

**FOR THE URGENT ATTENTION  
OF JOE ANDERSON**

Liverpool City Council  
Municipal Buildings  
Liverpool  
L2 2DH

**BY HAND**

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**Date:** 09 August 2012

Dear Sirs

**Our Client: Siobhan McDermott**

**Pre-Action Protocol for Judicial Review - Letter Before Claim**

We are instructed by the above client.

We write in accordance with the Pre-Action Protocol for Judicial Review. The aim of this letter is to seek to curtail escalation of this matter and to limit any proceedings and costs.

We write to notify you of our client's intended claim against Liverpool City Council in the Manchester District Registry of the Administrative Court for judicial review of your decision, taken at Cabinet on 8 June 2012 (Agenda Item 5b), to implement city centre street entertainment Terms and Conditions and permits under the Street Activity Management Plan ('**the Decision**').

Our client, who is a street entertainer, is adversely affected by the Decision, and intends to seek a Quashing Order in relation to it, an interim Prohibiting Order, further or other relief, and an order that Liverpool City Council pay her legal costs.

We are aware that a significant number of street entertainers, as well as our client, are also injuriously affected by the Decision. We are aware that the Association of Street Artists and Performers ('ASAP') is interested in this Decision, and that an online campaign, 'Keep Streets Live' has been launched.

The Decision is one which purports to deprive our client of her right to work and to entertain on the street. That right should not be taken away or interfered with except for just cause, and then only in accordance with the well-established principles of natural justice: see, for example, the decisions of the Court of Appeal in Re Liverpool Taxi Owners' Association

[1972] 2 AER 589, and R v Barnsley MBC exp Hook [1976] 3 AER 452 and the other authorities referred to in the most recent (6th) edition of De Smith's Judicial Review §7-018.

The Decision is unreasonable as it was not taken fairly. It was taken without any proper consultation with our client, or street entertainers more generally. We note the apparent absence of any consultation with the Musicians' Union. We note the failure to have considered alternative options. We note the absence of any evidence as alleged enforcement difficulties under the present (unlicensed) regime. We note the absence of any detailed information or evidence as to 'problem buskers'.

Moreover, the Decision and the Terms and Conditions are unreasonable, insofar as they purport to introduce a test of '*competence ... reflecting the Council's aims in regard to amenity and culture, and ... a genuine intention to entertain*'. We note the deemed and peremptory exclusion of any persons who '*spread blankets, sit on pavements, or possess penny whistles*'. We do not understand how simple possession of a penny whistle can be deemed not to constitute street entertainment. In these, as well as in other, regards, the Terms and Conditions seem arbitrary and capricious. There is no reasoned or evidentially substantiated basis for them.

Many of the Terms and Conditions, viewed individually, are arbitrary or simply draconian. For instance, Clause 13 seems to authorise or require Police Constables and Council Officers to act as music critics. Clause 18 relates to the requirement of public liability insurance. Our client is not aware of any instances where such insurance has in fact been called upon. You are seeking to impose an unnecessary financial burden on our client.

Taken together, the Terms and Conditions are an over-bearing and disproportionate interference with our client's livelihood.

Moreover, you have sought to restrict street entertainment to 25 named pitches, some of which have to be booked. On the basis that, hitherto, Liverpool is a city with a vibrant street entertainment scene, this limitation on the number of pitches imposes a cap on the number of performers who can operate.

We have seen and considered the template letter, entitled 'Non-Highway Activities on Corporate Estate' which seems to proceed on the basis that persons who infringe the Terms and Conditions are committing a trespass, against the Council, as owner of the substratum beneath the roadway. Although we find this an ingenious argument, we are far from convinced, as a matter of law, that it is well-conceived. If persons are found to be in contravention of your terms and conditions, do you propose to issue a claim against them for trespass in the County Court (thereby entitling yourselves, at best, to nominal damages) or do you propose to bring an information in the Magistrates' Court for criminal trespass? What rights of challenge or appeal are to be afforded to those accused of infringing the terms and conditions?

Given that our application to the Court must be issued by no later than 8 September 2012, and that this time limit cannot be extended by agreement, we require your prompt acknowledgment of this letter, and your full substantive letter of response by no later than **4pm 15 August 2012**. We otherwise propose to issue proceedings on **Friday 17 August 2012**.

We also request voluntary disclosure, by no later than **4pm 15 August 2012**, of all documents upon which you will seek to rely in any trial of this issue, which adversely affect your own case or our case or which support our case. For these purposes, 'document' means anything in which information of any description is recorded, including hand-written working or 'scrap' notes or memoranda, telephone logs, office diaries, computer records, and/or emails. We request that you make such disclosure in the appropriate Practice Form, supported by a Statement of Truth, together with provision of copy documents.

If full and proper disclosure is not made, we reserve the right to apply for specific disclosure, inspection, and/or the issue of a witness summons requiring attendance and the production of documents at Court. We reserve the right to seek an interim order for information.

We reserve the right to draw the terms of any refusal to co-operate on your part to the attention of the Court.

We remind you of the Court's powers to impose sanctions with regard to costs for failure to comply with the Pre-Action Protocol. Should proceedings be issued, we reserve the right to bring this letter to the attention of the Court generally and on the question of costs.

We are mindful of Paragraph 3.1 of the Protocol ('Alternative Dispute Resolution') and we invite you to consider whether some form of alternative dispute resolution would be more suitable than litigation for the resolution of this intended claim.

Given that the issue is one of general public importance, we also propose to apply for a protected costs order.

Yours faithfully

**KIRWANS**

