COMMUNITY SAFETY PARTNERSHIPS REVIEW AND ANTISOCIAL BEHAVIOUR POWERS

Liberty & Release Joint Response to Home Office Consultation

May 2023

LIBERTY

Release

Drugs, The Law & Your Rights

About Liberty
Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy.

Contact: Jodie Beck, Policy & Campaigns Officer (jodieb@libertyhumanrights.org.uk), Emmanuelle Andrews, Policy & Campaigns Manager (emmanuellea@libertyhumanrights.org.uk)

About Release
Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Contact: Aleister Adamson, Senior Legal Adviser (Aleister@release.org.uk)

INTRODUCTION

1. Liberty and Release welcome the opportunity to respond to the Government's 'Anti-Social Behaviour Consultation'. We confine our engagement in this consultation to the questions contained in Part 4 of the Questionnaire.

2. This consultation arrives in the context of a growing cost of living crisis which is distinctly harmful to those groups already disadvantaged, marginalised and subject to discrimination. Unfortunately, in recent years we have seen attempts to solve social issues like poverty and homelessness through criminal justice.

3. Youth services, critical for the wellbeing and safety of young people, have seen their budgets decimated as a result of cuts to local authority funding.[1] In too many cases, this has left young people without dedicated spaces to go to in their community. Some of the proposals made in Part 4 of this consultation risk making it even harder for young people to spend time with their friends, with dispersal powers criminalising them for simply being in public spaces.

4. The Vagrancy Act 1824 remains in force over a year after it was scrapped through an amendment to the Police, Crime, Sentencing and Courts Act. We note that replacing the Vagrancy Act forms the impetus for the expansion of so-called 'anti-social behaviour' powers in this consultation, and the Government's wider Anti-Social Behaviour Plan.

5. We fundamentally disagree with the use of 'anti-social behaviour' as a framework for understanding, and responding to, issues of community safety. We note that this concept is racialised and classed, with its responses falling most heavily on marginalised communities, including homeless people, people that use substances, people with mental health issues, and people of colour.

6. It is revealing that the research cited in this consultation states that the majority of the public "feel safe in their local area", but that *when prompted* [emphasis added], "most expressed concern about crime and ASB, NHS/GP services and cost of living."[2] Government neglect and runaway inequality cannot be disentangled from people's feelings of unsafety, and it is these root causes that the Government should be turning its attention to.

7. **Liberty and Release oppose the expansion of anti-social behaviour powers and call on the Government to roll back the use of existing powers for the way they criminalise poverty through the explicit targeting of homeless people and rough sleepers, criminalise young people who are simply accessing public space and remove the vital structures people rely upon to have the best chance at living fulfilling lives.**

8. Instead of continuing to expand existing anti-social behaviour powers, Liberty and Release call on the Government to invest in the services that build spaces that support

[1] Weale, S. (2020) 'Youth services suffer 70% funding cut in less than a decade', The Guardian, 20 January. Available at: https://www.theguardian.com/society/2020/jan/20/youthservices-suffer-70-funding-cut-in-less-than-a-decade
[2] Community Safety Partnerships Review and Anti-Social Behaviour Powers Consultation, p.9.

young people, to reverse criminalisation and to give communities the resources they need to flourish.

PART 4 - PROPOSALS: ANTI-SOCIAL BEHAVIOUR POWERS

DISPERSAL POWERS

9. Under Section 35 of the Anti-Social Behaviour, Crime and Policing Act 2014, police constables and police community support officers may use dispersal powers to direct a person away from a particular place and not to return for a period of up to 48 hours if this is necessary to remove or reduce the likelihood of:

    a. People in the community "being harassed, alarmed or distressed" or

    b. The occurrence of "crime or disorder" in the community

10. Failure to comply with Section 35 directions is an offence carrying a sentence of up to 3 months imprisonment or a fine of up to £2,500.

11. **Dispersal powers criminalise young people for simply accessing public space.**

    The use of dispersal powers to direct young people away from their peers when together in their community is alienating and only serves to bring them into contact with the police which can lead to needless criminalisation. Research by The Manifesto Club on the use of dispersal powers across police forces in England found that in some cases, the mere presence of young people in public space was viewed as "intimidating" or "distressing."[3] One example found in their research was the use of dispersal powers in Cornwall on the basis that "local residents feel intimidated by the large amount of young people who congregate in areas around the town."[4]

12. We object to the continued use and proposed expansion of dispersal powers in the context of the existing raft of police powers and sentencing legislation already used to label, and criminalise, groups of young people as 'gangs', with this impacting young Black people in particular. The evidence showing the use of dispersal powers to target young people shows a clear conflation of 'criminal' behaviour and 'congregating' behaviour. Young people may congregate together because they have a shared affinity with a particular area or they feel a greater sense of safety when together as a friendship group. Use of dispersal powers disrupt the bonds young people create with their peers when experiencing play and joy. Research exploring the impact of dispersal powers on young people says that the disruption of friendship through the use of such powers negatively impacts a young person's ability to build social capital which can lead to experiencing further disadvantage later in life.[5]

13. **Dispersal powers further criminalise people who use drugs**

---

[3] The Manifesto Club. 2016. *Dispersal notices - the crime of being in a public place.* Online. Accessed 17 May 2023. Available at: http://manifestoclub.info/wp-content/uploads/2016/02/Dispersal-Powers-Briefing-Document.pdf

[4] ibid

[5] Cockcroft, TW, Bryant, R and Keval, H. 2016. The Impact of Dispersal Powers on Congregating Youth. *Safer Communities.* [Online]. [Accessed 17 May 2023]. Available at: https://eprints.leedsbeckett.ac.uk/id/eprint/2549/1/The%20Impact%20of%20Dispersal%20Powers%20on%20Congregating%20Youth.pdf

14. The use of dispersal powers targets and marginalises another vulnerable group; people who use drugs. Dispersal powers focus on removing people away from certain areas for a specified period of time. The reality of such powers would mean that people who use drugs move into more secluded areas, thereby increasing drug-related risks such as overdose.[6] People who use drugs need safe, clean spaces to take drugs, which have access to on-site medical staff.[7] This pragmatic and public health approach to drug-use would not only prevent the risk of overdose and drug-related death, but also the issue of drug-related paraphernalia littering public spaces and streets. In framing drug use as 'anti-social behaviour' there is a danger that dependent users, and particularly those without access to housing, will simply be forced to move from one public space to another. It does nothing to engage with the difficult question of how to actually help people.
15. We object to criminalising and intimidating people who use drugs with police powers. The failure of these policies lie in the fact that they do little to resolve the issues they claim to be tackling (such as drug-related litter) and instead, force people who use drugs into further isolation and marginalisation, all of which put them at further risk of harm.

16. **Liberty and Release oppose the expansion of dispersal powers and urge the Government to roll back the use of these powers.**

DRUG TESTING ON ARREST (DToA)

17. Release and Liberty oppose the proposal that powers to test people for drugs on arrest should be expanded. As the consultation states, this would extend the existing police powers to test members of the public within the confines of a custody suite following an arrest.
18. We find this proposal particularly alarming as it sits alongside policy objectives set out in the Government's wider Antisocial Behaviour Action Plan,[8] but which do not form a part of this consultation. These proposals are devoid of any justification or evidence to support their efficacy, and introduce harmful and broad police powers which will risk being open to abuse.
19. These include the expansion of suspected offences subject to drug-testing beyond acquisitive offences and into so-called "*night-time economy-related offending*", violence against women and girls, domestic abuse, serious violence and anti-social behaviour ("ASB"). It also includes the expansion of drugs that can be tested for beyond opiates and cocaine into other Class A drugs including ecstasy, Class B drugs including cannabis, speed and ketamine and unspecified Class C drugs.
20. At present, the police can test people for specified Class A drugs where they have been charged with a *trigger offence*, namely possession and other drugs offences and so-called acquisitive offences such as theft or robbery. As the consultation highlights, the rationale for that mechanism is to identify people whose drug use may be

[6] European Monitoring Centre for Drugs and Drug Addiction, Perspective on Drugs: Drug Consumption rooms: an overview of provision and evidence https://www.emcdda.europa.eu/system/files/publications/2734/POD_Drug%20consumption%20rooms.pdf
[7] Frontline Aids: Six Reasons Why Drug Consumption Rooms Work 26 June 2019 https://frontlineaids.org/6-reasons-why-drug-consumption-rooms-work/
[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1157028/Anti-social_Behaviour_Action_Plan_March_2023.pdf

connected to the offence and require them to attend an initial drug treatment assessment. This is based on the premise that these people may benefit from treatment, and that treatment may reduce reoffending. For other offences, where a police inspector, or higher rank, has reasonable grounds for suspecting that an offence was linked to the use of a specified Class A drug, a sample can also be authorised.

21. The controls of this approach, and the safeguard for offences other than trigger offences, recognises that enforced drug testing is an infringement on a person's autonomy, dignity and bodily integrity. It can only therefore be appropriate in very narrow, justifiable circumstances. We strongly oppose suggestions it should be allowed to take place outside of police custody, and for a broad range of offences including unspecified anti-social behaviours without a charge.

Lack of sufficient justification

22. The proposal fails to set out the imagined benefit of allowing police officers to subject members of the public to drug testing in public places within the existing regime or in the context of the Government's wider, proposed ASB reforms. By this failure, the proposal fails to demonstrate that it is a proportionate measure toward achieving a legitimate aim.
23. The proposal is unclear but appears to remove the requirement for an inspector to authorise a sample. If this is the case, this represents the unjustifiable disposal of an important safeguard in the context of a significantly widened police power. Simply put, wider powers demand additional safeguards, not less and certainly not none.
24. Even if the requirement for authorisation remained in place, street-level testing would not allow an inspector to have the same degree of oversight of a proposed test or the context of the suspected offence, making street-level testing open to abuse and inconsistent, discriminatory application. There is ample evidence to suggest the discriminatory use of existing powers to stop and search for drugs.

Unjustifiable expansion of offences

25. While Release and Liberty do not support the current drug-testing regime we recognise it was founded upon an identifiable, albeit in our view fundamentally flawed, policy objective. The consultation's proposal lacks any clear policy objective and is set in unreasonably wide terms.
26. There is no clear definition of what is meant by "night-time economy-related offending". There is simply nothing to suggest that police need additional powers to address criminal offences simply on the basis that some may at times take place in bars, pubs or clubs. In relation to all offences caught by the proposal, there is no evidence presented to suggest that public drugs testing would lead to a reduction in those offences.
27. The proposal also blurs the distinction between potential criminal-offending and ASB, which itself is not a standalone criminal offence, nor a subset of criminal offences. The Government's action plan states that ASB "*covers criminal and non-criminal behaviour*"

and cites the definition in Section 2 of the Anti-social Behaviour, Crime and Policing Act 2014:

> *a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,*
> *b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or*
> c) *conduct capable of causing housing-related nuisance or annoyance to any person.*

28. As the Act makes clear, this definition applies solely within Part 1 of the Act, relating to civil injunctions. It is simply not correct as a matter of law that this definition of ASB covers criminal offending. It does not. The proposal is unclear what power of arrest an officer might be exercising in relation to an instance of ASB that is not itself a separate criminal offence. This risks people being subjected to drug testing in the absence of any criminal offence, and this risk will be heightened by connecting it to a loosely defined concept of anti-social behaviour to be used against people who, in the night-time economy, may themselves be intoxicated when providing biological samples.
29. No justification is offered for treating the approach to testing in relation ASB as it is treated in relation to identifiable criminal offences. There are already a huge range of criminal offences that cover property damage, violent offending and harassment. In addition, the police are already empowered by the 2014 Act to apply for a civil injunction in relation to ASB, which can itself include a power of arrest where the person(s) subject to the injunction engage or threaten to engage in threats or the use of violence or present a significant harm to others. Finally, the possession of drugs is already subject to criminal controls and "being under the influence" of drugs already exists as an aggravating feature to myriad criminal offences.
30. The proposal also asks whether it is acceptable for police to be empowered to test members of the public, in public, for a broad range of drugs and in relation to non-criminal behaviour which may meet the definition in the 2014 Act. We raise two major issues in relation to this approach.
31. First, no justification has been provided for the inclusion of those offences outlined in the consultation or for the inclusion of the vast spectrum of potentially anti-social behaviour that may be caught by the 2014 Act. The proposal has failed to outline the basis on which it is supposed that drug testing will lead to a reduction in criminal offending or the reduction of ASB.
32. While the consultation is grounded in the Government's objectives to tackle "*drug related anti-social behaviour*" and reduce drug demand, it fails to set out how the expansion of offences subject to the testing regime will accomplish this more effectively than the current system of criminal justice, which is itself ineffective and perpetuates harmful outcomes. Specifically, the consultation fails to outline what actions will follow from a person being found to have a drug in their system, or what the "*right interventions*" actually are in relation to the huge range of potential cases that would be captured by the suite of policy change.
33. Second, consistent with current street-level police interventions like stop-search, the power to test will be employed inconsistently and disproportionately against certain groups. Public drug-testing will also provide an incentive for police to search members

of the public for drugs for unrelated criminal offending or behaviour which meets the definition of ASB in the 2014 Act. This would apply equally to strip-searches.

34. Stop and search is primarily used for drug offences: Release's research into its use demonstrated that two-thirds of all stop-searches were for drugs in 2016/17.[9] It is applied in a racist manner: Black people are stopped up to 14 times more than white people[10] – with range depending on geography,[11] even though 'find' rates (the rate at which drugs are actually found in a stop and search) are lower for Black people. Find rates are so low that stop-search ultimately enables police to intimidate, harass and create violence in the lives of young people, Black and racialised communities, and poor people more effectively than it removes illicit substances from communities.
35. Arguably, the most traumatic and invasive extension of police powers is the use of strip searches. This was notably used in the case of Child Q, who was illegally strip searched at school.[12] Although her example may be the highest profile, 25 other children were strip searched in 2020/21 in her borough of Hackney. Of those 25, only two were white; of those 25 searches, 80% were for drugs, but in 22 of them, no drugs were found.[13] Police powers which target drug users are regularly misused with a substantial and long-term impact on those affected.

Unjustifiable expansion of drugs

36. As above, and recognised in the consultation, the current testing regime relies on the principle of intervening in criminal offending where a person may benefit from drug treatment. This formed the basis on which the current specified drugs are captured by that regime. Opening up the range of drugs subject to testing is a completely disproportionate measure considering there is no discernible policy objective to support the proposal. We raise three main issues here.
37. First, the proposal fails to set out what steps will be taken in relation to a person found to have drugs in their system and fails to specify what the "*right interventions*" might be for the innumerable cases that might arise under the proposed framework. For example, a person found to have used cannabis following an arrest related to an allegation of noise nuisance may not justify a referral for a drugs assessment. Inappropriate referrals would not only be a disproportionate action against the individual but also risk further overwhelming an already stretched treatment provision.
38. Second, the proposal fails to draw a causative link or correlation between the behaviour it identifies and the broad range of drug consumption it aims to capture.
39. Third, the proposal fails to establish how police officers are expected to consistently discern when a suspected offence bears a sufficient nexus to a person's drug use to justify a test at all, let alone in a public place. Against the context outlined above, there

[9] BBC (2022) 'Stop and search: Ethnic minorities unfairly targeted by police - watchdog', 20 April. Available at: https://www.bbc.co.uk/news/uk-61167875
[10] Liberty (2022) 'Met to overhaul 'racist' gangs matrix after landmark legal challenge', 11 November. Available at: https://www.libertyhumanrights.org.uk/issue/met-tooverhaul-racist-gangs-matrix-after-landmark-legal challenge/
[11] Associated Press (2022) 'Former Minneapolis officer sentenced to three years in George Floyd's murder', The Guardian, 21 September. Available at: https://www.theguardian.com/us-news/2022/sep/21/thomaslane-george-floyd-murder-sentenced
[12] Jordan, I M and Gomes, A (2022) The abuse of Child Q should make Britain rethink its drugs laws, Al Jazeera, 8 April. Available at: https://www.aljazeera.com/opinions/2022/4/8/child-q-another-victim-of-racist-policing-and-harmful-druglaws
[13] McCallum, R and Gamble, J (2022) Local Child Safeguarding Practice Review: Child Q. City & Hackney Safeguarding Children Partnership, 14 March. Available at: https://chscp.org.uk/wpcontent/uploads/2022/03/Child-QPUBLISHED-14-March-22.pdf

is a clear and appreciable risk that testing will be used in a discriminatory, harmful and fundamentally ineffective way. This has the added disadvantage of siphoning funds away from more effective measures.

Exacerbating harms

40. There's significant evidence of the failure of our punitive approach to drug control. Research about student drug use found that 16% of those who described having a "scary situation" with illegal substances did not seek emergency help for fear of punishment.[14] The Home Office's own research has shown that our drug laws have no impact on levels of use and that law enforcement has little impact on disrupting the illegal drug supply market.
41. The UK's drug framework is ineffective and fails in its own stated aim to reduce or eliminate drug use. Instead, drug policy, fuelled as it is by the criminal justice system, provides the architecture for racial and social control in society. Drug policy harms everyone, with particular and severe impacts on young people and racialised communities.
42. There is no evidence to suggest that this proposal will be effective. Instead, the wholesale expansion of police powers to carry out drug tests, in public, in relation to a wider range of suspected offences, applying the power to non-criminal behaviour and expanding the range of specified drugs, serves only to deepen the well-documented harms embedded in the policing of drugs.

Alternatives

43. The proposal to allow police officers to test for a broad range of drugs in relation to an increased spectrum of criminal and non-criminal conduct will deepen the harms already endemic to the current drugs policy landscape.
44. At the policy level, Release advocates for the decriminalisation of all drugs.[15] Although models of decriminalisation vary, the majority of jurisdictions provide legal limits for drugs that people can carry without being criminalised. Most models of decriminalisation carry civil sanctions like fines, we advocate for no penalties for being caught with drugs. This removes one of the main reasons used by the police to stop and search individuals and ensures people's details aren't entering the criminal justice system.
45. The current proposal advocates for a significant increase in police powers, and the introduction of these powers into behaviours that fall outside of the existing criminal law. Rather than expanding criminalisation, decriminalisation proposals should result in a reduction in funding, tools and other resources for the police, as it eradicates the need for policing in relation to drug possession. Given that over 60% of stop and

[14] Ozcubukcu, A and Towl, G (2022) Illicit drug use in universities: zero tolerance or harm reduction?, Higher Education Policy Institute, 3 March. Available at: https://www.hepi.ac.uk/2022/03/03/illicit-drug-use-in-universities-zerotolerance-or-harm-reduction/

[15] Eastwood, N, Fox, E and Rosmarin A (2016) A quiet revolution: Drug decriminalisation across the globe, Release, 14 March. Available at: https://www.release.org.uk/publications/drug-decriminalisation-2016

searches are for drugs,[16] this change in the law could dramatically reduce contact between people and the police.

46. These resources could then be invested in key areas such as trauma services and mental health counselling, to help repair the damage done to over-policed communities. The health service is responsible for addressing negative experiences when they happen to ensure the harm is not carried throughout life; another part of the tragic cycle where traumatic childhood experiences lead to drug-related dependency issues in later years.[17]
47. For those who are drug dependent and use drugs in public spaces due to socioeconomic circumstances such as poverty and lack of access to housing, safer locations for drug use (known as 'drug consumption rooms', or 'overdose prevention centres') provide much-needed protection and ensure users are able to use safely. At a time of record drug-related deaths this is a proposal which could genuinely save lives, and such facilities are already operational in 16 countries[18] and are a viable strategy for the UK.
48. Ultimately, the solutions pursued should eliminate the need for contact between police and the public in relation to drugs. The police have increasingly shown they are unable to address drug-related problems and are in fact a main driver of trauma, arrests and other harms. Drug possession offences are arguably a gateway into the criminal justice system; breaking this link could reduce (re)offending rates.

PUBLIC SPACE PROTECTION ORDERS AND COMMUNITY PROTECTION NOTICES

49. Public Space Protection Orders (PSPOs) give local authorities the power to ban any activities they consider to have a 'detrimental impact' on the 'quality of life' of others. Breaching a PSPO carries an on-the-spot fine of up to £100, increasing up to £1,000 and prosecution in the Magistrates' Court if the person does not pay. Similarly, Community Protection Notices (CPNs) seek to prohibit individuals from engaging in certain behaviour and the prohibitions included are often vague and far-reaching, including things such as entering a shop "without a valid reason". If a person is prosecuted for breaching a CPN, they can be fined up to £2,500.

50. **PSPOs and CPNs criminalise poverty through the explicit targeting of homeless people and rough sleepers.**

    Amended Home Office guidance on the use of PSPOs from January 2021 stated that "should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this is in itself unlikely to mean that their behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed."[19] The Guidance also encouraged professionals to "precisely"

[16] Shiner, M, Carre, Z, Delsol, R and Eastwood, N (2018) The colour of injustice: 'race', drugs and law enforcement in England and Wales, Release, 14 October. Available at: https://www.release.org.uk/sites/default/files/pdf/publications/The%20Colour%20of%20Injustice.pdf
[17] Release (2021) Written submission to Professor Dame Carol Black's independent review of drugs. Release, no date. Available at: https://www.release.org.uk/sites/default/files/pdf/publications/Black%20Review%20Phase%202%20Final2.pdf
[18] Harm Reduction International (2022): The Global State of Harm Reduction 2022. Available at: https://hri.global/flagship-research/the-global-state-of-harm-reduction/theglobal-state-of-harm-reduction-2022/
[19] Home Office. 2021. *Anti-social Behaviour, Crime and Policing Act 2014: Reform of Anti-social Behaviour Powers - Statutory guidance for frontline professionals.* January 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146322/2023_Update_ASB_Statutory_Guidance_-_FINAL__1_.pdf

define the behaviour that is having a detrimental impact on the community, yet such Orders offer such wide discretion to enforcement officers that any person whose physical appearance indicates that they are experiencing poverty could potentially be perceived as being in breach of such provisions. We note that the March 2023 Guidance removed any reference to homelessness, rough sleeping and poverty which is deeply concerning given the continued use of PSPOs to criminalise poverty and the proposals under this consultation to expand their use.

51. At the time of writing, there are a significant number of local authorities currently using PSPOs to issue a blanket ban on begging or to simply ban people for occupying public space, for example:

    a. Blackburn Borough Council have a PSPO that prohibits "loitering in any public place, or any place which to public have access on payment or otherwise for the purposes of begging."[20] Under this PSPO, loitering is defined broadly as "standing, sitting, approaching people they do not know or waiting around without apparent purpose."

    b. Redbridge Council have a PSPO that states "no person shall beg."[21]

    c. Luton Borough Council have a PSPO that prohibits "all persons… from, at any time, approaching another person who is not a member of their family or their friend either verbally or by conduct to ask for money or other objects or items from that other person."[22]

52. Similarly, CPNs are regularly issued by police to people sleeping rough. In 2022, Liberty represented a woman in London who was prosecuted after the Metropolitan Police accused her of breaching a CPN that prohibited her from "acting in a manner that implies begging". It also prohibited her from being on a specific street, which was very close to her home and where she usually went shopping. The Met later accused her of breaching the CPN due to being on the street named in the CPN. Most conditions of the CPN were suspended pending a final hearing. On the same day, Liberty's client was charged under the Vagrancy Act by the same officer representing the Met at the hearing.

53. Additionally, Liberty represented a man who was sleeping in a tent in London. He was issued with a CPN and was subsequently prosecuted for breaching it. The CPN prohibited him from pitching a tent or from making "any other improvised constructions to be used for living." It also prohibited him from loitering "on a public road or pavement waiting for others unless waiting for a pre-arranged appointment which can be proved/confirmed at the time of waiting. Both cases carried nebulous provisions, making criminalisation inevitable given the impossibility of Liberty's clients being able

[20] Public Spaces Protection Order (Blackpool Borough Council), Town Centre And Promenade, 2021 https://www.blackpool.gov.uk/Residents/Planning-environment-and-community/Crime-and-safety/Public-space-protection-orders/Town-centre-and-promenade.aspx

[21] Ilford Town Centre and Surrounding Wards Public Space Protection Order (PSPO), https://www.redbridge.gov.uk/media/9050/tc-pspo-2020-full-order.pdf

[22] Public Space Protection Order 1 of 2018 (as amended 04 June 2020), https://www.luton.gov.uk/Community_and_living/Lists/LutonDocuments/PDF/Community%20Safety/Gating%20orders/Order-town-centre.pdf

to ascertain their meaning, contrary to Article 7 of the European Convention on Human Rights (ECHR).

54. Release has seen many examples where PSPOs are widely drawn and pose a real difficulty to people who use drugs to access their treatment providers and support services. For example, we have seen many examples restricting the carrying of paraphernalia that could be used for drug use such as crack pipes or syringes. Criminalising pipes is problematic as it can deter people from engaging in alternatives to intravenous drug use if they fear criminalisation from carrying equipment to do this. The criminalisation of syringes is also deeply troubling as the provision of these is a key part of many needle syringe programmes and treatment services, and deterring the use of clean needles is contrary to public health interests to reduce and prevent the spread of blood borne viruses. Where PSPOs capture treatment services in their areas this can have detrimental consequences for the individual, as consistent treatment is key to helping with drug-related harms. Expanding these powers can result in empowering Local Authorities and the Police to unfairly target people simply for existing in public.

55. The criminalisation of poverty and activities arising from poverty can amount to violation of Articles 8 (right to respect for private and family life), 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (protection of discrimination) of the ECHR. Indeed, the ECHR confirmed in its judgement in *Lăcătuş v Switzerland* that Article 8 was engaged by a blanket ban on begging and expressed the view that "human dignity is seriously compromised if the person concerned does not have sufficient means of subsistence. By begging, the person concerned adopts a particular way of life in order to overcome an inhuman and precarious situation"[23] and that "the right to turn to others for help is the essence of the rights protected by Article 8 of the Convention."[24]

56. Begging and sleeping rough must be viewed as an inevitable consequence of poverty and deprivation, not anti-social behaviour. We echo the concerns shared by Crisis that measures that decrease someone's income, such as fines, are harmful and simply drive people in poverty further away from support as well as entrench harmful stereotypes.[25] We also note that legal aid is not available to bring appeals against PSPOs or CPNs and therefore challenging such provisions is largely inaccessible for people sleeping rough.

57. Liberty and Release oppose the expansion of PSPOs and CPNs and urge Government to roll back the use of these powers by councils and the police.

[23] Judgment Lăcătuş v Switzerland, para 56
[24] Judgement Lăcătuş v Switzerland, para 59
[25] Replacing the Vagrancy Act: Crisis' position on the Department for Levelling Up, Housing and Communities consultation https://www.crisis.org.uk/media/247247/replacing-the-vagrancy-act-crisis-position-on-dluhc-consultation-apr-2022.pdf

CLOSURE POWERS

58. The police and local authorities can currently apply to the magistrates' court for a closure order. The Court may make a closure order if it is satisfied that:

    a. A person has engaged, or is likely to engage in "disorderly, offensive or criminal behaviour on the premises" or

    b. Use of the premises has "resulted, or is likely to result in serious nuisance to members of the public" or

    c. There "has been or is likely to be disorder near those premises associated with the use of those premises".

59. A closure order prohibits access to a particular premises for a period not exceeding 3 months. Before issuing a closure notice, the police or local authority must inform the owner, landlord or anyone living on the premises.

60. **Liberty and Release oppose the expansion of closure powers and urge the Government to roll back the use of these powers by councils and the police.**

61. If Closure Orders are to be used, Liberty and Release would however support the proposal of an extension of the timeframe for Closure Orders to be applied for from 48 hours to 72. The proposed extension provides more time that occupiers can use to find legal advice or representation to halt the order, an opportunity that would be beneficial to our service users.

62. Whilst the allowance of an extra 24 hours between Closure Notice and Closure Order is welcomed, Liberty and Release strongly oppose allowing registered Housing Associations the power to issue these notices. As has been evidenced earlier in this document, these measures are more likely to impact people who are least supported in society, and least empowered to seek legal advice when issued with notices such as these.

63. A Closure Order can result in someone being prevented from accessing their home for up to three months and is also a mandatory ground on which repossession of someone's home can be made, a decision which would also be made by the same provider. As the threshold for such an Order could be that someone is thought likely to engage in disorderly behaviour, or result in a serious nuisance, there is a very real danger of confusing criminal action with the daily realities of living with neighbours. If behaviour of a criminal nature is alleged, and will result in enforcement through the Magistrates Court, only the Police and/or the Local Authority, which are both publicly accountable, should have a role in imposing such restrictions, compared to Housing Associations who cannot be held accountable in the same way.

64. The proposal is significantly inappropriate given the government's plans to roll back section 21 and so called 'No Fault Evictions'[26]. Extending the power of issuing these

[26] The end of 'no fault' section 21 evictions (England), March 2023 https://researchbriefings.files.parliament.uk/documents/CBP-8658/CBP-8658.pdf

notices to Housing Associations is tantamount to these powers being reinstated as the threshold for issuing a notice can simply be a person 'likely to engage' in disorderly behaviour. To blur the lines between housing provider and potential policing organisation serves as a threat to the people we support, for example those engaging in sex work. As can be evidenced in insight reports from the Housing Ombudsman[27] housing associations are already neglecting to support their tenants fully. Extending them the power to issue and enforce these notices could also be argued to be a way of short cutting the eviction process by using Closure Orders as grounds for possession proceedings. It is unacceptable for housing providers to be given the power to legally prevent their tenants from accessing their home for up to three months without authority from the public bodies who already have the authority to do so, all while still being responsible for rent payments. In these instances, occupiers will be barred from receiving benefits such as Housing Benefit, this can result in occupiers being classified as legally homeless.

65. The proposal brings into question what the desired outcome is of Closure Orders in this instance and what supported evidence there is for extending these powers to already empowered Housing Associations. In our experience as organisations, it is rare that Closure Orders result in a change in behaviour from occupiers, but rather further stigmatise and criminalise them. Release and Liberty fail to see how in situations like those faced by our clients, vulnerable people who have been largely disenfranchised, it would be appropriate for their Housing Association to be granted the power to remove already at risk people from their property and instead will only further stigmatise an already discriminated demographic.

CIVIL INJUNCTIONS

66. Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 gives the Magistrates Court the power to grant an injunction to a person aged 10 or over if:

    a. They are satisfied that, on the balance of probabilities, "that the respondent has engaged or threatens to engage in anti-social behaviour"

    b. It is just and convenient to grant the injunction "for the purpose of preventing the respondent from engaging in anti-social behaviour"

67. The penalties for breaching an injunction are high: the court may issue a fine or impose a suspended or immediate term of imprisonment for up to two years.

68. Currently the power of arrest is available when a person subject to a civil injunction uses, or threatens to use, violence, or when there is significant risk of harm to other members of the public. Lowering the threshold so that the power of arrests extends to all breaches of a civil injunction would further drag people into the criminal justice system. This is despite the fact that none of the usual protections available under the criminal law, such as a pre-sentence report or referral for probation support are available in civil court hearing: "representation is difficult to obtain, criminal legal aid is not available, civil legal aid is very difficult to find. Half the defendants are

[27] Housing Ombudsman Insight Report, September 2022, https://www.housing-ombudsman.org.uk/wp-content/uploads/2022/09/Housing-Ombudsman-Insight-Report-September-2022.pdf

unrepresented."[28] Furthermore, as documented by the '*Is it a crime to be Poor?' Alliance,* "seen through the lens of human rights and social justice, contempt of court law and practice appears to be a prime example of the criminal justice system being misused to punish the poor, the disadvantaged, the most damaged and despised, and the least supported people in our society."[29]

COMMUNITY SAFETY ACCREDITATION SCHEME

69. Existing powers to tackle so-called 'anti-social behaviour' should not be extended to the public.

70. **Liberty and Release oppose the proposal to extend powers in the Anti-social Behaviour, Crime and Policing Act 2014 to members of the Community Safety Accreditation Scheme.**

CONCLUSION: THE NEED FOR ALTERNATIVES

71. To conclude, the use of 'anti-social behaviour' as a framework for understanding, and responding to, issues of community safety is fundamentally misconceived.
72. Rather than give the police more powers, we strongly advocate for a human rights-based response to the underlying social issues that give rise to what is called anti-social behaviour. This includes responding with solutions that support, not punish communities, including through accessible and affording housing, the decriminalisation of drugs, and better education and work opportunities, to name a few.

[28] Epstein, R, 21 February 2023, *Anti-Social Behaviour Law: punishing the poor and vulnerable?* The Justice Gap. https://www.thejusticegap.com/anti-social-behaviour-law-punishing-the-poor-and-vulnerable/
[29] Is it a Crime to be Poor? Alliance. https://crimetobepoor.org/2022/01/05/the-rich-go-to-rehab-%e2%88%92-the-poor-go-to-prison-imprisonment-for-contempt-of-court/