Dr. Hywel Francis MP, Chair,
Joint Committee on Human Rights,
House of Commons,
7 Millbank,
London,
SW1P 3JA

1st November 2013

Dear Dr. Francis,

I would like to add to the points I raised to you in my previous letters, dated 22 August and 4 October, in relation to the Antisocial Behaviour, Crime and Policing Bill. First, I would like to thank you and the Committee for considering my points I raised previously; it was good to see that you have included each of the Committee’s Fourth Report.

My further points relate to Part 4 – Community Protection and in particular Chapter 1 – Community Protection Notices (CPN) and Chapter 2 – Public Spaces Protection Orders. (PSPO) Liberty, in their report, [1] detail their concerns that neither CPN’s or PSPO’s require pre-judicial oversight recognising the potential for unfairness and abuse through their application. They have urged the Government to amend the Bill to provide the minimum safeguards of necessity, proportionality and judicial oversight and, accordingly, have proposed Amendments to Clause 40 and the scrapping of Clauses 50 – 68. I support Liberty’s assessment of the dangers contained in the Bill but would like to go further and detail how Part 4 could seriously impede specifically on the right to protest.

Each of these powers is widely drawn, with vague definitions of the relevant behaviour that could invoke them given. This is a drastic move away from the powers these Clauses are replacing, which were targeted. Furthermore it is not clear why Chapter 2 is necessary, given the provisions in Chapter 1.

The danger with Public Space Protection Orders in particular is that they could be used to curtail Occupy style protests such as the ones that spread across the country in 2011. Although each of the protest camps were subsequently removed, I would like to highlight part of the judgment of Justice Lindblom in the High Court when ruling on the ‘Occupy London’protest:

“For an interference to be justified, it must be rationally connected to one of the legitimate aims specified in Articles 10(2) and 11(2). It must be convincingly demonstrated that the interference meets a pressing social need and is proportionate (see Handyside, at paras 48 and 49 [1976] 1 EHRR 737). Action will not be proportionate unless it is the least intrusive means necessary to achieve the aim. Even if it is the least intrusive means necessary to meet the aim,
it must also strike a fair balance between the needs of the community and the individual so as not to impose an excessive burden on the individual. To apply a blanket policy will not normally be proportionate. Nor may criteria be set whose effect would be prevent the competing interests to be properly balanced (see Dickson v United Kingdom [2008] 46 EHRR 41, at para 82). Whether or not an interference is proportionate must be decided by the court (see, for example, R (SB) v Governors of Denbigh High School [2007] 1 AC 100). This must be determined on the facts of the individual case. The court will focus very sharply and critically on the reasons relied on by the initial decision-maker for curtailing the right or rights engaged.” [2]

Justice Lindblom recognised that Convention rights were engaged and interference of those rights must be proportionate, based on the facts of an individual case, with any interference being the least intrusive means necessary to meet the aim – and critically – interference must be determined by a court. PSPO’s would go again all of this and allow local authorities to make a mockery of well-established Convention rights.

I have experience as a legal observer for a variety of protest situations and it is clear to me that the police I often engage with have little understanding of how human rights protections work – I have even less faith that local authorities will be up to the task of engaging in proportionality reviews.

I understand that the Committee continue to consider the issues that are raised in relation to the Bill so I ask that take the points I have raised into consideration. I would be happy for you to share the contents of this letter with your colleagues on the Committee,

Yours Sincerely,

Matthew Varnham