

This Report will be made public on 5 March 2019

Report Number **C/18/78**

To: Cabinet
Date: 13th March 2019
Status: Key Decision
Responsible Officer: Sarah Robson - Assistant Director - Strategy, Performance and Communications
Cabinet Member: Cllr Jennifer Hollingsbee

SUBJECT: New Public Spaces Protection Order – Results of Consultation

SUMMARY: On 14th November 2018, Cabinet agreed to consult the public on a proposal to introduce a new Public Spaces Protection Order (PSPO) as the current one is due to expire on 19th June 2019. The creation of bespoke PSPOs provides officers and partners (Kent Police) an additional tool on top of existing powers and legislation to help tackle specific issues of antisocial behaviour affecting parts of the District. PSPOs were brought in as part of a Government commitment to put victims at the centre of approaches to tackling anti-social behavior (ASB), focusing on the impact behavior can have on both communities and individuals, particularly on the most vulnerable.

This report summarises the results of the public consultation which shows that there is public support for all 7 measures. The report also provides an insight into the views of the public as well as the government's recommended position when implementing PSPOs. Members are asked to approve the new PSPO measures outlined in section 2.2.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to agree the recommendations set out below because:

- a) Support for introducing all 7 measures in a new PSPO can be demonstrated by the results of the public consultation process undertaken (section 2 of this report).
- b) The Local Government Association (LGA) guidance stated that where appropriate, education, prevention work, sign posting to support should be carried out first before any enforcement action and if action can be adequately and effectively dealt with using existing and alternative more effective legislation and tools and powers then this should be used. Public consultation has also advocated the use of alternative methods of control where appropriate, for example, management agreements for how a town centre precinct area is used to control street entertainment or a code of fundraising practices protocol, etc.

- c) Where the PSPO is used, it will be carefully framed and employed alongside other approaches as part of a broad and balanced ASB process. As part of the PSPO process, non-statutory solutions, delivered in partnership with community, charity or membership organisations can be equally valid in the right circumstances.
- d) The Council's Enforcement Policy promotes using education and other preventative interventions in the first instance, before enforcement sanctions are applied which should be an action of last resort.

RECOMMENDATIONS:

- a. **To note report C/18/78.**
- b. **To agree the 7 measures set out in section 2.2 to form the basis of a new PSPO for relevant parts of the District.**
- c. **To note the requirements for providing suitable protocols to support the implementation of the PSPO and to receive these together with a final revised Order for agreement by Cabinet in May 2019.**
- d. **To note the performance measures around successful interventions as set out in section 4.8**
- e. **To note where appropriate issues may be dealt with using education and/or prevention techniques, sign posting to services or using alternative, more effective legislation.**

1. BACKGROUND

- 1.1 The Council has commitment to develop a systematic, proactive approach to street and public space enforcement, including implementing a Public Spaces Protection Order (PSPO) to remove anti-social behaviours.
- 1.2 The Council recognises how anti-social behaviour can have a detrimental impact on local residents quality of life, with those affected often feeling powerless to act. It plays a key role in helping to make local communities within its area, safe places to live, visit and work.
- 1.3 Under the Anti-Social Behaviour, Crime and Policing Act 2014, a PSPO sits amongst a broad range of powers and tools to help reduce anti-social behaviour within particular areas.
- 1.4 A PSPO deals with specific nuisance problems, which is having, or is likely to have, a detrimental effect on the quality of life of those who live, work or visit a locality.
- 1.5 A PSPO can substantially reduce anti-social behaviour by the means of reasonable and proportionate restrictions and prohibitions. Its aim is to ensure public spaces can be enjoyed and are designed to ensure that the law-abiding majority can still use and enjoy public spaces, safe from anti-social behaviour.
- 1.6 PSPOs are not about stopping responsible people from using publicly accessible land, but to provide Local Authorities and other Local Government departments with the means to help deal with persistent issues, which can be damaging to local communities.
- 1.7 The threshold for making a PSPO is set out in Section 59 of the Anti-social Behaviour Crime and Policing Act 2014, which permits Local Authorities to make a PSPO if satisfied, on reasonable grounds, that two conditions are met as defined by the Act.

The first condition is that:

- a) Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- b) It is likely that activities will be carried on in a public place within that area and that they will have such an effect

The second condition is that the effect, or likely effect of the activities:

- a) Is, or is likely to be, of a persistent or continuing nature,
- b) Is, or is likely to be, such as to make the activities unreasonable, and justifies the restrictions imposed by the Order

2. INTRODUCTION

- 2.1 Following agreement by Cabinet on 14th November 2018 to carry out consultation on the introduction of new Public Spaces Protection Order the

public consultation formally opened on 26th November 2018 and closed on 21st January 2019. The public were asked to provide views on the introduction of 7 new measures to address ASB behaviour associated with certain activities in public places that can have a detrimental effect on the local community.

2.2 Public consultation was carried out in a number of ways to give the public as much opportunity to express their views and included:

- Access to all documentation and an online questionnaire via the Council's website
- Access to hard copies of documentation and downloadable paper copies of the questionnaire that could be posted to the Council (or emailed) and available at Town and Parish Council offices the Civic centre and Police reception desks
- Consultation with key stakeholders such as Kent Police, Police and Crime Commissioner (PCC), Town and Parish Councils and local charity organisations
- Direct email for comments or letters via a dedicated 'inbox'
- Communication via face book, twitter and the Council website
- Use of media including the local press and TV publicity via the BBC Sunday Politics show
- Awareness raising at key meetings and events and dissemination at forums, networks and residents meetings.
- Dissemination to internal members of staff
- Public drop in session held on 11.01.19

2.3 There were over 400 responses received in total and the following table summarises the returns received:

Table 1 – Summary of returns:

Method of Return	Number	Notes
Community Safety inbox	3	Liberty emailed letter & hard copy in post Fund raising Institute emailed letter & hard copy in post 1x general email with concerns raised.
Letters	2	PCC New Romney Town Council
Drop in session	5	Public views listened to
Hard copies of questionnaire	12	Entered separately by hand onto the online survey link
Online questionnaires	379	
TOTAL RETURNS	401	Summaries of comments submitted also trawled for trends in people's views

A breakdown of the respondents in terms of age range, areas they live in etc. is shown in Appendix 2.

3. RESULTS OF THE CONSULATION

- 3.1 The PSPO consultation results are presented as a general overview with recommendations and individual tables of results provided in more detail under this. There is further information in Appendices 1 and 2
- 3.2 Local Government Association (LGA) guidance for councils suggests that the consultation process should assess the appropriate balance for any proposed new measures ensuring they are supported and appropriate.
- 3.3 The public consultation undertaken by the Council demonstrates that overwhelming public support for all 7 proposed measures. These are:

Measure 1: 90% of the responses supported *Control of alcohol consumption in a public place*

Measure 2: 89% of the responses supported *No use of intoxicating substances in a public place*

Measure 3: 92% of the responses supported *No urinating, spitting or defecating in a public place*

Measure 4: 62% of the responses supported *No Begging*

Measure 5: 67% of the responses supported *Deterring inconsiderate Buskers*

Measure 6: 88% of the responses supported *Deterring inconsiderate Chuggers*

Measure 7: 67% of the responses supported *No unauthorised camping in open spaces*

- 3.4 A minority of the public comments received showed a lack of understanding of some of the measures and therefore clearer communication about the measures will be needed. Engagement with professionals in the field is being sought in terms of clear and consistent communication around the measures. Subject to Cabinet's approval to progress the 7 proposed measures, a PSPO workshop for key colleagues and partners will be organised in May 2019 to share and embed a consistent message and approach.
- 3.5 In terms of the written responses, emails received, comments added to the questionnaires and the public consultation exercise, views included general support for the proposals, although there were some concerns over targeting homeless, vulnerable people, traveller communities etc. Many comments were based around the fact that there are existing tools and powers that are adequate and can be used to address these issues and questioned why the PSPO was needed. Appendix 3 highlights a few such comments.
- 3.6 Letters from Liberty, the PCC and the Institute of Fundraising also cited concerns around begging and wrongly targeting vulnerable people, alongside recommendations, in the case of the Institute of Fundraising, to utilise management arrangements as a way of controlling street-based fund raising. A comprehensive Equality Impact Assessment has been carried out to demonstrate the impact of the PSPO on different groups of people and how actions will be taken, in particular to assist those most vulnerable

and to ensure the rights of people (and the community) are protected see Appendix 4).

- 3.7 At the public drop in session comments were made around the general feel of the town at certain times of the day and for more patrols (by Kent Police, the Council, Kent County Council and other agencies (such as the Rainbow Centre and Porchlight) at specific times, the need to address begging in the street and other matters around the vulnerability of young people and other aspects of disorder and reporting. There was concern expressed over lack of resources to carry out enforcement. There was also a request to include Littlestone in the boundary for some of the measures and based on local intelligence and data, this area is added to measures 1 and 2.
- 3.8 PSPOs are not the answer for everything – Councils and partners will still need to continually review issues, considering whether there are easier and more effective tools for dealing with ASB, such as; Codes of Practices, Community Protection Warnings (CPWs), Community Protection Notices (CPNs), targeted responses to individuals with multi-agency support and initiatives such as the Multi-Agency Rough Sleeper Support, Ops Ariel and Lion and Community Safety Unit intervention
- 3.9 When introducing a PSPO, it should be noted that the most robust Orders directly address the detrimental behaviour, rather than activities which may not in themselves be detrimental or which target characteristics that might be shared by some of those responsible (or with the wider public). The Home Office’s statutory guidance reiterates that PSPOs should be used responsibly and proportionately, only in response to issues that cause anti-social behaviour, and only where necessary to protect the public.

Recommendations:

- To bring all 7 measures into place in a new bespoke PSPO for the areas as listed in the consultation document. However, to note that appropriate interventions will be carried out to address the issues concerned e.g. through education, prevention, accessing support services, carrying out proactive projects and Community Safety operations to address this issues and using the most appropriate tools, powers and legislation as appropriate when enforcement is required - see section 3.
- To strengthen the communications messages around the proposed measures and to set out in detail the protocols around the use and implementation of the PSPO. New signage will be carefully put in place along with ongoing media and communications following the live launch of the PSPO.

3.10 Public consultation feedback – detailed analysis

Measure 1:

Control of alcohol consumption in a public place

369 of 391 respondents		
%	Response	Number
89%	YES	330
8%	NO	28
3%	Don't Know	11

Already in place in Folkestone, Cheriton parts of Sandgate and Seabrook the new PSPO will extend this to Hythe (High street and Oaklands) Dymchurch and New Romney – New: include Littlestone

Measure 2:

No use of intoxicating substances in a public place

Measure to cover the whole of Folkestone, Hythe (High street and Oaklands) Dymchurch, and New Romney, Cheriton and parts of Sandgate and Seabrook New: Include Littlestone

372 of 391 respondents		
%	Response	Number
90%	YES	334
6%	NO	24
4%	Don't Know	14

Measure 3:

No urinating, Spitting or defecating in a public place

Measure to cover the whole of Folkestone, Hythe (High street and Oaklands) Dymchurch, and New Romney, Cheriton and parts of Seabrook and Sandgate

368 of 391 respondents		
%	Response	Number
92%	YES	338
6%	NO	23
2%	Don't Know	7

Measure 4: No Begging

Already in place in Folkestone, Cheriton parts of Sandgate and Seabrook the new PSPO will extend this to Hythe (High street and Oaklands) Dymchurch and New Romney

371 of 391 respondents		
%	Response	Number
62%	YES	230
26%	NO	98
12%	Don't Know	43

Measure 5: Deterring Inconsiderate Buskers

The measure addresses amplified music and relates to certain areas of Folkestone as set out in the map on page 10 of the consultation document

370 of 391 respondents		
%	Response	Number
67%	YES	248
18%	NO	67
15%	Don't Know	55

Measure 6: Deterring Inconsiderate "Chuggers"

371 of 391 respondents		
%	Response	Number
88%	YES	329
10%	NO	36
2%	Don't Know	8

The measure looks to limit the number of chuggers (where passers-by are asked in the street to donate to charities or take out subscriptions) and relates to certain areas of the Folkestone and Hythe District

Measure 7: No unauthorised camping in open spaces

The measure addresses overnight stays in specified structures / vehicles without pre-agreement by the landowner and details of areas covered are set out in the consultation document

367 of 391 respondents		
%	Response	Number
67%	YES	245
25%	NO	91
8%	Don't Know	31

3.11 Appendix 1 shows graphical representation of the main results; Appendix 2 the demographic data of respondents that chose to fill this part of the consultation including male / female ratio, age range etc. and Appendix 3 provides examples of the wide range of comments received.

4. APPLICATION OF THE PSPO, EQUALITY IMPACT ASSESSMENT AND RELEVANT PROTOCOLS

4.1 The LGA guidance on PSPOs states that used proportionately and in the right circumstances, PSPOs allow local areas to counter unreasonable and persistent behaviour that affects the quality of life of its residents. They can send a clear message that certain behaviours will not be tolerated, and help reassure residents that unreasonable conduct is being addressed. It would be the responsibility of the relevant authorised officer to decide the most appropriate and proportionate response to any antisocial behaviour encountered.

4.2 However, PSPOs will not be suitable or effective in all circumstances, and it is important to consider carefully the right approach for identifying and addressing the problem behaviour. This is especially important when the activities may also have positive benefits. In addition, a comprehensive Equality Impact Assessment has been carried out to demonstrate the impact on different groups of people and how actions will be taken, in particular to assist those most vulnerable and to ensure the rights of people (and the community) are protected see Appendix 4)

4.3 LGA guidance also states that other options should actively be considered before a PSPO is pursued – and where a PSPO is used, it should be carefully framed and employed alongside other approaches as part of a broad and balanced approach to dealing with anti-social behaviour and to consider non-statutory solutions, perhaps delivered in partnership with community, civic or membership organisations which may be equally valid in the right circumstances.

4.4 The Council's Enforcement Policy states that the Council is committed to services which are courteous and helpful and seeks to work with individuals and businesses, wherever possible, to help them comply with the law. In section 1.4 of the policy, it states that where possible, the first step in enforcement should always be prevention, ensuring policy compliance and preventing contravention of the law by raising awareness and promoting good practice.

4.5 In conclusion, whilst PSPOs provide a useful tool for addressing ASB there will be alternative ways of dealing with issues on a case by case basis and this will be the case for both the measures in the PSPO as well as those excluded from it. The PSPO will act as another tool for authorised officers to use and will help with education messages and positive interventions. The next stage will be to work with the relevant Council departments and Kent Police to develop the relevant protocols as these will clearly define which agency (whether Council officers or the police) will help to educate, prevent and enforce elements of the PSPO and in what circumstances and how. The protocols will also define who takes legal action, prepares legal files and takes court action for prosecution. The protocols will be reported to Cabinet in May 2019 together with the actual order for signing off.

4.6 Examples of how alternative methods can be used for both the measures included and not included in the PSPO are described below:

- In the case of chuggers, peaceful fund raising in a controlled manner working with the town centre management team can be the approach, but if a chugger is persistently causing ASB issues then the PSPO may be used to address the problem. For example, street fundraising is governed by an independently set Code of Fundraising Practice and the Institute of Fundraising provides a free service for councils to limit the location, number and frequency of fundraising visits. Around 125 councils have taken advantage of these voluntary agreements, rather than use PSPOs.
- A Code of Practice for busking setting out 'good behaviour' has been developed by many council Economic Development teams and provides effective solutions in responding to particular concerns, whilst enhancing and promoting the town centre offer.
- In the case of begging and rough sleeping, the approach will remain around finding alternative accommodation, engagement with outreach services, charities and other support services will continue this includes the winter shelter support, Severe Weather Emergency Protocol, the Multi-Agency Rough Sleeper support initiative and Council funding support to key agencies such as Porchlight, Rainbow Centre, Citizens Advice and Salvation Army. The Council also recently launched its "Small Change, Big Difference" campaign with Porchlight to ensure that those vulnerable individuals with a genuine need who want help and support, receive it - so far there has been a total of 33 donations from the public/residents.
- The use of Community Protection Warnings (CPWs) and Community Protection Notices (CPNs) can be used to address the ASB associated with unauthorised encampments on public land and the existing processes and procedures as set out in the Council's existing

unauthorised encampments protocol as well as Police use of Section 61 powers can continue (Criminal Justice and Public Order Act 1994).

- 4.7 Given the number of comments received as part of the public consultation, where there was misinterpretation of the use of the PSPO for example on street drinking, many comments were still received e.g. around picnicking and peaceful use of alcohol, there needs to be stronger and clearer communications messages given out on what the PSPO exactly is being used for and to emphasise the types of ASB being addressed.
- 4.8 In terms of performance measures, as FPNs are the action of last resort, we will also collect data in terms of how the Council and other agencies (Kent Police etc.) use proactive engagement, education, warnings or signposting to support services in support of the PSPO. In addition, the regular use of these types of interventions through monthly multi-agency operations (e.g. Op Ariel) will add to the performance information. Whilst the numbers of FPNs will be collected, these will inevitably be low in comparison to interventions that may be used to prevent the unwanted behaviour recurring, in line with our Enforcement Policy. Any evidence obtained by the Police must be provided to the Local Authority as the prosecuting authority where a decision will be made by Legal Services in partnership with CSU (as per the National Policing Guidelines on the prosecution for Breaches of CPNs and PSPOs).
- 4.9 Where concern has been expressed by the public on resourcing enforcement, clear protocols will be developed with relevant partners and where appropriate, authorised Council officers are trained and supported to promote education messages and prevention interventions, alongside enforcement.

5. DURATION OF A PSPO

- 5.1 The maximum duration of a PSPO is three years, however, they can last for shorter periods where appropriate. Whilst a PSPO is in place, the Local Authority can extend it by up to three years if deemed necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local Police and any other relevant community representatives. If approved, this PSPO will be reviewed in two years to ensure it remains fit for purpose.

6. SUMMARY OF TIMELINES

The latest timeline for the process is set out below:

- 21 January 2019 - consultation ends and information to be collated.
- 13 March 2019 - full cabinet decision to disband old PSPO in June 19 and agree new PSPO as set out in this report.
- OSC and Cabinet meetings in May 2019 – Enforcement protocols and new order signed off
- June 2019 - New PSPO's implemented in place and – communications plan in place and new signage designed based on the feedback.
- PSPO will be reviewed after 2 years, but can remain in place for up to 3 years

7. RISK MANAGEMENT ISSUES

Perceived risk	Seriousness	Likelihood	Preventative action
Cabinet disagree with the measures	High	Low	Public consultation has been carried out and the results will be presented to Cabinet for approval, outlining the recommendations set out in this report
Old PSPO lapses and new one not in place in time due to any additional information needed or changes made to the timeline	High	Low	Approval given to the recommendations set out in this report
Lack of resource to carry out enforcement	Medium	Medium	To ensure resource level is commensurate with expectation on enforcement
Unlawful discrimination against protected characteristics that may be unintentionally affected by a PSPO	Medium	Low	The planning phase of the PSPO will ensure that there is not a breach to the Equality Act 2010. This will be prevented via an Equality Impact Assessment (EIA), a specific assessment tool used to assess and ensure that a policy or project does not discriminate against any disadvantaged or vulnerable people. It also ensures that the Local Authority provides and delivers a service that reflects the needs of the local community and its stakeholders.
The public are not aware of the new PSPO measures	Medium	Low	Effective communications and education, including erecting signs in (or near) an area subject to an Order are required by the legislation.

8. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

8.1 Legal Officer's Comments (DK)

There are no legal implications arising directly out of this report. Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 allows PSPOs to be introduced in a specific public area where the Council is satisfied on reasonable grounds that two conditions have been met. The first condition is that (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect. The second condition is that the effect, or likely effect, of the activities (a) is, or is likely to be, of a persistent or continuing nature, (b) is, or is likely to be, such as to make the activities unreasonable, and (c) justifies the restrictions imposed by the notice.

8.2 Finance Officer's Comments (LH)

There are no financial implications arising from this report.

8.3 Diversities and Equalities Implications (SR)

The Council must have regard to the Equality Act 2010 in making a PSPO. An Equality Impact Assessment (EIA) will be conducted with a view to assessing the proposed conditions and ensuring that their application does not negatively impact on any particular group.

8.4 Communications Implications (MR)

By adopting the most clearly supported PSPO measures and not adopting those that have less public support, we are showing that we have listened to residents' feedback and have altered our proposals as a result. This message should be clearly communicated. Once the PSPO measures have been agreed and adopted, there needs to be clear communication as to what they are, what behaviours they target and how other potential nuisance behaviour is addressed via other measures.

8.5 Transformation Comments (SR)

There are no direct implications on the delivery of the transformation programme arising from this report. However, officers may wish to consider using the new Project Methodology piloted with the Communities team.

9. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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The following background documents have been relied upon in the preparation of this report:

LGA guidance document on PSPOs

https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf

National Policing Guidelines on the prosecution for Breaches of CPNs and PSPOs

Appendices:

Appendix 1: General Graph of results

Appendix 2: Demographic information

Appendix 3: Example of comments made

Appendix 4: Equality Impact Assessment