

LIBERTY

SUBMISSION TO THE CRIMINAL JUSTICE BILL PUBLIC BILL COMMITTEE, JANUARY 2023

SUMMARY

1. Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.
2. Liberty stands with countless homelessness charities, street outreach services and Parliamentarians across all parties and affiliations in opposing the introduction of offences to replace the Vagrancy Act. Rough sleeping, begging and homelessness are a result of poverty and economic inequality and should be treated as such. The criminalisation of poverty and activities arising from poverty can amount to violation of Articles 8 (right to respect for private and family life), 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (protection of discrimination) of the European Convention on Human Rights (ECHR).
3. The backdrop to the Criminal Justice Bill is one of skyrocketing poverty, a housing system in freefall, an insufficient social security net and rising costs of basic food and toiletries. Growing numbers of people are being forced to sleep rough across our towns and cities. **This Bill will criminalise people forced into these intolerable circumstances. Instead, the Government should meaningfully address ever-increasing levels of poverty across the country.**
4. Latest government figures show a 26% rise in rough sleeping – the first reported increase since 2017.¹ This is happening alongside similarly worrying trends in other forms of homelessness with growing numbers of people living in temporary accommodation and high numbers of people facing homelessness because of Section 21 ‘no-fault’ eviction notices.² Rough sleeping and begging are connected issues, with a significant number of people sleeping rough also engage in begging, predominantly to buy food.³ Research into the wider range of reasons why people resort to begging show that the majority of people cite economic factors such as not having enough money to cover the basics, being sanctioned by the benefits system or having lost their job.⁴ **We strongly oppose the introduction of measures to tackle so-called ‘nuisance’ rough sleeping and begging which will exacerbate the deep and enduring hardship faced by rough sleepers and people who beg, and we urge the Government to remove these measures from the Bill.**
5. This submission will outline Liberty’s concerns with Clauses 38 to 64 (‘nuisance’ rough sleeping and begging) and Clauses 65 to 71 (anti-social behaviour). More broadly, Liberty echoes the submission made by Big Brother Watch on Clause 21 of the Bill.⁵ Policing Minister Chris Philp revealed during Committee Stage of the Criminal Justice Bill that the intended outcome of Clause 21 of the Criminal

¹ Department for Levelling Up, Housing and Communities. 2023. *Rough sleeping snapshot in England: autumn 2022*. Available at: <https://www.gov.uk/government/statistics/rough-sleeping-snapshot-in-england-autumn-2022>

² Crisis. 2023. *Crisis responds to figures showing 26% rise in rough sleeping, as almost 100,000 households stuck in temporary accommodation*. Available at: <https://www.crisis.org.uk/about-us/media-centre/crisis-responds-to-figures-showing-26-rise-in-rough-sleeping-as-almost-100-000-households-stuck-in-temporary-accommodation/>

³ Crisis. 2017. *An examination of the scale and impact of enforcement interventions on street homelessness in England and Wales*. Available at: <https://www.crisis.org.uk/media/237532/an-examination-of-the-scale-and-impact-of-enforcement-2017.pdf>

⁴ Shelter Scotland. 2019. *Street Begging in Edinburgh: A comprehensive evaluation of data available November 2016 to October 2018*. Available at:

https://assets.ctfassets.net/6sqgfrl1sfj/2G86py00K0mxxpTvVpCwIX/8a26b79203fafe3e390c5348b162fb8e/Shelter_Scotland_Street_Begging_Final_Report_Jan_2019.pdf

⁵ Big Brother Watch. 2024. *Big Brother Watch briefing on Clause 21 of the Criminal Justice Bill*.

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Justice Bill was to allow police and law enforcement "to access driving license records to do a facial recognition search." As such, Clause 21 marks an unprecedented expansion of facial recognition technology, enabling police to run biometric searches on a database containing images of millions of driving license holders across the country. For the way that facial recognition threatens our privacy, chills free expression, and criminalises those most marginalised across our society, we urge the Government to amend Clause 21 as suggested by Big Brother Watch.⁶

‘NUISANCE’ ROUGH SLEEPING AND BEGGING – CLAUSES 38 TO 64

6. Liberty opposes the introduction of measures to criminalise so-called ‘nuisance’ rough sleeping and begging in Clauses 38 to 64.
7. We reject the government’s characterisation of rough sleeping and begging as a ‘nuisance’. Sleeping rough and turning to others for help are not a ‘nuisance’, nor issues that warrant enforcement and criminalisation by police and local authorities. The definition of ‘nuisance’ in the context of begging and rough sleeping⁷ is incredibly expansive, with emphasis placed on the low threshold of “harassment, alarm and distress”. Begging and rough sleeping do not, in themselves, amount to actions causing harassment, alarm and distress and thus do not merit enforcement action as set out in Clauses 38 to 64 of this Bill. This important principle has been heralded and upheld by parliamentarians and the Home Office itself regarding the use of existing powers in the Anti-Social Behaviour, Crime and Policing Act 2014, with the statutory guidance on the use of the Act stating that powers must not be used to target people based solely on the fact that they are homeless or rough sleeping.⁸ However, we note that this wording has now been removed from the statutory guidance with no acknowledgment or evidence to justify doing so.
8. The definition of ‘nuisance’ is extraordinarily broad and includes shaming, dehumanising language which will see people on the streets subject to criminalisation and enforcement action based on their appearance and how they present. Combined with the low threshold of “harassment, alarm and distress”, Clause 61 (5) further defines ‘nuisance rough sleeping’ as including ‘excessive smells’, and displaying signs or writing that is considered to be ‘insulting’. Such a definition of ‘nuisance’ will exacerbate the stigma already faced by people sleeping rough or begging on the streets. The viciousness of which sees people on the streets subject to violence and harassment, being 17 times more likely to be a victim of crime.⁹
9. We echo the contributions made by Domestic Abuse Commissioner, Nicole Jacobs, to the Public Bill Committee regarding the particular impact of these measures on women and girls.¹⁰ Research shows that over 30% of women sleeping rough are forced to do so as a result of domestic abuse. Due to the cross-cutting threat of hostility on the basis of sleeping rough and the threat of gender-based violence, abuse and harassment, women sleeping rough conceal themselves out of public view.¹¹ The broad definition of ‘nuisance’ in this Bill, drafted to include less visible places such as doorways, will exacerbate the already high risk of violence and harm already faced by women and girls. Increasing

⁶ *ibid*

⁷ Clause 49 defines “nuisance begging” and Clause 61 defines “nuisance rough sleeping”

⁸ 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/956143/ASB_Statutory_Guidance.pdf

⁹ Crisis. 2016. “It’s no life at all”: *Rough sleepers’ experiences of violence and abuse on the streets of England and Wales*. Available at:

https://www.crisis.org.uk/media/20502/crisis_its_no_life_at_all2016.pdf

¹⁰ Public Bill Committee, *Criminal Justice Bill*. Available at: https://publications.parliament.uk/pa/bills/cbill/58-04/0010/PBC010_Criminal_1st6th_Compilation_11_01_2024.pdf (p.32)

¹¹ St Mungo’s. 2018. *Women and rough sleeping: a critical review of current research and methodology*. Available at: <https://www.mungos.org/wp-content/uploads/2018/10/Women-and-Rough-Sleeping-Report-2018-Summary.pdf>

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enforcement and criminalisation, through the measures in this Bill, will push women and girls sleeping rough further out of public view and closer to violence and harm.

10. Furthermore, we object to the inclusion of health and safety matters in the definition of ‘nuisance’ and as justification for use of enforcement powers against rough sleepers and people who beg. Matters of health and safety, especially in the context of rough sleepers and people who beg, are not enforcement or criminal justice matters. To use enforcement powers on this basis evidences the significant criminalisation creep present in these measures which, as The Manifesto Club writes in relation to the growth of anti-social behaviour powers in recent decades, “indicates a loss of perspective on the question of what is, what is not, meriting the state’s powers of coercion and criminal sanction”.¹²
11. These measures risk violating the rights of rough sleepers and people who beg. The definition of ‘nuisance begging’ in Clause 49 of the Bill amounts to a blanket ban, and therefore is in breach of Article 8 of the European Convention on Human Rights (ECHR). The criminalisation of poverty and activities arising from poverty, such as begging, can amount to violation of Articles 8 (right to respect for private and family life), 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (right not to be discriminated against) of the Human Rights Act 1998 (HRA). The list of areas “where the begging is taking place” includes an expansive list of public places including on public transport, at a train station or within 5 metres of a retail premises. This fails to account for the nature of begging, taking place in busy places precisely because there are people around to turn to for help. Recent case law affirmed the act of begging as a way to “overcome an inhuman and precarious situation” and that “the right to turn to others for help is the essence of the rights protected by Article 8 of the Convention.”¹³
12. These measures have already been rejected by Parliamentarians. In January 2022, we saw MPs and Peers from across all parties vote to scrap the 1824 Vagrancy Act which criminalised begging and rough sleeping. The government stated its intention to commence the scrapping of the Act once they had developed ‘replacement offences’. This intention, again, received significant opposition from all corners of the House, with now-government minister Robert Jenrick MP stating there are no “convincing arguments” to back up the need for replacement legislation.¹⁴ Furthermore, the government’s own public consultation on replacement legislation saw only 25% of respondents in favour of introducing new offences in relation to rough sleeping.¹⁵
13. Liberty casework¹⁶, along with recent research conducted by Sheffield Hallam University¹⁷, has shown that rough sleepers and people who beg are already primary targets for the unfair use of existing anti-social behaviour powers, including Community Protection Notices, Public Space Protection Orders and Dispersal Orders. Clauses 38-64 mark an unprecedented expansion of police and local authority enforcement powers to criminalise people on the streets, with a staggering 8 new

¹² The Manifesto Club. 2017. *CPNs: The Anarchy of Arbitrary Power*. Available at: <https://manifestoclub.info/cpns-the-anarchy-of-arbitrary-power/>
JUSTICE. 2023. *Lowering the Standard: a review of Behavioural Control Orders in England and Wales*. Available at: <https://files.justice.org.uk/wp-content/uploads/2023/11/06143241/Lowering-the-Standard-a-review-of-Behavioural-Control-Orders-in-England-and-Wales-September-2023.pdf>

¹³ *Lacatus v Switzerland (2021)*

¹⁴ HC deb, 28 February 2022, vol 709, col 839

¹⁵ Department for Levelling Up, Housing & Communities. 2023. *Consultation outcome: Government response to the consultation on replacement legislation for the Vagrancy Act*. Available at: <https://www.gov.uk/government/consultations/review-of-the-vagrancy-act-consultation-on-effective-replacement/outcome/government-response-to-the-consultation-on-replacement-legislation-for-the-vagrancy-act>

¹⁶ In 2022, Liberty represented a woman in London who was prosecuted after the Metropolitan Police accused her of breaching a Community Protection Notice that prohibited her from “acting in a manner that implies begging.” It also prohibited her from being on a specific street, which was very close to her home and where she usually went shopping. The Met later accused her of breaching the CPN due to being on a particular street named in the CPN. Most conditions of the CPN were suspended pending a final hearing. This case, and other Liberty cases, carried nebulous provisions, making it virtually impossible for Liberty’s clients to ascertain their meaning and therefore control their behaviour, contrary to Article 7 ECHR.

¹⁷ Heap, V, Black, A and Devany, C. 2022. *Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness*. Available at: <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>

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measures, on top of existing powers. Taken together, these measures will subject people on the streets to layers of criminalisation. For example, someone could effectively be given a Clause 38 ‘nuisance begging direction’, a Clause 39 nuisance begging prevention notice and be criminalised under the Clause 49 offence of ‘engaging in nuisance begging’ on the same day and in quick succession. Similarly, alongside the giving of directions or a notice, a person could be criminalised under the Clause 62 of trespassing with intent to commit a criminal offence if they are sleeping rough or begging on a premises. “Premises” is defined widely as “any building, part of a building or enclosed area”.

14. Rough sleeping and begging are not, and should not be, policing matters. Police forces across the country are rightfully taking action to divert resources away from non-policing, social issues¹⁸ of which poverty should be included. We echo the remarks from Chair of the National Police Chiefs Council, Gavin Stephens, that matters of rough sleeping, particularly when underpinned by homelessness and mental ill health are “clearly not a matter for policing at all.”¹⁹ Furthermore, in the face of government cuts to local authority budgets, some councils struggle to meet their legal duty to provide accommodation to homeless families.²⁰ New enforcement powers targeting people in poverty will not help them provide adequate homelessness services. Instead, the government must provide the resources local authorities need to accommodate and protect people in their communities.
15. These measures will also place enormous pressure on a court system with record high backlogs²¹ and an overcrowded prison system.²² In addition, there is an inherent contradiction in the government’s intention to bring forward a presumption against short prison sentences through the Sentencing Bill alongside the penalty for of a 1 month custodial sentence attached to noncompliance with measures outlined in Clauses 38-64.

ANTI-SOCIAL BEHAVIOUR – CLAUSES 65 TO 71

16. Liberty opposes the expansion of existing anti-social behaviour powers in Clauses 65 to 71.
17. Existing anti-social behaviour powers have long been used to target, and criminalise, people in poverty and should not be expanded. We reiterate our opposition to the expansion of PSPOs and CPNs, as detailed in our response to the Home Office Anti-Social Behaviour Plan where these measures originated, for the way that both tools are routinely used to impose blanket bans on begging or to simply ban people from occupying public space which disproportionately impacts people sleeping rough.²³ Using anti-social behaviour powers in this way criminalises poverty, plunging people with little to no resources into debt with hefty fines as punishment and ultimately, pushing people further away from support. We are especially concerned about the expansion of the power to issue PSPOs to the police and note the Home Office explanation that the consultation requirement will still be maintained.²⁴ We question the ability of the police being able to meet a consultation requirement that requires them to consult with themselves. This, combined with the removal of safeguards against using CPNs and PSPOs to target people on the streets from the statutory guidance on use of powers

¹⁸ The Guardian. 2023. *Met wins battle with NHS over not attending mental health calls*. Available at: <https://www.theguardian.com/uk-news/2023/aug/17/met-police-mental-health-calls-nhs-mark-rowley>

¹⁹ Public Bill Committee, *Criminal Justice Bill*, Available at: https://publications.parliament.uk/pa/bills/cbill/58-04/0010/PBC010_Criminal_1st6th_Compilation_11_01_2024.pdf (p.6)

²⁰ The Guardian. 2023. *Councils in England facing bankruptcy as lack of housing pushes up costs*. Available at: <https://www.theguardian.com/society/2023/oct/30/councils-in-england-facing-bankruptcy-as-lack-of-housing-pushes-up-costs>

²¹ The Law Society. 2023. *Justice delayed as thousands of cases wait more than two years to be heard*. Available at: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/justice-delayed-as-thousands-of-cases-wait-more-than-two-years-to-be-heard>

²² The Howard League for Penal Reform. 2023. *Prison watch*. Available at: <https://howardleague.org/prison-watch/>

²³ Release and Liberty. 2023. *Joint response to the Government’s Anti-Social Behaviour Plan*. Available at: <https://www.release.org.uk/sites/default/files/pdf/publications/Liberty%20and%20Release%20Submission%20-%20Anti-Social%20Behaviour.pdf>

²⁴ Home Office. 2023. *Consultation outcome: Community safety partnerships review and antisocial behaviour powers: government response*. Available at: <https://www.gov.uk/government/consultations/community-safety-partnerships-review-and-antisocial-behaviour-powers/outcome/community-safety-partnerships-review-and-antisocial-behaviour-powers-government-response>

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in the Anti-Social Behaviour, Crime and Policing Act 2014, is extremely worrying and makes way for the continued criminalising of people in poverty.

18. Expansion of dispersal powers in Clause 66 of the Bill²⁵ will negatively impact young people. Current use of dispersal powers criminalises young people for simply accessing public space, with research showing that their use disrupts the formation and strengthening of friendships which has implications for a young person's ability to build social capital and can lead to experiencing further disadvantage later in life.²⁶ Expansion of such powers arrives after over a decade of local authority funding cuts that have been detrimental to local youth services, leaving young people without dedicated spaces to go in their community.²⁷ We also share the concerns of Release who, in our joint submission to the Home Office's consultation on the Anti-Social Behaviour Plan, cautioned against the expansion of dispersal powers on the basis that this will further criminalise people who use drugs instead of taking a pragmatic, public health approach that would prevent the risk of overdose and drug related death. Use of dispersal powers would simply push people who use drugs into more secluded areas where the risk of harm is significantly heightened.²⁸
19. Clause 67 of the Bill lowers the minimum age at which a person can be issued with a Community Protection Notice from 16 to 10. The Home Office response to their consultation on the Anti-Social Behaviour Plan, where this measure was first proposed, indicated that they were seeking to bring the age in line with the age of criminal responsibility. This will subject children to needless enforcement and criminalisation in a context where, as stated by the former Lord Chief Justice of England and Wales Lord Thomas of Cwmgiedd, "there are better ways to deal with children and young people than criminalising them"²⁹ with a vast range of alternative supportive and preventative interventions available. We note that the age of criminal responsibility in England and Wales – aged 10 – is the lowest in Europe, and far lower than internationally recognised minimum standards of 14 years old.³⁰

²⁵ Clause 66 expands the maximum period of a dispersal notice from 48 to 72 hours

²⁶ Cockcroft, TW, Bryant, R and Keval, H. 2016. *The Impact of Dispersal Powers on Congregating Youth. Safer Communities*. Available at: <https://eprints.leedsbeckett.ac.uk/id/eprint/2549/1/The%20Impact%20of%20Dispersal%20Powers%20on%20Congregating%20Youth.pdf>

²⁷ The Guardian. 2020. 'Youth services suffer 70% funding cut in less than a decade'. Available at: <https://www.theguardian.com/society/2020/jan/20/youthservices-suffer-70-funding-cut-in-less-than-a-decade>

²⁸ Release and Liberty. 2023. *Joint response to the Government's Anti-Social Behaviour Plan*. Available at: <https://www.release.org.uk/sites/default/files/pdf/publications/Liberty%20and%20Release%20Submission%20-%20Anti-Social%20Behaviour.pdf>

²⁹ Lord Thomas of Cwmgiedd. 2019. *Justice in Wales for the People of Wales*. Available at: https://www.gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf

³⁰ UNICEF. *Legal minimum ages and the realisation of adolescents' rights*. Available at: <https://www.unicef.org/lac/media/2771/file/PDF%20Minimum%20age%20for%20criminal%20responsibility.pdf>

UNICEF. 2020. *A rights-based analysis of youth justice in the United Kingdom*. Available at: https://www.unicef.org.uk/wp-content/uploads/2020/12/UnicefUKYouthJusticeExecSummaryInfographic_2020_2.pdf