**DRAFT Formal Complaint.**

**Faith & VCS Homeless and Vulnerable Forum Position Statement on the City Councils proposed Public Space Protection Order (PSPO).** Note: This is on behalf of the Faith & VCS group on the Forum, not statutory agencies, LG, commissioned services, etc..

**Position Statement**.

Complaint that proper processes have not been followed as prescribed by the latest Home Office PSPO Statutory Guidance Legislation Dec 2017 and the Local Government Association PSPO Guidance. Links to these documents as follows:

<https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf>.

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf>

**Evidence and List of Reasons in Support.**

We refer initially to the Forums Consultation Responses of the 16th March (Response 1), Summary of Response 1, Response 2 and Response 3 which lists in detail, relevant reasons for this ‘complaint’. These are

as set out in the Supporting Documentation which also includes relevant emails, submission from Homeless Link, Manifesto Club and Liberty.

**Summary**.

The Forum considers that elements of the Councils proposed PSPO are non-compliant and in violation of latest Legislation and Guidance with concerns that it may be expressly prohibited. Any Order must define precisely the specific harmful activity or behaviour; the PSPO as drafted doesn’t. Statutory Guidance sets out what local authorities must do to comply with the law.

There doesn’t seem to be any practical way rough sleepers could avoid being caught by this PSPO hence rough sleepers and homeless people are clearly impacted by this PSPO as confirmed by Homeless Link, Liberty and the Manifesto Club. This is not the stance taken by Council Leaders which we do not understand and have not had a satisfactory reason why.

The Council have failed to undertake an Impact Assessment, which is a legal requirement within the Council’s Equality Duty and as referred to within Guidance.

Public Health (PH) have not been involved. The Public Health England (PHE) latest Report, ‘Evidence Review: Adults with complex needs (with a particular focus on street begging and street sleeping)’.. refers to enforcement being a high-risk strategy due to the unpredictability of the outcomes for specific street users. We have asked Public Health (PH) for advice on this…what is the risk to health & wellbeing on taking away rough sleepers property especially in the winter, view on whether to undertake a Review of measures due to Gloucester being a ‘suicide hot spot’ and also where the County is in ‘RED’, significantly worse than England Average, for Hospital stays for self-harm. We asked if PH are on the Council officers PSPO Working Group but with no response.

Because of the Councils non-compliance we consider we have reluctantly took on a scrutiny role as ‘critical friend’ to try and guide the Council. We have asked Chair and Vice Chair of the Councils Overview & Scrutiny Committee for advice and help on this role with the view of working for or with them, in the critical role that Scrutiny has in scrutinising any PSPO in accordance with Statutory and LG Guidance. See Guidance for scrutiny process and questions 1-14.

It is of grave concern that the Council have not yet formalised the necessary ‘evidence’. The Guidance stipulates that, ‘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….’

**Forums Position.**

**Compliancy.** Our Consultation Responses to the City Council 1-3 and Summary refer. Summarising….the proposed PSPO as drafted does not comply with the latest Home Office Statutory Guidance or latest LG Guidance. Hence it is considered to be non-compliant and regulatory compliance is in question. Any PSPO must define precisely the specific activity or behaviour that is having the detrimental impact on the community….the PSPO as drafted doesn’t. Failure to comply relate specifically to the ‘Begging’, ‘Nuisance or ASB’ and ‘Unattended items’ proposed PSPO Restrictions and hence we object to these restrictions.

The Draft Gloucester City Council PSPO Guidance, Public Space Protection Orders (PSPOs), as detailed in the Cabinet Report Overview & Scrutiny and Cabinet Date: 27th November 2017 & 6th December 2017 refers respectively.

Statutory Guidance sets out what local authorities must do to comply with the law. The Councils own Guidance and hence its PSPO as drafted, is therefore said to be non-compliant, in violation of the Statutory Guidance and hence could be challenged as being unlawful.

There is a requirement in the new statutory guidance that, ‘councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others’ quality of life.’

This PSPO is not considered to be appropriately worded in accordance with Home Office Statutory Guidance and LG Association Guidance and is hence said to be non-compliant, in violation of the Guidance.

**Begging.** Does not define precisely the specific activity or behaviour. Itis not an activity ‘causing nuisance or harm’. A person sitting with a hat or asking for change is not threatening or otherwise harming people in the locality.

**Unattended Items**. The public consultation response said this was 'not a big problem'. It is noted that the Council and the Police would like to use the PSPO enforcement powers to remove suspect / suspicious packages at main events in Gloucester such as Tall Ships. However, while being sympathetic to this view it may be unlikely that a PSPO can be used in this way, as it is not ‘persistent’ or able to ‘define precisely’ etc., to comply with Statutory Guidance; this needs further careful thought on behalf of the Council. The Police can remove suspicious packages with a S35 power but apparently takes 40 hours, so any main event could be disrupted. It seems that the Council do not need the PSPO power to remove rough sleepers bedding etc as there are already successful measures in place to do this, this is in operation now.

**Punitive Measures**. Concerns that PSPOs simply fast-track vulnerable people into the criminal justice system – rather than divert them away from it and it is thought that punitive measures are rarely ‘successful’ for long-term sustainable change for people who find themselves homeless or begging. There is this document - <http://www.homelesslink.org.uk/our-work/resources/responses-to-begging>.

**Rough Sleepers**. We welcomed the Councils promise in that Council leaders have on numerous occasions said that Rough sleeping is not included in the PSPO consultation purposely as they have no intention to use any proposed PSPO to address homelessness. This was in the Cabinet report prior to consultation and both the Leader and Deputy Leader of the Council have said so in many public forums. Cllr Jennie Watkins would hope that the forum would recognise that she would not ‘mislead’ on this serious issue. We totally accept that Cllr Jennie Watkins would not ‘mislead’ but there is then a serious question raised that the Council Leaders have perhaps been wrongly advised by others….we do not understand the Councils stance and will be initiating the Councils Complaints Process and FOI requests on the following basis:

There doesn’t seem to be any practical way rough sleepers could avoid being caught by this PSPO hence Rough sleepers and homeless people are clearly impacted by this PSPO. The proposed PSPO as drafted, directly impacts rough sleepers and homeless people as confirmed by Homeless Link, Liberty and Manifesto Club.

While the proposed PSPO does not directly include restrictions specifically banning rough sleepers or homeless people, other restrictions such as begging by rough sleepers and removal of rough sleepers unattended items such as rough sleepers bedding, personal belongings, say while they go for food or find a toilet, obviously directly relates to rough sleepers. We are aware of other Councils bringing in restrictions against rough sleepers through the ‘back door’.

**Scrutiny & Evidence**. We appear to have taken on a Scrutiny role as a ‘critical friend’ to help guide the Council. We will be raising this with the Council with the view of working with or for the Councils Overview & Scrutiny Committee. We have written to Chair & Vice Chair. We propose that we initially follow the Scrutiny Questions in accordance with the Guidance and help feed into Scrutiny Committee. Scrutiny Question 1 we have asked is:

Q1: 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. We asked Emily to please forward the Evidence. We were informed that the necessary evidence gathering is ongoing at the moment, so the Council was unable to provide this.

It is of grave concern that the Council have not yet formalised the necessary ‘evidence’. The Guidance stipulates that, ‘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….’

**An Impact Assessment** has not been undertaken. It is a requirement in law. We hear the reasons why the Council have not undertaken an IA but agreed to disagree. An IA is a critical document required before Council can make decisions on new proposals/ process / projects / strategies, especially those that may be open to challenge and contentious such as a PSPO. There needs to be a transparent and robust approach. It has been recommended that we explore Case law and whether it has been established that due regard cannot be demonstrated after the decision has been taken. Hence we say that your EIA should be considered at the outset and throughout the development of your proposal, it should demonstrably inform the decision, and be made available when the decision is recommended….. from [file:///G:/%20(G)/Night%20Shelter/Homelessness%202017/RBKC%20Equality%20Impact%20Assessment.pdf](G://%20(G)/Night%20Shelter/Homelessness%202017/RBKC%20Equality%20Impact%20Assessment.pdf)

**Detrimental Test**. A PSPO cannot be introduced based solely on anyone’s wish list who find an activity annoying or unpleasant. The detrimental test should be stringent and objective one.

**ASB Measures**. A PSPO should only be considered when other measures have failed. Gloucester has well documented and successful ASB measures in place so careful thought is required to assess needs.

**Robust Evidence Base**. There must be robust evidence from the police, for the PSPO ‘Legal Test’, to confirm any specific ASB restriction.

Supporting evidence and consultation are detailed in the LG Association PSPO Guidance for Councils. The Council have not yet formalised the necessary ‘evidence’ as per the Guidance.

**Direction to Leave**. The proposed ‘direction to leave’ is said to be illegal under the law providing for PSPOs and needs to be investigated further. The PSPO power allows for the prohibition (or requirement) of certain activities.. <http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted>.

A PSPO, therefore, must target an ‘activity’. The Councils ‘direction to leave’ power does not mention an activity, to be banned or required. Instead, there are concerns that the council is attempting to use a PSPO to pass a dispersal order, which is a separate power provided for in the same act as PSPOs. This dispersal power can only be used by the police, and is subject to various controls. It is said to be inappropriate, and illegal, to use the PSPO power in order to invoke a dispersal power.

**Consultation**. Public Consultation from 8th January to 4th April .The Forum welcomes the Councils thorough consultation process and is pleased to be involved in the PSPO Working Group. However, there are concerns that the Working Groups will be assessing data that is said to be flawed because of the Councils PSPO ‘non-compliancy’ and conclusions should be treated with caution.

We are disappointed that the Council didn’t take up our offer to work with them in compiling the questions for any consultation.

**PSPO Coercion**. It is understood that the argument that a PSPO won't criminalise homeless people is often made, even on orders banning homelessness. The problem is that coercion and support are blurred when it comes to dealing with the homeless - and that people's 'non-compliance' with services is seen as an offence. Therefore, in officials' minds, homeless people can be coerced for their own good.

**Health & Wellbeing**. The important latest Public Health England (PHE) Report ‘Evidence Review: Adults with complex needs (with a particular focus on street begging and street sleeping)’ refers to the use of enforcement as a high-risk strategy due to the unpredictability of the outcomes for specific street users. We have proposed that a Review should be undertaken by Public Health and GCC to assess issues, any links re the high suicide rate in Gloucester being a hot spot in the County and SW and also where the County is in ‘RED’, significantly worse than England Average, for Hospital stays for self-harm….. **before** a PSPO is considered. The Forum have written to Sarah Scott, Director PH Gloucestershire for advice and help and we are awaiting her reply. We feel that this should also be linked in with the County Councils JSNA Homeless Healthcare Assessment.

**Outcomes Sought**.

1. The Forum has serious concerns with the proposed PSPO as drafted and recommends that the Council withdraws the proposed PSPO and reconsiders its position in discussion with the Forum and Homeless Link.
2. The Forum has serious concerns over the Councils failure to undertake this in accordance with latest Home Office Statutory Guidance and Local Government Association Guidance. We ask that the Council recognises this and withdraws the flawed proposed PSPO as drafted.
3. That the Council opens discussions with the Forum and Homeless Link on a way forward to work collaboratively together to be able to come to an understanding going forwards.
4. That the Council shares the Scoping Document.
5. That any proposed PSPO is scrutinised in accordance with the Guidance for each Question stipulated in the Guidance.
6. That an IA is undertaken and shared and consulted with the Forum before any decisions are made. This has been requested but the Council has not responded.
7. That the Council reconsiders its timescales, which are considered unrealistic, knowing the amount of work it must do to ‘comply’. We have concerns for the Health & Wellbeing of Council staff in working to these Council timescales. Present Timescales as follows:

Ongoing Consultations to include those who submitted written consultation responses – up to 11th May.

Final report to Senior Management Team – End of May

Cabinet Briefing – End June

Full Council – July

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