



## RESPONSE OF THE CATHOLIC UNION OF GREAT BRITAIN TO THE HOME OFFICE ABORTION CLINIC PROTEST REVIEW (QUESTIONS 28-34)

### What is your view of the usefulness of such a tool [Buffer Zones]?

To be useful, such a tool would have to: (a) be addressed to a problem that is not addressed by existing laws; and (b) be addressed to activity that is not protected by fundamental principles of law such as those contained in Article 10 of the European Convention on Human Rights (or indeed, if different, fundamental principles of our free democratic society). Those who argue for such a tool bear the evidential burden of establishing that such a problem / activity exists.

This burden will not be satisfied by evidence that groups have been standing outside clinics offering counselling or assistance with alternatives to abortion or offering most information leaflets or conducting prayer vigils. It will also not be satisfied by evidence of protests *per se*. Article 10 protects those activities. The European Court of Human Rights describes freedom of expression as ‘...one of the essential foundations of a democratic society...it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference’: *Animal Defenders International v. UK* [GC] at paragraph 100 and (in the specific context of Abortion clinics) *Annen v. Germany* Application number 3690/10 26<sup>th</sup> February 2016 and *Hoffer and Annen v. Germany* Application numbers 397/07 and 2322/07 20<sup>th</sup> June 2011 (which upheld the rights of anti-Abortion activists in this context). This accords with the views of the UK courts. In *R v. Home Secretary Ex parte Simms* [2000] 2 AC 115 at 126 -7, Lord Steyn in the House of Lords said: ‘...the starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not possible..’. In the present context this is consistent with values most people would see as fundamental. We understand that there is evidence that people have been born who would not otherwise have been born as a result of this kind of activity by pro-life groups.

The only evidence that is likely to satisfy the relevant burden of establishing that such a tool would be useful is evidence of activities other than those referred to in the previous paragraph and evidence that the existing legal tools (such as injunctions or prosecutions under the *Protection from Harassment Act 1997* or prosecutions for

public order offences) have been tried in specific cases and been found wanting. The written evidence from the Home Office to the Home Affairs Select Committee Inquiry suggests that it will be hard to satisfy this burden. The evidence contains the following passages:

*[In December 2016]...all forces confirmed that they were not aware of any significant regional or local issues and felt that they had the necessary and appropriate powers to manage such protests*

...

*The police assessed that the overwhelming majority of demonstrations were conducted peacefully and lawfully, without any public order / criminal concerns or need for police intervention. Pro-life groups denied harassment and intimidation, claiming that they only seek to dissuade and offer support to those seeking the services of family planning clinics.*

*Complaints about the activities of pro-life demonstrators directly to police from those attending healthcare clinics were seemingly few.*

It follows, that any argument that these zones would be useful should be very closely analysed.

**Who do you consider should determine whether and where such a zone is put in place.**

The only acceptable authority for any such orders would be a Court having heard evidence to justify an order in a specific case. It must be a fundamental right of a citizen of the United Kingdom that an order restricting his or her activities not be made without a hearing before a judge. It is contrary to one of the principles of the rule of law for political decision makers to make orders directed at specific individuals and restricting their activities. That is particularly the case in this field where there is a very real danger of non-judicial decision-making being politicised or subject to pressure from powerful interested parties.

**How should buffer zones be enforced?**

If any such order were to be introduced it should be a civil order that is subject to the usual methods of enforcement of civil injunctions (for example, by contempt of Court proceedings).

**What benefits or challenges do you envisage?**

We think that there are real questions about the wisdom of these proposals. The issue of abortion is an extremely emotive one. It is deeply divisive. It skews political voting patterns (obviously, in countries like the United States and more subtly here)

and certainly skews political reporting in this country. Both sides of the debate are motivated by the desire to protect and promote what they honestly regard as truly fundamental rights. The truth is that this issue always involves a clash of rights and reasonable people disagree about where on the spectrum the correct balance is to be found. In this context, seeking to introduce laws for which even the Home Office evidence from the police suggests there is the most flimsy (if any) evidence of a pressing need is deeply to be regretted. It risks further polarising our society and apparently unnecessarily.

**Are there other considerations that you would like to raise regarding the introduction of buffer zones?**

Only to emphasise the necessity for all evidence received to be scrutinised appropriately fairly and rigorously.

**Are there other powers or tools you would consider appropriate?**

Only those that already exist (see above).

**What do you think would be the implications to the right to protest and of freedom of speech if buffer zones were created?**

This question is already answered by the cases we set out above. It does not seem to us that, on the information currently available, any laws that go beyond those that exist at the moment would be compatible with existing jurisprudence in this area. The issue of freedom of speech is particularly important in this case because the government would have to establish a 'pressing social need' to succeed on any legal challenge to any new law (which was not established in relation to a significant amount of the material in the *Annen* cases). We understand that there is evidence being submitted to the consultation that shows that a significant number of people have been born as a result of the kinds of activities currently engaged in outside clinics who would not otherwise have been. Whether you agree or disagree with the current law on abortion, most people would agree that this is a good worth protecting. In those circumstances (and other more general ones already accepted by the courts) it would seem almost impossible to argue that banning the activities was in response to a 'pressing social need'.

The Catholic Union of Great Britain

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