

## **Public spaces protection orders and the policing of sub-criminal behaviour**

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## **Article Title**

Public Spaces Protection Orders and the policing of sub-criminal behaviour

## **Abstract**

Public Spaces Protection Orders (PSPOs) are civil powers used to regulate anti-social behaviour in England and Wales. Since their introduction in 2014, concerns have persisted about their disproportionate application against vulnerable populations, particularly people experiencing street homelessness. Drawing on qualitative interviews with practitioners, this article draws on procedural justice and responsive regulation theories to examine how statutorily designated policing bodies enforce PSPOs. The findings reveal that while policing bodies portray enforcement as incremental and fair, this framing serves to legitimise inconsistent application, discriminatory targeting, and the use of punitive sanctions. In doing so, this article contributes to the growing literature on PSPOs and has relevance to wider debates about how municipalities utilise a variety of tools to govern public spaces.

## **Keywords**

anti-social behaviour, public spaces protection orders, procedural justice theory, process-based model, compliance, responsive regulation

## **1 Introduction**

Public Spaces Protection Orders (PSPOs) are powers used to regulate anti-social behaviour (ASB) in England and Wales. Introduced by the Conservative-Liberal Democrat Coalition government through the Anti-Social Behaviour, Crime and Policing Act 2014, they are a contemporary example of what Simester and von Hirsch (2006: 147) termed “two-step prohibitions”, being civil in nature but carrying a criminal offence for breach (Ashworth and Zedner, 2014).

Since their creation, most academic commentary on PSPOs has focused on the potential for their enforcement to disproportionately criminalise the presence and conduct of several marginalised groups, particularly people experiencing street homelessness (Brown, 2020a; Heap *et al.*, 2022; JUSTICE, 2023; Roberts and Archer, 2022). However, less attention has been paid to the discretionary decision-making processes through which front-line

practitioners operationalise these powers, a gap made more urgent by the absence of central government oversight (Heap and Dickinson, 2018).<sup>1</sup>

This article addresses that gap by examining how local authorities and police forces construct and justify the enforcement of PSPOs as proportionate and legitimate. Drawing on procedural justice theory (Tyler, 2006) and responsive regulation (Ayres and Braithwaite, 1992), it explores how claims of fairness and incremental enforcement are used to legitimise practices that may be inconsistent, exclusionary, or punitive. Understanding how these powers are applied is crucial for assessing their fairness and for interrogating broader trends in the discretionary governance of public space.

## **2 Public Spaces Protection Orders**

Section 2(1)(a) of the Anti-Social Behaviour, Crime and Policing Act 2014 defines ASB as “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”. This vague and subjective definition enables a broad and inconsistent interpretation of ASB, encompassing behaviours ranging from noise complaints (GOV.uk, n.d.) to graffiti, littering, and congregations of young people. Since ASB was first criminalised in the Crime and Disorder Act 1998, it has remained a political and policing priority, with the police recording one million incidents in the year ending September 2024 (Office for National Statistics, 2025). In turn, successive governments have developed an arsenal of powers to address ASB, most prominently the Anti-Social Behaviour Order,<sup>2</sup> which Brown (2020b: 92) characterised as a “zeitgeist punishment” for permeating the public’s consciousness and being subjected to routine academic critique. Emerging from the Coalition government’s 2014 overhaul of ASB powers, PSPOs have received comparatively little critical or public attention, despite their discretionary breadth and punitive consequences.

Local authorities can introduce PSPOs when they are satisfied that ASB in public spaces has caused, or is likely to cause, a “detrimental effect on the quality of life of those in the locality” (section 59(2)(a)). Alongside the Anti-Social Behaviour, Crime and Policing Act 2014, the primary official documents intended to guide practitioners are the Home Office (2023) ASB statutory guidance<sup>3</sup> and the Local Government Association (2018) PSPO guidance. However, both offer recommendations rather than exhaustive directives and leave many scenarios unaddressed. This lack of specificity is intentional: case law (*Dulgheriu & Orthova v Ealing LBC* [2018] EWHC 1667) has affirmed that the structure of the Anti-Social Behaviour, Crime and Policing Act 2014 grants local authorities broad discretion in implementation. Also limited are legal challenges to PSPOs, as individuals affected by an order have only six weeks to bring a case before the High Court (sections 66(1)–(3)).

Crucially, PSPOs blur the line between criminal and non-criminal behaviour, allowing local authorities to prohibit or require conduct that would not otherwise meet the legal threshold for sanction (JUSTICE, 2023). This flexibility has facilitated the regulation of behaviours associated with several marginalised populations: young people (Ford *et al.*, 2018), Gypsy, Roma and Travellers (Patchett, 2017), ethnic minorities (Brown, 2017), and people experiencing street homelessness (Moss and Moss, 2019; Sanders and Albanese, 2017). Previous studies have focused on the latter; Brown (2020a) found that a quarter of 125 sampled local authorities had orders restricting begging, aggressive begging, rough sleeping, or loitering. The Manifesto Club<sup>4</sup> (2023) similarly discovered that 53 of 303 local authorities had prohibitions on begging, seven had bans on rough sleeping, and 22 had restrictions on loitering. Research by Heap *et al.* (2022) also presented the intensive policing that people experiencing street homelessness receive through these orders. As a result, PSPOs function as discretionary instruments through which local authorities have sought to regulate the conduct of vulnerable individuals in public spaces.

Enforcement practices further complicate these concerns. Sections 68(11) and 69 enable a broad range of practitioners to function as ‘policing bodies’ and enforce PSPOs. This includes local authority employees, police officers, and third-party enforcement officers (employed as local authority employees or as private companies). Breaching a PSPO is a criminal offence that carries two punishments: either an on-the-spot fixed-penalty notice (FPN) of up to £100,<sup>5</sup> or a fine of up to £1,000 on summary conviction. Reports by the Manifesto Club (2022; 2023) have documented a steady increase in FPN issuance and the emergence of ‘Fining for Profit’ practices. Alongside formal sanctions, the use of informal mechanisms such as verbal warnings (Brown, 2020a; Ford *et al.*, 2018) and spatial displacement (Heap *et al.*, 2022) lacks statutory accountability. Similar concerns have also been raised regarding the enforcement of Community Protection Notices<sup>6</sup> (CPNs), where the combination of discretionary legislation and insufficient central oversight has led to variable enforcement practices (Black and Heap, 2022; Heap *et al.*, 2023a; 2023b).

## 2.1 Public Spaces Protection Orders, byelaws, and ordinances

PSPOs share some characteristics with traditional regulatory tools like byelaws, but they differ significantly in scope, flexibility, and accountability (Brown, 2017). In England, byelaws<sup>7</sup> require approval from the Secretary of State and cannot duplicate existing criminal or civil law. A single council officer can enact a PSPO, by contrast (Manifesto Club, 2016) and can regulate conduct that is already criminalised and may override existing byelaws during their period of

operation. Enforcement mechanisms also differ; while byelaws necessitate court proceedings, responses to PSPO breaches primarily form on-the-spot sanctions.

Globally, PSPOs resemble byelaws, ordinances, and other similar powers that are used to regulate behaviour at a local level. Logan (2001: 1409) argues that these powers enable the functioning of a “Shadow Criminal Law”, especially where local governments exercise punitive powers with limited oversight. Further, Martino *et al.* (2024: 305), whose Canadian study focused on ‘Bylaw Officers’ (municipal officials responsible for enforcing local regulations), revealed that enforcement of street homelessness operates within a “regulatory grey zone”, and Valverde (2005) has argued that municipality action functions as mechanisms of social control, even when framed as supportive.

What emerges is an uneven regulatory landscape, in which postcode lotteries of decision-making lead to the potentially discriminatory application of PSPOs. This article draws on empirical findings to examine how the enforcement of PSPOs, with a focus on whether policing bodies apply these powers in ways that the public perceives as fair and consistent. While grounded in England and Wales, the findings speak to broader international concerns about the discretionary use of local regulatory powers and ensuring accountability in municipalities. As such, this article contributes to wider understandings of public space governance using flexible legal instruments.

### **3 Theoretical Framework**

#### **3.1 Procedural Justice Theory**

Pioneered by Thibaut and Walker (1975), procedural justice theory examines *how* individuals comply with the law and *why* they choose to do so. It suggests that when the public perceives authority figures (the aforementioned ‘policing bodies’) as legitimate in the exercise of their power, they are more likely to self-regulate their behaviour through a normative (ethical and/or moral) obligation (Sunshine and Tyler, 2003; Tankebe and Liebling, 2014). In this context, legitimacy refers to “a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just” (Tyler, 2006: 375). Where legitimacy is present, compliance can occur even if an individual perceives the outcome of an encounter as unfair, such as receiving a fine (Hough *et al.*, 2010; Sunshine and Tyler, 2003). In practical terms, Hough (2021: 7) argues that “securing compliance with the law by deploying normative strategies is less costly, less intrusive and more effective” than instrumental (compliance driven by fear of punishment (Sunshine and Tyler, 2003)), or coercive (such as threatening arrest (Hough, 2021; Reiner, 2010)) methods.

Tyler (2003: 286) claims that the role of fairness and legitimacy in the development of compliance transpires within a 'Process-Based Model', upon which authority figures treat "community residents in ways that lead them to feel that the police and courts exercise authority in fair ways". According to Tyler (2006), four principles form the basis of this model:

- a) Voice: Suggesting that an individual should feel heard and be free to ask questions.
- b) Neutrality: Demonstrating that authority figures make decisions from objective evaluations rather than pre-existing biases.
- c) Respect: Recognising that the public often sees adversarial approaches as unjust.
- d) Trustworthiness: The belief that decisions are made in an individual's best interests.

The process-based model allows policing bodies to adapt their strategy to a given situation and foster normative compliance (Jackson *et al.*, 2012; McCluskey, 2003) through the collective application of these principles (Jonathan-Zamir *et al.*, 2015). As Tyler (2017: 30) observes, this model offers "one set of practices that authorities can engage in when they are trying to build their legitimacy; increase voluntary deference to the law; motivate compliance with rules or laws". Academics have previously used the process-based model of procedural justice theory to analyse the enforcement of Anti-Social Behaviour Orders and Acceptable Behaviour Contracts<sup>8</sup> (Crawford *et al.*, 2017), as well as CPNs (Black and Heap, 2022; Heap *et al.*, 2023b). However, its application to PSPOs remains underexplored.

This theory also incorporates a relational dimension, arguing that compliance is more likely when individuals feel included in the broader social group that authority figures represent (Tyler, 1997; Tyler and Lind, 1992). However, relationality can be limited for vulnerable groups, such as people experiencing street homelessness. Kyprianides *et al.* (2022), for instance, found that instrumental enforcement methods were often more effective in securing compliance from this group, as behaviours linked to 'survival' (e.g. begging, rough sleeping) outweighed concerns about fairness and legitimacy. Nevertheless, their research shows that building positive relationships with this population can foster inclusion and cooperation (Kyprianides and Bradford, 2024; Kyprianides *et al.*, 2021). Similarly, Madon *et al.* (2017) found that procedural justice principles can influence suggestions of legitimacy among disengaged ethnic minority groups, suggesting that relational elements continue to guide perceptions of fairness even in contexts of marginalisation.

While procedural justice theory has often centred on individuals' subjective beliefs of fairness, some argue that its assessment should prioritise the actions and behaviours of policing bodies themselves. This is because personal, cultural, and situational factors shape public perceptions, and these may not align with whether authority figures acted fairly (Tyler, 2006). Dai *et al.* (2011: 196) contend that "what is in the direct control of officers is their own behavior",

and that understanding the impact of procedural justice should occur through examining the strategies of policing bodies rather than through individual perceptions. This article, therefore, draws on two elements of Dai *et al.*'s (2011) work, quality of treatment and quality of decision-making, as analytical tools for appraising PSPO enforcement. These dimensions explore the exercise of discretion in practice and whether the enforcement of PSPOs reflects the principles of the process-based model.

### 3.2 Responsive Regulation

Responsive regulation was popularised by Ayres and Braithwaite and is most well-known through their seminal 'Enforcement Pyramid' (see figure in Ayres and Braithwaite, 1992: 35) (Mascini, 2013). Originally designed for the context of business regulation, their work posits that responses to low-level breaches of the law should begin with persuasive efforts to encourage compliance (Braithwaite, 2002), in what they call "speaking softly and carrying big sticks" (Braithwaite, 1997: 305). If that fails, they outline that policing bodies should incrementally escalate sanctions, applying the most punitive options only when necessary (Ayres and Braithwaite, 1992; Braithwaite, 2002). Doing so renders punitiveness more likely to be legitimate (Braithwaite, 2011). Aligning with notions of responsive regulation is the Home Office (2023) ASB statutory guidance, which recommends the incremental enforcement of ASB powers.

There is, however, the potential for enforcement to depart from responsive regulation. Occurring where institutional or political interests influence enforcement rather than fairness, consistency, and incrementality, Braithwaite (2008) describes such deviations as 'Regulatory Capture'. In the case of PSPOs, financial incentives (such as commissions for FPN issuance by private security firms (Manifesto Club, 2022)) and political narratives (e.g. the lasting impact of New Labour's 'tough on crime, tough on the causes of crime' slogan) embody forms of regulatory capture. They can distort enforcement priorities by driving the selective use of persuasion and creation of inconsistent, non-linear enforcement patterns, which undermine legitimacy and proportionality, and go unchecked when central government oversight is absent.

The integration of procedural justice theory and responsive regulation provides a robust theoretical framework for examining PSPO enforcement, particularly given the broad discretion afforded to policing bodies and the sub-criminal behaviour that these orders regulate. Both theories centre on how legitimacy develops through the exercise of authority: procedural justice through perceptions of fairness and inclusion, and responsive regulation through measured, proportionate escalation. By drawing on these perspectives, the theoretical

framework enables a critical examination of whether current approaches to governing ASB risk reinforcing exclusion, rather than effectively reducing its incidence.

## **4 Methodology**

This article presents data from a larger project examining how practitioners implement, enforce, and perceive the effectiveness of PSPOs (Archer, 2023). A multiple-case study research design, using semi-structured interviews, was employed to explore how this part of the Anti-Social Behaviour, Crime and Policing Act 2014 is operationalised in local contexts. As no central resources of active PSPOs exist, the sampling process began with compiling a database using information from local authority websites. After this, a shortlist was created using the following sampling criteria:

- a) PSPOs were due to be operational throughout the data collection period.
- b) Prohibitions and requirements of PSPOs targeted behaviour that is associated with vulnerable groups (e.g. begging/aggressive begging, consumption of alcohol/new psychoactive substances (NPS),<sup>9</sup> congregation of groups).
- c) At least one PSPO was active in a town/city centre or neighbourhood.
- d) The local authority was easily accessible by public transport to the researcher's institution.

Using purposive sampling, senior local authority employees were identified from shortlisted areas, and initial scoping emails were sent. Many of these individuals either did not respond or declined to participate in the research. For those who did respond, informal conversations were held to explain the rationale for this study and discuss whether snowball sampling could facilitate the recruitment of further participants.

A limitation of this research's focus is that it relies on practitioners' self-reported accounts, which reflect their constructed perceptions or 'truths', rather than objective enforcement practices. This presents a risk that participants may have omitted or downplayed actions perceived as discriminatory, as observational studies of policing culture previously note (Punch, 1979; Reiner and Newburn, 2000). Nevertheless, the findings provide valuable insight into how those responsible for enforcing PSPOs understand and articulate legitimacy and discretion, especially as no central record of enforcement practices is available to be relied upon.

The findings draw on 32 interviews across nine case study areas. The demographics of the participants constitute 20 local authority employees, eight police officers, and four elected officials, a sample that is proportionate to the involvement of these practitioners in the introduction of PSPOs. By the time of the first national coronavirus lockdown in March 2020,



20 interviews had been conducted in two substantive case study areas. Data collection was paused and resumed in August 2020 with an adapted approach, whereby telephone interviews were conducted with fewer participants in more case study areas. Whilst not generalisable, the findings provide insight into the decision-making processes of local authorities that have, to date, been under-researched.

Each interview was audio recorded and transcribed. Data analysis was undertaken using Braun and Clarke's (2006) thematic analysis framework and the data management software NVivo. Institutional ethical approval was granted and follows the British Society of Criminology's (2015) 'Statement of Ethics'. Participants are anonymised in the findings and referred to by their area and generalised role.

## **5 Findings**

### **5.1 Speaking Softly and Framing Fairness in Early Encounters**

Across all case study areas, practitioners consistently framed their enforcement approach as grounded in persuasion and attuned to responsive regulation (Ayres and Braithwaite, 1992). They emphasised informal engagement, particularly verbal warnings, as the primary responses to PSPO breaches:

There are situations, possibly out in the countryside... where people won't necessarily know the legislation applies, and it does. But my view would be, unless I've warned someone it does, I wouldn't want to issue a fine or take them to court. (Environmental Health Officer, Area 1)

Other participants described equally "kind" and "education[al]" processes which served to soften and legitimise what fundamentally eventuated into punitive action:

I'd like to think we're a kind town. We don't want to fine people. We want people to be aware of communities and others and be respectful. So, it's all about education first. We will give warnings; if that doesn't work, then you do have to come down harder and issue the FPN. (Local Councillor, Area 3)

My rule of thumb is that if they swear in front of you, then they get a warning. It's a matter of saying, "If you swear again, you are breaching the PSPO, which is active in this area of [borough]", wherever it happens to be. And if they then swear again, then I would then issue a PSPO ticket. (Police Community Support Officer, Area 2)

By assuming breaches arose from ignorance rather than deliberate defiance, policing bodies positioned themselves as neutral and reasonable. They were aware that individuals are more likely to comply with rules when they perceive enforcement as respectful (Tyler, 2006), and accordingly, they performed legitimacy by signalling fairness without necessarily enacting it.

As Bottoms and Tankebe's (2012) dialogic model of legitimacy suggests, these were not neutral acts but strategic claims to legitimacy that could be accepted, challenged, or ignored.

At the heart of these conversations was a judgment about whether an individual was "realising what you're saying", and how decisions formed the basis of whether enforcement progressed:

So, if we come across someone and they're just having a drink, having a laugh with their mates, I might, as an officer... I'd just have a little walk amongst them all, "Guys, I appreciate you're all drinking. Could you keep it a bit sensible?"... And usually, that's enough. If it gets past that point and you realise that this person is not realising what you're saying, you say, "Give me your alcohol." You can take their alcohol, their open alcohol containers... on a PSPO. (Police Officer, Area 4)

The vague thresholds for determining when to act, like when "that doesn't work", or when someone "is not realising what you're saying", rely on officer judgements that can be non-neutral through implicit biases. Subjectivity here leads to inconsistent enforcement across individuals and contexts, particularly marginalised groups who practitioners may perceive as more likely to be non-compliant and subject to escalation. Participants, therefore, used a rhetoric of "kind[ness]" and staged enforcement through procedural justice theory and responsive regulation, respectively, to mask their readiness to escalate sanctions.

#### 5.1.1 The Internal Governance of Enforcement

While ASB Team Managers often referred to the Home Office (2023) ASB statutory guidance or Local Government Association (2018) PSPO guidance, police officers mentioned them inconsistently, if at all, revealing a disconnect between national policy and frontline enforcement. In response to this gap, some local authorities developed internal guidance and training aimed at promoting consistency and reducing the risk of disproportionate enforcement. As one Head of Service explained, such efforts aimed to prevent well-intentioned individuals from being penalised unnecessarily, reflecting a concern for procedural fairness:

[W]e also developed some enforcement guidance for our officers, and that essentially kind of gave them some parameters to work with so people wouldn't kind of accidentally, [that] good decent dog owners, wouldn't accidentally fall foul of it. (Head of Service, Area 2)

These resources clarified the purpose and scope of PSPOs, distinguishing them from other ASB powers and outlining when and how enforcement should escalate. They also promoted a staged, procedurally fair approach to compliance. One Police Community Support Officer described how this guidance shaped their practice:

[T]hey just said, "We've got this in town, we've got this in [public space], here's your ticket book", and then, "Here's a bit of information about it"... So, I read the pamphlets

on what I could and couldn't do, and then I just worked along with [it], so if I saw people breaching these rules, then I would advise; enforce if necessary. (Police Community Support Officer, Area 2)

However, such engagement was not universal. In many areas, officers operated with minimal instruction from the local authority, relying instead on informal norms and discretionary judgment. As one police officer explained:

It's very much ingrained in us as [police] officers that [you] are personally responsible for what you do and what you choose to do. You never, as a police officer, should say "we". It's a case of "I"... The way I may deal with a situation may be completely different to how my colleague would deal with a situation, but we both have to justify the way in which we dealt with that situation if it was scrutinised in any way. (Police Officer, Area 4)

This emphasis on individual autonomy reflects a professional culture that prioritises discretion over consistency. Yet, such discretion actively opposes responsive regulation, where legitimacy relies on clear, proportionate, and predictable enforcement. The absence of formalised, consistent guidance across policing bodies weakens the legitimacy of PSPO enforcement and fosters a regulatory environment where discretion becomes a vector for inconsistency and bias. As Heap *et al.* (2022) have shown, such discretion can result in the over-policing of marginalised groups, particularly those experiencing street homelessness.

### 5.1.2 The Role of Introductory Periods

A distinct example of how practitioners' actions constructed the appearance of informal engagement and staged enforcement appeared in Area 2. This was formalised through an "introductory period" accompanying the introduction of a PSPO targeting a disadvantaged residential neighbourhood, which the local authority ostensibly designed to buffer this order's impact. The PSPO was a response to complaints about Eastern European immigrants, whose conduct other residents perceived as negatively impacting their "quality of life", and prohibited alcohol consumption, loud noise, and abusive language.

Practitioners recognised that the PSPO risked disproportionately penalising individuals unable to read the signage imposed. They decided that, during the first four weeks of this order's operation, policing bodies would withhold FPNs and engage in discussions with those breaching the PSPO, using verbal warnings when necessary:

[I]t was just about... trying to get a really broad group of people without disadvantaging those that can't speak the language as well, because they are likely to be the ones that are likely to fall foul of it if they can't read the signs. (Community Safety Officer, Area 2)

There was... an introductory period, from when they said, "Right, this is when the order comes in force, but for these four weeks, we're not going to issue any tickets, we're just

going to deal with it by advice and warnings, etc.”, and we communicated that. (Community Safety Officer, Area 2)

Another acknowledged that this period was a symbolic necessity to avoid perceptions of “harsh” enforcement:

We all agreed it’d just be far too harsh to just go in with an iron rod and say, “Here’s a £100 fine”. “What for?” “Well, since yesterday, you’ve not been able to drink, and you’re drinking today”. It’d just be very harsh. (Police Community Support Officer, Area 2)

Participants presented the introductory period as a neutral and fair transition, intended to give residents time to acclimate to the PSPO and develop a normative intention to comply. In practice, however, it functioned as a reactive strategy to manage the legitimacy risk created by the local authority’s failure to meaningfully engage the Eastern European residents whose behaviour the order sought to regulate. This was not a reciprocal process but a one-sided claim to legitimacy (Bottoms and Tankebe, 2012), crafted to pre-empt contestation rather than invite participation. The introductory period thus obscured the punitive rationale for the PSPO and legitimised pre-determined outcomes. It exemplifies how procedural justice can be co-opted to maintain power structures under the guise of fairness, with the performative nature of engagement, challenging the relational trust that procedural justice seeks to cultivate.

## 5.2 Support as Sanction: The Language of Coercive Care

Across the sample, three local authorities had PSPOs prohibiting begging, aggressive begging, or rough sleeping, and all had orders targeting alcohol and/or NPS consumption. Despite claims of fairness and discretion, some acknowledged the uneven application of PSPOs against people experiencing street homelessness:

I do think people aren’t treated equally across the board, sort of between the night-time revellers and the rough sleepers... I don’t think they’re treated the same. (Police Officer, Area 8)

This frank admission validates concerns about unequal enforcement patterns against such individuals (JUSTICE, 2023). PSPOs functioned here as instruments for policing public spaces: they marked people experiencing street homelessness as being subject to different behavioural standards, eventually leading to biased enforcement practices. Casting these individuals as separate from other public spaces does little to support the relationality necessary for procedural justice and explains why many participants reported a lack of compliance from such individuals.

Unequal treatment was situated within a language of care. Participants outlined that support and referral were the first steps taken before punishment, but such discourse hid broader exclusionary, controlling, and coercive practices over this population:

[I]f people who are breaching the PSPO are, for example, you know, potentially living on the street or at risk of homelessness... then we would always want officers to engage initially and give people the opportunity to access support where they need it before enforcement takes place. (Community Safety Officer, Area 9)

The same for, the nuisance beggars. Quite often, if they're engaged, they're advised, they're offered support, they're offered referrals to various people. It's only when they fail to comply or start returning is when they start accumulating tickets. (ASB Team Manager, Area 7)

This approach reflects what Johnson and Fitzpatrick (2010: 1712) term "coercive care" and allows for its application to PSPOs. Framing support as a condition for avoiding punishment contradicts the principles of trustworthiness and respect central to procedural justice and erodes the relational legitimacy essential for voluntary compliance. In doing so, the punishments deriving from these orders shifted from forceful powers, as Johnsen *et al.* (2018) typologised them, into coercive tools:

I'm gonna have a conversation with the guy, [and] say, "You've got this [PSPO] ticket; you've got 14 days to pay the fine. However, if you engage with drug services, I'm quite happy to hold the ticket, as long as you engage with drug services". So that's the kind of carrot-and-stick approach. (ASB Team Manager, Area 1)

The "carrot and stick" approach diverges from both procedural justice and responsive regulation by making support conditional on compliance, rather than fostering trust and fairness, compromising legitimacy and long-term engagement. It ignores evidence that service refusal among people experiencing street homelessness often stems from systemic barriers or prior negative experiences, not ignorance (Heap *et al.*, 2022; Karadzhov, 2020). It also contradicts National Institute for Health and Care Excellence (NICE) (2022) guidance, which advocates assertive, repeated outreach as a more effective strategy. Participants did not progress through the enforcement pyramid via sustained procedural justice; instead, uneven enforcement diminished the legitimacy promised by incremental escalation and sidelined the principle of voluntary cooperation.

Interviews with police officers discovered resistance to coercive engagement tactics:

[Y]ou wouldn't want to use a PSPO as a carrot 'cus a PSPO's a stick to beat someone with and move them on, and I'd only want to utilise anything that would be put in the PSPO if you've got a robust system of doing something with that individual. (Senior Police Officer, Area 1)

I mean, some people refuse all help, but the people who refuse all help tend not to cause us problems... I've spoken to [a person experiencing street homelessness] many a time

in my professional capacity. He doesn't want help, he wants to be on the street; he prefers that now. But he doesn't cause any issues, so he lives his life that way because he doesn't cause any issues, he doesn't come to people's attention, so they just leave him alone. (Police Officer, Area 4)

These excerpts highlight tensions between practitioners' positionalities. Police officers appeared more attuned to legitimacy and dimensions of relationality. Local authority staff, who were more exposed to political pressure to 'deal' with ASB using the powers from the Anti-Social Behaviour, Crime and Policing Act 2014, prioritised demonstrable enforcement action. This resonates with the notion of regulatory capture, illustrating the subsuming of discretion and fair practices by political imperatives to address the visibility of marginalised groups within public spaces and respond to ASB victimisation.

### 5.3 Escalation and Fairness: When Persuasion Becomes Punishment

Issuing an FPN is the most formal on-the-spot sanction that is available for someone breaching a PSPO. A recurring concern was the perception from the public that FPNs functioned less as legitimate enforcement tools and more as revenue-generating mechanisms for local authorities. Participants recognised the reputational risks that this posed to their organisations, and were astute to public critiques of 'Fining for Profit' (Manifesto Club, 2022) practices:

I think there is some hesitation about things where it may be used overzealously, and I think that might be... the sort of traffic warden scenario, "Oh, [the] first time I've done owt wrong, I've got a fine", you know "[the] council's trynna make money", all those things. (ASB Officer, Area 2)

I want to really get away from fixed penalty notices... as a money-generating thing. You've got to be careful doing that and setting targets and things like that... it's very obvious if you rock up in court and somebody says, "The only reason you've issued this fixed penalty on me is because you've got a target to hit!" I don't wanna be trying to defend that in court. I wanna be defending it, "No, you've committed an offence, and as a last resort, we've taken you to court". (Environmental Health Officer, Area 1)

These reflections underscore a structural tension within contemporary neoliberal governance. When fiscal imperatives, rather than the principles of procedural justice, drive PSPO enforcement, they become tools of revenue capture rather than stimulants of normative compliance. If the public perceives these orders as such, this erodes trust and undermines the legitimacy of enforcement practices, particularly when sanctions disproportionately target marginalised groups. As such, the strategic use of incremental enforcement by some looked to avert criticism, rather than display a commitment to procedural fairness.

Appreciative of both this and the significance of an FPN, participants reserved these penalties for individuals who had repeatedly failed to comply following persuasive engagement efforts, positioning them as a “last resort” tactic:

If I had a repeat offender, definitely... we’d go down the route that I’ve said already, but then I probably would like for some kind of fixed-penalty notice. (Police Community Support Officer, Area 1)

[T]he enforcement of the PSPO is almost the last resort with a lot of these people. (ASB Officer, Area 1)

When detailing those who received an FPN, practitioners often spoke of already marginalised individuals, such as people experiencing street homelessness. incrementality was framed as legitimate, even when enforcement disproportionately targeted these groups. in such contexts, escalation may conform to procedural norms while functioning as a punitive mechanism. Yet, as Bottoms and Tankebe (2012) argue, legitimacy is fragile when it is asserted unilaterally and not open to both dialogue and challenge. Without dialogue with those subject to enforcement, claims of procedural fairness become a justification for using exclusionary outcomes.

Moreover, whilst participants categorised FPNs as a “last resort”, this was not true, and an unanticipated theme was how FPNs became evidence of persistent ASB in support of a Criminal Behaviour Order<sup>10</sup> (CBO):

I’ve got to put a table of evidence in that says, “On this date, at this time, at this location, such and such did this, was arrested for this, or was issued a PSPO ticket for drinking in the street.” That’s the information I use. (ASB officer, Area 2)

So, actually, the CBO has been... the one that’s given teeth to those real persistent offenders, but the PSPO has given... a little bit of solace to people, a little bit of a base to start getting your evidence together for a CBO later. (ASB officer, Area 2)

Neither the Home Office (2023) ASB statutory guidance nor the Local Government Association (2018) PSPO guidance has information about the progression from PSPO to CBO (JUSTICE, 2023). However, local authorities used PSPOs not only for immediate behavioural regulation but punishments to be repurposed to construct criminal trajectories. This threatens the normative and proportional foundations of both procedural justice and responsive regulation by not adhering to procedurally fair means of securing behaviour change, and further blurs the boundary between civil and criminal enforcement. When practitioners elect to follow this enforcement pathway rather than encourage legitimised normative compliance, they risk forcing those who lack the financial means to pay an FPN into a disproportionate cycle of criminality for conducting what initially was sub-criminal behaviour.

## 6 Discussion and Conclusion

This article offers a critical empirical account of the enforcement of PSPOs by local authorities and police officers. Further underscoring its significance is being the first work to apply procedural justice theory (Tyler, 2006) and responsive regulation (Ayres and Braithwaite, 1992) to PSPOs, extending existing research on other ASB powers (Crawford *et al.*, 2017; Heap *et al.*, 2023a; 2023b). Through this lens, the article provides novel insights into the regulation of ASB using PSPOs, examining the construction of legitimacy through claims of fairness, persuasion, and care.

Across the findings, practitioners consistently described an incremental approach to PSPO enforcement, beginning with verbal warnings before escalating to formal sanctions. While this aligns with the principles of responsive regulation, the appearance of proportionality often masked discriminatory and inconsistent practices. For instance, participants framed “introductory period” in Area 2 as a fair transition, but it functioned more as a symbolic gesture to mitigate legitimacy risks. Discretion also produced fragmented enforcement, and the rhetoric of fairness and incrementality obscured the absence of genuine choice, particularly for people experiencing street homelessness, who were often subject to different behavioural standards. Whilst an outlier in the findings of this study, the treatment of people experiencing street homelessness is a visible symptom of broader, systemic inequalities embedded in localised enforcement practices.

While PSPOs appear to be proportionate tools for managing ASB, their enforcement reveals a more troubling reality: the performance of fairness that legitimised exclusionary governance. To safeguard legitimacy and prevent the normalisation of punitive discretion, reforms to the Anti-Social Behaviour, Crime and Policing Act 2014 and the Home Office (2023) ASB statutory guidance should clarify enforcement expectations, formalise training, and introduce stronger safeguards against misuse. Without such reforms, PSPOs risk continuing to exist within a “regulatory grey zone” (Martino *et al.*, 2024: 305), entrenching punitive discretion and not fostering the normative compliance they purport to encourage.

This study is not without limitations. It draws exclusively on the accounts of practitioners, leaving the perspectives of those most affected, particularly marginalised individuals, underexplored. Future research should prioritise these voices to assess whether the procedural justice and responsive regulation frameworks resonate with their lived experiences. Nonetheless, this article contributes significantly to understanding how PSPOs operate and, more broadly, to debates about the discretionary governance of public space, the normalisation of punitive regulation, and the challenges municipalities face when tasked with managing social order without adequate oversight or accountability.



## Notes

1. Clause seven of the Crime and Policing Bill, published in February 2025, proposes greater central government oversight through the 'Provision of Information to Secretary of State'.
2. Anti-Social Behaviour Orders were introduced in the Crime and Disorder Act 1998. Issued by a court, they contained rules and behavioural guidelines for recipients, and punishments for breach included a prison sentence. They were repealed following the enactment of the Anti-Social Behaviour, Crime and Policing Act 2014.
3. First published alongside the 2014 statute, the Home Office ASB statutory guidance has been revised several times: in 2017, 2019, 2022, and 2023.
4. The Manifesto Club is a civil liberties organisation that challenges the increasing regulation of public space, with a particular focus on the use of PSPOs.
5. Clause four of the Crime and Policing Bill proposes to increase the amount of an FPN to £500.
6. Introduced in the 2014 statute, CPNs carry a similar requirement to PSPOs in that ASB must pose a "detrimental effect" on others to be issued. They can be given to any business or individual over the age of 16 and contain prohibitions and requirements on acceptable behaviour but should be preceded by a Community Protection Warning (CPW). Penalties for breaching a CPN include an on-the-spot FPN of up to £100 or a fine of up to £2,500 or £20,000 for individuals or businesses.
7. The Byelaws (Alternative Procedure) (England) Regulations 2016 governs byelaws in England.
8. Acceptable Behaviour Contracts are written agreements between individuals (often those under eighteen) and local authorities. They are informal documents that contain a list of prohibited behaviours. Whilst Acceptable Behaviour Contracts are not legally binding and there is no penalty for those who do not adhere to its contents, evidence of non-compliance can be used to support an application for formal punishment.
9. The Home Office (2015: 6) states that "NPS are drugs that are designed to replicate the effects of other illegal substances. People may refer to these drugs as 'legal highs'". Whilst criminalised by the Misuse of Drugs Act 1971 and Psychoactive Substances Act 2016, a PSPO can include prohibitions on NPS consumption.
10. CBOs were created through the 2014 statute. Issued by a judge following a criminal conviction in the Crown or Magistrates' Court, they contain prohibitions and requirements for behaviour. For under-18s, CBOs are reviewed annually and exist for up to three years; for adults, they last a minimum of two years. Breaches must meet the criminal burden of proof, with punishment including a fine or imprisonment for up to four years. Heap and Black (2024) similarly found CPN breaches being used as evidence for CBOs.

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