

Abortion buffer zones

A decorative graphic on a dark blue background featuring several red map pins with black shadows. Each pin is surrounded by a light blue dashed oval. The pins are arranged in a scattered pattern across the page, with some appearing to be in the foreground and others in the background, creating a sense of depth.

**PROTECTING THE VULNERABLE OR
REINTRODUCING STATE CENSORSHIP?**

In a society that claims to champion freedom of speech, religion and conscience, the introduction of abortion buffer zones across the United Kingdom marks a deeply troubling shift. These zones, enforced through vague and sweeping legislation, threaten to criminalise peaceful activities such as silent prayer, offering help to women in crisis, or simply holding a sign.

This report, commissioned by Christian Concern, exposes the profound legal, ethical, and human rights implications of such measures.

At the heart of this issue lies a fundamental question: should the state have the power to silence compassionate voices offering alternatives to abortion? The evidence presented here shows that buffer zones are not only unnecessary but also dangerously authoritarian. They suppress dissent, marginalise Christian beliefs, and erode the very freedoms that underpin our democracy.

This report draws on legal precedent, medical ethics, and international human rights law to demonstrate that buffer zones are incompatible with a free and just society. It is a call to policymakers, churches, and citizens to stand for truth, compassion, and liberty.

We must not allow the quiet witness of love, life and truth to be driven from our streets.



Andrea Williams

Chief Executive, Christian Concern and Christian Legal Centre

The report

This is an independent report which has been commissioned by Christian Concern. The authors affirm that they have not, without forming an independent view, included or excluded anything which has been suggested to them by others.

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Glossary

Abortion care. This is a term used by abortion providers to cover all aspects of abortion provision. It has been criticised as not representing the principles of evidence-based medicine since the clients are invariably healthy, and no disease is being treated.¹

Abortion reversal: If the woman changes her mind about abortion after taking the drug Mifepristone and decides not to take the dose of Misoprostol, Progesterone can be administered in isolated cases to counter the effects of Mifepristone. There have been reports of successful pregnancies.²

BPAS: British Pregnancy Advisory Service.

CQC: Care Quality Commission.

DVLA: Driver and Vehicle Licensing agency.

GMC: The General Medical Council.

MSI: Marie Stopes International.

NICE: The National Institute for Health and Care Excellence.

NUPAS: National Unplanned Pregnancy Advisory Service.

RCOG: The Royal College of Obstetricians and Gynaecologists.

¹ James Studnicki and Ingrid Skop, 'Is Induced Abortion Evidence-Based Medical Practice?' *Medical Research Archives* 2024 Vol. 12 Issue 6.

² cf G. Delgado, S.J. Condly, M. Davenport, T. Tinnakornsriruphap, J. Mack, V. Khauv, P.S. Zhou. 'A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone'. *Issues in Law and Medicine* 2018; 33:21-31.

Executive Summary

Competing worldviews and understanding of entitlement to human rights

- i. Both the local authority PSPOs and the national legislation introducing abortion buffer zones raised serious issues about freedom of religion or belief, freedom of speech and expression and freedom of assembly. The debates through which these laws were introduced suggested that there was both a significant lack of religious literacy, i.e. understanding of religious as well as secular worldviews, as well as a significant lack of literacy in relation to the historical development of freedom of religion or belief and freedom of speech.
- ii. In particular, there was an apparent failure on the part of many legislators to understand that there were two conflicting worldviews held. One which believed that the unborn child was a human being and therefore entitled to human rights, and one which denied this and consequently asserted that the only human rights at stake were those of the mother.
- iii. In practice, there appears to have been little if any attempt to balance the claims of these competing worldviews and competing rights.
- iv. Similarly, the evidence of women expressing gratitude after encountering Pro-Life supporters outside abortion clinics and being offered support which led to them positively changing their minds and deciding to continue their pregnancy, appears to have been given little weight.

The introduction of abortion buffer zones

- v. Abortion buffer zones were first introduced, without parliamentary debate or scrutiny, but as a result of judicial decisions in Canada which both created an exclusion zone around an abortion clinic and prohibited public prayer within sight of it. Abortion buffer zones then spread in Canada, Australia and the USA. In 2009, BPAS, which operates one of the largest networks of abortion clinics in the UK, began campaigning for their introduction to the UK, launching a formal campaign in 2014. The pictures on campaign websites of BPAS and the Back Off Scotland campaign both suggest that the target of the campaign was to make it illegal to conduct silent prayer vigils outside abortion clinics.
- vi. In 2015 a campaign was begun by Rupa Huq MP, who had that year been elected as Labour MP for Ealing Central and Acton, for abortion buffer zones to be introduced across the UK. In November 2015, a Pro-Choice group ‘Sister Supporter’ began a counter-protest outside an abortion clinic in Ealing against the Pro-Life vigils there. A petition was then presented to Ealing Council calling for the use of a Public Space Protection Order (PSPO) to create an abortion buffer zone around the clinic which would ban the Pro-Life vigil. Ealing Council subsequently introduced an abortion buffer zone which banned any form of direct or indirect influence on whether to have or take part in providing an abortion. The restrictions included a specific prohibition on “prayer” as well as the use of a non-exhaustive list of terms, some of which, such as “Hell” and “soul”, were specifically Christian theological terms.
- vii. The creation of the Ealing abortion buffer zone was subsequently followed by the London Borough of Richmond, Manchester, Bournemouth Christchurch and Poole, and Birmingham Councils. All of which specifically banned prayer. The use of PSPOs was highly contentious, as parliament had granted these powers to local authorities to tackle minor issues of anti-social behaviour such as dog fouling. As such, the powers were being used for a purpose for which they had never been intended by parliament – and when a parliamentary campaign to introduce them nationally had at that point been unsuccessful.
- viii. In November 2017 the Home Office launched a consultation on intimidation and harassment outside abortion clinics which noted that the law already provided protection

against intimidation and harassment, while looking to see if police, local authorities and healthcare providers had sufficient powers. A year later, Home Secretary Sajid Javid told parliament that the review, which had been led by the National Police Lead for Protest, had received 2,500 consultation responses. However, whilst it had found some “upsetting examples of harassment”, these were the exception, with most protests outside abortion clinics being “passive”, with “relatively few reports” of more aggressive activities. As such, he concluded that national legislation to introduce abortion buffer zones would be a disproportionate response.

ix. National legislation on abortion buffer zones was first introduced in Northern Ireland, the most socially conservative part of the UK, where the collapse of devolved government allowed the Westminster parliament in 2019 to pass the most liberal abortion law in the UK, including decriminalisation of abortion for all reasons up to 12 weeks pregnancy. When the Stormont assembly was restored, the UK government overrode a vote by the NI Assembly rejecting the new abortion law and ordered the NI government to begin providing abortion services. In March 2022 a bill introduced by NI Green Party leader Clare Bailey MLA to create buffer zones around Northern Ireland abortion clinics, was finally passed by a majority vote in the “wash-up period” when remaining bills are rushed through without normal scrutiny on the final sitting day before the assembly was dissolved for elections.

x. Shortly after this the Scottish Parliament passed an Act which was broadly similar to the NI Act, while in England an amendment to the Public Order Act 2023 by prominent Pro-Choice campaigner Stella Creasy MP created abortion buffer zones in England and Wales.

Silent prayer

xi. As a number of prosecutions had taken place for people engaged in silent prayer in local authority PSPO abortion buffer zones, an attempt was made by Westminster MPs to specify that silent prayer was not included in the prohibition on harassment or intimidation outside abortion clinics. As parliament failed to agree to this, it left the legislation unclear as to whether or not prayer – whether spoken or silent – was banned in abortion buffer zones. However, while the earlier December 2023 Home Office consultation had stated that silent prayer was an “unqualified” human right in international human rights conventions, the subsequent CPS guidance not only failed to repeat this emphasis, but contradicted it by listing silent prayer as a potential criminal offence.

xii. The CPS issued guidance which implied that “carrying Bibles” could also amount to a criminal offence.

Historical precedents for restrictions

xiii. The closest historical precedent for the restrictions imposed by abortion buffer zones is the Clarendon Code, a series of laws introduced between 1661-65 whose purpose was to restrict the influence on wider society of the beliefs of Dissenters, i.e. Protestants such as Baptists, who dissented from some aspects of the beliefs of the Church of England. In particular, a) the Five Mile Act 1665 which created an exclusion zone around major towns within which non-Conformist ministers were prohibited from teaching or preaching; b) the Conventicle Act 1664 which prohibited meetings for a religious purpose of more than 5 people. Both of these Acts were repealed in 1812, having long fallen into disuse.

xiv. At no point in English history have there ever been any restrictions on silent prayer in public spaces. The closest historical precedent to this is the arrest of the Quakers William Penn and William Meade in 1670 for conducting an act of Quaker worship – which typically involved significant periods of silence, on a London street. At the subsequent trial the jury, despite being directed by the judge to convict them, refused to do so. The case has had a significant influence both on subsequent English legal history and on the development of international FoRB, as in 1701 Penn drafted the constitution of Pennsylvania whose freedom of religion clause directly influenced the 1791 First Amendment to the USA's Constitution: “Congress shall make no law

respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble”.

The rule of law

xv. The nature of the restrictions imposed by abortion buffer zones raises significant issues about their potential compatibility with at least four of the eight principles which former Lord Chief Justice and Master of the Rolls, Lord Bingham, set out as being foundational to the rule of law, in particular, the criminalisation of influencing a person’s decision whether to access, provide or facilitate the provision of abortion services. As this term is not defined in legislation it has created a situation where the law is neither clear nor predictable (Principle 1).

xvi. This lack of clarity around the legality of silent prayer is of considerable significance because it has been a fundamental principle of English law since the reign of Edward IV (1461-70) that “the thoughts of a man are not triable”. This position is also affirmed in the understanding of both the Universal Declaration of Human Rights and the European Convention on Human Rights that internal religious actions are an “unqualified” human right i.e. one that cannot be restricted.

Application of abortion buffer zones to general hospitals

xvii. The application of national legislation to general hospitals – specifically in Northern Ireland and potentially in Scotland, England and Wales – creates a further a degree of uncertainty as to whether the abortion buffer zone merely includes the outside of the hospital or also includes the inside of the hospital. This raises a number of questions:

1. Could prayer be banned either in part or the whole of a general hospital?
2. Would discussion of abortion by a hospital chaplain with a patient in a general hospital be prohibited?
3. Would discussion of the ethics of abortion by a hospital chaplain with a doctor or nurse who was considering whether or not to exercise their legal right to conscientious objection to taking part in an abortion be prohibited, as they be “influencing a person’s decision to...provide or facilitate the provision of abortion services”?
4. Similarly, would a private lunchtime meeting of the Christian Medical Fellowship – a UK body which states it has 5,000 doctors as members – be prohibited from discussing the ethics of how Christian doctors should respond to abortion, as again, it would be “influencing a person’s decision” whether or not to take part in the provision of abortion services?
5. Similar issues also arise not simply in relation to freedom of religion or belief, but also with respect to academic freedom. Medical Ethics is an important part of both initial and continuing medical education. As such, the potential (or in the case of Northern Ireland) specific inclusion of general hospitals within abortion buffer zones, combined with the failure to provide a specific exemption for medical education, leaves this as an area of legal uncertainty.

xviii. This legal uncertainty creates the real risk that HR managers in NHS general hospitals could seek to use their own discretion in determining what is permissible, such as by banning discussion of abortion by staff, including doctors and nurses throughout the hospital, and could potentially even ban prayer.

Effective prioritisation of pro-abortion worldview

xix. The prohibition on any form of discussion or written material which could influence someone’s decision whether to access, provide or facilitate an abortion, in the context of a general hospital where abortions are taking place, means that a pro-abortion worldview has in effect been legally prioritised and protected from any form of criticism.

The precedent set

xx. The precedent which legislation enacting abortion buffer zones set is that one particular set of beliefs or values can in practice be protected from any form of criticism or challenge in a defined geographical area. This in itself potentially conflicts with Principle No.3 – The laws of the land should apply equally to all.

xxi. The introduction of abortion buffer zones in October 2023 almost immediately led to calls for similar buffer zones to be enacted around assisted dying clinics, a medical facility which does not even currently exist, but was being proposed in a private members’ bill due to be debated in parliament. There have also been longstanding calls from some, though by no means all, sections of the Muslim community for the enactment of specific zones around mosques where aspects of shari’a could be enforced.

Compatibility with protection for Freedom of Assembly in international human rights law

xxii. International human rights law gives strong protections to freedom of Assembly. The details of what this is understood to include were in 2020 spelled out by the UN Human Rights Committee in a general commentary on ICCPR Article 21 (Right of Peaceful Assembly).

This:

1. requires states to positively facilitate peaceful assembly;
2. affirms that the protections afforded to this right are not diminished if the goal of the assembly is contentious;
3. affirms that the state may not interfere in determining the “expressive content” of any peaceful assembly...
4. ...and must enable participants to conduct a peaceful assembly “within sight and sound or their target audience”;
5. requires any restrictions on peaceful assemblies to be “narrowly constrained”; and
6. prohibits any blanket national ban in relation to peaceful assemblies taking place at particular places or times. As such, it is difficult to see how either abortion buffer zones enacted by either local authority PSPOs or national legislation in Northern Ireland, Scotland or England and Wales are compatible with international human rights law.

Potential impact on international human rights including FoRB and global persecution of Christians

xxiii. The current national restrictions in abortion buffer zones also have the potential to create significant harm to international freedom of religion or belief. As a result of the recommendations in the Bishop of Truro’s FCDO sponsored review on global persecution of Christians, it is now government policy to “articulate an aspiration to be the global leader in championing FoRB”. However, there is a significant risk that governments who persecute Christians and other minorities will respond to concerns about FoRB violations in their country by pointing to similar restrictions on FoRB now operating in parts of the UK as a result of abortion buffer zones. The following four issues are identified as particular risks:

1. Vaguely worded laws. These are a common feature of authoritarian countries where they are used to criminalise any expression of dissent in relation to the either the government or the ideology which is politically dominant. For example, Iran’s criminal code contains a number of vaguely worded offences which have been used to imprison Christians, such as “waging war against God” (moharebah) or spreading “corruption on

earth” (Efsad-e-fel-arz). Both of these have been frequently used to imprison Iranian Christians and can potentially be used to execute them.

2. Prohibited words and speech. Blasphemy laws are essentially an attempt to suppress the expression of any criticism or dissent from an officially sanctioned belief system. It is now essentially only Islamic countries which have blasphemy laws. However, the prohibition on criticising, even indirectly, the belief that an unborn child is NOT a human being entitled to human rights, in its essence bears significant parallels to the underlying principle of blasphemy laws.

3. The offence of influencing. In a significant number of Islamic countries, it is a criminal offence to seek to influence a Muslim so that they might consider adopting another belief. For example, even in Algeria which is widely regarded as a relatively moderate Islamic country, the criminal code makes such influencing, including by “distributing printed documents or audiovisual materials with the intent of ‘shaking the faith’ of a Muslim”, an offence punishable by a fine of one million dinars and up to five years’ imprisonment. Christian leaders are not infrequently arrested under this legislation.

4. Prohibition on Christian prayer in public is a key feature of dhimmitude, which grants certain religious minorities living under Islamic government and shari’a enforcement the right to live provided they keep to the terms the dhimma contract. This was imposed by Islamic State on Christians in the parts of Iraq and Syria they controlled in 2015 and continues to be imposed by jihadist groups in West Africa. One of the key conditions of the dhimma is that Christian worship including prayer must not be heard, but must take place behind closed doors. However, even Islamic State did not seek to prohibit silent prayer as potentially UK abortion buffer zones do.

1. What is an abortion buffer zone?

1.1 Abortion buffer zones (sometimes referred to as ‘safe access zones’) are specific geographical areas around an abortion clinic which prohibit a number of activities which in other locations would be entirely lawful for anyone to undertake.

They effectively restrict or prohibit in the zone

- a) Any expression of disagreement with the ethics of abortion.
- b) Other activities which are deemed to indirectly express disagreement with the ethics of abortion, which in some buffer zones specifically includes prayer.
- c) Any offer of alternative therapeutic support to women facing an unwanted pregnancy, such as counselling.

The breach of any condition is a criminal offence.

1.2 Controversy

1.2.1 Abortion

Abortion itself is a highly contentious issue, despite the attempts of some Pro-Choice advocates to claim the contrary. There is currently no settled consensus as to the level of support for abortion in the UK.

At one end of the spectrum is the claim of Aston University sociologists Dr Pam Lowe and Dr Sarah-Jane Page, the former of whom has been a leading advocate of abortion buffer zones:

“Despite a history of opposition, abortion is a settled issue in Britain and as a whole, the UK is overwhelmingly a Pro-Choice country. The British Social Attitudes survey reveals that over 90% of people think that abortion should be available in at least some circumstances and over 70% think it should be an individual choice.”³

In fact, this is a somewhat misleading and overly generalised claim.

An alternative perspective is presented by the World Values Survey, an international research programme which is the world’s largest and most widely used social survey. An analysis of the findings of this by Professor Bob Duffy, Director of the Policy Institute at Kings College London, found that only 48% of people in the UK believed abortion was justified.⁴

The discrepancy is partly due to different questions and the level of nuance in the question. The 70% figure quoted by Lowe and Page is from the 2017 British Social Attitudes Survey, which asked three very simple questions about the circumstances in which abortion should be legal.⁵ While the World Values Survey asked questions about whether people believed abortion could ever be “justifiable” with a 10 point scale response, which was then analysed as 8-10 “could always be justified”; 1-3 “could never be justified” and 4-7 “maybe justified in some circumstances”.

What is clear is that there is a spectrum of beliefs about abortion ranging from a) those who believe that abortion is always morally wrong to b) those who believe that abortion is both justifiable and should be legal up to the point of birth i.e. 40 weeks pregnancy, with c) a majority of people at

³ Pam Lowe and Sarah-Jane Page, (2022) *Anti-Abortion Activism in the UK* [Bingley: Emerald, 2022].

⁴ The Policy Institute, King’s College London, *The UK in the World Values Survey: A Growing Liberalisation – How Social Attitudes Have Shifted in the UK and Beyond* (King’s College London, March 2023) <https://www.kcl.ac.uk/policy-institute/assets/social-attitudes-in-the-uk-and-beyond-pub01-116.pdf> [accessed 26 November 2024].

⁵ National Centre for Social Research British Social Attitudes 34, Moral Issues <https://natcen.ac.uk/sites/default/files/2023-08/bsa34_moral_issues_final.pdf> [accessed 26 November 2024].

some point in between, with over 90 percent believing it is justifiable and should be legal where the mother's life is in danger.

1.2.2 Campaigns for decriminalisation of abortion in all circumstances

The issue of whether and to what extent abortion should be legal is intertwined with the introduction of abortion buffer zones in two respects.

First, the decriminalisation of abortion up to 12 weeks' pregnancy in Northern Ireland by the UK Parliament led to the introduction of abortion buffer zones in the province.

Secondly, the MPs who were leading the campaign for abortion buffer zones, such as Labour MPs Diana Johnson and Stella Creasy, were at the same time seeking to change the law to decriminalise abortion in all circumstances. The decriminalisation of abortion up to 12 weeks' resulted from what the BBC described as an "unusual" amendment to the Northern Ireland Executive bill by Stella Creasy MP in July 2019.⁶ Then in 2023, Diana Johnson MP, who had earlier made an unsuccessful attempt to persuade the Westminster parliament to legalise abortion in Northern Ireland, proposed an amendment to the Criminal Justice bill then going through the House of Commons, to exclude from prosecution any woman taking abortion pills up to the time of birth.⁷

1.2.3 Abortion buffer zones: the key issues of contention

The controversy around buffer zones centres around three main themes:

1. Their compatibility with both historic UK freedoms and rights and those set out in international human rights conventions such as the European Convention on Human Rights (ECHR), in particular:
 - freedom of religion
 - freedom of speech
 - freedom of assembly
2. The right to privacy in healthcare. The argument has been made that these rights and freedoms must be balanced against a right to privacy in health care, although in practice abortion buffer zones have prioritised the right to privacy to the exclusion of other rights in the area up to 150m around an abortion clinic or hospital. However, whilst rights such as freedom of expression and freedom of religion or belief are very specifically stated in a range of international human rights conventions, the claimed "right to privacy in healthcare" does not occur even in human rights statements relating to the right to receive healthcare.⁸ The most that can be said is that:
 - a) The claimed right to privacy in healthcare is a very longstanding and very important part of professional ethics in healthcare. However, such ethics relate primarily to the relationship between the healthcare professional and patient, not to the wider public space around a healthcare provider. For example, whilst any breach of confidentiality between a GP and patient would be a serious breach of professional ethics, the fact that patients have an appointment with a GP is not normally accorded that same protection of privacy, with patients typically waiting together in the GP waiting room.

⁶ 'Abortion in NI: Timeline of key events' BBC 8 June 2022 <<https://www.bbc.co.uk/news/uk-northern-ireland-politics-56041849>> [accessed 26 November 2024].

⁷ 'Decriminalisation of abortion opposed by more than half the public, poll finds' Daily Telegraph 7 April 2024 <<https://www.telegraph.co.uk/news/2024/04/07/abortion-decriminalise-poll-commons-vote-diana-johnson/?msockid=3d0e981bf89c613429b08d03f99a601a>> [accessed 26 November 2024].

⁸ UN Office of the High Commissioner for Human Rights, Special Rapporteur on the Right to Health 'International Standards on the Right to Physical and Mental Health' <<https://www.ohchr.org/en/special-procedures/sr-health/international-standards-right-physical-and-mental-health>> [accessed 3 December 2024].

- b) It is derived from the general right to privacy which is stated in international human rights conventions such as the European Convention on Human Rights (ECHR).

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.*

However, even this is a qualified human right, rather than an absolute one i.e. one which can be curtailed in a number of circumstances, including importantly “for the protection of the rights and freedoms of others” (ECHR Article 8[2]). That the right to privacy is not an absolute right is reiterated in the NHS *Guide to Confidentiality in Health and Social Care*’s discussion of the Human Rights Act 1998, which incorporates the ECHR into UK law:

*“The right to privacy in the ECHR is not absolute, but qualified. Article 8(2) states that there shall be “no interference by a public authority” other than in certain special circumstances...In general, compliance with the Data Protection Act 1998 and the common law of confidentiality will satisfy HRA requirements.”*⁹

3. A particularly contentious issue has been a prohibition on “prayer” in a number of local council abortion buffer zones, with attempts to enforce this not only on audible prayer, but also to extend this to silent prayer, i.e. prayer conducted by speaking to God through the thoughts of one’s minds. This creates particularly important issues, because in international human rights conventions, internal religious actions (known as the *forum internum*) are widely assumed to be an “unqualified human right”, i.e. one that cannot be restricted. It has also led at a more popular level to accusations of local authorities and police creating a “thought crime”.¹⁰
4. The political and democratic aspect of restrictions, which are seen by opponents as prioritising the worldview of those who claim that abortion is a “right” and its associated belief that the foetus in the womb is NOT an unborn child and therefore should not be accorded the rights and dignity of a human being, while at the same time, the restrictions criminalise the expression within the buffer zone of the alternative belief that the foetus is a human being and as such entitled human rights and dignity. In this sense the issue of abortion buffer zones goes to the heart of a much wider ethical, legal and political question as to who is entitled to human dignity and human rights.
5. Whilst the small number of abortion buffer zones introduced by local councils in the UK typically prohibit any expression of either approval or disapproval of abortion, opponents of abortion assert that:
 - i) It is proponents of abortion who have been prominent in lobbying for the introduction of abortion buffer zones, with opponents of abortion being prominent in arguing against them.
 - ii) Opponents of abortion see the abortion buffer zones as part of a wider attempt by proponents of abortion to seek to shut down and even prohibit any expression of reasoned disagreement with abortion. As such, it raises fundamental questions about the relationship between freedom of speech and the functioning of democracy.¹¹

⁹ NHS ‘Part A of A Guide to Confidentiality in Health and Social Care, Section 4 The Human Rights Act provisions’ <<https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/a-guide-to-confidentiality-in-health-and-social-care/hscic-guide-to-confidentiality-references/section-4>> [accessed 3 December 2024].

¹⁰ ‘The battle for abortion buffer zones’ *The Week* 20 August 2024 <<https://theweek.com/health/the-battle-for-abortion-buffer-zones>> [accessed 3 December 2024].

¹¹ cf House of Commons ‘Written Evidence from the Alliance of Pro-Life Students (FSU0063)’ 19 December 2017 <<https://committees.parliament.uk/writtenevidence/85146/html>> [accessed 20 December 2023] which raised serious

In other words, they assert that abortion buffer zones in practice are NOT really neutral, even though they purport to be.

6. A number of women have gone on record to state that when on their way to have an abortion the presence of a person offering an alternative saved them from making a decision they would later have regretted, as they decided to keep the child they were carrying (see chapter 7 for examples of these).

concerns about the attempts by a small minority to suppress freedom of speech by Pro-Life groups was having on the democratic process.

2. How abortion buffer zones emerged

2.1 Abortion buffer zones in other countries

2.1.1 Judicial activism

Judicial activism refers to judges extending existing law in ways which might be seen as encroaching on the constitutional role of parliamentarians in creating new law.¹² It is particularly contentious because it can lead to law being extended to cover areas which parliament did not originally intend it to, and were therefore not subject to democratic debate.

The first abortion buffer zone appears to have been introduced in Calgary, Alberta in 1991 as a result of a court injunction against opponents of abortion.¹³ In 1997, a judge further extended the order by ordering Pro-Life supporters to conduct their prayers out of sight of the clinic.¹⁴

2.1.2 Parliamentary laws

The creation of abortion buffer zones in this way was followed by a number of governments enacting specific laws to create abortion buffer zones, including:

- The Province of British Columbia, Canada (1995)¹⁵
- The State of Victoria, Australia (2008)¹⁶
- The State of Tasmania, Australia (2013)¹⁷
- The Province of Ontario, Canada (2017)¹⁸

The extent of these zones varied from a distance of 50m from the abortion clinic as in the case of British Columbia, to 150m as in the State of Victoria, Australia and subsequent laws elsewhere. The similarity of these laws would suggest that they have been at least influenced, if not actually modelled on each other.

However, it is noteworthy that NONE of these laws prohibited prayer.

¹² For discussion of judicial activism of 'The Judicial Power Project' of the think tank Policy Exchange <<https://policyexchange.org.uk/judicial-power-project/>> in particular, Richard Ekins KC *Human Rights and the Rule of Law* (London:Policy Exchange,2024) accessible at <<https://policyexchange.org.uk/wp-content/uploads/Human-Rights-and-the-Rule-of-Law.pdf>> [both accessed 31 October 2024]. Professor Ekins who is head of the Judicial Power Project is Professor of Law and Constitutional Government at Oxford University.

¹³ 'Abortion-rights advocates look ahead as Alberta clinic bubble zone legislation takes effect' Toronto Star 19 June 2018 <https://www.thestar.com/calgary/abortion-rights-advocates-look-ahead-as-alberta-clinic-bubble-zone-legislation-takes-effect/article_ec192b59-dd38-5544-8016-b50b968a5a2e.html>; [accessed 31 October 2024].

¹⁴ Childbirth by Choice Trust. 'Abortion in Canada Today: The Situation Province-by-Province Archived' (April 2007) archived at <<https://web.archive.org/web/20070812195125/http://www.cbctrust.com/provincebyprovince.php>> [accessed 31 October 2024].

¹⁵ Province of British Columbia, Canada Access to Abortion Services Act,1996 <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96001_01> [accessed 1 November 2024].

¹⁶ State of Victoria, Australia, Public Health and Wellbeing Act 2008, s.185 <<https://content.legislation.vic.gov.au/sites/default/files/2024-10/08-46aa066-authorized.pdf>> [accessed 1 November 2024].

¹⁷ State of Tasmania, Australia, Reproductive Health (Access to Terminations) Act, 2013 <<https://www.legislation.tas.gov.au/view/html/inforce/current/act-2013-072>> [accessed 1 November 2024]. The same Act decriminalised all abortions up to 16 weeks pregnancy regardless of circumstances.

¹⁸ Province of Ontario, Canada, Protecting a Woman's Right to Access Abortion Services Act 2017 <<https://www.canlii.org/en/on/laws/astat/so-2017-c-19/latest/so-2017-c-19.html>> [accessed 1 November 2024].

2.1.3 The USA

The USA presents a unique situation due to the strong protections on freedom of speech, freedom of expression and freedom of assembly in the USA's Constitution, particularly the First Amendment:

*“Congress shall make no law respecting an establishment of religion, **or prohibiting the free exercise thereof; or abridging the freedom of speech**, or of the press; **or the right of the people peaceably to assemble**, and to petition the Government for a redress of grievances.”*¹⁹

Despite this, in 1994, a court in the US State of Florida took a similar course to that which had occurred three years earlier in Canada by permanently excluding protestors from a 36 foot (11m) zone around abortion clinics, creating what would now be described as an abortion buffer zone.²⁰

In the same year, President Bill Clinton signed the Freedom of Access to Clinic Entrances Act, 1994, which made any form of intimidation of those entering abortion clinics a federal crime punishable by imprisonment. Significantly, this Act did NOT create abortion buffer zones, as any such restraint on peaceful expression of opposition to abortion was understood to be protected by the USA's First Amendment.²¹

However, in 1997, the US Supreme Court in a 6-3 vote upheld an injunction by a New York State court which had created a short buffer zone around abortion clinics from which protestors were banned.²²

Political ideology

It is also noteworthy that there was at least an element of partisan political ideology in the introduction of laws creating abortion buffer zones, with all the governments which introduced these laws being led by political parties which sought to promote social liberalism, while parties which were more socially conservative tended to either abstain or vote against the measures.²³

¹⁹ Constitution of the United States, First Amendment <<https://constitution.congress.gov/constitution/amendment-1/>> [accessed 31 October 2024]. NOTE the Australian Federal Constitution contains a similar provision (s.116) although not specifically including the freedom of speech and freedom of assembly clauses in the US First Amendment <https://www.aph.gov.au/-/media/05_About_Parliament/52_Sen/523_PPP/2023_Australian_Constitution.pdf?la=en&hash=D9117474455DBD5DDAA61E699329B64A598291C1> [accessed 1 November 2024].

²⁰ Madsen v Women's Health Center (1994) for discussion of this cf Lynne Chandler Garcia, 'Abortion protests' Free Speech Center, Middle Tennessee State University <<https://firstamendment.mtsu.edu/article/abortion-protests/>> [accessed 31 October 2024].

²¹ Madsen v Women's Health Center (1994) for discussion of this cf Lynne Chandler Garcia, 'Abortion protests' Free Speech Center, Middle Tennessee State University <<https://firstamendment.mtsu.edu/article/abortion-protests/>> [accessed 31 October 2024].

²² Lynne Chandler Garcia, 'Abortion protests' Free Speech Center, Middle Tennessee State University <<https://firstamendment.mtsu.edu/article/abortion-protests/>> [accessed 31 October 2024].

²³ Province of British Columbia 1995 (New Democratic Party); State of Victoria 2008 (Labor Party); State of Tasmania 2013 (Labor Party); Province of Ontario 2017 (Liberal Party); USA 1994 (President Bill Clinton – Democrat).

3. The campaign for abortion buffer zones in the UK

3.1 While abortion buffer zones were being implemented in Canada and Australia, BPAS – one of the UK’s largest providers of abortion services – began a campaign to introduce them in the UK. Subsequent to their implementation in the UK, MSI Reproductive Choices (formerly known as Marie Stopes international) also publicly claimed to have been part of “the cross-partner campaign” to introduce them in the UK.²⁴

3.2 The BPAS campaign

BPAS’ ‘Back-Off campaign’ to introduce abortion buffer zones in the UK appears to have formally started in 2014.²⁵ However, when Parliament legislated for abortion buffer zones in England in March 2023, BPAS claimed it was the culmination of their 14-year campaign, suggesting that it was an issue they had been campaigning on since 2009.²⁶

BPAS’ description of the activities which they were seeking to ban within such zones extended significantly beyond what would in other locations be understood to constitute harassment, alarm or distress – which were already offences under s.4A-5 of the 1986 Public Order Act. The activities they sought to prohibit extended to any attempt to “influence” people’s decision:

“inside the zone people are not allowed to influence people’s decision to access or provide abortion, obstruct anyone trying to access or provide abortion, or cause harassment, alarm or distress.”²⁷

The sole picture on the BPAS website which accompanies this description (figure 1) depicts a group of people standing near an abortion clinic, some with their heads bowed, others holding rosaries and with a person in the centre of the picture holding up a picture of a mother and baby with the caption “Love them both”. Insofar as can be seen, all the people in the picture appear to have their mouths closed. The campaign photo does not feature any identifiable form of harassment or even engagement with other people.

Similarly, the webpage of the BPAS Scotland ‘Safe Access Zones Scotland’ (figure 2) campaign similarly depicts a sole photograph of a group of (in this instance) seven people standing with their heads bowed. They have A2 sized placards with the following slogans – produced by the campaign group 40 Days for Life:

- Prayer vigil
- Women do regret abortion
- We can help
- Choose life
- Children are our future
- a sign which appears to be in Urdu²⁸

²⁴ MSI Reproductive Choices ‘Help protect UK abortion clinics with safe access zones’ MSI 15 January 2024 <<https://www.msichoices.org/latest/protect-uk-abortion-clinics/>>; ‘MSI statement on abortion clinic safe access zones’ MSI 18 September 2024 <<https://www.msichoices.org/latest/msi-statement-on-abortion-clinic-safe-access-zones/>> [both accessed 20 November 2024].

²⁵ BPAS ‘Campaigns- Back Off’ <<https://bpas-campaigns.org/campaigns/backoff/>> [accessed 18 November 2024].

²⁶ ‘Abortion providers celebrate “safety” of buffer zones as law finally set to come in’ ITV News 12 March 2023 <<https://www.itv.com/news/2023-03-12/buffer-zones-mean-safety-abortion-provider-wins-14-year-battle>> [accessed 18 November 2024].

²⁷ BPAS ‘Back off’ <<https://bpas-campaigns.org/campaigns/backoff/>> [accessed 25 November 2024].

²⁸ BPAS ‘Safe Access Zones Scotland: our campaign to introduce safe access zones in Scotland’ <<https://bpas-campaigns.org/campaigns/safe-access-zones-scotland/>> [accessed 25 November 2024].

ABORTION BUFFER ZONE REPORT

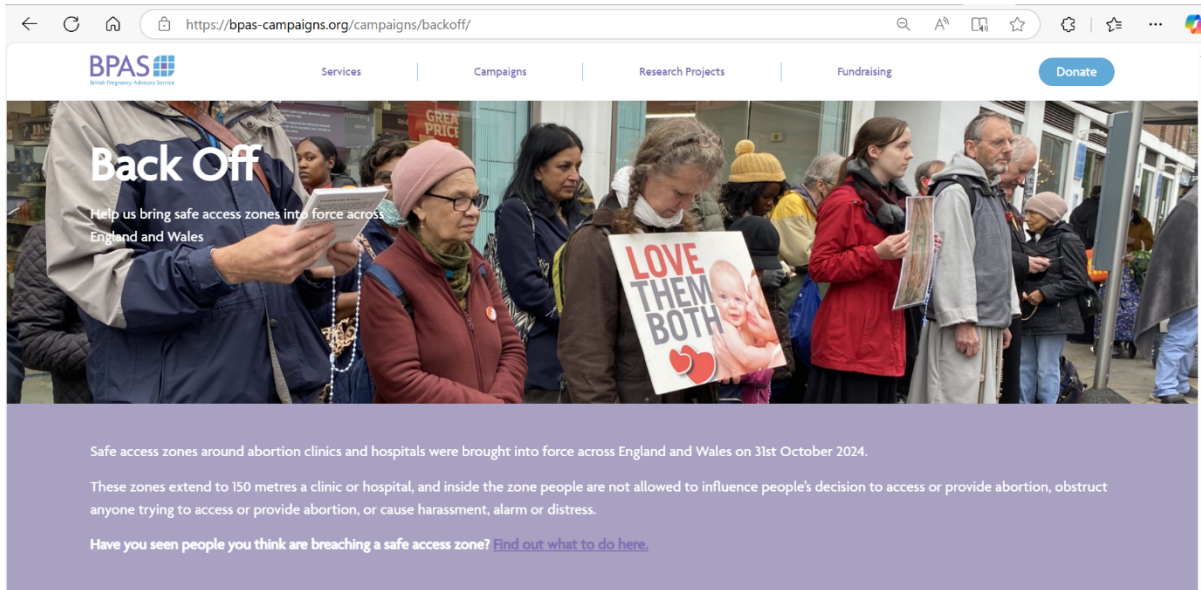


Figure 1

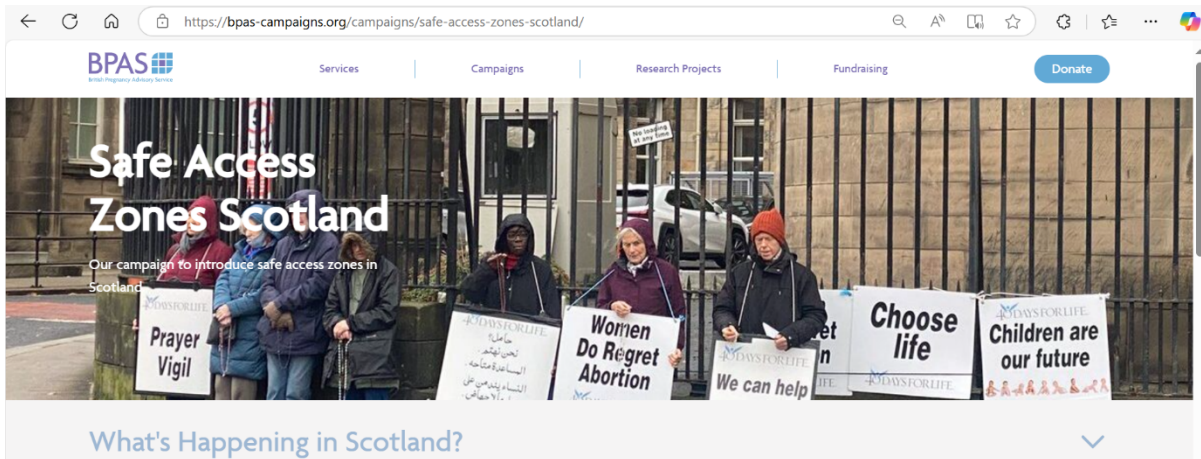


Figure 2

In other words, whilst both pictures depict people expressing by means of posters an alternative point of view on abortion to that of BPAS, in neither photo – which are sole pictures on the BPAS campaign webpages – is there any obvious evidence of what in any other situation would be regarded as “harassment”.

As such, it appears that the aim of the campaign was primarily to prohibit the manifestation of any opinion which dissented from acceptance of abortion.

4. Competing visions of human rights and who is human

4.1 Competing claims to human rights

Opponents of abortion buffer zones have strongly criticised them as placing unprecedented restrictions on freedom of religion. For example, when the Westminster Parliament passed an amendment to the Public Order Act 2023 which created abortion buffer zones across England and Wales, the Society for the Protection of Unborn Children (SPUC) claimed the new law was an attack on freedom of religion and freedom of speech, and described the ban on silent prayer as a “chilling and Orwellian” measure to

*“shut down legitimate peaceful vigils and control religious activity including silent prayer”*²⁹

On the other hand, advocates of abortion buffer zones such as Stella Creasy MP who proposed the amendment which created them, claimed that the law simply protects “women’s right to privacy” and that:

*“Nobody’s banning silent prayer, they’re just saying it’s not appropriate here”*³⁰

4.2 The nature of human rights

4.2.1 Underlying both of these claims is a wider dispute about the nature of human rights and who is actually “human” – and therefore entitled to human rights.

Historically, there have been two broad approaches to the protection of human rights.

- i) The first, which developed in the countries of the English-speaking world such as England, Scotland and the USA, sought to protect freedom by limiting the power of government to interfere in the lives of individuals, and as such could be described as a ‘top-down approach’. Laws such as Magna Carta (1215) and the Habeas Corpus Act (1679) as well as a host of common law judgments such as the Felton case (1628) which banned the use of evidence derived from torture and the Somerset case (1772) which declared all slaves in England to be free, are examples of this approach.
- ii) The second, which developed much later during the era of the French Revolution, could in contrast be described as a ‘bottom-up’ approach, as it sought to ascribe innate rights to every individual. The French Declaration of the Rights of Man and the Citizen (1789) is an example of this approach. Two particular issues arise in relation to this approach: First, the need to balance one right against another; Second, what the extent of those rights is – with additional rights being claimed over time such as the right to privacy – which does not occur in the 1789 Declaration. In the late twentieth century, the claim began to be made

²⁹ ‘Abortion safe zone clinics welcomed but opponents brand them “Orwellian”’ *Independent* 29 October 2024 <<https://www.independent.co.uk/news/uk/parliament-stella-creasy-orwellian-college-of-policing-wales-b2637280.html>> [accessed 7 November 2024].

³⁰ Stella Creasy MP quoted in ‘Abortion safe zone clinics welcomed but opponents brand them “Orwellian”’ *Independent* 29 October 2024 <<https://www.independent.co.uk/news/uk/parliament-stella-creasy-orwellian-college-of-policing-wales-b2637280.html>> [accessed 7 November 2024].

by pro-abortion activists that ‘the right to abortion’ is a universal human right – a claim fundamentally disputed by opponents of abortion.

The Universal Declaration of Human Rights (UDHR), which was a compromise statement negotiated over the course of almost two years by a UN committee,³¹ largely drew on the development of human rights in the English-speaking world, but expressed them in terms of the European i.e. bottom-up approach. The UDHR was subsequently used as the basis for significant parts of regional human rights charters, such as the European Convention on Human Rights (ECHR) which also expressed them using the European approach.

4.2.2 The influence of worldviews on approaches to human rights

However, what should also be noted is that the context in which these two approaches to human rights and freedoms developed reflected very different worldviews. Christianity played an enormously important role in the development of freedoms in the English-speaking world, not merely by the church but also through common law lawyers, reminding kings that they were accountable to God for their rule and therefore could not simply do whatever they chose. As the seventeenth century Chief Justice Sir Edward Coke reminded James 1, “*The King is under no man save God and the law*”. In contrast, the European approach to human rights largely emerged in the context of the French Revolution which was overtly secular and, in some respects, quite strongly anti-Christian.

4.2.3 Silent prayer – understood to be outside the limits of state authority

One of the consequences of the historic influence of Christianity on the development of freedom and human rights in the countries of the English-speaking world was that the actions of the state were restricted to external matters and could not interfere with internal religious beliefs or actions. In an important study of the historic influence of Christianity on the English common law, Richard O’Sullivan KC noted that even in medieval times it was this which distinguished the English Common Law from Roman law, which significantly influenced the legal systems in other European countries:

*“The state then has not to do with the inner life of man. It has principally and primarily to do with the external life of man, with words spoken or written, or acts done, about which evidence can be given.”*³²

He then went on to quote a celebrated dictum of Chief Justice Brian from the reign of Edward IV

*“‘The thought of man is not triable’. The dictum expresses an abiding principle of law. It came to life at the trial of Sir Thomas More.”*³³

4.3 Who has human rights?

A further issue which arises particularly, though not exclusively, in relation to the French approach to human rights, is who is actually deemed to have human rights?

³¹ United Nations ‘History of the Declaration’ <<https://www.un.org/en/about-us/udhr/history-of-the-declaration> > [accessed 3 December 2024].

³² Richard O’Sullivan ‘Natural Law and Common Law’ originally published in the Transactions of the Grotius Society, 1946 reproduced in B.A. Wortley (ed) *The Spirit of the Common Law: A Representative Collection of the Papers of Richard O’Sullivan QC*, KSG (Tenbury Wells: Fowler Wright, 1965) 105

³³ ‘In a celebrated dictum of the Year Book of 17 Edward IV, Brian C.J. is reported to have said: “comen erudition est que l’entent d’un home ne sera trie, car le diable n’ad conusance del’etente d’home.” The thought of man is not triable. The dictum expresses an abiding principle of law. It came to life at the trial of Sir Thomas More. Richard O’Sullivan ‘Natural Law and Common Law’ 105.

The influence of the Christian worldview throughout most of English history meant that human uniqueness and dignity was based on the biblical teaching that man was made in the image of God (Genesis 1:26-27), with the teaching of the Bible and the early church fathers being one of the major influences on common law judgments.³⁴

In contrast, the overtly secular, and indeed anti-Christian nature of the French revolution meant that the French Declaration could only speak of “natural rights”, without giving a rationale for their existence or human uniqueness.

In recent years secular human rights theorists have sought to address the question of why human life is unique and worthy of special respect – as well as the related question of who actually is human. They have done so primarily by suggesting various competency-based criteria, particularly rationality, i.e., it is claimed that humans are unique and worthy of special dignity because they are capable of rational thought. However, the implication of this approach is that an unborn child is not deemed to be a person with human rights because it lacks rationality. As such abortion is not merely justified up to the point of birth, but as the foetus is not deemed to be a human being, the right of the mother to control her own body becomes the primary, or indeed only human right to be considered.

There is a therefore a fundamental clash of worldviews when addressing the question of who has human rights.

³⁴ Richard O'Sullivan 'Natural Law and Common Law' originally published in the Transactions of the Grotius Society, 1946 reproduced in B.A. Wortley (ed) *The Spirit of the Common Law: A Representative Collection of the Papers of Richard O'Sullivan QC*, KSG (Tenbury Wells: Fowler Wright, 1965) 69, 75, 102 citing Henry of Bracton (c.1210-68)'s *On the Laws and Customs of England*, the oath taken by serjeants at law, a statement by the Lord Chancellor (1468) and the Speaker of the House of Commons (1604).

5. Why people hold conscientious objections to abortion

5.1 Christian ethics in relation to abortion

5.1.1. For the overwhelming majority of the past 1,500 years, the worldview which has predominantly influenced western societies has been a Judaeo-Christian one. This had an enormously important influence both on the development of law – with statements repeatedly made throughout English history that the common law was based on the law of God³⁵ – and on the development of modern medical ethics.³⁶

5.1.2 The Bible

The understanding that life begins in the womb exists across both the Old and New Testaments and can be seen in biblical texts such as the following:

“Before I formed you in the womb I knew you,” (Jeremiah 1:5)

The Old Testament law makes clear that this life in the womb is to be treated with the same respect and value as human life after birth, imposing a fine for anyone who struck a pregnant woman so that she gave birth prematurely, though without injury to the child, but imposing the punishment for murder if the assault on a pregnant woman led to a miscarriage.³⁷

5.1.3 The early Church Fathers

As such, from the earliest centuries the Christian Church has generally viewed abortion as morally wrong in all but the most extreme of circumstances and has frequently described it as “murder”. The following is a sample, rather than a comprehensive list of such texts:

The Didache

Apart from the New Testament itself, one of the earliest Christian writings is the *Didache* – a manual on morals and church practice, which possibly dates back to the first century of Christianity. In its discussion of the Ten Commandments, it specifically states that the Fifth Commandment “You shall not murder” includes abortion:

*“And this is the second commandment of the teaching. 2:2 {Thou shalt do no murder, thou shalt not commit adultery,} thou shalt not corrupt boys, thou shalt not commit fornication, thou shalt not steal, thou shalt not deal in magic, thou shalt do no sorcery, thou shalt not murder a child by abortion nor kill them when born...”*³⁸

³⁵ Richard O’Sullivan ‘Natural Law and Common Law’ originally published in the Transactions of the Grotius Society, 1946 reproduced in B.A. Wortley (ed) *The Spirit of the Common Law: A Representative Collection of the Papers of Richard O’Sullivan QC*, KSG (Tenbury Wells: Fowler Wright, 1965) 75 gives a number of such examples, including: “The ruling philosophy of the common law is condensed and reflected in the oath the Serjeants too: ‘to give counsel according to law, that is to say, the law of God, the law of reason, and the law of the land.’”

³⁶ J.T. Aitken, H.W.C. Fuller and D. Johnson (eds) *The Influence of Christians on Medicine* (London:CMF, 1984) chapter 10 ‘Medical Ethics’ 127-33.

³⁷ Exodus 21:22-25.

³⁸ *The Didache: The Teaching of the Twelve Apostles* 2:1-2. ET by J.B. Lightfoot (1899). JB Lightfoot was Lady Margaret Professor of Divinity at Cambridge University, Bishop of Durham and widely regarded as one of the most important New Testament scholars of the nineteenth century.

Tertullian

Similarly, Tertullian (c.160-225), a Roman lawyer and church leader in North Africa, also explicitly described both infanticide and abortion as “murder”:

*“As to any difference in the kind of murder, it is certainly the more cruel way to kill by drowning, or by exposure to cold and hunger and dogs. A maturer age has always preferred death by the sword. In our case, murder being once for all forbidden, we may not destroy even the foetus in the womb, while as yet the human being derives blood from other parts of the body for its sustenance. To hinder a birth is merely a speedier man-killing; nor does it matter whether you take away a life that is born, or destroy one that is coming to the birth. That is a man which is going to be one; you have the fruit already in its seed.”*³⁹

John Chrysostom

John Chrysostom (c.347-407), who had originally been educated in Roman law, later becoming Patriarch of Alexandria and known as “the greatest Christian expositor,”⁴⁰ wrote:

*“Wherefore I beseech you, flee fornication...Why sow where the ground makes it its care to destroy the fruit? where there are many efforts at abortion? where there is murder before the birth? for even the harlot thou dost not let continue a mere harlot, but makest her a murderess also. You see how drunkenness leads to whoredom, whoredom to adultery, adultery to murder; or rather to a something even worse than murder. For I have no name to give it, since it does not take off the thing born, but prevent its being born. Why then dost thou abuse the gift of God, and fight with His laws, and follow after what is a curse as if a blessing, and make the chamber of procreation a chamber for murder?”*⁴¹

Jerome

Jerome (342-420) whose scholarship is regarded as “unsurpassed in the early Church” and who had a monumental influence on Christianity in the West, particularly through his translation of the Bible into Latin known as the Vulgate,⁴² also explicitly described abortion as “child murder”:

*“Some go so far as to take potions, that they may insure barrenness, and thus murder human beings almost before their conception. Some, when they find themselves with child through their sin, use drugs to procure abortion, and when (as often happens) they die with their offspring, they enter the lower world laden with the guilt not only of adultery against Christ but also of suicide and child murder.”*⁴³

Basil the Great

Basil the Great, (c.330-79) who was one of the most eminent theologians of the early church, explicitly described both women who sought to abort the child they were carrying and those who carried out the abortion as “murderesses”:

*“Women also who administer drugs to cause abortion, as well as those who take poisons to destroy unborn children, are murderesses.”*⁴⁴

³⁹ Tertullian Apology 9:7-8 ET by S Thelwall 22-82 in Philip Schaff (ed) Ante Nicene Christian Fathers Volume 3 Latin Christianity: Its Founder Tertullian (Edinburgh:T&T Clark,1885).

⁴⁰ ‘Chrysostom, St John’ 285-86 in F.L. Cross and E.A Livingstone The Oxford Dictionary of the Christian Church (Oxford:OUP,1974) note that “He was educated for the law under the great Pagan orator Libanius at Antioch” cf also ‘Chrysostom, St John’ 114 in E.A. Livingstone Oxford Concise Dictionary of the Christian Church (Oxford:OUP,2013).

⁴¹ John Chrysostom Homilies on Romans No.24 on Romans 13:11. ET by J.B. Morris in Philip Schaff (ed) A Select Library of the Nicene and Post Nicene Christian Fathers of the Christian Church Volume 11 Homilies on the Acts of the Apostles and the Epistle to the Romans (Edinburgh:T&T Clark 1886-1900) 918,

⁴² ‘Jerome, St’ 294 in E.A. Livingstone Oxford Concise Dictionary of the Christian Church (Oxford:OUP,2013).

⁴³ Jerome letter 22:13 to Eustochium ET by W.H. Fremantle, G. Lewis and W.G. Martley in Philip Schaff (ed) A Select Library of the Nicene and Post Nicene Christian Fathers of the Christian Church, Volume 6 St Jerome Letters and Select Works (Edinburgh:T&T Clark 1886-1900) 22-41.

⁴⁴ Basil the Great First Canonical Letter, To Amphilochius, concerning the Canons (Letter 188) 649-59 in Philip Schaff (ed) A Select Library of the Nicene and Post Nicene Christian Fathers of the Christian Church, Second Series Volume 8 (Edinburgh:T&T Clark 1886-1900)

5.1.4 Abortion to save life as the sole moral exception

The exception to this principle that abortion is murder is set out by Tertullian, who states that in certain circumstances it may be “a cruel necessity” in order to save the life of the mother:

*“But sometimes by a cruel necessity, an infant is put to death when lying awry in the orifice the womb he impedes parturition and kills his mother if he is not to die himself. Accordingly, there is among surgeon’s tools a certain instrument which is formed with a nicely adjusted flexible frame for opening the uterus first of all and keeping it open; it is further furnished with an annular blade by means of which the limbs within the womb are dissected with anxious but unfaltering care; its last appendage being a blunted or covered hook, wherewith the entire foetus is extracted by a violent delivery...”*⁴⁵

It is important to note that statements such as these which explicitly affirmed that abortion is murder were NOT a reflection of the cultural norms of the day, but were in fact, very strongly counter-cultural in a society where even the infanticide of newborn children was regarded as legitimate. Professor F.F. Bruce FBA, who was Rylands Professor of Biblical Criticism and Exegesis at Manchester University and widely regarded as one of the twentieth century’s leading scholars of early Christianity, observes that the extent to which the early church acted in a counter cultural manner in respect of prevailing societal norms legitimising infanticide meant that

*“Not only did the churches look after the orphan children of their own members, as was their natural duty; they also felt a concern for the considerable number of infants who were exposed because they were unwanted by their parents.”*⁴⁶

5.1.5 The modern Roman Catholic Church

The Catechism of the Roman Catholic Church, which is its official statement of doctrine, draws on both the teaching of the Bible and the understanding and practice of the early church. It sets its discussion of abortion in the context of a detailed statement of the application to human life of the fifth of the ten commandments: “You shall not kill”. It describes abortion as “a moral evil”:

“Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life...Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable. Direct abortion, that is to say, abortion willed either as an end or a means, is gravely contrary to the moral law:

“You shall not kill the embryo by abortion and shall not cause the newborn to perish””⁴⁷

5.1.6 The Church of England

The Church of England has consistently and repeatedly issued statements expressing strong opposition to abortion in principle.⁴⁸ The latest such statement was at its General Synod in 2017 in response to the 50th anniversary of the 1967 Abortion Act. The Church of England statement described all abortions as tragedies:

⁴⁵ Tertullian *The Soul* Chapter 25 ET by Peter Holmes 181-235 in Alexander Roberts, Sir James Donaldson and A Cleveland Cox (ed) *Latin Christianity: Its Founder, Tertullian* (Buffalo, NY: Christian Literature Publishing Co., 1885).

⁴⁶ F.F. Bruce *The Spreading Flame: The Rise and Progress of Christianity from its first Beginnings to the Conversion of the English* (London: Paternoster, 1958) 190.

⁴⁷ Catechism of the Catholic Church <https://www.vatican.va/archive/ENG0015/___P7Z.HTM> [accessed 16 April 2024].

⁴⁸ ‘Religions: The Church of England and Roman Catholic views on abortion’ BBC <https://www.bbc.co.uk/religion/religions/christianity/christianethics/abortion_1.shtml> [accessed 23 August 2023].

“The Church of England combines principled opposition to abortion with a recognition that there can be strictly limited conditions under which it may be morally preferable to any available alternative. This is based on our view that the foetus is a human life with the potential to develop relationships, think, pray, choose and love. Women facing unwanted pregnancies realise the gravity of the decision they face: all abortions are tragedies, since they entail judging one individual’s welfare against that of another (even if one is, as yet, unborn).”

It also emphasised the importance of the church offering sensitive support to those with unwanted pregnancies:

“Every possible support, especially by church members, needs to be given to those who are pregnant in difficult circumstances and care, support and compassion must be shown to all, whether or not they continue with their pregnancy.”⁴⁹

5.1.7 Evangelicals

The Christian Church in the UK can be broadly categorised as

- i) Evangelical – holding to the Protestant Reformation emphasis on *Sola Scriptura* i.e. believing that the Bible is the inspired word of God and the sole ultimate source of authority for matters of belief and moral conduct.
- ii) Catholic – broadly speaking, holding both the Bible and a particular tradition of Church interpretation as authoritative. This tradition pays particular importance to the teachings of the early Church Fathers.
- iii) Liberal – which rejects the ultimate authority of the Bible, while still self-identifying as Christian and seeks to adapt the teaching of the Bible and Christian doctrine to fit in with contemporary secular viewpoints. As such, while both Catholics and Evangelicals are more likely to hold the belief that abortion is morally wrong, liberals often express the opposite opinion.

However, it is important to understand the relative strengths of these three broad streams. The overall trend over the past three decades has been a significant decline of church attendance at liberal churches, down from 11.4% of church attendees in 1990 to only 7.1% in 2020. Attendance at Catholic churches has slightly declined, from 31.6% of all regular church attendees in 1990 to 25.6% in 2020. However, attendance at Evangelical churches has increased from 34% of all church attendees in 1990 to 45.9% in 2020.⁵⁰ Some of the fastest growth has been among African and Asian heritage Evangelical Christians.⁵¹ Whilst complete statistics for regular church attendance are not available for the UK as a whole, in England in 2020 there were 715,200 people attending Catholic churches, 1,281,500 people regularly attending Evangelical churches and 198,900 attending Liberal churches.⁵²

As such, Evangelicals now represent almost half of all regular church worshippers and are one of the largest non-visible minority groups in the UK, of broadly comparable size to the size of the

⁴⁹ Abortion: Church of England Statements <<https://www.churchofengland.org/sites/default/files/2017-11/abortion-church-of-england-statements.pdf>> [accessed 22 August 2023].

⁵⁰ If those in Brierley’s category ‘Anglo-Catholic’ are added to the percentages for ‘Catholic’, those in his category ‘low’ to ‘Evangelical’ and those in the category ‘broad’ to ‘Liberal’, then the percentages are: Catholic 1990 35.9%; 2020 30.5%; Evangelical 1990 40.8%; 2020 51.2%; Liberal 1990 21.4%; 2020 14.9%. Table 13.9.2 Attendance by Churchmanship, England, 1990-2030, Percentages’.

⁵¹ Peter Brierley (ed) UK Church Statistics No 4 2021 Edition (ADBC, 2021) Tables 13.24.2 ‘Churchgoers attending Growing or Declining churches, 1998 to 2005, by ethnicity’.

⁵² Peter Brierley (ed) UK Church Statistics No 4 2021 Edition (ADBC, 2021) Tables 13.19.1 ‘Attendance by churchmanship, England 1990-2030, numbers’.

LGBT community recorded by the 2021 census,⁵³ while regular worshippers at Catholic Churches also represent a very large non-visible minority.

Surveys have consistently found a majority of Evangelicals expressing the belief that abortion is morally wrong in most situations where it is currently conducted. For example, a survey conducted by the Evangelical Alliance of more than 1,300 Evangelicals ahead of the 2024 General Election found that 68% were more likely to vote for a party which made a specific commitment to reduce the time limit on abortions to lower than the current 24 weeks.⁵⁴

5.1.8 Secular opposition to abortion

This debate cannot be simply described as a religious versus secular one.

Many people express informed moral opposition to abortion who have no religious faith. They typically do so either because they instinctively hold values which can historically be traced to the wider influence of Christian values on society, or on evidential grounds. The latter typically include indications which are taken to point to the existence of human life in the womb which it is argued should be accorded the right to life.⁵⁵ These include the visibly humanlike development of the foetus in the womb at well before the legal 24 weeks limit for most abortions, as well as the survival of premature babies born before this time. However, they also include wider issues such as the discrimination against disabled people implied in the current legal provision allowing abortion where there is deemed to be a substantial risk that if a child were born it would be seriously physically or mentally handicapped.⁵⁶

⁵³ The England only statistic of 1.285 million Evangelicals would suggest a figure of between 1.5-1.8 million for the UK as a whole. For comparison the 2021 census found there were 748,000 who self-identified as 'Gay or Lesbian', a further 628,000 as bisexual and 165,000 who identified as an 'other' sexual orientation (excluding heterosexual), making a total LGBT+ population in England and Wales of 1.541 million (House of Commons Library 2021 Census: *What do we know about the LGBT+ population?* 16 January 2023 <<https://commonslibrary.parliament.uk/2021-census-what-do-we-know-about-the-lgbt-population/>> [accessed 13 November 2024].

⁵⁴ *Thinking Faithfully About Politics: A snapshot of how Evangelicals think and act as they engage in politics* (London: Evangelical Alliance, 2024) <<https://www.eauk.org/general-election/thinking-faithfully-about-politics>>; <<https://www.eauk.org/assets/files/downloads/Appendices-Thinking-faithfully-about-politics.pdf>> [both accessed 13 November 2024].

⁵⁵ Cf for example, Liam Réamonn 'A Secular approach to abortion' *The Furrow* 64:12 (2013) 680-84 and C. Strong 'A critique of the best secular argument against abortion' *Journal of Medical Ethics* 34:10 (2008) 727-31.

⁵⁶ This was a principal argument in the judicial review application sought by SPUC against the legalisation of abortion in Northern Ireland before the Northern Ireland high court [2022] NIQB 9.

6. Medical Ethics

6.1 The influence of Christian values on western society throughout the majority of the last 1,500 years has meant that these values have been the predominant influence on Medical Ethics until relatively recently.

The development of Medical Ethics has been categorised into four main phases:

- i) Ancient: up to 500CE with Christian influence gradually becoming predominant towards the end of this period.
- ii) Medieval: 500-1500 in which medicine gradually came under the care of the monasteries and in the newly emerging universities which were also dominated by the church.
- iii) Modern: 1500 to the era of the French Revolution. This period saw the emergence of modern medical ethics which was set on a specifically Christian foundation by its early pioneers such as the sixteenth century Physician Thomas Sydenham who became known as ‘the English Hippocrates’, Thomas Browne of Norwich in his *Confessio Medici* (1643) and *Christian Morals* (published posthumously 1716), John Gregory’s *Duties and Qualifications of a Physician* (1772), and Thomas Percival’s *Medical Ethics* (1803).
- iv) Contemporary: covering the period from the early eighteenth century – during the overwhelming majority of which Medical Ethics was based primarily on Christian ethics.⁵⁷

This significantly influenced the approach of Medical Ethics to the issue of abortion throughout the greater part of the twentieth century

“The impact of Christian ethical thought upon the history of medicine...has had a crucial and salutary role in affirming the conviction that the intentional killing of innocent human beings is always wrong, and comprises no proper part of medical care.”⁵⁸*

In other words, intentional killing of what was understood to be a human being – albeit one that was entirely dependent on its mother for its survival – was incompatible with the historic understanding of the twofold purpose of medicine as being to heal the sick and relieve suffering.

6.2 Competing worldviews

However, particularly from the latter part of the twentieth century, the rise of Secular Humanism meant that more divergent approaches to Medical Ethics emerged:

“While Christian ethics still exercised a powerful influence, there were other contenders for the guidance of professional etiquette and ethics. Finally, today, Christian ethics has to meet scientific humanism as its most powerful rival in determining ethical issues confronting the profession.”⁵⁹

Whilst there are in reality a range of competing worldviews, they can helpfully be understood in terms of

- a) those who hold that the unborn child is a human being with full human rights and, as such, the rights of two humans must be considered – mother and as yet unborn child.
- b) those who reject the idea that the foetus before birth is a human being, and therefore claim that the only rights to be considered are those of the mother.

⁵⁷ J.T. Aitken, H.W.C. Fuller and D. Johnson (eds) *The Influence of Christians on Medicine* (London: CMF, 1984) 127.

⁵⁸ David Atkinson, David Field, Arthur Holmes and Oliver O'Donovan, Arthur Holmes, and David Atkinson. 2020. *New Dictionary of Christian Ethics and Pastoral Theology*, [Leicester: IVP, 2013] ‘Attitude to the taking of life’ 101.

⁵⁹ J.T. Aitken, H.W.C. Fuller and D. Johnson (eds) *The Influence of Christians on Medicine* (London: CMF, 1984) 128.

It is the relatively recent emergence of these two competing worldviews which underpins current debates about abortion.⁶⁰ That is still very much a live debate within Medical Ethics, as one recent medical ethics textbook states:

*“Very few conversations in the public arena have had such a long life with so little agreement to show for it as the abortion debate.”*⁶¹

⁶⁰ For an examination of the competing worldviews underpinning current debates over abortion cf Michael ‘The abortion debate in the twenty first century’ in Michael Boylan *Medical Ethics* (Oxford: Wiley-Blackwell, 2013) 203-17.

⁶¹ Michael Boylan ‘The abortion debate in the twenty first century’ in Michael Boylan *Medical Ethics* (Oxford: Wiley-Blackwell, 2013) 203.

7. Is there evidence of women changing their minds as a result of the presence of Pro-Life supporters?

7.1 One of the areas where there is a relative paucity of published research is the extent to which the presence of Pro-Life advocates outside abortion clinics may have any positive benefits. Studies that have been done have tended to focus on either the religious motivation of Pro-Life campaigners or negative feelings that clinic users and staff have about the presence of Pro-Life advocates in proximity to abortion clinics.⁶²

However, a balanced approach also requires examination of whether there is evidence of women either

- i) expressing regret that the alternative support of the sort Pro-Life advocacy groups purport to offer outside abortion clinics was not available when they had an abortion; or
- ii) expressing gratitude that such encounters with Pro-Life advocates had changed their minds leading to them being grateful that they had chosen to continue with their pregnancy.

7.2 Regret at the perceived absence of alternatives by those who had an abortion

7.2.1 “For my son Jonathan

How can anyone not think of a child who was aborted?

How can they forget that once there was life?

Fear was driving force behind my decision at 22 years old. What would I do? Who would support me and stand by me?

I was alone with this tremendous decision.

There is silence on the subject of an unplanned pregnancy, which leaves a woman feeling isolated and unheard. Many women do eventually speak out on this, linking mental health problems suffered since their abortion to the trauma of having an abortion.

I was typically left feeling that nobody was listening to me. So what protection did my little one have? His potential to be an artist, musician, engineer, hairdresser, scientist, or to be a father to many others. I never gave him a chance to follow his destiny. I have to live with that for the rest of my life, or pretend it was ‘nothing really’.”⁶³

7.2.2 Dr Peter Randall, a clinical Psychologist who was Director of the Family Assessment and Support Unit at the University of Hull, provides another such example, in the introduction to a book of similar testimonies published by the Society for the Protection of the Unborn Child:

⁶² For example, Pam Lowe and Sarah-Jane Page, (2022) *Anti-Abortion Activism in the UK* [Bingley: Emerald, 2020]. Dr Lowe is one of the few UK academics specialising in the political aspects of abortion protests and in the research methodology section of this book describes herself as having “publicly advocated for abortion” (199).

⁶³ ‘Sarah’ ‘For my son Jonathan’ In *Gear* (Group for Evangelism and Renewal within the United Reformed Church)150 (Autumn 2024) 12 used with permission.

“Cara was victim – young naïve, frightened and without family support...As a result she was quickly persuaded to submit herself to a process that solved her problems in the short term but left her with a lifetime of guilt. She told me, ‘I’d like to think of myself as a decent person but how can I be when I murdered my own baby?’

As Cara’s difficulties had begun to intensify so the issue of abortion had become more and more the focus of unwanted insistent thoughts. The confusion that she started with gradually gave way and she began to re-live the experience, her mind and sometimes her dreams revisiting the reality of what she went through. Eventually she had to turn away from magazine articles or TV programmes about abortion and she still cannot bring herself several years later to join in conversations with other women on that subject. Both the anniversary date of the abortion and the probable birth date of the aborted child have become very hard days for her to face,

All the time that these feelings were growing Cara tried hard to ignore them. She went to great lengths to convince herself that her feelings were nothing to do with the abortion but instead were to do with the fact that the baby’s father had deserted her so soon after. Along with the denial came a gradual shutting off from her friends and usual social activities. She found she was becoming a recluse for whom day to day social life was somehow unreal.

Other symptoms began to crowd her: sleeplessness, secondary anorexia and alcohol abuse. Only then did she begin to accept all the reasons for her pain and unhappiness.”⁶⁴

7.3 Examples of women positively deciding to keep their pregnancy after encountering Pro-Life advocates near an abortion clinic.

7.3.1 The following seeks to present a summary of material that is available in the public domain purporting to provide testimonies of women who positively changed their minds as a result of encounters with Pro-Life advocates in proximity to abortion clinics.

Written evidence to a parliamentary select committee from the Good Counsel Network highlighted a number of examples of women who had subsequently expressed gratitude after encountering Pro-Life advocates outside an abortion clinic.⁶⁵ These included the following two examples of women who decided to keep her baby after encountering Pro-Life advocates near the BPAS clinic in Ealing and being offered support:

7.3.2 Testimony of Ealing Resident Attending Marie Stopes Centre

My name is E and I live very close to where the Mattock Lane abortion centre is located.

I was going through a very difficult time when I found out I was pregnant because my current accommodation is very overcrowded.

I was approached by one of the Pro-Life counsellors in front of the abortion clinic who gave me a leaflet about where to get help if you’ll love to keep your baby but under pressure to do otherwise because of difficult circumstances. So I collected the paper and called the number on it. I was invited to the Women’s Centre and that has made a world of difference to me and my family. I was offered

⁶⁴ Peter Randall ‘Introduction’ (ix–xiv) of Melanie Symonds (ed) ...And Still They Weep: Personal Stories of Abortion a: as related to Melanie Symonds (SPUC Educational Research Trust, 1996).

⁶⁵ Clare McCullough, Director Good Counsel Network written evidence submitted to select committee enquiry 30 January 2018 <<https://committees.parliament.uk/writtenevidence/87103/html/>> [accessed 20 November 2024].

practical help, counselling and assistance ranging from buggies to baby clothes, baby carriers and practically everything a new mum and baby will need. They even went as far as buying a new bunk bed and sofa bed for my other children in order to make my current accommodation more habitable while we are still there.

I live near the Marie Stopes Clinic and the presence of the Pro-Life Witnesses has never bothered me or anyone I know. I have been seeing them in front of the Clinic since 2011 and they are usually very courteous and polite. They are never intimidating, rude or confrontational.

On the other hand, the times I have seen or heard about the Sister Supporter's group witnesses are times when they've been to the Clinic in order to protest against the Pro-Life Vigil, without offering any alternative help to the people being helped by the Pro-Life witnesses.

The Good Counsel and the Pro-Life witnesses are very good people who go out of their way to help women in every way they can. One of the witnesses, has even offered to help take my children to the park just to allow me to sometimes get some rest when I was pregnant. One question they normally ask is "E...is there anything we can do to make life better." Another Counsellor has given me so much support and even gift vouchers.

So I therefore completely disagree with a buffer zone being introduced in front of abortion clinics because this will deprive a lot of women from getting the help they desperately need and might end up taking decisions they otherwise would not have taken if given an alternative."⁶⁶

7.3.3 Witness Statement of Woman Attending Marie Stopes Ealing

"The reason we were having an abortion was due to job problems and financial problems. When I went to Marie Stopes abortion centre in Ealing, they asked me the reason for this decision but they were unable to provide any help, they only offered me an abortion.

"We met two ladies in front of the Ealing abortion centre and they approached me in a very friendly manner. And further to talking with them, in the same place, they told us there are many alternatives that they can help with. Those two ladies name are Kay & Lorraine. They were out there and they changed our life for good, in a way that no one is capable enough to do. They never blocked the gate and they were completely outside of the entrance.

Neither of them have any aggressiveness or rudeness in their vocabulary or behaviour at that time, or at any time. Therefore I completely disagree with the buffer zone because it prevents people like me, who went through a difficult time period, getting the support we needed."

The two witness statements were given by women who wish their identities to be kept private, but who presented their evidence to Ealing Councillors in a private meeting and subsequently included in evidence to the House of Commons Home Affairs Select Committee"⁶⁷

7.4 Be Here for me

7.4.1 The organisation Be Here For Me provides 14 case studies on its website of women who positively changed their minds while on their way to have an abortion as a result of encountering Pro-Life advocates who offered them support. The women from three of these case studies also give short testimonies on video of how the support offered prevented them ending their

⁶⁶ House of Commons 'Written evidence submitted by the Good Counsel Network (HIA0002)' <<https://committees.parliament.uk/writtenevidence/87103/html/>> [accessed 20 November 2024].

⁶⁷ House of Commons 'Written evidence submitted by the Good Counsel Network (HIA0002)' <<https://committees.parliament.uk/writtenevidence/87103/html/>> [accessed 20 November 2024].

pregnancy. Some of these themselves joined those offering support outside abortion clinics.⁶⁸ Three examples of these case studies are reproduced below:

7.4.2 Alina's Story

"Some people say that we shouldn't be there because women have already made their choice. I think we all made our choice when we walked into the clinic. I made my choice to have an abortion because I didn't have another solution. So I made my choice, but once I walked through that gate, there was a woman there saying, 'we can offer you help.' Then I felt that I did have a choice. I can choose, yes or no. I chose not to go ahead with the abortion because I did have another option. I was given another option by the woman at the gate.

Once I decided to have the abortion I looked on the Marie Stopes website and it was written that they give you counselling and help to make the right decision. I called them and said, 'can I have some help?' They said, 'the only thing we offer is just abortion, nothing else.'

I walked into the Marie Stopes clinic and a woman standing outside offered me a leaflet. I asked what it was and she said she could offer help if I wanted it. All they did was offer me a leaflet.

I myself have been at the Vigil since then, praying there and handing the women leaflets. There's no harassment going on. I have been myself there, with my little girl when she was 2 years old. It's not harassment.

We are just 3 people holding a rosary and my daughter was playing. There's nothing shocking or graphic on the leaflets. My daughter saw the picture of the developing baby on the leaflet and she said 'Mummy look it's a baby', then she knelt down and kissed the picture, there's no harassment going on."⁶⁹

7.4.3 Isabel's Story

"When I was pregnant, I was lost, confused, I didn't know what to do. At that particular point in time the only thing which came to my mind was just "Let me terminate the pregnancy". So that is why I went to BPAS to terminate it.

I was worried because I was on my own. I didn't know what to do any more. How will I take this pregnancy from here, then from there how will I keep my baby? So those were the things coming through my mind at that time.

When I got there I met a lady outside the abortion clinic. She greeted me, offered me a leaflet and I decided to talk to her. I was lost, I didn't know what to do with the pregnancy. She asked me why I was there and I told her everything. She was like "If there is any way I could get support for you, would that put you in a position where you felt you did not have to terminate the pregnancy" and I said "Yes, if I am able to get the support, I do want to keep this baby". So I was assured.

I was about to go homeless because at the time I was living with my brother. The Good Counsel Network supported me with accommodation. When I had my baby they continued to support me with all the baby items, with financial support, everything I needed to start my life all over again. Not just for myself now but for my baby as well.

If there was no one outside the clinic I don't think I would have kept the baby. But me going there on that particular day and meeting someone to reassure me, to encourage me, let me know they were going to be there from that stage, all through my pregnancy and when my baby was delivered.

⁶⁸ BeHereForMe 'Mothers against the ban on help outside abortion clinics' <<https://behereforme.org/>> [accessed 20 November 2024]. The following testimonies from their website are reproduced with permission (personal communication from BeHereForMe 25 November 2024).

⁶⁹ BeHereForMe 'Alina's story' <<https://behereforme.org/alinas-story/>> [accessed 20 November 2024].

And I'm happy now that I met someone at the clinic that day, because I can't imagine what I would have been like that if I had not met the woman there I would have terminated the pregnancy. Seeing my baby now, I'm so happy that I met someone that very day.

Groups should be allowed to offer support outside abortion clinics. I know from my experience that when people are lost and in position where they don't know what to do, they really feel their only option is terminate the pregnancy. These groups come to people's aid, giving them the support they need and let them know they have other options and don't have to feel they are going to be forced into going ahead with a termination because they believe there are not other viable ways forward for them. So they should be allowed to offer support outside the abortion clinics and anywhere else they can talk with people and reassure them.”⁷⁰

7.4.4 Anna's Story, mother of blind and deaf baby

“I was worried about having a baby at the time, because, first of all, I'm in a foreign country, I just came here as a student. Secondly, the father of the baby isn't here. When I found out I was pregnant it was really scary., I am a Christian and I was very guilty because I got into the position where I felt like abortion was the only option, I was so scared. And I said, “Okay, how will I even take care of her, like financially? If I tell my parents, how will they understand? Because they are the ones supporting me. And they already planned everything, this is the fee for education, this is what you are going to use and then after a year you are going to come back. So it was all scary to me.

I was very, very scared, I was very, very stressed. And then everybody I talked to about said, “if you abort the baby, it is going to be the best for you, the best decision for you.’ I still felt really guilty about it so when I went to my GP I told him I was going to keep the baby. After that though I started breaking down in tears when I was in school. After a while I started thinking to myself ‘Maybe I should consider having an abortion, see what the procedure is like’.

So I just went on Google, and I found Marie Stopes.

On the day of the appointment I walked towards the clinic and the lady from Good Counsel outside the clinic said “Are you going for the abortion? I can help you if you don't want to do it” Then I said ‘What? You can help me?’ And then it just took me a second to say ‘Okay’ Then I was relieved, she took me to the office, to the Women's Centre, and I met Alina there. I was also introduced to Julia and she said: “We are going to take care of you, we are going to support you in every way we can.”

Julia started really helping me by meeting with me and listening to me. Very often I would walk out of class and go straight to the Women's Centre and, really stressed out, I would cry and cry.

I think I just needed someone to talk to first of all, and then second of all, I was in real need of financial help. They gave me the money in my account. So I gave them my bank details and every time I had a financial need they helped me. I used to go to visit them all the time and they said to me “Come any time you want to talk or are stressed out”. I always spoke to the same person, Julia, and always felt really comfortable with her.

The day I had my baby she came with me to the hospital and was there with me. I had a C-section and she was with me for that. She held my baby and it was truly special. I was so grateful for the help as it was a difficult time for me. I feel like those people were sent from heaven to help my baby and me. Before I had my baby they had a Christmas party for me and I got so many clothes and her first shoes and everything, because I knew it was going to be a girl by then.

And after that, when I had the baby, I didn't know where to start with taking care of her, but they gave me everything from the buggy, money, blankets, basket, clothes, everything that I wanted for my baby, they gave it to me. They even gave me the sterilizer for the milk because it would have been very expensive; everything, they gave it to me. And then also they gave me vouchers for Tesco, and then they gave me money as well. I don't know how my child would be if it wasn't for them. I'm so grateful

⁷⁰ BeHereForMe ‘Isabel's story’ <<https://behereforme.org/isabels-story/>> [accessed 20 November 2024].

for them. People have often asked me “How are you going to cope, it’s so expensive to have a baby, like a bag is so expensive, a bed, everything.” But right from the person standing outside the clinic through to Julia who helped me so much, they have been there for me and my child and I am grateful for that.

It has been quite a difficult journey with my baby, because after she was born, it turned out that she was blind, deaf, and she had so many problems. She stayed in the hospital for so long. I didn’t expect to stay for 7 months in the hospital before she came home. She was born with congenital rubella infection, which left her with a lot of problems. But despite everything I’m so much in love with my baby, and I love her very much. She’s everything to me, and she’s the best thing that I’ve ever seen in this world. She holds my heart and I love her very much. She’s very charming, very lovely, and I’m so grateful for all of the help and support that I’ve received until now.”⁷¹

7.4.5 Sara (foreign worker without the right to claim benefits in the UK)⁷²

“When I was first pregnant, I was very happy and then at about twenty-two weeks my partner left me. He said I don’t want a baby and I don’t want to live with you. At that time I was really upset. I didn’t know what to do. I didn’t know how I could manage life with a baby. It was a very tense situation and so I decided at that time I was going to go and have an abortion.

Because of this situation, I felt under strong pressure to have an abortion and I really felt I had no other choice. Feeling that I had no support from anyone, my only option was making an appointment for an abortion.

So I went to my GP and they asked about my reasons for seeking an abortion. I said my partner had left me and I did not want the baby because I couldn’t afford it. The GP gave me an appointment at the BPAS Richmond abortion clinic.

I did not have rights to claim a benefit or anything here as I am a foreign worker, so I was in a difficult situation where I couldn’t see any other options for support. The doctor made no attempt to provide me with any other options for support. I was 23 weeks pregnant when I went to the abortion clinic in Richmond, just inside the 24 week abortion limit.

I went into the abortion clinic and there were lots of other people there for abortions. A staff member took my appointment paper and then told me to wait ten minutes. I then had a scan which they were doing to prepare for the abortion. During the scan I saw my baby girl. She was very nice, playing, and putting her thumb in her mouth. But I didn’t have a choice about what I was going to do. I was crying, crying so much.

I went outside and met a woman called Justyna standing there offering women help as they walked into the clinic. We started talking and I told her about why I was there and that I was now 23 and a half weeks pregnant. She offered to support me and that was very emotional for me, I was crying a lot because up until that stage I really did not feel anyone wanted to support me. I relaxed after that, feeling that someone now wanted to support me.

Justyna took me to the Good Counsel Network and they worked with me to find out what I would need in terms of support to keep my baby. First off, my accommodation. I needed a house or a room and food because at that time I was not getting much work. After becoming pregnant it became even more difficult to the point that I was not getting any work, so I needed support to cover my rent and food. I had my full rent covered by them and they gave me vouchers every week for food.

⁷¹ BeHereForMe ‘Anna’s story’ <<https://behereforme.org/annas-story-abortion/>> [accessed 20 November 2024].

⁷² People working in the UK who are from countries outside the European Economic Area are normally granted limited term UK visas do not normally have the right to claim UK social security benefits (see House of Commons Library People from Abroad: what benefits can they claim? Published 6 August 2021 <<https://commonslibrary.parliament.uk/research-briefings/sn06847/>> [accessed 20 November 2024].

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What this support meant for me was that I had a choice. It was clear with this support in place that I really, really wanted my little girl. Without the support offered outside the abortion clinic I would have had only one choice. That is not really a choice at all when there is only one choice. My baby girl would not be here today if I had not met the woman outside the abortion clinic.

Now I have my baby girl and I am still getting support from the Good Counsel Network.

If I hadn't met Justyna that day, I would have definitely had the abortion. Because who was there to look after me? I had no money. If I had been living somewhere, the landlord would have moved me on because I couldn't afford the rent.

Tomorrow my baby girl will be 9 months old.

It makes me angry to see people saying the help and support I was given outside the clinic should be banned. These people say that other people should not be allowed to offer help to women like me because that is harassment. They do not speak for me. They should come and talk to me and hear my story.”⁷³

⁷³ BeHereForMe ‘Sara’s story’ <<https://behereforme.org/saras-story/>> [accessed 20 November 2024].

8. The medical issues

Are patients attending abortion clinics able to provide informed consent? The perspective of an experienced GP

8.1 Dr Gregory Gardner MRCP has nearly 40 years' experience as a General Practitioner. He is a retired GP Trainer and Honorary Clinical Lecturer at the University of Birmingham. He has delivered presentations on various aspects of abortion trauma at meetings at the Royal Society of Medicine, the Royal Statistical Society, the Society of Social Medicine and the House of Commons and House of Lords.

Here he has been asked to provide a professional reflection on five issues pertinent to the question of the extent to which women attending abortion clinics are able to give informed consent.

8.2 Question 1: As a GP have you seen any evidence of women changing their minds and deciding against abortion, as a result of either a conversation with a pavement counsellor, or reading an information leaflet, or seeing people praying quietly outside an abortion facility?

8.2.1 A couple who were patients at the GP practice where I worked were referred to a Birmingham abortion centre by a colleague. This couple were very conflicted about the abortion decision right up to the time of the appointment as it was against their religious beliefs, but they concluded that they did not have a choice. On the day of the scheduled abortion, a small group of people were praying outside the Robert Clinic in Kings Norton, Birmingham and the couple stopped to have a conversation. It became apparent that they had certain needs for family support, and this was eventually arranged. Through local contacts a befriender who spoke their language was able to visit them for several months during and after the pregnancy and the couple who had felt isolated and unsupported were relieved that they had had a chance at the very last moment to reconsider their decision and welcome their baby into the world. My GP colleague was unaware of such available support.

8.2.1 On another occasion a midwife reported to me about a lady whose baby she had helped to deliver. The midwife learned that in early pregnancy this lady had attended an abortion appointment, but seeing people in prayer outside the abortion centre caused her to ponder her decision. She decided to continue with the pregnancy.

8.2.2 Not all abortions are freely chosen. Many women are conflicted, uncertain and pressurized⁷⁴ about their abortion decision and need more time, emotional support and in some cases practical help. The abortion provider has neither the means nor perhaps always the motive to supply this.

8.3 Question 2: As a GP with nearly 40 years' experience, have you ever encountered any patients who had experienced harassment by Pro-Lifers outside abortion clinics?

8.3.1 I have not encountered any evidence from patients of harassment of women outside clinics by Pro-Lifers.

⁷⁴ David C. Reardon and Tessa Longbons 'Effects of Pressure to Abort on Women's Emotional Responses and Mental Health', *Cureus* 2023;15(1) e34456 accessible at <<https://pubmed.ncbi.nlm.nih.gov/36874642/>> [accessed 14 November 2024].

8.4 Question 3: Is there is evidence of abortion providers withholding information about abortion – in particular what happens during an abortion, reversal treatment, and possible adverse side effects of abortion?

8.4.1 The Professional Standards of Care for Decision Making and Consent are regulated by the GMC.⁷⁵ The following texts are taken from this document:

“Consent is a fundamental legal and ethical principle. All patients have the right to be involved in decisions about their treatment and care and to make informed decisions if they can. The exchange of information between doctor and patient is essential to good decision making. Serious harm can result if patients are not listened to, or if they are not given the information they need – and time and support to understand it – so they can make informed decisions about their care.”

The document further states that,

“the information you give to patients will usually include options for treating or managing the condition, including the option to take no action”

and,

“the potential benefits, risks of harm, uncertainties about and likelihood of success for each option, including the option to take no action. By “harm” we mean any potential negative outcome, including a side effect or complication.”

With regard to withholding information, the GMC further state that ‘you should not withhold information a patient needs to make a decision for any other reason, including if someone close to the patient asks you to. In very exceptional circumstances you may feel that sharing information with a patient would cause them serious harm and, if so, it may be appropriate to withhold it. In this context “serious harm” means more than that the patient might become upset, decide to refuse treatment, or choose an alternative. This is a limited exception and you should seek legal advice if you are considering withholding information from a patient.’

8.4.2 The communication of risk to the patient is noted as the first point in the summary of the GMC document. The document advises

“a discussion about risks of harm and potential benefits that the patient would consider significant for any reason; any risk of serious harm, however unlikely it is to occur; expected harms, including common side effects and what to do if they occur.”

8.4.3 It follows from this that any procedure where there are potentially identifiable risk factors, and psychological, physical, relational, ethical and economic dimensions, requires extra time for counselling and consent. Informed consent requires unbiased and accurate information.

8.4.4 A failure to screen properly for risk factors that may be predictive of adverse physical or psychological effects may lead to harm. It may also lead to a lack of disclosure of risk and therefore uninformed consent.⁷⁶

8.4.5 The concerns and expectations of the client may not necessarily coincide with those of the abortion provider. Any ideological bias on the part of the abortion provider might hinder an active search for ambivalence or even coercion. A survey of 1,060 women in 2022 revealed that 15% had

⁷⁵ General Medical Council Professional Standards Decision Making and Consent ([in effect 9 November 2020] <<https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/decision-making-and-consent>> [accessed 14 November 2024].

⁷⁶ David C. Reardon, ‘Abortion decisions and the duty to screen: clinical, ethical, and legal implications of predictive risk factors of post-abortion maladjustment’, *Journal of Contemporary Health Law Policy* 2003;20:33-114.

experienced some kind of coercion to terminate a pregnancy.⁷⁷ Figures in this range have been corroborated by other researchers.⁷⁸

8.4.6 Pre-abortion counselling is therefore resource intensive and should be individualised and evidence based.⁷⁹ It must be delivered along the lines of a collaboration between the patient and the clinician.⁸⁰ The extremes of medical paternalism on the one hand, and an uncritical acceptance of patient demands on the other should be avoided. Both these consultation models are flawed. In the former case, there is likely to be an incomplete transfer of information from clinician to patient. In the latter case the clinician is absolved of any responsibility in making a judgment between potential harms and benefits of the abortion procedure and presenting these to the patient in an understandable and sensitive way.

8.4.7 However, published evidence suggests pre-abortion counselling on the part of abortion providers which achieve an acceptable standard of evidence gathering and sharing is often the exception rather than the rule.^{81 82} For example, the report of a 2016 inspection of a sample of 12 Marie Stopes abortion clinics by the Care Quality Commission (CQC) led to them serving four warning notices on Marie Stopes International

“for breaches of the CQC regulations in relation to requirements **concerning consent**, safeguarding, care and treatment of patients, and governance.”⁸³

Any shifting (intentional or not) of all the responsibility of the abortion decision on to the woman is unethical and exposes her to unnecessary risk.

8.4.8 The main areas where abortion has been shown to potentially impact the health of some women in the long term are the increased risks of preterm birth in a subsequent pregnancy,^{84 85 86 87} and psychological injury.^{88 89 90 91 92} There is also a debate about whether breast cancer in some

⁷⁷ Savanta Reproductive Coercion Poll BBC Radio 4 8 March 2022 <<https://savanta.com/knowledge-centre/poll/reproductive-coercion-poll-bbc-radio-4-8-march-2022/>> for BBC Radio 4 File on 4 ‘Controlling my birth control’ 13 March 2022 <<https://www.bbc.co.uk/programmes/m00154bp>> [both accessed 20 November 2024].

⁷⁸ Gregory K. Pike, ‘Coerced Abortion - The Neglected Face of Reproductive Coercion’. *New Bioethics* 2023;29:85-107.

⁷⁹ Margaret McCartney, Julian Treadwell, Neal Maskrey, Richard Lehman, ‘Making evidence based medicine work for individual patients’, *British Medical Journal* 2016;353:i2452.

⁸⁰ Trisha Greenhalgh, Jeremy Howick, Neal Maskrey, ‘Evidence based medicine: a movement in crisis?’ *British Medical Journal* 2014;348:g3725.

⁸¹ Melanie Symonds *And Still They Weep. Personal Stories of Abortion* (London, SPUC Educational Research Trust 1996).

⁸² David C. Reardon and Tessa Longbons ‘Effects of Pressure to Abort on Women’s Emotional Responses and Mental Health’, *Cureus* 2023, 15:1.

⁸³ Care Quality Commission *Marie Stopes International Quality Report* 2017<<https://api.cqc.org.uk/public/v1/reports/b1868e7d-a15b-424f-81cd-70796175234f?20210116163708>> [accessed 14 November 2024].

⁸⁴ P.S. Shah and J. Zao ‘Induced termination of pregnancy and low birthweight and preterm birth: a systematic review and meta-analyses’, *British Journal of Obstetrics and Gynaecology* 2009;116(11):1425-42.

⁸⁵ Hanes M. Swingle, Tarah T. Colaizy, M. Bridget Zimmerman and Frank H. Morris Jr, ‘Abortion and the risk of subsequent preterm birth: a systematic review with meta-analyses’, *Journal of Reproductive Medicine* 2009; 54(2):95-108.

⁸⁶ M. Lemmers, M.A. Verschoor, A.B. Hooker, B.C. Opmeer, J. Limpens, J.A.F. Huirne, W.M. Ankum and B.W.M. Mol, ‘Dilatation and curettage increases the risk of subsequent preterm birth: a systematic review and meta-analysis’ *Human Reproduction* 2016;31:34-45.

⁸⁷ Gabriele Saccone, Lisa Perriera, and Vincenzo Berghella, ‘Prior uterine evacuation of pregnancy as independent risk factor for preterm birth: a systematic review and meta-analysis’, *American Journal of Obstetrics and Gynaecology* 2016; 214:572-91.

⁸⁸ David C. Reardon ‘The abortion and mental health controversy: A comprehensive literature review of common ground agreements, disagreements, actionable recommendations, and research opportunities.’, *SAGE Open Medicine* 2018;6:1-38.

⁸⁹ Donald P. Sullins, ‘Abortion, substance abuse and mental health in early adulthood: Thirteen-year longitudinal evidence from the United States’, *SAGE Open Medicine* 2016;4:1-11.

⁹⁰ Priscilla K. Coleman, ‘Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009’, *British Journal of Psychiatry* 2011;199(3):180-6.

⁹¹ Louis Jacob, Karel Kostev, Christian Gerhard and Matthias Kalder, ‘Relationship between induced abortion and the incidence of depression, anxiety disorder, adjustment disorder, and somatoform disorder in Germany’ *Journal of Psychiatric Research* 2019;114:75-79.

⁹² James Studnicki, Tessa Longbons, John Fisher, David C. Reardon, Ingrid Skop, Christina A. Cirucci, Donna J. Harrison, Christopher Craver, Maka Tsulukidze and Zbigniew Ras, ‘A Cohort Study of Mental Health Services Utilization Following a First Pregnancy Abortion or Birth’ *International Journal of Women’s Health* 2023;15:955-963.

women can be associated with a previous induced abortion. While this is frequently denied there are a number of papers providing evidence in the opposite direction.^{93 94 95} In the short term, there is also a risk that some women may have to be admitted to hospital for a further procedure to deal with excessive bleeding or infection.^{96 97} Some women, at least some of the time, may be affected in one or more of these ways. The three main abortion providers in the UK, MSI, BPAS and NUPAS, do not provide information on their websites about the risk of any of the potential long-term side effects of abortion.⁹⁸

There is a similar insufficiency of information at The Faculty for Sexual and Reproductive Health.⁹⁹ NICE has no significant information about abortion for the general public on its website.¹⁰⁰

The RCOG, which has members working for and advising the abortion industry, has limited information for the general public on its website.¹⁰¹

The NHS, which commissions abortions, does have some information about the risk of immediate complications but does not acknowledge that for some women there may be an increased risk of longer-term adverse effects. It states:

Having an abortion does not increase the risk of breast cancer or mental health issues. It also states, *‘Having an abortion will not affect your chances of becoming pregnant and having normal pregnancies in the future.’*¹⁰² Setting aside the disputed area of breast cancer all these other statements are contrary to published research, while the claim that

‘Having an abortion will not affect your chances of...having normal pregnancies in the future’ is contradicted by published evidence of an increased risk of premature birth in a future pregnancy.

8.4.9 As such, any adoption in a consultation by an abortion provider of the ‘one size fits all’ statements on the NHS website cited in section 8.4.8 above would appear to be inconsistent with the GMC’s standards of careful and individualized risk assessment.

8.4.10 The Care Quality Commission have on several occasions rated various abortion providers as ‘inadequate’ or ‘needs improvement.’

In 2016 a Care Quality Commission (CQC) Report on 12 Marie Stopes International’s clinics in England raised “significant concerns”, with the CQC issuing formal warning notices

⁹³ Joel Brind, Steven J. Condly, Angela Lanfranchi and Brent Rooney, ‘Induced abortion as an independent risk factor for breast cancer: a systematic review and meta-analysis of studies on south Asian women’, *Issues in Law and Medicine* 2018;33(1):32-54.

⁹⁴ Md Akhtarul Islam, Nusrat Jahan Sathi, Hossain Mohammad Abdullah and Tarana Tabassum, ‘A Meta-Analysis of Induced Abortion, Alcohol Consumption, and Smoking Triggering Breast Cancer Risk among Women from Developed and Least Developed Countries’, *International Journal of Clinical Practice* 2022;2022:1-15.

⁹⁵ J. Brind, V.M. Chinchilli, W.B. Severs, and J. Summy-Long, ‘Induced abortion as an independent risk factor for breast cancer: a comprehensive review and meta-analysis’, *Journal of Epidemiology and Community Health* 1996; 50(5):481-96.

⁹⁶ Maarat Niinimäki, Satu Suhonen, Maarit Mentula, Elina Hemminki, Oskari Heikinheimo and Mika Gissler, ‘Comparison of rates of adverse events in adolescent and adult women undergoing medical abortion: population register based study’ *British Medical Journal* 2011;342:d2111.

⁹⁷ Isabelle Carlsson, Karin Breiding and P-G. Larsson, ‘Complications related to induced abortion: a combined retrospective and longitudinal follow-up study’, *BMC Women’s Health* 2018;18(1):158.

⁹⁸ MSI Reproductive Choices ‘Abortion care’ <<https://www.msichoices.org/what-we-do/services/abortion-care/>>; British Pregnancy Advisory Service ‘Abortion care’ <<https://www.bpas.org/abortion-care/>>; <<https://www.nupas.co.uk/abortion-care/>>

[all accessed 14 November 2024].

⁹⁹ Faculty of Sexual and Reproductive Healthcare, <<https://www.fsrh.org/Search?SearchTerms=abortion>> [accessed 14 November 2024].

¹⁰⁰ NICE ‘Abortion care: Nice Guideline (NG140)’ (published 25 September 2019) <<https://www.nice.org.uk/guidance/ng140/informationforpublic>> [accessed 14 November 2024].

¹⁰¹ Royal College of Obstetricians and Gynaecologists ‘Abortion care’ <<https://www.rcog.org.uk/for-the-public/browse-our-patient-information/abortion-care/>> [accessed 14 November 2024].

¹⁰² NHS ‘Risks: abortion;’ <<https://www.nhs.uk/conditions/abortion/risks/>> [accessed 14 November 2024].

“in relation to consent, safeguarding, the care and treatment of patients and governance processes as the provider had breached the CQC regulations relating to these matters.”

In order to avoid the CQC taking enforcement action, MSI with immediate effect suspended

- the termination of pregnancy for children and young people aged under 18 and those aged 18 and over who are vulnerable, to include those with a learning disability.
- all terminations using general anaesthesia or conscious sedation.
- all surgical terminations at the Norwich Centre.⁸³

In 2021 the CQC in its inspections of BPAS had significant concerns that ‘incomplete risk assessments were not fully completed’ and

‘staff did not always support clients to make **informed decisions** about their care and treatment.’

This resulted in the imposition of urgent conditions on the registration of each BPAS abortion centre (under section 31 of the Health and Social Care Act 2008) which was not lifted until January 2023.¹⁰³

8.4.11 In 1994 a commission of enquiry was set up under the chairmanship of Lord Rawlinson of Ewell.¹⁰⁴ The commission took evidence from several bodies including the RCOG, BPAS and Marie Stopes (as it was called then) as well as individuals. The commission received advice that in view of the high incidence of Chlamydia in young women attending abortion appointments, there should be screening for and/or treatment of Chlamydia in this age group. This became the Commission’s first recommendation. Significantly, the commission did not report that any of the abortion providers mentioned above, or the RCOG had advocated this in their submitted evidence. However, as a result of the commission’s recommendations this is now routine practice in abortion centres and recommended by the RCOG and NICE, but the impetus for change did not come from the abortion industry itself.

8.4.12 Evidence submitted to the commission in response to its questionnaire highlighted several cases where there was inadequate provision of pre-abortion counselling and information. This under resourcing of women seeking abortion is also mentioned in the book *...And Still They Weep; Personal Stories of Abortion*.¹⁰⁵ There are 20 autobiographical accounts of women who have experienced abortion and how it affected their lives. Although this group is not necessarily representative of a large population, there are threads that commonly weave through each story. One of these is the absence of information provided by medical professionals. Several of the women mention pressure applied by friends or family or medical professionals.

8.4.13 The selective withholding of information is not confined to abortion providers or clinicians. There has been over many years a reluctance to discuss abortion’s consequences in parts of academia as well as in the wider culture. There are now four peer reviewed meta-analyses in print evaluating the association between abortion and the increased risk of preterm birth in a subsequent pregnancy, but there is still a reluctance to cite these studies by some authors. A House of Lords committee looking at the causes and consequences of preterm birth in 2024 summoned over 30 expert witnesses from Royal Colleges, research bodies and large charities with an interest in this field. Only one of these specialists mentioned abortion as a potential cause of preterm birth and was not questioned any further on the matter.^{106 107}

¹⁰³ Care Quality Commission ‘British Pregnancy Advisory Service: Quality Report 1 June 2023’ <<https://www.cqc.org.uk/provider/1-116992830/reports>> [Accessed 14 November 2024].

¹⁰⁴ The Physical and Psycho-Social effects of Abortion on Women. A report by the commission of enquiry into the operation and consequences of the abortion act. House of Lords 1994.

¹⁰⁵ Melanie Symonds *And Still They Weep: Personal Stories of Abortion* (London, SPUC Educational Research Trust 1996).

¹⁰⁶ Per Ashorn, Ulla Ashorn, Yvonne Muthiani, Samira Aboubaker, Sufia Askari, Rajiv Bahl, Robert E. Black, Nita Dalmiya, Christopher P. Duggan, G. Justus Hofmeyr, Stephen H. Kennedy, Nigel Klein, Joy E. Lawn, Jeremy Shiffman, Jonathan Simon and Marlene Temmerman, ‘Small vulnerable newborns-big potential for impact’, *Lancet* 2023;401:1692-1706.

¹⁰⁷ UK Parliament Preterm Birth Committee ‘Preterm birth: reducing risks and improving lives’

8.4.14 There are moves to both censor and retract papers in academia so the only ‘research’ that is acceptable is one that supports a narrative of safety promulgated by the abortion industry and its ideological allies.¹⁰⁸ The correct forum for discussing evidence of abortion’s possible harms is academic journals. This academic bias has an effect of depriving journalists and the wider public of a balanced diet of information so that people can make informed choices based on the best quality information.

8.4.15 Abortion affects 1 in 3 women in the UK by the end of their reproductive years. In my experience the subject of assessing and communicating abortion’s risks to the individual woman is not a subject taught well at Medical School. Nor does it occupy a place in the GP post-graduate training curriculum. This does not help with the accurate dissemination of information to women considering having an abortion.

8.5 Question 4: Where and how accessible is the evidence on the dangers and/or alternatives to abortion from other sources?

8.5.1 There are numerous websites offering information about abortion but most women attending abortion appointments have probably not heard of these. In terms of local help, having a one-to-one conversation with a volunteer who can provide a confused or ambivalent or pressurised client with information and/or signposting to practical help can be invaluable and literally lifesaving.

8.5.2 The testimony of women who have had abortions is important to hear. This is a unique perspective that women who have had prior abortions can give. This is not the kind of information which an abortion provider would normally give to a client. The perspectives of women who have experienced a termination (or multiple terminations) and then reflected on this are often ignored or even denigrated.¹⁰⁹ Many women who have experienced abortion will say “if only I had known this or been told that, I might have made a different choice.”

8.5.3 Abortion reversal.¹¹⁰

There is no information about reversal of first trimester medical abortion on any of the websites of the three main abortion providers.

8.6 Question 5: As a GP with nearly 40 years’ experience, have you encountered any evidence of women's wellbeing being harmed by more than mere momentary distress from the presence of people praying or offering literature outside an abortion centre?

8.6.1 I know of no evidence where women have been harmed by having consensual conversations outside abortion centres, or offers of literature, or seeing people praying. As a GP I have seen people temporarily distressed after having information provided to them about potentially harmful courses of action (smoking, excess alcohol intake, illicit drug use, harmful eating habits, driving under the influence of hypnotics etc.) GP’s must warn diabetic patients about testing blood glucose before driving and every 2 hours if the patient is taking insulin. Patients with certain medical

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<<https://publications.parliament.uk/pa/ld5901/ldselect/ldpreterm/30/3002.htm>> [accessed 9 December 2024].

¹⁰⁸ Julia H. Littell, Kathryn M. Abel, M. Antonia Biggs, Robert W. Blum, Diane Greene Foster, Lisa B. Haddad, Brenda Major, Trine Munk-Olsen, Chelsea B. Polis, Gail Erlick Robinson, Corrine H. Rocca, Nancy Felipe Russo, Julia R. Steinberg, Donna E. Stewart, Nada Logan Stotland, Ushma D. Upadhyay and Jenneke van Ditzhuijzen, ‘Correcting the scientific record on abortion and mental health outcomes.

British Medical Journal 2024;384:e076518.

¹⁰⁹ David C. Reardon *Aborted Women, Silent no More* (Chicago, IL: Loyola University Press, 1987).

¹¹⁰ If the woman changes her mind about abortion after taking the drug Mifepristone and decides not to take the dose of Misoprostol, Progesterone can be administered in isolated cases to counter the effects of Mifepristone. There have been reports of successful pregnancies cf G. Delgado, S.J. Condly, M. Davenport, T. Tinnakornsrisuphap, J. Mack, V. Khauv, P.S. Zhou. ‘A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone’. *Issues in Law and Medicine* 2018; 33:21-31.

conditions having a fitness to drive test for the DVLA must be told if they do not meet the required standard. I have seen patients distressed and angry after being refused a prescription for potentially addictive prescription drugs. Nobody is suggesting, however, that these conversations in themselves cause long term harm.

8.7 Conclusions

Women attending for abortion appointments may be underserved in terms of receiving accurate, personalized and relevant information and are therefore at risk of disadvantage. Information about foetal development, abortion reversal and potential long-term side effects is missing from the websites of all three main abortion providers in the UK. There is evidence from the CQC that standards of communication and risk assessment by some abortion providers have been at variance with the standards set by the GMC.

Many of the clients - perhaps most whose first language is not English - are also likely to be unaware of local services in the charitable sector.

There are ongoing efforts in parts of academia to ignore or censor findings unfavourable to abortion providers, so information about any detriment attached to abortion does not filter down to medical professionals, let alone the general public.

There is therefore a 'knowledge gap' which has been described both by researchers and by women who have had contact with abortion providers.

9. The creation of abortion buffer zones by local councils

9.1 Since 2018, abortion buffer zones have been introduced by a small number of local authorities by means of the Public Space Protection Orders (PSPOs) which the Anti-Social Behaviour, Crime and Policing Act, 2014 enabled local authorities to enact. This Act of Parliament did NOT specifically refer to any actions related to abortion, nor did the Local Government Association's guidance document on PSPOs for local councils issued in February 2018 even mention the issue of abortion.¹¹¹

9.1.1 However, PSPO legislation was used by the London Borough of Ealing to introduce the UK's first abortion buffer zone, when in April 2018 it introduced a Public Spaces Protection Order around the Marie Stopes International West London abortion clinic in Ealing town centre.¹¹²

9.2 Timeline of the campaign for the first abortion buffer zone in Ealing

9.2.1 There appear to have been a number of key events leading up to Ealing Council's decision to introduce the UK's first abortion buffer zone:

c.1998 It has been claimed that for around 20 years various activities had taken place in the area around the Marie Stopes abortion clinic including: vigils for the unborn children aborted there and silent prayer; offers of counselling either verbally or by leaflet to persons approaching the clinic; posters which included statements such as "both lives matter" and photographs of unborn children in the womb at less than 24 weeks pregnancy showing human features such as eyes, ears and fingers.¹¹³

2014 BPAS launched their "Back Off" campaign for abortion buffer zones to be introduced in the UK. The main picture for this campaign on the BPAS website shows people standing with their heads bowed and mouths closed, some holding a rosary, the only poster – which is in the centre of the picture is a photograph of a mother and baby and the words "love them both". The campaign photo does not feature any identifiable form of harassment or even engagement with other people.¹¹⁴

December 2014 Labour Shadow Home Secretary Yvette Cooper MP, in an interview with ITV News, called for introduction of abortion buffer zones in the UK.¹¹⁵

¹¹¹ Local Government Association Public Spaces Protection Orders: Guidance for Councils (London: LGA, February 2018) <https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf> [accessed 1 November 2024].

¹¹² MSI Choices West London Abortion Clinic <<https://www.msichoice.org.uk/find-us/clinics/msi-choices-west-london-national-treatment-centre/>> [accessed 30 October 2024].

¹¹³ The 20 years figure was given in both the report to Ealing Council and a subsequent article by Ealing Councillors Joanna Camadoo-Rothwell (Cabinet member of safer communities and inclusion) and Binda Rai (cabinet member for Health and adult services) 'How we became the first council to introduce an abortion clinic safe zone' Labour List 3 March 2020 <<https://labourlist.org/2020/03/how-we-became-the-first-council-to-introduce-an-abortion-clinic-safe-zone/>> [accessed 18 November 2024].

¹¹⁴ This was not stated in the Ealing Council report, but was stated by the leader of Ealing Council giving oral evidence to the Home Affairs Select Committee Tuesday 12 December 2017 subject harassment and intimidation near abortion clinics, Parliament TV evidence by Councillor Bell 09:34 <<https://www.parliamentlive.tv/Event/Index/83d2c76e-6c23-4a01-9d02-a4de196f1f0>> [accessed 27 November 2024].

¹¹⁵ 'Yvette Cooper calls for buffer zones outside abortion clinics' ITV News 8 December 2014 <<https://www.itv.com/news/2014-12-08/hunts-statements-on-abortion-deeply-worrying>> [accessed 18 November 2024].

May 2015 Rupa Huq was elected as Labour MP for Ealing Central and Acton, taking the seat from the Conservatives. Dr Huq subsequently made campaigning for abortion buffer zones one of the main aspects of her parliamentary career and spoke of having in the year before her election attended what she described as a “demonstration” outside the clinic against those opposed to abortion.¹¹⁶

November 2015 A pro-abortion counter protest group known as Sister Support began gathering outside the clinic.¹¹⁷ It used banners directed against Pro-Life groups such as: “It’s her body, her choice” and “I’ve asked God she’s Pro-Choice” as well as “no more vigils Ealing Clinic needs a buffer zone”.¹¹⁸ When the group persuaded Ealing Council to pass a motion seeking to ban the vigils outside the abortion clinic they described Rupa Huq MP as one of their “hugely influential supporters”.¹¹⁹

April 2017 Sister Supporter approached Ealing Council to ask what it was doing to stop harassment of pregnant women entering the abortion clinic, claiming the council had an equalities duty to protect the women.¹²⁰

July 2017 Sister Supporter then organised a petition¹²¹ signed by 3,593 people, equivalent to approximately 1% of Ealing’s population,¹²² calling for the council to:

“to end the persistent presence of the anti-abortion vigil outside the Marie Stopes Reproductive Centre on Mattock Lane, Ealing and take all measures within its power, including but not limited to the establishment of a Public Spaces Protection Order, to move anti-abortion campaigners away from the area immediately outside the Mattock Lane clinic (to a distance of at least 100M).”¹²³

The PSPO powers until then had never been used to create anything similar to an abortion buffer zone in the UK. They were introduced by parliament to enable local councils to tackle minor incidents of anti-social behaviour such as dog fouling in town centres.

The petition appears to have been linked to the counter-protest which was trying to stop the vigils by the Pro-Life supporters. It is certainly the case that the Pro-Choice counter demonstration group Sister Supporters claimed the credit for it, with their website stating:

“We successfully campaigned for a Public Space Protection Order outside our local Marie Stopes clinic.”¹²⁴

September 2017 local Labour MP Rupa Huq announced she would be leading a campaign in parliament to introduce abortion buffer zones using an amendment to the

¹¹⁶ Rupa Huq ‘Ealing’s abortion clinic safe zone is a great start but we need a national solution’ Labour List 11 April 2028 <<https://labourlist.org/2018/04/rupa-huq-ealings-abortion-clinic-safe-zone-is-a-great-start-but-we-need-a-national-solution/>> [accessed 5 November 2024].

¹¹⁷ Report to Ealing Council for cabinet decision 10 April 2018, ‘Addressing behaviours outside the Marie Stopes Sexual Health clinic on Mattock Lane’ (Report author listed as Paul Murphy) s.3.2 <<https://ealing.moderngov.co.uk/Data/Cabinet/201804101900/Agenda/Agenda%20Document%20Pack%20-%20Cabinet%20-%2010-04-2018%2019-00-00.pdf>> [accessed 5 November 2024].

¹¹⁸ Sister Supporters – main picture on front of website <<https://www.sistersupporter.co.uk>> [accessed 15 November 2024].

¹¹⁹ Katie Berrington ‘Why last night was historic in the Pro-Choice campaign’ British Vogue 10 October 2017 <<https://www.vogue.co.uk/article/sister-supporter-ealing-abortion-clinic-campaign>> [accessed 27 November 2024].

¹²⁰ Report to Ealing Council for cabinet decision 10 April 2018 s.3.2.

¹²¹ This was not stated in the Ealing Council report, but was stated by the leader of Ealing Council giving oral evidence to the Home Affairs Select Committee Tuesday 12 December 2017 subject harassment and intimidation near abortion clinics, Parliament TV evidence by Councillor Bell 09:34 <<https://www.parliamentlive.tv/Event/Index/83d2c76e-6c23-4a01-9d02-a4de196ff0>> [accessed 27 November 2024].

¹²² Office for National Statistics ‘How the population changed in Ealing: Census 2021’ ONS 28 June 2022 <<https://www.ons.gov.uk/visualisations/censuspopulationchange/E09000009/>> [accessed 18 November 2024].

¹²³ Ealing Council Report to Cabinet (The Murphy Report) s.3.3.

¹²⁴ Sister Supporters ‘Story’ <<https://www.sistersupporter.co.uk/story>> [accessed 15 November 2024].

domestic violence bill then going through parliament, which had been drafted by the abortion provider BPAS. In her statements at the time, she referred to what she termed the “phoney vigil” outside the Marie Stopes abortion clinic in Ealing.¹²⁵

October 2017 in response to the petition Ealing Council debated and approved a motion to

“fully explore every possible option and will take all necessary actions within its powers, utilising all necessary resources, to prevent anti-abortion protestors from intimidating and harassing women outside the Marie Stopes Clinic on Mattock Lane.”¹²⁶

The motion solely referred to banning “the anti-abortion vigil” and made no reference to pro-abortion protestors.¹²⁷

It is also noteworthy that at this time local Labour MP Rupa Haq was unsuccessfully seeking to persuade parliament to introduce abortion buffer zones. The issue of abortion buffer zones was therefore a hot political issue in the local area, particularly among supporters of the Labour Party, which had controlled Ealing Council since 2010. **26 November 2017** The Home Office launched a consultation on intimidation and harassment outside abortion clinics which noted that the law already provided protection against intimidation and harassment, while looking to see if police, local authorities and healthcare providers had sufficient powers.¹²⁸

12 December 2017 The House of Commons Select Committee on Home Affairs, chaired by Yvette Cooper MP, who had previously called for the introduction of abortion buffer zones in the UK, broke off from its scheduled programme of inquiries¹²⁹ to collect additional evidence which it wished to provide to the government consultation just announced. It held an oral evidence session at which Ealing Council’s leader, Councillor Julian Bell and cabinet member for health and adult services, Councillor Binda Rai, gave evidence. Councillor Bell stated that Ealing Council’s actions were in response to concerns raised with the council “from both users of the clinic, members of staff from the clinic and also residents”.¹³⁰ In their evidence, both repeatedly called for national legislation on the issue. Councillor Rai stated the outcome she wanted was “I don’t think any (Pro-Life) protestors should be on Mattock Lane”.¹³¹

16 January 2018 in an interview on Sky News, former Ealing Labour councillor Edward Rennie publicly challenged claims made by Ealing Council that what was happening outside Ealing abortion clinic amounted to harassment of women. He emphasised the importance of groups such as Good Counsel Network in providing an alternative source of information to the abortion clinic for vulnerable women, such as those who

¹²⁵ ‘Labour MP Rupa Huq wants a change in the law to stop protests outside abortion clinics’ *Huffington Post* 26 September 2017 <https://www.huffingtonpost.co.uk/entry/labour-mp-rupa-huq-wants-a-change-in-the-law-to-stop-protests-outside-abortion-clinics_uk_59ca8288e4b01cc57ff61cd3 > [accessed 4 November 2024].

¹²⁶ Ealing Council Report to Cabinet (The Murphy Report) s.3.4.

¹²⁷ Report to Ealing Council for cabinet decision 10 April 2018, ‘Addressing behaviours outside the Marie Stopes Sexual Health clinic on Mattock Lane’ s.3.4.

¹²⁸ Home Office Review into harassment and intimidation near abortion clinics’ 26 November 2017 <<https://www.gov.uk/government/news/review-into-harassment-and-intimidation-near-abortion-clinics>> [accessed 27 November 2024].

¹²⁹ Home Affairs Committee, session 2017-19, Reports, special reports and government responses <<https://committees.parliament.uk/committee/83/home-affairs-committee/publications/reports-responses/?DateFrom=21%2F06%2F2017&DateTo=13%2F10%2F2019&SearchTerm=&SessionId=30&page=2>> [accessed 27 November 2024].

¹³⁰ Councillor Julian Bell at 09:34.

¹³¹ Home Affairs Committee Tuesday 12 December 2017 subject harassment and intimidation near abortion clinics, Parliament TV evidence by Councillor Bell and Rai 09:32-10:25 <<https://www.parliamentlive.tv/Event/Index/83d2c76e-6c23-4a01-9d02-a4de1961f0>> [accessed 27 November 2024].

lack internet access due to poverty, those with unclear immigration status and those experiencing abortion coercion.¹³²

29 January 2018 Ealing Council began an eight-week consultation on a proposal to introduce an abortion buffer zone using PSPO legislation. Ealing Council was described in the local press as being the “first in the UK to consider [a] safe zone outside an abortion clinic”.¹³³ The public responses were split between those supporting it and those who saw it as a significant overreach by Ealing Council which infringed on people’s human rights. It would appear that both the original petition and the consultation responses contained a significant number of signatories from people who were not necessarily residents or workers in the Ealing Council area.¹³⁴

10 April 2018 Ealing Council’s report to its Cabinet recommending using the PSPO legislation was considered by the council’s cabinet, who decided to create the abortion buffer zone.

September 2018 Home Secretary Sajid Javid told parliament that, whilst Home Office commissioned a review conducted by the National Police Lead for protest on harassment and intimidation outside abortion clinics had found some “*upsetting examples of harassment*”, these were the exception, with most protests outside abortion clinics being “passive”. As such, he stated that it would not be proportionate to introduce abortion buffer zones.

9.2.2 Analysis of timeline

The extent to which the move was seen as both a victory by pro-abortion activists, and part of a national campaign to ban vigils by those opposed to abortion, was illustrated by an article by Rupa Huq MP published the following day on the website *Labour List* headed:

*“Ealing’s abortion clinic safe zone is a great start but we need a national solution”*¹³⁵

It is therefore clear that

- i) the Ealing abortion buffer zone was introduced as a result of a successful campaign by anti-abortion activists.
- ii) the motivation behind the introduction of the abortion buffer zone as illustrated by the motion agreed by Ealing Council in 2017 was to ban “anti-abortion vigils”, rather than to impartially ban all groups from the proximity of the abortion clinic.

9.2.3 Ealing Council’s negotiations between the Pro-Life and Pro-Choice groups

Prior to recommending the creation of the abortion buffer zone, Ealing Council officers had conducted negotiations between Pro-Life and Pro-Choice groups whose members were gathering in proximity to the clinic. They had agreed:

¹³² Sky News 18 January 2018. A downloaded clip of the interview discussion between Edward Rennie, Chair of Labour for Life and Sociologist Dr Pam Lowe can be accessed at: Right to Life UK

<<https://www.facebook.com/watch/?v=1831953256823812>> [accessed 18 November 2024].

¹³³ ‘Ealing to be first in the UK to consider safe zone around abortion clinic’ *Ealing News* 3 April 2018

<<https://www.aroundealing.com/news/consider-safe-zone-outside-abortion-clinic/>> [accessed 18 November 2024].

¹³⁴ The July 2017 petition was signed by 3,593 people. However, the Ealing Council report (s.6.1.6) notes that only 2,181 people took part in Ealing Council’s consultation which required those submitting responses to state their address. In addition, while an additional 78 people submitted responses by letter, a total of 2,259 which is less than 63% of the number signing the original petition. In addition, 1,476 email responses were received, including 1,430 using a template email from the portal of Pro-Life group <www.behereforme.org>.

¹³⁵ Rupa Huq ‘Ealing’s abortion clinic safe zone is a great start but we need a national solution’ *Labour List* 11 April 2018 <<https://labourlist.org/2018/04/rupa-huq-ealings-abortion-clinic-safe-zone-is-a-great-start-but-we-need-a-national-solution/>> [accessed 5 November 2024].

“4.2.6 The meetings with Pro-Life and Pro-Choice groups were productive to the extent that they established where scope for negotiation could exist and where it would not. Of the Pro-Choice represented groups who did engage with the Council, the following behaviours were agreed as unacceptable and they stated they do not engage in them:

- Shouting at women entering or leaving the Clinic*
- Following women entering or leaving the Clinic*
- Taking photos or filming women entering or leaving the Clinic.”¹³⁶*

As such, there was in effect a code of practice agreed between the two groups which prohibited many of the actions which were later claimed to be the reason why it was necessary to introduce the abortion buffer zone.

The issues the two sides did NOT agree on were stated in the council's report to be

- Displaying images of foetuses
- approaching women entering and / or leaving the clinic
- Standing at the entrance to the clinic.¹³⁷

The Council report also noted that the council's negotiations between the two groups failed as the representatives of the Pro-Choice group Sister Supporter

“stated they would not consider changing any of their activities until such time as the represented Pro-Life groups ceased theirs and removed themselves from the area.”¹³⁸

9.2.4 Results of negotiations

Whilst the council did conduct a public consultation before creating the abortion buffer zone which showed a degree of, though far from unanimous, public support for it, what is nevertheless clear is that

1. There was agreement between Pro-Life and Pro-Choice groups which effectively created a code of conduct banning some of the behaviours which were later claimed to make the creation of an abortion buffer zones necessary.
2. The Council's attempt to negotiate a compromise between the two groups failed because the Pro-Choice group refused to stop any of their activities at all, unless the Pro-Life groups were no longer present in any capacity in the vicinity of the abortion clinic.
3. Ealing Council effectively gave in to Pro-Choice group by introducing a wide-ranging ban on anything related even indirectly to abortion, including prayer and the use of religious language – including, but not restricted to the use of Christian theological terms such as “soul” and “Hell” – which the Council's report on the negotiations between the two groups does not even mention.

¹³⁶ Ealing Council Report to Cabinet dated 10 April 2018 s.4.2.7.

¹³⁷ Ealing Council Report to Cabinet dated 10 April 2018 s.4.2.8.

¹³⁸ Ealing Council Report to Cabinet dated (“The Murphy report”) s.4.2.9.

9.3 The evidence base in the Ealing Council report proposing the PSPO

9.3.1 The Council's report states that its evidence base consisted of

- Consultation and engagement exercises with represented groups from all sides.
- Obtaining information from Police and other agencies.
- Engagement with the clinic and clinic staff.
- Taking witness accounts from those using the clinic and those who have used it historically.
- Engagement with the local community, specifically by seeking the information and views of local residents and councillors.
- Receiving and considering 'evidence packs' produced by Sister Supporter and the Good Counsel Network.¹³⁹

9.3.2 Precisely what information Ealing Council obtained from the police is not stated in the report. However, in December 2017, the leader of Ealing Council did admit during questioning before the Home Affairs select committee:

*"It's fair to say there have not been any prosecutions or legal actions taken against any protestors at the clinic to date."*¹⁴⁰

While the Ealing Council report itself states that during the consultation the police themselves took a neutral stance:

"6.6 The Metropolitan Police have cited their role as an enforcement partner as the basis for their position that they will neither support nor object to the order."

9.3.3 The Ealing Council report adds that it received evidence packs from both the Pro-Choice Sister Supporter group and Pro-Life groups. Whilst the Ealing Council report does not set out any detail of what the content of this evidence was, comparison with the evidence both groups provided to a parliamentary select committee in December 2017-January 2018 makes clear that a significant part of claims produced by each side was likely to have been disputed by the other. In particular

- Pro-Life groups claimed that their presence near the clinic was both peaceful and had a beneficial impact, with a number of women being grateful for having changed their minds and positively decided to continue their pregnancy after encountering them.¹⁴¹
- The Pro-Choice Sister Supporter group appear to have claimed both that a) Pro-Life supporters sometimes shouted, or called women murderers; b) the mere presence of people standing near the abortion clinic led to women using the clinic feeling intimidated.

9.3.4 Ealing Council dealt with this situation by taking 13 additional witness statements itself, with the council report stating:

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

¹³⁹ Ealing Council Report to Cabinet dated 10 April 2018 ("The Murphy report") s.4.1.

¹⁴⁰ Home Affairs Select Committee Tuesday 12 December 2017 subject harassment and intimidation near abortion clinics, Parliament TV evidence by Councillor Bell 10:06 <<https://www.parliamentlive.tv/Event/Index/83d2c76e-6c23-4a01-9d02-a4de196f1f0>> [accessed 27 November 2024].

¹⁴¹ Ealing Council Report to Cabinet s.4.4.3.

*In total, thirteen witness statements were obtained.*¹⁴²

Given that clinic users and staff would at best only be able to corroborate the above claims made by the Pro-Choice Sister Supporter organisation, it is far from clear why Ealing Council apparently failed to take seek similar witness statements which would have the potential to corroborate the claims made by the Pro-Life groups of women being positively helped by their presence.

9.3.5 The apparent failure of Ealing Council to seek a balanced corroboration of the evidence presented to it by both Pro-Choice and Pro-Life groups would appear to be a particularly egregious failing.

Indeed, one of the Pro-Life groups who submitted evidence to Ealing Council, the Good Counsel Network, in January 2018 submitted written evidence to the select committee inquiry on harassment and intimidation outside abortion clinics, which included two detailed accounts by women who were grateful for having been positively helped in this way by Pro-Life groups.¹⁴³ The website of the mother's organisation BeHereForMe.org which is referred to elsewhere in the Ealing Council report contains 14 such accounts by women who positively decided to keep their babies as a result of the encountering Pro-Life supporters while going to an abortion clinic, as well as a video of 3 of the women talking about their experiences.¹⁴⁴

9.3.6 Evidence of intimidation or harassment of women

The council officers who visited the clinic and provided some of the 13 witness statements to the council reported being approached by Pro-Life groups handing out literature. However, the Ealing Council report does NOT refer to them having witnessed some of the other actions which the Pro-Choice demonstrators alleged were happening, such as shouting at, photographing or following women or calling them "murderers".

The Ealing Council report does also refer to four witness statements of women who had had abortions at the Marie Stopes clinic in Mattock Lane, Ealing during the period 2005-17:

Client A, who used the Clinic in 2005, stated that the group standing outside the clinic "told me that they were "praying for the souls of dead babies" and this made me feel overwhelmingly guilty."

Client B, who accessed the Clinic in 2007 advises "I remember the yelling and the protest more vividly than the termination. I was dazed and it was embarrassing because it was a residential street. They had placards with images of foetuses in the early stages of development. The foetuses had fingers and toes."

Client C, who used the Clinic's services in 2017 stated "If the protestors were not there, the experience would have been easier; I would not have felt so tense walking into the clinic. It would not feel that my privacy was being invaded..."

Client D, who used the Clinic in 2017 described a man with a rosary saying to her, "I am going to pray for you, you don't have to do this.' They made me feel like I was wrong. I made a concerted effort not to look at them."¹⁴⁵

What is significant, is that with the possible exception of client B, none of these, nor according to the Council report, the witness statements from the council's own safe neighbourhood officers, contain any allegation of aggressive actions by Pro-Life supporters which would in other situations be regarded as intimidation or harassment.

¹⁴² Ealing Council Report to Cabinet dated 10 April 2018 s. 4.3-4.5.

¹⁴³ House of Commons 'Written evidence submitted by the Good Counsel Network (HIA0002)' <<https://committees.parliament.uk/writtenevidence/87103/html/>> [accessed 20 November 2024].

¹⁴⁴ Be Here For Me: Mothers against the ban on help outside abortion centres 'Stories' <<https://behereforme.org>> [accessed 27 November 2024].

¹⁴⁵ Ealing Council Report to Cabinet s.4.3.3.

Given that these witness statements cover a 12 year period, it is difficult to see how this could reasonably be regarded as a strong body of evidence on the basis of which to introduce the first abortion buffer zone in the UK.

9.4 International influence

The Ealing PSPO appears at least in part to have been modelled on the Access to Abortion Services Act, 1996 of British Columbia as can be seen from the following comparison:

"protest" includes any act of disapproval or attempted act of disapproval, with respect to issues related to abortion services, by any means, including, without limitation, graphic, verbal or written means; (British Columbia, 1996 Act)

"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,"
(Ealing Council PSPO)

9.5 The Ealing PSPO

9.5.1 The Ealing buffer zone PSPO created two zones:

- a) One which it termed a "safe access zone" which extends along the road the clinic is on in both directions for more than 250m, as well including part of the large public park behind the abortion clinic.
- b) A small area which it termed a "designated area" on the far side of a road approximately 100m away from the clinic, in which limited protests were permitted with specific restrictions – including no more than four persons being in the designated area and no sign being larger than A3 size.

9.5.2 Within the safe access zone it prohibited

- 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.*

It is not entirely clear why Ealing Council included s.ii) and iii) as causing harassment with a threat or abuse were already criminal offences under the 1986 Public Order Act, although the PSPO would have allowed a council officer to issue a fixed penalty notice to anyone infringing any of these regulations, rather than just the police.

9.5.3 Banning prayer and use of religious language within the safe access zone

i) Ban on prayer

The ban on prayer in the safe access zone was both unprecedented in the UK and ambiguously worded – i.e. was the ban a) on all prayer or b) simply prayer which a reasonable person could construe as a protest for/against abortion? And c) did the ban include silent prayer?

Within the designated area, prayer was permitted, but as presence within this zone was restricted to only by four persons, this represented a restriction which was unprecedented anywhere in the English-speaking world.

ii) Ban of specific words – including religious terms

In its list of definitions, the Ealing PSPO also banned a number of specific words, though stating that this was not an exhaustive list. These included a number of religious and Christian theological terms:

“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”

This was potentially of enormous significance as the terms “soul” and “hell” are used in the Bible on a large number of occasions in both older and more modern translations, as well as being specifically Christian theological terms.¹⁴⁶ This aspect would appear to be unprecedented in any other abortion buffer zone anywhere in the world.

Ealing Council’s justification for the ban on prayer

The briefing papers prepared for the decision by Ealing Council’s cabinet in April 2018, which in a subsequent court case became known as “the Murphy report” after the officer who produced it, contained the following statement:

“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.”

However, in fact, this is misleading, as the ambiguous wording of the PSPO as it stands potentially bans ALL forms of prayer without qualification in the safe zone, which stretches for approximately 0.5 km along Mattock Lane.

It is unclear as to why Ealing Council felt it appropriate to take this step at this time, or whether it considered the extent to which it conflicted with the historical constitutional development of freedom of religion in the UK. The latter is particularly significant, as the repeal of laws prohibiting the gathering of more than five person for a religious purpose, as well as the recognition by the courts that silent prayer in the street was not a criminal act, played an important role in English constitutional history (see chapter 11 below).

¹⁴⁶ King James (Authorised Version) Bible: soul 498 times, Hell 54 times; Revised Standard Version: soul 323 times. Hell 20 times; New International Version: soul 95 times, Hell 15 times; Good News Bible: soul 60 times, Hell 22 times.

9.6 Other local council abortion buffer zones

9.6.1 The creation of the abortion buffer zone by Ealing Council was followed by four other local authorities similarly using Public Spaces Protection Orders to introduce abortion buffer zones.

Council	Date	Abortion clinic	Prohibition on prayer
London Borough of Ealing	April 2018 ¹⁴⁷	Marie Stopes International West London Abortion Clinic, Mattock Lane ¹⁴⁸	Prayer AND religious terms specifically prohibited
London Borough of Richmond	April 2019 ¹⁴⁹	BPAS Clinic, Rosslyn Road ¹⁵⁰	Prayer specifically prohibited
Manchester City Council	October 2020	Marie Stopes International, Wynnstay Grove	Prayer specifically prohibited
Bournemouth Christchurch and Poole Council	October 2022 ¹⁵¹	BPAS Clinic, Ophir Road	Prayer specifically prohibited
Birmingham City Council	September 2022 ¹⁵²	BPAS Robert Clinic, Station Road	Prayer specifically prohibited

All of these specifically ban prayer using words which reflect those first used by Ealing Council. However, none include the small “designated area” for protests and prayer at a distance from the abortion clinic which Ealing’s PSPO did.

Similarly, none followed Ealing Council in banning specific religious/theological terms.

The restrictions in each of these local authority PSPOs are, however, wide-ranging, encompassing any act of approval/disapproval or intended act not merely related to abortion, but to any “issues related to abortion services” – which potentially encompasses a significant range of otherwise legitimate subjects, such as the existence of the abortion buffer zone PSPO itself, and the issues such as care quality.

¹⁴⁷ Ealing Council ‘Mattock Lane PSPO’

<https://www.ealing.gov.uk/info/201335/active_pspas/3417/mattock_lane_pspo> [accessed 31 October 2024].

¹⁴⁸ Maries Stopes International ‘MSI Choices West London Abortion Clinic’ <<https://www.msichoice.org.uk/find-us/clinics/msi-choices-west-london-national-treatment-centre/>> [accessed 31 October 2024].

¹⁴⁹ Richmond.co.uk ‘Public Spaces Protection Orders’

<https://www.richmond.gov.uk/services/community_safety/antisocial_behaviour/public_spaces_protection_orders#:~:text=These%20orders%20impose%20various%20restrictions%20to%20dog%20control,22%20September%202020%20for%20a%20further%20three%20years.> [accessed 30 October 2024].

¹⁵⁰ ‘BPAS Richmond, London’ <<https://www.bpas.org/contact-us/find-a-clinic/bpas-richmond-london/>> [accessed 30 October 2024].

¹⁵¹ Bournemouth, Christchurch and Poole Council <<https://www.bcpccouncil.gov.uk/communities/crime-safety-and-emergencies/public-spaces-protection-orders-pspos-in-our-area/ophir-road-and-surrounding-area-public-spaces-protection-order-pspo>> [accessed 30 October 2024].

¹⁵² Birmingham City Council ‘Robert Clinic, Station Road, B30’

<https://www.birmingham.gov.uk/downloads/file/24121/robert_clinic_station_road_b30> [accessed 31 October 2024].

9.6.2 Prayer and local authorities' general power of competency

Although Ealing Council's ban on prayer in a public space broke new ground in terms of the extent of local authority powers, it was not covered by the general power of competence granted to local authorities by the Localism Act 2011, as this only gave local councils a power to do anything which an individual could do.

The general power of competence had in fact been created in response to a specific attempt to ban prayer at the start council meetings in a high court judicial review case brought by the National Secular Society against Bideford Town Council.¹⁵³ In response to this, the then Secretary of State for Communities and Local Government, Rt Hon Eric Pickles MP had fast tracked an amendment to the Localism Act 2011 giving local authorities a general power of competence enabling them to do anything which an individual person could do. He then sent a letter to the leaders of all local authorities headed: "General Power of Competence and Freedom to Pray".¹⁵⁴ This was then further reinforced by the government passing the Local Government (Religious Observances) Act 2015.

As such, Ealing Council's ban on prayer in a public place, in effect significantly extended the accepted power of local authorities in this respect.

9.7 Democratic deficit

9.7.1 As noted above, when Public Spaces Protection Orders (PSPOs) were introduced by parliament in 2014, they were intended to allow local authorities to take temporary action, for a maximum of three years, against minor aspects of anti-social behaviour such as dog fouling and littering. There is no evidence that parliament, in voting for them, intended them to be used to create abortion buffer zones. Indeed, one of the major criticisms which has subsequently been made of PSPOs was that they potentially gave too wide-ranging general powers to local councils, with a House of Commons Library briefing paper published in 2020 observing that:

*"Partly because of their wide application, PSPOs have been a particularly controversial ASB enforcement measure."*¹⁵⁵

9.7.2 It is also particularly noteworthy that at the time Ealing Council used the PSPO legislation to create the UK's first abortion zone, local MP Rupa Huq was at the time trying unsuccessfully to persuade parliament to legislate for abortion buffer zones. Her comments the day after Ealing Council's decision to create an abortion buffer zone, raise the question of whether the Public Space Protection Order legislation was being used as a means of bypassing Parliament's refusal at that point to legislate for abortion buffer zones.

Despite this, the then leader of Ealing Council, Councillor Julian Bell (Labour) subsequently described the introduction of the abortion buffer zone as one of the achievements he was most proud of.¹⁵⁶

¹⁵³ Rosalind English 'Prayer in council meetings was unlawful, rules high court' UK Human Rights Blog 10 February 2012 <<https://ukhumanrightsblog.com/2012/02/10/high-court-bans-god-from-council-meetings/>> [accessed 4 December 2024].

¹⁵⁴ Rt Hon Eric Pickles MP Secretary of State for Communities and Local Government letter to council leaders 'General Power of Competence and Freedom to Pray' <<https://assets.publishing.service.gov.uk/media/5a79da86ed915d6b1deb3d31/2092311.pdf>> [accessed 4 December 2024].

¹⁵⁵ House of Commons Library *Tackling Anti-Social Behaviour* Briefing Paper No 7270 21 April 2020 <<https://researchbriefings.files.parliament.uk/documents/CBP-7270/CBP-7270.pdf>> [accessed 4 December 2024] 23.

¹⁵⁶ 'What went wrong for Ealing Council leader Julian Bell after 11 years in charge – My London investigates' MyLondon 25 May 2021 <<https://www.mylondon.news/news/west-london-news/what-went-wrong-ealing-leader-20628743>> [accessed 4 November 2024].

10. The creation of abortion buffer zones across the UK

10.1 Northern Ireland

10.1.1 Abortion law has always been a politically sensitive and divisive issue in Northern Ireland (NI). The 1967 Abortion Act, which decriminalised abortion up to 28 weeks (now 24 weeks) pregnancy, for what in practice has turned out to be wide ranging reasons, only applied to England and Wales and in Scotland, but did not apply to Northern Ireland.

Since 2010, the issue has been one of the areas devolved by the UK government to the NI government under the Hillsborough Agreement.

10.1.2 In February 2012, Marie Stopes International opened a private abortion clinic in Northern Ireland which immediately attracted regular protests. In October that year, an attempt by DUP and SDLP MLAs to ban private abortion clinics in Northern Ireland was blocked by Sinn Féin, Alliance and Green Party MLAs tabling a petition of concern. The ‘petition of concern’ is a mechanism in the Hillsborough Agreement designed to prevent sectarian discrimination against either Unionist or Nationalist communities by blocking a bill unless it has at least 60% of MLAs and 40% of both Unionist and Nationalist MLAs supporting it. The mechanism was therefore designed to ensure bills had cross community support. However, in this instance it clearly did, as the DUP are the main Unionist party and the SDLP are a nationalist party. In practice, the split was along more ideological lines, with socially liberal Alliance Party,¹⁵⁷ Green Party and Sinn Féin opposed to the more socially Conservative DUP and SDLP, both of which explicitly describe themselves as being ‘Pro-Life’.¹⁵⁸

10.1.3 In November 2015, in a test case brought by NI’s Human Rights Commission, the NI High Court ruled that the effective ban on abortion breached the European Convention on Human Rights. In February 2016 MLAs responded by voting against liberalising the law on abortion. The case eventually went to the UK Supreme Court, which in June 2018 ruled that the NI Equality and Human Rights Commission was wrong to claim the Stormont Assembly did not have the authority to decide Northern Ireland’s abortion laws, but by a majority verdict said NI’s laws were incompatible with ECHR rights.

10.1.4 Between January 2017 and January 2020 the Northern Ireland power sharing executive collapsed following a dispute between the DUP and Sinn Féin, meaning that government in the province was undertaken by NI civil servants supervised by the UK government. In July 2019 Labour MP Stella Creasy, a prominent campaigner for abortion, used this situation to secure an amendment to the Northern Ireland Executive Bill to decriminalise abortion in Northern Ireland if the devolution was not restored by October. The move was highly contentious, first, because the Supreme Court had a year earlier ruled that abortion was a matter devolved to the Northern Ireland Assembly, which had earlier specifically voted against liberalising the abortion law in Northern Ireland; and secondly, because it gave NI the most liberal abortion laws anywhere in the UK, with the regulations eventually enacted decriminalising abortion for any reason up to 12 weeks pregnancy. After the NI executive was restored in 2020, the NI Assembly voted for a non-binding

¹⁵⁷ ‘Rise of Alliance reveals surprising facets of North’s shifting politics’ *Irish Times* 17 May 2022

<<https://www.irishtimes.com/opinion/rise-of-alliance-reveals-surprising-facets-of-north-s-shifting-politics-1.4880004#:~:text=The%20Alliance%20Party%20is%20viewed%20as%20socially%20liberal,to%20be%20replaced%20by%20a%20weighted%20majority%20model>> [accessed 6 November 2024].

¹⁵⁸ ‘Abortion in Northern Ireland: where do the parties stand?’ *Irish Times* 7 June 2018

<<https://www.irishtimes.com/news/social-affairs/abortion-in-northern-ireland-where-do-the-parties-stand-1.3522879>>; Both Lives Matter ‘Northern Ireland Political parties – where do they stand on abortion and the right to Life?’ nd <<https://bothlivesmatter.org/blog/ni-political-parties-where-do-they-stand-on-abortion-and-the-right-to-life>> [both accessed 6 November 2024].

motion proposed by the DUP, rejecting changes to NI abortion laws. However, in July 2021, the UK government issued a formal directive to the NI executive ordering it to set up abortion services in Northern Ireland.¹⁵⁹

10.1.5 In September 2021, NI Green Party leader Clare Bailey MLA re-introduced a private member's bill to create buffer zones around Northern Ireland abortion clinics, which she had originally sought to introduce in 2017 before the Stormont Assembly collapsed. The bill was finally passed in March 2022 by a majority vote in the "wash-up period" when remaining bills are rushed through without normal scrutiny on the final sitting day before the assembly was dissolved for elections.¹⁶⁰

10.1.6 However, even in its final stage, the Act caused particular controversy because of section 5(2) a which made it a criminal offence to do anything in the zone which could be deemed to be influencing a person "whether directly or indirectly" in relation to abortion.¹⁶¹

This particular clause led Northern Ireland's Attorney General, who has an independent non-political role, to refer the Abortion Services (Safe Access Zones) Act (Northern Ireland) Act 2023 to the UK Supreme Court over concerns that its omission of a "reasonable defence" clause and the attempt of its attempt to prohibit a number of activities including "intrusive" silent prayer was incompatible with ECHR guarantees of the right to freedom of expression. The Supreme Court concluded that "in a sensitive context like this one, states have a wide margin of appreciation in situations where it is necessary to strike a balance between competing Convention rights."¹⁶²

10.2 Scotland

10.2.1 The Northern Ireland Act was largely copied shortly afterwards in a Scottish bill proposed by Green Party MSP Gillian Mackay.¹⁶³ In June 2024, the Scottish parliament passed the Abortion Services (Safe Access Zones) (Scotland) Act,¹⁶⁴ following a four-year campaign by pro-abortion activists.¹⁶⁵

The Act copied the wording of the highly contentious s.5(2)a of the Northern Ireland Abortion Services (Safe Access Zones) (Northern Ireland) Act. However, whilst the Northern Ireland Act set a 150m exclusion zone around abortion clinics, the Scottish Act extended this to a 200m zone - the largest in the UK. It is not clear what the justification for the size of the area being extended was.

The Scottish Act also imposed a maximum possible fine of £10,000, unlike the maximum £2,500 fine in the law enacted in Northern Ireland.

¹⁵⁹ 'Abortion in Northern Ireland: timeline of key events' BBC 8 June 2022 <<https://www.bbc.co.uk/news/uk-northern-ireland-politics-56041849>> [accessed 6 November 2024].

¹⁶⁰ 'Range of legislation passed in final hours of assembly mandate' *Belfast Telegraph* 24 March 2022 <<https://www.belfasttelegraph.co.uk/news/northern-ireland/range-of-legislation-passed-in-final-hours-of-assembly-mandate/41484779.html>> [accessed 6 November 2024].

¹⁶¹ Northern Ireland Assembly official report: Thursday 24 March 2022. Abortion Services (Safe Access Zones) Bill- Final Stage <<https://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2022/03/24&docID=372037#4128728>> [accessed 6 November 2024].

¹⁶² UK Supreme Court REFERENCE by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill Case ID 2022/0077 <<https://www.supremecourt.uk/cases/uksc-2022-0077.html>> and Press summary <<https://www.supremecourt.uk/press-summary/uksc-2022-0077.html>> [both accessed 6 November 2024].

¹⁶³ 'Abortion clinic buffer zone bill lodged in Scottish Parliament' BBC 15 June 2023 <<https://www.bbc.co.uk/news/uk-scotland-65914694>> [accessed 6 November 2024].

¹⁶⁴ 'MSPs approve abortion buffer zones' BBC 12 June 2024 <<https://www.bbc.co.uk/news/articles/c8vv5l8vlp3o>> [accessed 6 November 2024].

¹⁶⁵ 'Student campaign helps bring about buffer zones around abortion clinics in Scotland' *The Tab* 5 November 2024 <<https://thetab.com/2024/11/05/student-campaign-helps-bring-about-buffer-zones-around-abortion-clinics-in-scotland>> [accessed 6 November 2024].

10.2.2 Those proposing the law claimed it was necessary to prevent harassment and intimidation of clinic users and staff by those opposed to abortion.¹⁶⁶ Green Party MSP Gillian Mackay who proposed the bill stated when the bill was passed by the Scottish Parliament:

"I hope that it will be the end of the intimidation and harassment we have seen of people who are accessing healthcare."

While those opposed to the bill disputed whether the evidence supported this, with the charity CARE for Scotland describing the laws as "unnecessary and disproportionate":

*"The harassment pro-abortion campaigners alleged to be taking place was not borne out by evidence, including freedom of information data from Police Scotland. This policy has always been about curtailing the expression of views that people disagree with."*¹⁶⁷

10.2.3 Banning Prayer

The wide-ranging clause 5(2)a which prohibits any act within the zone which could have the effect of influencing people on the subject of abortion either "directly or indirectly" has raised concerns as to whether in practice the Act will ban silent prayer. Care for Scotland stated:

"The buffer zones law opens the door to: peaceful, Pro-Life Scots being criminalised for praying silently in public, Scots who live next to a buffer zone being arrested for displaying a Pro-Life slogan in the window of their private dwelling and Christian ministers being prosecuted for displaying a bible verse on a church building that borders a buffer zone."

*"People are rightly questioning whether such outcomes are conducive to a free society."*¹⁶⁸

10.3 England and Wales

10.3.1 Abortion buffer zones were introduced nationally to England and Wales through an amendment to the Public Order Act 2023 when it was going through Parliament.¹⁶⁹ The amendment by prominent Pro-Choice abortion campaigner Stella Creasy MP, which became s.9 of the Public Order Act, created a buffer zone of 150m around abortion clinics within which it prohibited

s.9(1) a "influencing any person's decision to access, provide or facilitate the provision of abortion services at an abortion clinic."

10.3.2 Restrictions on activities in residential houses within 150 m of abortion clinics

Unlike the abortion buffer zones created by local councils PSPOs, it did not merely restrict activities on publicly accessible land, but also extended to private residential properties within the 150m buffer zone, with s.9(2) referring in a vaguely worded phrase to "any location" visible from a public highway, footpath, open space or the abortion clinic itself:

A "safe access zone" means an area which is within a boundary which is 150 metres from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic and is—

(a) on or adjacent to a public highway or public right of way,

(b) in an open space to which the public has access,

¹⁶⁶ 'Abortion protests near clinics banned as buffer zone law goes live' BBC 24 September 2024
<<https://www.bbc.co.uk/news/articles/c98y1ryd6d3o#:~:text=Green%20MSP%20Gillian%20Mackay%20was%20behind%20the%20bill,support%20of%20118%20MSPs%20from%20across%20the%20Chamber>> [accessed 6 November 2024].

¹⁶⁷ 'Abortion buffer zones to take place within weeks' BBC 5 September 2024
<<https://www.bbc.co.uk/news/articles/cy0r75n72qzo>> [accessed 6 November 2024].

¹⁶⁸ 'Abortion buffer zones to take place within weeks' BBC 5 September 2024
<<https://www.bbc.co.uk/news/articles/cy0r75n72qzo>> [accessed 6 November 2024].

¹⁶⁹ 'Stella Creasy's amendment Public Order Act 2023 report stage amendment No.NC11
<<https://bills.parliament.uk/bills/3153/stages/16631/amendments/10002351>> [accessed 7 November 2024].

(c) within the curtilage of an abortion clinic, or building or site which contains an abortion clinic, or
(d) **in any location** that is visible from a public highway, public right of way, open space to which the public have access, or the curtilage of an abortion clinic.

The restrictions were particularly significant, as abortion clinics are frequently situated in residential areas. However, imposing restrictions on what people could put do or display within their own house and garden was an unprecedented restriction not merely in relation to abortion buffer zones, but in terms of the common law right of anyone to do anything in their home or elsewhere provided it did not constitute a criminal offence.

10.4 Silent prayer

10.4.1 House of Commons

In the House of Commons, an amendment was proposed by Andrew Lewer MP which specifically proposed exempting silent prayer:

insert—

“(3A) No offence is committed under subsection (1) by a person engaged in consensual communication or in silent prayer in a public place.

(3B) For the avoidance of doubt, any such communication or prayer shall not, without more, be taken to be —

- (a) influencing any person’s decision;*
- (b) obstructing or impeding any person;*
- (c) causing harassment, alarm or distress to any person; or*
- (d) otherwise fulfilling any of the elements of an offence within the acts listed in this section.”¹⁷⁰*

However, this failed to gain acceptance, leaving the question as to whether the Act prohibited silent prayer unanswered.

10.4.2 House of Lords

In the House of Lords, serious concerns were raised by both peers and bishops about the potential to criminalise silent prayer. Lord Jackson of Peterborough, a former MP, drew attention to the use of PSPOs by both Birmingham and Bournemouth Christchurch and Poole councils to ban silent prayer using legislation which had never been intended for this purpose:

The recent cases of Isabel Vaughan-Spruce in Birmingham and Adam Smith-Connor in Bournemouth, arrested for silently praying within two different PSPO buffer zones, took people by surprise, since they were not aware that silent prayer had become criminalised in this country. In 2014, I voted for the relevant legislation in the other place, but it was never intended for such draconian use.¹⁷¹

Lord Farmer spoke of the lack of impartiality in the bill which only gave freedom of speech to certain beliefs, while criminalising others:

“Clause 9 is now the most restrictive part of the whole Bill, allegedly to protect women from harassment. Yet it goes significantly beyond banning “harassment” or even preventing “serious disruption”, as is the stated intention of the Bill. It bans “protest” for those who hold certain beliefs, and their right to “inform”, “persuade”, “advise” or even express opinion on the public

¹⁷⁰ Motion on Lord’s Amendment 5 Public Order Act 2023 consideration of Lord’s amendments
<<https://bills.parliament.uk/bills/3153/stages/17414/motionsandamendments/19>> [accessed 7 November 2024].

¹⁷¹ UK Parliament Hansard Public Order Bill 2023 Volume 827 debated on 30 January 2023
<<https://hansard.parliament.uk/lords/2023-01-30/debates/E5DBCE3B-D5DA-441A-91F8-5ED110FC8639/PublicOrderBill>> [accessed 11 November 2024].

street...However, for some, the right to protest depends entirely on what one's convictions are. Pro-Life convictions are deemed so abhorrent as to require a blanket ban and withdrawal of rights within certain spaces.

Furthermore, the Bill reduces the threshold of criminality to standards lower than ever before and, as currently drafted, would likely catch a parent, teacher or social worker giving, at the request of a young or vulnerable person, rounded advice to help them make one of life's most difficult decisions."¹⁷²

He then specifically raised concerns that by potentially criminalising silent prayer the bill amounted to the UK's first "thought crime":

*"Instructively, five local councils have instituted buffer zones already. Bournemouth Council has prohibited even the act of crossing oneself in the vicinity, treating even peaceful presence as intimidation. All five councils have banned prayer—even silent prayer, in the case of Ealing—flagrantly violating religious freedom. If prayer is considered a form of "influence", then Clause 9 puts the UK's first "thought crime" into statute."*¹⁷³

An amendment was proposed by Lord Farmer which would have required the government to set out in a statutory instrument the specific activities which were prohibited in an abortion buffer zone – although this was not accepted.¹⁷⁴

10.4.3 Has silent prayer been banned?

During the debate in the House of Lords the claim was made by supporters of the bill that it would only ban silent prayer if it involved multiple people in silent prayer. However, as Baroness Morrissey pointed out, this was a distinction which clause 9 of the bill, which introduced abortion buffer zones, simply did not make:

"...would also ban silent prayer and goes further than supporters of my noble friend's amendment wanted to go in Committee. I draw your Lordships' attention to the remarks of the noble Baroness, Lady Barker:

'I listened carefully to a number of noble Lords who made emotive comments suggesting that we wish to 'criminalise prayer'. In the case of a single person in silent prayer, no, we do not; in the case of a church where every member turns up, week in week out, to stand directly in the path of women trying to access a service with the avowed intent of frustrating their access, yes we do.'—[Official Report, 22/11/22; col. 1323.]

*Unfortunately, this is a distinction without a difference in Amendment 45, which could criminalise anyone who prays silently."*¹⁷⁵

What this meant was that the question was left open to the courts to decide whether the somewhat vague term influencing includes silent prayer.

10.4.4 However, both Pro-Choice and Pro-Life campaigners were clear that the intention of those proposing the amendment to the Public Order Act which created the vaguely worded offence of influencing someone with 150m of an abortion clinic, intended this to include a ban on silent prayer. As the Act came into force, Stella Creasy MP was emphatic that her amendment did ban silent prayer within 150m of an abortion clinic, saying:

¹⁷² Public Order Bill Lord Farmer's excerpts 2nd Reading <<https://www.parliament.parliament.co.uk/mp/lord-farmer/bill/2022-23/publicorder>> [accessed 11 November 2024].

¹⁷³ Public Order Bill Lord Farmer's excerpts 2nd Reading <<https://www.parliament.parliament.co.uk/mp/lord-farmer/bill/2022-23/publicorder>> [accessed 11 November 2024].

¹⁷⁴ UK Parliament Parliamentary Bills, Lord Farmer's amendment after clause 9 Public Order Act 2023 <<https://bills.parliament.uk/bills/3153/stages/17066/amendments/10002939>> [accessed 11 November 2024].

¹⁷⁵ UK Parliament Hansard Public Order Bill 2023 Volume 827 debated on 30 January 2023 <<https://hansard.parliament.uk/lords/2023-01-30/debates/E5DBCE3B-D5DA-441A-91F8-5ED110FC8639/PublicOrderBill>> [accessed 11 November 2024].

“There could not be a more democratic embodiment of what has happened, which is people have disagreed with them that they have a right to pray wherever they want, and said, ‘well actually, women have a right to privacy, and that privacy means that if you’re going to pray for women having abortions, you need to do it 150 metres away.’”¹⁷⁶

While as the Act came into force the Society for the Protection of Unborn Children (SPUC) commented:

“We) believe that the inclusion of silent prayer constitutes a gross intrusion in the right of freedom of religion, free speech and accordingly needs to be properly tested in the courts.”¹⁷⁷

However, what this means in practice is that individuals will be arrested and prosecuted because of a vaguely worded law, and it will then ultimately be left to the Appeal Court to decide whether or not silent prayer is included, a process which can take up two years or more.

This raises the question as to why the vaguely worded term influencing was used in the Act. Whilst it replicated the language in the Northern Ireland and Scottish laws, it is a primary role of MPs to scrutinise proposed legislation to ensure the law is clear. As such, it raises the question as to whether those proposing the bill deliberately used the vague term “influencing”, in order to avoid the loss of support that a specific reference to banning prayer would likely entail, while nonetheless intending that the term would create sufficient legal uncertainty as to create an effective ban in practice.

10.4.5 Home Office consultation

In December 2023, the Home Office issued non statutory guidance on the operation of abortion buffer zones as part of a public consultation on how they should be implemented. This emphasised that silent prayer as an internal religious activity is an unqualified human right, i.e. one which cannot be restricted for any reason:

“Prayer within a Safe Access Zone should not automatically be seen as unlawful. Prayer has long received legal protection in the United Kingdom and these protections have not changed as a result of section 9. Silent prayer, being the engagement of the mind and thought in prayer towards God, is protected as an absolute right under the Human Rights Act 1998 and should not, on its own, be considered to be an offence under any circumstances. However, where an individual is praying, but their conduct is also intrusive, this is likely to be an offence under section 9.”¹⁷⁸

“Practising routine religious activities – such as praying silently whilst in transit, reading a Bible at a bus stop or carol singing in a church courtyard would be unlikely to be reckless for the purposes of the offence. However, a large and obtrusive religious gathering directly outside a clinic to promote the Pro-Life cause could be an offence.”¹⁷⁹

It also noted the Supreme Court judgment in relation to the Northern Ireland law focused on the issue of intrusiveness:

¹⁷⁶ ‘Abortion safe zone clinics welcomed but opponents brand them “Orwellian” *Independent* 29 October 2024 <<https://www.independent.co.uk/news/uk/parliament-stella-creasy-orwellian-college-of-policing-wales-b2637280.html>> [accessed 7 November 2024].

¹⁷⁷ ‘Abortion safe zone clinics welcomed but opponents brand them “Orwellian” *Independent* 29 October 2024 <<https://www.independent.co.uk/news/uk/parliament-stella-creasy-orwellian-college-of-policing-wales-b2637280.html>> [accessed 7 November 2024].

¹⁷⁸ Home Office Non Statutory Guidance on Abortion Safe Access: Zones Government Consultation s.2.7 (London:Home Office,2023) <<https://assets.publishing.service.gov.uk/media/6578357c095987001295de76/SAZ+Public+Consultation.pdf>> [accessed 7 November 2024].

¹⁷⁹ Home Office Non Statutory Guidance on Abortion Safe Access: Zones Government Consultation s.2.11 (London:Home Office,2023) <<https://assets.publishing.service.gov.uk/media/6578357c095987001295de76/SAZ+Public+Consultation.pdf>> [accessed 7 November 2024].

“Whilst the UK Supreme Court judgment on the Northern Ireland Safe Access Zone law did refer to silent prayer, the conduct described was ‘intrusive.’”¹⁸⁰

10.4.6 Crown Prosecution Service Guidance

However, the subsequent Crown Prosecution Service guidance had a different emphasis noting that the Supreme Court’s appraisal of the Northern Ireland law considered the scope of the activities prohibited and:

“These activities included not only violent offences such as spitting, threats, assaults and verbal abuse, but also a range of non-violent activities. These included:

- informing, advising, offering counselling, or attempting to persuade someone in relation to the use of abortion facilities;*
- handing out leaflets with information or misinformation on abortions;*
- holding bibles or foetal dolls;*
- displaying images of fetuses or babies;*
- singing around religious pictures;*
- **holding a vigil or praying, including silent prayer.***

Whilst also stating that:

“a person who carries out any of these activities within a safe access zone will not necessarily commit a criminal offence.”¹⁸¹

As such, the CPS guidance not only failed to repeat the emphasis of the earlier Home Office consultation document that silent prayer was an unqualified human right in international human rights conventions, it positively listed it as a potential criminal offence.

The CPS guidance also implied that “holding bibles” also potentially amounts to a criminal offence, by citing what it claimed was “a similar statutory provision in the NI Bill, in relation to the influencing limb of the offence”:

“In coming to its judgment, the court considered evidence of the types of activity by anti-abortion protesters and demonstrators that might impact a person accessing abortion services, and which were capable of falling within the scope of the statutory provision. These activities included not only violent offences such as spitting, threats, assaults and verbal abuse, but also a range of non-violent activities. These included:

- informing, advising, offering counselling, or attempting to persuade someone in relation to the use of abortion facilities;*
- handing out leaflets with information or misinformation on abortions;*
- holding bibles or foetal dolls;*
- displaying images of fetuses or babies;*
- singing around religious pictures;*
- holding a vigil or praying, including silent prayer.*

However, the Court acknowledged that there may arise factual questions of some delicacy as to whether particular conduct, in particular circumstances, answers the statutory descriptions [112].

¹⁸⁰ Home Office Non Statutory Guidance on Abortion Safe Access: Zones Government Consultation n1 to s.2.7 (London: Home Office, 2023)

<<https://assets.publishing.service.gov.uk/media/6578357c095987001295de76/SAZ+Public+Consultation.pdf>> [accessed 7 November 2024].

¹⁸¹ Crown Prosecution Service ‘Section 9 Public Order Act 2023: Interference with access to or provision of abortion services – Summary only’ <<https://www.cps.gov.uk/legal-guidance/protests-potential-offences-during-protests-demonstrations-or-campaigns-annex>> [accessed 7 November 2024].

*Accordingly, a person who carries out any of these activities within a safe access zone will not necessarily commit a criminal offence. Prosecutors will need to consider not only all the facts and circumstances of the particular conduct but also the context in which the conduct takes place.”*¹⁸²

In fact, this is misleading for two reasons. First, the Northern Ireland Act creates an offence (s.5[2]) of “influencing a protected person, whether directly or indirectly”, while the England and Wales Act - which is the geographical area in which the CPS has jurisdiction, does not include any reference to “indirectly” influencing. Secondly, the only reference to “holding Bibles” in the Supreme Court Judgment (s.84) was to a claim made in a submission by the Royal College of Obstetricians and Gynaecologists and the Faculty of Sexual and Reproductive Healthcare that protests outside abortion clinics in the UK generally involved “holding Bibles”. There was no specific reference to “holding Bibles” in Supreme Court’s actual consideration of the issues referred to it (s.110–57).

As such, the suggestion by the CPS that “carrying Bibles” in an abortion buffer zone in England and Wales would appear to be going well beyond what either s.9 of the Public Order Act 2023 states to be an offence and, even in the case of the Northern Ireland law, where the CPS has no jurisdiction, was not specifically ruled to be unlawful by the Supreme Court in the way that the CPS guidance implies.

The CPS claims in this respect are of some significance, as prohibition on the Bible being seen in a public space is one of the hallmarks of the more extreme forms of persecution of Christians. In England prior to 1536 it was a criminal offence which carried a penalty of execution by burning at the stake to even own a copy of the English Bible. As such, Henry VIII’s 1537 enactment of specific legalisation of reading the English Bible in public was a major milestone in the historic development of Freedom of Religion in England (cf s.11.3.2 below).

Today in countries such as Afghanistan and Saudi Arabia it is also a serious criminal offence to even own a Bible. Similarly, the *dhimma* contract which in 2015 Islamic State forced Christians to sign in Syria also specifically prohibits a Bible being visible in a public place:

*“2. They may not show the cross or any of their books in the Muslims' streets or markets, and may not use amplifiers when worshipping or during prayer.”*¹⁸³

The CPS really should have been aware of both the difference between the Northern Ireland and the England and Wales legislation, with the latter making no reference to indirectly influencing, and also aware of exactly how “carrying Bibles” was, and equally importantly was not, referred to in the NI Supreme Court judgment.

They should also have been aware in at least general terms of the importance of the Bible in both English constitutional history and the historic development of freedom of religion in Britain.

The issue is particularly important as concern has previously been raised in the House of Lords about negative comments made by the Crown Prosecution service in relation to the Bible, which led to a government law officer describing CPS comments as “inappropriate” and stating that new procedures would be put in place at the CPS to prevent this reoccurring.¹⁸⁴

¹⁸² Crown Prosecution Service ‘Section 9 Public Order Act 2023: Interference with access to or provision of abortion services – Summary only’ <<https://www.cps.gov.uk/legal-guidance/protests-potential-offences-during-protests-demonstrations-or-campaigns-annex>> [accessed 7 November 2024].

¹⁸³ ‘ISIS Video: Christians forced to pay jizya poll tax in Syrian town of Qaryatayn’ *Middle East Media Research Institute* (MEMRI) 4 October 2015 <<https://www.memri.org/tv/isis-video-christians-forced-pay-jizya-poll-tax-syrian-town-qaryatayn>> [accessed 7 December 2024].

¹⁸⁴ UK Parliament written Questions, answers and statements. ‘Religious Freedom, Question for Attorney General UIN HL3803, tabled on 28 November 2022 by Baroness Hoey <<https://questions-statements.parliament.uk/written-questions/detail/2022-11-28/hl3803>> [accessed 9 December 2024].

10.5 Summary

10.5.1 Abortion buffer zones in UK

Abortion buffer zones emerged in the 1990s in Canada as a result of judicial activism. Parliamentary laws were subsequently enacted in Canada, Australia and the USA although none of these laws prohibited prayer.

In the UK the first abortion buffer zones were introduced in the UK by local councils using Public Space Protection Orders originally designed to enable them to deal with minor issue of anti-social behaviour such as dog fouling.

The first such abortion buffer zone was introduced by Ealing Council in 2018 and banned both prayer and specific religious words. All subsequent local authority abortion buffer zones (Manchester, London Borough of Richmond, Bournemouth Poole and Christchurch and Birmingham) banned prayer within them.

Abortion buffer zones were subsequently introduced in Northern Ireland and Scotland which criminalised any act which could be deemed to be influencing issues related to abortion either directly or indirectly.

Abortion buffer zones were then introduced to England and Wales through an amendment to the Public Order Act 2023 using similar language to the Northern Irish and Scottish Acts. Those proposing this amendment subsequently claimed that it banned silent prayer in abortion buffer zones.

10.5.2 Democratic deficit

The manner in which abortion buffer zones were introduced in the UK repeatedly bypassed the normal processes of parliamentary debate and scrutiny.

- They were first introduced by a local council using Public Spaces Protection Orders which parliament intended to be used to tackle minor issues.
- The first abortion buffer zone was introduced by Ealing Council when its local MP Rupa Huq had at that time been unable to persuade parliament to introduce them.
- The banning of prayer in a specified area was unprecedented in modern UK constitutional history, yet carried out by local councils without specific parliamentary legislation.
- In Northern Ireland, abortion buffer zones were introduced by pro-abortion MPs in Westminster forcing through a change in the law on abortion while the Stormont Assembly was suspended, despite the UK Supreme Court having ruled the previous year that this was a matter devolved to the Northern Ireland Assembly which had expressly rejected changing the abortion law three years earlier.
- The laws in Northern Ireland and Scotland and later in England and Wales used vague language creating an offence of “influencing” (and in NI and Scotland “indirectly influencing”) which those who proposed the law subsequently claimed banned silent prayer.
- Whilst the public consultation conducted by the Home Office clearly stated that silent prayer as an internal religious act was an “unqualified human right”, the subsequent CPS guidance for police and prosecutors both failed to state this and positively stated that silent prayer in an abortion buffer zone could constitute a criminal offence and additionally added that persons carrying a Bible could also be committing an offence, which appears to amount to the CPS engaging in something akin to judicial activism, as this issue does not appear to have been raised previously in any context.

11. Freedom of Religion, Freedom of Speech and Freedom of Assembly

11.1 Freedom of religion

11.1.1 Whilst it is frequently claimed that modern human rights derives from the era of the French revolution,¹⁸⁵ the first known reference to a “human right” is actually a claim set out by Tertullian (160–c.220 CE), a Roman lawyer who became one of the most important early church theologians during a time of persecution of Christians by the Roman Empire in North Africa. In his *Letter to Scapula*, the empire’s proconsul in North Africa, Tertullian set out a detailed apologetic for the legal toleration of Christians i.e. freedom of religion, which he describes as a ‘human right’ (*humani juris*) “We are worshippers of one God, of whose existence and character nature teaches all men; at whose lightnings and thunders you tremble, whose benefits minister to your happiness. You think that others, too, are gods, whom we know to be devils. However, it is a fundamental **human right, a privilege of nature**, that every man should worship according to his own convictions: one man’s religion neither harms nor helps another man.”¹⁸⁶

11.2 The development of freedom of religion in the English-speaking world

Historically, freedom of religion developed in three broad phases in Britain:

1. A period from 1533 (which marked the split from Rome in England) to 1689 which can be characterised as one of ‘enforced conformity’, whereby a broad Church of England was created which included both Protestant and Catholic elements. However, any expression of beliefs contrary to it, or meeting for worship or prayer outside of the established church carried severe penalties including imprisonment and execution.
2. A period from 1689 to 1888 which could be characterised as ‘toleration on sufferance’. The 1689 Toleration Act made it legal for Protestant Dissenters (now commonly called ‘non-Conformists’) to meet for worship – provided it was not behind locked doors, a provision which in 1791 was extended to Catholics. However, those dissenting from the Church of England were excluded by various ‘Test Acts’ from holding public office, certain professions including the law and school teaching and from attending Oxford or Cambridge universities. The purpose of such Test Acts was to protect the politically dominant (Anglican) worldview by restricting the influence of those holding dissenting beliefs on wider society.
3. The repeal of the various Test Acts between 1719 and 1871, created freedom of religion or belief broadly, first for Protestant Dissenters, followed by Catholics, then Jews. Finally, the 1888 Oaths Act which allowed MPs to take a non-religious oath, extended this freedom to Atheists. This was followed by the blasphemy laws either becoming redundant (Ireland) or being formally repealed creating the freedom to criticise other religious or philosophical belief, thereby creating full freedom of religion or belief.

¹⁸⁵ Nicholas Wolterstorff *Justice: Rights and Wrongs* (Princeton, NJ: Princeton University Press, 2008):47-50.

¹⁸⁶ Tertullian *To Scapula* chapter 2 in Philip Schaff (ed) *Ante Nicene Christian Fathers Volume 3 Latin Christianity: Its Founder Tertullian* (Edinburgh: T&T Clark, 1885).

11.3 Freedom of expression and freedom of speech

11.3.1 The development of freedom of speech and expression particularly reflected four issues:

- a) Freedom to preach
- b) Removal of heresy and blasphemy laws
- c) Removal of licensing laws
- d) Removal of sedition laws

11.3.2 Freedom to preach

The freedom of Christian preachers to preach and read the Bible in the open air is a very ancient one. When Christianity came to the British Isles, it came through open-air preaching, both by Celtic preachers such as Patrick in Ireland, Ninian and Columba in Scotland and Aidan in England, as well as the Roman preachers such as Augustine of Canterbury.¹⁸⁷ Indeed, the Venerable Bede's Ecclesiastical History of the English Nation is at pains to emphasise that when King Ethelbert of Kent in 597 gave Augustine, later the first Archbishop of Canterbury, permission to preach Christianity in his kingdom it was specifically permission to preach "in the open-air".¹⁸⁸

Magna Carta, whose 1297 version still remains on the English Statute book,¹⁸⁹ specifically reaffirmed the pre-existing rights and freedoms of the English Church with its first (and surviving) article stating that:

"the English church shall be free and shall have its rights undiminished and its liberties unimpaired".

The pre-existing rights and liberties which Magna Carta confirms appear to be those granted by Anglo-Saxon and Norman kings, since King Ethelbert of Kent gave Augustine and his fellow missionaries permission to preach in 597 CE i.e.

- Freedom to preach in the open air.
- Freedom to conduct Christian worship.
- Freedom to establish churches and places of worship.

Public reading of the Bible and open-air preaching became increasingly important after the Reformation and were central to the development of freedom of religion in Britain and its subsequent spread around the world. For example, Thomas Cromwell's first injunctions to clergy (1536) ordered all parish clergy that they should:

*"discourage no man from the reading of any part of the Bible, either in Latin or in English..."*¹⁹⁰

This was followed by a further royal decree in 1537 formally making it legal to read from the English Bible in public and a second set of injunctions to clergy (1538) which began by re-emphasising that they must provide a large English Bible in their church and not prevent anyone from publicly reading it.¹⁹¹

¹⁸⁷ F.F. Bruce *The Spreading Flame: The Rise and Progress of Christianity From its First Beginnings to the Conversion of the English* (London: Paternoster, 1958): 371-83; 363-70; 353-62; 384-418. The author was a Fellow of the British Academy and Rylands Professor at the University of Manchester.

¹⁸⁸ Vida D Scudder *The Venerable Bede The Ecclesiastical History of the English Nation, etc. with an Introduction* Everyman's Library series (London: J.M.Dent, nd) :35 (Book 1 Chapter XXV).

¹⁸⁹ Magna Carta 1297 <<https://www.legislation.gov.uk/aep/Edw1cc1929/25/9/contents>> [accessed 11 November 2024]. The unrepealed sections include Article 1 (the freedom of the church) and Article 9 the freedom of the City of London and other cities, boroughs and towns to maintain their preexisting liberties.

¹⁹⁰ *The First Royal Injunctions of Henry VIII* (Cromwell's injunctions to clergy) 1536 section 7.

¹⁹¹ *The Second Royal Injunctions of Henry VIII* (Cromwell's injunctions to clergy) September 1538 section 2-3.

11.3.3 Heresy and blasphemy law

Heresy laws in England largely dated from the attempts of the Church to suppress the Lollards who were at least loosely associated with the teaching of John Wyclif. The 1408 Constitutions of Arundel decreed that anyone who without church permission translated the Bible into English, or allowed the translation instigated by Wycliffe to “be read in whole or in part, in public or in private” would be subject to the penalty for heresy i.e. burning at the stake.¹⁹² Similar legislation was passed in Scotland from 1425.¹⁹³

Blasphemy laws were essentially an attempt to protect a particular belief system, that of the official (or after the Reformation, established) church from the expression of criticism or dissent. However, the common law offences of blasphemy and blasphemous libel were gradually narrowed down by the courts so as not to prohibit criticism of Christian beliefs *per se*, but only intemperate criticism, particularly that which was likely to cause a breach of the peace.¹⁹⁴ As Lord Scarman put it quoting a 1922 article “The evolution of the law of blasphemy”:

*“The common law does not interfere with the free expression of bona fide opinion. But it prohibits, and renders punishable as a misdemeanour, the use of coarse and scurrilous ridicule on subjects which are sacred to most people in this country.”*¹⁹⁵

11.3.4 Licensing laws

The Licensing Act 1662 (sometimes referred to as either the Printing Act, the Press Act, or the Censorship Act) imposed pre-publication censorship on all printed materials including books and pamphlets.¹⁹⁶ It was passed at the same time as the “Clarendon Code” and designed to prevent “heretical, seditious, schismatical, or offensive books”. It was allowed to lapse in 1695 which effectively marked the end of pre-publication state censorship of printed material.

11.3.5 Seditious laws

The seditious laws consisting of both the common law offences of sedition and seditious libel, and specific Sedition Acts were construed very broadly to prohibit any expression of disaffection or dissent against the crown, the government, the constitution or the established church.¹⁹⁷

Whilst broader than the blasphemy laws, they encompassed religious activities. For example, the 1661 Sedition Act prohibited “writing, printing or any preaching” which could “stir up the people to hatred or dislike of the Person of His Majesty or the established Government.” However, even this Act contained tight restrictions including the presence of two witnesses and specific authorisation by the King.¹⁹⁸

The last Sedition Act to be enacted by the UK government was the addition in 1870 of s.124A to the Indian Penal Code, which criminalised causing disaffection against the government and was used to suppress political dissent. It remains on the statute book in both India and Pakistan.¹⁹⁹

In the UK itself the law against sedition was, in a similar manner to the blasphemy laws, gradually narrowed down so as only to prohibit speech or other acts which were intended to cause violence

¹⁹² Archbishop Thomas Arundel’s *Constitutions Against the Lollards* 14 January 1408.

¹⁹³ J.D. Mackie *A History of Scotland* (London:Penguin,1991) 145.

¹⁹⁴ Law Commission Working Paper No.79 *Offences Against Religion and Public Worship* s.2.1-4.2.

¹⁹⁵ *R v Lemon*; *R v Gay News Ltd* [1979] 1 All ER 898.

¹⁹⁶ Michael Treadwell ‘The Stationers and Printing Acts at the End of the Seventeenth Century in John Barnard and D.F. McKenzie (eds) *The Cambridge History of the Book in Britain* (Cambridge;CUP, 2002)_755-776.

¹⁹⁷ Clare Feikert-Ahalt ‘Sedition in England: the abolition of a law from a bygone era’ *Library of Congress* 2 October 2012 <<https://blogs.loc.gov/law/2012/10/sedition-in-england-the-abolition-of-a-law-from-a-bygone-era/>> [accessed 6 December 2024].

¹⁹⁸ ‘Charles II, 1661: An Act for Safety and Preservation of His Majesties Person and Government against Treasonable and Seditious practices and attempts’ *British History Online* <<https://www.british-history.ac.uk/statutes-realm/vol5/pp304-306>> [accessed 6 December 2024].

¹⁹⁹ India Penal Code 1870 s.124A. Pakistan Penal Code s.124A.

or disorder against the institutions of government, with a Law Commission report in 1977 recommending repeal of the remaining common law offences of sedition and seditious libel.²⁰⁰

The last major attempt to use sedition law in England was an unsuccessful attempt in 1991 to obtain a summons for sedition against Salman Rushdie and the publishers of his book *The Satanic Verses*, on the grounds that it was “a scurrilous attack on the Muslim religion” which was likely to incite violence.²⁰¹ It was in effect an attempt to use the sedition law which had long fallen into disuse, as an Islamic blasphemy law. The common law offences of sedition and seditious libel were formally abolished by the Coroners and Justice Act, 2009.

11.3.6 Summary: Freedom of speech in the twentieth century

The common law right to say anything one liked, provided it did not incite violence, and to seek to persuade others of the truth of one’s opinions was seen as being of such importance by the twentieth century that when the text of the Universal Declaration of Human Rights was being negotiated, the UK government proposed a draft text to what would eventually become Article 18 (freedom of religion or belief) which specifically included the freedom:

*“To endeavour to persuade other persons of full age and sound mind of the truth of his beliefs.”*²⁰²

However, opposition from Saudi Arabia and a number of other countries in the Islamic world meant that this failed to gain acceptance as it conflicted with shari’a. It was therefore not included in the final text which became UDHR Article 18, which was in essence a compromise statement.²⁰³

11.4 Freedom of Assembly

11.4.1 The right of people to freely assemble in a public space, and in particular to discuss and protest against any issue is a very longstanding freedom in the UK. The repeal of laws sometimes referred to as “the Clarendon Code” which were introduced 1661-65 after the restoration of the monarchy was particularly important in this respect. The purpose of these laws was to restrict the influence on wider society of Dissenters (i.e. Protestants such as Baptists who dissented from some aspects of the beliefs of the Church of England):

- The Corporation Act, 1661 prohibited anyone from holding municipal office who did not take communion in an Anglican church.
- The Act of Uniformity, 1662 prohibited Dissenters from holding church offices.
- The Conventicle Act, 1664 prohibited meetings of more than five non-family members for a religious purpose whether in the open air or private houses.
- The Nonconformists Act (more commonly known as the Five Mile Act), 1665 prohibited non-Anglican ministers from preaching within five miles of any town sending MPs to parliament.

The Toleration Act, 1689 brought significantly greater freedom, allowing Protestant Dissenters the freedom to assemble and preach, with this freedom extended to Catholics a century later. The formal repeal of these laws did not take place until the early nineteenth century, with for example the Five Mile Act, which created a specific exclusion zone around towns within which preaching by non-Anglicans was prohibited, being repealed in 1812,²⁰⁴ although in reality the law had by then long been a dead letter.

²⁰⁰ Law Commission Working Paper No.72 *Codification of the Criminal Law Treason, Sedition and Allied Offences* (London: HMSO, 1977).

²⁰¹ *R v. Chief Metropolitan Stipendiary (Ex Parte Choudhury)*, [1991] 1 QB 429.

²⁰² Sir Malcolm D Evans *Religious Liberty and International Law in Europe* (Cambridge: CUP, 1997) 184. The author is Professor of Public International Law at Bristol University.

²⁰³ *Ibid.*, 191-92.

²⁰⁴ An Act to Repeal Certain Acts, and amend other Acts relating to Religious Worship and Assemblies, and Persons teaching or preaching therein 1812 c.155 (52 Geo. III).

Freedom of assembly was seen as being of such importance that it was included as a specific article in the 1948 Universal Declaration of Human Rights.

“Article 20 (1) *Everyone has the right to freedom of peaceful assembly and association.*”

11.5 The extent to which restrictions of freedom of speech, religion or assembly in abortion buffer zones have any historical precedent

11.5.1 Restrictions on the content on what can be said in public spaces

Abortion buffer zone legislation in Northern Ireland, Scotland and England and Wales all contain a prohibition on influencing any person’s decision to access, provide or facilitate abortion services at an abortion clinic. While Ealing Council PSPO goes further still by banning specific religious terms, such as “soul” and “hell”, though states this is not an exhaustive list

Insofar as historic restrictions have existed on the propagation of Christian beliefs in public spaces, these have primarily related to whether the preacher/evangelist was an ordained member of the officially recognised or (after the Reformation) established church. In other words, even when open air preaching was regulated by the state, which ceased to be the case with the repeal of the Five Mile Act and Conventicle Act in 1812, it was the type of person who was regulated, NOT the content of what was preached.²⁰⁵

11.5.2 Restrictions on what can be said in a specific geographical zone

The abortion buffer zones create a specific geographical area normally 150m from an abortion clinic, within which no form of influencing in relation to abortion can take place.

The closest historical precedent for this is the Five Mile Act 1665 which prohibited non-conformist ministers from preaching or teaching within 5 miles of any major town. It was specifically designed to prevent them influencing people to hold beliefs which conflicted with any aspect of Church of England beliefs. It was repealed in 1812 having long fallen into disuse.

11.5.3 Prohibition on a specific number of people meeting for a religious purpose

The closest historical precedent to this is the Conventicle Act, 1664 which made it illegal for more than five persons to meet for any non-Anglican religious purpose. Ealing Council’s PSPO restricts the gathering of people for the purpose of “prayer” to no more than 4 persons in a small “designated space” with the abortion buffer zone. However, the national legislation does not even permit this. As with the Five Mile Act, the Conventicle Act was repealed in 1812 having long been a dead letter.

During the eighteenth and nineteenth centuries there were a number of attempts by local magistrates to restrict local religious gatherings, particularly those associated with John Wesley and the early Methodist movement, and later those associated with the early Salvation Army. John Wesley on a number of occasions successfully went to the King’s Bench to obtain what would today

²⁰⁵ Charles F Mullett ‘The Legal Position of the English Protestant Dissenters, 1767-1812’ *Virginia Law Review* 25:6 (1939):671-97; David Hempton ‘Methodism and the law, 1740-1820’ *Bulletin of the John Rylands Library Manchester* 70.3 (1988): 93-108. The authors were respectively Professor of History at the University of Missouri, Columbia and Dean of the Faculty of Divinity, Alonzo L. McDonald Family Professor of Evangelical Theological Studies and John Lord O’Brian Professor of Divinity at Harvard Divinity School.

be known as a judicial review (*certiorari* and *mandamus*) because local constables and other officials tried to prevent Methodist preaching. For example, in August 1748, the constable and local officials at Barrowford in Lancashire tried to have Wesley and the local Methodist preachers prosecuted at the Quarter Sessions. In response, Wesley, on the advice of the Attorney General, successfully took the matter to the King's Bench. The prosecution was quashed, and the local official was dismissed. Wesley claimed that he won all such cases which he took to the King's Bench.²⁰⁶

11.5.4 Restrictions on silent prayer

At no point in English history have there ever been any restrictions on silent prayer in public spaces. The closest historical precedent to this is the arrest of the Quakers William Penn and William Meade in 1670.

Penn, who later drafted the constitution of the State of Pennsylvania, was arrested on a number of occasions beginning in 1667 for “preaching” in the streets of London without a licence, which at the time was only available to Anglican clergy. In 1670 he was arrested in Gracechurch Street along with fellow Quakers including William Meade. After finding the building where they normally met for worship locked against them, they had decided to meet outside in the street. This context is potentially of some significance to the issue of silent prayer, as Quaker meetings (also known as “Friends meetings”), whilst “religious”, normally involved extended periods of silence – and it was this religious silence which was viewed by the authorities as particularly subversive. As Professor Ana Acosta observes:

*“Friends’ silent worship in the Restoration was perceived by non-Quakers as a subversive practice and in many respects was considered as more dangerous than words. In contrast to individual silence, communal silence negated accepted religious ritual and stemmed from an unshakeable belief in a direct bond between the worshipper and God.”*²⁰⁷

Penn and Meade were arrested for a gathering which was entirely peaceable, but in breach of the Conventicle Act. At the subsequent trial held at the Old Bailey, Penn and Meade pleaded not guilty – and cited in their defence both the ancient rights of Magna Carta and from Sir Edward Coke on the Common Law.²⁰⁸ The jury, despite being directed by the judge to convict them, refused to do so. The jury's actions in refusing to convict them were upheld in a subsequent case, known as Bushell's case.

Meade and Penn's case has a continuing legacy in terms of their importance in the constitutional development of freedom of religion, freedom of speech and freedom of assembly in England, being quoted by English judges in the late twentieth century. For example, in 1999, Lord Justice Sedley, in granting the appeal of Alison Redmond-Bate, reputedly the first street preacher to be arrested in the twentieth century, observed:

*“We in this country continue to owe a debt to the jury which in 1670 refused to convict the Quakers William Penn and William Mead for preaching ideas which offended against state orthodoxy.”*²⁰⁹

²⁰⁶ David Hempton ‘Methodism and the law 1740-1820’ *Bulletin of the John Rylands Library Manchester* 70.3 (1988): 93-108.

²⁰⁷ Ana M Acosta ‘Pregnant silence and mystical birth: Quaker worship in the seventeenth century and the subversive practices of silence’ *Restoration: Studies in English Literary Culture 1600-1700* 43:1 (2019) 51-72. The author of Associate Professor of Humanities and Social Sciences at Brooklyn College, City University, New York.

²⁰⁸ The Trial of William Penn and William Mead, at the Old Bailey, for a Tumultuous Assembly: 22 Charles II. A. D. 1670. [Written by themselves.] From: *Howell's State Trials*, Vol. 6, Page 951 (6 How. 951) republished by the Constitution Society <<https://constitution.org/1-History/trials/penn/penn-mead.htm#01>> [accessed 18 December 2023].

²⁰⁹ Redmond-Bate v Director of Public Prosecutions EWHC Admin 733 [1999].

11.5.5 International legacy

These historic developments have had a significant impact on the development of freedom of religion or belief not just in England, but across the English-speaking world, and through that on the subsequent development of the Universal Declaration of Human Rights and the European Convention on Human Rights.

The 1670 case in which the jury refused to accept the judge's instruction to convict the Quakers William Penn and William Meade was particularly important in this, as in 1681 Penn was granted a royal charter to found a colony in North America which later became the State of Pennsylvania. The 1701 Pennsylvania Constitution drafted by Penn made it the first colony (and later first US state) in North America to grant full freedom of religion, with the first article stating that no person:

“shall be in any case molested or prejudiced, in his or their person or estate, because of his or their conscientious persuasion or practice, nor be compelled to frequent or maintain any religious worship, place or ministry, contrary to his or their mind, or to do or suffer any other act or thing, contrary to their religious persuasion.”²¹⁰

The above words are recognised as being a precursor to the 1791 First Amendment to the USA's Constitution:²¹¹

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”²¹²

This itself influenced both the wider development of freedom of religion and freedom of speech across the English-speaking world, and the later development of Articles 18 (Freedom of Religion or Belief) and 19 (Freedom of Expression) the Universal Declaration of Human Rights, which in turn formed the basis for ECHR Article 9 and 10 respectively.

²¹⁰ 'Pennsylvania Charter of Privileges', 28 October 1701 <<https://www.ushistory.org/documents/charter.htm>> [accessed 18 December 2023].

²¹¹ Alvin K Benson 'William Penn' Middle Tennessee State University 19 September 2023 <<https://firstamendment.mtsu.edu/article/william-penn/>> [accessed 18 December 2023].

²¹² 'Constitution of the United States, First Amendment' <<https://constitution.congress.gov/constitution/amendment-1/>> [accessed 18 December 2023].

12. Have abortion buffer zones been weaponised?

12.1.1 Introduction

In his acclaimed *A History of Modern Britain*, former BBC political editor Andrew Marr makes the following observation on the introduction of new socially liberal laws in the 60s and 70s, including the decriminalisation of abortion up to 28 weeks in specific circumstances agreed by two doctors:

“The social changes were rarely argued through with clarity, or indeed honesty...

..Despite endless public debates the abortion reformers entirely played down the significance of psychological health as a reason for a termination, passionately arguing that the bill was not a charter for abortion on demand – which it certainly became. The use of separation as ground for divorce, rather than proof of adultery, was said to be a measure that would strengthen marriage; if so, it was clearly a failure. It was argued and assumed that the end of hanging would not increase the rate of murder or violent crime. Both would soon rise sharply.”

He adds that these laws were pushed through parliament by a socially-liberal elite, rather than on a groundswell of popular support:

*“All these measures had the backing of small and dedicated campaigns, generally only a few thousand strong.”*²¹³

12.1.2 Democratic deficit

In chapter one we noted how the introduction of legally enforceable abortion buffer zones internationally had initially bypassed the normal democratic processes of parliamentary lawmaking.

In the UK, Ealing Council had introduced them using a Public Spaces Protection Order (PSPO), powers parliament had granted local councils to tackle minor issues of anti-social behaviour such as dog fouling in built up areas. This PSPO had not only banned all expressions of disagreement with abortion, even indirect ones within a significant area around an abortion clinic, but had also very specifically banned “prayer” within this zone – a restriction which was entirely without precedent in British constitutional history since the Toleration Act 1689. Four other councils – the London Borough of Richmond, Manchester, Bournemouth Poole and Christchurch and Birmingham – then followed Ealing Council’s PSPO by similarly introducing abortion buffer zones.

This was all happening at a time, when advocates of abortion buffer zones had failed to persuade parliament to legislate for them.

12.1.3 Weaponisation

The term weaponisation was originally a military term used in the 1960s to denote the military use of a civilian device.²¹⁴ By the second decade of the twenty first century the term had been widely used to refer to tactics of social protest which sought to mobilise groups of people to censor expressions of opinions which they disagreed with.

An early example of this usage was a 2015 article in the *Atlantic* magazine in which a tent city erected by students seeking to force the resignation of the University of Missouri’s president, surrounded and sought to intimidate a student working on a freelance assignment for a media company. The *Atlantic Monthly* report stated:

²¹³ Andrew Marr *A History of Modern Britain* (Macmillan: Basingstoke, 2007) 259.

²¹⁴ ‘Weaponisation’ *Oxford English Dictionary*.

“In the video of Tim Tai trying to carry out his ESPN assignment, I see the most vivid example yet of activists twisting the concept of “safe space” in a most confounding way. They have one lone student surrounded. They’re forcibly preventing him from exercising a civil right. At various points, they intimidate him. Ultimately, they physically push him. But all the while, they are operating on the premise, or carrying on the pretense, that he is making them unsafe.

It is as if they’ve weaponized the concept of “safe spaces.”²¹⁵

Inherent in this is the categorisation of people in strictly binary terms as either a) aggressor or b) victim according to their perceived opinions.

12.1.4 “Cancel culture”

Ultimately, this form of identity politics has its origin in a combination of the Social Marxism of the 1920s and 30s,²¹⁶ and the affirmative action policies originally championed by US President John F Kennedy, both of which form the intellectual history behind what is today commonly termed “Cancel Culture”.²¹⁷

Whereas Classical Marxism saw itself engaged in a class war in which the working class seized power, what subsequently became known as Cultural Marxism envisaged a similar war against western culture and civilisation, particularly the influence of Christianity and the church.²¹⁸ As Professor Douglas Groothuis observes

“Both original Marxism and Cultural Marxism (CRT) are revolutionary at their core and seek nothing less than the total transformation of society...”²¹⁹

While the tactics used to achieve this were to shut down democratic debate:

“We do not play by rules set down by the oppressors, but forge our own critique, which is shielded from criticism because we must struggle against these oppressors. We do not win arguments, but discredit our opponents, who are nothing but power-mongering and privileged oppressors.”²²⁰

12.2 Attempts to silence those expressing principled opposition to abortion

12.2.1 In 2017 The Alliance of Pro-Life Students submitted written evidence to a parliamentary select committee inquiry in which they stated:

“we have noticed an increasing amount of hostility on campus towards the freedom of speech of Pro-Life students.”

and provided details of what they described as

“key instances of the suppression of freedom of speech”

²¹⁵ Conor Friedersdorf ‘Campus activists weaponize “safe space”’ *The Atlantic* 10 November 2015 <<https://www.theatlantic.com/politics/archive/2015/11/how-campus-activists-are-weaponizing-the-safe-space/415080/>> [accessed 15 November 2024].

²¹⁶ Dennis Dworkin *Cultural Marxism in Post War Britain* (Durham: Duke University Press, 1997) 4-6. Dworkin notes both similarities and differences between British cultural Marxism and the origins of the movement in the Frankfurt school of the 1920s, with the former being more populist.

²¹⁷ Marc Sidwell *A Silent Revolution: the intellectual origins of cancel culture* IEA Discussion paper No.110 (London: Institute for Economic Affairs, 2022).

²¹⁸ Douglas Groothuis, *Fire in the Streets* (Washington DC: Salem, 2022) 6-17.

²¹⁹ *Ibid.*, 16. The author is Professor of Philosophy at Denver Seminary.

²²⁰ *Ibid.*, 15. the quotation is Professor Groothuis’ translation of what he describes as a somewhat turgid Marxist text.

at leading universities, including Oxford, Cambridge and Kings College London and raised concerns about the effect this was having on the democratic process.²²¹ They also noted that these attempts at suppression of Pro-Life voices came from a small minority, with wider opinion being much more tolerant:

*“These attempts to suppress freedom of speech originate in a small segment of the student population. Student Unions themselves tend to more often listen to the voices of this small minority of students than the voices of the majority – most students, even if they are Pro-Choice, have no problem with the existence of a Pro-Life society at university.”*²²²

12.3 Lawfare as a tactic of cancel culture

12.3.1 Lawfare is the deliberate manipulation of the legal system and principles by individuals and organisations to silence their critics and opponents, often by using the greater financial resources of one party. A debate on the issue in the House of Commons in 2022 spoke of organisations engaging in lawfare in the UK courts with the aim of both silencing and destroying their critics:

*“We are rightly proud of our legal system in this country. Britain is home to some of the fairest and best courts in the world. Centuries of jurisprudence mean that London is among the most respected cities from a legal perspective. However...there are those with exceptionally deep pockets and exceptionally questionable ethics. These people use our justice system to threaten, intimidate and put the fear of God into British journalists, citizens, officials and media organisations. What results is injustice, intimidation, suppression of free speech, the crushing of a free press, bullying and bankruptcy...Lawfare is the misuse of legal systems and principles by extraordinarily rich individuals and organisations to destroy their critics and opponents.”*²²³

12.3.2 Whilst that debate focused particularly on the misuse of the UK legal system by people and organisations from outside the UK, similar tactics of lawfare have been used by some UK campaigning organisations and individuals to seek to silence the expression of opinions which they object to. This has included the making complaints to the police against both well-known public figures, such as cabinet ministers, as well as private individuals who express opinions which dissent from the worldview of those making the complaints.²²⁴ Christian preachers have been a particular focus of this, with multiple complaints made to police against them either by Islamists or by social liberal activists.²²⁵

These have included a complaint by an Islamist which led to the prosecution of the minister of one of Northern Ireland’s largest churches for a sermon he preached in his church on the persecution of Christians in Islamic countries. While a recent analysis of the arrests of street preachers by police since 2006, all of whom were released without charge, subsequently had the charges against them dropped, or were found not guilty, found the majority of arrests followed social liberal activists asking them questions, then making a police complaint when they answered with a biblical perspective.

²²¹ House of Commons ‘Written Evidence from the Alliance of Pro-Life Students (FSU0063)’ 19 December 2017 <<https://committees.parliament.uk/writtenevidence/85146/html>> [accessed 20 December 2023].

²²² House of Commons ‘Written Evidence from the Alliance of Pro-Life Students (FSU0063)’ 19 December 2017 <<https://committees.parliament.uk/writtenevidence/85146/html>> [accessed 20 December 2023].

²²³ UK Parliament Hansard ‘Lawfare and the UK Court System’ Volume 707 debated on Thursday 20 January 2022 <<https://hansard.parliament.uk/Commons/2022-01-20/debates/4F7649B7-2085-4B51-9E8C-32992CFF7726/details>> [accessed 19 November 2024].

²²⁴ ‘How Amber Rudd’s speech to Tories was labelled a non-crime hate incident – and other bizarre cases’ *Daily Telegraph* 13 November 2024 <<https://www.telegraph.co.uk/news/2024/11/13/non-crime-hate-incident-amber-rudd-harry-miller-police/?msocid=3d0e981bf89c613429b08d03f99a601a>> [accessed 19 November 2024].

²²⁵ *Without Fear or Favour: An examination of contemporary policing of freedom of speech, religion and belief – report* commissioned and published by Christian Concern (London: Christian Concern, 2022).

For example, in December 2019, David McConnell was preaching in the open air in Huddersfield when a few people started asking him hostile questions about sexuality and abortion – issues he had not preached on, they then complained to police he was preaching on “gay rights and abortion.”²²⁶ He was arrested and held in custody for six hours until police listened to a recording of his preaching and realised no offence had been committed and released him. He subsequently sued the police for wrongful arrest, false imprisonment and breach of human rights, with the police agreeing to pay compensation plus legal costs.²²⁷

The analysis also found that around 25% of all arrests of Christian street preachers occurred following false allegations made by social liberal activists against the preachers. In these cases, police analysis of video or audio recordings made by the preacher for their own protection demonstrated the allegations to be entirely false, with the alleged statements never having been made at all.²²⁸

12.3.3 Andy Stephenson and Kathryn Sloane

In 2010 Andy Stephenson the founder of Abort67, which seeks to educate the public about the effects of the 1967 Abortion Act, and Kathryn Sloane were arrested for standing in silent protest outside the BPAS abortion clinic in Brighton while displaying posters of an aborted early-stage foetus. The BPAS abortion clinic reported their actions to the police.²²⁹

*“The police asked them to take down their pictures otherwise they would be arrested. A discussion followed as Mr Stephenson tried to explain why their actions were lawful. Mr Stephenson and Miss Sloane refused to take down the banner as they believed that they had a lawful right to protest and educate. The police therefore arrested them and took them to Brighton Police station. After having their photographs, fingerprints and DNA taken they were offered a “fixed penalty notice” instead of being prosecuted. They refused the police’s offer and requested a court hearing.”*²³⁰

Believing themselves to have a legal right to educate the public about abortion,

*“Mr Stephenson and Miss Sloane returned to the clinic on the 10th of August and protested in the same manner. Once again, after having stood in silent protest for 45 minutes, they were again approached by police. Mr Stephenson and Miss Sloane refused to take down the banner and so were again arrested and taken to Brighton Police Station and held for 14 hours. This time they were interviewed under caution.”*²³¹

In June 2011 both were again arrested. Miss Sloane who had tried to stop police officers removing their posters was charged with “obstructing police” – a charge which a district judge later dismissed. While Mr Stephenson was charged under the 1983 Public Order Act.

²²⁶ ‘Huddersfield Christian street preacher was arrested and held for six hours – but now he has won a case against West Yorkshire Police’ *YorkshireLive* 29 June 2021 <<https://www.examinerlive.co.uk/news/local-news/huddersfield-christian-street-preacher-arrested-20931752>> [accessed 19 November 2024].

²²⁷ ‘Street preacher wins compensation for wrongful arrest’ *Premier Christian News* 25 June 2021 <<https://premierchristian.news/en/news/article/street-preacher-wins-compensation-for-wrongful-arrest>> [accessed 19 November 2024].

²²⁸ *Without Fear or Favour: An examination of contemporary policing of freedom of speech, religion and belief* – report commissioned and published by Christian Concern (London: Christian Concern, 2022).

²²⁹ Danielle Bean ‘British Pro-Lifers arrested for graphic images’ *National Catholic Register* 22 September 2010 <<https://www.ncregister.com/blog/british-Pro-Lifers-arrested-for-graphic-displays>> [accessed 18 November 2024].

²³⁰ ‘Pro Life abortion protestors arrested’ *Observatory on Intolerance and Discrimination Against Christians in Europe* Date of Incident August 2010 <<https://www.intoleranceagainstchristians.eu/index.php?id=12&case=224>> [accessed 18 November 2024].

²³¹ ‘Pro Life abortion protestors arrested’ *Observatory on Intolerance and Discrimination Against Christians in Europe* Date of Incident August 2010 <<https://www.intoleranceagainstchristians.eu/index.php?id=12&case=224>> [accessed 18 November 2024].

In September 2012, when the case came to court, they were both found not guilty, with the judge stating that:

- he “had not been persuaded” that Mr. Stephenson’s signs were “threatening, abusive, or insulting,” as then required for convictions under Section 5(b) of the Public Order Act.
- He also explicitly rejected police and Crown Prosecutors’ arguments that Mr. Stephenson should have displayed pictures which were less graphic, or pictures which were smaller, or that his pictures should have been made available only upon request.
- He also ruled that the police acted improperly when they confiscated abortion photo signs without authority to do so.

After the verdict, Sussex Police put out a statement saying that they themselves never sought to stop protests outside the clinic – but they arrested Mr Stephenson and Miss Sloane because a complaint had been made to them.²³²

12.4 Abortion buffer zone arrests for silent prayer

12.4.1 The local authority PSPOs around abortion clinics list “prayer” as a possible form of protest against abortion. However, a series of actions by both uniformed local council enforcement officers and police suggest they have sought to extend this further to include even silent prayer.

12.4.2 Father Sean Gough and Isabel Vaughan-Spruce, Birmingham

In February 2022 Father Gough, a Catholic priest from Wolverhampton, and Isabel Vaughan-Spruce were arrested for silently praying outside a Birmingham abortion clinic. Both were accused of breaching the PSPO by “protesting and engaging in an act that is intimidating to service users”.

This was the first prosecution of its kind, as whilst the Birmingham PSPO banned any form of protesting, including “prayer”, it was far from clear that this included silent prayer. When the case went to court the prosecutor announced that the charges were being dropped as the case was not deemed to have met the “full code test” for prosecutors, which requires the prosecution to be in the public interest and with a sufficient likelihood of conviction.

After his acquittal, Father Gough is reported to have spoken of how part of the charge related to an inadvertent action related to a bumper sticker on his car:

“I was charged for praying for freedom of speech and for an old bumper sticker on my car that read ‘unborn lives matter’.”

While Miss Vaughan-Spruce said she had been

“arrested and criminalised simply for my private thoughts on a public street.”²³³

12.4.3 Isabel Vaughan-Spruce, Birmingham

Less than a month later, in March 2023, Isabel Vaughan-Spruce was again arrested for silently praying outside the Birmingham abortion clinic.

As the clinic was closed at the time, there was no realistic possibility that her actions could reasonably be construed as harassment or intimidation of anyone using the clinic. However, six

²³² ‘Anti-abortion protestors cleared over foetus posters’ BBC News 17 September 2012 <<https://www.bbc.co.uk/news/uk-england-sussex-19630472>>; ‘Victory for Pro-Lifers in key freedom of speech case’ Christian Concern 17 September 2012 <<https://archive.christianconcern.com/our-concerns/religious-freedom/victory-for-Pro-Lifers-in-key-freedom-of-expression-case>>; ‘Pro-Life freedom of expression case: Analysis’ Christian Concern 21 September 2012 <<https://archive.christianconcern.com/our-concerns/abortion/Pro-Life-freedom-of-expression-case-analysis>> [all accessed 19 November 2024].

²³³ ‘Abortion charges dropped against Wolverhampton Priest’ BBC News 16 February 2023 <<https://www.bbc.co.uk/news/uk-england-birmingham-64668114>> [accessed 19 November 2024].

police officers arrived to arrest her. Despite the widespread recent media coverage concerning her acquittal for silent prayer in the same location a few weeks earlier, one of the police officers said to her emphatically that silent prayer was an offence:

“You’ve said you’re engaging in prayer, which is the offence”.

The case was finally dropped six months later after then Home Secretary, Rt Hon Suella Braverman MP confirmed in an open letter to police that silent prayer is “not unlawful”.

Miss Vaughan-Spruce subsequently sued West Midlands Police for wrongful arrest and false imprisonment in relation to both incidents, for assault and battery in relation to an intrusive search and for a breach of her human rights. She was awarded £13,000 in compensation.²³⁴

12.4.4. Adam Smith-Connor, Bournemouth

In November 2022, Adam Smith Connor, who had been silently praying outside abortion clinics since 2019, was issued with a fixed penalty notice by uniformed enforcement officers from Bournemouth Christchurch and Poole Council for silently praying outside an abortion clinic. The previous day, Mr Smith Connor had emailed the council to tell them he intended to do so, but that his prayer would be silent, he would have no signs and would not manifest the fact that he was praying in any way.

Within a few minutes of praying while standing out of sight of the abortion clinic, but within the PSPO he was approached by two uniformed council enforcement officers who asked what he was doing. When he replied he was praying, he was asked “what is the nature of your prayer today?”²³⁵ He was then issued with a fixed penalty notice which was subsequently upheld in the Magistrates Court. Following his conviction Mr Smith Connor said:

“Today, the court has decided that certain thoughts – silent thoughts – can be illegal in the United Kingdom. That cannot be right. All I did was pray to God, in the privacy of my own mind – and yet I stand convicted as a criminal.”

He also raised the question as to whether the restrictions on prayer in Bournemouth Christchurch and Poole Council’s PSPO were compatible with fundamental British values:

“I served for 20 years in the army reserves, including a tour in Afghanistan, to protect the fundamental freedoms that this country is built upon. I continue that spirit of service as a health care professional and church volunteer. It troubles me greatly to see our freedoms eroded to the extent that thoughtcrimes are now being prosecuted in the UK.”

12.4.5 Claire Brennan and David Hall, Northern Ireland

In October 2023, Claire Brennan and David Hall were arrested for holding up a sign and quietly saying the Lord’s prayer by the main road near Causeway Hospital, Coleraine,²³⁶ one of only two acute general hospitals in Northern Ireland.²³⁷

Their arrest was significant as it was the first in the UK to take place outside a general hospital, rather than a specialist abortion clinic, as the Abortion Services (Safe Access Zones) (Northern

²³⁴ ‘Woman arrested for silent prayer outside abortion clinic wins £13K payout’ *Daily Telegraph* 19 August 2024 <<https://www.telegraph.co.uk/politics/2024/08/19/christian-volunteer-silent-prayer-13k-payout-thought-crime/?msockid=3d0e981bf89c613429b08d03f99a601a>> [accessed 19 November 2024].

²³⁵ ‘Moment army veteran is confronted for silently praying outside clinic’ YouTube <<https://www.youtube.com/watch?v=PmdEdITj3U>>; ‘CBN News UK man arrested for silently praying’ YouTube <<https://www.youtube.com/watch?v=SZd6W0-RtHo>> [both accessed 19 November 2024].

²³⁶ ‘Abortion: two arrests under new buffer zone law’ BBC News 4 October 2023 <<https://www.bbc.co.uk/news/uk-northern-ireland-67007413>>; ‘Court to rule on first arrest and prosecution for saying “Lord’s prayer” in abortion buffer zone in Northern Ireland’ *Christian Concern* 29 July 2024 <<https://christianconcern.com/ccpressreleases/court-to-rule-on-first-arrest-and-prosecution-for-saying-lords-prayer-in-abortion-clinic-buffer-zone-in-northern-ireland/>> [both accessed 20 November 2024].

²³⁷ Northern Health and Social Care Trust ‘Causeway Hospital’ <<https://www.northerntrust.hscni.net/hospitals/causeway-hospital/>> [accessed 20 November 2024].

Ireland) Act 2023 allows the creation on buffer zones which encompass entire hospitals as well as an area of up to 100m from their entrances. As such, the abortion buffer zone imposes restrictions on large numbers of both staff and patients who visit the hospital for reasons wholly unconnected to abortion.

12.4.6 Livia Tossici-Bolt, Bournemouth

In December 2023, Livia Tossici-Bolt, a retired medical scientist, was stopped by Bournemouth Christchurch and Poole Council's unformed Community Safety Enforcement officers because she was holding up a sign saying "pregnant – need help?" and a phone number for a crisis pregnancy helpline. When asked what she was doing, she replied that she was praying and also holding up a sign. Three unformed council officers, who in the video are seen standing next to a marked police car, inform her that she is breaching the PSPO, to which she then pointed out "I am standing outside the PSPO".²³⁸

Bournemouth, Christchurch and Poole Council subsequently had to issue an apology to her for making her "distressed and harassed".²³⁹

12.4.7 Livia Tossici-Bolt, Bournemouth- prosecution by Bournemouth Christchurch and Poole Council

A few months later in March 2024 Livia Tossici-Bolt was issued with a Fixed Penalty Notice by Bournemouth Christchurch and Poole Council's enforcement officers for holding up a sign in the PSPO area which simply said:

"Here to talk if you want to."

She appealed against the fine, stating:

"For several years now, I have been offering a helping hand to women who would like to consider other options for abortion and pointing them to options where they can receive financial and practical support if that's what they would like."

*"There's nothing wrong with offering help. There's nothing wrong with two adults engaging in a consensual conversation on the street. I shouldn't be treated like a criminal just for this."*²⁴⁰

Livia was at the time well known having been part of an unsuccessful high court challenge to Bournemouth Christchurch and Poole Council's PSPO in December 2023.

12.4.8 Sebastian Vaughan-Spruce

In May 2024, Sebastian Vaughan-Spruce was issued with a fixed penalty notice by two police community support officers for standing silently on the street in the Birmingham PSPO. The Daily Telegraph reported that:

"He was not carrying any signs and remained silent until he was approached by the officers, who challenged him to explain why he was standing in the street."

²³⁸ 'Livi Tossici-Bolt confronted outside the PSPO' YouTube <<https://www.youtube.com/watch?v=iMzxy1DBGME>> [accessed 19 November 2024].

²³⁹ 'Retired scientist prosecuted for holding up "here to talk" sign outside abortion clinic' *Daily Telegraph* 9 March 2024 <<https://www.telegraph.co.uk/news/2024/03/09/retired-scientist-free-speech-case-abortion-clinic/?msockid=3d0e981bf89c613429b08d03f99a601a>> [accessed 19 November 2024].

²⁴⁰ 'Retired scientist prosecuted for holding up "here to talk" sign outside abortion clinic' *Daily Telegraph* 9 March 2024 <<https://www.telegraph.co.uk/news/2024/03/09/retired-scientist-free-speech-case-abortion-clinic/?msockid=3d0e981bf89c613429b08d03f99a601a>> [accessed 19 November 2024].

In a three-minute exchange, he said he was not praying but was simply standing silently in the street and asked why he was being asked to move on.”²⁴¹

In the video of the exchange published by the *Daily Telegraph*, the PCSOs wrongly insist that simply standing in the buffer zone breaches the PSPO:

PCSO: Are you refusing to move from outside the location?

SVS: Well, it would be nice if you could clarify what the problem is

PCSO: You have been asked to move, are you going to move?

SVS: Well, you haven't clarified as to the reasons

PCSO: With the PSPO you can't be outside

SVS: But you haven't clarified as to what the reasons are

PCSO: The PSPO which is there tells you all the reasons

SVS: How am I breaking it?

PCSO: Because you are stood in the zone?

SVS: But you can still stand in a public street can't you?²⁴²

In fact, whilst the Birmingham PSPO, which the video appears to show one of the PCSOs holding a copy of, makes it an offence to engage “in any act of approval or disapproval or attempted act of approval or disapproval, with respect to issues related to abortion services”, it does NOT make it an offence to simply stand on the street.

This therefore raises significant questions about the level of training and legal competency of those other than police officers who can issue fixed penalty notices for alleged breached of abortion buffer zones.

12.5 Private prosecutions by local councils

12.5.1 Council's incurrence of disproportionate prosecution costs

One of the issues which the case of Adam Smith-Connor highlights is that any appeal against a PSPO fixed penalty notice issued by a local council, is to a trial in the Magistrates Court, where the council mounts a private prosecution.

Bournemouth Christchurch and Poole Council is reported to have spent more than £90,000 on legal fees prosecuting Mr Smith-Connor, more than ten times the amount which would be typical for a single day case in a Magistrates Court, although the court only ordered him to pay £9,000 in costs.²⁴³

Whilst a person convicted in the Magistrates Court where the prosecution is undertaken by the CPS would typically be required to pay notional costs of around £250, in a private prosecution the

²⁴¹ Charles Hymas 'Watch: anti-abortion activist fined for standing silently outside clinic' *Daily Telegraph* 20 May 2024 <<https://www.telegraph.co.uk/news/2024/05/20/Pro-Life-advocate-fined-standing-outside-abortion-clinic/?msockid=3d0e981bf89c613429b08d03f99a601a>> [accessed 10 January 2025].

²⁴² Charles Hymas 'Watch: anti-abortion activist fined for standing silently outside clinic' *Daily Telegraph* 20 May 2024 <<https://www.telegraph.co.uk/news/2024/05/20/Pro-Life-advocate-fined-standing-outside-abortion-clinic/?msockid=3d0e981bf89c613429b08d03f99a601a>> [accessed 10 January 2025].

²⁴³ Press release issued by Alliance Defending Freedom which funded Mr Smith Connor's defence: 'Guilty: Army vet convicted for praying silently near abortion facility' ADF 16 October 2024 <<https://adfinternational.org/en-gb/news/guilty-army-vet-convicted-for-praying-silently-near-abortion-facility>> [accessed 20 November 2024].

full prosecution costs can be imposed on the person convicted. For a one-day hearing in a Magistrates Court this is likely to be £5-10,000, in addition to the defendant's own legal costs.

As the maximum penalty for breach of a PSPO is a level 3 fine, currently £1,000, the potential costs imposed on a defendant as a result of a local council undertaking a private prosecution are likely to be significantly disproportionate to the maximum amount of the fine that can be imposed. As legal aid is generally only available where there is a real risk of custodial sentence, a defendant would also have to have the ability to pay their own legal costs.

As such, the use of private prosecutions for PSPO offences raises the issues of access to justice due to the disproportionate balance of financial resources between the local authority and the individual being prosecuted. The use of private prosecutions also enables a local authority to exploit this imbalance by employing high fee earning lawyers in the hope of increasing the probability of a conviction and then asking the court for their full costs to be imposed on the person convicted.

12.5.2 Council officials issuing fixed penalty notices for human rights related cases

A further issue relates to the issuing of fixed penalty notices by local council officials. Fixed penalty notices are normally issued for relatively minor offences such as littering or parking violations. These are normally strict liability offences – in other words, there is no necessity to prove that someone intended to overstay the period they had paid to park, merely that they did so. However, the use of fixed penalty notices is clearly much more problematic in abortion buffer zones particularly in relation to issues such as silent prayer where there is a degree of ambiguity in the regulations, as well as the need to assess wider human rights issues. As such, there is a real question as to whether it is appropriate for anyone other than a police officer to enforce such regulations.

There is a further significant constitutional issue involved. Police officers are officers of the crown. As such they are required to take an oath of office to act fairly and impartiality and respect human rights. It is also a fundamental principle of UK policing that while police budgets and priorities may be set by Police, Fire and Crime Commissioners, the police are not operationally subject to political direction. However, local council officers are contractually, and often very specifically, required to accept to “political direction”.²⁴⁴ Whilst this may, in practice, have been a relatively minor issue when council officers were issuing fixed penalty notices for relatively minor issues such as dog fouling and littering, it becomes a more problematic constitutional issue when those fines are issued by council officers which involve conflicts of fundamental human rights.

A series of Freedom of Information requests were submitted to local councils which have instituted abortion buffer zones by means of PSPOs. The following table summarises the responses:

²⁴⁴ This is not negated by the requirement of the Local Government and Housing Act 1989 and the Local Government Officers (Political Restrictions) Regulations 1990 for the holders of some local authority posts to personally avoid involvement in any political activity or comment. This requirement exists precisely because of the general requirement on local authority staff to accept political direction from the political leadership of the council.

Training and required declarations of impartiality etc. of officers issuing PSPO fixed penalty notices

	London Borough of Ealing Council²⁴⁵	London Borough of Richmond Council²⁴⁶	Manchester City Council²⁴⁷	Birmingham City Council²⁴⁸	Bournemouth Christchurch and Poole Council²⁴⁹
1. Are fixed penalty notices for breaches of Public Spaces Protection Order ONLY issued by council officers (rather than police)?	"No. Police also issue FPNs in line with the legislation and guidance"	"No, our contractors Park Guard, Park Officers and police can issue Park related PSPO FPNs."	"may be issued by an authorised council officer or a constable"	"Yes, the fixed penalty notices are only issued by Birmingham City Council Officers."	"An FPN may be issued by the authorising officer to anyone they believe has committed an offence"
2. How many hours of initial training does the local authority provide to its anti-social behaviour enforcement staff before they are able to issue fixed penalty notices for breaches of Public Spaces Protection Orders?	"Officers receive training at the point they are recruited and on an on-going basis."	FOI response stated: "n/a"	No record kept of No. of hours initial training "Officers will normally be in post for approximately 12-18 months before they are authorised to use the delegated powers (under the ASB, Crime and Policing Act 2014)."	"1 hour – more if required."	"Training is completed by all authorising officers."

²⁴⁵ London Borough of Ealing Council response to FOI request 24-1671 dated 25 November 2024.

²⁴⁶ London Borough of Richmond Council response to FOI request 07071 dated 9 December 2024.

²⁴⁷ Manchester City Council response to FOI request 14399 dated 22 January 2025.

²⁴⁸ Birmingham City Council response to FOI request 60706416 dated 2 December 2024.

²⁴⁹ Bournemouth Christchurch and Poole Council response to FOI request 12885 dated 5 December 2024.

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3. What topics are covered in this initial training?	<i>"The legislation, in particular ASB, Crime and Policing Act (2014), criminal procedure and of the prohibitions / requirements of the PSPOs that fall within scope of enforcement."</i>	FOI response stated: "n/a"	<p>a) Why introduce a PSPO</p> <p>b) Legislation (including a detailed breakdown of each prohibition or requirement of the relevant PSPO)</p> <p>c) FPNs and Prosecutions</p> <p>d) Support for vulnerable people</p> <p>e) Human Rights considerations</p> <p>f) Record keeping</p>	<i>"An Overview of PSPO and Breaches – for the specific PSPO, Training on how to log a breach and what happens post breach."</i>	<i>"Training is undertaken in line with national best practice."</i>
4. Are newly appointed anti-social behaviour enforcement staff required to make any form of public declaration similar to constable's oath which commits them to act with fairness, impartiality and to uphold human rights?	<i>"No, that applies to the Police only. "</i>	FOI response stated: "n/a"	"No"	<i>"There is no requirement for anti-social behaviour enforcement staff to make a specific declaration, however, training is given to officers to ensure they carry out their duties with fairness, respect, impartiality and to uphold human rights."</i>	<i>"High level vetting of ASB Officers is undertaken on appointment and this is refreshed."</i>
5. Please provide a copy of any	FOI response stated: "n/a"	FOI response	FOI response stated: "n/a"	<i>"There is no requirement for anti-social</i>	<i>"I am unable to share confidential</i>

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declaration which anti-social behaviour officers must say when issuing a fixed penalty notice for breach of a Public Spaces Protection Order.		stated: "n/a"		<i>behaviour enforcement staff to make a specific declaration. However, officers are required to inform individuals of the active Public Space Protection Order and how their behaviour is in breach of the prohibition(s). The officer will then ask the suspect to seize their behaviour and comply with the PSPO.."</i>	<i>documents relating to FPN."</i>
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Whilst the responses from some councils were a model of obfuscation, the following can be said from these responses:

1. In all councils which responded, council officers issue Fixed Penalty Notices (FPNs) for alleged breaches of the PSPO. In Birmingham FPNS are only issued by council officers not police.
2. The London Borough of Richmond Council authorises a range of other people to issue FPNs including external contractors and park officers.
3. The training such council officers receive can be as little as one hour (Birmingham City Council) – although the "n/a" response to this question from the London Borough of Richmond Council could be interpreted as meaning that no initial training at all is given prior to them undertaking duties on the streets.
4. Where such training does clearly take place, it appears to primarily to the content of the actual PSPO in force. Only Birmingham and Manchester City Councils stated that their initial training sought to ensure that officers carried out their duties in a manner which upheld human rights. However, as Manchester stated they did not know how many hours initial training were provided, while Birmingham stated this was only one hour, the extent and the effectiveness of this are questionable.
5. No council requires council officers to make any form of declaration of their duty to enforce the law with fairness and impartiality and to respect human rights.

Implications

A number of implications arise from this:

1. Whilst it is clear that the Anti-Social Behaviour, Crime and Policing Act, 2014 allowed local councils to authorise their own staff to issue fixed penalty notices for minor acts of anti-social behaviour such as dog fouling, as we earlier noted, there is no evidence that parliament ever intended PSPOs to be used for issues such as the creation of abortion buffer zones where fundamental human rights are involved.
2. Nor is there any evidence that parliament intended that local councils should outsource that authority to external contractors as the London Borough of Richmond Council does.
3. The level of training provided to council officers who are authorised to issue such FPNs is clearly inadequate and can be as little as one hour, or possibly even none. When experienced police officers frequently have little understanding of the Human Rights Act, 1997, a situation which has led to a significant number of unlawful arrests, it is clearly wholly inappropriate for council officers with significantly less training to be authorised to issue FPNs enforcing abortion buffer zones.²⁵⁰
4. The failure of any council to require their officers who are authorised to issue FPNs to make a formal declaration that they will act impartially, whilst not in itself suggesting that any such officers do act without impartiality, highlights the problems inherent in local council officers being authorised to enforce aspects of the criminal law. This results from the difference of organisational culture between the police who are constitutionally independent of political direction and local council officers who are contractually required to accept political direction.
5. The above observations also have significant potential implications for the proposal set out in the government's December 2024 White Paper on English Devolution, which proposes allowing elected regional mayors to approve new council bye-laws instead of the Secretary of State approving them, and to review whether local councils should be able to enforce bye-laws through fixed penalty notices, rather than through the courts.²⁵¹

²⁵⁰ Martin Parsons *Without Fear or Favour: An examination of contemporary policing of freedom of speech, religion and belief* – report commissioned by Christian Concern (London: Christian Concern, 2022).

²⁵¹ Ministry of Housing, Communities and Local Government *English Devolution White Paper* (September 2024) 99, 114.

13. How strong is the evidence of harassment of women by Pro-Life supporters?

13.1 The Home Office review into harassment and intimidation outside abortion clinics

13.1.1 Home Office review of extent of harassment and intimidation outside abortion clinics

In November 2017, Home Secretary Rt Hon Amber Rudd MP, in response to concerns which had been expressed about the alleged tactics used by some protestors, announced a review into harassment and intimidation near abortion clinics. This was to be undertaken by the National Policing Lead for Protest, Deputy Chief Constable Rachel Swann. The announcement of the review emphasised that the law already provided protection against harassment and intimidation, and the police have a range of powers to manage protests.

13.1.2 Result of the Home Office review of evidence

The Home Office call for evidence resulted in over 2,500 responses from a range of interested parties, including abortion service providers, abortion service clients, those engaging in anti-abortion demonstrations, police forces and local authorities. One of the submissions to the Home Office review was by the Royal College of Obstetricians and Gynaecologists and the Faculty of Sexual and Reproductive Healthcare, which, stated they had serious concerns regarding “intimidation and harassment” of patients and staff outside facilities providing abortion. This submission was subsequently cited in a 2022 Supreme Court case in relation to the Northern Ireland legislation.²⁵²

However, in September 2018, the then Home Secretary Rt Hon Sajid Javid MP made a statement to parliament summarising the results of the review. He emphasised that the purpose of the review had been to explore whether existing laws adequately protected people from harassment and intimidation. He stated that whilst the review had found some

“upsetting examples of harassment and the damaging impact this behaviour has had on individuals.” these were the exception, with most protests outside abortion clinics being “passive”:

“However, what is clear from the evidence we gathered is that these activities are not the norm, and predominantly, anti-abortion activities are more passive in nature. The main activities reported to us that take place during protests include praying, displaying banners and handing out leaflets. There were relatively few reports of the more aggressive activities described above.”

In the light of both this relative lack of evidence of actual harassment and intimidation and the finding of the review that only 36 of the 363 hospitals and clinics where abortions were carried out had any form of anti-abortion protests outside, he concluded

²⁵² UK Supreme Court REFERENCE by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill Case ID 2022/0077 <<https://www.supremecourt.uk/cases/uksc-2022-0077.html>> and Press summary <<https://www.supremecourt.uk/press-summary/uksc-2022-0077.html>> [both accessed 6 November 2024].

“Having considered the evidence of the review, I have therefore reached the conclusion that introducing national buffer zones would not be a proportionate response, considering the experiences of the majority of hospitals and clinics, and considering that the majority of activities are more passive in nature.”

He added that:

“legislation already exists to restrict protest activities that cause harm to others. For example, under the Public Order Act 1986, it is an offence to display images or words that may cause harassment, alarm or distress. This Act also gives the police powers to impose conditions on a static demonstration if they believe it may result in serious public disorder, serious damage to property or serious disruption to the life of the community or if the purpose of the assembly is to intimidate others.”²⁵³

13.2 Evidence from the BPAS campaign website

As noted in chapter 3, in 2014, BPAS began a formal campaign to create buffer zones around all abortion clinics. Their description of the activities which they were seeking to ban with such zones was not simply any form of harassment, alarm or distress – which under the 1986 Public Order Act were already criminal offences, but also any attempt to “influence people’s decision”.

The sole pictures on the BPAS webpages related to this campaign depicts a group of people standing with some also holding small placards with moderately phrased messages such as “love them both”, “choose Life” or “women do regret abortion”. Insofar as can be seen, all the people in both pictures appear to have their mouths closed. However, a number of people in both photographs clearly have their heads bowed, apparently in silent prayer, an impression which is reinforced by the presence in one of the pictures a person holding a rosary, which is used as part of Catholic contemplative prayer, being given a particular prominence in the picture.

As such, it appears that the aim of the campaign was primarily to prohibit the manifestation of opinions which dissented from acceptance of abortion, with the implication that this specifically included silent prayer near abortion clinics.

13.3 Evidence from the Back off campaign in Scotland website

13.3.1 BPAS state on the webpage of the BPAS Scotland ‘Safe Access Zones Scotland’ campaign that they have been working closely with the grassroots campaign group “Back Off Scotland”.²⁵⁴ This campaign group’s own website contains two accounts of women who had abortions describing their reactions to seeing Pro-Life supporters near the clinic, for example:

Alice’s story

“I experienced anti-choice protestors first-hand when I found out I was pregnant at 20 years old and attended Chalmers Clinic Edinburgh to seek an abortion. There were roughly seven protestors all standing on one side of the street, meaning they were impossible to ignore. I attended the clinic alone and felt targeted by the protestors.”²⁵⁵

Neither of the two women featured described any shouting at them, obstruction of the clinic entrance or indeed, any engagement with them by the Pro-Life supporters standing near the

²⁵³ UK Parliament ‘Outcome of abortion clinic protest review’ statement made on 13 September 2018 UIN HCWS958 <<https://questions-statements.parliament.uk/written-statements/detail/2018-09-13/HCWS958>> [accessed 27 November 2024].

²⁵⁴ <<https://bpas-campaigns.org/campaigns/safe-access-zones-scotland/>> [accessed 26 November 2024].

²⁵⁵ Back Off Scotland ‘Real Experiences’ <<https://www.backoffscotland.com/real-experiences>> [accessed 26 November 2024].

clinic. But the ‘Back Off Scotland’ website does describe the mere presence of Pro-Choice supporters in proximity to the clinic as “an aggressive act”:

Lily’s story

“Implementation of a buffer zone would have meant that I felt safe. You would think safety isn’t much to ask for but here we are. Imposing opinion on a personal matter, when not asked for, and occupying of space in this context are aggressive acts.”²⁵⁶

The Back Off Scotland campaign webpage also includes five further anonymous short statements. Three of these are from women claiming to have been subjected to action which most people would consider harassment:

“A small group of individuals, mostly male, were standing on the other side of the road. I was repeatedly called out to by one of the men, and when I glared at him and ignored him, he called me a ‘teenage murderer’” (Chalmers Centre, Edinburgh, May 2021)

“While walking with my baby in the pram, I passed one protester standing on the pavement outside centre. She tried to hand me a leaflet which clearly had anti-abortion messaging... I spoke to her about what she was doing... She looked into my baby’s pram and said ‘but there’s a reason you didn’t want to murder your own baby’. I walked away and she shouted after me ‘You are a hypocrite. You knew she was a baby and you knew she was in your womb. Would you kill her too?’” (Chalmers Centre, Edinburgh, February 2020)

“One of the group marched over to me and was extremely aggressive... he screamed in my face several times... he told me that I was going to get cancer (I had disclosed that I had an abortion between pregnancies)” (Royal Infirmary of Edinburgh, 2017)

13.3.2 Questions arising from the accounts by BPAS and Back Off Scotland

These accounts raise three basic questions:

1. How widespread is this type of harassment?
2. If such harassment is regularly occurring, as the Public Order Act 1986 (England and Wales) and the Protection from Harassment Act 1997 (Scotland) both make causing someone harassment, alarm or distress a criminal offence, what actions have the abortion clinics themselves taken in response to such actions?
3. What is the attitude of Pro-Life groups to this type of harassment – i.e. is it
 - a) either officially (or in practice) endorsed? or
 - b) do they regard it as reprehensible and take steps to prevent anyone associated with their organisation engaging in such practices?

The highlighting by the Back Off Scotland campaign of only three anonymous examples over a five year period (2017-2022) of what would in other circumstances be regarded as harassment does not support the claim that such actions are a particularly frequent occurrence.

If such harassment was frequently occurring, a reasonable response would be for the abortion clinic staff to immediately report the incident to the police, with CCTV footage able to provide at least some corroboration of any witness statement by the person who experienced the harassment. Whilst many patients might not wish to make such statements, it would be somewhat surprising if none of relatives or friends accompanying them were willing to make such a statement. However, neither of the campaign websites makes any suggestion that this has happened.

²⁵⁶ Back Off Scotland ‘Real Experiences’ <<https://www.backoffscotland.com/real-experiences>> [accessed 26 November 2024].

In relation to the third question – the attitude of Pro-Life organisations to this type of harassment – two of the main organisations organising prayer vigils outside abortion clinics, the Good Counsel Network and 40 Days for Life require anyone participating in their vigils to sign a “statement of peace” (figure 3) beforehand – which specifically commits them not to verbally abuse anyone, obstruct entrances and to positively cooperate with local authorities, and to only act with compassion.

Statement of Peace

I, _____, testify to the following:
Print Name

- I will only pursue peaceful solutions to the violence of abortion when volunteering with the Good Counsel Network vigil.
- I will show compassion and reflect Christ's love to all Marie Stopes and BPAS employees, volunteers, and customers.
- I understand that acting in a violent or harmful manner immediately and completely disassociates me from the Good Counsel Network vigil.
- I am in no way associated with Marie Stopes, BPAS, their affiliates or any abortion provider.

While standing in the public right-of-way in front of Marie Stopes or BPAS:

- I will not obstruct the driveways or pavements while standing in the public right of way.
- I will not block the entrance or exit of Marie Stopes or BPAS.
- I will not litter on the public right-of-way.
- I will closely attend to any children I bring to the prayer vigil.
- I will not threaten, physically contact, or verbally abuse Marie Stopes or BPAS employees, volunteers or customers.
- I will not damage private property.
- I will cooperate with local authorities.

Signature: _____ Date: _____

Address: _____
_____ Postcode: _____

E-mail: _____

Phone: _____

Mobile: _____

Figure 3

13.4 The evidence from police

A series of requests under the Freedom of Information Act to police forces in the areas where local authorities introduced abortion buffer zones using PSPOs suggested that police were unable to provide specific information about the number of crime reports in proximity to a particular abortion clinic. This is because a) the location for which police record crime is normally just the street b) the police do not disaggregate crime in a particular street into particular offences. For example, West Midlands Police responded to a question:

“Please provide the following information for each calendar year from 2000 to the present please state the number of people

1. *Cautioned outside the BPAS Robert Clinic in Station Road, Birmingham and the offence for which they were cautioned*
2. *The number arrested outside the Robert Clinic and the offence for which they were arrested.”*

By stating that their crime date is only recorded for the whole of Station Road- which is approximately half a mile long:

“Our data is not organised in such a way as to allow us to provide this information within the appropriate (cost) limit within the Freedom of Information (FOI) Act (see ‘Reason for Decision’ below). Since 2000 there has been 1216 recorded crimes in Station Road, Birmingham. Each individual record would need to be manually assessed in order to identify if it had occurred outside the BPAS Robert Clinic / was connected to the clinic. When an offence has occurred and a crime recorded, Officers may record this location in many different ways, some may mention the BPAS Clinic and others may not. Any arrests (neither confirm nor deny there are any arrests) may not be connected with the location but happen to have occurred there.”²⁵⁷

A summary of responses from police is provided below.

- A) How many people cautioned or arrested outside each abortion clinic since 2000**
B) How many Fixed Penalty Notices issued by police since introduction of PSPO

Police force	Date PSPO introduced	How many people cautioned or arrested outside clinic each year since 2000	Total number of Fixed Penalty Notices issued by Police since PSPO introduced
Metropolitan Police (MSI Clinic, Mattock Lane Ealing)	April 2018	unable to provide data specific to incidents outside the Clinic as crime is recorded at whole street level NB crime data only held since 2008 ²⁵⁸	Unable to find any evidence of FPN issued by police ²⁵⁹
Metropolitan Police (BPAS Clinic, Rosslyn Road, Richmond)	April 2019	unable to provide data specific to incidents outside the Clinic as crime is recorded at whole street level ²⁶⁰	Unable to find any evidence of FPN issued by police ²⁶¹
Greater Manchester (MSI Clinic, Wynnstay Grove, Manchester)	October 2020	The information is not held in an easily retrievable format ²⁶²	No data held in an easily retrievable format ²⁶³

²⁵⁷ West Midlands Police response to FOI Request Reference: 1822A 24 received 13 November 2024. A similar response was received from Greater Manchester Police in response to FOI Request 24/013630/J received 29 November 2024.

²⁵⁸ Metropolitan Police Response to FOI request 01/FOI/24/041340/J dated 12 December 2024.

²⁵⁹ Metropolitan Police Response to FOI request 01/FOI/24/041314/H response dated 11 December 2024.

²⁶⁰ Metropolitan Police Response to FOI request 01/FOI/24/041340/J dated 12 December 2024.

²⁶¹ Metropolitan Police Response to FOI request 01/FOI/24/041314/H response dated 11 December 2024.

²⁶² Greater Manchester Police Response to FOI request 01/FOI/24/013630/J dated 29 November 2024.

²⁶³ Greater Manchester Police Response to FOI request 01/FOI/24/013630/J dated 29 November 2024.

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West Midlands Police (BPAS Clinic, Station Road, Birmingham)	September 2022	unable to provide data specific to incidents outside the Robert Clinic as crime is recorded at whole street level ²⁶⁴	Data not held by police
Dorset Police (BPAS Clinic Ophir Road, Bournemouth)	October 2022	Declined to provide information on basis of s.40 of FOI Act (Personal information) NB crime data only held from May 2015 ²⁶⁵	Nil ²⁶⁶

13.5 Evidence from local authorities which instituted PSPOs

In oral evidence given to the Home Affairs Select Committee in December 2017, the leader of Ealing Council, Councillor Julian Bell stated that:

“It’s fair to say there have not been any prosecutions or legal actions taken against any protestors at the clinic to date.”²⁶⁷

Councillor Bell suggested this might be due to women using the clinic not wanting to make statements. However, he had begun his evidence by stating that Ealing Council was taking action because of specific concerns that had been raised with them as the local authority “from both users of the clinic (and) members of the staff from the clinic”. He also referred to having recently visited the clinic and been shown a logbook of incidents kept since the start of 2017 which he stated included a large number of statements by relatives and friends who had accompanied women having an abortion.

However, as noted in chapter 9, whilst the Ealing Council report contained witness statements from its own safer neighbourhood officers and from four women who had had an abortion at the clinic between 2005-17, only one of these statements referred to an action (shouts coming from demonstrators) containing any allegation of aggressive actions by Pro-Life supporters which would in other situations be regarded as intimidation or harassment.

Freedom of information requests to the five local authorities which instituted abortion buffer zones for the three-year period permitted by PSPO legislation revealed that there was an extremely low number of fixed penalty notices issued.

²⁶⁴ West Midlands Police Response to FOI request 1822A 24 dated 29 November 2024.

²⁶⁵ Dorset Police Response to FOI request 01/FIN/24/002588/P dated 11 December 2024.

²⁶⁶ Dorset Police Response to FOI request 01/FIN/24/002588/P dated 11 December 2024.

²⁶⁷ Home Affairs Select Committee Tuesday 12 December 2017 subject harassment and intimidation near abortion clinics, Parliament TV evidence by Councillor Bell 10:06 <<https://www.parliamentlive.tv/Event/Index/83d2c76e-6c23-4a01-9d02-a4de196f1f0>> [accessed 27 November 2024].

ABORTION BUFFER ZONE REPORT

Number of fixed penalty notices issued since PSPO implemented

Council	Date PSPO introduced	Year starting 2018	Year starting 2019	Year starting 2020	Year starting 2021	Year starting 2022	Year starting 2023	Year starting 2024
London Borough of Ealing Council (MSI Clinic, Mattock Lane Ealing) ²⁶⁸	April 2018	0	0	0	1	0	1	0
London Borough of Richmond Council (BPAS Clinic, Rosslyn Road, Richmond) ²⁶⁹	April 2019	-	0	0	0	0	0	0
Manchester City Council (MSI Clinic, Wynnstay Grove, Manchester) ²⁷⁰	Oct 2020	-	-	0	0	0	0	0
Birmingham City Council (BPAS Clinic, Station Road, Birmingham) ²⁷¹	Sept 2022	-	-	-	-		1 NB upheld on challenge	0
Bournemouth Christchurch and Poole Council (BPAS Clinic Ophir Road, Bournemouth) ²⁷²	Oct 2022	-	-	-	-	2 NB 1 later cancelled	2	0

²⁶⁸ Ealing Council response to FOI request 24-1663 dated 18 November 2024.

²⁶⁹ London Borough of Richmond Council response to FOI request 07059 dated 9 December 2024.

²⁷⁰ Manchester City Council response to FOI request 14393 dated 20 December 2024.

²⁷¹ Birmingham City Council response to FOI request 69711414 dated 27 November 2024. NB the FOI response was possibly incomplete – but referring to only FPN being issued, failing to state the date issued though stating it was challenged on 6 April 2024 while saying this was for a second breach of Robert Clinic PSPO'. This presumably relates to the 2022 arrest of to Isabel Vaughan Spruce and Father Sean Gough for engaging in silent prayer outside the Robert Street abortion clinic. As noted in s.12.4.2 above the case was later dropped as it was not deemed to have met the “full code test” for prosecutors, which requires the prosecution to be in the public interest and with a sufficient likelihood of conviction.

²⁷² Bournemouth Christchurch and Poole Council response to FOI request 12884 dated 3 December 2024.

Notes:

1. The single 2023 Ealing PSPO relates to Stephen Green who had stated that he was protesting against the existence of the abortion buffer zone, rather than abortion itself.²⁷³
2. The single 2023 Birmingham PSPO may relate to the March 2023 arrest of Isabel Vaughen Spruce for silently praying outside the abortion clinic while it was closed. As noted in s.12.4.3 above. The case was finally dropped six months later after then Home Secretary, Rt Hon Suella Braverman MP confirmed in an open letter to police that silent prayer is “not unlawful”.
3. One of the Bournemouth 2022 FPNs was that issued to Adam Smith-Connor in November 2022 for silently praying outside the abortion clinic, which was noted in s.12.4.4 above. Although the FPN was upheld in the Magistrates Court, the case is currently subject to appeal to the Crown Court.²⁷⁴

As such, the evidence from police reports and PSPO fixed penalty notices issued clearly substantiates the national picture found by the Home Office review i.e. that incidents that met the criminal threshold of causing intimidation, alarm or distress were “relatively few”.

13.6 Have harassment and intimidation been redefined?

13.6.1 The justification given for introducing abortion buffer zones both locally through PSPOs and nationally through legislation has been to protect women accessing abortion clinics from “harassment and intimidation”. However, as is clear above, there is a paucity of evidence of acts which would fall within the legal definition of harassment and intimidation.

The implication of this is that by prohibiting all actions which could “influence” a person near an abortion clinic, a new much narrower definition of “harassment” and “intimidation” has in practice been created – that of expressing either verbally, by writing or – even by silent actions – including a head bowed in prayer – opinions related to abortion which a person approaching an abortion clinic might disagree with.

²⁷³ ‘Religious preacher, 72, loses appeal after conviction for protest’ MyLondon 4 December 2024 <<https://www.mylondon.news/news/west-london-news/religious-preacher-72-loses-appeal-30506842>> [accessed 10 January 2025].

²⁷⁴ Press release issued by Alliance Defending Freedom which funded Mr Smith Connor’s defence: Army veteran confirms APPEAL as Crown Prosecution Service concede silent prayer “not necessarily” an offence ADF 31 October 2024 <<https://adfinternational.org/en-gb/news/silent-prayer-case-appeal>> [accessed 10 January 2025].

14. Are abortion buffer zones state overreach?

When Ealing Council undertook its consultation on introducing the UK's first abortion buffer zone, a number of the consultation responses from local residents used words such as "totalitarian". For example:

"671 Peaceful protest is a sign of a free society. Prayer is exercise of a person's religion which is a protected characteristic. Banning prayer is a sign of a totalitarian state. People have the choice to accept or refuse counselling, and it is also part of exercising a person's religion."

*"730. This restricts freedom of speech, religion, and other forms of expression. It is totalitarian and has no place in a healthy democratic society where people must be free to express their views so long as they do not physically threaten another."*²⁷⁵

The introduction of restrictions clearly does raise a number of significant issues related to historic British freedoms.

14.1 The rule of law

14.1.1 Former Lord Chief Justice and senior law lord, Lord Tom Bingham, set out eight principles which underpin the rule of law:

1. The law must be accessible and as far as possible intelligible, clear and predictable
2. Questions of legal right and liability should ordinarily be resolved by the application of the law and not the exercise of discretion.
3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
5. The law must provide adequate protections to fundamental human rights.
6. Means must be provided for resolving without prohibitive cost or inordinate delay civil disputes which the parties themselves are unable to resolve.
7. Adjudicative procedures provided by the state should be fair.
8. The rule of law requires compliance by the state with its obligations in international law as in national law.²⁷⁶

It is clear that not only the manner in which abortion buffer zones were first introduced, but also the nature of a number of the restrictions they impose on ordinary citizens, raise fundamental questions about their compatibility with a number of these principles.

14.1.2 The manner in which abortion buffer zones were introduced

The creation of abortion buffer zones by the use of Public Spaces Protection Orders potentially conflicts with principle No.4. These powers were granted to local authorities by the Anti-Social Behaviour, Crime and Policing Act 2014 to tackle minor issues such as dog fouling and littering. There is no evidence that parliament intended them to be used to create abortion buffer zones, or indeed for any purpose which raised fundamental questions about human rights. The use of PSPOs by local authorities to create abortion buffer zones at a time when a number of MPs had tried

²⁷⁵ Ealing Council Report to Cabinet dated ("The Murphy report").

²⁷⁶ Tom Bingham *The Rule of Law* (London: Penguin, 2010) 37-129.

unsuccessfully to introduce legislation creating them, would appear to be a particularly conspicuous example of a breach of principle No.4.

14.1.3 The restrictions on abortion buffer zones

Influencing

Both abortion zones created by local authority PSPOs and by national legislation create a vaguely worded offence of actions which may have the effect of “influencing” a person’s decision on whether to access, provide or facilitate the provision of abortion services.

This vaguely worded term, which is not defined in the legislation, (and in the case of both the PSPOs and Northern Ireland legislation specifically extends to “indirectly” influencing) creates a situation where what is or is not a criminal offence can only be tested by 1. The issue of a criminal sanction such as a fixed penalty notice, which can only be challenged by a trial in a Magistrates Court, followed by 2. a re-trial in the Crown Court, followed by an appeal to a higher court which is able set a legally binding precedent. In other words, the law is neither clear nor predictable (Principle 1).

The use of religious language

The Ealing Council PSPO specifically prohibits the use of significant religious concepts, stating that “any text or images relating directly or indirectly to the termination of pregnancy” *“which includes but is not limited to...soul...hell”*. The prohibition of an unstated list of words and concepts similarly means that the law is neither clear nor predictable (Principle No.1).

The prohibition on the use of certain terms and concepts which could be said to be indirectly related to abortion potentially also raises real questions as to whether fundamental human rights have been adequately protected (Principle No.5). If for example, a shop on a main street 100m from an abortion clinic i.e. well within the 150m abortion buffer zone, were to display a Christmas poster referring to the birth of the baby Jesus (the term “baby” is specifically prohibited in the Ealing PSPO) or display a crib with the baby Jesus in it (the Ealing PSPO specifically bans “texts or images” related to these words) as is not uncommon at Christmas – the question arises as to whether this would be a criminal offence. The question is particularly pertinent, as the PSPO creates a strict liability offence i.e. one for which it is not necessary to prove intent.

In contrast, the national legislation in Northern Ireland, Scotland and in England and Wales states that a person commits an offence if they do “an act with the intention of or be reckless as to whether the act has the effect of” influencing a person etc.

Prayer

The national legislation is particularly unclear in this respect, as although parliament debated whether prayer should be specifically exempted from the legislation, it voted against doing so. This has left a situation where the legislation is silent on the question of whether or not prayer of any description i.e. spoken or silent is prohibited by the legislation, while those who lobbied for the legislation are insistent that it is (Principle No 1).

This has also potentially created a situation where local authority PSPOs, which were intended to tackle minor issues of anti-social behaviour, restrict what is acknowledged to be a fundamental human right, i.e. freedom of religion or belief to a greater extent than broadly similar national legislation does.

Silent prayer

All local authority PSPO abortion buffer zones specifically prohibit “prayer” – but they leave unclear whether this is spoken (or perhaps written prayer, or also extends to silent prayer – i.e. prayer spoken in one’s mind).

In terms of national legislation, the lack of clarity in respect of prayer generally has been made worse by the guidance issued by the Crown Prosecution Service, whose list of the activities prohibited within abortion buffer zones specifically states that this includes “silent prayer”.

This lack of clarity around the legality of silent prayer is of considerable significance because, as previously noted, it has been a fundamental principle of English law since the reign of Edward IV (1461-70) that “the thoughts of a man are not triable”, a position which is also affirmed in the understanding of both the Universal Declaration of Human Rights and the European Convention on Human Rights that internal religious actions are an “unqualified” human right i.e. one that cannot be restricted (Principles No.1, No.5 and No.8).

14.2 Is prayer banned in general hospitals?

14.2.1 Hospitals in England and Wales

The national legislation in both England and Wales, Scotland and Northern Ireland creates an abortion buffer zone 150m around any place where abortions take place, including a general hospital if the Health Authority notifies the relevant government department. For example, s.9 of the Public Order Act 2023 which creates abortion buffer zones (termed “safe access zones” in England and Wales states that:

“A “safe access zone” means an area which is within a boundary which is 150 metres from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic and is—

- (a) on or adjacent to a public highway or public right of way,
- (b) in an open space to which the public has access,
- (c) within the curtilage of an abortion clinic, or building or site which contains an abortion clinic, or
- (d) in any location that is visible from a public highway, public right of way, open space to which the public have access, or the curtilage of an abortion clinic.”

This raises a critically important question as to whether “an area which is within a boundary which is 150 metres from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic...” and b) which is within the curtilage of a building or site which contains an abortion clinic” includes all or parts of the interior of general hospitals.

14.2.2 Hospitals in Northern Ireland

The issue is somewhat clearer in the Northern Ireland legislation, with the Abortion Services (Safe Access Zones) (Northern Ireland) Act 2023, which not only designates as “protected premises” those where abortions are actually carried out (s.1) but can also include the whole of general hospitals which merely provide information about abortion.

“Premises where information, advice or counselling about abortion treatments are provided

2. (1) In this Act, **premises are also protected premises** if they satisfy conditions 1, 2 and 3.

(2) Condition 1 is that the premises are—

- (a) **an HSC hospital,**
- (b) a clinic provided by an HSC trust,

(c) used to provide primary medical services in accordance with arrangements under the Health and Personal Social Services (Northern Ireland) Order 1972, or

(d) any other premises approved for the purposes of this section by the Department.

(3) Condition 2 is that **information, advice or counselling relating to treatment for the termination of pregnancy is provided at the premises.**

(4) Condition 3 is that the operator of the premises has given notice to the Department that **the operator wishes the premises to be protected premises** and that notice has not been withdrawn by the operator.

(5) In this section—

“HSC hospital” means a hospital managed by an HSC trust,

“HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991.”

14.3 Unresolved questions

14.3.1 This raises a number of important questions:

1. Could prayer be banned either in part or the whole of a general hospital?
2. Would discussion of abortion by a hospital chaplain with a patient in a general hospital be prohibited?
3. Would discussion of the ethics of abortion by a hospital chaplain with a doctor or nurse who was considering whether or not to take part in an abortion be prohibited as they be “influencing a person’s decision to...provide or facilitate the provision of abortion services”?
4. Similarly, would a private lunchtime meeting of the Christian Medical Fellowship – a UK body which states it has 5,000 doctors as members – be prohibited from discussing the ethics of how Christian doctors should respond to abortion, as again, it would be “influencing a person’s decision” whether or not to take part in the provision of abortion services?
5. Similar issues also arise not simply in relation freedom of religion or belief, but also in respect of academic freedom. Medical Ethics is an important part of both initial and continuing medical education, as such the potential (or in the case of Northern Ireland) specific inclusion of general hospitals within abortion buffer zones, combined with the failure to provide a specific exemption for medical education – leaves this as an area of legal uncertainty.

Each individual one of these potentially conflicts with Principle No.1 – the law being clear and predictable.

However, the legal uncertainty creates the real risk that HR managers in NHS general hospitals will seek to use their own discretion in determining what is permissible, such as by banning discussion of abortion by staff, including doctors and nurses throughout the hospital, and could even ban prayer. This would not only have a chilling impact on freedom of religion or belief (Principle No. 5 adequate protections to fundamental human rights), but also potentially Principle No.2 (Questions of legal right should ordinarily be resolved by the application of the law and not the exercise of discretion) and principle No.7 (Adjudicative procedures provided by the state should be fair).

14.4 Prioritisation of a pro-abortion worldview

14.4.1 The prohibition on any form of discussion or written material which could influence someone’s decision whether to access, provide or facilitate an abortion, in the context of a general

hospital where abortions are taking place, effectively means that a pro-abortion worldview has been legally prioritised and protected from any form of criticism.

Whilst this issue does also arise in principle with abortion buffer zones anywhere, it is particularly acute in a general hospital where the overwhelming majority of patients, staff and visitors have come to the hospital for reasons wholly unconnected with abortion.

Such a prioritisation of a pro-abortion worldview conflicts with Principle No.3 – the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation. Lord Bingham observes that the justifiable differences are very few and far between, citing children as being treated more leniently by the criminal law because of their lack of maturity.²⁷⁷

14.4.2 The prioritisation of a worldview and protection of it from criticism was of course also the purpose of the blasphemy laws which, in the various countries which constitute the United Kingdom, were over the centuries increasingly narrowly constrained so as only to prohibit words which were like to provoke a breach of the peace, before finally being abolished. While, as noted in chapter 11, the freedom to criticise other religious or philosophical beliefs, was a central aspect of the historical development of freedom of religion or belief and freedom of speech in Britain, particularly for those known as Dissenters and for Catholics. As Lord Scarman summarised the situation in the decade before the offence of blasphemy was formally abolished in England and Wales:

*“The common law does not interfere with the free expression of bona fide opinion. But it prohibits, and renders punishable as a misdemeanour, the use of coarse and scurrilous ridicule on subjects which are sacred to most people in this country.”*²⁷⁸

As such, the effective prohibition on expressing views which dissent from a pro-abortion worldview, particularly in general hospitals is significantly regressive in relation to the historical development of the right to both freedom of religion or belief and freedom of speech and expression.

The UN Human Rights Committee has also issued a commentary on Article 18 of the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR), both of which the UK is a signatory to. This states:

*“10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.”*²⁷⁹

The absence of any obvious balancing clause in legislation creating abortion buffer zones between the rights of a) those who believe the unborn child is a human being entitled to human rights with b) those who believe it is not, raises significant questions as to whether the effective prioritisation of the pro-abortion worldview created by national legislation is compatible with this aspect of the ICCPR.

14.5 The precedent set

14.5.1 The precedent which legislation enacting abortion buffer zones set is that one particular set of beliefs or values can in practice be protected from any form of criticism or challenge in a defined geographical area. This in itself potentially conflicts with Principle No.3 – The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

²⁷⁷ Tom Bingham *The Rule of Law* (London:Penguin,2010) 55-59.

²⁷⁸ *R v Lemon*; *R v Gay News Ltd* [1979] 1 All ER 898.

²⁷⁹ UN High Commissioner for Human Rights, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)* Adopted at the Forty-eighth Session of the Human Rights Committee, on 30 July 1993 CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments).

However, it also creates a precedent by which other beliefs could be prohibited from criticism in defined geographical areas.

In fact, within weeks of the national legislation enacting abortion buffer zones coming into force, there were already calls for similar buffer zones to be enacted around assisted dying clinics, a medical facility which does not even currently exist, but was being proposed in a private members' bill due to be debated in parliament.

There have also been longstanding calls from some, though by no means all, sections of the Muslim community for the enactment of specific zones around mosques where aspects of shari'a could be enforced,²⁸⁰ as well as calls under the guise of the term "Islamophobia" to not merely proscribe discrimination and prejudice against Muslims, but also to prohibit all criticism of Islam, something which the Organisation for Islamic Co-operation in its 2005 10 year strategy stated it wished to achieve in western countries.²⁸¹ This would again clearly conflict with the most basic principle of English law – which is set out by Lord Bingham as Principle No. 3 – there should be one law which should apply equally to all.

14.6 Compatibility with international human rights protections of freedom of assembly

Freedom of Assembly is set out as a fundamental right in both the Universal Declaration of Human Rights (UDHR) (Article 20) and the International Covenant on Civil and Political Rights (ICCPR) (Article 21) to which the UK is a signatory.

The UN Human Rights Committee's official commentary on ICCPR article 21 makes clear that even where the aims of an assembly are "contentious" these "do not call into question the protection that such assemblies enjoy."²⁸² It also states that any such restrictions must be "narrowly drawn"²⁸³ and says that states cannot prohibit displays of material related to a particular topic:

*"States must leave it to the participants to determine freely the purpose or any expressive content of an assembly."*²⁸⁴

While only in exceptional circumstances may the time, place or manner in which a peaceful assembly takes place be regulated:

*"participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience."*²⁸⁵

Any regulation must be justified on a case-by-case basis i.e. there can be no blanket national ban

*"the onus remains on the authorities to justify any such restriction on a case-by-case basis. Any such restrictions should still, as far as possible, allow participants to assemble within sight and sound of their target audience, or at whatever site is otherwise important to their purpose."*²⁸⁶

It also sets out a general principle in relation to restrictions that

²⁸⁰ See for example, 'As Islamic extremists declare Britain's first sharia law zone, the worrying social and moral implications' *Mail on Sunday* 29 July 2011 <<https://www.dailymail.co.uk/news/article-2020382/You-entering-Sharia-law-Britain-As-Islamic-extremists-declare-Sharia-law-zone-London-suburb-worrying-social-moral-implications.html> > [accessed 7 December 2024].

²⁸¹ OIC Ten Year Programme of Action to meet the challenges facing the Muslim Ummah in the 21st century, Third Extraordinary Session of the Islamic Summit Conference (December 2005) section 1-VII 'Combatting Islamophobia'. This section on "Islamophobia" makes no reference whatsoever to combatting prejudice against Muslims, but instead calls for "defamation" of Islam to become an offence and for western as well as Islamic states "to enact laws to counter it, including deterrent punishments".

²⁸² United Nations Human Rights Committee (HRC) General Comment No.37 (2020) on the Right of Peaceful Assembly (Article 21) s.7.

²⁸³ UN HRC General Comment No.37 (2020) on the Right of Peaceful Assembly (Article 21) s.8.

²⁸⁴ UN HRC General Comment No.37 (2020) on the Right of Peaceful Assembly (Article 21) s.22.

²⁸⁵ UN HRC General Comment No.37 (2020) on the Right of Peaceful Assembly (Article 21) s.22.

²⁸⁶ UN HRC General Comment No.37 (2020) on the Right of Peaceful Assembly (Article 21) s.53.

“The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it.”²⁸⁷

As such, it is very difficult to see how either the five local authority PSPOs or the national legislation in Northern Ireland, Scotland or England and Wales is compatible with international human rights law.

²⁸⁷ UN HRC General Comment No.37 (2020) on the Right of Peaceful Assembly (Article 21) s.36.

15. Potential international impact on Freedom of Religion or Belief and other human rights

15.1 Freedom of Religion or Belief (FoRB)

Freedom of Religion or Belief largely developed in the UK and other countries of the English-speaking world, such as the USA and spread from there around the world. The UK Foreign, Commonwealth and Development Office has long sought to positively influence governments of countries where Christians and other religious minorities face persecution. As a result of the recommendations in the Bishop of Truro's FCDO sponsored review on global persecution of Christians, it is now government policy to "articulate an aspiration to be the global leader in championing FoRB".²⁸⁸

However, a number of aspects of both local authority PSPOs and national legislation have the potential to significantly compromise the ability of the FCDO to effectively address freedom of religion violations in overseas. In particular, the following aspects create a significant risk that governments who persecute Christians and other minorities will respond to concerns about FoRB violations in their country by pointing to similar restrictions on FoRB now operating in parts of the UK as a result of abortion buffer zones. The following four issues are particular risks:

15.2 Vaguely worded laws

As noted in s.14.1 above, it is a basic principle of the rule of law that laws should be clear and predictable (Principle No.1). Vaguely worded laws are a common feature of authoritarian countries where they are used to criminalise any expression of dissent in relation to the either the government or the ideology which is politically dominant.

For example, Iran's Penal Code contains a number of vaguely worded offences which have been used to imprison Christians, such as "waging war against God" (*moharebah*) (s. 279-285) for which the maximum penalty can be either execution by hanging or crucifixion, amputation of the right hand and left foot or banishment; or spreading "corruption on earth" (*Efsad-e-fel-arz*) (s.286) which the Penal Code defines as offences against the people or internal security including "spreading lies", for which the maximum penalty is²⁸⁹ also execution.²⁹⁰

15.3 Prohibited words – blasphemy laws

It is only repressive authoritarian, communist and Islamic governments which seek to prohibit the expression of opinions.

Blasphemy laws are essentially an attempt to suppress the expression of any criticism or dissent from an officially sanctioned belief system. As noted in chapter 11, the abolition of blasphemy laws

²⁸⁸ Professor Sir Malcolm Evans, Professor Nazila Ghanea, Professor Ahmed Shaheed, Dr Gehan Gunatilleke and Dr Caroline Roberts Independent Report Assessment of the implementation of recommendations of Bishop of Truro's independent review of FCDO support for persecuted Christians (London:FCDO 4 July 2022) <<https://www.gov.uk/government/publications/bishop-of-truros-independent-review-of-fcdo-support-for-persecuted-christians-assessment-of-recommendations-implementation/69e219a8-d8f8-4a90-8b75-f0f79e9a18df>> [accessed 7 December 2024].

²⁸⁹ Iranian Penal Code s.279-85.

²⁹⁰ Iranian Penal Code s.286.

was a major part of the UK's historical development of freedom of religion or belief (FoRB). It is now essentially only Islamic countries which have blasphemy laws. They are widely recognised as being incompatible with both fundamental human Rights (Principle No.5) and international human rights conventions (Principle No.8).

However, the prohibition on criticising, even indirectly, the belief that an unborn child is not a human being entitled to human rights, in essence bears significant parallels to the underlying principle of blasphemy laws.

15.4 Influencing

A significant number of authoritarian countries place criminal sanctions, including lengthy terms of imprisonment, on anyone who speaks out against any aspect of the government – including government abortion policy. For example, Chen Guangcheng, a blind human rights activist, was arrested on a trumped up charge of “damaging property and organizing a mob to disturb traffic.” after speaking out and seeking to bring a legal case against the use of abortion as part of the Chinese government’s one child policy. He was subsequently sentenced to four years in prison. While he was in prison his wife was placed under constant surveillance by eight police officers. His lawyers, who were themselves subjected to state harassment, told UK Human Rights experts Lord Alton and Baroness Cox that he would be released “immediately” if he would “recant his previous statements”.²⁹¹

Similarly, in a significant number of Islamic countries, it is a criminal offence to seek to influence a Muslim so that they might consider adopting another faith. For example, in Algeria, the Criminal Code makes such influencing, including by

“distributing printed documents or audiovisual materials with the intent of ‘shaking the faith’ of a Muslim”

an offence punishable by a fine of one million dinars and up to five years’ imprisonment. Christian leaders are not infrequently arrested under this legislation. For example, in 2022 Foudhil Bahloul, a Christian convert from Islam, was fined and received a prison sentence for “shaking the faith of a Muslim” by giving religious leaflets to Muslims.²⁹²

15.5 Prohibition on prayer in public

Prohibition on Christian prayer in public is a key feature of dhimmitude, which grants certain religious minorities living under Islamic government the right to live, provided they keep to the terms of the *dhimma* contract. This was imposed by Islamic State on Christians in the parts of Iraq and Syria they controlled²⁹³ and continues to be imposed by jihadist groups in West Africa.²⁹⁴ One of the key conditions of the *dhimma* is that Christian worship, including prayer, must not be heard, but must take place behind closed doors.

It should be noted that even this merely prohibited the audible recitation of Christian prayer in public

²⁹¹ ‘China: Blind advocate remains imprisoned for work against abortions’ Human Rights House Foundation 12 August 2010 <<https://humanrightshouse.org/articles/china-blind-advocate-remains-imprisoned-for-work-against-abortions/>> [accessed 13 January 2-25].

²⁹² US Commission on International Religious Freedom 2022 *Report on International Religious Freedom: Algeria* <<https://www.state.gov/reports/2022-report-on-international-religious-freedom/algeria>> [accessed 7 December 2024].

²⁹³ ‘ISIS Video: Christians forced to pay jizya poll tax in Syrian town of Qaryatayn’ Middle East Media Research Institute (MEMRI) 4 October 2015 <<https://www.memri.org/tv/isis-video-christians-forced-pay-jizya-poll-tax-syrian-town-qaryatayn>> [accessed 7 December 2024].

²⁹⁴ US Commission on International Religious Freedom *Annual Report 2024* ‘Introduction and overview’ 1-3.

“3. They may not make Muslims **hear the reciting of their books** or the sounds of church bells, which must be rung only inside their churches.”²⁹⁵

It did not seek to ban silent prayer as potentially UK abortion buffer zones do.

15.6 Restrictions on freedom of assembly

As noted in s.14.7 above, the right to peaceful assembly is strongly protected in international human rights law, which specifically requires states to facilitate peaceful assemblies and prohibits blanket national bans in relation to particular places, or restrictions which do not allow participants to assemble within sight or sound of their target audience.

The wide-ranging restrictions in both local authority PSPOs and national legislation in Northern Ireland, Scotland, England and Wales therefore not only potentially conflict with international human rights law, but also set a very dangerous precedent in terms of justification of similar restrictions on freedom of peaceful assembly in other countries, which in the past the UK government has condemned.

For example, in Turkey in 1995, a group which became known as “The Saturday Mothers” began gathering each Saturday noon at Galatasaray Square in Istanbul as a vigil to remember and call for justice for victims of state-sponsored abductions and enforced disappearances in Turkey. In 1998 the police started to arrest the protestors, which forced the suspension of the protest for a decade. It began again in 2009. However, in August 2018 the local authority district governor issued a written ban on gatherings in Galatasaray Square, with Saturday Mothers and members of international human rights organisations with them being targeted with water canons, plastic bullets and tear gas, before 47 were arrested and held in detention for 8 hours. Turkey’s Minister of the Interior publicly accused the Saturday People of “being the spokesperson of terrorist organisations”. The Turkish government continued to prosecute the Saturday mothers for their peaceful vigils remembering their lost relatives, before finally allowing them to return to Galatasaray Square in November 2023, with 20 of the Saturday Mothers eventually being acquitted by the court in October 2024.²⁹⁶

There is therefore a risk that the UK placing a blanket legal ban on vigils outside abortion clinics could be viewed as justification for once again banning similar vigils to that of the Saturday Mothers in countries such as Turkey.

²⁹⁵ ‘ISIS Video: Christians forced to pay jizya poll tax in Syrian town of Qaryatayn’ Middle East Media Research Institute (MEMRI) 4 October 2015 <<https://www.memri.org/tv/isis-video-christians-forced-pay-jizya-poll-tax-syrian-town-qaryatayn>> [accessed 7 December 2024].

²⁹⁶ Stockholm Center for Freedom ‘Turkish court acquits 20 in Saturday Mothers trial’ SCF 10 October 2024 <<https://stockholmcfr.org/turkish-court-acquits-20-in-saturday-mothers-trial/>> ; cf also Hafiza Merkezi ‘Galatassary Square: a recognised memory space’ 13 August 2020 <<https://hakikatadalethafiza.org/en/news/galatassary-square-recognized-memory-space>> and ‘Saturday Mothers/people’ – updated 13 January 2025 <<https://www.sessizkalma.org/en/defender/saturday-motherspeople>> [all cessed 14 January 2025].

16. Conclusions

16.1 Competing worldviews and understanding of entitlement to human rights

Both the local authority PSPOs and the national legislation introducing abortion buffer zones raise serious issues about freedom of religion or belief, freedom of speech and expression and freedom of assembly. The debates through which these laws were introduced suggested that there was both a significant lack of both religious literacy, i.e. understanding of religious as well as secular worldviews, as well as a significant lack of literacy in relation to the historical development of freedom of religion or belief and freedom of speech and assembly in the UK.

In particular, there was an apparent failure on the part of many legislators to understand that there were two conflicting worldviews held: one which believed that the unborn child was a human being and therefore entitled to human rights, and one which denied this and consequently asserted that the only human rights at stake were those of the mother.

In practice, there appears to have been little if any attempt to balance the claims of these competing worldviews and competing rights.

Similarly, the evidence of women expressing gratitude after encountering Pro-Life supporters outside abortion clinics and being offered support which led to them positively changing their minds and deciding to continue their pregnancy, appears to have been given little weight.

16.2 The introduction of abortion buffer zones

Abortion buffer zones were first introduced without parliamentary debate or scrutiny, but as a result of judicial decisions in Canada which both created an exclusion zone around an abortion clinic and prohibited public prayer within sight of it. Abortion buffer zones then spread in Canada, Australia and the USA. In 2009, BPAS, which operates one of the largest networks of abortion clinics in the UK, began campaigning for their introduction to the UK, launching a formal campaign in 2014. The pictures on campaign websites of BPAS and the Back Off Scotland campaign both suggest that the target of the campaign was to make it illegal to conduct silent prayer vigils outside abortion clinics.

In 2015, a campaign was begun by Rupa Huq MP, who had that year been elected as Labour MP for Ealing Central and Acton, for abortion buffer zones to be introduced across the UK. In November 2015, a Pro-Choice group ‘Sister Supporter’ began a counter-protest outside an abortion clinic in Ealing against the Pro-Life vigils there. A petition was then presented to Ealing Council calling for the use of a Public Space Protection Order (PSPO) to create an abortion buffer zone around the clinic which would ban the Pro-Life vigil. Ealing Council subsequently introduced an abortion buffer zone which banned any form of direct or indirect influence on whether to have or take part in providing an abortion. The restrictions included a specific prohibition on “prayer” as well as the use of a non-exhaustive list of terms, some of which, such as “Hell” and “soul” were specifically Christian theological terms.

The creation of the Ealing abortion buffer zone was subsequently followed by the London Borough of Richmond, Manchester, Bournemouth Christchurch and Poole, and Birmingham Councils, all of which specifically banned prayer. The use of PSPOs was highly contentious as parliament had granted these powers to local authorities to tackle minor issues of anti-social behaviour such as dog fouling. As such, the powers were being used for a purpose for which they had never been intended by parliament – and when a parliamentary campaign to introduce abortion buffer zones nationally had at that point been unsuccessful.

In November 2017, the Home Office launched a consultation on intimidation and harassment outside abortion clinics which noted that the law already provided protection against intimidation

and harassment, while looking to see if police, local authorities and healthcare providers had sufficient powers. A year later, Home Secretary Sajid Javid told parliament the review, which had been led by the National Police Lead for protest, had received 2,500 consultation responses. However, whilst the review had found some “*upsetting examples of harassment*”, these were the exception with most protests outside abortion clinics being “passive”, with “relatively few reports” of more aggressive activities. As such, he concluded that national legislation to introduce abortion buffer zones would be a disproportionate response.

National legislation on abortion buffer zones was first introduced in Northern Ireland, the most socially conservative part of the UK, where the collapse of devolved government allowed the Westminster parliament in 2019 to pass the most liberal abortion law in the UK, including decriminalisation of abortion for all reasons up to 12 weeks of pregnancy. When the Stormont assembly was restored, the UK government overrode a vote by the NI Assembly rejecting the new abortion law and ordered the NI government to begin providing abortion services. In March 2022 a bill introduced by NI Green Party leader Clare Bailey MLA to create buffer zones around Northern Ireland abortion clinics, was finally passed by a majority vote in the “wash-up period” when remaining bills are rushed through without normal scrutiny on the final sitting day before the assembly was dissolved for elections.

Shortly after this, the Scottish Parliament passed an Act which was broadly similar to the NI Act, while in England an amendment to the Public Order Act 2023 by prominent Pro-Choice campaigner Stella Creasy MP created abortion buffer zones in England and Wales.

16.3 Silent prayer

As a number of prosecutions had taken place for people engaged in silent prayer in local authority PSPO abortion buffer zones, an attempt was made by Westminster MPs to specify that silent prayer was not included in the prohibition on harassment or intimidation outside abortion clinics. As parliament failed to agree to this, it left the legislation unclear as to whether or not prayer – whether spoken or silent – was banned in abortion buffer zones. However, while the earlier December 2023 Home Office consultation had stated that silent prayer was an “unqualified” human right in international human rights conventions, the subsequent CPS guidance not only failed to repeat this emphasis, but appeared to contradict it by listing silent prayer as a potential criminal offence.

The CPS Guidance also implied that “carrying Bibles” could also amount to a criminal offence.

16.4 Historical precedents for restrictions

The closest historical precedent for the restrictions imposed by abortion buffer zones is the Clarendon Code, a series of laws introduced between 1661-65 whose purpose was to restrict the influence on wider society of the beliefs of Dissenters i.e. Protestants such as Baptists who dissented from some aspects of the beliefs of the Church of England. In particular, a) the Five Mile Act 1665 which created an exclusion zone around major towns within which non-Conformist ministers were prohibited from teaching or preaching; b) the Conventicle Act 1664 which prohibited meetings for a religious purpose of more than 5 people. Both of these Acts were repealed in 1812 having long fallen into disuse.

At no point in English history have there ever been any restrictions on silent prayer in public spaces. The closest historical precedent to this is the arrest of the Quakers William Penn and William Meade in 1670 for conducting an act of Quaker worship – which typically involved significant periods of silence, on a London street. At the subsequent trial the jury, despite being directed by the judge to convict them, refused to do so. The case has had a significant influence both on subsequent English legal history and on the development of international FoRB, as in 1701 Penn drafted the constitution whose freedom of religion clause directly influenced the 1791 First Amendment to the USA’s Constitution: “*Congress shall make no law respecting an establishment of*

religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble”.

16.5 The rule of law

The nature of the restrictions imposed by abortion buffer zones raises significant issues about their potential compatibility with at least four of the eight principles which former Lord Chief Justice, Lord Bingham, set out as being foundational to the rule of law – in particular, the criminalisation of influencing a person’s decision whether to access, provide or facilitate the provision of abortion services. As this term is not defined in legislation, it has created a situation where the law is neither clear nor predictable (Principle 1).

This lack of clarity around the legality of silent prayer is of considerable significance because it has been a fundamental principle of English law since the reign of Edward IV (1461-70) that “the thoughts of a man are not triable”. This position is also affirmed in the understanding of both the Universal Declaration of Human Rights and the European Convention on Human Rights that internal religious actions are an “unqualified” human right i.e. one that cannot be restricted.

16.6 Application of abortion buffer zones to general hospitals

The application of national legislation to general hospitals – specifically in Northern Ireland and potentially in Scotland, England and Wales – creates a further degree of uncertainty as to whether the abortion buffer zone merely includes the outside of the hospital or also includes the inside of the hospital. This raises a number of questions:

1. Could prayer be banned either in part or the whole of a general hospital?
2. Would discussion of abortion by a hospital chaplain with a patient in a general hospital be prohibited?
3. Would discussion of the ethics of abortion by a hospital chaplain with a doctor or nurse who was considering whether or not to exercise their legal right to conscientious objection to taking part in an abortion be prohibited, as they would be “*influencing a person’s decision to...provide or facilitate the provision of abortion services*”?
4. Similarly, would a private lunchtime meeting of the Christian Medical Fellowship – a UK body which states it has 5,000 doctors as members, be prohibited from discussing the ethics of how Christian doctors should respond to abortion – as again, it would be “*influencing a person’s decision*” whether or not to take part in the provision of abortion services?
4. Similar issues also arise not simply in relation freedom of religion or belief, but also in respect of academic freedom. Medical Ethics is an important part of both initial and continuing medical education, as such the potential (or in the case of Northern Ireland) specific inclusion of general hospitals within abortion buffer zones, combined with the failure to provide a specific exemption for medical education – leaves this as an area of legal uncertainty.

This legal uncertainty creates the real risk that HR managers in NHS general hospitals could seek to use their own discretion in determining what is permissible, such as by banning discussion of abortion by staff, including doctors and nurses throughout the hospital, and could potentially even ban prayer.

16.7 Effective prioritisation of pro-abortion worldview

The prohibition on any form of discussion or written material which could influence someone’s decision whether to access, provide or facilitate an abortion, in the context of a general hospital where abortions are taking place, effectively means that a pro-abortion worldview has in effect been legally prioritised and protected from any form of criticism.

16.8 The precedent set

The precedent which legislation enacting abortion buffer zones set is that one particular set of beliefs or values can in practice be protected from any form of criticism or challenge in a defined geographical area. This in itself potentially conflicts with Principle No.3: the laws of the land should apply equally to all.

The introduction of abortion buffer zones in October 2023 almost immediately led to calls for similar buffer zones to be enacted around assisted dying clinics, a medical facility which does not even currently exist, but was being proposed in a private members' bill due to be debated in parliament. There have also been longstanding calls from some, though by no means all, sections of the Muslim community for the enactment of specific zones around mosques where aspects of shari'a could be enforced.

16.9 Compatibility with protection for Freedom of Assembly in international human Rights law

International human rights law gives strong protections to freedom of Assembly. The details of what this is understood to include in 2020 spelled out by the UN Human Rights Committee in a general commentary on ICCPR Article 21 (Right of Peaceful Assembly). This requires

1. States to positively facilitate peaceful assembly.
2. Affirms that the protections afforded to this right are not diminished if the goal of the assembly is contentious.
3. That the state may not interfere in determining the “expressive content” of any peaceful assembly.
4. And must enable participants to conduct a peaceful assembly “within sight and sound of their target audience”.
5. Any restrictions on peaceful assemblies to be “narrowly constrained”.
6. And prohibits any blanket national ban in relation to peaceful assemblies taking place at particular places or times.

As such, it is difficult to see how either abortion buffer zones enacted by either local authority PSPOs or national legislation in Northern Ireland, Scotland, England and Wales are compatible with international human rights law.

16.10 Potential impact on international FoRB and global persecution of Christians

The current national restrictions in abortion buffer zones also have the potential to create significant harm to international freedom of religion or belief. As a result of the recommendations in the Bishop of Truro's FCDO sponsored review on global persecution of Christians, it is now government policy to “articulate an aspiration to be the global leader in championing FoRB”. However, there is a significant risk that governments who persecute Christians and other minorities will respond to concerns about FoRB violations in their country by pointing to similar restrictions on FoRB now operating in parts of the UK as a result of abortion buffer zones. The following four issues are identified as particular risks:

1. Vaguely worded laws. These are a common feature of authoritarian countries where they are used to criminalise any expression of dissent in relation to the either the government or the ideology which is politically dominant. For example, Iran's criminal code contains a number of vaguely worded offences which have been used to imprison Christians, such as "waging war against God" (*moharebah*) or spreading "corruption on earth" (*Efsad-e-fel-arz*). Both of these have been frequently used to imprison Iranian Christians and can potentially be used to execute them.
2. Prohibited words and speech. Blasphemy laws are essentially an attempt to suppress the expression of any criticism or dissent from an officially sanctioned belief system. It is now essentially only Islamic countries which have blasphemy laws. However, the prohibition on criticising, even indirectly, the belief that an unborn child is NOT a human being and therefore not entitled to human rights, in its essence bears significant parallels to the underlying principle of blasphemy laws.
3. The offence of influencing. In a significant number of Islamic countries, it is a criminal offence to seek to influence a Muslim so that they might consider adopting another belief. For example, even in Algeria, which is widely regarded as a relatively moderate Islamic country, the criminal code makes such influencing, including by "distributing printed documents or audiovisual materials with the intent of 'shaking the faith' of a Muslim" an offence punishable by a fine of one million dinars and up to five years' imprisonment. Christian leaders are not infrequently arrested under this legislation.
4. Prohibition on Christian prayer in public is a key feature of dhimmitude, which grants certain religious minorities living under Islamic government and shari'a enforcement the right to live provided they keep to the terms the *dhimma* contract. This was imposed by Islamic State in Christians in the parts of Iraq and Syria they controlled in 2015 and continues to be imposed by jihadist groups in West Africa. One of the key conditions of the *dhimma* is that Christian worship including prayer, must not be heard but must take place behind closed doors. However, even Islamic State did not seek to prohibit silent prayer as UK abortion buffer zones potentially do.

17. Recommendations

International human rights law

1. The UK government should immediately commission a review of
 - a) The compatibility of both PSPOs and national legislation in Northern Ireland, Scotland, England and Wales with international human rights law, including the International Covenant on Civil and Political Rights to which the UK is a signatory and the UN Human Rights Committee's commentary on its meaning. This should specifically include:
 - UN HRC General Comment on Article 18 (freedom of religion or belief)²⁹⁷
 - UN HRC General Comment on Article 19 (freedom of opinion and expression)²⁹⁸
 - UN HRC General Comment on Article 21 (right to peaceful assembly)²⁹⁹
 - a) Take immediate steps to ensure compatibility of both local authority PSPOs and national legislation in Northern Ireland, Scotland, England and Wales with these international human rights obligations, including, where necessary repeal of existing legislation.

Silent prayer

2. The Crown Prosecution Service should immediately make clear in its guidance that silent prayer has been both an historic common law right since the fourteenth century, and an unqualified human right in international human rights conventions.

National legislation

3. In order to ensure full freedom of religion or belief for patients accessing general hospitals for reasons unconnected to abortion and for staff working there:
 - Immediately exempt the entirety of general hospitals from:
 - a) s.2 of the Abortion Services (Safe Access Zones) Northern Ireland 2023
 - b) s.1(a) of the Abortion Services (Safe Access Zones) (Scotland) Act 2024
 - c) s.9 (6b) of the Public Order Act 2023.
4. In order to ensure that the law is as far as possible intelligible, clear and predictable (Principle No.1 of Lord Bingham's eight foundational principles of the rule of law) AND to ensure that it does not adversely impact International Freedom of Religion or Belief globally, particularly in the Islamic world:
 - Amend the national legislation in Northern Ireland, Scotland, England and Wales by replacing the word the word "influencing" with "causing harassment or intimidation". This would create clarity while also retaining the offence of preventing or impeding access to someone accessing the clinic.

(This would also bring the provision of the law into line with the balance of evidence found by the Home Office review conducted by the National Policing Lead for Protest)

4. In order to ensure that Northern Ireland legislation does not impose more severe restrictions on freedom of religion or belief than the rest of the UK:
 - Remove the word "indirectly" from s.5(2a) of the Abortion Services (Safe Access Zones) Northern Ireland 2023.

²⁹⁷ United Nations Human Rights Committee General Comment No.22 (1993) on Article 18 (Freedom of Thought, Conscience and Religion).

²⁹⁸ United Nations Human Rights Committee General Comment No. 34 (2011) on Article 19 (Freedom of Opinion and Expression).

²⁹⁹ United Nations Human Rights Committee General Comment No.37 (2020) on Article 21 (the Right of Peaceful Assembly).

5. In order to ensure that the national legislation is not placed on a more permanent basis than that which broadly similar historic restrictions on freedom of religion or belief and freedom of expression such as the Licensing Act 1662, have been:

- Parliament should be required to annually approve the continuance of restrictions on these contained in the
 - a) Abortion Services (Safe Access Zones) Northern Ireland 2023
 - b) Abortion Services (Safe Access Zones) (Scotland) Act 2024
 - c) s.9 (6b) of the Public Order Act 2023.

Public Spaces Protection Orders

6. In order to bring local authority abortion buffer zones into line with national legislation:

- The Ministry of Housing Communities and Local Government should issue instructions to all local authorities to immediately rescind all restrictions on FoRB or Freedom of Speech in PSPO abortion buffer zones which are more restrictive than those in national legislation.

7. In order to bring enforcement standards of local authority PSPO abortion buffer zones into line with national legislation, which 1) only allows police officers (not local authority officials) to enforce abortion buffer zones, 2) CPS guidance requires prosecution under s.9 of 2023 Public Order Act to only be undertaken with consent of Director of Legal Services:

- The Ministry of Housing Communities and Local Government (HCLG) should issue immediate instructions to all local authorities in this respect.

8. Amend the Anti-Social Behaviour Crime and Policing Act 2014 by

- a) Specifically prohibiting PSPOs from placing restrictions on FoRB which do not exist nationally.
- b) Require the Secretary of State to place a statutory instrument before parliament annually setting out a list of behaviours which local authorities may restrict with PSPOs.

9. Amend the Local Government Act to state that no local authority bye-law, Public Space Protection Order or other legal enactment may restrict either FoRB or freedom of speech to a greater extent than that set by national legislation.

The proposal in the government's December 2024 English Devolution White Paper to devolve the current requirement for the Secretary of State to approve local council bye-laws down to an elected regional mayor, should include both

- a) a list of specific issues on which local councils can enact bye-laws (such as dog fouling, littering, cycling on the pavement, noise abatement etc.)
- b) a list of specific issues on which local councils cannot enact bye-laws. This should automatically include:
 - i) all issues on which national legislation already exists, so that bye-laws cannot be created which impose greater restrictions or more severe penalties than national legislation.
 - ii) all issues where there is a need to balance one group of human rights against another.

The White Paper's additional proposal to review whether the enforcement of local council bye-laws should be enforceable by means of Fixed Penalty Notices, rather than in the Magistrates Court, if enacted at all, then for the constitutional and other reasons set out in s.12.5.2, the authority to issue of any such Fixed Penalty Notices should be restricted to police officers.

UK government

10. Enact a Freedom of Religion Act, requiring all national and local authority legislation to undertake a FoRB impact assessment similar to that currently required for the Equalities Act.

11. Set up a commission of historians to produce a summary of the key aspects of a) Freedom of Religion or Belief b) Freedom of Speech c) Freedom of Assembly which historically developed in the countries which now constitute the UK.³⁰⁰

12. Ensure that a summary of those aspects of Freedom of Religion or Belief and Freedom of Speech is provided

- a) In the induction briefing for all new members of parliament
- b) All FCDO staff
- c) All professional civil servants.

³⁰⁰ Cf for example, The Lindisfarne Centre for the Study of Christian Persecution '10 Aspects of Freedom of Religion' and 'The Development of Freedom of Religion Over the last 500 Years' <<https://christianpersecution.co.uk/freedom-of-religion>> [accessed 9 December 2024].

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