

Written evidence submitted by Dr Vicky Heap, Dr Alex Black, Benjamin Archer, Dr Dario Ferrazzi and Richard Lynch to the Criminal Justice Bill Public Bill Committee (CJB45)

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Criminal Justice Bill: call for evidence

Written evidence submitted by Dr Vicky Heap, Dr Alex Black, Benjamin Archer, Dr Dario Ferrazzi and Richard Lynch (all Sheffield Hallam University)

Executive Summary

- This response addresses the following sections of the proposed Criminal Justice Bill: powers of the police etc, drug testing powers (S15-17), nuisance begging/rough sleeping (S38-64), anti-social behaviour tools and powers including Dispersal Orders, Community Protection Notices (CPNs), Public Spaces Protection Orders (PSPOs), and Fixed Penalty Notices (FPNs) (S65-71), and crime and disorder strategies (S72).
- The proposed drug testing powers (S17-19) create the possibility for street-based testing. There is evidence to suggest this may negatively impact vulnerable groups and desistance journeys away from crime. Mitigating these risks through piloting and evaluation should be a high priority.
- Our research suggests the proposed nuisance begging and rough sleeping powers (S38-64) are unlikely to deter, prevent, or stop anti-social behaviour (ASB) associated with people experiencing street homelessness. Enacting these powers will further erode trust and engagement with policing bodies and short-cut individuals into the criminal justice system.
- For Dispersal Orders (S60), the proposed extension to the maximum period the orders can operate will only serve to exclude vulnerable groups from public spaces, according to our research.
- Our extensive research into CPNs suggests that reducing the minimum age a person can receive a notice to 10 (S67) will not be appropriate. Measures that already exist provide greater opportunities for intervention with more robust due process protections for young people.
- Providing police powers to make PSPOs and Expedited Orders (S68) is likely to reinforce existing tensions with partnership working, which have been found in our research. This relates to transparency and communication, as well as resourcing.
- Increasing the value of a FPN to £500 (S70) is excessively coercive for the most vulnerable people in society, who we know are subject to this sanction. Our research highlights that FPNs do not act as a deterrent, nor do they prevent ASB from occurring. If individuals cannot pay £250, they will not be able to pay £500.
- We have concerns regarding the integration, oversight, and formalisation of the relationship between Community Safety Partnerships and Police and Crime Commissioners. Improved regulatory frameworks are welcome to drive consistency, but the provisions do little to safeguard third-sector organisations. Furthermore, we suggest caution with the use of hotspot enforcement and the inclusion of housing-related support.

- None of the powers identified above have yet been robustly evaluated to assess their effectiveness at tackling the problems they intend to address. Until this has been done, there is no evidence base to suggest the proposed changes would be of benefit.
- We have provided nine evidenced based recommendations to reform the Bill.

1. Introduction

1.1 We are academics from the [Helena Kennedy Centre for International Justice](#), a leading centre for social justice and human rights. Based within the Department of Law and Criminology at Sheffield Hall am University, our multi-disciplinary team combines research expertise from the fields of anti-social behaviour, law, policing, and community safety.

2. Powers of the police etc (S15-17)

2.1 Drug testing powers

S15-17 extends the scope for police drug testing to a greater range of offences and drug types and from a controlled environment to upon detention, which would include on arrest. This would allow testing on the streets which would bring a range of challenges for officers that are not apparent from current driving related drug testing. A requirement for testing within a police vehicle or mobile facilities may mitigate the risks.

2.2 The range of people brought into policing contact is far more diverse and complex with street-based drug testing. This may be in terms of age/youth and the complexity of social problems experienced, especially for people subject to homelessness (Black & Heap, 2022; Heap, Black & Rodgers, 2021). Heap and Black have shown some of the challenges that vulnerable groups may experience when subject to ASB related policing practices. There are clear links with police legitimacy and procedural justice in the effectiveness of such interventions.

2.3 The way in which police officers on the street respond to suspects may impact upon their desistance journeys away from crime (Schinkel, Atkinson & Anderson, 2019). The discretion with which officers act is wide and will lead to variable effects. Vulnerable groups connected with ASB are likely to have multiple and complex needs. Introducing drug testing into this context may alienate people and bring conflict. Furthermore, drug use is likely to be one of many issues that need addressing.

Recommendation 1: S15-17 extension to drug testing must be fully piloted to ameliorate the risks highlighted, especially to vulnerable groups, as was done with the original custody suite processes. Priority should be given to police partnership working with street homelessness services to access community assets (Paterson & Best, 2016).

3.Nuisance begging/rough sleeping (S38-64)

3.1 Nuisance begging etc (S38-50)

Based on our recent research with people experiencing street sleeping homelessness within PSPO areas, the proposals to tackle nuisance begging are unlikely to change behaviour and instead increase the criminalisation (Heap, Black & Devany, 2022a).

3.2 Many of our participants engaged in begging-related activities which were responded to by police officers, local authority officers, and wardens through informal enforcement (e.g. being 'move on'), and more formal enforcement action through either the PSPO, a Dispersal Order, or the Vagrancy Act 1824 (or a combination of the three). However, the threat of, or actual, enforcement action did not deter our participants from begging and therefore did not affect the perceived "detrimental effect" that their behaviour had on the community. It also did not solve the problems faced by people experiencing street homelessness (e.g. destitution/poverty/addiction). See pages 69-75 in our report Heap, Black & Devany, (2022a) and also Saunders and Albanese (2017). On that basis, issuing an individual with a nuisance begging prevention notice or order will likely make no difference to their personal circumstances. It will chiefly serve as a shortcut into the criminal justice system, as our other research on Community Protection Notices (CPNs) details (Heap, Black & Devany, 2023; Heap, Black & Rodgers, 2023)

Recommendation 2: S38-50 on nuisance begging should be removed from the Criminal Justice Bill because our evidence suggests that enforcement action does not deter or prevent begging and only serves to criminalise people experiencing street sleeping homelessness.

3.3 Nuisance rough sleeping etc (S51-62)

Our research into the policing of people experiencing street sleeping homelessness within PSPOs demonstrated the physical and emotional impacts of both informal and formal enforcement action (Heap, Black & Devany, 2022a).

3.4 In brief, the quality of the interactions between our street sleeping participants and policing bodies varied dramatically. From the accounts of our participants, police officers and police community support officers were the frontline officers most frequently interacted with, and they also were the ones where incidents of disrespect, verbal, and physical abuse were most common. See pages 91-98 of our report for more details (Heap, Black & Devany, 2022a).

3.5 Many participants expressed a feeling of being on edge and not being able to relax due to the expectation of being told to move on. Some participants felt resigned to being constantly policed, with little solution available because of their complex needs, e.g.

addiction. This ultimately outweighed any deterrent effect of the policing powers. Our participants also expressed injustice and anger at their perceived unfair treatment, particularly when behaviours undertaken by non-homeless people were not subject to the same scrutiny (e.g drinking alcohol). The antagonistic nature of the relationships between our participants and policing bodies often resulted in precipitating more ASB as a reactionary form of resistance (e.g. deliberate urination in public), thus generating a counterproductive spiral of ASB. Overall, these emotional impacts created a barrier to establishing positive relationships that could lead to otherwise meaningful outcomes. See pages 98-108 for greater detail (Heap, Black & Devany, 2022a).

Recommendation 3: S51-62 on nuisance rough sleeping should be removed from the Criminal Justice Bill because our evidence demonstrates that the policing of people experiencing street homelessness can cause physical and emotional harm, which ultimately does not lead to the prevention of rough sleeping.

Recommendation 4: ‘Guidance for the use of tools and powers from the Anti-Social Behaviour, Crime and Policing Act 2014 with people experiencing street homelessness’, which was produced by us alongside the charities Crisis, ASB Help, and consultancy Janine Green ASB should be utilised when considering how to manage street sleeping populations. See Heap, Black and Devany (2022b).

4. Anti-social behaviour tools and powers (S65-71)

4.1 Maximum period of certain directions, notices and orders (S66)

Extending the length of dispersal orders, from 48 to 72 hours, will do little more than extend the period of time from which vulnerable citizens can be displaced from public spaces. Archer (forthcoming), spoke to 32 participants (comprising local authority employees, police officers, and elected officials) in nine case study areas around the implementation, enforcement, and perceived effectiveness of PSPOs.

4.2 When comparing the perceived effectiveness of PSPOs against other powers to address ASB, practitioners perceived dispersal notices to only be useful in circumstances where they provided immediate, short-term displacement, to perpetrators accused of conducting ASB. In doing so, they recognised that dispersals were often ineffective in addressing underlying issues that generated such conduct (often behaviours which are undertaken by people experiencing street homelessness), compared to the long-time, supportive impact that a PSPO could potentially have. Home Office (2023) research with police officers uncovered similar findings, noting that short-term dispersals should be accompanied by long-time solutions towards understanding and addressing ASB.

Recommendation 5: S66 of the Criminal Justice Bill should be removed unless evidence is provided to demonstrate that increasing the length of time for dispersal orders, from 48 to 72 hours, will have a significant impact on decreasing levels of ASB, beyond mere displacement of vulnerable individuals.

4.3 Community protection notices: minimum age (S67)

The proposed change to reduce the age an individual can receive a CPN to 10 is likely to over criminalise certain individuals, reduce the due process provisions and protections necessary for young people and will likely further erode relationships between families in need and authorities (Black & Heap, 2022; Heap et al 2023).

4.4 In our research into both practitioners' use of CPNs and recipients' experiences of CPNs, we found CPNs were issued for a widening range of behaviours, and often with no specified end date (Black & Heap, 2022). The legislation allows CPW/CPNs to be issued through the post, which is a common practice. For recipients this resulted in a range of communication challenges and an inability to clarify, query or dispute its issuing (Heap, Black & Rodgers, 2021). This practice should therefore not be used with young people aged 10 or above who may struggle to understand and therefore comply with their requirements.

4.5 CPNs, unlike a caution, can be issued with no admission of guilt. Recipient's felt this to be unfair and caused significant stress and reduced their perceptions of legitimacy of the issuing authority (Heap, Black & Rodgers 2021). If applied to young people this lack of admission or proof of guilt will reduce the opportunity for meaningful engagement with young people to take responsibility for any ASB caused. In addition, other tools already available to practitioners have a much more rigorous process for responding to young people, such as the civil injunction which requires consultation with YOTs. CPNs in their current form do not have this provision. Practitioners liked the ease at which CPNs could be issued (e.g out of court) (Heap et al 2023). This may mean they become the preferred method when engaging with young people, bypassing other due process protections that a tool such as the civil injunction may afford.

Recommendation 6: S67 suggesting the minimum age for receiving a CPN move from 'aged 16' to 'aged 10' be removed from the Criminal Justice Bill as our evidence demonstrates that the process is not appropriate for young people, that more rigorous legal responses with greater due process protections already exist and that the risk of over criminalising young people is high.

4.6 Police powers to make public spaces protection orders and expedited orders (S68)

The proposed changes to the public bodies that can issue PSPOs, from local authorities alone to the inclusion of police officers, is unlikely to resolve current issues surrounding partnership working between these two organisations, which is vital to its success at managing ASB.

4.7 In Archer's research (forthcoming), there were ongoing issues regarding transparency and communication in the implementation of PSPOs by local authorities. For instance, owing to the statutory duty for local authorities to consult only with the chief of police and local policing body (often the Police and Crime Commissioner), front-line police officers were generally not afforded an opportunity to present their views about a proposed PSPO. Subsequently, one area contained a PSPO with a prohibition on excessive noise that police officers were uncomfortable in enforcing; such behaviour, and experiences of victimisation, went unpunished.

4.8 Further issues surround the expectation of personnel resourcing that accompany the introduction of a PSPO. In several areas, local authorities relied on police officers to enforce their PSPOs. In turn, this resulted in frustration from police officers around the lack of enforcement from local authorities and pressure that they faced towards enforcement. Consequently, sub-criminal ASB was often insufficiently responded to whilst police officers responded to 'serious' crime.

Recommendation 7: In order to solve the issues around partnership working, S68 of the Criminal Justice Bill should instead be replaced with a statutory obligation for local authorities to consult with front-line workers prior to the introduction of a PSPO, and a greater emphasis on partnership working should be operationalised within the accompanying Home Office guidance.

4.9 Fixed penalty notices (S70)

Increasing the value of a fixed penalty notice (FPN) may be overly coercive for those most vulnerable groups that we know are subject to this sanction. Without any evaluation of the deterrent effect of an FPN, it appears unnecessary and overly punitive. For practitioners in Archer's (forthcoming) research, issuing an FPN was seen as a "last resort" in addressing the incidence of ASB, due to the sub-criminal element; alongside a recognition that recipients would often be those who lacked the financial means to pay such penalties. Heap, Black and Devany's (2022a) research conducted with people experiencing street homelessness demonstrated that FPNs were not paid. Non-payment of fines resulted in a court summons and an additional court fine, which was again not paid. Nor did the fines act as a deterrent or prevent the behaviours occurring. There is no evidence to suggest that increasing the fine would have any better deterrent effect for this vulnerable group.

4.10 For all groups, a higher fine increases the potential for escalation on non-payment. In Archers (forthcoming) research, circumstances where FPNs were not paid, prosecution within the criminal justice system was pursued, either through the PSPO or, as evidence to support the issuing of a Criminal Behaviour Order (CBO). CBOs are criminal in their nature, carrying a punishment of imprisonment for breach. Therefore, increasing the financial penalty of an FPN will likely increase the number of vulnerable citizens who are unable to pay such penalties, and therefore risk criminalisation and even imprisonment for initially conducting sub-criminal behaviour.

Recommendation 8: S70 of the Criminal Justice Bill should be removed unless substantial evidence is produced to demonstrate that an FPN of £500 is sufficient in deterring ASB and will avoid unnecessarily criminalising some of the most vulnerable citizens in society.

5. Crime and Disorder Strategies (S72)

5.1 PCCs/CSP links

With respect to the recommendations made under S72, and the amendments to Section 6 of the Crime and Disorder Act 1998, there are concerns regarding the integration and oversight established by these measures and the formalisation of the relationship between CSPs and PCCs. Discussions concerning the introduction of further regulatory frameworks do not go far enough towards safeguarding third-sector organisations. Extensive academic research has indeed refuted that CSPs and PCCs are functioning effectively, and that they holistically account for the multifaceted nature of ‘problems’, and considering communities needs and vulnerabilities as part of their problem resolution (see, for example: Crawford, 2001; Crawford, 2006; Hancock, 2001; Rabaiotti and Harrison, 2023).

5.2, The ‘adoption of a hotspot enforcement approach as areas of particular interest’ needs to be more critically addressed as police data and strategies often overestimate and are over reliant on poor quality data (Buil-Gil et al., 2022). ‘Hot-spot’ practices lack standardisation and create further harm or displacement of ‘problems’ without resolving the root causes (Braga *et al.*, 2019). Building on the comments from the Chartered Institute of Housing, support derived through housing cannot be understated. However, caution must be paid as to the definition of ‘problems’, with better understanding as to the intrinsic issues linked to the policing of different kinds of housing (e.g. socially rented vs privately rented/owned). More work needs to be carried out towards creating more cross-tenorial mechanisms to explore and safeguard the interest and vulnerabilities of all households (Ferrazzi, 2022; Ferrazzi and Atkinson, forthcoming)

Recommendation 9: S72 of the Criminal Justice Bill should be reviewed in light of overwhelming evidence and support that the effectiveness of the CSP is based on greater consultation with its current participating organisations, not with greater oversight from

statutory organisations. Additional review should be instigated to explore current gaps in evidence and standardisation in the organisation and operation of CSPs and PCCs across the country, particularly within the context of housing, with the immediate view of improving current knowledge of local problems and the needs of communities.

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