

Officer Response to points made by Liberty

| Ref | Summary of Points made by Liberty (to be read in conjunction with Letter received) | Officer Response |
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| 1. | <p>The PSPO in its current form represents a significant and unjustified threat to civil liberties. Certain measures will have a disproportionate impact on vulnerable people. The Shrewsbury PSPO contains provisions that punish poverty related issues such as homelessness or rough sleeping and includes unlawful dispersal powers.</p> | <p>The PSPO is intended to tackle behaviours which are considered unacceptable within the community and this is demonstrated through the strong support received via the public consultation. The PSPO does not punish poverty related issues - it punishes unacceptable behaviours caused by individuals acting inappropriately irrespective of status /wealth and applies equally to matters also commonly associated with the night time economy. The provisions within the PSPO are not intended to prevent rough sleeping and instead focus on challenging unacceptable behaviours which may be exhibited by a minority of people causing ASB.</p> <p>In addition, there are measures in place to help vulnerable people who are homeless and rough sleeping and this includes support from a variety of agencies including the Council, Shrewsbury Ark, Shropshire Recovery Partnership, Police and the medical profession. A recent initiative is the Homeless Outreach Street Triage (HOST) service which consists of a new outreach vehicle containing a combination of a plain clothes Police Officer, a mental health social worker from The Redwoods Centre, an Ark Outreach worker, Shropshire Recovery Partnership worker and a housing officer from Shropshire Council. The team seek out and visit Rough Sleepers on the street with the aim to fast-track the help and support available to them, working as a team to get Rough Sleepers accommodated quicker than ever before. Further, we support the Alternative Giving Scheme which operates within the Town centre. This allows people to provide donations which are specifically used to assist homeless people.</p> <p>Having considered the evidence available against the requirements of the Act, the inclusion of a dispersal power is not considered to be unlawful. Further, the wording of S59 of the Act is intended to enable Authorities to implement measures that can effectively address issues that are affecting an area; this is what the PSPO is aimed at delivering. We are acting in accordance with the Act and following the controls within the legislation including the statutory requirement to consult. This ensures that civil liberties are protected.</p> |
| 2. | <p>It is not reasonable to impose requirements that are sufficiently addressed by other existing powers. Nothing in the Home office statutory guidance provides that PSPOs can include dispersal powers. Section 35 of the Act provides a dispersal power entirely separate from the PSPO for which</p> | <p>The principle that we should not impose requirements that are sufficiently addressed by existing powers is agreed and the restrictions included in the PSPO are consistent with this approach. The dispersal power within s.35 of the Antisocial Behaviour, Crime and Policing Act 2014 ('the Act') has been actively used by the Police in the area concerned to date. Irrespective the behaviours that the PSPO seeks to address have not been adequately controlled as demonstrated by the evidence and consultation responses. The inclusion within the PSPO of this prohibition is intended to compliment the powers that are already available to the police to deal with the ASB being experienced whilst also enabling the Local Authority to more readily deal with ASB where appropriate. There is nothing in the Home Office statutory guidance or the legislation that states such a</p> |

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| | <p>the Council is fully aware. Such dispersal powers are not reasonable and not the purpose for which PSPOs were enacted.</p> | <p>prohibition cannot be included. The guidance advises that the test for the PSPO is designed to be broad and to focus on the impact of ASB on victims and communities. The public consultation indicated strong support for the use of all the suggested prohibitions and when taken into account with the evidence available and the extensive use of s.35 by the Police it cannot be said that the proposed prohibitions included in the PSPO are unreasonable as the purpose of any PSPO is to address a detrimental effect on the quality of life of those in the locality.</p> |
| <p>3.</p> | <p>Further, the PSPO dispersal power would not have the same safeguards (oversight by a senior officer). This leaves the power open to abuse. If enacted the PSPO dispersal power could be used by Council Officers rather than reserved for the Police; circumventing the Act and usurping the position of Parliament.</p> | <p>Whilst the safeguards applied to s.35 are not fully replicated in the PSPO there are measures in place that would provide an appropriate safeguards commensurate with the nature of the ASB that the PSPO aims to control; this is recognised in the legislation as being at a lesser level that that which is controlled by s.35 (i.e. punishment is categorised as a fine not exceeding level 3 on the standard scale as opposed to level 4 under s.35). Whilst in the main the Police will undertake the enforcement of the PSPO, a memorandum of understanding exists which requires consideration by them of the Council's Better Regulation and Enforcement Policy. Further, all incidents where the PSPO has been used will be recorded and each record provided to the Council. Only the Council may administer a FPN under this PSPO or institute any legal proceedings. This provides the Council with the opportunity to monitor all enforcement activity under the PSPO and to ensure that the restrictions are not being used in an unfettered manner or being abused. In addition any breach of the PSPO will be subject to review and oversight by a Senior Council Manager, experienced in dealing with criminal matters, and a Council solicitor who will consider each criminal case against the Council's Better Regulation and Enforcement Policy before instituting criminal proceedings. It is contended that this will provide equally stringent controls of the use of the PSPO. There is no intention to circumvent the Act or to usurp the position of Parliament. The Council has acted in accordance with the legislation, gathered evidence and has undertaken a public consultation allowing the Police and the local community to comment on the proposals. The PSPO will in the main be enforced by local police officers in line with a memorandum of understanding, in response to low level ASB which adversely impacts on the community. It provides the opportunity to address ASB matters without necessarily criminalising anyone unless they continue to act inappropriately or defy the request. The PSPO will enable the police to respond more quickly and effectively to these matters as they arise. West Mercia Police regularly use the S.35 powers and it is their intention to continue to do so in line with current practice to respond to wider public concerns. To help clarify this, it is proposed to remove the restriction to target public disorder from the two relevant restrictions within the PSPO.</p> |
| <p>4.</p> | <p>Neither the wording of s.59 or s.63 provides for dispersal powers. S.59(4) requires 'specified things to be done by persons carrying on specified activities in</p> | <p>As already mentioned above the wording of s.59(4) is clearly intended to allow an Authority to determine the contents of the PSPO based on the issues that are affecting the community. The legislation remains silent on the details that may be included. In considering the 'specific things to be done', i.e. a request to leave the area (and not to return etc.) would be a reasonable 'thing' when carrying on 'specified activities in that area' i.e.ASB (behaviour causing nuisance, alarm,</p> |

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| | <p>that area'. This does not cover the power to disperse people if their behaviour is causing or likely to cause nuisance, alarm, harassment, distress or public disorder because no activity has been specified (a test that is too vague). Requiring people to leave the area on demand is not within the remit of the Act and enacting this measure would be ultra vires the Councils powers under the Act. Requiring people to disperse under a PSPO is not reasonable measure as it is qualitatively different from s.59(4)(a)-(b) it does not mean an activity is banned in an area it means a person is banned from the area. Further dispersal powers are dealt with separately in the Act and Parliament clearly intended dispersal powers to exist but chose to reserve them for the police under s.35 and not include them under PSPOs.</p> | <p>harassment or distress to any other person). The legislation makes no reference to what are specified things to be done as it intends for Local Authorities to come up with those 'things' that help to address the problem being experienced by the community. Requiring people to leave the area on demand is within the remit of the Act because it is requiring a specified thing to be done and given the evidence available is reasonable and not ultra vires. The three provisions in s.59(4) are to be read separately. It is not necessary to satisfy all three and in the case of the Councils proposed PSPO the prohibition concerning the requirement to leave the area is permitted by virtue of s.59(4)(b). The police have actively been involved with the development of the PSPO and consider it will work alongside s.35 enabling them to respond appropriately to low level ASB where S35 would not be immediately available. Police regularly use the S.35 powers and it is their intention to continue to do so in line with current practice to respond to wider public concerns as it has supplementary powers around the surrendering of items and powers to take U16s home; whilst also providing for a greater sanction in the event that legal proceedings are required. As already mentioned S.59 is silent on the types of 'things to be done' to address the activities causing detriment in the area. There is nothing to prevent such provisions being included in the PSPO and therefore it there cannot be said that Parliament clearly intended to limit the 'specified things' to be the reserve of the police.</p> |
| 5. | <p>In addition to s.35 the police already have powers under the Public Order Act 1986 and there is no reason why a PSPO dispersal power is also needed. The s.35 dispersal power allows the same degree of flexibility and discretion that the council argues for in the PSPO so an additional power would be unnecessary.</p> | <p>There are no dispersal powers under the Public Order Act 1986 instead reverting back to criminalising individuals as opposed to providing an opportunity to cease the ASB and move on. The PSPO enables a more rapid and appropriate response to low level ASB that would fall below that which would ordinarily be addressed under section 5 of the Public Order Act 1986. The dispersal power within s.35 of the Antisocial Behaviour, Crime and Policing Act 2014 ('the Act') has been actively used by the Police in the area concerned to date. Irrespective the behaviours that the PSPO seeks to address have not been adequately controlled as demonstrated by the evidence and consultation responses. The inclusion within the PSPO of this prohibition is intended to compliment the powers that are already available to the police to deal with the ASB being experienced whilst also enabling the Local Authority to more readily deal with ASB where appropriate.</p> |
| 6. | <p>Paragraph 3.9 of the council report (of 21st</p> | <p>It is clear from the wording of para 3.9 that the Council is not intending to prohibit the activity of rough sleeping or begging, however certain</p> |

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| | <p>December 2016) is an empty reassurance made for PR purposes and based on documents accompanying the PSPO it is obvious that the Council intend to use the provision (leaving personal belongings) to target rough sleepers. Evidence in The ESIIA document and Appendix E to the report of 21st December rely on evidence associated with rough sleepers</p> | <p>behaviours should be challenged irrespective of a individuals status. This will apply to anyone where their actions are inappropriate as in the case of leaving personal belongings which exposes the public to unnecessary risks. The evidence in the ESIIA and Appendix E highlight the issues being experienced in the town and will include behaviours associated with a number of rough sleepers where some of their behaviour are affecting the community. Whilst there is reference to the presence of rough sleepers within the evidence obtained this was based on collation of data by other agencies not specifically intended for the purposes of the PSPO at the time and has not resulted in any recommendation or suggestion to include a specific provision preventing rough sleeping. During the drafting of the proposed PSPO data collection methods were revised to better capture the behaviours/issues causing the detriment to the community rather than any of the diverse categorisations previously employed. The Council and other partners are proactively engaging with rough sleepers and establishing ways to assist them into accommodation and to resolve other harmful lifestyle choices (please see Ref 1 above).</p> |
| <p>7.</p> | <p>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 5 minutes while they use a toilet. The current drafting states 'No person shall for any duration of time, leave unattended...'. This is unreasonable and unnecessarily and disproportionately affects the vulnerable which your Council states is not the intention.</p> | <p>There is a significant difference between the two; specifically in the risks posed to others including minors. In order for an offence to be committed under the PSPO the offender must have acted without reasonable excuse and if there is a valid and reasonable explanation for the breach then this will be given full consideration. Further, the Authority will consider each and every breach in line with the Council's Better Regulation and Enforcement Policy. Leaving belongings for 5 minutes would ordinarily mean that the owner returns to the belongings whilst an officer is present and should be able to provide that officer with the reason why the belongings were left under such circumstances. If there is a reasonable excuse, for example, why the belongings could not be taken with them or that there was an emergency need to leave the items etc. then there would not be a breach of the Order. In any case, there are facilities at the Shrewsbury Ark for rough sleepers to leave their belongings which would ensure their safe keeping and security whilst alleviating any security risk or any other risk to the public.</p> |
| <p>8.</p> | <p>Page 6 of the ESIIA highlights begging and rough sleeping under the heading of 'General Behaviour issues'. This indicates that the Council intends to use the proposed dispersal power to move on rough sleepers. This is supported by Appendix E which details supporting data mentioning measure should be used to 'Stop people sitting on</p> | <p>Whilst there is reference to the presence of begging and rough sleeping within the evidence obtained this was based on collation of data by other agencies not specifically intended for the purposes of the PSPO at the time and has not resulted in any recommendation or suggestion to include a specific provision preventing rough sleeping or begging being present to Cabinet. A conscious decision was made not to include some of the originally suggested prohibitions, as outlined in the Intelligence Report (Appendix E), in the draft PSPO (Appendix A) as presented to Cabinet on 21st December 2016. Included within the Intelligence Report were other partner suggestions for consideration for inclusion within the PSPO including steps to prevent people sitting on the floor for prolonged periods of time and again these were rejected. During the drafting of the proposed PSPO data collection methods were revised to better capture the</p> |

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| | the floor for prolonged periods of time'. | behaviours/issues causing the detriment to the community rather than any of the diverse categorisations previously employed. |
| 9. | The witness statements in Appendices H, I, J and L all refer to homeless people, rough sleepers and beggars as being the sources of ASB. The natural conclusion is that the PSPO will be used against these vulnerable people. | The appendices H, I, J and L do refer to homeless people as causing some, but certainly not all, of the ASB that the PSPO seeks to address. The natural conclusion is that the PSPO will be used to tackle the behaviours evidenced but this is not aimed solely at vulnerable people who may be homeless. |
| 10. | We are particularly concerned by this measure (belongings) because people who are sleeping rough and leaving bedding/possessions are likely to be doing so as a result of poverty, addiction and/or mental health problems. If they are refusing support or alternative accommodation then there are likely reasons for that which may be connected to their homelessness. | Significant measures are being taken to provide support to rough sleepers which includes the help and assistance of mental health professions (see Ref 1 above). The Shrewsbury Ark is also available to assist and help with addiction and homelessness issues and provides somewhere to keep possessions and seek help. The PSPO is only part of the toolkit available and taking into account all the measures available and the controls in place it is unlikely that those individuals in need of genuine help and assistance will fall foul of the PSPO but may also help in steering those individuals to accepting help or seeking out assistance themselves. |
| 11. | Rough sleepers are highly unlikely to be able to pay a Fixed Penalty Notice or a Magistrates' Court fine for reasons beyond their control. | The PSPO will apply to anyone whose behaviour is considered inappropriate and simply being vulnerable does not preclude a person from the rule of law. Evidence has been collated that a small number of individual rough sleepers, beggars and others act inappropriately but this does not mean all act in this way. The only intention is to reduce the level of ASB in the community. The PSPO along with other initiatives will form part of the toolkit available to the police and the Local Authority to tackle the challenges within the restricted area and this does not necessarily mean the use of FPNs or legal action. This is also reflected in the Councils Better Regulation and Enforcement Policy which enables the Council to also consider other sanctions including warning and simple cautions. |
| 12. | Homelessness is increasing; the answer is not to pass a law to enable the council to fine anyone leaving their belongings. At worst this could be seen as a cynical attempt to mask | The Council is not intending to victimise or vilify anyone and provides help and opportunities to homeless people. The introduction of the PSPO will not mask the problem of homelessness that will be present as the PSPO is not outlawing rough sleeping. It should be noted that the official number of people sleeping rough in Shrewsbury in February 2017 was 6 and was significantly lower than previously recorded. This is an indication of the positive outcomes achieved through the efforts being made to help rough sleepers, for example, |

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| | <p>the problem without addressing the causes. It will not help their situation to victimise and vilify these people.</p> | <p>the use of the HOST car. The PSPO seeks to ensure the behavioural issues identified within the area are addressed and that all those in the community can enjoy the public spaces available without the fear or risk of being exposed or subjected to ASB.</p> |
| 13. | <p>The proposed PSPO unfairly targets the homeless and will be ineffective in addressing the underlying causes of ASB</p> | <p>References above set out the reasons whereby the PSPO does not unfairly target the homeless and the impact on ASB will be monitored to determine the ongoing need or otherwise of the proposed PSPO with or without further amendments.</p> |