

## WRITTEN EVIDENCE FROM MANIFESTO CLUB (CJB0005)

### Manifesto Club response to amended powers to tackle ASB, contained in the Criminal Justice Bill

#### A. About the Manifesto Club

1. We are a grassroots civil liberties organisation specialising in the defence of freedoms in public spaces ([www.manifestoclub.com](http://www.manifestoclub.com)). Over the past decade, we have researched and campaigned on the powers contained in the Anti-Social Behaviour, Crime and Policing Act (ASBCPA), particularly Public Spaces Protection Orders (PSPOs) and Community Protection Notices (CPNs), which have had significant implications for human rights. We produce the only annual data on the use of these powers.<sup>1</sup> We are contacted each week by members of the public who are facing an unfair CPN or a restrictive PSPO, and have produced several reports based on their testimonies.<sup>2</sup> We advised the Home Office on the reworking of the Statutory Guidance,<sup>3</sup> influenced the Local Government Association guidance on PSPOs,<sup>4</sup> and were a member of the JUSTICE working party on behaviour control orders.<sup>5</sup>

#### B. Our concerns with the operation of existing ASB powers

2. The Criminal Justice Bill extends PSPO and CPN powers that are already causing widespread injustice and the erosion of human rights on the ground. We note that the Home Office has never collected data on the use of these powers, nor carried out research into their effectiveness or real-world impact. (The only Home Office research looks at police perception of powers).<sup>6</sup> Protections in the existing Statutory Guidance are largely ignored, and there appears to be no mechanism for ensuring that guidance is followed.

3. PSPO and CPN powers lack basic checks to ensure that they are used proportionately and fairly, with respect for fundamental rights. These powers can be issued on the basis of an official's judgement that an activity has a 'detrimental effect on the quality of life'. A PSPO can be issued by a single council officer, without needing to carry out a public consultation (the Act states only that they must consult 'whatever community representatives the local authority thinks it appropriate to consult').<sup>7</sup> CPNs can be issued on the spot by a council or police officer, and in some cases the officer does not even talk to the CPN recipient beforehand, let alone take evidence from them or give their testimony equal weight.

4. There are no functioning systems of appeal for PSPOs or CPNs. PSPO appeals are through the High Court and carry prohibitive legal costs. CPN appeals occur through Magistrate's Courts but there is no system of legal advice or legal aid, so CPN recipients often face council barristers on their own (indeed, one dyslexic man in north-west England had to represent his CPN appeal facing a top London barrister). If the appeal is unsuccessful, the appellant is at risk of paying council legal costs that can reach several thousand pounds. Data provided by the Ministry of Justice suggests that

---

<sup>1</sup> See our most recent reports: <http://manifestoclub.info/cpns-2022/>; <https://manifestoclub.info/pspos-the-use-of-busybody-powers-in-2022/>

<sup>2</sup> <https://manifestoclub.info/victims-of-arbitrary-power-cpn-case-studies/>

<sup>3</sup> <https://manifestoclub.info/statutory-guidance-on-pspos-a-campaigners-guide/>

<sup>4</sup> [https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance\\_06\\_1.pdf](https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf)

<sup>5</sup> <https://justice.org.uk/behavioural-control-orders-report/>

<sup>6</sup> <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

<sup>7</sup> <https://www.legislation.gov.uk/ukpga/2014/12/section/72/enacted>

in total, there were only 179 legal appeals of CPNs between November 2014 and October 2019, of which 40 were successful.<sup>8</sup> These 40 successful appeals were out of 29,043 council CPNs issued in that period, and an unknown number of police CPNs. One north London solicitor who defends CPNs on a weekly basis said that in her view ‘9 out of 10 CPNs could be overturned or varied with a proper legal defence’.<sup>9</sup> These powers therefore undermine people’s rights to liberty and to a fair trial.

5. The PSPO power has led to absurd, stigmatising and authoritarian orders. We found that there are currently over 2000 PSPOs, banning activities such as rough sleeping, loitering, shouting, foul language, wild swimming, busking, charity collection, standing in groups, and picking up stones.<sup>10</sup> These orders are often drafted in a deliberately broad manner (such as bans on possessing ‘any potentially dangerous item’), which do not appear to be serious attempts at legislation but rather a broad ‘sus law’, which allows authorised persons to move on or target any person they please. These engage several fundamental rights, including rights to freedom of association and freedom of expression.

6. Manifesto Club research found that nearly 50,000 CPNs have been issued since 2014<sup>11</sup>, at an average rate of 6,000 a year. In addition, Community Protection Warnings are currently running at around 20,000 a year. People have received notices ordering them not to feed birds in their garden, or not to keep their wheelbarrow behind their garden shed, while homeless people have been barred from their town centre or prevented from receiving donations (we documented a selection of case studies in our report, ‘Victims of Arbitrary Power’<sup>12</sup>). CPNs include significant restrictions on how people conduct themselves in their own home (and their right to private life), as well as significant restrictions on their liberty such as a ban on entering their town centre. CPN recipients we have spoken to generally feel completely helpless - ‘like a lamb to the slaughter’, one man said - without means to defend themselves or to represent their side of events. We collaborated with Sheffield Hallam University on a research paper analysing the experience of CPN recipients.<sup>13</sup>

### **C. Our concerns with the Criminal Justice Bill**

7. We consider that the CJB reforms to ASB powers will greatly aggravate existing problems with the implementation of these powers, leading to a significantly increased incidence of injustice and abuse of power, and a further erosion of fundamental rights.

Specifically, we object to:

8. The increase of CPN and PSPO penalties from £100 to £500 (Clause 70). This is a grossly out-of-proportion increase, especially given the nature of many PSPO offences. Manifesto Club research found that there were 13,443 penalties issued in 2022 for the offence of violating a PSPO.<sup>14</sup> These included an 82-year old fined for cycling his bike in Grimsby town centre, and another man fined for silently praying outside an abortion clinic in Bournemouth. The potential for injustice is heightened by the fact that 43 councils employ a private company to issue PSPO penalties,<sup>15</sup> and most of these companies are paid per fine, which gives them an incentive to issue as many penalties

---

<sup>8</sup> MOJ FOI response, 21 September 2020

<sup>9</sup> <https://manifestoclub.info/interview-9-out-of-10-cpns-could-be-overturned-or-varied-with-a-proper-legal-defence/>

<sup>10</sup> <https://manifestoclub.info/pspos-the-use-of-busybody-powers-in-2022/>

<sup>11</sup> <https://manifestoclub.info/cpns-2022/>

<sup>12</sup> <https://manifestoclub.info/victims-of-arbitrary-power-cpn-case-studies/>

<sup>13</sup> <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/recipients-experiences-of-community-protection-notices>

<sup>14</sup> <http://manifestoclub.info/pspos-the-use-of-busybody-powers-in-2022/>

<sup>15</sup> <https://manifestoclub.info/the-corruption-of-punishment-2022-report/>

as possible. Increasing PSPO penalties to £500 will increase incentives for penalties to be issued for anodyne activities, and increase the weight of injustice.

9. Giving PSPO powers to the police (Clause 68). Senior police officers are not democratically accountable and have a more restricted public interest than local authorities. It is therefore dangerous to give them what in effect are bylaw powers. Based on current evidence, it is likely that the police would introduce laws that would make their job more convenient, such as bans on standing in groups or broad dispersal powers. We have observed that some of the worst PSPOs (such as bans on foul language or powers to disperse people from public spaces) were passed by councils after requests from local police forces. We note that Clause 68 was only supported by 52% of consultation respondents (largely composed of police, council, and community safety representatives) which is hardly a ringing endorsement from the sector, let alone from a broader public constituency.

10. Lowering CPN age to 10 (Clause 67). Even educated adults often find it difficult to appeal a CPN: one CPN recipient told us that her CPN appeal had been as much work as her MA thesis, and a great deal more stressful. While the CPN process still lacks basic checks to ensure that orders are fairly issued, including a systematic appeal system, it is foolhardy to extend this order to children who are still in primary school. CPNs can impose severe restrictions - such as bans from entering the town centre, or from seeing certain friends - which would have a significant impact on the life of a young person. We note that this clause was also only supported by 52% of consultation respondents.

11. Nuisance rough sleeping and begging directions/notices/orders (Clauses 38-64). Homeless people are already a primary target for the unfair use of CPN, PSPO and dispersal powers, as documented by a recent report by Sheffield Hallam University.<sup>16</sup> Police and council officers currently have ample means to move homeless people on, restrict their movement, and confiscate their belongings, and these experiences are part of the daily reality for homeless people. In practice, both police and council officers consider begging or rough sleeping to be ‘anti-social behaviour’, and police forces often list incidents of begging alongside acts of violence or vandalism in their ASB incident logs. We cannot understand why the government thinks it necessary to introduce six new powers specifically targeting homeless people, given the wide variety of generally available powers. These new powers will lead to a de facto criminalisation of homelessness, and increase official and public stigmatisation of homeless people as well as further eroding the rights of this vulnerable population.

12. Nuisance begging/rough sleeping etc ctd. Nuisance begging/rough sleeping directions and orders can be issued on a very low standard, based on someone being ‘likely’ to cause distress or nuisance. It is particularly concerning that the direction power does not appear to include the possibility of appeal. We also object to the high penalty for infractions of one month imprisonment and/or a £2500 pound fine. This would mean that, if a homeless person were directed to leave their town centre for three days (which may be impossible or difficult, if this is the area they rely upon for donations, shelter or food), they are at risk of imprisonment. This is a stigmatising and punitive approach, which will have the counterproductive effect of making homeless people’s lives even more difficult, and further alienating them from support systems.

13. Other elements of the bill that engage human rights include: the extension of dispersal powers from 48 hours to 72 hours; the attaching of the power of arrest to injunctions whenever courts judge it appropriate to do so; the extension of closure powers by 24 hours and to registered housing providers.

---

<sup>16</sup><https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/impact-of-anti-social-behaviour-tools-and-powers-on-street-sleeping-homeless-people>

## **D. Our suggested amendments**

13. We recommend the removal of the following Clauses: 38-64, 67, 68, 70.

14. We also recommend the use of the CJB to introduce amendments to the ASBCPA which would improve the effectiveness and fairness of existing powers. These amendments could include:

Introduce a stronger statutory benchmark for the use of PSPO or CPN powers, such as ‘activities causing significant nuisance or harm’ (as referenced in the Statutory Guidance);

Require a substantial public consultation (and full council scrutiny and approval) before passing PSPOs, as recommended in LGA guidance;

Establish a legal advice and legal aid system for PSPO and CPN appeals;

Require full investigation before a CPN is issued, including balanced consideration of testimonies from both sides.

*(19 January 2024)*