

**To:** City Executive Board

**Date:** 13 March 2019

**Report of:** Head of Regulatory Services and Community Safety

**Title of Report:** Approach to the City Centre Public Spaces Protection Order

<b>Purpose of report:</b>	To approve the approach to setting standards of behaviour in the City Centre.
<b>Key decision:</b>	Yes
<b>Executive Board Member:</b>	Councillor Tom Hayes, Board Member for Safer, Greener Oxford
<b>Corporate Priority:</b>	Strong and Active Communities.
<b>Policy Framework:</b>	Corporate Enforcement Policy, Anti-social Behaviour Policy

**Recommendations:** That the City Executive Board resolves to:

1. **Approve a city centre consultation process to determine the standards of acceptable behaviour in the city centre and the acceptability and appropriateness of a City Centre Public Spaces Protection Order for tackling particular behaviours.**
2. **Endorse the use of the Anti-social Behaviour Enforcement Policy to address behaviours in the city centre addressed by the 2016-19 City Centre Public Space Protection Order**

Appendices	
Appendix 1	2016-19 City Centre Public Spaces Protection Order
Appendix 2	City Centre Public Spaces Protection Order intervention activities: 1st Feb 2016 – 31st Dec 2019

Appendix 3	Equality Impact Assessment
Appendix 4	Risk Assessment

## Introduction and background

1. Oxford City Council is committed to reducing antisocial behaviour and building stronger cohesive communities. Working with partners – including Thames Valley Police - and communities, the Council takes a stand against antisocial behaviour, moving away from the situation where people tolerate problems to one where everyone enjoys the highest quality of life and work together to tackle problems.
2. Antisocial behaviour is that which is detrimental to the quality of life of people in a locality and is persistent and unreasonable. This can include graffiti, fly tipping, verbal or racial abuse, drug dealing or misuse, vandalism, and behaviour that cause harassment, distress or alarm to others.
3. Oxford City Council tackles antisocial behaviour with several tools, and that can include the use of Public Space Protection Orders (PSPO), as provided for by Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (2014 Act). This Council maintains community safety within a legal framework set by Government.
4. The City Centre PSPO (Appendix 1) began on the 1<sup>st</sup> February 2016 and expired on 31<sup>st</sup> January 2019.
5. The Council seeks to appraise whether that Order should be continued for each of the prohibitions contained within it to tackle anti-social behaviour, and public and business concerns about inappropriate behaviour.
6. Prior to considering a future City Centre PSPO the Council wishes to consult the people and businesses who make up the city centre on what they see as acceptable behaviour and the acceptability and appropriateness of a City Centre Public Spaces Protection Order for tackling it. A range of techniques will be engaged to ensure that all stakeholders have an opportunity to be heard.
7. The proposed open-ended consultation sits prior, and additional, to a consultation process, required by statute, which would be undertaken if this Council decided on the basis of the open-ended consultation to take forward a PSPO as a suitable option. Our intention is to have the broadest possible consultation and fully listen to a wide range of people and views on the Order. Our intention was not to take a decision on whether (or not) to renew the Order without hearing from those affected.
8. The consultation will include focus groups and a Public Attitude Survey. Focus groups will involve residents and visitors, businesses and people from the homeless sector including those with lived experience. Focus group insights will inform the content of the survey which will be available on-line. It will be promoted widely through social media, on-street activities and through stakeholder organisations.
9. By enabling the Order's expiry, the Council is able to appraise whether real-world behavioural change is in fact dependent upon an Order being in place for each of the prohibitions contained within it. A measure of success for the Order in relation to each prohibition is its effectiveness at changing behaviour from that which is

legally deemed anti-social in order that everyone can enjoy the highest quality of life and work.

10. We hope for Member review, through the formal Scrutiny process, of our proposed consultation(s) and the decisions take in responses to stakeholders' views.
11. The purpose of a PSPO), as defined by national law, is to set out standards of acceptable behaviour in an area, based upon those behaviours being, or likely to be detrimental, persistent and unreasonable to those in the area. A PSPO is similar in intent to a byelaw; they have a preventative purpose by setting out standards of acceptable behaviour in an area. This is a crucial difference to most other legal remedies to address anti-social behaviour which are used against a named individual in reaction to anti-social occurring.
12. Breaching a PSPO is a criminal offence and can be dealt with by serving a £100 Fixed Penalty Notice or prosecution in court, carrying a maximum fine of £1,000. The court decides on the appropriate sanction if a person is found guilty.
13. The Council has a graduated approach to enforcement that is set out in the Anti-social Behaviour Enforcement Policy. This requires officers to operate the lowest possible level of intervention that is suitable to the case, most often involving a process of engagement and words of advice.
14. The interventions used for breaches of the City Centre PSPO between 1<sup>st</sup> February 2016 and 31<sup>st</sup> December 2019 can be found in Appendix 2, Of the nearly 1,000 incidents that warranted intervention and advice over a three year period, it was deemed necessary to follow this up with enforcement action on six occasions; five fixed penalty notices (four for trading as a peddler and one for somebody in charge of a dog within a restricted area breaching the terms of the Order) and one prosecution for remaining in a public toilet without reasonable excuse.
15. The one prosecution involved an individual injecting drugs in Gloucester Green toilets, discarding drug paraphernalia and abusing Oxford City Council staff. After lengthy engagement, the City Council asked for a non-financial penalty and a Criminal Behaviour Order. This was obtained and has prevented the individual from accessing the city centre, continuing to be aggressive, discarding or showing drug paraphernalia in public, and leaving litter and rubbish lying around.

### **Setting standards of behaviour and protecting vulnerable citizens in the city centre**

16. The city centre is a unique area of the city, attracting millions of visitors each year, and as the retail and entertainment hub of the city, and the workplace for thousands of employees, it has a very high footfall.
17. Prior to considering a future City Centre PSPO the Council wishes to ascertain the views of the people and businesses that make up the city centre on what they see as acceptable behaviour. The consultation process will ensure that the voices of residents, rough sleepers, the business community, visitors and those that work in the city centre, during the day or at night, are included.
18. We are a listening Council and want to ensure our enforcement powers are right and proportionate for the types of behaviour deemed acceptable by the residents, rough sleepers, employees, employers, and visitors from Oxford, the county, and further away.

19. This Council is sensitive to the tough trading conditions of our high streets, and those across the country, and the need to encourage shoppers and visitors to spend more time in the city centre. Taking into account the views of businesses located in the city centre will be important.
20. The Council has a responsibility to all of Oxford's businesses, visitors, residents, and rough sleepers to provide a safer city, as well as a responsibility to the vulnerable population of the city, which the Council has a moral and statutory duty to protect, support, and treat with dignity and without discrimination.
21. This Council is sensitive to the concerns of some about the use of such powers in respect of vulnerable people, especially those sleeping rough in the city centre. The Council categorically will not serve any enforcement power on somebody because they are sleeping rough or are homeless. The Council addresses behaviours which meet the legal test of being anti-social, using the PSPO as a last resort in a long process of engagement, and these behaviours can be undertaken by people who are housed as well as sleeping rough homeless. As a compassionate and caring Council, this Council is working with partners to end the need for anyone to sleep rough on the city's streets.
22. Rough sleeping is a visible manifestation of a national homelessness crisis. Oxford and a number of cities are experiencing a sharp rise in homelessness and rough sleeping.
23. As this Council believes that rough sleeping is harmful and dangerous to both the physical and mental health of individuals, it focuses on early intervention and prevention approaches and operates an assertive outreach service to offer people all possible opportunities to move off the street.
24. The current Corporate Enforcement Policy and Antisocial Behaviour Policy has an explicit requirement to act proportionately to the risk – with consideration of a person's support needs and safeguarding risks always being the priority. Owing to the first-hand face-to-face contact by Oxford City Council with rough sleepers and the street-based population, we are conscious of and sensitive to needs and risks.
25. The Council's multi-agency case management approach provides an in-depth understanding of the history and current circumstances of vulnerable people causing anti-social behaviour in the city centre. In the majority of cases this approach enables the Council and other partners to address anti-social behaviour without the need of legal remedies.
26. The results of the consultation will be used to determine what behaviour is acceptable to the wide range of city centre residents, rough sleepers, businesses, and visitors consulted and whether a PSPO is an appropriate mechanism to change behaviour, so that everyone enjoys the highest quality of life and work.
27. A further consultation process, required by statute, will then be undertaken if this Council decided to take forward a PSPO as a suitable option. The Council will consult again with key stakeholders on the specific standards set out in the Order.

#### **Interim measures to address anti-social behaviour in the city centre**

28. While the Council consults on the kinds of behaviour which key stakeholders find acceptable, it will operate the range of existing legal remedies available to address anti-social behaviour, including Community Protection Notices (CPN), Civil Injunctions and Criminal Behaviour Orders (CBO).

29. The legal tests for CPNs are the same as a PSPO; behaviour needs to be detrimental, persistent and unreasonable. A City Executive Board review of the processes for the issuing of Community Protection Notices ran from October 2017 to January 2018, and had significant council and member involvement and attention given to these powers. A senior officer review of all five cases in 2016 and 2017 involving the issuing of CPNs against behaviour by rough sleepers was carried out by the Corporate Affairs Lead Officer and then reported to the Executive Director Sustainable City.
30. The CPN Review found that in all cases the Council's policies in respect of these matters had been followed appropriately. The Board Member initiated a Cross-Party Panel to examine the respective policy positions on enforcement against antisocial behaviour to consider the Senior Officer Review's findings and the policies underpinning the enforcement actions taken. The Panel agreed with the CPN Review and its conclusions. It also endorsed the current Corporate Enforcement Policy and Antisocial Behaviour Policy with their explicit requirement to act proportionately to the risk – with consideration of a person's support needs and safeguarding risks always being the priority.
31. There are two citywide PSPOs that include the city centre area, both expiring in October 2020. The Alcohol PSPO addresses alcohol-related disorder in public spaces. An offence is committed if a person refuses to surrender alcohol when requested by an authorised officer.
32. The Dog Control PSPO addresses dog fouling, the number of dogs a person has in their control, dogs in children's play areas and dogs on leads. The difference between the City Centre PSPO and the citywide Dog Control PSPO is the former required dogs to be on leads at all times, not by direction of an officer.
33. The City Centre PSPO contains restrictions on peddling, street entertainment and cycling restrictions. Cases that meet the detrimental, persistent and unreasonable test can be dealt with using a process which involves the CPN as a last resort.
34. The cycling prohibitions in Queen Street and Cornmarket Street are set by a Traffic Management Order and officers will continue to advise people cycling in contravention of the Order to desist from doing so.
35. Aggressive begging, remaining in a public toilet without a reasonable excuse and urination and defecation impact on all people, including with vulnerabilities or who may have limited financial means. The Council has an approach in place as such.
36. Where multi-agency engagement and support does not address the anti-social behaviour, the Council can issue a CPN Warning with the necessary advice, consistent with the agreed recommendations of the CPN Review from January 2018. Continuation of the behaviour will result in the Council determining, on a case-by-case basis, the public interest in serving a Fixed Penalty Notice or seeking a prosecution at Court and take the appropriate action.

## **Legal issues**

37. Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (2014 Act) provides Oxford City Council with the power to make a PSPO. The legal tests for a PSPO focus on the impact that anti-social behaviour is having on victims and communities. A PSPO can be made by the Council if it is satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out, in a public space:

- Has had, or is likely to have, a detrimental effect on the quality of life of those in the locality;
  - Is, or is likely to be, persistent or continuing in nature;
  - Is, or is likely to be, unreasonable; and,
  - Justifies the restrictions imposed.
38. The Council is further required by the Human Rights Act 1998 not to interfere disproportionately with the rights protected by the European Convention on Human Rights.
39. The use of anti-social behaviour enforcement powers are contained in the Council's Anti-social Behaviour Enforcement Policy and Procedures, updated recently in line with the recommendations of the CPN Review.

### **Financial issues**

40. The consultation process will be funded through existing budgets.

### **Level of risk**

41. There is a risk that the Council does not address the standards of behaviour expected by the public in the city centre. The consultation process will mitigate this risk by ascertaining what the public believe is acceptable behaviour.
42. There are risks associated with striking an appropriate balance in enforcement of anti-social behaviour and community protection. These are explored in the report.
43. There are risks resulting from the perceived relationship between the drugs supply and aggressive begging. Figures from our partner Thames Valley Police show that, from a total of 18 individuals served a second aggressive begging warning, 16 experienced substance misuse issues. Our aim is to support people with substance misuse issues to access recovery support which is available immediately to them. Oxford City Council is seeking the view of Thames Valley Police and Turning Point the substance abuse service, on the advisability of retaining the Order for aggressive begging on drugs supply-related grounds.
44. The powers to address anti-social behaviour are available to Council officers. The lack of officers available to deal with these issues at key times when they are most prevalent, will limit their effectiveness. If we choose to have the powers, the Council needs to have the people in the right places at the right times to change behaviour.

### **Equalities impact**

45. All people with protected characteristics, including people with vulnerabilities, will have an equal opportunity to engage with the consultation process.
46. People with vulnerabilities who are committing anti-social behaviour. These vulnerabilities and all safeguarding considerations are considered on a case-by-case basis.

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## **Appendix 1: 2016-19 City Centre PSPO**

### **OXFORD CITY COUNCIL ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 PART 4, SECTION 59 PUBLIC SPACES PROTECTION ORDER**

Oxford City Council (the Council) in exercise of the power under section 59 of The Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), being satisfied that the conditions set out in section 59 of the Act have been met, makes the following order:

1. The Order applies to the public areas shown delineated by the black line on the plan annexed to this Order (the Restricted Area):
  - 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 provisions of this order relating to the control of dogs shall not apply to any person who is registered blind in accordance with section 29 of The National Assistance Act 1948, to any person who is deaf and in charge of a dog trained by Hearing Dogs for Deaf People and to any person suffering a disability and in charge of a dog trained to assist with his/her mobility, manual dexterity, physical coordination or ability to lift and carry everyday objects and the said dog has been trained by a prescribed charity.

Any person who, without reasonable excuse, fails to comply with the requirements of this Order commits an offence and shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.



## Appendix 2: City Centre PSPO intervention activities: 1<sup>st</sup> Feb 2016 – 31<sup>st</sup> Dec 2019

Prohibition	Intervention level
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.	Advice - 96 FPN - 0 Prosecution - 0
No person shall remain in a public toilet without reasonable excuse.	Advice - 1 FPN - 0 Prosecution - 1
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.	Advice - 2 FPN - 0 Prosecution - 0
No person shall cycle within Queen Street or Cornmarket Street outside the permitted cycling times of 6 p.m. to 10 a.m.	Advice - 661 FPN - 0 Prosecution - 0
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.	Advice - 18 FPN - 0 Prosecution - 0
No person trading as a pedlar shall: <ul style="list-style-type: none"> <li>• remain in any location for more than 10 minutes unless it is to complete a transaction.</li> <li>• locate themselves within 50 metres of their previous location.</li> <li>• return to any location already occupied in the last three hours.</li> <li>• obstruct the highway or shop entrances.</li> </ul>	Advice - 154 FPN - 4 Prosecution - 0
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.	Advice - 18 FPN - 0 Prosecution - 0
Any person in charge of a dog within the restricted area shall be in breach of this Order if he/she: <ul style="list-style-type: none"> <li>• fails to keep the dog on a lead and under physical control at all times.</li> <li>• is found to be in charge of more than four dogs at the same time whilst in a public place.</li> <li>• allows the dog to foul in a public place and then fails to remove the waste and dispose of it in an appropriate receptacle.</li> <li>• allows the dog to enter any covered public space</li> </ul>	Advice - 13 FPN - 1 Prosecution - 0

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