.

[41] On 24 March 2016 the mother's solicitors wrote again to the PPS asking that the decision to prosecute be reconsidered in light of the first instance judgment in Northern Ireland Human Rights Commission's Application [2015] NIQB 102 where Horner J held that there was a breach of Article 8 of the Convention by reason of the absence of exceptions to the general prohibition of abortions in cases of foetal fatal abnormality and pregnancies which are a consequence of sexual crime. It was contended that there had been some degree of medical supervision as a result of the pills being obtained from WoW, the family circumstances made it difficult to afford the travel to England and in many cases it appeared the prosecutions had not been launched although it was accepted that there had been some prosecutions under section 59 of the OAPA.

[42] The PPS replied on 26 April 2016 stating that it was clear that Horner J was considering only pregnancies as a result of rape and incest and not those arising from consensual sex with a 15 year old. It was not considered that the judgment provided support for the proposition that the prosecution constituted an abuse of process or a breach of the Article 8 rights of either the child or the defendant. It was confirmed that the PPS were aware of the circumstances in which the pills were obtained from WoW. It was also confirmed that there was no policy of not prosecuting cases of this nature. The facts and circumstances of each case can vary widely and reference was made to the prosecution of a 21-year-old who was sentenced recently at Belfast Crown Court.

[43] A further pre-action protocol letter was sent on behalf of the mother on 16 May 2016 which focused in particular on the breach of Article 8 of the Convention and contended in particular that the PPS misdirected itself in concluding that the daughter's pregnancy did not fall within the sexual crime exception identified by Horner J in concluding that a 15 year old was capable of having consensual sex. The PPS reply noted that there was no challenge to the finding that the evidential test had been met. Secondly, it was pointed out that in paragraph 2 of the second judgment given by Horner J it was made clear that sexual crime was defined in the judgment as meaning only rape or incest. It was not intended to include other crimes of a sexual nature. In order to prove rape it was necessary for the prosecution to prove in the case of a victim under the age of consent that she did not consent of the sexual penetration. The PPS had taken a wide range of factors into account in determining that the prosecution should proceed.

[44] On 12 December 2016 a pre-action protocol letter was sent to the PPS in relation to the daughter contending that the decision to prosecute the mother for assisting her in the termination of her pregnancy amounted to a breach of her Article 8 and Article 3 rights and was unlawful. These proceedings were issued two days later. The parties were subsequently notice parties to the appeals of the NIHRC case to the court of Appeal and the Supreme Court.

Recent events

[45] On 22 October 2019 the Northern Ireland (Executive Formation etc) Act 2019 came into force. Section 9(1), (2) and (3) provided as follows:

> "(1) The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.
>
> (2) Sections 58 and 59 of the Offences against the Person Act 1861 (attempts to procure abortion) are repealed under the law of Northern Ireland.
>
> (3) No investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever committed)."

In light of that legislation the charges against the mother were dismissed on 23 October 2019. The Northern Ireland Office is consulting on the implementation of the recommendations and in the meantime arrangements are in place for the provision of assistance with transport to England where terminations can be carried out at no cost. The recommendations in paragraphs 85 and 86 of the CEDAW report are as follows:

> "**A. Legal and Institutional Framework**
>
> 85. The Committee recommends that the State party urgently:
>
> (a) Repeal sections 58 and 59 of the Offences against the Person Act, 1861 so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health care professionals and all others who provide and assist in the abortion;
>
> (b) Adopt legislation to provide for expanded grounds to legalise abortion at least in the following cases:
>
> (i) Threat to the pregnant woman's physical or mental health without conditionality of "long-term or permanent" effects;
>
> (ii) Rape and incest; and 83 Mellet v. Ireland, Human Rights Committee, Communication No. 2324/2013. 84 CEDAW/C/GBR/CO/7 (2013), paras. 50 and 51 CEDAW/C/OP.8/GBR/1 19
>
> (iii) Severe foetal impairment, including FFA, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and

ongoing support, social and financial, for women who decide to carry such pregnancies to term.

(c) Introduce, as an interim measure, a moratorium on the application of criminal laws concerning abortion, and cease all related arrests, investigations and criminal prosecutions, including of women seeking post-abortion care and healthcare professionals;

(d) Adopt evidence-based protocols for healthcare professionals on providing legal abortions particularly on the grounds of physical and mental health; and ensure continuous training on these 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 this mechanism with the Department of Health, Social Services and Public Safety (DHSSPS) and the Northern Ireland Human Rights Commission; and

(f) Strengthen existing data collection and sharing systems between the DHSSPS and the PSNI to address the phenomenon of self-induced abortions.

B. Sexual and reproductive health rights and services

86. The Committee recommends that the State party:

(a) 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;

(b) Ensure accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;

(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 this area;

(d) Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory curriculum component for adolescents, covering early pregnancy prevention 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; and

(g) Protect women from harassment by anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators."

Consideration

[46] This is an application challenging the decision of the PPS to initiate and maintain a prosecution against the mother for offences contrary to section 59 of the OAPA. The applicants submit that the pursuit of the prosecution contravened the rights of each of them under Articles 3 and 8 of the Convention. There is a well-established line of authority arising from the decision of the House of Lords in R v DPP, ex p Kebilene [2000] 2 AC 326 that absent dishonesty, mala fides or an exceptional circumstance the decision of the DPP to initiate and pursue a prosecution is not amenable to judicial review.

[47] Kebilene also dealt with the forum within which such a challenge should take place. Lord Steyn said at 369H:

"The starting point must be the analogical force of the statute which excludes the High Court's power to review decisions of the Crown Court. Thus section 29(3) would prohibit an application for judicial review of the decision of the Crown Court judge refusing to hold a prosecution to be an abuse of process by reason of an alleged breach of the Convention. It would be curious if the same issue could be raised in the Divisional Court by means of a challenge to the decision of the prosecutor to proceed with the prosecutions. The policy underlying the statute would be severely undermined if it could be outflanked by framing the case as a challenge to the

> prosecutor's decision to enforce the law rather than as a challenge to the decision of the Crown Court judge to apply the law. It is also noteworthy that it is rightly conceded that once the Act of 1998 is fully in force it will not be possible to apply for judicial review on the ground that a decision to prosecute is in breach of a Convention right. The only available remedies will be in the trial process or on appeal."

Section 29 (3) of the Supreme Court Act 1981 did not apply in this jurisdiction but by virtue of section 1 of the Judicature (Northern Ireland) Act 1978 judges of the Crown Court are members of the Court of Judicature and not, therefore, amenable to judicial review. The same principle, therefore, applies in this jurisdiction.

[48] The applicants argue that the breaches of the Convention rights in this case are such that they constitute an exceptional circumstance entitling this court to intervene. It is also submitted that since the prosecution has now been withdrawn it is for this court to determine whether there was any breach of the applicants' Convention rights by the PPS as a result of the initiation and maintenance of the prosecution until 23 October 2019.

Article 8

[49] Article 8 of the Convention concerns private and family life. It provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The notion of private life is a broad concept. It includes the ability to live one's life without arbitrary disruption or interference and accordingly personal autonomy is an important aspect of private life. Family life has also been given a broad meaning by the ECtHR and includes the protection of the relationships between parents and their children.

[50] The first question which arises is whether the first applicant can claim to have her Article 8 rights engaged as a result of her prosecution for a criminal offence. The issue was addressed by the Supreme Court in SXH v Crown Prosecution Service (United Nations High Commissioner for Refugees intervening) [2017] 1 WLR 1401. That was a case in which a Somali national came to the United Kingdom using false

travel documents and when apprehended claimed asylum. She was charged with possessing a false identity document and remanded in custody. Nearly 6 months later she was granted asylum. The following day the Crown offered no evidence on the criminal prosecution since she would have had a defence as she had come to the United Kingdom as a refugee and satisfied other criteria.

[51] Giving the judgment for the majority Lord Toulson said at [32]:

> "32 By commencing a criminal prosecution the CPS places the matter before a court. In other Convention countries the court is itself in charge of deciding whether a person should be treated as an accused in a criminal case. There is a striking absence of any reported case in which it has been held that the institution of criminal proceedings for a matter which is properly the subject of the criminal law may be open to challenge on article 8 grounds (as Munby LJ observed in R (E) v Director of Public Prosecutions [2012] 1 Cr App R 66, paras 72-75). It would be illogical; for if the matter is properly the subject of the criminal law, it is a matter for the processes of the criminal law. The criminalisation of conduct may amount to interference with article 8 rights; and that will depend on the nature of the conduct. If the criminalisation does not amount to an unjustifiable interference with respect for an activity protected by article 8, no more does a decision to prosecute for that conduct."

In that case it was accepted that the false document offence was Convention compliant and that the CPS was reasonably entitled to conclude that the evidential test was met at the time. The court specifically left open the issue of whether Article 8 rights might be affected by delay although Lord Toulson was of the view that this was probably an issue under Article 6.

[52] Although there was no specific claim that section 59 of the OAPA was incompatible with either of the Convention rights upon which the applicants relied it was implicit in the case made on behalf of the applicants that the enforcement of the provisions breached the rights upon which they relied.

[53] The applicant also relied upon the admissibility decision in G v United Kingdom (2011) 53 EHRR SE 25 which concerned the prosecution of a 15 year old boy for having sexual intercourse with a 12 year old girl. He was convicted and sentenced on the basis that both parties had consented to the sexual intercourse and that he reasonably believed the complainant to be the same age as him. The Court concluded that the criminal proceedings against the applicant which resulted in his conviction and sentence constituted an interference by a public authority with his right to respect for private life.

[54] We accept, therefore, that the criminalisation of conduct can amount to an interference with the Article 8 right. We are satisfied that the attempts by the mother to find a medical solution to the pregnancy of her daughter engaged both her private life in the exercise of her responsibility for her daughter and for the same reason her family life bearing in mind the broad approach which should be applied to both.

[55] Having accepted that there was an interference with an Article 8 right it is then necessary to examine whether the interference was justified. The terms of section 59 OAPA are set out at [1] above and the decision to initiate the prosecution was in our view plainly in accordance with law. We also consider that the decision to prosecute had the legitimate aim of protecting the health of women and in particular in deterring the medically unsupervised administration of medication to procure an abortion in circumstances where there is a risk to the health of women and, in this case, children. The prosecution decision was clearly rationally connected to that aim.

[56] The prosecution papers include a statement from Dr Nicholas Morris, a consultant obstetrician and gynaecologist. He was asked to deal with the side-effects of the drugs and the risks of self-administrating without medical supervision. He noted that in clinical studies the majority of patients experienced abdominal pain, uterine cramping and bleeding which could last up to 2 weeks. He said that a standard protocol for medical management of termination of pregnancy would be to confirm gestation by ultrasound scan, screen for infection and provide appropriate counselling before and after the procedure. The prescription of prophylactic antibiotics was recommended. His statement was prepared in April 2015 and at that time medical supervision of the provision of both drugs was required in England, Scotland and Wales in accordance with WHO guidelines.

[57] Although that has been changed by Regulations in those jurisdictions, so that it is only the first pill that should be taken under medical supervision, it remains the position that the taking of the pills without direct medical supervision constitutes an offence contrary to section 59 of the OAPA. At paragraph [48] of her affidavit in these proceedings the daughter stated that she thought it unfair that her mother should be prosecuted just because she did something that was legal in England, Scotland or Wales. It appears that she has been misled. The mother's conduct would have been contrary to the criminal law of each of those jurisdictions and she would have been liable to prosecution in each such jurisdiction because of the absence of medical supervision.

[58] The next question is whether the means chosen for protecting women and children satisfies the least intrusive option test. The approach to this test was set out by Lord Reed in Bank Mellat (No 2) [2013] 3 WLR 179 at [75]:

> "75 In relation to the third of these criteria, Dickson CJ made clear in *R v Edwards Books and Art Ltd [1986] 2 SCR 713,* 781–782 that the limitation of the protected right must be one that "it was reasonable for the legislature to impose", and that the courts were "not called on to substitute judicial opinions for legislative

> ones as to the place at which to draw a precise line". This approach is unavoidable, if there is to be any real prospect of a limitation on rights being justified: as Blackmun J once observed, a judge would be unimaginative indeed if he could not come up with something a little less drastic or a little less restrictive in almost any situation, and thereby enable himself to vote to strike legislation down (Illinois State Board of Elections v Socialist Workers Party (1979) 440 US 173 , 188–189); especially, one might add, if he is unaware of the relevant practicalities and indifferent to considerations of cost. To allow the legislature a margin of appreciation is also essential if a federal system such as that of Canada, or a devolved system such as that of the United Kingdom, is to work, since a strict application of a "least restrictive means" test would allow only one legislative response to an objective that involved limiting a protected right."

Although examined in the context of decisions of the legislature the principle must also apply to decisions of public authorities for the same reasons.

[59] The use of the criminal law in order to secure the protection of women and children is well recognised and appropriate. The maximum sentence of five years imprisonment allowed adequate scope to reflect the many different circumstances in which the offence is committed. That policy approach was also taken in the rest of the United Kingdom.

[60] The Assistant Director of the PPS laid a proper basis for the need for a deterrent approach and guidance on sentencing. While recognising the additional protections relating to terminations in England and Wales and Scotland the prosecution for this offence was entirely in line with the position in the rest of the United Kingdom. We consider that the decision to prosecute was not unreasonable in light of the risk to the health of the child. There was, of course, an obligation to keep the matter under review but it appears that the PPS did so.

[61] The last step in the analysis of proportionality is the assessment of whether a fair balance was struck between the public interest in prosecution and the interference with the private and family life of the mother. In order to carry out that assessment it is necessary in the circumstances of this case to examine the position in relation to the daughter.

[62] The offence of sexual activity with a child is described in Article 16 of the Sexual Offences (Northern Ireland) Order 2008 ("the 2008 Order"):

> "*Sexual activity with a child*
>
> 16.—(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally touches another person (B),

(b) the touching is sexual, and

(c) either—

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this Article, if the touching involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years."

Article 20 of the 2008 Order provides that a person under 18 commits an offence if he does anything which would be an offence under Article 16 but the maximum period of imprisonment on indictment is a term not exceeding five years. The commission of the offence is not affected by the fact that the sexual touching was consensual. That may, of course, be relevant on the question of sentence if there is a conviction.

[63] In order to secure a conviction in the circumstances arising in this case the prosecution must prove that the boy with whom the sexual intercourse occurred did not reasonably believe that the daughter was 16 or over. Since that is a matter entirely dependent upon the knowledge or belief of the alleged offender it has no bearing on the consequences for the complainant or victim.

[64] The decision of the Supreme Court in Northern Ireland Human Rights Commission's Application for Judicial Review [2018] UKSC 27 was that the Commission had no standing to pursue its claim that the unavailability of services for the termination of pregnancy in cases of fatal foetal abnormality, rape and incest contravened Articles 3 and 8 of the Convention. In deference to the arguments that had been advanced the court went on to deal with the merits of the issue.

[65] Four members of the court, a majority, concluded that the absence of the availability of termination of pregnancy services in cases of rape contravened Article 8 of the Convention. Although not binding this decision on the substantive issues is highly persuasive and its reasoning should clearly be followed. Lady Hale stated that it was difficult to see any reason to distinguish between offences under Article 12 which concerned children under 13 and constituted rape and those under Article

16 where pregnancy occurred in circumstances where the child was "deemed incapable of giving a real consent to it". She considered that these were all situations in which the autonomy rights of the pregnant woman should prevail over the community's interest in the continuation of the pregnancy.

[66] Lord Mance recognised that the proceedings had been initiated with a narrow focus on the issue of rape. He noted that in the case of a pregnancy resulting from rape, a woman is not just expected to carry the foetus to birth. She is also potentially responsible for the child that was born under a relationship which may continue as long as both live. Causing a woman to become pregnant and bear a child against her will was an invasion of the fundamental right to bodily integrity. These comments transfer easily to the circumstances of children under 16 who become pregnant as a result of sexual intercourse to which they cannot legally consent.

[67] He also noted the profound physical and psychological changes involved in pregnancy and the continuing legal and practical responsibilities which occur after birth. He agreed that sexual crime is the grossest intrusion of a woman's autonomy in the vilest of circumstances. The law should protect the abused women not perpetuate her suffering. We do not consider that the fact that the child may have willingly engaged in the sexual intercourse should undermine these compelling reasons for concluding that the unavailability of services in Northern Ireland for termination of pregnancy in these circumstances is disproportionate and constitutes a breach of the Article 8 rights of the child.

[68] Lord Kerr with whom Lord Wilson agreed concluded that the denial of a woman's autonomy, which was an indispensable aspect of her right to private life, in cases of fatal foetal abnormality, rape and incest gave rise to a readily identifiable incompatibility. For the reasons we have set out the child in this case is to be treated as a victim of sex crime and to have been made pregnant as a result. In those circumstances the prohibition of lawful medical advice for children on the termination of the pregnancy cannot be properly distinguished from the analysis leading to a finding of a breach of Article 8 in rape cases.

[69] The second aspect of interference with the private life of the child related to the circumstances in which her medical details were obtained by the police. These were provided following the service of a personal data request form by the PSNI which was served for the purpose of the prevention, investigation and detection of crime. Section 29 (3) of the Data Protection Act 1998 permits disclosure of such personal data for those purposes. It was contended that the disclosure should not have been made without the consent of the child and that in any event such disclosure had a chilling effect on those who might need medical treatment on circumstances such as these. Clearly if this matter had gone to trial it would have been for the trial court to decide whether the prosecution constituted an abuse or whether some of the evidence ought to be ruled inadmissible. There is no separate claim against the PSNI pursued in these proceedings.

[70] The third aspect of interference concerns the effect on the child of the prosecution of the mother. In light of the broad definition of private life and family

life we consider that this at the very least was an interference with family life. We agree that this is another factor in relation to the child which should be taken into account in assessing the fair balance between the rights of both applicants and the public interest in the prosecution of the offence.

[71] There were a number of criticisms of the matters identified by the PPS as material to the decision to prosecute. We only consider it necessary to address two of those criticisms. The applicants submitted that although the PPS recognised that the second applicant was the potential victim of a crime it did not go on to find that the prohibition on the provision of services to the second applicant for the termination of her pregnancy was in breach of her Article 8 rights. We accept for the reasons set out above that that the applicant's submission on this point was correct and that the consideration of the fair balance must take that into account.

[72] The second issue concerned the characterisation of the sexual activity between the second applicant and her boyfriend as consensual. We accept that the reference to consensual activity did not indicate any failure to recognise the potentially criminal nature of the activity. The consensual nature of the crime in G v UK was considered by the ECtHR to be a relevant factor in the assessment of the Article 8 rights of the applicant but similarly did not excuse his criminal behaviour. We recognise, however, that this should not lead to a distinction between potential child victims of sex crime such as the second applicant and those who are victims of rape in dealing with the consequences of pregnancy where that arises.

[73] The affidavit of the second applicant indicates that she felt unable to continue with the pregnancy and give birth. The choices presented to her were to travel to England for a termination or to obtain pills online as the pregnancy was in its early stages. She was wrongly advised that it was not illegal to take pills obtained in this way and she was also unaware that in Great Britain such a course could only be taken under medical supervision.

[74] At paragraph [100] of the judgment in NIHRC Lord Mance indicated that in most cases where women are faced with this dilemma they travel to England. He recognised the stress and expense associated with travelling abroad away from the familiar home environment and local care. We accept for the reasons we have given that such a dilemma constitutes an unjustified interference with the Article 8 rights of the second applicant. We also accept that the applicants in this case were persons of modest means for whom the expense would have been considerable. It was suggested that it would have been difficult for the second applicant to travel to Great Britain without a passport. That was not perceived as a difficulty by the applicants at the time. The child was on her mother's passport and that was sufficient to enable her to travel. Although an issue was raised about whether the passport was in date it was not pursued in the evidence.

[75] Rather than take the undoubtedly difficult decision to travel to Great Britain the course taken by the first applicant involved the administration of the pills without medical supervision. In this case medical supervision would have entailed an assessment first of the capacity of the child to make the decision as to termination.

Assuming that the child had capacity the doctor would then have explained the options and ensured that the child's decision was voluntary.

[76] If so satisfied the next stage for the medical professional would have been the taking of a full medical history and an assessment of whether an ultrasound scan was required. Assuming no contraindication the mifepristone would then have been administered in the confines of the medical centre while the patient was supervised. Further advice on the taking of the second pill together with reassurance about what to expect and the necessity for aftercare would have been provided.

[77] The decision to prosecute needs to be seen, therefore, in the context of child protection and exposure to harm through unregulated treatment. The public interest in protecting children takes into account the nature of the risk to children and the measures taken to address that risk. For the broad reasons set out at paragraph [34] above we do not consider that the WoW website satisfies the requirement for protection of children.

[78] While the CEDAW report urged the repeal of sections 58 and 59 of the OAPA 1861 those recommendations, set out at [45] above, emphasised the importance of access to independent counselling, information and good quality healthcare on an age appropriate basis. None of these were available in this case to the child. The mother did not even establish that the taking of the pills was illegal and the child did not understand that the taking of the pills in Great Britain was under medical supervision. We do not consider that the decision to prosecute offended the fair balance between the Article 8 rights of the applicants and the public interest in the protection of the health of children in the circumstances of this case.

Article 3

[79] In the NIHRC case the court had to consider whether the current Northern Ireland legislative position necessarily involved a breach of Article 3 in respect of any pregnant woman faced with the choice between carrying her foetus to term or travelling abroad for an abortion. At paragraph [100] Lord Mance said:

> "Even when one takes into account that the present case concerns pregnancies where the foetus is diagnosed as fatally or seriously abnormal or is the result of rape or incest, it remains the case that the pregnant woman may, and it seems likely in most cases can if she chooses, travel elsewhere from Northern Ireland for an abortion. It is clear that this can be a distressing and expensive experience, even taking into account that it has now been accepted that the NHS should bear the costs of such an abortion in England. Nevertheless, this is the result of current Northern Irish legislative policy, which itself no doubt originates in moral *beliefs* about the need to value and protect an unborn foetus. In these circumstances, I do not see that current Northern

> Ireland law can be regarded as giving rise either generally or necessarily in any case to distress of such severity as to infringe article 3, any more than the European Court of Human Rights considered it to be in *A, B and C v Ireland*. Instead, the focus should be on individual cases, in a way which the Commission's actio popularis does not permit."

His view was supported by four other members of the court although Lord Kerr and Lord Wilson disagreed.

[80] In this case we have to determine whether the decision to prosecute gave rise to distress of such severity as to infringe Article 3 in the case of either applicant. The first applicant indicated that she had been extremely upset because of what her daughter had to go through and how the child's boyfriend had treated her. It appears that graffiti was put up locally and that was a further source of concern. The mother was also concerned that the GP went to the police. In her affidavit the first applicant said that she was extremely distressed at the prospect of facing serious criminal charges. She said that she had been having panic attacks and had been prescribed beta-blockers. She had been on antidepressants. There was no medical evidence in relation to the prescription of drugs and the reasons for it.

[81] The second applicant indicated that she was extremely upset that her mother was now being prosecuted for helping when she needed it. She felt responsible for the fact that she was facing serious criminal charges. She found it difficult to understand why she should be prosecuted for something that would be legal in England, Scotland or Wales and considered it unfair that she should be prosecuted just because they lived in Northern Ireland. It seems clear that she was unaware that what occurred was at the time unlawful in each of those jurisdictions.

[82] We recognise that the decision to prosecute will inevitably have caused upset to both applicants but in our view the evidence adduced in relation to the effect of the decision to prosecute does not reach the level to lead to an infringement of Article 3 in either case.

[83] Article 14 of the Convention was touched on in the argument but was not pleaded and in our view did not arise on these facts.

Section 6 of the Human Rights Act

[84] It was common case that this claim was based on section 7 (1) of the Human Rights Act ("HRA") on the basis that the PPS had acted in a way which was made unlawful by Section 6 (1) of the HRA. The relevant provisions of section 6 of the HRA are:

> "**6 Acts of public authorities.**
>
> (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if—

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions."

[85] In his oral submissions the Attorney General raised an argument under section 6(2)(b) of the HRA on the basis that the PPS was acting so as to enforce a provision made under primary legislation which could not be read or given effect in a way which was compatible with the Convention rights. Accordingly it was submitted that even if the prosecution infringed a Convention right there was no unlawful act. The applicants accepted that the PPS was enforcing section 59 of the OAPA and that the section was primary legislation.

[86] It was submitted on behalf of the applicants, however, that section 59 could be read down under section 3 of the HRA so that the word "unlawfully" would be interpreted to mean that the section would not apply where its application would breach a Convention right under Article 3 or 8 of the Convention.

[87] The applicants recognise that in the NIHRC case the Supreme Court did not read down section 58 of the OAPA and the reasoning informing that decision is largely contained in paragraph [157] in the judgment of Lord Kerr.

> "157. The 1861 and 1945 Acts are the foundation of the law on abortion in Northern Ireland. They forbid the termination of pregnancy unless it is required to preserve the mother's life. That has been interpreted to mean that abortion is permitted in order to save the mother from a condition of physical or mental devastation. That condition has been held to equiparate to long term or permanent effect on the mother's health which is both real and serious. I do not consider that it is possible to stretch the concept of "preservation of life" beyond these notions."

[88] It is apparent from paragraph [151] that he was speaking about both sections 58 and 59 of the OAPA. In those circumstances we do not consider that we should go behind this highly persuasive conclusion supported by the majority of the Supreme Court.

Conclusion

[89] For the reasons given the applications are dismissed. The abortion laws of England and Wales and Scotland have recognised the need for measures to safeguard the health and personal safety of women taking abortion pills. The absence of wider abortion laws in Northern Ireland did not necessarily render it unreasonable to apply measures designed to safeguard the health and personal safety of women taking abortion pills in this jurisdiction.