Rough sleeping: enforcement and austerity

Roger Grimshaw and Matt Ford

Foreword

This briefing emerged out of work the Centre undertook last year in collaboration with the homelessness charity, Crisis. It was a small part of a wider study by Crisis that sought to assess the scale and impact of interventions against rough sleepers. The report on this work was published earlier this year (Sanders and Albanese, 2017).

The data on enforcement actions the Centre collated as part of this collaboration is explored in more depth in this briefing than was possible in the earlier report. The briefing also considers the pathways into homelessness and the approaches taken to deal with it.

It is common to explain homelessness as being the result of individual choices or vulnerabilities. But as the briefing points out, pathways into homelessness 'are institutional, and not simply the result of individual problems'. Rather, those individual problems 'are part of a complex picture in which several institutional factors feature'. Particular groups in society – care leavers, former prisoners and victims of domestic violence, for instance – all form major segments of the homeless population. Criminal justice and welfare changes both act as major conduits into homelessness.

Homelessness is, therefore, one indicator of the failure in the criminal justice system both to respond effectively to certain victimisations, as well as to ensure those processed as 'offenders' are able to land back on their feet at the end of a sentence.

Rough sleepers also 'present an obvious target' when it comes to the management of public spaces. 'Every feature of their misery is constantly visible and every sign of discomfort or alienation can be interpreted as inappropriate, indecent or reprehensible.' But as this briefing makes clear, strategies to deal with street homelessness are inconsistent; information on such interventions is fragmentary. Where interventions are made, they should focus on addressing needs, rather than using Anti-social Behaviour legislation to require behaviour change or move people on.

The choices, the briefing concludes, are clear: 'to fund properly a coherent policy for housing the vulnerable; or to reach more frequently into the box of ASB tools without ensuring that needs are met.'

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Director

1 The inter-relationships between structural and personal factors are evidenced in Crisis' Homelessness Monitor series: www.crisis.org.uk/ending-home lessness/homelessness-know ledge-hub/homelessness-monitor

2 www.bbc.co.uk/blogs/the reporters/markeaston/2009/09 /the_politics_of_proper_be havio.html

In this briefing, we will consider the social pathways into homelessness, and how Anti-social Behaviour (ASB) legislation has become a contemporary instrument of power. We then analyse the results of our national research, outlining the recent mixture of coercive and related interventions imposed on rough sleepers, before considering the prospects implied by the latest legislation. The question for the future is how coercion may be reduced and replaced by provision to meet the needs of rough sleepers.

Social pathways to homelessness

It is commonplace to seek explanations for homelessness and rough sleeping in a cluster of individual challenges and vulnerabilities. However, evidence shows how experiences of harm follow systematic patterns which reflect structural social problems such as housing shortages, unemployment and inadequate welfare provision.

Key channels into homelessness are institutional, and not simply the result of individual problems: eviction and the loss of work have emerged as significant factors affecting the experiences of rough sleepers in London (Hertzberg, 2017); care leavers, former prisoners and victims of domestic violence form major segments of the homeless population (All Party Parliamentary Group, 2017). Criminal justice is a conduit for homelessness: a third of rough sleepers in London in 2015-2016 were found to have experience of prison (ibid, 2017). More recently, welfare reforms have been identified as another source of homelessness including rough sleeping (Clarke et al., 2017). Personal issues such as relationship breakdowns are part of a complex picture in which several institutional factors feature (Wilson, 2016).[1]

The scope for coercion

These adverse social pathways into homelessness have been clear for some time, but instead of simply moderating or negotiating solutions, the measures to deal with its most public face have retained special coercive themes. The rough sleeper population has been defined as presenting a potential for disorder, and therefore made subject to special laws such as The *Vagrancy Act 1824* which codified measures to repress those with no resources who were forced to roam and make a living.

In the control and supervision of public spaces rough sleepers present an obvious target of intervention. Every feature of their misery is constantly visible and every sign of discomfort or alienation can be interpreted as inappropriate, indecent or reprehensible. They embody the powerlessness of the destitute in the face of authority and privilege. Such a lack of power serves to licence a variety of interventions, both positive and negative.

It is not of course inevitable that they will be simply treated as objects to be removed; they may be subjected to an array of different responses, from members of the public, voluntary organisations, as well as public services and coercive agencies. What is important is the point at which the decisive powers of the local state begin to crystallise in favour of a coercive intervention. Historical conjunctures play a part in determining the structural balance of interventions over periods of time.

'Anti-social Behaviour' was a single comprehensive term invented and sustained by governments set on identifying fearful phenomena and being seen to control them. By using criminal sanctions it started to create a fusion of regulation and criminal law involving targeted and supervised prohibition, instead of treating incidents case by case. As a broad term, it has become a container for social fears.

Under New Labour, and the early years of the coalition which governed from 2010 to 2015, Anti-social Behaviour Order enforcement looked to be developing into a top-down process with national oversight – what some critics might call the 'Ministry of Fear'.[2] In 2000, breaches were frequently punished by custodial sentences (Campbell, 2002).

In the latter years of the coalition it was reinvented as a delegated process with a new repertoire of measures under the *Anti-social Behaviour, Crime and Policing Act 2014*. This has meant that the local power to instigate has been paramount, and the consequences have been more diffuse and less subject to central recording. Our research was therefore a rare attempt to collate national data on a large scale.

A national picture of interventions

To find out how the available measures were being applied, we requested information on the use of the 2014 Act against rough sleeping in local authority areas from all district, borough and city councils in England and Wales (326 in England; 22 in Wales). Supplementary information was requested from police forces and the Ministry of Justice. Data from the Act's implementation in October 2014 through to June 2016 was requested. In addition data on arrests, prosecutions and convictions for rough sleeping under *The Vagrancy Act 1824* were sought from all 43 territorial police forces in England and Wales.

We were interested in discovering the range of interventions, in order of seriousness and impact, against rough sleeping itself.

The Ministry of Justice's central database only records data on court proceedings for criminal offences, which in this case are breaches of any of the **measures** contained in the 2014 Act, except for civil injunctions. Unfortunately they do not record the reason the measures were initially issued – a disappointing omission.
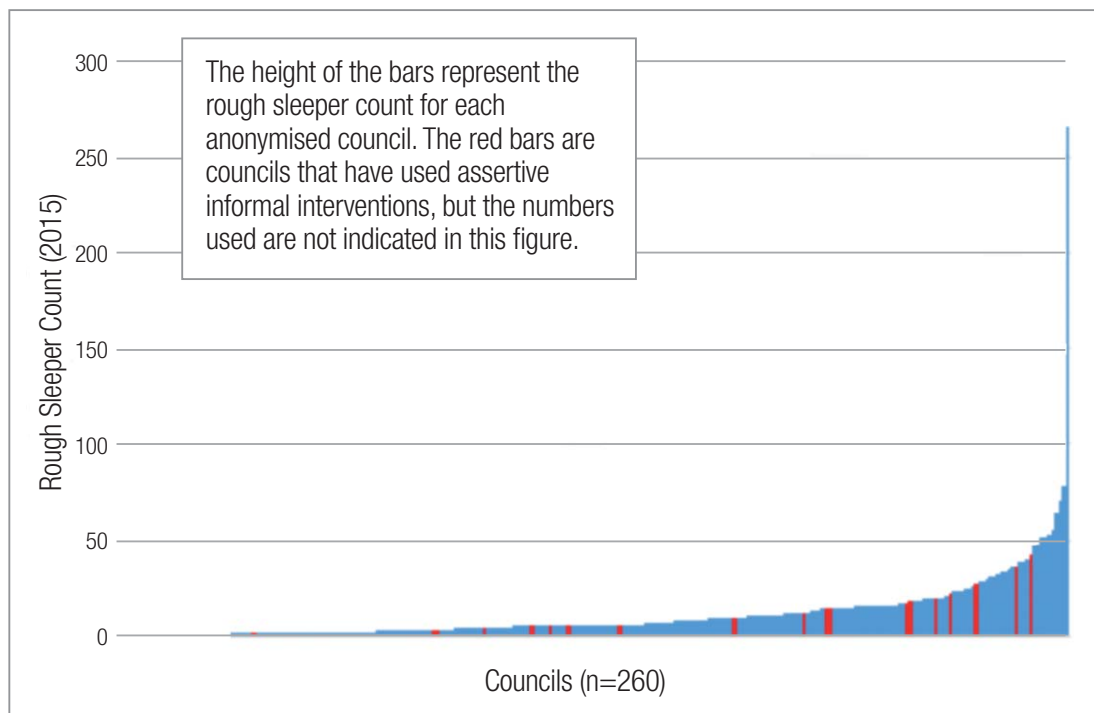
Only one police force out of the 30 that responded to our requests for information confirmed use of interventions against rough sleeping under the 2014 Act. A single person was charged for breaching a dispersal order and served one day's detention in a court house as a result.

None of the 260 councils that returned data used any **formal interventions, i.e. sanctions for breach of any measures under the 2014 Act**, against rough sleeping.

In all, 69 councils confirmed that referrals to counselling or support services were made to address rough sleeping- clearly, the most frequent **informal intervention**.

Relatively few councils (19) have so far used **assertive informal interventions, i.e. ones other than referrals**. The overwhelming majority of assertive informal interventions (338/340) were warnings, both written and verbal. The use of

Figure 1: Rough sleeping count for local authority areas compared with data about whether the local authority has used assertive interventions

The height of the bars represent the rough sleeper count for each anonymised council. The red bars are councils that have used assertive informal interventions, but the numbers used are not indicated in this figure.

Notes: Rough sleeper counts taken at October 2015 for England and November 2015 for Wales.

3 www.gov.uk/government/news/
   governments-nudge-unit-goes
   -global
4 http://hansard.parliament.uk/
   Commons/2017-04-25/debates/
   15BC7E04-A7CF-49D4-9B5C-16
   7F675ACACE/Justice

these assertive informal interventions is very unevenly distributed amongst the 19 councils that have so far used them. Approximately 300 of the 340 assertive informal interventions used were by only three councils.

Data on arrests for rough sleeping under Section 4 of *The Vagrancy Act 1824* was supplied according to financial year, as we requested, by eight forces, and by calendar year by three forces. Overall, 47 of such arrests were made by these police forces between 2010 and 2016 – again, low figures unevenly distributed across the forces.

Among councils that returned data, there does seem to be some broad regional pattern of distribution to the use of interventions against rough sleeping under the 2014 Act: 13 out of 19 councils that used assertive interventions are in the South (defined here as the South West, South East, London and the East of England). Around half of these were in London. Five councils and one police force which used assertive interventions are in the North (defined here as the North West, North East, and Yorkshire and the Humber). Only one such council was in the Midlands. No councils or police forces in Wales were identified as having used assertive interventions against rough sleeping.

Among the councils that returned data, there does not appear to be a pattern of relationship between the number of rough sleepers in a local authority area and whether the council has used assertive interventions (see Figure 1).

The data show how even on a very narrow definition of 'rough sleeping' a number of ASB interventions have been unevenly used as part of strategies targeted at the destitute. Local discretion associated with the regions has played a large part in triggering their use.

In sum, the most common responses we were able to quantify have been to make referrals. A more assertive practice has been to issue warnings. We did not quantify the use of the measures themselves. Hence why subsequent formal intervention was rare is not clear, but the general picture seems to be one of compliance on the part of the people targeted. There are other caveats to the findings: they do not mean that rough sleepers were not targeted for infringements of other kinds, such as nuisance or begging; nor have we delved into unrecorded

street interactions which may involve advice, threats, warnings, or directions.

According to Crisis research, the most significant risk associated with interventions has been to move homeless people from spaces they find safe and accommodating and to disrupt outreach services. More specifically the informal action which was the most frequent intervention did nothing to link or signpost individuals to support services that could address or end their homelessness. Opportunities to engage them with support were unfortunately missed.

The regimes of austerity

There has emerged a pragmatic emphasis in ASB intervention towards a range of non-assertive and assertive practices without necessarily following up with sanctions. It would appear that the ASB regime has incorporated strategies consistent with reduced spending capacity and the use of more economical measures. In contrast with consequential justice-based enforcement, strategies seek to threaten and to persuade, echoing, if in more robust form, the principles of 'nudge' policies elsewhere.[3] As the Crisis report has shown the homeless are to be 'nudged' out of the spaces they occupy by warnings and by physical measures such as removing comfortable niches.

Opportunities to end coercion

The political context for a more complete departure from coercion has been established by *The Homelessness Reduction Act 2017*. The Act extends the duties of local authorities to prevent and relieve homelessness regardless of 'priority need' and calls upon public services to notify the housing authority about people in need. However it should be noted that Clause 7 also outlines a procedure in respect of 'non-cooperation' with a local authority plan to provide accommodation.

In May, the then Minister of Justice, Liz Truss, welcomed the Bill and stated that the Ministry had written to prison governors about planning housing transitions for former prisoners.[4]

The Act presents an opportunity to put supportive interventions on a stronger footing with developments in Wales hailed as a marker for future policy. As our evidence showed it was interesting that Wales featured no examples of assertive intervention, despite the real challenge posed by levels of rough sleeping (Fitzpatrick et al., 2017).

However it seems that the apparent successes of the model in Wales have been conditioned by a continuing investment in social housing and supported housing programmes. In England local authority spending has been cut back. Without substantial reinvestment, initiatives in England will confront challenges in delivering sustainable housing outcomes for the homeless (Pennington, 2017; Birch, 2017).

A main grant of £61 million has been allocated to fund implementation of the Act in England over two years but by comparison with budgetary provision in Wales this sum looks insufficient; if so the prospects for further reducing ASB interventions would be prejudiced. The choices are therefore becoming clear: to fund properly a coherent policy for housing the vulnerable; or to reach more frequently into the box of ASB tools without ensuring that needs are met. Here are urgent policy questions that will affect the treatment and well-being of the most powerless in society: much better data collection will be required if change is to be fully documented.

About the authors

Dr Roger Grimshaw is Research Director and Matt Ford is Research Analyst, the Centre for Crime and Justice Studies.

Acknowledgements

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