Gloucester Faith & VCS Homeless & Vulnerable Forum

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Emily Jones,

Lead Officer re proposed PSPO

Community Wellbeing Officer (Community Engagement)

Community Wellbeing Team,

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Gloucester City Council

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Dear Emily Jones,

**City Council proposed Public Space Protection Order (PSPO) - Consultation Response.**

**Faith & VCS Homeless & Vulnerable Forum**

We thank you for the opportunity to make our considered response/ representations / concerns, within the consultation period for the proposed PSPO. First, thank you for the initial meeting and discussion we had, notes as appended. Our further response is as follows:

**General Comments**:

Our general comments re PSPO’s are that we have overall concerns that the violation of a PSPO is a criminal offence. PSPOs don’t alleviate hardship on any level. They are blunt instruments which fast-track so-called "offenders" into the criminal justice system. Those who breach a PSPO are subject to being moved on, being fined, or potentially arrested and would not help support individuals to get back into society and get paid work. PSPOs are extremely blunt instruments incapable of addressing complex social problems, vulnerability, poor health, mental health or sensitively dealing with targeted groups. PSPOs can only lead to fines, and are therefore likely to draw vulnerable people into both the criminal justice system and a cycle of debt. There is a danger that ‘people will be looking to councils to put in PSPOs to deal with things they don’t like’. Furthermore, the PSPO allows for the regulation of potential activities and potential effects: the council can restrict activities which have not yet taken place, which it judges ‘are likely to have…a detrimental effect on the quality of life of those in the locality’. We feel that this low bar is unreasonable. We would point out that PSPO’s should not be used as a ‘preventative’ measure.

We would first like to refer you to the latest Home Office ‘Statutory Anti-social Behaviuor, Crime and Policing Act 2014….’Anti-Social behaviour powers Statutory Guidance for frontline professionals, Updated December 2017’, read [HERE](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf). Summarising, this requires that restrictions imposed are focused on 'specific behaviours and are proportionate to the detrimental effect that the behaviour is causing'. The 'Legal Test' must focus on the impact as 'justifying the restrictions imposed'. Re ‘Openness & Accountability’, given that the effect of Public Spaces Protection Orders is to restrict the behaviour of everybody using the public place, the 'close or direct involvement of elected members' will help to ensure openness and accountability.  This will be achieved, the Statutory Guidance says, ‘for example, where the decision is put to the Cabinet or full Council'.

It has been estimated that around a fifth of existing PSPOs are now explicitly prohibited, or strongly advised against, by the new guidance.

To recap, the important change is that the new Statutory Guidance makes clear that orders should only target the specific behaviour that is causing nuisance or harm, rather than activities that are in themselves harmless. The Statutory Guidance states 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’…...that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. ……‘Consideration should be given to how the use of this power might impact on the most vulnerable members of society….’ …‘Councils should consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers’.

Legal Statutory Test – must focus on the impact as 'justifying the restrictions imposed'. The ‘detrimental effect on the quality of life of those in the locality is persistent and unreasonable’ has been or has not been met…we would ask for the necessary evidence, such as from the Police, to confirm that the Statutory Test has been met for each restriction….’detrimental effect’ meaning causing ‘significant public harm’.

We have the following issues and specific concerns: -

**1. Restriction on begging**. Concerns that the present PSPO as drafted does not comply with the above Statutory Guidance as implied by Liberty. We would submit Libertys Representation in objecting to the proposed restriction on 'begging', as Appended. Liberty highlight that the proposed measure relating to ‘begging’ constitutes an interference with Articles 8 and 10 of the Convention. The proposed 'begging' restriction does not address any related anti-social behaviour, being widely drawn, vague and undefined. The proposed PSPO restriction is as follows:

**Begging. Any person is prohibited from, at any time, placing himself in a position to receive alms (charity from individuals on the street).**

A PSPO must be proportionate to be lawful. However, we believe the proposed PSPO is disproportionate as it is a blanket ban on 'begging' that will target vulnerable members of society with financial penalties they cannot afford. It therefore does not appear to fulfill the statutory conditions required under section 59. We would like to see evidence that the council has considered whether this 'blanket ban' is the least intrusive way of achieving its aims.

Because the restriction on 'begging' is vague and open ended, it could be left open to interpretation by any enforcing officer or delegated officer, a big danger as the decision to enforce can then be subjective, depends on the officer at the time. How does the officer decide what is a 'nuisance' which must be seen to be causing a detrimental effect on the quality of life, and likely to be, or persistent or continuing in nature…?

It is felt that for homeless/ rough sleepers, the activity of rough sleeping is not in itself 'unreasonable', it is not a crime or in itself anti-social but with any PSPO with a blanket restriction 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 presently drafted by the City Council and hence leaving rough sleepers open to being criminalised for a non-criminal activity as a rough sleeper. We understand the position of the Council in all the good work they are doing in their welcomed 'engage, support', approach but it is how the order is written, being vague, wooly, undefined.

So, yes, by implication, you could say that 'rough sleeping' and 'begging' together could be an offense. We also understand the Councils stance to show that begging and rough sleepers are two seperate issues, rough sleeping is not included as an offence in the proposed PSPO as confirmed by the Leader of the Council, Cllr Paul James, and at Full Council.  We fully support the Councils 'engage, support' approach and its concerns to offer advice and assistance to those who find themselves without accommodation and who may be vulnerable. However, a PSPO is an extremely blunt instrument, incapable of addressing such needs - it gives officers no powers beyond issuing Fixed Penalty Notice or pursuing a criminal charge in the magistrates courts and cannot help the causes of homelessness.

While fully supporting and recognising the welcome stance taken by Cllr Paul James, in that the City Council have no intention in restricting or criminalising rough sleeping or homeless people in any way, we have been made aware of similar promises made by Swindon Council. Sadly, the PSPO there, when enacted, seems to have made it harder to access vital services and support organisations and said to threaten safety and wellbeing, with threats of dispersal orders and injunctions. Some said they were being moved on by the authorities and having their possessions taken by council workers - that includes bedding and food. While at Gloucester there is the protection of the City Councils overarching Streets Policy, 'engage, support' approach, with enforcement as a last resort, together with the wide support network/ service providers, dedicated council staff, officers, elected members, voluntary groups, etc., so would hope that the situation in Swindon would not occur here, but we do have concerns for our homeless if the present proposed PSPO is enacted without major changes.

While the Council is keen to show that there is no link between ‘beggars’ and ‘rough sleepers’, which would confuse the promise not to restrict and criminalise rough sleepers/ the homeless, it should be noted however, that begging and rough sleeping are said to be 'inextricably linked' with a 'high degree of overlap' as stated in the new, well thought through, **Public Health England 'Evidence Review, Adults with complex needs (with a particular focus on street begging and street sleeping)**' ...link [HERE](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/680010/evidence_review_adults_with_complex_needs.pdf) . The Review also says that recent reports suggest that the majority of those who beg are not homeless and goes onto say that, 'The relationship between street begging and street sleeping is a complex one, but what is clear from the literature is that those who street beg and/or are street sleepers, are some of our most vulnerable individuals. They have a range of complex needs and experience severe and multiple deprivation over long periods of time'.

**Summarising**. Looking forward, we would be grateful to see evidence that the council has considered whether the blanket ban on 'begging' is the least intrusive way of achieving its aims. Begging is allready an offence under Section 3 of the Vagrancy Act (1824) and City Safe Scheme enforcement is already in place which includes the yellow/ red card scheme, letter of concern and the warning letter and well known ‘exclusion’ scheme. This has been well publicised by City Safe, Solace and Gloucester BID.  It is known 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.

For example…The warning letter says....'....*You have previously been given advice by an officer and issued with a warning that Project Solace and Police will consider legal action to prevent your further participation in this negative behaviour.  This is the second time that you have been seen and spoken to regarding begging in the City. You are being given this letter to inform you that if you are witnessed begging for a third time, you will be arrested.  Through investigations we have been able to identify which individuals in the City are genuinely homeless and in need of support, and those who have somewhere to live and financial support and are choosing to beg.*'

…so we ask, why is further enforcement considered necessary such as a PSPO? we would draw you back again to the Home Office Statutory Guidance. 'Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring'.

May we say that the City Council could therefore be in a quandary, in that a PSPO is a tool to address anti-social behaviour NOT rough sleeping or homelessness, yet the Councils ‘blanket’ begging restriction may well draw in rough sleepers/ homeless within the proposed PSPO.

**Recommendation**: Due to the above, we must object to the present proposed restriction on 'Begging' as it affects the homeless and rough sleepers. The Restriction does not define precisely the specific activity or behaviour.

However, the Forum would support the view that, if ‘aggressive’ or ‘intimidating begging’ or ‘professional begging’ is causing distress and significant harm to the public, then it should be challenged.  We should be seen to be balancing enforcement and support approaches in line with the evidence or we risk makinghomelessness worse.  Wedo not object to a properly thought through restriction that defines precisely the specific activity or behaviour and is re drawn/re drafted, in accordance with new statutory guidelines and Liberty's advice with regard to the 'Begging' restriction.  We are happy to explore with the City Council and leading members of the Business Community to redraw the 'restriction' by focusing on agreed specific behaviours and the Legal Test with regard to appropriate evidence.

**2. Restriction on 'Nuisance or anti-social behaviour'**. We have concerns about the restriction 'Nuisance or anti-social behaviour'. For instance, someone rough sleeping could be enforced against under the PSPO if they are said to be or ‘likely to be’ a nuisance and/or engaging in anti-social behaviour which the PSPO seeks to prohibit. The proposed PSPO restriction is as follows:

**Nuisance or anti-social behaviour. Any person shall not behave in a manner that causes or is likely to cause nuisance, harassment, alarm or distress to any other person.**

Again, because the restriction on what constitutes a ‘nuisance’ is so vague and open ended it could be left open to interpretation by any enforcing officer or delegated officer, a big danger as the decision to enforce can then be subjective, depends on the officer at the time, how does the officer decide what is a 'nuisance' which must be seen to be causing a detrimental effect on the quality of life, and likely to be, or persistent or continuing in nature…? Again, the proposed restriction 'Nuisance or anti-social behaviour'  is also widely drawn, vague, wolly and undefined.

It has been remarked that there is concern re reliance that the authorities will only enforce an Order against the right people when there this lack of clarity; does this ask us to place far too much power, and discretion in their hands? The criminal law should be clear, and people should be able to predict whether they are acting within it or not. For example this has led to concerns that the Faith & VCS community being criminalised for helping needy, vulnerable, marginalised, homeless individuals on say their soup runs or other charitable humanitarian assistance under the restriction re ‘Nuisance or Anti-social behaviour’ or the restriction re ‘Direction to Leave’…. concerns also that vulnerable etc individuals could be criminalised for accepting help from the Faith & VCS Community or just being ‘in a position to receive alms’ (PSPO begging restriction) or charity from the Faith & VCS Community.

We were pleased therefore when you confirmed that 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. You went on to say that PSPOs are part of the toolkit available 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 the Council is already carrying out. You confirmed that if a PSPO would be implemented, it will **not** override the “engage, support” elements of the Councils Safe & Attractive Streets (Street Aware) Policy, which will always be the first point of action when the Council, Solace, BID, CPO’s, Police, etc… are carrying out work with vulnerable people on the streets.

**Summarising**. Looking forward, we would be grateful to see evidence that the council has considered whether the blanket ban on 'nuisance or anti-social behaviuor' is the least intrusive way of achieving its aims. Again, rough sleepers and the homeless could be implicated. There are already successful, locally managed enforcement in place such as the yellow/ red card scheme , letter of concern, warning letter, ASB Orders....close to 1,000 individuals have been warned and more than 100 people are currently banned from Gloucester... Since City Safe started in 2014 nearly 4,000 yellow card warnings have been issued and 312 exclusions issued…… so why is further enforcement considered necessary? we would draw you back again to the Home Office Statutory Guidance.

**Recommendation**: Due to the above, we must object to the present proposed ‘blanket’ restriction on 'Nuisance or anti-social behaviuor' and ‘Direction to Leave’. The Restriction does not ‘define precisely the specific activity or behaviour’.

However, the Forum would support the view that, if individuals or groups of individuals are causing ‘violent’ or ‘abusive behaviour’, that is causing ‘significant public harm’, that this should be challenged. Any PSPO must therefore identify these specific behaviours and not be a ‘blanket’ ban. Thespecific behaviours must be seen to be causing a detrimental effect on the quality of life, and likely to be, or persistent or continuing in nature. The 'specific behaviours being proportionate to the detrimental effect that the behaviour is causing'. The 'Legal Test' must focus on the impact as 'justifying the restrictions imposed' with required evidence.

We would also request that the Council gives suitable written assurances that the Faith & VCS Community will in no way be restricted in any way from helping and carrying out humanitarian assistance to whoever it considers necessary and that those individuals it helps, who receives alms or charity, will not be restricted or enforced against in any way by any PSPO.

**3. Restriction re Unattended Items**. The restriction says that:

**‘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’**.

We have expressed concerns with this restriction being within our Q&A. We were asked ‘Doesn't this specifically refer to rough sleepers and the homeless and hence lead to enforcement? an outright ban on rough sleeping, the homeless?’ Our response being….’reading this restriction 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, food, (may have been provided by the community), important paperwork, etc, .... and could disproportionately impact the homeless. We understand that removal of belongings may be unlawful…if possessions are destroyed, get lost or damaged then individuals may be able to sue whoever is responsible for the damage. If whoever removes items, refuses to return them, or deny that the homeless have a right to them, then again they could be open to being sued. We would not wish the Council to be seen to prosecute on the basis of certain "behavioural attributes" such as leaving baggage unattended.

We said that this proposal needs careful thought as it would put ‘bona vide’ rough sleepers at serious risk to health and wellbeing and could be seen to be ‘unsafe’. It is proposed that the view of Public Health should be sought and we have copied into Dave McConalogue re JSNA Homeless Healthcare Health Needs Assessment. It was our view that, again, rough sleepers could be caught by this PSPO as drafted. 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, but this was apparently somewhat haphazard and didn’t seem to work. Belongings could include important paperwork/ identification papers, etc., for the homeless person. It would be good to seek input from the Police.

We recommended that we first discuss this with the City Council so that they are aware of the implications and we get back to members. We did this and you kindly responded: -

‘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’.

**Summarising**: The City Council and Cllr Paul James have said on record that rough sleepers and homeless will not be included in any PSPO, they will not be implicated in any way, a PSPO being directed at ‘anti-social behaviour’ not ‘rough sleepers or homeless people’. However, the removal of bedding, food, etc., of rough sleepers is obviously targeting rough sleepers and the homeless.

We hear what you are saying but there are still major health and wellbeing issues when individuals bedding and clothing is removed, especially in the winter, putting individuals health at risk, which would be most concerning. We shouldn’t be seen to be passing anti-social behaviour orders or PSPO ‘restrictions’, that are a danger to life, this goes against the new Home Office Guidance. Other Councils have withdrawn such restrictions from PSPOs. We would point out that PSPO’s should not be used as a ‘preventative’ measure. We would repeat, the activity of rough sleeping is not in itself 'unreasonable', it is not a crime or in itself anti-social, it is extreme poverty. It is obvious that the Council already have measures in place so why is a PSPO needed?

We have been informed, if implemented, may well breach the rights of people in Gloucester under the Human Rights Act and the European Convention on Human Rights. The Council is bound by the Act not to behave in a way which would disproportionately affect those rights.

**Recommendations**: We recommend as at Windsor, that the City Council withdraws this restriction from any PSPO and reconsiders. If the City Council subsequently still considers that rough sleepers unattended bedding, food etc., is anti-social behaviour within the new Home Office PSPO Guidelines and its necessary to be included in any PSPO, then we ask that we have urgent dialogue with the Council.

It has been suggested that a time period could be allowed of say 3 hours to enable rough sleepers, the homeless, to get washed, have a comfort break, be taken for a coffee, etc., to ‘go elsewhere’. Windsor are looking at solutions such as secure storage facilities for rough sleepers in the centre where rough sleepers, the homeless, can go and safely store their belongings, rather than leaving them unattended when they need to ‘go elsewhere’. It has been proposed that this could be an option that could be explored. The Leader of Windsor Council has suggested a local council-owned building in Windsor and is exploring this idea.

**4. Enforcement**. PSPOs restrictions could be enforced through on-spot fines issued by the City Protection Officers/ private security guards. It is assumed the on-the-spot fine will be the preferred mechanism of sanction. By contrast, byelaws are enforced through a court, which means that they are subject to judicial oversight and interpretation from an independent party. On-the-spot fines possess all the inherent dangers of summary punishment, where the officer’s view of events is not tested or proven.  This danger is heightened by the increased number of officials who can enforce PSPOs, including not only police officers, but also Police Community Support Officers, council officers and private security guards employed and managed by councils, BID’s. This is a significant shift from the situation at present, where say controlled drinking zones (DPPOs) can only be enforced by police officers or ‘accredited persons’ designated by the police.

This also presents a significant shift for councils, with council officers taken more directly into the realm of law enforcement and policing. A report to the City of Lincoln Council stated that this represented a ‘game changer’ for local authorities, and that ‘workload is expected to increase significantly’.

What is perhaps most concerning is that local authorities can delegate enforcement power to private contractors, as some councils do currently for say litter fines or parking fines. These private contractors generally work on a commission basis, and receive a portion of fines issued. Generally, the employment of private contractors has led to an increase in fines issued, as well as allegations of unfair fines.

We would have concerns that CPO’s/ private security guards, do not have the knowledge, experience or training when dealing with vulnerable, chaotic individuals who have mental health problems and/ or learning disabilities, addictions and specific needs. This is critical when issuing FPN fines, as part of any PSPO, as this could lead to a criminal record. We have asked, and you kindly agreed to forward, the Councils detailed process on how the important ‘engage, support’ approach, is operated and managed, how everyone links in such as P3, CGL, 2getherTrust, etc, to give comfort to members. We are awaiting this ‘process’.

**Recommendation**: We ask that this ‘process’ is documented and written into any PSPO Order. That careful consideration is given to saying who can issue FPN’s and for which PSPO restrictions. We ask that we are involved in this decision-making process.

**5. Elected Members**. New Home Office Statutory Guidance December 2017...requires that given that the effect of Public Spaces Protection Orders is to restrict the behaviour of everybody using the public place, the close or direct involvement of elected members will help to ensure openness and accountability.  This will be achieved, for example, where the decision is put to the Cabinet or full Council'.

The decision on whether to adopt the PSPO has been delegated to the Head of Communities in liaison with the Cabinet Member to sign off.

The City Council within the consultation questions, ask whether to extend the PSPO restrictions outside the City Centre area. Every consultation question which refers to every proposed restriction asks, 'Do you think that this condition should cover a wider area than specified on the map for the City centre PSPO'... Yes or No. Depending on the consultation response the proposed PSPO restrictions could cover a number of wards in the City Council.

**Background**: Unlike byelaws, there are no democratic or other procedures required for the passing of PSPOs. This means that local authorities will be left to design their own systems for designating PSPOs, as they do with controlled drinking zones (Designated Public Place Orders, DPPOs) at present. Some authorities could require that PSPOs be passed through council or a particular committee (such as the licensing committee), while others could delegate the power to make PSPOs to a particular council officer.

Hence, in some councils a single officer (such as an anti-social behaviour officer or community safety officer) could have the power to make PSPOs, in consultation with their colleagues. This would mean that this power is removed from all significant judicial or democratic oversight. Where other measures can be enacted in this manner, we have heard of powers brought through against the wishes or indeed without the knowledge of the local mayor or elected councillors. For example, a single council officer enacted a ban on unlicensed leafleting in Oxford city centre, against the wishes of the mayor and two of the main parties, and without opportunity for debate. This means that, depending on the arrangements in place, the empowering of ‘local authorities’ to issue PSPOS could just mean the empowering of a small number of individuals.

For Gloucesters PSPO, we do have political oversight by the Cabinet Member but this is not what the new Home Office Statutory guidance seems to stipulate.

**Recommendation**: We would propose that any decision should now fully involve elected members and as PSPO restrictions could be extended to any area of the City and PSPO’s includes everyone in that area.

**6. Impact Assessments**. We have raised important issues with regard to the legal requirement to undertake an IA (Councils Person Impact Assessment). At present the City Council have not yet undertaken an IA, we consider that this is an important omission. It is our view that an IA Part 1 and Risk Assessment would have been undertaken, usually at the start of any new proposal, to outline the potential impact on people and communities, initial findings, measures that might mitigate any adverse impacts, etc., that can then be followed up with consultation to collect further data/implications and then a Part 2 IA. Only then can the Council understand the full implications with the IA helping to direct the consultation which would have given comfort to the community and that due process had been followed. The Council cannot make decisions without undertaking an IA. We have been informed that a full IA will be undertaken after consultation when the council say they will know the restrictions to be included in any PSPO, however, we already have a full list of restrictions within the proposed PSPO so we feel that an IA should have been undertaken to help direct/ feed into the consultation.

City Council guidance to employees says…’PIAs mean you will assess more rigorously the policies which are likely to have a significant impact on the local community’.. as per a PSPO. City Council Person Impact Assessment (PIA) Template....read [HERE](https://e-voice.org.uk/fvcshomelessforum/assets/documents/pia-template). (This is a link to the doc which is stored on the Forums web site).

**Recommendation**. That the Council liaise with the Forum on the required IA with the view of the Council Solicitor being sought. That socio economic and Human Rights impacts are included… Could other socio-economic groups be affected and are there any human rights implications? We are grateful to you Emily, to look to sharing the final full IA for any PSPO with the Forum prior to any ‘final decision’. We would also ask that the Councils process for undertaking an PIA and Risk Assessment is forwarded to the Forum and how and when the IA is addressed in compliance with the Councils decision making process and risk management guidance.

**7. PHE New Report**: **Public Health England: Evidence review: Adults with complex needs (with a particular focus on street begging and street sleeping).**

In reviewing the above, there are some concerns about the council’s growing anti-social behaviour enforcement policy on the street. A Key Extract from the PHE Report, read [HERE](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/680010/evidence_review_adults_with_complex_needs.pdf) , refers to the use of enforcement as a ‘high risk strategy’ due to the unpredictability of the outcomes for specific street users…concerns that enforcement is also likely to result in displacement, (concern raised by the Home Office), away from support services and the best responses are integrated care delivery such as Housing First. The Forum believe that further enforcement re a PSPO must be of concern and should be reviewed. Previous Reports by Public Health have showed that ‘the suicide rate (persons) in Gloucestershire though not significantly different from that of the South West, is however significantly higher than the national rate,’ (reported as being almost 50% higher). ‘Rates across the districts are also not significantly different when they are compared with one another, whilst the rates in Gloucester and Cheltenham were significantly higher than the national rate’, …Gloucester being a particularly worrying hot spot.

**Recommendation**: We hence feel that the PSPO should be delayed pending advice from Public Health, leading to a Review if recommended. Re any review, we would propose that Public Health are asked to progress in conjunction with Healthwatch, perhaps as part of the present JSNA Homeless Healthcare Assessment, to include looking at the worrying high number of deaths in Gloucester and concerns with suitability and poor standard of emergency accommodation such as Councils use of B&B’s/ hostels, especially for vulnerable women when said to be unsafe, all as highlighted by Healthwatch.

**8. Gloucester BID**. We have been informed that: Businesses (retail and offices) are concerned about begging impacting their business, but they understand the bigger issue and looking into what they can do, they don’t want to be seen to be ‘negatively cracking down’ on beggars so communication is important.

**Concerns**: That the proposed PSPO is seen by some Forum members as a 'done deal'. That the Business Community will be fully involved in the consultation and will hence drive the Councils response.

**Recommendation**: The Forum encourages everyone to have their say, views need to be submitted to the Council otherwise they obviously cant be taken into account and the consultation response could be in danger of being skewed.

**9. General**. We would request that the promise made by the City Council that rough sleepers and homeless people will not be included in any PSPO, or implicated in any way, being directed at anti-social behaviour not the most vulnerable members of society such as rough sleepers and homelessness people, is written into any PSPO as a future safeguard.

Kind Regards

Gloucester Faith & VCS Homeless & Vulnerable Forum

Cc: Cllr Colin Organ.

**APPENDIX**

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

**Representation received from Liberty, the National Council for Civil Liberties.**

**Background**. Since their inception, Liberty has been concerned by PSPOs that are too widely drawn, vague, and that disproportionately impact the most vulnerable – in particular, the homeless – and has been campaigning on the issue for some time. Encouragingly, a number of local authorities have responded to concerns regarding such proposals by choosing to amend or withdraw them altogether.

 Liberty’s focus has in particular been on PSPOs that restrict and specifically target ‘rough sleeping’. However, in this particular consultation Liberty have set out below specific representations that form the basis of the Forums response to the consultation as well as general comments in respect of PSPOs.

 **Specific representations**

1. Section 59 of the Anti-social, Behaviour, Crime and Policing Act 2014 provides that PSPOs can be put in place, in addition to other conditions, to prevent activities that have had or are likely to have a detrimental effect on the quality of life of those in the locality. Further, the Background & Key Issues section of the GCC Report states at paragraph 3.5 that “the purpose of a PSPO is to stop individuals or groups committing ASB in a public space”. However, the draft PSPO provides simply that “any person is prohibited from, at any time, placing himself in a position to receive alms.” It does not address any related anti-social behaviour, but appears to be a blanket ban on begging, whether or not it is having a detrimental effect on the quality of life of others in the locality. It therefore does not appear to fulfil the statutory conditions required under section 59.
2. A PSPO must be proportionate to be lawful. The proposed PSPO is disproportionate as it is blanket ban on begging that will target vulnerable members of society with financial penalties they cannot afford. It is also not limited to begging that can reasonably be perceived to be intimidating to members of the public but applies to all begging. There is a world of difference, in terms of detriment to the quality of life of those in the area, between someone begging in an intimidating manner and someone simply sitting on the street with a container. There is no evidence that the council has considered whether this blanket ban is the least intrusive way of achieving its aims.
3. The proposed measure relating to begging constitutes an interference with Articles 8 and 10 of the Convention; (European Convention on Human Rights). Local authorities are bound by section 6 of the Human Rights Act 1998 not to act in any way which is incompatible with any rights contained in the Convention. The measure interferes with these rights in two ways: first, begging is arguably an expression of poverty and disadvantage and criminalising such conduct may undermine the right to freedom of expression under Article 10 of the Convention. Second, Article 8 of the Convention extends to the protection of personal autonomy and can apply to activities conducted in public; this is especially true of the homeless whose scope for private life is highly circumscribed. Begging is a form of interaction with others and, in our view, its blanket and untargeted criminalisation falls within the scope of the right to respect for private life in Article 8.

We raise these, and any other concerns we have, as detailed separately, through the consultation process. Liberty has encouraged us to consider speaking to our MP and to contribute to the consultation which is seen as really important in helping the Council as part of its decision-making process.

Other more general comments as received from Liberty are as set out below.

**General comments**

1. Section 59 provides that a local authority must provide sufficient evidence to be satisfied, on reasonable grounds, that the statutory conditions to implement a PSPO are met, i.e. that beggars are (or will have) a detrimental effect on the quality of life of others in the locality, which is persistent or continuing or such that the activities are unreasonable and the restrictions in the PSPO are therefore justified. We believe that “detrimental effect” should be defined as causing “significant public harm”, and that the detrimental test should be a stringent and objective one – it is not sufficient that some people find an activity annoying or unpleasant. The proposed PSPO does not seem to meet this criteria.
2. If the PSPO is implemented, it will turn behaviour that is not illegal into criminal offences and “fast-track” vulnerable individuals into the criminal justice system.

We hope that this is helpful. Additional information on Liberty’s stance in relation to PSPOs is available at <https://www.liberty-human-rights.org.uk/campaigning/public-space-protection-orders-0>.

Regards

Advice & Information

**Liberty**
Protecting civil liberties
Promoting human rights

**Meeting re Gloucester City Council Proposed Public Space Protection Order (PSPO)**

Present: Emily Jones, Community Wellbeing Team; Sam, Solace ASB Officer and Tony Hipkins, Faith & VCS Homeless & Vulnerable Forum.

Date: 23rd January 2018 at 2:30pm.

Location: Herbert Warehouse, GCC.

**Notes of Meeting.**

Discussion on the necessary Impact Assessment.

EJ said a full IA has not been undertaken as yet, as an initial assessment concluded that an IA could not be carried out until the consultation had been concluded as the proposed terms may change, reduce or increase or the council may not go with a PSPO at all. AH pointed out that the proposed PSPO Order did detail specific ‘restrictions’, so it would be entirely reasonable to undertake an IA or initial IA, as per other authorities, it had also gone to Cabinet. An IA was required by Law, as part of any report to Council or Cabinet to enable them to make an informed decision. An IA and risk assessment is required, usually at the start of any new proposal, to outline the potential impact on people and communities, initial findings, measures that might mitigate any adverse impacts, etc., that can then be followed up with consultation to collect further data/implications. EJ advised that the report that went to Cabinet was to request 1) permission to carry out consultation for a PSPO, 2) that the decision on whether to implement a PSPO be delegated to the Head of Communities. Therefore, there is no current change to any service and EJ confirmed that, should it be proposed that a PSPO is implemented (after all of the consultation responses have been considered) and hence a potential change to service because of it, a full Impact Assessment would be carried out at this stage. EJ confirmed that an initial IA screening was done as part of the Cabinet report, and once the consultation responses have informed any proposals, a full impact assessment will be completed to accompany the proposals which go to the Head of Service and Cabinet Member for a decision to be made.

Reports to decision-makers in any public body must include IA's. EJ replied that Council/Cabinet had to date only agreed to go forward with the Consultation, no decision had been made on whether to go forward with the Order. The decision on whether to adopt the PSPO has been delegated to Lloyd, the Head of Communities, to sign off. AH said Lloyd’s decision couldn’t be made until the full IA had been completed, there may be an issue that the initial decision to go ahead should have had access to an interim IA. EJ clarified that the initial report was seeking permission to carry out the consultation and an IA is not required for this. EJ agreed that Lloyd’s final decision could not be made without an IA and once consultation feedback is collated and considered, if a PSPO is proposed an impact assessment will be completed as part of this proposal.

AH asked if there would be any consultation after the IA had been completed? EJ will enquire and get back to AH. AH said they didn’t want to get into FOI requests, and would expect the IA to be shared at some stage before a final decision was made, AH clarified that this would give comfort to members that due process had been followed and the council were being open and had considered all the implications re the PSPO as required. EJ advised that there is a monthly PSPO working group that meets to discuss things such as 1) what work we already do to address issues raised in the draft PSPO 2) whether a PSPO enhances existing legislation/pieces of work and therefore if it would be necessary 3) enforcement of any potential PSPO 4) consider and respond to consultation feedback 5) make proposals once consultation responses have been considered 6) work on the necessary impact assessments to accompany any proposals. EJ advised that the public consultation stage is the opportunity for anyone to have input in to the PSPO proposal and the final proposal and IA would be written with the consultation feedback in mind. EJ confirmed that she would find out about sharing the final IA, advised that she thought additional consultation after the IA would be unlikely as the public consultation is the stage at which views and concerns are received. It was agreed to move on and ‘agree to disagree’.

AH raised concerns on how the Council/Project Solace recognise, identify, engage and worked with those on the street who are suffering mental health problems and/or have learning disabilities. Did they have expertise/ training in mental health such as MHFA? Sam, ASB Officer, who was new with Solace and taking over Street Aware from Justin, has not yet had specific MHFA training but has joined Solace from the Police and so has had similar training previously, with experience and knowledge of working with those who are vulnerable and/or with mental health issues and specific needs. EJ said MHFA would be looked in to. EJ said Solace / City Centre Policing Team, link in withP3, CGL, 2gether, but 2gether tend not to turn up to monthly Councils Street Aware Group. AH said he had contacted 2gether for their views and on safeguards/ process needed in the PSPO for those suffering mental health problems, was awaiting a formal response. AH to follow up with 2gether for GCC.

There were serious concerns about private security companies or the City Protection Officers taking on enforcement powers but not having any necessary expertise or training, concerns about what has been called the councils ‘private police’ force. EJ confirmed that actually the CPOs do engage as part of Street Aware and so have knowledge of how we work and necessary sensitivities. EJ also said enforcement is part of what the PSPO working group is looking at and there may be several options. EJ advised some PSPO Restrictions such as littering was black and white, so could be handed over to say CPO with other restrictions such as begging, unattended items, staying with Solace/ Police, as would need to have an understanding, aware, expertise of the needs and causes behind these behaviours in order to deal appropriately with individuals relating to this.

Agreed, big question is how is the PSPO going to be enforced? A PSPO applies to everyone in the designated area of the PSPO. AH said the police would not want to get involved, we were told, because of the admin involved being too onerous re paperwork for Fixed Penalty Fines, especially as many issued with FPN’s would not be able to pay their fines, so wouldn’t progress. EJ said the prosecuting duty lies with the Council, therefore whoever serves an FPN (i.e. Police, CPOs) if the FPN is not paid the Council will be doing any further prosecution. The exception to this is if an enforcement contractor is enforcing the order, in which case they deal with it all. Talking about FPNs relating to begging, EJ said that the Council know that this is not going to be a suitable course of action because serving an FPN would either not be paid or would mean more begging in order to pay the fine, therefore perpetuating the problem and setting people up to fail.

AH asked how the important ‘engage and support’, which was welcomed by the Forum, with ‘enforcement’ as a very last stage, all as detailed in the City Councils Street Policy, could be written into the PSPO Order? EJ said that the Street Policy was the main overall Council Policy and all other orders/ policy etc., including any PSPO would feed into this, as additional tools available to the Council so there was no need to ‘write it in’.

EJ said they wouldn’t progress with warning letter or ASB order, if an individual was engaging say with CGL and CGL had asked them not to progress with any enforcement\*. Solace linking in and working well together with other services in accordance with councils ‘engage and support’ policy. AH asked if EJ could provide full details of how they operate the engage and support, what is the process? …City Centre Policing Team…how does everyone ‘link in’, meetings such as the Street Aware Group, how they link in with mental health expertise, 2gether, CGL, P3, etc., that would be really helpful. EJ agreed to document and provide the ‘process’.

A PSPO by their very nature are vague with blanket bans, agreed big danger as decision to enforce can then be subjective, depends on the officer at the time, how does the officer decide what is a nuisance which must be causing a detrimental effect on the quality of life, and likely to be, or persistent or continuing in nature…? Big danger of consistency problem. Big Question…How are you going to make enforcement fair and just?

Enforcing breaches of a PSPO do include an element of officer discretion and this supports what is said in the above paragraph\*. The process of implementing a PSPO is what decides whether a behaviour is a nuisance which must be causing a detrimental effect on the quality of life, and likely to be, or persistent or continuing in nature. This is clearly defined in the law and the considerations relating to this are made before a PSPO is put in place. An officer enforcing a breach simply has the discretion to decide whether or not a breach has taken place, and which is the most appropriate prescribed penalty. An example in its most simple form; if a PSPO includes begging and a person is witnessed asking for money, they have breached the PSPO. It is the officer’s discretion whether to consider that person’s background information (such as whether they are engaging with GCL, are they housed etc) and determine how this breach is dealt with (through an FPN, arrest, no action, or potentially logged and reported back to Street Aware group).

An example of being very vague was the Restriction on Begging. Was this meant to cover aggressive begging or professional begging? Aggressive begging would be standing next to say a cash machine. (Post Meeting by AH to help clarify what was meant by ‘professional’ begging and the comment on the restriction on begging being ‘vague’……not yet greed with Emily. Professional begging would define someone who is not homeless, has access to accommodation one way or another and who is begging for cash as a way of making money; they give those in genuine need a bad name. The present drafting of the PSPO is disproportionate as it is a blanket ban that will target vulnerable members of society with financial penalties they cannot afford and therefore does not appear to fulfil the statutory conditions of Section 59…the legal test…etc., the big problem with many PSPO’s are that they are often widely drawn, vague, woolly and undefined, leaving them open to interpretation by whoever and whenever. If the Council means to identify aggressive begging and professional begging as a restriction, then it should clearly say so.)

There are many reasons why people have to beg on the street. This was seen as a big issue as the homeless could be said to be begging if they ask or have a cap, cup….(Note: Consultation Question 18 says that any person can be fined if it is considered, at any time, that a person places themselves in a position to receive ‘alms’….i.e. the poor people just need to be said to be in a position to receive food or money). EJ said that the vast majority of the people who have been seen begging have not been homeless. A lot of very successful work has been done in the last 18 months using present tools, warning letters, yellow/ red card and Criminal Behaviour Order, rather than a PSPO. It should be also noted that begging is already a criminal offence said EJ and therefore enforceable already. However, PSPO’s are often seen as the ‘be all and end all’, seen as resolving unwanted activity’s. Again, the PSPO working group is mapping the work that already occurs and comparing whether a PSPO would add any additional benefit to these workstreams.

Consultation. EJ hoped that residents would complete the consultation, there is a list of questions…you can look through to start with, without filling in the answers. AH expressed concern that there was a view that the decision had already been made by the Council to go ahead, so why bother to consult with the community. EJ refuted this view, the Council were keen to hear views and EJ is determined that this will be a genuine and meaningful consultation. EJ advised that this is partly why a full impact assessment has not been completed yet, just a screening. A full IA on the draft order would suggest that the draft PSPO is a fait-accompli and the consultation juts a tick box exercise, but this is absolutely not the case and the responses received in the consultation will be part of the decision making process. Brief discussion on the case where a consultation on a PSPO had been carried out, but was skewed by the high number of responses from the Business Community in favour, think the public/ residents were against, but council went ahead with the PSPO anyway…..view that this was Newport? EJ said this is why it is important that everyone has their say; unless someone submits their views we will not know about them. EJ reassured AH that the PSPO working group, their final report, potential proposals and impact assessment, will take in to account consultation feedback.

ENDS