

# SCRAP THE VAGRANCY ACT

Homelessness is not a crime.



## Scrap the Act: The case for repealing the Vagrancy Act (1824)

This campaign is supported by:



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## Acknowledgements

The views in this report are those of Crisis only but in the course of writing it we benefited from valued contributions:

- The Crisis project team: Matt Downie, Rosie Downes, Martine Martin, Simon Trevethick, Cuchulainn Sutton-Hamilton, and Nick Morris; and our colleague Lily Holman-Brant for helping produce this report.
- George Olney from Crisis for providing the stories told to him by people on the street who were affected by the Act and directors from the Crisis Skylight services across England and Wales who shared their contacts and stories.
- Campaign partners Homeless Link, St Mungo's, Centrepoin, Cymorth Cymru, The Wallich, and Shelter Cymru for their help developing this report and the campaign to repeal the Act.
- Lord Hogan-Howe for this report's foreword and for chairing the multi-agency roundtable discussion in April 2019 in the UK Supreme Court (details in Appendix 1). Photo credit Chris McAndrew, licensed under the Creative Commons Attribution 3.0 Unported licence.
- Mike Schwarz, Bindmans LLP, for giving the legal advice in Appendix 2.
- Professor Nick Crowson for sharing historical data about the Vagrancy Act's use.
- Cllr Ruth Bush and Matthias Kelly QC, for sharing their experiences of the End the Vagrancy Act campaign.
- Prison Reform Trust for helping analyse the recent data.
- Hannah Hart for providing advice and connections to policing and Crown Prosecution Service contacts who briefed us on police and criminal justice processes.
- Special thanks to Layla Moran MP for her leadership and awareness raising on the Vagrancy Act.

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# Foreword

At its most basic level of definition, modern policing is about working in partnership with local communities, businesses and the general public to keep people safe from harm. The law is our shared framework for conduct, providing an agreed set of guidelines on what constitutes criminality and what does not. It changes as our values, learning and priorities change.

Everything about the Vagrancy Act, including its name, signals that it comes from a very different era. Technically, it even predates the police service as we know it, with Sir Robert Peel's formative Metropolitan Police Act only passed in 1829. And while it has been my experience, gained across decades of service, that the Vagrancy Act is rarely used today and only then as a last resort, the point is that it is still used.

With the Vagrancy Act set for review as part of the Government's Rough Sleeping Strategy, the time has undoubtedly come to explore how this two-hundred-year-old piece of legislation sits alongside our modern legal framework, and to examine its impact on the people most likely to be affected by it.

Frontline police are called upon to make judgement calls about vulnerable people who are either living on the streets, or living out of unsuitable temporary accommodation, every day. There is a lot of pressure to act on issues like rough sleeping and begging, but if the evidence shows that criminalisation is more likely to push people away from the support services they need to progress out of the situation, then we can and must do better than relying on this outdated piece of legislation to plug the gaps.

I do not believe that being homeless should be a crime, or that the public want to see people in that situation automatically criminalised. The Vagrancy Act implies that it is the responsibility of the police primarily to respond to these issues, but that is a view firmly rooted in 1824. Nowadays, we know that multi-agency support and the employment of frontline outreach services can make a huge difference in helping people overcome the barriers that would otherwise keep them homeless.

Individuals who have become homeless are in an incredibly risky situation. Rough sleepers in particular are almost 17 times more likely to have been victims of violence and 15 times more likely to have suffered verbal abuse compared to the general public, according to Crisis figures.<sup>1</sup> Yet, while the Vagrancy Act remains in law, these people are actively discouraged from engaging with the police for fear of enforcement measures being taken. This does not help anyone.

This report provides an overview of how the Vagrancy Act has been used historically and the challenges involved with its use today, alongside a comprehensive overview of alternate options, with the case for repeal very clearly made. My hope is that it will bring the issue into a sharp perspective and ensure that, when a decision comes to be made about the future of the Vagrancy Act in England and Wales, it is the right one.



**Lord Bernard Hogan-Howe QPM,  
Commissioner of the Metropolitan Police Service, 2011-2017**

<sup>1</sup> Sanders, B and Albanese, F (2016), *"It's no life at all" - Rough sleepers' experiences of violence and abuse on the streets of England and Wales*. London: Crisis.

# Executive summary

**This report looks at the case for repealing the Vagrancy Act 1824 in England and Wales. People sleeping rough experience the most extreme and visible form of homelessness, facing a greater risk of violence, abuse, and earlier death compared to the general public.**

Levels of rough sleeping have increased substantially during the past decade and this has been accompanied by an increase in begging prosecutions, covered by the Act.

The evidence says police enforcement action against people in this situation should be used to link people to support services and, if needed, housing. Yet, the Vagrancy Act remains in law with sections 3 and 4 covering begging and sleeping rough and other associated offences such as 'being in enclosed premises for an unlawful purpose'.

With the Westminster Government committed in its rough sleeping strategy to review homelessness legislation, and with Welsh Government delivering an action plan to address rough sleeping, now is an ideal time to look again at the Vagrancy Act.

This report looks at a number of areas:

- The historical background to the Act, particularly the original intent and assumptions behind it and the fact its use has hit peaks and troughs over time.
- The current use and effects of the Act.

- The likely effect of repeal on policing.
- How effective support would involve better outreach but also a more nuanced approach to any anti-social behaviour and crime that is linked to rough sleeping and/or begging.
- Legal considerations and why the Act might not be suitable for the present day.
- Discussion of the way forward.

## The historical background of the Act

The origins of the Vagrancy Act pre-date 1824. It was part of a move at the time to simplify centuries of existing vagrancy law into one Act. At the time, criminal justice was the main way to tackle vagrancy and police increasingly became the lead responders. It was driven largely by concerns about people in poverty who were wandering the country to make a living. This included soldiers who had returned from the Napoleonic wars. By 1906, a Departmental Committee noted that the Act in most part was a "measure simply of repression"<sup>2</sup> that increased the number of people imprisoned.

The Act set out categories of 'vagrant' and the punishments they should receive if they broke the law by sleeping rough, begging, or committed one of the other offences in the Act. Many observers have commented on the looseness of the drafting of the Act, particularly its wide definition of 'vagrancy'. Over the years, many groups have fallen foul of the law, including owners of shops displaying 'obscene prints', people playing dice in the streets and, in the 1970s, young black men were pre-emptively stopped and searched under the so-called 'sus laws'.

Policymakers in 1906 noted that differences in policing practice – not the numbers of vagrants nor the scale of populations or areas – determined how many people were subject to the Act. Although its use is in very gradual decline in the longer term, there have been periodic peaks and troughs, depending on wider circumstances. Wars, social change, economic upheaval, and the gradual emergence of professional support services and the welfare state, have all affected the peaks and troughs in the Act's almost 200-year history.

There have been attempts at reform and repeal, ranging from legal changes in the 1930s, a working party's recommendations for the Home Office to heavily reform it in the 1970s, and the 'End the Vagrancy Act' campaign around 1990. Governments over the years have partially relaxed the penalties and removed some of the offences. In the 1990s and early 2000s there was a new approach and coordinated funding that reduced rough sleeping substantially. In more recent decades 'anti-social behaviour' as a legal and social concept has emerged and started to overlap in some cases with the Act's offences.

The Act has continued to be in force, however, and the consensus among historians is that the Act is best understood as a response to poverty

and to fears in society about people experiencing the effects of it.

## The Act's current use

Modern policing has changed immensely since the Vagrancy Act came into force. Policing and our understanding of the causes of homelessness, anti-social behaviour and other associated street activity have improved. There are now very well evidenced links between vulnerability, trauma, and poverty and some of their social effects through people rough sleeping, begging and other associated street activity.

However, the Act is still used across police force areas in England and Wales to address these circumstances. The Act's use has been falling since 2014, coinciding with various policy initiatives and the passing of an updated anti-social behaviour law. This overall trend, however, masks a great deal of variation. Different police forces are using the Act to different degrees. The main formal use of the Act in the past decade has been against begging but prosecutions for all offences in the Act still happen.

More commonly, however, people on the streets report informal use of the Act (and other enforcement powers) to move them on or challenge behaviour without formal caution or arrest. This kind of approach antagonises the people affected, including support and outreach workers and some police themselves, because it does not address the root causes of the situation. The approaches can also cause further problems by displacing people into more dangerous places or riskier activities, and potentially drawing people into a criminal justice system that is not well designed to address their needs.

The evidence suggests areas that have developed a multi-agency response to street homelessness, and the

<sup>2</sup> UK Parliamentary Papers (1906), *Report of the Departmental Committee on Vagrancy*, cd 2852, p.8

behaviours associated with it, are the areas that rely less on enforcement activity.

### The likely effect of repeal and the effective alternatives to the Act

Police forces are under pressure to respond to concerns from the community, from businesses, and from members of the public and to balance the needs and rights of different members of society. What is clear, however, is that when police refer people on the street to sources of help then support services need to be available to respond in a timely way. Enforcement action by police (and local authorities) should be rare and focused on specific behaviour that causes distress or harm to the community that cannot be dealt with in any other way.

There are two broad approaches that are needed instead of the Act:

1. Support and outreach services need to be scaled up across England and Wales to help quickly link more people who are rough sleeping and/or begging to support (and making sure someone is in safe and stable housing). Better use of this approach could result in fewer people coming into contact with police and criminal justice services in the first place.
2. To address anti-social behaviour linked to rough sleeping and/or begging, there is a need for more trauma-informed approaches from police and criminal justice services that take into account what has happened to people who are currently on the streets. This report outlines some examples of current practice in this area.

The link between police forces and wider support services is critical to putting in place effective responses to meet the two aims above. There are links between homelessness, begging and the trauma that people have experienced, often earlier in life. People who are in the criminal justice system, engaged in substance use, and accessing homeless services have often experienced trauma. Police and the criminal justice system are generally not the best lead agencies to help people out of these circumstances and contact with police and criminal justice services can lead to further trauma for the individual if they do not help address the root causes.

People on the street and outreach/support workers share the view that the Act and its approaches are outdated. As one service manager said:

**“Enforcement in its current format does nothing to empower communities to resolve issues, build awareness of responsibility or recognise collective skills and expertise. It further stigmatises the homeless community as they remain external to discussions and meaningful change. Current use of enforcement is fear based, further traumatising individuals for whom life is complex enough.”<sup>3</sup>**

A different approach is needed that looks to resolve the root causes of the situation for people and not just the signs and symptoms of it. Most people sleeping rough require swift action to help them from the street, involving street outreach services that link people into suitable accommodation and support.<sup>4</sup> For the smaller number of people who have committed offences that cause genuine harm to

the community, there is existing good practice to address these individuals' circumstances including, for example, liaison and diversion services and programmes to address how police can better work with vulnerable people.

Services need to help resolve the causes of the situation for people and not just the signs and symptoms. Government policy and the law can help or hinder contacts between people on the street, support services, and the authorities. This report's review of the Act's use shows it does not work to resolve the problems it is supposed to address. Drawing on the evidence of what works to end homelessness,<sup>5</sup> the report suggests the two broad approaches above would be more effective.

### Repeal and legal considerations

If the Act were to be repealed, some police force representatives still say they would need reassurance that they could address criminality and persistent behaviours that cause harm to the community.

Other countries that previously had vagrancy laws have repealed them. In Scotland, for example, begging and sleeping rough are not offences in themselves. However, where there is separate and additional anti-social behaviour alongside begging or sleeping rough, this is covered by more up to date legislation. Such an approach could apply in England and Wales too.

Crisis sought legal opinion to gauge how suitable the Act is for addressing rough sleeping, begging and the Act's other offences. The full advice is reproduced in Appendix 2 and discussed in the report but the advice considers the Act to be “obsolete” because:<sup>6</sup>

- The remaining offences in the Act are regulated by more modern legislation, including (but not limited to) the Anti-Social Behaviour, Crime and Policing Act 2014.
- Modern legislation sets out powers that authorities (police, criminal justice etc) can use. The modern legislation better defines the offences and their impact; and, when used appropriately, these powers can more effectively address anti-social behaviour than the Vagrancy Act.

The legal advice and those working in outreach services agree the 2014 anti-social behaviour legislation is not without fault. For example, this report considers the increased use of Public Space Protection Orders, and that some of these prohibit rough sleeping specifically. This is despite official guidance that these orders should only be used where they are proportionate to the harm that they are trying to address.

However, when correctly applied, the legal advice to Crisis says, the anti-social behaviour (and other modern legislation) is more suitable and more accurately reflects the needs of the present day. In particular, the 2014 Act includes the impact of behaviour on the wider community, which is totally absent from the Vagrancy Act.

### The way forward

The report considers whether to retain, reform or repeal the Act. It concludes that repeal - possibly combined with reform of other legislation as necessary - would be the ideal way forward.

While the numbers of people currently prosecuted under the Act is relatively small, and policy initiatives have made progress in recent years to reduce the Act's use, the strong lesson from

<sup>3</sup> Comments shared with Crisis by St Mungo's outreach staff

<sup>4</sup> Mackie, P., Johnsen, S. and Wood, J. (2017), *Ending rough sleeping: what works? An international evidence review*. London: Crisis.

<sup>5</sup> Mackie, P., Johnsen, S. and Wood, J. (2017), *Ending rough sleeping: what works? An international evidence review*. London: Crisis.

<sup>6</sup> Schwarz, M. (2019) *Crisis and alternatives to the Vagrancy Act 1824*, paras 26-31

the Act's history is that it can fall dramatically but then return to use as circumstances change. There is also strong evidence that the vast majority of all enforcement action is informal, that is not resulting in formal action such as arrest.

Repeal of the Act would remove the legal route to criminalise people just for sleeping rough and/or begging, and for the other offences under the Act. It would also make clear that addressing these activities is not primarily a police response; they are a matter for wider support services.

Now is an ideal time to look again at the Act, which is why reform or repeal should be considered. There are commonly identified shortcomings of the Act, including how outdated the approaches in it are; how ineffective it is at addressing the root causes of the behaviours it criminalises; and that it does not factor in the community impact of the behaviour nor the motives of the individual whose behaviour needs addressing.

In making any change to the Vagrancy Act, England and Wales would merely be following Scotland's legal and policing approach. In Scotland rough sleeping and begging are in themselves not crimes and anti-social behaviour is addressed through better support and reliance on more up to date legislation.

Repealing the Act is a timely and useful step towards a better response to the challenges of street homelessness and begging. Criminality that causes harm and distress needs to be addressed but any behaviour that society would wish to criminalise is covered adequately by more modern legislation. This newer legislation requires that the impact of the behaviour on others is a material factor, so that rough sleeping and begging would not be considered offences in themselves.

Police forces should have the most effective powers available in order to carry out their roles. During the Crisis roundtable on repealing the Vagrancy Act there was discussion about whether there might be any further changes to existing legislation to ensure police had all the necessary powers to be able to manage aggressive begging that has an anti-social effect and some of the wider uses of offences like 'being in enclosed premises for an unlawful purpose'. Such changes to existing legislation could be factored into a repeal Bill, provided they reflect the principles set out in this report and the policy and practice approach of having enforcement action as rare and leading to support, when other options have failed or will not work.

## Conclusion

People who are rough sleeping and/or begging have quite straightforward asks that chime with those of wider society, such as to be shown respect, to have the basic human needs for housing and support met, and to have opportunities to work, sort out money problems and be in stable relationships.<sup>7</sup> Likewise, wider society has an interest in making sure that every person has a stable home and the support they need to rebuild their lives.

The Vagrancy Act does nothing to help bring about these changes. It does not tackle the problems people have, and there is evidence that it can also push people further from the help they need. Where long-term street homelessness risks harm and distress to the wider community, this needs to be addressed carefully and with a flexible, patient and assertive approach that is mindful of the trauma that people in this situation have experienced. Where genuinely anti-social behaviour is taking place, this should be dealt with and enforcement plays a crucial role, alongside offers of housing and support for those who need it. Of course, where people are engaged in genuine crime such as drug dealing, harassment or intimidation, this should be taken seriously and dealt with by the police. The time has come to scrap the Act.

<sup>7</sup> See, for example, Glasgow Homeless Network's research quoted in Johnsen, S. (2016), *Enforcement and interventionist responses to rough sleeping and begging: opportunities, challenges and dilemmas*, ESRC



**“I was already on the streets,  
and then they fined me.  
You just felt like a statistic.”**

**Shaun, Blackpool**



“I’m a plasterer by trade. Never been to jail, but four years ago I went to rehab for heroin addiction. I got through it but afterwards I relapsed and ended up just hurting everybody. That’s when I ended up on the streets.

About eight months ago, I was begging, and the police kept coming over to me and asking me to move. They didn’t tell me anywhere to go and get help. They just moved you. I got moved a couple of times and then they issued me a letter with a court date. I missed the first date because I was still on the streets and not thinking straight. Then I was asleep in a doorway and they came and arrested me at two o’clock in the morning. I was in court the next day.

The court fined me £150. The term they used in court was, ‘Gathering money for alms.’ Afterwards I was just sent on my merry way. The courts didn’t tell me anywhere to go to try and get support. Nothing like that.

The fine comes out of my benefits. That just makes it even harder. I had about £90 to last me a month. It’s not right. It didn’t deter me from begging. I was straight back out again. The same place. I was just trying to

survive without being a criminal. It’s either that (begging) or go out and rob because you’re desperate.

I nearly died on the streets after that. My legs were rotten. Six months ago, I went to hospital and they told me I nearly had septicemia, but they also released me straight back onto the streets with no fixed abode. Apparently, they weren’t allowed to do that.

About a week later that’s when I met [an outreach worker for a local volunteer charity] who helped get me housed. Once I was off the streets, I got on a methadone script and I’ve been clean for four months now. I’m also building my plastering business up again and getting back in touch with my family. My only support came from them. The Vagrancy Act didn’t help me at all. I was already on the streets, and then they fined me. You just felt like a statistic.”

**Shaun, Blackpool**



## Chapter 1:

# Rough sleeping and enforcement in England and Wales today

People sleeping rough experience the most extreme and visible form of homelessness. Across England and Wales, levels of rough sleeping have increased substantially during the past decade, with official figures showing a 165 per cent increase in England from 2010 to 2018<sup>8</sup> and an increase of around 45 per cent in Wales from 2015 to 2018.<sup>9</sup>

People who are rough sleeping are almost 17 times more likely to be victims of violence and 15 times more likely to have suffered verbal abuse compared to the general public.<sup>10</sup> Between 2012 and 2017 the number of people who died while homeless in England and Wales increased by almost a quarter (24%).<sup>11</sup>

Various governments have tried to reduce rough sleeping and the Westminster Government has a rough sleeping strategy, primarily for England,

with an aim to eradicate rough sleeping by 2027.<sup>12</sup> Welsh Government has a rough sleeping action plan.<sup>13</sup> Yet, it remains a very live problem for society.

The latest evidence from across the UK and internationally shows that, in cases where people are forced to sleep rough, the best response is for swift action to help people away from the street, involving outreach services that link a person to suitable accommodation and support. The evidence shows that a person-centred

8 Fitzpatrick, S., Pawson, H., Bramley, G., Wood, J., Watts, B., Stephens, M. and Blenkinsopp, J. (2019), *The Homelessness Monitor: England 2019*. London: Crisis, p. 62

9 Welsh Government (2019), *National rough sleeping count* (two-week estimate), published 21 March 2016 and 5 February 2019. See full releases for more detail due to methodology changes that came into force in 2015.

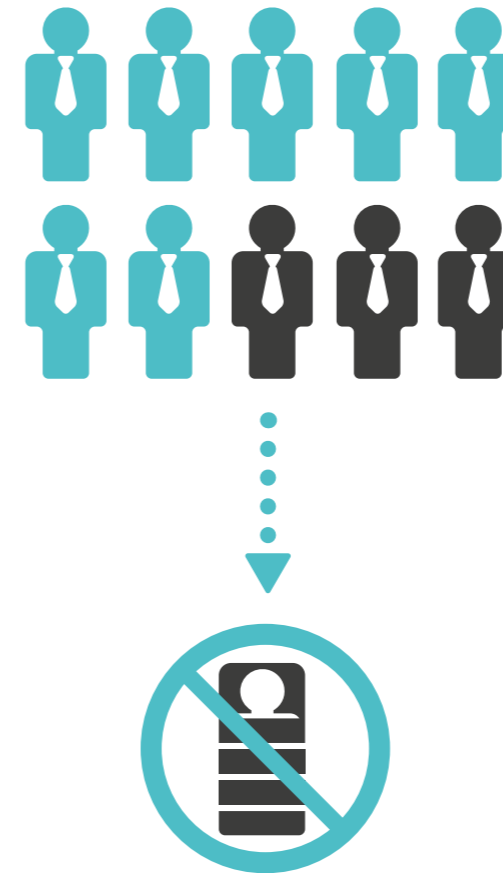
10 Sanders, B. and Albanese, F. (2016), *"It's no life at all" - Rough sleepers' experiences of violence and abuse on the streets of England and Wales*. London: Crisis.

11 Office for National Statistics (2018), *Deaths of homeless people in England and Wales: 2013 to 2017*.

12 Ministry of Housing, Communities & Local Government (2018), *Rough Sleeping Strategy*, <https://www.gov.uk/government/publications/the-rough-sleeping-strategy>, accessed 14 February 2019

13 Welsh Government (2018), *Rough Sleeping Action Plan*, <https://gov.wales/docs/desh/publications/180206-rough-sleeping-action-plan-en.pdf>, accessed 14 February 2019

support approach, which responds to local housing markets and the needs of the individual who is sleeping rough, is the best approach.<sup>14</sup>



## 7 out of 10

local authorities use some form of enforcement activity against people who are street homeless, according to Crisis research.

'Enforcement' includes actions by local authorities, police and other agencies to address activities that take place on the street and are "sometimes associated with sleeping rough."<sup>15</sup> They can include formal measures

like legal penalties or sanctions and informal measures like being moved on, or 'defensive architecture' that prevents people from settling or bedding down. Places in both England and Wales have increased their use of enforcement in recent years, with 7 out of 10 local authorities using some form of enforcement activity against people who are street homeless, according to Crisis research.<sup>16</sup> The research also found local authorities intended to make more use of anti-social behaviour powers and a fifth (18%) were intending to use further 'defensive architecture'.<sup>17</sup>

The rough sleeping strategy for England has acknowledged that:

**"Those who find themselves sleeping rough are some of the most vulnerable in society and we are clear that people who sleep rough should not be discriminated against."**<sup>18</sup>

It recommended, on the basis of advice from an advisory group, that a wider review of rough sleeping and homelessness legislation is carried out during 2019 and early 2020 and that the review includes the Vagrancy Act that is in force across England and Wales.

While there may be some disagreement among stakeholders on the use of enforcement measures, there is a consensus that urgent action is needed to address the root causes of all forms of homelessness and begging, and all agree that preventing people from being in these situations in the first place is the most desirable and effective approach.<sup>19</sup>

14 Mackie, P., Johnsen, S and Wood, J (2017), *Ending rough sleeping: what works?* London: Crisis.

15 Johnsen, S. and Fitzpatrick, S. (2007), *The impact of enforcement on street users in England*. York: Joseph Rowntree Foundation, p.viii

16 Sanders, B. and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*. London: Crisis.

17 Ibid. p.19

18 Ministry of Housing, Communities and Local Government (2018), *Rough Sleeping Strategy*, p.29

19 Johnsen, S (2016), *Enforcement and interventionist responses to rough sleeping and begging: opportunities, challenges and dilemmas*. ESRC, p.6

### Vagrancy Act offences today

The Vagrancy Act 1824 (the Act) remains in law across England and Wales and is still in use today. As a long-standing piece of legislation, the Act has been subject to a number of amendments but, as it stands, has two main sections that police can use against people suspected of offences:<sup>20</sup>

Section 3 of the Act:

- Begging and persistent begging are prohibited - 'Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms'.
- It is a recordable offence and the maximum sentence is currently a fine at level 3 of the standard scale (currently up to £1,000).<sup>21</sup>

Section 4 of the Act:

- 'Sleeping out' or rough sleeping is defined as: 'Wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, and not giving a good account of himself'. An amendment in 1935 provided that people could only be arrested if there is a shelter nearby that can be accessed or if they have been offered a shelter and still sleep on the street.<sup>22</sup>

- There is also an offence for 'being in enclosed premises for an unlawful purpose', which is used, for example, when dealing with people suspected of burglary when apprehended by the police. However, it is also sometimes used to challenge people who are sleeping rough.

The Act and the principles contained within it, are a product of a very different age, yet it still informs the response to rough sleeping and begging to the present day.

<sup>20</sup> Sanders, B. and Albanese, F (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*. London: Crisis, p.4

<sup>21</sup> House of Commons Library (2018), *Briefing paper - Rough Sleepers and Anti-Social Behaviour (England)*, p.1

<sup>22</sup> Vagrancy Act 1935, section 1(3)

## Chapter 2:

# The historical background to the Vagrancy Act

**This chapter examines the roots of the Vagrancy Act and concludes that the Act is not simply old, but is based on a totally different set of challenges and assumptions to the present day and different attitudes and values about how to tackle visible poverty. It looks at how the Act has persisted over decades and centuries, falling into and out of use, yet still remaining in law into the present day, where it continues to criminalise people who are rough sleeping or begging.**

### Three centuries of law-making led to the Vagrancy Act

The origins of the Vagrancy Act go back even further than 1824. It was "part of the contemporary codification, rationalisation and reform of the criminal law" and was a response to concerns about an increase in visible poverty at the time.<sup>23</sup> Three years before the Act came into law, a Parliamentary Select Committee recommended a new law to bring together existing laws dating back centuries and to make provision for the "apprehension, punishment, and

passing of vagrants [the system of returning vagrants to parishes where they claimed settlement]".<sup>24</sup>

The Act was a measure aimed at "enforcing ideals of independence, work and family responsibility"<sup>25</sup> and set out categories of 'idle and disorderly persons', 'rogues and vagabonds' and 'incorrigible rogues'. All of these were first established by legislation in the 1730s.<sup>26</sup> Yet this approach had even deeper roots in measures from the early 1600s, which set out different categories of people deserving of sympathy and those undeserving.<sup>27</sup>

<sup>23</sup> Charlesworth, L (2006), 'Readings of Begging: The Legal Response to Begging considered in its Modern and Historical Context', *Nottingham Law Journal*, 15, 1, pp.2-12

<sup>24</sup> UK Parliamentary papers (1821), *Report from the Select Committee on The Existing Laws Relating to Vagrants*, p.6

<sup>25</sup> David Jones quoted in Humphreys, R. (1999), *No fixed abode: a history of responses to the roofless and the rootless in Britain*. Basingstoke: Macmillan, p.81

<sup>26</sup> Vagrants Act 1739, 13 George II, ch. 24;

<sup>27</sup> Act for the Relief of the Poor 1601

The 'class' to which someone was deemed to belong determined how they were treated. Men found guilty of being 'rogues and vagabonds', for example, were not to be whipped, but in general 'incorrigible rogues' were.<sup>28</sup> 'Rogues and vagabonds' included a broad range of people deemed to be socially outcast in some way, including "players of [musical] interludes unauthorized", those "without property, idle, and refusing to work"; fortune tellers; illegal lottery ticket dealers; and unlicensed pedlars.

### 'A measure simply of repression'

Lawmakers in 1821 recommended a new Vagrancy Act because they thought punishments at the time were too soft. A Departmental Committee noted in 1906 that in general "the Act of 1824 was a measure simply of repression". It judged the Act to have been "certainly effective" because the number of vagrants imprisoned nearly doubled to almost 16,000 between 1825 and 1832.<sup>29</sup>

The Parliamentary report (1821) said those sent to prison were not being punished enough:

**"The threat of commitment has lost its terror. The vagrant himself, so far from shrinking, throws himself in the way of it, is apparently solicitous for it, and in fact steps forward as a volunteer for a prison."**<sup>30</sup>

In the report's meeting transcripts almost every witness faced questions about their views on whether further punishments would work, including hard labour,<sup>31</sup> working on a mill,<sup>32</sup> longer jail terms, and being "privately whipped with wholesome severity".<sup>33</sup> The committee recommended "more extended periods of imprisonment" under an additional sentence of hard labour.<sup>34</sup> Within a decade of the Act's passage into law, the sanctions and punishment became more formalised, through a system of centrally organised workhouses that the New Poor Law 1834 created.

### The extraordinary survival of the Act

In the Act's era, social and political anxieties had long focused on the idea that travelling poor people were a threat to social order and the Act was one way to deal with this. Crowson observes that the "wording of the legislation was sufficiently vague as to make it a very flexible tool that could be applied when other forms of legal recourse were unenforceable".<sup>35</sup> For example, the increase in "Irish and Scotch [sic] vagrants" wandering in England and Wales in the 1820s was a source of concern at the time,<sup>36</sup> as were soldiers returning from the Napoleonic wars.<sup>37</sup> This is reflected in the Act's wording, with references in section 4 to people "wandering abroad" and trying to beg "by the exposure of wounds or deformities".

28 UK Parliamentary Papers (1821), *Report from the Select Committee on The Existing Laws Relating to Vagrants*, pp.1-6

29 UK Parliamentary Papers (1906), *Report of the Departmental Committee on Vagrancy*, cd 2852, p.8

30 UK Parliamentary Papers (1821), *Report from the Select Committee on The Existing Laws Relating to Vagrants*, p.4

31 Ibid. p.24

32 Ibid. p.51

33 Ibid. pp.88-89

34 Ibid. p.4

35 Crowson, N (forthcoming), *Tramps' Tales: discovering the life stories of Late Victorian and Edwardian Vagrants*, *English Historical Review*

36 UK Parliamentary Papers (1821), *Report from the Select Committee on The Existing Laws Relating to Vagrants*, p.30

37 Jones, G (1969), *History of the Law of Charity 1532-1827*, Cambridge: Cambridge University Press

There were misgivings at the time. William Wilberforce, the leader of the anti-slavery movement, is said to have argued it was a catch-all and did not address individuals' circumstances.<sup>38</sup> The average number of prosecutions in England and Wales for sleeping out during 1859-1863 was 3,621. This rose in the following years and by 1899-1903 it was 9,003. However, as is the case today, there was considerable variation in which areas used the Act. The Departmental Committee report (1906) said the variation happened because of differences in police enforcement practice and not because of the different sizes of the areas or populations nor the actual numbers of 'vagrants'.<sup>39</sup>

By the early 1900s politicians still did not believe that the system was working. As the Departmental Committee (1906) report said:

**"We are convinced that the present system neither deters the vagrant nor affords any means of reclaiming him, and we are unanimously of opinion that a thorough reform is necessary. Briefly, the object of the scheme which we propose is to place the vagrant more under the control of the police, to help the bona fide wayfarer, and to provide a means of detaining the habitual vagrant under reformatory influences."**<sup>40</sup>

Though use of the Act has been in very gradual decline in the longer term, there have been periodic peaks and troughs in its use depending on circumstances.<sup>41</sup> Following the Act's establishment there were growing numbers of recorded 'vagrants' from the 1850s with rapid increases from 1880 until the early 20th century. In 1909 a Royal Commission found that vagrancy levels had increased tenfold over 60 years, despite a general decline in poverty.<sup>42</sup> Prosecutions under sections 3 and 4 of the Act grew and peaked at an annual average of almost 39,000.<sup>43</sup> As Crowson observes, only the outbreak of the First World War brought about a reduction in numbers.<sup>44</sup>

Fears about economic instability and political violence between the two world wars correlate with a rise in the Act's use and a new Vagrancy Act (1935) amended the original law in relation to "sleeping out" to make the offence more specific.<sup>45</sup> In the decades that followed, the Act's use fell, particularly as the welfare state started to formalise after the Second World War. The end of the Second World War did not see the mass of veterans seen wandering after previous wars. This was due to a combination of relative economic stability; extra support for travelling people who were outside the National Insurance scheme; improved job prospects; and Government commitments to new housebuilding.<sup>46</sup>

38 Hansard, HC 29 January 2019, Volume 653, Column 793

39 UK Parliamentary Papers (1906), *Report of the Departmental Committee on Vagrancy*, cd 2852, p.102

40 Ibid. p.1

41 Lawrence, P (2017), 'The Vagrancy Act (1824) and the Persistence of Pre-emptive Policing in England since 1750', *British Journal of Criminology*, Volume 57, Issue 3, 1 May 2017.

42 *Royal Commission on the Poor Laws and the Relief of Distress* (1909). London. p. 572

43 Ibid. vol. 1, chapter 2; and *Judicial Statistics England and Wales 1909 (1911)*, Cmd 5473; *Home Office, Criminal Statistics England and Wales 1924* (London, 1926), Cmd. 2602.

44 Crowson, N (forthcoming), *Tramps' Tales: discovering the life stories of Late Victorian and Edwardian Vagrants*, *English Historical Review*

45 Vagrancy Act (1935), section 1(3)

46 Humphreys, R. (1999), *No fixed abode: a history of responses to the roofless and the rootless in Britain*. Basingstoke: Macmillan, p.140



But the Act remained and began to be used again in the 1960s. The moral tone of discussions about homelessness continued, with some people attributing rising homelessness to reasons that included “a fashionable willingness to accept ‘unmarried mothers’” and an increased divorce rate.<sup>47</sup> Around this time there were further changes with the release of the film *Cathy Come Home* (1966 with a repeat in 1967) and greater social awareness of homelessness. The concept of vagrancy declined but was still present, as its official use in the Home Office’s *Working Party Report on Vagrancy and Street Offences* (1976) showed.<sup>48</sup>

In the 1980s, legislation relaxed the punishments for offences under sections 3 and 4 of the Vagrancy Act.<sup>49</sup> However, this did not lead to a reduction in the Act’s use, and by the early 1990s it was rising again.<sup>50</sup> As Earl Russell said in a Parliamentary debate in 1990 about possible repeal of the Act:

**“There has been a cyclical pattern in the enforcement of vagrancy laws over the centuries. The rise in prosecutions that we have seen between 1988 and 1989 is the umpteenth of many. Historians as a profession do not agree about much, but looking at previous occasions in other centuries they seem**

**to be agreed that those peaks in vagrancy prosecutions do not mark peaks in original sin, which is not that much of a variable. They mark periods of exceptionally poor social conditions. The variable relates to the degree of poverty and unemployment and the adequacy of relief.”<sup>51</sup>**

Under Westminster governments in the 1990s and early 2000s there was new funding for support and outreach services through the Rough Sleepers Initiative – and improved data and outcomes for reducing levels of rough sleeping.<sup>52</sup> The Rough Sleepers Unit reduced rough sleeping in England by two-thirds between 1999 and 2002.<sup>53</sup>

With the New Labour administration under Tony Blair, there was a focus on ‘zero tolerance’ policing,<sup>54</sup> and there were also concerns that, in Blair’s words, “rough sleeping can blight areas and damage business and tourism”.<sup>55</sup> During the New Labour years the term ‘anti-social behaviour’ took on a political, policy and legal definition linked to controlling types of behaviour. Its use has evolved over time and it is now in force in an amended form in the Anti-social Behaviour, Crime and Policing Act 2014.<sup>56</sup> The Vagrancy Act, however, has remained in place throughout.

47 Ibid. p.150

48 See also National Assistance Board (1966), *Single Homeless Person*. London.

49 Criminal Justice Act 1982

50 Humphreys, R. (1999), *No fixed abode: a history of responses to the roofless and the rootless in Britain*. Basingstoke: Macmillan, p.8

51 HL Deb 11 Dec 1990 vol 524, c 480

52 Illott, O., Randell, J., Bleasdale, A. and Noble, E. (2016), *Making Policy Stick. Tackling long-term challenges in government*. London: Institute for Government

53 Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018), *Everybody In: How to end homelessness in Great Britain*. London: Crisis, p.33

54 Humphreys, R. (1999), *No fixed abode: a history of responses to the roofless and the rootless in Britain*. Basingstoke: Macmillan, p.165

55 Social Exclusion Unit (1998), *Report to Parliament - Rough Sleeping*, Cm 4008, p.7

56 Grimshaw, R and Ford, M (2017), *Briefing 20 - Rough sleeping: enforcement and austerity*. Centre for Crime and Justice Studies.

## Wide range of uses for the Act

Over the years, the Act has been amended with new offences, such as, wilfully exposing obscene prints or indecent pictures in shop windows (1838), gambling and playing dice in the streets (1875); and pimping and living on earnings of prostitution (1898). There are also cases of the Act’s use against gay men.<sup>57</sup>

The Departmental Committee (1906) said:

**“The term ‘vagrant’ is a very elastic one and, as ordinarily used, no precise meaning can be attached to it.”<sup>58</sup>**

The same committee also observed that later amendments to the Act criminalised a wider range of actions and “in this way many offenders who are in no sense of the word vagrants have been brought under the laws relating to vagrancy.”<sup>59</sup>

The loose definition made precise estimates of how many vagrants there were difficult. The Departmental Committee (1906) said somewhere between 30,000 and 40,000 at any given time and 70,000-80,000 in times of economic depression.<sup>60</sup>

In the 1970s, black and minority ethnic young people were particularly subject to the police’s use of section 4 of the Act, the so-called ‘sus’ laws.<sup>61</sup> There were community concerns at the time that police were using the Act

indiscriminately against whole groups of people - particularly young black men - to deter suspected criminals from operating in an area.<sup>62</sup> A Home Affairs Select Committee (1980) report concluded that there was definite confusion and poor communication between police and suspects. It said some police were mistakenly or deliberately misusing Section 4 to carry out or threaten to carry out a ‘stop and search’ of people they suspected.<sup>63</sup>

In 2014, a notable use of the Act involved three men who were arrested and charged for ‘being in enclosed premises for an unlawful purpose’ for taking food from bins outside an Iceland supermarket in north London. The men, who had no fixed address, had allegedly taken vegetables, cheese and cakes from waste containers behind the shop. Their case was dropped as it was later deemed to be ‘not in the public interest’ to pursue it. Representations from the Iceland company were a key part in the decision, according to prosecutors,<sup>64</sup> and outcry on social media also played a part, according to the lawyer who represented the men.<sup>65</sup>

Professor Nick Crowson told the Crisis roundtable discussion on the Act:

**“Consensus has emerged amongst historians who say, really, what’s going on here with the changes to the Vagrancy Acts and the various statutes that exist during this time is that this is a response to the**

57 Houlbrook, M. (2005), *Queer London: Perils and Pleasures of the Sexual Metropolis*. London: University of Chicago Press

58 UK Parliamentary Papers (1906), *Report of the Departmental Committee on Vagrancy*, cd 2852, p.24

59 Ibid. p.7

60 Ibid. p.22

61 Lawrence, P. (2017), ‘The Vagrancy Act (1824) and the Persistence of Pre-emptive Policing in England since 1750’, *British Journal of Criminology*, Volume 57, Issue 3, 1 May 2017, p.526

62 Demuth, C. (1978), *‘Sus’: a Report on the Vagrancy Act*. London: Runnymede Trust, p.53

63 Home Affairs Select Committee (1980), *Race Relations and the ‘Sus’ Law, 1979-80 session*, 21 April 1980. London: HMSO, p.vii

64 BBC News online (2014), *Iceland food bin theft case dropped by CPS*, 29 January 2014; accessed 14 February 2019

65 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

growing sense of poverty and the perceived threat that these wayfarers present to society.”<sup>66</sup>

### Conclusion

The Act’s enduring history shows a piece of legislation formed at a time when the approach to people in difficult circumstances and deemed socially outcast was overwhelmingly punitive and led by criminal justice concerns. It strengthened and brought together measures to be used against people begging or rough sleeping – or rather the class of people called ‘vagrants’.

Use of the Act has fluctuated over time. While the Act’s use has gradually declined in the longer term it has also reached peaks when there were particular social concerns, and troughs whenever there was concerted pushback and concerns about its overreaching approach. Different political and policy responses, such as the expansion of the welfare state and the availability of support services, have also made a difference. The next chapter looks at current use of the Act.

66 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

## Chapter 3:

# The evidence of how and why it is used today

**This chapter presents evidence<sup>67</sup> about the contemporary use of the Act by police and considers the potential impact of repealing the Act on policing. Modern policing and society has changed to a very large extent since the Act was passed, so is it a help or a hindrance to current policing?**

“The basic mission for which police exist is to prevent crime and disorder as an alternative to the repression of crime and disorder by military force and severity of legal punishment.”

*Principles of Law Enforcement (1829)* by Sir Robert Peel, founder of the Metropolitan Police<sup>68</sup>

### Changing nature of policing and dealing with trauma

Modern policing has changed immensely over the nearly two centuries since the Vagrancy Act

came into force, during the same decade as Sir Robert Peel drafted his law enforcement principles. Research into current public attitudes towards the police finds:

“There is no simple template that the police can follow to ensure public acceptability. There is no stable constituency who approve of what they do, nor a hard core of those who disapprove.”<sup>69</sup>

Effective policing also now includes a greater focus on positive relationships and communication, more emphasis on the interests of victims of crime, and working with a wider range of

67 Evidence in this chapter includes quotes from the Crisis roundtable discussion and data from published reports, datasets, and Parliamentary proceedings and papers. Some were obtained through the Freedom of Information process. Sources included the UK Ministry of Justice, individual police forces across England and Wales, and the relevant housing departments of the Westminster and Welsh governments. Professor Nick Crowson kindly shared historical data with Crisis.

68 Durham Police (1829), *Sir Robert Peel’s Principles of Law Enforcement*, [https://www.durham.police.uk/about-us/documents/peels\\_principles\\_of\\_law\\_enforcement.pdf](https://www.durham.police.uk/about-us/documents/peels_principles_of_law_enforcement.pdf), accessed 13 March 2019

69 Waddington, P. A. J. (2017), *Public attitudes to the police*. OUP blog <https://blog.oup.com/2017/04/public-attitudes-police/>, accessed 5 April 2019

partners such as health services, charities, and local authorities.<sup>70</sup>

The legal picture in England and Wales has also changed. In contrast to the years when the Act was passed, for example, officers now need to be much more mindful of a variety of legislation relevant to working with people on the street, including:

- Human rights principles and law, which the College of Policing says “underpin every area of police work”<sup>71</sup> and can involve difficult decisions where the rights of suspected offenders and the rights of property owners seem to be in conflict.
- Disability equality (which includes mental health problems) and the reasonable adjustments needed to work inclusively with all members of the community.
- Vulnerability and how different individuals respond in varying ways to police based on their past experiences.

All of this implies a different way of working for police and suggests cooperation with support services to help someone away from the street and into a stable life. The National Police Chiefs Council’s strategy states:

**“By 2025 local policing will be aligned, and where appropriate integrated, with other local public services to improve outcomes for citizens and protect the vulnerable.”<sup>72</sup>**

As this report previous considered, evidence about the impact of enforcement shows that, in isolation

from support services, use of the Act does nothing to resolve the problems that people affected by it experience. Yet there are still expectations that police should address these issues. As a review of policing and health joint work said:

**“Models of policing are designed to tackle crime, yet the majority of demand is about vulnerability. This impacts on local policing, as although the police may not always be the best professionals to deal with the situation, they are the ones who are called.”<sup>73</sup>**

### Formal enforcement of the Act varies

While the nature of policing has changed immensely, the Vagrancy Act has, of course, remained in use. The formal use of the Act – particularly to prosecute people – has been falling in the past few years. However, the history of the Vagrancy Act suggests this trend could reverse and its use could increase again in the future.

The current figures suggest it is not being employed as an effective strategy to tackle rough sleeping, given that rough sleeping levels have risen while use of the Act against ‘sleeping out’ has fallen. The most recent fall in overall use of the Act coincides with the introduction of 2014 Anti-social Behaviour, Crime and Policing Act and other policy and practice initiatives.

The Act’s use varies:

- Between different geographic areas.

70 College of Policing, *Engagement and communication*, <https://www.app.college.police.uk/app-content/engagement-and-communication/?s=>, accessed 15 March 2019

71 College of Policing, *Core planning principles*, <https://www.app.college.police.uk/app-content/operations/operational-planning/core-principles/>; accessed 26 March 2019

72 National Police Chiefs Council (2016), *Policing Vision 2025*, <https://www.npcc.police.uk/documents/Policing%20Vision.pdf>; accessed 20 March 2019

73 Public Health England (2018), *Policing and Health Collaboration in England and Wales*, London: Public Health England, p.27

- Over time with peaks and troughs in the use of the Act overall.
- And between the different offences in the Act and the stages of enforcement used (e.g. informal, arrest, prosecution and criminal penalty).

Previous Crisis research across local authorities in England and Wales found that use of section 4 of the Act is uneven between different areas.<sup>74</sup> Other research work has also found this trend in use of section 4.<sup>75</sup> In 2018, for example, 16 per cent of police force areas in England and Wales saw convictions for the ‘sleeping out’ offence.<sup>76</sup>

The reasons for variation in enforcement action are not clear, but the Crisis research found the levels of resourcing and experience seemed to be a factor. It said:

**“A lack of resources meant enforcement was sometimes used by local authorities without the appropriate support in place. In those areas with more resources and experience, enforcement could be embedded with a multi-agency service offer of last resort.”<sup>77</sup>**

**Table 1: Vagrancy Act prosecutions (cases proceeded against) in England and Wales, 2008-2018**

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Begging	1,328	1,428	1,776	1,296	1,229	2,097	2,219	1,827	1,461	1,025	1,144
Sleeping out	30	20	50	29	21	30	23	23	30	8	11
Being found in enclosed premises	864	721	940	1,021	779	581	520	350	255	207	165
<b>TOTAL</b>	<b>2,222</b>	<b>2,169</b>	<b>2,766</b>	<b>2,346</b>	<b>2,029</b>	<b>2,708</b>	<b>2,762</b>	<b>2,200</b>	<b>1,746</b>	<b>1,240</b>	<b>1,320</b>

Source: Ministry of Justice (2019), Prosecutions and convictions data tool

74 Sanders, B., and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*, London: Crisis, p.15. Note that approximately another third of areas asked either did not respond or did not hold the data.

75 Grimshaw, R. and Ford, M. (2017), *Briefing 20 - Rough sleeping: enforcement and austerity*. Centre for Crime and Justice Studies, p.4

76 Ministry of Justice (2019), *Court outcomes by police force area in 2018*

77 Sanders, B., and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*, London: Crisis, p. 34

78 Ministry of Justice (2019), *Prosecutions and convictions data tool*

As the previous chapter considered, the use of the Act has changed over time and not followed a clear and consistent pattern. While informal enforcement is much more likely than formal measures there is value to looking at the formal data.

### Prosecutions

Combined Vagrancy Act prosecutions between 2008 and 2018 for begging, ‘being found in enclosed premises for an unlawful purpose’ and sleeping out almost halved over the ten years, with one notable spike around 2012 to 2014. This ten-year trend was driven mainly by begging prosecutions, which have constituted the majority of total prosecutions in each given year (see Table 1 and graphs below).<sup>78</sup>

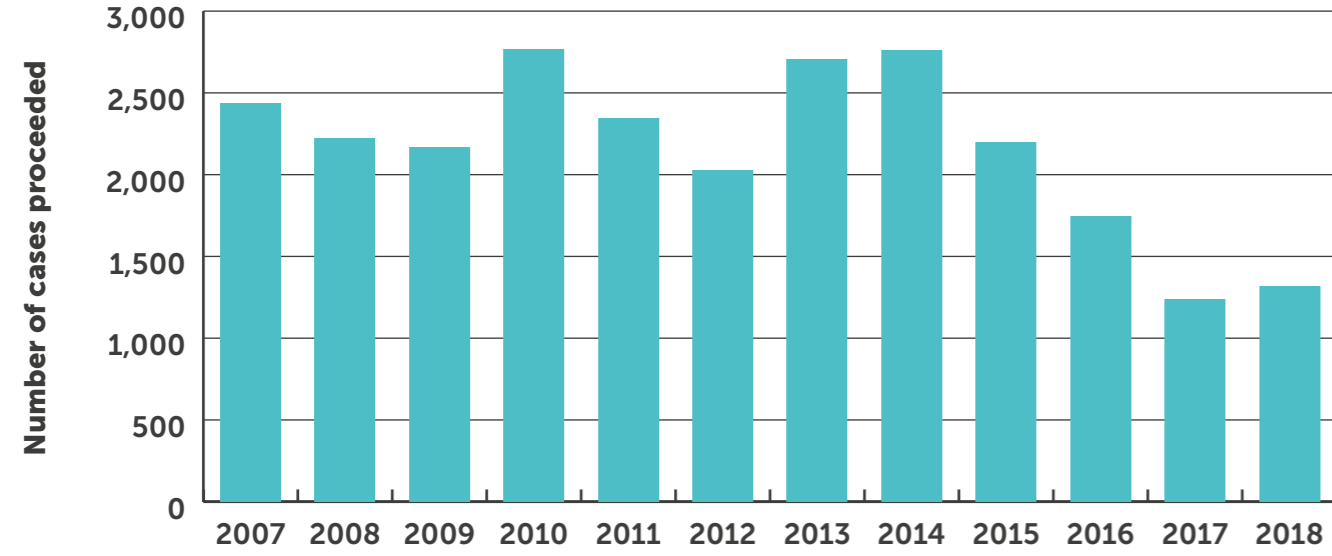
### Graphs: Vagrancy Act prosecutions in England and Wales, 2008-2018

The following graphs show prosecutions under the Act across England and Wales for every year from 2008 to 2018, shown in total and by the principal three offences of begging, sleeping out and being in an enclosed premises for an unlawful purpose.



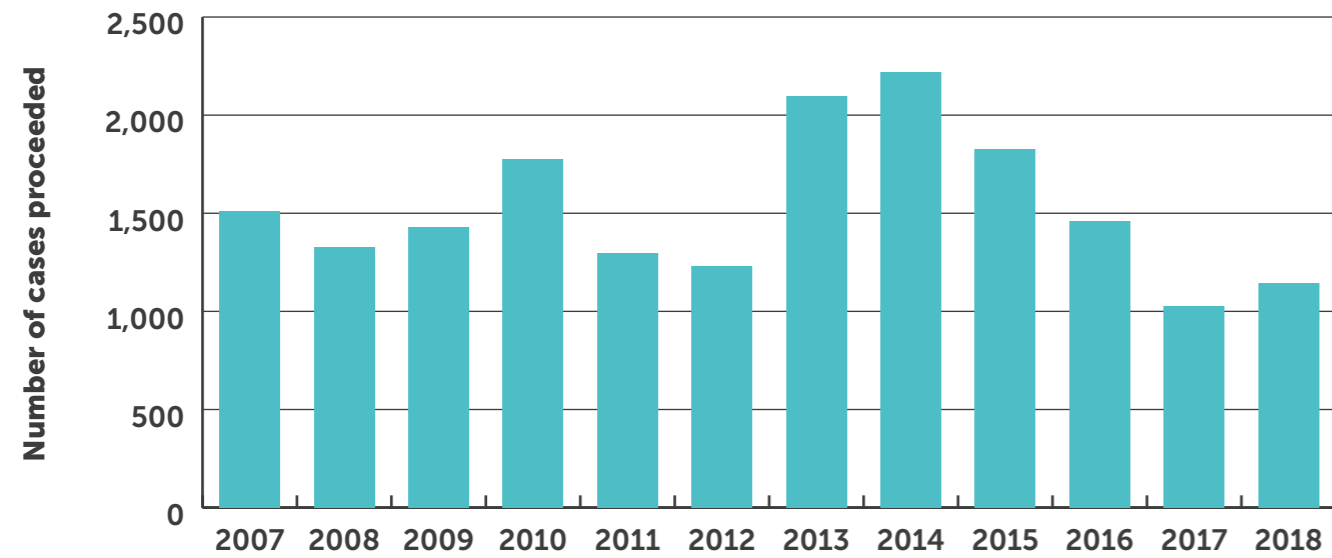
Graph 1a

Vagrancy Act offences (total of the three offences)



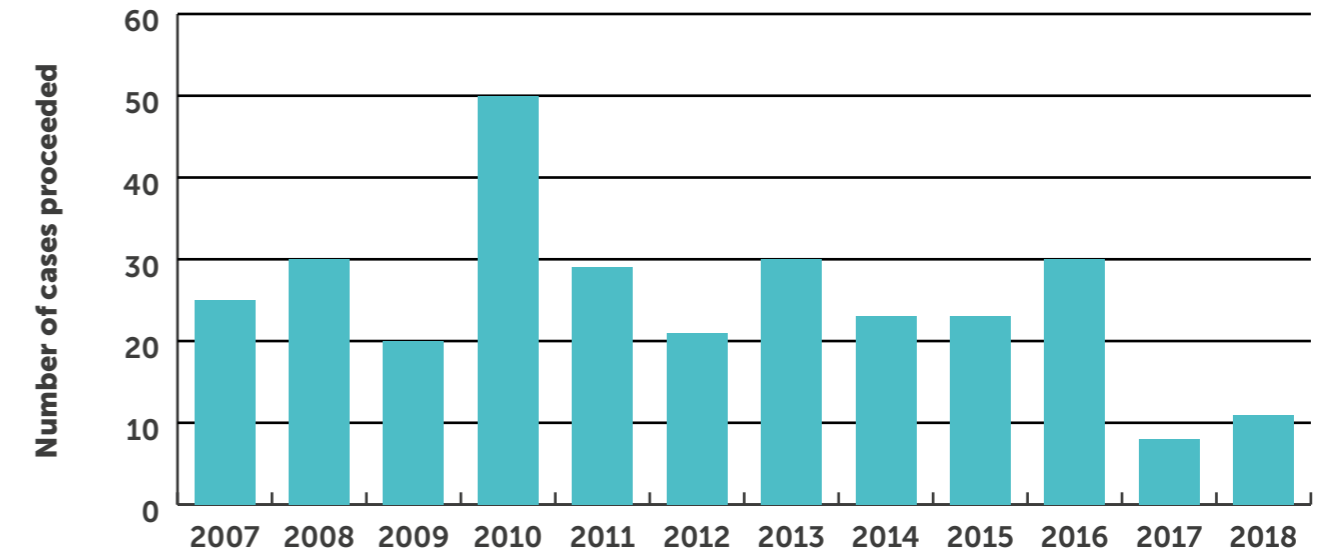
Graph 1b

Begging



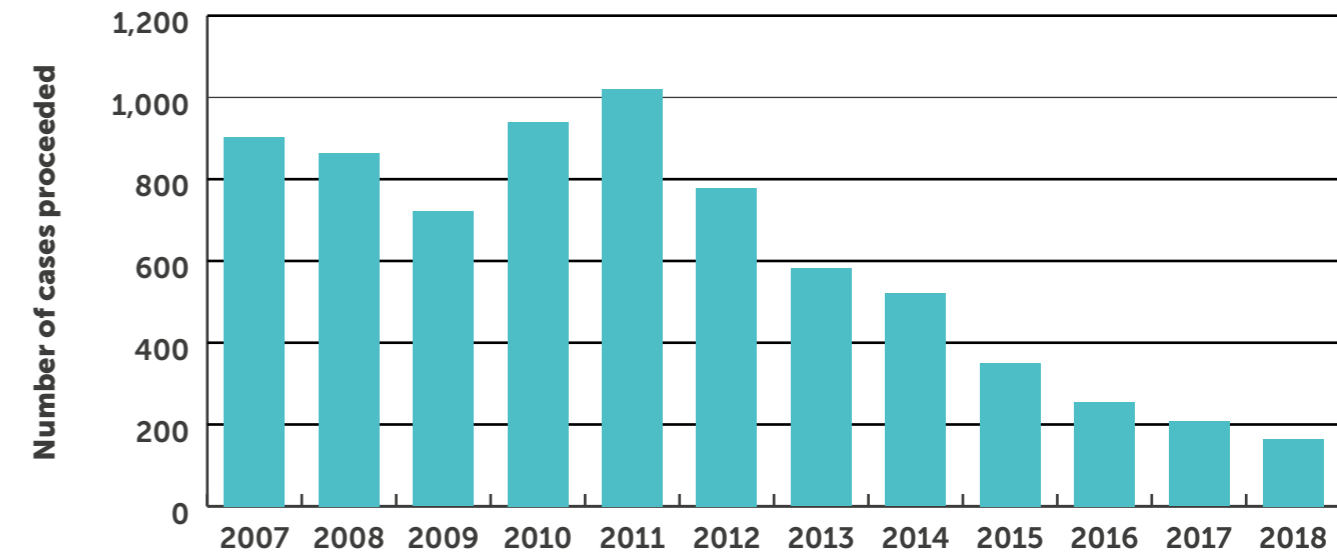
Graph 1c

Sleeping out



Graph 1d

Being in enclosed premises for an unlawful purpose



Begging is the most prosecuted offence under the Act, with a level of between 1,000-1,300 prosecutions at the beginning and end of the recent decade. While this represents a low in more recent terms, it has fluctuated over time.<sup>79</sup> In the late 1980s and early 1990s the figures were around 1,500 per year.<sup>80</sup> The current level of begging prosecutions is on a par with the early 1970s and the early 1980s but it is much higher now than in earlier decades, such as the 1950s and 1960s.<sup>81</sup>

Prosecutions for 'sleeping out' are low, with only 11 in 2018, but there was a peak in 2010, when there were 50 prosecutions.<sup>82</sup> They were last at this approximate level during the mid- to late-1980s (there were 9 prosecutions in 1986, 14 in 1987 and 13 in 1988, and 24 in 1989). Use of the Act was and continues to be uneven, however. In 1989 specifically, for example, half of sleeping out prosecutions were in London and there were no recorded prosecutions in Wales.<sup>83</sup>

Prosecutions for 'being found in enclosed premises for an unlawful purpose' were at 165 in 2018, but also peaked most recently around 2011 at just over 1,000.

While rough sleeping increased significantly between 2014 and 2018, rising by 70 per cent in England,<sup>84</sup> prosecutions under the Act declined. This suggests that the Act is neither a

primary tool nor effective for dealing with rough sleeping at the moment (see Graph 2).

The police force areas with the highest levels of convictions under the Act overall in 2018 were the Metropolitan Police, Merseyside, Greater Manchester, West Yorkshire, and South Wales.<sup>85</sup>

**Arrests**

There are, of course, more arrests than prosecutions, but the rate of people arrested and then actually being charged varies. Data on arrests from existing Freedom of Information requests do not give enough data for an accurate England and Wales figure for arrests under the Act.

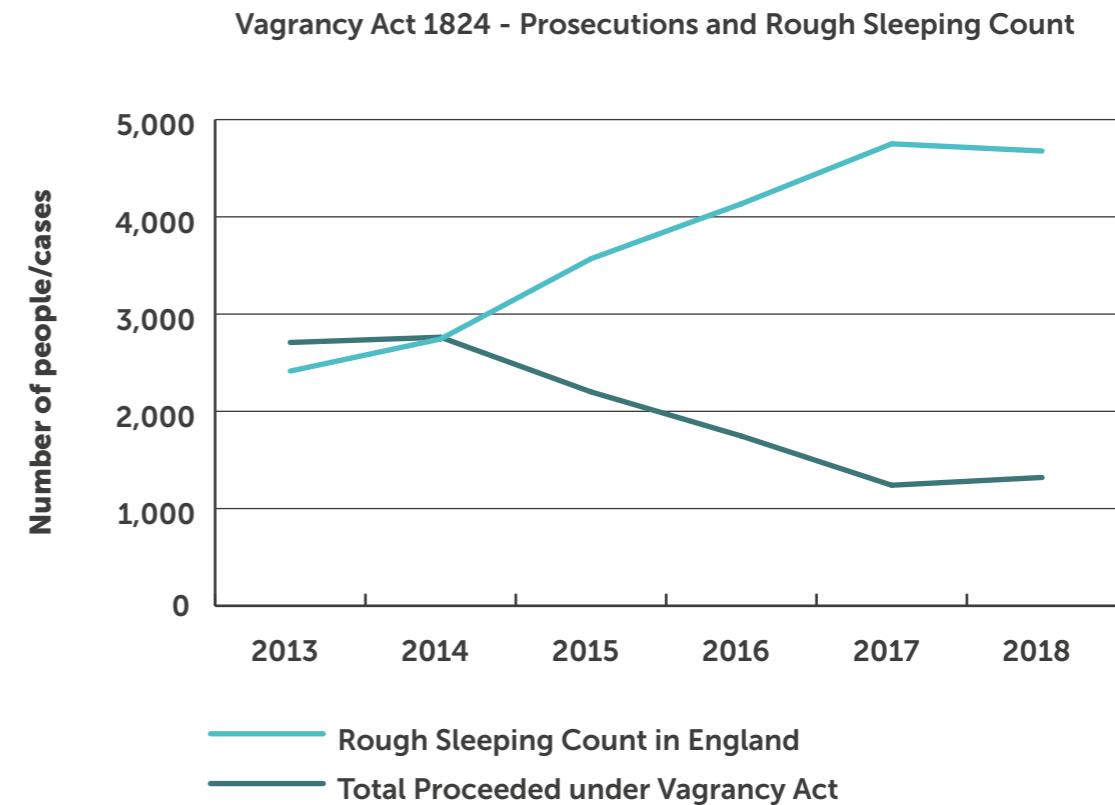
Data from 2015-2016 for police forces in London and Greater Manchester suggest that at least half of people arrested (and sometimes more) are charged for an offence under the Act. West Yorkshire Police charged about 40 per cent of people arrested in 2015.<sup>86</sup> In line with the prosecutions data, the police force areas that use the Act most tend to do so for 'begging in a public place' most commonly and then 'being found in enclosed premises for an unlawful purpose' and occasionally 'sleeping out'.<sup>87</sup>

**Penalties**

Table 2 shows the total data covering 2008-2018. It looks at the percentage

79 All historical data in this chapter kindly provided by Professor Nick Crowson  
 80 Home Office, *Criminal Statistics England and Wales* annually 1970-1980 (London, various) and *Hansard: HC Debs 1980-1992*  
 81 Home Office (1953), *Criminal Statistics England and Wales* 1952. London, Cm 8941; Home Office (1959), *Criminal Statistics England and Wales* 1958. London, Cm 803; Home Office (1961), *Criminal Statistics England and Wales* 1960. London, Cm 1437; Home Office (1965), *Criminal Statistics England and Wales* 1964. London, Cmd 2815  
 82 Ministry of Justice (2018), *Criminal Justice Statistics*  
 83 1986 figure from HC Deb 16 Nov 1989 vol. 160; 1987 and 1988 figures from HC Deb 24 January 1990 vol. 165 c714W; 1989 figure in HL Deb 22 May 1991 vol. 529 cc12-3WA  
 84 Ministry of Housing, Communities and Local Government (2019), *Rough Sleeping Statistics Autumn 2018, England (Revised)*, 25 February 2019  
 85 Ministry of Justice (2019), *Court outcomes by police force area*  
 86 Ministry of Justice (2019), *Prosecutions and convictions data tool*; and Metropolitan Police response to Freedom of Information request; [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure\\_2017/march\\_2017/information-rights-unit---arrests-made-under-the-vagrancy-act-1824-and-the-offences-these-arrests-were-for-in-2016](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2017/march_2017/information-rights-unit---arrests-made-under-the-vagrancy-act-1824-and-the-offences-these-arrests-were-for-in-2016), accessed 29 May 2019  
 87 Home Office data, provided to Crisis by the Prison Reform Trust

**Graph 2: Prosecutions under the Act compared with rough sleeping levels**



**Table 2: Percentage of cases in which a person is found guilty in prosecutions (cases proceeded against) and guilty cases that result in fines, 2008-18**

	Begging	Sleeping out	Enclosed premises
Convicted under the Act	84%	67%	78%
Convicted and fined	56%	49%	26%

Source: Ministry of Justice (2019), *Criminal Justice Statistics*

of cases proceeded against, where cases were found guilty, and also the proportion of guilty cases that resulted in a fine. It varies between offences, with the offence of begging having the highest rate of guilty verdicts and fines. The average fine was £65 in most recent data.<sup>88</sup>

Other penalties listed in the Ministry of Justice data include conditional or absolute discharges, being otherwise dealt with, and community sentences. Occasionally, some cases result in community sentences, custody or suspended sentences.

88 Ministry of Justice (2019), *Prosecutions and convictions data tool*

### The effect of formal enforcement

“When I found out about them arresting people for sort of like vagrancy or whatever I learnt to sleep as far out of the city centre as possible... Some of the places I’ve slept in were terrible, you know what I mean. But at least I knew the police wouldn’t come and you wouldn’t get arrested... I slept under bridges and all sorts.”<sup>89</sup>

Enforcement activity without support can displace people physically to other locations, potentially further away from support services and also make people feel more lonely and isolated.<sup>90</sup> Other evidence shows that enforcement without support can also lead to ‘activity displacement’, whereby people engage in potentially riskier behaviour like shoplifting or street-based sex work instead of begging.<sup>91</sup> There is also evidence that people who are begging feel guilt and shame about the situation.<sup>92</sup>

Matthias Kelly QC, one of the founding members of the End the Vagrancy Act campaign that ran in the late 1980s and early 1990s, was motivated to campaign after seeing the results of formal enforcement. He said to the Crisis roundtable discussion:

“As a young barrister I was sitting in what is now Westminster Magistrates’ court, waiting for a case to be called on. And as I sat there, I watched a stream of homeless,

mainly young people, being prosecuted for begging. They were invariably fined, some got conditional discharges. I thought, then, what I still think now: what an utterly pointless exercise this was. It was worse, still, when I thought further about it, it was deeply damaging to everybody.”<sup>93</sup>

Andrew Neilson from the Howard League for Penal Reform mentioned similar responses from the public and campaigners in cases where people went to court for begging. Speaking about the Howard League’s successful campaign to stop criminal courts charges he said:

“The [cases] that got the most traction were the ones where it was in the magistrates’ courts and it was begging. There was a fine, and then there was the £150 criminal courts charge put on top. The reaction of people to the pointlessness of that was very clear... It was not being paid, so, very quickly the unpaid charges were racking up.”<sup>94</sup>

Kathleen Sims, Head of Outreach for St Mungo’s, said that the Act keeps a focus on people rather than the areas in which the begging and other associated activity is happening, which can be unhelpful:

“If you look at the Victorian day hotspots of rough sleeping, they are exactly the same as today

89 Johnsen, S. and Fitzpatrick, S. (2007), *The impact of enforcement on street users in England*. York: Joseph Rowntree Foundation, p.38

90 Sanders, B., and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*. London: Crisis, p.35

91 Johnsen, S (2016), *Enforcement and interventionist responses to rough sleeping and begging: opportunities, challenges and dilemmas*, ESRC, p.3

92 Fulfilling Lives (2017), *Exploring begging in Newcastle City Centre: Consultation*; <http://www.fulfillinglives-ng.org.uk/wp-content/uploads/2018/01/Exploring-begging-in-Newcastle-EBE-2017.pdf>

93 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

94 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

in central London. We need to look at what the magnets are that pull people onto the streets, and that goes back to the locations. Criminalising the individual is not going to solve those issues.”<sup>95</sup>

### The Act doesn’t have to be used formally to have an effect

Away from the more formal use of the Act, it can also guide police behaviour and attitudes about enforcement. This is not limited to police, however, and the next chapter considers the expectations on police from the public, businesses or politicians. Informal police enforcement can include ‘moving people on’. Crisis research found this is the most commonly experienced recent form of enforcement along with citing the offence they might be committing with a non-official warning to desist.<sup>96</sup>

On a Monday morning in late March 2019 a man, Peter, was woken up by police at 8am while sleeping rough in public tunnels near the Houses of Parliament:

“They asked me to leave. I asked why, but they didn’t give me a good reason, they just said, ‘section four’ – meaning section four of the Vagrancy Act, which I’ve heard before. It’s happened quite regularly since

the end of February... I’m here because it’s safe and warm. They call us vagrants but we’re not doing anything wrong – I always tidy up and take my stuff away.”<sup>97</sup>

Media coverage of the incident involving Peter said no arrests were made.

Stories about people being moved on show how the practice is used but it is also widespread. The Crisis enforcement research (2017) found a third (34%) of rough sleepers said that enforcement action in general caused them to move their sleeping location. 92 per cent said they experienced informal measures, such as being challenged or ‘moved on’.<sup>98</sup>

### What people affected by the Act say

People on the streets can have negative views of enforcement action and the use of the Vagrancy Act. A common theme in the stories of those on the streets is that people think different standards are applied to people on the streets compared with wider society. For example:

“If you walk around [place] at night, see how many people out there are completely out of their faces [inebriated] and the police won’t touch them ... I go in there with a can of beer, I get arrested. It’s so unfair.”<sup>99</sup>

95 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

96 Sanders, B. and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*, London: Crisis, p.iv

97 The Independent (2019), *Homeless people kicked out of underpasses next to parliament ‘so MPs can get to work’*, <https://www.independent.co.uk/news/uk/home-news/homeless-people-westminster-tunnels-parliament-mps-police-sleep-rough-a8839076.html>, accessed 26 March 2019

98 Sanders, B. and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*. London: Crisis, p34

99 Quoted in Johnsen, S. and Fitzpatrick, S. (2010), *Revanchist sanitisation or coercive care? The use of enforcement to combat begging, street drinking and rough sleeping in England*. *Urban Studies*, 47(8), 1703-1723. DOI: 10.1177/0042098009356128, p.1709





**"They should be helping people before they get to the street, rather than criminalising them once they get there."**

**Peter, Westminster**

"I've been sleeping in Westminster station subway for about eight months because it's warm. Usually I get up at 6am and then don't go back until 10pm, but the girl in the toilets always kindly charges my phone for me, so one day I sat there for an hour reading the paper while it charged. Not asking for anything, just keeping quiet, when two police officers and another one in plain clothes came down. He said 'You know what we're going to say, don't you? We're going to ask you to move out of the tunnel.' I said, 'I'm not doing anything wrong. The public come, and they sit down in here sometimes, so what's the problem with me?' He said, 'Well, we believe you're begging.' I said I don't ask people for anything. I don't have a cup or a hat. He said, 'Well, you have to leave anyway because you're near a business.'

**Then they said they would give me a section 4 written warning if I didn't move,** and when I asked them what that was, they said it was the Vagrancy Act. I called a friend of mine who is a homelessness campaigner, and explained what was happening, then I left, but I told them they hadn't heard the last of it. My friend told the newspapers, and that's when the stories about the Vagrancy Act being used in Westminster started appearing in the press.

**It's true some people do have a drink or drug problem,** but those people need help to get over that addiction, and even if they do get them into treatment it's never long enough. They might get on methadone, but then they don't get housed, so then they just end up back on the

streets afterwards. It's got to be long term, not short term. There are also so many people with mental health issues who would rather be on the street than in dangerous chaotic hostels. People don't realise the few alternatives that exist are actually worse for them. That's what it was like for me.

**The police I know are usually alright.** They've never offered me any support apart from a bacon sandwich, but most of them will know your name and have a chat with you. I know it doesn't look good being homeless, but we don't deserve that. I actually think it's good for the MPs to see homeless people when they come out of Parliament.

There's no need for the Vagrancy Act. It's not the dark ages, and anyway, it's not working. If they move me on again, I'll just be back like a rubber ball. Even if it did stop people begging, they might start committing real crimes just to survive, and it's the public who'll suffer even more. They should be helping people before they get to the street rather than criminalising them once they get there. That's how to end homelessness."

**Peter, Westminster**

"It's seriously hypocritical. People like myself and other miscreants, if you will, if we drink on the street the police will come over and give us some serious bulls\*\*t and maybe ... arrest us... Come the weekend people come and they're walking up and down the street drinking and the police don't say anything to them."<sup>100</sup>

Others said:

"They just want you away up and gone. You're not their problem anymore, do you know what I mean? ... You just have to walk about for a bit until you find another spot. You get to know where you're not going to be bothered."<sup>101</sup>

"Most people who've been on the street, in that lifestyle, they've lived a life of being told what not to do. It doesn't work. 'What, you're going to tell me I can't do this? So what? I've been told all my life that.' So it doesn't work."<sup>102</sup>

The Act has a general definition of begging that can allow officers to challenge someone they perceive to be begging or rough sleeping even if there is no direct evidence of anti-social behaviour. For example:

Officer: "I'm not sure if I know you or not - my job in the city centre is begging."

Person: "I'm not begging."

Officer: "But you are. You don't have to talk to people or have a card or a cup. Basically if I walk along and I see you placed to beg, I think you're there to receive money or food - you're begging. You're committing an offence. This is your last warning."<sup>103</sup>

Alex Osmond of The Wallich, told the Crisis roundtable meeting that one of his charity's clients had been nearly arrested for trying to take cardboard from outside a shop but that the shop was unwilling to press charges, so the case was dropped. He also said:

"There have been some incidents where people on the streets were getting disgruntled because of constantly being moved on over a short period. Their perception was that their subsequent attitude, perhaps, to the officers dealing with them was much more likely to get them arrested, which would then result in 'unaffordable fines' and 'unrealistic community sentences'."<sup>104</sup>

100 Quoted in Johnsen, S., Fitzpatrick, S. and Watts, B. (2018), Homelessness and social control: a typology, *Housing Studies*, 33:7, 1106-1126, DOI: 10.1080/02673037.2017.1421912, p.1113

101 Johnsen, S, Fitzpatrick, S and Watts, B (2018), Homelessness and social control: a typology, *Housing Studies*, 33:7, 1106-1126, DOI: 10.1080/02673037.2017.1421912, p.1118

102 Johnsen, S., Watts, B. and Fitzpatrick, S. (2016), *First Wave Findings: Homelessness. Welfare Conditionality Study Briefing Paper*. York: University of York., p.10

103 Manchester Evening News (2019), 'Brutal': 60 Days On The Street viewers shocked at the way police speak to homeless people in Manchester, <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/brutal-60-days-street-viewers-15977153>; accessed 19 March 2019

104 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

While there is evidence that people on the streets are "often cynical" about enforcement authorities' motives they do accept the need for some enforcement activity. This is generally because they recognise that this will make themselves safer, and also because they are concerned about possible hardening of public attitudes towards people in their situation, if visible anti-social behaviour is left unchecked.<sup>105</sup> There are also examples of good practice. Staff from The Wallich mentioned that Police Community Support Officers were "real assets to the police and homelessness agencies"<sup>106</sup> because they generally have detailed knowledge of people on the streets and are in a position to share concerns and information.

### Threats and harm to people on the streets

The use of the Act directly (through arrest and prosecution) and indirectly (through informal measures) associates the acts of rough sleeping and begging alone with criminal behaviour. The pre-emptive approach is intended to address fears of potential future criminal behaviour and the punishments are meant to act as a disincentive. However, the evidence is that this can push people further away from potential help and that people who are homeless are, also, particularly vulnerable to being victims of crime themselves.

Crisis research across England and Wales found that almost a third (30%) of respondents surveyed who are homeless had been deliberately kicked or hit or experienced another form of violence over a 12-month period. Almost half (45%) of people currently or recently sleeping rough had been intimidated or threatened with violence or force.<sup>107</sup>

Particularly notable was that just over half (53%) of incidents that were reported to the Crisis survey of abuse and violence rough sleepers had experienced were actually unreported to the police. The main reason for this was the expectation that nothing would be done as a result. There is evidence too that offences against people who are homeless are "grossly underreported and rarely documented" in mainstream victimisation surveys.<sup>108</sup> The Crisis research pointed out how this had the effect of further marginalising people in this situation:

"Rough sleepers reported how living on the streets meant living in fear and having to navigate constant risk and uncertainty about their safety. This was largely caused by the dilemma of who to trust and whether to remain hidden or close to busy areas."<sup>109</sup>

105 Johnsen, S. and Fitzpatrick, S. (2010), Revanchist sanitisation or coercive care? The use of enforcement to combat begging, street drinking and rough sleeping in England. *Urban Studies*, 47(8), 1703-1723. DOI: 10.1177/0042098009356128, p.1711

106 Quoted at the Crisis roundtable on the Vagrancy Act, 24 April 2019

107 Sanders, B and Albanese, F (2016), *'It's no life at all' - Rough sleepers' experiences of violence and abuse on the streets of England and Wales*. London: Crisis.

108 Cooper, V. (2017), 'No Fixed Abode: The Continuum of Policing and Incarcerating the Homeless', *Policing*, Vol. 11 (1), p. 31

109 Sanders, B and Albanese, F (2016), *'It's no life at all' - Rough sleepers' experiences of violence and abuse on the streets of England and Wales*. London: Crisis, p.6



"I grew up in Scotland, but I was in and out of children's homes since I was ten. When I left care at fifteen I didn't have anywhere to go, and that's when I first ended up on the streets. I travelled about a bit, and then I started to get involved in drugs. It blocked it all out, but it also makes you stop caring about anything, even yourself. I ended up in jail a few times.

The BID team [Business Improvement District]<sup>110</sup> and the police were on me straight away when I got here. It was them who first served me the Vagrancy Act papers. Sometimes they give you a bit of advice about where to go, like soup kitchens and things, but otherwise nothing else.

Since coming to Blackpool I've now had thirteen charges under the Vagrancy Act, and I've also been taken to court twice for it. Getting the papers just made me angry. They just come up and tell you to move, but I don't know where they expect you to go? Five of those warnings I was even asleep when they gave them to me, so how could that have been for begging? I just woke up to find it on my sleeping bag. 'Sitting in a public place gathering money for alms,' they called it.

Half the homeless in town have been given Vagrancy Act papers now, and most of them have been fined about £100 and then given a banning order from the town centre. If they get caught coming back, they get done again and could go to jail, but that means all those people can't get into town to use the few local services there are for rough sleepers.

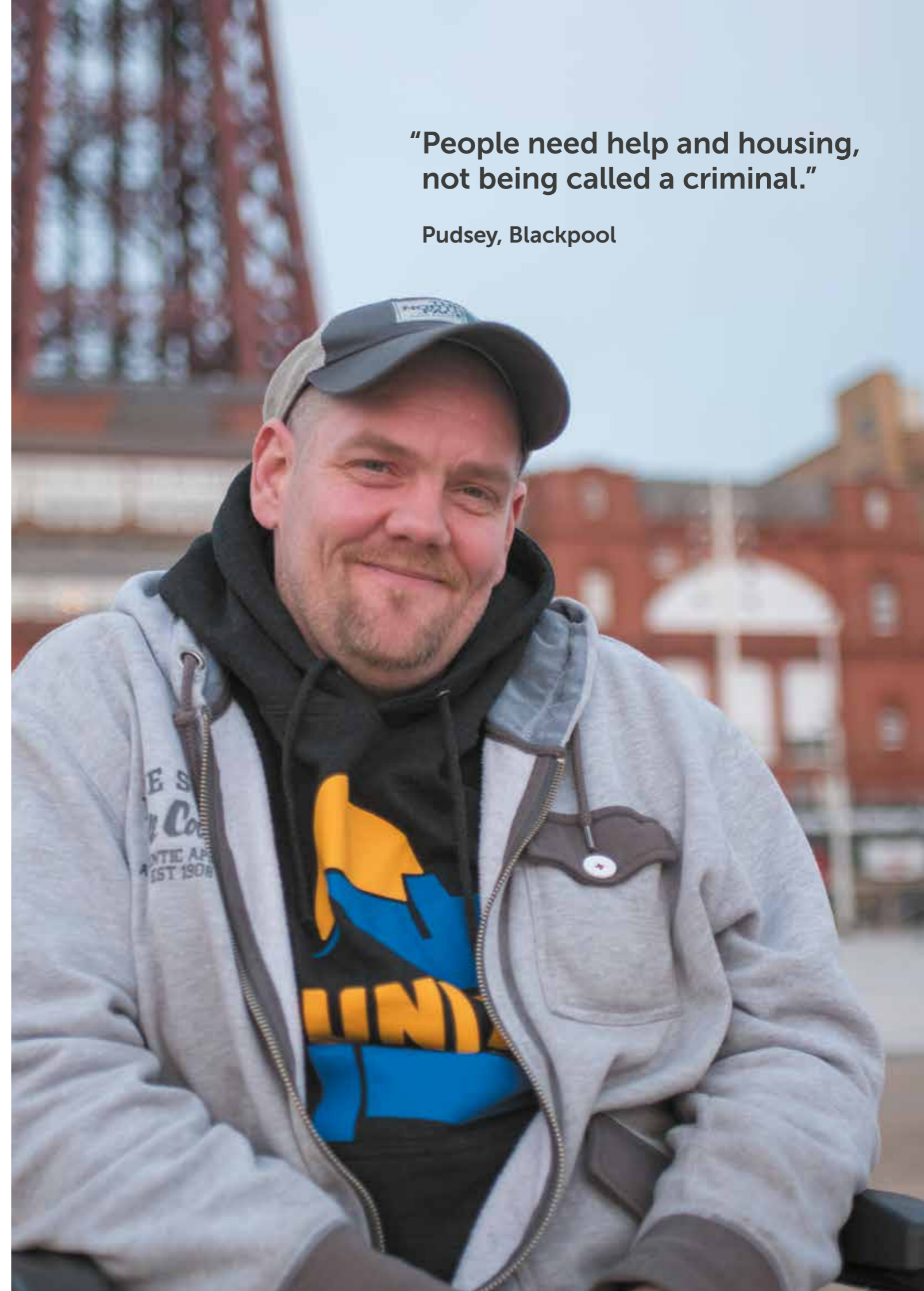
Luckily, I met a local charity outreach team last October, and they told me about a temporary shelter they'd opened over Christmas. Then they supported me into a shared flat with our own tenancy and everything. That's when I got clean by myself. I gave it all up on my own in the end. The most important thing for me now is staying clean and to start living a normal life.

I'm also starting to sort things out with my family too. I last spoke with my mum a couple of weeks ago, and that's beginning to get better. But that's all because I'm housed and clean now. If I didn't have this support around me now, I'd probably be dead. People need help and housing, not being called a criminal."

**Pudsey, Blackpool**

**"People need help and housing, not being called a criminal."**

**Pudsey, Blackpool**



<sup>110</sup> House of Commons Library (2018), *Business Improvement Districts*, Briefing 04591, 7 May 2018 describes BIDs as "partnerships between local authorities and local businesses which are intended to provide additional services or improvements to a specified area. A BID must be agreed by ballot and is funded in whole or in part by a levy on those liable for non-domestic rates".



## Chapter 4:

# The potential effect of repeal on policing

This chapter looks at the pressures and expectations on police to address anti-social behaviour and their experiences of working with wider support services. It reflects on more effective approaches to help people currently affected by the Vagrancy Act and how, for many people, this will involve little or no contact time with police or the criminal justice system at all. For the minority of cases where there is genuinely anti-social behaviour it looks at what works to address it.

The National Police Chiefs Council's lead on homelessness and anti-social behaviour, Deputy Assistant Commissioner Laurence Taylor, told the Crisis roundtable discussion:

"The police role is to balance everybody's rights. We have to make sure what we do is proportionate, legal and necessary. We are absolutely not out to criminalise people unnecessarily. We are in this position where we have to balance the challenges we have working in communities because of the scrutiny and the pressure. Sometimes we are

the only people who are able to deal at the last resort."<sup>111</sup>

When asked about repealing the Act, he said:

"100 per cent of [police forces] will tell you if we got rid of the Vagrancy Act, we would not be bothered so long as there was something in its place where, as a last resort, we are able to deal with some of those issues that are not linked to rough sleeping or homelessness, that are there to deal with criminality or the persistent behaviours that we might come across."<sup>112</sup>

111 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

112 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

Concerns about wider forms of 'anti-social' street behaviour that go beyond rough sleeping alone can often tend to frame the discussion of the Act. Evidence shows that these concerns are frequently motivated by worries about its effect on local businesses and tourism, on the public who can report feeling intimidated, and of the health and social impact on the individuals undertaking the street activity.<sup>113</sup> In Crisis research 63 per cent of local authorities across England and Wales had received complaints about rough sleeping from the public and local businesses with calls to address it. 69 per cent of councils received complaints from the public and businesses about anti-social behaviour.<sup>114</sup>

In the build-up to a Royal wedding in Windsor, the council leader raised concerns with the Police and Crime Commissioner for the area about the "concerning and hostile atmosphere" due to rough sleeping and begging activity, adding that "The whole situation also presents a beautiful town in a sadly unfavourable light."<sup>115</sup>

There was considerable outcry in response, including a petition signed by more than 327,000 people to stop the use of legal powers to move on rough sleepers in Windsor.<sup>116</sup> The Prime Minister at the time said: "I don't agree with the comments that the leader of the council has made."<sup>117</sup>

Reflecting on the pressures that police face, Deputy Assistant Commissioner Laurence Taylor from the National Police Chiefs Council said:

"The police are not out to criminalise people unnecessarily. We do not set out to do that. We are here to look after the vulnerable and... we believe the most effective approach to this is problem-solving, in conjunction with our partners to resolve the situation. Rather than use the law to beat with a stick. That said, we do often find ourselves between a rock and a hard place. It is very challenging for the police, because we do get a lot of pressures from a lot of different areas, both from local businesses, from local communities, from the homeless community..."

He added:

"Police do feel, sometimes, a frustration where we refer and then the next day the same person is out. We refer again, the same day the next person is out. You continue down this cycle. We absolutely do not see ourselves as a lead agency in tackling homelessness. We tend to pick up the consequences of some behaviours that are often focused around the street community, many of whom are not part of the homeless community. There is this whole narrative that sits behind it, but certainly there is a lot of

113 Johnsen, S., Watts, B. and Fitzpatrick, S. (2016), *First Wave Findings: Homelessness. Welfare Conditionality Study Briefing Paper*. York: University of York, p.9

114 Sanders, B., & Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*, London: Crisis, pp.11-12

115 Letter from Leader of the Royal Borough of Windsor and Maidenhead (2018) to Thames Valley Police PCC, 2 January 2018, [https://www3.rbwm.gov.uk/download/downloads/id/3558/cldr\\_simon\\_dudley\\_letter\\_to\\_anthony\\_stansfeld\\_jan\\_2018.pdf](https://www3.rbwm.gov.uk/download/downloads/id/3558/cldr_simon_dudley_letter_to_anthony_stansfeld_jan_2018.pdf); accessed 20 March 2019

116 Change.org petition (2018), 'Stop Windsor council removing rough sleepers before royal wedding', accessed 11 April 2019

117 BBC News online (2018), *Royal wedding: Theresa May joins Windsor begging row debate*, accessed 11 April 2019

evidence where there just is not the capacity within a lot of organisations to deal with all the referrals that we might make as part of the problem-solving approach.”<sup>118</sup>

Another police officer told Crisis about the difficulties they faced in partnership working:

**“Having worked in partnership posts, one of the issues is a lack of alternate options other agencies can use, which often results in the police being used to ‘tidy up’ unsightly begging and rough sleeping spots, without any longer-term problem solving options being in place.”** (North-west England)<sup>119</sup>

Similarly, Public Health Wales’ research in a Welsh police force area found increasing demand on police to respond to calls related to vulnerability (e.g. mental health, vulnerable adults, or child welfare) and, over a 12-month period, between 72-80 per cent of police referrals to partners did not result in further action.<sup>120</sup>

The Welsh Local Government Association’s good practice guide says:

**“People commit offences for a multitude of reasons, many of which have their basis in social deprivation and dysfunction; the solutions to these problems cannot be provided by one discipline alone, we all have a joint**

**responsibility for responding to criminal behaviour, its causes and effects. Without access to housing colleagues, substance misuse services and probation supervision then we cannot hope to resolve an individual’s mental health needs.”**<sup>121</sup>

Attitudes can vary towards the use of the Act across police in England and Wales. The Police and Crime Commissioner for West Midlands, David Jamieson, reported his reservations about the use of the Act and believes it is a barrier to people receiving the support they need. He said:

**“I am [also] concerned about the use of the Vagrancy Act. I am pleased that it is being used less and less, but I now think it is the time for the government to remove it from the statute books and update the legislation. It should be replaced with legislation that helps agencies to work closer together to ensure no-one falls through the cracks.”**<sup>122</sup>

Multiple police force representatives maintain that they do not penalise people ‘solely’ for rough sleeping or begging. For example, a South Wales Police representative said to a Welsh Assembly committee:

**“We do not move people on for rough sleeping. There must be an element of anti-social behaviour associated for us to issue a section 35 notice [dispersal powers under the Anti-social Behaviour, Crime and Policing Act 2014] or to put a referral in.”**<sup>123</sup>

However, the representative also said that it is possible for individual officers to still use the Act (and other enforcement measures) while it remains in force:

**“I’m not naive enough to suggest that some people may not actually take a different tack to one another—we’re all individuals.”**<sup>124</sup>

A Chief Inspector working in England said:

**“It is extremely rare for people to make an informed decision to be homeless, and many people living without shelter have complex needs: they may be fleeing abuse at home, may struggle with addiction, and/or suffer from poor health. To criminalise this seems, well... criminal! We joined the job to help people who are vulnerable to exploitation and abuse, and the homeless community are more likely to be victimised owing to their housing status than other members of our**

**communities. We have a duty to protect them as vulnerable adults in our community. We are asked to consider how we prioritise our scant resources according to threat, risk and harm. But with begging, where’s the threat? Where’s the risk? Where’s the harm?”**<sup>125</sup>

118 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

119 Quoted at the Crisis roundtable on the Vagrancy Act, 24 April 2019

120 Public Health Wales (2018), *Early Action Together Programme Response to Commission for Justice in Wales: Call for Evidence*, 30 July 2018

121 Good Practice Wales (2009), *Criminal Justice Liaison Service: Working Seamlessly Across Organisations*, <http://www.goodpractice.wales/casestudy-384>; accessed 23 April 2019

122 Quoted in Birmingham Mail (2019), ‘Police chief calls for abolition of Vagrancy Act’, 26 March 2019

123 Welsh Assembly (2018), Equality, Local Government and Communities Committee record, 8 February 2018, <http://record.assembly.wales/Committee/4587>, accessed 25 February 2019

124 Ibid.

125 A police officer provided this quote anonymously to Crisis

"I worked ten years as a police officer in London, but I retired in 1999 after an accident, now I'm three quarters of the way through training as a barrister.

When I was a police officer I liked helping people. We had more discretion back then to support people on the street. Now people are far too quick to criminalise them. We did use the Vagrancy Act back then, but they do it much more now. It seems to have become the default position, but it's just upholding an image. Ahead of the royal wedding for example, and I don't like the law being used to lie and cover up things.

I personally never found it comfortable arresting someone for rough sleeping or begging. The only good thing that came out of it was them being able to have a cup of tea and biscuit in the station and use the toilet. Just to help them get warm for a short while, but then they went straight back to the street. The real reasons for homelessness, like relationship breakdown, poverty and job losses are not solved by criminalising people. They were just moved on. It never solved the problem.

**"They were just moved on. It never solved the problem."**

**Chris, Guildford**

The Vagrancy Act itself was just a convenient piece of legislation to remove the poor from anywhere they didn't want homeless people around, like shops, train stations and theatres. The analogy we used to use was like getting rid of pigeons in Trafalgar Square. It's just something we don't want to see. And places like Westminster don't like the bad publicity they get from having people sleeping in the streets. If anyone tells you different it's not true.

There's a social issue about why you're removing someone from the street. There needs to be statutory provision for homes, but there's a huge problem with social housing the government don't want to admit to, so they victimise homeless people and pretend they chose to be there instead. The Vagrancy Act is completely out of date for the 21st century. Criminalising homeless people doesn't solve homelessness. We should be criminalising failing to support homeless people."

**Chris, Guildford.**

## Chapter 5:

# More effective approaches to the challenges

**The evidence of the Act's current use and of what works to end homelessness shows how ineffective the Act is. There are two broad approaches that could work more effectively to help people away from the streets:**

- Scaled-up support and outreach services (cooperating with police forces and others) to help people away from rough sleeping and begging as early as possible through support and, if relevant, housing.
- More effective alternative approaches to addressing anti-social behaviour and criminality that occur alongside rough sleeping or begging, using modern law rarely and in a very focused way. This also requires sensitivity to the trauma that people on the streets have experienced and the vulnerabilities they have.

There are links between homelessness, begging and the trauma that people have experienced, often earlier in life. For example, 85 per cent of those in England who are in touch with the criminal justice system, involved in substance use, and homeless services have experienced childhood trauma.<sup>126</sup>

Dealing with people who have experienced trauma can require different approaches and the ideal agency to lead in delivering them is not usually the police, as police representatives have said. Crisis research found that any contact with police (or any agency that offers support or outreach) is an opportunity to ensure a person on the streets is linked to support that can help them away from homelessness.<sup>127</sup>

It also needs an understanding approach where agencies build up trust with the person. As one police representative said:

**"We cannot treat the street community as 'you've committed theft, you've committed assault' and just be like that. We need to start thinking why. Why have they committed theft? Why are**

<sup>126</sup> Bramley, G., Fitzpatrick, S., Edwards, J., Ford, D., Johnsen, S., Sosenko, F., and Watkins, D. (2015), *Hard Edges: mapping severe and multiple disadvantage in England*. London: Lankelly Chase Foundation.

<sup>127</sup> Sanders, B., and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*, London: Crisis, p.27



they drinking? Why are they on drugs? I don't care whether people are looking at me as an ex-public-order riot squad trainer and say 'Jesus, you've lost your edge', I'm actually being realistic about the fact that ... there is a traumatic incident at the heart of every single of these individuals' problems... Police officers need to be 'We're here to enforce the law, but I also appreciate that you've got problems and we will link into these agencies'." <sup>128</sup>

Kathleen Sims, Head of Outreach at St Mungo's, also emphasised the need to understand people who are on the streets. She said:

"We are all creatures of habit. Some people, when they find a site they find comfortable, will return to that site. But they don't do that necessarily to be anti-social... That, to the public, can seem like people are doing things deliberately, but they're not. And there's many occasions where actually, you just have a conversation with the individual in the said doorway, to explain that they are either blocking the entrance or they are causing alarm and distress by being there. They are mortified to know that, and they would move straight away." <sup>129</sup>

Evidence also shows a "strong overlap" between street homelessness and begging, especially among UK nationals.<sup>130</sup> A review of evidence from across Britain by Shelter Scotland found that a considerable proportion of people who beg are homeless in some form, depending on the definition of homelessness used (e.g. varying from sleeping rough or in temporary accommodation or unstable housing situations). The research quoted finds that this group has a higher incidence of mental health issues compared with physical health problems, underlining the need for a psychologically informed approach.<sup>131</sup> This approach, according to guidance, "takes into account the psychological makeup – the thinking, emotions, personalities and past experience – of its participants in the way that it operates" and takes into account the trauma people have experienced.<sup>132</sup>

However, while there is overlap rough sleeping, begging and other street activities are different. Kathleen Sims of St Mungo's also said:

"Street activity is very different to rough sleeping. For those people you see street active during the day, if any of you came out with one of my teams at night, you are unlikely to see those same individuals rough sleeping. And in fact, most of the people that you'd wake up at night, you would not even know that they were homeless if you were to bump

128 Quoted in Johnsen, S. and Fitzpatrick, S. (2010), *Revanchist sanitisation or coercive care? The use of enforcement to combat begging, street drinking and rough sleeping in England*. *Urban Studies*, 47(8), 1703-1723. DOI: 10.1177/0042098009356128, p.1715

129 Quoted at the Crisis roundtable discussion, 24 April 2019

130 Johnsen, S (2016), *Enforcement and interventionist responses to rough sleeping and begging: opportunities, challenges and dilemmas*, p.3; <http://www.welfareconditionality.ac.uk/wp-content/uploads/2016/12/Interventionism-Event-Summary.pdf>

131 Shelter Scotland (2019), *Street Begging in Edinburgh*, Edinburgh: Shelter Scotland, pp.8-13

132 Quoted in Homeless Link (2015), *Creating a Psychologically Informed Environment*, <https://www.homeless.org.uk/sites/default/files/site-attachments/Creating%20a%20Psychologically%20Informed%20Environment%20-%202015.pdf>, accessed 15 March 2019

into them during the day. And I think it's really understanding the complexities of rough sleeping, and the complexities of anti-social behaviour such as begging, and they are two very different things, and they need a different response." <sup>133</sup>

St Mungo's, which works directly with some people who are affected by the Act in England, found 7 out of 10 street outreach service managers it surveyed wanted to see the Act repealed. Some respondents said that some enforcement activity is necessary for 'persistent' or 'aggressive' behaviour but that legal mechanisms exist outside the Act to take action.<sup>134</sup> Not all outreach services agree and some have argued that an "interventionist" approach is needed.<sup>135</sup>

However, as with St Mungo's staff, workers from Welsh charity The Wallich generally hold negative views of the Act:<sup>136</sup>

- "The Act is an outdated law that penalises people unfairly. It is a problem that requires compassion and not just moving someone away."
- "Terminology of the Act, the way people are treated for just trying to survive is disgraceful. Language and articulation is one of the most powerful tools we have and it can make or break people."
- "The Vagrancy Act would not be passed today and should be abolished."

And a St Mungo's service manager said:

"Enforcement in its current format does nothing to empower communities to resolve issues, build awareness of responsibility or recognise collective skills and expertise. It further stigmatises the homeless community as they remain external to discussions and meaningful change. Current use of enforcement is fear based, further traumatising individuals for whom life is complex enough." <sup>137</sup>

### Scaled up assertive outreach and support in England and Wales

There is consensus among support agencies and in the research evidence that enforcement should be rare and used only when other options will not work. It should recognise that any anti-social behaviour is linked to (but separate) from rough sleeping and begging and it should always seek to help people into support services. As a St Mungo's service manager said:

"Enforcement where there is no anti-social behaviour or criminal activity is the wrong tactic, unless the client is a risk to themselves... Assertive outreach practices from outreach teams, clinical teams or substance use teams should be used. Otherwise, enforcement action pushes clients into hard to reach areas and further entrenches the

133 Johnsen, S (2016), *Enforcement and interventionist responses to rough sleeping and begging: opportunities, challenges and dilemmas*, ESRC, p.4

134 St Mungo's (2018), *Repealing the Vagrancy Act*, <https://www.mungos.org/wp-content/uploads/2018/12/St-Mungos-repealing-the-Vagrancy-Act-briefing.pdf>; accessed 4 April 2019

135 Johnsen, S (2016), *Enforcement and interventionist responses to rough sleeping and begging: opportunities, challenges and dilemmas*, ESRC, p.4

136 Quoted at the Crisis roundtable discussion, 24 April 2019

137 Comments shared with Crisis by St Mungo's

**rough sleeping. Enforcement action is a short-term solution to clearing an area, not a tool to end rough sleeping.**<sup>138</sup>

A review for Crisis of what works to end rough sleeping specifically found the following five themes feature in successful approaches.<sup>139</sup>

1. Recognise that individual rough sleepers have different and diverse needs and address the needs and public support entitlements of each person who is rough sleeping with housing and support.
2. Swiftly acting to prevent or quickly end street homelessness, through interventions such as No Second Night Out (NSNO), to reduce the number of people rough sleeping who develop complex needs and potentially become entrenched.<sup>140</sup> NSNO aims to identify and help people away from the streets immediately with the public helping to alert services to people who may be rough sleeping. Once alerted, services can help people into suitable accommodation with support.<sup>141</sup>
3. Use assertive outreach leading to a suitable accommodation offer – by identifying and reaching out to people rough sleeping and offering suitable housing as part of the package of support.
4. Be housing-led, i.e. offer rapid access to settled housing, including the use of the Housing First approach.

138 Comments shared with Crisis by St Mungo's.

139 Mackie, P., Johnsen, S. and Wood, J. (2017), *Ending rough sleeping: what works? An international evidence review*. London: Crisis.

140 See Homeless Link (2014), *Adopting the No Second Night Out Standard - Developing a service offer for those new to the streets*. London: Homeless Link.

141 Homeless Link, 'No second night out campaign', <https://www.homeless.org.uk/our-work/campaigns/policy-and-lobbying-priorities/no-second-night-out-campaign>, accessed 16 May 2019

142 For more detail see Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018), *Everybody In: How to end homelessness in Great Britain*. London: Crisis.

143 Sanders, B. and Albanese, F. (2017), *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*, London: Crisis, p. 34

5. Offer person-centred support and choice – via a client-centred approach based on cross-sector collaboration and commissioning. This includes, for example, access to specialist mental health teams when necessary and rapid referral for substance use support.<sup>142</sup>

This suggests a much larger role for support agencies working together in helping people away from the streets and a much more focused role for police in responding only when other options will not work. This is in keeping with Crisis' research into enforcement that found areas that tended to use enforcement action less were ones that had invested in a multi-agency response to the issues.<sup>143</sup> It would also fit with the vision of policing set out by the National Police Chiefs Council and its representatives.

**More effective responses to anti-social behaviour and crime**

The second part of the solution is to ensure that police forces are able to respond in a trauma-informed way to solve problems and help people away from the streets.

**Mental health support in policing and justice: liaison and diversion**

Lord Bradley's report for the Prison Reform Trust on people with mental health problems or learning disabilities in the criminal justice system found in 2009 that a large proportion of people had unidentified (and therefore unmet)

mental health support and/or treatment needs. The report said:

**"Homelessness is often a trigger for offenders to be dealt with differently by the criminal justice system, at the police and court stages, and can decrease the likelihood of an individual being granted bail or a community sentence."**

The report also found a strong link between people who were homeless (including in temporary accommodation) and mental health problems, with a higher prevalence of problems reported among people who are homeless compared with the general population.<sup>144</sup> Research conducted in both England and Wales has consistently found links between mental health and homelessness:

- In Wales more people presenting to their local authority for homeless assistance had mental (and physical) health problems than the broader population.<sup>145</sup>
- In England 80 per cent of people who were homeless reported a mental health issue and 45 per cent were diagnosed with one.<sup>146</sup>

Following the Bradley report, availability of liaison and diversion services increased across England and Wales with an estimated 100 schemes in operation in 2018.<sup>147</sup>

Diversion is a process that ensures that people with mental health problems or learning disabilities who enter (or are at risk of entering) the criminal justice system are identified. They are provided with appropriate mental health services, and whatever support and/or treatment is needed. There is an emphasis on early identification to prevent needs increasing and avoid the escalation of damage to the person and the community.<sup>148</sup>

People can be diverted at any stage in the police and justice systems, including prevention before people are even arrested, at the point of arrest, while decisions are being made in the justice system, or before, during and after custody or community sentences.<sup>149</sup> 'Diversion' happens towards health and social (care) services to meet people's needs and can mean diversion out of or within the police and justice systems, so that it does not simply mean 'letting someone off'.<sup>150</sup>

'Street triage' is separate from liaison and diversion. According to the College of Policing, while the two services tend to operate at different times of day there is a "natural overlap" between the two approaches so that police forces can plan and use them effectively.<sup>151</sup> NHS England says triage services involve mental health professionals working with police who are responding to emergency calls and might not necessarily relate to someone who might have committed an offence.<sup>152</sup>

144 Prison Reform Trust (2009), *Bradley Report*, London: Prison Reform Trust, p.63

145 Cymorth (2017), *Health Matters – the health needs of homeless people in Wales*, Cardiff: Cymorth, p.6

146 Homeless Link (2014), *The unhealthy state of homelessness – health audit results*. London: Homeless Link, p.3

147 Cardiff and Vale University Health Board (2018), *Cardiff & Vale UHB & South Wales Police Liaison & Diversion Scheme Protocol*, p.4

148 College of Policing (2016), *Mental health and the criminal justice system*, accessed 18 April 2019

149 Sainsbury Centre for Mental Health (2009), *Diversion – a better way for criminal justice and mental health*. SCMh: London. <http://www.ohrn.nhs.uk/resource/policy/DiversionSCMH.pdf>

150 College of Policing (2016), *Mental health and the criminal justice system*, accessed 18 April 2019

151 Ibid.

152 NHS England, *Frequently Asked Questions about Liaison and Diversion*, <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/ld-faqs/#q12>, accessed 18 April 2019

Liaison and diversion services require identification by police and screening of people by specialists to identify support needs. The College of Policing says that, in keeping with police working practices, services being referred to must also be available out-of-hours to make sure any referral can be timely and effective.<sup>153</sup> Police, probation and the judiciary can then make decisions on the basis of evidence and information presented to them.<sup>154</sup>

An evaluation of the liaison and diversion service model has found that the “vast majority” of people who worked with liaison and diversion services from a range of different backgrounds reported that the services were useful.<sup>155</sup> NHS England and the Ministry of Justice are working together to increase access to liaison and diversion services, with an indicative target of 100 per cent of the population in England having access by the end of 2021 (up from 60 per cent in 2016-17).<sup>156</sup>

Welsh Government has included further development of the Criminal Justice Liaison Service as a mental health service priority since 2012.<sup>157</sup> All Welsh Local Health Board areas have a service<sup>158</sup> and the relevant Welsh Government strategy has a goal to ensure “timely and appropriate” access to mental health services for people in contact with the justice system.<sup>159</sup>

### **Policing and vulnerability: Early Action Together**

In Wales, the Home Office’s Police Transformation Fund supports a multi-agency partnership between Public Health Wales; and policing and criminal justice. The Early Action Together programme addresses the root causes of criminal behaviour to enable police and criminal justice staff to take preventative measures when dealing with vulnerable people by taking an Adverse Childhood Experience (ACE) informed and public health approach. This enables early intervention and root cause prevention, keeping vulnerable people out of the criminal justice system, breaking the generational cycle of crime, and improving lives.

According to Public Health Wales, ACEs are:

“Stressful experiences occurring during childhood that directly hurt a child (e.g. maltreatment) or affect them through the environment in which they live (e.g. growing up in a house with domestic violence). ACEs include childhood abuse (physical, sexual or emotional); neglect (emotional or physical); family breakdown; exposure to domestic violence; or living in a household affected by substance misuse, mental illness, or where someone is incarcerated.”<sup>160</sup>

153 College of Policing (2016), *Mental health and the criminal justice system*, accessed 18 April 2019

154 NHS England, *About liaison and diversion*, <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/about/> accessed 18 April 2019

155 Disley, E., Taylor, C., Kruithof, K., Winpenny, E., Liddle M., Sutherland, A., Lilford, R., Wright, S., McAteer, L., and Francis, V. (2016), *Evaluation of the Offender Liaison and Diversion Trial Schemes*. Santa Monica: RAND Corporation, 2016. [https://www.rand.org/pubs/research\\_reports/RR1283.html](https://www.rand.org/pubs/research_reports/RR1283.html)

156 NHS England (2017), *Implementing the Five Year Forward View for Mental Health*, p.32

157 Welsh Government (2012), *Together for Mental Health*, p.40

158 Magistrates Association (2018), *Call for evidence about justice in Wales: Commission for Justice in Wales*, <https://llyw.cymru/sites/default/files/publications/2018-06/Submission-the-magistrates-association%20.pdf>

159 Public Health Wales (2016), *Together for Mental Health Delivery Plan: 2016 -19*, p.23

160 Grey, C. and Woodfine, L. (2018), *Adverse Childhood Experiences (ACEs) and Housing Vulnerability – Report and Evaluation of ACE-informed Training for Housing*. Public Health Wales and the Police and Crime Commissioner for South Wales.

In the past, services have often focused on treating the ‘symptoms’ of people’s behaviour rather than addressing the causes, and by the time people get professional help it can seem too late to intervene. There is evidence that adults who have experienced four or more ACEs are more likely to have experienced or carried out a number of criminal behaviours and there is a link between ACEs and people experiencing homelessness for a month or more.<sup>161</sup>

Because the police spend so much time with people whose wellbeing and safety are at risk, they are well-placed to intervene early before things get worse. They can also find ways of helping individuals, families and communities and so reduce the impact of ACEs and trauma and break cycles of behaviour that have continued through generations.

The programme partners include:<sup>162</sup>

- All four police and crime commissioners and all four chief constables: South Wales, North Wales, Dyfed-Powys and Gwent;
- The Community Rehabilitation Company Wales;
- Her Majesty’s Prison and Probation Service in Wales;
- Her Majesty’s Courts and Tribunal Service (Wales);
- Wales Youth Justice Board;
- And Barnardo’s Cymru.

By being ACE-informed and taking an early intervention approach, police can aim to better identify, understand, problem solve and signpost with partners, so that they can help vulnerable people before their problems escalate.

Progress so far includes:

- Almost 3,000 police officers and partners have received ACEs training.
- ‘Early help’ trauma-informed systems and processes are being tested with local authorities.
- A public-health approach is being tested in all four Welsh police forces in the areas of serious violence, police workforce wellbeing, social prescribing and policing in schools.
- There is also a learning network for sharing professional knowledge, research findings, best practice and information about partner organisations. There is some early evidence of better information and knowledge sharing.
- Early Action Together has support from senior and strategic leads in all the partner organisations. It is also mentioned in the UK Government’s Serious Violence Strategy.<sup>163</sup>

The whole programme is being evaluated, and its findings will inform the work of the police and the prison and probation services.

161 Ibid. p.5

162 Public Health Wales (2018), *Research Highlights 2017/18*

163 HM Government (2018), *Serious Violence Strategy*, p.60



**“Arresting people for being homeless only made them stay homeless.”**

**Karl, Liverpool**



“I was first arrested for the Vagrancy Act in 2008. I just asked someone for 20p so I could use the phone. Two police saw it and arrested me on the spot for begging. I spent the night in the cells and was in court the next morning. They just fined me and sent me straight back to the streets. No more help. Nothing.

Arresting people for being homeless only made them stay homeless. You felt like a criminal, so you end up shutting down and just relying on the homeless community instead. It becomes learned behaviour. I tried my best to stay out of sight. You found little places to hide away like garages, air vents, and parks. Where I live now there’s a park I walk through early in the morning with my dog and they’ve started sniffing at something on the floor, and I realised it’s a person. They tell me they’d been moved out of town. But they’ll only go back. They have to.

You get mental fatigue trying to access any kind of support services. It’s like the whole system is set up to perpetuate homelessness and crime, not to end it. People are also begging just to pay bills, or to get a room in a hostel, or get enough for a permanent address for when that hostel moves them on. At the end of the day if someone’s begging on the street, that person needs help, not being arrested for it.

I try to explain to people the horrors of living on the streets, and how much difference it makes for someone to treat you like a human being. The best thing I can remember is silly little things like people saying good morning and asking if I was OK. It would be brilliant if the Vagrancy Act could be repealed. That would help turn public opinion back to helping homeless people instead of punishing them. At the end of the day the police only do as they’re told.”

**Karl, Liverpool**

## Chapter 6:

# The Vagrancy Act and legal considerations

The evidence relating to enforcement is clear that it should be used only when other options will not work and when it is used it should link someone to support services. However, there will be some cases where police would need to use the law to address criminality that is separate from – and in addition to – a person begging or sleeping rough. This chapter looks at how and when legislation should play a part in addressing anti-social behaviour linked to rough sleeping, begging or related street activity.

### Vagrancy law in Scotland and elsewhere

In Scotland, criminal law is not part of the response to rough sleeping or begging. The Vagrancy Act was repealed in 1982 and instead only the 'associated' and additional behaviour is potentially criminal, and not begging or rough sleeping alone.

According to a Police Scotland representative:

**"While begging itself is not a crime, the behaviour associated with it can sometimes constitute an offence if, for example, there was an**

**aggressive or anti-social aspect to it."**<sup>164</sup>

There is police discretion if there is a complaint and people can be arrested for potential disorderly conduct or breach of the peace if they are behaving in an intimidating or aggressive way. When Aberdeen Council applied to pass a bylaw to forbid begging more generally in specific areas in 2014 the Scottish Government refused.<sup>165</sup> Scottish Ministers said they were "not persuaded" that a bylaw was "conducive to good rule and government" or that such a move would help solve the problem.<sup>166</sup>

164 Evening Express (2018), *Law allows begging on streets of Scotland – but not aggression*, 8 January 2018  
 165 BBC News online (2014), *Aberdeen begging by-law plan rejected by Scottish ministers*, 20 June 2014  
 166 The Press and Journal (2014), *Aberdeen's anti-begging bylaw rejected by Scottish Government*, 21 June 2014

One study of begging in Edinburgh suggests that people without accommodation tend to beg for a variety of reasons, but those with relatively more 'stable' accommodation tended to beg due to addictions. However, just over 80 per cent of people in the study had mental health support needs and the most common help that people in this situation wanted was access to accommodation, followed by drug or alcohol treatment and access to work.<sup>167</sup>

There is evidence that Scottish local authorities have acknowledged these challenges for some time. In 2010, an Edinburgh Council document outlined its approach:

**"There are no police powers to 'move people on' outside certain extreme circumstances or through an approved dispersal order, but obviously where a crime occurs they have existing police powers to deal with this and the main crux would be the one person's definition of 'aggressive'... There are often complex social and economic issues surrounding persons who beg on the street and any enforcement action being considered should only be seen as a small part of a holistic approach to addressing this."**<sup>168</sup>

Other nations that previously had vagrancy laws have also repealed them:<sup>169</sup>

- In the USA a succession of vagrancy laws in states or counties were ruled unconstitutional by the US Supreme Court in the early 1970s, starting with a Florida case in 1972.<sup>170</sup>
- The Canadian Ministry of Justice has legislation in the Parliament to repeal a number of laws that had been struck down in courts but remained in law, including a diverse list of outdated laws such as vagrancy.<sup>171</sup> The list was dubbed the "zombie laws" by Canadian legal experts.<sup>172</sup>
- Belgium abolished its laws against vagrants and begging in 1993 that had been in place since 1891. There are some relevant offences still in place but they are restricted to 'aggressive' begging.<sup>173</sup>
- Finland's 1883 vagrancy law was repealed in 1987.<sup>174</sup>

167 Shelter Scotland (2019), *Street Begging in Edinburgh*, Edinburgh: Shelter Scotland, p.6

168 Edinburgh Council (2010), *South Central Neighbourhood Partnership*, 9 August 2010

169 Ranasinghe, P (2015), *Refashioning vagrancy: a tale of Law's narrative of its imagination*, *International Journal of Law in Context*, 11,3 pp. 320–340 (2015), Cambridge University Press 2015 doi:10.1017/S1744552315000178

170 *Papachristou v. City of Jacksonville (1972)*, 405 U.S. 156

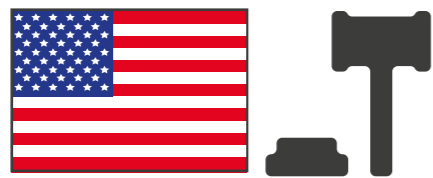
171 House of Commons Canada (2018), *Bill C-75: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st Session, 42nd Parliament

172 CBC News (2017), *Federal government to axe 'zombie laws' from Canada's Criminal Code*, 7 March 2017

173 Housing Rights Watch (2013), *Criminalisation*, <https://www.housingrightswatch.org/page/criminalisation-6>; accessed 3 May 2019

174 Y-Foundation (2018), *A Home of Your Own*. 2nd ed. Y-Foundation: Keuruu





## 1970s

In the USA a succession of vagrancy laws were **ruled unconstitutional by the US Supreme Court** in the early 1970s.



## 1993

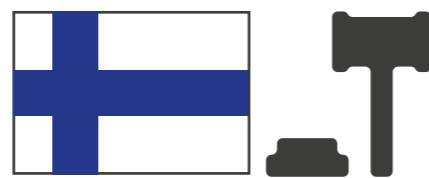
**Belgium abolished its laws against vagrants and begging in 1993** that had been in place since 1891.

In contrast, the Hungarian Government led by Viktor Orbán has strengthened laws against rough sleeping and effectively banned it with 'exclusion zones' around historical and tourist sites. Charities say this has led to people sleeping rough in more hidden or remote sites, where they are more difficult to find and to help. The European Federation of National Organisations Working with the Homeless (FEANTSA) said the approach was a "policy of total evil" and would also not work to reduce



## "zombie laws"

The Canadian Ministry of Justice has legislation in the Parliament to repeal a number of outdated laws such as vagrancy. **The list was dubbed the "zombie laws"** by Canadian legal experts.



## 1987

Finland's 1883 **vagrancy law was repealed in 1987**.

rough sleeping.<sup>175</sup> In an open letter, a United Nations special rapporteur said the approach was "absolutely unacceptable."<sup>176</sup>

## Legal advice given to Crisis on England and Wales

Many of the Act's shortcomings are not newly identified. In 1976, a working party report for the Home Office recommended the Act's repeal and "replacement of some of

the offences by new ones to meet modern circumstances".<sup>177</sup> It also recommended raising the criminal threshold for offences to include only 'persistent' begging and a much more clearly defined 'sleeping out' offence.<sup>178</sup>

In 1990, the End the Vagrancy Act coalition pointed out that other legislation could be used instead.<sup>179</sup> Crisis sought a new legal opinion on the Act in the context of current legislation to gauge how suitable it is for addressing rough sleeping and begging across England and Wales. The advice looked at whether there is sufficient legislation outside of the Act for authorities (that is police, courts, prosecutors etc.) to act on concerns about criminal behaviour.

The full legal advice to Crisis is in Appendix 2 but in summary it considers the Act to be "obsolete" in relation to the following legal criteria that:

- The remaining offences in the Act are regulated by discrete, subsequent offences in more modern legislation.
- The criteria to trigger the authorities' powers in modern legislation more adequately reflect the conduct and impacts of that conduct that need to be addressed.
- That the powers, once triggered, adequately address the conduct, especially compared with the Vagrancy Act.<sup>180</sup>

### 1. The remaining offences in the Act are regulated by discrete, subsequent offences in more modern legislation.

The legal advice says that offences in the Act that police and criminal justice services would still need to use are regulated by more modern legislation. One of the key differences between the Act and more modern legislation, the legal advice's author Mike Schwarz from Bindmans LLP said to the Crisis roundtable discussion, is that the modern legislation contains greater flexibility for possible legal defence for the person being prosecuted.<sup>181</sup>

The full details of how the remaining offences in the Vagrancy Act are covered by newer legislation are also in the appendix and should be read alongside the full context and legal commentary. However, particularly relevant alternative Acts include those in Table 3.

<sup>175</sup> Euronews (2018), *Hungary's homeless ban: Campaigners slam 'policy of total evil' with temperatures set to fall*, accessed 30 May 2019

<sup>176</sup> Office of the UN High Commissioner for Human Rights (2018), *Hungary: UN expert expresses outrage at attempt to criminalise homelessness*; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23229&LangID=E>; accessed 30 May 2019

<sup>177</sup> Home Office (1976), *Report of the Working Party on Vagrancy and Street Offences*, HMSO: London, p.1

<sup>178</sup> Ibid. p.24

<sup>179</sup> Quoted in HL Deb 11 December 1990 vol 524 cc465-93

<sup>180</sup> Schwarz, M (2019), *Crisis and alternatives to the Vagrancy Act 1824*, paras 26-31

<sup>181</sup> Crisis roundtable discussion, 24 April 2019



**Table 3. Vagrancy Act offences and alternative legislation**

Offence	Alternative legislation
<p><b>Section 3</b> Wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do.</p>	<p>Highways Act 1980 for obstructions of the highway if on public pavements, roads or rights of access.</p> <p>Serious Crime Act 2007 for begging that involves joint enterprise, conspiracy, or encouraging others to commit offences.</p> <p>Anti-social behaviour legislation for begging that is 'aggressive' (see below)</p>
<p><b>Section 4</b> Wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon and not giving a good account of himself or herself.</p> <p>and</p> <p>Being found in or upon any dwelling house, warehouse, coach-house, stable, or outhouse, or in any enclosed yard, garden, or area, for any unlawful purpose.</p>	<p>Criminal Justice and Public Order Act 1994 to remove trespassers trying to reside on land and for not leaving, aggravated trespass on private land, police powers to direct trespassers to leave, and power to remove unauthorised campers.</p> <p>Theft Act 1968 to address burglary (i.e. trespass on a building with intent to steal, cause damage, or commit a serious assault)</p> <p>Criminal Law Act 1977 to address adverse occupation of 'residential premises' (which includes buildings, any land ancillary to a building such as a garden) if any 'displaced residential occupier' or 'protected intending occupier' seeks possession. Anti-social behaviour legislation for offences linked to these areas (see below)</p>
<p><b>Section 4</b> Wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms.</p> <p>and</p> <p>Going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence.</p>	<p>Public Order Act 1986 which addresses any threatening words/behaviour or disorderly behaviour (or display of any sign or other visible representation which is threatening) within the hearing or sight of a person likely to be caused harassment, alarm or distress.</p> <p>Fraud Act 2006, which includes dishonestly making false representation, and intending to do so to make a gain for oneself or cause loss to another.</p>
<p>Any uses of the Act to address domestic abuse in a property.</p>	<p>Police and Criminal Evidence Act 1984 includes powers for police to take reasonable steps to prevent a 'breach of the peace', including entering a property, detaining an individual, or arresting. The police may take action where a breach of the peace is occurring, has occurred and is likely to be renewed, and is about to occur.</p> <p>Protection from Harassment Act 1997 covers any domestic abuse that includes stalking and the need for injunctions or restraining orders.</p>

One potential hesitation about using the more recent legislation is that some, though not all, of the legislation can have higher potential penalties than the Vagrancy Act. The legal advice author, Mike Schwarz, told the Crisis roundtable discussion:

**“Just because it has a higher potential sentence does not mean the courts have to impose a higher fine. As we all know, they take into account the nature of the offence and they look at the means of the defendant. I do not accept that [using other legislation instead of the Vagrancy Act] would have the unintended consequence of attracting heavier penalties than the Vagrancy Act.”<sup>182</sup>**

**2. The criteria to trigger the authorities' powers in modern legislation more adequately reflect the conduct and impacts of the conduct that need to be addressed.**

The legal advice suggests that any regulation of rough sleeping through criminal law “requires a different type of legislation” and one that can:<sup>183</sup>

- Provide discretion to police, local authorities and prosecutors about whether and how to act when working with people currently affected by the Act.
- In the use of this discretion to focus on the impact of the actions on other people.
- Allow responses to be gauged with the more extreme response being criminal law.
- Enable courts in their work (trying cases, setting precedents, providing guidance on appeals or judicial

reviews) to include consideration of the interests of people who are experiencing homelessness or poverty.

The Anti-social Behaviour, Crime and Policing Act 2014 is the main legislation that meets the criteria the legal advice set out. The Vagrancy Act is anomalous compared with more modern legislation like the 2014 Act because it does not require consideration of the impact of the alleged criminality on others or the motivations behind this alleged criminality. As the legal advice for Crisis said about the Act:

**“The conduct it seeks to criminalise appears to belong to a different era. It narrowly defines, and then criminalises that conduct. It does not expressly put at the forefront of the authorities' considerations the impact of the conduct on others, or indeed the interests, motivations and/or circumstances of the alleged offender.”<sup>184</sup>**

According to Mike Schwarz, the 2014 Act does have uses:

**“The [anti-social behaviour] legislation has a useful structure, which does not go nought to sixty miles per hour in terms of prosecution. It says you can get an order stopping you from doing something. The order is not a criminal conviction, as we know. It is a breach of the order that creates the criminal element. There are various strands there, the injunctions, the criminal**

<sup>182</sup> Comments to the Crisis roundtable discussion, 24 April 2019

<sup>183</sup> Schwarz, M. (2019), *Crisis and alternatives to the Vagrancy Act 1824*, para. 34

<sup>184</sup> Schwarz, M. (2019), *Crisis and alternatives to the Vagrancy Act 1824*, para. 33

behaviour orders, dispersal powers and so on, and which apply this two-tier approach, which I think is appropriate because it gives some flex to the process. It gives a warning shot. It gives people notice of what they should and should not do. Still, I think it is defective because it does not take into account the situation of the defendant.”<sup>185</sup>

The 2014 Act is not without fault. As Mike Schwarz said, one continued shortcoming of this law is that it does not take into account the situation of the individual whose conduct is being controlled. There are examples of inadequately drafted orders arising from the 2014 Act.

The 2014 Act has established Public Space Protection Orders (PSPOs) that seek to control specific types of behaviour in certain places. As this report has previously highlighted, begging offences under the Vagrancy Act are the most highly prosecuted of the Act. Local authorities, police and media reports have variously put forward the idea of ‘aggressive begging’ as a problem. However, the definition of ‘aggressive’ varies between areas across England and Wales:

- Newport, south Wales, banned people from “aggressive begging” which was defined as being within 10 metres of a cashpoint.<sup>186</sup>
- Exeter Council puts forward the idea of “passive aggressive” begging,

which included standing near a cashpoint, where it said people would feel vulnerable or have their privacy violated.<sup>187</sup>

- Wakefield Council defined ‘aggressive’ begging as “A solicitation made in person for immediate donation of money or another gratuity,”<sup>188</sup> which seems to include more forms of begging beyond ‘aggressive’ begging. It is very similar to the Vagrancy Act’s definition of begging as “placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms”.<sup>189</sup>

These ideas are not new, as historian Professor Nick Crowson said to the Crisis roundtable in April 2019:

“Social attitude surveys still keep talking about the idea of the aggressive or the ‘fake’ beggar. And we probably need to understand where that lineage comes from... it’s not something that has just been created in the last 20 or 30 years and perpetuated through the media and through certain politicians’ statements. It’s a lineage that goes right back to the early mendacity societies [in the early 1800s]. We see it with anti-vagrancy campaigns of the Edwardian and interwar years, where you would have posters distributed in the region, saying ‘Do not give to beggars, we

have the workhouse and casual wards for them’.”<sup>190</sup>

Home Office guidance to local authorities on the use of PSPOs is clear that the proportionality of imposing them, balanced with the impact of the behaviour on the community’s quality of life, must be a key consideration. As part of a general emphasis on considering the needs of victims, the guidance says PSPOs “should not be used to target people based solely on the fact that someone is homeless or rough sleeping” because it is unlikely to be a proportionate response. It further states that councils might receive complaints from the public and so they should consider whether a PSPO is the appropriate response specifically to the behaviour in question, as well as consult with charities when assessing this. It emphasises a number of times that councils should look at whether the impact of the behaviour in question really does affect the community’s quality of life to the extent that a PSPO is justified.<sup>191</sup>

During the Crisis roundtable on repealing the Act there was discussion on whether there might be any further legal changes to existing legislation to ensure police had all the necessary powers to be able to manage behaviour associated with aggressive begging that has an anti-social effect and for some offences covered by ‘being in enclosed premises’ (in section 4). Such changes to existing legislation could be factored into a repeal Bill, provided they reflect the principles set out in this chapter and the policy and practice approach of having enforcement action that leads to support when other approaches will not work.

### 3. Whether the powers, once triggered, adequately address the conduct.

The legal advice document for Crisis

compares the Vagrancy Act with more modern legislation and says:

“Legislation other than the Vagrancy Act, if correctly and carefully applied, provides a better and modern framework within which the perceived mischiefs identified by what remains of the Vagrancy Act, can be addressed.”<sup>192</sup>

The legal conclusion that the Vagrancy Act is obsolete against the three criteria set out above and that more modern legislation exists to address perceived wrongdoing should, however, not be read as an unqualified endorsement of enforcement powers.

Putting the legal discussion in wider context, the evidence is very clear that enforcement activity can be truly effective only if it is used when other approaches will not work and when it is linked to an offer of meaningful help. If used inappropriately, enforcement action can cause extra problems or even harm to the individual involved. There is also a risk of harm to the wider community as a result of not quickly resolving the problems in a person’s situation.

Kathleen Sims, Head of Outreach at St Mungo’s, said outreach teams at the charity can find anti-social behaviour legislation easier to communicate clearly to people they work with:

“The powers that exist around other anti-social behaviour legislation are the ones that are more appropriate to be used, if people are anti-social in their behaviour on the street. That also helps our teams to be clear with the messaging, that, if

185 Crisis roundtable discussion, 24 April 2019

186 BBC News online (2018), *Cash point begging ban approved by city council*, <https://www.bbc.co.uk/news/uk-wales-south-east-wales-44947730>, accessed 22 March 2019

187 Exeter Council (2016), *Prohibitions and actions contained in Public Spaces Protection Order (PSPO)*, <http://committees.exeter.gov.uk/documents/s55503/APPENDIX%201B%20PSPO%20Restrictions%20FINAL.pdf>, accessed 22 March 2019

188 Pontefract and Castleford Express (2018), *Aggressive beggars need to be moved out of town*, <https://www.pontefractandcastlefordexpress.co.uk/news/video-aggressive-beggars-need-to-be-moved-out-of-town-1-9276345>, accessed 22 March 2019

189 Vagrancy Act (1824), section 3

190 Comments to the Crisis roundtable on the Vagrancy Act, 24 April 2019

191 Home Office (2017), *Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers - Statutory guidance for frontline professionals*, December 2017, p.51

192 Schwarz, M. (2019), *Crisis and alternatives to the Vagrancy Act 1824*, para.35



people behave in this way, these are the consequences that are going to happen to them. With the Vagrancy Act, it is very unclear how my teams can articulate that message because it is unclear what would actually happen.”<sup>193</sup>

The legal advice suggests that any regulation through criminal law needs to give discretion to police, local authorities and prosecutors about whether and how to take action when working with people currently affected by the Vagrancy Act. In the use of this discretion it should focus on the impact of the actions on other people and allow responses to be calibrated – and for the last resort response to be criminal law. It should also enable courts in their work (trying cases, setting precedents, providing guidance on appeals or judicial reviews) to take into account the interests of people who are experiencing homelessness or poverty.<sup>194</sup>

In relation to any offence where a prosecution is considered, including offences under this Act, the Crown Prosecution Service must apply a twofold test of whether there is enough evidence to prosecute; and whether it is in the public interest to do so.<sup>195</sup>

In relation to sleeping rough and begging, the legal advice given to Crisis suggests that the public interest test criteria should include:

- Whether or not the offence is serious.
- The culpability of the suspect and the extent of harm to the victim.
- Whether the alleged offender is under 18.
- The impact on the community.

- Whether prosecution is a proportionate response.

The advice concludes that in relation to rough sleeping and begging, given these criteria, it “may be argued [these questions] should militate in favour of taking no [legal] action or no prosecution” in the absence of any other, more serious offences.<sup>196</sup>

The previous chapter discussed what a trauma-informed approach to the Act’s offences could be. An international evidence review for Crisis on what works to end rough sleeping found that enforcement action should have a limited and defined role when addressing rough sleeping and that there is no evidence to support criminalising homelessness to address its root causes. As the review said:

“The (limited) evidence on the impact of enforcement on rough sleepers indicates that, when combined with sufficiently intensive, tailored and high quality support it can offer a ‘window of opportunity’ prompting targeted individuals to accept offers of temporary accommodation and/or engage more constructively with other services. It can, however, also displace rough sleepers, by ‘pushing’ them into areas that are more dangerous and/or where they are more difficult for outreach workers to find and assist. Positive outcomes are more likely when a personally tailored and staged approach is adopted (wherein enforcement is used as a last resort).”<sup>197</sup>

193 Crisis roundtable discussion, 24 April 2019

194 Schwarz, M. (2019), *Crisis and alternatives to the Vagrancy Act 1824*, para. 34

195 Crown Prosecution Service (2013), *The Code for Crown Prosecutors*, [https://www.cps.gov.uk/sites/default/files/documents/publications/code\\_2013\\_accessible\\_english.pdf](https://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf), accessed 5 April 2019

196 Schwarz, M. (2019), *Crisis and alternatives to the Vagrancy Act 1824*, para. 24

197 Mackie, P., Johnsen, S., and Wood, J. (2017), *Ending rough sleeping: what works?* London: Crisis. p. xviii

“The whole experience of the Vagrancy Act was dehumanising.”

Sam, London



"I'm a British citizen who grew up abroad. I moved to London in 2013 hoping to improve my life because I was living with complex post-traumatic stress disorder from abuse and neglect in my childhood, plus bullying in school and at work. I had some money and a credit card when I arrived. I hoped that this would be enough to tide me over, but when the money started to run out, I realised that homelessness was something I couldn't escape from. There was a period of three months when I had no money at all, and by that time I was also sleeping on the streets.

That's when the Vagrancy Act was being used. The police would come and ask about my details. I gave them my reason for being in the area. I said I had an ongoing case with the council about my housing, but they didn't really listen; I just felt harassed. They also seemed to conflate begging with rough sleeping, and the two aren't the same thing. Some people do beg, but I personally never did. So I eventually stopped answering their questions.

After four warnings for sleeping rough under section 4 of the Vagrancy Act, it got to a point where I got taken to court, to the Old Bailey. I was advised by my solicitor to plead guilty, but I didn't think I had done anything wrong so I chose not to. The way I saw it, I had a good reason for being there. If I had pleaded guilty, I don't know what they

would have done. But I knew at the very least it would have led to a criminal conviction, and the information pack that my solicitor had given me did state that a jail sentence was a possibility.

In the end I managed to persuade the judge that I had a valid reason for sleeping rough, and it was thrown out of court in five minutes, but it caused months of waiting and worry. The whole experience of the Vagrancy Act was dehumanising.

What helped me in the end was just sticking my guns and being assertive with the council. But is it really in the public interest to convict people who have the misfortune of being on the streets in the first place? Should they be criminals for that reason?"

**Sam, London**

## Chapter 7:

# The way forward

**Building on the case set out in previous chapters, this chapter looks at the options for what to do with the Vagrancy Act. Previous chapters put forward the arguments that the Act is outdated with entirely different thinking at its core and that its current use remains a concern. This chapter looks at the alternative approaches to the law including retaining the Act, replacing or changing it, or repealing it in part or wholly.**

This report has found that, while the Act is still used across England and Wales, it is difficult - if not impossible - to find any enthusiastic champions for its use. There is evidence of caution and some anxiety about what might happen if the Act were to be repealed, including fear of unintended legal consequences when replacing, amending or repealing it.

As well as the legal concerns, there is also a need to develop alternative approaches to the Act that include scaled-up outreach and services that link people to support and housing; and more effective use of the law to ensure that anti-social behaviour is addressed.

This chapter will consider the main legal options to the Act. It will look at:

- Retaining the Act.
- Replacing the Act or amending it.
- Repealing parts of the Act or the whole Act.

### Retain

One potential hesitation about repealing or amending the Act is that the numbers of people being formally subject to the Act, particularly the

rough sleeping offence, are small. Looking at recent trends, there is a potential course of action to allow the Act to become obsolete through lack of use rather than formal repeal or reform and with the development and promotion of good practice in policing and support services.

The most recent declines in its use since 2014 are encouraging and coincide with concerted action on anti-social behaviour and the development of programmes to bring about more trauma-informed approaches and a widening of preventative housing support in both England and Wales. However, as the data on historical use shows, while the Act's use is historically low over a ten-year period it has fallen to similar levels in the past but then risen again. This also does not include the known informal use of the Act to move people on that is more common than the formal use of the Act.

Research shared with Crisis by Professor Nick Crowson shows a wide variation in apprehensions and prosecutions under the Vagrancy Act over the years, including previous decades, where use of the Act was either at a similar level or lower than the present day, both as a whole and

when looking individually at section 3 or 4 offences. Put simply, there is strong precedent for the Act's use to fall due to intervention or changing socio-economic circumstances, but also a body of evidence to suggest that it will rise again, meaning the progress since 2014 could be lost.

At the turn of the 20th century the Departmental Committee on Vagrancy (1906) had similarly noted that measures against vagrants did not work in the long-term. It said:

**"...it appears to have been the experience that on most occasions when an Act has been passed or an Order or circular, number of these persons has fallen, only, however, to rise again gradually until the next Act or Order."<sup>198</sup>**

This is not the first time that repeal or amendment has been seriously considered. In 1976, a Home Office working party on vagrancy and street offences noted that the majority of Chief Officers of Police that it consulted "thought that threatening or abusive behaviour by beggars could be dealt with under other legislation, e.g. the Public Order Act 1936".<sup>199</sup> At the time of the report the prosecutions for begging and for sleeping out started to fall, reaching lows by the mid-1980s. However, the Act remained and begging prosecutions rose again and reversed the more recent falls.<sup>200</sup>

Crisis argues that now is an ideal time to look again at the Act. Changes could cut off the legal avenue for making simply sleeping rough, begging and associated behaviour an offence, but also make clear that addressing these activities and the vulnerabilities and traumas people experience is not

primarily a police responsibility. It should be a matter for wider support services.

The recent historical decline in its use presents a window of opportunity to move on both practically and symbolically from the Act. We cannot be sure how long this window will be available, so reforming or repealing the Act should be firmly on the agenda without delay.

Given the strong evidence that enforcement should only be used sparingly and always linked to offers of support, it is clear the response to these issues should primarily be a non-criminal one. As a result, we cannot recommend the option of retaining the Act.

#### **Reform**

There is a case to consider whether the Act could be reformed. The key shortcomings this report has identified include:

1. How outdated and out of step the approaches in the Act are with evidence on what works in support services and policing. In particular, evidence that a criminal justice and police response is highly unlikely in most cases to effectively address the root causes of behaviour linked to the Act, leading to a lack of long term impact and potentially repeated contacts between the individual and authorities.
2. There is consensus that large parts of the Act (e.g. sleeping out) seem particularly redundant for modern uses.
3. For those subject to formal police enforcement under the Act, the law seems unbalanced in focusing on the individual behaviour rather than the community impact.

An alternative approach exists elsewhere in the UK, e.g. in Scotland, where begging and rough sleeping in themselves are not criminal offences.

Taking these points into account, repeal of at least some parts of the Act could attract support. This report has established that the various offences covered by the Act are applied differently between areas. Section 4, which relates to 'sleeping out' and other wider offences sometimes linked to homelessness, could be repealed while not affecting large numbers of people. This, along with use of alternative legislation and continued improvements in joint working between support services and police, would be likely to make a difference.

Repeal of section 4 would not affect the begging offences, however. This report found that begging appears to be the sticking point for authorities at present and is the part of the Act that is most enforced. It also seems to attract a lot of media and public interest. While not everyone who sleeps rough begs and not everyone who begs sleeps rough, the two issues cannot be separated entirely. The evidence suggests a link between begging and sleeping out with wider forms of homelessness, which in turn have strong links with vulnerability, trauma and poverty. Retaining section 3 (begging offences) would risk enforcement action against people who are rough sleeping and begging, making them potentially subject to the 'pre-emptive enforcement' that the Vagrancy Act allows.

There is consensus that 'aggressive' begging should be the target of any legitimate enforcement action. However, as the legal chapter considered, the Vagrancy Act's section 3 only mentions begging and not the additional behaviour that could cause alarm or distress, i.e. the 'aggressive' part. Given there is newer legislation to deal with the alarm and distress

elements of behaviour, amending the begging offence could only be attempted if it could somehow improve the anti-social behaviour legislation.

Of course, there are concerns expressed in wider society about the non-criminal impact of the behaviours. However, these concerns can only be truly addressed by tackling the root causes of begging, sleeping rough, and associated behaviours covered by the Act. As this report has considered a number of times, this should not be primarily a matter for police and the criminal justice system.

The continued presence of these offences in law and their use in practice reinforce the misplaced idea that the police should be the lead responders to vulnerability, trauma and poverty, even if these behaviours are not causing harm or distress. In many cases, as the legal advice to Crisis suggested, they may not be meeting public interest tests to make them worthwhile cases to pursue. The conclusion of the legal advice to Crisis is that section 3 or 4 offences can be dealt with more than adequately by various items of newer, more suitable legislation.

#### **Repeal**

After considering the cases for retaining or reforming the Act, this report suggests that repealing the Act would be a timely and useful step towards a better response to the challenges of street homelessness and begging. Police forces are under great pressure to deal with issues in which they are a leading agency, such as violent crime. To ask police and the criminal justice system to lead on fixing issues related to rough sleeping and begging places extra pressure and unfair expectations. It also potentially misleads the public and business owners that their concerns can fully be addressed by the police or by the law in isolation from better support services.

198 UK Parliamentary Papers (1906), *Report of the Departmental Committee on Vagrancy*, cd 2852, p.14

199 Home Office (1976), *Report of the Working Party on Vagrancy and Street Offences*, HMSO: London, p.5

200 Data provided by Professor Nick Crowson: Home Office, (1975), *Criminal Statistics 1974*, London, Cm 6168, pp. 68-9; and HC Deb 16 Nov 1989, vol. 160

The history of the Act shows that it was, and still is, an overreaching piece of law that was originally intended to punish 'vagrants' more harshly as a way to move them away from their 'way of life'. We know now that enforcement without any form of support can cause problems and does not bring about the behaviour change the Act was originally intended to encourage. Instead, there is evidence that it can push people further away from support and cause frustration, further damage to the person, and wasted resources.

The Act is out of step with modern policing and does not support effective joint working between support partners and the police. Beyond that practical complaint, the Act is also unjust in its application, with people subject to penalties due to trauma, vulnerability and the structural factors that already put them at a higher risk of sleeping rough and begging. These factors include the shortage of affordable housing, the lack of widespread availability of support services to meet their needs, and broader socio-economic problems.

In making any change to the Vagrancy Act, England and Wales would merely be following Scotland's legal and policing precedent that rough sleeping and begging are in themselves not crimes but that anti-social behaviour can be addressed through better support and reliance on more up to date legislation.

Criminality that causes harm and distress needs to be addressed. The chapter of this report which is based on legal advice makes clear that any behaviour that society would wish to criminalise is covered adequately by more modern legislation. However, police forces need to be confident that they have the most effective powers available when they are needed to carry out their roles.

This newer legislation requires the impact of the behaviour on others to be a material factor, so that engaging in the behaviour defined by section 3 or section 4 of the Act is not an offence in itself. This is in line with policing in many parts of England and Wales, wherein a 'stepped' approach is adopted wherever possible, ensuring that referral to support is considered well before any question of criminality.

There is merit to considering whether this option could be combined with 'reform', if there are cases where the view of authorities is that they might still need additions or amendments to existing legislation to make it more fit for purpose alongside repeal of the Vagrancy Act. Of course, any such provisions would need to be scrutinised to ensure they meet the principles and evidence of what works to end rough sleeping and begging; and should not recreate any of the shortcomings of the Act that this report has considered.

### Conclusion: scrapping the Act

This report contends that people who are sleeping rough or begging – or both – should not be punished for the problems that they are experiencing. Expert outreach teams, working alongside health, housing and other agencies, are best placed to resolve street homelessness and associated issues and behaviours. Assertive, persistent, but also trauma informed outreach, when matched with offers of housing and ongoing support have all been shown to have the greatest chance of success. We know from research that for some people:

**"When combined with suitably tailored and intensive support, however, enforcement can be effective in deterring someone from begging or sleeping rough and encouraging them to**

**accept help. In such instances, enforcement acts as an effective prompt for reflection and change."**<sup>201</sup>

The Vagrancy Act does nothing to help bring about these changes. Where local police are asked to respond to homelessness and rough sleeping, it is of course vital that they consider the needs of communities, residents and businesses in the round. We contend that criminalisation is not appropriate in most of these circumstances and police should not be tasked with working alone – without the help of outreach services – to simply move people on or arrest them. This approach does not tackle the problems people have, and there is evidence that it can also push people further from the help they need.

Where long-term street homelessness risks harm and distress to the wider community, this needs to be addressed carefully and with a flexible, patient and assertive approach that is mindful of the trauma that people in this situation have experienced. Where genuinely anti-social behaviour is taking place, this should be dealt with and enforcement plays a crucial role, alongside offers of housing and support for those that need it. Of course, where people are engaged in genuine crime, such as drug dealing, harassment or intimidation, this should be taken seriously and dealt with by the police.

People who are rough sleeping and/or begging have quite straightforward asks: "to be acknowledged, to have somewhere safe to live, to have more money, to sort out money problems, to have good relationships, to be in work, and to have support."<sup>202</sup> Likewise, wider society has an interest in making sure that every person has a stable

home and the support they need to rebuild their life. By improving the support available to people this can happen.

The question of what to do about the Vagrancy Act is much more than just a legal matter. It represents a judgement delivered on society's treatment of some of its most vulnerable members over almost 200 years. That judgement reflects poorly on the way society continues to treat visible poverty, trauma and vulnerability. It also reminds us that we are not doing what works to end begging and rough sleeping. People experiencing one of the most visible and extreme forms of homelessness must have support and housing to move away from the streets for good. By scrapping the Act we can move on from an outdated piece of legislation, putting efforts and resources instead into providing the support and housing that people need.

201 Johnsen, S (2016), *Enforcement and interventionist responses to rough sleeping and begging: opportunities, challenges and dilemmas*, ESRC p.3

202 Ibid. p.5



## Appendix 1: Roundtable discussion on repeal

### 24 April 2019, UK Supreme Court

#### Attendees

- Lord Bernard Hogan-Howe QPM (chair)
- Alex Osmond, Research Co-ordinator, The Wallich
- Andrew Neilson, Director of Campaigns, the Howard League for Penal Reform
- Arfon Jones, Police and Crime Commissioner for North Wales
- Baljit Ubhey, Director of Prosecution Policy and Inclusion, Crown Prosecution Service
- Cuchulainn Sutton-Hamilton, Research Officer, Crisis
- Eddie Smithwick, Association of Police and Crime Commissioners
- Chief Inspector Geraint White, South Wales Police
- Kathleen Sims, Head of Outreach, St Mungo's
- Deputy Assistant Commissioner Laurence Taylor, National Police Chiefs Council lead on homelessness and anti-social behaviour; and Metropolitan Police
- Matt Downie, Director of Policy and External Affairs, Crisis
- Matthias Kelly QC SC
- Mike Schwarz, Senior Consultant, Bindmans LLP
- Prof. Nick Crowson, Professor of Contemporary British History, Birmingham University
- Nick Morris, Policy and Communications Manager, Crisis
- Chief Superintendent Rob Jones, Metropolitan Police
- Rosie Downes, Campaigns Manager, Crisis
- Simon Trevethick, Senior Media Officer, Crisis

#### Observers

- Georgina Manley, Ministry of Housing, Communities and Local Government
- Hannah Hart, Devon and Cornwall Local Criminal Justice Board
- John Hall, Director, Ministry of Housing, Communities and Local Government
- Liv Edwards, Ministry of Housing, Communities and Local Government

## Appendix 2: Legal advice from Mike Schwarz, Bindmans LLP

### CRISIS AND ALTERNATIVES TO THE VAGRANCY ACT 1824 –

#### 1. INTRODUCTION

2. We have been asked by Crisis to provide an opinion on the extent to which the actions criminalised by the Vagrancy Act 1824 ('VA') may now be covered by other provisions of the criminal law.
3. This note also touches upon police powers. It does not cover in any detail civil law or injunctions other than where breach of an injunction might lead to criminal liability. It is limited to the law in England and Wales.
4. We make no comment on the rights and wrongs, politically, of the criminal law or even likely areas of legal challenge to the VA or other parts of the criminal law.
5. The approach we have taken in this note is as follows. First, we have identified, in the table below, those provisions which remain (following repeals) of the VA which create criminal offences. We have also identified other criminal law, primarily legislation, which may be relevant to the particular activity criminalised by the VA. However, it appears that the principal relevant legislation which may apply to any or all of the VA is the Anti-Social Behaviour, Crime and Policing Act 2014 (the 'AS Act') and so we deal with its provisions more fully, below the table. Finally, we make some concluding comments on linked issues.
6. We have not compared maximum sentences available under the legislation referred to.
7. The Anti-Social Behaviour, Crime and Policing Act 2014 (the 'AS Act').
8. The primary legislation which may be deployed to control and criminalise behaviour currently covered by the VA appears to be the AS Act. There are a number of key powers and provisions which may apply and these are summarised below.
9. The powers are triggered by some key criteria being satisfied, the terms (a) anti-social behaviour (b) conduct likely to cause harassment, alarm or distress (c) conduct likely to have a detrimental effect on the quality of life of others in a locality. The definition of each of these criteria is developed, below.
10. Injunctions for anti-social behaviour<sup>203</sup>

203 Part 1 of the AS Act - <http://www.legislation.gov.uk/ukpga/2014/12/section/1/enacted>

**Table 4. Relevant alternative legislation to the Vagrancy Act**

Section of the Vagrancy Act	Current offence from Vagrancy Act	Some alternative offences in other legislation	Link to relevant legal material	Comment
3	Wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do.	Obstruction of the highway if public pavement, road or right of access (s137 Highways Act 1980)  General criminal law principles such as joint enterprise, conspiracy, encouragement apply to substantive offences. E.g. s 44-45 Serious Crime Act 2007 creates offence of 'encouraging' another to commit an offence.	S137 Highways Act 1980 - <a href="https://www.legislation.gov.uk/ukpga/1980/66/section/137">https://www.legislation.gov.uk/ukpga/1980/66/section/137</a>  S44-45 of Serious Crime Act 2007- <a href="https://www.legislation.gov.uk/ukpga/2007/27/part/2">https://www.legislation.gov.uk/ukpga/2007/27/part/2</a> .	It is a defence to obstruction of the highway to show it was 'reasonable' (with 'lawful authority or excuse').  For offences on private land, see aggravated trespass etc. see below.
4	Wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon and not giving a good account of himself or herself.	Power to remove trespassers present on land for the purposes of residing there and offence of failing to leave such land (s61 CJPOA) Aggravated trespass if private land (s68 CJPOA) Police power to direct trespassers to leave (s69) Power to remove unauthorised campers (s77 CJPOA)  Burglary is trespass on a building with intent to steal, cause damage or commit a serious assault (s9 Theft Act 1968).  Adverse occupation of residential premises – i.e. trespassing on 'residential premises' (this includes a building or any land ancillary to a building, including a garden) to which a 'displaced residential occupier' or 'protected intending occupier' seeks possession (s7 Criminal Law Act 1977)	Criminal Justice and Public Order Act 1994 (CJPOA) - <a href="https://www.legislation.gov.uk/ukpga/1994/33/contents">https://www.legislation.gov.uk/ukpga/1994/33/contents</a> . S68 - <a href="https://www.legislation.gov.uk/ukpga/1994/33/section/68">https://www.legislation.gov.uk/ukpga/1994/33/section/68</a> .  Theft Act 1968, burglary - <a href="https://www.legislation.gov.uk/ukpga/1968/60/section/9">https://www.legislation.gov.uk/ukpga/1968/60/section/9</a> .  S7 Criminal Law Act 1977 - <a href="http://www.legislation.gov.uk/ukpga/1977/45/section/7">http://www.legislation.gov.uk/ukpga/1977/45/section/7</a> .	Note s61 applies only to two or more trespassers and does not apply to buildings.  Note that aggravated trespass offences require a suspect to do something more than trespass - i.e. an act intended to disrupt another's lawful activity, and that activity is happening or is about to happen.  Note comment in R v CPS [2008] 1 Cr App R 8, that a prosecution under s4 VA 'is and should be a choice of last resort for a prosecutor when seeking to mark suspicious conduct'.
4	Wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms.	Threatening words or behaviour or disorderly behaviour (or display of any sign or other visible representation which is threatening) within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby (s5 POA).	S5 Public Order Act 1986 ('POA') - <a href="https://www.legislation.gov.uk/ukpga/1986/64/section/5">https://www.legislation.gov.uk/ukpga/1986/64/section/5</a> .	Query: Might Equalities Act 2010/Article 14 of ECHR read with some other Convention right apply to reduce the scope of the VA offence?  There is a defence to the public order offence if one's actions were 'reasonable'.
4	Going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence.	Fraud includes dishonestly making a false representation, and intending by doing so to make a gain to oneself or cause loss to another.	S2 Fraud Act 2006 - <a href="https://www.legislation.gov.uk/ukpga/2006/35/section/2">https://www.legislation.gov.uk/ukpga/2006/35/section/2</a>	
4	Being found in or upon any dwelling house, warehouse, coach-house, stable, or outhouse, or in any enclosed yard, garden, or area, for any unlawful purpose.	See above – s4 offence of lodging in any barn or outhouse, deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon.	Ditto – see s4 offence.	Note, this offence includes the phrase 'for any unlawful purpose'. In R v CPS (above) the court ruled that this should be restrictively interpreted to mean that the defendant should be 'then and there about to commit an offence'.

11. A court may grant an injunction if satisfied that a person has engaged or threatened to engage in anti-social behaviour. 'Anti-social behaviour' is defined<sup>204</sup> as (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person, (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or (c) conduct capable of causing housing-related nuisance or annoyance to any person. An injunction can prevent that person engaging in anti-social behaviour or impose positive obligations on them. Breach of an injunction is not a criminal offence.
12. Criminal behaviour orders ('CBO')<sup>205</sup>
13. Where a defendant has been convicted of a criminal offence, the court may, when sentencing, impose a CBO. The court may do so if satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress<sup>206</sup> to any person and that the order will help in preventing the offender from engaging in such behaviour. The CBO can prevent the respondent from engaging in anti-social behaviour or impose a positive obligation on them to do something specific. Breach of such an order is a criminal offence.
14. Dispersal powers<sup>207</sup>
15. The police have the power to direct a person who is in a public place in a specified area to leave the locality and not to return for up to 48 hours. These powers may be exercised where the police are satisfied that applying these powers in any given locality to individuals may remove or reduce the likelihood of members of the public in the locality being harassed, alarmed or distressed, or the occurrence in the locality of crime or disorder. An officer may also direct that person to surrender any item in the person's possession that may be used in behaviour that might harass, alarm or distress members of the public. It is a criminal offence not to comply with a direction.
16. Community protection notices ('CPN')<sup>208</sup>
17. The police and local authorities may impose a CPN on an individual if satisfied that the conduct of the individual is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and that the conduct is unreasonable. A CPN can require a person to do and to stop doing specific things where those steps are reasonable to tackle the identified detrimental effect. It is a criminal offence not to comply with a CPN.
18. Public space protection orders ('PSPO')<sup>209</sup>
19. A PSPO can be imposed by a local authority if it is satisfied that activities carried on in a public place within the authority's area have had a detrimental

effect on the quality of life of those in the locality, or it is likely that activities will be carried on in a public place within that area and that the effect of these activities will be: persistent or continuing, make the activities unreasonable, and justifies the restrictions imposed by the notice. A PSPO identifies the area to which it applies, the person(s) to whom it applies, the times during which it applies and the circumstances in which it applies. It is a criminal offence to fail to comply with a PSPO.

#### 20. Miscellaneous points

21. The definition of all offences must, of course, be read so that they are compatible with the Human Rights Act 1998 (incorporating the European Convention on Human Rights). So if/where the VA and other more modern alternative legislation is not compatible in its application to a particular defendant with one of that defendant's rights, the defendant's actions will not amount to a criminal offence. Relevant rights may, of course, include the right to privacy / family life (article 8), assembly and association (article 11). Conversely, the legislation must also be read so it is compatible with property owners' rights, notably to the peaceful enjoyment of possessions and property (article 1 of protocol 1).
22. We have been asked if the VA is required in order to assist the police to gain access to property in instances of domestic violence. The police have several more modern and mainstream powers to enter property. First, there is section 17 of the Police and Criminal Evidence Act 1984.<sup>210</sup> This preserves<sup>211</sup> the common law power of police to deal with a 'breach of the peace'. A breach of the peace occurs 'whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed...through ...[a] disturbance'.<sup>212</sup> The police may take action where a breach of the peace is occurring, has occurred and is likely to be renewed and is about to occur. The police are entitled to take 'reasonable steps' to prevent the breach of the peace and these steps may include, among other things, entering property, detaining an individual and arrest.
23. We have also been asked if the VA is required, more generally, to assist the victims and police protecting the interests of victims of domestic violence where there has been harassment and stalking, especially near the victim's home. The Protection from Harassment Act 1997 ('PHA')<sup>213</sup> contains a panoply of powers to deal with such situations – e.g. the creation of the offence of stalking, the power of courts to impose injunctions and for the police to arrest and the CPS to prosecute those who breach such injunctions and then for courts to convict and impose restraining orders (even in the event of an acquittal).
24. Note, even if a criminal offence of any kind might have taken place, the Crown Prosecution Service must apply the twofold test set out in the Code for Crown Prosecutors – (a) is there enough evidence to prosecute and (b) is it in the public interest to prosecute.<sup>214</sup> The public interest test includes criteria which, applied to the homeless/ those begging, it may be argued

204 S2 of the AS Act. See also the police's own definition of anti-social behaviour - <https://www.police.uk/crime-prevention-advice/anti-social-behaviour/>. For the courts' view see eg R v Janes [2016] EWCA Crim 676.

205 Part 2 of the AS Act - <http://www.legislation.gov.uk/ukpga/2014/12/part/2/crossheading/criminal-behaviour-orders/enacted>

206 For examples of the courts' definitions of these terms see eg Chambers and Edwards v DPP [1995] Crim LR 896 an Southard v DPP [2006] EWHC 3449 Admin

207 Part 3 of the AS Act - <http://www.legislation.gov.uk/ukpga/2014/12/part/3/enacted>

208 Part 4, Chapter 1 of the AS Act - <http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/1>

209 Part 4, Chapter 2 of the AS Act - <http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2>

210 <https://www.legislation.gov.uk/ukpga/1984/60/section/17>

211 Ss(6)

212 R v Howell, [1982] QB 416, 427, CA.

213 <https://www.legislation.gov.uk/ukpga/1997/40/contents>

214 See CPS guidance: [https://www.cps.gov.uk/sites/default/files/documents/publications/code\\_2013\\_accessible\\_english.pdf](https://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf)



should militate in favour of taking no action or no prosecution – e.g. how serious is the offence, the ‘level of culpability of the suspect’, ‘harm’ to ‘the victim’, whether the alleged offender was under 18, ‘what is the impact on the community’, ‘Is prosecution a proportionate response?’.

#### 25. Conclusions

26. We are asked for our opinion on whether there is sufficient legislation, other than the VA and particularly in relation to substantive criminal offences, for the authorities<sup>215</sup> to act on any concerns they may have to deal with rough sleeping.
27. We suggest that the following four questions provide a useful framework with which to consider this issue.
28. – whether and to what extent the mischief addressed in the discrete remaining VA offences<sup>216</sup> are satisfactorily regulated by the discrete, subsequent offences;<sup>217</sup>
29. – whether the criteria which trigger the authorities’ powers in the AS Act<sup>218</sup> adequately reflect the conduct and impacts of that conduct which need to be addressed;
30. – whether the wording of the VA offences adds anything to these criteria;
31. – whether the authorities’ powers, once triggered when the criteria are met, adequately address this conduct.
32. It is our view that the remaining provisions of the VA are now obsolete, tested against this framework.
33. They are obsolete in a number of ways. Much of the language is archaic. The conduct it seeks to criminalise appears to belong to a different era. It narrowly defines, and then criminalises that conduct. It does not expressly put at the forefront of the authorities’ considerations the impact of the conduct on others, or indeed the interests, motivations and/or circumstances of the alleged offender.
34. Others, better versed than us in the sensitive and complex policy issues around homelessness and its causes, impacts and controls, may be better placed to make this assessment, but it appears to us that the regulation, through the criminal law, of rough sleeping requires a different type of legislation. Its features should include the following. It should (a) provide discretion to the police, local authorities and prosecutors as to whether and how to act against rough sleepers (b) focus, when exercising that discretion, on the impact of their actions on others (c) calibrate responses, the last and most extreme being the application of the criminal law and (d) enable the courts, when trying cases and setting precedent and providing guidance on a criminal appeal or on a judicial review, to put in the balance the interests of the homeless and poor.

<sup>215</sup> By ‘authorities’ we mean the police, local authority, prosecutors, courts and others.

<sup>216</sup> Set out in the table, above, first and second columns.

<sup>217</sup> Set out in the table, third, fourth and fifth columns.

<sup>218</sup> Listed at para 10, above.

35. Legislation other than the VA, if correctly and carefully applied, provides a better and modern framework than the VA within which the perceived mischiefs identified by what remains of the VA, can be addressed. Better still, in addition to repeal of the VA, legislation in the area of homelessness could be looked at again and revamped to reflect the wider social issues its regulation raises.

**Mike Schwarz, Bindmans LLP, 22.4.19**

## Appendix 3: Draft Vagrancy (Repeal) Bill presented by Layla Moran MP (7 February 2018)<sup>219</sup>

### 1. Vagrancy Act 1824 (Repeal)

The Vagrancy Act 1824 is hereby repealed.

### 2. Consequential amendments

(1) Section 70 of the Criminal Justice Act 1982 (Vagrancy offences) is hereby repealed.

(2) Section 20 of the Criminal Justice Act 1967 (Power of magistrates' court to commit on bail for sentence) is hereby repealed.

(3) In section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 (Committal for sentence in certain cases where offender committed in respect of another offence) omit paragraph (4)(a).

(4) In section 43 of the Mental Health Act 1983 (Power of magistrates' courts to commit for restriction order) omit subsection (5).

### 3. Extent, commencement and short title

(1) The provisions of this Act have the same extent as the provisions being repealed or amended.

(2) This Act comes into force on the day on which it is passed.

(3) This Act may be cited as the Vagrancy (Repeal) Act 2018.

<sup>219</sup> Parliament, House of Commons (2018), *Vagrancy (Repeal) Bill* (Bills 2017-19 162). London: The Stationery Office. Online <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0162/18162.pdf> (licensed under the Open Parliament Licence v3.0).

