

**IN Highbury Corner Magistrates' Court**

**B E T W E E N:**



Appellant

-and-

THE COMMISSIONER OF POLICE FOR THE METROPOLIS

Respondent

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**GROUND(S) OF APPEAL OF THE APPELLANT**

*For appeal of the Community Protection Notice filed on 6 April 2022*

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**A. INTRODUCTION**

1. This is an appeal brought under s.46 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") against a community protection notice issued by the Respondent's officers on 17 March 2022 ("the CPN").

2. The Appellant appeals on three grounds, namely:

2.1 Ground 1: There is material defect or error in connection with the CPN;<sup>1</sup>

2.2 Ground 2: The conduct specified in the CPN did not take place, and/or has not had a detrimental effect on the quality of life of those in the locality and/or is not unreasonable and/or is not conduct that The Appellant can reasonably be expected to control or affect;<sup>2</sup> and

2.3 Ground 3: The requirements of the CPN are unreasonable.<sup>3</sup>

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<sup>1</sup> S. 46(1) (3) Anti-social Behaviour, Crime and Policing Act 2014.

<sup>2</sup> S. 46 (1) (a), (b), (d) and (e) Anti-social Behaviour, Crime and Policing Act 2014.

<sup>3</sup> S. 46 (1) (2) Anti-social Behaviour, Crime and Policing Act 2014.

**B. THE LAW**

**B.1. The 2014 Act**

3. The 2014 Act provides, in so far as relevant, that:

*s.43 Power to issue notices*

*(1) An authorised person may issue a community protection notice to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that—*

*(a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and*

*(b) the conduct is unreasonable.*

(Emphasis added)

*(3) A community protection notice is a notice that imposes any of the following requirements on the individual or body issued with it—*

*(a) a requirement to stop doing specified things;*

*(b) a requirement to do specified things;*

*(c) a requirement to take reasonable steps to achieve specified results.*

(Emphasis added)

*(4) The only requirements that may be imposed are ones that are reasonable to impose in order—*

*(a) To prevent the detrimental effect referred to in subsection (1) from continuing or recurring, or*

*(b) To reduce that detrimental effect or to reduce the risk of its continuance or recurrence.*

(Emphasis added)

*(5) A person (A) may issue a community protection notice to an individual or body (B) only if—*

*(a) B has been given a written warning that the notice will be issued unless B's conduct ceases to have the detrimental effect referred to in subsection (1), and*

*(b) A is satisfied that, despite B having had enough time to deal with the matter, B's conduct is still having that effect.*

*(6) A person issuing a community protection notice must before doing so inform any body or individual the person thinks appropriate.*

*(7) A community protection notice must—*

*(a) identify the conduct referred to in subsection (1);*

*(b) explain the effect of sections 46 to 51.*

*(8) A community protection notice may specify periods within which, or times by which, requirements within subsection (3)(b) or (c) are to be complied with.*

#### *s. 46 Appeals against notices*

*(1) A person issued with a community protection notice may appeal to a magistrates' court against the notice on any of the following grounds.*

*1. That the conduct specified in the community protection notice—*

*(a) did not take place,*

*(b) has not had a detrimental effect on the quality of life of those in the locality,*

*(c) has not been of a persistent or continuing nature,*

*(d) is not unreasonable, or*

*(e) is conduct that the person cannot reasonably be expected to control*

*or affect.*

- 2. That any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable.*
- 3. That there is a material defect or error in, or in connection with, the notice.*
- 4. That the notice was issued to the wrong person.*

*(2) An appeal must be made within the period of 21 days beginning with the day on which the person is issued with the notice.*

*(4) A magistrates' court hearing an appeal against a community protection notice must —*

*(a) quash the notice,*

*(b) modify the notice (for example by extending a period specified in it),  
or*

*(c) dismiss the appeal.*

## **B.2 Human rights legislation**

4. The Human Rights Act 1998 (the 'HRA') provides, in so far as relevant, that:

*s.6 Acts of public authorities*

*(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.*

*(3) In this section "public authority" includes—*

*(a) a court or tribunal, and*

*(b) any person certain of whose functions are functions of a public nature,*

*but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.*

5. The European Convention on Human Rights (the 'ECHR') provides, in so far as relevant, that:

*Article 8 - Right to respect for private and family life*

- (1) *Everyone has the right to respect for his private and family life, his home and his correspondence.*
- (2) *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

*Article 10 – Freedom of expression*

- (1) *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- (2) *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

## Article 11 – Freedom of assembly and association

*(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

*(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

### C. **STATUTORY GUIDANCE**

6. 'The Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals', Home Office (Revised in January 2021) (the 'Guidance') states, in so far as relevant, that:

At page 4:

"The guidance emphasises the importance of ensuring that the powers are used appropriately to provide a proportionate response to the specific behaviour that is causing harm or nuisance without impacting adversely on behaviour that is neither unlawful nor anti-social."

At page 48:

"Protecting the vulnerable: Particular care should be taken to consider how use of the power might impact on more vulnerable members of society."

At page 50:

“Agencies should have sufficient evidence to satisfy themselves that the behaviour in question is genuinely having a detrimental effect on others’ quality of life, in terms of the nuisance or harm that is being caused to others, rather than being a behaviour that others may just find annoying.

Similarly, decisions on whether behaviour is persistent or continuing in nature should be taken on a case by case basis. (...)

The issuing officer must also make a judgement as to whether the behaviour in question is unreasonable. For instance, a baby crying in the middle of the night may well have a detrimental effect on immediate neighbours and is likely to be persistent in nature. However, it is unlikely to be reasonable to issue the parents with a Community Protection Notice if there is not a great deal that they can do to control or affect the behaviour.”

At page 51:

“The issuing officer will need to be satisfied that the person issued with the Community Protection Notice can be reasonably expected to control or affect the behaviour in question, taking into consideration all the available circumstances. There is also a need to have due regard to the Equality Act 2010.”

(Emphasis added)

At page 53:

“In many cases, the behaviour in question will have been ongoing for some time. Informal interventions may well have been exhausted by the time the applicant decides to proceed with a Community Protection Notice. However, before a Notice can be issued, a written warning must be issued to the person committing anti-social behaviour.

The written warning must make clear to the individual that if they do not stop the anti-social behaviour, they could be issued with a Community Protection Notice. However, local agencies may wish to include other

information in the written warning, for instance:

- outlining the specific behaviour that is considered anti-social and which is having a detrimental effect on others' quality of life, as this will ensure there is little doubt over what needs to be done to avoid the formal Notice being issued;
- outlining the time by which the behaviour is expected to have changed in order to give the alleged perpetrator a clear understanding of when the Community Protection Notice might be served;
- setting out the potential consequences of being issued with a Community Protection Notice and in particular the potential sanctions on breach, which could act as an incentive for the individual to change their behaviour before a formal Notice is issued.

(...)

Enough time should be left between the issue of the written warning and the issue of a Community Protection Notice to allow the individual or body to deal with the matter. It will be for the issuing officer to decide how long is allowed on a case by case basis. For instance, in an example where a garden is to be cleared of waste, several days or weeks may be required to enable the individual to make the necessary arrangements. However, where an individual is playing loud music in a park, as outlined above, the officer could require the behaviour to stop immediately.

(Emphasis added)

At page 54:

“The Community Protection Notice is intended to deal with short or medium-term issues.”

Page 65 deals specifically with those who are homeless and states:

“Public Spaces Protection Orders should not be used to target people based solely on the fact that they are homeless or rough sleeping, as this in itself is unlikely to mean that their behaviour is having an

unreasonably detrimental effect on the community's quality of life which justifies imposing restrictions using a PSPO. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned. Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets. The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.”

(Emphasis added)

## **D. GROUNDS OF APPEAL**

### **D.1. Material defect or error in, or in connection with, the CPN<sup>4</sup>**

7. The Appellant was issued with a warning under Part 4, Chapter 1, of the 2014 Act on 4 March 2022. The warning described five conducts that were alleged to satisfy the criteria under s. 43 of the 2014 Act. The warning gave the Appellant three days to stop the offending conduct, failing which a CPN would be issued.
8. On 17 March 2022, a CPN was issued. However, the CPN had 11 conditions, whereas the warning only related to five conducts under s. 43 of the 2014 Act. This is a material error that vitiates the CPN; the Respondent cannot be satisfied that, despite the Appellant having had enough time to address his alleged conduct, it is still having a detrimental effect, as per s. 43 (5) (b) Anti-social Behaviour Crime

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<sup>4</sup> S. 46 (1) (3) of The 2014 Act

and Policing Act 2014, in respect of the conducts of which he had not been warned. The Guidance specifically states at page 53 that “outlining the specific behaviour that is considered anti-social and which is having a detrimental effect on others’ quality of life, ... will ensure there is little doubt over what needs to be done to avoid the formal [CPN] Notice being issued”.

9. The Appellant was not issued with a written warning in respect of the following conduct/conditions:

9.1 Condition 2 (“not to be in possession of any articles used in the commission of begging, including but not limited to open containers/cups or sign and not to position yourself to beg”);

9.2 Condition 4 (“must not pitch a tent or make any other improvised constructions to be used for living. Must not live in a tent or any other place not designed and constructed to be used as accommodation in the London Borough of Camden”);

9.3 Condition 6 (“not to loiter on a public road or pavement waiting for others unless waiting for a pre-arranged appointment which can be proved/confirmed at the time of waiting”);

9.4 Condition 9 (“not to block, sleep or sit outside of any entrances and/or exits to doorways. This includes residential and business anywhere in London”); and

9.5 Condition 11 (“must engage positively with current services offered which will provide immediate accommodation and support, while vacating the site on [REDACTED]”).

10. In addition, several of the conditions are substantively different, in particular:

10.1 Condition 5 in the CPN (“not to congregate near or associate with illegal drug use on the street or allow a rough sleeping site to be used for illegal drug use”) is wider than the corresponding condition 3 in the warning (“Congregating and associating with illegal drug use on the street. Allows drug

users to enter his tent and use drugs inside”). Whereas in the warning the concern seemed to be with what went on in the Appellant’s tent, the CPN seems to relate to any rough sleeping site anywhere.

10.2 Condition 8 (“not to use any sound amplifier or make excessive noise in any public place in London”) is much wider than conduct 6 in the warning (“uses an amplifier to play loud music in the street during unsociable hours”). It now applies at any time rather than just during unsociable hours. It now prohibits “excessive noise” but the conduct in warning related only to “loud music”. The condition in the CPN applies to the whole of London.

11. This is further evidence that the Appellant was not given any time to address the perceived problem conduct, in breach of s. 43 (5) of the 2014 Act. The Respondent cannot therefore have been satisfied that, having had time to deal with the matter, The Appellant’s behaviour was still having a detrimental effect on the quality of life of those in the locality.

12. In addition, the CPN states that: “██████████ was issued with a CPN WW [warning] on 04/03/22 by PC Springate and was required to remove his tent and all personal belongings from the location by 07/03/2022. Since being issued with the CPN Written Warning (WW), ██████████ continued to live in his tent at the location and to breach his CPN WW on a daily basis.”

13. This is incorrect. The written warning does not tell the Appellant that pitching a tent or living in his tent is having a detrimental effect on the quality of life of those in the locality. Nor does it ask him to remove himself from the location. It simply states that the unreasonable conduct is: “1. *Leaves litter, tents, bedding, clothing, personal belongings and other items unattended in a public space. Urinating and Defecating in a public space.*”

14. The Appellant denies the conduct at paragraph 1 of the warning. Regarding his tent, it was not left unattended. It was the Appellant’s home. Whenever he was not there, he locked it and left all his personal belongings inside it. The Appellant’s first

language is [REDACTED], not English, he did not realise that he was required to move out of the tent within four days of receiving the notice.

15. The Appellant was provided with a translated copy of the conditions imposed on him by the CPN but he was not provided with a translated copy of the part of the CPN that explains his right of appeal and the time frame for exercising it, in breach of s. 43 (7) (b) of the 2014 Act.

**D.2. The conduct specified in the CPN did not take place, and/or has not had a detrimental effect on the quality of life of those in the locality, and/or is not unreasonable, and/or is not conduct that The Appellant can reasonably be expected to affect.<sup>5</sup>**

16. The Appellant denies ever engaging in most of the conducts listed in the CPN other than the condition at 4, of which he was not warned, and conditions 1 and 3 in so far as his tent was previously pitched in a public space.

17. In any event the conditions in the CPN are unclear as they set out general, rather than specific, behaviours. They do not provide a requirement that the Appellant must do specified things or take reasonable steps to achieve specified results, as required under s. 43 (3) of the 2014 Act. Rather, they set out conditions that largely target those who are living on the streets.

18. Eleven 'conditions' are listed. We address each condition in turn. We ask the court to consider the statement of [REDACTED] and the letter from [REDACTED] when considering the representations below.

19. Condition 1: Must not leave any bedding in any public space in the London Borough do Camden, including but not limited to duvets, pillows, sheets, etc.

19.1 The Appellant denies engaging in this behaviour. In so far as his tent was in a public space, this was his home and he is homeless.

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<sup>5</sup> S. 46 (1) (a), (b), (d) and (e) of the 2014 Act

19.2 When the Appellant was not in his tent or in the area around it, he kept his personal belongings, including bedding, locked within his tent. We refer to the statement of [REDACTED] at para 19 and para 21 where she confirms this.

20. Condition 2: Not to be in possession of any articles used in the omission of begging, including but not limited to open containers/cups or sign and not to position yourself to beg.

20.1 The Appellant denies begging and [REDACTED] states confirms in her statement at para 20 that the Appellant does not beg.

20.2 In any event it is unclear what this condition means: a person may be in breach of it for having a container or cup with a beverage in it. It is also unclear what “not to position yourself to beg means”. Any conditions in a CPN should be clear to enable the person who receives it to control their behaviour.

21. Condition 3: Must not leave litter, tents, clothing, personal belongings or any other items unattended in any public space in the London Borough of Camden.

21.1 The Appellant denies littering and the statement of [REDACTED] at para 21 confirms that he does not litter.

21.2 In so far as his tent was in a public space, this was the Appellant's home and he is homeless. When the Appellant was not in his tent or in the area around it, he kept his personal belongings locked within his tent. We refer to the statement of [REDACTED] at para 21 where she confirms this.

22. Condition 4: Must not pitch a tent or make any other improvised constructions to be used or living. Must not live in a tent or any other place not designed and constructed to be used as accommodation in the London Borough of Camden.

22.1 The Appellant admits this behaviour. In any event it is unclear how pitching a tent or living in one of itself can be said to meet the criteria under s. 43 (1) of the 2014 Act.

22.2 These criteria seem to target those living on the streets, in breach of the guidance. The guidance states that Public Spaces Protection Orders (“PSPO”s) should not be used to target people based solely on the fact that they are homeless or rough sleeping.<sup>6</sup> The criteria for making PSPOs and issuing CPNs is very similar;<sup>7</sup> PSPOs very much like CPNs, can be made if the council are satisfied on reasonable grounds that the activity of behaviour concerned has had or is likely to have a detrimental effect on the quality of life of those in the locality.<sup>8</sup> The Appellant therefore contends that the same guidance applies to the issuing of CPNs.

23. Condition 5: Not to congregate near or associate with illegal drug use on the street or allow a rough sleeping site to be used for illegal drug use.

23.1 The Appellant denies using illegal drugs.

23.2 In so far as it purports to prohibit the Appellant from ever being close to someone who uses drugs or making him responsible for controlling the behaviours of those who use drugs in public spaces this condition is too broad and unreasonable.

23.3 Clearly the Appellant cannot be held responsible for the behaviour of others with whom he may associate. We refer the court to the case of Staffordshire Moorlands DC v Sanderson [2020] EWHC 962 (Admin) where Mrs Justice Andrews held that on a proper construction of s. 43 of the 2014

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<sup>6</sup> See page 65 of the Guidance. The full passage is quoted at para 13 above.

<sup>7</sup> The criteria for issuing a CPN is at s. 43 of the 2014 Act and includes “the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality”. Under s. 43 (4) “The only requirements that may be imposed [ in a CPN] are ones that are reasonable to impose. The criteria for making a PSPO is set out at s. 59 and includes “activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality”. Under s. 59 (5) “The only prohibitions or requirements that may be imposed [ in a PSPO] are ones that are reasonable to impose...”. (Emphasis added)

Act, there was no power to issue a CPN in the name of an individual (parent) concerning the conduct of a different individual (their child). Mrs Justice Andrews states at paragraph [31]:

23.4 “S.43(1) provides that where a CPN is served on an individual the unreasonable conduct of that individual must have a persistent and continuing detrimental effect on those in the locality. That is easy enough to understand. It seems clear that Parliament intended that a CPN (and any prior warning) should be served on the person who is engaging in the anti-social behaviour, with a view to getting that person to desist, ultimately on pain of a criminal sanction.”

24. Condition 6: Not to loiter on a public road or pavement waiting for others unless waiting for a pre-arranged appointment which can be proved/confirmed at the time of waiting.

24.1 This condition is unclear, overly broad and unreasonable. It seems to prohibit the Appellant from ever being on any public road or pavement unless he had a pre-arranged appointment which can be proved or confirmed at the time of waiting. This would prevent him from waiting for a friend, for a support worker or even his solicitor, unless he had a confirmed appointment with them. These criteria do not comply with s. 43 (1) of the 2014 Act either.

25. Condition 7: Not to engage in behaviour which causes or is likely to cause harassment, alarm, distress, nuisance or annoyance to any person.

25.1 It is unclear when it is alleged that the Appellant harassed, alarmed, distressed, caused a nuisance or annoyance to any person. He denies doing so.

25.2 In any event this condition is overly broad and unreasonable. Who has not ever annoyed another person? How will the Respondent consider if this condition has been breached and the reasonableness of any complaint(s) made?

26. Condition 8: Not to use any sound amplifier or make excessive noise in any public space in London.

26.1 It is unclear how “excessive noise” is defined. The condition is also overly broad and therefore unreasonable as it purports to prevent the Appellant from ever using a sound amplifier in any public space in London. Therefore, if the Appellant wanted to protest against the breadth of the provisions of this CPN he could be in breach of this condition. This condition therefore also potentially infringes the Appellant’s rights under articles 10 and 11 ECHR. Such a broad interference would not be justifiable.

27. Condition 9: Not to block, sleep or sit outside of any entrance and/or exits to doorways. This includes residential and business anywhere in London.

27.1 It is unclear what this condition means; would it prevent someone from sitting by, or in front of, the vicarage door or of anyone who did not mind the Appellant sheltering on their door step?

27.2 This seems to be another condition targeting those in poverty who are living on the streets. It does not therefore comply with s. 43 (1) either.

27.3 In an event, in so far as the Appellant understands these conditions, he Appellant denies engaging in them as until he was placed in hotel accommodation recently, he slept in his tent and had no reason to block entrances or exits to doorways.

28. Condition 10: Not to urinate or defecate in public

28.1 This seems to be another condition targeting those in poverty who are living on the streets. It does not therefore comply with s. 43 (1) either.

28.2 In any event, the Appellant denies engaging in this behaviour. [REDACTED]  
[REDACTED] also confirms at para 24 of her statement that the Appellant would have no reason to engage in this behaviour.

29. Condition 11: To engage positively with current services offered which will provide immediate accommodation and support, while vacating the site on [REDACTED]:

29.1 It is unclear what services the Appellant is meant to engage with. The Appellant is currently in accommodation provided by Routes off the Streets. The letter by [REDACTED] confirms that the Appellant engaged with the support provided by them, including in job searches and in his pre-settled status application. He also engages positively with the support from Streets Kitchen.

29.2 However, there may be reasons why a person such as the Appellant may choose at one point not to engage with services or specific support that it is offered by those services. This condition, which is unclear, means that the Appellant could get a criminal record for breaching a condition that he does not know the meaning of.

### **D.3. Ground 3: The requirements in the notice are unreasonable.<sup>9</sup>**

30. Conditions are not proportionate

30.1 The above conditions are not targeted at the Appellant and are all valid for an indefinite period. Taken individually or together, they are unclear, overly broad and disproportionate in their effect. They are not requirements that are reasonable to impose under s. 43 (4) of the 2014 Act.

30.2 The Court should not make an order requiring a person to comply with conditions where it would not be appropriate for that order to be enforced: Wookey v Wookey [1991] Fam 121 (Butler-Sloss LJ at para 10). In the case of

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<sup>9</sup> S. 46 (1) (2) of The 2014 Act

a CPN the Court must therefore be satisfied that it would be appropriate to convict the subject for breach (in the present case therefore including potential conviction of the Appellant for simple begging) in order for the conditions to be considered reasonable.

30.3 Lord Justice Hickinbottom and Mrs Justice Whipple in the case of Kieron Stannard v The Crown Prosecution Service [2019] EWHC 84 (Admin) EWCH [2019] highlighted at paragraph [54] that:

30.4 “CPNs constitute a significant interference with an individual's freedom; they must be clear in their terms and proportionate in their effect. We make two final comments. First, we consider it would be best practice and consistent with legal certainty for any CPN to be limited in time, with that term clearly stated in the CPN. Secondly and more generally, we emphasise the need for authorised persons prior to issuing a CPN to consider with care the prohibitions and restrictions imposed to ensure that they go no further than is necessary and proportionate to address the behaviour which has led to the CPN being made.”  
(Emphasis added)

30.5 The Court of Appeal in R v Boness [2005] EWCA Crim 2395 (paras 22 and 23) a case dealing with an ASBO, held that prohibitions should be capable of being easily understood by the defendant and that any conditions imposed should be enforceable in the sense that it should allow a breach to be readily identified and capable of being proved. This approach was endorsed more recently by the Court of Appeal in R v Khan [2018] EWCA Crim 1472 (paras 14 and 15).

30.6 Conditions 8 and 9 are said to apply to the whole of London. Some other conditions (eg.6) do not have a geographical limit. These conditions are unreasonable by reason of their overly broad geographical limit alone and it is unclear how they could be enforced.<sup>10</sup>

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<sup>10</sup> For examples of overly broad conditions that were quashed in respect of an ASBO, see R v Boness [2005] EWCA Crim 2395.

30.7 In addition, as stated above, condition 8 is so broad that it would prevent the Appellant from ever protesting against the breadth of the CPN anywhere in London – it therefore also interferes with his rights under articles 10 and 11 ECHR and has not been justified and, we submit, could not be justified in the circumstances.

30.8 Condition 11 is unclear; the Appellant could breach it without knowing that he is doing so. In addition, it does not take into account that the Appellant may have a reason for not engaging with services or refusing specific support. It is therefore too uncertain, broad and unreasonable.

30.9 CPNs are meant to deal with issues that are short or medium term,<sup>11</sup> but the Appellant's homelessness is neither; he has been living in his tent which has been pitched in the [REDACTED] area for on or about two years.

### 31. Conditions targeting those living on the streets

31.1 The guidance states at page 48 that when issuing a CPN "particular care should be taken to consider how use of the power might impact on more vulnerable members of society." The CPN breaches the guidance because several conditions set out above target those who live on the streets and those who are poor, who are some of the most vulnerable members of our society. These conditions are unreasonable to impose, and they interfere with the Appellant's rights under Article 8 ECHR.

31.2 The clearest examples of this are Conditions (1) (2) and (4). However, conditions such as Condition (6) ('Not to loiter on a public road or pavement waiting for others unless waiting for a pre-arranged appointment which can be proved/confirmed at the time of waiting') and Condition (9) ('Not to block, sleep or sit outside of any entrances and/or exits to doorways...') also seem to target

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<sup>11</sup> See page 54 of the Guidance.

those who are living on the streets. Who else sleeps close to entrances or exits to doorways other than people who are living on the streets?

### 32. Blanket ban on begging

32.1 Condition (2) amounts to a blanket ban on begging. Therefore, it is also unreasonable and, we submit, unlawful.

32.2 Both the local authority and the police are public authorities which are required, under s. 6 HRA, to act in a way that is compatible with a person's rights under the ECHR.

32.3 The Appellant denies begging but, in any event, a blanket ban on begging in a public space, such as the one in the CPN, amounts to an unacceptable interference with Article 8 ECHR as it deprives those who are poor of a means of subsistence.

32.4 We refer the court to the European Court of Human Rights (the '**ECtHR**') decision in *Lacatus v Switzerland* (application no. 14065/15), where the court held that an outright ban on a certain type of conduct was a radical measure which required strong justification and particularly rigorous scrutiny by the courts empowered to weigh up the various interests at stake. The blanket nature of the ban precluded a balancing of the interests at stake.

32.5 The ECtHR considered that, being in a clearly vulnerable situation, the claimant had had the right, inherent in human dignity, to attempt to meet her basic needs by begging.

32.6 In addition, an outright ban on begging would also interfere with rights under Article 10 ECHR, as it would prevent the Appellant from communicating his plight and suffering to members of the public.

32.7 Any interference with the Appellant's rights under Articles 8 and 10 ECHR has not been justified and we submit, could not be justified in her circumstances.

33. Unable to control or affect behaviour

33.1As already stated, many of the conditions in the CPN, such as conditions 2 and 6, are unclear. The Appellant is therefore unable to control his behaviour in respect of conditions that he is unable to understand.

33.2In addition, the Appellant is homeless. At present he is in insecure accommodation provided by Routes off the Streets. However, if he were to find himself in the streets again, he would immediately be in breach of the conditions related to rough sleeping such as condition 4.

**E. CONCLUSION**

34.For all those reasons, the Appellant respectfully invites the Court to allow the appeal and quash the CPN.

35.The Appellant also asks that, pending the outcome of his appeal, the Court suspends the CPN conditions under s 43 (6) (a) of the 2014 Act.

**LARA TEN CATEN  
LIBERTY**

**6 APRIL 2022**