

REPLY BY THE PRESIDENT OF THE COMMITTEE FOR HEALTH & SOCIAL CARE TO QUESTIONS ASKED PURSUANT TO RULE 14 OF THE RULES OF PROCEDURE BY DEPUTY LIAM McKENNA

Thank you for submitting a number of Rule 14 questions regarding the Abortion (Guernsey) (Amendment) Law, 2021, which was passed by the States of Deliberation on 15th July 2021.

Before responding directly to the questions posed, and by way of further background to inform the Committee's response, I can advise that abortion care in Guernsey is provided by Consultant Obstetricians, Nurses, Midwives and, when a surgical procedure is performed, this will also involve Consultant Anaesthetists. Clients having an abortion are cared for on Victoria Wing and Loveridge Ward only. These wards are adjacent to each other at the far end of level 3 of the Princess Elizabeth Hospital, away from the rest of the hospital wards and departments located across levels 1 and 2.

It is currently the case, and has been for some time, that abortion care on one of the wards is only provided by a small number of staff due to a number choosing to object to provide care to clients who attend the hospital for such a procedure. The Committee respects the right of those individuals who wish to 'conscientiously object' to taking part in abortion care. However, this situation accentuates the stigma that surrounds abortion, places unnecessary strain on other members of staff on duty and is problematic in the planning and organisation of admissions.

'The Code' is a Nursing & Midwifery Council (NMC) document that sets out the professional standards that nurses and midwives must uphold in order to maintain their professional registration. In relation to conscientious objection, paragraph 4.4 of The Code advises that those with a conscientious objection to a particular procedure must inform their employer and make suitable arrangements for a suitably qualified colleague to take over responsibility for that person's care. The amendment Law recently approved by the States reflects this part of The Code.

The NMC further signposts to the Supreme Court decision in the case of Greater Glasgow Health Board v Doogan, which provides further guidance on which aspects of care can and cannot be refused. This ruling makes clear that administrative and other duties far removed from the abortion procedure cannot be refused. Both the Royal College of Nursing and Royal College of Midwifery respect the right to refuse participation in abortion care but are explicit that this only extends to direct participation in the abortion procedure itself. There is no intention for the arrangements in relation to conscientious objection to extend further than the requirements of The Code.

Turning now to the specific questions, the Committee advises the following:

Question 1

Please can the Committee for Health and Social Care provide the number of and dates when medical practitioners have been disciplined The Code or any other disciplinary proceedings for not “answer call bells, bleep the Doctor, provide pain relief or take food into the room of the service user” in Guernsey since the inception of the Abortion (Guernsey) Law, 1997.

Answer

Section 5(1) of the Abortion (Guernsey) Law, 1997 protects the right of health professionals to consciously object, unless the woman’s life is in danger. This exemption is consistent with equivalent abortion legislation in Jersey, England, Wales, Scotland, Northern Ireland, the Isle of Man and the Republic of Ireland but (in ‘unamended’ form) falls short of all of these jurisdictions which also include a further exemption specifying that the right to refuse care does not affect any duty to participate in any aspect of care or treatment which is necessary to prevent injury to the physical or mental health of the patient.

Given the lack of definition in the Abortion Law about the scope of conscientious objection, in its ‘unamended’ form, it would not be possible to discipline staff for exercising their right to object. While it is not the Committee’s intention to take a disciplinary approach as the main driver of these recommendations, it acknowledges that professionals should be acting within The Code and the amended Law seeks to support this.

The Abortion (Amendment) (Guernsey) Law, 2021 (‘the new Law’) aligns conscientious objection with these jurisdictions and importantly, with the requirements and expectations of the professional healthcare regulators and unions. When the new Law has force, disciplinary action may be considered in a case where any registrant does not practice according to the legal requirements and those standards set out to maintain registration with the NMC, as it would in other areas where disciplinary action may be considered appropriate.

Question 2

When I challenged Deputy Bury to inform the Assembly of her information source she stated, “Our senior health practitioners”. Please can the Committee for Health and Social Care release the evidence supplied by our local senior health practitioners to support her statements on behalf of the Committee?

Answer

Consultation was undertaken with a wide range of health professionals during the development of the proposals to amend the Abortion (Guernsey) Law, 1997, which highlighted this issue. Clinical leads with direct responsibility for abortion care have also raised this as an operational management issue.

The Committee would reiterate that it is not the intention to prevent a member of staff from exercising their right to conscientiously object to taking part in the abortion procedure itself. It does however seek to clarify the scope of any such objection to ensure that high levels of care for all service users are maintained.

27th July 2021