

Liberty House  
26-30 Strutton Ground  
London SW1P 2HR

TELEPHONE 020 7403 3888  
FACSIMILE 020 7799 5306

DIRECTOR  
[REDACTED]

LEGAL DIRECTOR  
[REDACTED] b, Solicitor

LEGAL OFFICERS  
[REDACTED] b, Solicitor  
[REDACTED] b, Solicitor  
[REDACTED] b, Solicitor

Mr [REDACTED]  
Public Space Protection Order Consultation  
Community Protection Team  
Public Protection  
Shropshire Council  
Abbey Foregate  
Shrewsbury  
SY2 6ND

Also by email to [REDACTED]@shropshire.gov.uk and  
[community.protection@shropshire.gov.uk](mailto:community.protection@shropshire.gov.uk)

8 March 2017

Our ref: RB/FFT/11001-9-0/39

Dear [REDACTED]

## Public Space Protection Order

I write on behalf of Liberty to express concern regarding the proposed Public Space Protection Order for Shrewsbury (the 'PSPO'). I understand that Shropshire Council ('the Council') is currently consulting on the PSPO and that you are involved with the proposals as Cabinet Member for Planning, Housing, Regulatory Services and Environment. On behalf of Liberty, I urge the Council not to approve the PSPO as in its proposed form it represents a significant and unjustified threat to civil liberties and is not supported by sufficient evidence. It is also likely that certain measures will have a disproportionate impact on vulnerable people.

### 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 proceed with proposed PSPOs. We are particularly concerned about PSPOs that punish poverty-related issues, such as homelessness or rough sleeping, or include unlawful dispersal powers. Liberty is concerned about the Shrewsbury PSPO because it contains both of these types of provisions.

### 2. Dispersal power

Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act') provides the statutory basis for local authorities' power to make public space protection orders ('PSPOs'). s.59 (4) defines PSPOs to mean orders that prohibit or require certain behaviour within an identified public place. But councils should only impose what is reasonable to impose. It is clearly not reasonable to impose requirements that are sufficiently, and indeed more effectively, addressed by other existing powers.

Nothing in s.59 or the Home Office's Statutory Guidance provides that PSPOs can include dispersal powers. Instead, s.35 of the Act provides a dispersal power entirely separate from PSPOs which allows police officers to disperse people from an area if they are engaging in behaviour likely to cause harassment, alarm or distress or crime or disorder (and the police officer has been authorised to use such power pursuant to s.34). The Council is aware of this separate power as it refers to it in paragraph 5.18 of the Report for the Proposed Consultation of the PSPO (the 'PSPO Report')<sup>1</sup> and seeks to align the PSPO dispersal power with the s.35 power in terms of the length of time someone must stay away from an area, i.e. up to 48 hours. This is not reasonable and not the purpose for which the PSPOs provisions were enacted.

If enacted, the PSPO dispersal power would differ greatly from the s.35 power.

- *First*, it would not have the same safeguards that are built into s.35, most importantly the oversight by a senior officer each time it is proposed that dispersal powers are used. Instead, the PSPO provides an unfettered, unsupervised power to disperse people whenever an enforcement officer thinks they are likely to cause nuisance, no matter what the circumstances might be. This leaves the power open to abuse.
- *Second*, the PSPO power could be used by Council enforcement officers rather than being reserved for police officers as the s.35 dispersal power is. By introducing an alternative dispersal power under the PSPO, the Council appears to be circumventing the Act and usurping the position of Parliament. It is clear from the existence of s.35 that Parliament intended dispersal powers to be reserved for the police, rather than Council enforcement officers.

Neither the wording of s.59 nor s.63 (the power for an authorised officer to request a person surrender alcohol when that person is in breach of a PSPO) provides for dispersal powers. While under s.59(4)(b) a PSPO can require "*specified things to be done by persons carrying on specified activities in that area*", this does not cover the power to disperse people from the area if their behaviour is causing, or even just likely to cause, nuisance, harassment, alarm, distress or public disorder. This is because such behaviour cannot be described as a 'specified activity'. Quite simply, no activity has been specified; any number of activities could cause nuisance, alarm, harassment or distress (a test which is inherently vague and subjective). Requiring people leave an area on demand is not within the remit of PSPOs and enacting this measure would be ultra vires the Council's powers under the Act.

Furthermore, s.59 (5) requires any prohibitions or requirements under a PSPO be reasonable to impose in order to alleviate the effect of activities that are having a detrimental effect on the local area. Requiring people to disperse under a PSPO is not a reasonable measure as it is qualitatively different from s.59(4)(a) – (b); it does not mean an activity is banned or restricted in an area, it means a person is banned from an area. As indicated above, it is also not a reasonable measure because dispersal powers are dealt with separately in the Act; Parliament clearly intended dispersal powers to exist but chose to reserve them for the police under s.35 and not include them under PSPOs in s.59 of the Act.

Finally, as well as the dispersal power under s.35 of the Act, police already have powers under the Public Order Act 1986 to deal with behaviour that is likely to cause harassment, alarm or distress, and there is no reason why a PSPO dispersal power is needed in addition to both the s.35 power and the Public Order Act powers. The s.35 dispersal power, like the proposed PSPO dispersal power, allows police to ask people to leave an area without

---

<sup>1</sup> <https://shropshire.gov.uk/committee-services/documents/s13945/9%20Proposed%20Consultation%20on%20a%20Public%20Spaces%20Protection%20Order%20for%20Shrewsbury%20Town%20Centre.pdf>

criminalising them unless they breach the order to stay away. As this existing power allows the police the "flexibility and... degree of discretion" that the Council argues for in the PSPO Report it seems an additional power would be unnecessary to achieve the Council's aims.

### 3. Provision against leaving belongings in a public space

We appreciate that the Council states that it has put thought into the way in which the PSPO is drafted. Paragraph 3.9 of the PSPO Report states that:

*The wording of the PSPO has been specifically drafted in a way to avoid any allegation that the Council is targeting any specific group or type of individuals and particularly does not prohibit begging or rough sleeping. It is recognised that these individuals are vulnerable with complex needs and it is inappropriate to prohibit these activities where the infrastructure and support is not sufficiently available to prevent individuals resorting to these measures.*

However, we are concerned that this is an empty reassurance made for PR purposes and, based on the documents accompanying the PSPO proposals, it is obvious that the Council does in fact intend to use the provision to target vulnerable rough sleepers.

We note that in the Equality and Social Inclusion Impact Assessment (the 'ESIIA')<sup>2</sup> and Appendix E to the PSPO Report (which details supporting data for the measures) the Council has presented data to support each proposed PSPO measure. On page 6 of the ESIIA, there is data with regard to the "Belongings and possessions" measure and this specifically refers to instances of "Belongings left by Rough Sleepers" and page 4 of Appendix E states explicitly that the "Partner/Business requirements" are for "No littering – rough sleepers. Rough sleepers not to leave belongings. Leaving drug paraphernalia and taking drugs."

PC Evans' statement at Appendix G appears to be designed entirely to justify the targeting of rough sleepers. Page 8 of the ESIIA seeks to justify this approach by stating: "While many of the incidents in this particular statement relate to behaviours of vagrants or rough sleepers, importantly it is their behaviour as opposed to their status or lifestyle that can be challenged by the PSPO." We submit that there is no qualitative difference between criminalising a rough sleeper for sleeping and criminalising a rough sleeper for leaving their bedding for five minutes while they use a public toilet or take a walk to warm up. In both situations, the Council would be penalising a "status or lifestyle" caused by poverty and homelessness. The current drafting of the measure states that: "No person shall, for any duration of time, leave unattended in a public area any personal effects" (emphasis added). Therefore, a rough sleeper could potentially be fined for doing nothing more than taking a few steps away from their belongings. This is unreasonable and unnecessarily and disproportionately affects the vulnerable, which your Council states it is not the intention of the PSPO.

We also note that the data provided on page 6 of the ESIIA highlights begging and rough sleeping under the heading of "General behavioural issues". This indicates that the Council intends to use the proposed dispersal power to move on rough sleepers from Shrewsbury Town Centre. This assessment is supported by looking at Appendix E to the PSPO Report which details supporting data for the measures. With regard to the dispersal power, the document specifically states the measure should be used to "Stop people sitting on the floor for prolonged periods of time."

<sup>2</sup> <https://shropshire.gov.uk/committee-services/documents/s13948/9%20Appendix%20C%20ESIIA%20for%20proposed%20PSPO.pdf>

Furthermore, the witness statements in Appendices H, I, J and L all refer to homeless people, rough sleepers and beggars as being the source of the antisocial behaviour that the PSPO seeks to address. The natural conclusion is that the PSPO will be used in particular against these vulnerable groups.

In our view, it is clear that the Council intends to target rough sleepers with the PSPO. We are particularly concerned by this measure because people who are sleeping rough and leaving bedding or other possessions in public places are likely to be doing so as a result of poverty, addiction and/or other mental health issues. They are highly unlikely to be able to pay a Fixed Penalty Notice or a Magistrates' Court fine. If they are refusing support or alternative accommodation, then there are likely to be reasons for that, which may be connected to the underlying causes of their homelessness. The vulnerable will end up with criminal records for reasons beyond their control.

Homelessness in the UK is increasing at an alarming rate. The answer to this problem is not for the Council to pass a law giving itself the power to fine anyone leaving their belongings, such as bedding, in public areas of Shrewsbury. At worst, this could be seen as a cynical attempt to mask the problem without addressing its causes. It will not help their situation to victimise and vilify these people. We would urge the Council to consider all alternative options for addressing homelessness before creating this blunt power which could have very damaging consequences for some of the most vulnerable people.

#### 4. Conclusion

Whilst we appreciate that the Council is still in consultation, we are concerned that the proposed PSPO terms addressed above are unfairly designed to target the homeless and will be ineffective in addressing the underlying causes of anti-social behaviour. Liberty urges the Council to reconsider these provisions.

Yours faithfully



  
Solicitor

020   
erty-human-rights.org.uk