

# Dispersal notices – the crime of being in a public place

A Manifesto Club briefing document

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## The new dispersal powers

From 20 October 2014, the Anti-Social Behaviour, Crime and Policing Act 2014 created wide-ranging powers for police officers and Police Community Support Officers to 'disperse' members of the public from a particular locality.

An area can be declared a dispersal zone if an officer of the rank of police inspector or above is

*satisfied on reasonable grounds that the use of those powers in the locality during that period may be necessary for the purpose of removing or reducing the likelihood of—*

*(a) members of the public in the locality being harassed, alarmed or distressed, or*

*(b) the occurrence in the locality of crime or disorder.<sup>1</sup>*

A police officer can order members of the public to disperse from this area if they have

*reasonable grounds to suspect that the behaviour of the person in the locality has contributed or is likely to contribute to—*

*(a) members of the public in the locality being harassed, alarmed or distressed, or*

*(b) the occurrence in the locality of crime or disorder.<sup>2</sup>*

The officer can specify the route by which a person must leave the area, and the 'exclusion period' within which they must not return.

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<sup>1</sup> Section 34: <http://www.legislation.gov.uk/ukpga/2014/12/part/3/enacted>

<sup>2</sup> Section 35: <http://www.legislation.gov.uk/ukpga/2014/12/part/3/enacted>

These new dispersal powers are an extension of the dispersal powers available under section 30 of the Anti-Social Behaviour Act 2003,<sup>3</sup> and differ in the following ways:

- Under the 2003 powers, areas had to be designated a dispersal zone on the basis of a particular problem of crime and disorder; the local authority had to be consulted and any planned order publicised. Now, any area can be declared a dispersal zone on the spot. This can be done in advance, for example covering a town centre over the weekend, or 'spontaneously', for example giving authorisation over the phone to a constable who wishes to use the powers.<sup>4</sup>
- The 2003 powers could only be invoked if 'anti-social behaviour is a significant and persistent problem in the relevant locality'. The current powers can be applied if an inspector believes that the use of the powers 'may be necessary for the purpose of removing or reducing the likelihood of...members of the public in the locality being harassed, alarmed or distressed' – a substantially vaguer condition.
  - The new powers additionally allow for the confiscation of property 'that the constable reasonably believes has been used or is likely to be used in behaviour that harasses, alarms or distresses members of the public';
  - The new powers allow for somebody to be banned from an area for 48 hours, rather than 24 as under the previous powers. This has led to 'weekend curfews' in town centres, as police forces can issue orders on a Friday night to last the weekend;
  - The new powers can be used against single individuals, rather than groups of two or more people. This means that the powers are not restricted to defusing group situations but have a broader application in the policing of individuals;
  - The new powers can be used by Community Support Officers in addition to police officers.

These shifts mean that the power to disperse individuals from public spaces is no longer an exceptional power existing only in particular areas. Instead, it has become part of the ordinary powers of policing to be applied in all areas. In effect, police forces now have a roaming power to banish people from the streets.

### **How have the new powers been used?**

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2003/38/part/4/enacted>

<sup>4</sup> The Inspector must also record the authorisation in writing.

We issued FOI requests to all 43 England and Wales police forces, requesting information about their use of dispersal powers in the six-week period between 20 October and 30 November 2014. We asked them about: the number of dispersal zones declared; their reasons for declaring dispersal zones; the number of people dispersed; any information about these individuals; and whether any items had been confiscated. We also searched local press reports for accounts of the use of these powers. Our findings can be summarised as follows.

### *Number of dispersal zones and dispersals*

We received responses from 37 police forces, 23 of which were able to supply some information. These responses show that in the six-week period after the passing of the Anti-Social Behaviour, Crime and Policing Act, 19 police forces used dispersal powers 528 times to declare dispersal areas. Data from 19 police forces recorded the dispersal of 1344 individuals in this period (for statistics, see Appendix).

If this were scaled up for all 43 police forces, this would suggest that around 1000 dispersal areas were declared in that six-week period, and around 3000 individuals were dispersed. Assuming these powers are being used at the same rate, corresponds to some 5000 dispersal areas and 13,000 dispersed individuals in the six-month period following the enactment of the powers.

In practice, this figure is likely to be higher, since larger police forces such as the Greater Manchester Police and Metropolitan Police were among those unable to provide data, and Merseyside Police – a very frequent user of dispersal powers - was only able to provide very incomplete data.

There is very little data on the use of confiscation powers, but some police forces reported the confiscation of alcohol. One police force, Lancashire, confiscated ‘four pedal cycles’ from young people, which it said had been ‘used for the committing of ASB’.<sup>5</sup>

### *Reasons for declaring dispersal zones*

Our FOI responses indicate that police forces are invoking dispersal powers pre-emptively in advance of public gatherings, such as fairs or bonfire night, rather than in response to significant public disorder.

Several police authorities, such as Essex, cited ‘bonfire night’ as the reason for introducing a dispersal zone. South Wales Police declared dispersal zones in Bridgend

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<sup>5</sup> FOI response, Lancashire Police

town centre for Halloween, and Barry Town for bonfire night.<sup>6</sup> Stoke-on-Trent South police called a dispersal zone in Fenton Park to 'Prevent ASB at firework display'.

Lancashire East Division declared a dispersal zone in Lancaster City Centre between 1645-2359hrs on 23 November 2014, when the town centre became 'crowded with attendees for (Christmas) lights switch-on'.<sup>7</sup> It seems that the switching on of the Christmas lights proceeded without incident, however, and there were '0 dispersal notices issued'.

The mere presence of crowds is often seen as justification enough to invoke powers, just in case they may be required. Blackpool town centre was declared a dispersal zone with the justification: 'ASB anticipated this Saturday evening due to greater numbers of people than usual expected in town this evening.'<sup>8</sup>

Police forces created dispersal zones in anticipation of lower division football matches; as well as fairs, including the South Staffordshire Victorian fair<sup>9</sup> and Long Eaton Chestnut Fair<sup>10</sup>. Other police forces said that they declared zones in response to the 'night-time economy', commonly running from Friday until Sunday night in a town or city centre. In South Wales these weekend dispersal zones include Swansea city centre, and Bridgend and Porthcawl town centres.<sup>11</sup>

Stoke-on-Trent police enacted dispersal zones 'Due to drunkenness' and 'Nuisance vehicles', and several authorities invoked the powers against car enthusiast meet-ups. Kent Police enacted dispersal zones in response to 'homeless people', while others mentioned beggars or street drinkers. Warwickshire Police declared dispersal zones in Leamington town, Warwick town and Stratford town centre in response to 'student night', 'drunks on high st', 'begging', as part of an 'enhanced policing initiative', and in response to the 'Mop fair'.

In some cases, groups' mere presence in public space was cited as 'intimidating' or 'distressing' for others, which was particularly the case with groups of homeless or young people. One dispersal area in Cornwall, targeted at young people, was justified

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<sup>6</sup> FOI response from South Wales Police

<sup>7</sup> FOI responses from Lancashire Police

<sup>8</sup> FOI response from Lancashire Police

<sup>9</sup> FOI from Staffordshire Police

<sup>10</sup> <http://www.ilkestonadvertiser.co.uk/news/local/police-crackdown-on-yobs-for-long-eaton-s-chestnut-fair-1-6960358>

<sup>11</sup> FOI responses from South Wales Police

on the basis that 'Local residents feel intimidated by the large amount of young people who congregate in areas around the town.'<sup>12</sup>

Some police forces seem to be suggesting that merely being present in a public place for any length of time is an illegitimate and questionable activity. One police superintendent said that people would automatically be asked to move on from the dispersal area within Worcester City Centre: 'People are more than welcome to use the pubs, clubs and food outlets in the area. However, once they leave these premises we will politely ask them to move on quickly.'<sup>13</sup>

Dispersal powers have been used in most city centres, but also in small towns, villages and rural areas: 16 people were barred from Lambton village centre (Sunderland) over a weekend,<sup>14</sup> and powers were used in a village park in Kirton, Lincolnshire<sup>15</sup>.

It is striking that many of the areas declared dispersal zones do not experience significant unrest or disorder, such as Oxford and Grantham city centres. It is also striking that police authorities discuss dispersal powers as a measure with which they can experiment, rather than a last resort. The measures are described as 'flexible', a 'useful new tool', or 'preventative measure', which authorities are 'testing'. Such language suggests that the powers are being used pragmatically to deal with a variety of different situations. It also suggests that authorities are not imposing very stringent conditions upon the use of powers which deprive citizens of their freedom of movement.

### *Who has been dispersed?*

Police forces were unable to provide significant detail about the individuals who had been dispersed, or the reasons for their dispersal. Some forces said that the orders had been used against homeless or young people, but without more detail on the circumstances. For example, Lancashire South Division reported that 'The ages of the people directed to leave ranged from 11 to 22, but were typically 14-16 years old'.<sup>16</sup>

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<sup>12</sup> <http://www.cornishguardian.co.uk/Crackdown-antisocial-behaviour-Saltash/story-25800855-detail/story.html#ixzz3TKhIF0eI>

<sup>13</sup> <http://www.worcesternews.co.uk/NEWS/11673494.print/>

<sup>14</sup> <http://www.sunderlandecho.com/news/crime/law-used-for-first-time-to-crack-down-on-antisocial-problems-in-washington-1-6919271>

<sup>15</sup> <http://www.bostonstandard.co.uk/news/local/first-use-of-anti-social-act-in-kirton-park-1-6388513>

<sup>16</sup> FOI response, Lancashire Police

Several political protesters have been targeted with dispersal powers, which poses a direct threat to freedom of speech and assembly. Merseyside Police used the powers against political protesters on consecutive weekends<sup>17</sup> - in one case targeting activists who were chatting and deciding which pub to go to for a drink. Police used the powers to remove protesters against the redevelopment of a Southwark estate.<sup>18</sup> Westminster Police dispersed street drinkers and rough sleepers from Trafalgar Square, along with activists who were preparing to hand out meals for the homeless.<sup>19</sup>

Other cases which have been brought to the attention of the Manifesto Club include the unjust use of dispersal notices against football supporters. Supporters of one Championship side were issued with dispersal orders when their coach had pulled up by the side of an isolated road on the way to a match. A football fan reports:

‘... our treatment was unreal, around 48 of us received section 34 (dispersal) orders. We simply pulled up on the edge of town, got out of our bus, and were surrounded by police within a minute. We were held there for two hours and given one option - accept the order or be arrested. Each one of us had a match ticket, this was very poor and easy policing. There was no trouble at all, the road we were on was remote, there were absolutely no rival fans anywhere near us, there was no public order. This was a planned police operation....’<sup>20</sup>

Finally, a disabled man in a wheelchair was issued with a dispersal order for handing out food for the homeless in central Brighton. He was told that if he returned to the area he would be arrested.<sup>21</sup>

### *Lack of central recording*

Our FOI request also revealed that many police forces are failing to record their use of the dispersal power.

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<sup>17</sup> <https://liverpooliww.wordpress.com/2014/12/01/liverpool-iww-condemns-police-use-of-dispersal-notices-against-activists/>

<sup>18</sup> <https://netpol.org/2015/02/19/dispersal-orders-aylesbury-estate/>

<sup>19</sup> <http://www.standard.co.uk/news/crime/police-launch-today-crackdown-on-trafalgar-square-squatters-9989664.html>

<sup>20</sup> Email to Manifesto Club. The football clubs cannot be named since the fans are considering legal action.

<sup>21</sup>

[http://www.theargus.co.uk/news/11675213.Disabled\\_man\\_threatened\\_with\\_arrest\\_after\\_handing\\_out\\_food\\_to\\_the\\_homeless\\_in\\_Brighton/?ref=mr](http://www.theargus.co.uk/news/11675213.Disabled_man_threatened_with_arrest_after_handing_out_food_to_the_homeless_in_Brighton/?ref=mr)

Of the 37 forces who answered our FOI request, only 19 were able to specify the number of dispersal zones declared between 20 October and 30 November 2014, and 19 were able to specify the number of individuals dispersed. The forces which refused the request said that there was no central procedure for recording the use of dispersal powers; some said that they would need to examine every officer's pocketbook in order to find out how the powers had been used.

This lack of reporting runs counter to the recommendations in the Guidance accompanying the Anti-Social Behaviour, Crime and Policing Act, which specifies:

'As a safeguard to protect civil liberties, data on the use of the dispersal power would have to be published locally. Police and Crime Commissioners will have a key role in holding forces to account on this to ensure that officers are using the power proportionately.'<sup>22</sup>

This lack of formal checks and reporting means that the public would in general be unaware that a particular area was a dispersal zone. (By contrast, under the 2003 powers, dispersal zones were marked with signage or documented on council or police websites). Therefore, the police have gained extensive new powers which are to a large extent undocumented and invisible.

#### *Arrests/prosecutions for violation of dispersal orders*

Those who violate a dispersal order have committed a criminal offence, for which they can be prosecuted and fined. Our FOI requests show that there were 120 prosecutions in Magistrates' Courts for the offence of violating a dispersal order between 20 October and 31 December 2014.<sup>23</sup>

Since the person was issued with the order only on the basis of an officer's *suspicion* that their behaviour might in the future *contribute to* harassment, alarm or distress, the person's actual offence was only that they had been found in a public space.

For example, of 10 people dispersed from Leicester Town Hall square, three were found the next day in the prohibited area and prosecuted for the offence.<sup>24</sup>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/202891/Fact\\_sheet\\_Police\\_Powers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/202891/Fact_sheet_Police_Powers.pdf)

<sup>23</sup> FOI Response from the Ministry of Justice, 15 April 2015. 100 of these prosecutions were successful.

<sup>24</sup> <http://www.leicestermercury.co.uk/Police-order-drinkers-Leicester-s-Town-Hall/story-23746961-detail/story.html#ixzz3ImBFpJd0>

Meanwhile, Dorset Police carried out 12 arrests for the offence of violating a dispersal order in the six-week period 20 October-30 November.<sup>25</sup>

Local Magistrates' Court reports show that dispersal orders are being issued against homeless people, an offence for which they can be fined hundreds of pounds. The Bournemouth Echo reports the case of a man

'aged 76 of no fixed abode. Admits at Bournemouth on 9/4/15 failing without reasonable excuse to comply with a direction given in that they failed to leave the locality specified, namely Princess Road under section 35 of the Anti-social Behaviour, Crime and Policing Act 2014. Fined £100. To pay victim surcharge of £20. Costs of £85. To be detained in courthouse. Also admits to failing without reasonable excuse to surrender to custody at Bournemouth Magistrates' Court on 10/4/15. Fined £50. To pay criminal courts charge of £150.'<sup>26</sup>

Of course, if this individual has committed a crime then they should be held to account for it. But in this instance, a homeless person was criminalised for nothing more than the offence of being found in a public place after having being ordered to leave. The fact that they had no home to go to makes such use of powers of banishment particularly unreasonable.

### *Blurring crime and non-crime*

It also appears that dispersal powers are being used where stronger action could have been taken, in place of prosecution of criminal offences. For example, dispersal areas were declared in response to robberies, criminal damage, and break-ins in areas including South Staffordshire and Blaenau Gwent<sup>27</sup>. Surely the investigation of these crimes, and prosecution of the individuals responsible, would be more appropriate action, rather than banishing groups from the streets on the suspicion that they might have or may commit a crime.

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<sup>25</sup> FOI request to Dorset Police

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[http://www.bournemouthecho.co.uk/news/12947463.In\\_the\\_Dock\\_\\_Nine\\_people\\_from\\_Bournemouth\\_who\\_have\\_appeared\\_in\\_court/](http://www.bournemouthecho.co.uk/news/12947463.In_the_Dock__Nine_people_from_Bournemouth_who_have_appeared_in_court/)

<sup>27</sup> <http://www.southwales-eveningpost.co.uk/Weekend-exclusion-order-following-40-thefts/story-25914432-detail/story.html>



In other cases, individuals were dispersed for drug possession and other offences. A ‘prolific shoplifter’ was issued with an order barring him from Bedford town centre.<sup>28</sup>

The chief inspector of Doncaster Police said that one individual was issued with a dispersal order for ‘possession of cocaine’.<sup>29</sup> The South Yorkshire Police FOI response reported that ‘3 People were dispersed from the Doncaster Town Centre’: ‘1 for Verbal Altercation, 1 for Anti Social Behaviour, 1 for Possession of Cocaine.’ Here, somebody guilty of the vague misdemeanours ‘verbal altercation’ or ‘anti-social behaviour’ – neither of which is itself a designated public order offence – is apparently given the same penalty as someone possessing a prohibited substance.

The dispersal power has the effect of blurring the distinction between crime and non-crime, with the police simply removing groups of people from an area, pushing them away, whether they have done something wrong or not. Criminal and non-criminal behaviour becomes lumped together in the broadening, pseudo-criminal category of ‘ASB’, or the even broader category of ‘suspicions of possible ASB to be committed in the future’.

It was striking that police forces mentioned criminal and non-criminal activities alongside one another as the reasons for declaring dispersal zones. Norfolk Police declared zones in Norwich town centre in response to ‘begging’, ‘drugs’ and ‘prostitution’, applying the same legal remedy to these activities of very different legal status.<sup>30</sup>

Similarly, Staffordshire Police declared dispersal zones in response to ‘House burglaries and vehicle crime in locality’, as well as to ‘Car cruising’ and ‘Nuisance vehicles’, lumping together serious offences with something that would have been seen as a misdemeanour or indeed entirely outside the purview of the criminal law.<sup>31</sup>

The attraction of the dispersal power is likely to be that it can be issued on the spot, by handing out a card or filling in a form, without the time and effort required for prosecuting an offence. If the individual violates the dispersal order then their arrest and prosecution is a straight-forward matter, since the officer need only prove that the person had actually been found in the public place.

Yet such methods blur the distinction between criminal and non-criminal behaviour, and resort instead to pragmatically pushing individuals out of public spaces. Where

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<sup>28</sup> <http://www.bedfordshire-news.co.uk/Anti-social-behavior-tackled-Bedfordshire-police/story-26180365-detail/story.html#ixzz3UePelnsJ>

<sup>29</sup> South Yorkshire FOI response

<sup>30</sup> FOI response, Norwich Police

<sup>31</sup> FOI response, Staffordshire Police

these powers are used against young people, they also supplant the socialisation and disciplining role of police officers and other adults in public spaces. Rather than a police officer having 'words' with young people to deal with low-level misdemeanour, young people are simply sent home and removed from these spaces.

### *Dispersal powers and the corrosion of criminal justice*

Police authorities including Staffordshire Police are producing dispersal 'cards', which can be given out on the spot to members of the public, indicating the area from which they are barred. Such summary powers clearly have the potential to be used in a pre-emptive and arbitrary manner.

Indeed, in some cases officers have made it quite clear that they can disperse whomever they wish. The group of Liverpool political activists were dispersed while chatting and deciding which pub to go to for a drink, asked on what grounds they were being dispersed, and received the response:

'One officer farcically commented that activists may have "polystyrene balls", and these "may cause distress". However, when invited to search for these mysterious balls, he declined.'<sup>32</sup>

A South Derbyshire police chief spelled out the pre-emptive and subjective application of the powers:

'These new powers mean we can be much more effective in cutting out crime and antisocial behaviour before it has a chance to happen. If officers out on patrol see people who they think may cause a nuisance, they can now address it and move them on if they feel that the problem could escalate.'<sup>33</sup>

Since police officers do not possess clairvoyant powers, we must doubt their claim to be able to stop behaviour 'before it has a chance to happen'. There is an obvious danger that these powers will be used against innocent and law-abiding members of the public, who are then effectively placed under curfew for the weekend. None of these thousands of dispersed individuals had been shown to actually have committed an offence.

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<sup>32</sup> <https://liverpooliww.wordpress.com/2014/12/01/liverpool-iww-condemns-police-use-of-dispersal-notices-against-activists/>

<sup>33</sup> <http://www.burtonmail.co.uk/parts-South-Derbyshire-criminals-banned-caught/story-26121013-detail/story.html#ixzz3TVTEcLPu>

Historically, powers to disperse groups (such as the Riot Act) were used to defuse critical public order situations. The 2003 dispersal powers could be invoked on broader grounds, but were still limited to particular areas where ASB was a 'significant and persistent problem'. As this report shows, dispersal powers have now become part of everyday policing and can be used in any public space. As a result, these powers now require urgent critical review.

The growth of dispersal measures represents a return to more primitive forms of law enforcement, which were defined by banishment. These rough tools were employed by societies without a developed system of criminal justice or law enforcement. The fact that banishment has returned in our times indicates a lack of regard for legal principles and public rights.

Therefore, although police forces celebrate these new powers as a handy 'new tool', the vagueness and loose nature of these mechanisms means that they act to the detriment of both public liberties and of effective law enforcement.

## **APPENDIX**

*Police forces' use of dispersal powers between 20 October and 30 November 2014*

<b>Police Force</b>	<b>No. of dispersal zones declared</b>	<b>No. of dispersal orders issued</b>
Avon and Somerset	15	NA
Bedfordshire	NA	NA
Cambridgeshire	69	123
Cheshire	NA	NA
City of London	1	5
Cumbria	28	66
Derbyshire	26	39
Devon and Cornwall	NA	98
Dorset	NA	124
Durham Constabulary	4	0
Dyfed Powys	54	NA
Essex	NA	NA
Gloucestershire	NA	NA
Gwent	3	8
Hampshire	NA	200
Hertfordshire	NA	NA
Kent	37	19
Lancashire	41	78
Leicestershire	NA	NA
Lincolnshire	NA	NA
Manchester (GMP)	NA	NA
Merseyside (incomplete data)	27	80
Metropolitan Police	NA	NA
Norfolk Constabulary	19	194

North Wales	NA	NA
Northamptonshire	31	NA
Northumbria	NA	NA
Nottinghamshire	NA	NA
South Wales	39	48
South Yorkshire	7	19
Staffordshire	67	91
Suffolk	37	NA
Thames Valley	NA	NA
Warwickshire	4	9
West Midlands	NA	92
West Yorkshire	NA	NA
Wiltshire	19	51
<b><u>TOTAL</u></b>	<b><u>528</u></b>	<b><u>1344</u></b>