

IN [REDACTED] MAGISTRATES' COURT

Case number:

[REDACTED]  
BETWEEN:

[REDACTED]  
-and-

Appellant

COMMISSIONER OF POLICE FOR THE METROPOLIS

Respondent

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**SKELETON ARGUMENT ON BEHALF OF THE APPELLANT**

**Appeal hearing 3-4 March 2022**

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*[#] indicates page numbers in the appeal bundle throughout*

*(WSXX) indicates witness statements identified by initials*

**A. INTRODUCTION**

1. This is an appeal brought under section 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 11 October 2021 (“**the CPN**”). Grounds of appeal were filed on 27 October 2021. Liberty is representing the Appellant because it considers the appeal to raise issues of general importance.

**B. PRELIMINARY MATTER: PROCEDURE**

2. The CPN is premised on factual allegations. Fairness demands that the Respondent must particularise what those allegations are so that the Appellant has a fair opportunity to rebut them.

3. The CPN can only be based on facts which are proved to have occurred in the window between the date on which a community protection warning was issued and the date on which the CPN was issued.
4. The Respondent will bear the evidential burden of establishing those allegations. The Appellant cannot be expected to prove a negative.
5. The running order for the trial of an appeal under section 46 the 2014 Act should therefore be as follows:
  - 5.1. the Respondent to identify the factual allegations on which the CPN is based and to present its evidential case;
  - 5.2. the Appellant to present her evidential case in response and/or make oral submissions in support of her appeal;
  - 5.3. the Respondent to make oral submissions in response;
  - 5.4. the Appellant to reply.
6. The Appellant sought the Respondent's views in respect of running order on 25 January 2022. Unfortunately, the Respondent has failed to respond and has so far failed to particularise the factual allegations on which he relies. The Appellant asks the Respondent to do so in writing in good time before the hearing.

### **C. BACKGROUND**

7. The Appellant is a [REDACTED] She is a highly vulnerable individual suffering from severe mental and physical health problems and drug addiction. She currently lives in a supported placement for persons requiring treatment for substance misuse (see [REDACTED], para 3) [59].
8. The Appellant has diagnoses of borderline personality disorder, post-traumatic stress disorder (PTSD) and depression (see [REDACTED] report, para 37) [100-101]. She is addicted to heroin and crack cocaine, and currently uses both in addition to a Methadone prescription.
9. The Appellant begs to support her drug habit. She has done so on [REDACTED] for around 7 years ([REDACTED], para 8) [35].

10. On 11 October 2021 the Respondent issued the CPN. The Appellant explains that this put under her door at the hostel, and that a copy was then given to the hostel staff (██████, para 4) [34].
11. The CPN records: “*You were issued with a written warning on – 11/10/2021*”, *i.e.* on the same day as the notice.
12. The Appellant lodged this appeal on 27 October 2021 [5].
13. On 16 December 2021 this appeal came before the court for directions and terms 2, 4, 5, 6, 7, 8, 10, 11, 12, 14 were suspended pending final determination of the appeal.
14. Before that interim order, the Respondent instituted three sets of criminal proceedings against the Appellant for alleged breach of the CPN in respect of the following incidents:
  - 14.1. 28 October 2021: alleged breach of term 7 for having a sign stating “Please can you help me make £18 for a bed for the night, thank you” [124].
  - 14.2. 29 October 2021: alleged breach of terms 2 and 8 for being outside Sainsbury’s with blankets and a bike [123].
  - 14.3. 3 November 2021: alleged breach of terms 2 and 7 for sitting outside Sainsbury’s with three signs [123].
15. Representations were sent by the Appellant’s criminal solicitor to the Crown Prosecution Service in respect of each of the above charges and the criminal proceedings have now been discontinued.
16. On 16 December 2021, the Respondent instituted criminal proceedings against the Appellant for begging, in alleged breach of s.3 of the Vagrancy Act 1824 and s.70 of the Criminal Justice Act 1982 [125-126]. Following representations by the Appellant’s criminal solicitors [127-130]. On 1 February 2022, the Crown Prosecution Service filed a notice of discontinuance on the ground that prosecuting the Appellant for begging was not in the public interest. [147]

## **D. LEGAL FRAMEWORK**

### **D.1. The 2014 Act**

17. The statutory framework applicable to CPNs is contained in chapter 1 of part 4 of the 2014 Act.

18. The relevant sections are set out in the grounds of appeal and are not repeated here.
19. In summary, the police may only issue a CPN to an individual in circumstances where:
- 19.1. they are satisfied on reasonable grounds that 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 (s.43(1)(a) ;
  - 19.2. they are satisfied on reasonable grounds that the conduct is unreasonable (s.43(1)(b));
  - 19.3. the individual has been given a written warning that the notice will be issued unless his/her conduct ceases to have the detrimental effect (s.43(5)(a)); and
  - 19.4. the police are satisfied that, despite the individual having had enough time to deal with the matter, their conduct is still having that effect (s.43(5)(b))
20. There is a right of appeal against a CPN under section 46 of the 2014 Act and the relevant grounds are addressed in submissions below.

#### Statutory guidance

21. “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 respect of CPNs that:

##### 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.”*

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.”*

### Case law

22. “Detrimental effect” under the 2014 Act is to be given its plain meaning, and the circumstances in which it may apply are many and various (*Dulgheriu v Ealing LBC* [2018] EWHC 1667 (Admin); [2019] PTSR 706 per Turner J at first instance, para 31). However, as emphasised by May J in *Summers v Richmond Borough Council* [2018] 1 WLR 4729 (in the context of public space protection orders):

“26. *It is important to bear in mind, however [...] that the behaviours which PSPOs are intended to target are those which are seriously anti-social, not ones that are simply annoying. He referred me in this respect to the following passage in the Home Office information note (Reform of Anti-Social Behaviour Powers: Public and Open Spaces) from 2017:*

*“Our aim in reforming the anti-social behaviour powers is to give the police, councils and others more effective means of protecting victims, not to penalise particular behaviours. Frontline professionals must use the powers in [the 2014 Act] responsibly and proportionately, and only where necessary to protect the public.”*”

23. The Court should not to make an order requiring an 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 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.

## **D.2. Articles 8 and 10 ECHR**

24. The Appellant relies upon her rights under Articles 8 and 10 ECHR as set out on the grounds of appeal.
25. The Respondent as a public authority must not act in a manner incompatible with convention rights (section 6 Human Right Act 1998). As a public authority, the Court must also act compatibly with the Appellant's Convention rights (s.6(3)(a)).
26. In *Lăcătuș v Switzerland* (application no. 14065/15), the European Court of Human Rights held that a blanket ban on a passive begging was an unjustified interference with the article 8 rights of the applicant. This is addressed further below.

## **E. SUBMISSIONS**

### **E.1. Material defect or error in, or in connection with, the notice (s.46(1)(3))**

27. The notice fails properly to particularise the alleged misconduct. The section headed "*the nature of the conduct is as follows*" is simply a copy and paste of conditions 1-12.
28. The notice provides that a warning was issued on 11 October 2021 to ensure the alleged offending stopped by 8am on 11 October 2021. That warning period was manifestly inadequate.

### **E.2. Conduct specified did not take place (s.46(1)(1)(a))**

29. The Appellant accepts that she passively begs for money on [REDACTED] and that she will often have drug paraphernalia upon her (but not visible to the public). She gives evidence to the effect that she sits on the pavement with a blanket or sleeping bag and sometimes a sign asking for money and/or a cup, and that she will have drugs paraphernalia on her person as she is a drug addict ([REDACTED], paras 6-8) [35]. Beyond this, it is denied that she has engaged in the conduct referred to in the CPN: the Appellant is not an aggressive beggar, does not cause disruption to local shops, does not obstruct the footpath, and does not leave litter or urinate in public ([REDACTED], para, 13-15, 18) [36-37]. These are unfounded and offensive allegations. The

Appellant's account is supported by her witnesses - support workers with first-hand experience of the Appellant's begging activity.

30. The Respondent has presented no evidence capable of supporting most of the allegations on which the CPN is premised. Witness statements from two store managers are relied upon, both of which contain highly generalised allegations which fail to specify the dates upon which they are said to have occurred.
31. Importantly, the Respondent may only issue a CPN where the appropriate warning procedure has been followed. The Respondent must therefore evidence not only that the Appellant has engaged in the relevant conduct but that she has done so between the issue of the CPW and issue of the CPN. According to the CPN, the warning relied on was issued on the same day at the CPN. Assuming (for the sake of argument) that this was a reasonable warning period, it means that the Respondent would need to prove that each particular of misconduct occurred in a short window of time on 11 October 2021. The Respondent's evidence served on 12 January 2022 does not allege any misconduct on that date. The CPN therefore cannot stand.

### **E.3. The Appellant cannot reasonably be expected to control or affect the conduct**

32. As set out above, the Appellant has not committed most of the alleged misconduct.
33. As to the allegation of "being in close proximity of drug paraphernalia", the Appellant cannot reasonably be expected to prevent others from leaving drug paraphernalia on the street.
34. In respect of the conduct which is admitted ("asking members of the public for money"; "having any sign that requests money"; "Having any drug paraphernalia on your person"), the Appellant relies upon the expert psychiatric evidence of [REDACTED] dated 6 February 2022 and in particular his findings at para 73 [108]. It is [REDACTED] express view that the Appellant "*lacks the ability to control her behaviour due to her mental health problems particularly in relation to substance misuse*", and more specifically that "*she has high levels of emotional instability and impulsivity as a result of her mental health problems and is largely unable to control her behaviour in relation to behaviours such as having a sign requesting money, begging for money, using illicit drugs, having in her possession or being in close*



*proximity to drug paraphernalia and being on [REDACTED], given that she is reported to be frequently at this location.”*

**E.4. Conduct not unreasonable (s.46(1)(1)(d)), no detrimental effect on the quality of life of those in the locality (s.46(1)(1)(b)) and/or requirements of the notice unreasonable (s.46(1)(2))**

35. Several behaviours listed in the CPN are not conduct which falls within the scope of section 43 of the 2014 Act, namely:

- Having a sign that requests money
- Acting in a manner that implies begging
- Entering any business without a valid reason
- Being in close proximity of drug paraphernalia
- Having drug paraphernalia on your person
- Being anywhere on [REDACTED] with a medial (sic) appointment or pre-arranged appointment

36. Section 43 of the 2014 Act is a penal provision, in that it provides for the issuing of a notice which exposes the recipient to the risk of imprisonment. Penal provisions are to be narrowly construed: *Bennion on Statutory Interpretation*, 7<sup>th</sup> Edition, Section 26.4; *Bogdanic v Secretary of State for the Home Department* [2014] EWHC 2872 (QB), paras 47-48).

37. On a narrow construction, passive begging cannot be considered to have “*a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality*” and/or is not “*unreasonable conduct*”. That seeing a beggar may invoke feelings of discomfort in passers-by does not come close to meeting that threshold. Seeing beggars is an inescapable part of ordinary life, which is generally accepted and tolerated in a free and democratic society (see, by parity of approach, the Court of Appeal’s conclusion that if one walks down a busy street one impliedly consents to being jostled or bumped – *Collins v Wilcock* [1984] 1 WLR 1172).

38. The evidence presented by the Respondent includes comments in respect of the Appellant’s appearance, dress, cleanliness, and her “pronunciation” [sic] [81]. That shop managers may feel distaste for or dislike the Appellant is not a proper basis for issuing a CPN. The contrary view would have alarming consequences – it would permit the outlawing of individuals on the grounds of community prejudice.

39. Further, the effect of the CPN is to criminalise passive begging. The Court should only uphold such a notice if it is satisfied that it would be appropriate to prosecute and punish the Appellant for passive begging in breach of the notice. If not, then the requirements of the notice are unreasonable, contrary to s.46(1)(2) of the 2014 Act and the notice must be quashed.
40. The Crown Prosecution Service's decision that it was not in the public interest to prosecute the Appellant for passive begging (see para 16 above) shows that such a prosecution would not be in the public interest and, accordingly, that the terms of the notice are not reasonable.
41. The Crown Prosecution Service's determination that it is not in the public interest to criminalise such conduct is consistent with the views of the Government. On 13 August 2021, in its response to the Special Rapporteur on extreme poverty, the Government stated: "*The UK is committed to refraining from enforcing any laws and regulations which criminalise persons in situations of poverty or homelessness and that are incompatible with human rights standards and the ECHR Lacatus v. Switzerland judgment*". On 20 October 2021, the Prime Minister committed to repealing the Vagrancy Act 1824. On 17 January 2022, the House of Lords voted to repeal the Vagrancy Act 1824 through an amendment to s.160 to the Police, Crime, Sentencing and Courts Bill.

## **E.5. Human Rights**

42. The Appellant relies upon her rights under Article 8 and 10 ECHR. The Appellant submits that the CPN violates her human rights in that (a) it disproportionately interferes with her right to respect for her private life (Article 8), and (b) it disproportionately interferes with her freedom of expression (Article 10). In accordance with s.6 of the Human Rights Act 1998 and section 46(2)(2) of the 2014 Act (the requirements of the notice must be reasonable), the notice must therefore be quashed.

### Article 8

43. Insofar as it prohibits passive begging, the notice interferes with the Appellant's right to respect for private life. This is because:

- 43.1. First, begging is the means by which the Appellant maintains social connections with the community (see [REDACTED], para 9 [35]; [REDACTED] para 27 [27]; and [REDACTED], paras 22 and 26 [62-63]). This unorthodox form of social life is a reflection of the Appellant’s mental illness. That this is an unorthodox form of social life does not render it unworthy of respect. It is the genuine core of the Appellant’s social existence.
- 43.2. Second, the Appellant’s limited income from state benefits is insufficient for fund her ongoing drug addiction over which she has little control (see [REDACTED] report para 73) [108]. If the Appellant were prevented from begging, she is likely to be forced into sex work to fund her drug addiction, as she has done in the past ([REDACTED] para 29) [53].
44. Private life under Article 8 is a broad concept incapable of exhaustive definition (*Pretty v United Kingdom* (2002) 35 EHRR 1, para 61). It covers the physical and psychological integrity of a person and may “embrace multiple aspects of the person’s physical and social identity” (*Denisov v Ukraine* [2018] ECtHR 76639/11, para 95; S and *Marper v the United Kingdom* (2008) 48 EHRR 50, para 66). Aspects of private life under Article 8 include: individuals’ wellbeing and human dignity (*Beizaras and Levickas v Lithuania* (2020) 71 EHRR 28, para 117), the right to self-determination (*Pretty v the United Kingdom*, para 61), and relationships with other human beings (*Paradiso and Campanelli v Italy* (2017) 65 EHRR 2, para 159).
45. In *Lăcătuș v Switzerland* (application no. 14065/15), which the Government has committed to respecting (see para 40 above), the ECtHR held that Article 8 was engaged by a blanket ban on begging, and expressed the view that “human dignity is seriously compromised if the person concerned does not have sufficient means of subsistence. By begging, the person concerned adopts a particular way of life in order to overcome an inhuman and precarious situation” (para 56) and that “the right to turn to others for help is the essence of the rights protected by Article 8 of the Convention.” (para 59). The ECtHR also held that “the specific nature of the particular case must be taken into account, including the economic and social realities of the person concerned” (para 57).
46. Once it is accepted that the CPN is an interference with the Appellant’s right to respect for private life, the question is whether that interference is proportionately justified, applying the well-establish four-stage test for assessing proportionality (set out in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700, para 20, *per* Lord Sumption):

- 46.1. Is the objective of the measure sufficiently important to justify the limitation of a protected right?
- 46.2. Is the measure rationally connected to the objective?
- 46.3. Could less intrusive measures have been used without unacceptably compromising the achievement of the objective?
- 46.4. Balancing the severity of the measure's effects on the rights of the person to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, does the former outweighs the latter?
47. The assessment of proportionality calls for strict scrutiny. In *Lăcătuș*, the ECtHR considered that “a general prohibition of a certain conduct, such as the one in this case [begging] is a drastic measure which requires strong justification and particularly serious review by the courts, which are entitled to weigh the relevant interests at stake” (para 101, emphasis added).
48. As to the first limb of the proportionality assessment, in *Lăcătuș* the ECtHR found that the Swiss government had demonstrated the presence of legitimate aims in adopting its blanket ban on begging, specifically in relation to the protection of public order and safety, the economic well-being of the country, and the protection of the rights and freedoms of others in light of representations made in respect of the impact of increased begging generally. However, by contrast, passive begging such as the Appellant's presents no threat to public order and safety, economic well-being of the country, or to the rights and freedoms of others. Accordingly, the Appellant submits that this ban on passive begging does not pursue an objective which is sufficiently important to restrict her fundamental rights.
49. As drafted, the CPN plainly fails to satisfy the third limb. Even if the prohibition of passive begging were legitimate, the CPN imposes much greater restrictions on the Appellant than are necessary to prevent her from engaging in passive begging. Excluding her from the whole of [REDACTED], which is the centre of her local community, cannot possibly be justified.
50. As to the fourth limb, the advantages of stopping the Appellant from passively begging (if, contrary to the submissions above, that is a legitimate aim) are clearly outweighed by the

devastating impact of the CPN on the Appellant's private life. The Appellant's begging is highly relevant to her physical and psychological well-being, her social identity, her right of self-determination and her relationships with other human beings. The CPN will render the Appellant liable to arrest for conduct over which she has little control. The damaging effects of this upon her mental health and general well-being are set out by [REDACTED] at para 75 of his report. If the suspension of the CPN were lifted, the Appellant - an individual who already faces significant marginalization – would be further marginalised and face repeated arrests which are psychologically harmful and detrimental to efforts being made towards her reintegration in society (see report of see [REDACTED] report para 73) [108]; and [REDACTED] paras 27-29 [52-53]).

51. The position is also analogous to *Lăcătuș*, in which the ECtHR held that it had “*no reason to doubt that begging was one of her [the applicant's] means of survival. It considers that, being in a situation of clear vulnerability, the applicant had the right, inherent in human dignity, to be able to express her distress and to try to remedy her needs by begging*” (para 107).
52. The ECtHR quoted the United Nations Special Rapporteur on extreme poverty and human rights and noted that “*the motivation to render poverty less visible in a town, and (thereby) to attract investment, is not compatible with a proper regard for human rights*” (para 113).

#### Article 10

53. Insofar as it prohibits begging, the CPN engages Article 10.
54. Freedom of expression under Article 10 is broad in scope. It is not limited to certain types of information or ideas or forms of expression (*Markt Intern Verlag GmbH and Klaus Beermann v Germany* (1990) 12 EHRR 161, para 26), and is applicable to forms of conduct (*Ibrahimov and Mammadov v Azerbaijan* [2018] ECtHR 63571/16, paras 165-167).
55. The Appellant's begging is inherently expressive in nature. It is her means of expressing her need for social interaction, and moral and financial support. The CPN therefore clearly involves an interference with the Appellant's Article 10 rights. For the reasons set out in relation to Article 8, that interference is not proportionately justified.

**F. CONCLUSION**

56. The court is respectfully asked to allow the appeal and quash the CPN.

**CHRIS BUTTLER QC  
MATRIX**

**ANGHARAD MONK  
GARDEN COURT**

**24 FEBRUARY 2022**