

# Kent Academic Repository

## Full text document (pdf)

### Citation for published version

Sheldon, Sally (2016) How Can a State Control Swallowing? The Home Use of Abortion Pills in Ireland'. *Reproductive Health Matters*, 24 (48). pp. 90-101. ISSN 0968-8080.

### DOI

<https://doi.org/10.1016/j.rhm.2016.10.002>

### Link to record in KAR

<http://kar.kent.ac.uk/61053/>

### Document Version

Publisher pdf

#### Copyright & reuse

Content in the Kent Academic Repository is made available for research purposes. Unless otherwise stated all content is protected by copyright and in the absence of an open licence (eg Creative Commons), permissions for further reuse of content should be sought from the publisher, author or other copyright holder.

#### Versions of research

The version in the Kent Academic Repository may differ from the final published version.

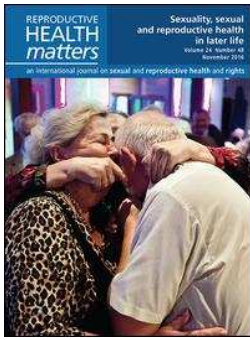
Users are advised to check <http://kar.kent.ac.uk> for the status of the paper. **Users should always cite the published version of record.**

#### Enquiries

For any further enquiries regarding the licence status of this document, please contact:

[researchsupport@kent.ac.uk](mailto:researchsupport@kent.ac.uk)

If you believe this document infringes copyright then please contact the KAR admin team with the take-down information provided at <http://kar.kent.ac.uk/contact.html>



# Reproductive Health Matters

An international journal on sexual and reproductive health and rights

ISSN: 0968-8080 (Print) 1460-9576 (Online) Journal homepage: <http://www.tandfonline.com/loi/zrhm20>

## How can a state control swallowing? The home use of abortion pills in Ireland

Sally Sheldon

To cite this article: Sally Sheldon (2016) How can a state control swallowing? The home use of abortion pills in Ireland, *Reproductive Health Matters*, 24:48, 90-101, DOI: [10.1016/j.rhm.2016.10.002](https://doi.org/10.1016/j.rhm.2016.10.002)

To link to this article: <http://dx.doi.org/10.1016/j.rhm.2016.10.002>



© 2016 Elsevier Inc



Published online: 26 Nov 2016.



Submit your article to this journal [↗](#)



Article views: 135



View related articles [↗](#)



View Crossmark data [↗](#)

## How can a state control swallowing? The home use of abortion pills in Ireland

Sally Sheldon

Professor, Kent Law School, Kent University, Canterbury, UK. *Correspondence:* S.Sheldon@kent.ac.uk

**Abstract:** *Evidence suggests that there is widespread home use of abortion pills in Ireland and that ending a pregnancy in this way is potentially safer than the alternatives available to many women. This paper argues that there is a strong case for women with unwanted pregnancies to be offered truthful and objective information regarding the use of abortion pills by trusted local professionals and, further, that this is possible within existing law. A move in this direction would not, however, negate the need for legal reform to address the fundamental moral incoherence of a law that treats women who terminate pregnancies within Ireland as criminals but those who travel to access services overseas as victims in need of support. In support of these arguments, the paper draws on both library research and a small number of interviews with government officials, service providers and activists. © 2016 Reproductive Health Matters. Published by Elsevier BV. All rights reserved.*

**Keywords:** abortion pills, medical abortion, Ireland, criminal law, telemedicine

### Introduction

An uneasy compromise, whereby an “abortion free Ireland” has historically relied upon women travelling overseas to end pregnancies, is challenged by the fact that abortion services can now travel to women. Today, safely ending a pregnancy is potentially possible with some simple instructions and a blister pack of pills, and both are readily accessible via a few clicks of a mouse. This paper examines some implications of this fact. It begins by setting out what is known regarding the home use of abortion pills in Ireland. While robust data has often been elusive, it is suggested that the evidence that exists points to a pressing public health need that is unmet by domestic services and, further, that home use of pills to induce abortion can offer a safer and potentially more attractive option than the alternatives facing many women in Ireland. The paper then moves on to consider some policy implications of these findings.

In addition to drawing on published sources, the paper relies on information gleaned from a small number of fact-finding interviews conducted in 2015 in the context of a project into the challenges which growing use of abortion pills poses for existing regulatory frameworks. In consultation with the project Advisory Group, potential interviewees were identified as individuals who would likely be able to offer particular insight into the use of abortion pills

in the Republic of Ireland, the regulation of such use, and the health consequences for the women concerned. All but two individuals thus identified (both of whom worked in roles concerned with enforcement of the law) agreed to be interviewed. Interviewees included government officials, online suppliers of the pills, family planning service providers, doctors and activists. The manner in which each interviewee is identified (fully, by just first name, or by role description) was agreed with the individuals concerned. All interviewees were given the right to approve and revise quotations prior to publication.

### Home use of abortion pills in Ireland

The Republic of Ireland has one of the most restrictive abortion laws in the world. The Constitution acknowledges that the “right to life of the unborn” is equal to that of the pregnant woman,<sup>1</sup> with abortion permitted only in cases of ‘a real and substantial risk’ to her life.<sup>2,3</sup> This legal framework has meant that only very small numbers of legal abortions are performed within Ireland (just 26 in 2014).<sup>4</sup> However, it has not prevented women from ending pregnancies through abortion. Significant numbers access services elsewhere, particularly in England, with abortion travel not just tolerated but actively supported by the state: the Irish Constitution also

enshrines rights to obtain information regarding abortion services overseas and to travel to access them.<sup>1</sup>

At the high point of recorded travel, in 2001, 6,672 women gave Irish addresses when ending pregnancies in England. By 2015, this number had almost halved (Table 1 below). While women may give false addresses, making these numbers inexact, this reduction is so marked as to suggest real and significant change. Its drivers are almost certainly multiple. Since 2001, the Government Crisis Pregnancy Programme (formerly the Crisis Pregnancy Agency) has overseen improved sex education, more effective contraceptive usage, support, information and aftercare for women who experience unwanted pregnancies.<sup>5</sup> The morning after pill was made available over the counter in 2011. Further, cheap flights make it feasible to access abortion services in other European countries, such as the Netherlands, although the number of women from Ireland accessing services there has seen an even sharper decline (to just 12 in 2013).<sup>6</sup>

Official accounts have relied on these numbers recorded in English clinics to suggest that “about 4,000 women from Ireland have a termination procedure every year”.<sup>9</sup> However, a further, unacknowledged, reason for the decline is that increasing numbers are aborting their pregnancies with medication obtained over the internet.

Survey data suggests that only 16% of women in Ireland (10% of men) in the general population are aware of “drugs or herbs” that can be taken at home to end a pregnancy.<sup>5</sup> However, once a pregnant woman begins to explore her options, she will easily find information about abortion pills online, along with the websites of a large number of organisations willing to supply them: at the time of writing, a Google search on “buy misoprostol online” yields 1.6 million hits, with the majority of the first two pages of results comprising sites with offers of supply.

Two organisations formed a particular focus of this research. In 2001, local activists invited Women on Waves to sail the “abortion ship” into Irish waters, greatly increasing public awareness of the existence of abortion pills in Ireland. A sister

organisation, Women on Web (WoW), formed ten years ago and now has 16 help desk workers based across three continents, working in 16 languages and replying to 8,000-10,000 emails from about 6,000 individual women from around the world each month (Gomperts, Founder and Director, WoW, interview). A second group, Women Help Women (WHW) was established in 2014, and has 22 volunteers, working in six languages and sending out some 3,000 e-mails per month (Jelinska, Director and Founding Member, WHW, interview). WoW and WHW are each strongly informed by values of social justice, solidarity and the empowerment of women. Each offers online advice and practical support, including arranging for the supply of abortion pills to those who request them. Ordering pharmaceuticals online risks contravening a general prohibition on the supply of medicines by mail order in Irish law,<sup>10</sup> with attempted imports seized by Customs. As such, Irish residents are asked for an address outside the Republic, with packages needing to be either collected or redirected from there. While this may add a short delay, this hurdle appears not to be decisive: local activists described to me how, as one means of avoiding import restrictions has been shut down, another has been found.

Irish women’s home use of abortion pills has been regularly cited in reports, online forums and popular media,<sup>11–14</sup> and was confirmed in my interviews. The Crisis Pregnancy Programme (CPP) is charged with development and implementation of a national strategy to address the issue of crisis pregnancy in Ireland. It receives annual reports from the counselling services that it oversees. The annual reporting form does not specifically request information regarding the numbers of women who have sought information regarding, or reported use of, abortion pills. However, services will occasionally raise this issue in a narrative section. Beyond those reports, the CPP was aware of only anecdotal accounts (Deely, Head of HSE Sexual Health and CPP; and Donlon, Funding Officer, CPP, interview). Staff at one of these counselling services, the Irish Family Planning Association (IFPA), confirmed that requests from women wanting information regarding the safety of abortion pills were sufficiently

**Table 1. Abortions in England and Wales by women who gave Irish addresses.<sup>7,8</sup>**

|                     | 2001 | 2004 | 2006 | 2008 | 2010 | 2012 | 2014 | 2015 |
|---------------------|------|------|------|------|------|------|------|------|
| Number of abortions | 6672 | 6217 | 5042 | 4600 | 4402 | 3982 | 3735 | 3451 |

routine as to not warrant specific reporting. They estimated dealing with around one request per week for information regarding the pills, with these coming at each of their twelve counselling centres, spread across the country. In some cases, women had brought pills into a meeting to ask if they were “the right thing”. However the IFPA is constrained in the advice that they can offer, providing no information on how to access or use pills, other than to advise women that they should always be taken under medical supervision. Women were then unlikely to return to tell staff what choices they had made (Niall Behan, Chief Executive, and Maeve Taylor, Senior Policy and Advocacy Officer, IFPA, interview). The legal framework governing information provision is further discussed below.

Unsurprisingly, the greatest knowledge of use of abortion pills lay with WoW and WHW; with local activists; and with the London-based charity, the Abortion Support Network (ASN), which offers practical support to Irish women facing unwanted pregnancies. WoW and WHW would not provide information regarding the numbers of pills supplied, emphasising that it is the number of requests for help that illustrates the true scale of the problem. Each talked in terms of contacts with women on the island of Ireland (combining the Republic and Northern Ireland, which has a similarly restrictive law). WoW reported that they were contacted by 200-300 women from across the island each month (Gomperts, WoW, interview). The more recently established WHW reported ‘daily contacts’, with requests ‘from all over [Ireland], from every age bracket. We have women writing for their daughters, I’ve had one woman of over 40, and we’ve had immigrants’ (WHW, Founding Member, interview). Combined, these figures suggest in the region of 3,000 discrete contacts to WoW and WHW each year (although some women may contact both groups, with one activist reporting that women sometimes confuse or conflate the two). In line with their respective populations, it is reasonable to assume that well over two-thirds of these contacts – from more than 2,000 women each year – come from the Republic of Ireland. It is also reasonable to assume that many women who have contacted these groups will go on to request abortion pills, and that most of these will go on to use them: once pills are supplied, WoW report a general non-usage rate of around one in ten.<sup>15,16</sup>

While these numbers are imprecise, on any reading, they suggest a very substantial health need that is unmet by domestic services, and WoW and

WHW are just two of the organisations who will arrange supply of the pills, with evidence from customs seizures confirming that women in Ireland are also attempting to access pills from elsewhere. Neither WoW nor WHW ship directly to the Republic of Ireland yet Irish Customs regularly block attempts to import mifepristone and misoprostol: in 2014, 60 consignments were seized containing 45 mifepristone and 972 misoprostol pills (see Table 2).

A common abortion protocol requires one tablet of mifepristone to be supplied with four, six or eight tablets of misoprostol. One convincing, albeit speculative, reading of these seizure figures is thus that they involved 45 attempts to import the pills for use following this protocol, with another 15 women having attempted to import just misoprostol (used alone, the latter is still an effective abortifacient and it is extremely cheap, thus typically being sold in packs of 60 or 90 tablets).

The numbers of seizures tell us little about how many women attempt to import pills, as it is impossible to know what proportion of packages are successfully identified at the border. While pills shipped directly from a reputable pharmaceuticals supplier are likely to be distinctively packaged in tamper-proof wrapping with clear labelling, this may not be the case where suppliers are less concerned with respecting relevant regulation or where pills are repackaged and redirected by a friend. We also know nothing about the authenticity or quality of the pills impounded, with packaging and a visual inspection alone generally being sufficient to establish that any medicines seized are unauthorised for the Irish market (Hugo Bonar, Enforcement Manager, Health Products Regulatory Agency, personal communication, 13 November 2015).

Finally, the potential for a lucrative black market exists in any product that is desperately

**Table 2. Customs seizures, Ireland (data obtained by Ruth Coppinger, TD).**

| Year | No. of Importations | Mifepristone | Misoprostol |
|------|---------------------|--------------|-------------|
| 2011 | 28                  | 15           | 620         |
| 2012 | 25                  | 16           | 471         |
| 2013 | 25                  | 14           | 424         |
| 2014 | 60                  | 45           | 972         |



desired but not readily legally available, with pills easily smuggled into Ireland in personal luggage or shipments of other products. While I was unable to gain any insight into the extent of such a market, there are some indications that it exists.<sup>11,17</sup> In 2005, a prosecution was brought against a woman for importing mifepristone from China and selling it in a supermarket.<sup>11</sup>

In sum, there are indications that home use of abortion pills within Ireland is widespread. That an estimated number in excess of 2,000 women each year from the Republic contact just two groups, WoW and WHW, suggests a compelling need for help, advice and support that is unmet by domestic services. Further, while the evidence considered below suggests that WoW and WHW operate with a high regard for women's safety, the same cannot be assumed for all suppliers. Women on Waves publish a warning to women to avoid a long list of suppliers who they had found to supply fake medications or send nothing at all.<sup>18</sup>

### *The safety and acceptability of home use*

Mifepristone and misoprostol are on the World Health Organization's list of essential medications.<sup>19</sup> Where properly used, they are effective in ending a pregnancy in over 98% of cases; they are extremely safe; and they can be supplied by appropriately trained and skilled non-doctors.<sup>20–23</sup> A significant literature describes the important role played by the pills in expanding access to abortion and improving the safety of care offered in a large range of settings.<sup>24</sup> Notably, it is growing more common for abortion pills to be supplied via telemedicine and evidence suggests that this can offer an effective provision model.<sup>15,16,25,26</sup>

Official Irish advice regarding abortion pills tends towards blanket statements about the dangers of sourcing any pharmaceuticals online or using the pills "without medical supervision".<sup>27,40</sup> Irish media also carry frequent reports drawing attention to purported dangers of home use of pills (see, for example<sup>28</sup>). However, such accounts ignore important differences regarding the authenticity of the medicines and quality of guidance as to their use offered by different suppliers. WoW and WHW each supply abortion pills for use within the first nine weeks of pregnancy, following an online consultation to ensure that there are no contraindications to use. Their work is funded through donations, with women who

can so afford invited to offer €70-90 to cover the cost of their own treatment and, where possible, to give more to support services for others. Women follow an evidence-based treatment protocol of oral mifepristone followed 24 hours later by sublingual misoprostol. Ongoing e-mail support is offered to women for as long as they want it. While I did not interview women who had used the pills, my interviews with WoW, WHW and local activists revealed no evidence that women struggle to follow these simple instructions when they take the pills outside of a clinic. I was given only one example of incorrect use: a woman who, desperate after finding herself pregnant as a result of rape, had taken abortion pills without going through the assessment offered by WoW or WHW and had simply swallowed everything at once (Irish activist, interview). While this posed no significant risk to her health, a second course of pills was needed to end an ongoing pregnancy. For the activist who shared this story, it illustrated the importance of women having the clear instructions offered by WoW or WHW.

However, the telemedical provision model does have certain implications for the service that can be offered. First, while many women confirm gestational age with an ultrasound scan,<sup>16</sup> this is not a prerequisite for treatment and WoW and WHW rely on women to provide accurate information. There is no direct evidence that routine ultrasound improves either the safety or efficacy of abortion procedures<sup>22,29</sup> and research suggests that gestation can generally be calculated with sufficient accuracy for safe use of abortion pills by last menstrual period.<sup>30</sup> Further, I was told that women typically seek help very early, with contacts beginning from one day after a missed period (Maaiké, WoW help desk staff, interview). However, in a small number of cases, women had given false information in order to access abortion pills in later pregnancy. In those instances, each group saw it as their responsibility to give neutral information regarding what a woman might expect were she to use the pills and how she could keep herself safe.

*"We do get women who write and say that they are actually later than nine weeks [...]. Those women have to be counselled very differently. They use a different dose of the medicine. But it's not that the risks are much greater, it's more that she has to be psychologically prepared for the process – this [the products of conception] isn't going to end up going down the toilet or on a menstrual pad. So it's about*

*informing her before she takes the medicine, so that she makes an informed decision.*” (Founding Member, WHW, interview)

*“We do rely on women’s own estimation of gestation. We tell women that it’s only safe to use the pills until a certain time, after that there is a higher risk [...] Sometimes they write to us after they get the pills [to say that their pregnancy is more advanced than nine weeks]. We tell them to take them in the waiting room of a hospital and then it’s the same as doing it as a clinic. The protocol changes a little bit. Women are so scared about their health that they might lie but only a few women will do that. And most women know early.”* (Gomperts, WoW, interview)

A scan can also serve a second purpose: to exclude the potentially life-threatening risk of an ectopic pregnancy. However, this risk is extremely low in the abortion seeking population, particularly when symptoms are absent,<sup>20,31</sup> and is not entirely eliminated when women are treated in a clinic.<sup>32</sup> Moreover, the woman who takes pills to end her pregnancy without first receiving a scan is at no greater risk than a woman with a wanted, continuing pregnancy, who is unlikely to be scanned before the point that an ectopic pregnancy is likely to burst. Further, women are advised that the absence of bleeding after taking the pills may offer an important indication of a problem: I was told of one woman thus prompted to undergo an ultrasound scan, thereby identifying a life-threatening ectopic pregnancy (Founding Member, WHW, interview).

Few women experience serious side effects as a result of early abortion using pills and pain is generally manageable using over the counter analgesia. One large study found that rates of hospital admission due to complications are extremely low, ranging from 0.04% to 0.3%.<sup>20</sup> Serious infection requiring hospitalisation is very rare and it is only in the most extreme of circumstances (estimated at just 0.03% of cases) that women require transfusion to replace excessive blood loss.<sup>20</sup> However, haemorrhage can be life-threatening if left untreated and WoW and WHW advise women to plan for it, emphasising that this makes a planned miscarriage considerably safer than if the same thing occurs spontaneously. This is, nonetheless, an important limitation of the care that can be provided through a telemedical abortion service. While each group offers ongoing support and advice by e-mail, the

medical treatment that they offer necessarily ends with provoking a miscarriage.

*“The service stops with being able to provide the early medical abortion. [...] You need to understand the limitations of what you can do. If you can’t see someone, then you can’t measure what a woman means when she says ‘I have a little bleeding’ or a ‘little pain’. The helpdesk are trained never to attempt an assessment. All they can do is to say that “we can’t make an assessment but if you have this, and this, and this, then you need to see a doctor now.” [...] We can’t replace local health care. You can give information, you can give pills, you can trust women to do it themselves but, if there is a problem, you need the local clinic to assess the situation.”* (Gomperts, WoW, interview)

*“It is important that you repeat to women that they need to have a plan for additional health care if they need it, so that they’ve thought about it ahead of time. Women tend to be very cautious. They expect the worst. They get instructions, a long list of side effects and potential complications and they expect that it will probably happen [...] Complications are the same for any miscarriage but [...] this is safer than spontaneous miscarriage because you are forewarned.”* (Jelinska, WHW, interview)

There is at least a hypothetical risk that heightened stigma regarding illegal abortion and fear of prosecution might lead to a reluctance to seek necessary aftercare.<sup>12,22,33</sup> However, a specific question on this point elicited no direct experience of women failing to seek necessary treatment from my interviewees and none believed this was likely.

Nonetheless, it is likely that the need to end a pregnancy illegally at home will add to anxiety and feelings of stigma experienced by at least some women.<sup>33</sup> Further, while a recent WoW service evaluation found that 77% of women in Ireland had someone with them throughout their use of abortion pills (Gomperts, WoW, interview), that leaves almost a quarter who may be alone. While this does not cause a significant risk to physical health (even rare, serious complications, like haemorrhage are unlikely to leave someone incapable of contacting emergency services for necessary medical care), being alone may increase the emotional demands of home use. The privacy offered by internet provision may thus be twofold.<sup>25</sup> A member of the WoW helpdesk staff

explained that “[w]omen feel much more free to tell us what is happening, to discuss the real situation, to say things that they would never tell their own doctor’ before immediately going on to note that she also worried about women feeling isolated and having no support, explaining: ‘[w]e get many e-mails saying that you’re the only one who knows, I can’t tell anyone’ (Maaïke, WoW, interview). The Director of WHW expressed the same ambivalence:

*“The potential of the technology of self-administration of medical abortion is incredible. It can empower women and they can do it in the privacy of their own home. It is really revolutionary on many levels. But we also need to acknowledge that, as an individual experience, it is alienating.”* (Jelinska, WHW, interview)

The home use of abortion pills is thus not a panacea for the current deficiencies in the delivery of comprehensive reproductive healthcare in Ireland. However, its disadvantages must be understood in the context of the alternatives available to a woman facing an unwanted pregnancy. First, abortion pills are far safer than other known methods of attempting to induce an illegal abortion. The Abortion Support Network offers advice and practical support to women in Ireland facing unwanted pregnancies. It reports contacts from:

*“women who have drunk bleach and floor cleaner, and who have gone and gotten three packets of birth control pills and taken them with a bottle of gin or vodka, and taken all the pills in the medicine cabinet. We had a woman who had gone out and bought heroin in the hopes that it would make her miscarry. We heard from a mother of four who told us quite matter-of-factly: ‘I’m trying to figure out how to crash my car to cause a miscarriage but not permanently injure myself or die’.”* (Clarke, ASN, interview; see also <sup>34</sup>)

Second, those women who have the necessary travel documents and funds may travel (in particular to England), where they are likely to access high quality, tightly regulated services. However, some doctors in Ireland believe that the need to travel may itself impact negatively on their health<sup>17,35</sup> and many women will struggle to explain their absence to family, employers or school, or to raise the necessary €520–2,500 (depending on gestation and other factors) for flights, accommodation

and the procedure.<sup>34</sup> The law has an obvious and significant discriminatory impact, creating particularly acute problems for poorer women and those without valid travel documentation.<sup>11,12,34</sup> Anxious for secrecy and desperate for cash, some women borrow money from backstreet lenders, raising the prospect of a different range of harms. Others speak of needing to choose between raising money for a termination, and eating or paying utility bills (Clarke, ASN, interview) and, when securing the necessary funds creates delay, women will require later, more costly procedures, with higher complication rates. While only 9% of English and Welsh women terminate pregnancies at over 12 weeks, this proportion rises to 15% for Irish women.<sup>8</sup>

Finally, where a woman feels forced to continue with a pregnancy, this entails not just the substantial psychic, social, and economic harms stemming from unwanted pregnancy and motherhood, it also poses greater risks to her physical health than does a safe abortion. Inadequacies in data collection make it likely that Ireland’s maternal mortality rate is greater than the reported 8 deaths per 100,000 maternities.<sup>36,37</sup> However, even this figure is many times higher than the mortality risk of 0.32 per 100,000 for a safely performed abortion,<sup>29</sup> with an ongoing pregnancy also posing a range of less serious risks to health.

### *Official responses to home use*

Official responses to the home use of abortion pills are caught in an important tension in Irish law and policy between the Constitutional protection of unborn life and related criminalisation of abortion, on the one hand, and the Constitutional protection of women’s rights to travel and information and associated public health initiatives, on the other. This tension has been mediated, in part, by the very weak enforcement of the criminal law, with no convictions for abortion in at least the last ten years.<sup>38</sup> While none of my interviewees foresaw any possibility that a woman might be prosecuted for ending a pregnancy, the potential for greater enforcement of the criminal law is always there and this has had a significant chilling effect, cutting against relevant public health initiatives. Here, a pernicious role is also played by a second piece of legislation, the Abortion Information Act,<sup>39</sup> which intervenes directly in the therapeutic relationship



to circumscribe, on pain of criminal sanction, the information that a doctor or counsellor can offer regarding abortion. The Act's effect has been substantial, with some (mis)reading it as prohibiting the provision of even basic information about abortion.<sup>11</sup> Where doctors and counsellors feel unable to offer women accurate information regarding use of abortion pills, the resulting void is likely to be filled by the mass of information of highly variable quality available on the internet.

Secondly, the criminal law framework also potentially cuts against the public health goal of ensuring appropriate aftercare following abortion. The CPP advises women that they should tell their doctors if they have used abortion pills, with the duty of medical confidentiality ensuring that they do not risk being reported to the police other than in exceptional circumstances, such as where there is evidence of abuse.<sup>40</sup> However, Irish doctors are justified in breaching confidentiality where disclosure is in the "public interest"<sup>41</sup> and this test offers scope for divergent interpretations. Notably, if so minded, a doctor might argue that it justifies the reporting of a crime deemed sufficiently grave to attract a fourteen year prison term. In a study led by Dr Mark Murphy of the Royal College of Surgeons in Ireland, 12% of sampled hospital doctors replied that they would be prepared to report an illegal abortion to the police, with a further 14% unsure of whether they would do so.<sup>35</sup> While this is a small study (184 hospital doctors were sampled, with 28% responding), which is yet to be peer-reviewed, it suggests a level of uncertainty about the law that may well be sufficient to deter women from disclosing use. WoW, WHW and local activists advise women requiring aftercare to claim to have suffered a spontaneous miscarriage (which would present and be treated in the same way as one induced by pills) and this claim will generally be impossible to disprove.<sup>42</sup> Where pills have been sourced from a reputable supplier, non-disclosure of a medical abortion does not create obvious health risks. However, it does introduce deception into the medical relationship and this may potentially add to women's anxiety.

Finally, official guidance for women and service providers aims to discourage the home use of abortion pills, emphasising dangers in a way that is often misleading or inaccurate. Guidance tends towards blanket claims regarding the dangers of accessing pills online (it "may not be what it purports to be and may actually be ineffective or even dangerous") and advice against taking abortion pills "without appropriate medical supervision",<sup>27</sup>

ignoring available evidence permitting distinction to be made between the practices of different suppliers: WoW and WHW send authentic medication and offer a level of support and supervision, albeit by e-mail. The Government also advises that abortion pills are "designed to bring on an abortion for a woman who is less than nine weeks pregnant" and that they "may not work if you are more than nine week's pregnant",<sup>40</sup> despite the very well-evidenced efficacy of abortion pills, albeit using slightly different protocols, at other gestations.<sup>29</sup> Women are also advised that pills "are designed to be used in abortion clinics", notwithstanding the many studies establishing the safety of home use.<sup>20,25</sup> Further, a claim that the pills "may not work if you are ... pregnant with twins", is not backed by evidence, with the one small study that exists showing no difference in failure rate, bleeding or pain when pills are used in singleton and twin pregnancies.<sup>43</sup>

### *A different response?*

It is possible to imagine a more robust public health strategy that could be pursued within the constraints of current Irish law, albeit in further, considerable tension with the criminal law framework. Indeed, models that might inform such a development exist internationally.<sup>44,45</sup> Women with unwanted pregnancies might be offered a medical examination to confirm gestational age and health status, non-directive counselling and information regarding whether termination would be lawful, along with evidence-based information regarding different methods of clandestine abortion including abortion pills. Where women decide to terminate the pregnancy, they might then be encouraged to return for follow up care. While this would undoubtedly be controversial, it would represent a more honest response to the current reality of home use of pills, taking seriously a number of concerns which have influenced existing Irish health policy. Notably, it might increase the numbers of women who access local counselling services, providing the opportunity to offer face-to-face support and accurate, intelligible, evidence-based information to those facing unwanted pregnancies. It would foreground a concern for women's health and might potentially make a positive contribution to bringing down the numbers of Irish women who have abortions in later pregnancy. Importantly, it would also recognise the very significant discriminatory impact of a law that depends

on women being financially, socially, and legally able to travel to access services.

As noted above, Irish service providers operate within the constraints imposed by the Abortion Information Act. This was drafted in light of the well-established fact that women were travelling from Ireland to access services overseas and without any apparent consideration of the future availability of telemedical services. The Act requires that “truthful and objective” information, which does not “advocate or promote” abortion can be given regarding services “which are lawfully available in the place where they are provided [...] by persons who are acting lawfully in providing them”, provided always that a woman is counselled about “all the courses of action that are open to her”.<sup>39</sup> There is nothing on the face of these restrictions that would prohibit the provision of accurate information regarding services offered by groups like WoW and WHW, each of whom operates in compliance with the laws that apply in the place where services are provided.

However, given the illegality of using pills sourced online to procure an abortion within Ireland, a doctor or pregnancy counsellor who gives information regarding safer means of accessing and using abortion pills would also walk a fine line to avoid charges of aiding, abetting, counselling or procuring commission of criminal activities.<sup>27,46</sup> For this reason, the development of such services would require appropriate training and clear, accurate guidance from an official agency such as the CPP. Such guidance would need to eschew the kinds of blanket claims noted above in favour of an honest appraisal of the variety of organisations that supply abortion pills, recognising that while some may send inauthentic medication or fail to provide clear instructions as to use, there are others who operate transparently, professionally and in ways that are profoundly motivated by a concern for women’s health. Some groups, such as WoW and WHW, offer a very safe service, supplying authentic medication and offering “medical supervision”, albeit by e-mail. And, indeed, at least some of these facts have been legally confirmed and are thus already known to the Irish Government. Apparently at Ireland’s instigation, the legality of Dr Gomperts’ actions in prescribing (from Austria) abortion pills to women in Ireland was challenged in court, resulting in a judgment that confirmed that the medical supervision offered by WoW is sufficient to meet the requirement in Austrian law for a “personal and direct assessment of the patient”. In reaching this

decision, the Court took account of the fact that women could not legally obtain an abortion in Ireland and were thus in a particularly desperate situation. It further found that Gomperts’ work made an overall contribution to the health and survival of women in countries like Ireland.<sup>47</sup>

While permitting local service providers to offer clear and accurate information regarding safer use of abortion pills could potentially further the public health mandates that have underpinned the support services offered to women in Ireland, such a policy would, of course, disrupt the myth that the Republic is “abortion free”. It would also confront what the Chief Executive of the Irish Family Planning Association describes as “a tendency in official discourse to view women as helpless and hopeless, with no idea of their own best interests” (Behan, interview). Providing women with information that empowers them to manage their own pregnancies cuts against the grain of a powerful Irish discourse of women as victims of both unwanted pregnancy and those who offer abortion services. However, it would also reflect a second important understanding of women in Ireland, which has equally been relied upon by the state as a means of avoiding responsibility for the provision of services: as cosmopolitan and capable of travelling to access the health services that they need.<sup>48</sup> By extension, it might be suggested that modern cosmopolitan citizens do not just travel to access services, they are also consumers of pharmaceutical products, capable of researching and evaluating medical information, accessing services online and ordering the pharmaceuticals that will travel to them. This can nonetheless expose them to risks, raising the issue of the state’s responsibility to offer appropriate support, protection and objective information to those citizens.

### *Conclusion*

Ruth Fletcher has eloquently described how the Irish state has recognised and relied upon the core provision of healthcare in other jurisdictions, legitimating extra-territorial use of abortion services whilst simultaneously entrenching a domestic failure to provide them.<sup>48,49</sup> The fundamental ethical, political and legal questions that she raises regarding the role of the Irish state are thrown into sharp new relief by the online availability of abortion pills, which offer an important further mechanism for outsourcing reproductive healthcare. I have pointed to indications that

abortion pills are already in widespread home use in Ireland. That an estimated 2,000 women from the Republic of Ireland each year contact just two online groups suggests a pressing need that is unmet by domestic services. While they clearly exist, less is known about women who contact other online providers and the reliability and safety of the services that they access.

While offering a blunt and ineffective tool for preventing abortion,<sup>48</sup> the criminal law regulating abortion in Ireland has had a significant negative effect on women's health. This can be measured both in the extreme, tragic and high profile cases of harm caused to women like Savita Halvappanavar and Ms Y<sup>50,51</sup> and in its direct impact on the far larger numbers of other women, whose struggles to end pregnancies are largely unpublicised but likewise deeply affected by legal restrictions.<sup>11,12</sup> Further, while an increased enforcement of the criminal prohibitions against abortion appears unlikely, this is nonetheless always possible. This would not succeed in eradicating abortion. However, as one reviewer for this article put it, while a state might never be able to control swallowing, it might "choke a lot of throats" in an attempt to do so. While renewed efforts to enforce the criminal law would inevitably identify only a tiny proportion of the women who have used abortion pills, they might nonetheless result in a small number of convictions. Suppliers of pills cannot be prohibited from acting lawfully within another jurisdiction and, in most cases, the home use of abortion pills will be invisible to law enforcement agencies. While efforts focused on preventing the entry of pills into Ireland have experienced some modest success (see Table 2), my interviews confirmed that such seizures have not prevented women from accessing pills. Moreover, it is difficult to imagine how Customs might successfully prevent the arrival of consignments that are repackaged and redirected from friends elsewhere or which arrive concealed in personal luggage. However, an enhanced focus on blocking the importation of abortion pills from groups such as WoW (who ship medications in regulation-compliant, readily identifiable packaging) would be likely to increase attempts to import pills from other, less reputable suppliers and, indeed, to increase resource to other, more dangerous methods of attempting to induce a pregnancy.

For the time being, it seems likely that home use of pills is set to continue, begging the question of the appropriate official response. Thus far, the response of the Irish state to the issues raised

by abortion pills has been muted. Notably, no apparent attempt has been made to gather data regarding the extent of home use, to find out more about women's experience of it, or to analyse the relative risks to women's health of accessing pills from different suppliers. I have suggested above that greater support for women facing unwanted pregnancies would be possible within the constraints of existing law. A harm reduction approach might focus attention onto the need for high quality information and support through local agencies. However, it should be acknowledged that this is a solution likely to satisfy no-one, given its failure to address the fundamental moral incoherence of a legal framework that criminalises women who end pregnancies within Ireland while supporting those who travel to end them elsewhere. While the attraction of the harm reduction model is that it can avoid the need to confront the issue of the morality of the practice regulated, this should not be allowed to obscure the need to challenge the criminalisation and stigmatisation of an essential aspect of women's reproductive healthcare.

### *Postscript*

A study published while this article was in press has offered significant further insight into the home use of abortion pills within Ireland.<sup>52</sup> It reveals that, from 1 January 2010 to 31 December 2015, 5,650 women from across Northern Ireland and the Republic Ireland requested abortion pills from Women on Web, one of the two providers discussed above, with the numbers of online consultations more than doubling over that period. This suggests that a sizeable proportion of the initial contacts with Women on Web noted above resulted in eventual home use of pills. The women in this study commonly reported serious mental stress caused by their pregnancies and inability to afford travel to access abortion services elsewhere. Almost all (97%) felt that home use of pills had been the right choice and commonly reported feeling "relieved" (70%) after the abortion. However, women also described their anger, disappointment, shame and isolation at not being able to access legal abortion within their own country. It remains to be seen whether, and if so how, the Irish Government will respond to this important confirmation of the extent of women's home use of pills.

## Acknowledgments

*I am grateful to the UK Arts and Humanities Research Council for funding this research (AH/L006537/1) and to those people who shared their knowledge and insights in interview. Thanks also to my Advisory Group, Dr Jennie Bristow; Professor Joanna Erdman; Dr Ruth Fletcher and Dr Patricia*

*A Lohr for valuable feedback and support throughout the research, and to Máiréad Enright and two anonymous reviewers for RHM for their comments on an earlier draft of this paper. For further information and details of other project publications, see: <http://www.kent.ac.uk/law/mabal/index.html>.*

## References

- Irish Constitution, Art 40(3)(3).
- Protection of Life During Pregnancy Act 2013.
- Attorney General v X* [1992] IESC 1; [1992] 1 IR 1.
- Department of Health (Ireland). Notifications in Accordance with Section 20 of the Protection of Life During Pregnancy Act 2013. In: Annual Report 2014 (Dublin, 2015).
- McBride O, Morgan K, McGee H. Irish Contraception and Crisis Pregnancy Study 2010 (ICCP-2010) A Survey of the General Population. Health Services Executive, CPP: Dublin, 2010.
- Inspectie voor de Gezondheidszorg. Jaarrapportage 2013 van de Wet afbreking zwangerschap (Utrecht). [http://www.igz.nl/Images/2014-12%20Jaarrapportage%20Wet%20afbreking%20zwangerschap%202013\\_tcm294-361379.pdf](http://www.igz.nl/Images/2014-12%20Jaarrapportage%20Wet%20afbreking%20zwangerschap%202013_tcm294-361379.pdf). 2014.
- ONS Abortion statistics. Legal abortions carried out under the 1967 Abortion Act in England and Wales, (Series AB no. 28). London: the Stationery Office, 2002.
- Department of Health (England and Wales). Abortion Statistics, England and Wales: 2015. London: Department of Health, 2016.
- CPP. Post-Abortion Services. <http://www.crisispregnancy.ie/crisis-pregnancy-help/post-abortion-services/>(undated).
- Medicinal Products (Prescription and Control of Supply) Regulations 2003.
- She is Not a Criminal: The Impact of Ireland's Abortion Laws. London: Amnesty International, 2015.
- Fletcher R, Keane R, Murphy M, et al. Submission to the United Nations Human Rights Committee for Ireland's Review under the International Covenant of Civil and Political Rights. Doctors for Choice Ireland, 2014.
- <https://www.womenonweb.org/en/page/488/i-had-an-abortion>.
- Anon. Hundreds of Irish women contact abortion pill website every month' thejournal.ie (24 October). <http://www.thejournal.ie/abortion-pills-1743145-Oct2014/>. 2014.
- Gomperts R, Jelinska K, Davies S, et al. Using telemedicine for termination of pregnancy with mifepristone and misoprostol in settings where there is no access to safe services. *British Journal of Obstetrics and Gynaecology*, 2008;115(9):171–175.
- Gomperts R, Petow SAM, Jelinska K, et al. Regional differences in surgical intervention following medical termination of pregnancy provided by telemedicine. *Acta Obstetrica et Gynecologica Scandinavica*, 2012;91(2): 226–231.
- Murphy M, Vellinga A, Walkin S, et al. Termination of pregnancy: attitudes and clinical experiences of Irish GPs and GPs-in-training. *The European Journal of General Practice*, 2012;18:136–142.
- <https://www.womenonwaves.org/en/page/974/warning-fake-abortion-pills-for-sale-online>.
- World Health Organization (WHO). WHO Model List of Essential Medicines 19th List. Geneva: WHO, 2015.
- Cleland K, Smith N. Aligning Mifepristone regulation with evidence: driving policy change using 15 years of excellent safety data. *Contraception*, 2015;92:179–181.
- Kulier R, Kapp N, Gülmezoglu AM, et al. Medical methods for first trimester abortion. *Cochrane Database of Systematic Reviews*, 2011:11Art.No. CD002855.
- WHO. Safe Abortion: Technical and Policy Guidance for Health Systems. Geneva: WHO, 2012.
- WHO. Health Worker Roles in Providing Safe Abortion Care and Postabortion Contraception. Geneva: WHO, 2015. [http://www.who.int/reproductivehealth/publications/unsafe\\_abortion/abortiontask-shifting/en/](http://www.who.int/reproductivehealth/publications/unsafe_abortion/abortiontask-shifting/en/).
- Special Supplement on Expanding Access to Medical Abortion. *Reproductive Health Matters*, 2015; 22(44 Supplement):1–143.
- Grossman D, Grindlay K, Buchacker T, et al. Effectiveness and acceptability of medical abortion provided through telemedicine. *Obstetrics & Gynecology*, 2011;118(2): 296–303.
- Wiebe ER. Use of telemedicine for providing medical abortion. *International Journal of Gynaecology and Obstetrics*, 2013;124(2):117.
- Crisis Pregnancy Counselling Skills – A Practice Guide. Health Service Executive. <http://crisispregnancy.ie/crisis-pregnancy-counselling/>. 2015.
- O'Doherty G. Revealed: the abortion advice that could put lives at risk. *Irish Independent*. <http://www.independent>.

- [ie/irish-news/revealed-the-abortion-advice-that-could-put-lives-at-risk-28824188.html](http://ie/irish-news/revealed-the-abortion-advice-that-could-put-lives-at-risk-28824188.html). 27 October 2012.
29. The Care of Women Requesting Induced Abortion (Evidence-based Clinical Guideline No. 7). Royal College of Obstetricians and Gynaecologists. [https://www.rcog.org.uk/globalassets/documents/guidelines/abortion-guideline\\_web\\_1.pdf](https://www.rcog.org.uk/globalassets/documents/guidelines/abortion-guideline_web_1.pdf). 2011.
  30. Blanchard K, Cooper D, Dickson K. A comparison of women's, providers' and ultrasound assessments of pregnancy duration among termination of pregnancy clients in South Africa. *British Journal of Obstetrics and Gynaecology*, 2007;114:569–575.
  31. Shannon C, Brothers LP, Philip NM, et al. Ectopic pregnancy and medical abortion. *Obstetrics & Gynecology*, 2004;104(1):161–167.
  32. Cleland K, Creinin MD, Nucatola D, et al. Significant adverse events and outcomes after medical abortion. *Obstetrics & Gynecology*, 2013; 121(1):166–171.
  33. Harris LH. Stigma and abortion complications in the United States. *Obstetrics & Gynecology*, 2012;120(6): 1472–1474.
  34. Abortion Support Network: Annual Report 2014. London: ASN, 2015.
  35. Aitken K, Patek P, Murphy MA. The opinions and experiences of Irish Obstetric & Gynaecology trainee doctors in relation to abortion services in Ireland. (Currently under review)
  36. Murphy-Lawless J. Embodied Truths: women's struggles for voice and well-being in Irish maternity services In: Quilty, Kennedy, Conlon, editors. *The Abortion Papers*, vol. 2. Cork: Attic Press, 2015. p.207–216.
  37. MDE. Confidential Maternal Death Enquiry in Ireland. In: Report for Triennium 2009-11 (Cork).
  38. Galligan C. Letter on file with author in response to a request for information under the Freedom of Information Act. 22 September 2015.
  39. Regulation of Information (Services outside the State for Termination of Pregnancies) Act. 1995.
  40. Crisis Pregnancy Programme. Abortion Aftercare. (Undated). <http://www.abortionaftercare.ie/abortion-pill>.
  41. Irish Medical Council. Professional Conduct and Ethical Behaviour for Doctors. Dublin: Irish Medical Council, 2009.
  42. Gynuity. Misoprostol Detection in Blood. Gynuity Health Projects, 2014. [http://gynuity.org/downloads/factsht\\_misoinblood\\_en.pdf](http://gynuity.org/downloads/factsht_misoinblood_en.pdf).
  43. Hayes JL, Achilles SL, Creinin MD, et al. Outcomes of medical abortion through 63 days in women with twin gestation. *Contraception*, 2011;84(5):505–507.
  44. De Mora R. Eliminating maternal deaths from unsafe abortion in Uruguay: the experience of Iniciativas Sanitarias. UNFPA, 18 August 2011. <http://www.unfpa.org/public/home/news/pid/8147>.
  45. Erdman J. Access to information on safe abortion: a harm reduction and human rights approach. *Harvard Journal of Law and Gender*, 2011;34:413–462.
  46. s. 7 Criminal Law Act 1997.
  47. UVS 30.1.2012, UVS-06/9/2829/2010-23.
  48. Fletcher R. Peripheral governance: administering transnational healthcare flows. *International Journal of Law in Context*, 2013;9:160–191.
  49. Sedgh G, Singh S, Shah IH, et al. Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008. *Lancet*, 2012;379:625.
  50. Holland K. *Savita: The Tragedy that Shook a Nation*. London: Transworld Ireland, 2012.
  51. Fletcher R. Contesting the cruel treatment of abortion-seeking women. *Reproductive Health Matters*, 2014;22(44):10–21.
  52. Aiken ARA, Gomperts R, Trussell J. Experiences and characteristics of women seeking and completing at-home medical termination of pregnancy through online telemedicine in Ireland and Northern Ireland: a population-based analysis. *British Journal of Obstetrics and Gynaecology*, 2016. <http://dx.doi.org/10.1111/1471-0528.14401>.

## Résumé

Les données montrent que les pilules abortives sont largement utilisées à domicile en Irlande et qu'interrompre une grossesse de cette façon est potentiellement plus sûr que les options s'offrant à beaucoup de femmes. Cet article fait valoir qu'il est souhaitable que des professionnels locaux de confiance fournissent aux femmes avec des grossesses non désirées une information exacte et objective sur l'utilisation des pilules abortives et, en outre, que cela est possible dans le cadre de la loi actuellement en vigueur. Une mesure dans ce sens ne remettrait cependant pas en cause la nécessité d'une réforme juridique pour corriger l'incohérence

## Resumen

La evidencia indica que en Irlanda el uso domiciliario de las píldoras de aborto está extendido y que la interrupción del embarazo por este medio posiblemente sea más segura que las alternativas disponibles a muchas mujeres. Este artículo presenta sólidos argumentos a favor de que profesionales locales de confianza ofrezcan a las mujeres con embarazos no deseados información veraz y objetiva sobre el uso de las píldoras de aborto y de que esto es posible bajo la ley vigente. Sin embargo, un giro en esta dirección no negaría la necesidad de una reforma legislativa para abordar la incoherencia moral fundamental de una



morale d'une loi qui traite les femmes qui interrompent une grossesse en Irlande comme des criminelles, mais celles qui se rendent à l'étranger pour avoir accès aux services comme des victimes ayant besoin d'un soutien. À l'appui de ces arguments, l'article se fonde sur une recherche en bibliothèque et un petit nombre d'entretiens avec des fonctionnaires, des prestataires de services et des activistes.

ley que trata a las mujeres que interrumpen sus embarazos en Irlanda como criminales pero a aquéllas que viajan para acceder a los servicios en el extranjero como víctimas que necesitan apoyo. Para respaldar estos argumentos, el artículo se basa en investigaciones bibliotecarias y en un pequeño número de entrevistas con funcionarios gubernamentales, prestadores de servicios y activistas.