

Section 4: Options Considered and Draft Order

Following collation of evidence, a comprehensive options assessment was undertaken in January 2018 and provided to Cabinet. All options (including doing nothing) were considered in the context of their benefits, risks and mitigation.

The officer recommendation to Cabinet in January was that a PSPO is likely to be the most appropriate (albeit imperfect) option open to the council, having established there is evidence of intimidation, distress and harassment being caused to clinic services users. That options assessment is reproduced here in full, along with a copy of the draft PSPO.

There are several options available to manage the behaviours outside the clinic. In preparing this options paper the Council has looked at all of the available options including those which are only available to the Police.

<p>Option 1 – No Action</p>	<p>Having reviewed the evidence bundle it may be decided that none of the enforcement or intervention options are appropriate, and that the status quo should remain.</p> <p>The decision may also be considered alongside lobbying of central government to introduce appropriate legislation.</p>
<p>Procedure/ Timescale/ Resource Impact</p>	<p>The evidence gathered by Safer Communities will be reviewed in the coming weeks by senior officers and members. The decision will need to be publically announced given the recent petition and vote taken by members.</p> <p>If no action is taken there will be limited initial resource impact or timescale consideration. However the decision may be subject to judicial review, and the evidence and decision making process will then be subject to legal scrutiny, which may include full disclosure.</p>
<p>Benefits</p>	<ul style="list-style-type: none"> • May be the appropriate decision based on the evidence;
<p>Risks</p>	<ul style="list-style-type: none"> • <u>Judicial Review</u> - The council is likely to face a judicial review from Sister Supporter and possibly other currently unknown individuals and bodies. The Judicial Review will be heard in the High Court, which will carry cost

	<p>implications. The evidence will be reviewed and there is a possibility that the Council's decision will be successfully challenged;</p> <ul style="list-style-type: none"> • <u>Reputational Damage</u> - There will also be reputational damage to the Council and Members, who have voted for action to be taken;
Risk Management	<p>A 'no action' decision may be taken in conjunction with pressure being exerted on central government to act. Research shows that the only effective action taken against pro-life protest groups has been where specific legislation has been introduced at a national or federal state level. Such legislation is in existence in South Africa, and in certain states in Australia, Canada and the USA.</p> <p>Rupa Huq MP has called for an amendment to the new domestic violence bill to include 'buffer zones' around abortion clinics. If successful this would supersede local interventions.</p>
Option 2 – Compromise Agreement	<p>An agreement between the Pro-Life and Pro-Choice groups could be negotiated preventing the elements of the protest which cause most harm and avoiding costly and lengthy interventions.</p>
Procedure/ Timescale/ Resource Impact	<p>Upon review of the evidence bundle and options paper it may be decided before any other interventions are enacted that further discussion with Pro-Life groups is appropriate. Safer Communities have met with representatives from the Pro-Life groups previously so this should be possible to arrange quickly, and will have minimal resource impact.</p>
Benefits	<ul style="list-style-type: none"> • Swifter resolution than legal intervention if an agreement can be reached; • Avoids costly and time consuming legal intervention, which may ultimately prove unsuccessful; • Provides an appropriate 'tiered' approach to intervention;
Risks	<ul style="list-style-type: none"> • <u>No agreement</u> – Previous discussions with the Pro-Life and Pro-Choice groups indicate that an agreement is unlikely. A key element of the Pro-Life groups procedure is to approach clinic users and directly offer them support. The Pro-Choice groups have asked for a 100m buffer zone preventing any kind of protest around the clinic. Evidence from patients affected by the protests also indicates that the presence of the protesters caused distress and harassment. • <u>Agreement ineffective</u> – a suitable agreement in principle may be reached but then not adhered to. There would be no legal basis under which compliance could be enforced. In addition, even if agreement is reached with some or even all of the groups, other groups may become involved in the future.

Risk Management	It had been hoped that once the Pro-Life groups were presented with the evidence of the impact of their behaviours, that they might recognise the impact of the behaviours and consider a self-imposed compromise position or indicate willingness to negotiate on problematic behaviours. The discussions which have taken place suggest that the Pro-Life groups are not willing to discuss changes to where they stand or what they display or to refrain from approaching the service users of the clinic.
Option 3 – Physical Changes to the Environment	<p>The area directly opposite the Marie Stopes clinic is an open grassed island in the road, and provides an ideal base for protesters. It has been suggested that the reason for the increased protest at the Mattock Lane clinic, rather than other clinics in London is because the location is more convenient than others. Options include:</p> <ul style="list-style-type: none"> • Planting obstructive bushes/trees on the grassed area outside the clinic; • Railings directly outside the clinic; • Installation of alternative entrance;
Procedure/ Timescale/ Resource Impact	<p>Following review of the evidence and options paper a decision could be taken to obstruct access to the grassed area. The work could be delivered quickly and would be relatively low cost.</p> <p>It may also be considered alongside other measures listed below, such as security guards or alternative access to patients.</p>
Benefits	<ul style="list-style-type: none"> • Avoids costly and time consuming legal intervention, which may ultimately prove unsuccessful; • Low cost; • Quick to deliver; • Prevents a distressing element of the protest; • Could be successful in conjunction with other measures, such as a compromise agreement or alterations to patient access to the clinic;
Risks	<ul style="list-style-type: none"> • Obstructing access to the grassed area could be viewed as an aggressive move, and the decision making could be challenged by Pro-Life groups;

	<ul style="list-style-type: none"> • Railings obstructing the public highway would almost certainly require a change in local byelaws or a PSPO; • Railings may also be generally ineffective, and simply move the point of contact between protesters and patients to the new entry point; • Could result in displacing the behaviour to another area still in close proximity to the entrance to the clinic. • Will not be effective in removing the Pro-Life groups which stand on the pavement at the clinic entrance (as opposed to standing the grassed area).
Risk Management	<ul style="list-style-type: none"> • Consultation with the local community could show support for planting on the grassed area, and support the decision making process;
Option 4 – Alterations to the clinic and patient arrival	<p>Patients currently enter the clinic on foot via the front entrance on Mattock Lane exposing them to the protesters. Alterations to this process could be explored such as:</p> <ul style="list-style-type: none"> • Taxis bringing patients directly to the clinic; • Patients entering via a new rear entrance; • Moving the clinic to a different location altogether;
Procedure/ Timescale/ Resource Impact	<p>Following review of the evidence and options it may be decided that this approach would be the most appropriate. The key implication for these measures will be cost, and the timescale is likely to be dictated</p>
Benefits	<ul style="list-style-type: none"> • Avoids costly and time consuming legal intervention, which may ultimately prove unsuccessful; • It is possible to bring clients directly into the perimeter of the clinic and avoid the protesters;
Risks	<ul style="list-style-type: none"> • Protesters may still gather outside and be seen/heard by patients when they enter and leave; • High long term cost; • Resource intensive to administer; • Moving the clinic altogether would require agreement from Marie Stopes and the CCG, and does not in essence solve the problem; • ‘Solution’ in this case does not address objectionable activity and requires the victims of that behaviour to change their behaviours rather than the reverse, which does not seem consistent with ethical practice.

Risk Management	<ul style="list-style-type: none"> Formal agreement made with Marie Stopes and CCG to deliver the service, and appropriate resources allocated to ensure smooth running;
Option 5 – S222 LGA Injunction	The council has injunctive powers under section 222 of the Local Government Act 1972 to take proceedings where it considers that it is expedient for the promotion of the interests of the inhabitants of the local area.
Procedure/ Timescale/ Resource Impact	Applications are made to the County Court or High Court. No requirement for public consultation, evidence packaged in a similar way to standard Safer Communities Injunctions.
Benefits	<ul style="list-style-type: none"> Robust enforcement – can include an attached power of arrest, and sanctions for breach include prison sentences; Can seek in respect of ‘persons unknown’ if the evidence warrants this Safer Communities have experience of successfully delivering injunctions;
Risks	<p>;</p> <ul style="list-style-type: none"> Recent examples of successful challenges being brought against s.222 injunctions, a common ground for appeal being that other more appropriate or bespoke statutory remedies should be used; Also criticism from Courts that councils were trying to introduce byelaws without permission from the secretary of state; Difficult to enforce against large groups; The resource impact initially would be minimal. Any appeal would increase the resource impact.
Risk Management	<ul style="list-style-type: none"> More appropriate enforcement tools available;
Option 6 – Civil Injunction	Civil injunctions sought under s.1 of the Anti-Social Behaviour, Crime and Policing Act 2014 could be used to control the behaviour of against specific individuals identified as causing, or likely to cause, harassment, alarm or distress.
Procedure/ Timescale/ Resource Impact	<p>The evidence test is the civil standard. A court would need to be satisfied that:</p> <p style="padding-left: 40px;">On the balance of probabilities:</p> <ul style="list-style-type: none"> ➤ Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); and ➤ Just and convenient to grant the injunction to prevent anti-social behaviour. <ul style="list-style-type: none"> The evidence bundle would be packaged and an application made to the County Court for a hearing date. The application could be made fairly swiftly on the

	<p>available evidence. On-notice applications typically take 8-12 weeks to be heard at court, and it is likely the first hearing will be adjourned.</p> <ul style="list-style-type: none"> • The resource impact initially would be minimal. Any appeal would increase the resource impact.
Benefits	<ul style="list-style-type: none"> • Safer Communities and Legal Services have extensive experience of successfully using this power; • Could potentially be used against ‘persons unknown’ as well as specific individuals; • Flexible power, allowing for prohibitions such as exclusion zones; • Decision to impose is taken by the County Court, as opposed to a council officer;
Risks	<ul style="list-style-type: none"> • Likely to be appealed, delaying the introduction of the measure, although an interim injunction could be sought; • Generally only addresses the behaviour of specific individuals; • Threshold to have a power of arrest attached will not be met, meaning breaches will have to be dealt with by costly and time consuming ‘contempt of court’ procedure. Any contempt proceedings will need to be proved to the criminal standard of proof; • Risk that as specific problem individuals are removed they will quickly be replaced;
Risk Management	Robust evidence bundle and scrutiny of evidence prior to application.
Option 7 – PSPO	A Public Spaces Protection Order is designed to stop individuals and groups from causing anti-social behaviour in a public place, with an emphasis on improving public spaces for a local community.
Procedure/ Timescale/ Resource Impact	<p>Behaviour being restricted has to:</p> <ul style="list-style-type: none"> • be having, or be likely to have, a detrimental effect on the quality of life of those in the locality; • be persistent or continuing nature; and • be unreasonable. <p>By virtue of s.72(3) and (4), the council must carry out consultation with Police, whatever community representatives the Council thinks it is appropriate to consult with and the owners or occupiers of land within any area covered by a PSPO. Timescale is likely to be 4 – 6 months from the point at which it is decided to begin consultation to the PSPO going live.</p>

	<p>PSPOs are resource intensive to deliver and require at least one additional project officer allocated to support the delivery. It is likely a PSPO would be appealed adding to the resource impact, both in cost and officer time.</p>
Benefits	<ul style="list-style-type: none"> • PSPOs are specifically designed to address the issues in this case –anti-social behaviour in a public place; • Safer Communities have experience of successfully introducing another PSPO in the borough; • The order is flexible and the council has the ability to draft it's own requirements and prohibitions depending on the evidence; • Gathers views of the community;
Risks	<ul style="list-style-type: none"> • It may not be possible to completely restrict access to protesters, only restrict their behaviour; • Practical enforcement of PSPOs with fines and prosecutions may not be effective, nor will they bring about an immediate resolution; • The order may be deemed to unfairly target religious groups, religion is a protected characteristic under the Equality Act 2010; • The order may also be deemed to restrict the rights of protesters and rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly of the European Convention on Human Rights Act; • Also relevant is Article 9 (freedom of thought, conscience and religion) • Escalation from Pro-Life groups is possible, making the order very difficult to enforce and police, and worsening the impact on clinic patients; • Survey carried out by Safer Communities received a mixed response;
Risk Management	<ul style="list-style-type: none"> • Robust scrutiny of legal bundle and decision making process before officer sign off; • Appropriate consultation with Police, including thorough enforcement strategy; • External legal counsel sought, particularly on drafting of the order; • Legal guidance sought on Equality and Human Rights issues;
Option 8 – Injunction under the Protection from Harassment Act 1997	<p>The Council may apply to the Court for an injunction under the Protection from Harassment Act 1997. Such an injunction could be used to introduce a buffer zone around the clinic and the application could be made in partnership with other local authorities. health service providers to protect clinics across the country.</p>

<p>Procedure/ Timescale/ Resource Impact</p>	<p>The evidence bundle would be refined and submitted to the Court, which would then schedule a hearing date.</p> <p>The initial resource impact would be low as the application could be made on the evidence available. Further investigation may be suggested.</p>
<p>Benefits</p>	<ul style="list-style-type: none"> • Recent legal precedents of the power being successfully used by public bodies, including local government, to restrict 'peaceful protests', including introducing buffer zones; • Carries an attached power of arrest; • No requirement for police consultation; • Provides a more robust form of enforcement than fixed penalty notices; • Focusses on key issue of harassment, rather than popular support; • Decision is taken by the Court, as opposed to a council officer; • Allows for multiple applicants, meaning the Order could apply in other LA's, and therefore safeguard a much larger number of women across the country; • Multiple applicants also spreads reputational and financial risk to LAs; • Allows for multiple defendants, covering key protest groups, individuals and 'persons unknown'; • Lower financial risk than a PSPO High Court Appeal;
<p>Risks</p>	<ul style="list-style-type: none"> • Evidence may not meet harassment threshold as defined in the Act; • The order may be deemed to unfairly target religious groups, religion is a protected characteristic under the Equality Act 2010; • The order may also be deemed to restrict the rights of protesters and rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly of the European Convention on Human Rights Act; • Also relevant is Article 9 (freedom of thought, conscience and religion) • Large amounts of the evidence gathered will be discounted, as the legislation specifically relates to individuals who have been directly harassed;
<p>Risk Management</p>	<p>Robust scrutiny of evidence and legal consideration of Human Rights and Equality Act issues before a decision is taken.</p>
<p>Option 9 – Byelaws</p>	<p>Byelaws are local laws giving local authorities powers to restrict behaviours in a large variety of scenarios; they were recently streamlined under the Byelaws Regulations 2016. In theory they could be used to restrict the protest outside the clinic.</p>

<p>Procedure/ Timescale/ Resource Impact</p>	<p>The procedure is similar to that of a PSPO. Byelaws are drafted based on evidence of a particular issue, and then consulted on with partners and the public. The byelaw is then submitted to the Secretary of State for approval, who must respond within 30 days.</p> <p>The timescale up to submission to the Secretary of State is likely to be similar to a PSPO (i.e 4 – 6 months) to allow for a full public consultation to take place and for proper scrutiny of the evidence.</p> <p>Byelaws are enforced by the local authority through the magistrates' court and contravening a byelaw can result in a fine upon successful conviction.</p> <p>Byelaws are considered measures of last resort after a local council has tried to address the local issue the byelaw applies to through other means. A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem.</p>
<p>Benefits</p>	<ul style="list-style-type: none"> • Allows for full account of all sides views to be taken; • Flexible powers tailored to specific issue; • Not time limited; • Does not need to go to court in the first instance, • Decision ultimately taken by the Secretary of State;
<p>Risks</p>	<ul style="list-style-type: none"> • Relatively weak enforcement; • Possibility the Secretary of State will find that other powers are more appropriate;
<p>Risk Management</p>	<p>Legal advice taken before final decision is made.</p>
<p>Option 10 – CPNs</p>	<p>Community Protection Notices (CPNs) can be issued to persons aged 16 or over, business or organisation to prevent them from committing anti-social behaviour which spoils the community's quality of life.</p>
<p>Procedure/ Timescale/ Resource Impact</p>	<p>Firstly a warning letter is issued directing the person/organisation to stop or change their behaviour within an agreed timescale. If this is not complied with a Notice is issued, and breach of the notice is a criminal offence. A £100 fixed penalty notice can be issued, or a fine of up to level 4 for an individual, or £20,000 for a business.</p>
<p>Benefits</p>	<ul style="list-style-type: none"> • Quick and straightforward process; • Robust enforcement through heavy fines; • Breaches can lead to subsequent Criminal Behaviour Orders as breaches are a criminal offence;

	<ul style="list-style-type: none"> • Appeals heard in the Magistrates Court rather than higher courts; • Restricted grounds for appeal; • Exclusion zones successfully used in CPNS by local Police teams;
Risks	<ul style="list-style-type: none"> • Appeals could escalate to higher courts; • Difficulty of enforcing with fixed penalty notices; • Escalation from Pro-Life groups are possible, making CPNS very difficult to enforce and police, and worsening the impact on clinic patients; • Difficult to apply to large groups of unknown people, who are not affiliated to a specific group;
Risk Management	Legal advice taken before final decision is made.

Option 11 – Working with the Police to encourage use of the powers available to them.	There are several powers available to the Police which allow anti-social behaviour in public spaces to be regulated. Some of the powers listed below are more suitable for use than others
Procedure/ Timescale/ Resource Impact	<ul style="list-style-type: none"> • Criminal offences under the Public Order Act 1986 • Power to impose conditions on public assemblies under section 14 of the Public Order Act 1986 • Dispersal powers under the Anti-Social Behaviour, Crime and Policing Act 2014 • Criminal offence of obstruction of a Highway 1980, section 137 • Criminal offence of harassment under the Protection from Harassment Act 1997
Benefits	<ul style="list-style-type: none"> • Although some of the powers could be appropriate in the present situation, their use is an operational decision for the Police and the Council has little influence or control over this
Risks	<ul style="list-style-type: none"> • Ad-hoc reactive approach to the behaviours as opposed to preventing them in the first place

	<ul style="list-style-type: none">• The powers relating to assemblies/dispersal are a short term fix as opposed to being a longer term solution to the issues
Risk Management	