

Report to: Cabinet

Date of Meeting: 6th June 2022

Report Title: Reviewing the Anti-Social Behaviour Public Space Protection Order

Report By: Customer Services, Communications and Emergency Planning Manager

Purpose of Report

To summarise consultation feedback on proposals to update the Anti-social Behaviour Public Spaces Protection Order (ASB PSPO).

Agree any changes to the draft ASB PSPO.

Seek approval for the Chief Legal Officer to update and extend the Order in accordance with regulations published by the Secretary of State.

Recommendation(s)

- 1) Agree the proposed extension of the reviewed ASB PSPO, and authorise the Chief Legal Officer to update and extend the Order by 3 years on 9th July 2022, in accordance with regulations published by the Secretary of State.**

- 2) Authorise the Chief Legal Officer to correct any minor drafting errors that may be identified, and make minor amendments including deletions and insertions that may be necessary to ensure the ASB PSPO is accurate.**

Reasons for Recommendations

PSPOs are made under the Anti-social Behaviour, Crime and Policing Act 2014, and are valid for up to 3 years. They enable local authorities and the police to address serious anti-social behaviour in specified public places. PSPOs can be varied and extended in response to changes in patterns of ASB. The existing ASB PSPO originally came into force on 12th June 2017, was fully reviewed in Spring 2019, and then varied and extended by cabinet on 9th July 2019. It now needs to be reviewed and potentially varied and extended again before it expires in July this year.

Background

1. The original ASB PSPO came into force on 12th June 2017 following a public consultation process that was reported to the council's cabinet in May 2017. It introduced prohibitions on specified types of anti-social behaviour in defined public spaces in Hastings. For example prohibiting the consumption of alcohol in some outdoor public spaces, as a measure to try and address ASB typically associated with the street community.
2. PSPOs must be reviewed and consulted on at least every 3 years, in order to establish whether or not there is a continuing need for them, and whether they need to be varied and/or extended. The current ASB PSPO was comprehensively reviewed and consulted on in 2019, before cabinet met on 8th July 2019 and agreed for it to be varied and extended for another 3 years.
3. At that meeting in July 2019, cabinet considered feedback from the consultation, as well as the latest Government guidance, and decided:-
 - It was no longer appropriate for the ASB PSPO to have any provisions prohibiting unauthorised 'camping', as this was contrary to the latest guidance, and the council had alternative enforcement tools for addressing this issue.
 - The alcohol ban areas were extended to take account of displacement, such as in relation to the Queens Road bus shelters and also Wellington Square.
 - The general prohibition on ASB, such as recklessly screaming and shouting or acting in a way likely to cause nuisance or annoyance or alarm or distress or harassment, was extended to apply borough wide.
 - The definition of aggressive begging was clarified, so it included reference to begging in a way that people might find intimidating and/or menacing. This was important as the council wanted to make it clear that it didn't want to criminalise begging per se.

Is There a Continuing Need for the ASB PSPO?

4. Since July 2019, the council's Warden Service have taken a lot of enforcement action in relation to ASB associated with the street community. Principally relating to the prohibition on the consumption of alcohol in areas like the town centre, and aggressive begging offences. This has resulted in multiple warning letters and notices to offenders, and then also to action in the Magistrates Court. There have been a large number of successful prosecutions for non-compliance with the ASB PSPO, and also successful applications for Criminal Behaviour Orders, which are a form of injunction.
5. A summary of the enforcement action taken by the Wardens is attached at appendix A.

6. This clearly demonstrates that there continues to be an ongoing problem with anti-social behaviour in the borough, largely associated with the consumption of alcohol in areas such as the town centre, but also with aggressive begging.
7. It is worth noting that in accordance with our enforcement policies and protocols, the wardens take a graduated approach to enforcement. Following face to face engagement, Community Protection Warning Letters are served on offenders. Then if they continue to offend, Community Protection Notices are served on them. Only if this isn't a sufficient deterrent and they continue to offend, does the Council instigate further action against them in the Magistrates Court.
8. To achieve a successful prosecution relating to breach of a Community Protection Notice the Magistrate must be content that the behaviour has a:
 - Detrimental effect on the quality of life of those in the locality;
 - Be of a persistent and continuing nature; and
 - Be unreasonable.
9. Applying for a Criminal Behaviour Order is treated as a last resort, because the order is intended for tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court. As a result, before we apply to the Magistrates Court for a Criminal Behaviour Order, we will generally have already successfully prosecuted that offender twice for non-compliance with the terms of a Community Protection Warning Notice.
10. Although this enforcement action has had a positive impact on the behaviour of some offenders, and reduced the scale of the issues in some areas, there remain significant challenges with ASB throughout the borough. Especially in the town centre areas of St Leonards and Hastings. It is common for improvements to be relatively short lived, as the ASB is often displaced to new locations, before returning to the original hotspots.
11. To a lesser extent, Sussex Police have also taken enforcement action to help address ASB associated with the street community. The Council's Warden Service continues to liaise closely with them, and to share intelligence on ASB issues across the borough.
12. Unfortunately, as outlined above, despite all of this extremely difficult and time-consuming work, the need for more enforcement action remains, and officers are satisfied that there is an ongoing justifiable need to retain the ASB PSPO.

The Process for Reviewing and Potentially Updating the ASB PSPO

13. Officers don't currently think that the scope of the existing ASB PSPO needs to be significantly updated, and that we simply need to extend it for a further 3 years from when it is due to expire in July 2022 to July 2025.
14. The Council has to follow a statutory consultation process to extend the ASB PSPO, seeking views on the proposals from statutory consultees such as Sussex Police, as well as the general public. The process is set out in statutory guidance,

which has been carefully followed. The Community Safety Manager co-ordinated the consultation, which ended on 2nd March.

15. The Community Safety Manager is the Council's main point of contact on community safety issues, and receives complaints about ASB made by residents, businesses and visitors to the town. He also chairs the local Joint Action Group. This is a multi-agency group that regularly meets to discuss ASB hotspots and ways to address them. He also works with other local groups and partners such as East Sussex County Council (ESCC), in relation to the development and provision of outreach services for people such as the street community. To provide support in relation to alcohol and substance abuse and mental health issues.

Feedback on the proposal to retain and extend the ASB PSPO

16. When the Council first proposed the ASB PSPO in 2017, and again when we consulted on proposals to amend and extend it in 2019, we received a lot of feedback from a wide range of interested parties. However, on this occasion there has been very little feedback. This is because the ASB PSPO is now far better understood by partner agencies, and those directly affected by it, such as residents, traders and offenders. It is also worth noting that unlike some other local authorities with PSPOs, in 2019 we decided not to proceed with some prohibitions that potentially criminalised rough sleepers. We also amended the prohibition relating to begging, to ensure that it only related to 'aggressive begging'. For these reasons, the ASB PSPO proposals are not considered to be contentious, and this is likely to be why we received so little feedback.
17. We received a total of 13 responses to our consultation. One from the local Inspector from Sussex Police. Another from the Head of Safer Communities at East Sussex County Council. Plus 9 from people who appear to be either residents or traders of Hastings. One from a resident of Bexhill. As well as a comprehensive response from the human rights organisation Liberty.

Feedback from the Police

18. The Police support the council's proposals.
19. They also suggested that this might be an opportunity to consider introducing measures within the ASB PSPO to restrict access to the town centre by delivery drivers. However, there is already an enforcement framework for addressing the issue using highways legislation, which is enforced by East Sussex County Council's on-street parking enforcement contractor (NSL Services).
20. The issues with the delivery drivers started to develop a few years before COVID. With takeaway delivery drivers illegally accessing the pedestrianised zone on scooters and in small cars, and potentially causing safety issues for pedestrians. There have also been serious problems with unauthorised access to the pedestrianised area due to maintenance issues with the rising bollards outside the old town hall. The bollards should limit access to the town centre pedestrianised area, between 10am and 4pm but they are now almost obsolete, and spares for repairs are extremely difficult to source. These issues became far worse during the COVID lockdowns of 2020 and 2021.

21. Although ESCC is the enforcement authority for these traffic management issues, Hastings Borough Council has led on discussions about them with ESCC Highways and the Police. As a result, in March 2022 it was agreed that the Borough Council would establish a multi-agency working group to develop and implement solutions to these problems. ESCC Highways and the local Police have representatives on this working group. There is also a general rule that if there are existing national enforcement powers to tackle an issue, local authorities shouldn't 'duplicate' them in local 'byelaws'. On this basis, it would currently be inappropriate to use the ASB PSPO to try and resolve these issues.

Feedback from East Sussex County Council

22. East Sussex County Council agrees that the ASB PSPO in Hastings should be renewed under the same terms, as one tool in a co-ordinated response to tackling anti-social behaviour in our town centres. Although they would welcome the addition of an explicit expectation that the issuing of any sanction or enforcement action is complemented by active signposting/ referral into drug and alcohol treatment and recovery services. In fact, the Council's Warden Service already does this, as we agree that the key to a more sustainable approach to reducing ASB is to work closely with colleagues in support services to tackle the root causes. Such as alcohol and drug abuse that so often manifest as ASB in our public spaces. We are grateful to our colleagues at ESCC (and the services they commission in the borough), for their ongoing support on these issues, and look forward to working ever more closely with them.
23. As part of this response, ESCC Public Health also agreed in principle that HBC should retain/extend the current order. It will help to support delivery of the multi-agency East Sussex Alcohol Harm Reduction Strategy 2021-2026, and more specifically priority 4 which is 'Creating a Safer Environment in East Sussex'. Measures include using and supporting regulatory powers to stop/suppress access to alcohol increasing, and would therefore want this to continue. Hastings Borough Council were a key stakeholder in the development of the Strategy.

Feedback from Liberty

24. Liberty is concerned about the impact of PSPOs, particularly the potential misuse of PSPOs, especially where they punish poverty-related behaviours such as begging. They state they have persuaded some authorities not to pursue proposed PSPOs. However, this Council's position is that the PSPO does not criminalise begging save for in specific circumstances where begging is 'aggressive' in which case it meets the conditions set out in Section 59 of the Act, namely:

Condition 1: that 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 they are likely to have such an effect.

Condition 2: the effect of the activities is or is likely to be of a persistent or continuing nature, unreasonable and justifies the restrictions imposed.

25. Given the freedom available to authorities in the drafting of PSPOs and the differing requirements of authorities across the country, the actions of other authorities are not a relevant consideration.

26. Liberty state there is a lack of evidence to support the extension of the duration of the PSPO under section 60 of the Act. However, the Council's position is that there is sufficient evidence, as summarised earlier in this report.
27. Liberty also highlight that an Equality Impact Assessment does not appear to have been carried out. However, in 2017 when the Council first considered introducing the ASB PSPO it carried out equalities impact screening. This identified that enforcement of the ASB PSPO would involve work with vulnerable people such as the street community. But it also concluded that there would be no discrimination against any group with protected characteristics. In fact, the multi-agency approach to addressing issues associated with the street community should result in greater access to support services. So there is no requirement to carry out a full Equalities Impact Assessment.
28. They also comment that the presence of people living in the streets, who may be begging, is a symptom of poverty and of the detrimental impact of economic inequality, not the cause. The Council should liaise with local community partners to address causes of homelessness, not renew a PSPO that targets and criminalises those living in the streets. The first part of this point is irrelevant to the PSPO which seeks to control anti-social behaviour in the Borough. It does not in any way state or suggest begging is a cause of poverty or economic inequality. As to the second part, the Council does work with local community partners to address causes of homelessness. However, it also has to regulate anti-social behaviour in the Borough. The PSPO is the power Government has provided for the Council to do this. As for their 3rd point, the PSPO does not target and criminalise those living in the streets.
29. Liberty suggest the PSPO is a potential interference with Articles 8 (respect for private and family life) and 10 (right to freedom of expression) of the European Convention of Human Rights. These are both qualified human rights which can be interfered with by the Council if the Council can justify their actions.
30. Liberty has concerns relating to paragraph 3 of the PSPO which is the general anti-social behaviour prohibition. They suggest it may be used as an unlawful dispersal power akin to section 35 of the Act which can only be used by the Police. This is incorrect. While section 35 provides a constable in uniform the power to direct a person to leave and not return to an area, enforcement powers relating to the PSPO do not provide Council officers the power to require a person leave an area.
31. They suggest that the provision has no objective and enforceable standard and the officer is provided disproportionate and needlessly broad discretion. While discretion is provided there is nothing to suggest this is disproportionate or needlessly broad. Some degree of discretion needs to be provided to the officer to avoid rigid application of the rules which could in turn lead to injustice.
32. They suggest there is disproportionate impact on those with hidden disabilities. This is unsubstantiated. It also fails to take into account the wording of the offences section which confirms an offence is only committed if the person breaches the requirement or prohibition "without reasonable excuse".
33. Liberty has concerns relating to paragraph 4 of the PSPO which relates to aggressive begging prohibition. They suggest there is no evidence to support the

prohibition. But this is clearly not the case, given the ongoing enforcement work carried out by the Wardens on this specific provision over the last 3 years.

34. They suggest that the wording is unclear and uses unduly wide language amounting to a blanket ban on begging. This is not the case as the activity has to meet certain conditions to be considered aggressive and therefore is distinct from begging generally. In fact, the Council clarified what it meant by 'aggressive begging' in the last review, for example in close proximity to cash machines. Therefore, the suggestion that the wording lacks precision is not accepted.
35. They suggest a ban on begging could have a harmful and disproportionate impact on the most vulnerable people in Hastings. This statement is based on the incorrect assessment of the PSPO being a ban on begging when the ban is on aggressive begging. They state blanket bans on begging are ineffective and unlawful. This again is based on the incorrect assumption the Council has a blanket ban on begging which it does not. They suggest this is interference with Articles 8 and 10 of the ECHR. This is discussed above. Again they make reference to a blanket ban which is incorrect and therefore the caselaw referenced is irrelevant.
36. Liberty concludes by stating that the renewal of the PSPO is unreasonable and potentially unlawful. This is disputed for the reasons set out above. Liberty states the PSPO disproportionately interferes with people's basic rights including the right to inherent human dignity. The Council's position is that, for the reasons set out above, we consider it to be proportionate. Liberty state the PSPO adds nothing to the fight to alleviate poverty. However, this is not the purpose of the PSPO. The PSPO is to regulate the behaviour of persons in the town where it meets the conditions in Section 59 of the Act.

Feedback from residents/traders

37. A recurring theme was a call for more effective enforcement of the ASB PSPO by the Police. Recognising the difficulty faced by the Police, one respondent also made the point that the Police should be properly resourced to enforce the PSPO.
38. Some respondents focussed on issues that are not covered by the ASB PSPO, for example drunken behaviour late at night in the vicinity of particular town centre licensed premises. Whilst not directly relevant to this consultation, it is easy to understand why they have been raised in this context, and the information has been fed back to our Licensing Team.

Proposed amendments to the Anti-Social Behaviour PSPO proposals arising from the consultation feedback

39. Having carefully reviewed the feedback received via the statutory consultation process, officers can see no reason to amend the draft reviewed ASB PSPO that was consulted on. It is attached at Appendix B.

Process for implementing the updated ASB PSPO

40. This report seeks authorisation for the Chief Legal Officer to vary and extend the existing Order in accordance with regulations published by the Secretary of State.

41. Any challenge to the PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an Order is varied by a Council.
42. Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the Council did not have power to make the Order, or to include particular prohibitions or requirements, perhaps because there was insufficient evidence of a particular problem. In addition, the interested person could argue that one of the requirements (for instance consultation) had not been complied with. When the application is made, the High Court can decide to suspend the operation of the PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.
43. The maximum duration of a PSPO is 3 years. At any point before the expiry, the Council can extend a PSPO by up to 3 years if they consider that it is necessary to prevent the original behaviour from occurring and recurring. However, they should first consult with the local police and any other community representatives they think appropriate. If a new issue arises in an area where a PSPO is in force, the Council can vary the terms at any time. This is the process that has been followed in relation to these proposals.

Enforcement of the ASB PSPO

44. Enforcement of the ASB PSPO will continue to be a partnership between the Council and the Police. The council's warden service achieved Community Safety Scheme Accreditation from the Chief Constable in January 2018. This means they can be authorised to use additional powers normally only available to the Police. For example requiring the surrender of alcohol, and requiring a person suspected of committing an offence to provide their name and address.
45. Since the introduction of the original PSPO in 2017 the warden service has updated their operating procedures and now uses body worn video to help evidence their interaction with potential offenders, and safeguard their health and safety.
46. The Wardens should be thanked for their hard work and professionalism over the last 5 years of enforcing the ASB PSPO. This is very difficult and challenging work, and only part of their wide range of core duties.
47. Given the nature of some of the offending behaviour the wardens will continue to require police support.

Policy Implications

Financial Implications

48. Subject to cabinet agreeing these proposals, essentially making no substantive changes to the PSPO, there will be no significant financial implications, and any costs will be met from within existing community safety budgets.

Local people's Views

49. The consultation process has given the opportunity for local people to express their views on the proposals.

Crime and Fear of Crime/Environmental Issues

50. The ongoing enforcement of the ASB PSPO should have a positive impact on crime and fear of crime. However, the degree of success will to some extent be dependent upon the council's ability to recruit and retain a full complement of wardens, and the continued support of the police. As well as decisions made in the Courts when the council seeks to prosecute offenders, and/or applies for Criminal Behaviour Orders for persistent offenders.

Environmental Issues

51. Enforcement of the updated ASB PSPO should have a positive impact on the local environment as enviro-crime is often associated with the sort of ASB that the PSPO prohibits.

Equalities and Community Cohesiveness

52. From an equalities and community cohesiveness perspective, ASB issues associated with the wider street community have continued to generate a lot of complaints and probably undermined community cohesiveness. It is hoped that if the ASB PSPO is extended, community cohesiveness will improve, and enforcement linked with assertive outreach support will help vulnerable members of the street community to address their health and wellbeing issues, and improve their quality of life.
53. In 2017 when the Council first considered introducing the ASB PSPO it carried out equalities impact screening. This identified that enforcement of the ASB PSPO would involve work with vulnerable people such as the street community. However, it concluded that there would be no discrimination against any group with protected characteristics. In fact, the local multi-agency approach to addressing issues associated with the street community should result in greater access to support services. So there is no requirement to carry out a full Equalities Impact Assessment.

Organisational Consequences

54. There will be significant continuing demands on our Legal Services providing ongoing advice and support to our enforcement officers, for example when enforcement action is required in the local Magistrates Court.

Human Rights Act

55. The submission from Liberty raised potential Human Rights Act concerns. The Council's position on this is set out in the section of the report that reviews the consultation feedback. We don't believe that their concerns are warranted. Legal Services have worked closely with colleagues in Community Safety, and advised on the legal implications raised by Liberty, as well as the overall process of reviewing and extending the ASB PSPO.

Timetable of Next Steps

Action	Key milestone	Due date (provisional)	Responsible
Cabinet approves proposals to vary and/or extend the ASB PSPO	Cabinet meeting in Spring 2022 Chief Legal Officer varies and/or extends the ASB PSPO	June 6 th 2022 June 2022	Community Safety Manager Chief Legal Officer

Wards Affected

All Wards

Policy Implications

Relevant project tools applied? Yes

Have you checked this report for plain English and readability? Yes

Climate change implications considered? Yes.

This report doesn't propose any new measures relevant to climate change.

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	Yes
Risk Management	No
Environmental Issues	Yes
Economic/Financial Implications	Yes
Human Rights Act	Yes
Organisational Consequences	Yes
Local People's Views	Yes
Anti-Poverty	No

Additional Information

Appendices

Appendix A - Summary of enforcement action related to the ASB PSPO

Appendix B – Draft Reviewed ASB PSPO

Officer to Contact

Report Template v29.0



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