



Northern Ireland
Assembly

Committee for Health

OFFICIAL REPORT (Hansard)

Abortion Services (Safe Access Zones) Bill:
Ms Clare Bailey MLA

7 October 2021

The Chairperson (Mr Gildernew): That is fine, Clare.

Ms Bailey: Great. I will give you the context of the policy content in the Bill.

There are six main policy objectives in the Bill. If enacted, it will ensure that buildings that house organisations offering sexual and reproductive health services have safe access that is appropriate to their specific location and environment. Currently, terminations may be carried out in general practitioners' premises, clinics provided by health and social care trusts, health and social care trust hospitals operating under the overall Northern Ireland Health and Social Care (HSC) framework, and, concerning the second stage of an early medical termination, women's homes. The regulations also provide a power for the Health Minister to approve further places where medical abortion can be performed, with the power being able to be exercised at any point in time.

No provision for protesters is included in the Bill. The Bill will ensure that women and others visiting or working in the premises for a legitimate reason and anybody accompanying them are not approached unsolicited in the zone. The Bill seeks to prevent activities designed to cause distress or to deter a woman from approaching a building, such as filming, recording, unsolicited street counselling and pamphlet distribution. The Bill lists the behaviours. The other policy objective is to place an obligation on the appropriate Department officials to establish what a safe access zone for that specific premises looks like within one month. I think that we extended that to eight weeks for the service provider. That deadline is set so that it cannot go on for an indeterminate time.

That is the main content of the Bill. I am more than happy to take questions, if members have any.

The Chairperson (Mr Gildernew): Thank you, Clare. As a result of the Severe Fetal Impairment Abortion (Amendment) Bill, which we addressed in the previous session, we have heard huge concerns around this issue, including that people who access those facilities for other health services are also being impacted, as are people who are struggling with a difficult pregnancy and trying to keep it. How will your Bill help to protect users of health services, particularly vulnerable women?

Ms Bailey: I have had some disturbing and distressing experiences. I was with one young woman who was really distressed by the approach and behaviour of protesters. They threatened to film clients leaving clinics and upload it to social media. They said that they were from the BBC and that it would be reported on the news that night or that it would be reported to the PSNI. One young woman ran into four lanes of oncoming traffic to get away.

The situation has changed with the change in the legislation. We are in a different context from that in England, for example, where clients access specific premises. I hear from professionals and clinicians about the disruption caused by those protests when they happen outside Daisy Hill Hospital in Newry, for example. Speech and language therapy sessions are having to be changed or shifted in the building or cancelled altogether, because they cannot continue. There is also an effect on staff who have to come in and out. We hear about staff being recorded and intimidated, so they have to go through that continual disruption as well.

I go back to my experience with the Marie Stopes clinic in Belfast. That was in a nine-storey building. It had one floor in that building, and other businesses, such as legal services, recruitment agencies and admin services, operated in the same premises. Any woman of childbearing age was approached by the protesters. They were offered pamphlets. I do not want to go into the detail of what happened on the streets, unless you want me to. However, even staff and those who were accessing the Northern Ireland Housing Executive next door had to face that.

With the health trusts and the clinics, I know that, at the family planning clinic centre in College Street in Belfast city centre, for example, there are other businesses and services in that building. For example, the Blood Transfusion Service is there, and there is a heavy admin service. All staff, clients and members of the general public are approached by the protesters.

The Chairperson (Mr Gildernew): OK. We will go to members' questions.

Ms Ní Chuilín: Clare, thank you for bringing the Bill forward. It is a good Bill.

We heard some presentations from the medical professionals, and some of them were harrowing. I have also dealt with constituents who had to run the gauntlet at the protests. I have also spoken to colleagues and seen stuff on social media, particularly about Daisy Hill Hospital. One woman who was

going into that hospital to try to continue her pregnancy and had had complications was shown really graphic images. That woman and her partner had suffered a series of miscarriages, and that was very distressing.

I welcome the fact that there will be protections for people, but there is also a balance in the Bill. I think that you have that in clause 9. Well, I suppose that it is really clause 6. Will the offences for safe access zones cover some of the examples of harassment that I have outlined? The Bill rightly talks about a balance between people's right to protest and people's right to access health and social care. Can you elaborate on those, Clare? Those are my questions. Thank you

Ms Bailey: Thanks very much, Carál. I am glad that you picked that up, because it is not at all my intention to limit or remove anybody's right to protest. The Bill is really focused on being able to provide safe access to healthcare. It is about that balance of rights. I have engaged with the Human Rights Commission, the Equality Commission, the Secretary of State, the Northern Ireland Office and other bodies, and I will continue to do that. Obviously, when the Committee on the Elimination of Discrimination Against Women (CEDAW) did its full UK inquiry, one of its recommendations was safe access, but the Northern Ireland Office did not bring that forward. It is not my intention to overstretch or limit anybody's right to protest or freedom of assembly. I have been clear about that.

Article 11, in schedule 1 to the Human Rights Act 1998, deals with the right to free assembly. That is caveated, and I will read out to you and the Committee what those caveats are. Article 11 states:

"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."

That is caveated by:

"No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law".

It specifically mentions:

"in the interests of ... public safety, for the prevention of disorder or crime, for the protection of health".

I hope that the Bill strikes a balance in protecting those competing rights and does not restrict them in contravention of the freedoms and rights there.

Carál, you had two questions; I hope that that has addressed one of them. What was the second question?

The Chairperson (Mr Gildernew): What was the other one again, Carál?

Ms Ní Chuilín: It was about making sure that the staff and users of health and social care are protected. Given some of the harrowing examples that we have heard, with some members of staff having to accompany people to cars and things like that, I welcome that. The other thing was the protests and whether certain behaviour in safe access zones would be seen as intimidating behaviour or criminal behaviour. Do you have any examples of that, or will that be brought forward in guidance?

Clare, I apologise; I am keeping my camera off as much as I can because, like Jonathan, it keeps coming up that my Wi-Fi is unstable. It helps to keep the camera off.

Ms Bailey: That is fine. There is a real difficulty when we start to look at the harassment issue. Our current harassment laws mean that something has to happen to the same person on at least two occasions to constitute harassment. In my experience — I am sure that it is the same now — when clients and women are entering the clinic to access services, they are normally approached by one protester, but, when they are leaving, they are approached by a different protester. Under harassment legislation, that does not constitute harassment because it is two different people on two separate occasions.

When it was happening to us as escorts, we got the response that, because they are not trying to access you, they are not trying to harass you. There was a lot of dispute about what constituted harassment, but, that said, there were occasions when I — it was the same with all the clinic escorts at

the time — was spat on, splashed with holy water and called a "murderer". There were a number of incidents. In one case, when I reported it to the police, one protester was arrested and an investigation happened, but no prosecution took place in the end. I have been physically assaulted on a number of occasions, and I am not the only one. I do not feel that our harassment legislation is fit for purpose for what we are dealing with, and there is a concerted campaign of intimidation happening on our streets that our current legislation cannot deal with.

Ms Bradshaw: Thank you, Clare, for coming here today to discuss your Bill. I very much support it.

In the explanatory and financial memorandum (EFM), under the policy objectives, you list stopping certain activities outside the clinics and you reference "pamphlet distribution". In your preparation for the Bill, did you also consider banning the display of those huge graphic images of fetuses? As we know, they cause great trauma to the women entering the clinics, not least those who have suffered miscarriages. Did you consider that and discount it, or could you look at introducing that through an amendment to the Bill?

Ms Bailey: Thanks for that one. I am happy to look at that as an amendment. I was assuming that that was already covered under the provisions, but, if you feel that that maybe needs tightened, I am more than happy to look at that and have a conversation with you about it, Paula, if you want. Thank you for that. In my head, I assumed that it was covered, so I will certainly look at tightening that up.

Ms Bradshaw: Thank you, Clare. It sort of says "etc", and I was wondering whether that should be included, because those images can be huge and very overbearing, not only for those entering the clinic but for people who are just driving past. I appreciate your positive response, Clare, and I look forward to engaging with you on that.

Ms Bailey: Thank you.

Ms Hunter: Thank you, Clare, for being here this morning. Having spoken with representatives of the Northern Trust, I am mindful that there have been issues at clinics in my constituency that have caused severe stress to anybody receiving healthcare. Have you had any conversations with trusts about the Bill?

Ms Bailey: Thanks, Cara. Yes, I have, and I will continue to speak to them. I have not met too many of the chief executives, but I have contacted them. I also wrote to them recently. I have, however, been in contact with many of the staff. As far as this conversation goes, confidentiality is required, but those conversations will continue, without a doubt. They are vital in order to make sure that we get the Bill right.

Ms Hunter: Thank you. I welcome your clarification about one's right to assembly, to protest and to religious belief, which we all recognise. The harm and intimidation that you described, however, is wholly inappropriate. Thank you for coming to today's Committee meeting.

Ms Bailey: Chair, on that point, we should be cognisant that the Bill is not unique. Such measures have been taken in other states. For example, the USA, Canada, Australia, France and South Africa have implemented buffer zones in some shape or form. In England, measures have been implemented under public spaces protection orders (PSPOs), and legislation is going through Westminster to embed them further. In addition to the Bill that I am sponsoring, there is a draft Bill in the South. The Bill is not unique. Such measures have been challenged at the High Court in England, but the challenge and a subsequent appeal were lost. The challenge never made it to the Supreme Court. There is precedent for such measures in other jurisdictions, including England.

The Chairperson (Mr Gildernew): OK. Thank you.

Mrs Cameron: Thank you to the Bill sponsor, Clare, for your attendance, your briefing and your time this morning. I will say at the outset that my party recognises that those accessing abortion premises find themselves in incredibly difficult circumstances and may be traumatised by being confronted by *[Inaudible]* and local groups of protesters. We completely recognise the fact that, inevitably, staff get caught up in that as well. We recognise the fact that, often, services operate out of large buildings, along with different services, organisations and businesses. It is right and appropriate that nobody faces intimidation or harassment in any circumstance. We also recognise that pro-life activity and demonstrations take various forms, some of which are entirely legitimate, although others may

constitute intimidation or harassment. We need to strike a balance between addressing specific and evidenced criminal behaviours and tarring all public demonstrations with the same brush.

I will move on to questions. In clause 6, which stipulates the offences to be created, why is there no reference to offending behaviour having to be violent or threatening? I think, for example, of the threshold set out in the new Domestic Abuse and Civil Proceedings Act.

Ms Bailey: Thanks for that, Pam. As I said to Paula, if you feel that that clause might be worthy of an amendment, I will be happy to look at it and continue to talk to you about it. I was trying to strike a balance. My intent was not for the Bill to be severely restrictive or have heavy enforcement measures. I hope that, if the Bill is enacted, the PSNI will be enabled, first, to let people know that they are in that space and that such behaviour is not allowed and, then, to ask them to move on. I hope that they would move on. There is no imprisonment, for example. There is no jail time. I do not go to that level of enforcement. I suppose I chose not to do that because I just do not see the benefit of it. If others do, however, I am willing to look at that again. In my experience, violent behaviours are very insipid. Rather than being prescriptive, again, you are making me think about the detail, and, if that needs to be more explicit in the Bill, I am more than happy to look at it.

Mrs Cameron: That is great, thank you. That leads me to my second and third questions. Do you think that additional duties would be placed on police constables as a result of the Bill passing, because of the associated training, for example? Would that be proportionate, given that there is no provision for custodial sentences in the Bill?

My third question is about the practical concern that creating buffer zones could create new public safety and public order issues adjacent to Health and Social Care estates.

Ms Bailey: I hope that it will not be too burdensome and that it will not put extra pressure on the police. My experience is through Marie Stopes, where there ended up being a permanent police presence at the doors of the clinic. For every hour that the clinic was open, at least two officers were present just to monitor what was going on. If the Bill is passed, I hope that the legislation will enable the police to scale down the calls and the reports that they get and have to follow up. By having that safe access zone, people can protest at a safe distance so that that interference does not happen. I hope that addresses the question about the resource demand on policing.

The issue of training will probably need to be taken into consideration, but we know that there is a lot of training in relation to gender-based violence. We hear about a lot of domestic violence training for police officers and training in dealing with a lot of on-street harassment and attitudes, for example. Given that that training is ongoing, I envisage that raising awareness of the purpose of the Bill would be part of it. I recently met representatives from the police. They are keen to talk to me about the detail in the Bill. That meeting is currently being set up, if that gives you any reassurance.

Your third question has gone out of my head. Sorry, Pam.

Mrs Cameron: You are OK. I should not have asked them all together. It was about the practical concern that creating buffer zones could create new public safety issues around Health and Social Care estates.

Ms Bailey: The current situation is a matter of public safety. We see that playing out, but I hope that that can be addressed by passing the Bill. Since the abortion laws changed, we have seen more widespread disruption and protests on the streets. That is unsustainable. I know that abortion can be a politically contentious issue, and, to me, this is not about affecting that. It is not about anybody's personal opinion on abortion. That level of public disorder, with protests happening over such a widespread area, will continue to escalate. We need to acknowledge that and find a way to address it. I hope that the Bill can do that.

Mr Carroll: Thanks, Clare. I fully support the Bill. Thank you for bringing it to the Assembly. It is important.

Can I clarify that organisations will apply for the protected zones and that those zones will not be imposed? It is an application process. That is the way that it works under the Bill, yes?

Ms Bailey: Yes.

Mr Carroll: I underline the point that people who are anti-choice will still be able to protest and organise and even to display distasteful material that you and I and most people would find offensive. This just limits where they can do that. That is the aim of the Bill, is it not?

Ms Bailey: That is it. You said that it:

"limits where they can do that".

The Bill is about providing safe access. That is the key. Women, staff, service users and other building users just do not have that safe access at the minute. That is absolutely key. It does not impinge on civil liberties or human rights. It simply ensures, with the caveats that come with human rights and civil liberties, that everybody is allowed to go about their business unhindered.

Mr Carroll: Have you a sense of parties' support? I would hope that the majority of parties support it. Have you any sense of that? I think that Belfast City Council agreed a motion last year in support of the general principles. Are you aware of any other councils agreeing such motions or of support from public bodies for the principles of the Bill?

Ms Bailey: Correct me if I am wrong — I am not 100% sure — but I think that Derry and Strabane District Council also passed a motion. I think that there will be a motion in Ards and North Down Borough Council as well and maybe in Lisburn and Castlereagh City Council to sound that out. When those debates happened at council level, they got full cross-party support. To the best of my knowledge, there were no objections. People fully understand that this is about safe access, dealing with harassment and intimidation and keeping people safe on the streets.

Mr Carroll: Hopefully, that is good news for the Bill. Thanks.

Mr Buckley: Thank you, Clare, for coming before the Committee. My questions focus on the freedoms aspect. I take on board your comments that you have not been prescriptive and that, therefore, there is further opportunity to tease matters out. However, given that the Bill would effectively prohibit or limit, potentially, freedom of speech or assembly within the curtilage of certain Health and Social Care premises, for example, is the reference to fundamental freedoms in clause 9 just an afterthought, or are we serious about that aspect?

Ms Bailey: Sorry, Jonathan: in clause 9 —

Mr Buckley: Yes.

Ms Bailey: — as opposed to article 11 of the European Convention on Human Rights (ECHR) on freedom of assembly and association? Is that what you refer to?

Mr Buckley: Yes. Clause 9 talks about:

"the right to manifest religious belief, and the rights to freedom of assembly and expression, set out in Articles 9, 10 and 11 of the Convention, and in particular the right to protest."

Is that, essentially, an afterthought, given that the purpose would be to limit that freedom of assembly and protest?

Ms Bailey: That goes back to what I said earlier: those are caveated freedoms. With rights, obviously, come responsibilities. Every citizen has a responsibility not to limit other people's freedoms. That is why, when you look at clause 9 and Article 11 of the ECHR, you see that they set out the same freedoms. The freedom to manifest one's religion or beliefs shall be subject only to such limitations:

"as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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."

If those rights are being infringed, a democratic society is perfectly within its entitlements to bring forward law that balances the rights and freedoms of all people. The Bill does not remove the right to freedom of thought, conscience and religion. It does not remove freedom of assembly and association.

It simply allows for the rights of people who are trying to access particular premises not to be impinged on under those caveats.

Mr Buckley: Given that there is likely to be a wide difference of opinion on the interpretation of that and how it will have impact, how likely is it that there would be legal challenges to the legislation, if it were enacted, by those who advocate for civil liberties?

Ms Bailey: Of course, in a democratic society, anybody is free to challenge any legislation. However, I refer you to when safe zones were enforced under the public spaces protection orders in England. There was a legal challenge. It went to court. The challenge was unsuccessful, and an appeal was lodged to the Supreme Court. The Supreme Court decided to not allow that challenge and to uphold the original decision. That is as far as I can go in a more localised context, and I hope that that helps.

Mr Buckley: Might the number of potential challenges outweigh the benefits of the Bill in your name?

Ms Bailey: No, because the benefits will allow people to go about their business and access services and work without any fear, intimidation or harassment. That is something that we should all do our utmost to uphold. I do not see there being any conditions in which it would be OK for anybody in the Assembly to think that such impingement on someone was OK. That is what I am upholding. If people feel that they want to challenge that, that is OK; let us have a look at the challenges. I go back to the point that this is not about being heavy or prescriptive or trying to stop anybody's right to protest, campaign or hold particular views on particular issues; it is about us being able to acknowledge what is happening — acknowledge the infringements on staff and clients — and being able to balance those rights.

Mr Buckley: OK. Finally, the criminal offences established in clause 6 may be difficult to prove and, as mentioned, be open to a great deal of interpretation. How do we define offending behaviour that influences someone's decision-making?

Ms Bailey: In the explanatory and financial memorandum, you should find a list of proscribed behaviours and actions. It is about preventing people from being recorded without their consent and subjected to what is classed as "street counselling"; the list of behaviours is there. If you think, Jonathan, as raised by a few other members during the session, that that needs to be a bit more prescriptive or that the behaviours need to be further identified, I am more than happy to have that conversation with you and see if we can make it a wee bit sharper so that there is no —.

Mr Buckley: I am just thinking that there may be circumstances where behaviour can cause alarm and distress but not be criminal.

Ms Bailey: Absolutely, it can, and I have experienced the behaviours. I gave the example of one woman who was so distressed that she ran into four lanes of oncoming traffic, and I have many other personal experiences of the impact of those behaviours on women. There is research that shows the psychological harm that is being done and the longevity of its impact, which I am more than happy to share with the Committee, should it so wish. It was research that was carried out in Australia as it got ready for its legislation in this area. We have all heard personal testimony on the impact of such behaviour from a lot of staff, women and their partners and people who escort women and attend sessions with them. People, when they are trying to access services, are not really thinking about the wider political or societal contexts; they are thinking about themselves and accessing the services that they need, whether that is counselling, information or clinical help. When they are met with such behaviour on the streets, it has a severe impact.

Mr Buckley: OK, thank you Chair and Clare.

Mr Chambers: Clare, I fully support the intentions of the Bill. What we have witnessed over recent years has been appalling and unacceptable harassment. In recent days, we have started to see such behaviour around vaccination clinics. People should be able to seek medical treatment or advice without having to face intimidation. I look forward to the Bill progressing through the system.

Ms Bailey: Thank you.

The Chairperson (Mr Gildernew): There are a couple of other points that I wanted to touch on. Are there any financial implications? Clearly, there will be some. What is your view of the financial implications of the Bill?

Ms Bailey: The EFM sets out as far as I could go with the financial impacts. There are no directly comparable figures that we can put on that. I looked at the costs that were incurred by Ealing Council, which was the first council in England to introduce these protections. As of 2019, in Ealing Council, it was estimated that, in total, the order had cost approximately £250,000, which was largely to do with dealing with challenges through the courts. That goes back to Jonathan's question about people's freedom to challenge that. The EFM also states:

"The model for designating Safe Access Zones in Northern Ireland will aim to provide such zones for protected premises at an early juncture".

The resource cost in trying to establish what that zone would be would come from the Department's human resource. We do not expect that that would be a huge financial burden in any way, shape or form.

The Chairperson (Mr Gildernew): OK, thank you. Finally, what are your thoughts on the distance? I understand that that is for the Department to bring forward. You have shared your direct experience, which was harrowing. That has been helpful to us, and it is welcome that you, as the sponsor of the Bill, have that experience. I agree with you that it is absolutely unacceptable that a range of people who are trying to access health services, as well as the staff in those services, would be subjected to that behaviour on an ongoing basis. In your experience, what are the distances that would be helpful here?

Ms Bailey: That was something that we had to look at carefully. Again, it goes back to my direct experience. Premises have different locations, geography and environments around them. When I was looking at what was happening in England, the distance was often set at 100 metres or 150 metres. That does not suffice here because the context is different. If we have services being delivered in a city centre premises or, maybe, a more rural hospital or health trust premises, the geography around the premises is absolutely key.

Some cases — for example, Informing Choices, which is an advisory service — are very different. If a 100-metre zone were applied to all premises, it would not be enough for certain premises. That is why I wanted the departmental officials to make it specific to the building and take into account how a client would be, for example, able to get to a taxi, a bus or a car park without being watched or followed. Each case is different.

When we look at how the services are delivered in England, we can see that they are not delivered in hospitals or NHS settings; they are carried out by private clinics or charities, such as Marie Stopes or the British Pregnancy Advisory Service (BPAS). They are in, largely, residential settings. The services will be delivered in Northern Ireland in hospitals or GP practices, and health aftercare services, such as counselling, will be in other premises. Marie Stopes, for example, was in the same street as Informing Choices — the Family Planning Association, as it was at the time. Even in the same street, the geography around both buildings was different, as was staff access to car parks. Those unique circumstances need to be accounted for to make sure that safety is being provided rather than just a zone, if that helps.

The Chairperson (Mr Gildernew): It does make sense. Thank you for coming today, Clare, for presenting the principles of your Bill to the Committee, for taking members' questions and, in particular, your commitment to look at some of the specific issues that members have raised to see how those could be looked at with a view to improving the Bill. Thank you, and I wish you all the best for the time ahead.

Ms Bailey: Thank you, Chair and members. I am more than willing to have conversations or further meetings if members require.

The Chairperson (Mr Gildernew): Thank you. Go raibh maith agat.