

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's written evidence to the UN Special
Rapporteur on Poverty and Human Rights**

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at
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Introduction

1. Liberty welcomes the opportunity to provide evidence in advance of the United Nations Special Rapporteur on Poverty and Human Rights country visit to the UK. As a civil and political rights organisation, Liberty does not campaign on policies and practices relating purely to economic, social and cultural rights, and has not historically undertaken significant work on UK austerity and welfare reform. However, human rights violations linked to poverty and destitution under the ECHR fall squarely within the scope of our work. The issues highlighted below are by no means an exhaustive representation of the various ways in which poverty can lead to or arise from human rights violations in the UK. However, in highlighting key areas of concern this submission aims to outline potential areas of inquiry in advance of the Special Rapporteur's visit. The criminalisation of poverty, the hostile environment, and the prohibition on work for people seeking asylum are explored in turn.

(3) What are the most significant human rights violations that people living in poverty and extreme poverty in the United Kingdom experience? Please exemplify by referring to specific cases and relevant norms of international human rights law.

Public Spaces Protection Orders and the criminalisation of poverty

2. The criminalisation of homelessness and other activities resulting from extreme poverty has been recognised as raising concerns regarding cruel, inhuman and degrading treatment contrary to article 7 of the International Covenant on Civil and Political Rights (ICCPR).¹ It can also amount to a violation of articles 2, 9, 17 and 26 of the ICCPR², and articles 8, 10, 11 and 14 of the ECHR.
3. The UK Government has enacted legislation that permits local authorities to criminalise rough sleeping and other activities which result from extreme poverty. The Anti-social Behaviour, Crime and Policing Act 2014 (which came into force in October 2014) created Public Spaces Protection Orders (PSPOs). These are orders that can be created by local authorities in order to criminalise certain activities if: (1) those activities are having, or are likely to have, a detrimental effect on the quality of life of people in the local area and (2) are, or are likely to be, of a persistent or

¹U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights*, Magdalena Sepúlveda Carmona, para 36, U.N. Doc. A/66/265 (2011)

² U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, para 19, U.N. Doc CCPR/C/USA/CO/4 (2014)

continuing nature, such as to make the activities unreasonable and justify the restrictions imposed by the order. Orders apply to a certain geographic area, which could be the whole of a local authority's jurisdiction. Breach of an order can lead to a Fixed Penalty Notice of £100 or criminal prosecution leading to a maximum fine of £1,000.

4. Since their introduction, numerous local authorities have used these powers to target activities associated with poverty and extreme poverty. Some of these measures have explicitly targeted rough sleeping. For example, Rushcliffe Borough Council introduced a PSPO criminalising sleeping in any public place and, similarly, Doncaster Council enacted a PSPO prohibiting sleeping overnight in Doncaster town centre.
5. In December 2017 the UK Government amended its Statutory Guidance on the 2014 Act. It now states that *"Public spaces protection orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed"*.³ However, this has not prevented local authorities from enacting PSPOs to criminalise behaviours associated with rough sleeping. For example, since the Statutory Guidance was amended Poole Borough Council has created a PSPO which criminalises 'causing an obstruction' in car parks and doorways. Nottingham City Council is currently consulting on a PSPO worded in similar terms.
6. There have also been a significant number of PSPOs which seek to ban begging, for example:
 - Blackpool Borough Council has criminalised *"The act of loitering around cash machines and shop entrances as a means of appropriating monies"*;
 - Woking Borough Council has criminalised *"approach[ing] another person either in person or verbally in order to beg from the other person' and 'sit[ting] or loiter[ing] in a public space with any receptacle used to contain monies for the purpose of begging"*.
 - Worthing Borough Council's PSPO states that *"All persons are prohibited from approaching another person either verbally or through action in order to beg from the other person"* and *"All persons are prohibited from sitting or loitering in a public place"*

³ *Anti-social Behaviour, Crime and Policing Act 2014: anti-social behaviour powers. Statutory guidance for frontline professionals*, Home Office, page 51

for an unreasonable time or being in possession of a receptacle used to obtain monies for the purpose of begging.”

- Luton Borough Council has introduced a PSPO which criminalises anyone *“approaching another person, who is not a member of their family or their friend either verbally or by conduct to ask for money or other objects or items”* and *“sitting, standing or loitering, or being in possession of a receptacle used to obtain monies, for the purpose of asking for money or other objects or items in the restricted area”*.
- 7. We are particularly concerned at the breadth of such Orders. They give such a wide discretion to enforcement officers that any person whose physical appearance indicates that they are experiencing poverty could potentially be perceived as being in breach of such provisions. As the Special Rapporteur on extreme poverty and human rights has already recognised, *“Bans on begging and vagrancy represent serious violations of the principles of equality and non-discrimination. Such measures give law enforcement officials wide discretion in their application and increase the vulnerability of persons living in poverty to harassment and violence. They serve only to contribute to the perpetuation of discriminatory societal attitudes towards the poorest and most vulnerable.”*⁴
- 8. Some local authorities have also sought to pass measures that would prohibit acts intended to assist those living in extreme poverty. For example, Nottingham City Council is currently holding a consultation on proposals to introduce a PSPO that would criminalise the act of ‘giving anything to anyone within the area’ covered by the PSPO.
- 9. The United Kingdom Government has therefore created powers that allow local authorities to criminalise homelessness and other activities associated with extreme poverty, thus violating the human rights of those affected by such measures. It has failed to take robust action to prevent the powers being used in this way. Liberty is calling on the Government to repeal those sections of the Anti-social Behaviour Crime and Policing Act 2014 which created PSPOs.

⁴ U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights*, Magdalena Sepúlveda Carmona, para 32, U.N. Doc. A/66/265 (2011)

The hostile environment

10. The hostile environment is a set of policies designed and implemented since 2010, aimed at forcing undocumented migrants to leave the UK by making life unbearable for them through denial of access to essential goods and services; and deterring others from coming to the UK. ⁵ Its different strands function in broadly similar ways:
- a) to deny undocumented migrants access to essential goods and public services, including housing, bank accounts, and free healthcare;
 - b) to outsource immigration enforcement to public servants and private citizens, such as bank clerks, healthcare workers, teachers, university staff, homelessness outreach workers, employers and landlords;
 - c) to institutionalise the sharing of personal data between essential public services, private citizens and the Home Office, specifically for immigration enforcement purposes; and
 - d) to criminalise or otherwise penalise undocumented migrants and people who interact with them for carrying out everyday activities such as driving, working, letting a property, or employing someone.
11. It should be noted that the hostile environment has been introduced at a time when far from intentionally trying to evade the rules, people often become undocumented because they're unable to scrape together ever-increasing application fees,⁶ challenge poor Home Office decision making,⁷ or pay a solicitor to help them keep up with rapidly changing immigration rules.
12. Banking immigration checks are discussed below as measures likely to be of particular interest to the Special Rapporteur. However, it is important to note that analysis of any specific hostile environment measures cannot be abstracted from the intentional cumulative impact of these policies.

Banking

13. Bank accounts are vital for storing savings and earnings securely, making regular

⁵ For further information, see: '[A Guide to the Hostile Environment – the border controls dividing our communities and how we can bring them down](#)', edited by Liberty, (April 2018).

⁶ For an explanation of the impact of one kind of fee on applicants, please see *Briefing on Fees for the Registration of Children as British Citizens*, Project for the Registration of Children as British Citizens and Amnesty International UK, September 2016. Available here: https://prcbc.files.wordpress.com/2015/10/fees_briefing_2016.pdf

⁷ 'Serious flaws' in UK immigration system, *Law Society warns*, BBC News, April 2018. Available here: <https://www.bbc.com/news/uk-politics-43737542>

payments for necessities such as housing, and accessing credit. However, the Immigration Act 2014 bans banks and building societies from opening accounts for undocumented migrants. As a result, banks and building societies now carry out 'status checks' on their customers. If a person is in the UK unlawfully (or believed to be), the bank or building society must refuse them a current account.

14. Since October 2017, banks and building societies have been forced to carry out quarterly immigration checks on everyone who holds personal current accounts with them. When these identify someone believed to be in the UK illegally, the banks and building societies must share the results with the Home Office. Banks must also (if so requested) provide the Home Office with a wealth of information about the account holders they identify, such as the type and balance of each account held, details of certain payments made from the account and any other information the bank decides is relevant. The Home Office may then apply for a court order freezing the account holder's assets – or demand the account be closed down. Since May 2018, in the wake of the Windrush scandal, certain aspects of the banking immigration check policy have been suspended.⁸
15. Even if a person suspects a mistake has been made in checking their status when they apply for a bank account – and provides the Home Office with evidence to prove it – the Home Office has said that updating the records should only be done "in exceptional circumstances" and states that there "is no requirement to make this check and the default position should be to refuse".⁹
16. Home Office data has proven inaccurate in the past. In fact, the Independent Chief Inspector of Borders and Immigration – in a test sample of 169 refusals under the 2014 rules – found almost 10 per cent had been incorrectly identified by the Home Office as people who should not have a current account opened for them. One person, originally from Jamaica, had first arrived in the UK more than a decade before their application for an account was refused.¹⁰

⁸ *UK government pauses hostile immigration policies after Windrush*, The Guardian, July 2018. Available here: <https://www.theguardian.com/uk-news/2018/jul/11/windrush-uk-government-pauses-hostile-immigration-policies>

⁹ 'Immigration status checks: guidance for banks' found here https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386215/Guidance_on_current_accounts_provisions_-_banks_and_building_societies_v_1.1.pdf and at tab 3.

¹⁰ An inspection of the 'hostile environment' measures relating to driving licences and bank accounts' October 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567652/ICIBI-hostile-environment-driving-licences-and-bank-accounts-January-to-July-2016.pdf

17. Denying people access to bank accounts leaves them with nowhere secure to put their cash. This in turn leaves them vulnerable to robbery, reliant on employers and landlords who work 'cash in hand' and at the mercy of payday lenders. Worse still, the Government is putting people on a secret list and using that list to deny them access to services and their own assets, with scarcely any chance of redress if there is an error – a chilling exercise of power.

Violence against migrant women and girls

18. Migrant women who have experienced domestic abuse are often forced to choose between further violence and poverty. This impossible choice has been compounded by the hostile environment, which by linking immigration enforcement to the provision of public services prevents migrant women from reaching safety, security and support. Migrant victims' fears that attempting to access healthcare, welfare benefits, bank accounts, employment, homelessness services and even schools will make them vulnerable to immigration enforcement is regularly realised. Liberty is campaigning for the upcoming Domestic Violence and Abuse Bill to address many of these issues, and to ensure that migrant women are equally protected under the law.

19. In recent years, the Government has repeatedly cut funding to refuges and withdrawn financial support for victims' services. More than 65 per cent of England's local authorities have subsequently slashed their spending on refuges as a result of budget cuts, and councils have reduced their spending on refuges by nearly a quarter since 2010.¹¹ Further, 17 per cent of specialist women's refuges – including those accommodating BAME and migrant women – were forced to close between 2010 and 2014, and a third of all referrals to refuges are routinely turned away.¹² On one day in 2017, 94 women and 90 children were denied safety.¹³ The women most affected by the scarcity of refuge and safe accommodation spaces are those who are from a migrant background and/or undocumented. Evidence has shown that only 21 per cent of BAME women seeking refuge spaces in the year ending March 2015 were successful, and migrant women with No Recourse to Public Funds (NRPF - discussed below) have almost no options available when in need of safe accommodation.¹⁴ These women fleeing abusive relationships instead end up destitute or staying with their perpetrators – both of which put their lives at further risk.

¹¹ Jamie Grierson, '[Council funding for women's refuges cut by nearly £7m since 2010](#)', The Guardian, (23 March 2018).

¹² Harriet Agerholm, '[Fears for victims of domestic abuse as number of police charges plummets in one year](#)', The Independent, (2 April 2017).

¹³ Women's Aid, [SOS Save Refuges Save Lives](#).

¹⁴ Imkaan, '[Capital losses: the state of the specialise BME ending violence against women and girls sector in London](#)', 2016, p.6.

20. The Government also offers little meaningful assistance to women who are subject to a condition known as No Recourse to Public Funds (NRPF), which prevents them from accessing mainstream welfare benefits. Undocumented people in the UK have NRPF, and it is a condition often attached to people granted leave to remain in the UK. The NRPF requirement is discriminatory as it largely impacts BAME migrant women, who subsequently – as described above – are more likely to be turned away from a refuge space due to their immigration status. This two-tier system of safety (one for migrants, one for British nationals), risks undermining migrant women’s right to life (Article 2 ECHR), freedom from cruel and degrading treatment (Article 3 ECHR), and the prohibition of discrimination (Article 14 ECHR). Further, being subject to the NRPF rule means that these migrant women are often entirely dependent on their perpetrators both financially and for accommodation, which makes it considerably difficult for them to escape violence. As a result, Liberty supports the arguments expressed by many BAME women’s services and civil liberties groups that the NRPF scheme should be abolished.¹⁵ At the very least, if not abolished, this discriminatory status should be delinked from women’s eligibility for refuge spaces. The UK Government cannot meet its legal and policy obligations – both nationally¹⁶ and internationally¹⁷ - while victims of abuse are turned away. The system that currently exists to exclude migrant women with insecure status from accessing financial support from the state is unjust and renders them susceptible to further abuse and exploitation.

21. More generally, Liberty recommends that funding for women’s services and refuges should meet demand for spaces. Provision should be distributed to local authorities fairly and efficiently. If 1.9 million adults experienced domestic abuse from 2016 – 2017, then local authorities need to have the resources to accommodate any person who presents in need, regardless of their race, nationality and/or immigration status. It is for the UK Government to ensure that this is possible as part of its annual Budget. The Government must also ensure that safety and security provisions comply with Article 18(4) of the Istanbul Convention, recognising that “*we need the empowerment and economic independence of women victims to be encouraged*”, not stripped away. For migrant victims of abuse this is certainly not the case – and instead these

¹⁵ Amnesty International, Southall Black Sisters, ‘[No Recourse, No Safety – the Government’s failure to protect women from violence](#)’, (March 2008).

¹⁶ [National Statement of Expectations for Violence Against Women and Girls](#), and the Human Rights Act 1998.

¹⁷ [The Istanbul Convention](#), and the Convention on the Elimination of Discrimination Against Women.

vulnerable women are being sent further into poverty and danger, with no recourse to state support.

In summary

22. Liberty has fought hard against the hostile environment since its inception.¹⁸ These measures are cruel and inhumane insofar as they force undocumented migrants into hardship and destitution, and leave people with no choice but to avoid essential public and community services that might otherwise support them.
23. Confidential personal data collected by trusted public services including schools, NHS services, employers and even police information on victims and witnesses of crime has in the last two years been routinely handed over to the Home Office for immigration enforcement purposes.¹⁹ The majority of these data-sharing schemes have been implemented without any parliamentary scrutiny or public debate. Their effect is to deter undocumented migrants from interacting with public services; warping carefully cultivated relationships of trust between public servants and the people they are supposed to support.
24. The effects of the hostile environment are also felt by people beyond its stated target group. By turning unqualified administrators, landlords, doctors and teachers into border guards, the Government has created fertile ground for discrimination, with lawfully resident migrants and BAME British citizens viewed with suspicion simply because they are perceived to be foreign.²⁰ More broadly, the hostile environment leads to a society in which we are all conditioned to show ID and have our interactions with the State logged, as the Government's insistence on monitoring and policing people who've moved to the UK demands surveillance of every one of us.
25. Immigration control is only one priority for Government among many others, including child safeguarding and education; the protection of public health, the prevention of crime, and, crucially, social integration. Immigration control priorities are not to be pursued at all costs; they must be pursued in a manner that is proportionate and does not jeopardise other important public policy aims. Moreover, whatever a

¹⁸ Ref Liberty briefing on HE

¹⁹ For more information please see *Liberty's briefing on the Data Protection Bill 2017 for Second Reading in the House of Commons*, February 2018 pg 15-17. Available here: <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%27s%20Briefing%20on%20the%20Data%20Protection%20Bill%202017%20for%20Second%20Reading%20in%20the%20House%20of%20Commons.pdf>

²⁰ See our discussion of landlord immigration checks above.

person's immigration status, there are essential goods and services that they must be able to access in order to live a dignified life and avoid breaches of their human rights.

Prohibition on work for people seeking asylum

26. The UK Government currently operates a cruel and pointless policy which denies asylum seekers the right to work while their asylum applications are considered - even if this takes longer than the Home Office target time of 6 months. Currently, asylum seekers are only permitted to work in jobs on a highly restrictive list of 'shortage occupations'. They can only apply if the Home Office takes longer than 12 months to make a decision on their asylum claim. In practice, these restrictions mean that very few asylum-seekers are ever allowed to work.

27. Allowing asylum-seekers to work prepares them for participation in the life of the UK. Forcing people to remain idle and lose their skills creates alienation and hampers integration for those ultimately granted leave to remain in the UK. By contrast, refusing to permit asylum-seekers to work reinforces the discriminatory stereotype that they contribute nothing to society. As has been found time and time again:

...skilled and educated people are left destitute and forced to rely on handouts, despite being from professions where there are shortages in the UK, including health care and teaching.²¹

28. Victims of torture and human trafficking who carry the physical and mental scars of abuse are among those refused the right to work under this unfair and irrational policy. There is evidence to show that being left in limbo without any meaningful activity can exacerbate existing mental and physical health problems, and impedes asylum seekers' integration into UK society.²² The economic case for allowing asylum seekers to work is clear. Asylum-seekers come from a variety of backgrounds, and have much to offer the UK. Many have training or are willing to work in areas in which

²¹ Refugee Council and Zimbabwe Association, 'I hate being idle: Wasted skills and enforced dependence among Zimbabwean asylum seekers in the UK', July 2009, available here: <http://www.refugeecouncil.org.uk/assets/0002/8759/i-hate-being-idle.pdf>, p. 4.

²² See, for example, Freedom from Torture, 'The Poverty Barrier: The Right to Rehabilitation for Survivors of Torture in the UK', July 2013, available here: <http://www.freedomfromtorture.org/sites/default/files/documents/Poverty%20report%20FINAL%20a4%20web.pdf>.

the UK has shortages, such as teaching and nursing. Allowing asylum seekers to work also reduces the need for state support.

29. The evidence suggests that the prospect of extreme poverty does not deter people from seeking refuge in this country. The former Secretary of State for Work and Pensions, Iain Duncan Smith, condemned this approach in a 2008 report, arguing that the use of forced destitution as a means of encouraging individuals to leave the UK is “a failed policy”.²³ The Joint Committee on Human Rights came to the same conclusion in 2007, when it stated that the Government was operating a “deliberate policy of destitution”.²⁴ Asylum seekers are largely unaware of the legal and welfare systems of the countries in which they seek refuge, and come to the UK chiefly as a result of ‘push-factors’ such as violent conflict.²⁵ Indeed, in 2014, a Conservative-led Government accepted that “there is little hard evidence” of any alleged ‘pull-factor’.²⁶ A 2011 review of the 19 main OECD recipient countries for asylum applications carried out by the Centre for Economic Policy Research²⁷ concluded that tightening of welfare provision did not have any deterrent effect.²⁸
30. The ban on asylum seekers working plays no discernible role in reducing the numbers of those seeking protection in this country, but it does stop people from participating in the UK economy. It punishes those who seek asylum and eventually receive it by causing them to lose their skills and become destitute while their claims are decided. Asylum seekers already face poverty and exclusion from society. Indeed, most asylum seekers – and thousands of children in asylum-seeking families - live in severe poverty.²⁹

²³ Centre for Social Justice, ‘Asylum Matters: Restoring Trust in the UK Asylum System’, December 2008, pp. 4-5, available here: <http://www.centreforsocialjustice.org.uk/publications/asylum-matters-restoring-trust-in-the-uk-asylum-system>.

²⁴ See Joint Committee on Human Rights, ‘The Treatment of Asylum Seekers’, HL 81-I/HC 60-I of 2006/07, 30 March 2007, available here: <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>, paragraphs 120-22.

²⁵ See, for example, Refugee Council, ‘Chance or Choice? Understanding why asylum seekers come to the UK’.

²⁶ See Letter from Earl Attlee to Lord Roberts, 31 March 2014, cited by the Immigration Law Practitioners’ Association in its submissions to the Public Bill Committee for the 2014 Immigration Act, available here: <http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/memo/ib35.htm>.

Similarly, the Home Office itself has found that asylum-seekers often do not ‘choose’ where to claim asylum:...it is important to note that agents were critical determinants of the destination eventually reached by asylum seekers...if individual asylum seekers wanted to leave their home country they had to give over control of migration decision-making to these paid facilitators (Robinson, ‘Understanding the decision-making of asylum seekers’, p. 19.)

²⁷ Hatton, T., J., ‘Seeking Asylum: Trends and Policies in the OECD’, University of Essex, Australian National University, and CEPR, July 2011, available here: <http://www.voxeu.org/sites/default/files/file/Hatton%20Seeking%20Asylum.pdf>.

²⁸ Hatton, ‘Seeking Asylum: Trends and Policies in the OECD’, for example, sections 8.2 and 9.3.

²⁹ See The Children’s Society, ‘UK asylum system forces thousands of children to live in severe poverty’, 9 April 2012, available here: <http://www.childrenssociety.org.uk/news-and-blogs/press-release/uk-asylum-system-forces-thousands-children-live-severe-poverty>.

(6) Which areas of the United Kingdom should the Special Rapporteur visit in light of the poverty and human rights situation in those locations?

31. We would suggest that the Special Rapporteur visits one of the areas listed above, within which activities associated with poverty and extreme poverty have been criminalised through the introduction of PSPOs.

(7) Which individuals and organizations should the Special Rapporteur meet with during his country visit to the United Kingdom?

32. Liberty recommends that the Special Rapporteur prioritises meetings with people directly affected by poverty and Government policy during his visit. Below is a list – by no means exhaustive – of organisations he may additionally find it useful to visit:

Liberty
Crisis
Joint Council for the Welfare of Immigrants
Migrants' Rights Network
Project 17
Doctors of the World UK
Maternity Action
The Children's Society
Coram Children's Legal Centre
The Connection at St Martin in the Fields
Hackney Migrant Centre
Haringey Migrant Support Centre
Unity Centre Glasgow
Coventry Refugee and Migrant Centre

Conclusion

33. In myriad ways, UK Government policy intentionally produces and fails to respond to poverty and destitution, with consequences that are on occasion so grave that they amount to violations of the ECHR. The public authorities responsible for designing and implementing such policies range from central Government and the Home Office, to local authorities and, in the case of the hostile environment, individual public servants. In addition to highlighting the UK's part in a global trend towards the criminalisation of poverty, this submission also seeks to foreground some of the specifically gendered and racialised ways in which poverty affects and is weaponised

against certain groups by the state. We write this submission in the hope that the Special Rapporteur's visit results in a renewed focus by the UK Government on the impact that its actions can and do have on the rights of some of the most marginalised people in our society, and a move towards policies that respect those rights, whatever a person's income or immigration status.