



# Public Space Protection Orders

## Housing and Neighbourhoods O&S Committee,

25<sup>th</sup> July 2019

### 1 Purpose

- 1.1 At the meeting on Tuesday 4 June 2019, members of the Housing and Neighbourhoods O&S Committee heard from the following with regard to the proposed city centre Public Space Protection Order (PSPO):
- Councillor John Cotton, Cabinet Member for Social Inclusion, Community Safety and Equalities
  - Superintendent Ian Green, West Midlands Police
  - Emma Postin, ASB Partnerships Manager
  - Pamela Powis, Senior Service Manager – Community Safety
- 1.2 Today's meeting is the second session on this topic, held in order to hear other views on the PSPO.

### 2 Attendees

- 2.1 Today's session will be attended by:
- |                              |   |
|------------------------------|---|
| Jaz Bishop                   | Complex Needs and Rough Sleepers Outreach |
| Emma Poursain                | Shelter                                   |
| Carly Jones, Chief Executive | SIFA Fireside                             |
| Joanne Shemmans              | Say No to the Birmingham PSPO             |
| Chris Kuriata                | Say No to the Birmingham PSPO             |
| Alastair Wallace             | Community Law Partnership                 |
- 2.2 Also in attendance will be those who attended June's session and Cllr Sharon Thompson, Cabinet Member, Homes & Neighbourhoods.

### 3 Papers

- 3.1 In preparation for the meeting, the following papers are attached:
- Local Government Association: PSPO Guidance for Councils (Appendix 1)
  - Submission from the Say No to the PSPO Campaign (Appendix 2)



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- Letter from Liberty to Birmingham City Council (Appendix 3)
- Submission from Shelter (Appendix 4)
- Submission to Committee from the Community Law Partnership (Appendix 5)
- Submission to consultation from the Community Law Partnership (Appendix 6).

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# Public Spaces Protection Orders

Guidance for councils

# Foreword

Local authorities understand well how anti-social behaviour can blight the lives of people in their local communities, with those affected often feeling powerless to act. Councils have a key role to play in helping make local areas safe places to live, visit and work and tackling anti-social behaviour continues to be a high priority for local authorities and their partners across the country.

Councils know the issues that affect their localities the most and are well placed to identify how best to respond. Public Spaces Protection Orders (PSPOs), introduced in 2014, sit amongst a broad range of powers and tools to help tackle anti-social behaviour locally. PSPOs are aimed at ensuring public spaces can be enjoyed free from anti-social behaviour. They are not about stopping the responsible use of the night-time economy, or preventing young people from seeing their friends – but they do provide councils with another instrument to help deal with persistent issues that are damaging their communities.

PSPOs have not been welcomed by all, attracting some criticism over their introduction, or about how particular PSPOs have been implemented. As a result, in December 2017 the Home Office updated its statutory guidance on anti-social behaviour powers, according to the Anti-Social Behaviour, Crime and Policing Act 2014. The changes are reflected in this document. In light of the updated guidance, councils may find it useful to consider the current restrictions in their local area and whether the PSPO needs to be amended at the time of its renewal. It's important to note, that when used appropriately, proportionately and with local support, PSPOs can be a positive device that help to prevent anti-social behaviour, and can provide an effective response to some of the issues local residents and businesses face on a daily basis.

This guidance aims to set out the issues to consider where local areas are contemplating introducing a PSPO, and offers practical guidance on the steps to take if councils choose to do so. It should be read in conjunction with the Home Office's statutory guidance on the Anti-social Behaviour, Crime and Policing Act 2014.

**Councillor Anita Lower**

Deputy Chair and Anti-social Behaviour Champion  
LGA Safer and Stronger Communities Board

# Public Spaces Protection Orders

## Legislative background

The Anti-social Behaviour, Crime and Policing Act 2014 introduced several new tools and powers for use by councils and their partners to address anti-social behaviour (ASB) in their local areas. These tools, which replaced and streamlined a number of previous measures, were brought in as part of a Government commitment to put victims at the centre of approaches to tackling ASB, focussing on the impact behaviour can have on both communities and individuals, particularly on the most vulnerable.

PSPOs are one of the tools available under the 2014 Act. These are wide-ranging and flexible powers for local authorities, which recognise that councils are often best placed to identify the broad and cumulative impact that ASB can have. The Act gives councils the authority to draft and implement PSPOs in response to the particular issues affecting their communities, provided certain criteria and legal tests are met.

Councils can use PSPOs to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area. PSPOs differ from other tools introduced under the Act as they are council-led, and rather than targeting specific individuals or properties, they focus on the identified problem behaviour in a specific location.

The legislation provides for restrictions to be placed on behaviour that apply to everyone in that locality (with the possible use of exemptions). Breach of a PSPO without a reasonable excuse is an offence.

Powers to create PSPOs came into force in October 2014. As well as enabling local authorities to address a range of different issues, the Orders replace Designated Public Place Orders (DPPOs), Gating Orders and Dog Control Orders.<sup>1</sup> Existing DPPOs, Gating Orders and Dog Control Orders which automatically become PSPOs (as of 20 October 2017).

## Overview of Public Spaces Protection Orders

The Anti-social Behaviour, Crime and Policing Act 2014 provides a broad legal framework within which PSPOs can be implemented.

Orders can be introduced in a specific public area where the local authority<sup>2</sup> is satisfied on reasonable grounds that certain conditions have been met. The first test concerns the nature of the anti-social behaviour, requiring that:

- activities that have taken place have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will take place and that they will have a detrimental effect
- the effect or likely effect of these activities:
  - is, or is likely to be, persistent or continuing in nature
  - is, or is likely to be, unreasonable

<sup>1</sup> Replacing orders under The Criminal Justice and Police Act 2001, the Highways Act 1980 and the Clean Neighbourhoods and Environment Act 2005 respectively.

<sup>2</sup> This covers district councils, London Boroughs, county councils in an area where there is no district council in England (along with City of London and the Council of the Isles of Scilly) and county councils or a county borough councils in Wales.

- justifies the restrictions being imposed.

The Home Office statutory guidance re issued in December 2017 states that proposed restrictions should focus on specific behaviours and be proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.<sup>3</sup>

A single PSPO can be used to target a range of different ASB issues. Orders allow councils to introduce reasonable prohibitions and/or requirements regarding certain behaviours within the specified public area, and may also include prescribed exemptions.

As a minimum, each PSPO must set out:

- what the detrimental activities are
- what is being prohibited and/or required, including any exemptions
- the area covered
- the consequences for breach
- the period for which it has effect.

There are further specific provisions regarding some types of PSPO, which will be covered in detail below.

A PSPO can last for up to three years, after which it must be reviewed. If the review supports an extension and other requirements are satisfied, it may be extended for up to a further three years. There is no limit on the number of times an Order may be reviewed and renewed.

The legislation sets out a number of additional requirements for consultation and communication before an Order is introduced, once it is implemented and where it is extended, varied or discharged. PSPOs can be legally challenged under the 2014 Act on certain grounds.

Beyond this broad framework, detailed further below, councils can decide how best to implement PSPOs in their local areas. This guidance sets out some suggested

approaches based on good practice from around the country.

## Using Public Spaces Protection Orders

Local partners have a vast range of tools and powers at their disposal to respond to concerns about anti-social behaviour in their locality, from measures aimed at tackling the causes of ASB, awareness-raising, through to enforcement.

Used proportionately and in the right circumstances, PSPOs allow local areas to counter unreasonable and persistent behaviour that affects the quality of life of its residents. They can send a clear message that certain behaviours will not be tolerated, and help reassure residents that unreasonable conduct is being addressed.

However, PSPOs will not be suitable or effective in all circumstances, and it is important to consider carefully the right approach for identifying and addressing the problem behaviour. This is especially important when the activities may also have positive benefits. Other options should actively be considered before a PSPO is pursued – and where a PSPO is used, it should be carefully framed and employed alongside other approaches as part of a broad and balanced anti-social behaviour strategy. Considering non-statutory solutions, perhaps delivered in partnership with community, civic or membership organisations may be equally valid in the right circumstances.

### Choosing the right tool

Choosing the right approaches for responding to the ASB should start with identifying the specific issue or issues of concern, and considering what is likely to be the most targeted and effective response in the circumstances.

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/670180/2017-12-13\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670180/2017-12-13_ASB_Revised_Statutory_Guidance_V2_0.pdf)

Some issues may be adequately addressed using other tools. For instance, awareness-raising campaigns about the impact of certain activities on others, improved community engagement, or offering support to those exhibiting certain behaviours may be enough to address the ASB identified.

In some areas, codes of practice around certain practices such as busking<sup>4</sup>, or posters setting out ‘good behaviour’ associated with activities such as skateboarding, have provided effective solutions in responding to particular concerns.

Street fundraising for instance, is governed by an independently set Code of Fundraising Practice and the Institute of Fundraising provides a free service for councils to limit the location, number and frequency of fundraising visits. Around 125 councils have taken advantage of these voluntary agreements, rather than use PSPOs.

In other circumstances it may be more appropriate to use tools such as community protection notices (CPNs). CPNs are used against specific individuals responsible for causing harm, or for tackling particular problem premises, unlike PSPOs which create a broader ban covering a whole area. Similarly, in many cases existing legislation covering various forms of anti-social behaviour or public order may be adequate.

Feedback from councils suggests that effective consultation with partners, stakeholders and the wider community can help to identify the best way forward (see also support evidence and consultation, below).

**“PSPOs aren’t the answer for everything – you need to start by looking at what the issue really is. Often there are easier and more effective tools for dealing with the problem.”**

Cheshire West and Chester Council

Where local areas decide that introducing a PSPO may be appropriate, it should be noted that the most robust Orders directly address the detrimental behaviour, rather than activities which may not in themselves be detrimental or which target characteristics that might be shared by some of those responsible (or with the wider public). The Home Office’s statutory guidance reiterates that PSPOs should be used responsibly and proportionately, only in response to issues that cause anti-social behaviour, and only where necessary to protect the public.

There are also a number of practical considerations which should be borne in mind when choosing the right tool. PSPOs can be resource-intensive to introduce and enforce and there will need to be commitment from partners to ensure it can be implemented effectively.

Councils will need to be satisfied that where they choose to pursue introducing an Order as part of their strategy, they have met the requirements of the legislation. This is covered in detail in the following sections.

## Introducing a PSPO

Where councils have identified that a PSPO may be a suitable response to a particular local issue, they will then need to consider how to ensure they meet the statutory criteria. This will include determining:

- the appropriate scope of the Order
- the area covered by the restrictions
- the potential impact of the proposals
- how each of the restrictions meets the legal test.

Councils will also need to consider how best the Order should be worded and establish an evidence base to support the proposals, incorporating a consultation process. Other issues, such as the practical implications around implementation and what is possible to enforce, will also need to be borne in mind.

<sup>4</sup> See, for example, City of York Council: [https://www.york.gov.uk/info/20081/arts\\_and\\_culture/1155/busking\\_in\\_york](https://www.york.gov.uk/info/20081/arts_and_culture/1155/busking_in_york)



Early engagement with partners and stakeholders can be useful in understanding the nature of the issue, how best to respond – and, if an Order is proposed, how it might be drafted. This is likely to require involvement, and pooling of information, from a variety of sources, including councillors and officers from across council departments (including, for example, community safety, environmental health, parks, equalities, legal), police colleagues and external agencies.

It is useful for local areas to seek early contact with interest groups when scoping their proposals, to help identify how best to approach a particular issue, before the formal statutory consultation takes place. For example, a local residents' association or regular users of a park or those involved in specific activities in the area, such as buskers or other street entertainers. An effective consultation process with a range of stakeholders will also help to assess the impact of the ASB and where an appropriate balance for restrictions on behaviour should lie (see supporting evidence and consultation, below).

**“Engagement with representative groups early on was really constructive – they helped advise us on other legislation we needed to be mindful of, and helped us draft something that worked.”**

**Carmarthenshire County Council**

Ongoing engagement with, and commitment from, partners will be crucial for introducing, implementing and enforcing a PSPO and ensuring there are resources available to support it.

#### **Activity subject to an Order – overview**

PSPOs can be used to restrict a broad range of activities. Under section 59 of the 2014 Act, local authorities must be satisfied on reasonable grounds that the activity subject to an Order:

- has a detrimental effect on the quality of life of those in the locality (or it is likely

that activities will take place and have such an effect)

- is (or is likely to be) persistent or continuing in nature
- is (or is likely to be) unreasonable
- justifies the restrictions being imposed.

PSPOs must set out clearly what the detrimental activities are. What may be regarded as ‘anti-social’ is a subjective concept, and similarly determining whether or not behaviour is detrimental and unreasonable can present some challenges and will require careful consideration.

Councils will need to assess how certain behaviours are perceived, and their impact – both on the community broadly, and on its most vulnerable individuals. Some areas have included an additional test locally that the behaviour needs to be severe enough to cause alarm, harassment or distress. Collating evidence that illustrates the detrimental impact of particular activities will be important (see supporting evidence and consultation, below).

When assessing what is ‘unreasonable’ activity, councils will need to balance the rights of the community to enjoy public spaces without ASB, with the civil liberties of individuals and groups who may be affected by any restrictions imposed. Further, some of those affected by possible restrictions may be vulnerable and councils need to look carefully at what impact the proposals might have on certain groups or individuals (see assessing potential impact and the Equality Act, below).

#### **Appropriate restrictions**

As set out above, the restrictions imposed by an Order must be reasonable, and either prevent or reduce the detrimental effect of the problem behaviour, or reduce the risk of that detrimental effect continuing, occurring or recurring. Ensuring that the prohibitions or requirements included in a PSPO are solid, easily understood and can withstand scrutiny is key.

Orders must state what restrictions are being imposed to either prohibit certain things, and/or require certain things to be done by those



engaged in specific activities. PSPOs are most effective and most robust to challenge where they are **tightly drafted and focus on the precise harmful behaviour identified**. Being clear on addressing the problem behaviour in an Order can help avoid the risk of unduly pursuing individuals who may not be causing any real harm.

### **Homeless people and rough sleepers**

The Home Office guidance sets out that PSPOs should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. It suggests the council should consider whether the use of a PSPO is the appropriate response and if it will have a detrimental impact on homeless people and rough sleepers. Councils will find it useful to consult with national or local homeless charities on this issue, when councils are considering restrictions or requirements that could affect homeless people and rough sleepers.

### **Groups hanging around/standing in groups/playing games**

It is important that any Orders put in place do not inadvertently restrict everyday sociability in public spaces. Restrictions that are too broad or general in nature may, for instance, force young people into out-of-the-way spaces and put them at risk. It is useful to consider whether there are alternative spaces that they can use. The Home Office guidance notes that people living in temporary accommodation may not be able to stay in their accommodation during the day and may find themselves spending extended time in public spaces. It's important to consider when putting in place any restrictions that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.

In the London Borough of Brent, residents and park users identified issues with public defecation, alcohol use, public disturbances and intimidation. The council introduced a PSPO targeting the cause of the ASB – groups congregating, attracted by offers of casual labour. The council was keen not to enforce against rough sleepers or job-seekers but instead outlaw the offering of employment within the area, and the running of an unlicensed transport service. The aim was to deter those seeking to exploit casual labourers and those profiting from bringing certain groups to the area.

Proposals should clearly define which specific behaviours are not permitted or are required, and any exemptions that might apply. Careful wording will help people to understand whether or not they are in breach once the Order has been implemented and give them an opportunity to modify their behaviour. It will also help to avoid any unintended consequences. Councils' legal teams should be able to advise on the precise wording to use.

### **Limitations**

There are some limitations set out in the legislation regarding behaviours that can be restricted by PSPOs. Under the 2014 Act, local authorities must have regard to the freedoms permitted under articles 10 and 11 of the Human Rights Act 1998 when drafting, extending, varying or discharging an Order. These cover freedom of expression, and freedom of assembly and association respectively (although it is worth noting here that PSPOs might be considered appropriate for addressing aggravating behaviours such as the use of noise-enhancing equipment like amplifiers). Wherever proposals for an Order have the potential to impinge on the rights under articles 10 and 11, consideration must be given as to how to demonstrate that they satisfy the requirements of paragraph 2 in each of the articles.

Where a PSPO covers alcohol prohibition, section 62 of the 2014 Act lists a number of premises to which an Order cannot apply – such as licensed premises.

Further, there are some restrictions under section 63 on what action might be taken for a breach of an Order that prohibits consumption of alcohol (see enforcement and implementation, below).

Where Orders will restrict public rights of way, section 64 of the Act requires authorities to consider a number of issues, including the impact on those living nearby and the availability of alternative routes – and sets out some categories of highway where rights of way cannot be restricted. Councils may also conclude that PSPOs restricting access should only be introduced where the ASB is facilitated by the use of that right of way – otherwise it may be more appropriate to draft an Order focussed on the problem behaviour instead.

Some PSPOs have been introduced to address ASB linked with ingesting new psychoactive substances (NPS). The Psychoactive Substances Act 2016 introduces new legislation regarding the production and supply of NPS, but, unlike controlled drugs, does not criminalise the possession of substances alone.<sup>5</sup> Effective implementation and enforcement of PSPOs that deal with the consumption of psychoactive or intoxicating substances will require particularly careful consideration. Wording of these Orders should be precise to avoid any unintended consequences, ensuring it is clear what substances are covered or exempted.<sup>6</sup>

### Area subject to an Order

The Act and Home Office statutory guidance set out the types of land which can be subject to a PSPO, or where additional considerations or requirements apply (eg when undertaking the consultation process). The activity restricted by an Order must be carried out in a public place, which is defined in the legislation as ‘any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission’.

There may be some restrictions on the activities that can be prohibited on certain types of land (registered common land, registered town or village greens and open access land) which should also be considered. For instance, restrictions on access to registered common land may be subject to a separate consents process under The Commons Act 2006.<sup>7</sup> Further, for Orders that restrict public rights of way, section 65 of the 2014 Act sets out certain categories of highway to which such an Order cannot apply.

For addressing behaviour on privately-owned open spaces, other approaches may be more effective and appropriate. Private landowners are responsible for behaviours which occur upon their land and where landowners can be identified and traced, councils should work with them to address problem behaviour. Where landowners do not engage, councils may utilise other tools and powers available to them, such as Community Protection Notices or Civil Injunctions.

In Oldham, the council has successfully worked with a group of landowners and residents to enable them to find their own solutions to improve security and reduce ASB.

Determining the extent of the geographical area covered by an Order will mean identifying what is proportionate in the circumstances and restricting activities only where necessary – ie only where the legal test is met. It may be difficult to demonstrate that the statutory criteria under section 59 have been met across an entire broad geographical area; evidence about the extent of the anti-social behaviour within a locality should be used to inform appropriate boundaries (see supporting evidence and consultation, below).

<sup>5</sup> Unless in a custodial institution.

<sup>6</sup> It may be useful to refer to The Psychoactive Substances Act 2016, which includes a list of substances that might be deemed to produce a psychoactive effect when consumed but which are exempt from the scope of the 2016 Act – for instance medicinal products, nicotine or caffeine.

<sup>7</sup> Further information and links to additional guidance: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/364851/Public\\_and\\_open\\_spaces\\_information\\_note.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364851/Public_and_open_spaces_information_note.pdf)

In some cases of course it will not be appropriate to introduce broad-scale restrictions. When drafting an Order placing restrictions on dogs for instance, it should be considered that owners have a duty under the Animal Welfare Act 2006, to provide for their animal's welfare, which includes exercising them. In determining the area covered by restrictions, councils should therefore consider how to accommodate the need for owners to exercise their animals.

The area which the PSPO will cover must be clearly defined. Mapping out areas where certain behaviours **are** permitted may also be helpful; for instance identifying specific park areas where dogs can be let off a lead without breaching the PSPO.

## Controlling the presence of dogs

The Home Office guidance encourages councils to publish a list of alternative sites which dog walkers can use to exercise their dogs without restrictions. Councils should also consult dog law and welfare experts, for example, vets or animal welfare officers and organisations affected by restrictions before seeking to a PSPO. It may be useful to consult the Kennel Club on these issues.

The Department for Environment, Food and Rural Affairs has produced guidance in the form of a practitioner's guide on a range of tools available to deal with irresponsible dog ownership, for example, the use of a Community Protection Notice.

Where parish and town councils wish to deal with dog control issues, they are advised to approach the relevant authority, including whether a PSPO would provide the means to address the issues being experiencing by the local community. If the principal authority is satisfied that the legal tests for the use of the power are met and that it is a proportionate response to the level of harm and nuisance being caused it should consider consulting on putting in place a PSPO.

Practical issues, such as effective enforcement and erecting signs in (or near) an area subject to an Order – as required by the legislation – should also be borne in mind when determining how large an area the Order proposals might cover.

### Displacing behaviour

Notwithstanding the requirements outlined above, when defining the area restrictions should cover, consideration should be given as to whether prohibitions in one area will displace the problem behaviour elsewhere, or into a neighbouring authority. It is worth noting here that the legislation allows for Orders to address activity that 'is likely to' occur in that public place. Local areas can therefore consider whether there are any legitimate concerns that introducing an Order in one area, and not another, could simply move issues somewhere else – and thus whether it would be appropriate to extend into a larger area or adjacent street. Councils will however need to ensure that a proportionate approach is taken overall, and that there is evidence to support using a broader approach.

Where there are concerns that activity may be displaced into other areas, authorities should contact neighbouring councils to discuss managing any unintended consequences.

### Order exemptions

The legislation allows for Orders to apply only in particular circumstances and may include certain exemptions. Restricting behaviours only at certain times of day, or on a seasonal basis, can help to balance the needs of different groups and may be easier to enforce. Orders might only cover times of day when the issue is particularly acute, or when the problem behaviour will have more of an impact on others. Similarly, some types of ASB can be seasonal in their nature, for example relating to school holidays or summer weather. It may be the case that only at certain times will the behaviour be regarded as sufficiently 'detrimental' to satisfy the legislative test.

Exemptions for particular groups may be appropriate. For instance, for PSPOs controlling the use of dogs, it is likely that

assistance dogs should be exempt; this will need to be explicitly stated in the wording of the Order.<sup>8</sup> Exemptions might also cover particular circumstances where restrictions may or may not apply. Undertaking an effective impact assessment (see assessing potential impact and the Equality Act, below) should help to identify the consequences of a proposed Order on specific groups and therefore whether certain exemptions would be appropriate.

### **Assessing potential impact and the Equality Act 2010**

It is important for councils to consider carefully the potential impact of a PSPO on different sections of their communities. In introducing an Order, councils must take care to ensure that they comply with the requirements of the public sector equality duty under the Equality Act 2010. The Equality Act requires public authorities to have due regard to a number of equality considerations when exercising their functions. Proposals for a PSPO should therefore be reviewed to determine how they might target or impact on certain groups.

Although it is not a specific requirement of the legislation, it is recommended that areas undertake an Equality Impact Assessment (EIA) to assess whether the proposed PSPO will have disparate impact on groups with protected characteristics.<sup>9</sup> This process will help councils to establish any potential negative impacts and consider how to mitigate against these. This exercise will also help to ensure transparency.

Areas that have undertaken an EIA before introducing a PSPO have reported how useful this was<sup>10</sup>, providing an opportunity to give full and separate consideration to the effect that each of the prohibitions or requirements might have on those in particular groups, and

enabling areas to consider how they could minimise any negative consequences – both in terms of the scope of the proposals and in how they might be implemented. Undertaking an EIA before introducing a PSPO can help to inform how best to balance the interests of different parts of the community, and provide evidence as to whether or not the restrictions being proposed are justified – as required by section 59 of the 2014 Act.

### **Duration of PSPOs**

Orders can be introduced for a maximum of three years, and may be extended beyond this for further three-year period(s) where certain criteria are met (see extension, variation and discharge, below). The proposed length should reflect the need for an appropriate and proportionate response to the problem issue. Some areas have introduced shorter Orders to address very specific issues, where it is felt that a longer-term approach is unnecessary.

## **Supporting evidence and consultation**

Local areas will, of course, need to satisfy themselves that the legislative requirements are met before an Order can be introduced, and obtaining clear evidence to support this is important. Collating information about the nature and impact of the ASB subject to the PSPO are core elements of the evidence-gathering and consultation process and will help inform the council's view as to whether the requirements under section 59 of the Act have been fulfilled.

The evidence will need to be weighed up before authorities can determine whether or not it is appropriate and proportionate to introduce a PSPO at all, and if so, whether the draft proposals are suitable. It can be used to help shape the scope of the Order, including any exemptions – such as times of day when a behaviour might be prohibited – and can also help to determine what area the Order should cover and how long it should last. The most robust Orders will be supported by a solid evidence base and rationale that sets out how

<sup>8</sup> This differs from some Dog Control Orders, which automatically excluded assistance dogs from restrictions.

<sup>9</sup> The Equality Duty covers: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. Marriage and civil partnership are also covered in some circumstances.

<sup>10</sup> See example from Oxford City Council: <http://mycouncil.oxford.gov.uk/ieDecisionDetails.aspx?AllId=10095>



the statutory criteria for each of the proposed restrictions have been met, and demonstrates a direct link between the anti-social behaviour and the PSPO being proposed in response.

The nature of this evidence, and how it should be weighted, is largely down to councils to determine, although obtaining a range of data from different sources as part of this process will be particularly useful in informing decision-making, and may help to avoid challenge further down the line (see further evidence, below, for specific examples). The Act does however require that there is a consultation process before an Order can be made (and held again when an Order is extended, varied or discharged).

### **Statutory consultation – who to contact?**

Before introducing, extending, varying or discharging a PSPO, there are requirements under the Act regarding consultation, publicity and notification (see also publication and communication, below).

Local authorities are obliged to consult with the local chief officer of police; the police and crime commissioner; owners or occupiers of land within the affected area where reasonably practicable, and appropriate community representatives. Any county councils (where the Order is being made by a district), parish or community councils that are in the proposed area covered by the PSPO must be notified.

There are additional requirements under the Act regarding Orders that restrict public rights of way over a highway (see below), but beyond this, and the broad requirements above, local authorities can determine for themselves what an appropriate consultation process might entail. However, this does provide an important opportunity to seek a broad range of views on the issue and can be invaluable in determining ways forward, establishing the final scope of the proposals and ascertaining their impact.

Encouraging open discussion as part of the consultation process can help to identify how best to balance the interests of different groups – both those affected by the anti-social

behaviour and those who will be restricted by the terms of an Order – and a chance to explore whether there may be any unintended consequences from the proposals; in particular, any adverse impacts on vulnerable people.

‘Community representatives’ are defined broadly in the Act as ‘any individual or body appearing to the authority to represent the views of people who live in, work in or visit the restricted area’. This gives councils the freedom to determine who best to contact given local circumstances and the scope of the proposals. Those who will be directly affected by the Order, or groups representing their interests, should be directly approached. Further, several areas have reported that they found it useful to actively seek out stakeholders who might oppose the proposals during their consultation.

In several areas early discussions with stakeholders who might be affected by a PSPO have proven very useful. This engagement, often before a more formal consultation process, not only provides an opportunity to discuss the anti-social behaviour and its impact on others, but also gives the council an in-depth understanding of stakeholders’ key concerns, and tests the impact that any restrictions on behaviour might have. This has helped scope the proposals and in some cases identified alternative ways of tackling the problem behaviour.

Identifying appropriate stakeholders to approach will obviously depend on the nature and scope of the PSPO in question. Alongside residents, users of the public space, and those likely to be directly affected by the restrictions, this might include residents’ associations, local businesses, commissioned service providers, charities and relevant interest groups.

The Kennel Club (via KC Dog) has been contacted by several councils looking to introduce PSPOs affecting dogs and their owners. Where an Order will restrict access over land, utility service providers should be included within the consultation process.

## Consultation approaches

Councils should use a range of means to reach out to potential respondents, some of whom may be unable to feed back in certain ways, eg online. Local demographics and the characteristics of those who may be most affected by the ASB or the Order can also help to identify the best mechanisms for ensuring a comprehensive consultation process (for instance, using social media where young people may be particularly affected). Similarly, different tools may be utilised in various ways to enrich the information gathered – for instance, a survey of park users which is repeated at various times of day to cover a range of people using the public space.

Existing meetings such as ward panels may provide opportunities to discuss the issue and encourage more formal consultation responses. Securing written statements from those particularly affected, such as landowners, can be particularly useful in building the evidence base for supporting the introduction of a PSPO.

In Cheshire West and Chester their PSPO consultation not only asked respondents whether or not they found particular activities problematic, but also whether or not that behaviour should be addressed via a PSPO. By asking open questions that allowed for free comments, it provided an opportunity for respondents to give their views on what they felt should be a proportionate response to each specific issue identified.

An effective consultation should provide an overview of what the local issues are, set out why a PSPO is being proposed, and what its impact would be. Publishing details of the extent of the problem behaviour can assist respondents to understand why a PSPO is being considered and help inform views on whether it would therefore be an appropriate response.

The consultation should also provide sufficient means for respondents to oppose the proposals and may also be used to elicit

views on alternative approaches. Achieving a healthy response rate, with considered responses, will help to support the evidence base for introducing an Order and refuting challenge.

**“The open consultation format was actually really useful in identifying new issues. We haven’t lost anything from the process; all these things have gone into action plans to try and sort out.”**

Cheshire West and Chester

Examples of consultation methods from local areas include:

- online questionnaires
- postal surveys
- face-to-face interviews
- contact with residents’ associations
- focus groups with stakeholders and interest groups representing those who will be affected
- discussions with service providers working directly with affected groups
- discussions at ward panel meetings
- publicity via local press or social media
- publications in libraries and other public buildings
- on-street surveys
- drop-in sessions in the area subject to the PSPO.

Surveys or questionnaires have been an integral part of councils’ consultation processes for PSPOs and provide a chance to test the extent to which the proposals satisfy the statutory requirements under section 59. The questions might explore:

- what effect the activities in question have on residents, businesses and visitors – and whether this is detrimental

- how safe respondents feel and what impacts on this
- how often problem behaviours are personally encountered by individuals
- when and where problems occur
- whether the behaviour is so unreasonable that it should be banned.

Feedback from some areas suggests that seeking expert advice on drafting questions and undertaking consultations can help ensure that questions are appropriately phrased, clear and objective.

There are no statutory requirements about the length of the consultation process. However it should be ensured that its duration allows sufficient time to meaningfully engage with all those who may be impacted by the Order, taking into account for instance any holiday periods that may affect response rates – this may take several weeks or even months. Some issues may require time to fully explore and understand – councils should not be reluctant to extend the initial consultation period if it is clear that this would be beneficial in the longer-term.

### **Additional requirements for PSPOs restricting public rights of way**

In the case of Orders restricting access over public highways (eg through the installation of gates), the Act sets out specific additional requirements for the consultation process. The council must notify those who may be potentially affected by the Order, let them know how they can see a copy of the PSPO proposals and when they need to submit any responses, and is required to consider any representations made. Councils must also consider the effect of the restrictions on occupiers of premises adjacent to or adjoining the highway, on other people in the locality and, where this is a through route, whether a reasonably convenient alternative is available. These considerations should include, for example, access for emergency services or utility companies.

Achieving support from the local community for these types of Orders is particularly

important for ensuring their success; if gates are regularly left open by residents then it is unlikely that the ASB will be addressed.

In Oldham, a two-stage process is used for consultation for PSPOs that restrict access over public highways.

After local discussions it was found that often directly-affected properties were occupied by transient residents who were less likely to respond to a consultation process. This negatively impacted upon settled residents as non-responses were not counted towards the approval rate for schemes and failure to reach the agreed approval rate resulted in proposals not being progressed any further.

Working with residents and councillors, the policy was amended and now states that if, after two contacts, there is no response from a household directly affected by the proposal, and in the absence of a clear objection, the default position becomes support for the proposed Order, thus achieving a much higher level of support for the proposals. In order to achieve a balance the approval rate required to move to the next step of broader consultation was increased to 90 per cent.

### **Consultation outcomes**

Consultation responses will clearly require some analysis once they are collected. Councils might consider examining the demography of respondents to the consultation. This can help to gauge whether they are, for example, residents or visitors, and can be useful in determining who is likely to be impacted most by either the problem behaviour or restrictions on behaviour. This can be useful in helping to shape the final Order provisions.

**“The consultation allowed us to measure the fear of crime – often things are not reported and the statistics don’t show this.”**

Cheshire West and Chester Council



Councils may wish to publish the outcomes of their consultation process, and other supporting evidence, in the interests of transparency (subject to data protection requirements).

### Further evidence

As noted above the 2014 Act requires local authorities to formally consult with the police and the police and crime commissioner (PCC) – and there should be further engagement with relevant lead officers from the police to help build the evidence base and identify the potential impact of an Order. Early engagement with and support from police partners is likely to be key in introducing an Order. As well as assisting with identifying the problem behaviour and therefore the scope of any responses, this can also help to draw out some of the more practical implications of introducing an Order, such as how it will be enforced – which may shape how the PSPO is drafted.

Alongside eliciting views from the police and PCC, there may be a number of additional sources of information that help to inform decision-making and support (or oppose) the introduction of an Order or specific prohibitions. These might include:

- the community safety partnership's strategic assessment
- police data on crime and anti-social behaviour incidents (including the impact of some problem behaviours, such as excessive drinking)
- hospital data on ingesting new psychoactive substances
- calls to 101
- calls to council services reporting incidents
- residents' logs and photographs of anti-social behaviour
- mapping of problem areas
- data on the effectiveness of previous Gating Orders or Dog Control Orders
- CCTV footage of incidents
- reports from council staff such as park wardens and cleaners.

Collecting data covering a prolonged period may help to satisfy the legislative requirement that the activities subject to the draft Order are persistent. Some areas have collated evidence covering a two year period in order to demonstrate this.

## Political accountability, scrutiny and sign-off

Within the confines of the framework outlined above (and subject to legal challenge), councils have the freedom to determine their own procedures for introducing a PSPO, ensuring that the statutory requirements have been met and giving final approval for an Order to go ahead.

Close involvement of councillors and ensuring political buy-in throughout the implementation process are key. This provides political accountability for decisions taken – which is particularly important if the proposals may attract some opposition, and where insufficient member involvement may lead to challenge. Political support is also important to ensure that sufficient resources will be made available to implement and enforce the PSPO throughout its duration. Many areas have agreed that final approval and sign-off of PSPOs should be undertaken at cabinet/ executive or Full Council level.

In ensuring that the requirements under section 59 of the 2014 Act have been satisfied, councillors will have a significant role to play in unpicking what might be regarded as unreasonable and detrimental behaviour in the locality and what would constitute reasonable restrictions or requirements.

Discussions at senior political level by those who understand their local areas best, will help to ensure that the views of all parts of the community are reflected, and find an appropriate balance between the interests of those affected by the ASB and those likely to be affected by the proposed restrictions.

Councillors will also have an important role in examining the processes used in drafting the proposals. This will include analysing the outcomes of the consultation process and other supporting evidence offered to satisfy the statutory criteria, and determining whether, on balance this provides sufficient grounds to proceed (it should be noted here the need to ensure compliance with data protection legislation when sharing this information).

Several areas have used overview and scrutiny committees to examine draft Orders and challenge proposed ways forward. This adds a further element of democratic accountability and helps to ensure that decisions made are sound and transparent. In several cases, involvement from scrutiny committees has helped to focus the scope of Orders proposed.

Committees provide a useful mechanism to test the proposals and their potential impact, and the evidence base for introducing them; front-line councillors can provide different perspectives and may also offer suggestions for alternative approaches.

#### **Suggested questions for overview and scrutiny committees**

What evidence is there that the anti-social behaviour is or is likely to be persistent, detrimental and unreasonable?

Why is a PSPO being proposed to address this issue or issues?

Is the proposed restriction proportionate to the specific harm or nuisance that is being caused?

What alternative approaches are available and why is a PSPO appropriate in these circumstances?

Will the proposals alleviate each of the problem behaviours?

Have exemptions been considered?

What might be the unintended consequences for each aspect of the

#### **PSPO?**

What will be the impact on different groups? Has an equalities impact assessment been undertaken and what were its findings? What can be done to mitigate against any negative consequences?

How have the consultation outcomes and other evidence collated been taken into account?

How will the PSPO be enforced for each restriction/requirement? Are there sufficient resources to do this effectively?

## **Enforcement and implementation**

### **Enforcement protocols**

As noted earlier, issues regarding some of the more practical aspects of implementation and enforcement of PSPOs should be borne in mind from the beginning of the planning process – and may help shape the scope and wording of the Order itself. Further, effective implementation of a PSPO is likely to be part of a broader strategic approach that includes a number of different initiatives to tackle the problem issues.

Beyond this, local areas will want to develop specific protocols regarding enforcement action, before the Order is implemented. These protocols should incorporate expert input on the issues related to the ASB in question, and, recognising that there may be other options available to address a particular ASB incident, provide guidance on what might be the most appropriate legislative (or other) tool to use in different circumstances. Some areas have developed a process map to provide a step-by-step diagram to agreed enforcement procedures.

Protocols should also cover what should be done in the event of a breach. It is an offence under section 67 of the 2014 Act to breach an Order without a reasonable excuse. In the case of Orders that prohibit alcohol

consumption, where it is reasonably believed that a person has been or intends to consume alcohol, it is an offence under section 63 either to fail to comply with a request not to consume or to surrender alcohol (or what is reasonably believed to be alcohol or a container for alcohol).

Procedures should therefore consider circumstances where there may be a 'reasonable excuse' for breaching the Order, for instance a medical reason for public urination (such circumstances may be covered explicitly as exemptions in the wording of the Order). Protocols also provide a further opportunity to recognise that some of those responsible for the behaviour covered in the Order may themselves be vulnerable and in need of support; they should therefore include referral pathways where there are any safeguarding concerns, and signpost to other services.

In the London Borough of Brent enforcement of the PSPO is shared between the police and the council with joint visits from UK Border Agency and Brent's employment and skills team, who seek to offer routes into legitimate employment for jobseekers.

Who is responsible for enforcement will vary across areas. In some, enforcement will be undertaken by council officers – this may include ASB officers, housing officers, park wardens, etc – and in others this may be undertaken in partnership with police officers and/or police community support officers. Protocols may therefore require agreement regarding patrolling activity and reporting arrangements – some of which will be informed by the specific behaviour in question. Some authorities have also encouraged local people to report incidents of possible breaches, which can help shape enforcement responses going forward, particularly around timetabling patrols.

**“Local communities have helped to identify the peak periods for problems in the park – patrol times can then be planned accordingly.”**

#### Coventry City Council

As well as developing protocols, training will help delegated officers to understand how the Order should be enforced in practice. In Cheshire West and Chester, this included training from the ambulance service to reinforce that the safety of individuals was paramount and help officers understand, for instance, the possible dangers of ingesting psychoactive substances.

Some areas have used a 'soft-launch' period as the Order becomes live. This provides an opportunity to test protocols with officers before full implementation. It also gives councils the chance to raise awareness of the new pending prohibitions – and demonstrate that some behaviours have been causing concern. However areas should consider how to manage any risks if implementation is delayed.

#### Fixed penalty notices

As noted above, it is an offence under section 67 to breach an Order without reasonable excuse, and where Orders prohibit alcohol consumption, it is an offence under section 63 to fail to comply with a request not to consume or to surrender alcohol (or what is reasonably believed to be alcohol/a container for alcohol).

Under the Act, authorised officers have the power to issue fixed penalty notices (FPNs) to anyone they reasonably believe is in breach. Section 68 sets out a framework for issuing FPNs but councils will also have their own broader protocols around issuing fines to which they should also refer – this might cover, for instance, whether or not fines are issued to those aged under 18. Protocols should also cover when it would be appropriate to pursue an individual further where an FPN is issued but remains unpaid after the prescribed period. In addition, there will be a need to plan for practical elements before implementation, such as developing

specific FPN templates for dealing with PSPO breaches.

**“There was some concern that a £100 FPN might not be an adequate deterrent and that a broader financial range for FPNs, up to £400, would be preferred. However, the current arrangements do allow for a summons to court to be issued for persistent offenders where multiple FPNs have been issued.”**

#### **Royal Borough of Kensington and Chelsea**

It will not always be appropriate to issue FPNs. Warnings may often be sufficient, and in many areas this is the initial preferred response. In some, advice sheets are handed out in the majority of cases, informing recipients that their behaviour breaches an Order, giving them the chance to comply or providing an opportunity for them to be moved on. Councils have reported that in most cases this has been sufficient to address the behaviour and there has been no need to take further action.

#### **Publication and communication**

Using an effective communication strategy to raise awareness about a PSPO is important throughout the implementation process, and should incorporate contact with partners and stakeholders as well as members of the public. Successful communications can help with informing the appropriate scope of an Order, engaging members of the community and others during the consultation process, and ensuring effective enforcement.

The legislation also sets out a number of requirements. Draft proposals for a PSPO must be published as part of the consultation process. For new or varied Orders the text must be published; for extended or discharged Orders the proposal must be publicised.

Home Office guidance suggests the close or direct involvement of elected members will help to ensure openness and accountability. The guidance suggests this can be achieved, for example, where the decision is put to the Cabinet or full council.

The area covered by the proposals must be well defined; publishing maps of the affected area will help to clarify where behaviours are controlled. There are requirements in the legislation for notifying any parish or community councils in the affected area, and for notifying the county council where the Order is being made by a district council. There are further requirements for formal notifications regarding Orders that restrict access to public highways (see also supporting evidence and consultation, above).

Regulations set out additional requirements regarding the publication of PSPOs<sup>11</sup> that have been made, varied or extended, stipulating that these must be:

- published on the local authority’s website
- erected on or adjacent to the place the Order relates to, and is sufficient to draw attention, setting out the effect of the Order and whether it has been made, varied or extended.

The same requirements apply where an Order has been discharged, and must also include the date at which it ceases to have effect.

Signs publishing the Order in the affected locality do not necessarily need to set out all the provisions of the Order, but rather state where this information can be found. Multiple signs are likely to be required, particularly where the Order covers a large area.

These requirements should be regarded as a minimum and a range of options should be explored; in practice it is helpful to use a variety of means to help publicise the Order to raise awareness, avoid confusion and give people the opportunity to comply.

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<sup>11</sup> Statutory Instruments 2014 no. 2591 The Anti-social Behaviour Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders)



Effective communication helps people understand what behaviours are expected in particular areas, and reduces the need to rely on enforcement measures.

In some areas leaflets have been printed detailing the new prohibitions in different languages, for distribution by officers. Similarly the nature of the Order itself may suggest some communication channels may be more effective than others. For instance, an Order covering the ingestion of legal highs at a music festival in Chelmsford was promoted via a social media campaign to reflect the demographics of those most likely to be attending the festival and who are likely to be reached via these means.

Effective communication with residents and partners throughout can also help manage expectations about the impact of introducing an Order. Putting a PSPO in place can be a lengthy process and it is important to maintain communication about when it will come into effect and/or be enforced and if other measures are being utilised in the interim. In addition this can help residents to understand that simply having an Order in place is unlikely to resolve an issue overnight – which may be even more important where there has been media interest in the proposals.

### **Legal challenge**

PSPOs can be challenged under the Act on the grounds that the local authority did not have the power either to make the Order or include particular prohibitions or requirements, or that proper processes had not been followed as prescribed by the legislation. Challenges must be made to the High Court within six weeks of the Order being made, and by an individual who lives in, regularly works in or visits the restricted area. The High Court can uphold, quash or vary the PSPO and may decide to suspend the operation of the PSPO pending the verdict. As with all orders and powers, the making of a PSPO can be challenged by judicial review on public law grounds within three months of the decision or action subject to challenge.

### **Extension, variation and discharge**

A PSPO can be made for a maximum duration of up to three years, after which it may be extended if certain criteria under section 60 of the Act are met. This includes that an extension is necessary to prevent activity recurring, or there has been an increase in frequency or seriousness of the activity. Extensions can be repeated, with each lasting for a maximum of three years. Effective evaluation of Orders will be important when determining whether any extensions or variations would be appropriate.

Councils should consider carefully what length of time would be reasonable and proportionate given the nature of behaviour in question and the impact of the restrictions being posed – byelaws, which are permanent, may be more appropriate if the issue concerned is unlikely to be transient. The impact of the original Order should be evaluated before any extensions are approved – where ASB has been completely eradicated as a result of a PSPO, it is proportionate and appropriate to consider the likelihood of recurrence of problems if the Order is not extended.

Orders can also be varied under the Act, by altering the area to which it applies, or changing the requirements of the Order. The same legislative tests of detrimental impact, proportionality and reasonableness need to be satisfied, as set out earlier in this guidance. Similarly, PSPOs can be discharged before their original end date.

Where PSPOs are varied, extended or discharged, there are statutory requirements regarding publishing or publicising this and councils are required to undertake a further consultation process (see publication and communication, above). Similarly, under section 72 councils are required at all of these stages to have particular regard to articles 10 and 11 of the Human Rights Act 1998 (see limitations, above).

In light of the updated statutory guidance from the Home Office on anti-social behaviour powers, published in December 2017, councils should review their PSPOs

when they are up for renewal and take into account these recent changes to the statutory guidance.

protocols are being used and whether practices are appropriate and consistent.

### **Existing Designated Public Place Orders, Gating Orders and Dog Control Orders**

Any DPPOs, Gating Orders or DCOs are automatically treated as if they were provisions of a PSPO. The transitioned Order will then remain in force up to a maximum of three years (2020) from the point of transition.

There is no requirement in the legislation for councils to undertake a new consultation process where existing DPPOs, Gating Orders or DCOs automatically transition, although local areas may consider reviewing these current Orders ahead of this time to ensure their provisions meet the legal tests for PSPOs. It is recommended that councils publicise any PSPOs that replace existing DPPOs, Gating Orders or DCOs to help raise public awareness.

Local councils have the discretion to consider what changes to signage are needed to notify members of the public. Any extension, variation or discharge of a transitioned PSPO would mean the local councils should carry out the necessary consultation and publication of the proposed Order.

### **Evaluating impact**

As noted above, evaluating the impact of a PSPO will be important when considering extending or varying an Order, however assessing the effects, and effectiveness of the Order, should form part of ongoing performance management. Several areas have introduced procedures to monitor the impact of an Order at regular intervals.

A thorough evaluation will help to determine if the PSPO has addressed each aspect of the problem behaviour, whether discharging or varying the Order would be appropriate – and why – and what any variations might look like. Crucially it will also help measure the impact on people, including identifying any unintended consequences of the provisions. It should consider whether there has been any displacement of the issue to other areas and might also look at how enforcement

# Resources

Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers – Statutory guidance for frontline professionals

**Home Office, December 2017**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/670180/2017-12-13\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670180/2017-12-13_ASB_Revised_Statutory_Guidance_V2_0.pdf)

A councillors' guide to tackling new psychoactive substances

**LGA 2016**

<http://www.local.gov.uk/councillors-guide-tackling-new-psychoactive-substances>

A guide to community engagement for those contemplating management on common land

**Natural England, 2012**

[www.historicengland.org.uk/images-books/publications/common-purpose/](http://www.historicengland.org.uk/images-books/publications/common-purpose/)

Dealing with irresponsible dog ownership: Practitioner's manual

**Defra, 2014**

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/373429/dog-ownership-practitioners-manual-201411.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/373429/dog-ownership-practitioners-manual-201411.pdf)

Ending rough sleeping by 2012:

A self-assessment health check

**Department for Communities and Local Government, 2009**

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/housing/pdf/endroughsleeping.pdf>

Reform of anti-social behaviour powers:

Public and open spaces

**Home Office information note,**

**Home Office, 2014**

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/364851/Public\\_and\\_open\\_spaces\\_information\\_note.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364851/Public_and_open_spaces_information_note.pdf)

## Legislation

**Anti-social Behaviour, Crime and Policing Act 2014**

[www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2](http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2)

**Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014**

<http://www.legislation.gov.uk/uksi/2014/2591/contents/made>

**Human Rights Act 1998**

[www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents)

**Psychoactive Substances Act 2016**

[www.legislation.gov.uk/ukpga/2016/2/contents](http://www.legislation.gov.uk/ukpga/2016/2/contents)





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please contact us on 020 7664 3000.  
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REF 10.21

SAY NO TO THE BIRMINGHAM PSPO CAMPAIGN REPORT TO HOUSING AND  
NEIGHBOURHOODS SCRUTINY COMMITTEE 14<sup>TH</sup> July 2019.

The 'Say No to the Birmingham PSPO' Campaign was established in April 2019 in response to concern from members of the public regarding the potential impact of implementing the Public Space Protection Order concerned. Our online and paper petition asking Birmingham City Council to scrap these proposals currently totals 1037 signatures. It is to be noted that 55 of these are from members of the public in Councillor John Cotton's own ward, all of whom did not know about the proposals when we spoke to them. This would seem out of step with the idea that the public consultation was widely promoted and representative of the general public. Our campaign has had significant support from a wide variety of participants, including several Labour Councillors, Liberty, and The Community Law Partnership, whose responses to the consultation I enclose as a point of reference. Most recently, the Labour Homelessness Campaign have also contacted us to offer their assistance, and I believe that one of their representatives has written to Councillor Cotton independently to raise their concerns.

The amount of support our campaign has received, and the number of members of the public we have spoken to across the city who were unaware of the proposal, would certainly support the view held by the Community Law Partnership that the consultation itself does not meet the requirements of the Consultation Principles 2018. There are a number of other aspects of the consultation which our campaign considers to be flawed, including; the lack of specification in relation to what Penalties would be proposed under the PSPO for those in breach of it, the lack of data or evidence provided in respect of the circumstances that occurred which prompted the proposal to be constructed initially; and the vague aspect of much of the proposal itself, for example, failing to specify what constitutes obstructing the Council's street cleaning activity. We would draw reference to responses from both Liberty and the Community Law Partnership for a further, more detailed analysis of the legal implications of the proposal and consultation rather than reiterating ground which they have already covered, but would simply add that drawing from their analysis and experience, we do not believe the Council is able to make a lawful decision on the implementation of the PSPO on the basis of this consultation.

In addition to the objections to the consultation detailed above, it is also our belief that public response to the proposal has been unfairly influenced by statements made by those supporting the proposal in the local press. Specifically, the statement: "there continues to be accommodation for every single rough sleeper who wants a bed for the night" (Councillor John Cotton) has been repeated consistently in discussions, media statements and at the first Housing and Neighbourhoods Scrutiny Committee meeting. In order to gain a wider understanding of the issues around homelessness in the city, members of our Steering Group have been out on local rough sleeper counts and can testify personally that this is not the case. In one example, volunteers were forced to leave a rough sleeper who was in distress having had his possessions stolen, including his shoes, out for the night. This situation occurred after phoning around to find overnight accommodation as far as Sutton

Coldfield proved unsuccessful in securing him a bed. We believe using such statements in the media, which we know to be inaccurate, has had an unfair influence on the consultation, and has perpetuated the myth that there is no excuse for anyone to be sleeping rough in the city.

Local Government Guidelines on the use of PSPOs are very specific in relation to the issue of rough sleeping in particular:

“The Home Office guidance sets out that PSPOs should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community’s quality of life which justifies the restrictions imposed. It suggests the council should consider whether the use of a PSPO is the appropriate response and if it will have a detrimental impact on homeless people and rough sleepers. Councils will find it useful to consult with national or local homeless charities on this issue, when councils are considering restrictions or requirements that could affect homeless people and rough sleepers.”<sup>1</sup>

Our campaign considers it disingenuous for the Council to insist that the proposed PSPO will not affect homeless people and that this is ‘a red line’ for those in favour of its implementation. It is clear that specific paragraphs within the draft proposals, namely those which mention obstruction of doorways and footpaths, and to some extent those relating to begging, will have a disproportionate impact on the homeless community. It is clear that Birmingham City Council knows this to be the case, giving rise to the insistence that ‘there is a bed for everyone that needs one’ and the possibility of a ‘Charter of Care’. Why do we need a discussion of the issues around homelessness, if the proposal will not affect homeless people? Bearing this in mind, we believe that the draft proposal does not adhere to the guidance set out by the Home Office in respect of PSPOs.

It is also impossible to consider the issue of homelessness simply in terms of the availability of temporary beds alone. Many rough sleepers we encountered told us they were afraid to go into overnight accommodation, having experience aggression and bullying from other users in the past. Although Cllr Cotton has suggested a ‘Charter of Care’ would be put in place alongside the PSPO, we have seen no evidence of this charter and what it would entail, and would ask the question, where will the funding for such a charter come from, given the extensive cuts to Local Council budgets, and if funding for additional support for those experiencing homelessness exists, why was this not implemented prior to a draconian measure such as the PSPO? We have seen no detail provided as to what this charter would entail, and if it would address the issues such as the real availability of overnight accommodation, or the suitability and safety of the accommodation provided.

The question of support for those affected by the PSPO experiencing homelessness brings us on to the evidence already in existence regarding the use of such orders across England and Wales, their effectiveness, and the way in which criminalisation has a detrimental effect. A

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<sup>1</sup> Public Space Protection Order: Guidance for Councils (2018)

survey by the homeless charity Crisis, released in 2017, gave us these findings on the use of enforcement measures, including PSPOs:

“Drawing on a survey of local councils, the report shows how more than one in three (36%) are targeting rough sleepers with enforcement measures. Of these councils, common measures included Criminal Behaviour Orders (45 per cent), Dispersal Orders (35 per cent), Public Space Protection Orders (17 per cent) and actions under the Vagrancy Act (27 per cent).

An accompanying survey of 458 recent or current rough sleepers found that nearly three in four (73 per cent) had experienced some kind of enforcement in the past year, with one in ten having experienced a formal measure with legal penalties. Experiences of informal measures not involving legal penalties were far more common – with the most frequent experience having been informally moved on by a police officer or enforcement agent (56 per cent within the last 12 months).

While 94 per cent of local councils said that support and advice were always given alongside enforcement actions, this generally referred only to legal actions. By contrast, eight out of ten rough sleepers (81 per cent) said they received no support or advice during their last experience of enforcement, suggesting that informal actions are often poorly supported. More than half (56 per cent) said the experience added to their feeling of shame at being homeless; and nearly a third (30 per cent) said it made it harder to find settled accommodation.”<sup>2</sup>

These statistics give us real cause for concern in relation to the implementation of a PSPO in central Birmingham. Whilst Cllr Cotton has attempted to reassure the committee with his, as yet unavailable, plans for a Charter of Care, we can see that other councils implementing similar orders have also given similar assurances, but the reality has been considerably different. As mentioned earlier in this report, our Council budget has been slashed by Central Government. It is our belief that, whilst the intention to provide a package of support for anyone experiencing homelessness who is affected by the PSPO has been set out by Cllr Cotton, no evidence has been provided to substantiate this, and it is debatable whether the funding for such support will materialise.

The number of people dying as result of homelessness in Birmingham is the highest across England and Wales. Our campaign agrees with the aims outlined by Cllr Cotton to make the streets of our city safer, such as the ‘Reclaim the Night’ campaign, and the horrendous situation to drug dealers coming into our city to prey on rough sleepers which must be addressed. We also welcome a renewed effort to end the horror of human trafficking. But we do not feel that the most vulnerable people in our society should be dehumanised and treated as an inconvenience to be unfairly criminalised as a result of homelessness.

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<sup>2</sup> “Rough Sleepers being target by legal powers designed by Anti-Social Behaviour” Crisis National Statement(April 2017)

As a result, we call upon Birmingham City Proposals to scrap the proposals in their current form, and instead consider a revised approach which tackles genuine Anti-Social Behaviour whilst investing in services that support the most vulnerable. In particular, we request that the following paragraphs of the current proposal be removed:

2: Obstructing footpaths and highways:

- a) No person or their personal effects shall prevent or hinder the street cleansing activity of the Council within the Restricted Area.
- b) No person or their personal effects shall hinder the free passage of pedestrians or vehicles along the public footpath or highway within the Restricted Area.
- c) No person shall or their personal effects shall obstruct ingress or egress from any building within the Restricted Area.
- d) An authorised officer may request that a person remove themselves from the footpath or highway where they reasonably suspect a person is causing, or is likely to causes nuisance and/or disorder within the Restricted Area.

7. Begging:

- a) A person is prohibited from approaching any other person for the purposes of obtaining money by begging.
- b) A person is prohibited from positioning to beg.
- c) An authorised Officer may request that a person stop this activity (A and/or B) where they reasonably suspect a person is causing, or is likely to cause, nuisance and/or disorder.

The Say No to the Birmingham PSPO campaign are happy to discuss the proposals or suggested amendments in detail with Cllr Cotton at any time, but must reiterate that any discussion taking place should be on the basis that the removal of the sections quoted above is open to consideration. It is our opinion that the members of this committee support our recommendations and find that the PSPO in its current form should be rejected, with a view to finding alternative solutions to tackle homelessness and rough sleeping in the city, whilst dealing with genuine Anti-Social Behaviour, whether it be through a PSPO or the powers already available to local law enforcement agencies, under an entirely separate remit.

# LIBERTY

**FAO Ms Emma Postin  
ASB Partnerships Manager  
Community Safety Partnership  
Birmingham City Council**

02 May 2019

**BY EMAIL TO [emma.postin@birmingham.gov.uk](mailto:emma.postin@birmingham.gov.uk)**

## **LAWYERS**

HEAD OF LEGAL CASEWORK  
Emma Norton, Solicitor

Rosie Brighthouse, Solicitor  
Debaleena Dasgupta, Solicitor  
Lara ten Caten, Solicitor  
Megan Goulding, Solicitor

The solicitors employed by Liberty are individually authorised and regulated by the Solicitors Regulation Authority

Dear Madam / Sir

## **Birmingham City Centre PSPO Consultation**

I write in relation to the proposed Birmingham City Centre Public Space Protection Order ('the PSPO'), as set out on your website. I have separately been contacted by Oliver Humpidge of your offices in relation to the possibility of a meeting between Liberty and Birmingham City Council regarding the PSPO. A date has not yet been set for that meeting, and so we are sending this letter in the meantime in order to ensure that our views are submitted to you before the closing date of the current consultation.

### **1. Background to Liberty's concerns**

Liberty has been concerned about the impact of PSPOs since their inception and has successfully persuaded a number of local authorities not to pursue their proposed PSPOs. We are particularly concerned about the potential misuse of PSPOs, especially those that punish poverty-related behaviours such as rough sleeping or begging. We have also been contacted by local residents of Birmingham who are very concerned about the proposed PSPO. For the reasons set out below, we disagree with your proposed PSPO.

### **2. Lack of evidence**

We are disappointed that no evidence has been published on the Council's website to support the PSPO. Birmingham City Council ('the Council') is required by s. 59 of

the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') to be satisfied on reasonable grounds that the conditions to implement a PSPO are met before it can lawfully make a decision to introduce a PSPO. The Council cannot reasonably be satisfied of the relevant conditions without first considering robust evidence on the situation in the area which will be covered by the proposed PSPO. You mention *"overwhelming reports made to the Police and the Council from residents, businesses and professionals who live, work and travel into Birmingham."* However no data or other forms of evidence are actually provided. This is especially concerning given how extensive the provisions of the PSPO are, and the broad range of behaviours it prohibits. Has there been any thorough assessment of the potential impact of the PSPO? If so, it should be published.

By way of comparison, we have found that other councils have relied on, and published, data, witness statements, police reports, surveys, impact assessments, and many other sources of information to justify the need for a PSPO before setting out a proposed order and starting a consultation. Furthermore, when considering any evidence the Council should ensure that its consultation has heard a representative sample of views, including from those who will be negatively affected by the PSPO, who are likely to be among the most vulnerable and marginalised members of the community and may be difficult to reach through normal forms of public consultation.

We also note that the consultation page on your website does not explain clearly to the public what enforcement options a PSPO gives rise to. It does not explain, for example, that the only punishment available for breaching a PSPO is a monetary penalty. Although the last page of the draft PSPO contains a brief summary of the penalties, it refers to fixed penalty notices in general terms, without stating the amount that the Council intends to impose under such notices. In relation to prosecutions for breach of the PSPO, the summary simply states that this can give rise to *"a fine not exceeding level 3 on the standard scale"*, a phrase that will be essentially meaningless to most members of the public. Any responses to the survey are therefore unlikely to be sufficiently well informed as the suitability of a PSPO for dealing with the issues raised in the consultation.

### **3. Rough sleeping**

- ***Prohibition 2 – 'Obstructing footpaths and highways'***

*a) No person or their personal effects shall prevent or hinder the street cleansing activity of the Council within the Restricted Area.*

*b) No person or their personal effects shall hinder the free passage of pedestrians or vehicles along the public footpath or highway within the Restricted area.*

*c) No person shall or their personal effects shall obstruct ingress or egress from any building within the Restricted area.*



We are concerned that these vague provisions would grant an excessively broad discretion to enforcement officers and might be used to wrongly target those who may be sleeping rough in the PSPO area, and not causing a nuisance or engaging in violent or anti-social behaviour.

The Government's statutory guidance, issued on 17 December 2017, clearly advises against such targeting:

"Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. PSPOs should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life *which is within the control of the person concerned*."<sup>1</sup>

In reference to the wording of the draft PSPO, what does 'obstructing' mean? What would a person have to do to 'hinder or prevent' the Council's street cleansing activity, or the 'free passage' of pedestrians along a public footpath? Does it have to involve deliberate or aggressive behaviour? Or is it enough that someone happens to be in the wrong place at the wrong time? These vague provisions could easily be interpreted to cover rough sleepers. If the Council does not intend to target all or any rough sleepers by this provision, it should say so in the PSPO and publish guidance as to how these provisions are to be interpreted.

The presence of rough sleepers in an area is a *symptom* of poverty and of the detrimental impact of economic inequality and other factors, not the cause. According to official data, the number of rough sleepers in Birmingham has steadily increased in recent years to about six times the number recorded in 2010, while the number of households in temporary accommodation puts Birmingham close to the top 10% of local authorities in England.<sup>2</sup> A PSPO will do nothing to deal with the root causes of such problems.

These provisions also constitute a potential interference with Article 8 of the European Convention of Human Rights ('the Convention'). Local authorities are bound by section 6 of the Human Rights Act 1998 not to act in any way which is incompatible with any rights contained in the Convention. Article 8 of the Convention extends to the protection of personal autonomy and can apply to activities conducted in public; this is especially true of the homeless whose scope for private life is highly

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<sup>1</sup> Home Office, 'Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers', Statutory guidance for frontline professionals, p 51. Available at <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>.

<sup>2</sup> Ministry of Housing, Communities & Local Government, 'Rough sleeping statistics England autumn 2018: tables 1, 2a, 2b and 2c' at <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

circumscribed. Any interference with this right must be ‘in accordance with the law’, a concept which has been interpreted to mean that any relevant legal provision must be circumscribed with precision and allow sufficient foreseeability of its breadth and consequences.<sup>3</sup> There is a clear risk that the vague terms included in the proposed PSPO (i.e. causing an obstruction) fail to satisfy this requirement, and are therefore unlawful in Article 8 terms.

There are well-established links between homelessness and disability, based on a range of academic studies in this area.<sup>4</sup> This is recognised in the Government’s August 2018 *Rough Sleeping Strategy*, which sets out as one of its goals to “*address associated issues such as substance misuse and mental health issues which frequently contribute to repeat homelessness.*”<sup>5</sup> There is therefore a risk that these provisions would unlawfully discriminate against disabled people. There is no indication that the Council has conducted an Equality Impact Assessment or in any other way considered the equalities implications of the proposed PSPO. Failure to do so is likely to amount to a breach of the Equality Act 2010.

We also have a concern regarding the specific drafting of this provision. Paragraph 2(d) states the circumstances in which an authorised officer may ask a person to remove themselves from a footpath or highway. However, it is phrased in a non-exhaustive and permissive way which arguably fails to have the effect of limiting such circumstances to those listed. We would strongly submit that, if retained in the final PSPO, this section should read “*An authorised officer may **only** request that a person remove themselves...*”. The same restriction should be added to paragraph 1(c), 4(a) and (d), 7(c) and 8(b).

#### **4. Begging**

- ***Prohibition 7 – ‘Begging’***

*a) A person is prohibited from approaching any other person for the purposes of obtaining money by begging.*

*b) A person is prohibited from positioning to beg.*

As mentioned above, the Council is required by s. 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 to be satisfied on reasonable grounds that the conditions to implement a PSPO are met. Further, the Council can only impose PSPO requirements that it is reasonable to impose. It is clearly not reasonable to impose requirements that are simply not needed. It is not reasonable (or efficient) to

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<sup>3</sup> *Gillan and Quinton v UK* (Application no. 4158/05), ECtHR.

<sup>4</sup> See for instance Fitzpatrick, S., Bramley, G. and Johnsen, S. (2013) ‘[Pathways into multiple exclusion homelessness in seven UK cities](#)’, *Urban Studies* 50(1), p 158.

<sup>5</sup> See [Rough Sleeping Strategy](#), August 2018, p 44 [para 124.].

impose fines on people who cannot afford to pay them. We note that recently, Southampton City Council scrapped fines for begging under its PSPO, because "[f]ew of these fixed penalties were paid and they did little to change the behaviour of these individuals."<sup>6</sup>

The only method of enforcing a PSPO is by way of a Fixed Penalty Notice ('FPN') of up to £100 or, upon prosecution, a fine of up to £1,000. A PSPO does not give council officers, police officers or Magistrates any other additional powers, including dispersal powers or powers to require engagement with substance misuse services, for example.

As a specific example, this contrasts with a prosecution for begging under the Vagrancy Act 1824, which can give rise to the imposition of a community sentence as an alternative to a fine or sentence of imprisonment. Prosecution for breaching a PSPO cannot, other than in the most exceptional circumstances, lead to the imposition of a community sentence. A PSPO is an extremely blunt and inappropriate measure to use when dealing with the effects of poverty. It is therefore likely that this provision will be ineffective. As the statutory guidance suggests, *"introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere."*<sup>7</sup>

A PSPO must be proportionate to be lawful. It is therefore concerning that a person would be breaching the proposed PSPO as drafted even by placing an item before them for receipt of money or 'positioning to beg'. This would cover acts as harmless as sitting on the side of a street with a paper cup or a cardboard sign. This behaviour is clearly not anti-social or 'detrimental' to the life of those in the locality to the extent that it should be criminalised.

We note that, according to the Index of Multiple Deprivation 2015, seven out of the ten most deprived neighbourhoods in Birmingham, are either within or in close proximity to the PSPO area.<sup>8</sup> It is therefore highly likely that a significant portion of people begging in the proposed PSPO area are doing so because they are in need of financial help. No one in that situation should be fined and criminalised. The PSPO does not provide an effective mechanism for distinguishing between such people and those who may be begging despite having adequate subsistence through other means. There is therefore a significant risk of the genuinely desperate being penalised with ineffective fines which do nothing to address the causes of their

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<sup>6</sup> 'Southampton begging fines removed by council', BBC News, 16 April 2019.

<sup>7</sup> Statutory guidance, p 49.

<sup>8</sup> See map at <http://dclgapps.communities.gov.uk/imd/idmap.html>. Birmingham 071D, 083A, 071E, 136A, 139E, 071C, and 134E. Out of 32,844 LSOAs in England these are ranked, respectively, at 52, 101, 105, 197, 217, 222, and 263, where 1 is the most deprived LSOA. They all therefore fall into the top one percent most deprived in the country.

behaviour. We acknowledge that there is a reference at the end of the PSPO to a requirement to refer appropriate people subject to the order to appropriate support services. However, it is not clear whether such people will also be fined, and what will happen if they refuse (as is their right) to engage with such services.

### **CONCLUSION**

We appreciate that the plans are still at an early stage; however this proposed PSPO is potentially not only unlawful and unreasonable, it is also a disproportionate interference with basic rights and will not alleviate poverty or its detrimental effect on the community. Poverty and homelessness can only be made worse by such measures. We urge you to think again before making this PSPO.

Yours faithfully



Rosie Brighthouse  
Solicitor

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**Shelter Birmingham- Formal Response to Birmingham City Council (City Centre)**  
**PROPOSED PUBLIC SPACE PROTECTION ORDER 2019**

**Completed by: Emma Poursain July 2019**

Shelter Birmingham Hub are based at Gateway House, 50- 53 High Street, Birmingham, B4 7SY. We deliver several services from this location, of which five of these services deliver support and intervention to individuals whom this order could potentially affect:

**The Lead Worker Peer Mentor Service (funded by Big Lotto)-** working with adults experiencing entrenched multiple needs; homelessness, substance misuse, mental health concerns and offending behaviour who are disengaged from support services

**Housing First (funded by Birmingham City Council)-** working with adults with multiple and complex needs, with a history of rough sleeping

**No Wrong Door Navigator Service (funded by Big Lotto)-** working with adults with multiple and complex needs, who are ready to engage in support

**Peer Support Liaison & Diversion (funded by Birmingham & Solihull Mental Health Trust)-** working with adults with multiple and complex needs, who are 'frequent flyers' in Custody

**Rough Sleepers Initiative (funded by Birmingham City Council)-** working with adults with multiple and complex needs who are rough sleeping in the city

Since January 2015 the above services have worked with a total of **939 individuals**, many of whom have been previously disengaged from support services. The Lead Worker Peer Mentor Service has carried out significant data analysis and evaluation during the last four years. We are in a position whereby we therefore have demonstrable evidence for our pioneering approaches that have led to: increased engagement in services, reduction in number of arrests and reductions in presentations at A&E.

Shelter Birmingham seek to challenge this order on the following grounds:

### **1) The Validity of the *Formal Consultation Process***

Shelter Birmingham did not receive a direct communication from Birmingham City Council to notifying that this PSPO application was being made, or that formal Consultation had commenced. Given the services that we deliver and funding sources, we deem ourselves to be *key stakeholders, partners and persons of interest*. After learning from a third party that formal Consultation was underway, Shelter Birmingham contacted Birmingham City Council and made an offer to host Consultation with our Service Users. Birmingham City Council did not respond to or take up this offer.

On Friday 10<sup>th</sup> May 2019, after Consultation had ended, a Team Leader at Shelter Birmingham received an email from the *Street Intervention Partnership Operational Group* requesting a statement in relation to its views and opinion for the PSPO. The statement was requested for the end of that working day. The email request did not contain the formal PSPO proposal documents or the proposed area map. This request appeared informal and unrealistic in terms time allowed to complete.

#### **1.1) The effectiveness of Consultation activities, namely, the *PSPO Stands***

On Friday 10<sup>th</sup> May 2019 Shelter Birmingham obtained the dates for PSPO Consultation Stands via the Birmingham City Council website. Throughout the duration of these Stands Shelter services had **164 actively engaged service users** receiving support from our complex needs services.

Whilst in principle Shelter are undoubtably in support of face to face Consultation with *persons of interest*, we must raise the following points of concern based on the feedback of individuals who participated in these events:

- Locations of the Stands were not deemed suitable in terms of likeliness of persons agreeing to participate e.g. Jewellery Quarter Train Station, individuals arriving/departing and the associated time constraints
- Suggestions from partner agencies to re-locate the Stands were not taken on board and declined
- Consultation Questionnaires were difficult to understand and were *confusing*
- Consultation Questionnaires were completed incorrectly, and when this was raised it was acknowledged that *others* had also sighted they had completed them incorrectly and/or found them to be *confusing*

- Copies of the Draft PSPO Proposal and Proposed Map of Geographical Location were not provided to individuals that were consulted with

**2) Adequate considerations have not been made in relation to how the use of this power might impact the most vulnerable members of society**

Considering Shelter Birmingham's substantial experience and expertise in delivery services to individuals experiencing entrenched multiple needs, we have fundamental concerns pertaining to the impact that such PSPO is likely to have.

Evidence and data collated over the duration of the Lead Worker Peer Mentor Service has demonstrated the impact that investment in intensive support services can have on successful engagement with individuals with multiple needs; homelessness, repeat offending, mental health concerns and substance misuse. In addition to this, we have also collected data and case narrative pertaining to the ineffectiveness of enforcement and the damage and harm caused by exclusions whether this be from services or localities. Individuals therefore becoming trapped in the revolving door of *The System*.

There are numerous Prohibitions contained within the Proposed PSPO that fail to demonstrate that consideration has been made to medical and psychological vulnerability. In addition to this, Shelter Birmingham seeks to understand:

**How Birmingham City Council will address the potential for inconsistencies in the enforcement of the proposed Prohibitions, given the fact that some elements are open to individual perception?**

**What will be done to ensure that any potential enforcement, of such PSPO, is non-discriminatory and does not marginalise the most vulnerable members of society?**

## **Conclusion**

Given the points highlighted within this response, Shelter Birmingham questions the validity of the Consultation Process given that reasonable efforts were not made to consult with partners, stakeholders and persons of interest. In addition to this, information provision was lacking and not of a transparent nature.

Opportunities were missed and not taken up to Consult with person of interest, whom are likely to be most adversely impacted by such PSPO.

The Prohibitions contained within the Proposed PSPO are predominately targeted towards the most vulnerable members of society, with little consideration towards the potential that



such order could have on individuals disengaging from services and becoming harder to locate. In turn leading to potential decreases in successful delivery of vital harm reduction interventions and services, due to newly created geographical challenges.

### **Recommendations**

Considering the above points and our conclusion, we recommend that Birmingham City Council considers undertaking the following:

- Further face to face Consultation opportunities that are planned and co-ordinated should be carried out with persons of interest, with the provision of full information contained within the PSPO Proposal Document and The Proposed Geographical Area
- Planned and co-ordinated Consultation should be carried out with *persons of interest* who are likely to be most adversely impacted by such PSPO, in terms of; exclusions, restrictions and displacement
- The opinions of *persons of interest* who have lived experience of multiple needs, employed by partner agencies, are sought out and considered
- Further consideration is made as to the potential adverse impacts that such PSPO could have
- Appropriate measures and resources are established and put in place to mitigate the risks associated with the most vulnerable members of society being displaced from the proposed geographical area

**End of Formal Response.**

**Community Law Partnership**

**Housing and Neighbourhoods Overview & Scrutiny Committee**

**25 July 2019**

Introduction

The Community Law Partnership is an award-winning firm of solicitors specialising in the law relating to housing and public law. Amongst other things we provide advice and assistance to homeless people in Birmingham who may include rough sleepers. Some of our clients may have to resort to begging due to being impoverished.

We have made detailed submissions about this proposal in response to the consultation exercise. We have now been invited to give evidence to the Housing and Neighbourhood Overview & Scrutiny Committee.

We have read the report that was prepared by officers (“the officers’ report”) for the last Scrutiny Committee meeting and have seen the webcast of that meeting. We have also read various reports that have appeared in the Birmingham Mail in which the case for a PSPO is put by Council representatives. Having regard to all of the above evidence we are opposed to the proposed PSPO for Birmingham city centre because:

- it unjustifiably and disproportionately targets the homeless and rough sleepers;
- if the aim is to help address the underlying causes of homelessness and rough sleeping, it does not do this;

- if, which we do not accept, it were legitimate for the council to tackle the manifestations of homelessness and rough sleeping through punitive measures, a PSPO is unlikely to be effective;
- if the measure is – as claimed - not to be used against the homelessness and rough sleepers then no alternative justification has been provided.

### Background and framework

The starting point is to look at what a PSPO does and what it is to be used for. This is stated in the home office guidance anti-social behaviour, crime and policing act 2014 anti-social behaviour powers statutory guidance for frontline professionals, December 2017.

#### *Purpose*

*Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the lawabiding majority can use and enjoy public spaces, safe from anti-social behaviour. Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.*

However, the guidance makes specific comment on the use of PSPOs for problems arising from homelessness and rough sleeping as to this it states:

#### *Homeless people and rough sleepers*

*Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to*

*mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned.*

*Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets. [Emphasis added]*

In respect of the city centre PSPO there is a mismatch between what the Council says that is doing and its public pronouncements. On the one hand there is Councillor Cotton's statement to the last Scrutiny Committee meeting that, "*there will certainly be no criminalising of the homeless on my watch.*" On the other we have the detail of the order and the explanation of what it is designed to do in the officers' report of May 2019. These discrepancies are addressed below.

### Criminalisation

In the officers' report to the last Scrutiny Committee this issue is addressed head on. At paragraph 5.5 it is stated:

*5.5 There were further concerns raised in the following responses around criminalising the homeless community as a result of the Order. However, this is not the case. This is a civil order and as such being issued with a Suspected Offence Ticket for the breaching the PSPO will not create a criminal record for an individual and nor will it add to an existing criminal record.*

See similarly at paragraph 5.2 where it is stated that, “*a Public Space Protection Order is a civil tool which doesn't criminalise individuals on an initial breach.*” and paragraph 5.3 where it is stated, “*no person found in breach of this prohibition will be criminalised.*”

However, the fact is that this PSPO does criminalise behaviour. Indeed that is the very essence of it: it makes criminal activities which would otherwise be lawful. The point is made at the very beginning of the Council's draft order which states in a highlighted, boxed section:

*If you do not obey the order you will be committing a criminal offence and may be prosecuted by the Council within a Magistrates Court for an offence under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014* [Emphasis added]

Further, criminalisation is all a PSPO does. It does not offer the ‘hand of friendship’, encourage homeless people and rough sleepers to accept help with their lifestyles or curb behaviours that they are exhibiting, as claimed by paragraph 6.1 of the officers’ report. Although these actions can – and in our view should – be taken by the Council the PSPO legislation does not provide for them.

In this sense a PSPO is a blunt instrument. It is said that in the officers’ report (at paragraph 5.2) that the existing laws are archaic and outdated and because there is no ‘hand of friendship’ but in this respect the old laws are no different to the new one. Like the existing laws such as the Vacancy Act, a PSPO relies for its effectiveness *only* on the sanction of a criminal conviction. Whether it is used in a sympathetic or a harsh manner is entirely a matter for those enforcing. The ‘hand of friendship’ can be extended whichever statutory regime is adopted. Similarly, and importantly, it can be extended where no criminalisation is involved.

If the Council strategy is to extend the hand friendship to rough sleepers and the homeless then the adoption of a PSPO is contrary to that aim: it is in conflict with statutory Home Office guidance which advised Councils to address the root cause of homelessness instead of resorting to a PSPO.

It may be said that PSPO is or more flexible because they allow for the issuing of Fixed Penalty Notices (FPN) and that a FPN is not a criminal sanction. However, this is somewhat disingenuous. As above, a PSPO makes certain otherwise lawful behaviours unlawful. In the

words of the Council's draft order a person who does not obey the order will be committing a criminal offence. All the FPN does is to allow a transgressor to avoid conviction by paying a fine in advance.

In any event having regard to the nature of those who are likely to be in breach of the PSPO, FPNs are an inappropriate sanction. In the most recent guidance on FPNs issued by DEFRA in February 2017<sup>1</sup> it is stated that FPNs should not be issued where an offender is vulnerable. The reason for this is explained in previous DEFRA guidance which although now withdrawing is still relevant. It states:

*In essence, the vulnerable for the purposes of this guide are those that might lead chaotic lifestyles, for example the homeless, or those that suffer from a mental impairment.*

*In relation to this 'group' any authority using fixed penalty notice enforcement will need to ask itself what is to be gained by issuing a fixed penalty notices to such an individual. In all probability it will go unpaid and prosecution in the magistrates court would at best buy problematic and at its worst not in the public interest.*

*In relation to those that might be homeless it is very unlikely that they will have the money to pay a fixed penalty notice. Nor will they have a permanent address to which correspondence can be sent to pursue prosecution should the fixed penalty notice go unpaid. That said should an authority succeed in bringing a case in the magistrates court, given the circumstances the magistrates may question the interests of pursuing such a case and discharge the accused.*

...

*In relation to those that might suffer from a mental illness, the authority has to again ask itself, is it in the public interest to pursue action against such individuals? If they don't the magistrates might well ask as could the media.<sup>2</sup>*

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<sup>1</sup> Enforcement officers: issuing fixed penalty notices, DEFRA, February 2017

<sup>2</sup> Local environmental enforcement – Guidance on the use of fixed penalty notices, DEFRA, March 2007



### Who is the target?

The confusion over the nature of this PSPO has been caused in part by the inadequate, and we say unlawful, consultation that has been undertaken thus far. We have made extensive submissions about this, however suffice it to say that the information which is now available to the public and to the Scrutiny Committee in the officers' report of May 2019 was not available at the time of the consultation.

Although Councillor Cotton has said that the PSPO will not be used to target homeless people, a reading of the proposed order and the officers' report indicates otherwise. This is not to doubt Councillor Cotton's commitment, it is to say that if he is to be held to it he will need to bring forward new proposals.

### The draft order

Starting with the draught order itself, it is apparent that the activities which will become criminal are disproportionately targeted at the behaviours of the homeless and rough sleepers. This is best illustrated in one particular example which we have already drawn attention to concerning the prohibition on persons "*or their personal effects*" blocking street cleaning, doorways, the footpath or highway. While it may be the case that some of those who are not homeless or sleeping rough may carry their personal effects, it is almost certainly the case that all rough sleepers will. Further, it is almost by definition a consequence of sleeping rough that one will be in a doorway, footpath or highway. In short, these measures criminalise the very thing which characterises rough sleepers and the homeless – that they sleep on the streets - accordingly it is a measure which disproportionately affects them.

Similarly, in relation to the prohibition on groups gathering, Home Office guidance is relevant:

*People living in temporary accommodation may not be able to stay in their accommodation during the day and so may find themselves spending extended times in public spaces or seeking shelter in bad weather. It is important that public spaces*

*are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.*

It is apparent that this measure, also, disproportionately affects the homeless.

Further, the measure on begging, while it may be applied to other individuals, is likely to affect rough sleepers and the homeless disproportionately on the principle that while not all beggars are homeless, it is likely that almost all rough sleepers will at some point be compelled to resort to some form of begging.

The same principle applies to the provision concerning alcohol and intoxicating substances. A House of Commons briefing paper<sup>3</sup> from March 2018 records that in a sample of rough sleepers in London, 44% of those who had a needs assessment had alcohol related support needs and 35% had drug support needs. It is stated that no comparable data is available outside of London but there is no reason to suppose that this is not a representative sample of the national cohort. What this illustrates is that any measure which criminalises alcohol and drug related behaviours will disproportionately affect this cohort.

Finally, although it has now been withdrawn, the original order contained a prohibition on defecation and urination. Its original inclusion gives an indication of the target of the overall measure.

While the original criminalisation of defecation and urination was an egregious example of the misuse of a PSPO (and directly contrary to Home Office guidance – which uses this as an example of what not to do), it is important to recall the Home Office’s overarching principle for PSPOs which is that these orders should be used only to address any specific behaviour “which is within the control of the person concerned”. In our submission this principle is flouted by the Council’s proposal.

Any proposal which disproportionately affects an identifiable group of people on the basis of the very factors which make them identifiable is likely to be discriminatory, yet in this case

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<sup>3</sup> Rough sleepers: access to services and support (England), House of Commons Briefing Paper 07698, March 2018

there appears to have been no engagement with this issue by the Council whether through equalities legislation or otherwise.

### *The officers' report*

If the target of the PSPO not apparent from the draught order it is made plain by the officers' report.

In the Background section while a number of anti-social behaviours are listed it is clear that these are attributed to "the street community" (see paragraph 3.5)

Similarly, in the discussion section of the report headed 'What has been tried?' the focus is on rough sleepers and the homeless. For example, at paragraph 4.2 describes how the Street Intervention Team has been used "*to help with ongoing issues of rough sleeping and the homelessness in the city centre*". Similarly, Housing First a scheme "*to help deal with some of our most entrenched rough sleepers*" is relied upon.

Further, it is apparent from the 'hand of friendship' narrative that those who are anticipated to be the target of the order, are in fact those require help ("*individuals in breach will be offered support where appropriate so as to curb behaviour completely*"). Were it to be the case that the order was not to be used against vulnerable individuals – as suggested by the Council in the media<sup>4</sup> - this would not be necessary.

The paradox is that if individuals need help then they ought not to be the target of a PSPO the first place.

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<sup>4</sup> The Council's focus in press statements has been on gang masters and modern slavery (see Birmingham Mail, 6 June 2019.). However as will be apparent gang masters do not squat in doorways, gather in groups to take drugs and beg on the streets. Furthermore, there is dedicated legislation to deal with these individuals in the Human Trafficking and Modern Slavery Act 2015

## Conclusion

In summary, the logical inconsistency in the Council's position is that if (as it appears from the information it has provided) it wishes to address the behaviour of rough sleepers and the homeless in the city centre, the measure it seeks to rely on is inappropriate for this purpose (and contrary to statutory guidance.) Once it is accepted that a PSPO should not be used in this way the whole rationale for the current proposal falls away.

Community Law Partnership

17 July 2019

## **RESPONSE OF COMMUNITY LAW PARTNERSHIP TO THE BIRMINGHAM CITY CENTRE PSPO CONSULTATION 2019**

### **Introduction**

The Community Law Partnership (CLP) is an award winning, progressive firm of solicitors specialising in the law relating to Housing and Public Law. Amongst other things, we provide advice and assistance to homeless people in Birmingham who may include rough sleepers. Some of our clients may have to resort to begging due to being impoverished.

Obviously, nobody condones anti-social behaviour (ASB) but rough sleeping and/or begging do not amount to ASB in themselves. Sufficient methods already exist to deal with ASB such as the Vagrancy Act 1824, the Highways Act 1980 and the Public Order Act 1986. There is a grave danger that any blanket order will catch innocent people who are not guilty of any ASB.

### **The Law relating to Public Spaces Protection Orders (PSPOs)**

It may be useful to look at the details of the law here since the Council's consultation paper makes no attempt to do so. A PSPO is an order issued by a local authority which is designed to tackle activities carried on in a public place which have a detrimental effect on the quality of life of those in its locality and which prohibits specified things being done in a restricted area or requires specified things to be done by persons carrying on specified activities in that area, or does both of those things.

The power to make PSPOs is contained within the Anti-Social Behaviour, Crime and Policing Act (ASBCPA) 2014. Section 59 states:

#### *Power to make Orders*

- (1) *A local authority may make a Public Spaces Protection Order if satisfied on reasonable grounds that two conditions are met.*
- (2) *The first condition is that:*
  - a) *Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or It is likely that activities will be carried on in a public place within that area and that they will have such an effect.*
- (3) *The second condition is that the effect, or likely effect, of the activities –*
  - a) *Is, or is likely to be, of a persistent or continuing nature*
  - b) *Is, or is likely to be, such as to make the activities unreasonable, and,*
  - c) *Justifies the restrictions imposed by the Notice.*
- (4) *A Public Spaces Protection Order is an Order that identifies the public place referred to in sub-section (2) ("the restricted area") and*
  - a) *Prohibits specified things being done in the restricted area*
  - b) *Requires specified things to be done by persons carrying on specified activities in that area, or*
  - c) *Does both of those things.*

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

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

(6) *A Prohibition or requirement may be framed –*

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

A PSPO can last for up to 3 years, can be extended under certain circumstances and its term can be extended more than once (ASBCPA 2014 Section 60).

These are, therefore, draconian powers and it is essential that the conditions contained in this section are satisfied and that evidence is put forward to justify any PSPO.

### **A flawed consultation**

It is suggested that this consultation itself is flawed and thus challengeable. The consultation appears on the Council's Be Heard website. It commenced on the 22<sup>nd</sup> March and is due to close on 2<sup>nd</sup> May – a period of only 6 weeks.

### **The principles of lawful consultation**

The principles of lawful consultation in respect of public law decision making have been established in case law over many years. The starting point is whether a duty of consultation arises. In the present matter the power to make a PSPO is given by the Anti-Social Behaviour Crime and Policing Act (ASBCPA) 2014 s59 (see above). Section 72 deals with 'Convention rights, consultation, publicity and notification'. This provides as follows:

- (3) *A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before –*
  - (a) *making a public spaces protection order,*
  - ...
- (4) *In subsection (3) –*
  - “the necessary consultation” means consulting with –*
    - (a) *The chief of Police, and a local policing body, for the police area that includes the restricted area;*
    - (b) *Whatever community representatives the local authority thinks it appropriate to consult;*
    - (c) *The owner or occupier of the land within the restricted area;*
  - “the necessary publicity” means –*
    - (a) *In the case of a proposed order or variation, publishing the text of it.*

It is an established principle of public law that, in circumstances where consultation is deemed to be appropriate by a decision maker or, as here, is required by statute, such consultation must be carried

out lawfully and in accordance with established public law principles. In short, if consultation is to be done it must be done properly.

The principles of lawful consultation have been restated many times by the courts (see, for example, the Supreme Court case of *R(Moseley) –v- London Borough of Haringey* [2014] UKSC 56) These are:

1. that consultation must be done at a time when proposals are still at a formative stage;
2. that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
3. that adequate time must be given for consideration and response;
4. that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

These principles have been explained in many different forms of guidance.

As to the guidance issued by the Secretary of State this was originally contained in the 2008 Code of Practice on Consultation (“the Code”) which was subsequently replaced by a set of consultation principles issued by the Cabinet Office. The most recent of these are the Consultation Principles 2018 (“the Consultation Principles”). These state, among other things:

***C. Consultations should be informative***

*Give enough information to ensure that those consulted understand the issues and can give informed responses. Include validated impact assessments of the costs and benefits of the options being considered where possible; this might be required where proposals have an impact on the business or the voluntary sector.*

...

***E. Consultations should last for a proportionate amount of time***

*Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal. Consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.*

***F. Consultations should be targeted***

*Consider the full range of people, business and voluntary bodies affected by the policy, and whether representative groups exist. Consider targeting specific groups if appropriate. Ensure that they are aware of the consultation and can access it. Consider how to tailor consultation to the needs and preferences of particular groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods.*

***G. Consultations should take account of the groups being consulted***

*Consult stakeholders in a way that suits them. Charities may need more time to respond than businesses, for example. When the consultation spans all or part of a holiday period, consider how this may affect consultation and take appropriate mitigating action, such as prior discussion with key interested parties or extension of the consultation deadline beyond the holiday period.*

While the Consultation Principles replace the Code, the latter is nevertheless helpful in establishing good practice. The Code identifies seven consultation criteria. For the purposes of these submissions we refer to Criteria 2 & 4. Criterion 2 concerns the duration of consultation exercises and provides that “Consultations should normally last for at least 12 weeks with consideration given



to longer timescales where feasible and sensible.” Criterion 4 deals with the accessibility of consultation exercises. It provides that “consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach”.

The above principles have been adopted by Birmingham City Council. For example in the Birmingham Compact, the Council has adopted a Code of Practice in relation to consultation which advises statutory decision makers to ensure that they “follow local and national guidance when carrying out consultations” (page 11). The Compact includes the following elements:

- Carry out at least 12 weeks of formal written consultations, with an explanation given if the consultation is less than 12 weeks.
- Encourage responses from the voluntary and community sector organisations that are likely to have a view.
- Provide feedback to explain how organisations have influenced policy decisions. You should also provide feedback where you have not acted on an organisation’s views so you can show your judgement has been fair.
- Explain which matters are open to change as a result of the consultation and which are not.

### **BIRMINGHAM CITY CENTRE PSPO CONSULTATION**

1. Applying these principles to the present consultation it is apparent that they have not been met. We have set out our submissions in this regard by reference to the consultation principles as set out above.

#### **Adequate time must be given for consideration and response**

2. It is apparent the duration of this consultation is too short and is not in accordance with good practice, including that adopted by the Council. The consequence of an unreasonably short consultation period is that it disenfranchises those whose views ought to be taken into account. This is the case here and it is relevant to the comments we make below about the Council’s other failures in this regard

#### **The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response**

3. In this regard the consultation proposal is wholly inadequate. Despite the Council saying it is considering applying for a PSPO, little or no information is given about the basis on which this decision has been taken. The overview statement says that “*the order has been put into place due to overwhelming reports made to the Police and the Council from residents, businesses and professionals who live work and travel into Birmingham*” but the nature and extent of this evidence is not disclosed.
4. The key issue in the adoption of a PSPO is that of proportionality: the nature of an Order is that it imposes restrictions on the use of public space which apply to everyone. Accordingly, a balance must be struck between individual freedoms and the need to curb anti-social behaviour. This key theme is reflected in the guidance issued by the Government in *Anti-Social Behaviour*

*Powers – Statutory Guidance for Frontline Professionals updated December 2017 (“the Guidance”)*. At page 51 the Guidance states:

*“As with all the anti-social behaviour powers, the Council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused”*

5. Similarly, at page 49, in a highlighted paragraph, the Government advises:

*“In deciding to place restrictions on a particular space, Councils should consider the knock-on effects of that decision and ensure that this is a reasonable and proportionate response to incidents of anti-social behaviour in the area”.*

6. Yet further, in the section of the Guidance which deals with consultation (page 49) it is stated:

*“It is strongly recommended that the Council engages in an open public consultation to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate or needed at all”.*

7. In the present proposal the absence of information about the scale and nature of the problem, the predicted effectiveness of the proposal, the evaluation of alternatives and the respective costs, means that it is impossible for consultees to comment on proportionality. This is not an abstract point because, as the Council states in its Overview, it has gathered evidence about these matters.
8. In *Moseley*, the Supreme Court held that *“Meaningful public participation in this particular decision-making process, in a context with which the general public cannot be expected to be familiar, requires that the consultees should be provided not only with information about the draft scheme, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority’s adoption of the draft scheme.”* [Paragraph 39] The present consultation simply provides none of the information necessary to make it effective. A list of the information which we consider necessary is set out at the end of this submission.
9. The second aspect of the “sufficient reasons” limb of the consultation procedures is that it is not sufficient for the proposer to simply produce adequate information about its proposal, but such information must be made available to those affected. This is apparent as a matter of fairness but is also required because in any subsequent decision making it will be necessary for the decision maker to demonstrate that it has taken relevant considerations into account. The direct or indirect exclusion of the views of those affected will offend against this principle.
10. The need to “target” groups of consultees is set out in the Government’s Consultation Principles 2018 as set out above. These require proposers to consider “how to tailor consultation to the needs and preferences of particular groups.” In the PSPO Guidance it is stated:

*“It is strongly recommended that the Council engages in an open public consultation to give the users of the public space the opportunity to comment on whether the proposed restriction or*

*restrictions are appropriate, proportionate or needed at all. The Council should also ensure that specific groups likely to have a particular interest are consulted, such as local residents associations or regular users of a park or those involved in specific activities in the area, such as buskers and other street entertainers” [Page 49]*

11. It is self-evident, therefore, and of particular relevance given the need for proportionality, that those likely to be most affected adversely by the PSPO are consulted. As to this it is of particular concern that there has been no attempt by the Council to ascertain the views of the homeless or rough sleepers.

12. The issue of accessibility in consultation exercises is one which was addressed by the Government in its 2008 Code of Practice and remains relevant:

*“Careful consideration should be given to hide or alert potential consultees to the consultation exercise on how to get views from relevant sectors of the community and the economy. While many interested parties can usually be contacted directly there will often be other interested parties not known to the Government who can only be reached through intermediary bodies. Working with appropriate trade, community or third sector organisations can help the Government to hear from those who would otherwise go unheard. Using specialist media or events can also help promote consultation exercises among interested groups”. [Paragraph 4.3]*

13. In the present consultation it would seem that:

- the principal consultation documents are only accessible online and possibly (although it is not clear) on social media;
- these documents are only available in English;
- the main way in which consultation responses are to be made is in written form by typing into a computer or mobile device.

14. Although, since the previous (now withdrawn) consultation, it is proposed that members of the public can attend street stalls it is not accepted that this will be a successful means of reaching street homeless people and other relevant groups.

15. Accordingly, and having regard to the nature of the potential range of consultees it is relevant that there would appear to be:

- inadequate provision for those without access to the internet or, alternatively, social media;
- inadequate provision for those who do not speak English;
- inadequate provision for those who are illiterate;
- inadequate endeavour to address the needs of those with mental health difficulties;

- inadequate recognition of the need to seek the views of those who are resistant to engaging with authority. As to this it is not clear how the Council has attempted to seek the views of people who may be homeless and forced into rough sleeping.

## **THE CONSULTATION PROPOSAL**

16. In addition to the above procedural submissions we are also of the view that the content of this consultation is flawed. The following comments deal with the proposal themselves.

### **Groups**

17. At paragraph 3 of the overview statement it is said that the order is being proposed in response to “groups and gangs displaying harassing and intimidating behaviours”.

18. With respect to the appropriateness of PSPO’s for addressing ‘groups hanging around/standing in groups’, the Guidance states as follows:

*“It is important that Councils do not inadvertently restrict every day sociability in public spaces. The Public Spaces Protection Order should target specifically the problem behaviour that is having a detrimental effect on the community’s quality of life, rather than everyday sociability, such as standing in groups which is not in itself a problem behaviour”* [Page 53, emphasis added]

19. With respect to those living in temporary accommodation, which will include the homeless and those forced into rough sleeping, the Guidance continues:

*“People living in temporary accommodation may not be able to stay in their accommodation during the day and so may find themselves spending extended times in public spaces or seeking shelter in bad weather. It is important that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games”* [Page 53]

20. The Council’s draft Order deals with groups at paragraph 1. As to this the Order states at paragraph 1:

*“a) A person is prohibited from remaining (either individually or in a group of three or more people) within the Restricted Area after an Authorised Person has requested that the group disperse.*

*b) This prohibition does not restrict an individual's right to freedom of association and speech.*

*c) An Authorised Person may request that an individual, or a group, within the restricted area disperse, where they reasonably suspect any person in that group is causing, or is likely to cause nuisance, alarm, harassment or distress to any other group or person."*  
[Emphasis added]

21. Accordingly, there are the following problems with the order as it relates to groups:

- the justification for the order is in fact anti-social behaviour by individuals (for which adequate alternative sanctions exist);
- the measure in the draft order is a form of group punishment or sanction for the behaviour of individuals;
- having regard to the Guidance, individual anti-social behaviour is not sufficient justification for prohibiting groups from hanging around or people standing in groups;
- the use of a PSPO in this way disproportionately affects individuals who are homeless and/or have to resort to rough sleeping and is, in itself, contrary to the Guidance;
- in so far as the problem is anti-social behaviour by groups, no evidence is provided about this which could enable a consultee to take a view about whether a PSPO is a proportionate means of response.

22. Further, although paragraph 1(b) is welcome reassurance that the draft order does not aim to restrict rights to freedom of speech and association, it is not clear how this aim would be practically reflected in circumstances where a group is dispersed and individuals from that group are required to leave the Restricted Area.

No explicit consideration is made of the circumstance where a group inadvertently causes nuisance, alarm, harassment or distress whilst its members are explicitly attempting to exercise their rights to freedom of speech and association – for example, in the context of a protest or demonstration.

23. In addition the Guidance at page 49 provides that:

*"In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision and ensure that this is a reasonable and proportionate response to incidents of anti-social behaviour in the area. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere."*

24. The consultation proposal has not given any or any adequate consideration or had any or any adequate regard to the effect that the draft order would have in simply displacing the behaviour sought to be addressed elsewhere.
25. There is also a concern that enforcement activity in one area simply displaces street activity to another geographical area, and can sometimes lead to the displacement of activity (e.g. from begging into acquisitive crime). Moreover, it does not address the underlying causes of rough sleeping.

#### Rough sleepers/homeless people

26. The consultation does not address the impact of a PSPO on rough sleepers. Rough sleeping is not mentioned in the list of anti-social behaviour which the consultation proposal lists, nor are the homeless mentioned in the draft Order. On the face of it this is consistent with the statutory guidance which states, in a highlighted paragraph:

*“Homeless people and rough sleepers – Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community’s quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community’s quality of life which is within the control of the person concerned” [Page 51].*

27. Nevertheless, it is apparent that the draft Order is targeted (whether directly or indirectly) at rough sleepers. This is apparent through the provision concerning the obstruction of footpaths and highways. Although the Council states that it is principally concerned with street drinking, begging and anti-social group behaviour it is difficult to see how these behaviours are addressed by provisions which concern the blocking of the footpath and entrances to buildings and the interruption of street cleaning. In contrast, all of these elements are unfortunate, but necessary consequences of rough sleeping.
28. That this is the proper interpretation of paragraph 2 of the draft Order is in our submission made apparent by the use of the words “or their personal effects” in paragraphs 2(a), (b) and (c).
29. In our submission the fundamental inappropriateness of this provision is that it penalises activity which is intrinsic to the forced existence of a group of individuals and is not a matter of individual choice. In this sense it is not properly characterised as “behaviour” (whether anti-social or not). The importance of this is that unlike those others whom the Council seeks to target, rough sleepers are not in a position to modify their behaviour. This makes the particular provisions in the draft Order insofar as they relate to rough sleepers, oppressive and disproportionate.

30. While paragraph 2 is the most oppressive provision in this respect other paragraphs within the Order also require to be reconsidered on the basis that they appear to focus principally on rough sleepers:

- Possession of alcohol and/or intoxicating substances – It is probable that a significant proportion of rough sleepers will have drug and alcohol dependency without this necessarily having an overt anti-social manifestation.
- Begging – Rough sleepers are more likely to have little or no income and thus to be dependent on charity and personal donations. Requests for money are not necessarily anti-social. (It is not understood what the phrase “unauthorised requests for money” in paragraph 7(a) means.)
- General anti-social acts such as urination and defecation – these are unfortunate but inevitable aspects of rough sleeping. The Government guidance states:

*“Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets”.* [Page 51]

- Groups –The Guidance (quoted above) makes clear people living in temporary accommodation may have more cause to gather in groups in public spaces. This is likely to apply to greater extent with those who are street homeless. As we submit above, insofar as the Council seeks to target groups without more, such a provision is disproportionate.

31. In addition the Guidance at page 49 provides that:

*“In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision and ensure that this is a reasonable and proportionate response to incidents of anti-social behaviour in the area. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.”*

32. The consultation proposal has not given any or any adequate consideration or had any or any adequate regard to the effect that the draft order would have in simply displacing the behaviour sought to be addressed elsewhere.
33. There is also a concern that enforcement activity in one area simply displaces street activity to another geographical area, and can sometimes lead to the displacement of activity (e.g. from begging into acquisitive crime). Moreover, it does not address the underlying causes of rough sleeping.

#### Overall proportionality



34. The proposal does not consider any nuanced approach to the issues raised. There is no discussion of alternative options for the duration of the Order, nor whether the Order could be targeted to specific areas of the City Centre or should be limited to specific times. No alternative approaches are discussed or considered.

## **CONCLUSION**

35. In summary we make the following submissions:

1. This consultation is procedurally flawed in that:
  - (a) it fails to provide adequate or sufficient information to enable consultees to make an intelligent response;
  - (b) it fails to engage properly or at all with a significant cohort of those who are likely to be most affected by the Order.
2. In respect of the content, the proposals:
  - (a) are insufficiently justified and, consequently, disproportionate;
  - (b) unreasonably and unfairly interfere with the rights of individuals (whether rough sleepers or not) to gather in groups in breach of Government guidance;
  - (c) unreasonably target the homeless and rough sleepers in breach of Government guidance.

36. In our submission based on this consultation it would not be possible for the Council to make a lawful decision to adopt a PSPO. Accordingly, we ask that the consultation be withdrawn and re-formulated. In order for consultees to respond properly we submit that the Council must as a minimum provide the following information.

1. What is the nature of the problem that the PSPO is designed to address?
2. What is the extent of the problem?
3. What impact does the alleged anti-social behaviour have on the various constituencies who will be affected by the making of an Order?
4. What are the predicted impacts of the Order including equalities impact, human rights impact and impact on rough sleepers?
5. How is the Order to be applied?
6. How effective is it anticipated to be?
7. Who would be responsible for enforcing the Order?
8. What would the cost of implementation be?
9. Out of which budget would this money come?
10. What savings would have to be made as a result?

11. What services, if any, would consequently have to be cut?
12. What alternatives have been considered and why have they been disregarded?
13. What would the costs of these alternatives be by comparison with a PSPO?
14. Why a PSPO was considered preferable to the alternatives?
15. What information has been gathered in support of the proposal?
16. Who has contributed to the formulation of the proposal?
17. What work has been carried out by the Council's partners, what evidence has been gathered from residents, businesses and professionals and what does it reveal?

Community Law Partnership

01 May 2019