

Newport City Council
Civic Centre
Godfrey Road
Newport
South Wales
NP20 4UR

Liberty House
26-30 Strutton Ground
London SW1P 2HR

TELEPHONE 020 7403 3888
FACSIMILE 020 7799 5306

DIRECTOR
Martha Spurrier

LEGAL OFFICERS
Emma Norton, Solicitor
Rosie Brighthouse, Solicitor
Debaleena Dasgupta, Solicitor
Lara ten Caten, Solicitor

14 February 2018

Dear Sir/Madam

Newport City Centre PSPO

We write in response to Newport City Council's (the **Council's**) invitation to take part in the consultation on the Newport City Centre PSPO, which was introduced in November 2015 and which is currently under review (the **PSPO**).

Since their inception, Liberty has been concerned by PSPOs that are too widely drawn, vague, and that disproportionately impact the most vulnerable – in particular, the homeless – and has been campaigning on the issue for some time. Encouragingly, a number of local authorities have responded to concerns regarding such proposals by choosing to amend or withdraw them altogether.

In particular, we write in respect of the changes being considered to the PSPO. Currently, the PSPO restricts begging in a manner which is aggressive or intimidating, or which harasses members of the public. We are concerned by the alternative to this that is being considered as part of the review – namely, that *all* begging in the city centre should be banned (the **Alternative**).

It is clear from recent press reports that the Council is concerned that the current restriction is unclear and difficult to enforce. Leader of the city's Conservative group, Councillor Matthew Evans, has said that he is in favour of the Alternative, as he believes that it would allow police to use their discretion and would not constitute a blanket ban on begging.¹ However, it simply makes no sense to suggest that the Alternative, which clearly amounts to a blanket ban on begging by encompassing all begging, contains any (or sufficient) scope for discretion. It is therefore not only cruel to introduce the Alternative in response to the Council's concern but also incredibly unfair: if someone begs for money, that is not harassment or antisocial behaviour; that is a plea for basic compassion.

1

[http://www.southwalesargus.co.uk/news/15808681.Opinion divided on proposed Newport city centre begging ban/](http://www.southwalesargus.co.uk/news/15808681.Opinion%20divided%20on%20proposed%20Newport%20city%20centre%20begging%20ban/)

Further, imposing a blanket ban on begging is unlawful. Section 59 of the Anti-social, Behaviour, Crime and Policing Act 2014 provides, *inter alia*, that PSPOs can be put in place to prevent activities that have had or are likely to have a detrimental effect on the quality of life of those in the locality. Sitting on the street with a container does not amount to anti-social behavior: it amounts to poverty and having no other means of supporting oneself. Further, a blanket ban of begging is likely to disproportionately affect those who are homeless and do not have other means of supporting themselves.

The government's statutory guidance issued on 17 December 2017 clearly advises against such targetting:

"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.

*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."*²

In addition, a PSPO must be proportionate to be lawful. The blanket ban created by the Alternative is, by contrast, disproportionate as it targets vulnerable members of society with financial penalties that they cannot afford. There is no evidence that the Council has considered whether this blanket ban is the least intrusive way of achieving its aims.

The Alternative also constitutes an interference with Articles 8 and 10 of 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. The measure interferes with these rights in two ways: firstly, begging is arguably an expression of poverty and disadvantage, and criminalising such conduct may undermine the right to freedom of expression under Article 10 of the Convention. Secondly, 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. Begging is a form of interaction with others and, in our view, its blanket and untargeted criminalisation falls within the scope of the right to respect for private life in Article 8.

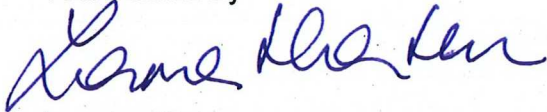
Further, banning begging is effectively trying to ban poverty and will be ineffective. As the statutory guidance suggests, *"introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere"*.³ Councils should therefore consider the knock-on effects of the decision to introduce the Alternative and ensure that it is a reasonable and proportionate response to incidents of anti-social behaviour in an area. If the Council would like to effectively address the issue of begging, it should consider engaging with national or local homeless charities, in particular when considering restrictions or requirements which may impact on homeless people.

² <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>, p51

³ <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>, p49

Finally, under the Act, the council may designate someone else (including a private company employee) to issue fixed penalty notices to anyone that they reasonably believe is in breach. Liberty is aware that many councils have chosen to enforcement powers for PSPOs private companies. We are very concerned by this practice as private companies would not have the same level of training or oversight as the police or council officers. In addition, if the contract allows them to keep the revenue or makes payment proportional to the number of fixed penalties issued there will be a huge financial incentive for the private enforcers to issue fixed penalty notices. We therefore consider that the Council should not pursue this method of enforcing any PSPO but in particular those who seek to criminalise poverty.

Yours sincerely



Lara ten Caten
Solicitor

0207 378 3658

laratc@liberty-human-rights.org.uk