



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

<b>Contains Confidential or Exempt Information</b>	No
<b>Title</b>	Options for the Mattock Lane PSPO
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<b>Portfolio(s)</b>	Inclusion and Community Safety
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	9 <sup>th</sup> February 2021
<b>Implementation Date if Not Called In</b>	22 <sup>nd</sup> February 2021
<b>Affected Wards</b>	Walpole
<b>Keywords/Index</b>	Protest, Vigil, Sexual, Health, Harassment, Anti-Social, behaviour, ASB, Women, Clinic, Mattock, Health, Space, Protection, Order, Review, Consultation, Variation, Extension

**Purpose of Report:**

The purpose of this report is to invite members to consider the impact and effectiveness of the Mattock Lane Public Spaces Protection Order (PSPO) and the outcome of the consultation undertaken by the council between 23<sup>rd</sup> November 2020 and 18<sup>th</sup> January 2021. Members are then invited to consider what action to take ahead of the existing PSPO coming to an end in April 2021.

Key points for action and decision:

- Review the impact and effectiveness of the current PSPO.
- Consider the statutory framework for extending the period for which a PSPO can have effect.
- Review the outcome of the consultation undertaken by the Council regarding the options for whether or not to extend the period of the PSPO.
- Decide whether the Council will extend the PSPO for a three-year period.

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## **1. Executive summary and recommendations**

- 1.1 This report considers the statutory consultation exercise conducted by the Council in relation to the current Mattock Lane Public Spaces Protection Order (PSPO) which will come to an end on 10 April 2021.
- 1.2 Members will be asked to consider whether it is appropriate to extend the period for which the existing order has effect. For reasons which are explained later in this report there is no proposal to vary the PSPO that is currently in place but simply to extend it. For this reason, much of the information that was considered by Members when deciding whether to make the existing PSPO will be relevant and should be considered alongside the further information contained in this report, as well as the outcome of the new consultation exercise the Council was required to undertake. Some of this information is appended to this report, also included are links to other documents which Members are asked to take into consideration.
- 1.3 The following recommendations are made:
  - i. To consider the evidence of the impact and effect of the Mattock Lane PSPO on the behaviours targeted as set out in this report;
  - ii. To consider the outcome of the consultation undertaken between 23<sup>rd</sup> November 2020 and 18<sup>th</sup> January 2021;
  - iii. To assess the evidence and decide whether or not it is proportionate and necessary to extend the existing PSPO;
  - iv. If so minded to authorise the Director of Community Development to extend the period for which existing PSPO has effect for a period of 3 years with effect from 11<sup>th</sup> April 2021 until 10<sup>th</sup> April 2024.

## **2. Legal framework**

- 2.1 This section of the report sets out the statutory framework for making a PSPO including the human rights and Equality Act 2010 considerations.
- 2.2 Much of the contents of this section has been taken from the April 2018 report to Cabinet and has been repeated here for ease of reference.
- 2.3 Paragraphs 2.16-2.18 below explains the approach when looking to extend a PSPO.
- 2.4 When the PSPO was made, the Council needed to be satisfied about a number of things in order to decide whether to make a PSPO. These were:
  - a. The nature of the activities taking place

- b. Whether those activities could be said to have had a ‘detrimental effect on the quality of life of those in the locality?’
  - c. If the detrimental effect existed, whether it was persistent or continuing in nature?
  - d. Did that detrimental effect make the activities unreasonable? And
  - e. Did it justify the restrictions imposed in the proposed PSPO?
  - f. Were the proposed prohibitions reasonable to impose to prevent or reduce the detrimental effect from continuing, occurring or recurring?
  - g. Was 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 overall legislative framework within which those decisions were 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**

#### **Making a PSPO**

- 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.
- 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 As with the previous reports, 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.

### **Extending the period for which a PSPO has effect**

- 2.16 As set out above a PSPO can be made for a maximum duration of up to three years, after which the period for which the PSPO has effect may be extended if the requirements of Section 60 of the Act are met. For a council to make the decision to extend a PSPO, they must be satisfied that an extension is *necessary to prevent:*
- i) *occurrence or recurrence of the activities after order is due to expire, or*
  - ii) *an increase in frequency or seriousness of the activity*

2.17 Guidance for councils sets out that, where activity having a detrimental effect has been *eradicated* as a result of a PSPO, it is proportionate and appropriate to consider the *likelihood of recurrence of problems* if the Order is not extended.

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

2.18 The Council is a public authority and the Human Rights Act 1998 requires it to act compatibility with the ECHR.

2.19 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 extend the period for which an order has effect under section 60.

2.20 When the Council looked at making the current PSPO some difficult issues arose under the Equality Act 2010 and the ECHR. These considerations remain relevant to the proposed extension.

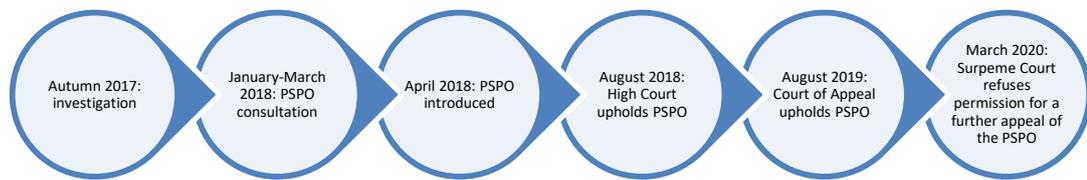
2.21 They were and are difficult issues because the proposed order requires the Council to have regard to the *competing* rights of members of the various represented groups who engage in protest and vigils outside the Clinic and the rights of the service users/clinic staff. A consideration of these 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.

2.22 Both the High Court and Court of Appeal have endorsed the approach adopted by the Council when it made the existing PSPO. However, these issues have been considered afresh when looking at the issue of extension as part of the Equalities Impact Analysis, which is exhibited at Appendix 5. The Council will need to decide whether it is necessary to extend the period for which the PSPO has effect and make an assessment as to whether allowing the PSPO to expire would mean that the activities identified in the order would reoccur.

## **3 Background and timeline**

3.17 The Public Spaces Protection Order (PSPO) on Mattock Lane has been in place since 10th April 2018, when Ealing Council's Cabinet decided to introduce the PSPO in response to issues in the locality of the Clinic that were believed to be having a detrimental impact on people in the locality, including those accessing the Clinic. The PSPO introduced certain restrictions on behaviours, as well as requirements on people in the defined area. The activities were determined to have been having a detrimental effect on those living in, working in and visiting the area and in particular on those accessing services at the Marie Stopes Clinic

(since 2020 known as MSI Reproductive Choices clinic and hereon referred to as 'the Clinic').



- 3.18 The decision to introduce a PSPO was taken by Cabinet having considered reports on the outcome of the council's safer communities teams' investigation, which took place during late 2017 and early 2018, and having considered subsequent consultation on the proposed PSPO (which took place over January – March 2018).
- 3.19 The safer communities team's investigation was undertaken following a motion agreed at a meeting of Full Council on 10<sup>th</sup> October 2017, which committed the council to fully exploring every option to address the behaviours causing distress to women accessing the Clinic. The Full Council debate had itself taken place following receipt of a petition submitted under the council's petition scheme in July 2017, signed by 3,593 people, which called for the council to explore ways of introducing a 'buffer zone' outside the Clinic.
- 3.20 Following the introduction of the PSPO, the council were notified on 26<sup>th</sup> April 2018 of an appeal made to the High Court to challenge the council's decision. The appeal was filed by individuals employed by and connected to Pro-Life groups, specifically the Good Counsel Network.
- 3.21 A directions and full hearing took place in the High Court in May and June 2019 respectively and judgment was handed down in July 2019. The High Court rejected the appeal and upheld Ealing's PSPO in its full terms. Members are directed to **Appendix 3a**, which includes a link to the copy of the High Court judgement.
- 3.22 The appellants subsequently appealed the decision of the High Court to the Court of Appeal. In January 2019 the council was informed that the Court of Appeal had given permission for this further appeal to be heard and an appeal hearing took place over two days on 16<sup>th</sup> and 17<sup>th</sup> July 2019.
- 3.23 Judgment was handed down on 21<sup>st</sup> August 2019. The Court of Appeal rejected the further appeal and again upheld Ealing's PSPO in its full terms. Members are directed to **Appendix 3b**, which includes copy of the Court of Appeal's Judgement.
- 3.24 Following that judgment, the appellants then applied for permission to appeal the decision of the Court of Appeal to the Supreme Court. On 11<sup>th</sup> March 2020 the council were notified of the decision of the Supreme Court to refuse permission to appeal. A copy of the certificate of decision can be found at **Appendix 3c**.

- 3.25 The appellants have indicated in social media posts and press releases their intent to further appeal the decision to the European Court of Human Rights. However, at the time of publication of this report, no direct communication has been received from either the appellants or the European Court in relation to this.
- 3.26 The Council's decision to introduce a PSPO has been subject to intense challenge and independent judicial scrutiny, and has continued to be upheld in full.
- 3.27 In November 2020 the Cabinet took the decision to begin an eight-week consultation on whether or not the period for which the order has effect should be extended beyond April 2021.
- 3.28 Consultation ran from 23<sup>rd</sup> November 2020 – 18<sup>th</sup> January 2021 and the process and the outcome is set out in Section 6 and **Appendix 4**.
- 3.29 Members are asked to consider the responses to the consultation and determine whether it is appropriate to extend the period of time for which the existing PSPO has effect. The legal framework, including the human rights and equalities considerations governing PSPOs, is set out in Section 3 of this report. Members are asked to have this framework firmly in mind in reaching their decision.
- 3.30 Members are again directed to the evidence base for the decision to introduce a PSPO in 2018. This was summarised in the report to Cabinet in April 2018, links to which are included at the end of this report.
- 3.31 The April 2018 report and in particular its appendices set out in full the evidence on which the Council's decision to introduce the PSPO was made, including witness testimony and the responses to the Council's original consultation on the introduction of a PSPO (conducted from 29<sup>th</sup> January to 26<sup>th</sup> March 2018).
- 3.32 In addition to the full complement of evidence and consultation feedback on which the April 2018 decision was made, included in the Appendices to this report are a copy of the existing PSPO copies of subsequent court judgments and decisions in respect of this order and feedback from the consultation undertaken from 23<sup>rd</sup> November 2020 – 18<sup>th</sup> January 2021.

#### **4 Evaluation of existing order**

- 4.1 Prior to the introduction of the current PSPO, protests and vigils by individuals and groups representing Pro-Life and Pro-Choice views had been occurring outside the Clinic for over 20 years. The Pro-Life groups involved consisted 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*. The principle Pro-Choice group involved was *Sister Supporter*.
- 4.2 During the second half of 2017 the Council's Safer Communities Team undertook detailed investigative work into the issues reported to be affecting Clinic users,

staff and those in the locality of the Clinic. Further evidence was received through the formal consultation process undertaken by the council in January–March 2018, which resulted in the decision in April 2018 to introduce the PSPO.

4.3 The key activities identified through the investigation and consultation as having a detrimental effect were:

- 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 members of Pro-Life groups when leaving the Clinic, who attempted to engage them in conversation, including making reference to what has happened to their unborn child.
- Women being closely observed entering and leaving the Clinic by members of the Pro-Life groups
- Members of Pro-Life groups engaging in prayer outside the Clinic, which was said to be on behalf of the women and / or their unborn children.
- Images of a foetus in various stages of development in the form of colour photos being held by members of Pro-Life groups, handed to women or left on the pavement.
- Shouting and other disruptive activities when Pro-Choice counter demonstrations were taking place.
- Women feeling they were being monitored, watched and judged by members of the Pro-Life groups.
- The presence of placards with references to ‘murder’ and other similar statements.

4.1 The evidence obtained through the investigation and consultation demonstrated that, while many of the activities in and of themselves may not have been viewed as objectionable in isolation, the very specific time and place in which the represented groups had been choosing to engage in these activities meant they were targeted women at the precise moment those women were accessing health services of a deeply personal nature.

4.2 As outlined in Section 3 of this report, the Council has kept the Mattock Lane PSPO under continuous review as part of its monitoring arrangements. These arrangements include the presence of CCTV at the location, proactive observations of the space by Police and Council officers, engagement with the Clinic and careful examination of any alleged breaches.

4.3 Such continued and careful examination of the impact and effectiveness of the order has not only formed part of the existing local arrangements for monitoring PSPOs, it has been a key part of the Council’s efforts in responding comprehensively to the legal challenges it has faced.

- 4.4 Since the introduction of the order in April 2018, there have only been three alleged breaches of the order the Council is aware of. One alleged breach took place in April 2018, when an individual attended the area outside the Clinic for a brief demonstration about PSPOs and freedom of speech; no action was taken in this instance.
- 4.5 A further breach took place in August 2019, when a male was detained by Police after refusing to disperse from the area when asked. The case was ultimately not proceeded with by Police.
- 4.6 The third alleged breach of the PSPO occurred in March 2020, when an individual deposited leaflets regarding abortion services at two entrance / exit points of the Clinic. This breach was enforced via service of a Fixed Penalty Notice, which was paid in full within the required time period.
- 4.7 There have been no other reported breaches of the PSPO.
- 4.8 As part of the continued review of the PSPO, Council officers have engaged with the Clinic in regard to the diary that it had maintained, documenting instances where patients and family members had reported being distressed by activities outside the Clinic. Clinic management have confirmed that following introduction of the PSPO, these events stopped occurring and it has ultimately become unnecessary for them to maintain this record.
- 4.9 Clinic management have described to officers the positive impact on women attending appointments and what they describe as an 'air of normality', existing outside the Clinic; they say this permeates the Clinic environment in a positive way and describe clients presenting as 'less tense' when they arrive at the Clinic.
- 4.10 An important aspect of the order has been the provision of a *designated area* within the footprint of the PSPO, where the prohibitions and requirements of the PSPO do *not* apply and where activities such as protest about abortion (albeit with some restrictions) are permitted. This area has been used by Pro-Life group members on a near daily basis, almost continuously since the introduction of the order. The individuals using that area congregate in small groups, often displaying small signs relating to abortion, offering leaflets to and attempting to engage with passers-by. The Pro-Choice group identified above have chosen not to use the designated area.
- 4.11 While the Council occasionally receives reports from residents and people visiting the area that object to the continued presence of Pro-Life group members in the designated area, none of these reports have identified any breach of the PSPO taking place and the designated area continues to form an important part of the careful consideration the Council has made in balancing the rights of those visiting the Clinic with those of the groups wishing to assemble, protest, impart information and express their religious beliefs and for those individuals who wish to receive the information that is being shared from that location. As far as the

Council is aware the people attending the designated area have complied with the restrictions which apply within that area.

4.12 As outlined in the evidence to Cabinet in April 2018, during the Lent period leading up to Easter, the area has historically seen high levels of represented groups attending the location immediately outside the Clinic. These groups often form part of the *40 Days for Life* initiative referenced above. During the Lent period of 2020, these congregations took place at the East end of Mattock Lane on the threshold of the PSPO area.

## **5 Options considered and reasons for Decision**

5.1 As explained in section 4 of this report the existing PSPO has been complied with for the most part and has been successful in tackling the activities having a detrimental effect which it was introduced to address.

5.2 The PSPO was never intended to completely stop abortion related protest or prayer from occurring, whether these be Pro-Life or Pro-Choice; it simply sought to prevent the activities from occurring within the narrowly and clearly defined area of the PSPO: it has achieved that purpose. Members are reminded that the order permits some activities within the designated area which is within the PSPO area.

5.3 There have been occasions during the period 2018-20 where groups of individuals who had been involved in protest / vigil in the immediate locality of the Marie Stopes Clinic have instead attended Ealing civic centre (Perceval House), where they have stood outside and displayed signs and images expressing a Pro-Life view and objecting to abortion.

5.4 The (almost) daily continued use of the designated area by the Pro-Life groups, the sporadic protests / vigils at Perceval House and the presence of groups involved in protest / prayer at the threshold of the PSPO area, all indicate a continued interest in the location by all of these groups who had previously been congregating at the entrance to the Clinic. It is reasonable to conclude from their continued presence at these sites that, were the order to expire, they will return to the area outside the Clinic and continue the activities previously engaged in at this location.

5.5 The main Pro-Choice group (Sister Supporter) which had also been protesting outside the Clinic prior to the introduction of the PSPO have chosen not to use the designated area to continue their activities although it has always been open to them to do so (as long as their activities complied with the provisions which apply to that space).

5.6 The April 2018 report details the various options that were considered by the Council before taking the decision to make a PSPO and appended an Options Assessment; these options will not be repeated here. Officers have reviewed the previous options assessment and have born in mind the likely reluctance of victims to provide witness statements/appear in court and the fact that the people

involved in the protests changes from day to day. It is noted that in the last three years no new powers have been created to deal with the issues. Officers remain of the view that the other options are not suitable to tackle the issues which have been identified and that the effectiveness of the PSPO indicates that it is an appropriate measure to deal with the activities which had been having a detrimental impact.

- 5.7 The period for which a PSPO has effect can be extended for up to three years. Officers have given consideration to whether a shorter period of extension might be appropriate but recommend that the extension is for the full three-year period. It is believed that without a PSPO the activities which have a detrimental effect will recur. As to the length of the extension, although there has been some suggestion of national legislation being introduced to create “buffer zones” around all abortion facilities, there is no certainty as to if (or indeed when) this may happen. Officers have also taken into consideration that the other remedies considered by the original Options Assessment are not appropriate and would not enable the extension to be for a shorter period of time. Officers are satisfied that a three-year extension period is necessary.

## **6 Consultation**

- 6.1 On 10th November 2020, Cabinet considered a report on the impact and effectiveness of the PSPO to date and resolved to begin consultation on the option of extending the order for a period of time beyond April 2021.
- 6.2 Consultation commenced on 23<sup>rd</sup> November 2020 and concluded on 18<sup>th</sup> January 2021 and was widely publicised by the council online and through social media channels. Consultation was undertaken with all of the agencies and groups with whom the Council consulted prior to the decision in April 2018 to introduce the order. This included all groups known to be involved in the activities regulated by the PSPO, who were notified of the consultation.
- 6.3 Engagement was also sought from consultees including the Metropolitan Police, Mayor’s Office for Policing and Crime (MOPAC), British Pregnancy Advisory Service (BPAS) and MSI Reproductive Choices, Clinical Commissioning Group and local faith groups. A letter-drop publicising the consultation to residents within and on the borders of the PSPO area was also undertaken.
- 6.4 The consultation took the form of an online survey, consistent with the type of public survey undertaken in 2018. In line with the consultation undertaken in 2018, consultees were additionally provided with the opportunity of submitting responses to the consultation in writing via post or email to the safer communities team. A specific telephone number and email address were also provided for anyone with any queries relating to the consultation.
- 6.5 The consultation asked questions specifically in relation to activities found during the 2017-18 investigation to have been causing a detrimental impact on people in the locality, namely:

- I. People present, individually or with others, inside the proposed PSPO area, for praying or counselling.
  - II. People approaching or attempting to engage in conversation with persons entering or leaving the Marie Stopes Clinic.
  - III. People approaching, following or challenging any person entering or leaving the Marie Stopes Clinic.
  - IV. People taking photographs or other recording of persons using the Marie Stopes Clinic.
  - V. Campaigners displaying text or images relating to the termination of pregnancy.
- 6.6 The majority of consultation responses from the public (4,642) were received via the survey route, with a smaller number of 93 responses being received via email and a single response received by letter. Formal written consultation responses were also received from a range of statutory and non-statutory agencies.

### **Online survey**

- 6.7 Questions 3-5 of the survey asked participants for their view on, if the order were to expire, how likely or unlikely these activities would occur or recur in the areas; how likely or unlikely these activities would increase in frequency; and how likely or unlikely these activities would increase in seriousness. As set out above, it is the Council which has to decide whether the section 60 test is met, namely the need to be satisfied on reasonable grounds that extending the period for which the PSPO has effect is necessary (in order to prevent an occurrence or recurrence or an increase in frequency or seriousness of the activities). In making its assessment the Council is entitled to have regard to the consultation responses but the decision is ultimately one for the Council to make.
- 6.8 The survey then asked participants for their view on whether or not the PSPO should be extended and, if so, for what period of time.
- 6.9 A consultation report, including a full breakdown of all of the 4,642 individual responses to the online survey and all of the consultation responses received via email and letter, can be found at **Appendix 4**.
- 6.10 As detailed in the consultation report, a total of 4,642 people took part in the online survey, with a further 91 written responses to consultation being received via other channels, most commonly via email.
- 6.11 The consultation required individuals to provide a postcode to partake in the survey and postcode analysis indicates:

- 79% of respondents reside in the borough of Ealing
- 21% of respondents reside outside of the borough of Ealing.

All but 1 of those who took part in the consultation reside within the United Kingdom.

- 6.12 The consultation collected equalities information about respondents. In doing so it asked respondents to identify their gender. 4,072 respondents (88% of the total) answered this question, of whom a large majority (76%) identified themselves as women.
- 6.13 The consultation asked participants to state what their relationship to the area was. The majority of respondents (47%) stated they use services within the Safe Zone area or an area bordering it. 17% stated they live in the area of the Safe Zone or an area bordering it, another 10% stated they access services at the Clinic.
- 6.14 In respect of the behaviours targeted by the PSPO, the majority of survey respondents were of the view that all five of these behaviours would be likely to occur (or recur), increase in frequency and increase in seriousness in the event the PSPO were *not* to be extended. Respondents of this view who chose to explain their view most commonly made references to the activities they had previously witnessed.
- 6.15 A number of these respondents also cited the continued behaviours within the 'designated area' and on the edges of the PSPO area as proof these activities would recur and increase in seriousness and frequency in the event the PSPO were to lapse. A repeated theme through the responses of people expressing this view was that the existing PSPO should be '*permanent*', with comments such as '*The safe zone should be extended forever*' and '*I do not see why it has to be 3 years and not permanently*' being common among those wishing to see the PSPO extended.
- 6.16 A smaller number of survey respondents stated they did not believe these activities were likely to occur or recur, increase in frequency or increase in seriousness if the PSPO were not to be extended. Respondents answering with this view offered a range of explanations for their answers, including the (extensively debunked) argument commonly made during the original investigation into the issues in 2017-2018 that: '*There have been no prosecutions of people campaigning [sic] outside these clinics. This is evidence that they are not causing any issue or disturbance.*'
- 6.17 A repeated theme throughout the responses of those who felt activities were unlikely to recur was the view that there was no antisocial behaviour occurring and that the PSPO was unreasonable, with one respondent stating simply '*Protesting is not antisocial behaviour.*' However, it is important to recognise that

the purpose of the consultation was not to seek people's views on whether the activities the PSPO has sought to address are 'antisocial' - the Council has already clearly satisfied itself that the relevant statutory test had been met; if it had not, it would not have introduced the PSPO. Both the High Court and the Court of Appeal accepted the Council's assessment on this front.

- 6.18 In terms of the fundamental question of whether or not the PSPO should be extended, of the 4,096 people who answered this question, the significant majority of respondents (97%) said the PSPO *should* be extended for a period of three years. Reasons for this view included:

*I have lived in Ealing my entire life, and the safe zone has made such a difference to the whole area. Having to watch women be harassed every day was horrendous, but since the safe zone Mattock Lane feels like a completely different place.*

- 6.19 93 respondents (approximately 2% of total respondents) said the PSPO should *not* be extended for any period of time at all. One respondent outlined their objection to the restrictions in the existing order, writing:

*'I am pro-choice. If people are approached then it is to offer help to them to keep the unborn child at least to full term. Whilst I find it hard to believe but in my professional life I have come across those who have no idea how an unborn child looks at 28 weeks in the womb so pictures can help with an otherwise uninformed decision if indeed such images are displayed.'*

- 6.20 Another respondent who opposed extending the order highlighted their support for the presence of people at the Clinic entrance, providing what they described as the offer of 'practical help':

*'Whereas certain other behaviours listed can amount to harassment, counselling and practical help of the kind offered by some of the groups has been demonstrated as providing a much-valued lifeline to women who might not otherwise believe they have any alternative but to seek a termination of pregnancy. To offer help with food, baby clothes, rent, housing and legal advice, among other kinds of caring support, is to provide a service to women in need that is the very opposite of causing harassment, alarm or distress. It should in no way be criminalised.'*

- 6.21 An extremely small number (10) of those responding to the survey said the PSPO should be extended but for a shorter period of time. On examining comments offered by these respondents, there was no clear reasoning offered as to why they felt the order should be extended but for a period of *less* than three years. In all cases where comments were offered by this small group of respondents, they were in favour of the existence and extension of the PSPO.

## Consultation with Police and other agencies

- 6.22 Consultation responses were additionally received from statutory and non-statutory consultees, including local partners and those organisations with a link to the issues addressed by the PSPO. This included responses from: the Metropolitan Police Service (MPS), Mayor's Office for Policing and Crime (MOPAC), the British Pregnancy Advisory Service (BPAS), MSI Choices, the British Medical Association, Royal College of Midwives, Good Counsel Network, Sister Supporter and other members from represented groups. All of these responses are provided in full at **Appendix 4b**.
- 6.23 The Metropolitan Police Service in their response to the consultation cited the protection of vulnerable people as one of the MPS's core priorities, described the PSPO as *'an appropriate tactic in this situation,'* and concluded, *'A continuation of the PSPO would benefit all communities, reducing potential public order incidents, and reassuring the vulnerable'*.
- 6.24 The Royal College of Midwives responded to the consultation in support of the extension of the PSPO, citing the ruling of the Court of Appeal in relation to the balancing of rights of all involved and highlighting the impact of protest / vigils at the entrance to clinics in the form of delayed procedures and associated adverse health outcomes, observing: *'The RCM is also aware there is some evidence that protesting has made women delay or put off treatment. Delayed access to abortion services can increase the likelihood of adverse experiences, limit women's ability to access safe, legal care, and increase costs to the health service.'*
- 6.25 The British Medical Association responded to the consultation to express their view that the behaviours the order has successfully addressed would recommence in the event of the PSPO lapsing. The BMA stated they support the extension of the PSPO in the absence of a national solution for the wider issues.
- 6.26 In their response to the consultation, MSI Reproductive Choices (formerly Marie Stopes International) outline their strong support for an extension of the PSPO for a further three years, citing the on-going continual presence of Pro-Life groups in the 'designated area' and, on occasion, at the nearby council offices, as evidence of the behaviours likely swiftly returning in the event of the PSPO lapsing.
- 6.27 MSI Reproductive Choices also cite the detailed feedback on the impact of the order from the Clinic operations manager, Sally O'Brien, who states: *'Since the PSPO has been in place, there have been very limited numbers of women who are arriving at the clinic in distress. Whereas before almost every woman had a tale to tell and would regularly question why the protestors were allowed to stand outside and harass them, this has now reduced to just the unfortunate few who happen to walk past the area where the protestors are still allowed to stand. It*

*would appear they stop and question everyone who walks past them, as I have had complaints from residents that they continue to approach them, and my own daughter has been stopped as she walked along the street. Thankfully, because they are away from the main entrance of the clinic and only at one end of the street, we are able to warn women of their existence and they can avoid this area if they wish.”*

6.28 The British Pregnancy Advisory Service (BPAS), in their response to the consultation, support this view, stating *‘It would be a mistake to believe that a three-year hiatus would dissuade groups – which are largely regional or national, and which have continued to protest across London in lieu of their presence in Ealing – from a presence outside the Mattock Lane clinic. Without a PSPO in place, it is our professional opinion that the same issues identified in 2018 would recur frequently, and with a high degree of impact on the local area and women seeking abortion care – resulting in the subsequent need for reinstatement of restrictions. The only suitable approach is for the PSPO to be renewed in full for 3 years.’*

6.29 In addition, both MSI Reproductive Choices and BPAS provided some significant supporting evidence of the types of behaviours that previously occurred outside the Clinic and similar on-going behaviours at other locations outside of Ealing. They assert that there is a high probability that the same behaviours evidenced to have caused detrimental effect would return in the event the PSPO were to end.

### **Response from Represented Groups**

6.30 The Council additionally wrote to all of the groups known to have previously engaged in abortion related protest / vigil activity in the locality of the Clinic (with all of whom the Council had previously had extensive liaison, through the attempted negotiation and engagement process during 2017-18 – members are referred to **Appendix 1**, which provides a link to Appendix 5 of the April 2018 report, containing the minutes of meetings held with represented groups including *Good Counsel Network and Sister Supporter among others*).

6.31 The Council were contacted in the final week of the consultation by Clare McCullough of the Pro-Life group *Good Counsel Network*, who are the organisers (and in some cases employers) of a number of those involved in historic protest / vigil outside the Clinic and on-going protest / vigil in the ‘designated area’. Ms McCullough reported that she had received ‘many complaints’ about what was described as the ‘prejudiced nature’ of the survey, and cited a single report that stated: *‘I found that the questions are so overwhelmingly biased against the pro-life vigil that it is not really possible for a pro-life person to answer them. There is no option for people to respond that no harassment, intimidation or antisocial behaviour is taking place; at least not on the part of the pro-life vigil attendees.’*

- 6.32 The Council responded to Ms McCullough, reiterating to her that the survey contains a free-text box for those completing the survey to outline any additional representations they need to make and that the Council is satisfied the survey allowed for any interested party to complete it in line with their personal views and beliefs. Ms McCullough was also informed that those wishing to communicate their views could use the email address and she was reminded of those details.
- 6.33 The concern raised by Ms McCullough in any case appears to miss the more fundamental point that the time for debating whether harassment or intimidation was occurring has passed. As outlined, there is no question these activities were occurring; the Council was sufficiently satisfied of the presence of these behaviours to introduce the PSPO in April 2018 and this decision and rationale was supported in the subsequent judgments of the High Court and Court of Appeal. As set out at paragraphs 2.16-2.17 of this report, the issue for the Council is whether it is appropriate to extend the period for which the order has effect. This requires the Council to focus on the risk of occurrence or recurrence, or, of an increase in the frequency or seriousness of the activities. The real issue in the present situation is the risk of recurrence.
- 6.34 The *Good Counsel Network* submitted a formal written response to the consultation, in which they continue to dispute the detrimental effect of the previous activities on Clinic service users and others in the locality. Their response suggests that the Council's reference to these behaviours causes the consultation to be prejudiced. The *Good Counsel Network* reiterate in their response the argument they have previously repeatedly made, and which was considered by the courts: that they provide financial and practical support for women who may be accessing abortion services because they do not feel there is an alternative.
- 6.35 The Pro-Life Group *Helpers of God's Precious Infants* similarly advise in their response to the consultation that they believe their group's activities are supportive and that the PSPO should not be extended. Their response states: *'The imposition of a PSPO prevents women from accessing the choice of whether to proceed with an abortion or not. It has been shown over the years (and demonstrated to your Council) that many women do not wish to go down the route of ending the life of their child but feel they have no alternative. Many women have testified their gratitude for our presence and are glad they did not have an abortion but carried on with their pregnancies, supported by our group.'*
- 6.36 Echoing a theme common to the response of both MIS Reproductive Choices and BPAS, the Pro-Life group *Sister Supporter* expressed in their response to the consultation their concern that allowing the PSPO to lapse would offer a 'green light' to those groups who had previously been involved in the activities outside the Clinic to return. It cites in its response and attached 'Evidence Pack' the on-going presence of Pro-Life represented groups in the 'designated

area' as well as evidence of Pro-Life represented groups at other clinics in London where no restrictions are in place.

6.37 There is nothing in the responses from any of the Pro-Life groups which suggests that they would change their pre-PSPO activities if the PSPO were allowed to lapse. The main theme is that they continue to dispute their activities have a detrimental effect on people in the locality. Officers take the view that despite seeing the evidence to the contrary, and two court judgments, GCN remains unwilling or unable to acknowledge the detrimental impact which some or all of their activities had on service users and the local community.

6.38 In particular, the GCN response asks the Council to look at whether activities taking place within the designated area are anti-social and claims that they are not (and that the PSPO has not been breached). The response does not offer any proposals for an alternative to the PSPO. From the meetings that took place prior to the PSPO being introduced it is clear that GCN see their ability to directly engage with service users, in order to offer counselling and/or support, as a core part of their activities. GCN would not entertain any suggestions that they voluntarily situate their activities away from the entrance to the clinic or otherwise modify their activities. Officers have been offered no evidence to suggest that their position has changed. On balance, GCN's response to the consultation, combined with the group's continued presence and activities within the designated area, suggests that without an order which restricts them to the designated area (or anywhere outside the safe zone) they would return to their pre-PSPO activities directly outside the Clinic. In reaching this conclusion, officers have taken into consideration the consistent position GCN has always adopted whenever they have been asked about these matters.

6.39 There is also no evidence to suggest that if the PSPO were allowed to expire, that the recurrence of some or all of the pre-PSPO activities would not have the detrimental effect which was identified when the order was made.

6.40 The response from *Sister Supporter* describes a key impact of the PSPO has been that instances of harassment and intimidation have virtually disappeared, concluding, '*The Safe Zone does the job it was intended to do.*'

## **7 Financial implications**

7.1 All of the investigation and consultation processes have been managed within the existing resources of the Safer Communities Team, albeit resulting in the need to realign priorities and the deployment of officers.

7.2 Similarly, the costs of the investigation and implementation of the PSPO (including the deployment of signage and CCTV to the location) have been met

from the Safer Communities approved budget and have to date amounted to approximately £0.01m.

- 7.3 The Council's legal costs, primarily incurred from resisting the appeals outlined in Section 4 of this report, have to date amounted to approximately £0.144m. However, this does not include the significant cost of officer time in supporting the various streams of work associated with the extensive legal proceedings.
- 7.4 There is no anticipated unbudgeted cost for implementing the recommendation of this report, i.e. extending the PSPO for a period of three years to April 2024.
- 7.5 There is no cost associated with the design, manufacture or installation of signage, as the signs already in place are sufficient for the order to be understood and enforced.
- 7.6 There is the small revenue cost of continued CCTV deployment to the location, however this CCTV would in any case be required at the location if the PSPO were not to be extended, given the high likelihood of the situation that existed prior to April 2018 returning should the order be left to expire.

## **8 Legal implications**

- 8.1 The applicable statutory framework in respect of the matters in this report is set out in Section 2 of this report and in the Equalities Impact Analysis appended to it.
- 8.2 Any decision to extend the PSPO for a further period of time may be challenged. It is not clear whether such challenge would be made.

## **9 Risk management**

- 9.1 By introducing the order and defending numerous legal challenges, the Council has been exposed to financial risk, albeit all of which has to date fallen within the contingencies made in 2018.
- 9.2 There is a risk of further legal challenge, which may expose the Council to additional legal costs.
- 9.3 The risk of taking no action and allowing the order to expire would likely result in the return of behaviours established to have caused detrimental effect and established to have a disproportionate detrimental effect on a protected characteristic (pregnant women) and would therefore create a renewed issue requiring Council intervention.

## **10 Community Safety**

- 10.1 The Council has a duty under the Equality Act 2010 and our commitment to a safer Ealing to protect women, and particularly pregnant women, (both of which are groups which have protected characteristics under the 2010 Act), accessing

health services. The Council's duties pursuant to the Crime and Disorder Act 1998 are also engaged by the issues evidenced to have been occurring in the locality of the Clinic.

## **11 Links to Council Priorities**

- 11.1 Continued action to ensure those accessing clinic services are protected from fear of intimidation, harassment or distress links to Ealing's priority of *A healthy and great place*, which outlines the Council's commitment to working with residents to build strong, fair communities and to keep the borough a clean, safe and attractive place to live.

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

- 12.1 A full Equalities Analysis Assessment and assessment of the Council's Public Sector Equality Duty was completed prior to the introduction of the PSPO and a renewed Equalities Analysis has been undertaken as part of the consultation on the recommended extension of the order beyond April 2021. The renewed Equalities Analysis Assessment can be found at **Appendix 5** of this report.

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

- 13.1 There are no proposed changes to Council staff or workforce within the outlined proposal beyond the staff resource already utilised in coordinating the consultation process, analysing and presenting the responses and delivering the results to Cabinet.

## **14 Property and assets**

- 14.1 There are no implications for Council property or assets beyond the continued deployment of CCTV and signage at the locality.

## **15 Any other implications**

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

## **16 Timetable**

- 16.1 If Cabinet are minded to follow the recommendations of this report, the PSPO will be extended for a period of three years with effect from 11<sup>th</sup> April 2021 until 10<sup>th</sup> April 2024.

## **17 Appendices**

Appendix 1: Copy of April 2018 Cabinet report and link to all appendices and evidence considered by Cabinet in April 2018.

Appendix 2: Copy of Cabinet report of November 2020

Appendix 3a: High Court judgement, dated 2<sup>nd</sup> July 2018

Appendix 3b: Court of Appeal judgement, dated 21<sup>st</sup> August 2019

Appendix 3c: Supreme Court certificate of decision, dated 10<sup>th</sup> March 2020

Appendix 4a(i): Summary of online survey responses

Appendix 4a(ii): Detailed report of online survey

Appendix 4b: Responses from statutory and non-statutory consultees

Appendix 4c (CONFIDENTIAL): Copies of email / letter responses to consultation.

Appendix 4d (CONFIDENTIAL): Full unabridged data collation from online survey.

Appendix 5: Equalities Impact Analysis

## 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>				
Keith Robinson	Lawyer	07/01/2021	27/01/2021	
Mark Wiltshire	Director of Community Development	07/01/2021	27/01/2021	
Jess Murray	Head of Safer Communities and Resident Services	07/01/2021	27/01/2021	
<b>External</b>				
Kuljit Bhogal	Counsel	07/01/2021	27/01/2021	
Tara O'Leary	Counsel	07/01/2021	27/01/2021	

## Report History

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