

Lewisham Council's Proposed Public Space Protection Order (PSPO)

**Release comments for Lewisham
Council's Select Committee on 27 June
2023**



Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach.

Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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Introduction

1. Release has been asked to comment on a borough wide PSPO being considered by Lewisham Council's Safer Stronger Communities Select Committee on 27 June 2023.
2. Our comments will focus on the proposed provisions relating to the consumption of drugs and psychoactive substances. The proposed provision states:
"Any person who, without reasonable excuse, fails to surrender any such substance in their possession, and if requested, leave the area and not return for 48 hours when asked to do so by a Constable, Police Community Support Officer (PCSO) or Council Officer, commits an offence and may be liable to prosecution or may be issued a Penalty Notices for Disorder or arrested, either under the Misuse of Drugs Act 1971 or issued an Fixed Penalty Notice for failure to comply with a PSPO (local authority FPN)."
3. The proposal includes a dispersal power, and provision for a punishment for noncompliance.
4. We also offer some more limited insight into the provisions on so-called illegal encampments. The proposed measure states:
"Any person who, without reasonable excuse, occupies any vehicle, caravan, tent or other structure on public land owned or managed by the London Borough of Lewisham, without prior authorisation from the London Borough of Lewisham, commits an offence."
5. Release opposes the expansion of anti-social behaviour (ASB) powers. The concept of using these powers to understand and respond to issues of community safety is racialised and classed. Our comments focus on the likely impact the PSPO will have on young people and vulnerable residents, particularly people experiencing homelessness and marginalised communities.
6. Through our legal outreach projects, we offer support to people accessing drug and alcohol treatment services, homeless projects, and sexual health clinics supporting them in relation to

housing, social welfare, benefits and debt. We are therefore uniquely placed to comment on the proposed approach to a number of issues raised in the proposal.

Background: Increase in police/local authority powers and oppressive effect in the context of police force undermined by institutional prejudice

7. Lewisham’s proposed PSPO states that “*enforcement of these powers would support the wider strategy in Lewisham to address alcohol related harm*” However, the use of PSPOs perpetuates and exacerbates the harms associated with increased contact with the police, particularly as this creates the clear risk of increased use in stop-search powers. The use of the criminal justice system to tackle concerns about alcohol consumption and drug use has been proven to do little to make communities safer, while also decreasing public trust and confidence in the police and increasing demographic disparities.

8. The Baroness Casey Review into the standards of behaviour and internal culture of the Metropolitan Police Service drew attention to the ways in which measures designed to increase police contact have exacerbated racial disparities and are used disproportionately. The Met Police already consistently account for 40-50% of all stops carried out in England and Wales.¹ These stops are disproportionately acquired against Black communities, as the Met have publicly admitted that they target areas of high crime which tend to be poorer areas where Black communities are more likely to live, however rather than targeting crime this inevitably manifests itself in the targeting of the communities themselves.² The Misuse of Drugs Act is consistently the most used reason to stop and search in London, accounting for 60 per cent of all such police interactions between April 2022 and April 2023³. The Report concludes:
 - *“Existing scientific evidence does not support the widespread use of [police stops] as a proactive policing strategy.”*
 - *Those stopped by the police suffer far more mental and physical health problems than those who live in the same neighbourhoods but have not been stopped by police.*
 - *Those who have been stopped showed a significantly more negative attitude towards the police than those who had not been stopped.*
 - *Level of distrust in police was twice as high among those who had been stopped compared with those who had not been stopped.”⁴*

¹ Home Office, 27 October 2022, Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111337/7/stop-search-data-tables-summary-mar22.ods>

² Baroness Casey of Blackstock DBE CB, *An Independent Review into the standards of behaviour and internal culture of the Metropolitan Police Service*, <<https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/baroness-casey-review/update-march-2023/baroness-casey-review-march-2023a.pdf>> p.317

³ <https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard>

⁴ Casey, 2023, p.319

9. Liberty's report, to which Release is contributing partner, "Holding Our Own: A Guide to Non-Policing Solutions to Serious Youth Violence"⁵ explored the harms perpetuated by drugs policing, demonstrating how increasing police powers and contact is both ineffective and fuels racial disparities, undermining public trust in the police.
10. Stop and search is an ineffective police practice. Even when the number of stop searches tripled in 2016 under Operation Blunt 2 to respond to knife crimes, analysis by the Criminal Justice Alliance demonstrated that nearly three-quarters of all stop and searches found no weapons or any other prohibited item. While it is claimed to be used to keep communities safe, the majority of stop and searches are for low-level drug offences such as possession, especially cannabis, for personal use. Overall, the find rates are so low that stop and search ultimately enables police to intimidate, harass and create violence in the lives of young people much more effectively than it is at removing illicit substances from communities.⁶
11. The effects of the PSPO will be particularly acute in Lewisham. Lewisham is a diverse area, with high levels of deprivation and ethnic, religious and racial diversity. Lewisham already has a high level of policing, in April 2023 (the most recent month reported) Lewisham was the eighth most policed borough in London, representing 3.6% of all stop and search in London.⁷
12. Black communities are particularly overrepresented in the Met's stop and search demographic data in the Lewisham area. Between June 2022 and April 2023, the black population were overrepresented amongst Lewisham's stop and search volumes, with 2414 searches conducted against people of black ethnic appearance compared to 1862 for people of white ethnic appearance, according to Metropolitan Police data on Lewisham stop and search. The racial disparities throughout this period range Black people were stopped and searched at between 2 to 3 times the rate of White people in the borough.⁸
13. Furthermore, Lewisham is a large borough encompassing several areas of deprivation.⁹ A loosely defined PSPO covering the whole borough risks the abuse of these wide-ranging powers to criminalise poverty, and to widen issues of over-policing of poorer communities.
14. Even in the unlikely event that the PSPO is implemented consistently across racial lines, this does not eliminate the risks that over-policed communities, in particular black people, will face severe

⁵<https://www.release.org.uk/sites/default/files/pdf/publications/Liberty%20and%20Release%20Submission%20-%20Anti-Social%20Behaviour.pdf>

⁶ Liberty & ors, *Holding Our Own: A Guide to Non-Policing Solutions to Serious Youth Violence*, <https://www.libertyhumanrights.org.uk/wp-content/uploads/2023/04/HoldingOurOwn_Digital-DoubleSpreads.pdf>, p.62

⁷ <https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard>

⁸ Ibid

⁹ <https://www.observatory.lewisham.gov.uk/deprivation/map/>

consequences following the increased powers. The Baroness Casey report and previously the Stephen Lawrence enquiry have highlighted the tragic consequences of over-zealous policing of black communities. Release also highlighted this in our research, *The Colour of Injustice*¹⁰, which looked at drug law enforcement and racial disparities the *Holding Our Own Report* in the context of drugs policing:

15. Overwhelmingly, the evidence as highlighted by the Met police’s own stop and search data, and independent reports such as the Baroness Casey review, demonstrate that increasing police powers through measures such as a PSPO, with its broad brushstroke approach to giving wide powers over wide areas for a long period of time, does more to harm communities, criminalise poverty, and exacerbate existing racial tensions and mistrust in police, than it does to prevent ASB and make communities safer.

Lewisham’s PSPO: Lack of justification and clarity for additional powers

16. The proposed PSPO gives the police the power to fine anyone found in breach. The police already have the power to seize any illicit substances found in a person’s possession under s.23 of the Misuse of Drugs Act 1971, as well as arrest and conviction for a possession offence (which itself could include a fine). As such, the penalties for a breach of the PSPO’s terms are not justified considering the existing power of the police in these circumstances.
17. The proposed wording of the PSPO is that “[a]ny person who... commits an offence and may be liable to prosecution or may be issued a Penalty Notices for Disorder or arrested, **either** under the Misuse of Drugs Act 1971 or issued an Fixed Penalty Notice for failure to comply with a PSPO” (emphasis added). The use of the word ‘either’ leaves open the possibility for enforcement using the PSPO or the Misuse of Drugs Act 1971, or potentially both. A person found in possession of illicit substances could conceivably be sanctioned for a breach of the PSPO for failing to surrender drugs, receive a fine and potential prosecution, *and* be convicted and punished for a possession offence, thus creating a double punishment for the same offence.
18. The evidence relied on in the Evidence Pack is unreliable. The data is from January 2020 to September 2022, which includes 2 years of data skewed as a result of the COVID-19 pandemic. During the pandemic, “*the rate of recorded anti-social behaviour in England and Wales rose sharply to more than double its expected level in the early months of the pandemic*”.¹¹ Halford, Dixon and Farrell report that this is due to lockdown breaches being recorded as ASB, as non-COVID-19 related ASB stayed “*at similar to expected levels across the pandemic*”. From 2022-onwards, ASB levels have also remained around expected levels,¹² demonstrating that the increase of ASB in the period cited by Lewisham Council is not an accurate reflection of the levels

¹⁰ <https://www.release.org.uk/publications/ColourOfInjustice>

¹¹ Halford, E., Dixon, A., and Farrell, G. 2022. Anti-social behaviour in the coronavirus pandemic. *Crime Science* 11, 6 . Available at: <https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-022-00168-x>

¹² *Ibid.*

of ASB in the community, and therefore cannot be relied upon to support the introduction of a PSPO.

19. The Evidence Pack that sets out supporting statements from local police officers. These supporting statements provide specific and very localised reports, including referring to singular venues and footpaths. There is a lack of anecdotal evidence and the statements do not balance those specific experiences with the wider Borough. It is not justifiable to limit the freedoms of the Borough on the basis of only three statements that only mention singular venues, and do not reflect the experience of the Borough at large.

Disproportionate impact on young people, poor people, people experiencing homelessness and people who use drugs

Drugs measure: Dispersal powers

People who use drugs

20. PSPOs which capture the location of drug and alcohol treatment services can have detrimental consequences for individuals as consistent treatment is fundamental to mitigating drug-related harms. A 48-hour exclusion may preclude a person from accessing treatment, their pharmacy and other medical and professional support. This can include crucial harm-reduction initiatives such as needle exchanges. This has the dual effect of preventing a person from accessing help and empowers the Local Authority and Police to target people simply for existing in public.
21. Where a person is using drugs in the vicinity of their accommodation provider, as has been identified in the Supporting Statements in the Evidence Pack, this is often because that person is not permitted to use drugs within the premises. Dispersal powers have the effect of excluding that person from accessing that accommodation. Release would encourage the Council to engage with housing providers to encourage a tolerated use policy within those accommodation providers. This approach is adopted by a number of other providers of shelters, and Release would be delighted to speak to the Council about this life saving approach.
22. Additionally, dispersal powers may force a person into more secluded areas, thereby increasing drug-related risks such as overdose.¹³ People who use drugs need safe, clean spaces to take drugs, which have access to on-site medical staff. This pragmatic and public health approach to drug-use would not only prevent the risk of overdose and drug-related death, but also the issue of drug-related paraphernalia littering public spaces and streets. In framing drug use as ASB there is a danger that dependent users, and particularly those without access to housing, will simply be forced to move from one public space to another. It does nothing to engage with the

¹³ European Monitoring Centre for Drugs and Drug Addiction, Perspective on Drugs: Drug Consumption rooms: an overview of provision and evidence. Available at:

https://www.emcdda.europa.eu/system/files/publications/2734/POD_Drug%20consumption%20rooms.pdf

difficult question of how to actually help people. It is worth noting that Lewisham has the tenth highest rate of drug related death in the Capital's boroughs.¹⁴

23. Release objects to criminalising and intimidating people who use drugs with police powers. The failure of these policies lie in the fact that they do little to resolve the issues they claim to be tackling (such as drug-related litter) and instead, force people who use drugs into further isolation and marginalisation, all of which put them at further risk of harm.

Young people

24. Youth services have seen their budgets decimated as a result to local authority funding, at a huge cost to the wellbeing and safety of young people. In too many cases, this has left young people without dedicated spaces to go to in their community. The proposed exclusion power makes it more difficult to spend time with friends and risks criminalising young people for simply being in public spaces.
25. Release objects to the use of dispersal powers in the context of the existing raft of police powers and sentencing legislation already used to label, and criminalise, groups of young people as 'gangs', with this impacting young Black people in particular. The evidence showing the use of dispersal powers to target young people shows a clear conflation of 'criminal' behaviour and 'congregating' behaviour. Young people may congregate together because they have a shared affinity with a particular area or they feel a greater sense of safety when together as a friendship group, or that they simply do not have the private space to meet. Use of dispersal powers disrupt the bonds young people create with their peers when experiencing play and joy.

Drugs measure: Punitive element

People who use drugs

26. Breaching a PSPO carries an on the spot fine of up to £100, increasing up to £1,000 and prosecution in the Magistrates' Court if the person does not pay.
27. Lewisham has areas of high deprivation and several of those areas have been specifically identified in the Supporting Statements. Subjecting people experiencing poverty to financial sanctions can have far-reaching consequences beyond that initially intended by the sanction. Compelling a person to pay £100 on-the-spot can be the difference between eating, paying for rent, paying for bills and other outgoings, and being simply unable to do so.
28. Where a person does not have access to that amount immediately due to their limited means, which may be unavoidable where a young person is sanctioned, they face the prospect of a

14

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/drugmisedeathsbylocalauthority>

much higher fine and prosecution. This mechanism effectively criminalises a person for having limited means. Where an individual is subjected to the harsher penalty, this can have life-changing consequences.

29. In the case of young people, prosecution and a criminal record can have a devastating impact on their life's outcomes, including in educational attainment and accessing employment in a wide range of professions and roles.
30. Those with limited means that fall into arrears that are subject to the higher fine and prosecution may have their lives significantly upturned. This can include falling into rent arrears or being unable to afford basic necessities.
31. Requiring a person to surrender drugs in their possession can also have far-reaching consequences for that person and may have the adverse effect of actually magnifying some of the issues raised in the Evidence Pack. For opiate users in particular, the confiscation of drugs can have harmful health impacts including withdrawal and a risk to life. The likely reality is that a person will simply buy more, thereby increasing the demand and trade in the area.
32. Release opposes the enforced surrender of drugs and encourages the Council to be led by a public health and harm-reduction approach.

Young people

33. It is well reported that law enforcement with respect to drugs has a disproportionate impact on young people. For example, "*[b]etween 2007 and 2017, 3,861 people have been given a custodial sentence [for cannabis possession], and of these 43% (1,663) were young people aged 12-24, and 18% (687) identified as Black - despite making up less than 4% of the population of England and Wales*".¹⁵
34. The life-altering impacts of criminal records are also felt much more deeply for young people, which is a further reason why the proposed PSPO should not be approved. If the PSPO does not displace the powers of seizure and arrest, and therefore risk double punishment for possession offences, this will produce the effect of imposing life-changing consequences of criminal records on young residents of Lewisham.
35. The timing of the proposed PSPO raises concerns, particularly for young people, coming into the summer months where people regularly socialise in parks and other public areas. The proposed PSPO will sanction people for failing to surrender alcohol, for small drug possession, littering and playing music. There is a clear link between people gathering in public spaces when the weather

¹⁵Garius, L. & Ali, A. (2022) *Regulating Right, Repairing Wrongs: Exploring Equity and Social Justice Initiatives within UK Cannabis Reform*, London: Release. Available at: https://www.release.org.uk/sites/default/files/pdf/publications/Regulating-Right-Repairing-Wrongs-UK-Cannabis-Reform_Release.pdf

is warmer and these potential breaches. Young people are more likely to be socialising in this way, and the PSPO will thus produce a disproportionate impact on young Lewisham residents.

36. The Mayor of Lewisham, Damien Egan, has previously put his support behind diversion programs for people under 25 who are found in possession of drugs and the decriminalisation of cannabis.¹⁶ This demonstrates that there is an understanding of the disproportionate impact of drugs policing on young people, and the harms that stem from enforcement. The proposed PSPO contradicts the Mayor's beliefs and support for harm reduction measures.

So-called illegal encampments and homelessness

37. The concerning tendency for powers within PSPOs to be used to unfairly target people experiencing homelessness and poverty was addressed in 2021 Home Office Guidance: “[PSPOs] should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this is in itself unlikely to mean that their behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed.”¹⁷ Reference to homelessness and poverty was removed in the 2023 guidance. This itself is deeply concerning.

38. There are several examples in the Evidence Pack's Supporting Statements which frame homelessness and poverty as requiring a punitive response:

“[R]esidents complain that the presence of homeless people within the tunnel is off putting for them and they feel intimidated by it. There are also reports that these people are begging. This matter has been referred to the council before and was recently subject to a joint police and council visit. Officers have recently issued 3 Community Protection Warnings here. The main protagonist here did for a period have a place at Miriam Lodge but rather chose to sleep in the tunnel with her partner until he recently died, as they couldn't stay together at Miriam Lodge.”

39. Seeking to criminalise homelessness does not help anybody, neither does seeking to use enforcement powers to compel a person to live away from their partner. Release advocates for access to safe, suitable and secure housing. As the Council will be aware, this is difficult to come by and it is fundamental that support is available to people experiencing homelessness who should at no stage be sanctioned for simply existing in a public space.
40. In relation to so-called illegal encampments, the proposal effectively criminalises a person experiencing homelessness from using a shelter. Positively, the Evidence Pack notes that

¹⁶ Keane, D. 2022. Decriminalise cannabis to protect young Londoners, says Mayor of Lewisham. Evening Standard. Available at: <https://www.standard.co.uk/news/london/mayor-of-lewisham-damien-egan-decriminalise-cannabis-plan-london-b978852.html>

¹⁷ Home Office. 2021. Anti-social Behaviour, Crime and Policing Act 2014: Reform of Anti-social Behaviour Powers - Statutory guidance for frontline professionals. January 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146322/2023_Update_ASB_Statutory_Guidance_-_FINAL_1_.pdf

reported cases occur “*relatively infrequently*”, with a steady rate of 30 reports over a period of just less than two years.

41. Release opposes the punishment of people seeking shelter, who will overwhelmingly be experiencing poverty and homelessness. The resources committed to the discharge of punitive powers would be much more effectively utilised ensuring that individuals have access the robust support to access safe, suitable and secure housing as opposed to needlessly moving a person from one public space to another and criminalising them at various points along the way. Support into housing can take a substantial period, particularly where individuals are self-advocating. There is a real risk that people will be sanctioned where they are already trying themselves to access permanent accommodation.
42. Release would also urge the Council to consider other options, such as dedicating unused public land to authorised encampments, serviced by sanitary facilities, rubbish disposal and on-site housing support. This approach would solve the main issues in the evidence pack and provide a long-term solution to people occupying impermanent shelter.

Conclusion

43. Release has serious concerns about the impact that the proposed PSPO will have on vulnerable populations including those experiencing homelessness, young people, black people and other ethnic minorities. We would urge Lewisham Council to adopt different, and more effective, strategies to ensure that those that would suffer the greatest harm under this proposal are instead supported by their Local Authority.