

LIBERTY

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

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14 December 2021

Dear Dorset Council

Public Spaces Protection Order Consultation - Dorset Council

We write in relation to Dorset Council's ('**the Council**') Consultation ('**the Consultation**') regarding the proposal of eight Public Spaces Protection Orders ('**PSPOs**').

We note that in seven of the eight PSPOs the Council proposes to include prohibitions categorised as what it alleges to be 'anti-social behaviour'. These prohibitions are unreasonable; they target vulnerable individuals and unduly restrict civil liberties. We are also concerned with the prohibition against tents and other temporary structures contained in the draft Dorset Beaches Anti-social Behaviour Related PSPO 2022. For the reasons set out below, we ask that the Council drops its proposals to introduce these provisions.

Our letter is based on information regarding the Consultation as set out on the Council's website,¹ as well as the draft PSPOs themselves.²

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 and unduly restrict civil

¹ <https://www.dorsetcouncil.gov.uk/public-space-protection-orders-pspos-consultation>, accessed 14 December 2021.

² Accessed via <https://www.dorsetcouncil.gov.uk/public-space-protection-orders-pspos-consultation> on 14 December 2021.

liberties. For the reasons set out below, we are against the proposed PSPOs in Dorset.

2. Evidence

We are disappointed with the lack of evidence that has been published on the Council's website to support the introduction of the PSPOs and, in particular, the provisions that criminalise behaviours associated with poverty, inhibit the right to protest and risk targeting the Gypsy, Roma and Traveller community.

The Council is required by s. 60 of the Anti-social Behaviour, Crime and Policing Act 2014 (the '**Act**') to be satisfied on reasonable grounds that each PSPO is necessary to prevent the occurrence or recurrence of the activities specified in the PSPO or to prevent an increase in the frequency or seriousness of those activities.

The Council cannot reasonably be satisfied of these conditions without first considering robust evidence on the situation in the area which will be covered by the proposed PSPOs. Given how extensive the provisions of the PSPOs are, the Council's failure is particularly concerning.

If the Council goes ahead with making these PSPOs without sufficient evidence, they will be unlawful and vulnerable to challenge in the High Court.

Furthermore, it is very concerning that the Council has not undertaken Equality Impact Assessments ('**EIAs**')³ to consider the disproportionate effect that these PSPOs are likely to have on disabled people in the area.

The adverse impact of trauma on people's physical⁴ and mental health is well understood and recognised.⁵ There are well-established links between homelessness, trauma⁶ and disability.⁷ There is therefore a risk that these PSPOs will unlawfully discriminate against disabled people, including those living with mental health conditions.⁸ Those who are living on the streets and living with trauma and/or mental health problems are precisely those who are the most vulnerable; they should not be targeted and risk having their rights infringed in this way.

The Council should conduct EIAs before considering introducing the PSPOs. If you contend that you have carried out EIAs addressing the concerns above, we request copies of them.

3. General concerns

The presence of people living on the streets is a symptom of poverty and of the detrimental impact of economic inequality and other factors, not the cause. The Council should liaise with local community partners to address the causes of homelessness;

³ <https://www.dorsetcouncil.gov.uk/your-council/equality-and-diversity/equality-impact-assessments/equality-impact-assessments-eqias>, accessed 14 December 2021.

⁴ [About the CDC-Kaiser ACE Study |Violence Prevention|Injury Center|CDC](https://www.cdc.gov/violenceprevention/InjuryCenter/about-the-cdc-kaiser-ace-study), accessed 14 December 2021.

⁵ <https://www.mind.org.uk/information-support/types-of-mental-health-problems/trauma/effects-of-trauma/>, accessed 14 December 2021.

⁶ https://www.feantsa.org/download/feantsa_traumaandhomelessness03073471219052946810738.pdf, accessed 14 December 2021.

⁷ Fitzpatrick, S., Bramley, G. and Johnsen, S. (2013) 'Pathways into multiple exclusion homelessness in seven UK cities', *Urban Studies* 50(1), page 158.

⁸ This is also recognised in the 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' See- [Rough Sleeping Strategy August 2018 – Ministry of Housing, Communities and Local Government](#), page 44, accessed 14 December 2021.

not introduce PSPOs which impose criminal sanctions and move the problem to neighbouring areas.

The PSPO provisions that we have identified below constitute a potential interference with Articles 8, 10 and 11 of the European Convention on Human Rights ('**the Convention**'). The Council is bound by s. 6 of the Human Rights Act 1998, under which it must not act in any way which is incompatible with any rights contained in the Convention.

4. Anti-social behaviour

No person without a reasonable excuse shall act in an anti-social or disorderly manner that causes or is likely to cause nuisance, harassment, alarm or distress to any other person.

The Statutory Guidance states that '*councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others' quality of life*'.⁹ The wording of the proposed PSPO provisions is too vague to have the effect of targeting a '*specific behaviour or activity*'. No examples are given as to what conduct could be deemed to cause nuisance, harassment, alarm or distress, which leaves residents and visitors at risk of being inadvertently criminalised.

There is also a real risk that this provision will have a disproportionate impact on those with 'hidden' disabilities, whose behaviour may cause alarm or distress to others but for entirely excusable reasons. As outlined above, failure to consider this disproportionate impact would breach your duties under the Equality Act 2010.

The current wording of this provision is therefore open to arbitrary enforcement, confers needlessly broad and disproportionate discretion to officers, and is likely to be in breach of Articles 8 and 10 of the Convention on that basis.

No person shall refuse to leave any [retail, commercial or licensed premises, public building or other area] / [beachfront area] within "the Controlled Zone" when requested to do so by management, staff or security, a Police Constable or an Authorised Person.

It is unclear for what reason management, staff or security would ask someone to leave the premises. If there is a concern about a particular behaviour that is genuinely anti-social, this should be spelled out in the PSPO, as stated above.

We are concerned that this provision is likely to be used as an unlawful dispersal power, without the safeguards provided for under s. 34 and 35 of the Act, for example, no authorisation by a police officer of at least the rank of inspector would be required nor would it be limited to a period of 48 hours.¹⁰ This vague provision with no safeguards would be ripe to misuse and abuse.

⁹ From enforcement to ending homelessness: guides (crisis.org.uk) page 64, accessed 14 December 2021 here: <https://www.crisis.org.uk/ending-homelessness/resources-for-practitioners/housing-centre-guides/from-enforcement-to-ending-homelessness-guides/>.

¹⁰ Section 34 (1) Anti-social Behaviour, Crime and Policing Act 2014.

5. Camping

No person shall erect a tent, gazebo, marquee or other temporary structure that is designed or intended to provide shelter or accommodation within “the Controlled Zone” without the express prior written permission of the landowner.

We are concerned that this provision, contained in the proposed Dorset Beaches PSPO,¹¹ is likely to target those who are homeless or sleeping on the streets, as well as engage the right to peaceful protest. Depending on the scope of the prohibition (which is unclear), it may also infringe the rights of Gypsies and Travellers. We consider each of these affected groups separately below.

a. Those who are homeless / sleeping on the streets

The prohibition on the erection of tents and similar temporary structures targets those who are homeless, who may reasonably erect such structures to protect themselves from the elements.

Under s. 59 of the Act, the Council is required to be satisfied on reasonable grounds that the conditions to implement a PSPO are met. The Statutory Guidance emphasises that the prohibited behaviour itself must be unreasonable. It states that ‘*PSPOs should only be used to address any specific behaviour which is within the control of the person concerned*’; they ‘*should not be used to target people based solely on the fact that someone is homeless or rough sleeping*’¹² (emphasis added).

The presence of those sleeping on the streets is a *symptom* of poverty and of the detrimental impact of economic inequality and other factors, not the cause. However, 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. It does not give council officers, police officers or Magistrates any other additional powers, such as powers to require engagement with substance misuse services. The PSPO will therefore do nothing to deal with the root causes of such problems.

These provisions also constitute a potential interference with Article 8 of the Convention. As set out above, the Council is bound by s. 6 of the Human Rights Act 1998 not to act in any way which is incompatible with any Convention rights. 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. Therefore, there is a clear risk that a prohibition on the erection of tents would breach the Article 8 rights of homeless people in Dorset.

There is also a risk that this provision would unlawfully discriminate against disabled people. We repeat our request that the Council carries out an EIA to address this risk. Failure to do so is likely to amount to a breach of the Equality Act 2010 and thus to render the PSPO unlawful.

b. Right to protest

This prohibition is also likely to engage the right to peaceful protest, enshrined by

¹¹ <https://www.dorsetcouncil.gov.uk/documents/35024/1742804/7+The+Dorset+Beaches+Anti-social+Behaviour+Related+Public+Spaces+Protection+Order+2022+%28Draft%29.pdf/2b75f6b2-a1d4-9a7a-d127-648bece7ad1f>, accessed 14 December 2021.

¹² Home Office, ‘Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers’, Statutory guidance for frontline professionals, page 52. Accessed on 14 December 2021 at: <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>.

Article 11 of the Convention. This right is essential to a functioning democracy and the proposed prohibition on erecting temporary structures risks undermining it. For example, people seeking to reside on land for the purposes of protest, as anti-fracking and anti-roads campaigners have done, are likely to be considered as falling within the scope of the prohibition.

The fact that the PSPO may not anticipate on its face that the powers it proposes could be used against legitimate forms of protest does not mean that they would not be in practice. Existing legislation has been used against peaceful protest despite not being originally intended for that purpose.¹³ The risk that these measures, once implemented, would be used against peaceful protesters highlights their potential chilling effect and disproportionality which could amount to a breach of Article 11 of the Convention.

c. Gypsies and Travellers

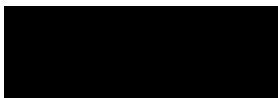
It is unclear whether this prohibition extends to the occupation of vehicles or caravans. If so, this would be particularly concerning, since Gypsies and Travellers would be put at a particular disadvantage compared to other groups because of their traditional way of life, which can involve residing in vehicles and caravans.

Racial discrimination is a particularly invidious kind of discrimination and local authorities should be using all available means to combat it.¹⁴ We request that if the Council does proceed with introducing this prohibition (which we would not support), it amends the drafting of this provision so that it explicitly excludes the occupation of vehicles or caravans. Without this carve out, the prohibition may breach Article 8 of the Convention by failing to respect the traditional and nomadic way of life practised by Gypsies and Travellers and failing to uphold the Government's positive obligation to facilitate that way of life.¹⁵ If the prohibition extends to occupations of vehicles or caravans, it will also be indirect discriminatory, contrary to Article 14 of the Convention.

6. Conclusion

The proposed PSPOs in Dorset are not only potentially unlawful and unreasonable; they also constitute a disproportionate interference with basic rights, including people's right to inherent human dignity. We urge you to think again.

Yours faithfully



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¹³ For example, the Protection from Harassment Act 1997, the Terrorism Act 2000 and the Serious Organised Crime and Police Act 2005.

¹⁴ *DH v Czech Republic* App No. 57325/00; (2008) EHRR 3 [176].

¹⁵ *Chapman v UK* (2001) EHRR 399 [96].