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Ingrid Brown

Head of Legal and Democracy and Monitoring Officer

By email to: ingrid.brown@thanet.gov.uk

31 July 2024

Dear Ms Brown,

Proposed claim for judicial review

We are writing to you formally with a letter before claim in accordance with the Judicial Review Pre-Action Protocol, a copy of which is enclosed.

Outline of the claim

The Claimant

1. The proposed Claimant is the Free Speech Union Ltd ('the FSU'), company number 12324336, whose address is 85 Great Portland Street, London, W1W 7LT.
2. At present the claim is being handled internally by the FSU's legal department. Email correspondence, including for service, is strongly preferred, which may be sent to legal@freespeechunion.org.
3. Other Claimants may join or replace the FSU in this action, including bringing a challenge under the procedure described in section 66 of the Anti-social Behaviour, Crime and Policing Act 2014 ('the Act') on substantially the same grounds as those raised below.

The Defendant

4. The proposed defendant is Thanet District Council, whose address is Cecil Street, Margate, CT9 1XZ.
5. We have previously corresponded with the Council's Monitoring Officer and Head of Legal and Democracy, Ms Ingrid Brown (email ingrid.brown@thanet.gov.uk). We would be grateful if you could let us know if Ms Brown will not be dealing with this matter, and, if so, provide contact details for the person who will.
6. Please also indicate whether you would be willing to accept service via these means, and any requirements under the Civil Procedure Rules, paragraph 4.1 of Practice Direction 6A.

The decision being challenged

7. We intend to challenge the decision taken at the Cabinet meeting on 25 July 2024 to implement the 2024-25 Anti-social Behaviour and Alcohol Public Spaces Protection Order ('the Order'). Cabinet passed the following resolution, which we quote verbatim:

1. That the two current current PSPOs be combined and adopted for the period of one year to cover Thanet main towns (Margate, Birchington, Ramsgate, Broadstairs) (as reflected in the updated PSPO document attached);

2. To delegate any minor amendments and extensions of the PSPO to the Chief Executive.

8. As there is no statutory power to 'combine' PSPOs, we are assuming for the purpose of this letter that the above decision means the Council is exercising its power to create a new PSPO. However, the issues described below also arise if instead the Council purports to use its powers to vary or extend an existing PSPO.

The issues

Procedural history

9. A nine-month extension to the existing Alcohol PSPO was agreed at Cabinet in October 2023, to bring its expiry date to July 2024, when the existing Anti-social Behaviour PSPO was due to expire.

10. The intended decision to implement a 'combined PSPO' in force from the end of July 2024 was published in the Forward Plan and Exempt Cabinet Report List for 13 December 2023 to 31 July 2024.

11. A short online survey, described as a public consultation, was published on 'Your Voice Thanet' from 3 – 24 May 2024. FSU submitted a detailed written response describing concerns over the legality of the Order and the inadequacy of the consultation process itself.

12. The Overview and Scrutiny Panel met on 18 June 2024, and considered the Order as item 6 on their agenda. They resolved to pass a note of concern to Cabinet about resourcing.

13. FSU wrote to the Council again on 23 June 2024, setting out further concerns and informing the Council, on a pre-pre-action basis, that legal action was being considered if the concerns were not addressed.

14. The proposal to approve the Order was withdrawn from the Cabinet agenda for 25 June 2024 at the last minute.

15. A revised version of the Order was put before the OSP on 16 July 2024. This reduced the geographic scope to coastal towns and conurbations, and reworded a number of the prohibitions, ostensibly in response to the FSU's letter. OSP approved the draft.

16. FSU wrote again to the Council on 23 July 2024, raising further concerns with the revised wording and explaining why it did not address previous concerns raised.

17. Cabinet approved the Order on 25 July 2024 via the motion laid out at paragraph 7 above. Three amendments to the wording had been made by officials subsequent to the approval of the draft by OSP:

    a. The clarification that Prohibition I applied to groups of '2 or more', where previously it was limited to exactly two.

    b. The removal of the words 'offence' and 'upset' from Prohibition II on foul language.

    c. The temporal scope of the Order was reduced from three years to one.

18. The decision referred to at paragraph 7 gives the implementation date as 3 August 2024.

19. The sole response the FSU has received from the Council to date was an email from the Monitoring Officer on 30 July 2024, acknowledging our letter of 23 July but noting the contents were not accepted.

The text of the Order

Offences

20. In order to narrow the issues for the purposes of this claim, we will focus on three prohibitions, reproduced here verbatim with emphasis to show the elements of the wording which form the core of our complaints (although this should not be construed as acceptance of the rest of the text). Each is followed by an illustrative example of otherwise lawful activity which falls within the prohibition.

> **I. Anti-Social group congregation**
>
> All persons are prohibited from congregating as part of a group of 2 or more and being abusive, alarming, threatening, insulting, intimidating, harassing, distressing or otherwise causing a disturbance to other members of the public, for such duration as specified when directed not to do so by an authorised officer.
>
> *Example: a group of protesters gathers outside the Council offices loudly chanting slogans objecting to a planned development on the outskirts of town.*
>
> **II. Misuse of public space**
>
> All persons are prohibited from using any public space, facility or installation otherwise in accordance with its intended use, or when directed not to do so by an authorised officer on the grounds that the use or behaviour is causing or is likely to cause harassment alarm or distress to others.
>
> *Example: a preacher stands in Margate Old Town Market, the intended use of which is the buying and selling of goods, and delivers a sermon expressing traditional Christian beliefs about sexuality.*
>
> **VII. Inappropriate harmful and degrading related activity**
>
> All persons are prohibited from being abusive to any person or people and behaving in a way which is or is likely to be humiliating or degrading to another person or people.
>
> All persons are prohibited from using language or behaviour causing or likely to cause harassment, alarm or distress to any other person. This includes comments and behaviour, being cruel, pejorative, or of a demeaning nature that results in a loss of dignity or respect for women and girls within the identified zone (schedule 1).
>
> *Example: an atheist activist gives a public speech in which she denies the existence of a god and mocks Christianity, which is distressing to religious passersby, some of whom are female.*

Geographic scope

21. The Restricted Area given in the Order is the coastal conurbation incorporating Margate, Birchington, Ramsgate and Broadstairs. Based on 2021 census data, this brings 93% of the population of the District within the scope of the Order.

Ground of claim 1: The consultation was unlawful

22. The Council acted in a procedurally unfair fashion in both the conduct of the consultation and its handling of the consultation results. Its handling of the consultation was also irrational.

Ground 1a: The consultation was procedurally unfair

23. Section 72(3) of the Act requires the Council to carry out the 'necessary consultation' before making a PSPO. While there is no statutory requirement to conduct an open public consultation, this is a strong recommendation in the statutory guidance issued by the Home Office.[1] Having chosen to go beyond statutory requirements, the Council has committed itself to the common law standards of fair and proper consultation: *R (app EasyJet Airline Company) v Civil Aviation Authority* [2009] EWCA Civ 1361, para 46.

24. Irrespective of whether or not the general public is consulted, the extent of the Order covers all 'public places' within the Restricted Area, which is defined at section 74(1) as including any place to which the public has access on payment or otherwise, as of right or by virtue of express or implied permission. Section 72(4)(c) thus requires, at a minimum, that land-owners and occupiers of such land be properly consulted. This would include the proprietors of all shopping centres, amusement parks and other such facilities.

25. The initial consultation carried out from 2 to 24 May 2024 failed to meet common law requirements and was therefore unlawful. It consisted of a short online survey, where the initial text of the Order was provided and participants were asked to indicate on a sliding scale whether they (strongly) agreed or (strongly) disagreed with each proposed prohibition.

26. No evidence was provided for why the Order or its prohibitions were being considered by the Council. No reasoning was shown for why the Council believed the measures within the Order would address any mischiefs it had identified, or what these mischiefs were.

27. This format fell well short of the *Gunning* principles for public consultation, upheld in *R v North and East Devon Health Authority, ex parte Coughlan* [2000] 3 All ER 850, in particular the requirement for a consultation to 'include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response'.

28. The draft form of the Order consulted on, and the final form of the Order, as approved by Cabinet, are significantly different. Every single prohibition within the Order has been reworded. The effect of this rewording is in many cases a dramatic broadening in scope, for example the revised Prohibition I introduces a ban on congregations which merely 'cause a disturbance', which plainly engages rights to freedom of expression and assembly.

29. This constitutes a new limitation on Convention rights on which consultation had not been carried out. This was a fundamental rather than trivial change to the proposal, and failure to re-consult is therefore procedurally unfair: *R (on the application of Smith) v East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin), para 43.

30. The Council has failed in its duty to conscientiously consider the results of the consultation (the fourth *Gunning* principle). The papers submitted to the OSP and to Cabinet purported to offer the results from the consultation, but no mention was made of the lengthy written response submitted by the FSU. A decision cannot be said to be 'conscientious' if evidence is

[1] Anti-social Behaviour Powers: Statutory guidance for frontline professions, p.65

withheld from the decision-maker (i.e. Cabinet) in the making of their decision. It is up to their discretion what weight they might choose to place upon it, but they were not given the opportunity to exercise this discretion.

Ground 1b: The Council acted irrationally in reliance on the consultation

31. The Council relied on obsolete consultation results. The annex to the Cabinet papers presented the results from the online survey, without clarification or qualification, in support of the decision to approve a substantially different Order, one which engages fundamental rights and freedoms in a way that was not in contemplation of respondents to the original consultation. No reasonable person would take evidence in support of one proposition and treat it, without qualification, as evidence in support of another, materially different proposition. This is self-evidently fallacious.

Ground 2: The Order unlawfully contravenes Convention rights

32. The Council has a general duty under section 6 of the Human Rights Act 1998 not to act incompatibly with Convention rights, and a specific duty under section 72(1) of the 2014 Act to have particular regard for the Articles 10 and 11 rights to freedom of expression and assembly respectively. Multiple prohibitions of the PSPO engage Convention rights.

33. Articles 10 and 11 are qualified rights, but any interference with them is subject to the usual requirements of prescription by law, necessity in a democratic society, and proportionality.

Ground 2a: The Order is not prescribed by law

The Order is ultra vires

34. The Order does not comply with the statutory requirements laid down in the Act and therefore is not prescribed by law. Alternatively the Order is *ultra vires* at common law.

35. Sections 59(1) and 59(2) of the Act state that a local authority may make a PSPO if it is satisfied on reasonable grounds that activities either are, or are likely to be, carried on in a public place within its area and these activities have, or will have, a detrimental effect on quality of life. Section 59(7) requires that a PSPO must identify these activities.

36. The preamble to the Order states:

> 'the activities set out in this order are being and have been carried out within the area to which this order applies. The Council's evidence suggests that is likely that these activities will continue to be carried out and that this will have or it is likely to have a detrimental effect on the quality of life of those in the local community [*sic*]'

37. Yet nowhere are the activities set out. It may be that the Council intends for residents to infer from what is prohibited what the activities are. But this is not what the Act says it must do. It must identify the activities. The terms of the Order are too vague to discern what activities are in contemplation.

38. Section 59(5) requires that the only prohibitions that may be imposed are those that are reasonable in order to prevent the identified detrimental effects from continuing, occurring or recurring. Therefore further or alternatively to the arguments laid out under Ground 3 that the prohibitions are unreasonable in the *Wednesbury* sense, they are also *ultra vires*.

39. The Council has the power to restrict activities to 'a public place' within the authority's area, per subsections 59(2) and (4). The Act limits both the spatial *and* temporal extent of orders, as befits a provision designed to restrict citizens' basic liberties. The geographical scope of

an order must therefore be circumscribed to a discrete area contained *within*, rather than constituted by, the authority's area. The statutory guidance states at p.68 that the object of a PSPO is to target problems experienced in a 'particular public space'. The Local Government Association, in their good practice guide, points out that 'it may be difficult to demonstrate that the statutory criteria under section 59 have been met across an entire broad geographical area.[1]

40. We consider that the Restricted Area as outlined, leaving only a few outlying villages outside the 'public place' covered by the Order, is a technical workaround to avoid the Order being labelled 'district-wide' and does not meet the Act's requirements. If all the potential detrimental activities were demonstrably taking place across the entirety of the area covered, Thanet would be anarchic. Council officials stated at the July OSP meeting that particular activities are known to occur in 'hot spots', and the targeting of such areas is the proper application of the PSPO power.

41. But even if the specific activities were identified, the prohibitions reasonable, and the area adequately circumscribed, the Order still fails to comply fully with statutory requirements. Prohibition V deals with consumption of alcohol. Section 67(4) of the Act excludes alcohol consumption from enforcement under that section. Instead alcohol enforcement is governed by section 63 and Section 59(7)(b) requires a PSPO to explain the effect of section 63 where it applies. The Order makes no mention of section 63, however, only explaining section 67. At present, therefore, the Order is effectively unenforceable when it comes to street drinking, one of the main mischiefs ostensibly targeted.

42. It is worth making clear as well that adding reference to section 63 to the Order is not a 'minor amendment' which can be conducted administratively at this stage. It turns Prohibition V, which is presently a nullity, into a prohibition, incorporating a new criminal sanction into the document where presently one does not exist. This is a 'variation' which must be consulted on etc. in accordance with section 72(3). It is in any case not defined what a 'minor amendment' is, in the context of the power the Council purports to have delegated to the Chief Executive.

43. Further or alternatively to the *ultra vires* grounds above, failure by the Order to meet Convention requirements under the remainder of Ground 2 below is a also a failure of the Council to meet its requirement under Section 72(1) to have particular regard to Articles 10 and 11 of the Convention.

44. We note also that the text of the Order says it 'comes into force on 31 July 2024'. However, subsections 9F(2)(a) and 9F(4) of the Local Government Act 2000 require that decisions by Cabinet must have a window in which decisions made but not yet implemented can be 'called in' for scrutiny, and the key decision report gives an implementation date of 3 August 2024. Therefore the Order is further *ultra vires* because it purports to come into force before the statutory scrutiny commitments have been met.

The Order lacks the quality of law

45. In order to meet the Convention requirement for an interference with rights to be 'prescribed by law', the instrument by which such interference is implemented must itself have the

[1] Public Spaces Protection Orders: Guidance for councils, p.8

'quality of law'. To have that quality, the instrument must be accessible and foreseeable: *Huvig v France* [1990] ECHR 11105/84.

46. The Order does not meet the requirement of accessibility, because its terms are so vague that it is not possible to discern from the text of the Order, even if in receipt of professional advice, precisely what is and isn't prohibited. The key test is given in *Sunday Times v UK* [1979] ECHR 6538/74, which says at paragraph 49 that something cannot be a 'law' unless 'it is formulated with sufficient precision to enable the citizen to regulate his conduct'. There is no certain way of construing, for example, what it means to 'use any public space otherwise in accordance with its intended use'. There is no rule of construction which can make sense of the insensible.

47. Moreover, when it comes to attempts to regulate a human behaviour as basic as discourse in the public square, the degree to which it is reasonable to expect someone to take advice before they act is highly questionable, and so even if it were the case that the proper meaning of the terms of the Order could be discerned by a lawyer, it is still inappropriate for the context.

48. This is a wholly different situation to, for example, a newspaper planning to publish a story when subject to an injunction (as in the *Sunday Times* case above), where the taking of advice would be an entirely reasonable expectation; and the Strasbourg case law is clear that the level of accessibility is dependent on the circumstances of the case (e.g. paragraphs 49-51 in *Sunday Times*).

49. Further, the Order does not meet the requirement of foreseeability. In *Re Gallagher's Application for Judicial Review* [2019] UKSC 3, Lord Sumption stated that:

> the measure must not therefore confer a discretion so broad that its scope is in practice dependent on the will of those who apply it, rather than on the law itself. Nor should it be couched in terms so vague or so general as to produce substantially the same effect in practice. The breadth of a measure and the absence of safeguards for the rights of individuals are relevant to its quality as law where the measure confers discretions, in terms or in practice, which make its effects insufficiently foreseeable. Thus a power whose exercise is dependent on the judgment of an official as to when, in what circumstances or against whom to apply it, must be sufficiently constrained by some legal rule governing the principles on which that decision is to be made.

50. It is impossible for an individual to determine whether an action in their contemplation may or may not result in enforcement activity, because it is not clear what the text of the Order actually means and what specific activities are being referred to. They are entirely at the mercy of an enforcement officer to determine whether their actions come within the prohibition or not.

51. It would be insufficient for the Council to point out that the Order reminds enforcement officers of the requirement to 'have regard to the relevant sections of the Human Rights Act including the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the convention [*sic*]'. This is, of course, a duty they already have, under section 6, and recording that fact on the Order is therefore not a positive action on the part of the Council to provide safeguards.

52. An enforcement officer cannot be expected to have at their disposal a comprehensive understanding of the case law surrounding the exercise of these rights, nor the ability to apply it on the spot to a set of facts against an Order which offers no framework by which

they can ascertain proportionality, necessity, etc., or carry out the necessary balancing exercises.

53. Rather, the duty is on the Council, in having its particular regard to the Convention under section 72(1), to ensure that the text of the Order itself provides the necessary framework by which activity may be measured, making clear what activities lie within and without the parameters, and reflecting the balance that it has deemed appropriate in local circumstances. The Order does none of that, and the Council has simply abdicated the responsibility given to it by Parliament and passed it down to the enforcement officers.

54. This also vitiates the effect of the 'reasonable excuse' defence contained within section 67 of the Act. Where this category of defence exists in the general criminal law, it is usually with respect to a tightly defined offence, for example carrying a bladed article, other than a folding pocket knife shorter than 3 inches, in a public place. There, it is clear what is prohibited, and an ordinary person can reasonably be expected to (a) work out the mischief towards which the law is directed, (b) know their own purpose in carrying such an article, and (c) deduce whether it is likely to fall on the right side of the line. By comparison, it is inconceivable that someone could, with any degree of certainty, work out the range of reasonable excuses for being 'pejorative' in public, as forbidden under Prohibition VII, even assuming such a prohibition met all other requirements.

55. This line of reasoning is supported in *Ineos Upstream Ltd and others v Persons unknown* [2019] EWCA Civ 515, where it was recognised that relying on such a formulation could lead to a chilling effect on the conduct of individuals exercising entirely legitimate rights (of protest in that case), as they would have no idea what would constitute a sufficient excuse in the circumstances, and being unclear on what was permissible or not, potentially (and illegitimately) be effectively restrained from exercising those rights.

Ground 2b: The Order is not necessary in a democratic society

56. The 'harassment, alarm or distress' formulation emphasised above in Prohibition 7 closely resembles section 5 of the Public Order Act ('POA') 1986. Parliament has extensively considered public order legislation and prohibitions on harassment in recent years. The POA itself was substantially amended in 2013 and 2022. At no point was it proposed that protection of the public interest required removal of any of the defences against charges of causing harassment, alarm or distress.

57. A detailed comparison is useful to see the extent to which the Council has departed from the balance which Parliament found appropriate. Section 5 POA provides:

> A person is guilty of an offence if he—
>
> > uses threatening or abusive words or behaviour, or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening or abusive
>
> within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

58. A number of divergences from the POA result in the Order imposing a considerably greater restriction on freedom of expression. As is apparent from the wording above, the POA requires a number of interlocking elements before an offence can be made out: the conduct must be threatening and abusive *and* within hearing or sight of someone *and* that person must be likely to be caused harassment, alarm or distress.

59. The Order prohibits any conduct, including innocuous conduct – regardless of whether it is threatening, abusive etc. – so long as it has, or is likely to have, the effect of causing harassment, alarm or distress. Crucially, the Order removes the POA's test of objective likelihood of harm. Therefore, resident A would be guilty of an offence if his innocuous conduct happened to alarm resident B even if resident B objected to resident A's conduct on hypersensitive or wholly unreasonable grounds. Causing alarm would on its own suffice to make out the offence.

60. There are further deficiencies of the Order as compared to the POA. The latter provides three defences that prevent the excessive criminalisation of free expression:

    a. the defendant had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress (section 5(3)(a));

    b. the defendant's conduct was reasonable (section 5(3)(c)); and

    c. the defendant did not intend his conduct to be threatening or abusive, or he was not aware that it may be threatening or abusive (section 6)(4).

61. By contrast, the Order only provides for the statutory 'reasonable excuse' defence under section 67(1) of the Act (on which see paragraphs 54 to 55), and makes no provision for the *mens rea* component given in section 6(4). It creates a strict liability offence for all speech causing, or likely to cause, harassment, alarm or distress, with none of the safeguards that Parliament has deemed appropriate in cases of the general criminal law.

62. Further or alternatively to the above, the Order also impermissibly uses statutory language borrowed from elsewhere in the Act. In so doing, it subverts the schema laid down by Parliament for the mechanisms granted to local authorities for dealing with anti-social behaviour.

63. At both OSP meetings, the official present assured the councillors that the phrase 'harassment, alarm or distress' had a definition given within the statute governing PSPOs, and its use was therefore acceptable. The Act contains no such definition, and in that respect she may have inadvertently misdirected the Panel. However, 'anti-social behaviour' *is* defined in section 2(1)(a) of the Act in substantially the same terms as the form of words used in the Order, namely behaviour which 'has caused, or is likely to cause harassment, alarm or distress'.

64. This definition is used in a very specific context, namely the power for a local authority to obtain an injunction against a specific person (section 1(1)), prohibiting them from undertaking particular behaviours (section 1(4)) having satisfied a judge that it is just and convenient to do so (section 1(3)).

65. The person will not even be prohibited from undertaking *all* behaviours which are likely to cause harassment, alarm or distress, that is merely the *category* of behaviour into which their conduct must fall in order to be classified as 'anti-social' for that part of the Act, and therefore susceptible to an injunction against their specific behaviour being sought.

66. The definition of 'anti-social behaviour' is also specifically restricted, by section 2(1) and again at section 20(1) to that particular part of the Act. It is not a general statutory definition of 'anti-social behaviour' for all purposes.

67. It may be that the council seeks, by its PSPO, to tackle problems of 'anti-social behaviour' in its area, and that is a legitimate objective. But it is entirely unreasonable and illegitimate to simply adopt a statutory definition of the concept from another, wholly different regime and apply it in the broadest possible terms as a restriction on the behaviour of some 130,000

residents (not including the c. 4 million tourists and other visitors Thanet welcomes each year).

68. This is tantamount to imposing a *contra mundum* restriction using a definition that Parliament intended to apply to an *in personam* context, and with no counter-balance of judicial restraint.

69. It is not open to a local authority to exceed the powers given to it by Parliament, and therefore further or alternatively this overreach is *ultra vires*.

Ground 2c: The Order is disproportionate

70. In assessing the proportionality of the Order, a court would consider the questions laid out in *Bank Mellat v Her Majesty's Treasure* [2013] UKSC 38:

    a. is the objective of the measure sufficiently important to justify the limitation of a protected right;

    b. is the measure rationally connected to the objective;

    c. could a less intrusive measure have been used without unacceptably compromising the achievement of the objective; and

    d. whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, the former outweighs the latter.

71. As noted in *Tossici-Bolt & Anor v Bournemouth, Christchurch and Poole Council* [2023] EWHC 3229 (Admin), where a Court is reviewing the proportionality (or otherwise) of an order as it relates to a Convention right, the Court has to form its own judgment on the extent of any interference with those rights and whether such interference is justified, as opposed to merely considering whether the local authority reached its decision by a proper process. This therefore goes beyond the *Wednesbury* grounds laid out above.

72. On any assessment of the Council's likely objective, the Order is disproportionate. If the Council's objective is to restrain general verbal abuse and harassment, then the Order falls foul of limbs three and four of the proportionality test, at least. It is plainly possible to restrict harassment without resorting to the strict liability standard, and without resorting to censorship of innocuous speech that offends the hyper-sensitive. Case law from both the European Court of Human Rights and UK domestic courts has made clear that freedom of expression includes the freedom to offend, shock or disturb; and that '[b]ehaviour which is an affront to other people, or is disrespectful or contemptuous of them, is not prohibited': *Percy v DPP* [2001] EWHC (Admin) 1125. This clearly puts Prohibition VII well beyond what the courts have found to be acceptable curtailment of speech rights.

73. The effect of the interference with free expression is also disproportionate to the purpose it serves. The Order restricts not just gratuitously abusive speech but any speech that has a certain effect, including speech that merits high protection under Article 10 – e.g. political debate, manifestation of religious and philosophical beliefs, and cultural expression.

74. If, on the other hand, the objective of the Order is to restrict anti-social behaviour in town centres, then it must fall foul of at least the second and third limbs of the proportionality test.

75. The geographical scope of the Order also falls foul of the second and third limbs of the proportionality test. It is not reasonable to order a prior restraint on what would otherwise be lawful free speech across the vast majority of the District's population simply because it might hypothetically arise in a new area due to a displacement effect. Page 69 of the statutory

guidance proposes proportionate means for dealing with 'displacement' effects. Less onerous measures are clearly viable – for instance, banning disorderly conduct in hot-spot areas based on police reporting, or only at times of day when it is particularly prevalent.

76. Further, no evidence has been provided that displacement has occurred subsequent to the previous Orders being in place. Indeed, it was specifically noted as part of the decision-making behind the original 2018 ASB PSPO that displacement would be unlikely, given that the behaviour being targeted arose due to characteristic features of town centres.

77. For all of these reasons, the Order is disproportionate and therefore incompatible with the Convention.

Ground 3: The Order is unreasonable

78. The terms of the Order are vague, incoherent, unfathomably broad, and in places so imprecise as to defy understanding. No reasonable person could propose to impose criminal sanctions on members of the public on the basis of such a document.

Ground 3a: The Order is Wednesbury irrational

79. The relevant *Wednesbury* standard to be applied in this particular instance, given the effect of the Order on the rights to freedom of expression and assembly, is towards that of 'anxious scrutiny', following the approach of Lord Mance in *Kennedy v Charity Commission* [2015] AC 455 at para 91. It was irrational for the Council to conclude that the interference with these freedoms was justifiable: *R v Secretary of State for the Home Department, ex parte Brind* [1991] 1 AC 696, at p.751.

80. The wording of the Order prohibits a vast and inscrutable range of activities. Whether something falls within the scope of the Order is in many cases entirely subjective, for example whether or not an utterance is 'pejorative'. In other cases it purports to regulate things which are arguably beyond the reach of the law, for example a 'loss of respect', which is a state of mind rather than an activity. An instrument imposing criminal liability on such a basis is plainly unreasonable.

81. The geographic scope also inexorably leads the Council into a position which is absurd. To make a PSPO, a council must be satisfied of the existence of detrimental activities that either are or are likely to be carried in a public place. They may then implement restrictions *in that public place* (section 59(4)) to prohibit those activities. The 'public place' in the Order is the entirety of the coastal conurbation. This means the Council must be satisfied that the full gamut of activities mentioned is taking place, or is likely to take place, throughout the entire area, which is highly implausible.

82. The Order's broad scope (both geographical and in terms of what it prohibits) means that there must be an extraordinary level of justification for the concomitant interference with fundamental rights. We suggest that there can be no conceivable justification for the extent of this interference: *ex parte Brind*.

83. Overall the effect of the Order is 'using a sledgehammer to crack a nut'. For the Council to use, or purport to use, its powers in this way, with the effect of interfering with basic rights and freedoms, would defy logic and contravene accepted moral standards: *Council of Civil Service Unions v. Minister for the Civil Service* [1985] A.C. 374, 410.

Ground 3b: The Order is not rationally connected to a legitimate objective

84. Further or alternatively, for the above reasons the Order is not rationally connected to any legitimate objective and is therefore disproportionate under *Bank Mellat*.

Reserve grounds

85. The Claimant reserves the right to expand on the grounds set out above following provision of the information and documentation sought below.

Standing

86. The FSU is a non-partisan, mass membership public interest body that stands up for the speech rights of its members and campaigns for free speech more widely. The FSU champions the right of people from all walks of life to express themselves without fear of punishment or persecution.

87. This claim is a public interest challenge to the lawfulness of a local authority's activities which have a significant impact on the Convention rights of residents and visitors within the Council's area. There is a strong public interest in ensuring compliance with statutory and common law constraints on the exercise of powers granted to local authorities, particularly when these create criminal liability and engage fundamental rights and freedoms. The FSU has sufficient interest in the principles at stake in accordance with the ordinary principles of standing for the bringing of such a claim.

88. While the Act restricts both the terms on which a challenge may be brought under section 66, and ousts judicial review for 'interested persons', it does not oust more general judicial review claims for groups or individuals who do not fall within the section 66 definition. This is supported by paragraph 181 of the Explanatory Notes to the Act, which note that judicial review claims may be brought by national bodies in the usual way (i.e. the procedure at CPR 54).

89. As noted above, the FSU is also ready to support a claim brought by an 'interested person' under section 66.

Actions defendant is expected to take

90. Were the claim to proceed, the Claimant would seek a declaration that the PSPO is unlawful for the reasons set out above, and an order quashing the decision, as well for costs. To avoid the prospect of this claim proceeding to litigation, we therefore invite the Defendant to take the following steps:

    a. agree that the PSPO in its current form is unlawful; and

    b. immediately commence the necessary action to discharge the PSPO.

91. Given that the manifold deficiencies with the PSPO mean that there is a risk of innocent individuals being subject to criminal sanctions, and that the PSPO constitutes an unjust and immediate interference with Convention rights, we believe there is a strong basis for seeking an interim order, preventing the PSPO from being enforced while the matter is being litigated. To avoid the additional cost of such an action for both sides, and the risk to the Council of further litigation should sanctions be issued on the basis of an illegitimate order, we therefore invite the Council to provide an open undertaking that the PSPO will not be enforced while this dispute is ongoing.

ADR proposals

92. The FSU would give careful consideration to any genuine proposal for ADR that the Council wishes to make, however we are of the preliminary view that this matter is not suitable for ADR.

The details of any information sought under the duty of candour

93. For *each* of the prohibitions in the PSPO, please clarify:
    a. what specific detrimental effect(s) it pertains to, in the sense of section 59(5);
    b. the specific locations in which that detrimental effect occurs;
    c. what specific activities are carried on, or are likely to be carried on, that have that detrimental effect (section 59(2)), and where on the Order these activities are identified;
    d. on what grounds the Council is satisfied that those activities are, or are likely to be, persistent and unreasonable (section 59(3)); and
    e. how the terms of the prohibition (including its geographic scope) relate to the activities and are reasonable to prevent or reduce that detrimental effect;
94. We consider that as the above information was required for the Council to make a PSPO anyway, it will be readily available and the provision of full details should not be unduly burdensome.
95. In terms of the particular regard that the Council has had to Convention rights per section 72(1), please explain:
    a. at what juncture(s) this was had, in what way, and by whom; and
    b. what determinations the Council made in terms of each prohibition contained within the Order and its effect on Convention rights, including the factors that it took into account.
96. Regarding the consultation process, please explain whether or not the response of the FSU was taken into consideration and by whom, and provide an explanation of why no mention of it was made in reporting the results of the consultation to either the Overview and Scrutiny Panel or to Cabinet (as the decision-makers). Please also provide an explanation of why the Council did not consult on the new terms of the Order.
97. Regarding the obligation under section 72(4)(c) to consult with owners or occupiers of land within the restricted area, please explain whether the Council made any positive efforts to consult them beyond the general public consultation, both during the initial consultation process and subsequent to the revisions to the draft Order.
98. Please explain what training authorised officers have had with regards to Convention rights, specifically as it pertains to contentious speech and protest, and provide copies of any training materials and policies for enforcement.
99. Please clarify the terms on which the Chief Executive will exercise his powers to carry out 'minor amendments' and extensions to the Order, as well as the definition of 'minor amendment' and where this may be found.

Documents requested that are relevant and necessary

100. We request copies of the following:

a. Any documentation in support of each answer given to the information sought at paragraphs 93 to 99 above;

b. The 'strategic plan' that was described at the Cabinet meeting on 25 July as providing an evidential basis for the Order;

c. The Council's Violence Against Women and Girls strategy;

d. Regarding the Cabinet report for the meeting on 25 July:

i. The evidence of the impact of original and subsequent orders relied on in paragraph 2.3;

ii. Details (including volume, nature and location) of the continuing complaints referred to in paragraph 2.4; and

iii. Evidence of effectiveness referred to in paragraph 3.5;

e. The results of the consultation with the chief of police, local policing body, any community representatives and anyone else consulted;

f. Any written consultation responses (i.e. not from the survey and already contained in the Cabinet report), other than that of the FSU;

g. Evidence of notification of the following bodies, including the date such notification was made:

i. The town and parish councils within the Restricted Area; and

ii. Kent County Council

h. Minutes of all meetings, both public and internal, where the Order was discussed;

i. Any documentation (emails, minutes, memoranda, etc) demonstrating the regard that was had for Convention rights; and

j. Relating to the 2021-24 ASB PSPO, a copy of all documents pertaining to the decision to extend the Order, including the results of the consultation conducted under section 72(3)(b).

Proposed reply date

101. We consider that there is an immediate potential for injustice from the moment the Order comes into force, and therefore request a reply under the pre-action protocol promptly, and certainly within 14 days, i.e. by **4 pm on 14 August 2024**, save that in respect of the undertaking requested at paragraph 91 above, we request that the Council replies to set out its position preferably by return, or in any event before the implementation date of 3 August 2024.

Yours sincerely,

THE FREE SPEECH UNION

Annexes:

Cabinet decision 25 July 2024

2024-25 Anti-social Behaviour and Alcohol Public Spaces Protection Order

Ref:	Called in	Yes/No

THE THANET DISTRICT COUNCIL

RECORD OF DECISION OF CABINET

Cabinet Member	Councillor Heather Keen
Relevant Portfolio:	Cabinet Member for Community
Date of Decision:	25 July 2024
Subject:	Anti-social Behaviour and Alcohol PSPO

Key Decision	Yes	In Forward Plan	Yes

Brief summary of matter:

The purpose of this report is to recommend that the Council exercises its powers as contained within the Anti Social Behaviour Crime & Policing Act 2014 to introduce a combined ASB/Alcohol PSPO for the period of three years.

Decision made:

Cabinet agreed:

1. That the two current PSPOs be combined and adopted for the period of one year to cover Thanet main towns (Margate, Birchington, Ramsgate, Broadstairs) (as reflected in the updated PSPO document attached);

2. To delegate any minor amendments and extensions of the PSPO to the Chief Executive.

Reasons for decision:

PSPOs are a valuable tool to allow councils and partners to tackle behaviours that can have a detrimental effect on the quality of life of those in the locality. The Thanet ASB and Alcohol PSPOs have been in place for approx 7 years and are an important aspect in maintaining quality of life to Thanet residents and visitors. To effectively manage the PSPO and enforcement action taken for anti-social behaviour and alcohol related negative behaviour, a combined PSPO to encompass the district of Thanet is the most effective enforcement tool to the council and relevant partners.

Alternatives considered and why rejected:

- To amend the recommendations and then approve them. This alternative was not considered suitable as the restriction of activities is proportionate to the issues presented;
- To reject the proposed order and recommendations. This alternative was not considered suitable as the application for the order meets the legal and consultative requirements.

Details of any conflict of interest declared by any executive Member who has been consulted and of any dispensation granted by the Standards Committee:

None

Author of Officer report:

Penny Button, Head of Neighbourhoods

Background papers

UPDATED PSPO 2024-2025 - Google Docs PSPO Cabinet Report 2024 - Google Docs Annex 1 - Draft PSPO 2024-2027 - Google Docs Annex 2 - Summary and Analysis of Survey Data - Google Docs Annex 3 - ASB_Alcohol PSPO Community Equality Impact Assessment - Google Docs

Statement if decision is an urgent one and therefore not subject to call-in:

None

Last date for call in:	2 August 2024

Thanet District Council

Anti-Social Behaviour, Crime and Policing Act 2014

Public Spaces Protection Orders (Thanet District Council)

2024 -2025

Thanet District Council (in this order called ‘’the Authority‘’) hereby makes the following Order;

Under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, the authority is satisfied that the activities set out in this order are being and have been carried out within the area to which this order applies. The Council’s evidence suggests that is likely that these activities will continue to be carried out and that this will have or it is likely to have a detrimental effect on the quality of life of those in the local community

This order relates to Margate, Birchington, Ramsgate and Broadstairs. This order relates to the land inside the area marked on the attached maps (Schedule 1) which is outlined in blue (‘the Restricted Area’). This includes all spaces within this boundary that are accessible to the public.

This Order comes into force on 31st July 2024 for a period of one year.

1. Offences

The activities which are prohibited by this order within the designated areas are set out below:

I. Anti-Social group congregation

All persons are prohibited from congregating as part of a group of 2 or more and being abusive, alarming, threatening, insulting, intimidating, harassing, distressing or otherwise causing a disturbance to other members of the public, for such duration as specified when directed not to do so by an authorised officer.

II. Misuse of public space

All persons are prohibited from using any public space, facility or installation otherwise in accordance with its intended use, or when directed not to do so by an authorised officer on the grounds that the use or behaviour is causing or is likely to cause harassment alarm or distress to others.

III. Using foul or abusive language

All persons are prohibited from using foul or abusive language in such a manner that is loud and can be heard by others and cause either alarm or distress to any other person in any public place.

IV. Excreting bodily fluids

All persons are prohibited from excreting bodily fluids in a public space. This includes; urinating, defecating or spitting in any public place that is not a specified toilet facility.

V. Alcohol

All persons are prohibited from consuming alcohol and behaving in a manner so as to cause nuisance, harassment, alarm or distress to another person or people.

No person, without reasonable excuse shall refuse to stop drinking alcohol or surrender any container (sealed or unsealed) which are believed to contain alcohol, when required to do so by a Authorised Person on the grounds that they are intoxicated and their behaviour is causing a nuisance, harassment, alarm or distress to another person or people.

VI. Use of Legal Psychoactive Substances & intoxicants

All persons are prohibited from the consumption of legal Psychoactive Substances (drugs made to mimic the effects of illegal substances) and behaving in a manner which is likely to cause nuisance, harassment, alarm or distress to another person. This restriction applies to glue and aerosol misuse.

VII. Inappropriate harmful and degrading related activity

All persons are prohibited from being abusive to any person or people and behaving in a way which is or is likely to be humiliating or degrading to another person or people.

All persons are prohibited from using language or behaviour causing or likely to cause harassment, alarm or distress to any other person. This includes comments and behaviour, being cruel, pejorative, or of a demeaning nature that results in a loss of dignity or respect for women and girls within the identified zone (schedule 1).

2. Offences under this Public Space Protection Order

Any person who, without reasonable excuse fails to comply with the terms of this Order is guilty of an offence under Section 67 of the Anti-Social Behaviour, Crime and Policing Act 2014 and shall be liable on summary conviction to a fine.

An authorised person may issue a Fixed Penalty Notice to anyone they have reason to believe has committed an offence under this Order in accordance with Section 68 of the Anti-social Behaviour, Crime and Policing Act 2014.

The penalty is set at £100.00 to be paid within 28 days but is reduced to £60.00 if paid within 14 days.

In exercising powers under this order, all authorised persons will have regard to the relevant sections of the Human Rights Act including the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the convention.

Length of Order: this Order shall have effect for a period of one year.

Designated Area

This order applies to the following towns within Thanet District; Margate, Birchington, Ramsgate, Broadstairs, which is described in schedule 1 ("The Restricted Area), i.e. all public spaces within the designated area, as set out on the Order Plan and which is shown shaded pink on the attached plan ("the Order plan").
Length of Order: this Order shall have effect for a period of one year until 30th July 2025.

Schedule 1


Reculver
Westgate-on-Sea
Birchington-on-Sea
Brooksend
Acol
Saint Nicholas-at-Wade
Spitfire & Hurricane Memorial Museum
Manston International Airport
Manston
St Peters
Broadstairs
Ramsgate
Goore Street
Monkton
Minster
Cliffsend
Plucks Gutter
Ebbsfleet
Westmarsh

Ministry of Justice

Pre-Action Protocol for Judicial Review

Pre-Action Protocol for Judicial Review

Contents

Introduction

1. This Protocol applies to proceedings **within England and Wales only**. It does not affect the time limit specified by Rule 54.5(1) of the Civil Procedure Rules (CPR), which requires that any claim form in an application for judicial review must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose. Nor does it affect the shorter time limits specified by Rules 54.5(5) and (6), which set out that a claim form for certain planning judicial reviews must be filed within 6 weeks and the claim form for certain procurement judicial reviews must be filed within 30 days. [1]

2. This Protocol sets out a code of good practice and contains the steps which parties should generally follow before making a claim for judicial review.

3. The aims of the protocol are to enable parties to prospective claims to—

(a) understand and properly identify the issues in dispute in the proposed claim and share information and relevant documents;

(b) make informed decisions as to whether and how to proceed;

(c) try to settle the dispute without proceedings or reduce the issues in dispute;

(d) avoid unnecessary expense and keep down the costs of resolving the dispute; and

(e) support the efficient management of proceedings where litigation cannot be avoided.

4. Judicial review allows people with a sufficient interest in a decision or action by a public body to ask a judge to review the lawfulness of—

- an enactment; or
- a decision, action or failure to act in relation to the exercise of a public function. [2]

5. Judicial review should only be used where no adequate alternative remedy, such as a right of appeal, is available. Even then, judicial review may not be appropriate in every instance. Claimants are strongly advised to seek appropriate legal advice as soon as possible when considering proceedings. Although the Legal Aid Agency will not normally grant full representation before a letter before claim has been sent and the proposed defendant given a reasonable time to respond, initial funding may be available, for eligible claimants, to cover the work necessary to write this. (See Annex C for more information.)

6. This protocol will not be appropriate in very urgent cases. In this sort of case, a claim should be made immediately. Examples are where directions have been set for the claimant's removal from the UK or where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so, such as where a local housing authority fails to secure interim accommodation for a homeless claimant. A letter before claim, and a claim itself, will not stop the implementation of a disputed decision, though a proposed defendant may agree to take no action until its response letter has been provided. In other cases, the claimant may need to apply to the court for an urgent interim order. Even in very urgent cases, it is good practice to alert the defendant by telephone and to send by email (or fax) to the defendant the draft Claim Form which the claimant intends to issue. A claimant is also normally required to notify a defendant when an interim order is being sought.

7. All claimants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of the case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it in good time before proceedings are issued and will take into account compliance or non-compliance when giving directions for case management of proceedings or when making orders for costs. [3]

8. The Upper Tribunal Immigration and Asylum Chamber (UTIAC) has jurisdiction in respect of judicial review proceedings in relation to most immigration decisions. [4] The President of UTIAC has issued a Practice Statement to the effect that, in judicial review proceedings in UTIAC, the parties will be expected to follow this protocol, where appropriate, as they would for proceedings in the High Court.

Alternative Dispute Resolution

9. The courts take the view that litigation should be a last resort. The parties should consider whether some form of alternative dispute resolution ('ADR') or complaints procedure would be more suitable than litigation, and if so, endeavour to agree which to adopt. Both the claimant and defendant may be required by the court to provide evidence that alternative means of resolving their dispute were considered. Parties are warned that if the protocol is not followed (including this paragraph) then the court must have regard to such conduct when determining costs. However, parties should also note that a claim for judicial review should comply with the time limits set out in the Introduction above. Exploring ADR may not excuse failure to comply with the time limits. If it is appropriate to issue a claim to ensure compliance with a time limit, but the parties agree there should be a stay of proceedings to explore settlement or narrowing the issues in dispute, a joint application for appropriate directions can be made to the court.

10. It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation which may be appropriate, depending on the circumstances—

- Discussion and negotiation.
- Using relevant public authority complaints or review procedures.
- Ombudsmen – the Parliamentary and Health Service and the Local Government Ombudsmen have discretion to deal with complaints relating to maladministration. The British and Irish Ombudsman Association provide information about Ombudsman schemes and other complaint handling bodies and this is available from their website at www.bioa.org.uk. Parties may wish to note that the Ombudsmen are not able to look into a complaint once court action has been commenced.
- Mediation – a form of facilitated negotiation assisted by an independent neutral party.

11. The Civil Justice Council and Judicial College have endorsed The Jackson ADR Handbook by Susan Blake, Julie Browne and Stuart Sime (2013, Oxford University Press). The Citizens Advice Bureaux website also provides information about ADR.

Information is also available at: https://www.gov.uk/guidance/a-guide-to-civil-mediation

12. If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. A party's silence in response to an invitation to participate in ADR or refusal to participate in ADR might be considered unreasonable by the court and could lead

to the court ordering that party to pay additional court costs.

Requests for information and documents at the pre-action stage

13. Requests for information and documents made at the pre-action stage should be proportionate and should be limited to what is properly necessary for the claimant to understand why the challenged decision has been taken and/or to present the claim in a manner that will properly identify the issues. The defendant should comply with any request which meets these requirements unless there is good reason for it not to do so. Where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose costs sanctions.

The letter before claim

14. In good time before making a claim, the claimant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether they can be narrowed or litigation can be avoided.

15. Claimants should normally use the suggested standard format for the letter outlined at Annex A. For Immigration, Nationality and Asylum cases, the Home Office has a standardised form which can be used. It can be found online at: https://www.gov.uk/government/publications/chapter-27-judicial-review-guidance-part-1

16. The letter should contain the date and details of the decision, act or omission being challenged, a clear summary of the facts and the legal basis for the claim. It should also contain the details of any information that the claimant is seeking and an explanation of why this is considered relevant. If the claim is considered to be an Aarhus Convention claim (see Rules 45.41 to 45.44 and Practice Direction 45), the letter should state this clearly and explain the reasons, since specific rules as to costs apply to such claims. If the claim is considered appropriate for allocation to the Planning Court and/or for classification as “significant” within that court, the letter should state this clearly and explain the reasons.

17. The letter should normally contain the details of any person known to the claimant who is an Interested Party. An Interested Party is any person directly affected by the claim. [5] They should be sent a copy of the letter before claim for information. Claimants are strongly advised to seek appropriate legal advice when considering proceedings which involve an Interested Party and, in particular, before sending the letter before claim to an Interested Party or making a claim.

18. A claim should not normally be made until the proposed reply date given in the letter before the claim has passed, unless the circumstances of the case require more immediate action to be taken. The claimant should send the letter before claim in good time so as to enable a response which can then be taken into account before the time limit for issuing the claim expires, unless there are good reasons why this is not possible.

19. Any claimant intending to ask for a protective costs order (an order that the claimant will not be liable for the costs of the defendant or any other party or to limit such liability) should explain the reasons for making the request, including an explanation of the limit of the financial resources available to the claimant in making the claim.

The letter of response

20. Defendants should normally respond within 14 days using the standard format at Annex B. Failure to do so will be taken into account by the court and sanctions may be imposed unless there are good reasons. [6] Where the claimant is a litigant in person, the defendant should enclose a copy of this Protocol with its letter.

21. Where it is not possible to reply within the proposed time limit, the defendant should send an interim reply and propose a reasonable extension, giving a date by which the defendant expects to respond substantively. Where an extension is sought, reasons should be given and, where required, additional information requested. This will not affect the time limit for making a claim for judicial review [7] nor will it bind the claimant where he or she considers this to be unreasonable. However, where the court considers that a subsequent claim is made prematurely it may impose sanctions.

22. If the claim is being conceded in full, the reply should say so in clear and unambiguous terms.

23. If the claim is being conceded in part or not being conceded at all, the reply should say so

in clear and unambiguous terms, and—

(a) where appropriate, contain a new decision, clearly identifying what aspects of the claim are being conceded and what are not, or, give a clear timescale within which the new decision will be issued;

(b) provide a fuller explanation for the decision, if considered appropriate to do so;

(c) address any points of dispute, or explain why they cannot be addressed;

(d) enclose any relevant documentation requested by the claimant, or explain why the documents are not being enclosed;

(e) where documents cannot be provided within the time scales required, then give a clear timescale for provision. The claimant should avoid making any formal application for the provision of documentation/information during this period unless there are good grounds to show that the timescale proposed is unreasonable;

(f) where appropriate, confirm whether or not they will oppose any application for an interim remedy; and

(g) if the claimant has stated an intention to ask for a protective costs order, the defendant's response to this should be explained.

If the letter before claim has stated that the claim is an Aarhus Convention claim but the defendant does not accept this, the reply should state this clearly and explain the reasons. If the letter before claim has stated that the claim is suitable for the Planning Court and/or categorisation as "significant" within that court but the defendant does not accept this, the reply should state this clearly and explain the reasons.

24. The response should be sent to all Interested Parties [8] identified by the claimant and contain details of any other persons who the defendant considers are Interested Parties.

ANNEX A

Letter before claim

Section 1. Information required in a letter before claim

1 Proposed claim for judicial review
To
(Insert the name and address of the proposed defendant – see details in section 2.)

2 The claimant
(Insert the title, first and last name and the address of the claimant.)

3 The defendant's reference details (When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available, therefore it is important to set out the relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute – see details in section 3.)

4 The details of the claimants' legal advisers, if any, dealing with this claim
(Set out the name, address and reference details of any legal advisers dealing with the claim.)

5 The details of the matter being challenged
(Set out clearly the matter being challenged, particularly if there has been more than one decision.)

6 The details of any Interested Parties
(Set out the details of any Interested Parties and confirm that they have been sent a copy of this letter.)

7 The issue
(Set out a brief summary of the facts and relevant legal principles, the date and details of the decision, or act or omission being challenged, and why it is contended to be wrong.)

8 The details of the action that the defendant is expected to take
(Set out the details of the remedy sought, including whether a review or any interim remedy are being requested.)

9 ADR proposals
(Set out any proposals the claimant is making to resolve or narrow the dispute by ADR.)

10 The details of any information sought
(Set out the details of any information that is sought which is related to identifiable issues in dispute so as to enable the parties to resolve or reduce those issues. This may include a request for a fuller explanation of the reasons for the decision that is being challenged.)

11 The details of any documents that are considered relevant and necessary
(Set out the details of any documentation or policy in respect of which the disclosure is sought and explain why these are relevant.)

12 The address for reply and service of court documents
(Insert the address for the reply.)

13 Proposed reply date
(The precise time will depend upon the circumstances of the individual case. However, although a shorter or longer time may be appropriate in a particular case, 14 days is a reasonable time to allow in most circumstances.)

Section 2. Address for sending the letter before claim

Public bodies have requested that, for certain types of cases, in order to ensure a prompt response, letters before claim should be sent to specific addresses.

- Where the claim concerns a decision in an Immigration, Asylum or Nationality case (including in relation to an immigration decision taken abroad by an Entry Clearance Officer)— The claim should be sent electronically to the following Home Office email address: UKVIPAP@homeoffice.gsi.gov.uk

Alternatively the claim may be sent by post to the following Home Office postal address:

Litigation Allocation Unit
6, New Square
Bedfont Lakes
Feltham, Middlesex
TW14 8HA

The Home Office has a standardised form which claimants may find helpful to use for communications with the Home Office in Immigration, Asylum or Nationality cases pursuant to this Protocol, to assist claimants to include all relevant information and to promote speedier review and response by the Home Office. The Home Office form may be filled out in electronic or hard copy format. It can be found online at:
https://www.gov.uk/government/publications/chapter-27-judicial-review-guidance-part-1

- Where the claim concerns a decision by the Legal Aid Agency—
  The address on the decision letter/notification;
  Legal Director
  Corporate Legal Team
  Legal Aid Agency
  102 Petty France
  London SW1H 9AJ
- Where the claim concerns a decision by a local authority—
  The address on the decision letter/notification; and
  their legal department [9]
- Where the claim concerns a decision by a department or body for whom the Treasury Solicitor acts and the Treasury Solicitor has already been involved in the case, a copy should also be sent, quoting the Treasury Solicitor's reference, to—
  The Treasury Solicitor,
  102 Petty France,
  Westminster,
  London SW1H 9GL
- Where the claim concerns a decision by Her Majesty's Revenue and Customs—
  the address on the letter notifying the decision; and
  General Counsel and Solicitor to Her Majesty's Revenue and Customs,
  HM Revenue and Customs,
  14 Westfield Avenue,
  Stratford,
  London E20 1HZ
- In all other circumstances, the letter should be sent to the address on the letter notifying

the decision.

Section 3. Specific reference details required

Public bodies have requested that the following information should be provided, if at all possible, in order to ensure prompt response. Where the claim concerns an Immigration, Asylum or Nationality case, dependent upon the nature of the case—

- The Home Office reference number;
- The Port reference number;
- The Asylum and Immigration Tribunal reference number;
- The National Asylum Support Service reference number; or, if these are unavailable:
- The full name, nationality and date of birth of the claimant.

Where the claim concerns a decision by the Legal Aid Agency—

- The certificate reference number.

ANNEX B

Response to a letter before claim

Information required in a response to a letter before claim

1 The claimant
(Insert the title, first and last names and the address to which any reply should be sent.)

2 From
(Insert the name and address of the defendant.)

3 Reference details
(Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue.)

4 The details of the matter being challenged
(Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate.)

5 Response to the proposed claim
(Set out whether the issue in question is conceded in part, or in full, or will be contested. Where an interim reply is being sent and there is a realistic prospect of settlement, details should be included. If the claimant is a litigant in person, a copy of the Pre-Action Protocol should be enclosed with the letter.)

6 Details of any other Interested Parties
(Identify any other parties who you consider have an interest who have not already been sent a letter by the claimant.)

7 ADR proposals
(Set out the defendant's position on any ADR proposals made in the letter before claim and any ADR proposals by the defendant.)

8 Response to requests for information and documents
(Set out the defendant's answer to the requests made in the letter before claim including reasons why any requested information or documents are not being disclosed.)

9 Address for further correspondence and service of court documents
(Set out the address for any future correspondence on this matter)

ANNEX C

Notes on public funding for legal costs in judicial review

Public funding for legal costs in judicial review is available from legal professionals and advice agencies which have contracts with the Legal Aid Agency. Funding may be provided for—

- Legal Help to provide initial advice and assistance with any legal problem; or
- Legal Representation to allow you to be represented in court if you are taking or defending court proceedings. This is available in two forms—

Investigative Help is limited to funding to investigate the strength of the proposed claim. It includes the issue and conduct of proceedings only so far as is necessary to obtain disclosure

of relevant information or to protect the client's position in relation to any urgent hearing or time limit for the issue of proceedings. This includes the work necessary to write a letter before claim to the body potentially under challenge, setting out the grounds of challenge, and giving that body a reasonable opportunity, typically 14 days, in which to respond.

Full Representation is provided to represent you in legal proceedings and includes litigation services, advocacy services, and all such help as is usually given by a person providing representation in proceedings, including steps preliminary or incidental to proceedings, and/or arriving at or giving effect to a compromise to avoid or bring to an end any proceedings. Except in emergency cases, a proper letter before claim must be sent and the other side must be given an opportunity to respond before Full Representation is granted.

Further information on the type(s) of help available and the criteria for receiving that help may be found in the Legal Aid Agency's pages on the Ministry of Justice website at: https://www.justice.gov.uk/legal-aid

A list of contracted firms and Advice Agencies may be found at: http://find-legal-advice.justice.gov.uk"

Footnotes

1. The court has a discretion to extend time. It cannot be taken that compliance with the protocol will of itself be sufficient to excuse delay or justify an extension of time, but it may be a relevant factor. Under rule 54.5(2), judicial review time limits cannot be extended by agreement between the parties. However, a court will take account of a party's agreement 'not to take a time point' so far as concerns delay while they were responding to a letter before claim. Return to footnote 1

2. Civil Procedure Rules, Rule 54.1(2). Return to footnote 2

3. Civil Procedure Rules, Practice Directions 44-48. Return to footnote 3

4. See the Direction made by the Lord Chief Justice dated 21 August 2013 (as amended on 17 October 2014), available in the UTIAC section of the www. justice.gov.uk website. Also, the High Court can order the transfer of judicial review proceedings to the UTIAC. Return to footnote 4

5. See Civil Procedure Rules, Rule 54.1(2). Return to footnote 5

6. See Civil Procedure Rules, Practice Direction – Pre-Action Conduct and Protocols, paragraphs 2-3. Return to footnote 6

7. See Civil Procedure Rules, Rule 54.5(1). Return to footnote 7

8. See Civil Procedure Rules, Rule 54.1(2)(f). Return to footnote 8

9. The relevant address should be available from a range of sources such as the Phone Book; Business and Services Directory, Thomson's Local Directory, CAB, etc. Return to footnote 9

To the top

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