

## **NOW, MORE THAN EVER, THE PENALISATION OF POVERTY MUST STOP**

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**by Dr Ben Stanford and Rona Epstein**

As others have noted, the UK has a long and troubled history penalising people who live in poverty.

This can be seen in centuries-old vagrancy laws and imprisonment for council tax debt, and more recently with the introduction of Public Spaces Protection Orders (PSPOs) and imprisonment for contempt of court following an injunction. Both mechanisms have occasionally been used against homeless people or those otherwise living in poverty. Several recent developments cast these practices in an even more unfavourable light.

In January 2021 the European Court of Human Rights issued a landmark judgment concerning the penalisation of a poor and vulnerable member of the Roma community for begging. In *Lucatus v Switzerland*, the Court considered whether the use of criminal sanctions, initially a fine and then detention due to the applicant's inability to pay the fine, was compatible with the right to respect for privacy under Article 8 of the European Convention on Human Rights.

The Court ruled that the outright ban on certain conduct - in this case begging - was a radical measure which required 'strong justification and particularly rigorous scrutiny'. The right to respect for privacy, as a conditional right, allows for restrictions provided that the restriction is proscribed by law, pursues a legitimate aim and is necessary in a democratic society. Applying this test, the Court found that the law was clear and authorised the sanctions, and it was conceivable that some forms of aggressive begging might disturb or exploit certain individuals. The real problem, however, was whether the criminalisation of begging was necessary and proportionate.

The Court considered that begging constituted a means of survival for the applicant, and that being vulnerable meant she had the right inherent in human dignity to seek help from others by begging. Therefore the Court concluded that the penalty was disproportionate to the aim of combatting organised crime or the aim of protecting others. Thus, there had been a violation of the applicant's Article 8 rights.

The judgment should cause policymakers and local councils in the UK to seriously re-think their approach to dealing with activity deemed to be anti-social when it is linked to homelessness or poverty.

The use of PSPOs, introduced by the Anti-social Behaviour, Crime and Policing Act 2014, is one particular controversial measure. These powers can be used by local authorities to prohibit activity which the council deems to have a 'detrimental effect on the quality of life of those in the locality', any breach of which is a criminal offence. Several PSPOs have prohibited begging or the erection of tents or other temporary structures. These come despite Home Office Guidance stating that consideration should be given to how these powers might impact the 'most vulnerable members of society', and that they 'should not be used to target people based solely on the fact that someone is homeless or rough sleeping'.

In 2018, an individual, Sarah Ward, and the human rights organisation, Liberty, challenged Bournemouth, Christchurch and Poole Council after it introduced a PSPO targeting rough sleeping and begging. However, in December 2020 with the court hearing looming, the challenge was dropped after the Council removed these aspects. Nonetheless, similar PSPOs exist around the country demonstrating the breadth of discretion local authorities possess and the ineffectiveness of Home Office oversight.

Another mechanism often used to deal with anti-social behaviour associated with homelessness or poverty is a civil Injunction to Prevent Nuisance and Annoyance (IPNA). This power, along with a Criminal Behaviour Order, was also introduced in the Anti-social Behaviour, Crime and Policing Act 2014 to replace the well-known Anti-social Behaviour Order regime. Local councils, the police or

any social landlord can apply for an IPNA to stop anti-social behaviour. A court may grant an IPNA if it is satisfied on the balance of probabilities that a person has engaged, or threatens to engage, in anti-social behaviour, and it is just and convenient to grant the injunction for the purpose of preventing that person from engaging in anti-social behaviour.

Breaching an injunction is not a criminal offence but can carry significant penalties imposed in civil proceedings. The court may issue a fine or impose a suspended or immediate term of imprisonment of up to two years, with the contemnor generally serving half the sentence.

We have studied 115 cases of contempt of court hearings in 28 different county courts between 2019-2021. Many revealed individuals in particularly vulnerable positions. There were 86 men and 29 women. There were 60 immediate imprisonments ordered and 50 suspended, and three fines ranging from £120 to £250. The largest group of 26 cases concerned nuisance to neighbours including noise, bad language, threats, and shouting. Twenty-five cases were individuals found to be in prohibited areas. Drug dealing or possession accounted for six cases, with begging and sleeping rough accounting for four cases.

Martin G. was given 26 weeks' immediate imprisonment for sleeping rough and the possession of a crack pipe. Michael R, an alcoholic and homeless, had a costs order of £2093 made against him after breaking an injunction for being in a prohibited place - his father's home. James Maguire was sentenced to 26 weeks' immediate imprisonment for breaching an injunction by begging. Some of these accounts reveal an array of mental health issues. Sentencing Evelyn C. to four weeks' suspended imprisonment, the court said 'there are underlying mental health issues'.

The use of PSPOs or contempt proceedings to penalise poverty should not just be viewed as isolated problems, but also as symptoms of the broader issue of homelessness and poverty. The steady increase of homelessness over the past decade has been well-documented, with Homeless Link reporting an increase of 141 per cent since 2010.

The COVID-19 pandemic is also having a significant impact, with Crisis reporting that across Great Britain there has been a continued new flow of people experiencing homelessness since the start of the pandemic.

Punishing people in the hope that the problem simply disappears from the UK's streets is not a credible solution.

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