

# The police use and abuse of ASB powers

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A Manifesto Club Report

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# Summary

1. The Home Office is setting the police on a dangerous course of 'fast and loose' policing. This prioritises the high use of increasingly flexible powers, with low benchmarks for issue, and carrying increasingly heavy penalties.
2. There is no credible official data on the police use of existing ASB powers, and no Home Office study of their on-the-ground effectiveness. No police authority or body has carried out an assessment of the use of ASB powers.
3. Many police forces do not centrally record the use of ASB powers. Out of 40 police forces who responded to our FOI request, 11 did not centrally record the issuing of Community Protection Notices (CPNs), and data supplied by the others was subject to minor/major inaccuracies. Only 18 forces could say how many dispersal notices had been issued, again with problems of accuracy.
4. The result of current ASB powers is to allow police enforcement against people who have not yet done anything wrong, or against whom there is no significant evidence. This is permitted because of the low standards of issue and broad nature of these powers.
5. Case studies indicate that police ASB powers are being used in inappropriate, unfair, and sometimes prejudiced ways, and can have highly counterproductive effects on the ground, particularly targeting vulnerable groups such as the homeless or young people or those with mental health problems. These powers can have a highly restrictive and damaging effect on the lives of recipients.
6. The policing of 'ASB' is taking the police away from a concern with criminal acts into areas such as petty disputes between neighbours, the regulation of model aircraft flying, and the sleeping spots of homeless people. This means a loss of focus and an ineffective use of police resources, as well as a significant restriction on the liberties of law-abiding citizens.

7. The extensions to ASB powers in the Criminal Justice Bill will increase incidents of the police abuse or misuse of power. The plan to give the police local law-making powers (Public Spaces Protection Orders) is particularly problematic, and goes against the advice of many policing bodies. Currently local councils scrutinise and check many unreasonable police requests for PSPOs. The police are not qualified to make laws: giving them such powers would lead to a large number of unjustified restrictions.
  
8. Procedural justice is currently being abandoned in the use of ASB powers. The erratic and unpredictable use of powers brings the law into disrepute and erodes respect for law-enforcement, as well as eroding norms that are the basis of a community's self-regulation.

# Introduction

The Criminal Justice Bill<sup>1</sup> - currently going through parliament - will dramatically extend police 'anti-social behaviour' powers contained in the Anti-Social Behaviour, Crime and Policing Act 2014. The Bill will give senior police officers powers to make Public Spaces Protection Orders (PSPOs), which can ban activities in public spaces or impose positive requirements upon the users of public spaces. The Bill will also extend police power to issue dispersal notices (orders to groups or individuals to disperse from public spaces), and allow on-the-spot legal orders (Community Protection Notices, or CPNs) to be issued to 10-year olds. On-the-spot penalties for PSPOs and CPNs will be increased from £100 to £500. Finally, the Criminal Justice Bill will create six new powers targeted at homeless people, to allow them to be moved on or subject to restrictive conditions in a range of circumstances, including if they or a member of their group 'does something that is a nuisance' or if they beg within 5 meters of a shop.

This dramatic expansion of police powers is occurring in the absence of any credible official data on how the powers contained in the 2014 Act are currently used by the police. While previous powers such as the ASBO were subject to intensive data collection and assessment, there has been no police or Home Office assessment of the on-the-ground effect of ASB powers, including whether they are effective and being used as intended.

This report concludes that the Home Office is setting the police on a dangerous trajectory of 'fast and loose' policing, where the primary concern appears to be to make ASB powers easier to use and to increase their use. This policy is exposing the public to significant dangers of the abuse of power, while undermining the reputation of the criminal law and the effective resolution of disputes. Before introducing new powers, the Home Office should first assess the use of existing powers, and introduce safeguards to prevent instances of arbitrary or perverse use.

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<sup>1</sup> Criminal Justice Bill: <https://bills.parliament.uk/bills/3511>

# Current police ASB powers v Criminal Justice Bill

Power	Current police power	Criminal Justice Bill
<u>Public Spaces Protection Orders (PSPOs)</u>	Councils can issue PSPOs to ban activities in public spaces, if they believe that an activity has a 'detrimental effect on the quality of life'. LAs must consult the police but the police cannot issue. £100 fixed penalty notice.	Senior police officers will be able to issue PSPOs if they believe that an activity has a 'detrimental effect on the quality of life'. £500 fixed penalty notice.
<u>Community Protection Notices (CPNs)</u>	Police officers can issue a CPN to over 16s if they believe that an individual's conduct has a 'detrimental effect on the quality of life'. £100 fixed penalty notice.	Police officers will be able to issue CPNs to 10-16 year olds. £500 fixed penalty notice.
<u>Dispersal powers</u>	Police inspectors must designate dispersal areas in advance, when necessary to reduce crime/disorder or the harassment/alarm/distress of members of the public. Police officers can order a person to leave this area for 48 hours, if they believe that their conduct is likely to contribute to harassment/alarm/distress or crime/disorder.	Dispersal orders can be issued for 72 hours. An amendment to the Bill, if passed, will allow dispersal powers to be used in any area at any time, without requiring prior authorisation of a dispersal area by a police inspector.
<u>Nuisance rough sleeping and nuisance begging orders</u>	Currently no specific powers targeting homeless people.	Six new powers targeting homeless people, allowing them to be moved on or subject to specific behavioural requirements if they or someone in their group 'does something that is a nuisance'.
<u>Civil Injunctions</u>	Civil Injunctions impose restrictions or requirements on an individual. Power of arrest only attached to the order if significant risk of violence/harm to others.	Power of arrest can be attached to the order whenever the court thinks it appropriate.

# ‘Fast and loose’ policing policy

The context for the police use of ASB powers is a policy shift at the level of the Home Office, which represents a new approach to policing and the enforcement of the criminal law. Enforcement is not targeted at criminal acts, but rather used preventively to ‘nip problems in the bud’. Punishment does not proceed according to due process, with requirements for evidence and the rights of the defence: instead, powers are considered as ‘tools’ to be used at the discretion of the officer.

This approach is particularly evident in the Criminal Justice Bill (and the prior ‘Anti-Social Behaviour Action Plan’<sup>2</sup>), which developed out of a quarterly Strategic ASB Oversight Board chaired by the Home Office.<sup>3</sup> In summary, this policing policy has the following elements:

1. **Preventative policing.** The Strategic ASB Oversight Board is described as having a ‘prevention-led focus’.<sup>4</sup> Powers are designed to be used at a low level, before someone has committed an offence, or when there is not sufficient evidence they have committed an offence - for example, by dispersing people who it is suspected might cause trouble. A police interviewee in the Home Office report *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014* said that officers issued dispersal notices when people were ‘gathering around...to try and get rid of some people before anything happens’.<sup>5</sup> A Leeds University report said that ASB powers are ‘driven by an

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<sup>2</sup> ‘Anti-Social Behaviour Action Plan’, Home Office, 27 March 2023: <https://www.gov.uk/government/publications/anti-social-behaviour-action-plan>

<sup>3</sup> Chief Constables’ Council Minutes, 8-9 December 2021: <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/meeting-minutes/chief-constables-council/2021/8-9-december-2021.pdf>

<sup>4</sup> National Police Chiefs’ Council FOI response

<sup>5</sup> *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*, Home Office, 14 November 2023: <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

overriding concern for what *might* happen in the future'.<sup>6</sup> Most ASB powers allow restrictions on the basis of behaviour that 'would be likely to' occur and 'would be likely to' cause a detrimental effect.<sup>7</sup> Such preventative policing involves an obvious risk of unfair use, since it is based on a suspicion of what someone may do rather than something that they have done. Since police officers are not clairvoyant it is impossible for them to know what somebody might do in the future, so preventative enforcement relies on hunches or presumptions about individuals or groups.

2. **Increase use of powers and punishments.** There is an explicit aim in Home Office policy to increase the use of ASB powers, without considering whether this use is effective or just. One of the aims of the Strategic ASB Oversight Board is 'more outcomes',<sup>8</sup> and the increase in penalties and restrictive orders was an explicit aim of the ASB Action Plan.<sup>9</sup> This desire to increase the use of powers appears to be an end in itself - showing the 'effectiveness' of police intervention - rather than strategic in achieving justice or the effective resolution of disputes. There is also a drive to increase punishments, which appears to be demonstrative rather than measured retribution: the Criminal Justice Bill will increase penalties for PSPOs and CPNs to £500, which is greatly out of proportion to the nature of these offences.
3. **'Flexible' powers that are easier to use.** The consistent drive in policy is to make powers more flexible and reduce the benchmark for use, which means removing elements of procedural justice. The Home Office *Police Perceptions*<sup>10</sup>

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<sup>6</sup> 'It ain't (just) what you do, it's (also) the way that you do it: The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People', Eur J Crim Policy Res (2017) <https://eprints.whiterose.ac.uk/100028/14/art%253A10.1007%252Fs10610-016-9318-x.pdf>

<sup>7</sup> For example, Nuisance Rough Sleeping Prevention Notices can be issued if it is 'likely' that someone is 'intending' to sleep rough, and that they do something that is 'likely' to be 'capable of causing' disruption, alarm or distress.

<sup>8</sup> National Police Chiefs' Council FOI response

<sup>9</sup> 'Anti-Social Behaviour Action Plan', Home Office, 27 March 2023: <https://www.gov.uk/government/publications/anti-social-behaviour-action-plan>

<sup>10</sup> *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*, Home Office, 14 November 2023: <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>



report concluded that the 'legal process' could be a 'barrier to the successful use of ASB powers' - because of requirements for the police officer to attend court, requiring witnesses to attend, the criminal threshold for evidence on breach hearings, and the possibility that the court might not grant the order. The drive in policy is to remove such 'barriers' that police officers find inconvenient and time consuming. Powers are often described as 'useful tools', and there is a preference for 'tools' with 'flexibility' and a 'lower evidential threshold' (the Community Protection Notice is described in the *Police Perceptions* report as a 'broad and flexible power'). 'Effectiveness' appears to be equated with ease of use: the report's suggested changes to increase the 'effectiveness' of ASB powers involved reducing procedural/evidential requirements, and increasing penalties or the circumstances in which powers could be used. (The use of the term 'tool', rather than 'power' or 'law', reflects a view of powers as existing for officers to use as they see fit, rather than a law that they enforce or obey. Powers are not seen as coercive mechanisms to be handled with care, but rather as neutral or benign elements - like a screwdriver or hammer - that are helpful to officers.)

4. **Focus on the subjective 'victim' experience.** One of the key elements to ASB policy is 'Focusing on victims and vulnerability'.<sup>11</sup> The use of powers is justified whenever there is a subjective experience of harm, including when somebody has been offended or upset. ASB powers are designed to respond to complaints, without procedures to scrutinise whether those complaints are reasonable, or even whether they are founded on fact. This 'subjective turn' in Home Office policy means that powers are not used consistently or in a standardised manner (indeed, variation in the use of powers is celebrated as 'local drive, understanding and delivery').<sup>12</sup> The same act would receive a very different punishment depending on the culture of the local police force, the character of a particular officer, and the temperament of a neighbour or

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<sup>11</sup> Chief Constables' Council Minutes, 8-9 December 2021: <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/meeting-minutes/chief-constables-council/2021/8-9-december-2021.pdf>

<sup>12</sup> Chief Constables' Council Minutes, 8-9 December 2021: <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/meeting-minutes/chief-constables-council/2021/8-9-december-2021.pdf>

bystander.

5. **ASB becomes a broad catch-all.** 'Anti-social behaviour' is fast becoming the most visible area of criminal justice policy and policing. This is not a coherent category of criminal or nuisance activity, but instead is a 'catch-all' basket into which anything can be placed if it is seen to cause 'harm' or 'annoyance', or if an officer judges somebody's actions to have a 'detrimental effect'. A Leeds University report noted that ASB had a 'capacious, subjective and all-encompassing quality'<sup>13</sup>, and indeed the Home Office notes that the definition of ASB is 'broad and subjective'.<sup>14</sup> Police 'asb' incident logs often include a variety of activities, including: criminal activity such as drug taking or criminal damage; rudeness such as swearing; social or personal problems such as poverty, homelessness, or mental illness; and free civic activities such as busking. This means in certain respects a down-grading of the enforcement of the criminal law, whereby offences such as criminal damage or class A drug dealing are tackled with the same dispensation as a homeless person asleep on a bench. The growing category of ASB means the extension of criminal controls over new areas of behaviour, as well as a disorganisation or downgrading of some areas of law enforcement.

Over time, the trend is for ASB powers to be issued with lower benchmarks, by more authorities, for longer periods, and in more areas or to more people. At the same time, there are heavier sanctions for breach. The Criminal Justice Bill makes a series of these modifications. This trend means the strengthening of the hand of police officers, at the expense of that of defendants or members of the public, such that people have fewer defences against the abuse of power.

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<sup>13</sup> 'It ain't (just) what you do, it's (also) the way that you do it: The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People', *Eur J Crim Policy Res* (2017): <https://eprints.whiterose.ac.uk/100028/14/art%253A10.1007%252Fs10610-016-9318-x.pdf>

<sup>14</sup> *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*, Home Office, 14 November 2023: <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

# How have the police used ASB powers?

## Community Protection Notices

We issued an FOI to the Home Office asking about any data or assessment of the use of police powers; the department responded with its report *Police Perception of Powers Within the Anti-Social Behaviour, Crime and Policing Act*.<sup>15</sup> This report states that there were 2495 Community Protection Notices issued by police in the financial year 2022-3. This is based on unpublished data collected by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). We obtained the full data from the HMICFRS through an FOI request, and it shows a rise from 1019 CPNs in 2017-18, to a high of 2886 in 2020-1, and 2842 in 2021-2, before a slight fall in 2022-3 to 2487 (not 2495). The Home Office notes that these figures are 'likely an underestimate of true rates'.

However, when we issued an FOI request last August to police forces for the year leading up to July 2023, many police forces said they did not have procedures in place to record CPNs issued, and therefore did not reliably know how many they had issued:

*CPNs are added as a document to one of the tabs within an occurrence record, and there is not a flag / filter to identify whether an occurrence has a CPN attached to it. Therefore, each anti-social behaviour occurrence would need to be manually reviewed to determine whether a CPN is linked to the occurrence and then collate the number of these to provide a response to your request. Wiltshire Police*

*Paper records are maintained in local stations of all Dispersal Orders and Community Protection Notices. To ascertain the numbers issued would require a*

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<sup>15</sup> *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*, Home Office, 14 November 2023: <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

*member of operational police officer / police staff to manually review the files to locate, retrieve and extract the exact information being sought.* **Durham Constabulary**

*Unfortunately, there is no central record for the recording of the issue of Community Protection Notices and dispersal orders. These are managed by the Neighbourhood Policing Teams and to determine if any relevant information is held, all Neighbourhood Policing Teams and individual Police Officer Pocket Notebooks would need to manually reviewed.* **Gloucestershire Constabulary**

Our FOI requests found that:<sup>16</sup>

\* Out of 40 police forces who responded to our FOI request, 11 police authorities did not have a means for centrally recording CPNs.

\* Only three police forces were able to give details on the reasons which these CPNs had been issued. An additional two police forces said that the CPNs had been issued for 'asb'.

Forces that responded to our FOI request reported 1672 CPNs issued in the year up to July 23. This is lower than the HMICFRS figure, perhaps because several police forces appear to have submitted 'estimates' to the HMICFRS but said that they were unable to respond to our FOI request, including Durham and Wiltshire police quoted above. Indeed, out of 43 police authorities that responded to the police inspectorate, there were 2 nil returns, 4 undercounts, 2 manual processes that meant undercounting/incomplete data, and 1 case of incomplete data. This led the police inspectorate to attach the proviso that 'Values for England & Wales represent the totals of the data provided across all forces and therefore may not be representative of the true values across England & Wales. This is due to some forces not being able to provide data or data being estimates, inaccurate or partial returns'.<sup>17</sup>

The official figure could be under-estimated by several orders of magnitude, as shown by the Metropolitan Police FOI response. The Met told the HMICFRS

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<sup>16</sup> Data on the police use of ASB powers: <https://manifestoclub.info/wp-content/uploads/2024/05/Police-ASB-powers-FOI-table.pdf>

<sup>17</sup> Note on HMICFRS dataset, provided in response to FOI request

that it had issued 335 CPNs, but it told us that this figure represented a non-mandatory marking of a 'sub-type' on an information report.

*Information markers and sub-types are non-mandatory entries on an Information Report, as is it possible it may have been recorded using a free-text entry in the Subject field, which cannot be counted due to how many variations of the free-text Input there could be.*

An unknown number of CPNs are therefore not being recorded by the Met. An indication of the degree of inaccuracy is provided when we asked the Met to search the 'free text' part of information reports, where officers might also have recorded the issuing of a CPN. The Met FOI team responded that:

*Searches were made using the following:(community&protect|protection&warn|cpn|pspo|dispersal&notic) and it was 353 pages so that's 10,500 reports would need reading to locate and retrieve the information relevant request.<sup>18</sup>*

According to the non-mandatory marking of sub-types, in the year up to July 2023 there were 360 CPNs issued, 190 CPN breaches, 82 PSPO breaches, 353 dispersal areas declared, and 522 persons dispersed - a total of 1507 incidents. This is a fraction of the 10,500 reports that were produced once the 'free text' for these offences was considered. It is therefore possible that the Metropolitan Police alone issues as many CPNs as the official CPN figure.

The only police authorities able to state the subjects for which CPNs were issued were Gwent, Lincolnshire, West Midlands, Norfolk, and Bedfordshire. In the case of West Midlands and Lincolnshire, the forces merely said that CPNs were issued for 'asb'. Norfolk issued CPNs for asb, noise, shoplifting, drunk and disorderly behaviour, begging, dogs, and exclusion zones. Gwent issued CPNs for threatening behaviour, 'homeless male lighting fires and abusing people', male repairing vehicles in the street, and serious incidents of disorder. Meanwhile, Bedfordshire issued CPNs for controlling a dog in public space, vagrancy/begging (4), and 'asb noise'.

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<sup>18</sup> We further asked the Met FOI team to narrow down searches to the different elements, but it seemed unable to do this.

We also asked police forces about their prosecution of CPN breaches. 14 police forces were able to supply this data. Together they issued 655 charges/summons for the offence of violating a CPN: the highest issuers were Metropolitan Police (190)<sup>19</sup>, Suffolk (88), South Wales (53), and South Wales (53). It is worth noting that these breaches correspond to 947 CPNs issued within these authorities, suggesting that as many as 70%<sup>20</sup> of all CPNs issued in these authorities were subject to breach proceedings. A person convicted of CPN breach would receive a criminal record and a maximum £2500 fine. They could also receive a Criminal Behaviour Order containing similar conditions as the CPN, which if breached carries a penalty of up to 5 years imprisonment and/or an unlimited fine.

We obtained Ministry of Justice figures that showed that CPN prosecutions reached a record high in 2022, of 1,775 prosecutions (up from 176 prosecutions in 2015).<sup>21</sup> It appears likely that police prosecutions make up a large portion of this figure, judging from the high prosecution rates in police authorities able to report this data.

Therefore, the data on the police issuing of CPNs is patchy, and offers only very tentative conclusions. There are: 1. That if police recording systems remained approximately the same, police CPNs more than doubled in the years between 2017 and 2020, and have remained relatively stable since. 2. These figures are, however, extremely unreliable and probably grossly under-reported. It is possible that the Met Police alone as many CPNs as the official total. 3. Police forces initiate high number of prosecutions for CPN breaches relative to the numbers of recorded CPNs.

## Dispersal notices

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<sup>19</sup> As with all Metropolitan Police ASB data, this is based on non-mandatory reporting and so is an underestimate.

<sup>20</sup> Data from Dyfed-Powys is excluded from this statistic, since the authority was unable to provide the number of CPNs

<sup>21</sup> <https://manifestoclub.info/record-number-of-prosecutions-for-community-protection-notices-in-2022/>

A similar lacuna exists for the recording of dispersal incidents. The Centre for Crime and Justice studies noted that ‘There is a statutory obligation for officers to record in their pocket books information about the individuals issued directions to leave. In most forces it looks like it remains only recorded in officers’ pocket books’.<sup>22</sup>

In response to our FOI requests, only 20 police forces were able to tell us the number of times dispersal powers had been invoked in the year August 2022 - July 2023 (Section 34 power: this authorises the use of dispersal powers in a certain area for a specified period). Together, these 20 police authorities declared 2432 dispersal areas, with highest as South Wales (384), Met Police (353), Northumbria (259), and Hampshire (224). Only four forces were able to state the reasons for the use of these powers. These included Northamptonshire (for the night-time economy), Lincolnshire (for hare coursing, football matches, and street drinking), Lancashire (for football and youth-related disorder, and to prevent disruption to an ongoing investigation), and Nottinghamshire (for the night-time economy and disorder/asb).

18 police forces were able to say the number of dispersal notices issued (Section 35 power: this is the number of people ordered to disperse under these powers). In total, these police forces recorded 4539 dispersal notices, with the highest numbers in Hampshire (990), Northumbria (836) and Norfolk (753). Only two forces (Merseyside and Lincolnshire) were able to state the reasons for dispersal notices: these included for asb, young people, and street drinkers.

These figures were also subject to inaccuracies. Avon and Somerset said that dispersals were not always centrally recorded and therefore that its figure may not be accurate, as was the case with the Metropolitan Police. Several of Gwent Police’s local police forces did not hold information about dispersals issued.

Information held by the HMICFRS found that there had been 6011 uses of ‘dispersal powers’ in the year 2022-3.<sup>23</sup> This figure included a mix of dispersal

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<sup>22</sup> ‘Anti-social behaviour powers and young adults’, Centre for Crime and Justice Studies, July 2018: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/YASE%20briefing%201%2017-07-2018.pdf>

<sup>23</sup> Unpublished data, FOI response from HMICFRS

areas declared (Section 34 power) and dispersal notices issued (Section 35 power), as well as data that was based on estimates or non-mandatory flags. 13 forces said that their figures were an underestimate or otherwise subject to inaccuracies. The HMICFRS data suggests that ‘dispersal powers’ were at a high in 2017-18 (8560), falling to a low in 2020-1 (4584), before rising to the current rate.<sup>24</sup> However, given the provisos attached to these figures, these changes may partly represent changes in forces’ recording systems over time.

## Public Spaces Protection Orders

We asked police forces about their enforcement of Public Spaces Protection Orders, including the issuing of FPNs, charges/summons, alcohol confiscation, and the use of PSPO-based dispersal powers in the year up to July 2023. Only 6 forces were able to provide partial information about the enforcement of PSPOs. Warwickshire said that it had formally used PSPO dispersal powers 15 times, and there were 16 formal incidents of alcohol confiscation under the PSPO. South Yorkshire had used PSPO dispersal powers 210 times. The Met Police counted 82 PSPO breaches. West Yorkshire said that there were 63 mentions of PSPO incidents on the database, which could be charges/summons or other offences. Gwent Police provided data from most local police forces which showed that every local police force was using PSPO dispersal powers (although only one had recorded the number of dispersals made under these powers - a single dispersal in Newport Centre). Dyfed-Powys said that there had been 140 incidents of alcohol confiscation under PSPOs.

We also sent an FOI to a selection of councils that have a PSPO containing a dispersal power, asking about the police enforcement of this condition. (A total of 29 councils have introduced dispersal powers as part of a PSPO).<sup>25</sup> The responses from 15 councils found that:<sup>26</sup>

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<sup>24</sup> HMICFRS unpublished data, obtained by FOI request

<sup>25</sup> Dataset from Manifesto Club FOI request on the subject of PSPOs, 2023: <https://manifestoclub.info/wp-content/uploads/2023/07/PSPOs-2022-data-1.pdf>

<sup>26</sup> Dataset on the use of PSPO dispersal powers: <https://manifestoclub.info/wp-content/uploads/2024/05/Council-PSPO-dispersals.pdf>



- The seven local authorities able to provide data had documented 1385 police dispersals using PSPO powers, with the highest in Exeter (1023 in the six years of the PSPO), and Shropshire (228 between 2017-2023);
- Eight local authorities were unable to provide data on the police use of the power;
- Only three local authorities had used the dispersal power themselves, suggesting that the power was largely for police use.

It appears that some police forces are using PSPO dispersal powers in preference to the specifically designed dispersal power. Devon and Cornwall Police told us that it had not used police dispersal powers in the past year, yet issued dispersals under the Exeter Council PSPO. South Yorkshire Police issued 210 dispersals using council PSPOs in two local areas, while the police force issued only slightly more dispersals (263 dispersals) using police dispersal powers across the whole force area. The attraction of dispersal powers contained within PSPOs is perhaps that they come with fewer conditions than police dispersal powers: the dispersal area does not need to be continually authorised, and dispersal notices can generally be issued on a lower benchmark.

## Undocumented powers

However, the lack of data about formal powers is only part of the problem. Several pieces of research have suggested that a large part of police ASB interventions takes the form of non-documented 'requests to move on'. A Sheffield Hallam investigation into the use of ASB powers targeting homeless people found that individuals were often 'moved on' by police up to four times a night, but were rarely issued with a formal dispersal notice.<sup>27</sup> Similarly, the police use a threat of an FPN for begging or loitering in order to get someone to leave an area or to stop their activity. One FOI response included a comment from Thames Valley Police (in Henley and Thame) that although they used PSPO dispersal powers 'weekly', they used 'warnings rather than enforcement' to gain compliance.<sup>28</sup> Therefore, the

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<sup>27</sup> Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness, Sheffield Hallam University, September 2022: <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/impact-of-anti-social-behaviour-tools-and-powers-on-street-sleeping-homeless-people>

<sup>28</sup> South Oxfordshire District Council FOI response

true scale of dispersal - defined as the number of people who were moved from the place they were lawfully occupying, under threat of formal sanction - is significantly greater than the number of people issued with a dispersal notice.

Another largely undocumented power is alcohol confiscation, which has existed since 2001 (in the form of Designated Public Place Orders) and in 2014 was transferred to Public Spaces Protection Orders. This is a widely used power, but it largely occurs without any formal documentation (eg noting the details of the person from whom the alcohol was confiscated, or the number of incidents of confiscation). For example, Exeter Police told the council that it had used confiscation powers on a 'daily basis' but this was not recorded.<sup>29</sup> Confiscations are sometimes counted for the purposes of publicity of an anti-ASB drive, and on these occasions are reported in local newspapers. Police in Leicester, for example, used PSPO confiscation powers to confiscate alcohol or other substances from 200 people in one month.<sup>30</sup> On one hot day at Richmond falls, officers from North Yorkshire Police confiscated 'more than 200 bottles of beer, cider, vodka and other spirits', which were destroyed'.<sup>31</sup> One two-month confiscation drive in the city of Gloucester - targeted at street drinkers - confiscated 563 vessels of alcohol, which were turned into an art project.<sup>32</sup>

An officer in Thames Valley Police told South Oxfordshire Council that the PSPO was mainly effective as a 'a great compliance tool', forcing people to leave an area or dispose of their alcohol:

*'mainly during the Henley Regatta as there are a lot of people who have open top alcohol within the designated areas – especially when members of the public do not*

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<sup>29</sup> Exeter Council, Report to Executive, 8 February 2022: <http://committees.exeter.gov.uk/documents/s82814/Report%20-%20PSPO%20Variation%202022%20FINAL.pdf>

<sup>30</sup> 'Police powers to confiscate alcohol and drugs used almost 200 times in one month alone', Leicester Mercury, 28 September 2020: <https://www.leicestermercury.co.uk/news/leicester-news/police-powers-confiscate-alcohol-drugs-4554740>

<sup>31</sup> 'Hundreds of bottles of alcohol confiscated', North Yorkshire Police, July 2022: <https://www.northyorkshire.police.uk/news/north-yorkshire/news/news/2022/07-july/hundreds-of-bottles-of-alcohol-confiscated-to-stop-revellers-using-north-yorkshire-beauty-spot-like-an-ibiza-nightclub/>

<sup>32</sup> 'Summer campaign to tackle anti-social behaviour proves a success', Gloucestershire Police, October 2023: <https://www.gloucestershire.police.uk/news/gloucestershire/summer-campaign-to-tackle-anti-social-behaviour-proves-a-success/>

*want to comply with our initial instructions the PSPO gives us authority to back our instructions where they inevitably comply – just a warning of a ticket being issued for this or a dispersal ticket seem a proportionate use of the PSPO.<sup>33</sup>*

Powers are invoked to gain ‘compliance’, but no formal sanction has been issued and therefore the incident of confiscation or dispersal was undocumented.

Dispersal and alcohol confiscation powers represent a major interference with a person’s liberty to be in a particular public place, as well as to retain property that they have paid for. It is concerning that these powers can be invoked so lightly, and without any formal record that a police intervention has occurred.

## Conclusion

Whereas previous new ASB powers were the subject of pilots, and then post-launch analysis including Home Office research<sup>34</sup> and official statistics<sup>35</sup>, the powers in the 2014 Act were simply launched and left to fly. This has drawn substantial criticism. In a 2020 report, the Civil Justice Council noted a data lacuna for anti-social behaviour powers: ‘Statistics retained by the police in relation to action taken in respect of anti-social behaviour did not allow for analysis of the use (or effectiveness) of injunctions under the 2014 Act.’ Similarly, a 2023 JUSTICE working party report on behavioural control orders strongly criticised the lack of data collection and assessment, and recommended: ‘The Home Office must work with HM Courts and Tribunals Service, the Office of National Statistics and enforcement bodies to rapidly improve data capture.’<sup>36</sup> A 2018 report by the Centre for Crime and Justice Studies noted: ‘Very little information is in the

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<sup>33</sup> Email exchange between Thames Valley Police and South Oxfordshire Council, obtained through FOI request to South Oxfordshire Council

<sup>34</sup> A review of anti-social behaviour orders, Home Office Research, January 2002: <https://webarchive.nationalarchives.gov.uk/ukgwa/20110314171826/http://rds.homeoffice.gov.uk/rds/pdfs2/hors236.pdf>

<sup>35</sup> Anti-social behaviour order statistics: England and Wales 2013 key findings, 18 September 2014: <https://www.gov.uk/government/statistics/anti-social-behaviour-order-statistics-england-and-wales-2013/anti-social-behaviour-order-statistics-england-and-wales-2013-key-findings>

<sup>36</sup> ‘Lowering the Standard: A review of Behavioural Control Orders in England and Wales’, JUSTICE, 2023 <https://justice.org.uk/behavioural-control-orders-report/>

public domain about ASB powers; how they are used, who is being sanctioned by them, or what the outcomes are of using them.’<sup>37</sup>

The Home Office’s lack of interest in collecting even basic statistics suggests that central government sees its role as creating criminal justice ‘tools’, without taking any formal responsibility for the manner in which these tools are used, which is seen as the responsibility of local authorities and police forces/officers. This lack of central government monitoring and assessment means a fragmentation of the national justice system, which instead is determined by local police cultures and the character of particular officers.

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<sup>37</sup> ‘Anti-social behaviour powers and young adults’, Centre for Crime and Justice Studies, July 2018: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/YASE%20briefing%201%2017-07-2018.pdf>

# How effective and fair is the police use of ASB powers?

## Internal evaluation of the use of powers

We issued FOI requests to the major policing bodies,<sup>38</sup> as well as to regional police forces, asking if they had carried out any assessment of the use of powers contained in the 2014 Anti-Social Behaviour, Crime and Policing Act. We also asked if the powers had ever been discussed at a minuted meeting of that body.

No policing body had carried out an assessment of the use of the powers. The College of Policing responded to the request with a meeting agenda item in 2013 and early 2014, before the powers were introduced. Officers at the meeting were concerned that the powers be used proportionately:

*‘While the measures will be inherently less bureaucratic and therefore easier to use than those they replace, it is the view of the National Policing Lead for ASB, DCC Simon Edens, that they should complement the incremental approach to dealing with ASB adopted by police forces and local authorities currently. Additionally it is felt that the powers use should be proportionate to the “spectrum of harm” of ASB.’<sup>39</sup>*

The officer warned:

*‘Inappropriate over-use of the powers by frontline officers would run the risk of undermining neighbourhood policing and damaging the reputation of police forces and the Service as a whole.... It is important therefore that guidance and training products arising from this commission give officers, supervisors and leaders a clear understanding not only of the powers that are available to them, but also the context in which their use is intended.’*

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<sup>38</sup> National Police Chiefs’ Council, College of Policing, His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, Home Office

<sup>39</sup> College of Policing, Professional Committee, 15 January 2014. Item lead at meeting: Simon Cole

These discussions show that policing bodies were aware that the broad and unchecked nature of the powers created inconsistency of enforcement, with an ensuing risk of damaging the public reputation of police forces. Indeed, the College of Policing commissioned training tools and products in an attempt to encourage consistency in the use of powers:

*‘The risk of inconsistent interpretation and application of the legislation between forces creates a risk to Service reputation. For example: A young person in Cleveland receives an Injunction to Prevent Nuisance and Annoyance as a result of complaints about skateboarding, while in Devon & Cornwall a young person engaging in similar behaviour is subject of a Community Remedy. Consistency is important to avoid criticism of the Service.’<sup>40</sup>*

The National Police Chiefs’ Council (NPCC) said that there had been a formal discussion of these powers when the ASB lead ‘provided a broad overview of the anti-social behaviour portfolio to Chief’s Council in December 2021’.<sup>41</sup> This summary mentioned the ‘change of definition to anti-social behaviour (ASB) in 2014 which provided a very broad definition and has had many areas of overlap which can be a challenge for front line staff’.

When asked about evaluation of the police use of ASB powers, the Home Office responded with the report *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*.<sup>42</sup> The report stated that ‘Understanding the effectiveness of powers from the Anti-Social Behaviour, Crime and Policing Act has been identified as a priority by the current government’, yet the report’s evidence base comprised of only 24 interviews with 38 police officers and staff. There was no consideration of the effects of these powers on the lives of recipients, or on the resolution of disputes or problems. Moreover, this investigation of ‘police perception’ seemed to be driven mainly by a concern to identify any ‘barriers’ or

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<sup>40</sup> College of Policing, Commissioning Proposal template, Anti-Social Behaviour: New Policing Powers, 15/01/2013

<sup>41</sup> Chief Constables’ Council Minutes, 8-9 December 2021: <https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/meeting-minutes/chief-constables-council/2021/8-9-december-2021.pdf>

<sup>42</sup> *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*, Home Office, 14 November 2023: <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

missed ‘opportunities’ for the police use of powers, to see how use might be increased. For example, the conclusion stated:

*‘Generally, interviewees were satisfied with the level of frequency in which they used CPNs and dispersal powers, although some desired the option to use CPNs with individuals aged 17 years and under. Perceptions of using CIs (Civil Injunctions) were mixed – some, particularly those who had experience with them, considered that further police use of this power would add value, whereas some felt that this power is better suited for other agencies. Challenges with using CBOs and Closure Powers meant it was likely that opportunities for use were missed but these were also considered powers that are appropriately infrequently used. The council used PSPOs although interviewees gave a few examples where police would want further use.’<sup>43</sup>*

We were unable to obtain minutes from the ASB Strategic Oversight Board or ASB taskforce. However, it is unlikely that this board has access to any further data beyond that provided in the Home Office *Police Perceptions* report.

## Problems with the police use of ASB powers

There have been several independent assessments of the effect of police ASB powers upon particular communities.

### **SHEFFIELD HALLAM RESEARCH**

Sheffield Hallam University research documented the effect of dispersal and PSPO powers on the lives of homeless people in 10 case study areas, based on semi-structured interviews with 52 people experiencing street homelessness, as well as interviews with local authority/charity/outreach workers.<sup>44</sup>

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<sup>43</sup> *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*, Home Office, 14 November 2023: <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

<sup>44</sup> *Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness*, Sheffield Hallam University, September 2022: <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/impact-of-anti-social-behaviour-tools-and-powers-on-street-sleeping-homeless-people>

The report found that the main effect of the use of PSPO and dispersal powers is the displacement of people from one area to another, in 'a cycle of policing and dispersal/displacement which neither stopped nor deterred the behaviours of people experiencing street homelessness'. Homeless people reported being moved on by police several times in a day and up to four times at night. The constant 'moving on' caused people to feel stressed and suffer poor sleep, and significantly increased the difficulty of their lives.

The majority of 'moving on' occurred on the basis of police threats rather than formal enforcement. Dispersal notices were often issued for sitting down (described by the police as being in a 'position to beg') rather than for begging itself. The indiscriminate use of the dispersal power was shown when the researcher on the project was himself issued with a dispersal notice for being in a 'position to beg' while conducting an interview. However, enforcement was erratic, depending on local enforcement policies or the character of individual officers. Some areas had one or two officers who 'went out of their way' to 'punish' homeless people. Interviewees reported incidents including police officers kicking, pulling, or verbally abusing them, as well as vindictive actions such as moving them away from warm air vents on a cold night.

In general, the report found that these powers were extremely ineffective, and led to a worsening of homeless people's situations and a degradation of their relations with authorities. The use of police enforcement powers led to a very negative perception of the police (the police were described by interviewees as 'bullies' or as 'bullies in badges'). It also led to a perception of the 'hypocrisy' of the law, since homeless people were targeted for doing things that other people were allowed to do, such as sit on a bench and have a drink. This made interviewees feel that the system was set against them: 'What chance do we stand when it's like that?'

The report also showed how punitive enforcement can worsen behaviour, with reports of homeless individuals committing ASB (such as urinating in front of police officers) with the aim of aggravating the officer and gaining a 'little win' as a payback for previous harassment. Finally, the research found that bans on begging were often ineffective, since people who relied on begging to eat had no choice but to continue.



Even the Home Office *Police Perceptions* report admits that dispersal powers were generally effective 'only in the short term'.<sup>45</sup> The Sheffield Hallam research shows that they can be extremely damaging and counter-productive in the longer term.

New powers contained in the Criminal Justice Bill (Nuisance Rough Sleeping and Nuisance Begging Orders and Directions) will increase these negative effects, by allowing homeless people to be targeted with powers issued on a lower benchmark. If the physical and verbal abuse of homeless people by police is already occurring, even broader powers will significantly worsen the situation for rough sleepers.

### LEEDS UNIVERSITY RESEARCH

A report by academics at Leeds University examined the effect of ASB powers on young people<sup>46</sup>. The paper observed that powers were often issued on the basis of 'a weak evidence base', particularly in terms of 'understanding the details of an incident, which often relied upon hearsay and public perceptions'.<sup>47</sup> The paper cited a statement from an enforcement officer saying that 'when we get to signing the document...there's always a lack of evidence', and that orders could be justified by police statements such as, 'Yeah, he's up to no good, we know this one and he's a bad egg'.

The paper cites cases where young people were given 'Acceptable Behaviour Contracts', and threats of eviction for their families, because of actions such as throwing snowballs, which was seen as 'unfair'. The authors argue that the over-use of contracts and powers - aimed to prevent the future offending of young people - could have a highly counter-productive effect:

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<sup>45</sup> *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014*, Home Office, 14 November 2023: <https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

<sup>46</sup> This research focused on previous ASB powers such as Acceptable Behaviour Contracts (ABCs), which were less coercive than current powers.

<sup>47</sup> 'It ain't (just) what you do, it's (also) the way that you do it: The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People', *Eur J Crim Policy Res* (2017) <https://eprints.whiterose.ac.uk/100028/14/art%253A10.1007%252Fs10610-016-9318-x.pdf>

*Due concern should be given to the proportionality of the response in terms of the behaviour itself rather than an overriding concern for what might happen in the future. Otherwise, there are real dangers that overly punitive early interventions may serve to attribute and affix ‘troublemaker’ identities and reputations on young people, which become difficult to shed in transitions to adulthood.’*

Importantly, the paper argues that procedural justice is essential for the effectiveness of the criminal justice system: it is only when criminal justice is fair, targeted and predictable that it can ‘enhance capacities and capabilities within communities, families and individuals for self-regulation’. When powers are used erratically and unfairly, they undermine communities’ systems of self-regulation.

The Criminal Justice Bill will significantly increase the exposure of young people to unjust, restrictive orders, with plans to expand the use of CPNs to children as young as 10. Given the lack of legal aid and advice for CPNs, and the fact that the appeal process is extremely challenging even for professional adults, 10-16 year olds stand little chance of appealing orders (which may include bans on entering certain parts of town or seeing certain people). Given that the breach of a CPN is a criminal offence, young people could be channelled into the criminal justice system merely for actions such as entering a particular area of town.

## **COMMUNITY PROTECTION NOTICES**

The Manifesto Club has spoken with and received legal documents/case histories from over 100 CPN recipients since 2014. In 2023, we drew some of these case studies together in a report.<sup>48</sup> These case studies show police officers becoming involved in a range of petty incidents, such as the feeding of stray cats and the flying of model aircraft, as well as using these powers for reasons of self-interest or convenience.

In one case, the Metropolitan Police gave out 30 CPNs to young Portuguese men in the borough of Newham, banning them from entering Stratford, and banning them from being in a group in the entire borough of Newham. The CPNs were issued after community unrest following the death of a young Portuguese man in custody. A solicitor who defended one CPN recipient said that there was ‘no

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<sup>48</sup> Victims of arbitrary power: CPN Case Studies, Manifesto Club, 2 July 2023: <https://manifestoclub.info/victims-of-arbitrary-power-cpn-case-studies/>

evidence for anything that he had done', and that the CPNs appeared to be 'pro forma' and were being 'issued to crack down'.

In another case, a man in south-west England was issued with four police CPWs, and one CPN, for flying model aircraft from a two-acre field behind his house. The man suspects that the case was driven by a police officer who bore a grudge against him due to an unrelated incident. Eventually, the man was able to involve the force's chief inspector, who visited his home and said that there was no reason he couldn't fly his plane behind his house and that the police had no jurisdiction over the flying of model aircraft.

Meanwhile, a man and his wife were issued with CPWs by a Police Community Support Officer, ordering them to stop feeding stray cats in their garden. The warning was initiated by a neighbour, who claimed that the food was attracting flies (although the man denies this as the food was not left out). As a result of the CPW, the man became frightened to go into the garden in case the neighbour or the police were spying on him.

Several of these police CPNs were issued on the basis of false allegations (eg case study 17). In some cases, the issuing police officer had a personal connection with the complainant, or appeared to have used the CPN to get back at a member of the public who had made a complaint about the officer (eg case study 21). In case study 23, Muslim police officers issued a CPN to a non-Muslim widow who was in a neighbour dispute with a Muslim family, and told her not to complain about the family because 'they are our religion'.

More recent cases submitted to us include that of a woman issued with a Community Protection Warning (CPW) by Nottinghamshire police officers, which banned her from allowing leaves or bark from her garden to go on to her neighbour's property. The lady had to erect netting on her boundary to try to prevent leaves and bark from passing to her neighbour's drive. The lady said that there had been a murder of a woman down the road, and argued that officers should focus on serious crime prevention rather than the question of leaves or bark on a drive.

Another recent case involved a Blackpool hotel owner, who was issued with a CPW after a police officer acted on false allegations of dog fouling made by a rival B&B owner. The hotel owner was issued at police request with a CPW, which required him to ensure that neither he nor his family and associates caused harassment, alarm or distress to anyone in the locality. After a lengthy and time-consuming complaint process, the hotel owner managed to show that these accusations lacked substance and the CPW was withdrawn.

The use of CPNs appears to vary greatly according to the police supervisor and procedures in place. Former police officer (and now ASB trainer and consultant) Jim Nixon said that some police forces he worked in were giving out CPNs 'like confetti, without a lot of thought to the evidence'.<sup>49</sup> He said that when he was supervising officers he sought to end 'a lot of bad practice', including officers sending CPNs in the post, CPNs issued to homeless people or those with mental health problems, officers refusing to tell the CPN recipient what the evidence was against them, and officers issuing CPNs to a group of people 'thought to be causing problems' without looking at the evidence in each case.<sup>50</sup> Jim Nixon said that he thought that police officers were attracted to CPNs because there is 'no real redress':

*'An officer can issue a CPW and there are no real consequences if they get it wrong. That is why CPNs are being issued without real evidence, because there is no recourse and no scrutiny. When I was supervising officers, I employed my scrutiny – I would ask for CPNs and CPWs to come through me, and I would review the evidence. If I wasn't happy I would drop the case and look at alternative options. In many cases you don't have that internal scrutiny – a lot of managers let their officers get on with it.'*

The police use of CPNs against homeless people appears to be a frequent occurrence. In response to our FOI request, the three police forces able to state the subject of their CPNs (Gwent, Norfolk and Bedfordshire) had all issued these to homeless people. North London lawyer Moira McFarlane says that many of the

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<sup>49</sup> Interview with Jim Nixon

<sup>50</sup> This was the case with CPWs issued to a group of teenagers suspected of causing criminal damage at a nursery. The orders were issued to the whole group who were barred from certain parts of the city. 'Youths who targeted Carlisle nursery given police warning', News and Star, 19 November 2018: <https://www.newsandstar.co.uk/news/17231056.youths-targeted-carlisle-nursery-given-police-warning/>

police CPNs she defends relate to homeless individuals, who are issued orders not to sleep in a particular area or not to beg:

*'In North London, the police know where people congregate. The homeless have areas they often feel safe and where there are local services such as soup kitchens and medical services. It has become apparent that police operate stop and searches in these areas. From the majority of what I have seen, the actions CPNs are preventing are not actions that are associated with criminality - for example, a CPN might prevent a homeless person from sleeping in a particular place where there has been no complaint or criminal allegation associated with that person/place.'*<sup>51</sup>

There are also cases of the police issuing CPNs to people with mental health problems, including banning them from contacting family or friends when they are distressed. Suffolk Police banned a lady from contacting 'anyone by any means to make threats or allude to thoughts of self-harm or suicide, save to the mental health crisis line or an allocated mental health professional'.<sup>52</sup> When the lady messaged a friend to say she was thinking about self-harming, the police visited her house and told her she had breached her CPN.

These case studies show the danger that unchecked powers can be subject to biased or inappropriate use. The restrictions of due process - such as evidence gathering, hearing two sides of a case, and proving a case - are not merely obstructions that waste police officers' time and energy. Rather, they ensure that powers are used proportionately and in a targeted manner. The looser the powers, the poorer the quality of enforcement and the more that police officers are likely to act on the basis of malicious accusations or personal gripes and prejudices.

This is also important because powers can have an extremely damaging effect on the lives of recipients. We have spoken to CPN recipients who suffered mental health problems, breakdowns, financial ruin and the threat of eviction as the result of the unjust use of the CPN power. Therefore, policy should consider not only the harm caused by ASB, but also the harm caused by officers using powers inappropriately and unjustly.

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<sup>51</sup> Interview with Moira McFarlane

<sup>52</sup> 'Asbos and fines issued to suicidal patients', The Times, 11 January 2021: <https://www.thetimes.co.uk/article/asbos-and-fines-issued-to-suicidal-patients-z978b3kl8>

## Conclusion

Internal police documents quoted at the start of this chapter show that police bodies were aware of the potential for misuse or erratic use of ASB powers. There were early police initiatives to standardise the use of powers, in attempt to counter these risks. However, the trend in policy has worked against these initiatives, and today there is minimal assessment or attempt to standardise the use of powers.

In the absence of any larger scale analysis, it is impossible to say in what circumstances or proportions ASB powers are effective and are being used proportionately. However, on-the-ground research and case studies indicate that there are frequent incidents of the inappropriate use of police powers, for which there are appear to be no checks or redress beyond the diligence of certain supervising officers.

# Should the police get PSPO powers?

The police will be given powers to make Public Spaces Protection Orders (PSPOs) under the current Criminal Justice Bill, allowing them to ban activities in public spaces. This section asks how the police would be likely to use PSPO powers, and whether they are qualified to use these powers.

## Which PSPOs have the police requested?

We issued FOI requests to a selection of councils that had introduced PSPOs containing particularly restrictive conditions (such as dispersal powers), and asked for the council's communications with police forces regarding the drawing up or modification of PSPOs. Communications we obtained showed that police forces have been proactive in demanding PSPOs. An analysis of PSPOs requested by the police provides some indication of how the police would use PSPO powers if the Criminal Justice Bill is passed.

Communications between council and police suggest that the police request PSPOs that allow them to take action when they suspect somebody has done something, or may do something, but there is no firm evidence (and therefore they cannot use other powers). For example, Thames Valley Police asked South Oxfordshire District Council to introduce dispersal powers on the grounds that there were 'groups gathering' that were 'suspected of drug dealing', but if there was no firm evidence these groups could not be dispersed: 'Officers can use their powers to stop and search if the grounds exist, but if no prohibited items are found or there are not enough grounds to use our PACE powers to stop and search, we do not have the power to disperse groups.'<sup>53</sup> Therefore, in this case the police wanted the power to disperse suspected drug dealers who had been searched and found not to be in possession of drugs.

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<sup>53</sup> Email exchange, FOI response from South Oxfordshire District Council

South Derbyshire District Council introduced a PSPO banning loitering if causing 'or likely to cause' ASB, after the police requested additional powers to deal with the 'problem groups' of young people and older street drinkers. The council stated:

*'After discussing the issues with the local Police Inspector it is believed that the introduction of a PSPO within the area identified will provide a valuable additional tool to enable enforcement measures to be taken for those occasions where the criminal threshold has not been met.'*<sup>54</sup>

This reveals a shift in police policy from targeting criminal actions, or serious nuisance, to seeking 'additional tools' that allow enforcement against people who cannot be proven to have done anything (ie, 'where the criminal threshold has not been met'). Since officers are acting on hunches rather than evidence, this means that enforcement is taken against people who may be innocent. Furthermore, this enforcement may be guided by prejudiced assumptions about individuals or groups (for example, on the basis of ethnicity, homelessness status, or age).

North Wales Police submitted a report to Gwynedd Council, requesting a new PSPO for the streets of Bangor. The police report stated that:

*'The existing order is insufficient to deal with the current issues impacting on local businesses, residents, students and tourists. These issues include general ASB and crime with intimidating behaviour, foul language, assaults, consuming alcohol and being under the influence of drugs. Concerns have been identified around begging and loitering at cash machines with intimidating behaviour... The implementation of the PSPO in addition to providing an enforcement option will primarily allow early intervention and prevention with potential offenders through engagement and education.'*<sup>55</sup>

This shows how the the desire to take 'early intervention' against 'potential offenders' is driving the demand for increased powers and new criminal offences. North Wales Police submitted a file of 486 ASB incidents and 649 crimes as justification for the requested PSPO. Criminal incidents included assault, affray and actual bodily harm, for which there are existing dispensations. The ASB file

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<sup>54</sup> Proposed Public Spaces Protection Order Evidence of need Document, South Derbyshire District Council

<sup>55</sup> Gwynedd Council Cabinet, 16 July 2019



included a wide range of incidents: 'male outside the store begging'; the presence of a busker and street artist outside of Debenhams; intoxication; shouting; altercations; and drug taking. It also included cases of suspected future ASB, such as a report of '3 males sat outside Boots will possibly cause issues'. Finally, the North Wales data shows how cases of poverty and destitution are categorised as 'ASB incidents': one police officer logged an 'ASB incident' when a homeless male was 'asleep in a doorway with his bare feet facing towards the pavement', noting that 'his toenails are overgrown the doorway is dirty'.<sup>56</sup>

North Wales police requested six new prohibitions, and the council concluded that four of these were appropriate to be included in an order: behaving in a way that is likely to cause harassment, alarm or distress; loitering in a state of intoxication through alcohol or drug induced activity; loitering or performing for reward within 10 meters of a cash point; and possessing open containers of alcohol within the restricted area.<sup>57</sup>

Nottinghamshire Police asked for a dispersal provision in a Newark Council PSPO, also justifying this on the grounds of prevention. A senior police officer stated: 'As a result of increasing concern, In November 2020 I requested NSDC considers a PSPO for Balderton to give officers additional powers to deal with ASB issues. This dispersal power will allow officers to disperse those who are likely to engage in ASB and prevent issues before they take place.'<sup>58</sup>

In Exeter, Devon and Cornwall Police asked for broader dispersal conditions under a redrafted PSPO. The original PSPO allowed for a dispersal for up to 6 hours of groups of two or more, but the police said they were 'hampered' to act against single individuals or groups who returned after 6 hours. The PSPO was extended to allow individuals or groups to be dispersed for up to 24 hours.<sup>59</sup>

Devon and Cornwall Police chief constable described the PSPO as a 'very effective tool to dynamically defuse instances of this behaviour', and said that the

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<sup>56</sup> FOI response from Gwynedd Council, 12 December 2023

<sup>57</sup> Appendix M, Gwynedd Council Cabinet, 16 July 2019

<sup>58</sup> Nottinghamshire police response to Newark Council PSPO consultation, FOI response from Newark and Sherwood District Council

<sup>59</sup> Report to Executive, Exeter Council, 8 February 2022: <http://committees.exeter.gov.uk/documents/s82814/Report%20-%20PSPO%20Variation%202022%20FINAL.pdf>

longer dispersal period would be a ‘considerably more effective preventative power’.<sup>60</sup>

Similarly, Runnymede Council introduced a dispersal PSPO after requests from Surrey Police (the police also requested an extended PSPO area and for FPNs to be issued to under-18s).<sup>61</sup> This dispersal area was targeted at groups of young people. Although the council acknowledged a ‘lack of youth activities’ (the youth centre is only open for two hours a week, and the young people said that they wanted an area to perform bike tricks), the council nonetheless authorised a PSPO that would allow the police to disperse the youths and issue FPNs if they return.<sup>62</sup>

Therefore, evidence from police-council communications suggests that if the police had PSPO powers they would introduce broad PSPOs that allow them to take enforcement action where there is no firm evidence, or to target what those they consider to be ‘problem groups’ such as young people and homeless people.

## Councils blocking unreasonable police requests

Communications also indicate that the council scrutiny process has blocked some of the more unreasonable police requests for new PSPOs. In the case of Gwynedd Council mentioned above, the council refused two of the six requests made by North Wales Police. We also obtained several email exchanges between council and police officers regarding PSPOs, which suggest that police forces are not qualified to initiate or authorise these orders.

One of these email exchanges is between a Nottinghamshire neighbourhood police inspector and Rushcliffe Council officer, regarding the renewal of the council’s

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<sup>60</sup> Email from Devon and Cornwall Police, 29 December 2021: <http://committees.exeter.gov.uk/documents/s82820/Appendix%20F%20-%20LPA%20Commander%20Consultation%20Response.pdf>

<sup>61</sup> Community Services Committee, Runnymede Council, 14 June 2018: <https://democracy.runnymede.gov.uk/Data/Community%20Services%20Committee/20180614/Agenda/Agenda.pdf>

<sup>62</sup> Community Services Committee, Runnymede Council, 14 June 2018: <https://democracy.runnymede.gov.uk/Data/Community%20Services%20Committee/20180614/Agenda/Agenda.pdf>

PSPO.<sup>63</sup> The police inspector gave a list of restrictions that he would like to be included in a new PSPO, many of which lacked evidence or consideration of proportionality:

**(Police inspector) Could spitting be added to urination and defecation?**

(Council response) I don't see why not, but I can try and see if legal has any concerns. (some evidence of it occurring and being problem would be useful)

**(Police inspector) Possible other provisions to consider: 1. Loitering around cash machines, shopping centre entrances, shop entrances, car park ticket machines and payment machines to beg for money.**

(Council response) To me this would fall under the begging causing annoyance, fear or distress to any person. Or generally the behaviour is causing harassment, alarm or distress. and as such you can chose to issue a dispersal notice or threaten a FPN for the offence of begging, all you need is a complaint to show annoyance or observations. It would be covered by what is proposed

**(Police inspector) 2. Putting up or using a tent or other temporary structure without the landowners permission.**

(Council response) It's a public space protection order and won't cover private land, it will be for the land owner to deal with as trespass. On the parks we can consider no tents allowed to avoid focussing on rough sleepers? Will consider

**(Police inspector) 3. Leaving any personal belongings unattended.**

(Council response) If it is causing obstruction or hazard. (eg tripping) so may need condition the wording to make it reasonable.

**(Police inspector) 4. Could a similar provision of dispersal be added for simple ASB - any activity or behaviour which causes nuisance, alarm, harassment to distress to another person.**

(Council response) This is what is being offered (item v) you can issue a dispersal order if "The condition is that an authorised officer has reasonable grounds to suspect that the behaviour of the person in the location has contributed or is likely to contribute to members of the public in the location being harassed, alarmed or distressed", will cover any activity you feel falls under this heading.

The police inspector had also requested a restriction on letting off flares or fireworks, but the council officer rejected this as lacking evidence:

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<sup>63</sup> FOI Response from Rushcliffe Council, 30 November 2023

*For RBC to consider prohibiting flares there would need to be an evidence base of the existence of a problem. We discussed this. I also believe there is a lot of legislation around the prohibition of flares/fireworks already which have greater enforcement options. As discussed though, if this requirement is wanted, an evidence and needs basis would need to be developed. We do get challenged if not by the public then by Cllrs who have to approve it. We need to think about how it will be enforced.'*

These emails also give a picture of the work that councils put into consultations and approval of PSPOs. The Rushcliffe Council officer outlined the steps involved after consultation with the police:

*I will need to have maps added as schedules and legal to review. Before further internal consultations take place. Then external consultations, then reports, managing any objections/comment/changes, further legal view if changed, then Council approval fingers crossed.'*

The Nottinghamshire police inspector seemed to have little idea of legislative process, since he asked if the PSPO could be amended after it had been passed. The culture within the police appears to be one of 'I would like to do X', or 'Y would be useful', rather than scrutinising proposals and passing them through a legislation or consultation process. Inspectors who gained PSPO powers would be able to stamp their 'wish lists' into law.

In another email exchange, South Oxfordshire Council blocked a request from Thames Valley Police for a restriction on vehicle nuisance, on that basis that there was not enough evidence that this was a problem:

*I won't be adding a condition relating to vehicle related noise nuisance as, from what you said in your email and the data provided, it doesn't look like the issue is persistent enough to warrant being covered by a PSPO.<sup>64</sup>*

The Home Office should be aware of the gatekeeping role being played by councils on the drafting of PSPOs, since it was a point made by several responses to its consultation on plans to extend PSPO powers to the police.(we obtained

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<sup>64</sup> Email from South Oxfordshire District Council to Thames Valley Police

consultation responses through FOI requests to the Home Office).<sup>65</sup> Several councils said that they had checked unreasonable police requests for PSPOs. A representative from Powys Council said:

*'There have been periodic approaches by police for PSPOs, but these have not been supported by any evidence, and the use of existing powers have proved sufficient. The Local Authority has not been a barrier to PSPOs but has asked proper questions around proportionality, legality and necessity.'*

Meanwhile, a representative from Luton Council said:

*'In relation to extending PSPO's to the police, there would be concern re extending this power to the police. The reason for this is that there are often requests for implementation of orders within areas. Whilst these are often well intended, there is often lack of thought about the implementation, consultation and then the wider enforcement which may lead to a number of PSPO's being implemented and challenged. By keeping it with local authorities, the applications go through a democratic process and are well scrutinised.'*

## Police lack democratic mandate and scrutiny processes for PSPOs

Other council representatives who responded to the Home Office consultation highlighted the fact that police forces are not democratically accountable, and do not have processes for legislating, scrutinising or consulting on PSPOs. A representative of the Forest of Dean Council said that 'PSPO's are currently granted after being voted in by a "full council'. This in essence is public representation and requires solid justification for imposing them.' Sussex Fire and Rescue Service said that a wide variety of elected members and the public can affect the drafting of a council PSPO, but 'The Police are unlikely to have this wider range of checks and balances and there may either be a tendency for them to issue a PSPO inappropriately or for the community to mistrust one issued by the Police because of the absence of accountability'.<sup>66</sup>

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<sup>65</sup> FOI responses from the Home Office, 1 December 2023 and 29 February 2024

<sup>66</sup> FOI responses from the Home Office, 1 December 2023 and 29 February 2024

Eastleigh Borough Council said that the plan to extend PSPO powers would confuse the respective roles of councils and the police:

*'PSPOs are not temporary measures and the fact they are currently introduced by local authorities ensures that the due process of consultation and democratic accountability are met. Allowing the police to introduce a PSPO which may be against the wishes of the locally democratically elected body could potentially cause serious damage in fundamentally important relationships. This could also be seen as allowing the police to make law. This is not their role, their role is enforce the law not create it.'*

Because PSPO consultation requirements in law are minimal or non-existent,<sup>67</sup> the relatively arduous consultations organised by some councils is a reflection of the fact that they are a democratic body that is accountable to local residents.<sup>68</sup> The police does not have connections with sections of the public, systems of legislative scrutiny, or accountability to the public, and so would carry out only a very cursory scrutiny or consultation process. Police PSPOs would be driven by the sectional interests and priorities of the police force itself.

A slight majority of those who responded to the Home Office consultation were supportive of the extension of police powers (52%). We also obtained these responses through FOI request. Some council respondents complained about the lack of police enforcement of current PSPOs, and supported the police being given PSPO powers on the basis that they would be more likely to enforce them. Other council respondents seemed to want to pass on some of the work of PSPO consultation to another authority. Several of these respondents supported the extension of powers on the (unrealistic) basis that the police carry out the same consultation processes as local authorities.

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<sup>67</sup> The ASBCPA requires only that councils consult 'whatever community representatives the local authority thinks it appropriate to consult'.

<sup>68</sup> For example, for one PSPO, Hinckley and Bosworth consulted: parish and town councils, the Kennel Club, the Dogs Trust, residents, borough councillors, face-to-face surveys on affected sites, Hinckley and Bosworth Staff Survey, friends of Hollycroft website and social media, Hinckley BID, and other databases. (FOI request received from Hinckley and Bosworth council.)

Finally, one council representative argued that extending the powers to the police could make them more disciplined about gathering evidence for PSPOs than they were at present:

*'There have been occasions where police have requested PSPOs with little evidence to support one. Giving police the authority to issue PSPOs may ensure more focus on gathering relevant and robust information/evidence to support future PSPOs. Should also consider the specifics of the PSPO and what its aim is – what is the presenting risk if it is not adhered to the the local community.'*

Therefore, local authorities' support for the extension of PSPO powers to the police seems to be driven largely by frustration with the operation of current powers, including with the police habit of suggesting unjustified PSPOs. It is highly questionable whether extending these powers will end council frustrations. The ineffectiveness of existing powers is an argument for rethinking those powers, not for extending them to yet more authorities. As Norfolk Council Safety Partnership told the Home Office consultation, 'Police struggle to understand and enforce the existing powers so allowing them to add more powers is pointless'.

## Many police authorities do not want PSPO powers

The Home Office's consultation responses also show that many police bodies share the concern about extending PSPO powers:

- \* Out of the Police and Crime Commissioners who responded to the Home Office consultation, 17 opposed the plan to give the police PSPO powers. Only three PCCs agreed.
  
- \* Out of the police constabularies who responded to the consultation, 4 opposed the measure. Only 1 police constabulary agreed.

Comments by policing bodies warned that the extension of PSPO powers would weaken law-making, place an additional burden on forces, and create a risk of abuse. The Office of the Police and Crime Commissioner for South Yorkshire said 'We would be concerned by ethical implication and resourcing requirements if

police were able to issue PSPOs. It could result in a shift away from policing by consent and a weakened rigour around the use of PSPOs'.<sup>69</sup>

Other police forces opposed the extension of powers on the basis of the increased demand on police resources, with West Midlands PCC saying 'Police time and capacity pressures would not allow for this expansion of the power'. Some police bodies pointed out that the doubling up of the law-making powers could lead to a conflict with local authorities, with the Safer Newport Community Safety Partnership saying that 'This could lead to confusion with PSPOs in place for similar spaces/issues and a muddle as to which agency holds responsibility/governance.... Expanding this to police makes it open to abuse and confuses governance'.

Therefore, many policing bodies are also aware that the police are not suited to enact PSPO law-making powers, and have made these points to the Home Office in its consultation on the measures. However, the political drive to extend the range and reach of ASB powers means that these concerns have been ignored, and measures that have only limited support among the community safety community - still less among a wider audience - are pushed ahead.

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<sup>69</sup> FOI responses from the Home Office, 1 December 2023 and 29 February 2024



# Recommendations

1. The extensions of ASB powers in the Criminal Justice Bill should be rejected. Extending powers further will merely intensify abuses and lead to increasingly erratic and arbitrary law enforcement.
2. Police forces should keep centralised records of the numbers of ASB orders issued, as well as the purposes for which they were issued.
3. The Home Office should carry out an assessment of the use and effectiveness of existing powers, as recommended by the Civil Justice Council and the JUSTICE working party on Behaviour Control Orders.
4. There should be an end to undocumented powers, particularly undocumented alcohol confiscation and 'moving on'. These police actions represent significant interference in public liberty and should be documented and held accountable.
5. The Home Office should review its current 'fast and loose' ASB policing policy. It should particularly consider whether increasing penalties and the numbers of orders issued are necessarily positive ends.
6. ASB powers should be used fairly and proportionately, in a targeted way against those who have committed acts of criminality or serious public nuisance. The use of power should be subject to controls, such that their targeted and proportionate use is required by law and not left to the volition or good nature of particular officers. Procedural justice is essential to guide police enforcement towards appropriate ends, as well as to provide predictable and fair standards of conduct.

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