

LIBERTY

Community Safety
Hastings Borough Council,
Muriel Matters House, Breeds Place
Hastings, East Sussex
TN34 3UY

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LAWYERS

HEAD OF LEGAL CASEWORK
Emma Norton, Solicitor

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

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BY EMAIL TO consultation@hastings.gov.uk

Dear Madam / Sir

The Public Spaces Protection Order (No 2) Hastings Borough Council 2017

I write in relation to the proposed extension of the above-referenced Public Spaces Protection Order ('the PSPO'), as set out on your website.

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. 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 extending the PSPO. Hastings Borough 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. 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 impact of extending the PSPO? If so, it should have been published in the call for consultation.

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. 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

- ***Prohibitions D and E – sleeping or camping in vehicles or designated structures within 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*.”¹

¹ 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>.

People sleeping in tents or vehicles because they are homeless are likely to have no other choice, aside from sleeping rough in the street; their behaviour therefore is not within their control. By criminalising their behaviour, the council is forcing them to choose between being penalised for sleeping in a tent or vehicle, and sleeping rough with no protection, putting them at risk of experiencing attacks and abuse. According to research from Crisis, *“people sleeping on the street are almost 17 times more likely to have been victims of violence, and 15 times more likely to have suffered verbal abuse in the past year, compared with the general public. This includes being hit or kicked, or urinated on.”*²

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 (which is likely to under-estimate the actual scale of the problem), the number of rough sleepers in Hastings has steadily increased in recent years to about 10 times the number recorded in 2010, putting Hastings at 8th highest by the number of rough sleepers per capita, out of all local authorities in England. Hastings also has the 4th highest percentage of statutory homelessness in England.³ 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 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.⁴ 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.⁵ 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*

² <https://www.theguardian.com/commentisfree/2019/mar/11/homeless-people-rough-sleepers>

³ 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>

⁴ *Gillan and Quinton v UK* (Application no. 4158/05), ECtHR.

⁵ 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.

frequently contribute to repeat homelessness."⁶ 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.

4. Begging

- ***Prohibition C – ‘Aggressive Begging’***

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 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.*"⁷

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.*"⁸

Your consultation documents purport to clarify the begging provisions in the renewed PSPO by restricting the prohibition to only "aggressive begging" and not "passive begging" because the previous PSPO as worded is "a little ambiguous on this". However the new PSPO defines "Aggressive Begging" so widely as to make the term "aggressive" meaningless. The definition includes, for instance, "loitering...in

⁶ See [Rough Sleeping Strategy](#), August 2018, p 44 [para 124.].

⁷ 'Southampton begging fines removed by council', BBC News, 16 April 2019.

⁸ Statutory guidance, p 49.

close proximity to a cash machine"; and "using verbal requests for money" (with no mention of any requirement that such requests should involve aggressive or anti-social behaviour as such).

We note that, according to the Index of Multiple Deprivation 2015, Hastings is the 13th most deprived area in England (having deteriorated from being 20th most deprived in 2010),⁹ and 8th most deprived on the 'Employment Deprivation' measure, out of 326 local authorities.¹⁰ 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 behaviour.

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

⁹'The English Indices of Deprivation 2015', Statistical Release, p 14. See the data and statistical release at <https://www.gov.uk/government/statistics/english-indices-of-deprivation-2015>. See also map at <http://dclgapps.communities.gov.uk/imd/idmap.html>.

¹⁰ IMO 2015, Statistical Release, p 22.