Geoffrey Raw

Chief Executive

Brighton and Hove City Council

Bartholomew Square

BN1

21 January 2018

Dear Geoffrey

**Re:**  **Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals, Updated December 2017**.

I am writing because updated guidance on the use of Anti-social behaviour powers has recently been published by the Home Office, in December 2017; updated in the light of experience since the new powers were introduced.

The introduction states that the changes in the Guidance will help to ensure the relevant legal tests are met before the powers are used, and that the updated guidance emphasises the importance of ensuring that the powers are used appropriately to provide a proportionate response to the specific behaviour that is causing harm or nuisance without impacting adversely on behaviour that is neither unlawful or anti-social.

At page 48 it states “Given that these orders can restrict what people can do and how they behavein public spaces, it is important that the restrictions imposed are focused on specific behavioursand 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.”

At page 49 it states ““In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision and ensure that this is a reasonable and proportionate response to incidents of anti-social behaviour in the area. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.”

On page 51 there is a highlighted box entitled ‘Homeless people and rough sleepers’. It states:

Public Spaces Protection Orders 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. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community’s quality of life which is beyond the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets.

The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.

Brighton and Hove City Council’s PSPOs on the twelve locations goes directly against this advice, as the mere existence of a caravan on one of the locations in Brighton is covered by a PSPO, without any anti-social activities whatsoever.

A Gypsy or Traveller who has to resort to unauthorised encampments is homeless in statutory terms (Housing Act 1996 s175 and Housing (Wales) Act 2014 s55). Therefore PSPOs should not be targeted at unauthorised encampments.

The fact that emphasis is placed on the rights of freedom of expression and freedom of assembly suggests that unauthorised encampments are not the target of PSPOs. The obvious convention right involved in an unauthorised encampment is the right to respect for private and family life and home (Article 8) and not Articles 10 and 11.

With regard to Article 8 of the European Convention it is important to apply the structured approach as explained by Lord Steyn in *R –v- Secretary of State for the Home Department ex parte Daly* [2001] 2 AC 532 at 27 and especially the question:

*Is the proposed measure the least restrictive means (in terms of the degree to which it interferes with a protected fundamental right) of accomplishing the relevant legitimate aim?*

Clearly there are ways in which such an extreme measure as a PSPO could be avoided e.g. by using existing possible methods of possession action such as Civil Procedure Rules Part 55 or Criminal Justice and Public Order Act 1994 Section 77.

Furthermore, has the Council had proper regard to its Public Sector Equality Duty under Equality Act 2010 Section 149? In the recent homelessness review case of *Hotak and Others –v- Southwark LBC and Others* [2015] UKSC 30, Lord Neuberger stated:

*It is therefore appropriate to emphasise that the equality duty, in the context of an exercise such as a Section 202* [Housing Act 1996] *review, does require the reviewing officer to focus very sharply on (i) whether the applicant is under a disability (or has another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the applicant if and when homeless, and (iv) whether the applicant is as a result ‘vulnerable’.*

Obviously in the context of PSPOs and Gypsies and Travellers, the most relevant protected characteristic would be the race of those who are ethnic Romany Gypsies and Irish Travellers.

Further the activities must be “unreasonable” (ASBCPA 2014 Section 59(3)(b). Once again it is certainly not clear that an unauthorised encampment in itself could be said to be “unreasonable”. It is recognised by a wide variety of organisations and by central government that the problem of unauthorised encampments is caused not through the fault of the Gypsies or Travellers concerned but due to the lack of authorised permanent and transit pitches and emergency stopping places. It is difficult to see how the phenomenon of unauthorised encampments in itself could, therefore, be described as being “unreasonable”.

The clear implications are that PSPOs are not appropriate or suitable to deal with unauthorised encampments, are not meant to deal with unauthorised encampments and should not be used with regard to unauthorised encampments.

In the light of this guidance we are therefore writing to ask you to withdraw the PSPOs on unauthorised encampments on the 12 locations in Brighton, which are in contravention to the new updated Guidance.

Yours sincerely

Emma Nuttall

Advice and Policy Manager

*Cc Peter Castleton, Head of Community Safety, Brighton and Hove City Council, Chief Inspector Howard Hodges, Sussex Police, Rosemary Lloyd, Senior Solicitor, Equalities and Human Rights Commission, Rosie Brighouse, Legal Officer, Liberty*.