

Written evidence from BPAS (FOE0093)

Is there a need to review the wording and application of Public Space Protection Order (PSPO) legislation?

Overview

Anti-abortion activity has taken place outside 42 clinics in England and Wales (50 across the UK) in the last three years. These clinics care for more than 100,000 women every year.

BPAS holds a database of abortion clinic activity which currently includes 2700 accounts from women, healthcare workers, and local residents who live and work near clinics.

The High Court and the Court of Appeal have both recognised that women have an Article 8 right to access legal abortion care in confidence and without fear of harassment, alarm, or distress – a right which is impinged by anti-abortion activity outside the clinic.

Despite attempts to use other methods and legislation to address damaging anti-abortion activity, Public Spaces Protection Orders (PSPOs) have been the only method successful in stopping the harmful activity.

The Article 9, 10, and 11 rights cited by anti-abortion protesters in opposition to the use of PSPOs are all qualified rights – the state has the ability to place boundaries on their exercise where they interfere with others' rights or with the protection of health.

BPAS believes that new legislation should be introduced to instate buffer zones (areas where activity designed to influence women's reproductive choices) outside all abortion clinics.

Until new legislation is in place, PSPOs should remain unchanged in law as the only effective method for protecting women's Article 8 rights as they access abortion care.

About BPAS

The British Pregnancy Advisory Service is the largest abortion provider in the UK. We operate 61 clinics in Great Britain, through which we provide pregnancy counselling, abortion care, miscarriage management, contraception and STI testing to 100,000 women each year.

BPAS also runs the Back Off Campaign – a coalition of organisations which work to put a stop to anti-abortion activity that takes place immediately outside clinics. As part of this work, we maintain a database of accounts and experiences of abortion clinic protests.

How many women have been negatively affected?

In 2019, more than 100,000 women were required to attend an abortion clinic targeted by protesters. Because of contracting arrangements and the relatively small number of dedicated abortion clinics, the majority of these women will have no option but to attend a clinic with a protest.

In the past three years, BPAS has received 1100 accounts and experiences of anti-abortion activity outside 31 different clinics. The vast majority of these clinics have an indicative rather than exhaustive number of comments.

The one exception is BPAS Richmond. During the statutory consultation on introducing a PSPO around the clinic, we asked every client who attended the service whether they wanted to share their experience of the activity outside. In one month, we received 323 accounts from women of the experiences they had had outside the clinic. The most common reported feelings from these accounts were being made to feel uncomfortable, judged or guilty, scared or anxious, angry, and distressed or upset.

Activity undertaken

The type of activity outside clinics varies by the group involved and the location of the protest. They include the aspects below – all of which are supported by records in BPAS’s database of first-hand accounts.

Groups usually gather immediately outside the clinic, or immediately opposite, facing the entrance. The largest protest in the last year was outside BPAS Finsbury Park in January 2020 with around 45 people. Protests tend to last between 1 and 4 hours on any given day – except for ‘40 Days for Life’ protests which aim to be present for 12 hours for 40 days in the spring and autumn. Some groups have been present outside clinics for several years.

- **Presence despite Covid-19 restrictions** – clinics around the country have had anti-abortion groups present since the lifting of the original lockdown in March. Reports cite that they prevent social distancing on pavements and as clients enter clinics, and they continue to hand out leaflets which present an infection risk.
- **Approaching clients** – Protesters approach clients, attempting to waylay them and tell them their opinions on abortion to deter or dissuade women from accessing services.
- **Leaflets** – On the one hand are leaflets produced by CBR-UK with pictures of dismembered foetuses on the inside pages. On the other hand are leaflets that focus on the purported ‘impact of abortion’, which provide false information such as “Some psychological effects of abortion...damage to maternal instinct, feeling incapable of motherhood, hostility” and “9 out of 10 relationships break up after abortion”. Other leaflets say that abortion causes breast cancer, eating disorders, depression, and suicidal thoughts.
- **Posters** – At one end of the scale, CBR-UK display 15ft banners of dismembered foetuses, at the other, 40 Days for Life have A1-sized ‘Pray to End Abortion’ signs.
- **Distressing communication** – this includes telling women that abortion is ‘murder’, or they are a ‘murderer’, telling women they are ‘doomed’, or that their ‘baby’ won’t get into heaven.
- **‘Prayer vigils’**

- **Singing** – Hymns may be loud enough to be heard inside the clinic, sometimes with amplification equipment. This forms part of the daily vigil and can persist over a number of days.
- **Filming** – Largely the preserve of evangelical groups who use bodycams during most activity. Also reports from Catholic ‘vigils’ of phone cameras being used, particularly on passers-by and local residents who query what is happening.
- **Following clients and staff**
- **Marches** – In conjunction with a local church, some groups organise marches that culminate outside a clinic. This has happened in the last two years in a number of different areas, and numbers are usually around 30-40.
- **Spreading holy water** – A number of areas report protesters spreading holy water around the clinic and on the pathway.

Addressing the issues raised by clinic activity

Clinic activity has an impact on women accessing abortion that needs to be combated.

As a result of the local, patchwork nature of PSPOs and the burden on councils in introducing them, BPAS supports the introduction of new legislation to introduce national buffer zones around clinics.

Until new legislation is introduced, however, PSPOs are the only successful means to stop damaging clinic activity. Other legislative options that have been previously suggested by the Home Office or by anti-abortion groups, to no avail, include:

- **Part 4, Chapter 1, Anti-Social Behaviour, Crime and Policing Act 2014 (used).** A CPN was used against two individuals who started protesting outside BPAS Birmingham South in early 2019. However, there is now a new protest group outside the clinic with significantly more people, present throughout Covid-19, which is ill-suited to a CPN or CPW.
- **S5 Public Order Act 1986 (used).** Used twice, most recently in Manchester, where a member of a regular protest group pleaded guilty and was given a 12-month restraining order. The group she is a part of continues to protest the clinic, and her restraining order expired last year, leaving her free to re-commence her activities.
- **Part 1, Anti-Social Behaviour, Crime and Policing Act 2014 (used).** One police force has obtained an injunction against an individual protester. The injunction requires that the protester does not use amplification equipment or use the word ‘murderer’ within 60 yards of the clinic. It does not prevent his attendance, any other aspects of the protest, or use of synonyms such as ‘baby killer’.
- **Civil injunction (considered).** Given the number of clinics impacted, a civil remedy for this persistent and widespread issue is insufficient and incorrectly places the right of women to access healthcare unimpeded as the responsibility of a provider rather than the government.

- **S14 Public Order Act 1986 (used).** In 2014, police officers in Richmond issued a Section 14 notice indicating that they considered the anti-abortion group posed a ‘serious risk of disruption to the life of the community’. The Metropolitan Police reviewed the issuing of these notices and concluded that they had been issued incorrectly.
- **S1, Protection from Harassment Act 1997 (considered).** This requires victims to report harassment to the police and if they wish to pursue a prosecution, to be willing to give evidence in court which would require disclosing their confidential medical records.
- **Part 3, Anti-social Behaviour, Crime and Policing Act 2014 (considered).** Dispersal powers would allow police to disperse individuals or groups who are causing harassment, alarm or distress. However, these powers only last a maximum of 48 hours and these groups are often present for more prolonged periods so will simply return once the order has expired.
- **S61 and S68 of the Criminal Justice and Public Order Act 1994 (considered).** It was concluded that trespass takes place only in very isolated circumstances and would not address the vast majority of protest activity.

Women’s Article 8 rights

Previous review by the government, and submissions by anti-abortion groups, strongly focus on the Article 9, 10, and 11 rights of the anti-abortion protesters, but make no mention of the Article 8 rights of women to make decisions about their healthcare within the law and access healthcare confidentially and without fear of harassment, alarm, or distress.

The first buffer zone introduced using PSPO legislation, by the London Borough of Ealing, is still subject to legal challenge. The PSPO was upheld in full by both the High Court and the Court of Appeal, and the Supreme Court declined to hear a further appeal.

L Turner in *Dulgheriu v London Borough of Ealing* found that –

“I am satisfied that their rights to a private life were engaged. Their position is very different to the person who walks down a public street knowing that they will inevitably be casually observed by others. In particular, women of reproductive age who are entering the Centre are quite likely to be going there in order to have an abortion. Those leaving may well have undergone an abortion. **They thereby become objects of attention not as ordinary members of the public but as women in the early stages of pregnancy who are considering the prospect of an abortion or who have just had an abortion.** The fact of being pregnant is often, in itself, one that a mother reasonably wishes to be kept private, to a greater or lesser extent, in the early stages. The fact that one is considering, or has undergone, an abortion is, if anything, likely to be an even more intensely private affair for many women and their partners. **To be the focus of open public attention, often at the very moment when sensitivities are at their highest, is an invasion of privacy even when it occurs in a public place.**”

The Court of Appeal’s ruling on the same case found that –

“The decision of a woman whether or not to have an abortion is an intensely personal and sensitive matter. **There is no doubt that it falls within the notion of private life within the meaning of article 8...** We consider it is clear, nevertheless, that [the protesters] engaged the article 8 rights of those visiting the Centre both from the perspective of the right to autonomy on the part of service users in wishing to carry through their decision to have an abortion and from **the reasonable desire and legitimate expectation that their visits to the Centre would not receive any more publicity than was inevitably involved in accessing and leaving the Centre across a public space and highway.**”

Conclusion

It is the duty of the State to provide adequate protection for the rights of its citizens.

It is recognised by the courts that when accessing abortion services, the Article 8 rights of women are involved – and further that they have a legitimate expectation to privacy. The presence of anti-abortion protests outside the clinic compromises this right.

We have no problem with anti-abortion individuals campaigning or sharing their views on the high street, on the internet, outside the Council buildings, or outside Parliament. But it is our opinion – and the opinion of the courts – that their attendance outside a clinic has an impact on the human rights of women that is not compatible with their continued presence.

As detailed above, there are no other adequate provisions in law that would protect the Article 8 rights of women in this circumstance. As such, a review of the wording and application of PSPOs does not only have the potential to harm the rights of women, but would place the State in an untenable position whereby there is a recognised contravention of women’s rights, and no means by which it can be redressed.

11/01/2021