

<b>Report for:</b>  <p style="text-align: center;"><b>DECISION</b></p>
<b>Item Number:</b>

<b>Contains Confidential or Exempt Information</b>	Yes – Appendix 2c and 2d (by virtue of Paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972)
<b>Title</b>	Addressing behaviours outside the Marie Stopes sexual health clinic on Mattock Lane: follow-up report
<b>Responsible Officer(s)</b>	Mark Wiltshire (Director of Safer Communities and Housing)
<b>Author(s)</b>	Paul Murphy (Operations Manager – Safer Communities)
<b>Portfolio(s)</b>	Community Safety and Services
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	10 <sup>th</sup> April 2018
<b>Implementation Date if Not Called In</b>	
<b>Affected Wards</b>	Walpole (although wider borough reach in terms of service)
<b>Keywords/Index</b>	Protest, Sexual, Health, Harassment, Anti-Social, behaviour, ASB, Women, Clinic, Mattock, Health, Space, Protection, Order, Consultation

**Purpose of Report:**

The purpose of this report is to invite members to consider the outcome of the Council's consultation on a proposed Public Spaces Protection Order (PSPO) to address behaviours affecting people in the locality of the Marie Stopes clinic on Mattock Lane.

Key points for action and decision:

- Review the Council's established evidence base
- Note the outcome of the consultation, including all responses to the online survey and written representations from interested parties
- Consider the statutory framework for making a PSPO and decide whether the statutory tests are met
- Decide whether the Council will implement a PSPO (or take other action)
- If minded, decide whether to approve the proposed wording of the terms of a PSPO
- If minded, decide the geographical area the PSPO would cover.

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## **Section 1: Executive summary**

- 1.1 This report considers the statutory consultation exercise conducted by the Council in relation to the proposal to introduce a Public Spaces Protection Order ('PSPO') to address the behaviours outside the Marie Stopes clinic on Mattock Lane (the 'Clinic').
- 1.2 Members are asked to consider whether it is appropriate to make a PSPO, in view of:
  - a. the evidence base
  - b. the consultation responses
  - c. the Equality Analysis Assessment and
  - d. the statutory framework for the making of a PSPO
- 1.3 The legal framework for making a PSPO, including the human rights and equalities considerations, are explained in Section 2 of this report. Members are asked to have this framework firmly in mind when considering the issues set out at paragraph 1.6 below.
  - 1.3.1 Members are asked to consider the evidence base which describes the activities taking place outside the Clinic. That evidence base has been made available to Members in full and is summarised in Section 4 of this report.
- 1.4 The responses to consultation and main substantive issues raised during the consultation process are examined in Section 6.
- 1.5 The proposed PSPO that was consulted upon can be found at Appendix 2b, together with the consultation report. Members' attention is drawn to the proposed order *as amended* which can be found at Appendix 1. Paragraph 4 of the proposed PSPO has been amended with a view to simplifying the language, the substance remains unchanged. Paragraph 11 has been amended to make it clear that the total number of people permitted in the designated area is four. There are also some grammatical changes. There are two versions available to Members, one with tracked changes highlighting what has been changed (appendix 1b) and a clean copy (Appendix 1a).
- 1.6 The following recommendations are made:

### **RECOMMENDATIONS**

- i. To approve the making of a PSPO, for a period of three years, in the amended form attached at Appendix 1a on the basis that (1) Members are satisfied that the activities identified in the evidence are having a detrimental effect on the quality of life of those in the locality (2) that the effect is persistent or continuing, and is such as to make the activities unreasonable and that effect justifies the restrictions proposed and (3)

the prohibitions and requirements are reasonable to impose in order to prevent or reduce the detrimental effect from continuing, occurring or recurring.

## **Section 2: Legal framework**

- 2.1 This Section of the report sets out the statutory framework for the making of a PSPO including the human rights and Equality Act 2010 considerations.
- 2.2 In considering the Recommendations set out in Section 1, Members will need to be satisfied about a number of things in order to decide whether to make a PSPO. These are:
- a. The nature of the activities taking place
  - b. Whether those activities can be said to have had a 'detrimental effect on the quality of life of those in the locality?'
  - c. If the detrimental effect exists, is it persistent or continuing in nature?
  - d. Does that detrimental effect make the activities unreasonable? and
  - e. Does it justify the restrictions imposed in the proposed PSPO?
  - f. Are the proposed prohibitions reasonable to impose to prevent or reduce the detrimental effect from continuing, occurring or recurring?
  - g. Is the proposed PSPO justified and proportionate?
  - h. Should the PSPO be made for the full three years or some lesser period?
- 2.3 The following paragraphs of this report explain the legislative framework within which those decisions should be made.

### **Section 17 of the Crime and Disorder Act 1998**

- 2.4 The 1998 Act imposes a duty on the Council to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can, to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment).

### **The Anti-Social Behaviour, Crime and Policing Act 2014**

- 2.5 PSPOs were created by the Anti-Social Behaviour, Crime and Policing Act 2014, hereinafter called the '2014 Act'. They are designed to place controls on the use of public space and everyone within it. The orders have effect for up to three years and can be extended. Only local authorities can make PSPOs. 'public place' means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 2.6 The Council can make a PSPO if satisfied on reasonable grounds that two conditions are met. These are found in section 59 of the 2014 Act:

#### **The first condition is that:**

- (a) activities carried on in a public place within the Council's area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities:

- (a) is or is likely to be, of a persistent or continuing nature,
- (b) is, or is likely to be, such as to make the activities unreasonable, and
- (c) justifies the restrictions imposed by the notice.

2.7 A PSPO must identify the public place in question and can:

- (a) prohibit specified things being done in that public place
- (b) require specified things to be done by persons carrying on specified activities in that place; or
- (c) do both of those things.

2.8 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring.

2.9 Prohibitions may apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories.

2.10 The PSPO may specify the times at which it applies and the circumstances in which it applies or does not apply.

2.11 Unless extended the PSPO may not have effect for more than 3 years. There is no statutory requirement to review a PSPO once made, however, the Council is suggesting a review of the proposed order after a 6 month period.

2.12 Breach of a PSPO without reasonable excuse is a criminal offence. The Police or a person authorised by the Council can issue fixed penalty notices, the amount of which may not be more than £100. A person can also be prosecuted for breach of a PSPO and on conviction the Magistrates' Court can impose a fine not exceeding level 3 on the standard scale (currently £1000).

2.13 In deciding to make a PSPO the Council *must* have particular regard to Article 10 (Right of Freedom of Expression) and Article 11 (Right of Freedom of Assembly) of the European Convention on Human Rights ('ECHR'). Members are advised that for this proposed PSPO it is also relevant to consider Article 8 (Right to Private and Family Life), Article 9 (Freedom of Thought, Conscience and Religion) and Article 14 (Right to Freedom from Discrimination).

2.14 The Council must also carry out the necessary prior consultation, notification and publicity as prescribed by s.72 of the 2014 Act.

2.15 In preparing this report Officers have had regard to the two sets of statutory guidance issued by the Home Office and the Guidance on PSPOs issued by the Local Government Association.

## **The Equality Act 2010 and the European Convention on Human Rights ('ECHR')**

- 2.2.1 The Council is a public authority and the Human Rights Act 1998 requires it to act compatibility with the ECHR.
- 2.2.2 In addition, section 72(1) of the 2014 Act requires the Council to have *particular* regard to the rights protected by Article 10 (Freedom of Expression) and Article 11 (Freedom of Assembly and Association) when deciding whether to make a PSPO.
- 2.2.3 The proposed order gives rise to some difficult issues arising under the Equality Act 2010 and the ECHR. These are difficult issues because the proposed order requires the Council to have regard to the *competing* rights of members of the various represented groups who engage in protest and vigils outside the Clinic and the rights of the service users/clinic staff. A consideration of these rights requires the Council to consider how to achieve the appropriate balance between the respective rights. They are also difficult because an ECHR right can only be interfered with where the interference is in accordance with the law, necessary and in furtherance of a permitted objective. These issues are considered more fully below.

### **The ECHR**

2.2.4 Council must take account of Articles 8, 9, 10, 11 and 14 of ECHR. These are a combination of 'absolute rights' (meaning they cannot be interfered with by the state under any circumstances) and 'qualified rights' (meaning they may only be interfered with under specific circumstances). In considering interference with qualified rights, the Council are required to consider that any interference is:

1. In accordance with the law

*and*

2. Necessary in a democratic society in the interests of:

- National Security
- Territorial integrity or public safety
- The prevention of disorder or crime
- The protection of health or morals *or*
- The protection of the reputation or rights of others

2.2.5 The protection of the rights of others is engaged here. The following paragraphs outline the key Articles relevant to the decisions Members are asked to make. Members will then find a summary of how any interference is said to be permissible:

#### Article 8: Right to Private and Family Life

- 2.2.6 Article 8 of the ECHR protects a person's right to *respect* for their private and family life, their home and their correspondence. Article 8 is a qualified right, which means it can be interfered with in certain situations, for example, to protect the rights of others
- 2.2.7 The proposed PSPO does not interfere with any person's right to private and family life. However, it does seek to protect the private and family life of those persons accessing services at the Clinic. Service users and staff are entitled to a degree of privacy when seeking or providing medical treatment, and access to treatment without fear of or actual harassment or distress.

#### Article 9: Right to Freedom of Thought, Conscience and Religion

- 2.2.8 Article 9 of the ECHR protects a person's right to hold both religious and non-religious beliefs and protects a person's right to choose or change their religion or beliefs. The PSPO is not seeking to interfere with this right and it does not seek to prohibit any activities that affect a person's right to hold religious or non-religious views.
- 2.2.9 Article 9 additionally protects a person's right to manifest their beliefs in worship, teaching, practice or observance. For example the right to talk and preach about their religion or beliefs and to take part in practices associated with those beliefs. The right to manifest one's religion or beliefs is a qualified right, which means it can be interfered with in certain situations, for example, to protect the rights of others.
- 2.2.10 The Council is aware that some of the represented groups believe that their activities are part of their right to manifest their religion or beliefs. The Council should be advised that these are important rights and that it should be reluctant to interfere with those rights. Where the Council does interfere it must ensure that any interference is in accordance with the law (this is addressed later in this report), and is necessary (also addressed more fully later in this report) to ensure the protection of the rights of others. The proposed PSPO would interfere with these Article 9 rights. This is a delicate balancing exercise in which any interference with the right must be in accordance with the law and necessary to protect the rights of others. Both of these considerations are addressed more fully later in this section.

#### Article 10 Right to Freedom of Expression

- 2.2.11 Article 10 of the ECHR protects the right of everyone to freedom of expression. This includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Article 10 is a qualified right, which means it can be interfered with in certain situations, for example, to protect the rights of others.



2.2.12 Again, this is an important fundamental right in any democracy. It includes the entitlement to express views that others might disagree with, find distasteful or even abhorrent. Article 10 provides a protection to express those views and is an important part of a free and democratic society.

2.2.13 It is important to consider that individuals from Pro-Life represented groups have stated they attend the Clinic to impart information to women accessing services and that the proposed PSPO will interfere with their Article 10 rights. It should also be noted that the PSPO will interfere with the Article 10 rights of Pro-Choice represented groups. In deciding whether to implement a PSPO, therefore, the Council will have to balance the rights of pregnant women to access health services free from fear of intimidation, harassment or distress and with an appropriate level of dignity and privacy against the Article 10 rights of Pro-Life and Pro-Choice represented groups to impart information and ideas relating to the termination of pregnancy. This is a delicate balancing exercise in which any interference with the right must be in accordance with the law and necessary to protect the rights of others. Both of these considerations are addressed more fully later in this section.

#### Article 11 Right to Freedom of Assembly and Association

2.2.14 Article 11 of the ECHR protects everyone's right to freedom of peaceful assembly and to freedom of association with others. Article 11 is again a qualified right, meaning it can be interfered with in certain situations, for example, to protect the rights of others.

2.2.15 The right to freedom of assembly includes peaceful protests and demonstrations of the kind seen outside the Clinic. The PSPO will interfere with the Article 11 rights of both Pro-Life and Pro-Choice represented groups in the locality of the Clinic. The Council therefore needs to balance the rights of pregnant women to access health services free from fear of intimidation, harassment or distress against the Article 11 rights of Pro-Life and Pro-Choice groups. This is a delicate balancing exercise in which any interference with the right must be in accordance with the law and necessary to protect the rights of others. Both of these considerations are addressed more fully later in this section.

#### Article 14 Right to Freedom from Discrimination

2.2.16 Article 14 of the ECHR provides '*The enjoyment of the rights and freedoms set forth in this European Convention on Human Rights shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*' It is therefore not a free-standing Article but rather one which relates to the engagement of other Articles, and to discriminate in the manner in which people are entitled to enjoy those rights.

2.2.17 Article 14 needs to be considered by the Council, given the proposed PSPO targets the activities of groups which identify with a specific religion and belief (namely Christianity).

### **Is the interference ‘in accordance with the law’?**

2.2.18 If Members are satisfied that the statutory tests and conditions for making a PSPO are met, and that the restrictions or prohibitions it imposes are reasonable in order to prevent or reduce the identified detrimental effect from occurring, continuing or recurring, then the PSPO will have been made in accordance with the statutory provisions. As a result any interference with the relevant ECHR right will be in accordance with the law.

### **Is the interference ‘necessary in a democratic society’?**

2.2.19 Members are invited to have regard to the content of the relevant rights as summarised above. They are reminded that all of the rights highlighted, but Articles 10 and 11 in particular, are important rights in a free and democratic society. This has been highlighted by a number of the responses to the consultation.

2.2.20 If the Council wishes to interfere with these rights the interference must be ‘necessary’ in order to achieve a stated aim, here the aim that the Council is seeking to achieve is the protection of the rights and freedoms of others. Those rights and freedoms include the freedom to access health care services without impediment. Members have to consider whether this objective is sufficiently important to justify limiting fundamental rights.

2.2.21 ‘Necessary’ means that the interference must be connected to achieving the stated objective and must not interfere any to any greater extent than is required in order to achieve it. In other words the PSPO must strike a fair balance between the competing rights of the represented groups and those affected by their activities.

2.2.22 The ECHR rights have been firmly in mind during the formulation of proposed order. In addition, these considerations have been kept under review throughout the process of consultation and drafting.

2.2.23 The principle issue identified by the evidence is the presence of the represented groups at the entry point to the Clinic and their desire to engage with the service users and staff. The evidence base suggests that the location of the groups, independently of what they do whilst they are there, is a problem in and of itself because the service users are sometimes impeded from entering the clinic, feel as though they are being watched or ‘judged’, are approached and spoken to about the procedure they are considering having or have already undergone, are given leaflets and ‘boy’ and ‘girl’ colour-coded rosary beads, are called

'Mum', partners, and relatives supporting service users are also approached and spoken to.

2.2.24 Members are reminded of the evidence base (summarised at Section 4 of this report and Appendix 3), which suggests that there is a detrimental effect on the quality of life of other persons who are living in or otherwise visiting the locality. Members are advised that the suggested prohibitions are directed at reducing the identified detrimental effect.

2.2.25 Balanced against this, Members should be aware that the represented groups say that their presence (of itself) should not be problematic, nor should the handing out of leaflets or attempting to speak to the service users/staff. They deny filming, shouting at or following Clinic service users or their partners, relatives and friends; they deny calling Clinic users 'murderers' or telling clinic users that they will be 'haunted'.

2.2.26 Members are also asked to note the Options Assessment, which formed part of the report to Cabinet and which is reproduced at Appendix 6 for ease. Officers have had regard to a broad range of powers to deal with the activities that are having a detrimental effect on the quality of life of those in the locality. Careful consideration has been given to whether there are alternative means of achieving a reduction or elimination of the detrimental effect on the quality of life of those in the locality. Each option has its own advantages and disadvantages, which will not be repeated here.

2.2.27 The proposed PSPO includes the provision of a designated area for use by the represented groups, which is intended to protect and facilitate the rights of those groups. The creation of the area is addressed more fully in Section 5.

2.2.28 The main issue for the Council is whether the making of the proposed order is a proportionate means of achieving a reduction / elimination of the detrimental effect on the quality of life of those in the locality. Enforcement options which attach to an individual are not thought to be appropriate here as the people present outside the Clinic differ from day to day. The best fit is thought to be a solution which attaches to the space as opposed to an individual. If Members are of the view that other measures are more suited, or ought to be tried first, they should not approve the making of the proposed order. However, Officer advice to Members is that the interference with ECHR rights is in accordance with the law and necessary to protect the rights and freedoms of others.

### **The public sector equality duty ('PSED')**

2.3.1 Section 149 of the Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:

a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the 2010 Act;

b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex,
- Sexual orientation

2.3.2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2.3.3 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

(a) tackle prejudice, and

(b) promote understanding.

2.3.4 Members should be aware that compliance with the duties in this section may involve treating some persons more favourably than others.

2.3.5 The law also requires that the duty to pay 'due regard' is demonstrated in the decision making process and the Council must be able to demonstrate that decisions are made in a fair, transparent and accountable way, considering the needs and the rights of different members of the community. This is achieved through assessing the impact that imposing restrictions and prohibitions through a PSPO could have on different protected groups and, where possible, identifying methods for mitigating or avoiding any adverse impact on those groups.

2.3.6 The Council's assessment of the impact of the proposed PSPO on different protected groups and the mitigation steps identified in relation to each group is

set out within the Equality Analysis Assessment ('EAA') attached to this report as Appendix 4.

## Summary

2.4.1 Members will need to consider whether:

- i. the need to provide service users, staff and visitors with safe, unimpeded access to the Clinic and through the safe zone is sufficiently important to justify limiting important fundamental rights;
- ii. whether the proposed PSPO meets the objective of facilitating that access;
- iii. whether the proposed order is no more than is necessary to accomplish that objective and
- iv. whether the proposed measures strike a fair balance between the rights of the represented groups and those affected by their activities.

2.4.2 In making a decision on whether to introduce an order, the Council needs to balance the various rights of the Clinic service users, staff, family members, residents, visitors and those of the vigil and protest members, ensuring due consideration of these competing interests.

2.4.3 Members are referred to the EAA contained at Appendix 4 and invited to note its contents. It identifies that some protected groups are negatively affected by the PSPO. It also identifies the mitigating measures that will be implemented.

2.4.4 Members are referred to Section 4 of this report which summarises the evidence base and Section 5 of this report which explains the basis for the proposed order, the scope of the safe zone and the scope and position of the designated area. The proposed PSPO has been carefully drafted to address the specific activities which are said to be having a detrimental effect on the quality of life of those in the locality.

2.4.5 Members are invited to make the proposed PSPO for the maximum period of 3 years. The proposal is to review the PSPO within 6 months of it being adopted and to consider, at that point, whether at any variation is necessary.

### **Section 3: Background**

- 3.1 The Clinic is a sexual health centre, offering a range of sexual health and family planning services, including termination of pregnancy, vasectomy, contraception and counselling. Protests and vigils by individuals and groups representing Pro-Life views have been held outside the Clinic for over 20 years. The Pro-Life groups consist of members from a variety of networks and organisations, including *The Good Counsel Network*, *The Helpers of God's Precious Infants*, *40 Days For Life*, *Ealing Pro-Life Group* and *The Society of Pius X*. For ease of reference these groups and individuals will be referred to collectively as the 'Pro-Life' groups. It is acknowledged that some of these groups do not consider that their activities are 'protests' however, for ease of reference this report will use the phrase 'protests and vigils'.
- 3.2 An organised counter-demonstration began taking place outside the Clinic in November 2015, with regular coordinated protests organised by *Sister Supporter*, a local Pro-Choice group founded in 2015. In April 2017 *Sister Supporter* contacted Ealing Council to ask that action be taken to prevent the harassment of women attending appointments at the Clinic, outlining the local authority's responsibilities under the Equality Act to protect pregnant women from discrimination, harassment and victimisation.
- 3.3 In July 2017 a petition was submitted under the Council's petition scheme, signed by 3,593 people, calling for the Council to explore ways of introducing a 'buffer zone' outside the Clinic (this petition and notes of the full Council meeting at which it was debated are included in Appendix 1). The petition read:
- "This petition calls for Ealing Council to end the persistent presence of the anti-abortion vigil outside the Marie Stopes Reproductive Centre on Mattock Lane, Ealing and take all measures within its power, including but not limited to the establishment of a Public Spaces Protection Order, to move anti-abortion campaigners away from the area immediately outside the Mattock Lane clinic (to a distance of at least 100M) and to allow women to access its services free from interference and intimidation.*
- The anti-abortionist vigils that occur daily on Mattock Lane amount to more than the exercise of their right to protest and it is time that action is taken to prevent this harassment. The Council can protect the space around the clinic under s59 of the Anti-Social Behaviour, Crime and Policing Act 2014 and also have duties under s149 Equality Act 2010 to eliminate discrimination, harassment and victimisation of women. The sustained intimidation and presence outside the clinic not only causes great distress to patients, but has a persistent detrimental effect on people living, working in and visiting the Walpole ward."*
- 3.4 The Council's petition scheme required that the petition be debated at a meeting of full Council. On 10th October 2017 the petition was debated at a meeting of Full Council. Following the petition debate, there then followed a

debate and Council motion that was resolved by the majority of those present that:

*“Ealing Council notes the 3,593 residents who signed the Sister Supporter petition and the dozens of letters from residents on and around Mattock Lane who report a “detrimental effect on my quality of life” as a result of disruption and distress caused by the protesters.*

*This motion is explicitly not one for or against abortion, which is available in Great Britain in the circumstances laid out in the Abortion Act 1967. It is a motion that seeks to protect the rights of individuals from harassment and intimidation when accessing legally existing health services and of local residents not to be exposed to related disruption and distress on a daily basis.*

*Many protesters use deliberately disturbing and graphic images and models, including those purporting to be of dismembered fetuses. They also distribute leaflets containing misleading information about abortion, and often follow, record and question women as they enter or leave the centres. Significant numbers of women report feeling intimidated and distressed by this activity as they try to access a lawful healthcare service in confidence.*

*The right to protest needs to be balanced with the right of pregnant women to choose and to obtain advice and treatment in confidence and free from intimidation. Those who wish to campaign to restrict women’s reproductive choices have plenty of opportunities and locations in which to do so. The area outside a clinic need not and should not be one of them.*

*Equally, local residents who live on Mattock Lane and surrounding streets should not have to be exposed to constant nuisance, disruption and anxiety caused by such protests on a daily basis. Further, staff at Marie Stopes and all women’s health clinics should be protected from bullying and intimidation at their place of work.*

*This Council commits to fully explore every possible option and will take all necessary actions within its powers, utilising all necessary resources, to prevent anti-abortion protestors from intimidating and harassing women outside the Marie Stopes Clinic on Mattock Lane.*

*The Council will do this to provide the necessary reassurance and security that all women need and deserve as they make their own personal decision about their pregnancy and to defend the quality of life of those residents living nearby who pass the clinic on a regular basis.”*

- 3.5 Following the petition debate and Council motion, the Council’s Safer Communities Team undertook detailed investigative work into the issues reportedly affecting Clinic users and Clinic staff and those in the locality of the

Clinic. The methodology and outcome of that investigation are outlined in Section 4: Evidence Base.

- 3.6 Engagement efforts with Pro-Life and Pro-Choice groups proved unsuccessful in forging a pathway to a possible negotiated settlement, with Pro-Life groups maintaining that their location and tactics were key to their strategy of engaging with clinic users and Pro-Choice representatives being clear they would not voluntarily cease their activities without concessions from Pro-Life represented groups.
- 3.7 It was therefore concluded in January 2018 that, in the absence of a clear way forward on a negotiated settlement, formal options for tackling the behaviours identified should be considered. Following completion of a peer review exercise and an Options Assessment (contained in Appendix 6 of this report) a report was provided to Cabinet, who made the decision in January 2018 to undertake a formal consultation on a PSPO.



## **Section 4: Evidence base**

4.1 The Council's Safer Communities Team ('SCT') have undertaken detailed investigative work into the issues reported to be affecting Clinic users, staff and those in the locality of the Clinic. The investigation has encompassed a number of strands:

- Consultation and engagement exercises with represented groups from all sides;
- Obtaining information from Police and other agencies;
- Engagement with the Clinic and Clinic staff;
- Taking witness accounts from those using the Clinic and those who have used it historically;
- Engagement with the local community, specifically by seeking the information and views of local residents and Councillors.
- Receiving and considering 'evidence packs' produced by Sister Supporter and the Good Counsel Network

4.2 Further evidence has been received through the consultation process.

4.3 In November-December 2017 officers from the SCT team spent a number of days in the Clinic and spoke with staff members and service users about their experiences. During this period, officers witnessed first-hand some of the behaviours outside the Clinic and were themselves approached by members of Pro-Life groups who attempted to speak with them and provide them with literature relating to abortion.

4.4 Council officers interviewed a number of Clinic service users and staff members, some of whom were willing to provide statements (anonymous and named) about their experiences. Officers also spoke with partners, parents and friends of service users on their experiences while at the Clinic providing support.

4.5 In total, thirteen witness statements were obtained. These statements were provided to Cabinet in a confidential appendix of January's cabinet report. Some of the material in Appendix 4 was confidential and only available to members when they approved the PSPO consultation. A summary of the respective viewpoints was contained in the report to Cabinet and consultation document. In the interests of transparency, and so that Members have a clear picture of the available evidence base, officers have sought permission from the various witnesses to make their evidence publicly available wherever possible, albeit redacted to some extent. Those statements have been produced in Appendix 3 of this report. The same statements, together with other photographic evidence are contained again for reference in.

- Witness statement of Abbi Shaw (Council safer communities officer)

- Witness statement of Noura Yamout (Council safer communities officer)
  - Witness statement of \*\*\*\*\* (service user)
  - Witness statement of Relative A (relative of service user)
  - Witness statement of \*\*\*\*\* (service user)
  - Witness statement of \*\*\*\*\* (staff member)
  - Witness statement of Staff member A (staff member)
  - Witness statement of Client A (service user)
  - Witness statement of Client B (service user)
  - Witness statement of Client C (service user)
  - Witness statement of Client D (service user)
  - Witness statement of Client E (service user)
  - Sally O'Brien (clinic operations manager)
- 4.6 Some photographic evidence was also obtained personally by Council officers, including a number of photos of images displayed on the pavement which were previously provided to Cabinet and are again included in Appendix 3. Additional photographic evidence has been provided by Sister Supporter in response to the consultation and this is included in Appendix 2b.
- 4.7 Excerpts from the incident log maintained by the Clinic were obtained by the Council and were presented within the confidential Appendix 4 to Cabinet. Additional incident logs and detailed reports of intimidation have been provided by Marie Stopes and BPAS during the consultation. All of those previously provided in January's Cabinet report are included again in Appendix 3, and those obtained during the consultation can be found at Appendix 2d.
- 4.8 Information obtained from a door knocking exercise undertaken in Autumn 2018 is also contained within Appendix 3.

### **The activities identified by the evidence base**

- 4.1.1 The following activities have been identified in the evidence base:
- Women and their partners / friends / relatives being approached by a member or members of the Pro-Life groups when entering the Clinic and attempting to engage women and those with them in conversation or to hand them leaflets.
  - Women being approached by a member or members of the Pro-Life groups when leaving the clinic and attempting to engage them in conversation, including making reference to what has happened to their unborn child.

- Women being observed entering and leaving the Clinic by a member or members of the Pro-Life groups
- A member or members of Pro-Life groups engaging in prayer outside the Clinic, which is said to be on behalf of the women and/or their unborn children.
- Being presented with images of a foetus in stages of development in the form of colour photos, sometimes indicating the age in weeks of the foetus.
- Encountering shouting and similar activities when Pro-Choice counter demonstrations are taking place.
- Women feeling they are being watched and judged by a member or members of the Pro-Life groups.
- The presence of placards with references to 'murder' and other similar statements.

### **Engagement and negotiation with represented groups**

4.2.1 The Council has always been willing to explore the possibility of a negotiated settlement to the issues. To this end Council officers and Members have taken part in a number of meetings with the represented groups; minutes of these various meetings are included in Appendix 5.

4.2.2 A challenge around engagement with Pro-Life groups was the number of different groups involved and the different levels of affiliation between them. Broadly speaking, Members will be aware of the key Pro-Life groups that congregate at Mattock Lane:

- **The Good Counsel Network.** GCN define their mission as offering practical help and support to pregnant women, and post-abortive women.
- **The Helpers of God's Precious Infants.** This group state their mission as to pray for everyone involved in abortion and for the end of abortion.
- **40 Days For Life.** This is coordination movement rather than a single group and describes itself as 'The largest internationally coordinated pro-life mobilization [sic.] in history'.
- **Ealing Pro-Life Group.** This is a local affiliate of other Pro-Life represented groups.
- **The Society of Pius X.** SPX represent a branch of the Roman Catholic Church and they are known to hold conservative views. It is understood that some of the other Pro-Life groups distance themselves from them to different extents.

- 4.2.3 Ealing has also seen one demonstration in the last year (in Acton and not Mattock Lane) by a group called **Abort 67**, who describe themselves as ‘a public education project that seeks to change how we view abortion’. Their tactics include using large posters of graphic medical photographs. However, there is no evidence of Abort 67 being part of the activities on Mattock Lane.
- 4.2.4 The Council has sought to engage with all of the Pro-Life and Pro-Choice groups who have attended the Clinic. The only key group not to engage with this process has been the Society of Pius X, who did not communicate beyond writing to decline the offer of a meeting and indicating during a subsequent telephone call made to them by Council officers that they would not wish to engage in discussion with Council officers or Councillors in person.
- 4.2.5 As part of the investigation, Council officers also met with a representative of Ealing Abbey, given their reported link with the current vigil / protests. Notes from a meeting with a representative from Ealing Abbey were included as part of January’s cabinet report, prior to consultation. However, Cabinet should be advised that the representative from Ealing Abbey who attended that meeting has since raised concerns about the publication of his comments and has stressed that he and Ealing Abbey do not wish to be involved in any public discussion about the issues on Mattock Lane. Ealing Abbey has been invited to formally give its views on the proposals.
- 4.2.6 The meetings with Pro-Life and Pro-Choice groups were productive to the extent that they established where scope for negotiation could exist and where it would not. Of the Pro-Choice represented groups who did engage with the Council, the following behaviours were agreed as unacceptable and they stated they do not engage in them:
- Shouting at women entering or leaving the Clinic
  - Following women entering or leaving the Clinic
  - Taking photos or filming women entering or leaving the Clinic
- 4.2.7 However, all of the Pro-Life represented groups who engaged with the Council also made it clear that they are **not** willing to consider negotiating any changes in respect of the following behaviours:
- Approaching women entering and / or leaving the Clinic
  - Displaying images of fetuses
  - Standing at the entrance to the Clinic
- 4.2.8 These behaviours were described by them as key tactics that help them to directly engage with women who are using the Clinic. This position was recently reiterated in a Parliamentary Home Affairs Select Committee convened on 12<sup>th</sup> December 2017, at which representatives from Ealing (Council leader, Cllr Julian Bell, and cabinet portfolio holder for children and young people and Walpole ward Councillor, Cllr Binda Rai) were also invited

to give evidence. During that hearing, Clare McCullough, a representative of the Good Counsel Network gave evidence in which she reiterated the position that approaching women directly outside clinics was a key part of the Good Counsel Network's strategy and not something they would be prepared to end voluntarily.

- 4.2.9 During separate engagement dialogue with Pro-Choice group Sister Supporter, they outlined their own code of conduct and their representatives stated they would not consider changing any of their activities until such time as the represented Pro-Life groups ceased theirs and removed themselves from the area. It thus became apparent that the likelihood of a successful negotiated settlement was negligible.

### **The evidence on Pro-Life activities**

- 4.3.1 The statements detail the impact of protests and vigils outside the Clinic on service users, clinic staff and people supporting Clinic service users as well as on residents and passers-by. There is evidence that both Pro-Life protests and vigils and Pro-Choice counter demonstrations cause issues, albeit of a different kind.
- 4.3.2 There have been incidents between the groups, notably reports to police in which individuals from Pro-Life represented groups report being abused by Pro-Choice represented groups and by passers-by. Additionally, Council officers have noted that the presence of counter demonstrations can create an atmosphere of heightened tension. In her statement, Abbi Shaw, Safe Communities Officer, notes of one such occasion: *'The atmosphere outside the clinic was tense and felt unfriendly and confrontational. It made me as a member of public as well as a professional feel uncomfortable.'*
- 4.3.3 The evidence from service users includes statements from women who have used the Clinic recently and some who have used it historically. What is striking from reviewing these statements is the consistency of the behaviour described over what is a prolonged period (as far back as 2005) and the long-term impact which their experiences continue to have on the women involved. The following is a selection of those comments. The full witness statements provided by those witnesses are available to Members as part of Appendix 3.

Client A, who used the Clinic in 2005 stated of the group standing outside the Clinic: *'They told me that they were "praying for the souls of dead babies" and this made me feel overwhelmingly guilty. I recall asking if they would have adopted my baby but they did not respond or engage with me at all; they did not give me eye contact, just repeated several times that they would be praying for the soul of the dead babies.'* She goes on to detail the impact of the behaviour of the group on her emotional wellbeing, concluding *'It has had a lifelong effect on me'*.

Client B, who accessed the Clinic in 2007 advises *'I remember the yelling and the protest more vividly than the termination. I was dazed and it was embarrassing because it was a residential street. They had placards with images of fetuses in the early stages of development. The fetuses had fingers and toes; it was like they were uber personified.'*

Client C, who used the Clinic's services in 2017 considers of the Pro-Life represented groups outside the clinic: *'I am not sure if they realise what they are doing. I understand that they are trying their best from their point of view but fail to remember that it is upsetting. Their views should not be shoved in your face when you are already feeling distraught. If the protestors were not there, the experience would have been easier; I would not have felt so tense walking into the Clinic. It would not feel that my privacy was being invaded... I would not expect to have protestors standing outside of the hospital trying to change my mind if I was having a kidney transplant so why should they be outside an abortion clinic?'*

Client D, who used the Clinic in 2017 described the people standing outside the clinic: *'They looked cross and the ginger man had a grimacing look for the duration that I was in his presence. He had rosary beads and he said to me, "I am going to pray for you, you don't have to do this." They made me feel like I was wrong. I made a concerted effort not to look at them.'*

- 4.3.4 Staff from the clinic have witnessed clients being followed after leaving the Clinic and despite saying 'No' when approached. They report seeing clients visibly upset following encounters with represented groups outside the clinic. In her statement Sally O'Brien (operations manager at the Clinic) details that the risk of harm is physical as well as emotional, with some clients choosing to delay their procedure because of the behaviours outside the Clinic thus moving further along in their pregnancy as a result. Discussions with staff members have also highlighted the distressing impact of the protests on them personally, with members of staff stating they have been verbally abused and spat at when entering the Clinic and one - [REDACTED], whose statement is included at Appendix 3 - receiving Pro-Life literature at her home address.
- 4.3.5 The Marie Stopes Clinic Operations Manager has provided details of frequently being called to assist distressed clients who have been affected by protests and vigils. She outlines how women have been physically inhibited from entering the Clinic and 'forced' to take literature, as well as being shown photos of aborted fetuses, which they find extremely distressing. She also states clients are told that they will 'go to hell', will be 'haunted by their dead baby' or will 'die of cancer' following a termination.
- 4.3.6 The Operations Manager gives her view that the comments are not directed to supporting a woman's informed decision, given the comments are sometimes offered as women are leaving the Clinic. The Operations Manager has reported that cancellation rates increase on days with a higher than normal number of Pro-Life protestors outside and that women have told the Clinic they are too

frightened to attend their appointment as they have seen the protestors outside. This places service users at risk both emotionally and physically.

- 4.3.7 The Council has also been advised of measures taken by staff as a result of the intimidation they face from vigil members and protestors, including covering their uniforms when entering the Clinic to minimise the likelihood of being identified and shouted at by vigil members and protestors. The Regional Operations Manager for Marie Stopes also described the situation at the Mattock Lane clinic in his testimony to the Home Affairs Select Committee. He stated that Marie Stopes staff have observed individuals from Pro-Life represented groups physically grabbing or blocking clients and using other means of intimidation. He highlighted his concerns for vulnerable clients, who ask to be escorted when leaving the Ealing clinic due to the intimidation from vigil members and protestors. In another example of the impact of the vigil, he stated that there have been occasions when the fire alarm has sounded at the Ealing clinic and patients have refused to leave the building for fear of having to encounter vigil members and protestors on their way out.
- 4.3.8 The statements from Council officers detail how, when visiting the Clinic to speak with staff and service users, they themselves were approached by *Pro-Life* vigil members in the apparent mistaken belief the officers were clinic users. Noura Yamout, Safer Communities Team Leader, details being approached by a *Pro-Life* group who told her “If you pray my dear, you will not come here again; the baby that died is probably with God.” Ms Yamout outlines that she was ‘stunned’ by the comment and, when she replied to say she had not done anything at the clinic, was handed two leaflets and rosary beads.

### **The evidence from Pro-Life Groups**

- 4.4.1 Representatives from the Pro-Life groups who regularly attend the area have stated they only offer a leaflet and do not attempt to engage further with Clinic users who decline. In their written statement within their ‘evidence pack’ they state their approach as: *‘One counsellor offers each woman a leaflet as she enters the abortion centre. This leaflet lists the help and support that she can get from our pregnancy centre. This includes: housing, financial support, legal advice, help to get a GP or to access medical services if she cannot at present, a safe-place to hide, ongoing moral support, and counselling’.*
- 4.4.2 The evidence makes clear the numbers of people present on each day and the activities in which they engage. The groups highlight the small number of people involved in their vigils, often only 1 person is present. They refer to the fact their members are required to abide by a code of practice. They strenuously refute the suggestion that their members refer to Clinic users as ‘murderers’ and deny telling Clinic users that ‘God will never forgive them’ or that their ‘babies will haunt them. They deny preventing women from accessing the clinic in any way. The evidence pack includes photographs of their presence and the pictures of fetuses which they use.

4.4.3 An important part of the Pro-Life groups' position is that they have helped and supported numerous women as a result of their presence at the Clinic. They have provided accounts from the women they have helped as part of their evidence pack and response to consultation.

## **Analysis**

4.5.1 The Council's investigation has established some fundamental challenges around perception. The emotive nature of the subject of pregnancy termination and the activities surrounding it mean some of the activities become focussed on in isolation rather than context. One such example is 'shouting' or 'chanting', which the Good Counsel Network maintain they and their affiliates do not do. However, 'shouting' and 'chanting' are referred to in the witness evidence of some service users and family members as being a behaviour they encountered. A high number of people taking part in the consultation also claim to have witnessed it. It remains unclear to what extent 'shouting' is a significant or on-going issue, or indeed whether the Pro-Life and/or Pro-Choice groups are responsible for it, as it is not always possible to discern from reports who is responsible, but it is in any case evident that, even in the absence of 'shouting' taking place, women entering and leaving the Clinic have found simply being approached and spoken to distressing and intimidating.

4.5.2 The evidence demonstrates that while many of the activities in and of themselves may not be objectionable, the very specific area in which the represented groups are choosing to engage in these activities means that they target service users at the precise moment they are accessing health services of a deeply personal nature. It is the fact that the activities take place at the point of entry to the Clinic, or close to it, that results in the detrimental impact.

4.5.3 Members are referred to the evidence found in Appendix 3.



## **Section 5: Options Considered and Draft Order**

- 5.1 A comprehensive Options Assessment was undertaken in January 2018 and provided to Cabinet. All options were considered in the context of their benefits, risks and mitigation. That Options Assessment is reproduced in full at Appendix 6.
- 5.2 The officer recommendation to Cabinet in January was that a PSPO was likely to be the most appropriate (albeit imperfect) option open to the Council, having established there is evidence to suggest a detrimental effect on the quality of life of those in the locality as a result of the activities of the represented groups.
- 5.3 Members now have to consider whether the statutory requirements of the 2014 Act have been met. The advice to Members is that:
- i. There is a sufficient evidence base to suggest that the activities (as identified in Section 4) are having a detrimental effect on the quality of life of those in the locality,
  - ii. That the activities are of a persistent or continuing nature such as to make them unreasonable,
  - iii. That the effect, or likely effect of the activities justifies the proposed restrictions
  - iv. That the restrictions are reasonable to impose in order to prevent or reduce the detrimental effect, and
  - v. That the proposed order is necessary and proportionate to reduce / eliminate the detrimental effect.
- 5.4 As explained in Section 2, Members must be satisfied that each of these component parts is met.

### **The specific proposals**

- 5.1.1 Paragraph 4 of the proposed order clearly sets out the activities which are having the detrimental effect of the quality of life of those in the locality. Each of these activities has been formulated by reference to the available evidence base. The existence of a detrimental effect is reinforced by the results of the online survey.
- 5.1.2 It is acknowledged that some may find the reference to 'prayer' in paragraph 4(i) surprising. It should be clear from the order that the only 'prayer' which is prohibited is that which amounts to an act of approval/disapproval of issues relation to abortion services, it is not a general ban on prayer and it applies only within the 'safe zone' defined by the order. As detailed further in Section 6 below, the Church of England parishes of St John's and St Mary's and the Ealing Trinity Circuit of the Methodist Church have all engaged with the consultation and are supportive of the proposed order.

- 5.1.3 Careful consideration has been given to whether this paragraph could be formulated differently, but it is felt that this is the least restrictive measure which would address the activities identified as distressing to service users and detrimental to the quality of life of those affected by the activities.
- 5.1.4 The reference to 'interfering or attempting to interfere' in paragraph 4(ii) is intended to deal with members of the represented groups who approach and attempt to speak to service users whilst in the safe zone.
- 5.1.5 References to intimidation and harassment are intended to respond to evidence – particularly provided by Clinic staff members – that members of represented groups have attempted to engage with service users and visitors even after they have said 'no' or otherwise indicated that they do not wish to interact with them, and have at times physically impeded service users from entering or accessing the Clinic. The order therefore makes clear that, for the avoidance of doubt, this behaviour will not be tolerated within the safe zone.
- 5.1.6 As for the reference to recording, both the Pro-Life and Pro-Choice groups appear to accept that they use their phones to take photographs or videos. Each say that this is for different purposes. The Pro-Life groups in particular say that this is to record when a criminal offence is being committed against one of their members. The Council's concern is that a service user is not going to know why a person is recording/photographing or what is being captured or the purpose for which it will be used. For this reason it is thought reasonable and proportionate to seek to prohibit all recording and photography of a service user or member of Clinic staff in the safe zone.
- 5.1.7 Sister Supporter accepts that they have played amplified music during their protests and vigils. This has caused nuisance to staff and clinic users inside and outside the Clinic and would be prohibited.
- 5.1.8 It is also important that Members note that, within the 'Designated Area' proposed by the PSPO, members of represented groups will be able to carry out protests and vigils. However, these activities will be subject to a number of restrictions which will not apply in any areas outside that covered by the PSPO.
- 5.1.9 Paragraphs 11 – 14 set out the proposed restrictions on protests and vigils within the Designated Area. In summary the restrictions would:
- a. Limit the number of persons within the area to a maximum of 4;
  - b. Prohibit use of any posters, texts or images which are larger than A3 size;
  - c. Prohibit shouting words and messages related to the termination of pregnancy; and
  - d. Prohibit the use of amplified music, voice or audio recordings.
- 5.1.10 The rationale of these restrictions is to ensure that the scale of activities continuing within the designated area is not such as would undermine or negate the impact of the PSPO within the rest of the 'safe zone'. In particular

the restrictions are designed to ensure that any service users, staff and visitors who wish to avoid interaction with members of representative groups may do so if they choose. It has also been taken into account that all groups have already agreed that shouting words and messages was not acceptable, and that evidence suggests that Pro-Life groups have been using posters and placards of an A3 size in any event. Finally, it can be seen that the restrictions do not limit prayer of any kind, which will thus be permitted within this area.

### **The scope of the safe zone**

- 5.2.1 The large majority of respondents to the Council's public consultation agreed with the scope and size of the safe zone, with a large majority (73%) indicating that they believed that the safe zone should cover a larger area. Comments in support of an extended area include:

*"I am concerned that this will just result in the protestors continuing with the same behaviour on all of the approach roads. Whilst this will be less intrusive for service users and staff arriving by car. It will still subject staff and service users approaching the clinic on foot. I would make the Zone far larger. People protesting against abortion should raise concerns with politicians...not service users and staff."* (General user of the area)

*"I think the Safe Zone should be extended to include the approach roads; Dane Road and Culmington Road."* (Resident of the area)

*"I would extend the safe zone. In its current proposed form, there is still no single access route to the clinic from any direction which could guarantee not being exposed to the protestors."* (General user of the area)

- 5.2.2 However, Members should be aware that objections have been raised to by about 27% of responses to the consultation to scope of the safe zone in the consultation. Some of these are set out in the consultation report. The full responses have been made available to Members in the appendices of this report.

- 5.2.3 Members are asked to note that 83.2% of the respondent to the online survey agreed overall with the scope of the proposed safe zone. 117 respondents said the safe zone was too small and should be extended, a further 32 stated that the safe zone was too large. Comments included:

*"Area is too large and pushes the protesters into residential areas. Make it smaller."* (Resident of the area)

*"It is very big area. Not really related to the clinic. Will life supporters be silenced everywhere soon?"* (General user of the area)

*“The proposal is frankly ridiculous. The “safe zone” is far too expansive. The small designated zone is immediately in front of my flat and will not be passed by the majority of service users who are either dropped off by cab / car or walk from Ealing Broadway.”*  
(Resident of the area)

5.2.4 Officers have spent a considerable amount of time and care in defining the scope of the ‘safe zone’ in which the prohibitions take effect. Careful thought has also been given to the size and scope of the designated area. Site visits have been undertaken of the area on numerous occasions and the area has been closely studied on maps.

5.2.5 The rationale for the scope of the safe zone has been the need to ensure safe access to the Clinic from the major routes of access, namely Ealing Broadway tube and train station and the main bus and pedestrian routes to the clinic from west and south Ealing. Officers have considered whether the scope of the area could be smaller but still achieve protection for the persons affected by the activities and have concluded that it could not. It is for this reason that officers conclude that the current proposed area – when considered in conjunction with the ‘designated area’ as discussed further below – strikes an appropriate balance between ensuing safe access for service users on the one hand versus enabling represented groups to continue their activities on the other. In doing so they have taken account of the consultation responses which specifically asked about the scope of the zone.

### **The scope of and restrictions within the designated area**

5.3.1 Members should be aware that objections have been raised to both the scope and position of the designated area. and the restrictions imposed on activities therein. For example an email received from Mr Peter Freely stated:

*“If this PSPO is a response to genuine instances of harassment and intimidation, such behaviour is entirely unacceptable and should not be permitted anywhere in the borough, let alone near the Clinic. ... The restrictions within the ‘Designated Area’ are further censorship within a censorship zone. Again, the premise behind the ‘Designated Area’ is poorly thought through and in fact makes a mockery of the behaviours that the council have cited as inherently ‘distressing’. The council is saying on one hand that prayer or religious images distress women and should be banned within the ‘Safe Zone’, and yet on the other that they are explicitly allowing for such behaviours within that very ‘Safe Zone’. Either behaviours are unacceptable or they are not. ...”*

5.3.2 The full responses have been made available to Members in the appendices to this report together with the Consultation Report which summarises this evidence.

- 5.3.3 Members are asked to note that 60.2% agreed overall with the scope for the designated area. A number of respondents disagreed with the provision of a designated area.
- 5.3.4 The designated area has been positioned within sight of those entering the clinic. This has been done deliberately so as to ensure that any service user who wishes to engage with the represented groups or the support they offer can do so if they choose. The position of the designated area would allow the groups to make their presence known, but in a way which reduces the impact of their activities on those service users who do not wish to be approached by them or engage with them.
- 5.3.5 The restrictions which apply in the designated zone have been drafted so as to ensure that the interference with their rights is no more than is necessary. Of the survey respondents, 75.1% agreed with the proposed restrictions in the designated area.
- 5.3.6 It is considered necessary to have some form of restriction on those in the designated zone to control the numbers of people and the activities they engage in. In particular this is relevant with regard to limiting any attempts there may be to attract the attention of service users through graphic images words or sound when service user may wish to avoid interacting with members of the represented groups.
- 5.3.7 On balance it is felt that the provision of the designated area with its restrictions allows both the Pro-Life and Pro-Choice groups to exercise their Article 9, 10 and 11 rights in a way which protects the rights of others in the locality, particularly the Article 8 rights of clinic service users.

## **Section 6: Consultation Summary and Analysis of the key objections to the proposed PSPO**

- 6.1 Section 72 of the Anti-social Behaviour, Crime and Policing Act (2014) provides that the Council must carry out necessary consultation before making a PSPO. This means consulting with:
- a) The chief officer of police, and the local policing body, for the police area that includes the restricted area;
  - b) Whatever community representatives the local authority thinks it appropriate to consult;
  - c) The owner or occupier of land within the restricted area, so far as it is reasonably practicable.
- 6.2 Following investigation into the issues raised in the petition presented to Full Council in October 2018 and Cabinet's decision of 16<sup>th</sup> January 2018 to begin consultation on a PSPO, the Council began formal consultation on a PSPO on Monday 29<sup>th</sup> January 2018. The consultation took the form of an online survey, which was widely advertised in publications, online and on social media, as well as being advertised in the Council's magazine *Around Ealing*, which was delivered to every Ealing resident. A letter drop of premises in and on the periphery of the proposed PSPO area was also completed.
- 6.3 In total 2,181 people completed the online survey.
- 6.4 Written, representations were received from an additional 1,476 via email and 78 by letter.
- 6.5 As part of the consultation, the Council wrote formally to the represented groups associated with protests and vigils at the Clinic and to key partner agencies, as well as consulting with the Metropolitan Police Service via Ealing's Borough Commander and with the Mayor's Office for Policing and Crime. This correspondence is contained in Appendix 2b, along with a full list of consultees.
- 6.6 The Metropolitan Police have cited their role as an enforcement partner as the basis for their position that they will neither support or object to the order.
- 6.7 The Council have additionally consulted the NHS, Public Health and CCG (Clinical Commissioning Group) and their responses are included in Appendix 2b.
- 6.8 The CCG have not expressed a view on the order itself but have stated their support of any appropriate actions that would ensure equality of access for all women access to sexual healthcare. NHS and Public Health have stated their support for the order. They have, however, raised concerns in relation to the provision of a designated area for quiet prayer, counsel and limited congregation, citing the proximity of the designated area to Gordon House surgery (which also offers family planning and sexual health services) and the relative proximity to the Clinic. The doctors of Gordon House surgery have also

responded to the consultation in the form of a letter, stating their support for the order and raising the same concerns about the designated area.

- 6.9 Marie Stopes and BPAS have formally responded to the consultation each in the form of a comprehensive letter and additional evidence provided from their respective incident logs relating to the Clinic. The Council has received no formal letter or email responses from the represented groups. However, individual members of both Pro-Life and Pro-Choice represented groups have completed the online survey.

### **The consultation report**

- 6.1.1 The consultation report at Appendix 2a sets out the analysis of the online consultation survey responses, and the letter and email responses, including postcode analysis of those people participating.
- 6.1.2 The details are not repeated here and Members are referred to the full report at Appendix 2a.
- 6.1.3 A number of matters will be considered in the remainder of this section:
- i. the form of responses to the consultation
  - ii. some, but not all, of the key objections to the proposed PSPO.

### **Format of responses to the consultation**

- 6.1.4 The online survey was crafted to ensure that respondents could be directed to the issues on which the Council was inviting an input. The survey required respondents to input their postcode and identify their interest in the consultation.
- 6.1.5 The survey required information on a respondent's postcode and whether they live in, visit or use the safe zone, or were an employee or service user of the Clinic. This was thought to be relevant as the people most affected by any detrimental effect of the activities, and or any PSPO that might be made, are those who use the area concerned.
- 6.1.6 In addition to the responses to the online survey, 1,476 separate email responses have been received. A significant number (1,430) of template responses were received via the [www.behereforme.org](http://www.behereforme.org) portal in the last 72 hours of the consultation, which appears to have been part of a coordinated effort, including leafleting of the local area. In an effort to better understand the mission, purpose and local connection of the 'Be Here For Me' organisation, efforts to identify a registered address or contact details have been made. However, no address appears to exist for the organisation and the only telephone number goes straight to a voicemail service connected to Ed Rennie, chair of 'Labour Life'.

6 1.7 These emails have been come from the website's portal which has been used to generate a generic written representation. A full copy of the template letter can be found in Appendix 2 and all emails received are contained in Appendix 2c and 2d. These are confidential, as they contain detailed information in relation to respondents, copies have been made available to all Cabinet members.

6.1.8 Members are advised that they should take all of the responses to the consultation into account, whether through the survey or otherwise. Some of the issues raised in those emails will be considered later in this section but it is important for Members to be aware of the following:

- i. No proper explanation is offered for why the authors could not take part in the online survey. The suggestion that the online *form 'is framed primarily to legitimise censorship of vigil attendees'* is not accepted. The whole purpose of the online survey was to seek input from all perspectives
- ii. The online survey provides some background explanation and directs the respondent to the matters which required thought and should be addressed. It seeks detailed views on specific questions as opposed to being merely an 'I agree' type of response.
- iii. The emails are all identical, with no option to tailor the response other than to add comments at the end. From an examination of the emails, not one of the authors has added any comments of their own.
- ii. It is impossible to know whether the authors have also taken part in the online survey and thus impossible to ascertain the extent of any double counting is impossible to ascertain.
- iii. Some of the emails appear to be have been sent by the same person multiple times, as they contain the same name and postcode in the signature.

6.1.9 The key points made by the email are:

- The consultation has been prompted by lobbying from the British Pregnancy Advisory Service (BPAS).
- Activities taking place on Mattock Lane are vigils and not protests.
- The counselling services offered by vigil members are there to support women and the PSPO is seeking to place restrictions on charitable work.
- The PSPO is seeking to ban prayer, which is a fundamental right.
- The wording of the PSPO is too vague and amounts to authoritarian overreach.

### **Key objections to the proposed PSPO**

6.2.1 The following paragraphs will consider the key the objections raised to the proposed PSPO. It is acknowledged that this summary is not exhaustive, but



Members are referred to the full consultation response and submissions which are provided within the Appendices.

### **Lack of evidence of detrimental effect**

- 6.2.2 The Pro-Life groups have argued that there is no evidence of any intimidation, harassment, abuse, alarm or distress being caused to service users, their supporters or Clinic staff.
- 6.2.3 It is correct to say that there has been little or no Police or other enforcement action in respect of their activities. Members are advised that this of itself is not a reason to rule out the possibility that the activities are having the requisite detrimental effect.
- 6.2.4 Members are referred to the evidence as summarised earlier in this report and as set out in the accounts appended hereto, some of which are first hand reports of the impact of the activities on a person's wellbeing.
- 6.2.5 The Officer recommendation is that there is sufficient evidence to indicate the activities are having the requisite detrimental effect.

### **Vigil is not a protest**

- 6.3.1 A number of written representations to the consultation have been made by individuals who state they personally attend the Clinic to engage in Pro-Life activities. A number of these representations reiterate the view that the Pro-Life represented groups are part of a *vigil* and *not a protest*. The representations from these individuals also frequently rebuke the suggestion that judgement or harassment is taking place. A comment that typifies this response to the consultation is: *'My colleagues and I who attend the vigil are genuinely there to offer help and support and we do not harass or judge anyone... allegations made against us are false and have been misleading the public as the pro-choice group Sister Supporter set up a campaign against us'*.
- 6.3.2 The Council has used the reference to 'protest' or 'vigil' for ease of reference within this report. It understands that those taking part in the prayer vigils do not see their activities as a 'protest' and that their activities may be well intentioned. However it is clear from several witness statements that their view is not shared by officers. The vigil members are present outside the Clinic in order to mark their objection to its activities, it is therefore reconsidered that this could be fairly described as a protest.

### **The PSPO is seeking to ban prayer**

- 6.4.1 While 'prayer' is outlined within the prohibited activities, it is critical to note that only *prayer in relation to protesting in an act of approval or disapproval in*

*respect of abortion services* is included within this prohibition. This means that the only circumstances under which prayer may be targeted as a prohibited activity under the PSPO is if it is taking place within the context of a protest that is an act or attempted act of approval or disapproval related to abortion services. In addition to breach the PSPO it must take place within the safe zone rather than within the designated area where quiet prayer will be permitted. This is not a blanket ban on prayer, it targets only prayer in a very specifically defined set of circumstances.

- 6.4.2 Article 9 of the European Convention of Human Rights protects a person's right to hold both religious beliefs and no religious beliefs at all. It additionally protects a person's right to choose or change their religion or beliefs. This is an *absolute right*, which means it *cannot* be interfered with by the state. The PSPO is not seeking to interfere with this right and it does not seek to prohibit any activities that affect a person's right to hold religious or non-religious views.
- 6.4.3 Article 9 additionally protects a person's right to manifest their beliefs, for example the right to talk and preach about their beliefs and to take part in practices associated with those beliefs. The right to manifest one's beliefs is a *qualified right*, which means it *can* be interfered with in certain situations, for example, to protect the rights of others. The Council has to consider the rights of pregnant women to access lawful health services free from the fear of intimidation, harassment or distress and with an appropriate level of dignity and privacy.
- 6.4.4 The Church of England parishes of St John's, St Mary's and Christchurch have engaged with the consultation and are supportive of the proposed order. In conversations with representatives of the Church, the question of prayer was raised and it was noted by the Church representatives that prayer is only being targeted in relation to protests connected with abortion services and would not, for example, impact anyone peacefully praying for other purposes or indeed anyone engaging in silent prayer. The representatives additionally noted the provision of a well-managed designated area away from the clinic itself as a sensible mitigating step.
- 6.4.5 The Equalities Analysis Assessment (contained in Appendix 4) and Legal section of this report cover the issues around this particular prohibition in more detail.

### **Objections to the designated area**

- 6.5.1 The proposed provision of the 'designated area' has been made with express recognition of the impact of the PSPO on those who attend the Clinic to engage in activities related to their religious views, and more generally on the right to freedom of speech, association and assembly (whether or not connected to a religious viewpoint). The Designated Area will allow those who wish to do so to attend the area for the purpose of quiet prayer and counsel and for protests or vigils related to abortion services. Certain restrictions will apply to the people

who choose to use the designated area and its operation will be reviewed when the PSPO is reviewed.

- 6.5.2 The response to existence of a designated area has been mixed, with approximately 60.5% of people taking part in the online survey strongly agreeing or tending to agree with it and 30.9% strongly disagreeing or tending to disagree with it. Of those who object to the provision of a designated area, a number express concerns that the problematic behaviours will not be resolved. Others cite its proximity to Clinic and Gordon House surgery as a key concern, to the extent that the presence of representative groups will continue to impact and deter service users from attending the Clinic and surgery.
- 6.5.3 Among bodies responding to the consultation, the view on the provision of a designated area has also been mixed. In the joint written representations from NHS and Public Health the professionals support the proposed PSPO but raise concerns about the provision of a designated area, also citing concerns for both the users of Clinic and Gordon House Surgery. As a clinic that offers family planning and sexual health services, they are concerned that Gordon House Surgery service users could be continue to be negatively affected by the presence of protestors and vigil members in the designated area.
- 6.5.4 The practitioners of Gordon House Surgery itself have also written to support the implementation of the PSPO but they object to the provision of the designated area for the same reasons outlined by NHS and Public Health. Similarly, in their formal response to the consultation, Marie Stopes International and BPAS both support the proposed PSPO but object to the provision of the designated area.
- 6.5.5 In responses from religious organisations, the Church of England support the proposed PSPO. Representatives of St Mary's and St John's churches both support the PSPO. They also support the provision of a designated area for quiet prayer and displaying small signs as being 'proportionate'. The representative from Ealing Trinity Circuit of the Methodist Church offers 'wholehearted support' for the scheme, going as far as to state *'we must offer support and protection to those who are visiting the clinic and are vulnerable. If that means that as churches we need to adapt our activities to enable that protection and to prevent others using 'prayer' improperly and unethically to apply pressure or coercion then we must do so.'*
- 6.5.6 As explained in Section 4 above, the Council invited comments from Ealing Abbey on behalf of the local Catholic Church. However that invitation was declined and comments have not been provided.
- 6.5.7 Officers consider that the provision of a designated area is a measured and proportionate response to the fact that a number of fundamental rights are being affected as a result of the proposed PSPO. The objective of the PSPO is to reduce or eliminate the activities which have been identified as having a detrimental effect on the quality of life of those in the locality. Key to the problems presented by the activities is their proximity to the Clinic entrance and

the ability to interfere with people who can be readily identified as service users or staff.

- 6.5.8 The provision of the designated area allows both the Pro-Life and Pro-Choice groups to exercise their rights to free speech, association and assembly whilst providing a sufficient degree of protection to those in the safe zone. The ability to be in a position within sight of the Clinic entrances allows groups such as the Good Counsel Network to continue their offer of support to pregnant women. It will empower service users to exercise a choice about engaging with either the Pro-Life or Pro-Choice groups, something which service users do not currently have.

### **The Council has ignored the financial incentive for the Clinic to remove the Pro-Life groups**

- 6.6.1 The Clinic provides health care of a type which is lawful in the UK. The Council is required to apply the statutory provisions of the 2014 Act. Members are advised to focus on the legal tests as set out in this report and consider whether they have been met.

### **Availability of other measures**

- 6.7.1 Members are referred to the Options Assessment. Other measures are not thought to be as effective as the PSPO which is proposed for the reasons set out therein.
- 6.7.2 The proposed PSPO has been carefully formulated to provide protection for those affected and facilitate the rights of the represented groups to express their views in the designated area.

### **Interference with fundamental human rights should not be allowed and is not justified**

- 6.8.1 The EAA has considered the impact on human rights and equality issues. The conclusions of the EAA are that whilst there is interference with certain rights, and an impact on certain protected groups, that interference is necessary, justified and proportionate.

### **The Council has not been even handed in its approach with the Pro-Life and Pro-Choice groups**

- 6.9.1 Officers have sought to engage with all of the represented groups. The details are set out in this report. It is regrettable that a negotiated compromise could not be reached.



## **Section 7: Conclusion**

- 7.1 Members are asked to approve the adoption of the proposed PSPO for the reason set out in this report.
- 7.2 If the proposed PSPO is approved in the meeting, the PSPO will be treated as being 'made' and will take effect immediately.

## **Section 8: Financial**

- 8.1 The investigation has largely been managed within the existing resources of the Safer Communities Team, albeit resulting in the need to realign priorities.
- 8.2 These costs of the consultation (below £5k) have been met from the Safer Communities budget.
- 8.3 As with any decision to take formal action, there will be a risk of potential High Court challenge which would give rise to the risk of associated legal costs. These costs could not be met from within the existing resources of the Safer Communities Team and so would need approval for utilisation of corporate contingency budgets. The quantum of these legal costs are not known at present and will be difficult to predict, as they would depend on the scale and complexity of any High Court challenge. In any case the legal costs of responding to a challenge will need to be met from the Council's corporate contingency funds.

## **Section 9: Risk Management**

- 9.1 The risks and mitigation of all options considered are contained within the Options Assessment (reproduced in full in Section 4 of this report).

## **Section 10: Community Safety**

- 10.1 As explained in Section 2, the Council considers that it has a duty under the Equality Act 2010 and our commitment to a safer Ealing to protect women – and particularly pregnant women – who are accessing health services. The Council also believes that its duties pursuant to the Crime and Disorder Act 1998 are engaged by the issues at the Clinic.

## **Section 11: Links to the 6 Priorities for the Borough**

- 11.1 Effective action to ensure those accessing clinic services are protected from fear of intimidation, harassment or distress links to four of the six Ealing priorities:

- Safer

- Healthier
- Fairer
- Accessible

## **Section 12: Equalities, Human Rights and Community Cohesion**

- 12.1 In assessing the options available, a key challenge is balancing the various rights of the clinic service users and the vigil and demonstration members, having due regard to the Equality Act 2010, and ensuring there is a balanced assessment of the rights outlined under Articles 8, 9, 10, 11 and 14 ECHR (those being respectively the right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and information; the right to freedom of assembly and the right to freedom from discrimination).
- 12.2 A full Equalities Analysis Assessment and assessment of the Council's Public Sector Equality Duty has been completed and is exhibited at Appendix 4 of this report.

## **Section 13: Staffing/Workforce and Accommodation implications**

- 13.1 There are no proposed changes to Council staff or workforce within the outlined proposal.

## **Section 14: Property and Assets**

- 14.1 There are no property implications.

## **Section 15: Any other implications**

- 15.1 There are no implications of the proposals that have not been addressed within the key implications outlined above.

## **Section 16: Consultation**

- 16.1 As outlined in Sections 3 and 5 of this report, the Council has engaged with and sought engagement from all groups known to be involved in vigils and protest outside the Marie Stopes clinic. It has additionally engaged with Marie Stopes, British Pregnancy Advisory Service (BPAS), clinic service users, the Metropolitan Police, Clinical Commissioning Group, NHS, Public Health and local faith groups.
- 17.2 A formal consultation in the form of an online survey was additionally undertaken for a period of eight weeks (29<sup>th</sup> January – 26<sup>th</sup> March 2018) and the summary and analysis of this is contained in Section 4 of this report. All

responses to the consultation (including the online survey and email and letter written representations) are exhibited in full at Appendix 2(a-e) of this report.

### **Section 17: Timetable**

**26<sup>th</sup> March 2018** – End of consultation for Public Spaces Protection Order (PSPO).

**3<sup>rd</sup> April 2018** – Submission of report to Cabinet.

**10<sup>th</sup> April 2018** – Consideration by Cabinet and decision.

### **Section 18: Appendices**

**Appendix 1a:** Amended draft order and map (clean)

**Appendix 1b:** Amended draft order and map (tracked changes)

**Appendix 2a:** Consultation report

**Appendix 2b:** Detail of consultation with statutory consultees

**Appendix 2c:** Written representations - objections to the PSPO

**Appendix 2d:** Written representations – support for PSPO

**Appendix 3:** Evidence obtained from investigation

**Appendix 4:** Equalities Analysis Assessment

**Appendix 5:** Engagement with Pro-Life and Pro-Choice represented groups

**Appendix 6:** Options Assessment previously provided to Cabinet

### **Section 19: Background Information**

Link to Mayor of London commitment of the 16/11/2017, page 13 - <https://www.london.gov.uk/moderngov/documents/s67400/Appendix%20%20Questions%20to%20the%20Mayor%20-%20Transcript.pdf>

Link to Hansard Select Committee of the 12<sup>th</sup> of December 2017 - <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/harassment-and-intimidation-near-abortion-clinics/oral/75524.pdf>



## Consultation

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent to consultee</b>	<b>Date response received</b>	<b>Comments appear in paragraph:</b>
<b>Internal</b>				
Mark Wiltshire	Director of Safer Communities and Housing	28/03/2018		
Jess Murray	Head of Safer Communities, Tenancy and regulatory Operations	28/03/2018		
Keith Robinson	Senior Lawyer	28/03/2018		
Helen Harris	Director of Legal Services	28/03/2018		
Nish Popat	Interim Head of Accountancy, Adults & Public Health and Regeneration	28/03/2018		
Paul Najsarek	Chief Executive	28/03/2018		
Moira Mercer	Head of Communications	28/03/2018		
Kieran Read	Director of Strategy & Engagement	28/03/2018		
<b>External</b>				
Kuljit Bhogal	Counsel	28/03/2018		

## Report History

<b>Decision type:</b>	<b>Urgency item?</b>
Key decision	No
Report no.:	Report author and contact for queries:
	Paul Murphy Safer Communities Operations Manager (ext. 8807)