**Check Terms and Conditions: Scrutiny, Human Rights, and Civil Preventative Powers**

**Professor Geoff Pearson**

*University of Manchester Law School*

**Dr Charmian Werren**

*University of East Anglia Law School*

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*Developed as a response to risks of recidivism, the piecemeal development of a wide range of Civil Preventative Powers has seen the creation of several powers focused primarily on repeat low-level criminality, anti-social behaviour, or nuisance in public places. Their power to prevent repeat behaviour comes from the conditions that they impose upon individuals, breach of which constitutes a criminal offence. This article focuses on six CPPs: FBOs, CBOs, CPNs, PSPOs, s.35 Dispersal Orders, and s.1 CIASBs. Using examples drawn from case law and local media reports, we demonstrate that these CPPs regularly contain conditions which engage ECHR Article 10 freedom of expression and Article 11 freedom of assembly and association, but do so with insufficient consideration of these freedoms and the proportionality of the restrictions they impose on individuals. This is particularly true where the conditions engaging these freedoms limit socio-cultural activities rather than protest activity. We identify five ways in which legislative, judicial, and public scrutiny of the proportionality of these CPP conditions has failed and highlight how the piecemeal development of the broad family of CPPs, lacking any overarching principles, undermines the ability of the courts to rein in some of the more problematic aspects of their operation. While the recently introduced Serious Disruption Prevention Order has brought concerns regarding the effects of CPP conditions on the “right to protest” to the fore, we conclude that wider reform is now needed to improve scrutiny and consideration of Articles 10 and 11 more broadly.*

In 2023, following a lengthy parliamentary struggle, the UK Government finally succeeded in introducing Serious Disruption Prevention Orders (SDPOs).[[1]](#footnote-1) Aiming to prevent protest activity that creates “serious disruption”, particularly to vehicular traffic from environmental protest groups, SDPOs (or “Protest Banning Orders” as they were dubbed) were immediately met with academic criticism,[[2]](#footnote-2) outrage by civil liberties and human rights groups, and protests across England and Wales. Liberty proclaimed that, “SDPOs are effectively protest bans” and would be “a wild violation of human rights” under ECHR Articles 10 and 11.[[3]](#footnote-3) The EHRC considered SDPOs unnecessary and disproportionate,[[4]](#footnote-4) the Shadow Spokesperson for Home Affairs declared that the proposed powers were “extreme and pernicious”,[[5]](#footnote-5) the JCHR concluded that they posed “an unjustified threat to the right of peaceful protest” and should not be introduced,[[6]](#footnote-6) and there was considerable opposition and amendment from both Houses.[[7]](#footnote-7)

This opposition and outrage stands in sharp contrast to the relative ease with which a host of other Civil Preventative Powers were added to the statute book since the mid-1980s, including Knife-Crime Prevention Orders, Serious Organised Crime Prevention Orders, Sexual Harm Prevention Orders, Sexual Risk Orders, and Terrorism Control Orders (later replaced by TPIMs),[[8]](#footnote-8) amongst many others. The SDPO is merely the latest addition to the growing family of what we term Civil Preventative Powers (CPPs): court orders, or police or council powers, that are designed to confront the risk of criminal, sub-criminal, or anti-social behaviour, or nuisance, and which operate under largely civil procedures and rules of evidence but are supported by the threat of criminal conviction if breached. Although the exact purposes, procedures, and legal tests for CPPs differ, they all aim to prevent individuals engaging in future deviant activity by placing conditions on them derived from a combination of their past behaviour and the threat they are believed to subsequently pose.[[9]](#footnote-9) Once imposed, CPPs effectively make further engagement in that activity an individualised criminal offence; bridging civil and criminal legal processes to create “hybrid law”.[[10]](#footnote-10)

The rapid growth in these powers has received important, but uneven, academic coverage. The now-defunct Anti-Social Behaviour Orders (ASBOs) attracted the greatest attention compared to more recent variants,[[11]](#footnote-11) although *Public Law* has previously published critiques of Football Banning Orders (FBOs)[[12]](#footnote-12) and Public Space Protection Orders (PSPOs).[[13]](#footnote-13) Research has linked the rise in CPPs to broader punitive shifts in society, including increased social control,[[14]](#footnote-14) the responsibilisation of non-state actors,[[15]](#footnote-15) the preventative turn in criminal justice,[[16]](#footnote-16) and the risk of undermining support for the rule of law.[[17]](#footnote-17) Their operation has also been associated with stigmatisation of vulnerable “suspect communities” and their “selective exclusion” from public spaces;[[18]](#footnote-18) leading to an increased flow of people into the criminal justice system.[[19]](#footnote-19)

Criticisms from legal scholars have primarily focused on how CPPs have been used to overcome legal “obstacles” placed in the way of preventing ongoing anti-social behaviour.[[20]](#footnote-20) In particular, critiques have focused on how hybrid powers have, to varying degrees, undermined Article 6 (Right to a Fair Trial) and Article 7 (No Punishment Without Law) of the European Convention on Human Rights (ECHR), primarily through their use of civil legal procedures and rules to impose *de facto* punishments upon individuals, supported by the threat of criminal sanction. It has been argued that CPPs pose a threat to the presumption of innocence, especially by undermining the procedural protections for criminal defendants, most notably through routinely allowing hearsay evidence against the defendant, and allowing past conduct to be proved to the civil rather than the criminal standard of proof.[[21]](#footnote-21) Linked to this have been concerns that the appeal courts have focused too much on the form rather than the substance of the measures, allowing for CPPs to be understood as purely preventative rather than punitive in nature, thereby justifying their continued operation under civil procedures.[[22]](#footnote-22) Other criticisms of the operation of CPPs have identified the lack of “proper procedural scrutiny” to prevent the breach of defendant rights,[[23]](#footnote-23) disproportionality between the potential sentences for breach and the seriousness of the conduct that is subject of the breach, the lack of “fair notice”,[[24]](#footnote-24) “double jeopardy” when breaching an order that prohibited already criminalised behaviour,[[25]](#footnote-25) the lack of definition for key terms such as “anti-social behaviour”, and the “capricious” subjecting of a greater number of people to increasingly “varied behavioural constraints”.[[26]](#footnote-26)

This previous research has primarily focused on how, when, and upon whom, CPPs are imposed. However, we argue that the *conditions* which form the substance of these powers and their impact on individuals have been comparatively under-appreciated. As we will demonstrate, the type of conditions that are applied to CPPs, even those imposed for minor offences or sub-criminal behaviour, and even those imposed following an application without requiring a previous conviction, can be extremely broad and have a severe impact upon the freedoms of individuals in a manner that is often more severe than a criminal punishment for an equivalent offence. In the case of SDPOs for example, imposed civil conditions might include requiring someone to report to a specific police station at a time when a protest is taking place, or prohibiting them from attending a protest, “being with” particular persons, participating in “particular activities”, having “particular articles” with them, and using the internet to facilitate or encourage others to engage in protest-related offences, injunction breaches, or activities that were likely to cause serious disruption. In this article we argue that the conditions of other CPPs can threaten human rights of free expression, association, and assembly in similar ways to the newly created SDPO. Yet while SDPOs have been met with the negative reactions outlined above, the potential infringements created by the impositions of other CPPs on individuals have not received the same recognition. As a result, we argue that there needs to be greater accountability and scrutiny given to the operation of all CPPs, including but not limited to SDPOs, and especially where CPP conditions have implications for Articles 10 and 11 ECHR, beyond obvious forms of protest, to other forms of gathering and assembly.

**Methodological Approach**

In order to examine the conditions imposed in CPPs, we have reviewed legislative and policy guidance documents, case law, and conducted a search of local media articles in order to identify whether conditions were being imposed that had the potential to infringe freedoms under Articles 10 and 11. We adopted this approach from a point of necessity: there is no exhaustive list of conditions that can be imposed for most of the CPPs, nor is there a register of the conditions that have been imposed. Not all these hybrid restrictions come in the form of a court order but may also be imposed as a council notice, or even a direction from a police officer, thus leaving no record of their imposition or conditions in the case law; others only appear in case law when their breach is appealed. Further, some CPPs are linked not to specific individuals, but instead to locations that are believed to attract certain types of anti-social behaviour. This means that, even utilising methods such as FOI requests, it is impossible to collate and analyse a representative sample of conditions. The analysis presented below does not therefore offer a representative or comprehensive account of CPP conditions. We also acknowledge that by using media sources to illustrate the potential for these powers to infringe Articles 10 and 11, we cannot provide an assessment of whether the possible infringement in each example presented is proportionate in relation to the problem behaviour it sought to address; the coverage provided by news articles rarely provides sufficient detail to make what must be a case-by-case judgement. However, by reviewing all case law available via the *Westlaw* database on our chosen selection of CPPs, and by conducting searches in the *GoogleNews* database for examples of the conditions imposed under each power, we believe that the analysis presented below provides a flavour of the ways in which CPP conditions have the potential to infringe these freedoms.

We chose to focus our searches on Football Banning Orders (FBOs), Criminal Behaviour Orders (CBOs), Civil Injunctions for Anti-Social Behaviour (CIASBs), Community Protection Notices (CPNs), Disorder or Anti-Social Behaviour Dispersal Notices, (Dispersal directions) and Public Space Protection Orders (PSPOs). To provide an outline of their objectives and various key aspects of their operation, Table 1 provides an overview of the powers that we have chosen to analyse (along with SDPOs for comparison), drawing out, in particular, the inconsistencies between them. Many of these powers were enacted through the Anti-Social Behaviour, Crime and Policing Act 2014, and have similar enforcement mechanisms. But CPPs cannot be understood solely by consideration of this statute; the 2014 Act replaced a number of older CPPs, such as ASBOs and CrASBOs (Crime and Disorder Act 1998), Anti-Social Behaviour Injunctions and dispersal orders (Anti-Social Behaviour Act 2003), and Alcohol Dispersal Orders (Violent Crime Reduction Act 2007) and followed a raft of different iterations of what are now FBOs, which commenced operation in 1987.[[27]](#footnote-27) Another gap in previous research in this area has been that, despite the growth in the use of CPPs, most studies have focused on one specific power rather than the inter-connections[[28]](#footnote-28) and differences between them, despite the rapid growth in these powers having led to calls to recognise this raft of hybrid powers as a separate “regulatory eco-system”[[29]](#footnote-29) or “tier” of administrative offences,[[30]](#footnote-30) requiring streamlining to enhance consistency.[[31]](#footnote-31) In examining a range of these powers together, we therefore also hope to contribute to the development of an overarching argument for reform.[[32]](#footnote-32)

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Power**  | **Purpose**  | **Conviction****Required?** | **Order imposed by** | **Statutory Test for imposition** | **Appeal****Route** | **Duration** | **What Conditions can be imposed?** | **Statutory HR Test?**  |
| **SDPO**POA2023 s20-33 | Prevent protest-related offences/injunction breaches/ activities likely to result in ‘serious disruption’ | Conviction or breach of injunction | Magistrates Court (application by Chief Police Officer) | “Necessary” to prevent | Crown Court/CA(Civ?) | Max 2yrs | May prohibit: being in locations at certain times, participating in activities, associating with others, possessing articles, internet use facilitating disruption/offences, or impose attendance orders | No |
| **s.14A FBO**FSA1989  | “Help prevent” football-related violence and disorder | Yes | Magistrates/Crown Court | Unless unjust to do so | Crown Court/CA(Civ) | 3-10yrs  | Any the court thinks fit | No |
| **s.14B FBO**FSA1989 | No | Magistrates Court (application by Chief Police Officer) | Reasonable grounds to believe it would help | Crown Court | 3-5yrs | Any the court thinks fit | No |
| **CBO**ASBCPA2014s22-33 | Prevent offender engaging in further ASB | Yes | Youth/Crown/ Magistrates’ Court (prosecutor application) | (1) Satisfaction beyond reasonable doubt offender has engaged in ASB and (2) it ‘will help’ prevent future ASB | Awarding Court | May be indefinite | Any prohibitions or requirements to do anything but conditions should avoid interfering with work/education | No |
| **s1 Injunction (CIASB)**ASBCPA2014 s1-21 | Prevent respondent engaging in further ASB | No | Youth/County/High Court, or on application by authorities inc. chief officers, local authorities and housing providers | (1) Satisfaction (balance of probabilities) respondent engaged/threatens ASB and (2) it must be ‘just and convenient’ to grant the injunction | Awarding Court/County Court | No max duration (adults)or max 1yr (minors) | Any prohibitions or requirements to do anything but conditions should avoid interfering with work/education | No |
| **CPN**ASBCPA2014 s43-58 | Deal with ongoing and unreasonable problems/nuisances negatively affecting community quality of life | No | Authorised persons, inc. police/local authorities/those designated by local authority | Satisfaction on reasonable grounds | Mags Court (within 21 days) | No max duration | Can include reasonable requirements to stop doing specified things; do specified things; take reasonable steps to achieve specified results | No |
| **s.35 Dispersal Order**ASBCPA2014ss34-42 | Disperse individuals committing or likely to commit ASB from a specified area | No | (1) Authorisation by senior police officer. (2) Any constable can then issue dispersal direction | Satisfaction on reasonable grounds that issuing the order may be ‘necessary’ | None | Up to 48hrs  | Direction to leave specified area and not return for period of order: no dispersal from an area they work/receive medical treatment/education, or where participating in peaceful picketing/regulated public processions | Authorising and dispersing officers must consider Arts.10/11 |
| **PSPO**ASBCPA2014s59-75 | Deal with a particular nuisance/problem in an area that is detrimental to local community’s qualify of life | No | Local authority | Satisfaction on reasonable grounds  | High Court (within 6 weeks) | Up to 3yrs | Reasonable prohibitions or requirements to prevent or reduce activities | LA must have “particular regard” to Arts.10/11 |

Table 1

We limit our focus to these powers because they share four specific characteristics. First, these CPPs are designed to confront low-level or sub-criminal behaviour, anti-social behaviour, or nuisance, in contrast to some of the more serious potential harms targeted by some of the other CPPs. Secondly, through the effect of their conditions, these powers regularly interfere with an individual’s Freedoms of Expression and Peaceful Assembly and Association; they may explicitly prevent them from engaging in certain types of public expression, from meeting with other named individuals or gathering in groups, from attending certain localities for the purpose of engaging in forms of collective expression or direct the target away from such a gathering. Thirdly, because of the relatively minor mischiefs that they are either designed to confront, or that they are typically used to confront in practice, these CPPs are more likely to create *disproportionate* restrictions of Articles 10 and 11, in that the reach and effect of their restrictions has a far greater negative impact on individuals subjected to them than the positive benefits they provide to the communities and spaces they are designed to protect. Finally, because of the relatively minor level of deviant behaviour they are designed to confront, there is very little scrutiny of these orders; their operation rarely arises in the appeal courts and, as we will return to in the discussion, there are a serious lack of accountability and scrutiny mechanisms built into how these powers operate and the extent to which they are allowed to interfere with ECHR freedoms. Indeed, a purely doctrinal analysis is incapable of illuminating their extent or operation.

From this, we have determined that we should not just be concerned with the human rights challenges arising from the imposition of CPPs under ECHR Articles 6 and 7, nor should we limit our focus to Articles 5 (Liberty) and 8 (Privacy and Respect for Family Life), which have also been raised by previous work. Instead, we have identified an overarching problem with the conditions and effects of these CPPs upon the Article 10 and11 freedoms. As we will demonstrate, each power raises, to a greater or lesser extent, concerns about procedure, scrutiny, and above-all, human rights. To illustrate this, we will now explain the extent of Articles 10 and 11 protections for gatherings and assemblies, before moving on to outline the findings from our searches.

**Collective Expression and Socio-Cultural Gatherings**

The ability of CPPs to restrict collective expression and gatherings associated with them engages ECHR Articles 10 and 11. Further, their use to restrict assemblies where collective expression occurs should be compliant with the obligations of police or other public authorities under s.6 of the Human Rights Act 1998 (HRA). There has been a tendency in the UK for these freedoms to be amalgamated into a single “right to protest”,[[33]](#footnote-33) expressions and assemblies relating to which undoubtedly receive an elevated level of protection.[[34]](#footnote-34) However, it is clear from both the text of the convention and the Strasbourg jurisprudence that neither Expression nor Peaceful Assembly and Association are freedoms that apply purely to protest, demonstration, or engagement in the democratic process.[[35]](#footnote-35) Domestically, the appeal courts have been much more explicit in accepting this for Article 10, for example Lord Neuberger in *The Mayoral Commonalty v Samede:*

“it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom ... However, it cannot be a factor which trumps all others, and indeed it is unlikely to be a particularly weighty factor.”[[36]](#footnote-36)

In terms of the application of Article 11 to non-protest gatherings of the type that may be affected by many CPPs, the explicit extension of this by the ECtHR has been slower. However, Freedom of Peaceful Assembly “should not be interpreted restrictively”,[[37]](#footnote-37) and has been applied to gatherings of a cultural,[[38]](#footnote-38) and a socio-political nature.[[39]](#footnote-39) Most significant for the purposes of this paper is *Friend v UK* (concerning fox hunting gatherings),[[40]](#footnote-40) when the ECtHR noted that,

“[The] primary or original purpose of art.11 was and is to protect the right of peaceful demonstration and participation in the democratic process ... Nevertheless, it would, in the Court’s view, be an unacceptably narrow interpretation of that article to confine it only to that kind of assembly, just as it would be too narrow an interpretation of art.10 to restrict it to expressions of opinion of a political character … [the] Court is therefore prepared to assume that art.11 may extend to the protection of an assembly of an essentially social character.”[[41]](#footnote-41)

The application of Free Assembly to gatherings of a socio-cultural nature is therefore unsurprisingly supported by the Council of Europe’s Guide to Article 11.[[42]](#footnote-42) The Supreme Court’s position on the extent to which the freedom applies to socio-cultural gatherings is less clear. In the domestic appeal leading to *Friend,*[[43]](#footnote-43) the House of Lords held that Article 11 was not engaged by the ban on fox hunting. However, Lord Bingham dissented on this point and Baroness Hale also acknowledged that Article 11 could be engaged by non-political gatherings.

 The lack of clarity on the reach of Article 11 is unfortunate, not least in providing guidance for the policing of non-protest assemblies (e.g. gatherings relating to sports events, festivals and carnivals, vigils, and funeral corteges). Much of this may be explained by the overlap between Articles 10 and 11, and the preference of courts to consider Article 10[[44]](#footnote-44) rather than develop a solid jurisprudence on Article 11. Only since the turn of the century have courts started to draw out the autonomous meaning of Article 11,[[45]](#footnote-45) focusing on the former’s importance in the “communication of ideas”[[46]](#footnote-46) and its existence as “a guarantee of being able to share one’s beliefs or ideas in community with others, particularly through associations of individuals having the same beliefs, ideas or interests.”[[47]](#footnote-47) As Salát argues, “courts often reconfigure assembly issues into expression issues”, meaning that “(f)reedom of assembly lacks any grand doctrine or systematic theory even in domestic courts and in domestic scholarship”,[[48]](#footnote-48) playing merely a supporting role to free expression. However, we consider it incontrovertible that Article 11 is engaged by gatherings of a socio-cultural nature where, (a) there is a form of collective expression that would engage Article 10, and (b) the gathering is for “a common purpose of its participants”, in contrast to “a random agglomeration of individuals each pursuing their own cause”.[[49]](#footnote-49) Combining both the ECHR text with the 21st century ECtHR cases, we can see that where like-minded individuals intentionally gather together to engage in peaceful collective cultural expression, even if to outsiders this may look nothing more than recreational, both Articles 10 and 11 are engaged;[[50]](#footnote-50) for example gathering with your friends to wave scarves and sing football chants, show off a latest skateboard trick, or compare some new trainers.

That said, non-protest assemblies and expressions are unlikely to receive equivalent protections against interference to those related to protest. The ECtHR has granted a wide margin of appreciation where states impose restrictions under Article 11(2); Fenwick *et al.* note the “cautious” nature of Article 11 jurisprudence,[[51]](#footnote-51) and the ECtHR tends to be sympathetic towards state interferences, particularly those aimed at preventing “disorder”, even when protest gatherings are restricted.[[52]](#footnote-52) These concerns reflect more general criticism about the lack of rigour in the ECtHR’s protection of positive obligations when confronted by state sanctions,[[53]](#footnote-53) in particular their deference to dominant community views[[54]](#footnote-54) and lack of empathy with minority groups[[55]](#footnote-55) when applying the principle of proportionality.

Finally in this section we need to consider the approach of the domestic courts towards the duties of public authorities under the HRA1998. This is important because CPPs are applied for, and enforced by, public authorities, usually a local authority or a police force. The leading authorities here, *Belfast City Council v Miss Behavin’ Ltd*[[56]](#footnote-56) and *R (Begum) v Governors of Denbigh High School*,[[57]](#footnote-57)have received criticism for their substantive approach to human rights protection,[[58]](#footnote-58) but both cases highlighted the importance of the public authorities undertaking a “conscientious” consideration of relevant ECHR rights when reaching their decision,[[59]](#footnote-59) which would make the court “less likely to conclude that the decision ultimately reached infringes the applicant's rights”[[60]](#footnote-60) and more likely to be considered proportionate.[[61]](#footnote-61) Further, R (Leigh and others) v Met Police Commissioner,[[62]](#footnote-62) demonstrates the risks of a public authority not undertaking “a fact-specific proportionality assessment”; here the Metropolitan Police’s decision to declare a vigil unlawful under COVID-19 lockdown regulations was “legally flawed”.[[63]](#footnote-63)This is important to our argument, which is not just that CPPs have the potential to engage Articles 10 and 11, or that their use in practice regularly restricts this freedom, but also that the imposition of restrictive conditions within individual CPPs, for non-protest scenarios at least, typically occurs without any consideration of s.3 or 6 HRA obligations, or scrutiny from the courts.

**Examining CPP Conditions**

We now turn to the examples of conditions imposed under the different CPPs that we uncovered in our review of the case law, guidance documents, and media examples. As we have argued, the conditions of CPPs have been relatively under-explored, and yet they are extensive, highly-restrictive, and regularly engage *inter alia* ECHR Articles 10 and 11.

**FBOs**, for example, do not merely prevent an individual from attending matches, but, as recognised by the Lord Phillips in *Gough*, also “impose serious restraints on freedoms that the citizen normally enjoys”.[[64]](#footnote-64) An FBO may “impose additional requirements” as the court sees fit,[[65]](#footnote-65) with no statutory requirement that they are necessary to confront the alleged misbehaviour nor reduce the risk of violence or disorder from the respondent. Indeed, it is not typically the court that determines what conditions to impose, but the police force that has a series of conditions that are standard for all its applications.[[66]](#footnote-66) These conditions will usually include 24-hour exclusion zones around football stadia, city centres, and train stations, which can prevent defendants meeting with friends or family at any number of entertainment and leisure premises for a substantial part of the weekend and many midweek evenings. While these blanket restrictions may be proportionate when confronting an individual who poses the risk of engaging in football violence away from stadia, they are also currently imposed as standard upon those committing comparatively minor stadium-based offences, such as possessing pyrotechnics, drinking alcohol within sight of the pitch, or chanting abuse. Magistrates and District Judges rarely challenge standard conditions when they impose FBOs, and regularly permit them to be imposed upon absent defendants without any consideration of the human rights engaged by the conditions applied for.[[67]](#footnote-67) Taken in isolation this may seem like a problem affecting only a small social community, but as we will see, it marks the start of a broader trend in which Articles 10 and 11 rights are not only disproportionately interfered with by CPPs, but do so without human rights considerations by public authorities, or judicial scrutiny.

Similarly, the applicant for a **CBO** does not need to prove that any condition is necessary,[[68]](#footnote-68) and the CBO may include requirements that do not relate to the offence itself, such as those that look to address the underlying causes of the offending behaviour. There is no requirement to consider human rights when imposing a CBO, and Criminal Prosecution Service guidance[[69]](#footnote-69) makes it clear that it expects courts to support those containing conditions such as night-time curfews,[[70]](#footnote-70) prohibitions on association with named individuals,[[71]](#footnote-71) and exclusion zones around public spaces, towns, and city centres,[[72]](#footnote-72) although they should avoid interference with the offender’s work or education.[[73]](#footnote-73) These types of conditions have a clear impact upon Article 10 and 11 freedoms (and other human rights), and, unlike CBO conditions that prohibit specific types of offensive behaviour, these blanket conditions should require a serious consideration of whether they are proportionate interferences. Our trawl of local media uncovered vast numbers of CBO conditions that restrict the offender’s ability to gather with whom they like or in locations where they would like to assemble. An illustrative handful of examples include conditions preventing live performances of drill music,[[74]](#footnote-74) entering the city of Truro,[[75]](#footnote-75) being in a state of drunkenness in a public place in England and Wales,[[76]](#footnote-76) being in a group of more than three people in a public place unless accompanied by a parent or guardian,[[77]](#footnote-77) sitting, perching, or crouching within 20-metres of commercial premises,[[78]](#footnote-78) entering any public house in Newark town centre for five-years,[[79]](#footnote-79) limiting overnight visitors to the home,[[80]](#footnote-80) and a 7pm-6am six-month curfew.[[81]](#footnote-81) Despite this we found little discussion of ECHR rights in the reported CBO cases.[[82]](#footnote-82) Indeed in *R v Khan (Kamran)*,[[83]](#footnote-83) the Court of Appeal recommended various standards that future courts should consider when creating CBOs to ensure that they do not become “a mere matter of box-ticking routine”, but none of these considerations included human rights. It may be that courts were more circumspect in permitting blanket congregation prohibitions in ASBOs/CrASBO than under the current CBO regime,[[84]](#footnote-84) but whether this is true or not, we would hope to find more evidence of human rights considerations when potentially-indefinite CBO conditions are imposed.

Data and studies on **CIASB** conditions are limited,[[85]](#footnote-85) but prohibitions engaging Articles 10 and/or 11 also appear common. Media reports of CIASBs can be unclear, but we identified (probable) s.1 injunctions, either threatened or imposed, to ban an individual from Gloucester city centre,[[86]](#footnote-86) to prevent attendance at town hall meetings,[[87]](#footnote-87) or to prohibit entering “the area of Handsworth outlined in red”.[[88]](#footnote-88) The statutory guidance specifically states that the power can be used to tackle gang-related activity,[[89]](#footnote-89) with gang-related injunctions often prohibiting entering certain areas or contact with other suspected gang members.[[90]](#footnote-90) The power has also been used to prevent unauthorised encampments by Travellers.[[91]](#footnote-91) Given that an injunction can be granted indefinitely and statutory restrictions only limit CIASB conditions to avoiding interference with times the respondent normally works or is in education, or conflict with the operation of other orders or injunctions,[[92]](#footnote-92) the breadth of these conditions is concerning. Courts have refused applications for CIASBs due to insufficient evidence or because it would create a situation of unlawful discrimination;[[93]](#footnote-93) or because the prohibited activities did not reach the threshold of “harassment, alarm or distress”, for example a requested injunction against a protest camp that would have prohibited inappropriate parking.[[94]](#footnote-94) However, in few such cases have we located any consideration of Article 10 and 11 freedoms, even where the injunction was specifically applied for against those engaged in protest.[[95]](#footnote-95)

As well as imposing similar requirements on an individual to stop specified “things”,[[96]](#footnote-96) a **CPN** can also require them to act, or take reasonable steps to achieve specified results. Such requirements must be “reasonable” to impose, in order to prevent or reduce the risk of mischief from recurring,[[97]](#footnote-97) meaning that, unlike a CBO, the requirements must be linked to the original activity.[[98]](#footnote-98) Despite this, cases in which the police had “copied and pasted its terms rather than suggest the client was doing anything to actually require the sanction” have been highlighted as problematic.[[99]](#footnote-99) Liberty has also criticised a CPN issued for filming police stop searches, which prohibited the individual from “loitering or being found” near any residential area in Hackney, being “within 20 metres” of bus stops or train stations and from being in possession of more than one phone.[[100]](#footnote-100) We identified conditions in CPNs which included: prohibiting joining or remaining in a group of two or more people in a public place where that group is acting in a manner likely to cause nuisance and annoyance to any other person;[[101]](#footnote-101) not to enter a pedestrian area of Barnstaple;[[102]](#footnote-102) and to notify police in advance of the times and locations of hunting events.[[103]](#footnote-103)

The extent to which authorising persons consider human rights when issuing a CPN is unclear; the guidance states that CPNs are intended to deal with “short or medium-term issues” and therefore more onerous conditions would be more appropriately administered by a court-issued order such as a CIASB,[[104]](#footnote-104) but there appears to be nothing preventing similarly-onerous provisions being included in CPNs, with a concerning lack of accountability at every level of their operation.[[105]](#footnote-105) Neither the legislation nor guidance mandate explicit consideration of human rights when issuing CPNs, leading the High Court in *Stannard* to caution that:

“CPNs constitute a significant interference with an individual’s freedom; they must be clear in their terms and proportionate in their effect … we emphasise the need for authorised persons prior to issuing a CPN to consider with care the prohibitions and restrictions imposed to ensure that they go no further than is necessary and proportionate to address the behaviour which has led to the CPN being made.”[[106]](#footnote-106)

Once again, whether such considerations, particularly regarding Articles 10 and 11, are regularly taking place is doubtful.

**Dispersal directions** are the simplest of the CPPs we are considering and clearly have the potential to engage Articles 10 and 11, as they allow the police to order individuals to leave a public area for a specific amount of time. Pre-authorisation provides some accountability and a direction cannot be given to anyone who is engaged in peaceful picketing under the Trade Union and Labour Relations (Consolidation) Act 1992 or is taking part in a lawful public procession as under the Public Order Act 1986.[[107]](#footnote-107) In contrast to the earlier powers discussed, the Act requires specific consideration of Article 10 and 11 rights when authorising a dispersal zone.[[108]](#footnote-108) However, on the Metropolitan Police’s authorisation form, the statement of consideration of these articles appears to be pre-written, and it is therefore not apparent whether in practice authorising officers need to document the extent of their considerations for later scrutiny.[[109]](#footnote-109) Although data is again limited, it appears that authorisation of a dispersal zone is a regularly exercised power[[110]](#footnote-110) and sometimes authorised in advance of crowd events: a Manifesto Club freedom of information request uncovered authorisations for exclusion zones for football matches, protests, and community gatherings such as “bonfire night”, “Halloween”, “firework-displays” or Christmas lights being switched on.[[111]](#footnote-111) Studies of the previous regime of dispersal powers found they often targeted young people, because of their tendency to congregate and socialise in groups,[[112]](#footnote-112) leading to calls for “dispersal powers [to] apply only to the *behaviour* of groups rather than merely their *presence*.”[[113]](#footnote-113) This problem is exacerbated by the tendency of police to view the power as a measure against gatherings rather than individuals. While the legislation is clear that dispersal directions can only be issued to individuals, when their behaviour is likely to cause harassment, alarm or distress and the dispersal is necessary to reduce that risk, dispersal powers have regularly been treated as a measure to restrict assemblies. Our media search found reports of a dispersal order implemented “to break up groups of people who are involved in anti-social behaviour”,[[114]](#footnote-114) and this police statement explaining a dispersal authorisation in Birkenhead:

“We have proactively put this dispersal in place to prevent youths gathering and causing unnecessary distress and intimidation to people who want to go about their business without fear or harm.”[[115]](#footnote-115)

Dispersals of groups of football fans have been successfully challenged on the basis they were not individually considered, but both cases were settled out of court.[[116]](#footnote-116)

The potential to infringe human rights and create “a postcode lottery of civil liberties”[[117]](#footnote-117) has led to **PSPOs** being labelled as “the most far-reaching and troubling” of the 2014 remedies.[[118]](#footnote-118) As with dispersals, there is a statutory requirement that local authorities must have particular regard to Articles 10 and 11 when drafting the conditions,[[119]](#footnote-119) but there are numerous examples of PSPO prohibitions with the potential to infringe both freedoms: gathering in groups of two of more whilst engaging in nuisance in Waltham;[[120]](#footnote-120) three or more children gathering in Colwyn Bay if they are likely to cause annoyance, harassment, alarm or distress;[[121]](#footnote-121) and Hillingdon has previously banned gathering in groups of two or more.[[122]](#footnote-122) While many prohibitions only apply to groups causing (or “likely” to cause) anti-social behaviour, the test of causing “nuisance” or “annoyance” is a low and highly-subjective threshold of behaviour. It is also unclear why such clauses focus on groups rather than the anti-social behaviour of individuals. Other PSPOs have targeted gatherings of a social nature, for example the bans on skateboarding in Kettering,[[123]](#footnote-123) parkour in Horsham,[[124]](#footnote-124) or ball games in Walsall.[[125]](#footnote-125) Revised 2017 statutory guidance now advises that in drafting PSPOs, local authorities should, “not inadvertently restrict everyday sociability in public spaces”, and instead “target specifically the problem behaviour that is having a detrimental effect on the community’s quality of life, rather than everyday sociability, such as standing in groups.”[[126]](#footnote-126) The LGA’s recent guidance for councils goes further, reminding local authorities “that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.”[[127]](#footnote-127) In a promising move, since the updated guidance we have noticed some problematic aspects of PSPOs being removed during the process of renewal. For example, the PSPO in Doncaster previously banned congregating in a group of three or more and behaving in a manner causing, or likely to cause, harassment, alarm, distress, nuisance or annoyance. The prohibition on congregating in a group was removed when the PSPO was renewed, with the council’s report acknowledging that,

“the right to assemble is a human right protected by legislation and the Council has no evidence that continuing with such a proposal would be either proportionate or reasonable. It is therefore determined there is no justification for retaining this prohibition.”[[128]](#footnote-128)

**Discussion**

While the powers we have discussed differ in operation, their conditions can each engage, and potentially infringe, Articles 10 and 11 freedoms in related and similar ways. It is worth emphasising that we are not arguing that every example presented above is necessarily unlawful; some may be considered sensible and proportionate responses to serious or persistent social problems, and some may target non-peaceful assemblies. Notwithstanding this, what the examples do suggest is that at present the state is frequently curtailing ECHR freedoms and it is doing so with very little scrutiny or accountability. In this discussion we consider five ways in which public authorities and the courts have failed to pay sufficient attention to Article 10 and/or 11 considerations when imposing conditions: their statutory creation; the limitations of appeals; the lack of judicial oversight; the failures of judicial oversight (where it does apply); and the failure of public or media scrutiny and lack of accessible data.

First, the human rights concerns we have identified are made possible by initial failures in the creation of the powers. The proliferation of hybrid law has been created without due parliamentary scrutiny:[[129]](#footnote-129) the extension of FBO conditions, for example, received no debate in Parliament, while the majority of focus on the 2014 Bill was on CIASBs and not the other powers,[[130]](#footnote-130) with the mere one-line statement in the Bill’s Impact Assessment that “[t]hese proposals are compatible with the Human Rights Act 1998.”[[131]](#footnote-131) This lack of consideration throughout the piecemeal development of CPPs has contributed to the variation between the differing powers, with no central strategy about how they should sit alongside each other. The overview in Table 1 makes clear that, beyond their different objectives, there is a lack of overarching principles directing how CPPs should operate: application processes differ, as do tests for implementation, checks on their necessity, restrictions on conditions, and opportunities to appeal. There is also no standardised requirement to consider human rights implications in the provisions themselves. Indeed, when we compare the new SDPOs with other iterations of the CPP regime, we can see that they possess some comparatively rigorous restrictions on their use. The wide variation in the operation of different CPPs also means that any attempt by the appeal courts to rein in the misuse of a particular power[[132]](#footnote-132) is unlikely to influence similar abuses occurring in the operation of other CPPs. The lack of overarching principles, or even learning from the travails of previous CPPs in the courts is remarkable. It is clear that the calls for more consistency outlined at the start of this paper have gone unheeded.[[133]](#footnote-133)

These variations, combined with the scrutiny shortfalls identified below, also lead to a significant overlap and a layering of powers; individuals could become subject to several such powers and different enforcement mechanisms.[[134]](#footnote-134) There is nothing, for example, to stop someone who has committed a “football-related” offence from receiving both a s.14A FBO and a CBO with differing conditions and there are many reported examples of breaches of pre-conviction CPPs leading to the imposition of a CBO. There is also a trend of “hybrid PSPO-Dispersal Orders”:[[135]](#footnote-135) PSPOs including within them dispersal powers that exist outside of the s.35 dispersal scheme.[[136]](#footnote-136) This development subverts even the limited protections provided by s.35, meaning that dispersal directions are not limited to police officers and can be given without the need for prior authorisation. This “layering” of the powers also has clear implications for scrutiny.[[137]](#footnote-137)

Secondly, pathways to appeal CPPs are limited by statute, although again, appeal mechanisms vary according to the specific measure. Statutory Guidance states that s.35 dispersals can be appealed by speaking to the duty inspector at the local police station—an option that is unlikely to bring relief within the 48-hour lifespan of the order. It is also difficult to appeal a PSPO once made; challenges can only be mounted on the grounds that the local authority did not possess the power to create provisions or that statutory requirements were not complied with, and are only permitted in the six-weeks after implementation, by those living, working, or regularly visiting the area,[[138]](#footnote-138) excluding civil society groups.[[139]](#footnote-139) A PSPO can only be quashed if the High Court is satisfied the authority was acting *ultra vires* or that “the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement”;[[140]](#footnote-140) an unnecessarily high bar. Appealing a CPN is even more limited: there are only 21-days to appeal to a Magistrates’ Court to modify or quash the notice, on the grounds that the limbs of the first test for issuing a CPN were not met, if the notice requirements are unreasonable, or if there is a material defect or error in the notice. The unreasonableness of this time limit was raised in *Stannard*,[[141]](#footnote-141) where a CPN was issued that indefinitely prohibited Stannard from being in a group of three or more (including himself) or from entering an area of Reading town centre. Despite the onerous and disproportionate nature of these restrictions on his Article 11 rights, his conviction for breaching the CPN was upheld as he did not exercise his right to appeal within the 21-days. The court did, however, advise that those issuing CPNs should operate a system for receiving and adjudicating requests to vary or discharge notices after the 21-day period in future,[[142]](#footnote-142) although this still leaves reviews in the hands of the original issuing body (unless recourse to judicial review is available). Moreover, as civil mechanisms, no legal aid is available for those wishing to challenge the imposition of CPPs in court (although it is available to someone prosecuted for breach).[[143]](#footnote-143) Worse, if a challenge brought via judicial review is lost, costs may be awarded against the challenger.[[144]](#footnote-144) This may explain why we can identify no cases coming before the higher courts seeking to challenge dispersal powers under the 2014 Act,[[145]](#footnote-145) and very few reported cases challenging PSPOs.[[146]](#footnote-146) As a result, while we have a smattering of Court of Appeal CPP cases, these relate mainly to post-conviction CBOs and FBOs, leaving the imposition and operation of CPPs occurring largely under the radar and without the opportunity to set precedent and develop common law principles that could “cross-pollinate” across the powers.

Thirdly, while courts do have oversight of some CPPs (FBOs, CBOs, and CIASBs), CPNs, dispersals, and PSPO breaches are unlikely to have any judicial oversight at all, limiting the courts’ scrutiny on disproportionate conditions or their ability to develop restraining principles via precedent. Those authorised to impose CPNs include police officers, local authorities, and persons designated by the local authority, including,

“county park guardians, community officers, street scene officers, community safety officers, environmental health officers, consumer services, community wellbeing service officers, neighbourhood pride managers, streetscene managers, town centre wardens, anti-social behaviour officers, housing trust officials, neighbourhood problem solving advisors, and early help and wellbeing officers.”[[147]](#footnote-147)

This range of authorised persons, along with the fact that CPNs can be issued, and fines administered for their breach, completely outside of court oversight, raises concerns for scrutiny of the operation of these powers and their impact upon *inter alia* Articles 10 and 11; it is not until someone is prosecuted for breach of a CPN that a court becomes involved. Fixed Penalties issued for breach of PSPOs create parallel problems.[[148]](#footnote-148) Similarly, the 2014 reform of Dispersal Powers removed the requirement on police to gather evidence of “serious and persistent” anti-social behaviour, and to obtain the agreement of the local authority. The loss of this additional layer of oversight means that the decision to first authorise a dispersal area, and then issue dispersal directions, lie solely with the police; it is not until breach and prosecution that a case comes before a court. These three restrictions place limits on the courts’ ability to scrutinise the operation of these powers and “de-juridify” decision making.[[149]](#footnote-149)

Fourthly, even where CPPs require court oversight, it appears that judges rarely scrutinise the conditions contained within them carefully, despite their duties under HRA ss.2-3 and 6 to consider their engagement with human rights. We identified little case law in the higher courts seeking to challenge or appeal these six powers, but it became clear from such cases as exist that there is a difference in approach between cases on *prima facie* protests compared with those that engage socio-cultural aspects of Articles 10-11. Although most of the focus of this article has been on collective expression and assembly of a socio-cultural nature, our research found examples of many of the powers being used against those involved in protests or demonstrations, including CBOs,[[150]](#footnote-150) CPNs,[[151]](#footnote-151) and dispersal powers,[[152]](#footnote-152) while “Fast-Track PSPOs” (introduced via a 2022 amendment), are *only* available to restrict activities occurring during protests and demonstrations outside schools or vaccine and test-and-trace centres.[[153]](#footnote-153) The case law indicates that on the infrequent occasions that protest-related cases are challenged in court, they are more likely to be granted a detailed consideration of their Article 10 and/or 11 implications. For example, an application for a CIASB against the leaders of “Britain First” was only partially granted, prohibiting several protest march activities but refusing to grant a provision forbidding the leaders from entering Luton and its surrounding area:

“to ban the leaders of a registered political party altogether from a town is a very considerable thing… all must strive not to inhibit the freedom to express views, the freedom to demonstrate and the freedom to organise politically.”[[154]](#footnote-154)

Likewise, in a series of judgments on the CIASB restricting engaging in or encouraging others to protest within an exclusion zone around Anderton Park School,[[155]](#footnote-155) the necessity and proportionality of the restrictions on Articles 10 and 11 were considered at length:

“The Court can be relied on … to keep in mind the importance of freedom of expression and freedom of assembly. It can be trusted to avoid unwarranted interferences with these (and other) fundamental rights by insisting on compliance with the well-established principles, that any interference must correspond to a pressing social need, its necessity must be established by clear and compelling evidence, and it must not go further than is necessary.”[[156]](#footnote-156)

Some PSPOs have been specifically created to prevent problematic protests from occurring in specific locations; at least five have created buffer zones outside abortion clinics,[[157]](#footnote-157) and they have been considered for reducing protests outside schools.[[158]](#footnote-158) When the first abortion clinic PSPO was challenged via judicial review in *Dulgheriu*, the court carefully considered the human rights of all parties, finding that on balance the acknowledged infringement of the protesters’ Article 9-11 rights was proportionate and necessary when considered against the impact on the Article 8 rights of the service users.[[159]](#footnote-159) Additionally, it was clear that, in contrast to PSPOs engaging non-protest Article 11 rights such as “loitering”,[[160]](#footnote-160) the council had incorporated various mechanisms in their PSPO to ensure proportionality, amassing a “considerable tranche of evidence and information” on the detrimental effects of the protests and establishing a designated zone where limited protests could continue at a distance from the building. Similarly, when Guildford extended its PSPO banning loitering or gathering in groups of two or more,[[161]](#footnote-161) it inserted the following statement:

“The Prohibitions in this Section [on Rowdy and inconsiderate and Anti-Social Behaviour (sic)] do not apply to any activities conducted in the public interest, including lawful freedom of expression and freedom of assembly by way of lawful demonstrations and other forms of protest or other activities to influence the policy of government, private sector and civil society organisations and individuals.”[[162]](#footnote-162)

While we commend the considered approach taken in these cases, we call for all those applying for or imposing CPPs to consider the implications of Articles 10 and 11 beyond obvious forms of protest to other forms of gathering and assembly. While restrictions on non-protest freedoms are more likely to be considered proportionate, there still needs to be a consideration of Articles 10 and 11 in the socio-cultural sphere. We noted above the requirement that public authorities carry out a conscientious consideration of human rights when imposing restrictions upon them, and assert that any authority imposing conditions under a CPP needs to be able to demonstrate that they have identified a legitimate objective for restricting freedoms under Articles 10(2) and 11(2) and that the conditions imposed are proportionate, in other words that they are rationally connected to achieve a legitimate aim and necessary to meet the “pressing social need” (currently only required of s.35 dispersals).[[163]](#footnote-163) Unfortunately, when we look at how this wide variation in checks on the use of CPPs operates in practice, we very rarely come across any kind of human rights consideration in cases that involve assemblies not defined as a form of protest by either applicant or court.

Fifthly and finally, there has been little public or media reaction to, or scrutiny of, these powers, in contrast to the critical narrative that developed around the use of ASBOs and the public backlash against SDPOs. Some campaign and civil liberties organisations have campaigned against specific powers, but with limited success. Recent powers have failed to embed in the public imagination like ASBOs did,[[164]](#footnote-164) and the resulting lack of public awareness lessens the opportunity for critical scrutiny. The breadth of powers, applied by different bodies and organisations, must also contribute to this. Those powers exercised outside of the courts may be less obvious to the public; unless police or local authorities volunteer information, local media will struggle to publicise cases. Even where CPPs go through the courts, cases may avoid the scrutiny of court reporters who tend to focus on criminal rather than civil courts.[[165]](#footnote-165) This problem is most clear in the case of the CIASBs, to which the 2014 Act refers only under the “bland title”[[166]](#footnote-166) of “Injunctions”, leading to a lack of distinction between these and other injunctive mechanisms. They were originally called “Injunctions to Prevent Nuisance and Annoyance” (IPNAs), but the more memorable name was lost post-amendment,[[167]](#footnote-167) meaning it is difficult to even search for examples or to establish from media reports which power is being used. Even with PSPOs, which require consultation with specific interest groups, concerns have been raised about the accessibility of primarily online consultations for difficult-to-reach groups, especially young people.[[168]](#footnote-168)

It is likely that public or civil society scrutiny has also been stymied by the lack of accessible data on the use of CPPs.[[169]](#footnote-169) No statistics appear to be collected or published on any of the 2014 powers, in contrast to the previous ASBO regime where data was centrally collected and made available.[[170]](#footnote-170) Neither the Home Office nor any other agency collect such data on any of the 2014 powers,[[171]](#footnote-171) and while some data has been made available via FOI requests, many councils and police forces have been unable to provide responses to requests about the use of the varied powers.[[172]](#footnote-172) For FBOs and CBOs (issued by criminal courts), bare statistics of imposition (and for FBOs, expiry) are available, but details of why they were awarded and what conditions they contain are neither collated nor published. For CIASBs, issued by the civil courts, relevant details seem not to be recorded[[173]](#footnote-173) and no data appears to be collated about the use of CPNs.[[174]](#footnote-174) Similarly, there is no central database of PSPOs,[[175]](#footnote-175) and most breaches of PSPOs are dealt with via warnings or on-the-spot fines with no judicial oversight.[[176]](#footnote-176)

However, it is clear from official documents ranging from ministerial statements, explanatory notes to the 2014 Act, and Home Office guidance, that data *should* have been collected on the use of these powers: the Bill’s Impact Assessment stated that while central collection of data was considered too burdensome, local evaluation and publication of data was to be encouraged, with court data returns intended to cover the use of CBOs and CIASBs,[[177]](#footnote-177) and s.35 dispersal directions to be collected by police and published by Police and Crime Commissioners, “[a]s a safeguard to protect civil liberties [and] to ensure that officers are using the power proportionately.”[[178]](#footnote-178) The Impact Assessments also indicated an intention to scrutinise the powers “3-5 years after Royal Assent” and, “carry out a post-implementation review once the first set of statistics on use of the new orders have been published”.[[179]](#footnote-179) We can find no evidence that any such data has been either collected or published, or that any official scrutiny has taken place.[[180]](#footnote-180)

**Conclusions**

The criticisms and outrage that followed the government’s introduction of SDPOs noted in our introduction are merited—they clearly have the potential to disproportionately restrict the Article 10 and 11 freedoms of protesters. However, the raft of other CPPs already on the statute book, and in regular use in the UK, regularly contain conditions that curtail freedoms of expression, assembly, and association. In fact, the immediate reaction to SDPOs fits and supports a pattern we have identified here; where CPPs have been used in response to certain types of (usually well-funded) protest activity, the application of pre-emptive conditions has been considered with some care by both applicants and the courts following appeal. Likewise, despite an initial attempt to introduce them via a last-minute amendment, SDPOs went through a more rigorous legislative process, received more furore in media and academic circles than other CPPs on the statute book, and some data on their imposition will be collected and published.[[181]](#footnote-181) Further, unlike most other powers we have considered here, they cannot be imposed without a relevant conviction or breach of injunction and must meet the test of necessity for imposition. As a result, when we assess it in terms of the process by which it is imposed, the legal tests for imposition, and the duration of conditions, the SDPO is one of the least problematic of the CPPs.

We are not suggesting that using SDPOs or any other CPPs to constrain protest is not extremely concerning, simply that there has not been comparable attention to CPP provisions when they restrain other forms of expression, assembly, or association. This has led to the unchecked growth of CPPs, designed to regulate relatively minor behaviour with potentially serious conditions and consequences, which has ultimately created the pathway for the SDPO’s creation, and should provide a cautionary tale on the use of unchecked pre-emptive powers. The Government’s 2024 ASB Plan, and provisions of the now defunct Criminal Justice Bill, would have expanded many of the CPPs we have discussed as well as creating new ones to target begging and rough sleeping. The calling of the 2024 general election and subsequent dissolution of Parliament meant the Bill ran out of time to be passed: however during early debates these provisions had received little parliamentary attention, and provide further evidence that, unless challenged, these powers will only continue to grow.[[182]](#footnote-182) We can confidently predict the SDPO will be subject to significant challenge in court, and unlike other CPPs, may find its way to the UK Supreme Court. Such a high-level appeal may curtail some of the more concerning aspects of their design, but we have little confidence that it would lead to serious reflection on the development, operation, and creep of the CPP regime more widely, in particular its thus far largely unscrutinised interference with Article 10 and 11. The piecemeal development of the CPP regime and the inconsistencies between the powers means it is unlikely that even a judgment significantly curtailing the operation of SDPOs on human rights grounds would lead to equivalent restrictions being placed on the operation of other CPPs.

 In our view, the greatest hope for a fundamental revisiting of the operation and effect of CPPs may come from a clarification from the appeal courts, drawing upon the ECtHR jurisprudence highlighted earlier, about the extent to which freedoms of expression, peaceful assembly, and association protect non-protest gatherings, especially those of a socio-cultural nature. A higher court judgment acknowledging in particular the reach of Article 11 into this realm would ensure greater levels of judicial scrutiny, reining in the manner in which CPPs disproportionately interfere with this freedom. We would hope that a subsequent reading down of existing provisions, or, preferably, legislative reform could lead to the creation of a set of minimum standards to be adopted across the range of powers, establishing that they should be imposed only where a court establishes it is necessary to prevent a specified behaviour, and providing a maximum duration and an opportunity to appeal without time limits. Moreover, we call for greater consideration of the impact of conditions attached to CPPs: all powers should contain a minimum requirement that a court should establish whether each condition or requirement is both suitable and necessary for the CPP to achieve its objective. This assessment is essentially an application of the principle of proportionality and should be required to consider not just rights of liberty, privacy and respect for family life, religion, or expression, but also the essential freedom of peaceful assembly, whether it be for protest or broader socio-cultural reasons.

1. Public Order Act 2023, s.20. [↑](#footnote-ref-1)
2. E.g. R. Martin, “The Protest Provisions of the Police, Crime, Sentencing and Court Bill: A ‘Modest Reset of the Scales’?” (2021) *Criminal Law Review* 12. [↑](#footnote-ref-2)
3. Liberty 15.32, 26 November 2021, *Twitter* (x.comlibertyhq/status/1464255692617957403). [↑](#footnote-ref-3)
4. Equality and Human Rights Commission briefing for the House of Lords Report Stage, Police, Crime, Sentencing and Courts Bill (EHRC, January 2022). [↑](#footnote-ref-4)
5. Hansard HL Deb, vol.817 col.1434 (17 January 2022). [↑](#footnote-ref-5)
6. Joint Committee on Human Rights, *Legislative Scrutiny: Public Order Bill* (2022) HC 351 [67]. [↑](#footnote-ref-6)
7. E.g. Hansard HC PBC *(Bill 8)* (9 June 2022); HL Deb, vol.827, col.1240 (7 February 2023). [↑](#footnote-ref-7)
8. See S. Shute, “Rationalising Civil Preventive Orders: Opportunities for Reform”, in *Criminal Law Reform Now: Proposals and Critique* (London: Bloomsbury, 2018) p.37. [↑](#footnote-ref-8)
9. R. Kelly, *Behaviour Orders: Preventive and/or Punitive Measures?* (Unpublished PhD, 2019, University of Oxford) provides a useful taxonomy of the overarching family of “Behaviour Orders” which he divides into civil behaviour orders, hybrid behaviour orders, and executive behaviour orders. [↑](#footnote-ref-9)
10. A. Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (Oxford: Hart, 2009); R.E. Morgan et al, “Clause 1—The Hybrid Law from Hell?” (1998) 31 *Criminal Justice Matters* 25; P. Edwards, “New ASBOs for Old” (2015) 79 *Journal of Criminal Law* Vol.257; L. Etherington, “Statutory Nuisance and ‘hybrid orders’: True crime stories?” (2012) 33 *Statute Law Review* 390; J. Hendry and C. King, “Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids” (2016) *Criminal Law and Philosophy* 1. They have alternatively been referred to as “two-step provisions”; A. von Hirsch and A.P. Simester, “Regulating Offensive Conduct through Two-Step Prohibitions” in A. von Hirsch and A.P. Simester (eds), *Incivilities: Regulating Offensive Behaviour* (Oxford: Hart, 2006), p.173. [↑](#footnote-ref-10)
11. K. Brown, “Punitive reform and the cultural life of punishment: Moving from the ASBO to its successors” (2020) 22 *Punishment and Society* 90. Z. Rodgers, “Understanding the policing practices associated with civil preventive orders and notices in England and Wales to regulate the conduct of society’s perceived deviant others: A systematic review” (2023) *Policing: A Journal of Policy and Practice* 17. [↑](#footnote-ref-11)
12. M. James and G. Pearson, “30 Years of Hurt: The Evolution of Civil Preventive Orders, Hybrid Law, and the Emergence of the Super-Football Banning Order” [2018] P.L. 44. [↑](#footnote-ref-12)
13. B. Stanford, “Power to the People! Public Spaces Protection Orders and the Devolution of the Preventive State” [2020] P.L. 719; J. Marriott, “Expedited public spaces protection orders and the duty to consult: is consultation delayed participation denied?” [2023] P.L.473. [↑](#footnote-ref-13)
14. A. Crawford, “Governing through Anti-Social Behaviour: Regulatory Challenges to Criminal Justice” (2009) 49 *British Journal of Criminology* 810. [↑](#footnote-ref-14)
15. A. Ashworth and L. Zedner, “Technologies of Responsibility” in I. Solanke (ed), *On Crime, Society, and Responsibility in the Work of Nicola Lacey* (Oxford: Oxford University Press, 2021), p.11. [↑](#footnote-ref-15)
16. J. Donoghue, “Antisocial Behaviour Orders (ASBOs) in Britain: Contextualizing Risk and Reflexive Modernization” (2008) 42 *Sociology* 337; J. Williams, “The costs of safety in risk societies” (2001) 12 *The Journal of Forensic Psychiatry* 1; L. Zedner and A. Ashworth, “The Rise and Restraint of the Preventive State” (2019) 2 *Annual Review of Criminology* 429. [↑](#footnote-ref-16)
17. M. Tonry, “The costly consequences of populist posturing: ASBOs, victims, ‘rebalancing’ and diminution in support for civil liberties” (2010) 12 *Punishment and Society* 387. [↑](#footnote-ref-17)
18. C. Johnstone, “Penalising presence in public space: Control through exclusion of the ‘difficult’ and ‘undesirable’” (2017) 6 *International Journal for Crime, Justice and Social Democracy* 1; M. Schuilenburg, “Behave or be banned? Banning orders and selective exclusion from public space” (2015) *Crime Law and Social Change* 277. [↑](#footnote-ref-18)
19. R.D. Hopkins Burke and R. Morrill, “Anti-Social Behaviour Orders: An Infringement of the Human Rights Act 1998” (2002) 11 *Nottingham Law Journal* 1; A. Millie, “Replacing the ASBO: An opportunity to stem the flow into the Criminal Justice System”, in A. Dockley and I. Loader(eds), *The Penal Landscape: The Howard League Guide to Criminal Justice in England and Wales* (London: Routledge 2013), p.64. [↑](#footnote-ref-19)
20. A. Ashworth, “Social control and ‘anti-social behaviour’: the subversion of human rights?” (2004) 120 L.Q.R. 263. [↑](#footnote-ref-20)
21. See A. Ashworth, “Four Threats to the Presumption of Innocence” (2006) 10 *International Journal of Evidence and Proof* 241; A. Ashworth, ‘”Criminal Law, Human Rights and Preventative Justice” in B. McSherry, A. Norrie, and S. Bronitt (eds), *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law* (Oxford: Hart, 2009) p.87; L. Zedner, “Fixing the Future: The Pre-Emptive Turn in Criminal Justice”, in B. McSherry, A. Norrie, and S. Bronitt (eds), *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law* (Oxford: Hart, 2009), p.35; L. Zedner, “Penal Subversions: When is a punishment not punishment, who decides and on what grounds?” (2015) 20 *Theoretical Criminology* 1. Early concerns about the standard of proof were alleviated by the CA’s ruling that proof of past conduct should be akin to the criminal standard for ASBOs (due to the potential penalty for breach) and s.14B FBOs (due to the seriousness of the conditions) (*R. (McCann and others)* *v* *Crown Court at Manchester* [2002] UKHL 39; *Gough* *and Smith v Chief Constable of Derbyshire* [2022] EWHC 527). [↑](#footnote-ref-21)
22. Ashworth, “Social Control and ‘Anti-Social Behaviour’”; A. Ashworth and L. Zedner, ‘Prevention Orders: A problem of undercriminalisation?’ in R.A. Duff et al. (eds), *The Boundaries of the Criminal Law* (Oxford: Oxford University Press, 2010), p.59; L. Zedner, “Preventive Justice or Pre-Punishment? The Case of Control Orders” (2007) 60 *Current Legal Problems* 174; James and Pearson, “30 Years of Hurt”. [↑](#footnote-ref-22)
23. Ashworth, “Social Control and ‘Anti-Social Behaviour’” p.291; R. Epstein, A. van Dellen and S. Sengupta, “Contempt of court imprisonment: what are the human rights issues?” (2021) *Coventry Law Journal* 93. [↑](#footnote-ref-23)
24. Von Hirsch and Simester, “Regulating Offensive Conduct”. [↑](#footnote-ref-24)
25. E. Harris, ‘Riddle Me This, Riddle Me That: Anti-social Behaviour, Vagueness and Judicial Discretion in the United Kingdom’ (2014) 6 *Perspectives on Federalism* 29. [↑](#footnote-ref-25)
26. Edwards, “New ASBOs for Old”; A. Millie et al. *Anti-Social Behaviour Strategies: Finding a Balance* (Bristol: The Policy Press, 2005). [↑](#footnote-ref-26)
27. Football Spectators Act 1989, s.14. [↑](#footnote-ref-27)
28. R. Selmini and A. Crawford, “The renaissance of administrative orders and the changing face of urban social control” (2017) *European Journal on Criminal Policy and Research* 1. [↑](#footnote-ref-28)
29. S. Lewis, A. Crawford and P. Traynor, “Nipping Crime in the Bud? the Use of Antisocial Behaviour Interventions with Young People in England and Wales” (2016) 57 *British Journal of Criminology* 1230, p. 1247. [↑](#footnote-ref-29)
30. A. Ashworth and L. Zedner, “Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure and Sanctions” (2008) 2 *Criminal Law and Philosophy* 21. [↑](#footnote-ref-30)
31. Shute, “Rationalising Civil Preventive Orders”. [↑](#footnote-ref-31)
32. Justice, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023) at Para.4.134. [↑](#footnote-ref-32)
33. E.g. the College of Policing’s Public Order policing “Authorised Professional Practice” (2013-2023). [↑](#footnote-ref-33)
34. *City of London v Samede* [2012] EWCA Civ 160; *Friend v UK* [2009] ECHR 2068. [↑](#footnote-ref-34)
35. Re Art.10: *X and Church of Scientology v Sweden* (1979) App. 7805/77; *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277; *Miranda v Secretary of State for the Home Department and Ors* [2014] EWHC 255, [44]-[45]. [↑](#footnote-ref-35)
36. [2012] EWCA Civ 160 [41]. [↑](#footnote-ref-36)
37. *Anderson v UK* (1997) 25 EHRR CD 172 [174] [↑](#footnote-ref-37)
38. *The Gypsy Council v UK* (2002) 663366/01 (the Horsmonden Horse Fair). [↑](#footnote-ref-38)
39. *Emin Huseynov v Azerbaijan* (2015) 59135/09 (a café gathering to celebrate Che Guevara’s birthday). [↑](#footnote-ref-39)
40. *Friend and Countryside Alliance v United Kingdom* [2009] ECHR 2068. cf. *Apprentice Boys of Derry, Bridgeton v Glasgow City Council* [2019] SC GLA 80 [56]. [↑](#footnote-ref-40)
41. *Friend*,[50]. [↑](#footnote-ref-41)
42. ‘Guide on Article 11 of the European Convention on Human Rights’, (2024, Council of Europe) [19]. [↑](#footnote-ref-42)
43. *R. (on the application of Countryside Alliance and others) v Attorney General* [2007] UKHL 52. [↑](#footnote-ref-43)
44. e.g. *Steel and others v UK* (1998) 28 EHRR 603 [↑](#footnote-ref-44)
45. O. Salát, “Comparative Freedom of Assembly and the Fragmentation of International Human Rights Law” (2014) 32 *Journal Nordic Journal of Human Rights* 140. [↑](#footnote-ref-45)
46. *Tatar and Faber v Hungary* (2012) Apps 26005/08 and 26160/08), [38]. [↑](#footnote-ref-46)
47. *Chassagnou v France* (1999) ECHR 2, [100]. [↑](#footnote-ref-47)
48. Salát, “Comparative Freedom of Assembly”, 141. See also R. Stone, *Textbook on Civil Liberties and Human Rights* (Oxford University Press, 2012), p.376; H. Fenwick “The Right to Protest, the Human Rights Act and the Margin of Appreciation” (1999) 62 M.L.R. 496. [↑](#footnote-ref-48)
49. ‘Guide on Article 11 of the European Convention on Human Rights’, (2024, Council of Europe) [19]. [↑](#footnote-ref-49)
50. Even when this gathering is prohibited under domestic law (*Éva Molnár v Hungary* (2008) App. 10346/05; *Lucas v The United Kingdom* (2003) App. 39013/02). [↑](#footnote-ref-50)
51. H. Fenwick, G. Phillipson and A. Williams, *Texts, Cases and Materials on Public Law and Human Rights* (London: Routledge, 2017), p.298. [↑](#footnote-ref-51)
52. T. Dyke, “Focus on Article 11” (2009) 14 *Judicial Review* 185, 185-6; D. Mead, “The right to peaceful protest under the European Convention on Human Rights—a content study of Strasbourg case law” [2007] E.H.R.L.R. 345; D. Mead, “Strasbourg discovers the right to counter-demonstrate—a note on *Öllinger v Austria*” [2007] E.H.R.L.R. 133. [↑](#footnote-ref-52)
53. L. Lavrysen, “Causation and Positive Obligations under the European Convention on Human Rights: A Reply to Vladislava Stoyanova” (2018) 18 Human Rights Law Review 705. [↑](#footnote-ref-53)
54. S. Hwang, “Margin of Appreciation in Pursuit of Pluralism? Critical Remarks on the Judgments of the European Court of Human Rights on the ‘Burqa Bans’” (2020) 20 Human Rights Law Review 361. [↑](#footnote-ref-54)
55. P. Cumper and T. Lewis, “Empathy and Human Rights: The Case of Religious Dress” (2018) 18 *Human Rights Law Review* 61. [↑](#footnote-ref-55)
56. [2007] 1 W.L.R. 1420. [↑](#footnote-ref-56)
57. [2007] 1 A.C. 100. [↑](#footnote-ref-57)
58. See D. Mead “Outcomes aren’t all: defending process-based review of public authority decisions under the Human Rights Act” [2012] P.L. 61. [↑](#footnote-ref-58)
59. Lord Bingham in *Begum*, [31]. [↑](#footnote-ref-59)
60. Lord Neuburgerin *Belfast City Council*, [91] [↑](#footnote-ref-60)
61. A. Kavanagh “Reasoning about proportionality under the Human Rights Act 1998: outcomes, substance and process” (2014) 130 L.Q.R. 235, 255. [↑](#footnote-ref-61)
62. R. (Leigh and others) v Met Police Commissioner [2022] EWHC 527 (Admin). [↑](#footnote-ref-62)
63. R. (Leigh and others) v Met Police Commissioner, [107]. [↑](#footnote-ref-63)
64. *Gough & Anor v Chief Constable of Derbyshire* [2002] QB 1213[90]. [↑](#footnote-ref-64)
65. FSA1989 s.14G(1). [↑](#footnote-ref-65)
66. M. James and G. Pearson, “Football Banning Orders: Analysing their Use in Court” (2006) 70(6) *Journal of Criminal Law* 509; James and Pearson, “30 Years of Hurt.” [↑](#footnote-ref-66)
67. James and Pearson, “30 Years of Hurt”. [↑](#footnote-ref-67)
68. Although the applicant must submit evidence about the “suitability and enforceability” of any positive requirements (s.333(2)). See *R. v Tofagsazan (Amir)* [2020] EWCA Crim 982. [↑](#footnote-ref-68)
69. CPS *Annex D: Criminal Behaviour Orders Legal Guidance* (17 October 2014). [↑](#footnote-ref-69)
70. Highlighting their support in ASBO cases *Lonergan v Lewis Crown Court and Brighton and Hove City Council* [2005] EWHC 457 (Admin); *R. v Starling* [2005] EWCA Crim 2277 and *R. v Boness* [2005] EWCA Crim 2395. [↑](#footnote-ref-70)
71. See for example *R. v Mahed Mohammed, Saharded Hassan* [2019] EWCA Crim 1397. [↑](#footnote-ref-71)
72. *DPP v* *Bulmer* [2015] EWHC 2323 (Admin). [↑](#footnote-ref-72)
73. Anti-Social Behaviour, Crime and Policing Act 2014, s.331(4)(a). [↑](#footnote-ref-73)
74. See L. Fatsis, “Policing the Beats: The Criminalisation of UK Drill and Grime Music by the London Metropolitan Police” (2019) 67 *The Sociological Review* 1300, 1303. [↑](#footnote-ref-74)
75. <https://www.cornwalllive.com/news/cornwall-news/nuisance-banned-swearing-hanging-around-3004964> [↑](#footnote-ref-75)
76. <https://www.devonlive.com/news/devon-news/devon-man-banned-being-drunk-9272743> [↑](#footnote-ref-76)
77. Fieldnotes, Greater Manchester Police, 2017. [↑](#footnote-ref-77)
78. <https://www.worcesternews.co.uk/news/13356255.nuisance-worcester-beggar-slapped-with-criminal-behaviour-order-banning-him-from-parts-of-city-centre/> [↑](#footnote-ref-78)
79. <https://www.nottinghampost.com/news/local-news/nuisance-drinker-banned-town-centre-3029253>. [↑](#footnote-ref-79)
80. [https://web.archive.org/web/20170614124838/https://www.kettering.gov.uk/news/article/1146/record\_fine\_for\_noisy\_neighbour](https://web.archive.org/web/20170614124838/https%3A//www.kettering.gov.uk/news/article/1146/record_fine_for_noisy_neighbour) [↑](#footnote-ref-80)
81. <https://www.cheshire-live.co.uk/news/chester-cheshire-news/crewe-man-banned-touching-parked-16034902>. [↑](#footnote-ref-81)
82. ###  What references there are refer to Art.8 (*R. v Janes* [2016] EWCA Crim 676) and, bizarrely, Art.2, Protocol 4 (Freedom of Movement) which has not been ratified by the UK (*Bulmer*).

 [↑](#footnote-ref-82)
83. [2018] EWCA Crim 1472. [↑](#footnote-ref-83)
84. A CrASBO including the condition that the nine offenders, “must not be together or in company with, in any public place while attending any demonstration, protest, or rally, any of the following persons” was held to be a disproportionate restriction of their rights under Arts.9-11 (*R. v Uddin (Mohan)* [2015] EWCA Crim 1918) and an outright prohibition on congregating in groups of more than six in an outdoor public place was considered disproportionate (*Boness*). However, in *Leeds City Council v Fawcett* [2008] EWCA Civ 597 the court noted that ABSOsenforcingexclusion zones to prevent offending or ASB were “a preferred form of prohibition” as they were easier to evaluate and enforce than “conduct prohibitions”. [↑](#footnote-ref-84)
85. S. Demetriou, “Crime and anti-social behaviour in England and Wales: an empirical evaluation of the ASBO’s successor” (2020) 40(3) *Legal Studies* 458, 459; <https://www.thebureauinvestigates.com/stories/2022-08-21/jailed-for-feeding-pigeons-the-broken-system-of-antisocial-behaviour-laws> [↑](#footnote-ref-85)
86. <https://www.gloucestershirelive.co.uk/news/gloucester-news/gloucester-city-centre-ban-nightmare-7699571> [↑](#footnote-ref-86)
87. <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/council-issues-banning-letters-residents-24623350> [↑](#footnote-ref-87)
88. Upheld in *AM v Chief Constable of the West Midlands* [2021] EWHC 796 (Admin). [↑](#footnote-ref-88)
89. Home Office, *Anti-social behaviour powers: Statutory guidance for frontline professionals* (2022), p.34. [↑](#footnote-ref-89)
90. *Jones v Birmingham City Council* [2023] UKSC 27. [↑](#footnote-ref-90)
91. See *Thurrock Council v Stokes* [2022] EWHC 1998 (Q.B.), where Art.8 but not Art.11 was considered in the refusal to grant the injunction. [↑](#footnote-ref-91)
92. Anti-Social Behaviour, Crime and Policing Act 2014, s.1(4-5) [↑](#footnote-ref-92)
93. *Rosebery Housing Association Ltd v Williams* [2021] 12 WLUK 464; Local Government Lawyer, “Council was required to consider public sector equality duty when applying for injunction banning individuals from London Square” (2022). [↑](#footnote-ref-93)
94. *Hackney LBC v Grant* [2021] EWHC 2548 (Q.B.). [↑](#footnote-ref-94)
95. Our ability to conduct a thorough review was made more challenging because the court of first instance is the County Court, with decisions thus not always reported. For example, it is possible that art.11 was considered in this case: <https://www.nottinghampost.com/news/nottingham-news/anti-abortion-campaigner-continue-vigil-1377990> [↑](#footnote-ref-95)
96. Anti-Social Behaviour, Crime and Policing Act 2014, s.43(3) [↑](#footnote-ref-96)
97. Anti-Social Behaviour, Crime and Policing Act 2014, s.43(3-4). [↑](#footnote-ref-97)
98. See *Staffordshire Moorlands DC v Sanderson* [2020] EWHC 962 (Admin). [↑](#footnote-ref-98)
99. Local Government Lawyer “Liberty calls on police to stop issuing ‘unreasonable’ community protection notices” (2022). [↑](#footnote-ref-99)
100. Liberty “Police drop Hackney-wide sanctions on man after Liberty challenge” (2022). [↑](#footnote-ref-100)
101. [https://web.archive.org/web/20221020140142/https://www.westyorkshire.police.uk/news-appeals/community-protection-notices-issued-persistent-street-drinkers-dewsbury-0](https://web.archive.org/web/20221020140142/https%3A//www.westyorkshire.police.uk/news-appeals/community-protection-notices-issued-persistent-street-drinkers-dewsbury-0) [↑](#footnote-ref-101)
102. [https://web.archive.org/web/20230924172349/https://www.northdevon.gov.uk/news/community/2022/november/court-fine-for-man-who-breached-community-protection-notice/](https://web.archive.org/web/20230924172349/https%3A//www.northdevon.gov.uk/news/community/2022/november/court-fine-for-man-who-breached-community-protection-notice/) [↑](#footnote-ref-102)
103. <https://www.horseandhound.co.uk/news/appeal-against-staggering-police-notice-issued-to-hunt-813036> [↑](#footnote-ref-103)
104. Home Office, *Anti-Social Behaviour Powers* pp.58-9. [↑](#footnote-ref-104)
105. V. Heap, A. Black and Z. Rodgers, “Preventive justice: Exploring the coercive power of community protection notices to tackle anti-social behaviour” (2022) 24 *Punishment and Society* 305; A. Black and V. Heap, “Procedural Justice, Compliance and the ‘Upstanding Citizen’: A Study of Community Protection Notices” (2022) 62 *British Journal of Criminology* 1414. [↑](#footnote-ref-105)
106. *Stannard v CPS* [2019] EWHC 84 (Admin) [54]. [↑](#footnote-ref-106)
107. s.36(4). [↑](#footnote-ref-107)
108. s.43(3). [↑](#footnote-ref-108)
109. <https://www.met.police.uk/cy-GB/SysSiteAssets/foi-media/metropolitan-police/disclosure_2020/july_2020/section35-dispersal-powers-direction-leave-under-asb2014act-form35a.pdf> [↑](#footnote-ref-109)
110. H. Mills and M. Ford, “Anti-social behaviour powers and young adults” (2018) Centre for Crime and Justice Studies (crimeandjustice.org.uk/publications/antisocial-behaviour-powers-and-young-adults-data). [↑](#footnote-ref-110)
111. J. Appleton, “Dispersal Notices—the crime of being in a public place” (2015) Manifesto Club Briefing. [↑](#footnote-ref-111)
112. T. Cockroft, R. Bryant and H. Keval, “The impact of dispersal powers on congregating youth” (2016) 15 *Safer Communities* 21; Crawford “Dispersal Powers”; A. Crawford, “Criminalizing Sociability through Anti-social Behaviour Legislation: Dispersal Powers, Young People and the Police” (2009) 9 *Youth Justice* 5; C. Johnstone, “After the ASBO: Extending control over young people’s use of public space in England and Wales” (2016) 36 *Critical Social Policy* 716. [↑](#footnote-ref-112)
113. A. Crawford and S. Lister, *The Use and Impact of Dispersal Orders: Sticking plasters and wake up calls* (Bristol: Policy Press, 2007), xi. [↑](#footnote-ref-113)
114. <https://www.walesonline.co.uk/news/police-cardiff-given-extra-powers-24565610> [↑](#footnote-ref-114)
115. <https://www.birkenhead.news/dispersal-order-introduced-following-crime-and-anti-social-behaviour/> [↑](#footnote-ref-115)
116. <https://thefsa.org.uk/news/wrexham-fans-challenge-new-police-powers-and-win/>; <https://www.bristolpost.co.uk/sport/football/football-news/we-were-treated-like-animals-3358721> [↑](#footnote-ref-116)
117. Brown, “Punitive Reform”. [↑](#footnote-ref-117)
118. K. Brown, “The Banishment of the Poor from Public Space: Promoting and Contesting Neo-Liberalisation at the Municipal Level” (2019) *Social & Legal Studies* 1, 5. [↑](#footnote-ref-118)
119. Anti-Social Behaviour, Crime and Policing Act 2014, s.72. [↑](#footnote-ref-119)
120. <https://www.walthamforest.gov.uk/sites/default/files/2022-07/Public%20Space%20Protection%20Order%20-%205%20September%202022.pdf> [↑](#footnote-ref-120)
121. <https://www.conwy.gov.uk/en/Resident/Crime-and-emergencies/Crime/Anti-social-behaviour/Public-Space-Protection-Orders/documents/The-Dingle-Eirias-Park-Bowling-Green-Public-Space-Protection-Order-30th-August-2017.pdf> [↑](#footnote-ref-121)
122. <https://metro.co.uk/2016/02/29/london-council-bans-standing-in-pairs-in-town-centre-unless-youre-at-a-bus-stop-5725461/>; http://manifestoclub.info/wp-content/uploads/Hayes\_Town\_Centre\_PSPO\_1\_July\_2015%20(1).pdf [↑](#footnote-ref-122)
123. <https://www.northantstelegraph.co.uk/news/people/hopes-raised-that-ketterings-crazy-ban-on-skateboarding-will-be-dropped-3677537> [↑](#footnote-ref-123)
124. <https://www.sussexexpress.co.uk/news/police-should-seize-free-runners-in-horsham-and-prosecute-them-1199527> [↑](#footnote-ref-124)
125. <https://www.birminghammail.co.uk/black-country/new-order-tackle-antisocial-behaviour-16371936> [↑](#footnote-ref-125)
126. Home Office, *Anti-Social Behaviour Powers*. [↑](#footnote-ref-126)
127. Local Government Association (2018) *Public Spaces Protection Orders: Guidance for councils*. [↑](#footnote-ref-127)
128. <https://doncaster.moderngov.co.uk/documents/s27301/i%20cab%20290920%20-%20Cabinet%20report%20town%20centre%20PSPO%20review%20For%20Exec%20Board.pdf> [↑](#footnote-ref-128)
129. R. Kelly, “The Problematic Development of the Stalking Protection Order” (2020) 83 M.L.R. 406. [↑](#footnote-ref-129)
130. Brown, “Punitive Reform”. [↑](#footnote-ref-130)
131. Home Office (2013) *Impact Assessment: ASB, Crime and Policing Bill: Community Protection Notice, Community Protection Orders and the Community Trigger* [39]; Home Office (2013) *Impact Assessment: Reform of the anti-social behaviour toolkit—Criminal Behaviour Order, Injunction to prevent nuisance and annoyance and Dispersal Powers* [35]. [↑](#footnote-ref-131)
132. e.g. the Court of Appeal’s narrowing of the meaning of “football related” offences (*R. v Elliott* [2007] EWCA Crim 1002; R. v Doyle (Ciaran) and Others [2012] EWCA Crim. 995) or raising of the standard of proof (*Gough*) for FBOs. [↑](#footnote-ref-132)
133. Which may of course be deliberate (P. Squires, “Why ‘Anti-Social Behaviour’? Debating ASBOs” in *ASBO Nation: The Criminalisation of Nuisance* (Bristol: Policy Press, 2009), p.18. [↑](#footnote-ref-133)
134. V. Heap, A. Black and C. Devany, “Living within a Public Spaces Protection Order: The impacts of policing anti-social behaviour on people experiencing street homelessness’ (Sheffield Hallam University, 2022). [↑](#footnote-ref-134)
135. Heap, Black, and Devany, “Living within a Public Space Protection Order”. [↑](#footnote-ref-135)
136. e.g. The London Marathon PSPO: “No person shall act (...) in a manner likely to cause nuisance, harassment, alarm or distress in the Designated Area. Any person instructed by a constable or authorised person to leave the designated area must leave without delay and shall not return to the designated area for a period of 12 hours.” [↑](#footnote-ref-136)
137. N. Helps and M. Segrave, “Move-on powers and practices of social exclusion: an examination of governance” (2021) *Policing and Society*, DOI: 10.1080/10439463.2021.2011276). [↑](#footnote-ref-137)
138. Anti-Social Behaviour, Crime and Policing Act 2014, s.66. [↑](#footnote-ref-138)
139. Brown, “Banishment of the Poor”. [↑](#footnote-ref-139)
140. Anti-Social Behaviour, Crime and Policing Act 2014, s.66(5). [↑](#footnote-ref-140)
141. *Stannard v CPS* [2019] EWHC 84 (Admin) [14]. [↑](#footnote-ref-141)
142. See N. Parpworth, “Challenging a Community Protection Notice: A Defence in Criminal Proceedings for Its Breach?’ (2019) 83 *Journal of Criminal Law* 307, 309. [↑](#footnote-ref-142)
143. Legal Aid Agency “Guidance: Apply for legal aid for anti-social behaviour injunction breaches” (2022); *R. (Liberty) v Director of Legal Aid Casework* [2019] EWHC 1532 (Admin) [57]. Art.11 might be considered when deciding proportionality of costs (*SoS for Transport v Cuciurean* [2022] EWCA Civ 661). [↑](#footnote-ref-143)
144. e.g. <https://www.crowdjustice.com/case/middlesbrough/> [↑](#footnote-ref-144)
145. *Overd* [2021] EWHC 3100 (Q.B.) raised dispersals as a marginal issue to the arrest of street preachers. [↑](#footnote-ref-145)
146. *Tossici-Bolt v Bournemouth & Poole* [2023] EWHC 3229 (Admin); Dulgheriu and Orthova v Ealing LBC [2019] EWCA Civ 1490 and *Summers v Richmond-upon-Thames LBC* [2018] EWHC 782 (Admin). [↑](#footnote-ref-146)
147. Manifesto Club, “CPNs: 20,000 new ‘busybody ASBOs’ issued in past 4 years” (2019). V. Heap et al.’s study found no social landlords who had been delegated such CPN powers (“Procedural justice and process-based models: Understanding how practitioners utilize Community Protection Notices to regulate anti-social behaviour” (2023) *Criminology & Criminal Justice* DOI:10.1177/17488958221151113). [↑](#footnote-ref-147)
148. See Magistrates Association Report, “Out of court disposals: Fit for purpose or in need of reform?” (2022). [↑](#footnote-ref-148)
149. A. Crawford, “Dispersal Powers and the Symbolic Role of Anti-Social Behaviour Legislation” (2008) 71 M.L.R.753, 781. [↑](#footnote-ref-149)
150. *North Warwickshire Borough Council v McFadden and Hewes* [2022] EWHC 1326 (Q.B.) [↑](#footnote-ref-150)
151. Local Government Lawyer “Judge upholds decision by council to issue community protection notice against pro-life campaigner erecting anti-abortion poster” (2020); <https://www.birminghammail.co.uk/news/midlands-news/calls-buffer-zones-around-abortion-17890033>; <https://www.swlondoner.co.uk/news/11052021-york-gardens-protester-facing-high-court-over-three-week-occupation-to-save-the-trees>; <https://www.watfordobserver.co.uk/news/20031386.insulate-britain-protesters-hertfordshire-avoid-strong-police-action/> [↑](#footnote-ref-151)
152. <https://www.itv.com/news/granada/2021-10-12/major-protests-underway-as-controversial-arms-fair-event-begins>; <https://www.liverpoolecho.co.uk/news/liverpool-news/six-arrested-during-arms-fair-21835653>; <https://www.liverpoolecho.co.uk/news/liverpool-news/city-politicians-critical-police-over-21842464> [↑](#footnote-ref-152)
153. Police, Crime, Sentencing and Courts Act 2022 s.59. [↑](#footnote-ref-153)
154. *Chief Constable of Bedfordshire Police v Golding and Fransen* [2015] EWHC 1875 (Q.B.). See also N. Parpworth, “Public Order and the Anti-Social Behaviour, Crime and Policing Act 2014” (2015) 197 *Criminal Law and Justice Weekly* 617. [↑](#footnote-ref-154)
155. *Birmingham City Council v Afsar* [2019] EWHC 3217 (QB); *Birmingham City Council v Shakeelafsar* [2020] EWHC 864 (Q.B.) [↑](#footnote-ref-155)
156. *Afsar*, [32]. [↑](#footnote-ref-156)
157. <https://www.bournemouthecho.co.uk/news/23043219.bournemouth-abortion-clinic-becomes-fifth-country-pspo/> [↑](#footnote-ref-157)
158. <https://www.lgcplus.com/politics/governance-and-structure/birmingham-considers-pspo-to-break-up-school-demo-21-05-2019/>; <https://www.localgovernmentlawyer.co.uk/education-law/394-education-news/40623-council-leader-eyes-use-of-pspo-to-stop-disturbances-outside-primary-school> [↑](#footnote-ref-158)
159. Dulgheriu, [186]. [↑](#footnote-ref-159)
160. K. Bhogal and T. O’Leary, “Public Spaces Protection Orders: What Have We Learned?” (2019) 22 *Journal of Housing Law* 7. [↑](#footnote-ref-160)
161. B. O’Brien, “Public spaces protection orders—an ‘attack of vagueness’” (2016) 15 *Safer Communities* 183. [↑](#footnote-ref-161)
162. <https://www.guildford.gov.uk/article/21317/Public-Spaces-Protection-Orders> [↑](#footnote-ref-162)
163. *Perinçek v Switzerland* (2016) 63 EHRR 6 [↑](#footnote-ref-163)
164. Brown, “Punitive Reform”. [↑](#footnote-ref-164)
165. Brown, “Punitive Reform”. [↑](#footnote-ref-165)
166. V. Heap, “Transforming anti-social behaviour: ASBOs, injunctions and cross-cutting criminal justice concerns” (2014) 12 *British Journal of Community Justice* 67. [↑](#footnote-ref-166)
167. Brown, “Punitive Reform”. [↑](#footnote-ref-167)
168. Brown, “Banishment of the Poor”. [↑](#footnote-ref-168)
169. Justice, “Lowering the Standard” [3.129]. [↑](#footnote-ref-169)
170. Cf Crawford, “Symbolic Role of Anti-Social Behaviour Legislation”; S. Hodgkinson and N. Tilley, “Tackling anti-social behaviour: Lessons from New Labour for the Coalition Government” (2011) *Criminology & Criminal Justice* 283). [↑](#footnote-ref-170)
171. V. Heap and J. Dickinson, “Public Spaces Protection Orders: a critical policy analysis” (2018) 17 *Safer Communities* 182. [↑](#footnote-ref-171)
172. Mills and Ford, “Anti-Social Behaviour Powers and Young Adults”; Appleton, “Dispersal Notices”. [↑](#footnote-ref-172)
173. Law Gazette, “ASB Injunctions are a Great Unknown” (2022); Civil Justice Council (2020) “Anti-Social Behaviour and the Civil Courts” [35]-[37]. [↑](#footnote-ref-173)
174. <http://manifestoclub.info/cpns-20000-new-busybody-asbos-issued-in-past-4-years/>; <http://manifestoclub.info/cpns-and-pspos-the-use-of-busybody-powers-in-2019/> [↑](#footnote-ref-174)
175. B. Stanford, “Power to the People! Public Spaces Protection Orders and the Devolution of the Preventive State” [2020] PL 719. [↑](#footnote-ref-175)
176. Brown, “Banishment of the Poor”. [↑](#footnote-ref-176)
177. Home Office, *Impact Assessments* (2013), [38] and [33]. [↑](#footnote-ref-177)
178. Home Office, *Fact Sheet: Dispersal Powers* (2013), [12]. [↑](#footnote-ref-178)
179. Home Office, *Impact Assessments*, [33]. [↑](#footnote-ref-179)
180. In 2023 the Home Office published a report into the 2014 powers, however this focused on police perceptions of the powers and gave no insight into the effects of imposing CPPs and their conditions: Home Office *Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014* (2023). [↑](#footnote-ref-180)
181. Home Office, *Serious disruption prevention orders: draft statutory guidance* (2023). [↑](#footnote-ref-181)
182. Home Office, *Anti-Social Behaviour Action Plan* (2023). The Criminal Justice Bill 2024 would have created new CPPs targeting begging and rough sleeping, extended the duration of s.35 Dispersal Orders from 48 to 72 hours, lowered the minimum age for CPNs from 16 to 10, and granted police the power to create PSPOs. While we would have welcomed the intention to create a taskforce and improve data collection on the powers, the proposed changes risked intensifying the issues we have laid out. [↑](#footnote-ref-182)