**PSPO – Forum Background Supporting Paper.**

Important Note: Local Government Association PSPO Guidance for Councils refers.

**Background**. Gloucester City Council is seen as an important member of the Forum. It has been and is instrumental in supporting and feeding into the Forum as part of its remit as agreed with the County Council when the Forum was set up. Over the last 18 months to 2 years we feel that real improvements have been made where the Forum has encouraged partnership joint working, better communications and coordination, signposting, building bridges and trust, etc., The Forum has at times raised issues where there could be seen to be service improvements, gaps in provision.

The City Councils main overarching policy in dealing with all anti-social behaviour is the Councils Safe & Attractive Street Policy dated July 2016.

Gloucester City Council, along with partner agencies, adopted a shared model of Engage, Support, and Enforce to address recognised complex street issues. Enforce was only ever a last resort and the draft Policy was welcomed by the Forum subject to inclusion of the Council to look at MEAM. Sadly, the Final Policy did not include MEAM, we understand due to cost. It is with regret that the council have since failed to accept the free offer of MEAM as sourced by the CHC. The draft policy did not include enforcement against rough sleepers, the Council stating that ‘rough sleeping is not a criminal offence’. However, the Council, without recourse to the Forum, latter included use of The Vagrancy Act 1824 to enforce against rough sleepers, which needs to be imposed by the Police.

Under the Vagrancy Act 1824, “Dossing & Sleeping Rough” are criminal offences, if a person who is wandering about or lodging in the open air & is not able to give a good reason why. Whether they have applied for accommodation or refused an offer is not relevant, but may become so if they claim to be homeless. However, this would be for the court to decide, not officers.

The Vagrancy Act, or other appropriate legislation, may be imposed where engagement and offers of support have been refused; for example, if the individual concerned has refused to apply for accommodation or has refused to accept offers of accommodation that have been made to them.

The Forum have previously asked for the important documented Process Mapping for the Street Policy, who is involved, who and how do you engage, coordination with service providers and agencys, who reports to who, who manages, actions and when, who decides, support process, actions when reluctance to engage…etc., this has not as yet been forthcoming. We are informed that the Map will be produced for each restriction when any PSPO decision has been made.

**Existing Enforcement.** Existing measures are very successful, being well publicised. The working practices adopted by Project Solace in Gloucester have been recognised as ‘Best Practice’ through national awards and inspections. Measures include Letters of concern, final warning letter and formal enforcement action being Civil ASB Injunctions, Criminal Behaviour Orders, Closure Orders. Since City Safe started in 2014 nearly 4,000 yellow card warnings have been issued and 312 exclusions from the City Centre.

**Introducing a PSPO.** Key Issues. The Anti-social Behaviour, Crime and Policing Act 2014 introduced several new tools and powers for use by councils and their partners to address ASB in their local areas. Public Spaces Protection Orders (PSPOs) are one of the tools available, and the Act gives councils the authority to draft and implement PSPOs in response to the particular issues affecting their communities, provided certain criteria and legal tests are met.

Need to consider how to ensure they meet the statutory criteria. This will include determining:• the appropriate scope of the Order• the area covered by the restrictions• the potential impact of the proposals• how each of the restrictions meets the legal test.

Councils will also need to consider how best the Order should be worded and establishan evidence base to support the proposals, incorporating a consultation process.

Councils will need to assess how certain behaviours are perceived, and their impact – both on the community broadly, and on its most vulnerable individuals. Some areas have included an additional test locally that the behaviour needs to be severe enough to cause alarm, harassment or distress. Collating evidence that illustrates the detrimental impact of particular activities will be important (see supporting evidence and consultation).

Further, some of those affected by possible restrictions may be vulnerable and councils need to look carefully at what impact the proposals might have on certain groups or individuals (see assessing potential impact and the Equality Act, below).

PSPOs are most effective and most robust to challenge where they are tightly drafted and focus on the precise harmful behaviour identified. Being clear on addressing the problem behaviour in an Order can help avoid the risk of unduly pursuing individuals who may not be causing any real harm.

**Homeless people and rough sleepers.** Homelessness and the causes of homelessness are not a Law enforcement issue. There are many causes and reasons why someone becomes homeless which is why there must always be a multi-agency approach which needs coordinating and managing.

We believe the Councils position is that where engagement is effective it leads to successful support, and where engagement and support succeed, enforcement is not required. Enforcement is included in this approach for the cases where individuals themselves refuse to engage with community led work, outreach or support and continue to behave in a way that impacts negatively on others. The Council will enforce only where they cannot resolve issues through appropriate engagement and support.

The Forum would support Homeless Links view that good results come from collaboration and flexibility between all different organisations – for example, we hear that ‘Fulfilling Lives’ and ‘MEAM’ areas have had great results in reduced offending by having the whole system work as a whole to support people who are repeatedly identified.

The Home Office guidance sets out that PSPOs should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community’s quality of life which justifies the restrictions imposed. It suggests the council should consider whether the use of a PSPO is the appropriate response and if it will have a detrimental impact on homeless people and rough sleepers. Councils will find it useful to consult with national or local homeless charities on this issue, when councils are considering restrictions or requirements that could affect homeless people and rough sleepers.

**Area Covered**. Determining the extent of the geographical area covered by an Order will mean identifying what is proportionate in the circumstances and restricting activities only where necessary – i.e. only where the legal test is met. It may be difficult to demonstrate that the statutory criteria under section 59 have been met across an entire broad geographical area; evidence about the extent of the anti-social behaviour within a locality should be used to inform appropriate boundaries (see supporting evidence and consultation).

**Supporting Evidence Base**.

The most robust Orders will be supported by a solid evidence base and rationale that sets out how the statutory criteria for each of the proposed restrictions have been met, and demonstrates a direct link between the anti-social behaviour and the PSPO being proposed in response. The nature of this evidence, and how it should be weighted, is largely down to councils to determine, although obtaining a range of data from different sources as part of this process will be particularly useful in informing decision-making, and may help to avoid challenge further down the line (see further evidence, below, for specific examples).

The Guidance says, *‘Local areas will, of course, need to satisfy themselves that the legislative requirements are met before an Order can be introduced, and obtaining clear evidence to support this is important. Collating information about the nature and impact of the ASB subject to the PSPO are core elements of the evidence gathering and consultation process and will help inform the council’s view as to whether the requirements under section 59 of the Act have been fulfilled.*

*The evidence will need to be weighed up before authorities can determine whether or not it is appropriate and proportionate to introduce a PSPO at all, and if so, whether the draft proposals are suitable. It can be used to help shape the scope of the Order, including any exemptions – such as times of day when a behaviour might be prohibited – and can also help to determine what area the Order should cover and how long it should last. The most robust Orders will be supported by a solid evidence base and rationale that sets out how the statutory criteria for each of the proposed restrictions have been met, and demonstrates a direct link between the anti-social behaviour and the PSPO being proposed in response. The nature of this evidence, and how it should be weighted, is largely down to councils to determine, although obtaining a range of data from different sources as part of this process will be particularly useful in informing decision-making, and may help to avoid challenge further down the line (see further evidence, below, for specific examples).*

*Further evidence as noted above the 2014 Act requires local authorities to formally consult with the police and the police and crime commissioner (PCC) – and there should be further engagement with relevant lead officers from the police to help build the evidence base and identify the potential impact of an Order. Early engagement with and support from police partners is likely to be key in introducing an Order. As well as assisting with identifying the problem behaviour and therefore the scope of any responses, this can also help to draw out some of the more practical implications of introducing an Order, such as how it will be enforced – which may shape how the PSPO is drafted.*

*Alongside eliciting views from the police and PCC, there may be a number of additional sources of information that help to inform decision-making and support (or oppose) the introduction of an Order or specific prohibitions.*

*These might include:*

*• the community safety partnership’s strategic assessment*

*• police data on crime and anti-social behaviour incidents (including the impact of some problem behaviours, such as excessive drinking)*

*• hospital data on ingesting new psychoactive substances*

*• calls to 101*

*• calls to council services reporting incidents*

*• residents’ logs and photographs of anti-social behaviour*

*• mapping of problem areas*

*• data on the effectiveness of previous Gating Orders or Dog Control Orders*

*• CCTV footage of incidents*

*• reports from council staff such as park wardens and cleaners.*

**Assessing potential impact and the Equality Act 2010.**It is important for councils to consider carefully the potential impact of a PSPO on different sections of their communities. In introducing an Order, councils must take care to ensure that they comply with the requirements of the public sector equality duty under the Equality Act 2010. The Equality Act requires public authorities to have due regard to a number of equality considerations when exercising their functions. Proposals for a PSPO should therefore be reviewed to determine how they might target or impact on certain groups.

Although it is not a specific requirement of the PSPO legislation, it is recommended that areas undertake an Equality Impact Assessment (EIA) to assess whether the proposed PSPO will have disparate impact on groups with protected characteristics. This process will help councils to establish any potential negative impacts and consider how to mitigate against these. This exercise will also help to ensure transparency. Areas that have undertaken an EIA before introducing a PSPO have reported how useful this was, providing an opportunity to give full and separate consideration to the effect that each of the prohibitions or requirements might have on those in particular groups.

**Why a PSPO?** The purpose of a PSPO is to stop individuals or groups committing ASB in a public space. Whereas Injunctions and Criminal Behaviour Orders (CBOs) are directed at individuals, PSPOs are geographically defined making pre-defined non-criminal activities within a mapped area, a criminal offence.

The Council say that existing measures, although successful, do not bring about a change in behaviour in all cases, and Officers have advocated that in those instances where an individual or group of individuals has failed to engage it would be beneficial to have a legislative instrument in the shape of a PSPO that encourages engagement through more formal means where informal approaches have not worked.

**Business Improvement District (BID).** The new Business Improvement District (BID) covers all of Gloucester City Centre, park, docks, gate streets, cathedral, etc., It is understood that funding is in place for City Safe from BID, City Council and the PCC. This will help fund say the City Protection Officers and also then re enforcing any delegated PSPO restrictions. It is recognised that begging may be seen to negatively impact their businesses, but the BID is cautious about being seen to be ‘cracking down on beggars’, so any work would have to be in collaboration with charities to support bigger education push and positive image, hence the Councils Street Aware campaign.

Sadly, with the best of intentions, the Councils Street Aware Campaign and the ‘Posters’ did not achieve a positive image.

**Overview & Scrutiny.** The Overview & Scrutiny Committee have an important role to play in ensuring that any PSPO is lawful. The Overview and Scrutiny Committee is the overall body responsible for co-ordinating scrutiny at Gloucester City Council. It conducts both pre and post-scrutiny of Cabinet and Council decisions, and commissions Task & Finish Groups to investigate specific policy areas. Its main responsibilities can be summarised as follows:

* Co-ordinating and leading scrutiny of Council and Cabinet decisions.
* Acting as a ‘critical friend’ for Council and Cabinet.
* Tracking the progress of recommendations made by Task & Finish groups once they have received a Cabinet response
* Undertaking scrutiny work required by legislation, such as Comprehensive Area Assessments, Crime and Disorder or Councillor Call for Action
* Monitoring the Forward Plan and deciding which policy areas to scrutinise, for example:
* Corporate Performance
* General Scrutiny Issues
* Corporate Governance (Scrutiny)
* Financial Monitoring
* Managing overall scrutiny work plan and resolving resource issues
* Pre-scrutiny of Executive decisions
* Scrutiny of bodies external to Gloucester City Council

Our Consultation Response of the 16th March raised major concerns about the apparent non-compliance of the Councils PSPO process with latest Statutory Guidance which included the need to involve councillors in accordance with the latest Home Office Statutory Guidance Updated December 2017 and Local Government Association PSPO Guidance for Councils updated following the Home Office Statutory Guidance.

The Guidance stipulates the following:

*Political accountability, scrutiny and sign-offWithin the confines of the framework outlined above (and subject to legal challenge), councils have the freedom to determine their own procedures for introducing a PSPO, ensuring that the statutory requirements have been met and giving final approval for an Order to go ahead.Close involvement of councillors and ensuring political buy-in throughout the implementation process are key. This provides political accountability for decisions taken – whichis particularly important if the proposals may attract some opposition, and where insufficient member involvement may lead to challenge.*

*In ensuring that the requirements under section 59 of the 2014 Act have been satisfied, councillors will have a significant role to play in unpicking what might be regarded as unreasonable and detrimental behaviour in the locality and what would constitute reasonable restrictions or requirements. Discussions at senior political level by those who understand their local areas best, will help to ensure that the views of all parts of the community are reflected, and find an appropriate balance between the interests of those affected by the ASB and those likely to be affected by the proposed restrictions.*

*Councillors will also have an important role in examining the processes used in drafting the proposals. This will include analysing the outcomes of the consultation process and other supporting evidence offered to satisfy the statutory criteria, and determining whether, on balance this provides suf cient grounds to proceed (it should be noted here the need to ensure compliance with data protection legislation when sharing this information). Several areas have used overview and scrutiny committees to examine draft Orders and challenge proposed ways forward. This adds a further element of democratic accountability and helps to ensure that decisions made are sound and transparent. In several cases, involvement from scrutiny committees has helped to focus the scope of Orders proposed. Committees provide a useful mechanism to test the proposals and their potential impact, and the evidence base for introducing them; front-line councillors can provide different perspectives and may also offer suggestions for alternative approaches.*

In complying with the above, the Guidance recommends the following Questions that should be asked.

Suggested Questions for Overview & Scrutiny Committees (our input in brackets).

1. What evidence is there that the anti-social behaviour is or is likely to be persistent, detrimental and unreasonable? (The Legal Test. There must be a strong evidence base from the Police that there is significant public harm).
2. Why is a PSPO being proposed to address this issue or issues? (Has the Council liaised with homeless charities such as Homeless Link?)
3. Is the proposed restriction proportionate to the specific harm or nuisance that is being caused?
4. What alternative approaches are available and why is a PSPO appropriate in these circumstances? Are there other successful measures in place? (A PSPO must be a last resort only if other measures have failed).
5. Will the proposals alleviate each of the problem behaviours?
6. Have exemptions been considered?
7. What might be the unintended consequences for each aspect of the PSPO? (Have Public Health been involved re any health and wellbeing or health risks or advice sought?)
8. What will be the impact on different groups? (Will there be any displacement of ASB elsewhere or to adjacent authorities, has this been discussed with other Districts? Is there a County wide protocol?)
9. Has an equalities impact assessment been undertaken and what were its findings? What can be done to mitigate against any negative consequences?
10. How have the consultation outcomes and other evidence collated been taken into account?
11. How will the PSPO be enforced for each restriction/requirement?
12. Are there sufficient resources to do this effectively? (Being in both officer time and budget allocations).
13. (Has a risk assessment been undertaken and what are the implications that Council needs to address, and officers allocated?)

**Democratic Process**. We are pleased that the Council has now changed its mind and any Final Report will now be going through proper Council democratic process as per the Statutory Guidance as advised and highlighted by the Forum. Previously the decision to ‘sign off’ the PSPO was delegated to a Council Officer. We are again pleased that the Council has again changed its mind and any final Report will also now go to the Overview and Scrutiny committee as per the Guidance and as advised and highlighted by the Forum.