

Written evidence from the Manifesto Club (FOE0035)

The Manifesto Club is a civil liberties group that campaigns on the freedom issues of everyday life, particularly in public spaces. For the past six years, we have researched and campaigned on Public Spaces Protection Orders (PSPOs), publishing annual data on the use of this power.¹

In this submission, we will focus on the question ‘Is there a need to review the wording and application of Public Space Protection Order (PSPO) legislation?’

1. PSPOs have been used to impose significant restrictions on freedom of expression and association. In our November 2019 report, ‘The Silencing of Public Space’,² we found that since 2014 there have been 89 PSPOs restricting free expression or association, in 67 councils. This means that nearly 20% of all councils in England and Wales have introduced an order restricting free expression or association in the years 2014-2019. These restrictions include: 14 restrictions upon charity collection, 16 restrictions upon standing in groups, 24 bans on swearing and foul language, 4 bans on amplification, 4 bans on handing out leaflets, and two orders banning vigils or protests outside abortion clinics.

Another increasingly common order is a PSPO creating dispersal powers for council officers. At least 25 councils have passed PSPOs allowing council officers to disperse people from public spaces for a period of up to 48 hours. This means that demonstrations or gatherings can be broken up by council officers.

2. The PSPO power is fundamentally flawed and allows for excessive and unjust application. There are several fundamental problems with the PSPO power:

The test of ‘detrimental effect on the quality of life of those in the locality’ is too low and subjective. This is a subjective phrase that invites the restriction of activities or speech on the basis that some people, or some one, finds this activity or speech to be detrimental to their quality of life (for example because it is annoying or offensive). It need not even be the case that the majority of the public find an activity detrimental for it to be subject to a PSPO.

There are no required standards for public consultation, or for the producing of evidence to demonstrate this detrimental effect. At present the ‘necessary consultation’, stated in law, means that local authorities must consult the local police and ‘whatever community representatives the local authority thinks it appropriate to consult’.³ Therefore, there is no requirement for any public consultation, no standards for consultation, and no requirement for the PSPO to be passed through democratic or scrutiny procedures within the council. Manifesto Club research found that in one year, nearly half of all councils passed a PSPO through a single council officer or pair of officers.⁴ Several councils have brought through PSPOs without any public notice or consultation, and some consultations have received fewer than 10 consultation responses. Councils have banned an activity in cases where only 6% of the public had said in the consultation that they were ‘affected’ by this issue.

There is currently no workable system for appealing or checking PSPOs. The need to appeal PSPOs in the High Court takes appeal out of the hands of all but the richest individuals and organisations. There have only been a handful of appeal cases, and legal costs ran into tens of thousands of pounds; this is therefore not a system whereby members of the public can appeal

¹<https://manifestoclub.info/category/pspos/>

²<https://manifestoclub.info/the-silencing-of-public-space/>

³<https://www.legislation.gov.uk/ukpga/2014/12/section/72/enacted>

⁴ <http://manifestoclub.info/busybodies-charter-2/>

orders that have a significant effect upon liberties in their local area. The Home Office recognised problems with the over-use of the PSPO power, and in 2017 produced amended Statutory Guidance in an attempt to provide further direction.⁵ Unfortunately, perhaps due to limited legal appeal, this has had no discernible effect on PSPOs: since the changes to the statutory guidance, PSPOs have been issued at an increased rate, rising from an average of 11 per month to 15 per month.⁶ The specification in the Anti-Social Behaviour, Crime and Policing Act that councils ‘must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention’, does not appear to have limited the creation of PSPOs. The Home Office does not collect data into the use of the PSPO powers. Therefore, this is a power that is to a large extent unchecked, unstudied, and unscrutinised.

3. We would recommend the scrapping of this power, or at the very least its substantial reform. Any reform would require fundamental changes to the statutory law, to check the source of the problems, as opposed to further guidance changes. Such changes might include -

A change of the test ‘detrimental effect’ to a stronger test such as ‘activity causing significant public nuisance or harm’;

To require substantial public consultation, with a requirement for a minimum number of responses and/or a minimum consultation period;

To require that PSPOs be subject to significant internal scrutiny prior to passing, for example including the production of substantial evidence showing the need for the PSPO, and/or the passing of the PSPO through elected council bodies such as cabinet or full council rather than by an unelected council officer.

To allow members of the public to appeal a PSPO without going to the High Court. Appeal should be simple and inexpensive to allow it to be accessible to the majority of the general public - for example, perhaps appeal could occur in a Magistrate’s Court, or in a special tribunal set up to consider PSPO cases.

Addendum -

We would also like to submit details of other Manifesto Club research that bears upon the question of the freedom of expression in public spaces. In our publication ‘The Silencing of Public Space’,⁷ we identified widespread and significant restrictions on free expression as a result of current local authority policies, and particularly as a result of the privatisation of public spaces. Findings include:

- Only 9% of councils show tolerance towards community posters for local political or social events, whereas 44% do not allow any posters at all and will remove all posters or issue fines (councils have taken down posters including a Macmillan nurses boot fair, an art show in a village hall, a hospice Christmas fair, protest signs).

- Only 19% of councils said that people could put up a political stall in a public space without payment or booking or undergoing other formal procedures. 25% said that political stalls were not allowed, and 43% said that they would charge, or possibly charge, for people to put up a political stall.

- There has been a growth in privately owned open-air public spaces in town centres, such as streets or squares, where property owners restrict public activities such as demonstrations,

⁵<https://www.gov.uk/government/news/new-guidance-on-the-use-of-the-anti-social-behaviour-crime-and-policing-act-2014>

⁶<https://manifestoclub.info/pspos-the-busybodies-charter-in-2018/>

⁷ <https://manifestoclub.info/the-silencing-of-public-space/>

political stalls, or leafleting. 47% of councils said that there were privately owned public spaces in the town centre, many of which imposed restrictions upon public activities. In addition, many councils have started renting out open-air public spaces, which are marketed as 'promotional spaces' or 'events spaces' and require the payment of a substantial fee for their use. This leads to a further reduction in opportunities for people to campaign or run petitions in town or city centres.

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