

# **Public Space Protection Orders**

## **City of Lincoln Council – ‘First!’**

### **April 2015 - PSPO**

1. Person(s) within the Exclusion Zone will not: ingest, inhale, inject, smoke or otherwise use intoxicating substances.
2. Intoxicating Substances is given the following definition (which includes alcohol and what are commonly referred to as ‘legal highs’): substances with the capacity to stimulate or depress the central nervous system.
3. Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are cigarettes (tobacco) or vaporisers or are food stuffs regulated by Food, Health and Safety legislation.
4. Persons within this area who breach this prohibition shall: surrender intoxicating substances in his/her possession to an authorised person.
5. An authorised person could be; a Police Constable, Police Community Support Officer or Council Officer, and must be able to present their authority upon request.

### **Prosecutions – July 2015**

- Issued a Fixed Penalty Notice on April 17, which he failed to pay. He has been fined £150 and ordered to pay costs of £100 and a £15 victims' surcharge.
- Second was tipped off by a member of public – “people were smoking and acting suspiciously nearby”  
Fixed Penalty Notice on April 16, which he failed to pay. He has been fined £200 and ordered to pay costs of £200 and a £20 victims' surcharge.
- 200 people under the PSPO with a further 13 prosecutions pending.

### **Working?**

“impossible to enforce” by a recognised policing expert.

Brendan O'Brien, current Director of Cheshire-based Blue Light Consultancy after a 28-year career as a police officer in three forces including Greater Manchester Police, said: “The ban is unenforceable as any suspected offender will be able to deny that they have consumed anything of that nature.

“The police or any other designated person with powers to enforce this PSPO will have no means to prove otherwise, and the offence must be proved beyond all reasonable doubt. There is no legal way to prove that the person has ingested an intoxicating substance.

“Quite simply, when it comes to ‘legal highs’ the suspected can say that they have swallowed a sweet and the officer will be powerless to prove otherwise.

## **February 2016**

- Staff at YMCA in Lincoln have told ITV Calendar they are still seeing the same number of people taking them. They claim the substances are still easy to access but selling has been driven underground.
- May 2016 - The Psychoactive Substances Act enacted – criminal offences related to producing, supplying or importing psychoactive substances.

## **Oxford**

### **Two PSPOs in place:**

#### **1. Oxford City Centre PSPO**

- a) No person shall aggressively beg. Aggressive begging includes begging near a cash machine or begging in a manner reasonably perceived to be intimidating or aggressive.
- b) No person shall remain in a public toilet without reasonable excuse.
- c) No person shall urinate or defecate in a public place. This includes the doorway or alcove of any premises to which the public has access.
- d) No person shall cycle within Queen Street or Cornmarket Street outside the permitted cycling times of 6 p.m. to 10 a.m.
- e) No person shall perform any type of street entertainment that causes a nuisance to nearby premises or members of the public. This includes obstructing the highway or shop entrances, or using street furniture including public seats, lamp posts and railings.
- f) No person trading as a pedlar shall:
  - remain in any location for more than 10 minutes unless it is to complete a transaction.
  - locate themselves within 50 metres of their previous location.
  - return to any location already occupied in the last three hours.
  - obstruct the highway or shop entrances.
- g) No person shall refuse to stop drinking alcohol or hand over any containers (sealed or unsealed) which are believed to contain alcohol, when required, to do so by an authorised officer in order to prevent public nuisance or disorder.

h) Any person in charge of a dog within the restricted area shall be in breach of this Order if he/she:

- fails to keep the dog on a lead and under physical control at all times.
- **is found to be in charge of more than four dogs at the same time whilst in a public place.**
- allows the dog to foul in a public place and then fails to remove the waste and dispose of it in an appropriate receptacle.
- allows the dog to enter any covered public space.

The Council have erected signs....



## 2. Foresters Towers Public Spaces Protection Order

The order prevents young people under the age of 21, who are not legal residents, from entering the tower block unless visiting a resident

## **One Draft PSPO:**

### Waterways PSPO

- a. No person shall moor any boat or amphibious craft to any land without the consent of the land owner, or managing authority, or breach any conditions imposed by the land owner or managing authority;
- b. No person shall obstruct a footpath, river bank, canal bank or waterway;
- c. No person shall store items or erect structures without the consent of the landowner on land adjoining the river bank or canal bank;
- d. No person shall create smoke, noise or fumes in such a manner as to give reasonable grounds for annoyance to any person;
- e. No person shall damage waterways habitats, signage, lifebelts, fencing or other waterways infrastructure;
- f. No person shall refuse to stop drinking alcohol, or to hand over containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by an authorised officer in order to prevent a public nuisance or disorder;
- g. Any person in charge of a dog within the restricted area shall be in breach of this Order if he/she:
  - o Fails to put the dog on a lead and keep it under control when requested to do so by an authorised officer.
  - o is found to be in charge of more than four dogs at the same time whilst in a public place.
  - o Allows the dog to foul in a public place and then fails to remove the waste and dispose of it in an appropriate receptacle.

The National Bargee Travellers Association reported on 8 March 2016:

Oxford City Council's Scrutiny Committee decided last night (7th March 2016) not to take the draft Waterways Public Space Protection Order (PSPO) forward to consultation following intervention by boat dwellers who pointed out that the draft PSPO was beyond the Council's legal powers to implement because it sought to undermine the lawful rights of boaters and to usurp the powers of navigation authorities in legislation such as Section 79 of the Thames Conservancy Act 1932 and Section 17 of the British Waterways Act 1995. The Scrutiny Committee will instead set up a meeting between the Council, boat dwellers and the NBTA to review the current form of the PSPO.

This is what boat dwellers put to Oxford City Council's Scrutiny Committee last night:

Yesterday (Sunday 6th March), a group of boaters met to discuss the proposed PSPO, this was in spite of little prior notification of this scrutiny meeting. Thankfully I am able to attend this important meeting so as to relay our concerns that the proposal in front of you is not fit for public consultation. Please note that the 'Anti-social Behaviour, Crime and Policing Act (2014)' only gives councils the statutory power to make a PSPO if activities are persistent and will have a detrimental effect on quality of life. However, the document provides insufficient evidence to conclude

that the activities detailed within it do indeed have a significant detrimental effect on quality of life. The scale and scope of the PSPO are thus disproportionate to the supposed problems.

I will provide a few examples of how the evidence (Appendix 3) does not stand up to serious scrutiny. Firstly, the 'crime summary' is irrelevant, as by definition these activities are already covered by criminal law and thus do not require a PSPO. According to the 'Crime and Disorder Act (1998)' anti-social behaviour is action causing 'harassment, alarm or distress.' Yet, 'mooring without consent', one of the items in the proposal, clearly does not satisfy the statutory definition of Anti Social Behaviour. Therefore, we would advise that the relating twelve pieces of evidence and proposed action should not go to public consultation.

On the whole, rather than crimes having been committed by boaters, it is boaters who have been the victims of crimes, such as, arson, theft and criminal damage. Yet the the PSPO will needlessly restrict boaters' ability to moor in Oxford by criminalising normal and necessary boating activities. I draw your attention in particular to the item relating to noise and smoke pollution. The running of engines, generators and stoves is essential for canal boats. The PSPO will, therefore, leave dozens of homes without lighting or heating – basic human rights recognised by the Universal Declaration of Human Rights. And a fact not considered in the impact risk review. Moreover, the evidence presented is anecdotal and flimsy at best. The supposed smoke pollution appears to be little more than natural fog and these pictures seemingly come from a single source. Rather than relying on inconclusive visual evidence, reports of air and noise pollution levels should be scientifically measured according to existing national and EU legislation if they are to be considered valid evidence.

Thirdly, the 14 cases relating to alcohol are connected to the area of Folly Bridge, there is no suggestion that they are connected to boaters and seem related instead to the location of a bench, yet the area covered by this PSPO will Oxford wide! Based upon the evidence provided the proposed PSPO is disproportionate, unjustified, or even illegal regarding, at least, the matters of mooring, alcohol, crime, and noise and smoke pollution. We wish to communicate our continued desire to work with council to improve Oxford waterways, however the document in front of you is erroneous and thus not fit to go forward to public consultation. Finally, we'd like to highlight that the NBTA have offered us legal support in ensuring our statutory and human rights, and that any prosecution of Oxford boaters would result in judicial review. It is the role of this Committee to ensure that this PSPO and the evidence supporting it would stand up to scrutiny of the highest standards.

## **Cheshire West & Chester Council**

(a) In this area any person who continues to carry out activities from which they are prohibited commits an offence namely;

i. Persons within the area will not ingest, inject, smoke or otherwise use intoxicating substances. Intoxicating substances being defined as substances with the capacity to stimulate or depress the central nervous system. This psychoactive substances - commonly referred to as 'legal highs' - but does not include tobacco or prescription medication.

ii. Persons within this area will not have in their possessions any open containers of intoxicating substances as defined in paragraph 3(a)(i)

iii. Persons within the area will not have any item that can be used to assist in the taking of intoxicating substances defined in paragraph 3(a)(i). This includes any device for smoking substances other than e cigarettes, it also includes needles - save for those packaged and sealed by the manufacturer and stored in a hard case.

iv. No person shall urinate or defecate in any public place; this does not include public toilets.

v. No person will consume alcohol in any public place (licensed premises excluded) and shall on the request of a Police Constable, Police Community Support Officer or an authorised Council Officer surrender to them anything in the person's possession believed to be alcohol or a container for alcohol from which they were believed to be consuming the alcohol.

After the consultation and online petition the following were not included in the final order:

vi. Persons within the area will not make any verbal, non-verbal or written request – including the placing of hats or containers, or by performance or artistry – for money, donations or goods save on designated pitches (as identified in Appendix \*\*) and with the express permission of the Council.

vii. Persons other than a person acting with the express permission of the Council shall not feed any bird – including the dropping or casting of feeding stuff for birds or, distribute any feeding stuff for birds.

viii. No person shall lie down or sleep in or on any public space within the area.

ix. No person shall at any time deposit any materials used or intended to be used as bedding in or on any public place.

## **Salford City Council**

1. Jumping from, climbing upon or hanging from any bridge to which this order applies or aiding, abetting, counselling or procuring such an act by another
2. Throwing of any object at anyone without their consent
3. Except in case of emergency, removing, displacing or otherwise interfering with any life saving equipment
4. Depositing or throwing into or onto the water any animal or any large object unrelated to water activities including wheelie bins
5. Using foul and abusive language

6. Urinating or defecating in any street or public space

## **Other 'controls' on public spaces**

### **Manchester**

City Council: 31st July 2015 – Injunction obtained against person unknown under section 222 of the Local Government Act 1972 - District Judge Matharu prohibited anyone from “erecting and/or occupying tents or other movable temporary forms of accommodation for the purposes of or in connection with protests or similar events arising from or connected with the Claimant’s [Manchester City Council’s] homeless policy on land”, within a specified area of the city “without the Claimant’s consent or the consent of the lawful occupier of the land.”

Committal applications were made but found, by HHJ Gore QC, to be “fundamentally defective.” Dismissing the Council’s case, he said: “There is no dates, descriptions of behaviour or identification of which allegations are made against which defendant. “That is a fundamentally misconceived and inappropriate way to advance criminal proceedings, where the Council seeks that the court orders to commit people to prison.” Judge Gore also stated that the Council couldn’t even prove that some of the defendants had ever seen the injunction.

Injunction in place until 3 August 2016. No further reports of committal applications.

In September the courts granted Manchester Metropolitan University a possession order of the land occupied by the residents. On the 11th of September the camp was handed a civil eviction notice for Friday the 18th, and the residents were granted six days to appeal the eviction.

### **Newcastle**

Anti-social Behaviour, Crime and Policing Act 2014 – Section 1 injunction:

not to ask anyone for money, banned from bringing sleeping bags into the city centre and told they must not have any device inviting donations or to hold donations.

Court order contained positive requirements which included access to supported accommodation provided by the council as well as drug treatment and support.

At least one committal application – 9 breaches – sentenced to 3 month imprisonment

### **Leeds**

24 June 2014 – Injunction obtained against person unknown under section 222 of the Local Government Act 1972:

1. All person are forbidden , in any public place within Leeds City Centre (as delineated on the attached map) from:

- a. Begging from any other person;
  - b. Sitting or loitering on an thoroughfare or Leeds City Station with any article to be used for begging (such as caps, hats, boxes or similar receptacle)
2. Entering any commercial premises and beg from another person , or to remain within any such premises when asked to leave by the lawful occupier, their employee or agent

...

July 2014 – Leeds City Council apply to commit Defendant to prison for breaching the injunction. Hearing listed in August 2014.

Legal aid was available (under the criminal legal aid contact) for the committal applications and ECF funding was required for funding to apply to set aside the original injunction...

ECF application made, refused, review requested, refused, PAP, fresh decision – refused, review – GRANTED.

November 2014 – application made to set aside the injunction:

- The Court did not have power to make it as there are statutory remedies that should have been used.
- It was an abuse of process not to name those it knew and alleged to be begging when the injunction was sought and then to seek to enforce it against those persons.
- In any event the criteria for an injunction restraining a criminal offence or public nuisance were not met (especially as Parliament had reduced the penalty for the offence of begging to a Level 1 fine).
- The injunction failed to consider the personal circumstances of the individuals concerned and was impermissibly made against “all persons”.
- Should not have been granted as it subverted the prohibition on the making of bye-laws without the permission of the Secretary of State.

Leeds City Council conceded that the injunctions should be discharged against Mr X and Mr Y and that the committal applications should be dismissed with costs but originally sought that the remainder of the injunction remained in place.

HHJ Saffmann, however, required Leeds City Council to show why the injunction should not be discharged in its entirety as if the injunction could not be maintained against Mr X or Mr Y it could not be maintained against any other person and after hearing brief submissions held that he should discharge the injunction entirely.

This case demonstrates that:



(1) Local Authorities should not seek to use S222 Local Government Act 1972 injunctions to seek to restrain or prevent behaviour that could be regarded as anti-social or a nuisance by common law injunctions but that the proper remedies to be employed, for which legal aid is available to defend, are the statutory remedies set out in the Anti-Social Behaviour, Policing and Crime Act 2014 (from 23/03/15).

(2) That judges and lawyers should be aware that local authorities do make applications without notice to obtain these injunctions when there are no grounds for them being made and that they should be challenged. It is understood that apparently unlawful begging injunctions of this type may be in force in other cities in England.

### **April/May 2015**

Anti-social Behaviour, Crime and Policing Act 2014 – Section 1 injunction against 6 Defendants

Arguments raised with regard to “passive” v “aggressive” begging which did not end up going to trial. Applications eventually dismissed against all Defendants.