

AGENDA SUPPLEMENT - RESPONSES TO PUBLIC QUESTIONS FOR CITY EXECUTIVE BOARD - THURSDAY 15 OCTOBER 2015

3. Public Questions (Pages 3 - 6)

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CEB 15 October 2015 – CEB responses to public questions

City Centre PSPO

Mr Jonny Walker - Founding Director of Keep Streets Live Campaign

1. Why is it deemed necessary to put in place a PSPO for busking when the council already has the power to issue Community Protection Notices (CPNs) for any behaviour which is having a detrimental impact on the locality, is unreasonable and persistent?

CEB response: *Community Protection Notices and Public Spaces Protection Orders (PSPO) are two of a number of powers available to local authorities and the police to deal with noise nuisance and obstruction. We believe that a PSPO clearly sets out the standards of behaviour acceptable in our city centre and challenges those who are causing a nuisance to people going about their normal daily lives. Although a Community Protection Notice may be suitable on a case by case basis it has greater sanctions. Although the FPN amount is £100, fines for breach of a CPN in Court are higher (level 4), and prosecution of a breach introduces the possibility of seizure and remedial orders.*

2. What statutory definition of 'nuisance' will be used by officers when determining whether they have reasonable cause to issue a Fixed Penalty Notice under the PSPO?

CEB response: *Nuisance will be given its ordinary and natural meaning and will be considered in the context of the facts of the particular incident. Every prohibition or offence which exists in our society requires the application of the facts to the terms of the prohibition or offence. Enforcement will only be carried out by a small number of trained Officers applying an existing enforcement code which promotes the resolution of complaints at the lowest possible level.*

3. What formal safeguards have Oxford City Council put in place to ensure that disputes between buskers and people who make complaints against them are resolved equitably without immediate recourse to the issuing of Fixed Penalty Notices and to ensure that OCC fulfil their obligations under the Human Rights Act 1998 and the Equalities Act 2010? What formal procedures will be followed by officers prior to the issuing of Fixed Penalty Notices?

CEB response: *The Council's Anti-Social Behaviour Policy, available on our website, describes the process that all officers must adhere to when dealing with any report of anti-social behaviour. The policy is clear that officers resolve complaints at the lowest possible level, based on the facts of the case. Speaking to people about the Code of Conduct and how compliance avoids breaching the PSPO should resolve the majority of cases at the earliest opportunity.*

4. Oxford City Council have made a formal undertaking not to fine beggars but instead to use the Magistrate's Court to compel them to seek help. Does the council make a similar formal undertaking in respect of buskers/pedlars and others affected by the PSPO, particularly those who are in a position of financial

hardship and could be forced into destitution by a combination of fixed penalty notices and court charges? What safeguards are in place to take account of the financial and social circumstances of persons who are threatened with a fixed penalty notice?

CEB response:*The Council has not given any such undertaking. The Council is however bringing together buskers, businesses, councillors and other interested parties to develop a refreshed Code of Conduct for street entertainment. We would welcome your involvement in this. As you are aware from your work in York and Liverpool, the Code of Conduct is a useful way of explaining what is considered to be acceptable behaviour, and challenge intolerance to buskers and street entertainment. If there are complaints and a street entertainer is found to be operating outside the Code of Conduct they will receive advice and guidance. On the rare occasion that speaking to the person does not work and there is a breach of the Order then a FPN may be issued.*

5. In respect of the measures aimed at Pedlars, what effort to consult with Pedlars and their representatives prior to the proposal to make it a criminal offence to remain in one place for no longer than 10 minutes, to move at least 50 metres and not to return within 3 hours was introduced?

CEB response:*The prohibition regarding peddling was developed drawing on consultation undertaken by the Department of Business Innovation and Skills when reviewing the Pedlars Act. Leaflets were handed out in the city centre encouraging people to respond to the on-line questionnaire. The prohibition enables the council and police to tackle illegal street trading.*

6. Will the council prosecute/issue fixed penalty notices against Pedlars for 'technical' breaches of the code of conduct i.e. staying in one place for 11 minutes, 12 minutes, 13 minutes, moving 30 metres, returning after 2 hours EVEN if no obstruction or nuisance has been caused?

CEB response:*The Council's ASB Policy describes the process that all officers must adhere to when dealing with any report of anti-social behaviour. The policy is clear that officers resolve complaints at the lowest possible level, based on the facts of the case.*

7. If the aim of including Peddling in the PSPO is to address NUISANCE caused by peddling will Oxford City Council amend the wording of the PSPO to make it clear that action will only be taken against Pedlars who have caused a nuisance rather than those who have committed a technical breach of the code of conduct but have caused no nuisance? This would be in order to reduce the potential for arbitrary prosecutions and subsequent legal challenges?

CEB response:*The council will tackle breaches of the Order in line with its ASB Policy. Peddling is a legitimate practice that the council respects. Illegal street trading is not an activity the Council condones.*

8. What steps have the council undertaken to establish the lawfulness of the proposals with regards to Pedlars under the 1998 Human Rights Act and the 2010 Equalities Act?

CEB response: *This can be found in the 15 October CEB papers available on our website. The PSPO report and associated Equality Impact Assessment are both in these papers.*

9. Will Oxford City Council consult with local and visiting buskers, professional bodies such as the Musician's Union and Equity, local and visiting Pedlars and their representatives such as Pedlars. Info in the ongoing development of Oxford's code of practice in relation to busking and Peddling in order to ensure best practise and to ensure that Oxford is in line with the practises of other UK towns and cities?

CEB response: *Yes.*

Mr Mark Thomas

10. Was Oxford City Council aware of the mandatory criminal courts charge before it said there would be no financial penalty for beggars under the proposed PSPO?

CEB response: *The statement in response to a posting on Change.org that aggressive beggars would not be fined was made in error. The Chief Executive has written to all Members to correct the position and that letter is appended to the supplementary report of the Head of Law and Governance published on the 14 October.*

11. How will Oxford City Council ensure that beggars will not be fined when the only sentence available is a fine?

CEB response: *See above answer. In addition, for relevant cases the Council may apply to the Court for a Criminal Behaviour Order if a person is convicted of breaching the PSPO. This Order allows the court to restrict behaviours and/or include positive requirements, such as engaging with a support service.*

12. What measures have Oxford City Council put in place to influence how a magistrate will sentence in relation to begging?

CEB response: *Sentencing is entirely in the discretion of the Court.*

13. If the intention is as, Oxford City Council states, to allow beggars access to services and not to fine or criminalise the very vulnerable, why won't the council use any of the various measures it already has at its disposal, specifically Community Protection Orders?

CEB response: *We believe that a PSPO clearly sets out the standards of behaviour acceptable in our city centre and challenges those who are causing a nuisance to people going about their normal daily lives. In the vast majority of cases there will be no need to use any enforcement powers. Although a Community Protection Notice may be suitable on a case by case basis it has greater sanctions. Although the FPN fine is £100, the fines in court are higher (level 4), and prosecution of a breach introduces the possibility of seizure and remedial orders.*

Community Centre leases

Mr Khan

14. Would the board members agree that by issuing leases you are putting a burden on community associations which will effect community associations as a whole who uses these centres? We have a lot of burden in community already.

CEB response:*Providing leases strengthens the position of community centres and enables them to have long term stability and to be able to apply for grants and charitable funding.*