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Human rights and foetal impairment grounds for abortion: *Crowter v Secretary of State for Health and Social Care* [2022] EWCA Civ 1559

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Abstract

This commentary discusses the Court of Appeal's decision in *Crowter v Secretary of State for Health and Social Care* handed down on 25 November 2022. The appellants argued that s.1(1)(d) of the Abortion Act 1967, the foetal impairment ground for abortion, was incompatible with Articles 8 and 14 of the European Convention on Human Rights for perpetuating discriminatory attitudes towards people with disabilities. The appeal was unsuccessful. In rejecting their argument, the Court of Appeal considered European and international human rights standards on discrimination, and distinguished between the direct and social impacts of discrimination. This commentary will engage with these arguments, and situate the decision within the broader context of recent changes to abortion laws in the United Kingdom and worldwide.

Keywords

Abortion, human rights, foetal impairment, disability discrimination, stereotyping, European Convention on Human Rights

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Introduction

This commentary focuses on the Court of Appeal's decision in *Crowter v Secretary of State for Health and Social Care*, in which the appellants argued that the foetal impairment ground of the Abortion Act 1967 was incompatible with Articles 8 and 14 of the European Convention on Human Rights (ECHR). While the Court of Appeal rightly

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dismissed the appeal, in this commentary, I will highlight how the framing of discrimination under the European Convention is limited in comparison with international human rights documents such as the UN Convention on the Rights of Persons with Disabilities (UNCRPD). I will argue that the negative stereotypes perpetuated by the foetal impairment ground must be addressed while also upholding access to abortion. I also situate the *Crowter* decision in the context of recent changes to abortion law in the United Kingdom and beyond.

The *Crowter* litigation

The Abortion Act 1967 enables two doctors to certify that a pregnant person can have an abortion up to 24 weeks' gestation if continuing the pregnancy would pose a greater risk to their (or their existing children's) mental or physical health.[1] After 24 weeks, an abortion is permissible if one of the three grounds is met: where the pregnant person's life is at risk, to prevent grave permanent injury, or where there is a 'substantial risk' that the foetus would be born with a serious impairment.[2] The thresholds of risk and severity required for s.1(1)(d) – the foetal impairment ground – are left to the clinical discretion of the two doctors.[3] It is this ground that was at issue in *Crowter*.

Heidi Crowter is a woman with Down syndrome and disability rights campaigner, and Aiden Lea-Wilson is a young boy with Down syndrome represented by his mother, Maire Lea-Wilson. Before the High Court, Crowter and Lea-Wilson challenged s.1(1)(d) as incompatible with Articles 2, 3, 8, and 14 of the ECHR as it applies to non-fatal impairments such as Down syndrome, seeking an s.4 Declaration of Incompatibility under the Human Rights Act 1998.[4] The High Court dismissed this challenge. The claims made under Articles 2 and 3 would have required the extension of Convention rights to the foetus, and as the High Court observed, the rights contained in the European Convention apply only after birth.[5] As such, permission to appeal to the Court of Appeal on Articles 2 and 3 was not granted.

The claims made under Article 8 in conjunction with Article 14 concerned the negative stereotypes towards people with disabilities that s.1(1)(d) may disseminate. Before the High Court, Maire Lea-Wilson had appeared as an additional claimant and an argument was made that Ms Lea-Wilson's Article 8 rights had been violated as she had felt pressured to undergo an abortion when she discovered Aiden's impairment.[6] The High Court did not accept that s.1(1)(d) perpetuated discriminatory attitudes and noted that an individual experience could not be taken as evidence that the law violates Article 8.[7] The argument concerning Maire Lea-Wilson's Article 8 rights was not presented again before the Court of Appeal. It was also highlighted in the Court of Appeal judgement that Ms Lea-Wilson had opted not to undergo prenatal testing for Down syndrome at an

1. Abortion Act 1967 s.1(1)(a).
2. Op. cit., s.(1)(b)-(d).
3. *Jepson v Chief Constable of West Mercia Police* [2003] EWHC 3318 (Admin).
4. *Crowter v Secretary of State for Health and Social Care* [2021] EWHC 2536.
5. Op. cit., paras. 68, 82.
6. Op. cit., para. 97.
7. Op. cit., para. 103.

earlier stage of the pregnancy as she had already decided along with her husband that she would want to continue the pregnancy regardless.[8] Thus, the focus of the appeal was on the issue of the legislative ground perpetuating discrimination against people with disabilities. The Court of Appeal emphasised that the issue of discrimination was not being considered in relation to the rights of the foetus (of which there are none legally recognised), but rather in relation to living disabled people.[9]

The Court of Appeal dismissed the appeal, finding that s.1(1)(d) is not incompatible with Articles 8 and 14. Lord Justice Underhill acknowledged that the applicants

> find it offensive and hurtful that the law permits the unrestricted abortion of foetuses who are at risk of being born with serious disabilities, and that they see it as conveying a message that the lives of disabled people are of lesser value.[10]

However, while recognising that s.1(1)(d) may reflect long-established prejudices against disabled people, Underhill noted that this 'is a very different matter from it causing or substantially contributing to them'.[11] The subjective perception of discrimination by the applicants was deemed insufficient to constitute or evidence an interference with their rights.[12] What was required for an interference to be found is something that would 'unequivocally convey that message' in its terms or effect.[13] Since s.1(1)(d) is concerned with the unborn, and not living disabled people, the law does not explicitly convey that message or 'promote any negative stereotype' about people with Down syndrome or any other disability.[14] Lady Justice Thirlwall and Lord Justice Jackson were in agreement, and the appeal was unanimously dismissed.

Analysis of the Court of Appeal decision

The European Court of Human Rights

The focus of much of the judgement was on whether the perceived negative stereotypes towards people with disabilities associated with s.1(1)(d) amounted to discrimination in violation of Articles 8 and 14. The appellants' representative relied on the case *Aksu v Turkey*, which concerned three government-funded publications expressing anti-Roma sentiment.[15] The European Court of Human Rights (ECtHR) highlighted that Article 8 was applicable to issues of negative stereotyping; at a certain level, stereotyping is 'capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group' and thus affects their private life.[16] However, Underhill LJ highlighted that the reasoning in *Aksu* was concerned with the direct impact

8. *Crowter v Secretary of State for Health and Social Care* [2022] EWCA Civ 1559, para. 25.
9. Op. cit., para. 26.
10. Op. cit., para. 56.
11. Op. cit., para. 58.
12. Op. cit., para. 73.
13. Op. cit.
14. Op. cit., para. 70.
15. Op. cit., paras. 44–45; *Aksu v Turkey* App no. 4149/04 (ECtHR, 15 March 2012).
16. *Aksu v Turkey* para. 58.

of negative stereotypes, rather than any broader societal impact.[17] *Aksu* concerned a Roma individual who was impacted by the offending passages of the publications; a disabled foetus cannot be similarly impacted as it does not hold Convention rights, and as Jackson LJ noted, the Abortion Act 1967 does not directly concern the appellants.[18]

The ECtHR's approach to stereotyping appears somewhat unclear across its broader case law, however.[19] In *Morais v Portugal*, the Court appears to recognise the broader societal impacts of gender-based stereotypes.[20] The applicant – a 50-year-old woman – complained that she had been discriminated against on the basis of her age and sex in domestic proceedings for compensation, following medical malpractice which left her with pain, incontinence, and a loss of sensation in the vagina. The ECtHR found a violation of Article 8 in conjunction with Article 14, but noted that issue here was not the applicant's age or sex as such; rather, the issue was the general assumption that sexuality was inherently linked to child-bearing purposes (as opposed to women's self-fulfilment) and thus could not be important to a 50-year-old woman who already had two children.[21] In a concurring opinion, Judge Yudkivska emphasised that it was the influence of 'out-dated gender stereotypes' on judicial decision-making which in itself constituted a violation.[22] The applicant in *Morais* was a member of the targeted class – women – and was therefore directly impacted by these discriminatory stereotypes. The appellants in *Crowter* were in a different situation, since the Abortion Act 1967 targets foetuses with impairments – a class to which they do not belong. However, the reasoning of the ECtHR in relation to tackling outdated and harmful stereotypes and the recognition of how the law is influenced by these stereotypes might have been recognised in relation to the appellant's claims. The appellants are affected, albeit indirectly, by the societal impacts of the stereotypes and assumptions underpinning s.1(1)(d), which the ECtHR's reasoning in *Morais* suggests ought to be addressed. Of course, even if the Court of Appeal had considered *Morais*, Underhill LJ emphasised that they were not strictly bound to follow ECtHR decisions.[23]

International human rights

The appellants' representative also made reference to the UNCRPD.[24] In its 2017 Concluding Observations on the United Kingdom, the Committee on the Rights of Persons with Disabilities (CRPD) raised concerns about stigmatising perceptions around the value of disabled people's lives in relation to the foetal impairment ground for abortion.[25] The CRPD recommended that the law be amended to avoid explicitly legalising abortion

17. *Crowter* [2022], para. 48.
18. Op. cit., para. 129.
19. See for analysis of anti-stereotyping in ECHR case law: L.N. Henningsen, 'The Emerging Anti-Stereotyping Principle under Article 14 ECHR', *European Convention on Human Rights Law Review* 3 (2022), pp. 185–219.
20. *Carvalho Pinto de Sousa Morais v Portugal* App no. 17484/15 (ECtHR, 25 July 2017).
21. Op. cit., para. 41.
22. Op. cit.
23. *Crowter* [2022], para. 48.
24. Op. cit., para. 59.
25. UN CRPD, 'Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 3 October 2017, UN Doc. CRPD/C/GBR/CO/1, para. 12.

on foetal disability grounds, while still respecting reproductive rights.[26] Lord Justice Underhill refers to the position of the Committee on the Elimination of Discrimination against Women (CEDAW), which has highlighted the importance of allowing abortion in circumstances including serious foetal impairment, as somewhat irreconcilable with the CRPD's opposition to abortion on foetal disability grounds.[27] However, in a joint statement issued in 2018, the CRPD and CEDAW noted that gender equality and disability rights are mutually reinforcing, noting that healthcare 'policies and abortion laws that perpetuate deep-rooted stereotypes and stigma undermine women's reproductive autonomy and choice' while also emphasising that abortion should be legalised.[28] Thus, while Underhill LJ considered there to be a marked difference between the views of the CRPD and CEDAW, the joint statement can be viewed as an attempt to reach concurrence between human rights standards on disability equality and abortion.

While the CRPD has recommended the amendment of s.1(1)(d), Underhill LJ highlights that the Supreme Court in *Northern Ireland Human Rights Commission* (*NIHRC*) did not positively determine that permitting abortion in cases of severe but non-fatal foetal impairments would be a breach of the UNCRPD.[29] Further, even if s.1(1)(d) did amount to a breach of the UK obligations under the UNCRPD, it would not follow that this provision also contravened Article 8 of the European Convention.[30] The human rights recognised in the international system – particularly those contained in specific conventions such as the UNCRPD and Convention on the Elimination of All Forms of Discrimination against Women – are broader than those contained in the European Convention. In relation to abortion, the ECtHR has only recognised a breach of Article 8 ECHR where the applicant was prevented from accessing abortion services in circumstances where abortion was already legalised by the state.[31] In contrast, international human rights bodies such as CEDAW; the Committee on Economic, Social, and Cultural Rights; and the Human Rights Committee have recognised that abortion should be decriminalised, legalised in a number of circumstances, and made accessible where legal.[32] Likewise, the approach to disability discrimination taken by the CRPD goes well beyond that of the ECtHR. The UNCRPD contains a specific right to accessibility,

26. Op. cit., para. 13.
27. *Crowter* [2022], paras. 63–65.
28. CRPD and CEDAW, 'Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities', 29 August 2018. Available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/Statements/GuaranteeingSexualReproductiveHealth.DOCX (accessed 5 January 2023).
29. *Crowter* [2022], para. 68; *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)* [2018] UKSC 27.
30. *Crowter* [2022], para. 68.
31. D. Fenwick, 'The Modern Abortion Jurisprudence under Article 8 of the European Convention on Human Rights', *Medical Law International* 12 (2013), pp. 249–276.
32. See, for example, CEDAW, 'Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to CEDAW', 6 March 2018, UN Doc. CEDAW/C/OP.8/GBR/1; CESCR, 'General Comment No. 22 on the Right to Sexual and Reproductive Health (Article 12 of the ICESCR)', 2 May 2016, UN Doc. E/C.12/GC/22; HRC, 'General Comment No. 36: Article 6 (Right to Life)', 3 September 2019, UN Doc. CCPR/C/GC/36, para. 8.

defined as enabling 'persons with disabilities to live independently and participate fully in all areas of life' which requires access to the physical environment, transport, information and communications, and facilities and services open to the public.[33] However, the ECtHR has declared inadmissible a number of cases concerned with physically inaccessible facilities, holding that Article 8 would only apply to such facts in exceptional circumstances.[34] Thus, the ECHR provides an inadequate avenue for exploring the complex issues arising in the question of balancing access to abortion with disability rights.

Perceptions of negative stereotypes

Article 8 of the CRPD requires States Parties to raise awareness of the rights of persons with disabilities. This includes an obligation to 'combat stereotypes, prejudices and harmful practices relating to persons with disabilities' through measures such as promoting 'positive perceptions and greater social awareness towards persons with disabilities'.[35] While s.1(1)(d) might not directly promote harmful stereotypes, it nonetheless feeds into broader societal attitudes towards disabled people. Asch expresses concerns over the assumption in medicine that disability is a problem to be solved and can be minimised by prenatal diagnosis and disability-selective abortion.[36] Shakespeare similarly critiques the medicalised model of disability underpinning foetal impairment grounds for abortion, which fails to recognise the social dimensions of disability.[37] This model assumes that an impairment will cause the resulting child to have a poor quality of life, perhaps one of suffering. While this may be true for some severe impairments, in many circumstances, social barriers create disability. For pregnant people discovering that the foetus they are carrying has an impairment, the influence of the medical model of disability may lead the person to choose an abortion out of a desire to avoid seeing their child suffer, even if this is a misconception. Furthermore, Heinsen observes (in the Danish context) that many pregnant people uncritically opt for prenatal diagnosis and selective abortion as it is perceived as standard reproductive healthcare.[38] This assumption that prenatal diagnosis and abortion in cases of foetal impairments is the most appropriate medical option is both caused by and the cause of negative attitudes towards disability.

As already noted above, for negative stereotypes around disability to amount to a breach of Articles 8 and 14 of the ECHR, there would have to be direct and measurable harm, that is, those stereotypes would have to cause differential treatment. However,

33. UNCRPD Article 9.
34. *Zehnalová and Zehnal v the Czech Republic* App no. 38621/97 (ECtHR, 2002); *Glaisen v Switzerland* App no. 40477/13 (ECtHR, 2019); *Arnar Helgi Lárruson v Iceland* App no. 23077/19 (ECtHR, 2022).
35. UNCRPD Article 8(1)(b), 8(2)(a)(ii).
36. A. Asch, 'Prenatal Diagnosis and Selective Abortion: A Challenge to Practice and Policy', *American Journal of Public Health* 89 (1999), pp. 1649–1657, at 1650.
37. T. Shakespeare, 'Choices and Rights: Eugenics, Genetics and Disability Equality', *Disability & Society* 13 (1998), pp. 665–681, at 679.
38. L.L. Heinsen, 'Moral Adherers: Pregnant Women Undergoing Routine Prenatal Screening in Denmark', in Ayo Wahlberg and Tine Gammeltoft, eds., *Selective Reproduction in the 21st Century* (London: Palgrave Macmillan, 2018), pp. 69–95, at p. 77.

stereotypes are harmful not only when they result in discriminatory treatment but also when they cause dignitary harm to members of the stereotyped group; negative perceptions of disability relate to the historical and ongoing inequalities faced by people with disabilities. This includes the dignitary harm caused by disability grounds for abortion in the context of the historically eugenicist treatment of disability.[39] What is at stake is the recognitive dimension of equality, which emphasises the need to address the harms of stigma, stereotypes, prejudice, and violence based on characteristics such as disability. Recognitive harms can be experienced in the absence of other forms of inequality.[40] Thus, while Underhill LJ observed that the appellants' subjective perception was not enough for a violation of the European Convention rights to be found, and the Court of Appeal was correct to dismiss the appeal as a matter of law, we should acknowledge that s.1(1)(d) causes recognitive harm to disabled people because of its social import.

Access to abortion

Alongside the recognition of the potential harms caused by disability grounds for abortion must also come the recognition of the importance of access to abortion. While negative stereotypes around disability may influence abortion decisions, restricting access to abortion in such circumstances would not be appropriate. Indeed, Underhill LJ observed that the perceived offence caused by s.1(1)(d) is 'inherently less difficult to justify than an interference of the kind in issue in the *NIHRC* litigation, where it consists in requiring a woman to continue an unwanted pregnancy'.[41] The High Court had also placed emphasis on the fact that removing or limiting s.1(1)(d) would curtail and potentially make criminal the choices of some pregnant people.[42] Furthermore, the Court of Appeal highlighted the fact that only a relatively small number of abortions take place under s.1(1)(d) and that abortions for Down syndrome are rare after 24 weeks' gestation; in 2019, Down syndrome was listed as a reason for just 19 abortions under s.1(1)(d).[43] Thus, while s.1(1)(d) may perpetuate harmful attitudes, it would be clearly disproportionate to remove or restrict access to abortion in these circumstances.

However, securing access to abortion and working to reduce negative stereotypes around disability need not be viewed as in conflict. Asch and Shakespeare, though critiquing law and policy around abortion for foetal impairments, do not conclude that abortion should be restricted in these circumstances; rather, they argue that it is necessary to rethink routine prenatal testing and change the societal conditions in which people consider having and raising disabled children.[44] I have argued elsewhere that reproductive and disability rights can work in tandem by repealing s.1(1)(d) but expanding access to abortion after 24 weeks' gestation to include broader grounds such as

39. See, for example, S. McGuinness, 'Law, Reproduction, and Disability: Fatally 'Handicapped'?', *Medical Law Review* 21 (2013), pp. 213–242.
40. S. Fredman, 'Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights', *Human Rights Law Review* 16 (2016), pp. 273–301, at 282.
41. *Crowter* [2022], para. 117.
42. *Crowter* [2021], para. 130.
43. *Crowter* [2022], para. 21.
44. Asch, 'Prenatal Diagnosis', p. 1655; Shakespeare, 'Choices', pp. 676–677.

socio-economic reasons.[45] In addition, the assumptions underpinning s.1(1)(d) must be addressed, for example, through the provision of comprehensive financial and social support to parents of disabled children; ensuring the accessibility of education, healthcare, and other public (and private) services; ensuring that non-biased and accurate information is provided alongside prenatal testing; and combatting prevalent stereotypes.[46] This, of course, goes well beyond the purview of the courts and will require legal, policy, medical, and socio-cultural change on a much bigger scale. Thus, as Underhill LJ concluded, the question of whether and to what extent to permit abortion in cases of foetal disability is one for Parliament to determine.[47]

Influence of the case

Had the claimants succeeded, and the Court of Appeal had issued a Declaration of Incompatibility in respect of s.1(1)(d), this would likely have had negative repercussions for reproductive rights in the jurisdictions where the Abortion Act 1967 applies. If the UK Parliament repeals s.1(1)(d), it would set England, Wales, and Scotland within a recent global context of rollbacks on access to abortion, including restrictions on abortion for foetal impairments. In June 2022, the US Supreme Court issued a decision that overturned the constitutional right to abortion recognised in *Roe v Wade* and the 'undue burden' threshold for restrictions on abortion established in *Planned Parenthood v Casey*, paving the way for states across the country to implement abortion bans.[48] The state of Louisiana, for example, now prohibits abortion completely except to save the pregnant person's life, to prevent serious risk to their physical health, or where the foetus is not expected to survive the pregnancy.[49] Unlike the British context, where it is up to doctors to determine in good faith whether s.1(1)(d) applies, the Louisiana Department of Health has issued a narrow list of fatal foetal conditions for which an abortion would be permitted.[50] For foetuses with potentially fatal conditions not included on this list, this means having to travel to other states to access legal abortions.[51] In October 2020, the Polish Constitutional Tribunal held that the legal ground for abortion based on foetal impairments was unconstitutional, since it discriminated against disabled foetuses by denying

45. Z. Tongue, '*Crowter v Secretary of State for Health and Social Care* [2021] EWHC 2536: Discrimination Disability, and Access to Abortion', *Medical Law Review* 30 (2022), pp. 177–187.
46. Op. cit.
47. *Crowter* [2022], para. 124.
48. *Dobbs v Jackson Women's Health Organization* 597 U.S. ___ (2022).
49. RS 40:1061 (Louisiana).
50. Louisiana Department of Health, 'List of conditions that shall deem an unborn child "Medically Futile"', 1 August 2022. Available at https://ldh.la.gov/assets/oph/Rulemaking/er/LDH_ER_List_of_Conditions_that_Shall_Deem_an_Unborn_Child_Medically_Futile_CLV_Signed_and_Dated_1_August_2022.pdf (accessed 5 January 2023).
51. R.A. Vargas, 'Louisiana Woman Carrying Unviable Fetus Forced to Travel to New York for Abortion', *The Guardian*, 14 September 2022. Available at https://www.theguardian.com/us-news/2022/sep/14/louisiana-woman-skull-less-fetus-new-york-abortion (accessed 5 January 2023).

their right to dignity.[52] Again, this means pregnant people must travel elsewhere to access abortion services in these circumstances. The UN Human Rights Committee has established in previous cases that being forced to travel for an abortion in cases of fatal foetal impairments amounts to cruel, inhuman, and degrading treatment.[53]

The overturning of *Roe v Wade* and other changes to abortion legislation worldwide could have global impacts, including for access to abortion in the United Kingdom. Previously, attempts have been made to limit access to abortion under the Abortion Act 1967 through private members bills introduced to reduce the 24-week time limit to 12 weeks' gestation or restrict abortion under s.1(1)(d) to fatal foetal impairments.[54] Yet, there have also been progressive changes to the UK abortion law recently, including the decriminalisation and legal provision of abortion services in Northern Ireland,[55] amendment of the Abortion Act 1967 so as to provide for telemedicine for early medical abortions,[56] and recent legislation creating buffer zones preventing protests within a certain radius outside abortion providers.[57] Further, recent jurisprudence would suggest that any challenge to the Abortion Act 1967 before the UK courts would be unsuccessful. In the *NIHRC* case, the UK Supreme Court observed (*obiter*) that the restrictions on abortion in Northern Ireland at the time would amount to a violation of Article 8 of the ECHR.[58] Both the High Court and the Court of Appeal in *Crowter* placed emphasis on the importance of access to abortion. Shortly following the Court of Appeal's decision in *Crowter*, the UK Supreme Court dismissed a challenge to Northern Ireland's buffer zones legislation, highlighting a concern to ensure that pregnant people can access abortion facilities 'without having their autonomy challenged and diminished'.[59]

Given these recent developments, there is perhaps the potential for abortion law reform through Parliament. The current foci of British abortion rights movements are decriminalisation and amending the Abortion Act 1967 to provide for abortion on request, thus mirroring the repeal of sections 58 and 59 of the Offences Against the Person Act 1861 and new regulations in Northern Ireland.[60] However, although the Northern Irish abortion regime is now more progressive than that of the rest of Britain, it aligns with the Abortion Act 1967 after 12 weeks' gestation and restricts abortion after

52. Polish Constitutional Tribunal Case K 1/20 (22 October 2020).
53. *Mellet v Ireland* (2016) UN Doc. CCPR/C/116/D/2324/2013; *Whelan v Ireland* (2017) UN Doc. CCPR/C/119/D/2425/2014.
54. Abortion (Foetus Protection) Bill [HL] 2017-19; Abortion (Disability Equality) Bill [HL] 2016-17.
55. Northern Ireland (Executive Formation etc) Act 2019 s.9; Abortion (Northern Ireland) Regulations 2020.
56. Abortion Act 1967 s.(1)(3A-D) inserted by the Health and Care Act 2022 s.178.
57. Northern Ireland (Safe Access Zones) (Northern Ireland) Bill 2022; Public Order Bill 2022-23 s.9; *Attorney General for Northern Ireland - Northern Ireland (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32.
58. *Northern Ireland Human Rights Commission.*
59. *Attorney General for Northern Ireland - Northern Ireland (Safe Access Zones) (Northern Ireland) Bill* para. 126.
60. Northern Ireland (Executive Formation etc) Act 2019 s.9; Abortion (Northern Ireland) Regulations 2020.

24 weeks' gestation except where there is a risk to the life or of grave permanent injury to the physical or mental health of the pregnant person, and in cases of severe or fatal foetal impairments.[61] Thus, it appears that there is currently little political impetus for reforming or expanding the law on later abortions. In the interim, then, it is perhaps necessary to address the issues around abortion for foetal impairments by challenging the aspects of healthcare delivery, policy, and society that impact living disabled people, disabled children, and their parents.

Conclusion

As a matter of law, the Court of Appeal was correct to dismiss the *Crowter* challenge to s.1(1)(d) of the Abortion Act 1967, which sought to limit the circumstances in which an abortion in cases of foetal impairment could be performed past 24 weeks' gestation. However, the case also highlights the limitations of applying rights contained in the ECHR to the issue of how abortion regulation may reflect and entrench negative attitudes towards disability. Section 1(1)(d) does perpetuate harmful stereotypes around disability and must be addressed, though in a way which does not place further limitations on pregnant people's reproductive rights.

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61. Abortion (Northern Ireland) Regulations 2020 s.6-7.