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Notice of Meeting:

Cabinet

Meeting Location:

The Atrium, Perceval House,
14-16 Uxbridge Road, Ealing, W5 2HL

Date and Time:

Wednesday, 8 November 2023 at 5.00 pm

Contact for Enquiries:

Email: democraticservices@ealing.gov.uk

Telephone: 020 8825 6302

Chief Executive:

Tony Clements

Members:

J Anand
J Blacker
L Brett
D Costigan
S Donnelly
P Knewstub
B Mahfouz
S Manro
P Mason (Chair)
K K Nagpal

Portfolio

Cabinet Member for Tackling Inequality
Cabinet Member for Healthy Lives
Cabinet Member for Decent Living Incomes
Deputy Leader and Cabinet Member for Climate Action
Cabinet Member for Inclusive Economy
Cabinet Member for Thriving Communities
Cabinet Member for Safe and Genuinely Affordable Homes
Cabinet Member for Good Growth and New Homes
Leader of the Council
Cabinet Member for A Fairer Start

AGENDA

This meeting will be broadcast live on YouTube

Please click the following link to view the meeting:

[\(1\) Ealing Council - YouTube](#)

- 1 **Apologies for Absence**
- 2 **Urgent Matters**
- 3 **Matters to be Considered in Private**
- 4 **Declarations of Interest**
- 5 **Minutes** **(Pages 3 - 6)**

To approve as a correct record the minutes of the meeting held on Thursday 12 October 2023.
- 6 **Appointments to Sub Committees and Outside Bodies**
- 7 **2023/24 Quarter 2 Budget Monitoring Report** **(Pages 7 - 26)**
- 8 **Commercial Strategy 2023-2027** **(Pages 27 - 44)**
- 9 **Mattock Lane Safe Zone PSPO** **(Pages 45 - 164)**
- 10 **Plans to develop an Ealing Building Blocks of Health Research Collaboration (BBHRC) - Pending funding from National Institute of Health Research** **(Pages 165 - 178)**
- 11 **Update on School Places and Children's Services Capital Approvals** **(Pages 179 - 190)**
- 12 **Date of the next meeting**

The next meeting is scheduled for Wednesday 6 December 2023.

Exclusion of the Public and Press

Published: Tuesday, 31 October 2023

Minutes of the meeting of the Cabinet

Date: Thursday, 12 October 2023

Venue: The Atrium - Perceval House

Attendees (in person): Councillors

P Mason (Chair), J Anand, J Blacker, L Brett, S Donnelly, P Knewstub, B Mahfouz, S Manro and K K Nagpal

Attendees (virtual): Councillors

D Costigan

Also present: Councillor

J Gallant

Also present (virtual): Councillor

G Malcolm and G Shaw

1 Apologies for Absence

Councillor Blacker sent apologies for lateness. Councillor Blacker was not present for items 1 – 7 of the agenda and did not participate in votes on these items. He arrived during item 8, council plan performance report Q1 2023 to 2024 and participated in the vote on this item and the remaining items on the agenda.

In accordance with paragraph 2.6(a) of the Council's Constitution, the following speakers addressed the Cabinet with regard to the following items:

Council plan performance report Q1 2023 – 24:

- Councillor Malcolm
- Councillor Gallant

Ealing Air Quality Strategy and Action Plan:

- Councillor Gallant

The meeting was held in a hybrid format with members and officers able to join the meeting remotely. However, regulations did not allow for members attending virtually to be counted as present in the attendance section of the minutes, and their attendance would not count as attendance in relation to section 85(1) of the Local Government Act 1972. Members attending virtually would be able to speak but would not be able to vote. Councillor Costigan attended the meeting virtually.

Also present virtually was Councillor Malcolm.

2 Urgent Matters

There were none.

3 Matters to be Considered in Private

There were none.

4 Declarations of Interest

There were none.

5 Minutes

RESOLVED:

That the minutes of the cabinet meeting held on Wednesday, 13 September 2023 were agreed and signed as a true and correct record.

6 Appointments to Sub Committees and Outside Bodies

There were none.

7 Agency worker contract

RESOLVED:

- I. That cabinet granted approval to extend the current contract between the council and Adecco UK Limited dated 11 March 2022 for agency services for a period of one year from 9th January 2024 to 8th January 2025 at an approximate cost of £25m.

REASONS FOR DECISION AND OPTIONS CONSIDERED:

1. On 10th November 2021, cabinet resolved:

“That Cabinet:

- (i) Agreed to award a direct call off contract to Adecco UK Limited from the Eastern Shires Purchasing Organisation (ESPO) Framework Agreement for Managed Services for Temporary Agency Resources (MSTAR3) under Lot 1 (b) (Master Vendor), the ‘Framework Agreement’, for the provision of agency workers. The start date of the contract is 9 January 2022, and the contract would be for two years with the option to extend for a further 2 periods of 12 months each (2 + 1 + 1) with a value of £25,136,198 per annum (£100,544,702 for a four-year cost of the contract).”

2. The report before cabinet sought approval to extend the current contract with Adecco UK Limited from 9 January 2024 to 8 January 2025 as provided for in the contract and as per paragraph 2.1. above.
3. Cabinet considered options including:
 - i. Entering new contractual arrangements effective from 9 January 2024.
 - ii. Extending the current contractual for one year from 9 January 2024 to 8th January 2025 will allow time for the new leadership team to explore different delivery models for the council and determine the workforce needs for the future. The extension will be the most effective and financially advantageous decision to be made on behalf of council to ensure this happens.

The second option (ii) above was the preferred option which was being recommended to Cabinet for approval.

4. Current performance of the contract and value for money considerations had been taken into account when making the recommendation.

8 Council plan performance report Q1 2023 - 24

RESOLVED:

- I. That cabinet noted progress against the Corporate Health Check key performance indicators at quarter 1, 2023/24.

REASONS FOR DECISION AND OPTIONS CONSIDERED:

1. Performance management was an essential part of a high performing organisation and therefore not providing a performance report had been discounted as an option. The report presented progress on the delivery of the Council Plan 2022-26, with specific reference to performance on the Corporate Health Check key performance indicators as at the end of quarter 1 2023/24.

**Councillor Blacker arrived at the meeting during this item. He was present and voted on this and remaining items.*

9 Ealing Air Quality Strategy and Action Plan

RESOLVED:

- I. That cabinet approved the air quality strategy and air quality action plan which were presented at appendices 1 and 2 of the report.

REASONS FOR DECISION AND OPTIONS CONSIDERED:

1. The need for the Council to adopt an Air Quality Strategy (AQS) was borne out of feedback from residents that air quality information was not easy to understand or interpret and that formal legal documents, such as the Air Quality Action Plan (AQAP), were not accessible and had not improved awareness of the impacts of air quality nor the actions taken by the Council to improve air quality in the borough.
2. Having declared the whole of the borough an “Air Quality Management Area”, the Council was obliged, under the Environment Act 1995 (the Act), to publish a written action plan describing how it was going to use its powers to achieve air quality standards. The Council should renew such a plan every five years. The last Air Quality Action Plan (AQAP) was published in 2017. Failure to produce an action plan would be a failure to comply with the Act.

10 Date of the next meeting

The next meeting was on Wednesday, 8 November 2023.

Meeting commenced: 5.00 pm

Meeting finished: 5.46 pm

Signed:

Dated: Wednesday, 8 November
2023

P Mason (Chair)



Report for: DECISION

Item Number:

Contains Confidential or Exempt Information	No
Title	Q2 BUDGET MONITORING REPORT 2023/24
Responsible Officers	Emily Hill, Strategic Director, Resources
Authors	Kevin Kilburn, Interim Assistant Director, Strategic Finance Baljinder Sangha, Finance Manager, Financial Planning & Monitoring Katherine Ball, Finance Manager, Capital & Projects
Portfolio	Councillor Steve Donnelly, Cabinet Member for Inclusive Economy
For Consideration By	Cabinet
Date to be considered	8 November 2023
Implementation Date if Not Called In	21 November 2023
Affected Wards	All
Area Committees	All
Keywords/Index	Financial Monitor, DSG, Savings, Capital

Purpose of Report

This report provides the second financial update on the General Fund, Housing Revenue Account, Dedicated Schools Grant, and Capital budget positions for the financial year 2023/24 as at 30 September 2023.

The Council continues to face considerable financial pressures in managing the implications of external factors and the wider economic context including high levels of inflation, increases in demand and complexity of demand, social care and, increasingly, private sector leasing market pressures.

The General Fund forecast is a net overspend of £4.631m (1.62%). This forecast includes a number of financial risks as set out in the report.

The Council is continuing to identify, develop and monitor management action plans which address the pressures and financial risks to reduce and eliminate the forecast overspend. Progress of these will form part of the overall financial management strategy aiming to deliver a balanced budget position for the year-end.

1. Recommendations

It is recommended that Cabinet:

- 1.1 Notes the estimated General Fund revenue budget outturn position of net £4.631m (1.62%) overspend for 2023/24 (section 4), and an overspend of £5.975m position on the Housing Revenue Account for 2023/24 (section 7).
- 1.2 Notes the in-year Dedicated Schools Grant (DSG) deficit forecast of £3.546m to be charged to the DSG account (section 6).
- 1.3 Notes the progress on delivering the 2023/24 savings programme (section 5).
- 1.4 Notes the 2023/24 capital programme forecast (paragraph 8.3).
- 1.5 Approves the re-profiling of 2023/24 capital programme net slippage of over £1m of £30.321m (Appendix 2) into future years.
- 1.6 Approves the decommissioning of £3.2m of capital schemes (paragraph 8.5.)

2. Reason for Decision and Options Considered

- 2.1 To forecast the financial position for 2023/24 based on available information at the end of 30 September 2023. The report outlines the Council's forecast position on revenue, capital, income, and expenditure to the end of Quarter 2.

3. Key Implications

- 3.1 In setting the budget for 2023/24, the Council supported significant growth in social care services that experience significant and continued demand and market/ cost pressures, and to prioritise its most vulnerable residents. Whilst these challenges continue in 2023/24, the Council is now experiencing additional pressures in demand for, availability and cost of temporary accommodation. Council services continue to operate in a challenging resource environment where demand and cost changes can lead to material budget variances with continued high levels of inflation and energy prices. The Council has undertaken and continues to undertake a number of projects and programmes to seek to manage and reduce demand, with some success. A programme of work is being scoped to respond to the increased costs being experienced in the market for placements, to develop a more commercial approach to negotiations, and identify and implement other market interventions.
- 3.2 The report presents the management accounts of the Council and provides information on the forecast financial position at 30 September 2023 (Quarter 2). The overall net general fund budget pressure forecast at the end of Quarter 2 is £4.631m overspend, a £3.5m improvement on the previous quarter (Quarter 1 £8.214m overspend). This compares to a forecast overspend of £5.739m in Quarter 2 of 2022/23 (Quarter 1 of 2022/23 £14.794m).
- 3.3 Councils are required to deliver a balanced budget each year ensuring that the projected expenditure and commitments can be matched by the available resources. Management have identified and are delivering mitigating actions and must continue to explore further measures as part of action plans to address the forecast overspend and the significant financial risks. Progress of these will be reported through the quarterly budget monitoring process and outturn report, and will form part of the overall financial management strategy to deliver a balanced position by year-end.

4. General Fund Revenue Forecast Position 2023/24

- 4.1 The General Fund revenue outturn forecast for 2023/24 is £291.312m. This represents a net overspend of £4.631m (1.62%) against a General Fund net revenue budget of £286.681m. The net position is summarised in Table 1:

Table 1: Quarter 2 Summary of Net Revenue Budget Variance

Revenue Budget	2023/24 Revised Budget £m	2023/24 Full Year Forecast £m	Forecast Net Variance Quarter 2 £m	Forecast Net Variance Quarter 1 £m	Movement Quarters 1 - 2 £m
Adult Services & Public Health	100.765	112.484	11.718	15.465	(3.747)
Children's & Schools	74.429	84.354	9.925	7.594	2.331
Economy & Sustainability	5.061	5.746	0.685	0.549	0.136
Housing & Environment	13.602	18.206	4.604	3.812	0.792
Resources	36.993	34.306	(2.687)	(2.089)	(0.599)
Strategy & Change	8.562	9.093	0.531	0.797	(0.266)
Net Cost of Services Subtotal	239.412	264.188	24.776	26.129	(1.353)
Corporate budgets	47.269	27.124	(20.145)	(17.915)	(2.230)
Total General Fund	286.681	291.312	4.631	8.214	(3.583)

4.2 Budget Pressure

4.2.1 The Strategic Directors continue to review their departmental budgets and spending and are undertaking further work with their directorate management teams to improve their financial position with their portfolio holders for Quarter 3 reporting and beyond.

4.2.2 During the quarter, corporately held budgets for inflation and utilities have been allocated to services. Explanations for significant pressures, underspends and movements are set out below.

Adult Services & Public Health

4.2.3 Adult Services & Public Health are reporting a significant gross pressure of £30.573m (Quarter 1 £29.907m). The gross budget pressure is off-set by significant in-year management actions of £10.164m (Quarter 1 £8.709m) and planned mitigations of £6.524m (Quarter 1 £3.684m), and reserves of £2.168m (Quarter 1 £2.048m) (for budgeted covid legacy pressures and support to the Homes for Ukraine scheme). These reduce the budget pressure to £11.718m (Quarter 1 £15.465m). Further action to reduce and eliminate this overspending is being developed by the department, this has included the introduction of a Resource Allocation Panel and identification of staff savings.

4.2.4 The net budget pressures as per Quarter 2 are driven by:

- a) £10.989m (Quarter 1 £14.726m) relating to the increasing cost of placements.
- b) £0.729m (Quarter 1 £0.739m) staffing pressures.

Children's & Schools

4.2.5 Children's & Schools are reporting a significant gross pressure of £18.602m (Quarter 1 £14.826m) which includes a Dedicated Schools Grant (DSG) pressure

of £3.546m (Quarter 1 £3.049m). The gross budget pressure is offset by in-year management actions of £1.450m (Quarter 1 £1.350m) and further reduced by £7.227m (Quarter 1 £5.881m), a combination of transferring the DSG deficit into the DSG Reserve (Section 6), one-off use of reserves for support to the Homes for Ukraine scheme, and Public Health grant. The net budget pressure has increased at Quarter 2 to £9.925m (Quarter 1 £7.594m) as a result of new high-cost placements flowing from increased demand and level of need in the cohort and a paucity in the supply of fostering placements. Further work is planned to identify additional management actions to reduce the level of overspend by year-end, including reviews of the operation of high placement cost panels, supply of fostering placements and the establishment and workforce.

- 4.2.6 The net budget pressures as per Quarter 2 are driven by:
- a) £6.888m (Quarter 1 £3.339m) relating to Looked After Children demand and cost pressures (including Unaccompanied Asylum-Seeking Children).
 - b) £1.282m (Quarter 1 £1.345m) Home to School Transport demand and cost pressures.
 - c) £1.755m (Quarter 1 £2.910m) staffing cost pressures.
- 4.2.7 Key risks to this forecast include the impact of new placements and, resolving the waiting list for Children with Disabilities, which may increase costs.

Economy & Sustainability

- 4.2.8 Economy & Sustainability are reporting a pressure of £0.685m (Quarter 1 £0.549m) after £0.300m of mitigation actions to increase income across Planning, Regeneration, Economic Growth, Building Control Surveying and Art, Culture, Leisure, and Libraries.
- 4.2.9 The net forecast budget pressures at Quarter 2 are driven by:
- a) £0.008m pressure (Quarter 1 £0.439m) - mitigations have reduced the income pressure relating to Art, Heritage and Libraries, community centres and for festivals and events.
 - b) £0.152m (Quarter 1 £0.152m) includes repairs pressures from a gas explosion at Western Road Southall which the service is taking steps to recover.
 - c) £0.210m local land charges income pressures due to reduced demand.
 - d) £0.315m (Quarter 1 (£0.042m)) adverse variance from planning enforcement income pressures.
- 4.2.10 Key risks to this forecast include the impact of wider economic conditions on future planning application income, and the increased potential for abortive capital costs in light of current market conditions. The previously forecast increase in expected planning income has now been reduced as there has been a delay whilst the government finalises measures to increase fees.

Housing & Environment

- 4.2.11 Housing & Environment services include Housing Demand, Community

Protection. Parking, Environment, Waste Management, Street Care, Parking, Highways and Travellers' Warden. The department is reporting a gross forecast pressure of £4.440m (Quarter 1 £4.010m) with the use of reserves of (£0.198m) and placing a net £0.363m into the parking reserve, increasing the net forecast budget pressure to £4.604m.

- 4.2.12 The net forecast budget pressures in Quarter 2 are driven by:
- a) £2.424m (Quarter 1 £2.513m) temporary accommodation pressure mainly relating to housing benefit subsidy loss with increased demand, and cost of accommodation due to limited supply. The service is looking at options to increase value for money accommodation provision to reduce the increasing budget pressures.
 - b) £0.679m (Quarter 1 £0.869m) highways pressures for maintaining traffic signals and increased energy costs.
 - c) £0.755m (Quarter 1 £0.342m) street income and GEL contract pressure.
 - d) £0.105m (Quarter 1 £0.088m) utility pressures within the travellers' warden service.
 - e) £0.571m parking income pressure.
- 4.2.13 The housing benefit subsidy loss budget was transferred to Housing & Environment as part of the 2023/24 budget process, having previously been reported in Resources. The Quarter 1 monitoring report explains this movement and effect on the respective budgets.
- 4.2.14 Key risks to this forecast are the continued challenges of the availability and costs of temporary accommodation, particularly as a result of government policy and practice in relation to resettlement and asylum seekers, and the wider economic impact on private sector landlords.

Resources

- 4.2.15 Resources are reporting a gross underspend of (£2.190m) (Quarter 1 (£1.227m)), and with in-year use of reserves the net underspend increases to (£2.687m) (Quarter 1 (£2.089m)). This includes a number of pressures offset by the housing benefit subsidy underspend and underspends in ICT due to issues recruiting staff.
- 4.2.16 The key drivers relating to the forecast are:
- a) Commercial Hub has a forecast pressure of £0.084m (Quarter 1 £0.084m) due to a shortfall in achieving the income target.
 - b) Net pressure of £0.253m (Quarter 1 £0.324m) pressure across Customer & Transaction services which is driven by increased staffing and agency costs.
 - c) Finance Service pressure of £0.190m (Quarter 1 £0.146m) due to staffing and agency costs.
 - d) ICT & Property Services includes a net underspend (£1.242m) (Quarter 1 £0.307m pressure), which includes an overspend of £0.144m (Quarter 1 £0.996m) for utility cost increases for Perceval House, Ealing Town Hall, and other properties; £0.354m (Quarter 1 £1.107m) pressures from planned and

- reactive maintenance services, and other pressures of £0.103m. These pressures are offset by reduced ICT staffing costs (£1.843m) (Quarter 1 (£1.899m)) due to vacancies and contract management.
- e) Strategic Property is forecasting a £0.317m overspend, which includes income pressures due to part year rent impacts and property costs relating to lettings. The service is working on options to increase income before year-end.
 - f) Housing Benefit subsidy is forecasting an underspend of (£3.255m) due to an increase in overpayment recovery.

Strategy & Change

- 4.2.17 Strategy & Change are reporting a gross overspend of £0.766m (Quarter 1 £1.032m). The gross pressure is offset by reserves of £0.235m (Quarter 1 £0.235m), reducing the net budget pressure to £0.531m.
- 4.2.18 The main pressure within Strategy & Change relates to Human Resources staffing and agency pressure of £0.694m, reduced by an underspend in other areas (£0.163m). This position is being reviewed to reduce the overspend before year-end.

Corporate Budgets

- 4.2.19 The Corporate Budget is reporting a net underspend of (£20.145m) (Quarter 1 (£17.915m)) driven by:
 - a) Increased forecast underspend on treasury management (£15.342m (Quarter 1 (£14.113m)) which reflects low Public Works Loan Board (PWLB) borrowing costs, and additional interest income from increased cash balances and higher interest rates.
 - b) Use of contingency to off-set service overspending (c.£2m).
 - c) Release of one-off funds of (£0.676m) by West London Waste Authority (WLWA) following WLWA board approval.
 - d) (£0.450m) underspend forecast on concessionary fares against budget allocations.
 - e) (£1.976m) forecast underspend of budgets relating to various other corporate budgets.

5. Achievement of 2023/24 Savings

- 5.1 Cabinet approved £9.578m of net savings of which £7.184m was approved in 2023/24 and £2.394m approved in previous MTFS periods. Table 2 below provides an overview summary of savings across the various funding sources.

Table 2: 2023/24 Approved Savings Summary by Funding

Savings Summary	General Fund	HRA	DSG	Total
	£m	£m	£m	£m
Gross saving	14.104	(0.003)	0.000	14.101
<i>Investment and funded by:</i>				
Digital programme	(0.192)	0.000	0.000	(0.192)

Savings Summary	General Fund	HRA	DSG	Total
	£m	£m	£m	£m
Cost avoidance	(4.199)	0.000	0.000	(4.199)
Investment	(0.135)	0.003	0.000	(0.132)
Net approved saving	9.578	0.000	0.000	9.578

- 5.2 At the end of Quarter 2, £1.312m (13.70%) of the savings have been achieved with £3.235m (33.77%) identified at being risk and the remaining in progress, as set out in Table 3 below.

Table 3: Quarter 2 2023/24 Savings Programme Delivery

Savings by Directorate	Total	Red	Amber	Green	% Savings Achieved (Green)
	£m	£m	£m	£m	
Adults Services & Public Health	1.206	2.383	0.477	(1.654)	(137.18%)
Children's & Schools	0.947	0.000	0.947	0.000	0.00%
Economy & Sustainability	2.203	0.096	1.905	0.202	9.16%
Housing & Environment	4.312	0.736	0.725	2.851	66.12%
Resources	0.412	0.142	0.357	(0.087)	(21.08%)
Strategy & Change	0.210	0.000	0.210	0.000	0.00%
Corporate	0.288	(0.122)	0.410	0.000	0.00%
Total	9.578	3.235	5.030	1.312	13.70%
Key:	Red	Savings at risk of not being achieved in-year and/or have not been replaced.			
	Amber	Savings forecast to be achieved; or are in progress to be delivered and/or potentially at risk of being delivered.			
	Green	Savings achieved			

6. Dedicated Schools Grant (DSG) Account

- 6.1 Dedicated schools grant (DSG) is paid in support of local authority schools and is the main source of income for school budgets. The terms and conditions allow the Council to carry forward any deficits and underspends to a ring-fenced reserve. This is separate from the General Fund, which cannot be used to subsidise the account.
- 6.2 At the end of 2022/23, the Council held a net surplus balance of £1.345m on its DSG account which includes a High Needs DSG deficit of £0.570m. At Quarter 2 the forecast is estimating a deficit of £2.201m, which is mainly due to an increase of £3.546m in High Needs overspend after mitigating by block transfer from the Schools Block to the High Needs block as agreed by the Schools Forum.

Table 4: Quarter 2 2023/24 DSG Account Summary Forecast

DSG Account	Quarter 2 Forecast £m				Q1 forecast £m
	Schools Block	Early Years Block	High Needs Block	Total	
Opening balance at 1 April 2023	(0.321)	(1.594)	0.570	(1.345)	(1.345)
2023/24 in-year movements	0.000	0.000	3.546	3.546	3.049
DSG Deficit (+) / Surplus (-) balance at 31 March 2024	(0.321)	(1.594)	4.116	2.201	1.704

6.3 The Council along with many other authorities continues to experience pressures on the High Needs Block due to increased demand for Education, Health, and Care Plans (EHCPs) and the level of need. The DSG High Needs Deficit Recovery Plan continues to be refined and the Council is working with London Councils to lobby for additional funding. However, in the absence of confirmation of additional funding the cumulative deficit on the High Needs Block is forecast to increase and the Council will be expected to recover the deficit from future allocations.

6.4 The Council continues to work with the Schools Forum to implement a DSG High Needs Recovery Plan in line with government directives to bring the High Needs Block into balance and recover the cumulative deficit. The Schools Forum continues to review the position on the other blocks.

7. Housing Revenue Account (HRA)

7.1 At Quarter 2, the HRA is forecasting an overspend of £5.975m and the additional funding required is to be drawn from reserves to balance the HRA. The main drivers for this are arising from increased responsive repairs costs due to the completion domestic electrical inspection reports (EICRs), cladding issues and fire damage works, utilities costs, the costs of implementing the building safety team and forecast cost of borrowing pressures resulting from the latest forecast capital expenditure and funding.

7.2 These pressures are being reviewed as part of the HRA business plan development to ensure sufficient provision is included in the budget to deliver the priorities considering the latest intelligence in price increases, volume of works to maintain the existing housing stock to required standards and the proposed regeneration capital programme.

Table 5: HRA Quarter 2 2023/24 Summary

HRA Budget	2023/24 Budget	2023/24 Full Year Forecast	Forecast Net Variance Quarter 2	Forecast Net Variance Quarter 1
	£m	£m	£m	£m
Income	(78.008)	(78.706)	(0.698)	(0.070)

HRA Budget	2023/24 Budget	2023/24 Full Year Forecast	Forecast Net Variance Quarter 2	Forecast Net Variance Quarter 1
	£m	£m	£m	£m
Expenditure	79.865	86.538	6.673	0.802
Sub-total	1.857	7.832	5.975	0.732
Contribution from Reserves	(1.857)	(7.832)	(5.975)	(0.732)
Total HRA	0.000	0.000	0.000	0.000

7.3 The table below shows a summary of the forecast position on the HRA reserves.

Table 6: HRA Reserves Summary Forecast

HRA Reserves	HRA Reserve	HRA Balance	Total HRA Reserves
	£m	£m	£m
Opening balance at 1 April 2023	11.941	4.925	16.866
2023/24 in-year movements (Q2 forecast overspend)	(7.832)	0.000	(7.832)
Forecast HRA Reserve Balances at 1 April 2024	4.109	4.925	9.034

8. Capital Programme

8.1 A summary of the capital programme is set out in the table below.

Table 7: Capital Programme Summary 2023/24 – 2027/28+ Movements

Capital Programme Summary	Budget 2023/24	Budget 2024/25	Budget 2025/26	Budget 2026/27	Budget 2027/28+	Total
	£m	£m	£m	£m	£m	£m
Revised Programme at Quarter 2						
General Fund	107.072	357.271	30.110	19.906	93.250	607.609
HRA	144.672	131.735	95.366	59.780	36.783	468.336
Total	251.744	489.006	125.476	79.686	130.034	1,075.946
Revised Programme at Quarter 1						
General Fund	342.381	158.222	55.668	21.349	92.695	670.315
HRA	146.383	153.790	111.058	62.452	61.201	534.884
Total	488.764	312.012	166.726	83.801	153.895	1,205.199
Changes due to slippage, decommissioning, reprofiling and/or in-year additions						
General Fund	(235.309)	199.048	(25.558)	(1.443)	0.556	(62.706)
HRA	(1.711)	(22.055)	(15.692)	(2.672)	(24.417)	(66.547)
Total	(237.020)	176.994	(41.250)	(4.115)	(23.861)	(129.252)

8.2 The revised Q2 capital programme reflects the following main changes since Q1:

- 2023/24 Q1 slippage of £212.351m, of which £204.280m (where the

slippage for each scheme is over £1m) was approved by Cabinet in September 2023. Total General Fund slippage was £224.194m.

- Additions to the capital programme of £18.935m mainly relating to works to improve energy efficiency at a Leisure Centre & Highways transport works.
- Decommissioned schemes totalling £148.252m, most significantly relating to the termination of the Perceval House redevelopment scheme – work is progressing on future plans for Perceval House and will be the subject of a future Cabinet report and capital budget approval.

8.3 The capital programme for 2023/24 is currently reporting an overspend position of £6m against the approved programme budget, as summarised in the table below.

Table 8: Capital Summary

2023/24 Capital Budget Summary	2023/24 Budget	Year to Date Actuals	Current Forecast	Slippage/ (Accelerated) Spend	Forecast Variance Under (-) / Over (+) spend	De commissioning	Forecast Variance (Under -) / Over spend after de commissioning
	£m	£m	£m	£m	£m	£m	£m
Adults Services & Public Health	0.531	0.000	0.231	0.300	0.000	0.000	0.000
Children's & Schools	20.070	4.889	16.225	3.846	0.000	0.000	0.000
Economy & Sustainability	44.397	8.370	45.054	2.182	2.840	3.201	6.040
Housing & Environment	27.328	5.311	26.328	1.000	0.000	0.000	0.000
Resources	14.625	3.916	14.554	0.071	0.000	0.000	0.000
Strategy & Change	0.000	0.039	0.000	0.000	0.000	0.000	0.000
Corporate	0.120	0.000	0.120	0.000	0.000	0.000	0.000
Total General Fund	107.072	22.525	102.513	7.399	2.840	3.201	6.040
HRA	144.672	32.626	118.109	26.563	0.000	0.000	0.000
Capital Programme	251.744	55.151	220.622	33.963	2.840	3.201	6.040

8.4 The recommendations seek approval to re-profile capital budgets that are in excess of £1m. The slippage over £1m totals £30.321m of the total slippage of £33.963m; details of these schemes are set out in Appendix 2. Slippage of under £1m of £3.642m has been agreed under delegated authority by the Strategic Director, Resources.

Budgets to be decommissioned

8.5 Cabinet is asked to approve a total of £3.2m of budget decommissioning in relation to Energy grant (Home Upgrade Grant Phase 1); £3.2m grant money is to be returned to the government as it has not been possible to spend this due to the unavailability of eligible properties to undertake works envisioned by the grant.

8.6 Decommissioning of £0.308m has been agreed under delegated authority by the Strategic Director, Resources.

Forecast overspend

- 8.7 As advised in Q1, it is currently forecast that there will be an overspend of £6.040m in relation to Genuinely Affordable Homes (Q1 £6.031m), which relates to housing schemes being developed within the Council's General Fund, prior to any transfer to Broadway Living RP or to the HRA. A further report on the housing development programme is expected to be reported to a future Cabinet which will include a review of housing development budgets and any required budget approvals.

Capital Risks

- 8.8 Due to the forthcoming change to the national phone network where all copper-wired networks will be switched off by 2027, and changed to fibre optic technology (the Big Switch Off), there is likely to be a requirement for a new capital budget to be added to the capital programme to undertake upgrade and improvement work. The costs have not yet been quantified but initial estimates indicate that they may be in the region of £2m to £6m, and work is ongoing to validate this early assumption.

9. Council Tax and Business Rates Collection 2023/24

- 9.1 The Council's collection performance for council tax and business rates in 2023/24 to 30 September 2023 is set out below.

9.2 Council Tax

- 9.2.1 Council tax in-year collection is behind the target collection profile (2.65%) which equates to £6.128m. The collection is not comparable to last year due to the award of £6.123m of energy rebates in 2022/23 which increased collection. The current net debit figure compared with this period last year has increased by £16.401m, and the cash collected in the first six months of the year has increased by £5.668m.

Table 9: 2023/24 Quarter 2 Council Tax in-year collection

Council Tax In-Year Collection	Quarter 2		Quarter 1	
	£m	%	£m	%
Amount to be collected to achieve 97.2%	224.397	97.20%	224.323	97.20%
Target collection	132.052	57.20%	71.774	31.10%
Amount collected	125.924	54.55%	67.972	29.45%
Variance against target	(6.128)	(2.65%)	(3.802)	(1.65%)

Source: QRC Monthly data

9.3 Business Rates

- 9.3.1 Business Rates collection is 2.78% ahead target which equates to £4.460m. The net debit has increased by £9.146m compared to this period last year due to

changes in the relief given to retail properties post-Covid.

Table 10: 2023/24 Quarter 2 Business Rates in-year collection

Business Rates In-Year Collection	Quarter 2		Quarter 1	
	£m	%	£m	%
Amount to be collected to achieve 97.2%	156.042	97.20%	156.206	97.20%
Target collection	84.764	52.80%	45.801	28.50%
Amount collected	89.224	55.38%	45.386	28.24%
Variance against target	4.460	2.78%	(0.415)	(0.26%)

Source: QRC Monthly data

10. Legal

10.1 The Council is required to monitor and review, from time to time during the year, its income and expenditure against budget. If it appears to the Council that there has been a deterioration in its financial position, it must take such action, if any, as it considers necessary to deal with the situation, and be ready to take action if overspends or shortfalls in income emerge (Section 28 of the Local Government Act 2003).

10.2 In regard to Schools Funding and Dedicated Schools Grant (DSG)

10.2.1 The Council currently receives funding for schools through the Dedicated Schools Grant (DSG) and has the statutory responsibility under the Schools and Early Years Finance Regulations for allocating this funding to schools.

10.2.2 The Schools and Early Years Finance (England) Regulations published in February 2022 (and to be updated for 2023) sets out the grant condition and accounting regulations that local authorities must follow in respect of DSG deficit and underspend balances. This specifically precludes the use of the General Fund to subsidise the DSG.

11. Value for Money (VFM)

11.1 Managing within budget and the achievement of efficiency savings are key responsibilities of budget managers, as identified in their performance objectives.

11.2 Detailed variance forecasting by service budget holders, together with a corporate overview by Strategic Finance will be reported regularly (in accordance with the agreed timetable) to the Strategic Leadership Team and Cabinet. Where forecast adverse variances are identified in this process, they will be addressed via action plans, enabling the General Fund spending to be brought within budget during the year.

12. Sustainability Impact Appraisal

12.1 Any sustainability impacts are taken into account before final decisions are taken

on whether or not to implement savings proposals as part of the budget setting process. All capital budget proposals are required to set out how the proposal contributes towards carbon emission reduction.

13. Risk Management

13.1 It is important that spending is contained within budget so that the Council can maintain its financial standing in the face of further pressure on resources in 2023/24 and beyond as set out in the annual review of the Medium-Term Financial Strategy (MTFS) approved by Cabinet in February 2023.

13.2 The Council is faced with an uncertain financial context over the short to long-term in relation to government funding, social and economic factors such as the continued high inflation and energy prices, and social care and temporary accommodation demand, which present risks to financial sustainability and there remains potential for further, unrecognised, risks. The most immediate risks to the budget in the current year are:

- social care placement demand and cost pressures.
- increasing homelessness, demand for, and cost of temporary accommodation.
- cost-of-living, high inflation and energy prices.
- unfunded income pressures as a result of the pandemic and current economic climate, particularly in relation to Council Tax and Business Rates income.
- non-delivery of approved savings.

13.3 Close monitoring by the Strategic Leadership Team of the pressures is undertaken through the year to reflect success and impact of mitigations and other management actions that aid in delivering a balanced budget.

13.4 Given the significant uncertainties and volatility of the economic environment and the level of in-year pressure, there are inevitably significant risks involved in delivering balanced budgets in the current year. Key strategic risks will continue to be:

- included in the Corporate Risk Register
- regularly reported to Audit Committee
- reviewed through quarterly budget update reports to Cabinet
- reviewed through ongoing budget and MTFS planning.

14. Community Safety

14.1 There are no direct community safety implications.

15. Links to Three Key Priorities for the Borough

15.1 The Council's medium-term financial strategy, budgets and capital programme are designed to enable the delivery of the Council's key priorities of fighting inequality, tackling the climate crisis, and creating good jobs. The budget for

2023/24 is supporting delivery of national and local priorities, including further investment in Real Living Wage for remaining contracts and to meet the annual inflationary uplift to the Real Living Wage commitments in homecare.

16. Equalities, Human Rights & Community Cohesion

16.1 There is no requirement for an Equality Impact Assessment as part of this report.

17. Staffing/Workforce and Accommodation Implications

17.1 There are no direct staffing/workforce and accommodation implications arising from this report.

18. Property and Assets

18.1 There are no direct property/asset implications arising from this report.

19. Any Other Implications

19.1 The overall financial position of the Council impacts on the future provision of all Council services.

20. Consultation

20.1 Information and explanations have been sought from departments on specific aspects of this report and their comments have been included.

21. Appendices

Appendix 1 – 2023/24 General Fund Forecast Summary

Appendix 2 – Capital Programme Slippage/Acceleration over £1m

22. Background Information

Cabinet reports:

- 2023/24 Quarter 1 Budget Monitoring Update– 13 September 2023
- Revenue and Capital Outturn 2022/23 – 14 June 2023
- Budget Strategy and MTFS 2023/24 to 2025/26 – 22 February 2023
- Budget Update Report 2022/23 – 22 February 2023
- Housing Revenue Account (HRA) Business Plan 2023-24 report – 25 January 2023
- Budget Update Report 2022/23 – 7 December 2022

Consultation

Name of consultee	Department	Date sent to consultee	Date response received from consultee	Comments appear in report para:
Internal				
Emily Hill	Strategic Director, Resources	Continuous	Continuous	Throughout
Tony Clements	Chief Executive	13/10/2023	18/10/2023	Throughout
Kerry Stevens Robert South Peter George Nicky Fiedler Amanda Askham	Strategic Directors	13/10/2023	18/10/2023	Throughout
Helen Harris	Director of Legal and Democratic Services	13/10/2023	18/10/2023	Legal section
Councillor Steve Donnelly	Cabinet Member for Inclusive Economy	23/10/2023	26/10/2023	Throughout
Russell Dyer	Assistant Director – Accountancy	Continuous	Continuous	Throughout
Nick Rowe	Assistant Director of Local Tax & Accounts Receivable	06/10/2023	09/10/2023	Section 9

Report History

Decision type: For decision	Urgency item? No
Authorised by Cabinet member:	Date: Report deadline: Date report sent:
Report	Report authors and contacts for queries: Kevin Kilburn, Interim Assistant Director Strategic Finance, 020 8825 7549 Baljinder Sangha, Finance Manager Planning & Monitoring, 020 8825 5579 Katherine Ball, Finance Manager Capital & Projects, 020 8825 5757

Directorate Revenue Summary		2023/24 Original Net Budget	VIREMENTS	2023/24 Revised Net Budget	Actual to Date	QUARTER 2										QUARTER 1	
						Gross Forecast	Management Actions (Green)	Management Actions (Amber)	Mitigation Actions (Approved)	New Reserve Requests	New Provision Requests	Provisions Approved	Reserves Approved	BAU Net Forecast	BAU Variance	Quarter 1 BAU Variance	MOVEMENT
						£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Adult and Public Health	Adult Operations (Social Care)/Older People & Disabilities	84,594	1,381	85,975	47,501	105,612	(5,909)	0	(6,072)	0	0	0	(1,243)	92,389	6,414	10,952	(4,538)
	Business Support & Integrated Commissioning	7,484		7,484	3,446	9,219	(79)	0	(180)	(119)	0	0	(600)	8,241	757	338	418
	Mental Health	7,306		7,306	9,281	16,507	(4,176)	0	(272)	0	0	0	(206)	11,853	4,547	4,175	372
	Public Health	0		0	(3,568)	0	0	0	0	0	0	0	0	0	0	(0)	(0)
Total for Adult and Public Health		99,384	1,381	100,765	56,660	131,339	(10,164)	0	(6,524)	(119)	0	0	(2,049)	112,484	11,718	15,465	(3,747)
Children's	Learning Standards & School Partnership	182		182	(845)	242	0	0	0	(100)	0	0	0	142	(40)	30	(70)
	Children's Social Care	34,949		34,949	26,289	43,328	0	0	0	0	0	0	0	43,328	8,379	5,657	2,723
	Early Help and Prevention Services	6,665		6,665	4,098	7,878	0	0	0	(199)	0	0	0	7,479	814	1,519	(705)
	Child Protection & EDT	1,154		1,154	938	1,890	0	0	0	0	0	0	0	1,890	536	441	95
	ESCAN/SEND/Inclusion	13,778		13,778	5,130	17,265	0	0	0	(498)	(549)	0	(3,049)	13,169	(608)	(1,057)	449
	Social Care Training	382		382	405	804	0	0	0	0	0	0	0	604	223	255	(32)
	Schools Planning, Development & Resources	16,844	500	17,444	32,423	21,667	0	0	0	0	0	0	(2,833)	18,834	1,391	1,462	(71)
	Commissioning & Management	(123)		(123)	0	557	(700)	(750)	0	0	0	0	0	(893)	(769)	(712)	(57)
Total for Children's		73,929	500	74,429	68,438	93,031	(700)	(750)	0	(797)	(549)	0	(5,881)	84,354	9,925	7,594	2,331
Economy and Sustainability	Planning	(1,937)		(1,937)	1,101	(1,621)	0	0	0	0	0	0	0	(1,621)	316	(84)	400
	Employment & Skills	821		821	1,014	821	0	0	0	0	0	0	0	821	(0)	(0)	0
	Economy & Sustainability Management	343		343	88	903	0	0	0	0	0	0	0	903	560	0	560
	Regeneration and Economic Growth	144		144	634	144	0	0	0	0	0	0	0	144	(0)	(0)	0
	Major Projects	51		51	367	51	0	0	0	0	0	0	0	51	0	0	0
	Housing Development	560		560	701	72	0	0	0	0	0	0	0	72	(488)	0	(488)
	Land Charges/Building Control & Surveying	58		58	518	347	0	0	0	0	0	0	0	347	289	195	94
	Arts & Culture Leisure & Libraries	4,856	165	5,021	4,339	5,329	0	0	(300)	0	0	0	0	5,029	8	439	(430)
Total for Economy & Sustainability		4,896	165	5,061	8,762	6,046	0	(300)	0	0	0	0	0	5,746	685	549	136
Housing & Environment	Travellers Warden	(107)		(107)	(75)	(2)	0	0	0	0	0	0	0	(2)	105	89	16
	Housing Development	3,395		3,395	8,804	3,395	0	0	0	0	0	0	0	3,395	(0)	(0)	0
	Homelessness	5,524		5,524	11,866	7,948	0	0	0	0	0	0	0	7,948	2,424	2,513	(89)
	Housing Demand	8,919		8,919	20,670	11,344	0	0	0	0	0	0	0	11,343	2,424	2,513	(89)
	Environment & Living Streets	375	951	1,326	3,401	3,165	0	0	0	363	0	0	(198)	3,330	2,004	1,211	793
	Community Protection	3,463		3,463	2,049	3,535	0	0	0	0	0	0	0	3,535	72	(0)	72
	Total for Housing & Environment	12,651	951	13,602	26,046	18,042	0	0	0	363	0	0	(198)	18,206	4,604	3,812	792
	Resources	Audit	2,028		2,028	1,301	2,077	0	0	0	0	0	0	0	2,077	49	41
Commercial Hub		579		579	804	663	0	0	0	0	0	0	0	663	84	84	0
Customer Services Revenues & Financial Assessments		8,066		8,066	5,344	8,666	0	0	0	0	0	(347)	8,319	253	324	(71)	
Finance		2,076		2,076	1,959	2,416	0	0	0	0	39	(39)	2,266	190	146	44	
ICT & Property Services		22,162	1,544	23,706	12,709	22,465	0	0	0	0	0	0	0	22,465	(1,242)	307	(1,549)
Emergency Planning		244		244	159	244	0	0	0	0	0	0	0	244	0	0	0
Legal & Democratic Services		3,627		3,627	2,722	3,585	0	0	0	0	0	0	0	3,585	(42)	(53)	11
Strategic Property		(3,107)		(3,107)	(705)	(2,745)	0	0	0	0	0	0	0	(2,745)	362	317	45
Housing Benefit Subsidy (excl. Temporary Accommodation)		(227)		(227)	66,140	(2,569)	0	0	0	0	0	0	0	(2,569)	(2,342)	(3,255)	913
Total for Resources		35,449	1,544	36,993	90,433	34,803	0	0	0	39	(39)	(497)	34,306	(2,687)	(2,089)	(599)	
Strategy & Change	Cabinet Office	306		306	192	386	0	0	0	0	0	0	0	386	80	80	0
	Chief Executive Office	464		464	859	547	0	0	0	0	0	0	0	547	81	81	2
	Communications	716		716	559	745	0	0	0	0	0	0	0	745	29	29	0
	Equalities	209		209	91	237	0	0	0	0	0	0	(100)	137	(72)	548	(620)
	Engagement	1,715		1,715	929	1,641	0	0	0	0	0	0	0	1,641	(74)	(74)	(0)
	Human Resources	2,538		2,538	2,609	3,232	0	0	0	0	0	0	0	3,232	694	694	0
	Performance, Intelligent & Insight	1,097		1,097	675	878	0	0	0	0	0	0	0	878	(219)	(167)	(52)
	Strategy & Change Directorate	931		931	106	928	0	0	0	0	0	0	0	928	(3)	(623)	620
	Transformation	585		585	476	733	0	0	0	0	0	0	(135)	598	13	228	(215)
Total for Strategy & Change		8,562	0	8,562	6,497	9,328	0	0	0	0	0	(235)	9,093	531	797	(266)	
WLA	West London Alliance (WLA)	0		0	770	0	0	0	0	0	0	0	0	0	0	0	0
	Total for West London Alliance	0	0	0	770	0	0	0	0	0	0	0	0	0	0	0	
Sub Totals		234,871	4,541	239,412	257,604	292,589	(10,864)	(750)	(6,824)	(553)	(510)	(39)	(8,860)	264,188	24,776	26,129	(1,353)
Corporate Budgets	Centrally Held Budgets (incl Treasury Management)	69,445	(4,541)	64,904	6,830	45,885	0	0	0	0	0	0	0	45,885	(19,019)	(16,789)	(2,230)
	Centrally Held Grants	(46,537)		(46,537)	(20,538)	(46,537)	0	0	0	0	0	0	0	(46,537)	0	0	0
	Leaves	25,401		25,401	7,238	24,275	0	0	0	0	0	0	0	24,275	(1,126)	(1,126)	0
	Contribution to/from Reserves	3,500		3,500	0	3,500	0	0	0	0	0	0	0	3,500	0	0	0
Total for Corporate Budgets		51,810	(4,541)	47,269	(6,469)	27,124	0	0	0	0	0	0	0	27,124	(20,145)	(17,915)	(2,230)
Totals		286,681	0	286,681	251,135	319,712	(10,864)	(750)	(6,824)	(553)	(510)	(39)	(8,860)	291,312	4,631	8,214	(3,583)

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APPENDIX 2 - SLIPPAGE OVER £1M

Capital Schemes		2023/24 Slippage	2023/24 Acceleration	2023/24 Net Slippage
		£'000	£'000	£'000
CHILDREN'S SERVICES				
310053	CHILDREN SERVICE RESIDENTIAL HOMES	1.209		1.209
372310	SEN EXPANSION PROGRAMME	1.300		1.300
CHILDREN'S SERVICES TOTAL		2.509	0.000	2.509
425618	GREENFORD CEMETERY EXTENSON	1.111		1.111
ARTS, CULTURE, LEISURE & LIBRARIES TOTAL		1.111	0.000	1.111
ECONOMY & SUSTAINABILITY TOTAL		1.111	0.000	1.111
GENERAL FUND TOTAL		3.620	0.000	3.620
HRA				
351103	INTERNAL REFURBISHMENT	0.000	(2.316)	(2.316)
351105	EXTERNAL REFURBISHMENTS	1.893	0.000	1.893
351106	CAPITALISED WORKS	1.425	0.000	1.425
351114	HEALTH & SAFETY & DDA	0.000	(7.183)	(7.183)
351118	SPECIALIST ADVICE	2.267	0.000	2.267
351513	GREENMAN LANE EST REGENERATION	4.150	0.000	4.150
351523	SOUTH ACTON REGENERATION	0.000	(5.554)	(5.554)
351525	COPLEY CLOSE REGENERATION	1.373	0.000	1.373
351527	COUNCIL NEW BUILD ROUND3	18.206	0.000	18.206
351535	HIGH LANE ESTATE REGENERATION	9.978	0.000	9.978
351803	NEW REGENERATION - LEXDEN ROAD (HRA)	0.000	(4.097)	(4.097)
351804	NEW REGENERATION - SUSSEX CRESCENT (HRA)	6.559	0.000	6.559
HRA TOTAL		45.851	(19.151)	26.700
TOTAL CAPITAL PROGRAMME		49.471	(19.151)	30.321

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Report for:
ACTION/INFORMATION

Item Number:

Contains Confidential or Exempt Information	NO
Title	Commercial Strategy 2023 – 2027
Responsible Officer(s)	Emily Hill – Strategic Director, Resources
Author(s)	Zamil Ahmed – Assistant Director, Commercial Hub
Portfolio(s)	Councillor Steve Donnelly, Cabinet Member for Inclusive Economy
For Consideration By	Cabinet
Date to be Considered	8 November 2023
Implementation Date if Not Called In	20 November 2023
Affected Wards	ALL
Keywords/Index	Commercial strategy, procurement strategy, procurement, contract management, social value

Purpose of Report:

To seek Cabinet authority to approve the new Commercial Strategy 2023-2027.

The report sets out proposal for the introduction of a new Commercial Strategy and our vision and ambition for achieving greater commercial, social and economic value from our commissioning, procurement and contracting activities. Based on a framework of four core imperatives, the strategy sets out our ambition to explore innovative commercial contracting models, develop collaborative partnerships and work with the community and voluntary sector to drive positive change for our residents, businesses, and wider stakeholders.

1. Recommendations

That Cabinet:

1. Approves the Commercial Strategy 2023-2027 and the objectives it seeks to achieve.
2. Authorise the Strategic Director of Resource to fully implement the objectives detailed within the strategy.

2. Reason for Decision and Options Considered

- 2.1 The council spends over £390 million each year on third party services contracts through competitive tendering as well as from multitude of approved Government and national purchasing consortiums.
- 2.2 The Commercial Strategy sets out our vision and ambition for achieving greater commercial, social and economic value from our commissioning, procurement and contracting activities. Based on a framework of four core imperatives, our commercial strategy sets out our ambition to explore innovative commercial contracting models, develop collaborative partnerships and work with the community and voluntary sector to drive positive change for our residents, businesses, and wider stakeholders.
- 2.3 In preparation of the forthcoming Procurement Act (the Act) expected later in the year and to be fully implemented by October 2024, the proposed commercial strategy reflects the changes that will be necessary to ensure the council meets the new requirements of the Act. The National Procurement Policy Statement is already making additional demands on all public bodies in respect of social value, climate change and effective contract management.
- 2.4 The Commercial Strategy 2023-2027 takes all these factors into account through its advocacy of innovation, a meaningful approach to social value, conscientious sourcing and improving the Council's procurement and contract management capacity and capability.
- 2.5 Some aspects of the strategy are already coming into effect:
- A new e-tendering system is being implemented that will in due course support the development of Ealing's contract management capabilities and develop its associated supplier relationship management.
 - The new e-portal will also provide improved access for smaller and local businesses and voluntary and community sector organisations to contracting opportunities with the council.
 - The Social Value process is being continually developed and now provides many more ways in which bidders can commit to and deliver activities that will support communities and contribute to Ealing's Net Zero Carbon Targets.
 - Make or buy is now a key part of any new procurement's options appraisal process in response to the council's commitment to its Public Service Guarantee.
- 2.6 The strategy will build on these achievements and continue to secure tangible benefits into the future for the borough's residents and businesses alike.

3. Governance and Implementation

- 3.1 The implementation of strategy's objectives detailed under each of the four themes will be progressed through Joint Contracts Board, which includes membership of senior officers from across the council.

4. Options Considered

- 4.1 The council could choose not to have a commercial strategy and continue with its current approach. However, the lack of clear direction aligned to Council Plan priorities will limit the council's ability to maximise best value from its third-party expenditure, including social and environmental benefits from its purchasing power and commercial trading relationships.

5. Financial

- 5.1 There are no direct financial implications arising from this report. Any financial pressures arising from the Act, will be considered on a case-by-case basis through the governance of the Joint Contracts Board.
- 5.2 The financial implications of specific contracts and procurements will be considered on a case-by-case basis and with relevant considerations to any agreed savings targets as part of the medium term financial planning process.
- 5.3 With regard to the Real Living Wage (formerly LLW), the council has made significant investments in contracts to secure adoption and any further cost pressures will be considered as part of the future Medium Term Financial Strategy.

6. Legal

- 6.1 Contracts over applicable thresholds need to be procured in compliance with the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016. All of the council's contracts need to be procured in compliance with the council's Contract Procedure Rules. The Procurement Act will have a significant impact on all aspects of the procurement and lifecycle of contracts when it comes into force.

7. Value For Money

- 7.1 Proposed strategy give strong guidance on routes to market and evaluation principles, all geared to ensuring that procurements are executed in such a way as to secure best value for money.
- 7.2 Contract Procedure Rules, through some of their streamlined procedures, also secure better value for money by reducing the demand on resources to achieve the desired outcomes.

8. Sustainability Impact Appraisal

- 8.1 Sustainability Impact Appraisal will form part of the commercial strategy for each contract and subject to the council's appropriate decision-making process.

9. Risk Management

- 9.1 Not implementing a commercial strategy risks the council not meeting its wider best value duties including complying with changes introduced to public procurement practices as well as more recent local council procurement policies and procedures.

10. Community Safety

- 10.1 No direct impact is expected from this report.

11. Links to the 3 Key Priorities for the Borough

- 11.1 Implementation of the commercial strategy will contribute to the delivery of administration's commitments under the three key priorities: creating good jobs, fighting inequality, and tackling the climate crisis.

12. Equalities, Human Rights and Community Cohesion

- 12.1 A full equalities impact assessment is not required and has not been carried out.

13. Staffing/Workforce and Accommodation implications

- 13.1 There are no direct staffing/workforce implications arising from this report.

14. Property and Assets

- 14.1 There are no direct property implications arising from this report.

15. Consultation

- 15.1 Consultation has been carried out through the council's Joint Contracts Board, which includes senior officer representation from each Directorate.

16. Timetable for Implementation

- 16.1 The commercial strategy will come into effect as soon as it is approved and call in expired. Objectives detailed under each of the four core imperatives will be progressed through Joint Contracts Board over the term of the strategy.

17. Appendices

Appendix 1: Commercial Strategy 2023 – 2027

18. Background Information

- 18.1 None.

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
CLlr Steve Donnelly	Cabinet Member for Inclusive Economy			Throughout
Emily Hill	Strategic Director, Resources			Throughout
Alice Rowland	Head of Legal (Commercial)			Section 6
Kevin Kilburn	Assistant Director, Strategic Finance			Section 7
External				
Not applicable				

Report History

Decision type:	Urgency item?
Key decision	Yes
Report no.:	Report author and contact for queries:
	Zamil Ahmed, Assistant Director - Commercial Hub 0203 574 8977

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Commercial Strategy 2023-2027



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3 Foreword

4 Summary of social value benefits

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Delivering our outcomes

Commercial innovation

9 Collaborative social value

10 Considerate and conscious sourcing

11 Capability and capacity

Procurement spend highlights



£390m

Annual
procurement
spend



3,128

Number of
suppliers



**£110m
(28%)**

Spend
with local
suppliers

Like most local authorities, Ealing Council needs to make savings against its annual spend to ensure that we can balance our budget and secure financial resilience. Energy costs are spiralling, interest rates are increasing, and general inflation has been climbing at a rate not seen for a quarter of a century, all whilst demand for council services continues to rise. All of this means that the need for us to make the best use of our resources will remain a key focus for the council: we will have to maximise the value of every penny we spend.

To do this and to avoid cutting essential council services or lowering our expectations and ambitions to deliver social and economic improvements, alternative solutions must be found. One key strand of the council's response to this challenge is to engender a more commercial approach, grounded in strong public service values.

Through our accreditation to Living Wage Foundation, we have continued to champion the payment of Real Living Wage (formerly known as London Living Wage) in our contracts and made significant financial investment in 2023 to ensure key sectors of our social care contractors can pay the Real Living Wage to their employees. To help raise living standards, to recognise good employers and to encourage more local businesses become a Living Wage Employer, we introduced our Living Wage business rate discount campaign to cover the registration fees.

Our Social Value Policy launched in February 2022 is already securing tangible benefits for the borough's residents and businesses alike. A summary of the social value benefits we have secured through our contract is presented in the graphic below.

This strategy builds on these achievements so that we may provide the services the council needs to deliver in a more effective and commercial manner, using our buying power to deliver on a wide range of socio-economic aims.

The council's commercial and procurement activities will play an important part in the delivery of the three primary objectives laid down in the Council Plan, namely: creating good jobs, tackling the climate crisis, and fighting inequality.

Invoking any one strategic approach will not provide the momentum we require to achieve these aims in times of austerity, a range of solutions will be needed. This strategy will define how the achievement of each of these objectives is supported through the council's commercial activities.



Councillor Steve Donnelly, cabinet member for inclusive economy

Summary of social value benefits

Apprenticeships for borough residents

£652,470

Based on Ealing Councils Apprentice Salary guide of £21,749 for a 12-month placement



Supply chain opportunities for local suppliers

£5.61m

Mentoring/support local suppliers or local third sector organisations

**98
DAYS**

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Career events at our Schools to educate and help improve inequalities

31 events

Voluntary time to maintain green spaces

**40
HOURS**

Wellbeing assistance support services



100 Care Leavers

Paid work experience placements

£37,642

Based on Real Living Wage of £896.25 for a 2-week placement

Summary of social value benefits secured at the end of the first year of implementing our social value policy

Ealing Commercial Strategy sets out our vision and ambition for achieving greater commercial, social, and economic value from our commissioning, procurement, and contracting activities. Based on a framework of four core imperatives, our commercial strategy sets out our ambition to explore innovative commercial contracting models, develop collaborative partnerships and work with the community and voluntary sector to drive positive change for our residents, businesses, and wider stakeholders.

Our Commercial Strategy is structured around four key themes.

- 1 **Commercial innovation**
- 2 **Collaborative social value**
- 3 **Considerate and conscious sourcing**
- 4 **Capacity and capability**

Commercial innovation is showing its potential in the development of creative procurement strategies and the tools to maximise value in securing services. Consideration of ‘make or buy’ is a key element of the options appraisals undertaken at the start of any tendering process in line with the Council Plan commitment to a Public Service Guarantee. Building on our track record of leading collaborative procurements and innovative procurement techniques, we will use our spending power to seek out new and improved commercial contracting models that support local economies and avoid wasteful outsourcing of vital public services – we will seek to bring more public services back under local authority control for the benefit of residents, delivering genuine value for taxpayers’ money.

Collaborative social value is proving to be a successful undertaking in Ealing with benefits being delivered widely across the council. We will strive to work in collaboration with internal and external partners to create a dynamic, streamlined, and targeted approach to delivering social value benefits to our residents and local communities. We will use our spending power to support our local economy, buying from local small and medium sized businesses.

Considerate and conscious sourcing will be a strong theme in all procurement activities to ensure appropriate consideration and assessment of our commitment to improving living wage standards and ensuring the fair treatment of labour across our contracts. We will work to ensure effective management and contractor performance is reported to encourage suppliers to meet better and better standards of environmental responsibility and promote diversity and equality.

Capacity and capability of the commercial hub will be developed to meet the challenges of continuing to deliver greater value and responding to changes in markets and procurement legislation. In turn, the commercial hub will strive to develop the skills and capability of officers across the council responsible for commissioning, procuring, and managing our council contracts. All of this will ensure that the effectiveness of all our contracts is maximised, and all contracted benefits realised.



Ealing Council spends over £390 million each year on third party services and contracts. This strategy aims to leverage the council's commercial and contracting relationships to deliver wider social and economic benefits to stimulate the realisation of the council's three primary objectives, namely creating good jobs, tackling the climate crisis, and fighting inequality.

Record annual inflation figures have put severe upward pressure on this figure and further challenge the council's ability to meet the demands of delivering its priorities and providing essential services. Procurement and contract management together provide the conduit for the delivery of the majority of the council's services and thereby its policy objectives. The commercial hub is the centre of excellence for procurement in the council and is responsible for ensuring that all procurement activity is compliant with council procedure rules and national legislation and that it secures best value for the council and its residents.

The government has published its 2022 National Procurement Policy Statement and the Procurement Bill is currently going through Parliament, leading to legislation that will establish the new UK Procurement Rules.

These rules will replace the EU legislation that we are currently working to and have got to know so well.

Both of these government initiatives bring in significant changes from their predecessors and meeting the new requirements will require application by all those involved. The Council Contract Procedure Rules (CPRs) have recently been updated to reflect current best practice and will require further amendment when the Procurement Act finally secures Royal Assent. The commercial hub will have to be at the forefront of the adoption of the new practices that will ensue, as well as leading on ensuring that procurement activities support the drive to achieve the desired outcomes.

The National Procurement Policy Statement requires authorities to ensure that their procurement function is adequately skilled and resourced. The changes in legislative and statutory demands will render this requirement even more relevant in the years to come.

Delivering our outcomes



1 Commercial innovation

Financial pressure on local authorities shows no sign of abating, due to the pressure of increases in demand, the complexity of that demand and market forces fuelled by record levels of inflation. For this reason, it is appropriate for the council to take a more commercial approach to its procurement and contract management.

A purely commercial solution would normally, in the first instance, be to generate more income. As a local authority, the opportunities for this are extremely limited. Instead, commercial acumen takes us down different paths to address budgetary pressures. In turn, this means the culture and working practices within the council's procurement and contracting activities need to be refreshed with the innovative approach this Commercial Strategy advocates.

Delivery

- 1 Contract expenditure needs to be controlled. Off-contract spend must be reduced, accompanied by the aggregation of multiple smaller purchases into larger or manageable contracting models.
- 2 Digital self-service tools and processes will be introduced to provide central intelligence of our contract expenditure and a self-service experience to managing our commercial relationships.
- 3 Make or Buy will be a key consideration in all retendering strategies to deliver the Council Plan Public Service Guarantee.
- 4 The scope of contracts and specifications will be challenged. Current pressures dictate the delivery of services ensuring a focus on the outcomes required rather than the inputs.
- 5 Income-generation will be a strategy consideration in all proposed contracts.
- 6 Better forward planning will be instigated to reduce the number of unbeneficial contract extensions and direct awards and to facilitate cross-council opportunities.
- 7 A wider range of tendering processes will be considered, with a view to encouraging lower cost bids.
- 8 Greater collaboration with the WLA will be engendered to increase leverage and make gains on the basis of economies of scale.

2 Collaborative social value

Building on the success of implementing our social value policy, our focus will shift towards developing a dynamic, streamlined, and targeted solution to the delivery of social benefits to our local communities, delivering social value where it is most needed and where it can make the biggest impact.

We will undertake a review of existing council services with a view to integrating the delivery of benefits with minimal resource effort to the council. Social value will play a larger role in contract management and become a regular item on the agenda for contract progress meetings.

The council advocates greater use of its small and local suppliers, supporting Ealing's local economy. Figures show that local small and medium sized enterprises (SMEs) currently make up approximately 28% of our supplier list: this can be improved. The council has held and supported local 'Meet the Buyer' events and has forged links with West London Chambers (WLC) but there is much more that can – and will – be done.

The Request for Quotation methodology has been streamlined and simplified, but more will be done to make the bidding process simpler for smaller organisations and support council services in buying from available local suppliers.

It is recognised that the capability of local companies to become council suppliers depends on a combination of opportunity and commercial acumen. The main thrust of this part of the Commercial Strategy will therefore combine the development of these two contributing factors.

Delivery

- 1** The council will further develop its links with Anchor Institutions and the Voluntary Community Sector to work on outreach support for local SMEs including, development of an online local supplier registry.
- 2** The social value commitments on larger businesses to support Ealing SMEs will be enhanced to include an increased use of local suppliers, facilitated in part by Meet the Buyer days for local SMEs and management mentorships, designed to develop SMEs' commercial acumen.
- 3** On-line training and guidance for SMEs on bidding and then working with the council will be improved and extended.
- 4** An on-line Request for Quotation portal for SMEs will be developed, making bidding for work with the council available to a wider commercial audience and more transparent.
- 5** The council will increase its outreach and support to the Voluntary and Community Sector (VCS) to encourage and support its endeavours to provide services to the council.
- 6** Alternative approaches to the delivery of social value benefits will be explored to maximise benefits for our local communities and residents.

3 Considerate and conscious sourcing

It is beholden upon all public bodies to do as much as possible in all their endeavours to protect the planet and the environment and to promote diversity and equalities. Ealing is particularly proud of its achievements in this respect to date, in particular the council's social value commitments. These are consistently targeted at the market that might be bidding, ensuring that commitments are within the bidders' capacity to deliver and best meet the needs of the local community. The council has firm plans to improve and increase its stand on this principle.

The council is committed to progress its ambition in commissioning and co-designing services to meet the needs of its diverse communities. Building on the commitments of the Race Equality Commission report, we will investigate ways to improve supply chain diversity across council contracts to improve economic impact and empowerment in underrepresented communities.

The council has firm plans to improve and increase its stand on Carbon Reduction through its Climate and Ecological Emergency Strategy (CEES) of 2021, which advocates a target of being carbon neutral as a borough and an organisation by 2030. A key driver of the policy is the reduction of carbon and the improvement of air quality through intelligent procurement practice, particularly in the area of construction.

Delivery

- 1 The council's social value commitments include a major emphasis on carbon reduction.
- 2 Carbon reduction will be considered earlier as part of our forward planning and early market engagements and where appropriate will form part of core contract specification, for example:
 - Low and zero-carbon construction materials such as concrete, tarmac
 - Recycled and recyclable materials in construction and maintenance, minimising waste on site
 - Minimising the carbon footprint on all materials delivery logistics, including a requirement that all vehicles meet the FORS bronze standard as a minimum
- 3 Whole Life Costing will be developed to reduce waste at the end-of-life stage of council assets.
- 4 The council will require works contractors to be registered on the Considerate Constructors Scheme.
- 5 Supplier relationship management will be employed to encourage existing suppliers to improve their environmental credentials on council contracts.
- 6 Procurement training modules will emphasise the use of pre-tender assessments to "look at the impact of proposals" on a range of areas including environment, equalities and local economies.

4 Capacity and capability

The council needs to adopt a more dynamic stance in its marketplace if the full potential of its service providers is to be realised. This approach must be evidenced at both the procurement and contract management stages of the contracting process and the National Procurement Strategy Statement advocates this:

“Contracting authorities should act to ensure their procurement and commercial teams have the right capability and capacity to deliver the priorities in this National Procurement Policy Statement.”

This will require continued enhancement of skills which will be addressed as part of this strategy.

Delivery

- 1 The council will review its resources in terms of technology, skills, and capacity.
- 2 Departmental procurement pipelines will be developed to better inform planning and use of resources.
- 3 Personal development plans will ensure that all commercial hub members have the skills and knowledge required to meet the demands put upon them and to support the maximisation of value in the council's contract.
- 4 The council will review its contract management toolkit to ensure that contract managers have the necessary level of support and resources available to them.
- 5 Contract management training will be made available for all officers who have contract management responsibilities and will be compulsory for all contract managers who have responsibility for Tier 1 and Tier 2-level contracts.
- 6 Supplier relationship management will be developed to maximise the benefits of council contracts to the Council and suppliers alike.
- 7 More mid-term contract progress reports shall be required to ensure that the council's contract are being effectively managed.
- 8 Contract manager responsibilities shall include the tracking and monitoring of the delivery of social value commitments.

Ealing Council
Perceval House
14/16 Uxbridge Road
Ealing W5 2HL

procurement@ealing.gov.uk
www.ealing.gov.uk

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

Contains Confidential or Exempt Information	No
Title	Options for the review of the Mattock Lane Public Spaces Protection Order
Responsible Officer(s)	Nicky Fiedler (Strategic Director, Housing & Environment)
Author(s)	Paul Murphy (Head of Community Safety)
Portfolio(s)	Tackling Inequalities
For Consideration By	Cabinet
Date to be Considered	8 th November 2023
Implementation Date if Not Called In	20 th November 2023
Affected Wards	Walpole (wider impact)
Keywords/Index	Protest, Vigil, Sexual, Health, Intimidation, Harassment, Anti-Social, behaviour, ASB, Women, Clinic, Mattock, Space, Protection, Order, Review, Consultation, Variation, PSPO, Safe Zone.

Purpose of Report:

The purpose of this report is to invite members to review and consider the impact and effectiveness of the Mattock Lane Safe Zone Public Spaces Protection Order (PSPO) and to determine whether the Council should commence a further consultation on a potential renewal and / or variation of the order.

Key points for action and decision:

- Review and consider the impact and effectiveness of the current PSPO.
- Consider the statutory framework for extending / varying a PSPO.
- Decide whether the Council will consult to extend or vary the PSPO (or take other action).

1. Recommendations

It is recommended that Cabinet:

1. Considers the impact and effect of the Mattock Lane PSPO on the behaviours targeted as set out in this report;
2. Authorises the Strategic Director of Housing and Environment to undertake a consultation on the renewal or variation of the Mattock Lane PSPO

2. Reason for Recommendation

2.1 The Mattock Lane Safe Zone Public Spaces Protection Order (PSPO) was introduced in April 2018 in response to activities in the locality of the *MS/ Reproductive Choices* (formerly *Marie Stopes*) clinic ('the Clinic') on Mattock Lane that were found to be having a detrimental impact on those visiting and using the Clinic, Clinic staff and others living in and passing through the area. Cabinet introduced the order having considered extensive documentary, testimonial and direct evidence of the harm caused predominantly by Pro-Life represented groups in the locality of the Clinic and following consultation with Ealing residents and statutory and non-statutory partners. A copy of the April 2018 Cabinet report and order made can be found at **Appendix 1**.

2.2 The order was introduced for a period of three years (this being the maximum period a PSPO can be made for in accordance with the *Anti-Social Behaviour, Crime and Policing Act (2014)*). In November 2020, Cabinet took the decision to begin consultation on the future of the order (which would have lapsed in April 2021 if no action was taken). In February 2021 the decision was taken by Cabinet to renew the order in its full terms for a further three years. This means the order will expire in April 2024 if no action is taken.

2.3 Since the introduction of the PSPO in April 2018, the order has been successful in reducing to almost nil the number incidents of Clinic service users, Clinic staff and others in the locality being interfered with, intimidated or harassed by individuals or groups expressing views on abortion services. Until the implementation of the order, instances of this behaviour had been occurring on a near daily basis.

2.4 The order has for the most part been complied with and has been successful in tackling the objectionable activity it was introduced to address. The introduction of the order has not stopped any of the activities of abortion related protest or prayer themselves from occurring, it has simply prevented them from occurring within the narrowly and clearly defined area of the PSPO.

2.5 The order created a designated area within the footprint of the Safe Zone that makes provision for some limited activities associated with protest of abortion related services but in a way that is designed to minimise the detrimental impact on Clinic service users and others, as well as reducing the identification, targeting

and intimidation of Clinic service users and staff. This designated area continues to be used by the same Pro-Life represented groups on a near daily basis.

2.6 Every year during the period of Lent (the six-week lead up to Easter in the Christian calendar), an increased presence of Pro-Life groups has been noted on the threshold of the footprint of the order. Primarily, Pro-Life groups base themselves in the locality of Ealing Green (a map detailing this location can be found at **Appendix 2**).

2.7 Since April 2018, some of the individuals or groups who had until that time stationed themselves at the gates of the Clinic, have on occasion instead based themselves outside Ealing civic centre (Perceval House), where they have displayed signs and images expressing a Pro-Life view and objecting to abortion.

2.8 The continued regular use of the designated area by Pro-Life groups, the sporadic Pro-Life protests at Perceval House and the presence of Pro-Life groups involved in protest / prayer at the threshold of the PSPO area all indicate a continued focus on the location by the same represented groups who had previously been congregating at the entrance to the Clinic. It is reasonable to conclude, therefore, that, were the order to expire, these groups will return to the area outside the Clinic and continue in the activities previously engaged in at this location.

2.9 Members are asked to consider whether it is appropriate to consult on the extension or variation of the PSPO, in view of the legal framework for consultation, implementation and extension of PSPOs. That legal framework, including the human rights and equalities considerations, is set out in Section 3 of this report. Members are asked to have this framework firmly in mind in reaching their decision.

2.10 Members are directed to the evidence base set out in the report to Cabinet in April 2018, links to which can be found in **Appendix 1** of this report. The April 2018 report and appendices set out in full the evidence on which the Council's decision to introduce the PSPO was made, including the responses to the Council's original consultation on the introduction of a PSPO (conducted from 29th January to 26th March 2018).

2.11 Included in the Appendices to this report are a copy of the existing PSPO (**Appendix 1**), copies of subsequent court judgements and decisions in respect of this order (**Appendix 3**) and a copy of the comprehensive Equalities Impact Analysis undertaken prior to the Council's decision to introduce the order (**Appendix 4**).

2.12 Members are then invited consider the impact and effectiveness of the PSPO in terms of what it set out to achieve and the necessity for the continuation of the order in its current or varied form.

3. Background

- 3.1 On 10th April 2018, Ealing Council's Cabinet voted unanimously to introduce a Public Spaces Protection Order (PSPO) in response to issues in the locality of the *MSI Reproductive Choices* (then *Marie Stopes*) clinic that were believed to be having a detrimental impact on people in the locality, including those accessing the clinic, clinic staff and residents who live in and pass through the area.
- 3.2 The decision was taken by Cabinet after considering a report on the outcome of an investigation by the Council's community safety team during late 2017 and the outcome of an eight-week consultation conducted during the period January to March 2018, including all of the extensive evidence obtained as a result. The Council was clear its decision was a local solution to a local problem but recognised Ealing's local problem was part of a wider national problem of interference, intimidation and harassment primarily of women taking place in the locality of abortion clinics across the UK.
- 3.3 On 26th April 2018, Ealing Council were notified of an appeal made to the High Court to challenge the Council's decision by individuals employed by and connected to Pro-Life groups.
- 3.4 A directions and full hearing took place in the High Court in May and June 2019 respectively. Judgement 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 3**, which contains a copy of the High Court judgement.
- 3.5 The appellants further appealed the decision of the High Court to the Court of Appeal and, in January 2019, the Council was informed that the Court of Appeal had granted permission for this appeal to be heard. This appeal hearing took place over two days in July 2019; judgement was handed down on 21st August 2019. The Court of Appeal rejected the appeal and upheld Ealing's PSPO in its full terms. Members are again directed to **Appendix 3**, which contains a copy of the Court of Appeal Judgement.
- 3.6 Following that judgement, the appellants then applied for permission to appeal the court's decision to the Supreme Court. On 11th March 2020, the Council were notified of the decision of the Supreme Court to refuse permission to appeal. A copy of this judgement can be found within **Appendix 3**.
- 3.7 Although the appellants indicated in social media posts, press releases and by word-of-mouth their intent to further appeal the order to the European Court of Human Rights, no direct communication has been received from either the appellants or any court in relation to this.
- 3.8 The Council's decision to introduce the Safe Zone PSPO has been subject to intense challenge and independent scrutiny, and has consistently been upheld in full throughout. Throughout the period April 2018 to present, the order has been under continued review in terms of its effectiveness and necessity.

3.9 With the law providing for a three-year maximum period for PSPOs to be made before they must be reviewed, in 2020 the Council began the process of formerly considering options for the future of the order, and in November 2020 Cabinet decided to undertake formal consultation on the renewal of the order. In Spring 2021, upon considering extensive evidence and feedback from this formal consultation in conjunction with all of the evidence already obtained from the historic investigation and continuous review and monitoring of the order, Cabinet decided to renew the order in its full terms for a period of three years, meaning the PSPO will expire in April 2024 if no action is taken.

4. Evaluation and review of the Safe Zone

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 community safety team opened an investigation into the issues reported to be affecting Clinic users, staff and those in the locality of the Clinic. 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 a 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 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.

- 4.3 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 these groups were choosing to engage in these activities meant they were targeting women at the precise moment they were accessing health services of a deeply personal nature.
- 4.4 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. 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.
- 4.5 Since the introduction of the order in April 2018, there have only been a small number of 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. 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. A 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. A fourth breach of the PSPO took place in 2023 and the individual involved is currently subject to legal proceedings by the Council. There have been no other reported breaches of the PSPO.
- 4.6 As part of the continued review of the PSPO, Council officers have engaged with the Clinic, who have provided feedback on the positive impact the order has had in reducing to almost nil instances of interference, intimidation or harassment of women at the entrance to the Clinic. A diary which had been maintained (contents of which formed part of the original evidence base considered by the Council in reaching its decision to make the Order) historically contained extensive recorded instances of alarm and distress by women using the Clinic caused by the activities of Pro-Life groups at the location; it also contained statements from family members who had reported being adversely affected and upset by the activities outside the Clinic. Following introduction of the PSPO, the Clinic have advised Council officers that these incidents ceased and that it has been unnecessary for them to maintain an incident diary.
- 4.7 Following a review of the order with the Clinic management, they have described an 'air of normality' as now existing at the Clinic; saying this permeates the Clinic

environment in a positive way. The Clinic have described clients presenting as 'less tense' when they arrive at the Clinic.

4.8 As outlined in Section 2 of this report, an important aspect of the Safe Zone PSPO has been the provision of a *designated area* within the geographic footprint of the Order, where the prohibitions and requirements of the PSPO do *not* apply and where activities such as protest relating to abortion service are permitted, albeit with some restrictions. As outlined, this designated area has habitually been used by Pro-Life group members on a continual basis since the introduction of the order. The individuals using this area congregate in small groups, often displaying small signs relating to abortion, offering leaflets to and attempting to engage with (predominantly female) passers-by. While the Council continue to on occasion receive reports from residents and people visiting the area who find the activity distasteful and upsetting, 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 balance the Council has sought to make 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. To the best of the Council's knowledge, people attending the designated area have always complied with the restrictions which apply within that area.

4.9 As outlined in the evidence to Cabinet in April 2018 and again in 2020-21, during every Lent period, the Mattock Lane area has had high levels of Pro-Life groups congregating in the designated area and on the very edge of the Order's geographic footprint. These groups often identify with the *40 Days for Life* initiative. 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 and consultation process

5.1 Moving into 2024, the Council have two options in relation to the Mattock Lane Safe Zone:

1. Take no action. This will mean the PSPO will come to an end in April 2024.
2. Proceed with consultation on renewal or variation of the existing order. This will require a consultation to be undertaken in line with the process previously undertaken during November 2020 - January 2021.

5.2 Should option 1 be considered appropriate by Cabinet, no further action needs to be taken by members. The PSPO will expire on 10th April 2021, signage will be removed and none of the prohibitions or requirements of the Order will apply to any persons in the locality thereafter, save for by introduction of national powers, further order by the Council or other party or some other action.

5.3 If Cabinet are conclude option 2 is most appropriate, a full consultation will be undertaken. This will involve specific consultation with all groups known to be involved in the activities regulated by the PSPO, as well as with *MSI Reproductive Choices, British Pregnancy Advisory Service (BPAS)*, clinic service users, the Metropolitan Police Service, Integrated Care System (ICS), NHS, Public Health and local faith groups. It will also involve an online survey in line with the public surveys undertaken in 2018 and in 2020-21.

5.4 Following consultation, a further report will be provided to Cabinet (most likely in February 2024), detailing the outcome of the consultation alongside an assessment of the impact and effectiveness of the Order to date and providing advice to Cabinet on the requirement for renewal or variation of the PSPO.

6. Financial implications

6.1 As outlined in previous reports to Cabinet, the original extensive investigation and subsequent consultations, reviews and monitoring have been managed within the existing resources and budget of the community safety team, albeit with the requirement to on occasion realign priorities. Costs of the investigation, consultation, implementation, review, monitoring and enforcement of the PSPO have been met from the community safety approved budget.

6.2 The Council's legal costs (primarily incurred from resisting the appeals) have to date amounted to approximately £0.150m. This does not include officer time in investigating the activities, collating evidence and witness statements, coordinating consultations, analysing the results and preparing reports, legal bundles and representations.

6.3 The cost of the recommended consultation will be managed within the existing resources of the community safety service.

7. Legal framework

7.1 The power for local authorities to draft, implement, vary and extend PSPOs is governed by the *Anti-social Behaviour, Crime and Policing Act (2014)*. The Act gives councils the authority to implement PSPOs in response to defined issues affecting their communities, provided certain criteria and legal tests are met. PSPOs can be used to prohibit specified activities, and / or to require certain things be done by people engaged in particular activities, within a defined public area.

7.2 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 £1,000).

7.3A PSPO can be made by a local authority if it satisfied on reasonable grounds that two conditions are met. These are found in section 59 of the 2014 Act:

7.4 The first condition is that:

- i) 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*
- ii) 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:

- i) is or is likely to be, of a persistent or continuing nature,*
- ii) is, or is likely to be, such as to make the activities unreasonable, and*
- iii) justifies the restrictions imposed by the notice.*

The PSPO must identify the public place in question and can:

- i) prohibit specified things being done in that public place*
- ii) require specified things to be done by persons carrying on specified activities in that place; or*
- iii) do both of those things.*

7.5 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.

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

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

7.8 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 Ealing has continually reviewed the impact of the Order as part of its on-going monitoring arrangements and in the significant work undertaken to respond to challenges in the High Court and Court of Appeal.

7.9A PSPO can be made for a maximum duration of up to three years, after which it may be extended if certain criteria under Section 60 of the Act are met. For a council to make the decision to extend a PSPO, they must be satisfied that:

- i) *An extension is necessary to prevent activity recurring, or*
- ii) *There has been an increase in frequency or seriousness of the activity*

7.10 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.

7.11 If a PSPO is to be extended or varied, the Council is required to undertake a further consultation process. If no action is taken the PSPO will end at the end of the period for which it was made (in the case of Mattock Lane, this would mean the Order expiring in April 2024 if no action is taken).

7.12 Safe access to abortion services has been a topic of wider public debate nationally and internationally. Since Ealing's decision to introduce the Safe Zone PSPO at Mattock Lane, the national picture has shifted significantly. The Home Office position had been that councils' local powers were sufficient to address the issue of intimidation and harassment at abortion clinics: following a review undertaken during 2018, Baroness Williams of Trafford (then Minister of State at the Home Office) then concluded national legislation would 'not be proportionate'. Since that time cross-party support has built around a national solution to the problem. In 2022-23 Stella Creasy MP led on an amendment to the *Public Order Bill* in March 2023. Section 9 of the Public Order Act makes specific provision Safe Access Zones around all sites in England and Wales where abortion services are offered. However, to date this provision, which is now part of an Act of Parliament has not yet been brought into force and there is currently no timetable for the implementation of Safe Access Zones in England and Wales.

7.13 Ealing has had dialogue with the Scottish Government, Government of Northern Ireland and with the Home Office. Officers from Ealing contributed to the Home Office consultation on the issue and have presented to both the Scottish Government and the Government of Northern Ireland on the evidence of harm Ealing uncovered within its investigation, consultation and ongoing monitoring work. Ealing have also provided insight to the Home Office, the Scottish Government and the Government of Northern Ireland on our experience navigating the existing legal framework and devising, implementing, monitoring and enforcing our PSPO.

7.14 Ealing remains clear that, while the Mattock Lane Safe Zone is a local solution to a local problem, there remains a broader national problem in need of a national solution.

8. Risk management

8.1 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 well within the contingencies originally made in 2018.

8.2 In proceeding with further consultation on the future of the Order, it should be noted that, as with the introduction of any order, any subsequent decision to vary or renew the order can be challenged in the High Court.

8.3 Along with these risks to the Council, the risk of taking no action would itself result in the risk of the return of activities and behaviours extensively evidenced to have caused detrimental effect to people (in particular women) in the locality of the Clinic.

9. Community Safety

9.1 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 with 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.

10. Links to Council Priorities

10.1 Protecting women accessing abortion services and ensuring they are protected from fear of intimidation, harassment or distress, links to a number of the Council priorities as set out in the Council Plan, including the Council's commitment to Healthy Lives, Thriving Communities and Tackling Inequality and Crime.

10.2 The Mattock Lane Safe Zone delivers part of Ealing's commitment to improving safety for women and girls in the borough; as evidenced in the 2018 report and in the monitoring and review process, the interference, intimidation and harassment that had been taking place at this location had disproportionately impacted women and girls and affected their ability to access health services in a safe and dignified way. In delivering a compassionate solution to an identified local problem, the Mattock Lane Safe Zone also connects at a broader level with Ealing's commitment to being an open, transparent and inclusive Council that listens to residents and puts residents at the heart of its decision-making.

11. Equalities, Human Rights and Community Cohesion

11.1 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 is exhibited at **Appendix 4** of this report. Should Cabinet be minded to proceed with the recommended consultation, an additional Equalities Analysis Assessment will be completed prior to the recommendation from that consultation being sent out to Cabinet in February 2024.

12. Staffing/Workforce and Accommodation implications

12.1 There are no proposed changes to Council staff or workforce within the outlined proposal beyond the staffing commitment from the Council's community safety team, corporate performance team and legal and democratic services, to

collectively coordinate the consultation process, analyse and present the responses to Cabinet.

13. Property and assets

13.1 There are no implications for council property or assets beyond the continued deployment of CCTV and signage at the locality.

14. Any other implications

14.1 There are no implications of the proposals that have not been addressed within the key implications outlined above. However, Cabinet are asked to keep in mind the broader national picture as set out in Section 7 of this report, given the progress of national legislation and potential future implementation of 'Safe Access Zones' across England and Wales. While there remains specific local factors in relation to the problem profile at Mattock Lane, it may be the case that national legislation (when it is implemented) may reduce the requirement for some of the prohibitions or requirements of the PSPO.

15. Consultation

15.1 Prior to the introduction of the PSPO the Council engaged with and sought engagement from all groups known to be involved in vigils and protest outside the Marie Stopes clinic. It 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. These same groups were engaged as part of the formal consultation undertaken in November 2020 - January 2021 as part of the consultation on the renewal of the PSPO. It is recommended that any consultation on the renewal or variation of the PSPO includes all of these groups.

15.2 If the decision is made to consult on the renewal or variation of the PSPO, it is recommended formal consultation be progressed in line with the approach taken prior to the decision to introduce the Order and in line with the practice developed in 2020-21 when the Order was considered for renewal. This will include an online survey for a period of eight weeks, with the full results, along with an open and transparent analysis and consultation report published and provided to Cabinet in February 2024.

16. Timetable

16.1 Should no action be taken, the PSPO will expire in April 2024.

16.2 Should Cabinet conclude to proceed with consultation on extension or variation of the PSPO, the following timetable is provided as a guide for the subsequent milestones:

- **November 2023** – Consultation begins.
- **January 2024** – Consultation closes.

- **February 2024** – Cabinet consider the evidence and feedback from the consultation exercise and make a decision on the future of the Order.

17. Appendices

Appendix 1: Copy of PSPO and map.

Appendix 2: Detailed map.

Appendix 3: Copy of judgements of High Court, Court of Appeal and Supreme Court.

Appendix 4: Copy of Equalities Impact Analysis.

Section 18: 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%20-Questions%20to%20the%20Mayor%20-%20Transcript.pdf>

Link to Hansard Select Committee of the 12th of December 2017:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/harassment-and-intimidation-near-abortion-clinics/oral/75524.pdf>

Link to Cabinet report and appendices of 10th April 2018:

<https://ealing.cmis.uk.com/ealing/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/4980/Committee/3/Default.aspx>

Link to Cabinet report and appendices of 9th February 2021:

<https://ealing.moderngov.co.uk/CeListDocuments.aspx?Committeed=137&MeetingId=509&DF=09%2f02%2f2021&Ver=2>

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Shabana Khan	Lawyer			
Cllr Jasbir Anand	Cabinet Member for Tackling Inequality			
Nicky Fiedler	Strategic Director, Housing & Environment			
Jess Murray	Assistant Director, Community Protection			
Justin Morley	Head of Legal Services (Litigation)			
Yalini Gunarajah	Finance Manager			
External				
Kuljit Bhogal	Counsel			

Report History

Decision type:	Urgency item?
Key decision	Yes
Report no.:	Report author and contact for queries:
	Paul Murphy Head of Community Safety (ext. 8807)

Amended DRAFT ORDER

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

SECTION 59

PUBLIC SPACES PROTECTION ORDER

This order is made by the London Borough of Ealing (the 'Council') and shall be known as the Public Spaces Protection Order (Mattock Lane) 2018.

PRELIMINARY

1. The Council, in making this Order is satisfied on reasonable grounds that:

The activities identified below have been carried out in public places within the Council's area and have had a detrimental effect on the quality of life of those in the locality,

and that:

the effect, or likely effect, of the activities:

is, or is likely to be, of a persistent or continuing nature,

is, or is likely to be, such as to make the activities unreasonable, and

justifies the restrictions imposed by the notice.
2. The Council is satisfied that the prohibitions imposed by this Order are reasonable to impose in order to prevent the detrimental effect of these activities from continuing, occurring or recurring, or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
3. The Council has had regard to the rights and freedoms set out in the European Convention on Human Rights. The Council has had particular regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the European Convention on Human Rights and has concluded that the restrictions on such rights and freedoms imposed by this Order are lawful, necessary and proportionate.

THE ACTIVITIES

4. The Activities prohibited by the Order are:

- i Protesting, namely engaging in any act of approval/disapproval or attempted act of approval/disapproval, with respect to issues related to abortion services, by any means. This includes but is not limited to graphic, verbal or written means, prayer or counselling,
- ii Interfering, or attempting to interfere, whether verbally or physically, with a service user or member of staff,
- iii Intimidating or harassing, or attempting to intimidate or harass, a service user or a member of staff,
- iv Recording or photographing a service user or member of staff of the Clinic whilst they are in the Safe Zone,
- v Displaying any text or images relating directly or indirectly to the termination of pregnancy, or
- vi Playing or using amplified music, voice or audio recordings.

THE PROHIBITION

- 5. A person shall not engage in any of the Activities anywhere within the Safe Zone as shown shaded on the attached map labelled 'The Safe Zone'.
- 6. This Prohibition is subject to the Exception stated below.

DEFINITIONS

- 7. In this Order the following words or phrases are defined as follows:

'Clinic' means the Marie Stopes Clinic on Mattock Lane, Ealing, W5;

'Designated Area' means the cross-hatched shaded area as identified on the attached map outlined with a green boundary and labelled 'Designated Area';

'Displaying any text or images relating directly or indirectly to the termination of pregnancy' includes but is not limited to, imagery or textual references to abortion, baby, mum, foetus, soul, kill, hell, murder;

'Member of staff' includes any employee, agent or contractor of the Clinic;

'Protesting' means being in the Safe Zone (whether by yourself or with others) and engaging in any act of approval/disapproval or attempted act of approval/disapproval, with respect to issues related to abortion services, by any means. This includes but is not limited to, graphic, verbal or written means, prayer or counselling;

'Safe Zone' means the area outlined in a red boundary on the attached map and marked 'Safe Zone for the PSPO (Mattock Lane) 2018';

'Service user' includes any patient or visitor to the Clinic.

REQUIREMENTS

8. A person who is believed to have engaged in a breach of this order or in anti-social behaviour within the Safe Zone, is required to give their name and address to a police officer, police community support officer or other person designated by Ealing Council.
9. A person who is believed to have engaged in a breach of this order, or in anti-social behaviour within the Safe Zone, is required to leave the area if asked to do so by a police officer, police community support officer or other person designated by Ealing Council.

THE EXCEPTION

10. The Prohibition does not apply to the green-shaded area identified on the attached map outlined with a green boundary and labelled 'Designated Area'.

RESTRICTIONS APPLYING IN THE DESIGNATED AREA

11. No more than four persons may be present in the Designated Area at any one time.
12. No individual poster, text or image, singularly or collectively greater than one sheet of A3 paper may be displayed within the Designated Area.
13. A person within the Designated Area must not shout any message or words relating to the termination of pregnancy.
14. A person within the Designated Area must not play or use amplified music, voice or audio recordings.

PERIOD FOR WHICH THIS ORDER HAS EFFECT

15. This Order will come into force at midnight on [] and will expire at midnight on [].
16. At any point before the expiry of this three year period the Council can extend the Order by up to three years if they are satisfied on reasonable grounds that this is necessary to prevent the activities identified in the Order from occurring or recurring or to prevent an increase in the frequency or seriousness of those activities after that time.

WHAT HAPPENS IF YOU FAIL TO COMPLY WITH THIS ORDER?

Section 67 of the Anti-Social Behaviour Crime and Policing Act 2014 says that it is a criminal offence for a person without reasonable excuse –

- (a) to do anything that the person is prohibited from doing by a public spaces protection order, or
- (b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.

A person guilty of an offence under section 67 is liable on conviction in the Magistrates Court to a fine not exceeding level 3 on the standard scale.

FIXED PENALTY

A constable, police community support officer or city council enforcement officer may issue a fixed penalty notice to anyone he or she believes has committed an offence under section 67 of the Anti-Social Behaviour, Crime and Policing Act. You will have 14 days to pay the fixed penalty of £100. If you pay the fixed penalty within the 14 days you will not be prosecuted.

APPEALS

Any challenge to this order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the safe zone. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an order is varied by the Council.

Interested persons can challenge the validity of this order on two grounds: that the Council did not have power to make the order, or to include particular prohibitions or requirements; or that one of the requirements of the legislation has not been complied with.

When an application is made the High Court can decide to suspend the operation of the order pending the Court’s decision, in part or in totality. The High Court has the ability to uphold or quash the order or any of its prohibitions or requirements.

Dated.....

Sealed etc

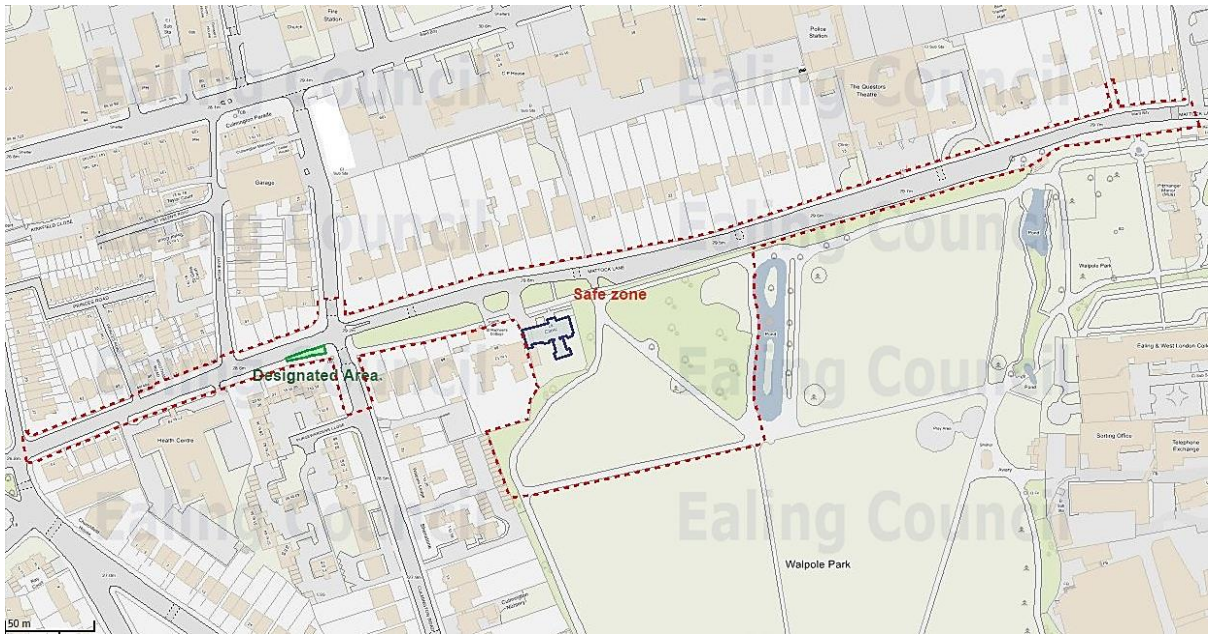
(1) It is an offence for a person without reasonable excuse-

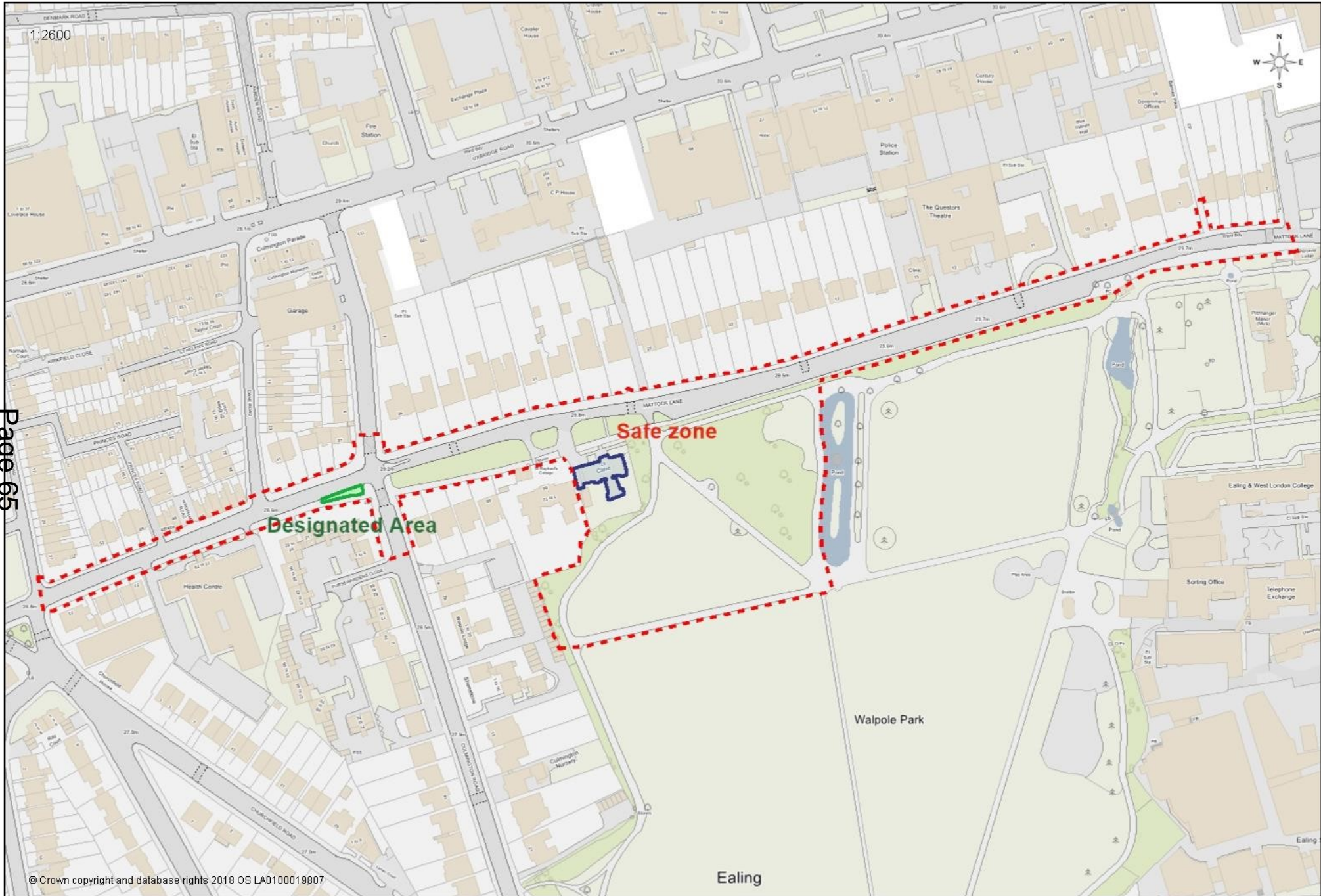
(a) To do anything that the person is prohibited from doing by a public spaces protection order, or

(b) To fail to comply with a requirement to which a person is subject under a public spaces protection order

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order





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Neutral Citation Number: [2018] EWHC 1667 (Admin)

Case No: CO/1695/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/07/2018

Before :

MR JUSTICE TURNER

Between :

FLORICA ALINA DULGHERIU

Claimant

- and -

ANDREA ORTHOVA

Second
Claimant

-and-

THE LONDON BOROUGH OF EALING

Defendant

Alasdair Henderson and Benjamin Fullbrook (instructed by **Tuckers Solicitors**) for the
Claimants
Kuljit Bhogal and Tara O'Leary (instructed by **London Borough of Ealing Legal Services**)
for the **Defendant**

Hearing dates: 7th June 2018

Approved Judgment

Mr Justice Turner :

INTRODUCTION

1. The debate over whether, and in what (if any) circumstances, it is right for a woman to choose deliberately to terminate her pregnancy is one which has polarised opinion for centuries. Inevitably, clinics providing abortion services, in this country and abroad, have tended to attract the attention of both pro-life and pro-choice activists. Feelings run high. Those who work at and who use the facilities of such clinics are liable to become the focus of the scrutiny of individuals who have strong feelings on the issue. One such clinic is the Marie Stopes UK West London Centre (“the Centre”) which operates from premises on Mattock Lane in Ealing.
2. For many years, pro-life supporters have congregated immediately outside the Centre to advance their cause. They have attempted, in different ways, to engage with users and, in particular, pregnant women who come to the Centre to have abortions. Latterly, they have been joined by pro-choice activists advancing a radically different agenda.
3. This situation changed completely when, on 10 April 2018, the defendant made a Public Spaces Protection Order (“PSPO”) which, in broad terms, provided for a “safe zone” around the Centre within which the opposing sides were henceforth precluded from communicating their respective views on issues relating to the provision of abortion services. The activists have, subject to certain additional constraints, been permitted to continue to operate but only within a defined “designated area” which is some distance from the entrance to the Centre. If they were to return to continue their activities at their former pitch then, so long as the PSPO remains in force, they would be guilty of a criminal offence. This decision has, predictably, given rise to considerable controversy. The claimants, who are both strong proponents of the pro-life stance, now apply to this court to quash the order of the defendant so as to permit the protesters to return to the immediate vicinity of the Centre to continue their activities as before.
4. Very many contentions and counter contentions have been raised by the parties to this litigation and I pay tribute to their industry. It would, however, involve a disproportionate exercise for this Court to attempt to address and resolve each and every point relied upon. The parties can rest assured that I have considered all of the issues they have raised and that where I have not adjudicated upon any given area of dispute it is because whatever finding I may have made thereon would not have affected the outcome of this challenge.

THE BACKGROUND

5. The presence of pro-life activists outside the Centre dates back to 1995. The individuals involved over the years have been affiliated to various Christian groups one of which is an organisation called the Good Counsel Network (“GCN”) of which the claimants are members. One of their primary objects was, and is, to try to dissuade users of the Centre from going through with their abortions. A variety of strategies have been deployed to this end. Leaflets have been handed out at the entrance to the Centre and posters illustrating what foetuses look like at various stages of gestation have been on display. Attempts have been made to engage the users in dialogue in the

hope that they might change their minds. Offers have been made to provide practical support to those who may have been motivated, at least in part, to seek an abortion because of domestic and financial pressures.

6. In 2015, pro-choice activists began to arrive on the scene with greater frequency and stood close by their pro-life counterparts. They were members of, or affiliated to, a group called Sister Supporter who flagged up their allegiance by sporting high visibility pink tabards. They would generally turn up on Fridays and Saturdays and protest against the aims and methods of the pro-life supporters. Inevitably, the simultaneous attendance of the two rival factions generated an atmosphere of tension outside the Centre. I have seen photographs illustrating the sort of scene which might be expected to present itself on the approach of any visitor to the Centre on days upon which both groups were active.
7. In October 2017, Sister Supporter organised an e-petition with the object of encouraging the defendant to take steps to bring an end to the presence and activities of the pro-life supporters outside the Centre. The defendant attempted to encourage the opposing groups to reach a mutual accommodation. In this it failed. So it went on to consider other options. One of these was the making of a PSPO under the provisions of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”). In the consideration of this potential response, the defendant launched an online public consultation which ended on 26 March 2018. Soon after, on 3 April 2018, Paul Murphy, an operations manager with responsibility for community safety and services, presented a report (“the Murphy report”) to cabinet on the issue. This was a detailed document which referred to a very considerable number of appendices which included evidence and information from a broad range of sources together with written representations both in support of and in opposition to the proposed PSPO. In addition, representatives of the defendant took statements from users and staff at the Centre.
8. The pro-life supporters’ stance was identified in the body of the Murphy report. In particular, it was recorded that they denied that they had caused any intimidation, harassment, abuse, alarm or distress to service users or staff. They also pointed out that there had been little or no police action or intervention as a result of their activities over the years. In addition, GCN had prepared and presented a briefing pack to the defendant pointing out that all members had been required to sign a “Statement of Peace” before attending outside the clinic disavowing any intention to threaten, physically contact or verbally abuse users and members of staff. The pack included brief testimony from mothers who had decided, after all, to keep their babies and had expressed gratitude to GCN for its support.
9. There were also contributions from Sister Supporter, the British Pregnancy Advisory Service (“BPAS”) and the Centre, all of which were in support of the imposition of a PSPO. The BPAS documentation included a number of reports of relevant incidents which had been made by users, staff and local residents. Complaints included allegations that pro-life supporters had, on occasion, grabbed the arms of clinic users and shouted at them and their partners. Some had found the images of fetuses which were on display to be disturbing and particularly inappropriate for a public street along which children often walked.

10. The Murphy report revealed that the statutory consultation had generated over 2,000 responses about 80% of which were to the effect that the activities outside the Centre were having a detrimental effect in the locality.
11. In the event, the Murphy report recommended the implementation of a PSPO. The defendant voted to accept this recommendation and a PSPO came into force on 23 April 2018.
12. The terms of the PSPO were such as to prohibit the following activities within the “safe zone”:
 - “(i) Protesting, namely engaging in any act of approval/disapproval or attempted act of approval/disapproval, with respect to issues related to abortion services, by any means. This includes but is not limited to graphic, verbal or written means, prayer or counselling,
 - (ii) Interfering, or attempting to interfere, whether verbally or physically, with a service user or member of staff,
 - (iii) Intimidating or harassing, or attempting to intimidate or harass, a service user or member of staff,
 - (iv) Recording or photographing a service user or member of staff of the Clinic whilst they are in the Safe Zone,
 - (v) Displaying any text or images relating directly or indirectly to the termination of pregnancy, or
 - (vi) Playing or using amplified music, voice or audio recordings.”
13. Protests were, however, permitted to continue within a “designated area” comprising a well-defined grassy space about 100 metres or so from the entrance to the Centre. Such protests were subject to some restrictions as to the numbers of participants, the size of placards on display and the like.
14. The claimant now seeks to challenge the making of the PSPO under the procedure provided for in the relevant statutory framework which I will now proceed to outline.

THE STATUTORY FRAMEWORK

15. The defendant made the PSPO which is the subject of the present challenge pursuant to section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 which provides:

“Power to make orders

- (1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
- (2) The first condition is that—

(a) activities carried on in a public place within the authority'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.

(3) 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.

(4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—

(a) prohibits specified things being done in the restricted area,

(b) requires specified things to be done by persons carrying on specified activities in that area, or

(c) does both of those things.

(5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—

(a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or

(b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

(6) A prohibition or requirement may be framed—

(a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;

(b) so as to apply at all times, or only at specified times, or at all times except those specified;

(c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.

(7) A public spaces protection order must—

(a) identify the activities referred to in subsection (2);

(b) explain the effect of section 63 (where it applies) and section 67;

(c) specify the period for which the order has effect.

(8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.”

16. The Explanatory Notes to the Act provide:

“161. The public spaces protection order ... is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community’s quality of life, by imposing conditions on the use of that area. The order could also be used to deal with likely future problems. It will replace designated public place orders, gating orders and dog control orders. Examples of where a new order could be used include prohibiting the consumption of alcohol in public parks or ensuring dogs are kept on a leash in children’s play areas. It could also prohibit spitting in certain areas (if the problem were persistent and unreasonable). This is currently covered in local byelaws...

172. The public spaces protection order will be different from the powers it will replace in the following ways:

a. It can prohibit a wider range of behaviour, which makes the new order more like the ‘good rule and government byelaws’ made under the Local Government Act 1972, but with a fixed penalty notice available on breach (although some current byelaws do allow for fixed penalty notices to be issued). This is following feedback in the consultation from local authorities that current byelaws are hard to enforce as the only option available to local agencies is to take an individual to court if they fail to comply, which can be costly and time-consuming;

b. There is intended to be less central government oversight than with byelaws, and no central government reporting requirements as with designated public place orders. This would reduce bureaucracy; and

c. There will be lighter touch consultation requirements to save costs (for example, there is no duty to advertise in local newspapers). This is following feedback in the consultation from local authorities that the current processes for consultation outlined in secondary legislation are costly and time-consuming.”

17. In addition, there is Statutory Guidance to the 2014 Act for “frontline professionals” which has been issued by the Home Office in accordance with section 73 of the Act and which was last updated in December 2017.

18. Only a local authority can issue a PSPO and, before doing so, they must, pursuant to section 72 of the 2014 Act, consult with the chief officer of police, the local policing body for the police area that includes the restricted area and any representatives of the local community they consider appropriate.
19. By the operation of section 60 of the 2014 Act, PSPOs may last for up to three years before requiring a review. However there is no limit on the number of times an order can be reviewed and extended. There is a requirement to inform the chief of police and any other community representatives on review and renewal (as with the original order). Under section 61 of the 2014 Act, a PSPO can be varied or discharged at any time by the local authority.
20. Breach of the terms of a PSPO, without reasonable excuse, is, pursuant to sections 67 and 68 of the 2014 Act, a criminal offence the sanctions in respect of which comprise either a fixed penalty notice of up to £100 or prosecution. On summary conviction, an individual is liable to be sentenced to pay a fine not exceeding £1,000.
21. A PSPO may be challenged under the provisions of section 66 of the 2014 Act:

“Challenging the validity of orders

(1) An interested person may apply to the High Court to question the validity of—

- (a) a public spaces protection order, or
- (b) a variation of a public spaces protection order.

“Interested person” means an individual who lives in the restricted area or who regularly works in or visits that area.

(2) The grounds on which an application under this section may be made are—

- (a) that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);
- (b) that a requirement under this Chapter was not complied with in relation to the order or variation.

(3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.

(4) On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.

(5) If on an application under this section the High Court is satisfied that—

(a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied), or

(b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,

the Court may quash the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied).

(6) A public spaces protection order, or any of the prohibitions or requirements imposed by the order (or by the order as varied), may be suspended under subsection (4) or quashed under subsection (5)—

(a) generally, or

(b) so far as necessary for the protection of the interests of the applicant.

(7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order, in any legal proceedings (either before or after it is made) except—

(a) under this section, or

(b) under subsection (3) of section 67 (where the interested person is charged with an offence under that section).”

22. A challenge brought under section 66 of the 2014 Act is assigned to the Administrative Court by virtue of PD8A. The jurisdiction is akin to judicial review. For example, it is exercisable by a single judge of the Queen’s Bench Division and evidence at the hearing is by witness statement. There are differences. There is no permission stage and the only remedies available are a suspension or a quashing order. Notwithstanding these distinctions, there is no dispute that the level of scrutiny to be applied by the court should reflect that which would be appropriate to judicial review proceedings.

THE INTENSITY OF REVIEW

23. The parties agree that the implementation of the PSPO in this case has led to the engagement of rights enshrined in a number of the Articles of the European Convention on Human Rights (“the Convention”). Under section 6 of the Human Rights Act 1998, it is unlawful for the defendant, as a public authority, to act in a way which is incompatible with a Convention right. Furthermore, under section 72 of the 2014 Act, a local authority must have particular regard to the rights of freedom of

expression and freedom of assembly set out in Articles 10 and 11 of the Convention when, for example, deciding whether to make a PSPO and, if so, what it should include. Finally, under section 3(1) of the 1998 Act, so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

24. Over recent years, the courts have moved away from the “one size fits all” approach to the level of intensity of the judicial review process as it may apply to the infinitely wide variety of circumstances in which such challenges arise. Indeed, the law is still in state of flux as is evident from the judgment of Lord Carnwath in R (Youssef) v Secretary of State for Foreign and Commonwealth Affairs [2016] A.C. 1454 who observed:

“55 In R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs [2016] AC 1355 (decided since the hearing in this appeal) this court had occasion to consider arguments, in the light of Kennedy and Pham, that this court should authorise a general move from the traditional judicial review tests to one of proportionality. Lord Neuberger of Abbotsbury PSC (with the agreement of Lord Hughes JSC) thought that the implications could be wide ranging and “profound in constitutional terms”, and for that reason would require consideration by an enlarged court: para 132. There was no dissent from that view in the other judgments. This is a subject which continues to attract intense academic debate: see, for example, the illuminating collection of essays in The Scope and Intensity of Substantive Review: Traversing Taggart’s Rainbow, (2015), eds Wilberg and Elliott. It is to be hoped that an opportunity can be found in the near future for an authoritative review in this court of the judicial and academic learning on the issue, including relevant comparative material from other common law jurisdictions. Such a review might aim for rather more structured guidance for the lower courts than such imprecise concepts as “anxious scrutiny” and “sliding scales”.

56 Even in advance of such a comprehensive review of the tests to be applied to administrative decisions generally, there is a measure of support for the use of proportionality as a test in relation to interference with “fundamental” rights: the Keyu case, at paras 280–282, per Lord Kerr of Tonaghmore JSC, and at para 304, per Baroness Hale of Richmond DPSC. Lord Kerr JSC referred to the judgment of Lord Reed JSC in Pham v Secretary of State for the Home Department [2015] 1 WLR 1591, paras 113, 118–119, where he found support in the authorities for the proposition that:

“where Parliament authorises significant interferences with important legal rights, the courts may interpret the legislation as requiring that any such interference should be no greater than is objectively established to be necessary to achieve the

legitimate aim of the interference: in substance, a requirement of proportionality”: para 119.

See also my own judgment in the same case, at para 60, and those of Lord Mance JSC, at paras 95–98 and Lord Sumption JSC, at paras 105–109, discussing the merits of a more flexible approach in judging executive interference with important individual rights, in that case the right to British citizenship.”

25. In A v The Chief Constable of Kent Constabulary [2013] EWCA Civ 1706, Beatson LJ held:

“36 It was common ground between the parties that, where the question before a court concerns whether a decision interferes with a right under the ECHR and, if so, whether it is proportionate and therefore justified, it is necessary for the court to conduct a high-intensity review of the decision. The court must make its own assessment of the factors considered by the decision-maker. The need to do this involves considering the appropriate weight to give them and thus the relative weight accorded to the interests and considerations by the decision-maker. The scope of review thus goes further than the traditional grounds of judicial review: see e.g. R (Daly) v Secretary of State for the Home Department [2001] 2 AC 532 at [27].

37 There are also clear statements that it is the function of the court to determine whether or not a decision of a public authority is incompatible with ECHR rights. In R (SB) v Governors of Denbigh High School [2006] UKHL 15 at [30], Lord Bingham stated that “proportionality must be judged objectively by the court”. See also Lord Hoffmann at [68], Lord Neuberger MR in L's case [2009] UKSC 3 at [74], and Belfast City Council v Miss Behavin' Ltd [2007] UKHL 19. In the last of these decisions Baroness Hale stated (at [31]) that it is the court which must decide whether ECHR rights have been infringed. In Huang v Secretary of State for the Home Department [2007] UKHL 11 Lord Bingham also stated that the court must “make a value judgment, an evaluation”. But he made it quite clear (at [13]) that, despite the fact that cases involving rights under the ECHR involve “a more exacting standard of review”, “there is no shift to a merits review” and it remains the case that the judge is not the primary decision-maker. In Axa General Insurance Ltd v HM Advocate [2011] UKSC 46, Lord Reed (at [131]) stated that, “although the courts must decide whether, in their judgment, the requirement of proportionality is satisfied, there is at the same time nothing in the Convention, or in the domestic legislation giving effect to Convention rights, which requires the courts to substitute their own views for those of other public authorities on all matters of policy, judgment and discretion”.

26. The structured proportionality test as applied in English law was summarised in De Smith's Judicial Review, 8th Edition at paragraph 11 - 081 thus:

“It requires the court to seek first whether the action pursues a legitimate aim (i.e. one of the designated reasons to depart from a Convention right, such as national security). It then asks whether the measure employed is capable of achieving that aim, namely, whether there is a “rational connection” between the measures and the aim. Thirdly it asks whether a less restrictive alternative could have been employed. Even if these three hurdles are achieved, however...there is a fourth step which the decision-maker has to climb, namely, to demonstrate that the measure must be “necessary” which requires the courts to insist that the measure genuinely addresses a “pressing social need”, and is not just desirable or reasonable, by the standards of a democratic society.”

27. I am satisfied that such an approach is consistent with the decisions of the most recent authorities on the point although I note, in passing, that there remains some debate over the role and scope of any “minimum impairment” test (i.e. that a less restrictive alternative could be pursued)¹. However, on the facts of this challenge, I will accept the claimants' invitation to consider alternative ways by which it is alleged that the defendant could and should have secured its objectives short of imposing a PSPO in the terms identified.
28. Having thus identified the level of review upon which this Court proposes to embark, I will proceed to deal with the grounds upon which the claimants seek to challenge the making of the PSPO.

DETRIMENTAL EFFECT

29. The first ground of challenge is that the necessary ingredients of section 59 of the 2014 Act have not been established and, in particular, that of “detrimental effect” has not been made out.
30. The term “detrimental effect” is not defined in the Act but was considered by May J in Summers v Richmond Upon Thames [2018] EWHC 782 (Admin) who observed:

“25 The Act therefore envisages use of PSPOs to curb activities which it is possible that not everyone would view as detrimentally affecting their quality of life. Taken together with the absence of any further definition of the key terms “activities” or “detrimental” this strongly points to local authorities being given a wide discretion to decide what behaviours are troublesome and require to be addressed within their local area. This requires local knowledge, taking into account conditions on the ground, exercising judgment (i) about what activities need to be covered by a PSPO and (ii)

¹ See, for example, the comments of Lord Sumption in Bank Mellat v Her Majesty's Treasury (No.2) [2014] A.C. 700 at paragraph 20.

what prohibitions or restrictions are appropriate for inclusion in the order. There may be strong feelings locally about whether any particular activity does or does not have a detrimental effect, in such cases a local authority will need to weigh up competing interests. Deciding whether, and if so what, controls on certain behaviours or activities may be necessary within the area covered by a local authority is thus the very essence of local politics.

26 It is important to bear in mind, however, as Mr Porter emphasised, that the behaviours which PSPOs are intended to target are those which are seriously anti-social, not ones that are simply annoying. He referred me in this respect to the following passage in the Home Office guidance from 2017:

“Our aim in reforming the anti-social behaviour powers is to give the police, councils and others more effective means of protecting victims, not to penalise particular behaviours. Frontline professionals must use the powers in [the 2014 Act] responsibly and proportionately, and only where necessary to protect the public.”

31. I gratefully adopt the approach of May J in Summers and would further observe that the fact that Parliament did not choose to define what may amount to “detrimental effect” should not, of course, be treated by the courts as an invitation to fill the vacuum a definition of their own. The circumstances in which PSPOs may be considered are many and various and attempts to lay down any general threshold level of conduct having detrimental effect by deploying various permutations of the concepts of “intimidation”, “harassment”, “alarm”, “distress” and suchlike would almost certainly prove to be unhelpful and inappropriate.
32. The claimants, however, argue that the defendant, when considering the need for a detrimental effect to have been established, applied the wrong tests under section 59 in a number of respects which fatally contaminate its decision to make a PSPO. I propose to deal with each in turn.

Objective detriment

33. In their skeleton argument, the claimants contend that:

“...any effect identified must be objectively detrimental – i.e. such that it would be detrimental to the quality of life of a reasonable person. Otherwise it would not be possible to comply with s59(3)(b) which stipulates that the effect of the activities must be (or be likely to be) “*such as to make the activities unreasonable*”. Thus, any reliance on residents saying that they are “upset”, “offended”, “angry” “annoyed” or similar is insufficient, certainly in the context of a PSPO which interferes with fundamental rights.”

34. There is no merit in this argument. The statutory language is clear and the introduction of the concept of “objectivity” takes the claimant’s case no further. Some individuals are more robust than others. The defendant was entitled to assess the impact of the activities of the protestors on all those whose quality of life it was the object of the Act 2014 to protect: the vulnerable and resilient alike. Indeed, cases may well arise in which the activities under scrutiny are performed in a locality particularly frequented by susceptible individuals whether arising from physical vulnerabilities, mental health issues or otherwise. The suggestion that the interests of such people should be relegated because they do not measure up to the standards of robustness of the man (or woman) on the Clapham Omnibus has only to be stated to be rejected. In many cases, the fact that the activities under consideration would not detrimentally affect people of reasonable resilience will be a factor to be taken into account when, for example, deciding whether the requisite overall detrimental effect has been made out and whether the effect of the activities are such as to make them unreasonable but it does not present a free standing additional hurdle for a local authority to surmount. I do not overlook the fact that expectations of privacy under Article 8 of the Convention are to be analysed objectively but that is a matter to be considered when addressing the competing Convention rights and not when interpreting the statute.²
35. Furthermore, the argument lapses into a non sequitur. Feelings of upset, offence, anger and annoyance are perfectly capable of having a detrimental effect on the quality of life of any given individual, even on one of average or greater resilience, a fact to which many commuters by rail or car or, indeed, omnibus could doubtless attest. Such feelings are not simply to be disregarded as in some way not being “objective”. The argument here appears to have shifted from the resilience of any given individual to meld into a consideration of the threshold level of upset which even those of normal robustness should be expected to tolerate without local authority intervention under the 2014 Act.
36. Ultimately, the task of the defendant was to exercise its judgment on the application of the words of the statute. The superimposition of a free-standing test of “objectivity”, however it may be defined, would serve not merely to confuse but to impede this process. Of course, a local authority will take into account the possibility that those whose quality of life is said to have been adversely affected are being oversensitive when deciding whether a detrimental effect has been made out and in whether the activities have been rendered unreasonable. Moreover, such assessments, as I have observed, are bound also to feed into the need to act in accordance with the Convention. In this case, however, there is no compelling evidence to suggest that the defendant wrongly took into account information which it ought either to have disregarded or to have significantly relegated in importance when applying the statutory tests.
37. I would add that, in any event, even if the defendant were in error in failing to deploy a free-standing test of “objectivity” it would not have affected by overall view of the validity of the claimants’ challenge. In particular, even an objective test, when applied to users of the clinic, would have to take into account that many of them would be

² See, for example, Wood v Commissioner of Police of the Metropolis [2009] EWCA Civ 414 at para 24.

pregnant, exposed to public view and facing the imminent prospect of termination. These are no subjective factors.

Meaning of “those in the locality”

38. The claimants contend that the reference in section 59(2)(a) to the “quality of life of those in the locality” must refer only to those who reside or work in the relevant place or its immediate vicinity or who visit regularly.
39. This argument, if successful, would exclude from consideration the vast majority of those women, together with their family and supporters, who visit the clinic for abortion procedures.
40. The short answer to this point is that if Parliament had thus intended to limit the scope of the section it could easily have done so. The concept of a person in a given locality is not necessarily, as a matter of common English usage, limited to residents of or frequent visitors to such a locality. The Oxford English Dictionary gives the example of “A blind man...feeling all around him with his cane, so as to find out his locality.”
41. A narrow approach would also have the potential to tie the local authority’s hand when attempting to prohibit detrimental activities in public areas mainly populated by visitors (for example, in the vicinity of tourist attractions) on the ground that persons in the locality have to be “locals” for the purposes of the application of the 2014 regime.
42. Undaunted, the claimants pray in aid the wording of section 66(1) of the 2014 Act which provides that only an interested person can challenge a PSPO. “Interested person” means an individual who lives in the restricted area or who regularly works in or visits that area. In my view, the terms of this section operate against rather than in favour of the construction advocated by the claimants. It would have been very straightforward for the draughtsperson to have used the term “interested persons” or some similarly narrowly defined group rather than “those in the locality” in section 59. The fact that different terms were deployed in the different sections of the Act strongly points to the conclusion that different interpretations were also intended. One can easily see the policy considerations behind imposing tighter controls upon the requisite standing of those who would seek to challenge a PSPO than upon the wider class of those whose quality of life can be taken into account by the local authority when making one. The wording of the statute provides protection for the rare migrant visitor without issuing to him or her an itinerant busybody licence.
43. Of course, the more infrequent the visitor to the locality, the less likely it will be that the activities under consideration will adversely impact upon his or her quality of life but this factor, in itself, does not mandate the imposition of a further interpretive limitation on the words of section 59. It is also the case that the use of the term “quality of life” carries with it the implication that the impact on those affected is more than merely transient but, as the evidence in this case revealed, there were users of the Centre who described a long term impact on their mental well-being.

Evidence of detrimental effect

44. The evidence and information available to the defendant included the following:

- (i) Outcomes of a “resident engagement exercise” from 2017;
 - (ii) Evidence collected in the course of an investigation by officers comprising: thirteen formal witness statements; photographs of the activists outside the Centre and excerpts from the Centre’s log of incidents;
 - (iii) Evidence packs from GCN;
 - (iv) Evidence packs and submissions from Marie Stopes, BPAS and Sister Supporter;
 - (v) Minutes of officers’ meetings with pro-life and pro-choice supporters;
 - (vi) A consultation report and the full text of all consultation responses;
 - (vii) An equalities analysis assessment.
45. The defendant carried out a consultation in accordance with its duty under section 72 of the 2014 Act. The police were neutral. The NHS and BPAS were strongly supportive of the imposition of a PSPO. Members of the represented groups made submissions in accordance with their respective allegiances.
46. The results of the consultation are set out in detail in the Murphy report. Direct representations were received in the form of emails and letters. Of the 78 letters, 65 were supportive of the PSPO and 13 were against. Of the 46 emails, 12 supported the PSPO and 34 objected. In addition, a further 1,430 responses were received through the pro-life campaign group “Be Here for Me”. Caution must, however, be exercised with respect to this and, indeed, other aspects of the consultation to varying degrees. Inevitably, the views expressed in many cases were likely to have been determined entirely, or almost entirely, with reference to the moral position of those responding on the issue of abortion rather than the broader aspects of the impact of the activities of the protestors. By way of example only, the “Be Here for Me” responses were drawn from all corners of England, Scotland and Wales some of which were hundreds of miles from the Centre.
47. There was an online survey which generated 2,181 responses. Nearly two thirds of these came from people who identified themselves to be users of services, shops or facilities in the proposed safe zone. 16.4% lived in the vicinity and 7.4% were users of the services of the Centre.
48. The vast majority of those who responded confirmed that they had seen activists outside the Centre displaying material relating to abortion and approaching people using the clinic. Of course, none of this is surprising because the claimants have never sought to deny that this is what they were doing. However, 470 respondents gave narrative examples of what they had witnessed. These included:
- (i) The display of lifelike foetus dolls;
 - (ii) Threats that users of the Centre would go to Hell;
 - (iii) Referring to users of the Centre as “Mum”.

- (iv) The handing out of rosary beads to users and passers-by;
 - (v) Pursuing users of the Centre with leaflets;
 - (vi) Not leaving users with enough room to pass into the Centre;
 - (vii) The playing of loud music and chanting from pro-choice activists;
 - (viii) The taking of photographs of persons using the clinic;
 - (ix) Young children passing by exposed to images of fetuses.
49. On the issue of the detrimental impact on their quality of life, the results of the online survey were striking. Between 85% and 90% of respondents supported the imposition of the proposed prohibitions in the safe zone. A clear majority said that their quality of life had been detrimentally affected either “extremely” or “very much”.
50. Some examples of reports collected by the Centre were appended to its submissions, a flavour of which may be gained from the following:
- (i) **Local resident** – It is extremely stressful living opposite these protests. It is a regular occurrence seeing protestors standing in the way of clinic users grabbing their arms and shouting at them... Do I comfort the crying women on the street, or do they prefer privacy? Local residents should be able to live a peaceful life and should not have the weight of such things on their shoulders on a daily basis.
 - (ii) **Clinic/Unit Staff** – Client very distressed because of protestors. Protestor holding pretend baby and trying to give client leaflets.
 - (iii) **Passer-by** - The pictures displayed by those opposing abortion are truly awful. I walk past my local clinic with my children and they have images of dead fetuses on show. They create an awful environment for local residents.
51. The claimants accurately point out that only a minority of local residents (as opposed to others in the locality) reported that they had problems with the protests. They also complain that most of the evidence from other sources is “second hand” or anecdotal and that the activities complained of are, with one or two exceptions, entirely innocuous.
52. Care must be taken not to equate the process of consultation with that of conducting judicial proceedings. The categories and quality of the information which is gathered in the former exercise is, inevitably, not subject to rules of evidence and the rigid application of burdens and standards of proof. As the explanatory notes record, the process is intended to involve a “lighter touch” than was required in respect to the procedures it was enacted to supplement or replace. Furthermore, the level of scrutiny and analysis which this Court must deploy is not such as to transform its jurisdiction from a “reviewing” to a “merits based” approach. Stepping back from the many individual criticisms which the claimants make of the process adopted, I remain satisfied that the defendant’s decision was untainted by the undue promotion of one category of information over another or any other public law irregularity.

53. As May J held in Summers: “There may be strong feelings locally about whether any particular activity does or does not have a detrimental effect, in such cases a local authority will need to weigh up competing interests. Deciding whether, and if so what, controls on certain behaviours or activities may be necessary within the area covered by a local authority is thus the very essence of local politics.”
54. The claimants’ suggestion that, with few exceptions, the activities of those outside the Centre were “innocuous” is likely to distract from the issues which the defendant was called upon to consider. Activities may fall within the provisions of the PSPO regime without having been proven, particularly when considered in isolation, to be nocuous. In any event, there was a considerable tranche of evidence and information before the defendant of activities which many would reasonably consider to be fully capable of having a detrimental effect on the quality of life who were exposed to them whatever the choice of adjective used to describe them.
55. Taking the evidence as a whole, I find that the defendant had reasonable grounds to be satisfied that the conditions in sub-section 59(2) and 59(3) (a) of the 2014 Act were met. I am satisfied that my findings in respect of the proper interpretation of these subsections are compatible with Convention rights the consideration of which I will embark upon later in this judgment. The decision of the defendant was, in this sense, thus properly prescribed by law. The issues as to whether the effect of the activities was likely to be such as to make them unreasonable and thus justify the restrictions imposed by the notice are inextricably bound up with the application of conflicting Convention rights to which I will now turn.

INTERFERENCE WITH CONVENTION RIGHTS

Article 8

56. One issue to be resolved is whether or not the provisions of Article 8 of the Convention (right to respect for private and family life) are engaged on the facts of this case. Article 8 provides:
- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
57. As the Council of Europe Guide (“the Guide”) to Article 8 provides:
- “The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence. This obligation is of the classic negative kind, described by the Court as the essential object of Article 8 (Kroon and Others v. the Netherlands, § 31). However, member

States also have positive obligations to ensure that Article 8 rights are respected even as between private parties. In particular, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.”

58. In Peck v United Kingdom (2003) no. 44647/98, the EHCR observed:

“57. Private life is a broad term not susceptible to exhaustive definition. The Court has already held that elements such as gender identification, name, sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. That Article also protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of “private life” (see P.G. and J.H. v. the United Kingdom, no. 44787/98, § 56, ECHR 2001-IX, with further references).

58. In P.G. and J.H. (§ 57) the Court further noted as follows:

“There are a number of elements relevant to a consideration of whether a person's private life is concerned in measures effected outside a person's home or private premises. Since there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor. A person who walks down the street will, inevitably, be visible to any member of the public who is also present. Monitoring by technological means of the same public scene (for example, a security guard viewing through closed-circuit television) is of a similar character. Private life considerations may arise, however, once any systematic or permanent record comes into existence of such material from the public domain.””

59. In Couderc and Hachette Filipacchi Associes v. France (2015) no. 40454/07 the EHCR observed at paragraph 83:

“The Court reiterates that the notion of private life is a broad concept, not susceptible to exhaustive definition. It extends to

aspects relating to personal identity, such as a person's name, photograph, or physical and moral integrity. This concept also includes the right to live privately, away from unwanted attention (see Smirnova v. Russia, nos. 46133/99 and 48183/99, § 95, ECHR 2003-IX (extracts)). The guarantee afforded by Article 8 of the Convention in this regard is primarily intended to ensure the development, without outside interference, of the personality of each individual in his or her relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life.”

60. As Sir Anthony Clarke MR observed in Murray v Express Newspapers [2009] Ch 481:

“36. As we see it, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.”

61. This defendant in this case had information to the effect that photographs of those using the Centre were being taken on occasion. GCN consistently denied doing this but the defendant was entitled to take into account the activities of all of those who were on watch outside the Centre when considering the issue of the privacy of users. However, even setting aside the taking of photographs of those entering or leaving the Centre, I am satisfied that their rights to a private life were engaged. Their position is very different to the person who walks down a public street knowing that they will inevitably be casually observed by others. In particular, women of reproductive age who are entering the Centre are quite likely to be going there in order to have an abortion. Those leaving may well have undergone an abortion. They thereby become objects of attention not as ordinary members of the public but as women in the early stages of pregnancy who are considering the prospect of an abortion or who have just had an abortion. The fact of being pregnant is often, in itself, one that a mother reasonably wishes to be kept private, to a greater or lesser extent, in the early stages. The fact that one is considering, or has undergone, an abortion is, if anything, likely to be an even more intensely private affair for many women and their partners. To be the focus of open public attention, often at the very moment when sensitivities are at their highest, is an invasion of privacy even when it occurs in a public place. Furthermore, the activities of the participating groups, however well-intentioned, would inevitably serve to attract the gaze of local residents and passers-by to the users of the Centre to a greater extent than would be the case if no such interaction were to take place. Of course, there will be users who are either oblivious to or positively welcome the opportunity to engage with the activists. That is why it was important for the defendant to gather the information and evidence it did concerning the preponderant impact of the activities of the protesters upon those in the locality and, particularly,

users. And this it did. The feelings of intrusion felt by many users are evidenced in the statements and reports made by users of the Centre and considered in the Murphy report.

62. Accordingly, I am satisfied that the Article 8 rights of such users of the Centre were engaged on the facts of this case.
63. I am not, however, satisfied by the application of the authorities referred to that the activities of the protestors, in the particular circumstances of this case, engaged the Article 8 rights of other visitors, local residents, and staff working at the Centre.

Articles 9, 10, 11 and 14

64. The Murphy report provided advice to the defendant on the engagement of these Articles in the following terms:

““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 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).”

THE ROLE OF RELIGION

65. In van den Dungen v The Netherlands (1995) no 22838/93, in an admissibility ruling, the European Commission of Human Rights considered a case in which the applicant had regularly attended outside an abortion clinic handing out leaflets and displaying enlarged photographs of foetal remains together with images of Christ. He maintained that he had the right to hand out leaflets and that he would leave people alone if they did not accept them. The domestic court granted an injunction prohibiting him from coming within 250 metres of the clinic for a period of six months on the ground that the users would be in a very vulnerable state of mind and that the Clinic had shown that, in consequence, it had had to offer extra assistance to patients.
66. The applicant complained that his rights under Articles 9 and 10 had been infringed. The Commission found that the applicant’s activities were primarily aimed at persuading women not to have an abortion and did not constitute the expression of a belief within the meaning of Article 9.
67. Accordingly, the advice given to the defendant on Article 9 was arguably generous to the stance taken by the claimants in this case. Furthermore, I am not persuaded that the application of Article 14 is of salient significance. The PSPO applies to those of all faiths and none and the reference to prayer is no more than an example of the sort of generically overt behaviour which the order seeks to prohibit rather than a free standing discriminatory provision.
68. I will, however, assume, for the sake of argument, that the advice given in the report in so far as it related to the Christian beliefs of some of the activists was accurate. It does not, however, follow that the resolution of these issues either way would have led me to a different conclusion on the central issues of the case. It would not.

LEGITIMATE AIMS AND COMPETING RIGHTS

69. The rights under Articles 8, 9, 10 and 11 which are engaged in this case are qualified rights which may be subject to restrictions for legitimate aims.

70. In the case of Article 8, 9 and 11, one such legitimate aim is “for the protection of the rights and freedoms of others.”
71. In the case of Article 10, the similarly worded legitimate aim is “the protection of the reputation or rights of others”.
72. With respect to the relationship between competing rights, the position is set out in the Guide as follows:
- “32. In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect (Couderc and Hachette Filipacchi Associés v. France [GC], § 91).”
73. In van den Dungen the Commission found that the injunction amounted to an interference with the Article 10 rights of the protester but that it had the legitimate aim of protecting the rights of others, namely, the visitors and employees of the Clinic.
74. In this case, I am satisfied that the protection of the rights to privacy of the users of the Centre was a legitimate aim.

RATIONAL CONNECTION

75. The next stage of a structured review requires the court to consider whether the measure employed (i.e. the PSPO) is capable of achieving the legitimate aim which interferes with the rights under Articles 9, 10 and 11, namely, whether there is a “rational connection” between the measures and the aim.
76. The creation of the safe zone meant, as was intended, that users of the Centre would be able to make their entrances and exits without inevitably being exposed to the close scrutiny of those whose interests lie in supporting or opposing their decisions to terminate their pregnancies. There is, therefore, a rational connection between the measure employed and the legitimate aim of protecting the Article 8 rights of users of the Centre.

SECTION 59(5) AND LESS RESTRICTIVE ALTERNATIVES

77. Section 59(5) provides that the only prohibitions or requirements that may be imposed under a PSPO are ones that are reasonable to impose in order either to prevent the detrimental effect from continuing, occurring or recurring, or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence. Further, the related question arises as to what the minimum interference necessary to the claimants’ rights would be under a proportionality review.

78. The claimants contend that better, or at least, no worse results could have been achieved by other means. Each of the alternatives relied upon by the claimants were presented for consideration in the Murphy report. The report dealt with the options in the following extract:

“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.”

79. One option open to the defendant would have been to have done nothing. A risk of taking this course was identified to be that of a successful challenge by way of judicial review. In so far as this reflected a genuine concern that a failure to act would be difficult to sustain in the face of the materials upon which the defendant was required to make its decision then the ground was an appropriate one. There is also a reference to the reputational damage which it was feared would be inflicted on the defendant should it fail to act. I share the doubts expressed by the claimants as to the relevance of this latter factor. However, the obvious disadvantage of doing nothing is that the situation giving rise to the conclusion that the quality of life of those in the locality was being detrimentally affected would remain unremedied.
80. Further complaint is made that the defendant could have deployed its powers under section 222(1) of the Local Government Act 1972 which provides that “where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area they may prosecute or defend or appear in any legal

proceedings and, in the case of civil proceedings, may institute them in their own name.”

81. This course, however, carries with it the substantial disadvantage that any such proceedings would have to be based upon the commission of specific and substantive legal wrongs and would have to be directed against named individuals or legal entities. The fact that the activities to which the PSPO is directed do not, of themselves, necessarily amount to unlawful conduct is part of the attraction of the PSPO option which, so long as it deployed in full compliance with the statutory criteria and with all requisite restraint, provides a flexible tool with which to enhance the quality of life of those in any locality within the jurisdiction of any given local authority.
82. Similar observations apply to the option of obtaining ad hoc injunctions under the Protection from Harassment Act 1997. Of particular relevance is the risk identified in the Murphy report that the “evidence may not meet the harassment threshold as defined in the Act.” Actually, harassment, as such, is not defined in the Act but the case law establishes a relatively high threshold and one which would be particularly difficult to surmount where potential victims are visiting the Centre infrequently and against whom a course of conduct would be difficult to prove. Again, proceedings would have to be directed against named individuals or legal entities.
83. Another option for the defendant identified in the Murphy report, and relied upon by the claimants, would have been that of working with the police. Yet again, however, the effectiveness of such a course would be dependent upon the protesters acting in such a way as to justify police intervention. Of course, the police could intervene in the event of the commission of criminal offences or in response to an actual or threatened breach of the peace. However, in this context, they are singularly ill-equipped to take into account the long term quality of life of those in the locality.
84. Finally, the complainant suggests that the deployment of Community Protection Notices under section 43 of the 2014 Act would have been a preferable option to a PSPO. I disagree. Such an order must be made against an “individual or body” and suffers from the disadvantage that a separate order would have to be sought every time a new participant turned up outside the Centre to engage in the detrimental activities thereby giving rise to the risk of the wholly disproportionate expenditure of time and money.

THE TERMS OF THE PSPO

85. The claimants criticise the breadth of the PSPO. In particular, it is said that the PSPO does not distinguish between groups and that the GCN should be allowed to continue to congregate outside the Centre even if other groups such as Sister Supporter should be excluded. The complaint is made that it is the members of Sister Support who are the cause of the problem and GCN should not suffer as a result.
86. However, the reality is that such a solution would be completely unworkable. It would be impossible to identify with adequate precision which persons belonged to one group or another or who were acting on their own initiative. Even less attractive would be the notion that only those on one side of the debate should be permitted to ventilate their views outside the Centre. Such a course would represent the very

antithesis of democracy. In any event, a very significant proportion of the conduct found by the defendant to have given rise to a detrimental effect was attributable to the conduct of the pro-life groups and was not limited to the pro-choice lobby. The reality is that there would have arisen overwhelmingly powerful objections to any attempt to allow some but not others to continue their activities immediately outside the Centre.

87. A number of objections are taken by the claimants to the actual wording of the terms of the PSPO. These include, but are not limited to, the risks that: someone standing silently outside the Centre might be subject to criminal penalty; someone who inadvertently takes a photograph in the vicinity of the Centre which includes a Centre user or member of staff could be committing a criminal offence; someone could be committing an offence by listening to a voicemail message on their mobile phone's loudspeaker within the safe zone.
88. I regret to say that I find these, and all other such objections, to be unattractively contrived. In any event, an act in breach of a PSPO, is by the operation of section 67 of the 2014 Act, a crime only when carried out without reasonable excuse. I struggle to believe that any of the unfortunate individuals in the imaginative scenarios conjured up by the claimants would not, in the unlikely event of being prosecuted, be able to raise and sustain the defence of reasonable excuse.
89. In van den Dungen the Commission noted that the injunction against the pro-life protestor was, as was the PSPO in this case, granted for a limited duration and in respect of a defined limited area. The injunction was not aimed at depriving the applicant of his rights under Article 10 but merely at restricting them in order to protect the rights of others. Similar considerations apply here. The PSPO is of limited duration and must be reviewed after three years by the operation of section 60 of the 2014 Act. Furthermore, the creation of the "designated area" further mitigates the impact of the PSPO on the Convention rights of the activists to assemble and express their views.

NECESSARY IN A DEMOCRATIC SOCIETY

90. In the case of Annen v Germany (2015) no. 3690/10 the pro-life applicant was in the habit of distributing leaflets outside the practice of two doctors who ran a day clinic providing abortion services. The leaflets condemned the activities of the two doctors in the strongest possible terms comparing lawful abortion to the atrocities of the holocaust. They also referred to a website where the two doctors were further identified in the same context.
91. The named doctors successfully applied for an injunction against the applicant to prohibit his activities complaining that the leaflets gave the false impression that they were performing illegal abortions.
92. There was no dispute that the injunction: amounted to an interference with the applicant's Article 10 rights, was prescribed by domestic law and was in pursuit of a legitimate aim, namely, the reputation and personality rights of the doctors. The central issue was, therefore, whether the interference was necessary in a democratic society. The relevant principles were helpfully summarised thus:

“52. The fundamental principles concerning the question of whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have recently been summarised as follows (see Delfi AS v. Estonia [GC], no. 64569/09, § 131, 16 June 2015 with further references):

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a ‘restriction’ is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was ‘proportionate to the legitimate aim pursued’ and whether the reasons adduced by the national authorities to justify it are ‘relevant and sufficient’... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ...

53. Another principle that has consistently emphasised in the Court’s case-law is that there is little scope under Article 10 of the Convention for restrictions on political expressions or on debate on questions of public interest (see, among other authorities, Wingrove v. the United Kingdom, 25 November

1996, § 58, Reports of Judgments and Decisions 1996-V; Ceylan v. Turkey [GC], no. 23556/94, § 34, ECHR 1999-IV; and Animal Defenders International v. the United Kingdom [GC], no. 48876/08, § 102, ECHR 2013 (extracts)).

54. The Court further reiterates that the right to protection of reputation is protected by Article 8 of the Convention as part of the right to respect for private life (see Chauvy and Others v. France, no. 64915/01, § 70, ECHR 2004-VI; Pfeifer v. Austria, no. 12556/03, § 35, 15 November 2007; and Polanco Torres and Movilla Polanco v. Spain, no. 34147/06, § 40, 21 September 2010). In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (see A. v. Norway, no. 28070/06, § 64, 9 April 2009; Axel Springer AG v. Germany [GC], no. 39954/08, § 83, 7 February 2012 and Delfi AS, cited above, § 137).

55. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see Hachette Filipacchi Associés v. France, no. 71111/01, § 43, 14 June 2007; MGN Limited v. the United Kingdom, no. 39401/04, § 142, 18 January 2011; Axel Springer AG, cited above, § 84 and Delfi AS, cited above, § 138).

56. In cases such as the present one the Court considers that the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the person who has made the statement in dispute or under Article 8 of the Convention by the person who was the subject of that statement. Indeed, as a matter of principle these rights deserve equal respect. Accordingly, the margin of appreciation should in principle be the same in both cases (compare Axel Springer AG, cited above, § 88 with further references).

57. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see MGN Limited v. the United Kingdom, no. 39401/04, §§ 150 and 155, 18 January 2011; Axel Springer

AG, cited above, § 88; Mouvement raëlien suisse v. Switzerland [GC], no. 16354/06, § 66, ECHR 2012 (extracts).”

93. The Commission went on to consider the application of the test thus set out to the circumstances of the case before it and concluded that the order prohibiting the applicant from further disseminating leaflets in the vicinity of the clinic was in breach of Article 10:

“62. While the Court furthermore accepts the domestic courts’ position, according to which the applicant’s campaign had been directly aimed at the two doctors, it also notes that the applicant’s choice of presenting his arguments in a personalised manner, by disseminating leaflets indicating the doctors’ names and professional address in the immediate vicinity of the day clinic, enhanced the effectiveness of his campaign. The Court also points out that the applicant’s campaign contributed to a highly controversial debate of public interest. There can be no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake (see A, B and C v. Ireland [GC], no. 25579/05, § 233, ECHR 2010)...

64. Having regard to the foregoing considerations and, in particular, the fact that the applicant’s statement, which was at least not in contradiction with the legal situation with regard to abortion in Germany, contributed to a highly controversial debate of public interest, the Court, in view of the special degree of protection afforded to expressions of opinion which were made in the course of a debate on matters of public interest (see Tierbefreier e.V. v. Germany, no. 45192/09, § 51, 16 January 2014 with further references) and despite the margin of appreciation enjoyed by the Contracting States, comes to the conclusion that the domestic courts failed to strike a fair balance between the applicant’s right to freedom of expression and the doctors’ personality rights.

65. There has therefore been a breach of Article 10 of the Convention in respect of the order to desist from further disseminating the leaflets.”

94. In contrast, the Commission in van den Dungen concluded on the facts of that case that the injunction against the pro-life protestor was necessary to satisfy a pressing social need and that, in the circumstances of the case as a whole, the interference was proportionate to the legitimate aims pursued.
95. A crucial distinction between van den Dungen and Annen lies in the nature of the rights under Article 8 which fell to be protected. Annen was concerned with the reputation of the two doctors who were being criticised in the applicant’s leaflets and online. In van den Dungen the rights which fell to be protected were primarily those of the users of the clinic. I would add, however, that the Murphy report correctly noted that the Article 10 rights include the freedom “to receive and impart

information” although it went on thereafter to focus solely on the rights of the pro-life and pro-choice activists to impart information rather than the rights of the users of the Centre to receive it. Nevertheless, I do not regard this to be a sufficiently serious omission as to have a bearing on the outcome of this challenge.

96. The Murphy report expressly dealt with the threshold requirement that a PSPO would have to be judged to be necessary in a democratic society before it could be made:

“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 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’.”

97. In the circumstances of this case, I do not doubt that there has been a significant interference with the rights of activists under Article 9, 10 and 11. I do not underestimate the seriousness of taking steps which are bound to conflict with that special degree of protection afforded to expressions of opinion which are made in the course of a debate on matters of public interest. Nevertheless I am satisfied that the defendant was entitled to conclude on the entirety of the evidence and information available to it that the making of this PSPO was a necessary step in a democratic society. There was substantial evidence that a very considerable number of users of the clinic reasonably felt that their privacy was being very seriously invaded at a time and place when they were most vulnerable and sensitive to uninvited attention. It also follows that, in this regard, I am also satisfied that the defendant was entitled to conclude that the effect of the activities of the protestors was likely to make such activities unreasonable and justified the restrictions imposed in satisfaction of the requirements of section 59(3) (b) and (c) of the 2014 Act.

CONCLUSION

98. Having, in the circumstances of this case, undertaken a structured proportionality review, I have concluded that the defendant’s decision to make a PSPO ought not to be quashed in whole or in part on this challenge.
99. Finally, and at the risk of stating the obvious, I would make the following observations:
- (i) This is not a case about the rights and wrongs of abortion;
 - (ii) The genuineness of the motives of the activists on both sides of the debate cannot be doubted;
 - (iii) My conclusions in this case do not give the green light to local authorities to impose PSPOs as a matter of course upon areas in the immediate vicinity of abortion clinics. Each case must be decided on its own facts.



Neutral Citation Number: [2019] EWCA Civ 1490

Case No: C1/2018/1699

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Turner J
[2018] EWHC 1667 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/08/2019

Before:

THE MASTER OF THE ROLLS
LADY JUSTICE KING
and
LADY JUSTICE NICOLA DAVIES

Between:

Florica Alina DULGHERIU (1)	<u>Claimants/</u>
Andrea ORTHOVA (2)	<u>Appellants</u>
- and -	
THE LONDON BOROUGH OF EALING	<u>Defendant/</u>
-and-	<u>Respondent</u>
THE NATIONAL COUNCIL FOR CIVIL LIBERTIES	
(t/a LIBERTY)	<u>Intervener</u>

Philip Havers QC, Alasdair Henderson and Ben Fullbrook (instructed by **Tuckers Solicitors**) for the **Appellants**
Ranjit Bhowse QC, Kuljit Bhogal and Tara O'Leary (instructed by **the London Borough of Ealing**) for the **Defendant**
Victoria Wakefield QC and Malcolm Birdling (instructed by **Liberty**) made written submissions for the **Intervener**

Hearing dates: 16 & 17 July 2019

Approved Judgment

Sir Terence Etherton MR, Lady Justice King and Lady Justice Nicola Davies:

Introduction

1. This is an appeal against the order dated 2 July 2018 of Mr Justice Turner, by which he dismissed the appellants’ challenge to the validity of the Public Spaces Protection Order made by the London Borough of Ealing (“Ealing”) on 10 April 2018 (“the PSPO”) prohibiting anti-abortion protests in the immediate vicinity of Marie Stopes UK West London Centre (“the Centre”). The Centre provides family planning services, including abortion services.
2. Two issues lie at the heart of this appeal: (1) whether a local authority has power to make a PSPO where the activity to be regulated impacts only or primarily on the quality of life of occasional visitors to the locality rather than on those who reside or work in the locality or visit it regularly; and (2) whether the restrictions imposed by the PSPO were compatible with articles 9, 10 and 11 of the European Convention on Human Rights (“ECHR”).

Legal framework

Anti-Social Behaviour, Crime and Policing Act 2014

3. Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act (“the 2014 Act”) empowers local authorities to make PSPOs if the conditions in section 59 are met. That section provides as follows:

“59 Power to make orders

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that—

(a) activities carried on in a public place within the authority'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.

(3) 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.

(4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) (“the restricted area”) and—

- (a) prohibits specified things being done in the restricted area,
- (b) requires specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things.

(5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—

- (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or
- (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

(6) A prohibition or requirement may be framed—

- (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;
- (b) so as to apply at all times, or only at specified times, or at all times except those specified;
- (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.

(7) A public spaces protection order must—

- (a) identify the activities referred to in subsection (2);
- (b) explain the effect of section 63 (where it applies) and section 67;
- (c) specify the period for which the order has effect.

(8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.”

Orders may last for up to three years, and may be renewed or varied by the local authority (sections 60-61).

4. Section 67 makes it an offence for an individual to fail, without reasonable excuse, to comply with the requirements of a PSPO or to violate any prohibition contained in the order. A person who commits the offence created by section 67 is liable on summary conviction to a fine not exceeding £1000 (level 3 on the standard scale). The individual may discharge his or her liability by paying a fixed penalty of up to £100 (section 68).

5. Section 72 imposes various duties on the local authority in deciding whether to make, extend, vary or discharge a PSPO. The local authority must have “particular regard” to the rights of freedom of assembly and expression (articles 10 and 11 ECHR respectively). It must also consult with the chief officer of police local to the restricted area, any appropriate community representatives, and the owner or occupier of the land in the restricted area. Section 72(4) imposes further duties (not relevant in this case) to publicise the order and to notify other local authorities of the order before making the order.
6. Section 66 sets out the exclusive procedure by which the validity of PSPOs may be challenged. In summary, PSPOs may only be challenged (1) within 6 weeks of the order being made, (2) by an individual who lives in or regularly works in or visits the restricted area, (3) on the grounds that the local authority did not have the power to make the order (or some part of it), or for lack of compliance with a requirement set out in Chapter 2 of the 2014 Act (ss.66(1)-(3)). The High Court may quash the order or any of its particular prohibitions if satisfied that the local authority did not have the power to make the order, or if the applicant’s interests have been substantially prejudiced by a failure to comply with the requirements of Chapter 2 (s. 66(4)-(5)).

European Convention on Human Rights

7. Articles 8, 9, 10 and 11 are set out in Annex A to this judgment.

Factual background

8. The appellants are affiliated to a Christian group called the Good Counsel Network (“GCN”). Prior to the PSPO members of GCN, and other pro-life campaigners, have for a number of years congregated immediately outside the Centre in an effort to dissuade users of the Centre from having abortions. Members of GCN were there every week and usually on a daily basis. Their activities included attempts to engage in dialogue with users entering the Centre in an attempt to dissuade them from having an abortion, handing out leaflets and displaying posters depicting foetuses at various stages of gestation. They have also held group vigils and entered into either vocal or silent prayer.
9. In 2015 pro-choice activists, affiliated to a group called Sister Supporter, began more frequently to protest against the aims and methods of the anti-abortion protestors outside the Centre. This generated an atmosphere of tension.
10. In 2017 Sister Supporter organised a petition calling on Ealing to ban protestors from the vicinity of the Centre. Ealing encouraged the opposing groups to reach a compromise, but those efforts failed. Ealing then considered whether to make a PSPO. It prepared a draft PSPO and undertook the statutory consultation on its terms. The draft PSPO in effect contained a prohibition on all abortion related protest within a substantial safe zone surrounding the Centre (“the Safe Zone”) save as to limited protest within a designated area 100 metres away from the entrance to the Centre (“the Designated Area”). The terms of the restrictions were materially identical to the PSPO eventually made by Ealing, which we summarise below.
11. The consultation attracted 2,181 online responses in addition to a number of written representations. As summarised in the consultation report, 83.2% of all respondents to

the consultation agreed overall with the scope of the Safe Zone, with 67.3% agreeing strongly. 85.4% agreed with the restrictions in the Safe Zone. 60.2% agreed with the scope of the proposed Designated Area. 75.1% agreed with the restrictions in the Designated Area.

12. On 3 April 2018 a 40 page report based on the consultation was presented to Ealing's cabinet recommending that a PSPO be made ("the Murphy report"). It was accompanied by a series of exhibits, running to thousands of pages, including an equalities analysis assessment. The report set out over 19 sections the issues before members.
13. Section 4 was entitled 'Evidence Base', and summarised the protestors' activities and their impact, at Section 4, paragraphs 4.1 - 4.5.3
14. Turner J summarised the evidence before Ealing in the following terms:

"Evidence of detrimental effect

44. The evidence and information available to the defendant included the following:

- (i) Outcomes of a "resident engagement exercise" from 2017;
- (ii) Evidence collected in the course of an investigation by officers comprising: thirteen formal witness statements; photographs of the activists outside the Centre and excerpts from the Centre's log of incidents;
- (iii) Evidence packs from GCN;
- (iv) Evidence packs and submissions from Marie Stopes, BPAS and Sister Supporter;
- (v) Minutes of officers' meetings with pro-life and pro-choice supporters;
- (vi) A consultation report and the full text of all consultation responses;
- (vii) An equalities analysis assessment.

45. The defendant carried out a consultation in accordance with its duty under section 72 of the 2014 Act. The police were neutral. The NHS and BPAS were strongly supportive of the imposition of a PSPO. Members of the represented groups made submissions in accordance with their respective allegiances.

46. The results of the consultation are set out in detail in the Murphy report. Direct representations were received in the form of emails and letters. Of the 78 letters, 65 were supportive of the PSPO and 13 were against. Of the 46 emails, 12 supported the PSPO and 34 objected. In addition, a further 1,430 responses

were received through the pro-life campaign group "Be Here for Me". Caution must, however, be exercised with respect to this and, indeed, other aspects of the consultation to varying degrees. Inevitably, the views expressed in many cases were likely to have been determined entirely, or almost entirely, with reference to the moral position of those responding on the issue of abortion rather than the broader aspects of the impact of the activities of the protestors. By way of example only, the "Be Here for Me" responses were drawn from all corners of England, Scotland and Wales some of which were hundreds of miles from the Centre.

47. There was an online survey which generated 2,181 responses. Nearly two thirds of these came from people who identified themselves to be users of services, shops or facilities in the proposed safe zone. 16.4% lived in the vicinity and 7.4% were users of the services of the Centre.

48. The vast majority of those who responded confirmed that they had seen activists outside the Centre displaying material relating to abortion and approaching people using the clinic. Of course, none of this is surprising because the claimants have never sought to deny that this is what they were doing. However, 470 respondents gave narrative examples of what they had witnessed. These included:

- (i) The display of lifelike foetus dolls;
- (ii) Threats that users of the Centre would go to Hell;
- (iii) Referring to users of the Centre as "Mum".
- (iv) The handing out of rosary beads to users and passers-by;
- (v) Pursuing users of the Centre with leaflets;
- (vi) Not leaving users with enough room to pass into the Centre;
- (vii) The playing of loud music and chanting from pro-choice activists;
- (viii) The taking of photographs of persons using the clinic;
- (ix) Young children passing by exposed to images of foetuses.

49. On the issue of the detrimental impact on their quality of life, the results of the online survey were striking. Between 85% and 90% of respondents supported the imposition of the proposed prohibitions in the safe zone. A clear majority said that their quality of life had been detrimentally affected either "extremely" or "very much".

50. Some examples of reports collected by the Centre were appended to its submissions, a flavour of which may be gained from the following:

(i) **Local resident** – It is extremely stressful living opposite these protests. It is a regular occurrence seeing protestors standing in the way of clinic users grabbing their arms and shouting at them... Do I comfort the crying women on the street, or do they prefer privacy? Local residents should be able to live a peaceful life and should not have the weight of such things on their shoulders on a daily basis.

(ii) **Clinic/Unit Staff** – Client very distressed because of protestors. Protestor holding pretend baby and trying to give client leaflets.

(iii) **Passer-by** - The pictures displayed by those opposing abortion are truly awful. I walk past my local clinic with my children and they have images of dead fetuses on show. They create an awful environment for local residents.”

15. Ealing resolved to make the PSPO, which is dated 10 April 2018 and came into effect on 23 April 2018. It prohibited the following activities within the Safe Zone:

“(i) Protesting, namely engaging in any act of approval/disapproval or attempted act of approval/disapproval, with respect to issues related to abortion services, by any means. This includes but is not limited to graphic, verbal or written means, prayer or counselling,

(ii) Interfering, or attempting to interfere, whether verbally or physically, with a service user or member of staff,

(iii) Intimidating or harassing, or attempting to intimidate or harass, a service user or member of staff,

(iv) Recording or photographing a service user or member of staff of the Clinic whilst they are in the Safe Zone,

(v) Displaying any text or images relating directly or indirectly to the termination of pregnancy, or

(vi) Playing or using amplified music, voice or audio recordings.”

16. Subject to certain restrictions on the number of participants (no more than four); size of placards (no larger than A3) and activity (no shouting or amplified sound or music), protests continued to be allowed in the Designated Area inside the Safe Zone. The PSPO has no effect outside of the Safe Zone.

The proceedings

17. The appellants commenced these proceedings under section 66 of the 2014 Act by issuing a CPR Part 8 claim form in the Queen's Bench Division of the High Court on 27 April 2018, claiming an order that the PSPO be quashed on the grounds that:
 - 1) there was insufficient evidence for Ealing to be reasonably satisfied that the activities in the vicinity of the Centre had a detrimental impact on those in the locality;
 - 2) the terms of the PSPO were far more extensive than was reasonable to impose to prevent the detriment alleged; and
 - 3) the prohibitions in the PSPO constituted an unjustified interference with Articles 9, 10, 11 and 14 ECHR.
18. The hearing of the action took place before Turner J on 7 June 2018.

Turner J's judgment

19. The Judge first considered whether the section 59 requirement of detriment to those in the locality was met. He then considered whether the unreasonableness of the activities justified the terms of the PSPO, which turned on the question of whether the PSPO constituted a disproportionate interference with the protestors' ECHR rights.
20. As to the meaning of "those in the locality", it was argued before the Judge that that phrase was limited to those who reside or work in or regularly visit the locality, and could therefore not include occasional visitors to the Centre. The Judge rejected this argument (at [38]-[43]). He said that the literal meaning of "those in the locality" was not confined to regular visitors; such an approach would deprive Ealing of the power to impose PSPOs in relation to detriments suffered by a mainly transient population (e.g., tourist attractions); and there was no reason to construe "those in the locality" as narrowly as the "interested person" in section 66, which restricts standing to challenge a PSPO to those who live in or regularly work in or visit the restricted area: the use of different terms in each sections militated in favour of those phrases meaning different things.
21. Turner J then reviewed (at [44]-[55]) the evidential basis for Ealing's view that those in the locality were suffering a detriment to their quality of life as a result of the protestors' activities, and concluded that Ealing had reasonable grounds to be satisfied that the conditions in section 59(2) were satisfied.
22. On the question of whether the restriction on the activities was justified by their unreasonableness, the Judge held (at ([56]-[63]) that the answer to that question was inextricably linked with the question of whether there was a disproportionate interference with the protestors' ECHR rights. He held that the article 8 rights of users of the Centre were engaged on the basis that both being pregnant and seeking or having an abortion are aspects of life that the users of the Centre would reasonably wish to keep private. Users of the Centre of reproductive age were very likely to be seeking or to have had an abortion. To be the focus of public attention at that time was an invasion

of privacy even if it occurred in a public place. He also held that the rights of the staff or other visitors of the Centre were not engaged on the facts.

23. The Judge held (at [65]-[76]) that the restrictions on the protesters' rights under articles 9 (freedom of thought and religion), 10 (freedom of expression), 11 (freedom of assembly) and 14 (non-discrimination in the protection of the ECHR rights) were prescribed by law, namely by section 59; that the protection of the service users' privacy was a legitimate aim; and that there was a rational connection between the PSPO and that aim. He also rejected a number of less restrictive alternatives to the making of a PSPO.
24. As to whether the interference with the protestors' rights was necessary in a democratic society, the Judge held (at [90]-[97]) that it was, given the significance of the interference with the article 8 rights of the service users visiting the Centre.
25. For those reasons, the Judge concluded that the activities were unreasonable and the PSPO was justified for the purposes of section 59(3)(b) and (c).

Grounds of appeal

26. The appellants' Grounds of Appeal are as follows:
 - 1) the Judge erred in holding that the phrase "those in the locality" in s.59(2)(a) of the 2014 Act applies to occasional visitors such as women who visit an abortion clinic for abortion procedures;
 - 2) the Judge erred in failing to adopt a merits-based approach to the justification for the PSPO;
 - 3) the Judge erred in holding that the article 8 ECHR rights of those using the Centre were engaged;
 - 4) the Judge erred in giving too little weight to the appellants' article 9 ECHR rights;
 - 5) the Judge failed to give any or any sufficient consideration to whether the terms of the PSPO could have been formulated in a less restrictive way;
 - 6) when considering whether the PSPO constituted an interference that was necessary in a democratic society, the Judge gave insufficient weight to the appellants' article 10 and 11 ECHR rights.

Respondent's Notice

27. Ealing has issued a respondent's notice seeking to uphold the Judge's order on three additional bases:
 - 1) even if the Judge did err in failing to adopt a merits-based approach to reviewing the justification for PSPOs, on the evidence he would have reached the same conclusion;

- 2) even if the article 8 rights of the service users were not engaged, he would still have held that the interference with the appellants' ECHR rights was justified by virtue of the objectives set out in articles 9(2), 10(2) and 11(2);
- 3) the Judge was wrong to hold that the article 8 rights of the staff and persons accompanying service users were not engaged.

The Intervener

28. By order dated 23 May 2019 Liberty was given permission to intervene in the appeal by way of written submissions only. It subsequently filed and served written submissions.

Discussion

Ground 1 – meaning of “those in the locality”

29. The appellants' submission is that visitors to the Centre do not fall within the words “those in the locality” in section 59(2)(a) because those words do not encompass occasional visitors. The appellants' case is that the words extend only to members of the local community and that the purpose of the statutory power for a local authority to make a PSPO is to protect the community from anti-social behaviour of a continuing and persistent nature.
30. Mr Philip Havers QC, for the appellants, advanced several arguments in support of those submissions. He pointed out that the White Paper “Putting Victims First - More Effective Responses to Anti-Social Behaviour” published in May 2012, which anticipated the 2014 Act, said (at Annex C para 44) that “The Community Protection Order (public spaces) is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's way of life” by imposing conditions on the use of that area which apply to everyone, and (at Annex C para 46) that the test for issuing the order would be that “the local authority reasonably believes that the behaviour is detrimental to the local community's quality of life, and that the impact merits restrictions being put in place in a particular area”.
31. Mr Havers also referred to the Explanatory Notes to the 2014 Act, which used similar language to the White Paper in describing PSPOs, stating (at [173]) that “The public spaces protection order (referred to as the community protection order (public places) in the White Paper) is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area.”
32. The Explanatory Notes gave as examples prohibiting the consumption of alcohol in public parks, ensuring dogs are kept on a leash in children's play areas and prohibiting spitting in certain areas. The Explanatory Notes stated (at para. 177) that the two-part test for issuing the order would be that the authority is satisfied on reasonable grounds that activities carried on, or likely to be carried on, in a public place are detrimental to the local community's quality of life, and that the impact justifies restrictions being put in place in a particular area. It stated that the behaviour must also be ongoing and unreasonable.

33. Mr Havers pointed out that Chapter 2 of the 2014 Act, which deals with PSPOs, is in Part 4 of the 2014 Act, which has the title “Community Protection”.
34. Mr Havers observed that both section 43(1)(a) of the 2014 Act, which addresses the power to issue a community protection notice, and section 59(2)(a), which addresses the power of the local authority to make a PSPO, describe the relevant conduct as having a detrimental effect on “quality of life”, which was the same expression used in the White Paper and the Explanatory Notes, as mentioned above. He submitted that indicated a continuing intention that the legislation was intended to protect those with a settled life in the community. He linked that submission to the condition in section 53(3)(a) that the effect, or likely effect, of the activities “is, or is likely to be, of a persistent or continuing nature”. He said that such a condition would not practically apply to those who visit the locality only once or twice.
35. Mr Havers also relied on the various references to “the community” in the latest statutory guidance on PSPOs issued by the Home Office (updated in December 2017). The guidance says, for example, that PSPOs are intended to deal with a particular nuisance or problem in a specific area “that is detrimental to the local community’s way of life”; it advises that discussing potential restrictions and requirements prior to issuing a PSPO with those living or working nearby may help to ensure that the final Order “better meets the needs of the local community”; it says, in relation to homeless people and rough sleepers, that PSPOs “should only be used to address any specific behaviour that is causing a detrimental effect on the community’s way of life” and should define precisely the specific activity or behaviour “that is having the detrimental impact on the community”; it says that Parish and Town Councils wishing to deal with dog control issues should discuss with their principal authority whether a PSPO would provide the means “to address the issues being experienced by the local community”, and that a PSPO should target specifically the problem behaviour that is having “a detrimental effect on the community’s way of life” rather than everyday sociability, such as standing in groups.
36. Section 67 of the 2014 Act provides that it is an offence for a person, without reasonable excuse, to break the terms of a PSPO. Mr Havers submitted that, in accordance with the usual rules of statutory interpretation where a criminal offence is created, the provisions of section 59 should be interpreted restrictively rather than expansively.
37. He submitted that another reason for a restrictive interpretation of section 59 is the requirement in section 72(1) that any local authority, when deciding whether to make a PSPO and, if so, what it should include or whether to make the other decisions in relation to a PSPO mentioned in section 72(1), must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 ECHR.
38. Mr Havers said that the appellants accept and endorse the view of May J in *Summers v London Borough of Richmond Upon Thames* [2018] EWHC 782 (Admin), [2018] 1 WLR 4729, at [24], that the expression “those in the locality” in section 59 of the 2014 Act “must be read to include those who regularly visit or work in the locality, in addition to residents”.
39. All those arguments were skilfully and elegantly put by Mr Havers but we nevertheless reject this Ground of Appeal.

40. Mr Havers devoted considerable time to the references to “the community” in the White Paper, the Explanatory Notes and the Statutory Guidance but none of those are a substitute for the words of statute themselves. There is no mention of “the community” in section 59. The White Paper was, at the end of the day, no more than a statement of future intent, affected by all that followed between the publication of the White Paper and the final enactment of the 2014 Act. The 2014 Act even changed the name from “Community Protection Order (Public Spaces)” to “Public Spaces Protection Order”. The Explanatory Notes state, at their very beginning, that they have been prepared by the Home Office and do not form part of the 2014 Act and have not been endorsed by Parliament. They state that they are not, and are not meant to be, a comprehensive description of the 2014 Act.
41. It is clear from the terms of the 2014 Act itself that Parliament deliberately decided not to limit, by way of a statutory definition or statutory guidance, the expression “those in the locality”. The looseness of that expression is to be contrasted with the express limitation of an “interested person” who may apply under section 66 of the 2014 Act to the High Court to challenge the validity of PSPO or its variation. “Interested person” is defined in section 66(1) as “an individual who lives in the restricted area or who regularly works in or visits that area”. Similarly, the obligation on a local authority under section 72 of the 2014 Act to consult before making, extending the duration of, varying or discharging a PSPO, is limited to certain persons representing the police and the community and (under section 72(4)(c)) to “the owner or occupier of land within the restricted area”. Parliament plainly decided not to limit section 59(2)(a) in either of those ways.
42. Accordingly, while we agree with May J in *Summers* that the expression “those in the locality” in section 59 includes those who regularly visit or work in the locality, in addition to residents, it will depend on the precise local circumstances whether or not it extends to others.
43. We do not consider that the Home Office’s statutory guidance throws doubt on that conclusion. While it is true that there are several references to “the community” in the guidance, read as a whole the guidance is compatible with Ealing’s case that it was entitled to regard visitors to the clinic as falling within the expression “those in the locality” in section 59(2)(a) even though such visitors would only visit once or twice. The “Introduction” to the guidance states that the first part of the guidance focuses specifically on putting victims at the heart of the response to anti-social behaviour. The guidance describes the purpose of a PSPO as being “to stop individuals or groups committing anti-social behaviour in a public place”. It correctly summarises the statutory test for behaviour which can be restricted by a PSPO as behaviour which has, or is likely to have, a detrimental effect on the quality of life of those in the locality, is persistent or continuing in nature, and is unreasonable. It states that a local authority can make a PSPO in any public space within its own area, and that the definition of public space is wide and includes any place to which the public or any section of the public has access, on paying or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre. The guidance envisages, therefore, that visitors to a shopping centre might fall within the expression “those in the locality” in section 59(2)(a). Mr Havers agreed that such visitors might fall within the expression but he limited them to regular visitors. Such a rigid and hard edged limitation, which the appellants would also apparently apply to patients in hospitals and hospices and

medical services generally and those visiting such patients, would not only be unworkable in practice in distinguishing regular from irregular visitors but would potentially produce considerable uncertainty as to the legality of a PSPO and is highly unlikely to have been the intention of Parliament.

44. The reference to the protection of victims or potential victims in the statutory guidance is a convenient reference point for the submissions on behalf of both the appellants and Ealing in the present case that, although distinct, the requirement in section 59(2)(a) that the activities must have had a “detrimental effect on the quality of life” of those in the locality and the requirement in section 59(3)(a) that the effect, or the likely effect of the activities “is, or is likely to be, of a persistent or continuing nature”, may throw light on whether on the facts any particular group or categories of people fall within the expression “those in the locality”. The appellants’ argument is that it is very unlikely that the effect of an activity on a person who visits only once or twice will have a persistent or continuing detrimental effect on their quality of life. The evidence in the present case, however, is that it is both possible and has indeed been the case, as the Judge observed at [43], that some of those who have visited the Centre have been left with significant emotional and psychological damage lasting substantial periods of time by the conduct of GCN and others protesting outside the Centre immediately before and immediately after the visit to the Centre. There is also evidence that those activities have led some women to cancel their appointment at the Centre, delaying advice and treatment, with consequential potential physical harm to them.
45. We have set out above the Judge’s summary of the evidence before Ealing. He subsequently said as follows:
- “54. ... there was a considerable tranche of evidence and information before the defendant of activities which many would reasonably consider to be fully capable of having a detrimental effect on the quality of life [of those] who were exposed to them whatever the choice of adjective used to describe them.
55. Taking the evidence as a whole, I find that the defendant had reasonable grounds to be satisfied that the conditions in sub-section 59(2) and 59(3) (a) of the 2014 Act were met. ...”
46. It is clear from the judgment as a whole that the Judge was there referring particularly to the women, their family and supporters, who visit the Centre for abortion procedures, to whom he referred at [39] of his judgment at the beginning of the section addressing the meaning of “those in the locality”. He was satisfied, therefore, that it was reasonable for Ealing to conclude on the evidence that the activities of GCN and other protest groups outside the Centre had a detrimental effect on the quality of life of those visiting the Centre which was, or was likely to be, of a persistent or continuing nature. There is no appeal against that finding.
47. We agree with May J in *Summers* at [25] that the 2014 Act gives local authorities a wide discretion to decide what behaviours are troublesome and require to be addressed within their local area. Equally, in deciding who is “in the locality” for the purpose of protection from such activities by way of a PSPO a local authority will (applying the words of May J to that issue) use its local knowledge, taking into account local conditions on the ground.

48. We do not consider there is any scope for narrowing the proper interpretation of the expression “those in the locality” in section 59(2)(a) on the ground that it is a criminal offence to breach a PSPO or because section 72(1) requires a local authority, in deciding whether to make, extend or vary a PSPO, to have particular regard to rights of freedom of expression and freedom of assembly in articles 10 and 11 ECHR. Any general presumption in relation to statutory provisions which criminalise conduct or activity (which was not explored in any detail before us) must be subject to the particular statutory provisions and framework in question. As regards section 72(1), its provisions are neutral on the issue of the proper interpretation of section 59(2)(a) as they presuppose that it is indeed lawful, where the statutory conditions for a PSPO are satisfied, for the PSPO to interfere with rights under articles 10 and 11 ECHR.
49. We conclude that Ealing was correct to interpret the expression “those in the locality” in section 52(2)(a) as capable of embracing occasional visitors, and were entitled to decide on the facts that the women, their family members and supporters visiting the Centre, in addition to staff and local residents, fell within that section.

Ground 3 – engagement of article 8

50. It is convenient to consider next the issue whether the Judge was correct to conclude (in [63]) that the article 8 ECHR rights of those using the Centre were engaged.
51. Mr Havers submitted that none of the three cases cited by the Judge in this part of his judgment - *Peck v United Kingdom* (2003) no. 44647/98, *Couderc v France* [2016] EMLR 19 and *Murray v Express Newspapers* [2008] EWCA Civ 446, [2009] Ch 481 - are factually comparable to the present case or supports the Judge’s conclusion on the engagement of article 8. In brief, Mr Havers said that, in contrast to the situation in *Peck*, which concerned the disclosure to the media of closed circuit television footage, including images of the applicant attempting to commit suicide, the Judge made no finding in the present case of any photographs being taken of any service user, and there was certainly no evidence that photographic images have been recorded or published or that there was any attempt to identify anyone in them. The issue in *Couderc* was whether a magazine had infringed the article 8 rights of Prince Albert II of Monaco in publishing an article about whether Prince Albert was the father of a child, with an accompanying photograph showing Prince Albert, the child and the child’s mother, and whether the decisions of the French courts circumscribing that publication was a breach of the publisher’s article 10 rights. Mr Havers submitted that the case had no relevance as it was accepted before the European Court of Human Rights (“ECrHR”) that article 8 was engaged; the case concerned the publication to a worldwide audience, and, moreover, the Grand Chamber emphasised the importance of the right to freedom of expression under article 10 and held there had been a violation of article 10. Mr Havers emphasised that, unlike the present case, *Murray* was also a case about whether an unauthorised photograph and its publication in a national newspaper infringed the article 8 rights of the claimant, in that case the infant child of a famous author.
52. Mr Havers advanced the following reasons as to why the article 8 rights of the visitors to the Centre were not engaged. First, the activities which are the subject of the PSPO were in a public place, taking advantage of a public highway. Secondly, no record was made or kept by the protesters of what the service users were doing. Thirdly there was no publication of what the service users were doing. Fourthly, the cases relied upon by the Judge all concerned publication of what the claimant was doing. Fifthly, the visitors

to the Centre could not have more than a limited expectation of privacy as they were visiting the Centre in a public place and by means of a public highway. Sixthly, there could be no expectation on the part of the service users that no one would seek to engage with those who entered the Centre as abortion is a controversial topic of general public importance. On the contrary, the expectation was that there would be some engagement by protesters with those seeking to use the services of the Centre. Had the users of the Centre wished to avoid such engagement, they could have gone to another clinic or hospital which was less publicly exposed.

53. We have no hesitation in rejecting Ground 3 of the appeal. The decision of a woman whether or not to have an abortion is an intensely personal and sensitive matter. There is no doubt that it falls within the notion of private life within the meaning of article 8. As the ECtHR said in *A v Ireland* [2011] (2011) 53 EHRR 13:

“212. The Court notes that the notion of “private life” within the meaning of Article 8 of the Convention is a broad concept which encompasses, inter alia, the right to personal autonomy and personal development (see *Pretty*, cited above, § 61). It concerns subjects such as gender identification, sexual orientation and sexual life (see, for example, *Dudgeon v. the United Kingdom*, 22 October 1981, § 41, Series A no. 45, and *Laskey, Jaggard and Brown v. the United Kingdom*, 19 February 1997, § 36, Reports 1997-I), a person’s physical and psychological integrity (see the judgment in *Tysi c*, cited above, § 107) as well as decisions both to have and not to have a child or to become genetic parents (see *Evans*, cited above, § 71).”

...

“214. While Article 8 cannot, accordingly, be interpreted as conferring a right to abortion, the Court finds that the prohibition in Ireland of abortion where sought for reasons of health and/or well-being about which the first and second applicants complained, and the third applicant’s alleged inability to establish her eligibility for a lawful abortion in Ireland, come within the scope of their right to respect for their private lives and accordingly Article 8.”

54. As Lady Hale said in *Re Northern Ireland’s Human Rights Commission’s application for judicial review* [2018] UKSC 27, [2019] 1 All ER 173 at [6]:

“For many women, becoming pregnant is an expression of their autonomy, the fulfilment of a deep-felt desire. But for those women who become pregnant, or who are obliged to carry a pregnancy to term, against their will there can be few greater invasions of their autonomy and bodily integrity.”

55. In *P v Poland* [2012] ECHR 1853, which concerned difficulties the applicants had encountered in trying to obtain authorisation for an abortion under the laws permitting an abortion in Poland, the ECtHR said (at paragraph 99) that the State is under a positive obligation to create a procedural framework enabling a pregnant woman to

effectively exercise her right of access to lawful abortion. The court concluded that the authorities had failed to comply with their positive obligation to secure to the applicants effective respect for their private life and so there had been a breach of article 8 ECHR. The court said the following:

“111. The Court is of the view that effective access to reliable information on the conditions for the availability of lawful abortion, and the relevant procedures to be followed, is directly relevant for the exercise of personal autonomy. It reiterates that the notion of private life within the meaning of Article 8 applies both to decisions to become and not to become a parent (*Evans v. the United Kingdom* [GC], no. 6339/05, § 71, ECHR 2007 I; *R.R. v. Poland*, cited above, § 180). The nature of the issues involved in a woman’s decision to terminate a pregnancy or not is such that the time factor is of critical importance.”

56. In a subsequent passage (at paragraph 128) the Court said, in relation to the need for protection of medical data in order to maintain, in addition to a patient’s privacy, the person’s confidence in the medical profession and in the health service in general, that without such protection those in need of medical assistance may be deterred from seeking appropriate treatment, thereby endangering their own health.
57. The present case, therefore, must be seen in the context of the exercise by those visiting the Centre of their right under article 8 to access advice on abortion and medical procedures for abortion available under the laws of this country. That is a reflection of the centrality under article 8 of the protection of every individual’s right to personal autonomy. There is no right to protection, however, unless there is a reasonable expectation of privacy or, which the authorities treat as synonymous, a legitimate expectation of protection: see, for example, *Re JR38* [2015] UKSC 42, [2016] AC 1131, at [84]-[88].
58. In assessing whether article 8 is engaged by the activities of protesters outside the Centre, it is necessary to bear in mind, as Mr Ranjit Bhose QC, for Ealing, pointed out, that service users visiting the Centre are women in the early stages of pregnancy. Some are children. Some are victims of rape. Some are carrying foetuses with abnormalities, even fatal abnormalities. Some may not have told friends or family. Their very attendance at the Centre is a statement about highly personal and intimate matters. They may be in physical pain and suffering acute psychological and emotional issues both when attending and leaving the Centre. There is no alternative way of arriving at and leaving the Centre except across a public space, which they would naturally wish to cross as inconspicuously as possible.
59. Mr Bhose put forward the following 12 respects in which the activities of protesters, including but not limited to GCN, intruded on service users visiting the Centre: (1) seeking out and identifying women of reproductive age approaching the Centre, identifying them as pregnant women attending an abortion clinic; (2) standing directly outside the entrance to the Centre so that service users had no alternative to engaging with them, there being no alternative means of access or exit; (3) engaging with the service users directly by word or conduct, whether or not the service users wanted any engagement; (4) engaging with service users about the choice they had made and seeking to persuade them to change their ways, including in some cases telling the

service users that what they were doing was morally wrong; (5) giving service users literature, coloured pink or blue, which advised that it was not too late to save the life of the baby and describing possible physical and psychological complications, and also handing out pink and blue rosary beads; (6) displaying photographs on the ground of fetuses at different periods of gestation; (7) praying, both audibly and not, for the souls of fetuses in the Centre, intending to provoke, and provoking, feelings of guilt on the part of service users; (8) conducting group vigils, drawing attention to service users when coming and going; (9) speaking to service users when leaving the Centre; (10) handing leaflets to women leaving the centre; (11) taking or pretending to take photographs of service users; (12) further drawing attention to women attending the Centre when there were counter protesters.

60. There is evidence to support all of those activities on the part of pro-life protesters. There is some repetition and overlap in the activities mentioned in Mr Bhose's list. We consider it is clear, nevertheless, that they engaged the article 8 rights of those visiting the Centre both from the perspective of the right to autonomy on the part of service users in wishing to carry through their decision to have an abortion and from the reasonable desire and legitimate expectation that their visits to the Centre would not receive any more publicity than was inevitably involved in accessing and leaving the Centre across a public space and highway.
61. That conclusion is further reinforced by the evidence that some of those who have visited the Centre have been left with significant emotional and psychological damage by the conduct of GCN and others protesting outside the Centre immediately before and immediately after visiting the Centre, and evidence that those activities have led some women to cancel their appointment at the clinic, delaying advice and treatment, with consequential potential physical harm to themselves. All of that is borne out by the Judge's unappealed findings of fact (at [54] and [55]), set out above, that the activities of GCN and other protest groups outside the Centre have had a detrimental effect on the quality of life of those visiting the Centre which was, or was likely to be, of a persistent or continuing nature.
62. In the circumstances, it is not necessary for us to address the claim in Ealing's respondent's notice that the Judge was wrong to hold that the article 8 rights of non-service using visitors to the Centre and/or staff and/or local residents were not engaged. Mr Bhose did not develop that claim as he accepted that, in all the circumstances, the article 8 rights of those other persons does not add materially to Ealing's case.

Ground 2 – failure to carry out a “merits-based” approach

63. Having found that the article 8 rights of women visiting the Centre were engaged, the Judge had to balance, on the one hand, those rights and, on the other hand, the rights of protesters, including the appellants and other members of GCN, to exercise their rights to manifest their religion under article 9 and their rights to freedom of expression and freedom of assembly under articles 10 and 11 ECHR respectively. The Judge had to consider whether the PSPO made by Ealing was both a necessary and proportionate restriction of the appellants' article 9, 10 and 11 rights in order to accommodate the article 8 rights of women visiting the Centre.
64. It is common ground that the correct approach of the court, when considering the justification of any limitation or interference under articles 9(2), 10(2) and 11(2), is not

to determine whether the decision maker has followed a defective decision-making process but rather the court must form its own view as to whether the applicant's ECHR rights have been infringed: *R (SB) v Governors of Denbigh High School* [2006] UKHL 15, [2007] 1 AC 100 at [29]; *Belfast City Council v Miss Behavin' Ltd* [2007] UKHL 19, [2007] 1 WLR 1420, at [31], [37].

65. The appellants contend that the Judge failed to form his own view of whether the PSPO was a justified restriction or limitation of the appellants' articles 9, 10 and 11 rights. They say that he wrongly relied upon what he regarded as the propriety of Ealing's own assessment of that issue. They rely on [96] of the Judge's judgment, in which he said that "[t]he Murphy report expressly dealt with the threshold requirement that a PSPO would have to be judged to be necessary in a democratic society before it could be made" and set out the relevant paragraphs of the Murphy report addressing that issue, and [97] of the judgment, which was as follows:

"In the circumstances of this case, I do not doubt that there has been a significant interference with the rights of activists under Article 9, 10 and 11. I do not underestimate the seriousness of taking steps which are bound to conflict with that special degree of protection afforded to expressions of opinion which are made in the course of a debate on matters of public interest. Nevertheless I am satisfied that the defendant was entitled to conclude on the entirety of the evidence and information available to it that the making of this PSPO was a necessary step in a democratic society. There was substantial evidence that a very considerable number of users of the clinic reasonably felt that their privacy was being very seriously invaded at a time and place when they were most vulnerable and sensitive to uninvited attention. It also follows that, in this regard, I am also satisfied that the defendant was entitled to conclude that the effect of the activities of the protestors was likely to make such activities unreasonable and justified the restrictions imposed in satisfaction of the requirements of section 59(3) (b) and (c) of the 2014 Act."

66. Mr Havers submitted that the Judge there expressed himself in the traditional way for a public law challenge on the standard *Wednesbury* approach.
67. In addition to the language used in that paragraph of the judgment, Mr Havers submitted that it is clear that the Judge approached the matter of justification incorrectly because, while the judge referred at [64] and [96] to the way in which articles 9, 10 and 11 and justification had been addressed in the Murphy report, there is nowhere to be found in the judgment any balancing exercise by the Judge himself. He did not examine the content and significance of the appellants' and other protesters' article 9, 10 and 11 rights and state why, in the light of the evidence, he concluded that the interference with those rights by the PSPO was justified.
68. The language of the Judge at [97] was not well chosen but, reading the judgment as a whole, we are satisfied that he did not fall into the error of failing to form his own judgment on justification as opposed to merely considering whether Ealing had reached its decision on the PSPO by a proper process.

69. The Judge was perfectly aware of the correct approach because he quoted at [25] the judgment of Beatson LJ in *R (A) v The Chief Constable of Kent Constabulary* [2013] EWCA Civ 1706 at [36] and [37]. In those paragraphs Beatson LJ stated that the court had to make its own assessment of the factors considered by the decision-maker, and he cited the *Denbigh High School* case, quoting the statement of Lord Bingham in that case at [30] that proportionality must be judged objectively by the court, and the *Miss Behavin'* case, quoting the statement of Baroness Hale at [31] that it is the court which must decide whether ECHR rights have been infringed.
70. Further, at [26] the Judge quoted the following description of the structured proportionality test as applied in English law in *De Smith's Judicial Review*, 8th edition at paragraph 11-081:
- “It requires the court to seek first whether the action pursues a legitimate aim (i.e. one of the designated reasons to depart from a Convention right, such as national security). It then asks whether the measure employed is capable of achieving that aim, namely, whether there is a “rational connection” between the measures and the aim. Thirdly it asks whether a less restrictive alternative could have been employed. Even if these three hurdles are achieved, however...there is a fourth step which the decision-maker has to climb, namely, to demonstrate that the measure must be “necessary” which requires the courts to insist that the measure genuinely addresses a “pressing social need”, and is not just desirable or reasonable, by the standards of a democratic society.”
71. The Judge then said (at [27]) that he was satisfied that such an approach was consistent with the decisions of the most recent authorities on the point.
72. As mentioned above, the Judge reviewed the evidence and information available at [44]-[56], stating at [54] that “there was a considerable tranche of evidence and information before the defendant of activities which many would reasonably consider to be fully capable of having a detrimental effect on the quality of life [of those] who were exposed to them whatever the choice of adjective used to describe them”. He then addressed at [56]-[63] the issue of engagement of the article 8 rights of visitors to the Centre, concluding (at [62] and [63]) that the article 8 rights of service users of the Centre were engaged on the facts of this case but the article 8 rights of other visitors, local residents and staff working at the Centre were not. It is clear from [68] and [69] that he formed the view that rights under articles 9, 10 and 11 were also engaged. It is clear from [72], where he quoted a passage from the Guide of the Council of Europe to article 8, that he was conducting the review on the footing that rights under article 8 and rights under article 10 in principle deserve equal respect. At [74] he said that he was satisfied that the protection of the rights to privacy of the users of the Centre was a legitimate aim. At [75] he said that the next stage of the structured review required the court to consider whether the PSPO was capable of achieving the legitimate aim which interfered with the rights under articles 9, 10 and 11, namely whether there was a rational connection between the measures in the PSPO and the aim. He found at [76] that there was a rational connection between the PSPO and the legitimate aim of protecting the article 8 rights of users of the Centre because the creation of the Safe Zone meant that service users of the Centre would be able to make their entrances and

exits without inevitably being exposed to the closer scrutiny of those whose interests lay in supporting or opposing the users' decisions to terminate their pregnancies. There can, therefore, be no doubt that up to this point in his analysis the Judge was approaching the review on the entirely correct basis of deciding matters for himself and not simply relying on the Murphy report.

73. We consider that it is wholly unrealistic to think that the Judge simply forgot the correct approach to justification at the very end of his judgment in [97] when expressing his conclusions on necessity. Indeed, [97] begins with the Judge expressing his own view that, in the circumstances of the case, the PSPO was a significant interference with the rights of activists under articles 9, 10 and 11. We consider that it is more realistic to read the Judge's language later in [97] as a legitimate acknowledgment that his own view that the PSPO was a justified interference with the appellant's and other protesters' article 9, 10 and 11 rights was supported by the views of Ealing, which had been reached after a full, careful and comprehensive consideration of the issues following extensive consultation.
74. We therefore reject the submission that the Judge failed to determine for himself whether the appellants' ECHR rights had been breached.

Ground 4 - the appellants' article 9 rights

75. The criticism of the appellants in this Ground of Appeal is that the Judge underplayed the significance of the article 9 rights of the appellants and other pro-life protesters to manifest their religion and religious beliefs by seeking to persuade women visiting the Centre not to have an abortion. The members of GCN are motivated by their Christian faith and belief in the rights of unborn children. It is not in dispute that they and other protesters have prayed both silently and vocally outside the Centre and kept vigils for religious reasons.
76. Mr Havers submitted that the case law cited by the Judge in this context, *Van Den Dungen v The Netherlands* [1995] ECHR 59, in which the European Commission on Human Rights held that the applicant's activities aimed at persuading women not to have an abortion did not constitute the expression of a belief within the meaning of article 9(1), was confined to its particular facts and had been, in any event, superseded by more recent authority. Mr Havers cited, in that context, *Eweida v United Kingdom* (2013) 57 EHRR 8 and *Barankevich v Russia* (2008) 47 EHRR 8.
77. The ECtHR held in *Eweida*, that the applicant's insistence on wearing a cross visibly at work, motivated by her desire to bear witness to her Christian faith, was a manifestation of her religious belief and attracted the protection of article 9. It held (at paragraph 82) that it is sufficient that the act in question is intimately linked to the religion or belief, and there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question. In *Barankevich* the ECtHR said (at paragraph 43) that, under article 9, "freedom to manifest one's religion includes the right to try to convince one's neighbour".
78. It is a well established principle of the jurisprudence of the ECtHR that, as enshrined in article 9, freedom of thought, conscience and religion is one of the foundations of the meaning of a "democratic society", within the meaning of the ECHR, and, as

regards religion, is one of the most vital elements that go to make up the identity of believers and their conception of life: *Eweida* at paragraph 79.

79. For its part, Ealing relies on the *Van Den Dungen* case and on the decision of the European Commission on Human Rights in *Van Schijndel v The Netherlands* (1997) no. 30936/36. *Van Schijndel* rejected as manifestly ill founded the applicants' complaint that their conviction for breach of the peace for praying in the corridor of an abortion clinic was contrary to their article 9 rights. The Commission, with reference to the *Van Den Dungen* case, said that article 9 does not always guarantee the right to behave in the public sphere in a way which is dictated by a belief.
80. Ealing accepts that the vigils and other acts of prayer of protesters outside the Centre fall within article 9 but contends that the other activities of the appellants and other members of GCN do not have a sufficient nexus with religious belief to fall within article 9.
81. We do not need to resolve that question in order to reach the conclusion, which we do, that Ground 4 of the appeal fails. The Judge plainly accepted, for the purposes of his justification review, that article 9 rights were engaged: see [68], [69], [70], [75]. He quoted in [64] paragraph 2.2.10 of the Murphy report, which stated that Ealing was aware some of the represented groups believed their activities were part of their right to manifest their religion or beliefs, that those were important rights and that Ealing should be reluctant to interfere with them, and that the proposed PSPO would interfere with them. The Judge stated in [97] that he did not doubt that there had been "significant interference with the rights of activists" under article 9. There is simply no indication that he underplayed the significance of those rights. It is plain, moreover, that the article 9 rights in play could not have carried more weight, in the balancing exercise, than the rights of protesters under articles 10 and 11, to which Ealing was required by section 72 of the 2014 Act to have particular regard when deciding whether to make the PSPO. Engagement of the article 9 rights of protesters could not have tipped the balance against the making of the PSPO if Ealing was otherwise justified in making it. We address below the specific issue of the prohibition of prayer by the PSPO.

Ground 5 - a PSPO with less restrictive terms – and

Ground 6 – relative importance of the appellants' article 10 and 11 rights

82. Justification under article 10(2) and article 11(2) requires, as part of the structured proportionality review, that the limitation of the ECHR rights must be the least restrictive possible. There is an overlapping question of whether the measure is necessary in a democratic society, which is essentially a question of whether a fair balance has been struck between the competing rights and interests: *Bank Mellat v HM Treasury (No. 2)* [2013] UKSC 39, [2014] AC 700, at [20]. That latter question arises in a particularly acute form in a case, such as the present, where there is a tension between different ECHR rights.
83. Provided that the Judge carried out correctly the proportionality and balancing exercise, the Court cannot interfere with his conclusion on those matters as his conclusion will not have been "wrong" within the meaning of CPR 52.21(3): *R (R) v Chief Constable of Greater Manchester Police* [2018] UKSC 47, [2018] WLR 4079.

84. Mr Havers submitted that, in relative terms, the significance of the appellants' article 10 and 11 rights was so great and the nature of the activities of the pro-life protesters so unintrusive that the Judge should have concluded that the PSPO should not have been made at all. This is an attack on the making of the order as such, whatever its particular terms. It therefore amounts to the claim that making the PSPO as such was a disproportionate interference with articles 10 and 11 or, even if not disproportionate, was not necessary in a democratic society.
85. In *Annen v Germany* [2015] ECHR 1043 the ECtHR emphasised the importance of article 10 in ECHR cases where the relevant conduct contributes to a highly controversial debate of public interest. In that case the court held that an injunction against the applicant prohibiting him from (1) disseminating in the immediate vicinity of a clinic leaflets containing the names of two medical practitioners operating there, and asserting that unlawful abortions were performed in the clinic, and (2) mentioning the doctors' names and address in the list of "abortion doctors" on a specified website, was a breach of article 10 even though the doctors' article 8 rights were engaged by reason of their right to the protection of their reputation, which was part of the right to respect for private life. Even in the Opinion of the two dissenting judges it was acknowledged that participation in a debate involving moral and ethical issues normally calls for a high degree of protection in terms of free-speech requirements. The majority judgment (at paragraph 62) said :
- "... the applicant's campaign contributed to a highly controversial debate of public interest. There can be no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake."
86. In *Couderc* the ECtHR said the following about the right of freedom of expression in article 10:
- "88. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As enshrined in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly"
87. As regards article 11 ECHR, Mr Havers referred to *Lashmankin v Russia* (2019) 68 EHRR 1, in which the ECtHR said (at paragraph 405) that the right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in article 11(2). Having reiterated (at paragraph 412) the general principle that the right to freedom of assembly is one of the foundations of a democratic society, the ECtHR went on to say (at paragraph 145):

“Freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote ... Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles - however shocking and unacceptable certain views or words used may appear to the authorities - do a disservice to democracy and often even in danger it ...”.

88. Mr Havers submitted that, in the light of those statements of principle, there could be no reasonable justification for prohibiting the activities of pro-life protesters identified in the Murphy report, which comprised no more than offering leaflets, offering to engage in conversations, and holding placards.
89. We reject that submission because this was not simply a case of a protest causing irritation, annoyance, offence, shock or disturbance, which can still fall within the protection of articles 10 and 11: *Plattform 'Ärzte für das Leben' v Austria* (1991) 13 EHRR 204 at [32], *Sánchez v Spain* (2012) 54 EHRR 24 at [53], *Animal Defenders v United Kingdom* (2013) 57 EHRR 21 at [100]. As we have said, the Judge’s finding of fact was that Ealing was reasonably entitled to conclude that the activities of GCN and the other protest groups outside the Centre had a detrimental effect on the quality of life of those visiting the Centre which was, or was likely to be, of a persistent or continuing nature. There is evidence of lasting psychological and emotional harm of service users, mentioned in [43] of the Judge’s judgment, and of those who wished to use the services of the Centre cancelling appointment, with potential adverse consequences to their health. The service users were entitled to protection in respect of those matters. A PSPO was necessary to strike a fair balance between, on the one hand, protecting those important interests of the service users and, on the other hand, the rights of the protestors. For Ealing to have made no order would not have struck a fair balance between those competing interests. For the same reasons, we reject the suggestion that any PSPO, whatever its terms, would have been a disproportionate interference with the protestors’ rights.
90. The effect of the PSPO is to prohibit in the Safe Zone all of the activities which the appellants and other protestors have carried on outside the Centre and, subject to some restrictions, to confine them to the Designated Area, some 100 metres away. The next questions, therefore, are whether the Judge was entitled to conclude that the restriction of the appellants’ article 10 and article 11 rights by the PSPO, in effect imposing a blanket ban in the Safe Zone other than in the Designated Area, was proportionate to the aim of protecting the appellants’ article 8 rights, and whether its terms, individually and taken together, strike a fair balance between the competing rights.
91. It is common ground that the rights under articles 8, 9, 10 and 11 are all of equal importance in the sense that none has precedence over the other and, where there is a tension between their values, what is necessary is an intense focus on the comparative importance of the rights being claimed in the individual case: *Annen* at paragraph 56, *Murray* at [24], *PJS* at [20]. We do not consider that, in a context such as this, the requirement in section 72(1) of the 2014 Act for a local authority to have particular regard to the rights under articles 10 and 11 adds anything of substance to the analysis.

92. Mr Bhoose submitted that the activities of the protesters did not contribute to a public debate. We reject that submission. The protestors' expressions of opinion in public, on a topic of public interest, was a contribution to public debate within the scope of article 10, notwithstanding the fact that individual service users of the Centre were the immediate target of those expressions of opinion.
93. The Judge reached his conclusion (at [97]) that the restriction on the appellants' rights under articles 9, 10 and 11 by the PSPO was necessary and proportionate on the basis of the entirety of the evidence and information available, including the substantial evidence that a very considerable number of service users of the Centre reasonably felt that their privacy was being very seriously invaded at a time and place when they were most vulnerable and sensitive to uninvited attention, namely just before and just after they had undergone a highly personal medical procedure. It is plain that the Judge was there taking into account the evidence as to the long-term impact on the mental well-being of some service users and that a reasonable conclusion from the evidence was that the activities of GCN and other protest groups outside the Centre had a detrimental effect on the quality of life of service users visiting the Centre which was, and was likely to be, of a persistent or continuing nature. It is clear also that the Judge took into account, as he was entitled to do, the wide statutory consultation on the proposed PSPO conducted by Ealing before making the PSPO, the recognition in the comprehensive Murphy report and in the Equality Impact Assessment of the competing rights, including ECHR rights, and interests of the protesters and the service users, and its assessment of the weight of those rights and interests on the evidence available, including evidence of Marie Stopes UK of internally reported incidents relating to the Centre.
94. As Ms Kuljit Bhogal, junior counsel for Ealing, emphasised, the Murphy report stated (at 2.4.4) that the proposed PSPO had been carefully drafted to address the specific activities which were said to be having a detrimental effect on the quality of life of those in the locality. Specific consideration was given (at 5.1.1-5.1.3) to the issue of prayer in the Safe Zone. Careful consideration was also given to the scope of the Safe Zone (at 5.2.5), and whether it could be made smaller but still achieve protection for the persons affected by the protesters' activities, and (at 5.3.4) as to the location of the Designated Area. Some relevant extracts from the Murphy report are set out in Annex B to this judgment. In the circumstances, the Judge was entitled to give due weight to the conclusion of Ealing: *Miss Behavin'* at [26], [37]. [47], [91].
95. In our view, the Judge was entitled to come to the conclusion that, on the particular facts of the present case, the article 8 rights of the service users visiting the Centre outweighed the rights of the appellants and other pro-life protesters under articles 9, 10 and 11, and the terms of the PSPO were proportionate.
96. That is not, however, the end of the matter because, as part of their attack on the way the Judge carried out the proportionality and balancing exercise, the appellants contend that the Judge failed entirely to address their argument that the terms of the individual provisions of the PSPO are too vague and uncertain in many respects and are too extensive in that they prohibit perfectly innocuous conduct which has nothing to do with activities offensive to those visiting the Centre. Mr Havers adopted the detailed written submissions of Liberty, the Intervener, on this aspect.

97. In short order, the complaints about the individual provisions of the PSPO are as follows:
- 1) Paragraph 4(i) covers the full range of opinionated activity, including the most unobtrusive, factual and mild-mannered expression of a viewpoint, and is so broad that it loses any rational connection with the aim of protecting the rights to privacy of the service users of the Centre, is not confined to less intrusive measures available and does not strike a fair balance between the competing rights;
 - 2) Paragraph 4(ii) is too vague and would potentially encompass a very broad scope of conduct, including an act of silently offering a staff member a leaflet in a manner which did not obstruct or intimidate them, is not confined to less intrusive measures and fails properly to strike the right balance between the competing rights of those affected;
 - 3) Paragraph 4(iii) is insufficiently precise, and does not make clear, as it could have done, what amounts to intimidation or harassment or attempted intimidation or harassment;
 - 4) Paragraph 4(v) is overbroad, and should have been tailored to text or images which are likely to cause a certain level of distress to service users, or which are abusive, insulting or threatening in nature;
 - 5) Paragraph 4(vi) is overly broad, lacks a rational connection to the aim of protecting the article 8 interests of service users and fails to achieve a correct balance between the competing rights.
98. Liberty also criticises the location of the Designated Area as being an infringement of the rights of the appellants and others under article 11 as it removes the right of protestors to choose the time, place and manner of the assembly and to ensure that it is, in the wording of *Lashmankin v Russia* (2019) 68 EHRR 1 (at paragraph 405), “within sight and sound of its target object and at a time when the message may have the strongest impact”.
99. We consider those objections to the individual terms of the PSPO to be overstated. The Judge described those that were made before him (at [88]) as contrived. The starting point on this part of the appellants’ case is that, as we have found, the Judge was entitled to find, having carried out the structured proportionality exercise, that the PSPO was a justified restriction on all those activities formerly carried out by the appellants and other protesters outside the Centre that would otherwise fall within the protection of articles 9, 10 and 11. That included prayer, whether silent or not. Those are the activities prohibited generally under paragraph 4(i) of the PSPO.
100. So far as concerns paragraphs 4(ii)-4(vi) of the PSPO, some of the wording criticised by the appellants and Liberty is standard wording used in other contexts. For example, prohibitions on intimidation and harassment, without further elaboration, are to be found in the standard Family Court non-molestation order. Harassment, as a component of the expression “anti-social behaviour” (in section 2(1) of the 2014 Act), is not further defined in the 2014 Act. Moreover, the short answer to all the points made by the appellants and Liberty on the wording in paragraphs 4(ii) to (vi) of the PSPO is that

those provisions are plainly to be read as sub-sets of, and examples of, the general prohibition of “protesting” in paragraph 4(i). Viewed in that way, they are not impermissibly vague or excessive.

101. There are two further points to be made on this aspect of the appeal. Firstly, it is not apparent that Liberty, in advancing its criticisms of the individual provisions of the PSPO, including the size of the Safe Zone and the location of the Designated Area, was aware of all the relevant evidence including, in particular, the detailed appraisal in the Murphy report. Secondly, there is no suggestion that the appellants are interested in the alleged vagueness or extensiveness of the terms of the PSPO because they are also residents or for some reason, other than protest, would want to be in the Safe Zone. They are regular visitors and so able to bring proceedings to challenge the PSPO pursuant to section 66 of the 2014 Act only because they wish to carry out the protest activities which the Judge held, and was entitled to hold, should not be carried out within with Safe Zone.

102. For those reasons we reject both Grounds 5 and 6 of the appeal.

Conclusion

103. For the reasons we have given we dismiss this appeal.

104. There is no need in the circumstances for us to address the issues in the respondent’s notice.

ANNEX A

European Convention on Human Rights

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for

the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ANNEX B

Relevant extracts from the “Murphy report”

The ECHR

2.2.4 Council must take account of Articles 8, 9, 10, 11 and 14 of ECHR. ...

Article 8: Right to Private and Family Life

...

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

...

2.2.10 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

...

2.2.13 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

...

2.2.15 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.

...

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. ... 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.

...

5.1.9 Paragraphs 11 – 14 set out the proposed restrictions on protests and vigils within the Designated Area. ...

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.

...

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 ...

5.3.3 Members are asked to note that 60.2% agreed overall with the scope [of] 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 of [sic] 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.

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IN THE SUPREME COURT OF THE UNITED KINGDOM

10 MARCH 2020

Before:

Lord Reed
Lord Carnwath
Lady Black

**Dulgheriu and another (Appellants) v
London Borough of Ealing (Respondent)**

AFTER CONSIDERATION of the application filed on behalf of the Appellants seeking permission to appeal the order made by the Court of Appeal on 21 August 2019 and of the notice of objection filed by the Respondent

THE COURT ORDERED that

- (1) permission to appeal be REFUSED because the application does not raise an arguable point of law
- (2) the Appellants pay the Respondent's costs of the application and, where the Respondent applies for costs, the costs to be awarded be assessed.

Louise di Mambro.

Registrar
10 March 2020



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Proposal Summary Information	
EAA Title	2021 Mattock Lane PSPO consultation
Please describe your proposal	Study to assess the impact on equalities in the event of a council decision to extend for a further period of time the existing Public Spaces Protection Order (PSPO) on Mattock Lane.
Is it HR Related?	No
Corporate Purpose	The existing PSPO targets behaviours having a detrimental impact on the quality of life of residents of and visitors to Mattock Lane, and to service users for the Marie Stopes clinic, as well as clinic staff. Extending the period for which the PSPO has effect would continue to target such behaviours.
1. What is the action looking to achieve? Who will be affected?	
<p>1.1. In April 2018 Ealing Council introduced a Public Spaces Protection Order (PSPO) 'Safe Zone' to enable service users and staff of the Marie Stopes clinic, Mattock Lane (now known as MSI Reproductive Choices and hereinafter referred to as the 'Clinic') to enter and leave the Clinic without facing activities which were assessed as having a detrimental effect on their quality of life in the area.</p> <p>1.2. The PSPO was additionally designed to protect those residing in, visiting and passing through the locality from the detrimental effect of the activities of individuals and groups involved in Pro-Life and Pro-Choice protests and vigils outside the clinic.</p> <p>1.3. The PSPO introduced restrictions on specific behaviours in the immediate locality of the Clinic and is due to expire in April 2021 if no action is taken. The Council are now considering whether or not to extend the period for which the order has effect for a period of time beyond April 2021, with the maximum possible time extension being three years (i.e. until April 2024).</p> <p>1.4. The restrictions created by the PSPO relate to a number of behaviours, namely:</p> <ul style="list-style-type: none"> • Protesting, namely engaging in any act of approval/disapproval or attempted act of approval/disapproval, with respect to issues related to abortion services, by any means, including, without limitation, graphic, verbal or written means, and including, for the avoidance of doubt, prayer or counselling • Interfering, or attempting to interfere, whether verbally or physically, with a service user or member of staff • Intimidating or harassing, or attempting to intimidate or harass, a service user or a member of staff • Recording or photographing a service user or member of staff of the clinic whilst they are in the safe zone, or • Displaying any text or images relating directly or indirectly to the termination of pregnancy. • Playing or using amplified music, voice or audio recordings 	

- 1.5. The Council additionally provided within the PSPO a ‘designated area’ that falls within the geographical footprint of the ‘Safe Zone’, in which both Pro-Life and Pro-Choice groups may gather. The limitations on activities within the ‘designated area’ are:
- A restriction to a total of four persons at any one time
 - That a person shall not display an individual poster, text or image, which singularly or collectively, is greater than one sheet of A3 paper
 - That a person must not shout any message or words relating to the termination of pregnancy
 - That a person must not play or use amplified music, voice or audio recordings
- 1.6. Those affected by the order include people who live in, work in, pass through or visit the area, the majority of whom will be aware of the presence of represented groups outside the Clinic before the PSPO was made and the associated behaviours of those groups at that time. Some people will be aware of the use of the designated area by some of those groups.
- 1.7. Service users of the Clinic and potentially their friends, partners, family or other supporters who attend the Clinic with them are affected by the order. While service users are predominantly women (and in particular women under the age of 45) their support networks may include people of any gender and any age, including children. Some of the service users are also children.
- 1.8. Clinic staff and those working at the Clinic are affected by the order. The overwhelming majority of those working at the clinic are women.
- 1.9. Represented groups are affected by the order. Those groups include those representing Pro-Life and Pro-Choice views. Most represented groups include adult men and women.

2. What will the impact of your proposal be?

- 2.1. This Equalities Analysis Assessment examines differential impacts an extension to the longevity of the PSPO may have on any people with protected characteristics who reside, work in or visit the area or any people with protected characteristics who may visit the area in the future.
- 2.2. The existing PSPO restricts behaviours within the designated area and places certain requirements on people in the area. People in the area are required to provide their name and address to a police officer or other person designated to enforce the Order, if asked to do so in relation to breaching the order or an act of anti-social behaviour. The order also requires people to disperse or leave the area if asked to do so by a police officer or other person designated to enforce the Order, if asked to do so in relation to breaching the order or an act of anti-social behaviour.
- 2.3. Feedback from the Clinic itself and from submissions received during the consultation indicate that the PSPO has to date had a positive impact for visitors to the Clinic, staff working at the Clinic and those supporting and accompanying people visiting the Clinic. The Clinic have cited the fact they no longer need to maintain a register of complaints about the presence of those

congregating at the gates as evidence of a significant positive impact of the order on clinic users. The Clinic's position is essentially that the PSPO safeguards and facilitates access to sexual health and reproductive health services by women and other service users.

- 2.4. Responses to the consultation indicate the order has had a positive impact on those visiting and living in the area by preventing those individuals from being personally affected by the activities of the represented groups or from seeing others being distressed by this activity.
- 2.5. Feedback from Pro-Life represented groups (both directly and through the consultation) indicates the order has had a partly negative impact on Pro-Life groups who visit or plan to visit the area for the purpose of protests and vigils addressed towards service users and staff at the clinic, given the order restricts some of the behaviours they wish to engage in to a defined area.
- 2.6. Pro-Life groups have argued that the PSPO has prevented them from expressing their views, that it prevents them from congregating peacefully, prevents them from praying and prevents them from engaging with service users in a manner they describe as supportive.
- 2.7. Responses to the consultation from those who previously attended Pro-Life protest and vigils in the immediate locality of the Clinic (and who, in some cases, still continue to attend Pro-Life protest and vigils within the designated area and at other clinics) have suggested that the order has reduced significantly the number of Clinic service users with whom they have been able to engage. They have argued this has prevented potentially vulnerable women accessing their 'support', 'advice' and 'help'.
- 2.8. The PSPO has had a neutral impact on Pro-Choice individuals and groups who oppose or protest the behaviours of the Pro-Life groups outside the Clinic. While the order places restrictions on some of their behaviours in a defined area, it also addresses the motivator for those behaviours (i.e. the proximity of certain activities of Pro-Life groups within a defined area of the Clinic).
- 2.9. Since the introduction of the order, it appears that Pro-Choice represented groups have not used the 'designated area' that is provided for within the order.
- 2.10. Pro-Life represented groups have continued to attend the locality and have engaged in vigil and protest within the 'designated area' and, on occasion, at the boundary of the PSPO 'Safe Zone' or at Council offices nearby.

Impact on Groups having a Protected Characteristic
3. AGE: A person of a particular age or being within an age group.
State whether the impact is positive, negative, a combination of both, or neutral: POSITIVE and NEGATIVE
Describe the Impact
<p>3.1. Given that the primary service users at Clinic are pregnant women, younger women are disproportionately represented among the people entering and leaving the Clinic.</p> <p>3.2. Very young women and girls (those aged 19 and under) are disproportionately represented among those accessing termination of pregnancy services. From their 2020 monitoring data, the British Pregnancy Advisory Service (BPAS) for London Clinical Commissioning Groups indicates 2.29% of service users of abortion services were under the age of 18. It is accepted that this data is not specific to Ealing but the Council takes the view it provides a useful indication of the general characteristics of service users who are likely to access services at the Clinic. This data confirms that service users of the clinic will include children, who are seeking access to health care.</p> <p>3.3. If the period for which the PSPO has effect is extended this will have a positive impact on younger people, given it will enable this group (who are disproportionately represented among clinic users) to access sexual health and reproductive health services without encountering interference from people unknown to them at the point of access.</p> <p>3.4. The overwhelming majority of clinic service users (99.5%) are aged 45 and under. The PSPO has had a positive impact on this age group, given it has enabled women aged 45 and under to access sexual health and reproductive health services without encountering interference at the point of access from people who are unknown to them.</p> <p>3.5. Observations by council officers during 2017-2018 and observations of activities within the 'designated area' since the introduction of the order indicate the majority of vigils and protests by Pro-Life groups involve people who are over the age of approximately 35. The PSPO is therefore likely to have had a partly negative impact on people within an older age group, given the restrictions it places on the behaviours of the represented groups within the 'designated area'.</p> <p>3.6. No specific data exists in relation to age of the represented groups who attend Pro-Choice vigils and protests outside the Clinic and, from observations, it is difficult to identify any particular age range disproportionately represented within those groups. The impact of the PSPOs on individuals and groups who formerly attended the area to engage in Pro-Choice protests is likely to be neutral on grounds of their age.</p> <p>3.7. The view of those who support the presence of Pro-Life protest / vigil members, or 'street counsellors' as they are sometimes termed, is the suggestion they provide a vital support service to women who may feel pressurised into a termination (for example by an abusive partner or family member). The PSPO includes the provision of the 'designated area' in which a</p>

<p>small number of persons be permitted to congregate and carry out protests or vigils. This area has been used throughout the period of the PSPO by Pro-Life groups, who have therefore remained accessible to any women who may wish to engage with them or seek their help.</p> <p>3.8. The PSPO has no impact on the activities of any represented groups outside the safe zone and will not affect the provision of support or counselling services away from this area.</p> <p>3.9. Professional and regulated services for young people in situations of crisis exist. While there is clear evidence to indicate the restrictions of the PSPO will have a positive impact on young women accessing the Clinic, it is not clear that any young women are likely to be negatively affected by the absence of protest / vigil members in the immediate locality. It remains the position of the Pro-Life represented groups that they have helped numerous women in challenging situations, however there remains no available data of the actual number of people who have engaged with and benefited from the services these groups purport to offer and in any event other services remain available to those women and/or the Pro-Life represented groups can be accessed by them in the designated area or other locations.</p>
<p>Alternatives and mitigating actions which have been considered in order to reduce negative effect:</p>
<p>The PSPO does not place restrictions on any behaviours beyond a relatively small geographical area.</p> <p>The PSPO provides for a 'designated area' in which represented groups are permitted to engage in certain forms of protest or vigil activities. That area is situated a short distance from the Clinic and is visible to those accessing it and has been continually used by Pro-Life groups since the introduction of the order. The 'designated area' is positioned so that it is located away from the immediate entrance of the Clinic but still in a position which would allow service users to be aware of the existence of the represented groups.</p>

<p>4. DISABILITY: A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day to day activities.</p>
<p>State whether the impact is positive, negative, a combination of both, or neutral: NEUTRAL</p>
<p>Describe the Impact</p>
<p>4.1. There is no available data relating to disabilities affecting persons engaged in protests / vigils outside the Clinic and the data available in relation to disabilities affecting Clinic service users or staff is limited.</p> <p>4.2. It is established from consultation with Public Health and NHS that inequalities in sexual health mean certain groups have poorer sexual health outcomes. For example, one identified group with poorer sexual health outcomes is people with learning disabilities. It is possible, therefore, that people with learning disabilities may be disproportionately represented among those accessing the</p>

<p>Clinic for services and, if so, may have been positively affected by an order that facilitates their access to sexual health and reproductive health services without interference from people not known to them.</p> <p>4.3. Overall, it is not anticipated that an extension of the period for which the PSPO has effect will have any disproportionate impact on people with disabilities.</p>
<p>Alternatives and mitigating actions which have been considered in order to reduce negative effect:</p>
<p>NOT APPLICABLE</p>

<p>5. GENDER REASSIGNMENT: This is the process of transitioning from one sex to another. This includes persons who consider themselves to be trans, transgender and transsexual.</p>
<p>State whether the impact is positive, negative, a combination of both, or neutral: NEUTRAL</p>
<p>Describe the Impact</p>
<p>5.1. There is no available gender reassignment data in relation to Clinic service users and staff, persons engaged in protests / vigils outside the Clinic or residents/other visitors to the area.</p> <p>5.2. It is not anticipated that an extension of the period for which the PSPO has effect will have a disproportionate impact on this group on grounds of their belonging to this group.</p>
<p>Alternatives and mitigating actions which have been considered in order to reduce negative effect:</p>
<p>NOT APPLICABLE</p>

<p>6. RACE: A group of people defined by their colour, nationality (including citizenship), ethnic or national origins or race.</p>
<p>State whether the impact is positive, negative, a combination of both, or neutral: POSITIVE</p>
<p>Describe the Impact</p>
<p>6.1. The Council does not hold monitoring data which is specific to local residents and visitors to the Clinic. The Council has considered both UK-wide monitoring data over a five-year period provided by BPAS in relation to race, and the London and South-East specific data (which is important, given London has a higher proportion of BAME residents within its established population).</p> <p>6.2. BPAS data shows that in London 48.2% of service users are from BAME groups. This is in comparison to people from BAME backgrounds making up approximately 40% of the London population, based on widely available open source and census data, suggesting that people from BAME groups are</p>

<p>overrepresented among service users accessing services offered by clinics like MSI Reproductive Choices.</p> <p>6.3. While the Council recognises the limitations of this data (it is not specific to Ealing and is provided by an organisation that provides termination of pregnancy services across the UK), it provides a useful indication of the general characteristics of service users accessing services offered by clinics such as MSI Reproductive Choices.</p> <p>6.4. It is established from dialogue with NHS and Public Health that inequalities in sexual health mean certain groups have poorer sexual health outcomes; one identified group with poorer sexual health outcomes is people from BAME backgrounds. This also suggests that people from BAME backgrounds may be disproportionately represented among those accessing the Clinic for services and, if so, positively benefit from the existing PSPO (and any extension of the period for which it has effect), which facilitates their access to the Clinic without interference at the point of access.</p> <p>6.5. There is no specific ethnic monitoring data available for either Pro-Life or Pro-Choice groups attending protests / vigils outside the clinic. In the case of individuals attending to represent Pro-Choice views, the impact of the PSPO is considered to have been neutral, as their motivation for attending will be reduced. The impact on those from Pro-Life groups is considered negative overall, given the restrictions it will place on their activities but there is no indication they will face a negative impact overall as a result of their race and the impact of the PSPO is therefore considered to have been neutral on this basis.</p> <p>6.6. The impact of the PSPO on people accessing the clinic (among whom service users from BAME groups are established to be over-represented) is positive, given it safeguards and facilitates those individuals in accessing the health services being offered. This will remain the case if the period for which the PSPO has effect is extended.</p>
<p>Alternatives and mitigating actions which have been considered in order to reduce negative effect:</p>
<p>NOT APPLICABLE</p>

<p>7. RELIGION & BELIEF: Religion means any religion. Belief includes religious and philosophical beliefs including lack of belief (for example, Atheism).</p>
<p>State whether the impact is positive, negative, a combination of both, or neutral: NEGATIVE</p>
<p>Describe the Impact</p>
<p>7.1. According to data from the 2011 census, Ealing residents identify as follows regarding their religion or belief:</p> <ul style="list-style-type: none"> • 44% Christian • 16% Muslim

- 15% No religion
- 9% Hindu
- 8% Sikh
- 7% Prefer not to answer

7.2. There is no specific data relating to the religion and belief of residents and visitors to the PSPO area (excluding the represented groups who are discussed separately below). However, census data provides some indication of the religion and faith identified with by Ealing's established population. For residents and visitors to the PSPO area, the effect of the PSPO is considered to have been positive as it has facilitated their access to the area near the Clinic without the distress caused by interference from people unknown to them at the point of access.

7.3. In relation to Clinic service users, monitoring data provided by BPAS in relation to religion and belief shows that in the five-year period 2013-2017, of the clients accessing its services UK wide the key groups were:

- 59% who identify with no religion
- 21% Christian
- 10% prefer not to say
- 4.5% Muslim
- 2% Hindu
- 1% Sikh

It is important to recognise this data does not relate specifically to MSI Reproductive Choices on Mattock Lane, however it provides a sense of the UK-wide picture of women accessing the same services offered at the Clinic.

7.4. The data indicates that the rate of clinic service users who identify as 'no religion' is roughly four times that of Ealing's established population, while those clinic service users identifying as Christian is approximately half the number of Ealing's established population who identify as such. The Council accepts that it is possible that these figures are not strictly accurate but may reflect reluctance on the part of service users to disclose personal information when attending clinics. Nonetheless, the information is relevant when considering the nature of the activities outside the Clinic, some of which use Christian imagery and language in their efforts to influence people at the point of access and departure. As a minimum it is clear that many, if not most, of the service users accessing the Clinic do not share the same faith or type or strength of religious views held by the representative groups.

7.5. In regard to those people who visit the area to take part in protest / vigils as part of groups expressing Pro-Choice views, there is no specific data relating to their religion and belief. Sister Supporter, the key Pro-Choice group represented outside the Clinic state on their website: "*We are not anti-religion, nor are we pro-abortion. We are... opposed to anyone, with any agenda, placing themselves outside of health services*". For these reasons, the effect of the PSPO is considered neutral on this group as regards their religion or belief. In any case it is believed that the impact of the PSPO will be more neutral from Pro-Choice groups overall given that their motivation for attending

or returning, in the event that the period of the PSPO being extended, will decrease.

- 7.6. There is similarly no quantitative data on individuals and groups who used to attend the area outside the Clinic to engage in protests / vigils representing a Pro-Life view (and who now use the 'designated area' within the PSPO to engage in protest and vigil). It is understood, however, from research and engagement with these groups that the majority of the individuals identify as Christian and, specifically, Roman Catholic. The *Good Counsel Network* state on their website they are "*Pro-Life, Faithful to Catholic Teaching. Striving to protect women and children from abortion.*" The *Helpers of God's Precious Infants* state on their website '*We pray for the mothers and their babies, for the doctors, nurses and everyone involved in the abortion practice.*' The *Society of Pius X*, a Roman Catholic group that are known to hold conservative views and *40 Days For Life* are a Christian Pro-Life organisation of affiliated groups.
- 7.7. In discussions with faith groups, including local churches and the borough's faith forum, the common understanding is that the Pro-Life represented groups who used to congregate outside the clinic were predominantly made up of groups identifying as Roman Catholic or what has been described as more 'fringe' Christian groups.
- 7.8. It is fair to conclude then that the overwhelming majority of groups who visit the area to engage in Pro-Life protests and vigils identify as Christian. The PSPO has placed restrictions on behaviours in the immediate locality of the Clinic that negatively affect this group, so the effect of the PSPO has been considered negative for this protected characteristic.
- 7.9. Any temporal extension of the PSPO beyond April 2021 will therefore likely disadvantage and indirectly disadvantage those Christian individuals who wish to visit the area to engage in Pro-Life protest or vigil free from any restriction. The PSPO (and any extension by default) will restrict their freedom of expression by prohibiting them from participating in protests or vigils relating to abortion within that part of the safe zone which is not part of the designated area.
- 7.10. The PSPO explicitly states that protest includes graphic, verbal or written means. Crucially, the PSPO explicitly states that protest in this context also can include 'prayer' and 'counselling'. As a result, the PSPO indirectly disadvantages those who wish to attend the area to pray and to express views which are connected to the practice and expression of their Christian (or other) religion and beliefs. A decision to extend the period for which the PSPO has effect beyond April 2021 will mean a continuation of this disadvantage.
- 7.11. However this disadvantage has been carefully balanced in terms of the rights of those individuals who visit the area to express their views (even through directed prayer and what may be considered by them to be 'counselling') against the rights of the people who visit the area to access the health services offered by the Clinic, who are overwhelmingly pregnant women, some of whom are themselves children.

- 7.12. The council has to consider the rights to privacy and family life of the service users, specifically their right to access health services free from intimidation, harassment, distress and with dignity and privacy.
- 7.13. The Council is further required to consider the rights of the *staff* who work at the Clinic (also overwhelmingly women) who have the right to access their place of work without facing intimidation, harassment or distress.
- 7.14. From the evidence obtained during the 2017-2018 investigation, it was clear that clients and staff of the clinic had been significantly negatively affected by the presence of individuals in the locality of the clinic engaging in Pro-Life protests and vigils. People accessing health services at the Clinic (in nearly all cases women and in the majority of cases pregnant women) reported feeling intimidated, judged, harassed and obstructed when attempting to enter and leave the clinic.
- 7.15. The Council also heard from those who attend the Clinic to support partners, family members and friends. The information and evidence obtained from those individuals indicates the negative impact of protests and vigils on these individuals too.
- 7.16. Staff from the Clinic confirmed witnessing and intervening in upsetting incidents where women have been approached and challenged when attempting to enter the Clinic and upon exiting the Clinic following treatment. Staff have also reported being personally intimidated and even receiving malicious communications from individuals representing Pro-Life views.
- 7.17. Since its introduction in April 2018 the PSPO has had a positive impact on those people accessing the clinic (the majority being pregnant women accessing health services connected with their pregnancy). It has restricted behaviours that were evidenced to have caused a detrimental impact on the quality of life of these people and an extension of the order beyond April 2021 would likely have a continued positive impact on this group.
- 7.18. In considering the impact of the PSPO to date on those with religious views that motivate and underpin their desire to participate in protests / vigils, the Council has to undertake a delicate balancing exercise of the competing rights of all of the represented groups, but also of the clinic users and staff. Clinic users are entitled to access lawful health services without interference or fear of intimidation, harassment or the feeling of being judged. Clinic staff are also entitled to access their place of work without direct or indirect distress, intimidation or harassment.
- 7.17 Indirect disadvantage is justified by reason of the need to balance these competing rights. The PSPO was carefully limited to provide restrictions and requirements only which were necessary to address the detrimental impact of activities of the represented groups. The provision of the 'designated area' created a space where the on-going activities were facilitated, albeit with some restrictions. For all these reasons the Council considers that the PSPO, and any extension, is a proportionate means of achieving these legitimate aims.

Alternatives and mitigating actions which have been considered in order to reduce negative effect:

The Council’s previous engagement work with Pro-Life groups sought to explore the possibility for a negotiated approach to agreeing steps these groups could take to address the detrimental effect of their activities on the quality of life of those in the locality, namely clinic users, staff and others. This was unsuccessful and the explicit statements made by these groups since the introduction of the order – in the press, in social media and in legal submissions – make it clear they remain unwilling to consider any voluntary steps to address the behaviours. The Council has again considered the negative impact on those who attend the area to express views associated with their Christian faith and has sought to carefully balance these against those other protected characteristics for whom the council also has a duty.

In considering the negative impact on the protected characteristic of religion and belief, provision was made for a ‘designated area’ within the PSPO which allows represented groups to congregate in small numbers a short distance away from the clinic to engage in peaceful prayer and to engage with any persons who wish to approach them for counselling or support.

The ‘safe zone’ has been kept as small as is considered absolutely necessary to provide safe passage to the clinic for staff, service users and those that accompany them.

The proposal to extend the period for which the PSPO has effect does not change the balancing exercise which had been undertaken. Insofar as there is a negative impact on this group it is considered to be justified.

8. SEX: Someone being a man or a woman.
State whether the impact is positive, negative, a combination of both, or neutral: POSITIVE
Describe the Impact
<p>8.1. While the Clinic offers some medical services for men, the overwhelming majority of service users are women. During their investigation in 2017-18 the council also established evidence that Pro-Life groups chose not to congregate outside the clinic during hours when a ‘male only’ service was being run.</p> <p>8.2. Similarly, while the witness testimony of service users and staff includes some evidence provided by men who raised concerns about the behaviours of those congregating outside, the overwhelming majority of concerns raised were made by or on behalf of women accessing the Clinic in relation to their pregnancy.</p> <p>8.3. Almost all staff and contractors practising at the Clinic are women. Witness testimony from members of staff, reports to police and staff incident reports almost exclusively feature a female victim. The purpose of the PSPO has been to tackle the behaviours driving incidents and therefore provide some protection to staff members and contractors as well as to the service users.</p> <p>8.4. The effect of the PSPO to date has been positive for women, given women as a group were disproportionately adversely affected by the behaviours the PSPO has sought to address.</p>

- 8.5. The NHS and Public Health England advise that females are more likely than adult males to access sexual health services. Whilst sexual health issues affect anyone who is sexually active, inequalities in sexual health mean some groups have poorer sexual health outcomes; this includes women.
- 8.6. When the PSPO was made, consideration was given to consultation responses highlighting the potentially negative impact of the 'designated area' within the PSPO on persons accessing services at the Gordon House Surgery and others passing through along Mattock Lane near the 'designated area', given that behaviours established to have had a detrimental impact have been permitted to continue here, albeit on a smaller scale. Although the Council has received complaints about the use of the designated area (which are addressed further below) there is no evidence to suggest that those using Gordon House Surgery have been affected.
- 8.7. In terms of those who have previously attended the location to engage in protest from a Pro-Choice perspective, the majority have been women. Pro-Choice protest has discontinued in the locality since the introduction of the PSPO and 'designated area'. The impact of a PSPO on this specific group is considered to be neutral on grounds of sex.
- 8.8. There is no specific data relating to the representation of men and women among groups attending the locality to engage in Pro-Life related protest / vigils and the make-up of these groups by gender has been observed by Council officers as changing day-to-day, with men sometimes making up the majority of a group on some days and women on others.
- 8.9. The impact of the PSPO on individuals and groups attending the locality to engage in Pro-Life related protest / vigil is negative, given it places restrictions on their behaviours. However, there is no evidence to indicate this has disproportionately affected any person within this group by virtue of their sex.
- 8.10. The Council has received reports from those living in and visiting the locality of the 'designated area' which the Pro-Life groups have used since the PSPO was implemented. The complainants are concerned about the repeated efforts by those using the designated area targeting them because they are women who may be in the area in order to visit the clinic.
- 8.11. Engagement or attempted engagement which takes place from the designated area is permitted by the PSPO. Such activity is very different from the direct targeting of service users at the entry point of the Clinic immediately before or after treatment. It is *that* activity which had a detrimental impact on the quality of life in the locality.
- 8.12. The Council has had to balance this (new) negative impact on women near the designated area against the negative impact on those who wish to congregate to impart information, express their views and express a manifestation of their religious beliefs (from the designated area). The balance lies in favour of continuing the period for which the PSPO has effect.

Alternatives and mitigating actions which have been considered in order to reduce negative effect:

Prior to the PSPO being introduced the Council undertook engagement work with Pro-Life groups in order to better understand their activities and in an attempt to negotiate a compromise that could address the detrimental effect of their activities on the quality of life of those in the locality, namely Clinic users, staff and others. This was unsuccessful. The extension of the period for which the PSPO has effect does not affect this analysis.

<p>9. SEXUAL ORIENTATION: A person’s sexual attraction towards his or her own sex, the opposite sex or to both sexes.</p>
<p>State whether the impact is positive, negative, a combination of both, or neutral: NEUTRAL</p>
<p>Describe the Impact</p>
<p>9.1. There is no evidence to indicate that lesbian, gay or bi-sexual people are disproportionately represented among any group which have been affected by the PSPO, whether by controlling their behaviour or seeking to protect them. There is no available data on the sexual orientation of the persons affected by the PSPO.</p> <p>9.2. While sexual health affects anyone who is sexually active, inequalities in sexual health mean some groups have poorer sexual health outcomes; this includes men who have sex with men (MSM). The PSPO area includes another clinic, Gordon House Surgery, which offers sexual health services. Consideration has been given to the potentially negative impact the behaviours addressed by the PSPO (and any extension of the period for which it has effect) could have on this group and the potentially negative impact the ‘designated area’ may have for MSM clients accessing sexual health services. There is no evidence of an impact on this group (MSM).</p>
<p>Alternatives and mitigating actions which have been considered in order to reduce negative effect:</p>
<p>None applicable other than in relation to the ‘designated area’. The Council continues to keep under review the location, the size and the scope of conduct permitted within the “designated area” to ensure that safe passage is being provided to the clinic and to the Gordon House Surgery nearby for service users and staff. However, the outcomes of the appeals processes to date and feedback within the consultation, combined with the on-going evidence of impact of the PSPO, provide strong indicators that the council has overall achieved the right balance in defining the location and restrictions for the ‘designated area’. This analysis applies if the period for which the PSPO has effect is extended.</p>

10. PREGNANCY & MATERNITY:

<p>Description: Pregnancy: Being pregnant. Maternity: The period after giving birth - linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, including as a result of breastfeeding.</p>
<p>State whether the impact is positive, negative, a combination of both, or neutral: POSITIVE</p>
<p>Describe the Impact</p>
<p>10.1. There is no data to indicate that pregnant women make up a disproportionate number of those attending the locality to engage in protest or vigils from either a Pro-Life or Pro-Choice perspective or of staff of the Clinic, residents and visitors in the area.</p> <p>10.2. The overwhelming majority of Clinic service users are pregnant women. The impact of the PSPO on this group is considered to have been positive, as it has facilitated pregnant women to access health services specific to their needs.</p> <p>10.3. In introducing the PSPO, the council considered the rights of pregnant women to access health services free from intimidation, harassment, distress and with dignity and privacy. It was clear that activities outside the Clinic among the represented groups were having a detrimental impact on quality of life for this group. In considering an extension of the period for which the PSPO has effect to beyond April 2021, this has been revisited and the impact on this group by the proposed extension is considered to be positive.</p> <p>10.4. The engagement and research work undertaken by the council established a key explanation offered by those engaged in Pro-Life protest and vigils was that women may want to know the alternatives to termination of their pregnancy. Consideration was therefore given to the possibility that some pregnant women attending the Clinic, despite the advice and counselling offered to them as part of the Clinic's processes and the array of information available online, may remain unaware of alternatives to termination and may wish to engage with support from voluntary groups on the day they attend the Clinic for a consultation or procedure. With this in mind, the 'designated area' was created to allow a person wishing to do so to engage with groups offering 'Pro-Life' advice. By way of balance, the location of the designated area and the restrictions which apply there mean that any service users who wish to avoid interaction with Pro-Life groups whilst accessing the Clinic may do so.</p> <p>10.5. All abortion clinics are registered with the Department of Health and abortion is a regulated activity under the Health and Social Care Act 2012 which means that they are governed by the statutory standards of care and procedures for regulation and governance. The Department of Health also issues standard operating procedures for the operation of independent abortion clinics with specific requirements including the provision of 24-hour aftercare (to enable women to contact the Clinic if they are worried about symptoms or side-effects), non-directive and non-judgemental pre- and post-abortion counselling from trained pregnancy counsellors, contraception counselling and provision, and sexually transmitted infection screening. The counselling offered by the Clinic is delivered by trained and appropriately qualified professionals and by virtue of the standard operating procedures this counselling is required to be non-directive.</p>

<p>10.6. In addition to this there are a range of regulated professional and voluntary services that exist for pregnant women who may be experiencing crisis (such as exploitation, domestic abuse or financial hardship). The Council will always seek to protect support for pregnant women who are affected by these issues. However, the evidence obtained by the council indicates that women do not wish to be approached on the street regarding decisions they have reached about their pregnancy at the moment they are accessing termination services. Prior to the implementation of the PSPO, the council had evidence of women being approached by members of Pro-Life groups upon <i>exiting</i> the clinic as well as attempting to enter it (i.e. after they have already received treatment), which these women would understandably have found particularly distressing).</p>
<p>Alternatives and mitigating actions which have been considered in order to reduce negative effect:</p>
<p>The 'designated area' is situated within sight of the entry point to the Clinic. Those wishing to seek information or support from the represented groups will be aware of their presence (due to the location of the area) and will be able to exercise a choice to seek assistance or engage with those groups. The council's position is that this will substantially mitigate any negative impact for pregnant women which results from the restriction of the representative groups' activities. This analysis remains valid if the period for which the PSPO has effect is extended.</p>

<p>11. MARRIAGE & CIVIL PARTNERSHIP:</p> <p>Description: Marriage: A union between a man and a woman, or of the same sex, which is legally recognised in the UK as a marriage Civil partnership: Civil partners must be treated the same as married couples on a range of legal matters.</p>
<p>State whether the impact is positive, negative, a combination of both, or neutral: NEUTRAL</p>
<p>Describe the Impact</p>
<p>11.1. There is no data in relation to the proportion of clinic service users, staff, residents or groups involved in Pro-Life or Pro-Choice protest and vigils, who are single, married or in civil partnerships.</p> <p>11.2. The impact on this group remains neutral, given there is no evidence that the PSPO has or would negatively or positively impact any person on the basis of their relationship status.</p>
<p>Alternatives and mitigating actions which have been considered in order to reduce negative effect:</p>
<p>NOT APPLICABLE</p>

<p>12. Human Rights</p>

12a. Does your proposal impact on Human Rights as defined by the Human Rights Act 1998?

Yes No

12b. Does your proposal impact on the rights of children as defined by the UN Convention on the Rights of the Child?

Yes No

12c. Does your proposal impact on the rights of persons with disabilities as defined by the UN Convention on the rights of persons with disabilities?

Yes No

12.1. In preparing this EIA the Council has had particular regard to the rights contained in Articles 10 and 11 of the European Convention on Human Rights. It has also had regard to the Public Sector Equality Duty found in s.149 of the Equality Act 2010 a copy of which is appended hereto.

12.2. Consideration has been given to the Equality Act (2010) and the European Convention on Human Rights, as well as the Council's Public Sector Equality Duty.

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

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

12.4. 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 a PSPO.

12.5. The decision whether to extend the PSPO gives rise to some difficult issues arising under the Equality Act 2010 and the ECHR. These are difficult issues because the proposed extension of the 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.

12.6. 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.

12.7. The 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 is required to consider that any interference is:

In accordance with the law and 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

12.8. 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

12.9. 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

12.10. The 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. The High Court and Court of Appeal agreed with the Council’s submissions that Article 8 Rights of those accessing the Clinic are engaged.

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

12.11. 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.

12.12. 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.

12.13. 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. Members are advised that these are important rights and that the Council 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 extension 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.

Article 10 Right to Freedom of Expression

12.14. 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.

12.15. 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.

12.16. It is important to consider that individuals from Pro-Life represented groups stated that they attended the Clinic to impart information to women accessing services and that the proposed PSPO would interfere with their Article 10 rights. It should also be noted that the PSPO has interfered with the Article 10 rights of Pro-Choice represented groups. In addition, the PSPO interferes with the rights of people to receive the information being imparted. Consequently an extension of the PSPO would continue to interfere with those rights.

12.17. In deciding whether to extend the period for which the PSPO has effect, the Council has 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 and the rights of people to receive information. 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

12.18. 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.

12.19. 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.

Article 14 Right to Freedom from Discrimination

12.20. 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 discrimination in the manner in which people are entitled to enjoy those rights.

12.21. 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'?

12.22. If Members are satisfied that the statutory tests and conditions for extending the period for which the PSPO has effect are met, and that any disadvantage caused to protected groups by the PSPO is a proportionate means of achieving a legitimate aim, any interference with the relevant ECHR right will be in accordance with the law.

Is the interference 'necessary in a democratic society'?

12.23. The Council has had regard to the content of the relevant rights as summarised above. The Council recognises that all of the rights highlighted, but Articles 10 and 11 in particular, are important rights in a free and democratic society.

12.24. If the Council wishes to interfere with these rights, the interference must be 'necessary' in order to achieve a stated aim; in this case the aim the Council

has sought to achieve is the protection of the rights and freedoms of others. Those rights and freedoms include the freedom to access healthcare services without impediment or interference. The Council has to consider whether this objective is sufficiently important to justify limiting fundamental rights.

12.25. 'Necessary' means that the interference must be connected to achieving the stated objective and must not interfere 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.

12.26. The ECHR rights were firmly in mind during the formulation of PSPO. These considerations have been kept under review throughout the process of considering whether the period for which the PSPO has effect should be extended.

12.27. 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 obtained by the Council investigation in 2017-18 demonstrated that the location of the groups, independently of what they do whilst they are there, is a problem in and of itself because service users were 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, and are called 'Mum'. Partners and relatives supporting service users have also been approached and spoken to and have reported being distressed by the activities. Several service users provided evidence to the Council that these activities had a long-term impact on their mental health and wellbeing. These activities have continued within the 'designated area' throughout the time the PSPO has been in place and it is very likely that the activities will return in full to the area outside the Clinic should no action be taken and the PSPO be allowed to expire.

12.28. The evidence base demonstrates that there was a detrimental effect on the quality of life of other persons who are living in or otherwise visiting the locality. There is no evidence to suggest that the activities would not cause further detrimental effect if they recurred or recommenced outside the Clinic. The PSPO restrictions are directed at reducing the identified detrimental effect.

12.29. Balanced against this, 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'.

12.30. The Council's position is that whilst it may be correct that not *all* of the Pro-Life represented groups or their members engaged in all of these behaviours, there was a reasonable body of evidence that *some* Pro-Life activists did and that there would be no alteration in their behaviour absent an order which imposed restrictions on their activities.

12.31. The Council has considered its previous Options Assessment, which formed part of the report to Cabinet in January 2018. Officers 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 was given to whether there were alternative means of achieving a reduction or elimination of the detrimental effect on the quality of life of those in the locality. Each option had its own advantages and disadvantages.

12.32. The main issue for the Council is whether the PSPO remains 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. In addition, any such options would likely require evidence to be provided or action to be taken (such as making reports to the police or the Council) by individual Clinic service users or staff who had interacted with the individual concerned. This is not thought to be realistic or appropriate given the circumstances in which service users attend the Clinic. The best fit is thought to be a solution which attaches to the space as opposed to an individual. The Council concludes that the continued interference with ECHR rights is in accordance with the law and necessary to protect the rights and freedoms of others.

12.33. The Council has also had regard to the fact that (as outlined in the Report to Cabinet) there have only been three alleged breaches of the PSPO since it was introduced in April 2018. Only one of these incidents resulted in a Fixed Penalty Notice, which was paid in full and on time. This suggests that the PSPO is working well, is clearly understood by members of the public and the represented groups, and has had its intended effect. Moreover this does not suggest that the PSPO or its enforcement is imposing an unreasonable or disproportionate burden on the police or Council officers.

The public sector equality duty ('PSED')

12.34. 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

12.35. 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.

12.36. 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.

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

12.38. The law also requires that the duty to have '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.

12.39. The Council's assessment of the impact of the PSPO on different protected groups and the mitigation steps identified in relation to each group has been set out in previous sections of this EIA. In deciding whether the period for which the PSPO has effect should be extended, the Council has had full and proper regard to its continuing duties under the PSED.

Summary

12.40. The Council has considered 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 continuing to limit important fundamental rights;
- II. whether the proposed extension of the period for which the PSPO has effect meets the objective of facilitating that access;
- III. whether the proposal is no more than is necessary to accomplish that objective and
- IV. whether the proposal strikes a fair balance between the rights of the represented groups and those affected by their activities.

12.41. In making a decision on whether to introduce an order, the Council must 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.

12.42. This EIA identifies that some protected groups are negatively affected by the PSPO, as well as the mitigating measures that have been implemented.

12.43. On balance the Council considers that it is appropriate to extend the period for which this carefully drafted PSPO has effect.

CONCLUSION

13. Conclusion

13.1. The PSPO has been successful in addressing the detrimental impact of abortion related protests and vigils taking place outside the Clinic. The positive impact of the council's action has been felt by Clinic staff, service

users, those that attend to support service users, residents of and visitors to the area.

- 13.2. The evidence obtained by the council through its investigation, substantial consultation and continual review of the order, provides a reasonably sufficient evidence base to reach this conclusion.
- 13.3. Reports submitted to the Council as part of its consultation exercise demonstrate that the impact of the order has been largely welcomed by those who use the area and those who have visited the clinic. The impact on women and, in particular, pregnant women has to this extent been positive.
- 13.4. Written responses to the consultation from *Sister Supporter* and responses from others involved from a Pro-Choice perspective note there has been no negative impact on them and that the overall impact of the order has been positive for people living in the area and, in particular women and pregnant women.
- 13.5. Responses to the consultation indicate a smaller number of people who have raised significant concerns that the PSPO has prevented individuals from manifesting their religious views and imparting advice to women accessing the Clinic. Some of these comments have come from individuals who have participated in protest from a Pro-Life perspective and others from people who sympathise with their views or simply have concerns about the interference by the local authority in the matter of prayer and protest. It is acknowledged that, in implementing a PSPO, the council did negatively impact some individuals in relation to their expression of religious beliefs. Significant steps were taken in the implementation of the PSPO to mitigate this negative impact (including through careful formulation of the restrictions and by inclusion of the designated area). As part of the recommended extension of the order to April 2024, the negative impact on these groups has again been carefully considered and balanced against the wider positive impact on others.
- 13.6. Alternatives to extending the PSPO have been considered, such as taking no action and allowing the order to expire. A full Options Assessment was prepared prior to the decision in April 2018 to make the PSPO and the alternative options to extending the order have been considered again. However, efforts by the council to previously engage with Pro-Life represented groups and agree on acceptable activities outside the Clinic by way of a negotiated settlement were not successful and it has been clear from the information presented by those groups in court, through the recent consultation and in the press and social media, that they remain very firmly committed to the argument that a number of the behaviours targeted by the PSPO (including approaching Clinic service users directly and using graphic images) are critical to their mission and their work. It is evident from their current actions and words that, should the PSPO be allowed to expire, they will likely return to the same behaviours that have been established to cause distress, harassment and intimidation to those the PSPO is designed to protect.
- 13.7. Pro-Life groups maintain that their location and tactics are key to their strategy to engage with service users and to offer them counselling and

support. Pro-Choice representatives were similarly clear, prior to the introduction of the PSPO, that they would be unwilling to voluntarily cease their own protest activities and vacate the area without corresponding concessions from Pro-Life groups.

- 13.8. Evidence collected in November – December 2017 showed that activities causing concern were continuing outside the Clinic, despite the Council's prior engagement with the representative groups involved and explaining to them the harm their activities were having. The Pro-Life groups did not accept that there is evidence to suggest their activities are having any detrimental impact on those in the locality, including on service users and Clinic staff. Since that time, represented Pro-Life groups have suggested within the court proceedings and through the tenor of their consultation submissions that any detrimental effects on service users are outweighed by their overall goal of reducing the number of abortion procedures.
- 13.9. The Pro-Life groups have had ample time to suggest alternative proposals both before the original PSPO was made and in response to consultation when consideration has been given to extending the period for which it has effect. No alternative proposals were made in 2018 and no suggestions have been offered in the responses to the recent consultation on whether the period of the PSPO should be extended. In addition, as explained above, the Pro-Life groups have continued to use the designated area (as they are permitted to do). There is presently no evidence to suggest that they would remain in that location when the PSPO expires or would otherwise restrict or amend their activities. Further it is noted that GCN has continued its protest/vigil activity at other clinic locations and maintains staff on its payroll for such purposes (the evidence adduced in the legal challenges was that it had 12 staff on its payroll).
- 13.10. The Council concluded in 2018 that lesser measures would not be effective to address the behaviours impacting residents and visitors, and that some form of order was necessary and proportionate in order to achieve its aim of ensuring that service users can enjoy safe access to health care services without fear of harassment, alarm or distress and with an assurance of dignity and privacy which they were previously denied. Since being in place, the PSPO has reduced the detrimental effect of the activities on the quality of life of staff, residents and visitors.
- 13.11. The Council remains of the view that lesser measures will not be effective to address the behaviours complained of, and that an extension of the PSPO is necessary and proportionate in order to maintain the improvement in quality of life.
- 13.12. In completing this EIA the Council has had due regard to its Public Sector Equality Duty pursuant to s.149 of the Equality Act 2010. In particular the council considers that its aims in adopting and seeking to extend the PSPO dovetail with its duties to have due regard to the need to eliminate discrimination, harassment, victimisation and other conduct prohibited by the Equality Act; and to advance equality of opportunity, eliminate discrimination and remove or minimise disadvantages suffered by persons who share a

relevant protected characteristic when compared to persons who do not have that characteristic.

- 13.13. Balanced against this, the Council acknowledges and recognises that continuing the PSPO will adversely affect persons of the Christian faith, to the extent that it will prohibit their protest / vigil activities within a limited geographical area and restrict their ability to express their political and religious views, particularly by imposing restrictions on their right to engage in abortion-related prayer within the safe zone. The Council acknowledges that this represents a continued infringement of their rights to freedom of expression, thought, conscience and religion which will cause them particular disadvantage compared to persons who do not share their faith or any faith, and which thus causes them disadvantage.
- 13.14. However, moving forward (and with the benefit of clear judgements from the High Court, Court of Appeal and Supreme Court), the Council's position is that this infringement of rights remains justified as a proportionate means of achieving a legitimate aim and thus does not amount to indirect discrimination. Balanced against the adverse impact on persons of the Christian faith, there are clear positive benefits for women, particularly pregnant women and young women under the age of 19, who are over-represented within the Clinic's service users. It is important to recognise that this group includes children accessing health services, who may be considered vulnerable and in particular need of protection from harassment and distress. The analysis also identifies likely positive benefits for persons from BAME backgrounds who appear to be over-represented amongst both service users and residents of the area, and who are particularly likely to benefit from any overall improvement in access to the Clinic and in quality of life as a result of the continuing PSPO.
- 13.15. The Council has sought to ensure that adverse impacts on Pro-Life representative groups and their members as a result of the PSPO are minimised as much as possible. The safe zone created by the PSPO has been kept as small as possible and is limited to the area immediately adjacent to the Clinic. The restriction of activities within the safe zone is further mitigated by the creation of the 'designated area', where a small number of persons (4) are permitted to congregate and engage in protest activities / vigils, displaying posters, text or images and engaging in prayer and counselling. Pro-life groups have made use of this facility more or less on a full-time basis since the PSPO was first introduced. GCN's consultation response confirms that the group have in fact been able to contact and/or interact with Clinic service users from the designated area, albeit in lower numbers than when they previously sought to do so at the entrance to the Clinic. Pro-life groups have also carried out prayer vigils at the boundary of the PSPO safe zone, and local protests outside the Council's offices a short walk away from the PSPO area.
- 13.16. Although concerns have been raised since the introduction of the PSPO and through the consultation that the 'designated area' and activities permitted therein may cause a negative impact for groups including women, pregnant women, young women and members of the LGBT community accessing the clinic, the council has concluded that the provision of the 'designated area'

strikes a more proportionate balance between the competing rights of those affected by the order.

13.17. The Council has continually kept the impact of the PSPO, and in particular its impact on all groups affected, under continuous review. In particular the size, location and activities permitted within the 'designated area' have been kept under review to ensure that the PSPO achieves its intended aims of eliminating or reducing harassment and distressing behaviour on the one hand, without causing a disproportionate interference with the rights of representative groups and their members on the other.

13.18. The order has additionally been subject to significant additional scrutiny, with an appeal of the PSPO having been considered by the High Court and subsequent appeals which upheld the order, being considered by the Court of Appeal and Supreme Court. The outcome of that process to date has been that the order has been upheld in its entirety and a conclusion that the Council has struck the right balance in relation to the competing rights and impact on equalities matters for all involved.


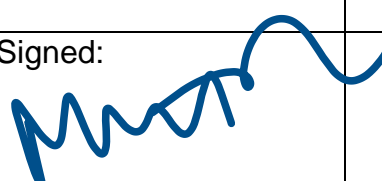
14. What evidence, data sources and intelligence did you use to assess the potential impact/effect of your proposal? Please note the systems/processes you used to collect the data that has helped inform your proposal. Please list the file paths and/or relevant web links to the information you have described.

Office for National Statistics (ONS):

- 2011 Census data (UK)
- 2011 Census data (Ealing)
- Ealing's 2016 Annual Population Survey (APS)
- Monitoring data from British Pregnancy Advisory Service (BPAS)
- 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 2nd July 2018
- Appendix 3b: Court of Appeal judgement, dated 21st August 2019
- Appendix 3c: Supreme Court certificate of decision, dated 10th 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

Action Planning: (What are the next steps for the proposal please list i.e. what it comes into effect, when migrating actions¹ will take place, how you will measure impact etc.)				
Action (in event of decision to implement a PSPO)	Outcomes	Success Measures	Timescales/ Milestones	Lead Officer (Contact Details)
Notification to all statutory consultees to notify them of the outcome of the Cabinet decision	All statutory consultees are personally informed of the order	Awareness across statutory partners of the order's prohibitions and enforcement strategy	April 2021	Mark Wiltshire
Engagement and education of local residents, represented groups and clinic staff and members.	Use of local engagement exercises, enhanced patrols, signage and publicity to educate interested parties	Local awareness of the PSPOs conditions and enforcement plan	April 2021	Jess Murray
Additional Comments:				

Sign off: (All EAA's must be signed off once completed)

Completing Officer Sign Off:	Service Director Sign Off:	HR related proposal (Signed off by directorate HR officer)
Signed:  Name: Paul Murphy (Safer Communities Operations Manager)	Signed:  Name: Mark Wiltshire (Director of Community Development)	Signed: N/A Name (Block Capitals): N/A Date:

2020 Full Equalities Analysis Assessment

Date: 27/01/2021	Date: 28/01/2021	
For EA's relating to Cabinet decisions: received by Committee Section for publication by (date):		

Appendix 1: Legal obligations under Section 149 of the Equality Act 2010:

As a public authority we must have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this 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 protected characteristics are: AGE, DISABILITY, GENDER REASSIGNMENT, RACE, RELIGION & BELIEF, SEX, SEXUAL ORIENTATION, PREGNANCY & MATERNITY, MARRIAGE & CIVIL PARTNERSHIP
 - Having due regard to advancing equality of opportunity between those who share a protected characteristic and those who do not, involves considering the need to:
 - a) Remove or minimising 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 characteristic that are different from the needs of the 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.
 - Having due regard to fostering good relations between persons who share a relevant protected characteristic and persons who do not, involves showing that you are tackling prejudice and promoting understanding.

Complying with the duties may involve treating some people more favourably than others; but this should not be taken as permitting conduct that would be otherwise prohibited under the Act.



Report for:
ACTION

Item Number:

Contains Confidential or Exempt Information	No
Title	Plans to develop an Ealing Building Blocks of Health Research Collaboration (BBHRC) – Pending funding from National Institute of Health Research
Responsible Officer(s)	Amanda Askham, Strategic Director of Strategy and Change and Anna Bryden, Director of Public Health
Author(s)	Dr Maddy Gupta-Wright, Consultant in Public Health Dr Vaishnavee Madden, Consultant in Public Health
Portfolio(s)	Cllr Josh Blacker and Cllr Jasbir Anand
For Consideration By	Cabinet
Date to be Considered	8 th November 2023
Implementation Date if Not Called In	1 st January 2024
Affected Wards	All
Keywords/Index	Research capacity building, research infrastructure, academic collaborations, evaluation and systems research, participatory action research, data systems and community public involvement

Purpose of Report:

Pending a successful funding outcome from the National Institute of Health Research (NIHR), this report recommends that the council enter into a contract with the Department of Health and Social Care (DHSC) to establish a Health Determinants Research Collaboration in Ealing using funding of £5 million, to build sustainable research capacity and infrastructure in the council over the next 5 years.

This will be an exciting and significant opportunity for Ealing. If successful, our bid will allow us to create a step change in our learning culture, embarking on a journey to develop and embed our own research capacity and infrastructure within the council and with our communities.

The purpose of this funding and programme of work will be to:

- Create a research-active council equipped to lead and collaborate on high quality research of the wider/social determinants of health ('building blocks of health'), using a range of research and evaluation methods.
- Build a culture of community involvement and co-production of research with residents to ensure we address the issues important to local people.

- Use the findings of research in Ealing to influence and impact policy, strategy and service change affecting building blocks of health through a stronger learning and innovation culture in order to enable more thriving, healthy communities in Ealing.

The Ealing collaboration will be named the Ealing Building Blocks of Health Research Collaboration (BBHRC).

1. Recommendations for DECISION

That Cabinet:

- 1) Authorise the council to enter into a funding contract with the Department of Health and Social Care (DHSC) for NIHR Health Determinants Research Collaboration (“the Funding Contract”) to receive funding of £5m to establish the Ealing’s Building Blocks of Health Research Collaboration (BBHRC), if the outcome of the bidding process is successful.

And in this event:

- 2) Delegate authority to the Strategic Director of Strategy and Change and the Director of Public Health to commence work on establishing Ealing’s Health Determinants Research Collaboration, called ‘Ealing Building Blocks of Health Research collaboration (BBHRC)’ from 1st January 2024, in line with its aims, objectives and deliverables set out in section 3 of this cabinet report.

and

- 3) Authorise the Strategic Director of Strategy and Change and the Director of Public Health following consultation with the Director of Legal and Democratic Services and the Director of Strategic Resources to enter into such partner agreements, research project agreements and model research agreements with research partners including without limitation Institute of Development Studies (IDS) at the University of Sussex, Imperial College London (ICL), and London School of Hygiene and Tropical Medicine (LSHTM) and other organisations as part of the BBHRC pursuant to the Funding Contract, as required.

2. Recommendations for NOTING

n/a

3. Reason for Decision and Options Considered

Ealing council has applied for, through a highly competitive process, Health Determinants Research Collaboration (HDRC) funding of £5 million from the National Institute of Health Research (NIHR), to build sustainable research capacity and infrastructure in the council over the next 5 years. This was in collaboration with academic and community co-applicants and followed a competitive application process. It will be named the Ealing Building Blocks of Health Research Collaboration (BBHRC). This is an exciting opportunity for a step change in our learning culture.

In stage 1 of the application process, the NIHR commended Ealing for the “*well-written and timely proposal with a strong team of co-applicants*”. They noted our “*strong focus on the wider determinants [of health] and fighting inequalities and [our] conveyed sense of positivity and commitment to working with, and for, the borough’s ethnically mixed population*”. They also commended the “*strong participatory angle to research proposed and the legacy that the HDRC will have*” in Ealing.

Ealing BBHRC’s vision will be to develop a collaborative, impactful research partnership focused on promoting the building blocks of health and equity.

The **aims** of the BBHRC will be to:

1. Transform Ealing’s research system and infrastructure.
2. Strengthen and grow Ealing’s research collaborations.
3. Drive organisational capacity building and culture change.
4. Embed diverse and inclusive community involvement in our transformation.

The **objectives**, aligned with these aims, are to:

1. Establish the **foundational structures**, roles, governance and partnership arrangements, to operate a centre of excellence in applied research on the building blocks of health.
2. Improve the capacity and culture for **community involvement and co-creation of research** with residents and community groups ensuring research addresses issues important to local people, particularly from underserved communities.
3. Improve accessibility and quality of our **data, including data linkage and integration**, to inform staff, partners and our communities.
4. Develop capacity to use a **plurality of innovative research methodologies** for different research questions, including social science and complex systems-informed research and evaluation methods.
5. Work with academic partners to embed **high quality research training and development**, with a focus on building capacity at all stages of the career pathway for council staff, and community groups.
6. **Strengthen our research collaborations** so there is alignment of vision, priorities, and work for academics, council staff, local partners and our communities.
7. **Disseminate and share learning** of our approach, activities and academic outputs, through our networks, building our reputation as a centre of excellence for applied health equity focused research.
8. Leverage the learning culture enabled by BBHRC to focus the role of the council as **enabler of systems change approaches** to improving the building blocks of health.

In addition to creating the necessary infrastructure and processes to build the research collaboration, **the main transformative deliverables** include:

1. Developing a sustainable systemic Participatory Action Research infrastructure. This includes training a network of community researchers. They will participate in action research alongside council staff, to co-create new knowledge and action together.
2. Integrate health and council data and co-produce a community data dashboard.

3. Conduct an in-depth baseline assessment of the council's current system of evidence use and creation.
4. Develop a bespoke and curated training and development offer for staff at all levels and community partners.

If successful, the BBHRC bid will directly support the Council Plan 2022-2026 and the Health and Wellbeing Strategy 2023-2028 as it focusses on building capacity for research that will inform the council's approach to tackling inequalities through the building blocks of health.

Three academic partners, offer unique and complementary expertise to build Ealing's research capacity (Institute of Development Studies - participatory action research; Imperial College London - epidemiology and data linkage; London School of Hygiene and Tropical Medicine - systems thinking and evaluation). Collaborating with communities is central to BBHRC's vision and embedded throughout, including inclusive and best practice community and public involvement, ensuring that research is relevant to, and works with, Ealing's underserved communities.

The leadership of the collaboration will sit within the council's Strategy and Change Directorate with significant input from Public Health in the Adults and Public Health Directorate in the council.

The intention is for Ealing BBHRC to impact Ealing residents and staff, with improvements to policy and services as a result of the research partnership. There will be a greater culture of evidence use and creation, on the building blocks of health, shifting systems towards greater health equity.

Dissemination of the work of Ealing BBHRC will also include sharing learning and approaches for the benefit of people and organisations in Ealing, regionally, nationally and internationally by publishing and sharing through regional and national networks.

NIHR are proposing to announce the outcome of the funding application process by the end of November 2023.

If Ealing is successful in securing NIHR funding, Option 1 will be to enter into a contract with the Department of Health to establish a National Institute of Health Research (NIHR) Health Determinants Research Collaboration in Ealing (the Ealing BBHRC).

Option 2 will be to decline the contract.

4. Key Implications

The bid is to develop the council's capacity and infrastructure to conduct research which will inform work to create greater health equity via the 'building blocks of health'. It will impact the whole council, and the capacity will support the council's

existing strategies that aim to address inequalities, including Health and Wellbeing Strategy 2023-2028 and Council Plan 2022-2026, as well as the council's ambition to further develop and embed greater community participation and involvement.

Culture Change and Capacity Building

Ealing BBHRC will create organisational culture change in the use and creation of research evidence to inform our work on the 'building blocks of health'. Staff across the organisation will be able to access a range of training and development opportunities that will be developed in collaboration with our academic and community partners. Residents and voluntary and community sector organisations will also have capacity building opportunities.

Collaboration

The Ealing BBHRC will establish partnerships with three Higher Education Institutes (HEIs), for their specific and renowned expertise:

- Institute of Development Studies (IDS) to develop our community and staff participatory action research infrastructure.
- Imperial College London to support our data integration aspirations, particularly around health and wider determinants of health data.
- London School of Hygiene and Tropical Medicine (LSHTM) for their expertise assessing the use of evidence in local government, research using systems thinking and stronger evaluation.

Memorandums of understanding or collaborative or other agreements will be entered into with each of these bodies during the first year of the programme of work. The partnerships will also be managed through a number of governance mechanisms.

Inclusive, consistent, best practice communities and public involvement (CPI) will be core to the development of the Ealing BBHRC, its governance structures, decision-making processes and future research, putting communities at the heart of research in Ealing.

Human resource and Governance implications

The BBHRC will be led by the Strategic Director of Strategy and Change, the Director of Public Health and a part time Research Director (to be recruited). The bid for the BBHRC had a strong team of officer co-applicants from core functions across the council including strategy and change, community engagement, strategic intelligence, organisational development, and public health, who, if successful, will be central to delivering a sustainable, integrated, and long-term research collaboration. Officers have carefully considered the roles required to deliver the workstreams for the BBHRC to create the necessary impact and ensure future sustainability.

There will be a number of specific new posts created and funded through the NIHR grant.

5. Financial

There are no direct financial consequences for the council of this project as it would be funded from an NIHR grant and there is no requirement for specific match funding. The requirements of the bid are that no inflationary funding, including for pay awards, is included. These costs will be provided by additional grant over the lifetime of the project in consultation with NIHR.

As the project is over a period of five years, there is a risk of the council incurring on-going commitments and liabilities, such as redundancy costs. The project will be managed to minimise or eliminate these liabilities, for example through the use of redeployment. Regular and transparent monitoring and reporting throughout the lifetime of the project will increase the likelihood of this being successful.

After allowing for any additional funding for inflation, the grant will be cash limited, which will require the council to contain costs within the overall grant total each year.

The council will incur indirect costs through the oversight and strategic leadership provided by Strategic Director of Strategy and Change and Director of Public Health. Recruitment of posts for the BBHRC will be managed by HR within existing resources. Ealing's Finance service will provide financial oversight of the programme from within existing resources.

There are a number of ICT infrastructure costs that are included within the investment for the Ealing's data & analytics strategy and its council funded budget. This will also support the data linkage element of the EBBHRC programme. There will be three academic institutions that will be partners through the programme. Some degree of financial oversight of these bodies will be required from the council to ensure total costs are within the terms of the grant.

The table below summarises the costs and funding of the project by year.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	£000	£000	£000	£000	£000	£000
Total research costs	1,021.0	1,150.0	1,021.1	930.5	876.7	4,999.4
Funding from NIHR	-1,021.0	-1,150.0	-1,021.1	-930.5	-876.7	-4,999.4
	0	0	0	0	0	0

6. Legal

The council has the statutory power to receive grants and enter into contracts and agreements with third parties.

7. Value For Money

We have considered carefully the resources required to deliver the ambitions and activities of the BBHRC. Our approach has the following strengths:

- A strong team of internal council co-applicants across the main council functions will ensure sufficient integration and alignment of the BBHRC adding value to the council's work as a whole.
- Partnership with 3 higher education institutions offering leading expertise in complementary areas of research capacity building. Each workstream has an ambitious and transformational agenda, and the salary costs of academics who will support us to achieve these ambitions, represents value for money.
- A number of new dedicated posts will be created throughout BBHRC's initial 5-year duration, with careful thought given to the requirement for each dedicated role, in order to ensure effective delivery of our workplans and achieve the necessary research transformation required.
- As an exercise in research system transformation and culture change, we are prioritising substantial investment in our training and development element, aimed at a range of staff, including senior management levels and building different levels of research expertise.

8. Sustainability Impact Appraisal

It is expected that the delivery of the Ealing BBHRC will support the council's sustainability objectives by adhering to the system-wide principles that also address the climate crisis.

In addition, the BBHRC will enable the council to undertake research on climate action as a key building block of health both internally regarding its own approach to sustainability and externally in terms of the policies and strategies that relate to addressing the climate crisis for Ealing's residents.

9. Risk Management

Risk	Mitigation
Lack of joint and shared understanding of vision of BBHRC	Core module on building blocks of health and research co-produced with academia, communities & council. Embed the development and work of the BBHRC into all council strategic and operational work through senior leadership
Lack of staff capacity to engage with research and development opportunities	Organisational plans to incentivise staff engagement in this work, including restructure, new resources, releasing time, discussion of training needs during annual appraisals, embedding BBHRC development and work into work plans
Resource capacity constraints on interventions that tackle the building blocks of health that research can inform	All council plans/strategies are developed based on Health and Wellbeing Strategy and Council Plan; resources re-aligned over time where needed. BBHRC will enable us to apply for further funding for research into action grants
Lack of alignment of research and policy/decision-making cycles	Annual research priority setting processes help to prioritise research that will make an impact on policymakers and practitioners, in line with policy and commissioning cycles

10. Community Safety

Community safety is a key building block of health and may emerge as a research theme allowing the BBHRC to impact more effective strategy and policy on community safety for Ealing residents.

11. Links to the 3 Key Priorities for the Borough

The BBHRC will enable the council to conduct its own high-quality research/evaluation of council work addressing all three key priorities for Ealing's administration: fighting inequality; tackling the climate crisis; and creating good jobs, the latter two as key building blocks of health.

In particular, the BBHRC will address 'fighting inequality'. By having capacity to conduct our own research on the building blocks of health, which are root causes of inequality, we will be able to understand our local inequalities in more details and learn of more effective and sustainable ways to address them.

12. Equalities, Human Rights and Community Cohesion

A full Equality Analysis Assessment (EAA) is not required for this work at this stage.

The BBHRC's core aim is to address health equity through greater capacity and infrastructure to do locally meaningful research with a diverse range of residents on a diverse range of building blocks of health. These include structural discrimination

and community development issues. Attention to equality, diversity and inclusion will be embedded into the core work of the BBHRC. As such the BBHRC will conduct an annual iterative process of analysing equality diversity and inclusion impacts of the programme.

Drawing on NIHR guidance on inclusivity in research and their Equality, Diversity and Inclusion toolkit, the BBHRC will ensure that communities and public involvement opportunities in the building of research capacity and future research itself, are accessible and inclusive. For the development of the collaboration itself, this means wide representation of our diverse communities in CPI activities and roles. The BBHRC will address practical and structural barriers to involvement, e.g. payment for time (guided by NIHR payment guidance, and factored into the grant-funded costs), cultural competence of communications and branding of research.

The BBHRC will ensure that recruitment processes for recruiting community members are fair and transparent, reflecting equality and diversity duties, including members of recruitment panels from diverse backgrounds.

The BBHRC will ensure that choice and flexibility in opportunities for the CPI are explicit.

The BBHRC will review research protocols from an EDI perspective, including the study design, recruitment approaches or inclusion/exclusion criteria.

In addition to the above the BBHRC set up can draw on the full EAA completed for the Health and Wellbeing Strategy 2023-2028 as the BBHRC delivers several actions in the first-year action plan of the strategy, against its commitments.

13. Staffing/Workforce and Accommodation implications:

See section 4 Key implication for specific staffing implications.

New staff will be based in Ealing council buildings and the community.

14. Property and Assets

There are no property or asset implications.

15. Any other implications:

N/A

16. Consultation

The proposal for BBHRC built on community and partner intelligence from other recent consultation processes, most notably, that which informed the Health and Wellbeing Strategy 2023-2028.

Extensive consultation with all co-applicants including from academic partners (IDS, LSHTM and ICL), Ealing and Hounslow Community and Voluntary Service (EHCVS), Golden Opportunity Skills and Development (GOSAD), Southall Community Alliance (SCA), Ealing Citizens tribunal, and also Cllr Blacker, was carried out for the development of the proposal.

High quality community and public involvement (CPI) has been essential throughout the development of the BBHRC proposal. We have undertaken this through our voluntary and community sector partners and their connected community groups and residents, and also our community champions programme of volunteers, our existing peer researchers and the Citizens Tribunal for Ealing's Race Equality Commission.

Co-development of the proposal's content with our 4 co-applicants representing community voices (3 in VCS (EHCVS, GOSAD and SCA) and 1 as chair of Ealing's Citizen's Tribunal), has been key and these partners have facilitated the involvement of communities' and residents in Ealing's bid through a series of virtual community conversations. These have included:

- Workshop session online with EHCVS Mental Health Forum
- Workshop session online with EHCVS' wider community of volunteers, funded VCS organisations, and community leaders including the council's community champions
- Discussion online at Ealing Community Network's AGM
- Discussion at Ealing's young people event
- In person workshop with 14 participants re: setting up coproduction of the Health and Wellbeing Strategy action plan – discussion with community leaders.

17. Timetable for Implementation

If successful in the funding application, the work to begin delivery of the first year of the programme will start from 1 January 2024, with initial mobilisation activities taking place across November and December. The proposed implementation plan will be based on these key areas across the 5 years:

Years 1 and 2 will focus on recruitment of new staff, developing governance arrangements and performance, financial, ethical and information governance frameworks. The communications, community and public involvement and dissemination strategy will be developed, alongside the BBHRC website.

Years 2 and 3 will focus on developing the community participatory action research infrastructure, the data linkage and sharing elements including developing an internal platform for sharing qualitative insights across the council, integrating council data with health data and co-producing the community data dashboard. Staff development opportunities will be more broadly rolled out, and the best practice standard for community and public involvement in research will be co-developed.

Years 4 and 5 will focus on dissemination of learning and research outputs, embedding the training and development offer into core training, evaluating impact of BBHRC and considering options for future sustainability.

BBHRC's anticipated impact will be:

- 1) Better evidence informed policy and practice on the building blocks of health
- 2) Greater research evidence creation on the building blocks of health
- 3) Greater learning from BBRHC locally, regionally and nationally.

18. Appendices

None

19. Background Information

[Call for proposals: NIHR Health Determinants Research Collaborations \(HDRC\) specification document | NIHR](#)

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12. Ealing Council Plan 2022-26
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27. UK Standards for Public Involvement

28. NIHR Involve

29. NIHR Being Inclusive in Public Involvement in Health Research

30. NIHR Resign Design Service Equality, Diversity and Inclusion toolkit

31. NIHR Payment Guidance

32. Holman, D., Salway, S., Bell, A., Beach, B., Adebajo, A., Ali, N. and Butt, J., 2021. Can intersectionality help with understanding and tackling health inequalities? Perspectives of professional stakeholders. Health Research Policy and Systems, 19(1), p.97.

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Amanda Askham	Strategic Director for Strategy and Change	11 Oct 2023	12 Oct 2023	/
Anna Bryden	Director of Public Health	27 Sept and 3 Oct 2023	27 Sept and 3 Oct 2023	/
Kevin Kilburn	Interim Assistant Director Strategic Finance	27 Sept and 3 Oct 2023	27 Sept and 3 Oct 2023	Financial
Cllr Blacker	Cabinet Member for Healthy Lives	4 Oct 2023		/
Cllr Anand	Cabinet Member for Tackling Inequality	4 Oct 2023		/
Chuhr Nijjar	Senior Contracts Lawyer	5 Oct 2023	9 Oct 2023	Legal
SLT	/	18 Oct 2023	18 Oct 2023	/
External				

Report History

Decision type:	Urgency item?
Key decision	Yes
Report no.:	Report author and contact for queries:
	Maddy Gupta-Wright, Consultant in Public Health, Public Health guptawrightm@ealing.gov.uk

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Report for: ACTION
Item Number:

Contains Confidential or Exempt Information	NO
Title	Update on School Places and Children’s Services Capital Approvals
Responsible Officer(s)	Tamara Quinn, Assistant Director Planning, Resources & Service Development, Ext. 8444, E-mail: TQuinn@ealing.gov.uk
Author(s)	Laurence Field, FieldL@ealing.gov.uk , 020 8825 5425 Kim Price, Kprice@ealing.gov.uk , 020 8825 8698
Portfolio(s)	Cllr Kamaljit Kaur Nagpal
For Consideration By	Cabinet
Date to be Considered	8 th November 2023
Implementation Date if Not Called In	20 th November 2023
Affected Wards	All
Keywords/Index	School place planning, primary school, high school, special school, SEN, Capital Programme, ARP, capital approvals

Purpose of Report:
The purpose of this report is to:

1. Update Cabinet with the position on school places and current projections (including for pupils with Special Educational Needs).
2. Update Cabinet on the work being done to ensure sufficient secondary phase and special needs places are available, including identifying further potential opportunities for providing additional places, and the actions being taken to manage surplus places where numbers have reduced at primary phase.
3. Seek approvals in relation to Schools Energy Surveys, Reinforced Autoclaved Aerated Concrete (RAAC),
4. Seek approval to consult on the potential to increase the planned capacity of John Chilton School at the school’s Orchard Site, including moving to publishing statutory proposals if the school and Council are in agreement to proceed.

1. Recommendations

It is recommended that Cabinet:

- i. Notes sections 3.1 and 3.2 which set out the updated projections in relation to demand for primary and secondary school provision across the borough and the proposed strategy to meet demand.

- ii. Notes the updated projections and progress made with regards to securing additional provision for pupils with Special Educational Needs, section 3.3.
- iii. Approves the inception of £0.171m confirmed funding from the carbon offset fund into the 2023/24 Schools capital programme, for undertaking Schools Energy surveys to inform decisions by schools and the Council in relation to energy, sustainability and climate action.
- iv. Approves the invitation and evaluation of tenders for undertaking Schools Energy surveys to inform decisions by schools and the Council in relation to energy, sustainability and climate action.
- v. Notes the identification of Reinforced Autoclaved Aerated Concrete (RAAC) at The Ellen Wilkinson School for Girls and authorises the Assistant Director: Planning, Resources and Service Development to make all necessary arrangements in relation to Department for Education (DfE) guidance, including the invitation and evaluation of tenders for any associated works, and specialist consultancy advice, funded from the existing approved High Priority Condition Programme, noting that the DfE has advised that they will provide reimbursement for all mitigation works that are capital funded.
- vi. Authorises the Assistant Director: Planning, Resources and Service Development, to work with the John Chilton School to undertake consultation on increasing the planned capacity of the school from 130 to a higher capacity and, following review of the consultation responses, and in consultation with the Portfolio Holder and the school's Governing Body, authorises the Assistant Director: Planning, Resources and Service Development to publish the necessary Statutory Proposals to increase the planned capacity, if the parties agree to do so.

2. Reason for Decisions and Options Considered

The Council has a statutory duty to secure sufficient school places and to promote high educational standards, ensure fair access to educational opportunity and promote the fulfillment of every child's educational potential. The Council must also promote choice and diversity.

The legal framework within which Cabinet must consider the proposals is set out in **section 5**.

The relevant background report on projected future demand, Update on School Places and Children's Services Capital Approvals, was presented to Cabinet on the 12th of October 2022, and can be accessed via the following link:

[Agenda for Cabinet on Wednesday, 12 October 2022, 7.00 pm \(moderngov.co.uk\)](https://www.moderngov.co.uk/Agenda-for-Cabinet-on-Wednesday-12-October-2022-7.00-pm)

3. Key Implications

3.1. Primary School Places, 4- 11 year olds

The number of permanent reception places in Ealing reduced by a further three forms of entry in September 2022, to continue to manage surplus following the reduction in

primary demand. The 4,350 places provided was sufficient to meet the demand generated by the corresponding 5,163 live births, with 3,949 children on roll in reception in January 2023. This represented a surplus of 9%.

The Council and schools have taken further steps to manage the projected surplus, with one planned admission number (PAN) reduction in September 2023, which reduces the overall number of reception places available by 30, and a further 1.5 form (45 place) reduction agreed for September 2024. (Note: PAN is the number of pupils in each year group that the admission authority has agreed will be admitted.) However, to mitigate localised pressure in the Acton area following the closure of a local independent school, a one form of entry reception bulge class was agreed at a school in Acton for September 2023, using existing accommodation. The 4,320 places provided is expected to be sufficient to meet the demand generated by the lower number of corresponding births, with a projected borough level reception surplus of 10% for 2023-24.

The September 2015 intake (born in 2010/11) represented the peak in births in the borough. Annual births reduced further to 4,329 in 2021/22 (the September 2026 intake) and are forecast to remain around 4,500 for the next three years. The Council therefore expects to have sufficient capacity at a borough level to meet demand over the five-year primary projection period and beyond, with an increasing number of surplus places, and will work closely with schools to continue to manage this projected surplus.

While surplus capacity creates some challenges for schools, it is important that the Council is able to operate with some surplus to flexibly meet demand and therefore a 5-10% surplus is desirable and in line with guidance. There also remains considerable uncertainty around the impact of both longer-term migration trends post COVID and Brexit and of the economic downturn (including any further risk from independent school closures) on school roll forecasts. The council will therefore continue to monitor and respond to any localised demand pressures on an ongoing basis.

The major planned housing developments, including The Green Quarter and Middlesex Business Centre, could potentially add more than 10,000 additional residential units in Southall over the next 10-20 years based on the latest plans. The child yield from these developments will be additional to current projections and primary school provision has been allowed for in the planning approvals in relation to additional demand from those developments. Options for delivery are under review. It will be important to manage the timing of any new provision carefully to ensure additional places are not made available before they are needed to avoid destabilising existing schools in the area.

3.2. Secondary School Places, 11- 16 year olds

The total number of year 7 places in Ealing remained at 3,814 in September 2022 and 2023. This was sufficient to meet the demand for secondary places in 2022-23, with 3,665 children on roll in year 7 in January 2023, which represented a surplus of 4%.

The popularity of Ealing secondary schools, coupled with large cohort sizes and in year migration, has continued to put pressure on places across all secondary year groups and the council are working closely with all schools and academies in the borough to ensure sufficient places are available for in year admissions.

As the smaller cohorts currently progressing through primary school move into high school, the Council expects to have sufficient capacity at a borough level to meet demand for the remainder of the projection period (7 years), based on our latest projections. Ealing remains a significant net exporter of secondary school pupils and the Council expects smaller cohorts to reduce the proportion of children going to schools outside of the borough, which may provide some mitigation against the impact of falling cohort sizes on Ealing secondary schools. The Council are working closely with schools to review capacity as secondary demand decreases, with consideration being given to PAN reductions from September 2025 onwards. It will be important to ensure that any PAN reductions agreed at secondary level still enable sufficient capacity to be provided as cohorts move through the year groups to meet in year demand.

Despite the increase in capacity and projected reduction in demand elsewhere in the borough, secondary demand is forecasted to remain high in Southall due to a combination of the increased popularity of high schools in the area, primary cohort sizes reducing later than elsewhere in the borough and major planned residential developments. In response to this forecasted demand, an additional form of entry is planned at Villiers High School from September 2025 as part of their rebuild.

3.3. Places for pupils with Special Educational Needs (primary, secondary and post 16)

The overall number of children and young people (age 0-25) with Education Health and Care plans (EHCPs) has increased by 766 plans (29%) in the past three years to 3,445 in January 2023, in line with national and London trends. The council saw a 10% increase in plans during 2022, and there has been further growth during 2023 to 3,665 plans (September 2023).

Since 2018, the prevalence of pupils aged 3-24 requiring an EHCP has increased from 2.3% to 3.7%. The number of primary age plans continues to rise, despite a now falling primary age population. If prevalence continues to increase at the current rate, the number of plans could increase to over 4,100 plans by 2025-26.

While the early intervention and mainstream inclusion priorities set out in [Ealing's Strategy for Additional and Special Education Needs, Disabilities and Inclusion 2023-2027](#) are key to reducing demand over time, up to a further 500 additional specialist places could be needed by 2028 if the current rising trend in EHCP prevalence continues.

The number of specialist places available in Ealing special schools and additionally resourced provisions (ARPs) increased from 1,258 to 1,346 in September 2023 and the council is considering a broad range of options to continue to close the projected gap. The current delivery plan includes further satellites and/or expansions of John Chilton, Mandeville and St Anns special schools, and two further secondary ARPs in mainstream high schools.

The council are also working closely with mainstream schools with excess accommodation due to falling rolls and special schools to explore opportunities for developing specialist resourced provision and / or satellites on mainstream sites. The main need profile required is for severe learning difficulties and associated challenging behaviours related to speech language and communication needs such as autism.

Should there be a further DfE free school bid round, a decision would be taken about whether to apply based on progress made in delivering additional specialist places and demand forecasts at that stage.

3.4 Energy Surveys

In order to assist schools and the Local Authority in energy, sustainability, decarbonisation and climate action planning, and additionally to assist with sourcing funding to decarbonise the heat supply in our schools and other buildings, this project involves the production of energy surveys of school sites.

The energy surveys will follow industry guidance and include various elements including building information, energy consumption and carbon emissions, heating and hot water systems and opportunities, key challenges and plans for the sites.

The contents of the surveys will comply with the eligibility criteria of Public Sector Decarbonisation Scheme.

3.5 Reinforced Autoclaved Aerated Concrete (RAAC)

The DfE is asking all Responsible Bodies (local authorities, academy trusts, dioceses, and college groups) to look for RAAC in their school buildings. RAAC is a lightweight, 'bubbly' form of concrete commonly used in construction between the 1950s and mid-1990s. It is predominantly found as precast panels in roofs (commonly flat roofs, sometimes pitched) and occasionally in floors and walls.

Through following the DfE process, RAAC was identified in some buildings at The Ellen Wilkinson School for Girls (EWS) in Acton.

EWS is a Foundation School and the School Governing Board owns the site and buildings. Foundation schools are a type of state school that are funded by the local authority but have more freedom in the way they operate than community schools. The school was originally formed in 1974 as a comprehensive school for girls, before becoming Grant Maintained in April 1992, and then a Foundation School in September 1999.

EWS had been identified for new build, remodelling and refurbishment through the second phase of the Building Schools for the Future (BSF) programme, and would have received substantial capital investment at that time. However, BSF was cancelled in July 2010, and the school did not receive investment through that programme. The buildings have since continued to be maintained through Government-funded School Condition Allocation projects.

Subsequent to the confirmation of the presence of RAAC at EWS, DfE guidance in relation to education settings changed on 1st September 2023, from monitor and manage RAAC, to instead vacate areas with confirmed RAAC as a precautionary measure, pending temporary and longer-term mitigation measures.

A number of temporary measures were then put in place to bring a number of areas of the school back into use to ensure the school could remain operational and continue to deliver the curriculum, which it has.

Plans are being developed, in line with DfE guidance, for the next stage of works required to start to bring the remaining spaces that are currently out of use back into

use. This will require a number of activities including structural design work, tender information production, invitation and evaluation of tenders, appointment of contractors, and the undertaking of the remediation works. Approval is sought in this report to commence those activities.

3.6 John Chilton School

Phased works are on-going to enable John Chilton School to fully occupy facilities at Wood End Primary (John Chilton Orchard Site), following DfE and Ealing Cabinet approvals. On completion of works to the additional space, it will be possible to further increase the planned capacity of John Chilton School, to help meet the further need for additional SEND places outlined in paragraph 3.3 above.

It is proposed to undertake stakeholder consultation in relation to the potential for increasing the planned capacity from 130 to a higher capacity at John Chilton Community Special School. Consultees will be asked to comment upon proposals and other matters associated with such an expansion. Subject to the outcome of the consultation, the Council and the school would agree to publish a Statutory Notice for the expansion.

The proposals will require investment in an existing building at Wood End Academy and will be implemented as part of the Council's Capital Programme. Building works would be required to adapt learning spaces to meet the needs of the pupils. Full details including estimated costs will be included in a future Cabinet report along with the responses to the statutory process outlined below for Cabinet to decide whether to proceed. Additional teaching and non-teaching staff would also be recruited. Authorisation to invite and evaluate tenders has already been obtained.

With regard to the statutory consultation period, if the proposal proceeds to that stage, the Notice will be completed using the applicable DfE prescribed alterations template and guidance. This proposal is not related to any other proposal. All statutory requirements will be carried out regarding the consultation.

Notification of the publication of the Statutory Notice and Statutory Proposal will be advertised widely, in line with DfE guidance. During this time any person could object to or make comments on the proposals by sending written representation to the Council directly or via the school office, to have their views on the proposals taken into consideration by the decision maker (Cabinet in this instance).

4. Financial Implications

Financial impact on the budget

The Schools Service capital programme is set out in the February 2023 Budget Strategy and MTFs 2023/24 to 2026/27 Cabinet Report Appendix 7 Capital Programme 2022/23 to 2027/28). The Cabinet report is available on the Council's website at the following address:

[Agenda item - 2023/24 Budget Strategy and Medium Term Financial Strategy \(MTFS\) \(modern.gov.co.uk\)](https://modern.gov.co.uk)

Energy Surveys

Table 1: Capital Programme: High Priority Condition Works

Scheme	Funding Source	2023/24 £m Estimate	2024/25 £m Estimate (excl. 24/25 allocation)	Total 2023-25 £m (excl. 24/25 allocation)
Schools Energy Surveys	Carbon Offset/ S106	0.179	-	0.179

RAAC

Table 2 shows the revised High Priority Condition Works grant in the capital programme, from which the RAAC activities will be funded, pending reimbursement from DfE.

Table 2: Capital Programme: High Priority Condition Works

Scheme	Funding Source	2023/24 £m Estimate	2024/25 £m Estimate	Total 2023-25 £m Estimate
High Priority Condition Works – currently in capital programme	Grant	0.285	-	0.285
High Priority Condition Works – grant allocations for 22/23 & 23/24	Grant	5.971	5.950	11.921
High Priority Condition Works	S106	0.459	-	0.459
Total		6.715	5.950	12.665

John Chilton School**Table 3: Funding stream for Schools SEN Expansion Programme**

Scheme	2023/24 £m	2024/25 £m	Total 2023-25 £m
EXISTING SCHOOLS SEN EXPANSION PROGRAMME	4.000	-0.622	3.378
NEW HIGH NEEDS PROVISION CAPITAL ALLOCATIONS GRANT (22/23 & 23/24)	8.802	-	8.802
TOTAL REVISED SCHOOLS SEN EXPANSION PROGRAMME	12.802	-0.622	12.180

Special education needs places are funded from the “high needs block” of the Dedicated Schools Grant (DSG) and the number of places is formally agreed with the Education and Skills Funding Agency (ESFA) each year. Schools also receive ‘top-up’ funding on a per pupil basis which relates to standard support needs and the school setting. All revenue costs are therefore expected to be contained within this DSG allocation. There are no General Fund implications for the Council arising from these capital works.

5. Legal

Duties in relation to children of school age

Councils have a statutory duty under section 14 of the Education Act 1996 to ensure that there are sufficient school places in their area, to promote high educational standards, to ensure fair access to educational opportunity and to promote the fulfilment of every child's educational potential. They must also ensure that there are sufficient schools in their area and promote diversity and increase parental choice.

The Education and Inspections Act 2006 requires local authorities to consider and respond to parental representations when carrying out their planning duty to make sure, that there is sufficient primary and secondary provision and suitable special educational needs (SEN) provision in their area.

The procedures include the publication of statutory notices and proposals containing prescribed information and defined consultation periods.

In relation to the potential expansion of John Chilton school, the School Admissions Code does not apply to special schools. For a special school, the 'number of pupils' means the maximum number of pupils the school is set up to provide for. In this situation, where the proposed increase is by over 20 pupils (and more than 10%) the local authority must follow the prescribed alterations' statutory process.:

Section 19 Education and Inspections Act 2006 and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 establish detailed procedures for making prescribed alterations to maintained schools including enlargement and the establishment or discontinuance of provision that is recognised as reserved for children with special educational needs.

In January 2023, updated statutory guidance was published entitled 'Making Significant changes (prescribed alterations) to maintained schools. Table 17 of this guidance sets out the stages for expanding a maintained school.

Those stages are:

Stage 1: Publication

Stage 2: Representation

Stage 3: Decision

Stage 4: Implementation

Cabinet has the responsibility under the Constitution to agree matters relating to school organisation in the borough, which are not within the legal remit of the Schools Adjudicator or the Secretary of State. Detailed legal advice is provided at each stage of the statutory process when prescribed alterations are proposed or being made.

Although there is no longer a statutory 'pre-publication' consultation period for prescribed alteration changes, there is a strong expectation that schools and councils will consult interested parties in developing their proposal prior to publication, to consider all relevant considerations.

At this stage Cabinet is being asked to give authority for the Local Authority to enter into consultation period and thereafter subject to the outcome of this consultation to

authorise publication of the statutory notice (stage 1). The Local Authority legal department will provide advice and guidance throughout.

The representation period (stage 2 – the formal consultation process) starts on the date of publication of the statutory proposal and MUST last for four weeks. Thereafter the matter will return to Cabinet for a decision (stage 3) which must take place within 2 months of the conclusion of stage 2.

In regard to public law and equalities considerations

When making decisions the Council must act reasonably and rationally. It must take into account all relevant information and disregard all irrelevant information and consult those affected, taking into account their views before final decisions are made. It must also comply with its legal duties, including those relating to equalities.

As public bodies schools and local authorities have duties, known as the ‘public sector equalities duties’ under S149 the Equality Act 2010.

The Equality Act 2010 places separate duties on local authorities as the responsible body (alongside the governing body) for schools maintained by the local authority.

Special Educational Needs Provision

Local authorities have overall responsibility for making sure that children’s Special Educational Needs (SEN) are met. A revised statutory framework under the Children and Families Act 2014 was brought into force in September 2014.

Under section 27 the Council must keep under review the educational, training and social care provision made for children who have SEN or a disability and consider the extent to which the provision is sufficient to meet the needs of the children and young people concerned.

In exercising its functions under section 27 the Council must consult children, young people and parents, the governing bodies of maintained schools, nursery schools, Academies, post 16 institutions, non-maintained special schools, advisory boards of Children Centres, providers of early years education and the governing bodies and proprietors institutions outside the area the authority thinks are or are likely to be attended by children and young people in the area, youth offending team and such other persons as the authority thinks is appropriate.

Local authorities must also have regard to the Joint Strategic Needs Analysis and Health and Wellbeing Strategy in the exercise of this function.

Procurement Rules

The proposed invitation and evaluation of tenders for Schools Energy surveys, and the procurement of specialist consultancy advice services and works contract associated with the remediation of Reinforced Autoclaved Aerated Concrete (RAAC) at The Ellen Wilkinson School for Girls will be carried out in accordance with the Council’s Contract Procedure Rules and the requirements of the Public Contract Regulations 2015.

6. Value for Money

All proposals pursued are subject to rigorous value for money (VfM) procedures through the feasibility study and option appraisal process. Providing Cabinet approval is granted, tenders will be sought in accordance with the Contract Procedure Rules and Public Contracts Regulations 2015 as appropriate and will be evaluated to establish the most economically advantageous tender to the Council. During the execution of the projects, regular progress review meetings will be held to ensure the projects are being executed to the approved budget and the timescales.

During the execution of projects, regular progress review meetings are held to ensure projects are being executed to approved budgets and timescales.

To date, the local authority contribution to Free Schools has been related to site costs and land receipts and the DfE have funded the capital costs for the build directly.

7. Sustainability Impact Appraisal

Planning applications for building works include an assessment of the impact on sustainability as outlined within the Council's procurement policies.

8. Risk Management

It is recognised that pupil projections may either under or overestimate future numbers and become less accurate the further into the future they go. Projections are kept under review as new data becomes available, including the termly pupil censuses and live birth data. The last detailed report on birth rate figures and population projections was presented to Cabinet in October 2021, the link for which is provided in section 2 of this report.

The programme is phased where practicable to spread the cost of the work and allow adjustments to the programme should there be changes to the projected figures.

There are risks arising from construction cost increases, and the position will be monitored throughout the process.

There are established processes for managing capital projects and risks are identified and managed as part of the project management process. Associated tendering processes will comply with best practice and be fully compliant with the Contract Procedure Rules and the requirements under the Public Contracts Regulations 2015 (as amended) as appropriate.

9. Community Safety

Transport, traffic and travel is a concern for many stakeholders. The proposed designs make appropriate changes to the access to, and layout of vehicle drop off areas to ensure the safe and efficient arrival and departure of pupils and staff.

10. Links to the 3 Priorities for the Borough

The project is linked to 'Fighting inequality - that blights too many lives and disproportionately holds back all too many people from achieving their dreams and aspirations.' priority.

11. Equalities, Human Rights and Community Cohesion

An Equalities Analysis Assessment (EAA) was completed in September 2022 for the John Chilton School Orchard Site works, and can be found here: [Appendix A EAA Cap Apps and John Chilton School.pdf \(moderngov.co.uk\)](#).

12. Staffing/Workforce and Accommodation implications

Implications of the Schools Service programmes will be managed within existing Council staff and any partner consultants. School works and expansions will have an impact on the school workforce and on school accommodation (i.e., appropriate expansion of staff and accommodation to manage additional pupils).

13. Property and Assets

This report deals with schools' property and assets.

14. Any other implications

None.

15. Consultation

Consultation has been carried out with the relevant stakeholders.

16. Timetable for Implementation

Secondary school and special school expansions are phased over a period until the expanded year group is fully implemented throughout the school.

The exact dates for school expansions cannot be given as timings can be subject to change.

17. Appendices

None

18. Background Information

Reports to Cabinet on need to increase school places in schools (particularly the reports of April 2008, December 2008, April 2009, September 2009, January 2010, July 2010, December 2010, January 2011, July 2011, September 2011, December 2011, January 2012, March 2012, July 2012, December 2012, January 2013, March 2013, April 2013, June 2013, October 2013, April 2014, September 2015, October 2016, October 2017, October 2018, October 2019, October 2020, October 2021 and October 2022), are available on the Council's website at the following address: <https://ealingintranet.moderngov.co.uk/ieListMeetings.aspx?Committeeld=137>

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Cllr. Kamaljit Kaur Nagpal	Portfolio Holder, A Fairer Start	12/10/23	12/10/23	Throughout
Robert South	Strategic Director Children	12/10/23	12/10/23	Throughout
Emily Hill	Strategic Director, Resources	12/10/23	18/10/23	1,3
Tamara Quinn	Assistant Director, Planning, Resources & Service Development	12/10/23	12/10/23	Throughout
Julie Lewis	Director Learning Standards and School Partnerships	12/10/23		
Madhu Bhachu	Assistant Director, SEND	12/10/23		
Chike Nnalue	Head of SEND Strategy and Development	12/10/23		
Russell Dyer	Assistant Director, Accountancy	5/10/23		
Justin Morley	Head of Legal Services (Litigation)	5/10/23		
Kathleen Ennis	Principal Lawyer (Housing and Social Care)	5/10/23	18/10/23	5
Chuhr Nijjar	Senior Contracts Lawyer (Legal Contracts)	5/10/23		
Afam Ajoh	Contracts & Project Lawyer (Legal Contracts)	5/10/23	9/10/23	5
Katherine Ball	Finance Manager, Capital and Projects	5/10/23	17/10/23	4
Stephen Bell	Finance Manager, Children & Schools	5/10/23		
Adrian Moody	Category Lead, Commercial Hub	5/10/23	6/10/23	

Report History

Decision type:	Urgency item?
Key decision	No
Report no.:	Report author and contact for queries:
	Laurence Field, fieldl@ealing.gov.uk 020 8825 5425