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## RESPONSE OF THE CATHOLIC UNION OF GREAT BRITAIN TO THE CONSULTATION BY LAMBETH COUNCIL ON THE MAKING OF A PUBLIC SPACES PROTECTION ORDER (PSPO) IN RESPECT OF ABORTION CLINICS

### Introduction

1. The essential purpose and effect of the draft Public Spaces Protection Order ('PSPO') appears to be to make it a criminal offence for a person to '*seek to dissuade*' individuals from accessing '*sexual health and reproductive services provided at places lawfully authorised or licensed to provide treatment for the termination of pregnancy (abortion)*' in the area that is to be marked on a map attached to the final order<sup>1</sup>.
2. The draft order, the consultation page of the Lambeth Council's website and the draft impact assessment also refer to 'intimidation' and 'harassment, alarm or distress', however these are already criminal offences in the relevant areas under the general law. There are also existing powers to obtain injunctions from a court to prevent such activities if there is sufficient evidence of them: see *Protection from Harassment Act 1997* and *Part 1 Anti-social Behaviour, Crime and Policing Act 2014* ('ASBCPA').
3. The intention to prevent dissuasion or 'discouraging' is expressed throughout the impact assessment. Although the list of the activities set out in the draft PSPO is expressed not to be exhaustive, it includes the distribution of leaflets<sup>2</sup>.
4. Those who appear outside abortion clinics have to be careful about what they say or do. The material on the Lambeth website contains many references to the difficult situation any woman seeking an abortion finds herself in. However, many of the factors which make that situation so difficult also make it important that the woman has access to full information as to, and (if appropriate) assistance with, the alternatives to having an abortion.
5. How that information and assistance is given may be a matter for debate but it cannot be in anyone's interests or genuinely 'pro-choice' to criminalise seeking to dissuade or discourage from terminating a pregnancy. We understand from debates in Parliament that there is evidence of people being born as a result of their mothers encountering this information and assistance outside abortion clinics. That is a social good.
6. It is our submission that the draft PSPO is neither in the public interest nor lawful.

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<sup>1</sup> Even if the order were to be otherwise appropriate, the draft maps on the Lambeth website appear to propose a disproportionately large area having regard to their purpose.

<sup>2</sup> There are references in the draft PSPO to activities that do not appear in the evidence packs, such as 'relaying false information on abortion' and 'throwing of water'.

## The Law

### (i) Human Rights

7. The starting point is the *European Convention on Human Rights*. Section 72 ASBCPA states that the local authority 'must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention'. The statutory guidance (section 73 of ASBCPA) requires (page 17) that 'any use of these powers must be compliant with the Human Rights Act 1998'. While the original Home Office guidance states: 'Agencies...must have regard to the Articles 10 and 11 of the European Convention on Human Rights which provide for the right for lawful freedom of expression and freedom of assembly, ensuring that...the making of a public spaces protection order is not used to stop reasonable activities where no anti-social behaviour is being committed'.

[Anti-social behaviour is defined in section 2 ASBCPA as 'conduct that has caused, or is likely to cause, harassment, alarm or distress to any person' and some conduct in relation to residential premises. It does not extend to dissuasion or discouragement].

8. The Lambeth impact assessment contains the following passage:

*'The Council recognises that impacted anti-abortion groups may consider this an infringement on their freedom of expression and/or religious beliefs. However, Lambeth would like to make it clear that none of these issues apply in this instance'.*

9. Lambeth is wrong about that. The Act and the statutory guidance (and the general obligation in the *Human Rights Act 1988* requiring a local authority to act compatibly with Convention Rights) require the Convention to be applied. The cases make clear that Article 10 is directly engaged in circumstances such as these.

10. The most relevant case is *Annen v. Germany* (application number 3690/10) decided by the European Court of Human Rights on 26<sup>th</sup> November 2015. The case is important both for its statements of general principle and its statements as to how those principles apply in the particular context of anti-abortion activity. As to general principle, the Court said this:

*50. The Court considers, and it was not disputed by the Government, that the civil injunction issued by the national courts amounted to an "interference" with the applicant's right to freedom of expression as guaranteed by Article 10 of the Convention. Such interference will infringe the Convention if it does not satisfy the requirements of paragraph 2 of Article 10.*

...

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

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

*(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’.*

*53. Another principle that has consistently emphasised in the Court’s case-law is that there is little scope under Article 10 of the Convention for restrictions on political expressions or on debate on questions of public interest*

(underlining added)

As to the particular context of anti-abortion activity, it said:

*62...The Court also points out that the applicant’s campaign contributed to a highly controversial debate of public interest. There can be no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake*

...

*64. Having regard to the foregoing considerations and, in particular, the fact that the applicant’s statement, which was at least not in contradiction with the legal situation with regard to abortion in Germany, contributed to a highly controversial debate of public interest, the Court, in view of the special degree of protection afforded to expressions of opinion which were made in the course of a debate on matters of public interest...*

11. In fact, in English domestic law, Article 10 occupies a privileged place. 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..’.

12. It is difficult to see how an order by the Local Authority which has the effect of making criminal, seeking to dissuade or the handing out of leaflets (or a similar level of activity) can be lawful.

**(ii) Unreasonableness**

13. There is real doubt as to whether PSPO’s were intended to be used in this context at all. They appear to be a tool a local authority can use to ensure that public spaces are free from

what people generally would regard as anti-social behaviour. The sorts of activities envisaged would appear to be excessive public drinking, certain dogs, legal highs, public gambling or certain types of driving.

14. In keeping with this apparent intention, the test in section 59 (3) includes a requirement that the activity being prohibited be 'unreasonable'.
15. Seeking to dissuade a person from terminating a pregnancy or handing a person a leaflet offering alternatives or other like activities do not fit easily within this scheme. As we say above, we understand that there is evidence that people have been born who would not otherwise have been as a result of activities such as these. Whatever a decision maker's view as to the current state of the law on abortion, a decision that activity having that effect is 'unreasonable' would seem hard to justify on conventional public law grounds.
16. The guidance contains references to 'necessity' and 'proportionality'. Given that there are already criminal laws prohibiting harassment and causing distress and civil injunctions that can be obtained from a judge to deal with particular individuals who engage in such conduct, this draft PSPO is not 'necessary'. There is no evidence that these laws have been used and found wanting in specific cases. It is not 'proportional' because of its breadth for the reasons already given.

**(iii) Duty to consult the Chief Officer of Police**

17. Section 72 (3) and (4) ASBCPA require that the Chief Officer is consulted before making a PSPO. We cannot see the results of any such consultation on the Lambeth website. We do, however, have the written evidence from the Home Office to the House of Commons Home Affairs Select Committee hearings on buffer zones. 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.*

**The Evidence**

18. We have read the three evidence packs on the Lambeth website. We do not know what other evidence Lambeth has sought or obtained. We make the following comments on it.

19. There is one reference to filming. This is obviously unacceptable behaviour but could be dealt with using existing laws. There are a few references to people holding graphic images. It is not clear how often this occurs, but it appears that when the police were called those people were moved on. Again, existing mechanisms appear to work. There is also one reported incident of a staff member being called a 'murderer'. Again, if this activity were to persist there are existing remedies.
  
20. The balance of the activity consists in leaflets, praying and conversation. We note that while differing numbers of people are recorded, the log that is provided records between 1 and 3 people taking part. As we say above, those who engage in this activity must do so respectfully but for the reasons given above this is not activity which can be made the subject of a PSPO.

The Catholic Union of Great Britain

28 February 2018