**City Council Proposed Public Space Protection Order (PSPO) for Gloucester.**

**Faith & VCS Homeless & Vulnerable Forum.**

**Q&A circulated to members on the 11th December 2017** with subsequent response from City Council in RED as follows with earlier response from the City Council on the 30th Nov below: -

We recognise that PSPO's had alot of negative press nationally and on TV and can be a very emotive subject. We therefore need to first just clarify that our Council have said that they will not make rough sleeping an offence. Any PSPO that may be introduced would not change the Councils welcomed 'engage, support' approach. Having regard to that, we suggest that your initial comments/concerns on the Report and draft PSPO Order, order forwarded by Emily as link [HERE](http://democracy.gloucester.gov.uk/documents/s40912/PSPO%20Report%20and%20Appendix.pdf), are an important basis for discussion/clarification with the City Council, and are as follows:

1. Question: It is thought that a Q&A Paper would be very helpful.
Answer:...Agreed, to be discussed with the City Council, but hope the following is a start.

GCC/Emily: We will have a Frequently Asked Questions page alongside the consultation on our webpage, all of the information is being finalised this week and will be on the website when the consultation goes live on 8th January.

2. Q: What is a PSPO?
A: The Home Office have a Helpful Document, link HERE. You can also find legislation info on a PSPO here <http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/crossheading/public-spaces-protection-orders/enacted>.
In general, a PSPO is designed to deal with a particular activity in a public place, a specific geographical location. The activity/behaviour must be having (i) a detrimental effect on the quality of life of those in the community; and (ii), it must be persistent or continuing to make the activity unreasonable and therefore justifies the restrictions imposed by the Order. The PSPO can impose restrictions on the use of that public place which apply to everyone who is carrying out that activity. The orders are designed to ensure that the law abiding majority can enjoy public spaces, safe from anti-social behaviour.  There needs to be hard evidence for the Order from existing intelligence from professionals e.g. police. The Order cannot be imposed for more than 3 years.

The use of the powers must be proportionate and reasonable. The aim in reforming the anti-social behaviour powers, is to give the police, councils and others more effective means of protecting victims, not to penalise particular behaviours (Home Office Guidance). Front line professionals must use the powers in the Anti-social Behaviour, Crime and Policing Act 2014 responsibly and proportionately, and only where necessary to protect the public.

Each 'activity' that a Council wants to be banned by a PSPO, must be tested against the above criteria.

GCC/Emily: A PSPO can be made by the Council if they are satisfied that the activities specified within them:

         have had, or are likely to have, a detrimental effect on the quality of life of those in the locality

         are, or are likely to be, persistent or continuing in nature

         are, or are likely to be, unreasonable

         justify the restrictions imposed.

GCC/Emily: PSPOs are part of the toolkit available to us to tackle behaviour that is having a negative impact on the wider community (in order to protect the community) and will be considered alongside the work we are already carrying out. As I think you had mentioned in a previous email, the PSPO report highlights that, should a PSPO be implemented, it will **not** override the “engage, support” elements of our Safe & Attractive Streets (Street Aware) Policy, which will always be the first point of action when we are carrying out our work with vulnerable people we may see on the streets.

3. Q: Concern on a private group such as City Centre Wardens taking on powers to say issue Fixed Penalty Notices (fines) rather than police, will they have expertise in dealing with vulnerable individuals say with mental health problems, dual diagnosis....?
A: Please note, as a first step, we have made initial contact with Rich Burge, Gloucester City Safe Manager and Nick Brooks, Chair of the Gloucester Business Improvement District (BID) who have forwarded to the Forum information on the Wardens, they are called City Protection Officers. This was to be covered and a Paper shared with the Forum meeting on the 6th Dec, information kindly supplied by Rich and Nick, please find CPO Paper attached to help clarify duties etc.To help with improving awareness would you like to invite Rich to a future meeting?

GCC/Emily: It is standard practice for information to be shared between Police and Council relating to tackling ASB in the city centre, and the City Protection Officers (CPOs) are a key partner agency in this process too. The CPOs have engaged proactively with both the Council and Police, and they are more frequently “eyes and ears” for us in the City centre alongside the local PCSOs. They are aware of the partnership work that we carry out under the Street Aware work, and how we engage with those we might see on the streets and what the routes in to support are. It is likely that CPOs may be trained and given delegated powers to enforce the PSPO, should we put one in place. We are confident that the City Protection Officers are fully aware of the ongoing work with vulnerable people that they might come across on the streets and they communicate with us regularly therefore would have any support they need in dealing with vulnerable individuals.

4. Q: Shouldn't an 'Impact Assessment' be carried out now?
A: Examples of successful PSPO Orders, as on the Forums Web site, do include what are known as Equality Impact Assessments undertaken prior to consultation, please view [Forum web site](https://e-voice.org.uk/fvcshomelessforum/council-s-streets-policy/). An EIA is a requirement under Equality Law. We are not sure whether a 'People Impact Assessment', as referred to in the Councils Report, would be appropriate or to who it would apply but need to seek clarification from the City Council. Should the Forum seek to help the Council to develop the required EIA?

GCC/Emily: Our ‘People Impact Assessment’ is an Equality Impact Assessment, just with a different name but with the same content. The Impact Assessment applies to us to look at whether the change or introduction of a service or piece of work would detrimentally impact on any of the protected characteristics under the Equalities Act, or on any other group. An initial Impact Assessment has indeed been carried out, but as I’m sure you’ll appreciate, because we are going to public consultation and because the terms of any potential PSPO are subject to change, the initial Impact Assessment concluded that we cannot determine the outcome of an Impact Assessment until we know the proposed terms to be included in a PSPO. When the PSPO working group meets to review the consultation responses, a second, more comprehensive Impact Assessment can and will be carried out.

5. Q: Noted that rough sleeping is referred to as 'negative behavior'. People who are forced to sleep rough should be supported not victimised, certainly not classed as 'negative' behavior. This should be redrafted.
A: To recap, PSPO's shall not penalise particular behaviors. We do not think there is mention or reference to 'negative' behavior in the legislation and therefore feel any PSPO should be re drafted. To be taken up with City Council.

GCC/Emily: The report quotes the Safe & Attractive Streets Policy in paragraph 3.7 saying *'The Policy recognises that negative behaviours such as street drinking, rough sleeping and begging are often very complex and commits the Council to supporting those with genuine needs reinforcing the staged approach to behaviour change that the Council has adopted'*. This is the only place rough sleeping is mentioned in the PSPO report and it is not proposed as part of any PSPO.

6. Q: How can existing Designated Public Places Orders (DPPO) be made automatically into PSPO's as from October 2017. What does this mean?
A: Councils have had to Review existing orders by October 2017 and either removed or to be replaced by a proposed PSPO. The Reviews must involve a range of stakeholders and consultation. Councils then have the opportunity, in discussion with say the Police, whether they are needed any more, say if the anti-social behavior has reduced/ceased or to consider introduction of a PSPO if the activity still persists and is unreasonable. To introduce a PSPO, a strong evidence base is required from professionals e.g. police, to justify the restrictions that would be imposed together with required consultation. Justification would have come out of the Councils Review as to 'need'. You will see that the process is not automatic. There is a need to assess any 'activity' to be banned with the criteria as in 2 above.

GCC/Emily: This is quite right, and again refers back to Q2. The process is not automatic and a working group has been convened to oversee the PSPO consultation and come up with any final proposals once the evidence and consultation responses have been considered.

7.  Q: Do Public Space Protection Orders (PSPOs) really allow councils to criminalise particular, non-criminal activities.
A: Yes, but there would have to be a breach of any ban which can then lead to court and a criminal record. If say a FPN fine is not paid within usually 14 days, a prosecution can be initiated. And yes, you could say that would not help support individuals to get back into society and get paid work.

GCC/Emily: If a PSPO is breached, it is the enforcing officers discretion as to whether an FPN is issued or whether an arrest is made. Further to this, if an FPN is not paid, yes prosecution may be initiated. Breaches of the PSPO of course need to be witnessed by the enforcing officer, and are considered on a case by case basis.

8. Q: From the Forums circulated draft letter to Rt Hon David Gauke MP, Secretary of State for Works & Pensions  re concerns with Universal Credit, there are obviously concerns for those who are vulnerable with as you say, learning difficulties, mental health problems etc. How can we be sure a PSPO order wont be misused, perhaps unwittingly, against such individuals.
A: Need clarification/ response from the City Council but the Forum is sure that the Council have no intention of using PSPO's to fast track vulnerable individuals into the criminal justice system. It may be helpful for the Forum to work with the City Council, together with 2getherTrust....comments from 2getherTrust please.

GCC/Emily: I don’t understand how the PSPO could be misused to target someone because of their mental health/vulnerability issues, maybe you could clarify? The PSPO can only be enforced if someone is clearly breaching the specific terms mentioned in the Order, so if someone is for example witnessed begging they may have enforcement action taken against them. We know, though, that serving an FPN against someone who is begging is a fruitless exercise as it will only perpetuate begging in order to pay the fine. This is where the Street Aware work is so important as it helps us and partner agencies identify those who are vulnerable, receiving support, refusing support etc. and to make an informed decision as to whether enforcement action would be taken against them. This is in the same vein as considerations regarding a person-based enforcement such as an injunction.

9. Q: What happens if a fine is issued to someone and they cant pay it?
A: Again, if an FPN fine is not paid within say 14 days, a prosecution can be initiated. They could face prosecution and we understand possibly a fine of up to £1,000.

GCC/Emily: This is correct. I think it is important to mention that a PSPO is not being considered in order to “target” vulnerable people. People we see begging and/or rough sleeping in the city are a minority and a vast amount of work is being done to support them and work with them on various pathways in to housing etc. Consider the wider implications of a PSPO say in the night time economy – where there may be incidents of alcohol related ASB and where an FPN may be served. There are many situations where a PSPO may be an appropriate tool to use, just as there are situations where it might not be the correct one. This is where the discretionary element is key, as it is with any action taken to prevent or tackle anti-social behaviour. Our Street Aware work is continuing and “engage, support” will be the first point of action still, the Council has committed to this.

10. Q: The 'restriction' in the Councils draft PSPO re 'begging' is a very broad description, couldn't it  apply to someone who is homeless /rough sleeping who has a hat or bowl for begging but may not be 'aggressive' or 'intimidating'?
A: We understand that aggressive or intimidating begging by individuals, who are not homeless, would be a particular worry of the Business Community and seen as anti social behaviuor (ASB) and would assume has been evidenced by professionals e.g police, in the City Centre to be able to be included in any PSPO. For a PSPO, the ASB has to have a detrimental effect on the quality of life of those in the community, being persistent or continuing and unreasonable with required evidence.

GCC/Emily: As part of our Street Aware work we have worked with people who are housed but begging, and those who are rough sleeping and begging. Begging is a criminal offence, and a lot of work has been done over the past 18+ months to engage with everyone we see begging because we know that the reasons behind it are complex. This approach will not stop if a PSPO is implemented; our “engage, support” approach will continue as the primary piece of work. A PSPO is a potential tool that can be used alongside our Street Aware approach to prevent and tackle begging in our city centre. We have a large amount of evidence, from both partner agencies and victims themselves, showing the detrimental impact that begging has had on the community.

For homeless/ rough sleepers, the activity of rough sleeping is not in itself 'unreasonable', but with any PSPO banning the activity of 'begging', it is thought it will be near impossible for homeless/ rough sleepers not to fall foul of any PSPO as drafted by the Council. So, yes, by implication, you could say that rough sleeping and begging will then be an offense.

GCC/Emily: No this is not correct; the overwhelming amount of people we have taken enforcement action against through Street Aware are begging, not rough sleeping. The two are separate issues, although we to understand that in some cases they can be intrinsically linked. Rough sleeping is not mentioned in the PSPO whatsoever; someone rough sleeping will not be enforced against under the PSPO unless they are engaging in anti-social behaviour which the PSPO seeks to prohibit. I’ll have to refer to previous answers here too, in terms of the support and engagement offered to those we see on the streets. There have been occasions where enforcement action has been taken against people, in the form of injunctions or criminal behaviour orders, but this has categorically **not** been because they are rough sleeping. Enforcement action is taken where someone is engaging in crime or anti-social behaviour and is having a negative impact on the wider community; this could be begging, drug use or dealing, intimidation etc. and it should be noted here that “the wider community” does also incorporate other people who are begging/rough sleeping and that we have had situations of intimidation and harassment between these. Furthermore, in order to take any enforcement action we need to show that all possible support has been offered to an individual and that they have refused to engage or have lost this support through the choices they have made. Again, this would not change if a PSPO is introduced.

It is felt important to first ensure that the City Council is aware of the implications, look at the evidence they have and then how best to address any ASB re 'aggressive' begging. If you still want to maintain dialogue and reach a pragmatic resolution, it is felt that this can only be addressed by encouraging the council to redraft to be ' specific' rather than a 'blanket' ban and not open to any ones perception, leading to enforcement action in such open/subjective terms.  It is proposed that any PSPO should be re drafted and 'begging' in any order be replaced with 'aggressive begging' as behaviour 'perceived to be intimidating or aggressive'....aggressive being say next to a cash machine.......comments please on the the way forward/ principle.

GCC/Emily: Of course we will be collating all feedback from the consultation so this will be a consideration for the council to make.

11. Q: In the draft PSPO Order it says.. 'Unattended Items. Any person is prohibited from leaving items or belongings unattended within the designated area. Unattended items will be removed at the direction of a constable or an authorised person'.....Doesn't this specifically refer to rough sleepers and the homeless and hence lead to enforcement? an outright ban on rough sleeping, the homeless?

GCC/Emily: No, this refers to all unattended items. Think for example in terms of the current terrorism threat and alarm that may be caused by unattended items left in the street. There is not, and is no intention for there to be, a “ban” on rough sleeping or homelessness.

A: Reading this as drafted, it could lead to enforcement of anyone who leaves any personal belongings in any public area for any amount of time, so yes, it could criminalise rough sleepers who have say sleeping bags, (may have been provided by you, the community) etc, .... and could disproportionately impact the homeless. Removal of belongings may be unlawful. We understand that if possessions are destroyed, get lost or damaged then individuals may be able to sue whoever is responsible for the damage. If whoever, refuses to return them, or deny that the homeless have a right to them, then again they could be open to being sued.
This proposal needs careful thought as it would put bona vide rough sleepers at seriuos risk to health and wellbeing and could be seen to be unsafe. The view of Public Health should be sought and we have copied into Dave McConalogue re JSNA Homeless Healthcare Health Needs Assessment.
So, again rough sleepers could be caught by this PSPO as drafted. We recommend that we first discuss this with the City Council so that they are aware of the implications and we get back to members.

Note: It is understood that the Police had in place a process whereby if they picked up rough sleepers belongings they would take them to a central safe place and leave a note as to where they could be collected. Belongings could include important paperwork/ identification papers, etc., for the homeless person. It would be good to seek input from the Police.

GCC/Emily: We do already have this process in place and it will continue. The PSPO will highlight and publicise this, and work as a preventative measure. No belongings are immediately thrown away, they are kept for a certain amount of time and attempts are made to engage with the person who’s belongings they are. If unclaimed the items are disposed of if they are not personal belongings. Certainly any personal paperwork would not be destroyed and would be kept with the Police. It might be interesting to note here that almost every time belongings have been removed from the street and stored, we have been told by the person who left them that they don’t want them. We have never had any personal paperwork left unattended. Most rough sleepers find a place to store their items rather than leave them unattended in the street.

12. Q: What happened to the MEAM approach that the Forum supported when we looked at the Councils Street Management Policy with the Council back in 2016?
A: The Council consulted with the Forum but did not in the end  implement MEAM, due we understand to the cost. MEAM is not directly related to any PSPO legislation but the adoption of MEAM does help Councils focus on being more 'person centered'.  You will have noted in past minutes that Chris Keppie, CHC, put in an expression of interest for newly funded MEAM support for the Council which was successful. We are dissappointed to hear that the Council didn't take up this free support.

GCC/Emily: You’re correct in terms of the original MEAM had a cost element attached. I’ll catch up with Chris Keppie about the further MEAM support.

 **Conclusion.**In summarising your concerns to date, there doesn’t seem to be any practical way rough sleepers/ homeless, could avoid being caught by any proposed PSPO in its present drafting and therefore rough sleepers could, eventually, end up being criminalised.

The problem with PSPO's are that they can be very 'broad' and powers too 'vague'. ....your concerns are that PSPO's are incapable of alleviating hardship, there is the risk that these proposals can only plunge the homeless into ever more debt and may end up with a criminal record. However, the City Council have said 'space based' enforcement was not appropriate for rough sleepers/ homeless cohort......a page was set up on your web site, link [HERE.](http://e-voice.org.uk/fvcshomelessforum/council-s-streets-policy/)

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**City Council Response.** (30th November 2017)

The City Council have responded initially as follows…

The proposed terms in the draft PSPO have come out of the pre-consultation phase and are listed below. These are of course subject to change pending the public consultation

·         Begging

·         Street drinking

·         Littering

·         Unattended items

·         Dog control orders:

·         Psychoactive substances

·         Nuisance/anti-social behaviour

·         Direction to leave if causing nuisance

You may have seen a press article which makes mention of the Council wanting to make rough sleeping an offence. This is absolutely not the case and is not included in the draft order. You’ll see that the report states: -

*A PSPO will not prevent the Council from operating in its staged approach whilst tackling ASB, and in particular the work moving through “engage, support, enforce” which seeks to change individual behaviours and prevent the need for enforcement action and connect people with the help and support they need. Working in accordance with our Safe & Attractive Streets Policy which Cabinet approved in July 2016 remains a priority for the Council when tackling a range of issues but particularly street homelessness and street begging.*

and certainly any PSPO that may be introduced would not change our “engage, support” approach of working with those who genuinely need help. Enforcement will remain a last resort where nuisance or anti-social behaviour is occurring.