

To: City Executive Board

Date: 15 October, 2015

Report of: Head of Law and Governance

Title of Report: City Centre Public Spaces Protection Order (PSPO)
(Supplementary Report)

Summary and Recommendations

Purpose of report: To present representations from Liberty on the proposed PSPO and provide a response to them.

Key decision: No

Executive lead member: Cllr Dee Sinclair

Policy Framework: Corporate Plan priorities – strong active communities; Cleaner, Greener Oxford

Recommendation(s): That the Board have regard to the matters set out in this Report in considering whether to approve the City Centre PSPO proposed by the Report of the Executive Director, Community Services at Agenda Item 7 and agree to revise the proposed Order, to replace the word 'make' in the first bullet point of Prohibition 1(b) with 'complete'.

Appendices

Appendix 1: Letter dated 9 October 2015 from Liberty.

Appendix 2: Letter dated 14 October 2015 from Peter Sloman

Background

1. A City Centre PSPO was originally proposed to CEB in June 2015. Consideration was deferred following the receipt of representations by Liberty on the day of the meeting.
2. Since June, in discussion with Members, the terms of the proposed PSPO have changed significantly. The proposed Order now focuses entirely on behaviour which is anti-social. The report presented at Agenda Item 7 ('the Report') has consequently been re-drafted and is not the same report which was on the agenda for the June CEB meeting.
3. Following publication of the Report, I provided a copy to Liberty and sought their views on it. I discussed the Report with their Solicitor on 6 October and invited her to put any residual concerns in writing in order that I could present them to the Board. Those concerns are set out in a letter dated 9 October which is attached at Appendix 1.

Response to Liberty letter

4. The letter raises concerns in respect of the proposed provisions for begging, public toilets and busking. Liberty's concerns are threefold.
5. Firstly, they submit that there is insufficient evidence of detrimental effect. This is denied. The Report sets out the detrimental effect of aggressive begging, remaining in a public toilet without reasonable excuse and nuisance street entertainment and this evidence does not solely consist of consultation responses.
6. Liberty make several submissions in respect of the proper use and interpretation of consultation responses. All of those points may be easily dealt with as the entirety of the consultation responses are set out for the Board at Appendix 3 to the Report and the Board should have regard to all of that material. The Board is not obliged to follow the majority opinion (whether for or against a particular prohibition) but must give conscientious consideration to the entirety of the responses.
7. Liberty submit that the detrimental effects in relation to remaining in a public toilet without reasonable excuse do not relate to the proposed prohibition. This is denied. All of the detrimental effects cited, e.g. drug misuse, would be capable of being enforced against by the terms of the proposed Order. They are, therefore, relevant.
8. The second concern relates to the issue of proportionality in relation to begging. Liberty submit that, because the Report does not say why the Vagrancy Act 1824 is inadequate to address begging, the Board cannot be satisfied that the PSPO is the least intrusive means of addressing the problem. This is denied. The Vagrancy Act criminalises begging *per se*, whilst the draft PSPO proposes a restriction merely in respect of aggressive begging. They are directed at different offences. In any

event, 'criminalising' aggressive begging (by breach of the proposed PSPO) is no more intrusive an interference of Convention rights than the existing criminal offence of begging *per se*.

9. The third concern relates to the breadth of the terms of the PSPO. The Board will note that the terms of the proposed Order have narrowed considerably compared to the June Report and that a further amendment to the terms of the prohibition on aggressive begging is proposed so that the word 'reasonably' is inserted to introduce an element of objectivity to the prohibition.
10. It is not accepted that the concepts of 'reasonable excuse' and 'nuisance' are imprecise or vague. They do not require further elucidation or definition. Whether or not they are made out will be a question of fact in each case. That is true of any enforcement activity however. 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.
11. It has been suggested that the Council will not issue fixed penalty notices (FPN's) for aggressive begging. Such a stance is inconsistent with the adoption of the PSPO. If the Board are not content to countenance the issue of FPN's for aggressive begging then that prohibition should not be adopted as proposed. The Chief Executive has written to all Councillors to clarify that point and his letter is attached as Appendix 2.
12. Finally, there is an error on the face of the draft Order. In the first bullet point of Prohibition 1(b) there is an exception for pedlars to 'make' a transaction. This should be to 'complete' a transaction. The Board are recommended to agree this correction if they adopt the proposed Order.

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List of background papers: None

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