

Understanding how Community Protection Notices are used to manage anti-social behaviour attributed to people experiencing street homelessness

HEAP, Vicky <<http://orcid.org/0000-0003-4311-1758>>, BLACK, Alexandra <<http://orcid.org/0000-0002-5910-0108>> and DEVANY, Chris

Available from Sheffield Hallam University Research Archive (SHURA) at:

<https://shura.shu.ac.uk/31308/>

This document is the Published Version [VoR]

Citation:

HEAP, Vicky, BLACK, Alexandra and DEVANY, Chris (2023). Understanding how Community Protection Notices are used to manage anti-social behaviour attributed to people experiencing street homelessness. *People, Place and Policy (PPP)*, 17 (1), 1-17. [Article]

Copyright and re-use policy

See <http://shura.shu.ac.uk/information.html>

Research article

Understanding how Community Protection Notices are used to manage anti-social behaviour attributed to people experiencing street homelessness

Vicky Heap^{1*}, Alex Black¹ and Chris Devany²

¹ Department of Law and Criminology, Sheffield Hallam University

² Vulnerability and Policing Futures Research Centre, University of York

Abstract

Community Protection Notices (CPNs) were introduced in England and Wales by the Anti-Social Behaviour, Crime and Policing Act (2014) to tackle anti-social behaviour (ASB) which 'spoils the community's quality of life'. The notices can prevent and/or require specific actions by the recipient where the behaviour in question has a 'detrimental impact on the quality of life of those in the locality'. Breach of the notice incurs a £100 fine through a Fixed Penalty Notice or a possible criminal conviction. CPNs are issued by individual officers without the need to go to court and a low evidential threshold is employed. Almost any behaviour can be sanctioned by a CPN and they are being used to address ASB attributed to people experiencing street homelessness by prohibiting behaviours such as begging, the creation of sleeping structures, and street drinking. This article draws on empirical evidence generated through a qualitative study conducted across four case study areas in England between 2019 and 2021. We use Lipsky's (2010) work on street-level bureaucracy and Tyler's (2006) theory of distributive fairness as lenses to explore how frontline practitioners use CPNs within a homelessness context. The findings demonstrate divergent uses of the notices, specifically in relation to the CPN issuing process, the incremental intervention approach, and enforcement for breach. This provides a unique insight into how ASB policy is being used to manage a vulnerable population and we offer three research-informed recommendations for policy and practice.

Keywords: anti-social behaviour, Community Protection Notices, distributive fairness, homelessness, street-level bureaucracy.

Introduction

This article reports the first research into how frontline practitioners use Community Protection Notices (CPNs) to manage the anti-social behaviour (ASB) attributed to people experiencing street homelessness. The study provides a qualitative insight into the notice issuing process, using Lipsky's (2010) street-level bureaucracy and the outcome component of Tyler's (2006) distributive fairness as theoretical lenses. The data presented here are from 36 interviews conducted with 30 frontline ASB practitioners and six ASB trainers across four case study areas in England. We analysed local council and police officer approaches to issuing CPNs, the incremental approach to intervention, and the punishment for breach when people experiencing street homelessness were the recipients. The research provides a significant contribution to our understanding of contemporary ASB policy in relation to the management of vulnerable populations and the implications of the divergent use of these powers, both within and between geographical areas. The research adds to the debates around the response to ASB attributed to people experiencing street homelessness and offers three empirically grounded recommendations for policy development.

Community Protection Notices (CPNs) were introduced through the Anti-Social Behaviour, Crime and Policing Act (2014) as a measure to address behaviours which 'spoil the community's quality of life' (Home Office, 2022a: 52). A CPN is a civil preventive notice for individuals aged over 16, or organisations, whose behaviour is considered to: 'have a detrimental effect on the quality of life of those in the locality'; is of a persistent or continuing nature; and is unreasonable (Home Office, 2022a: 52). This definition of ASB, which forms the behavioural test for issuing a CPN, is more vague than the legal definition of ASB, which is 'conduct that has caused, or is likely to cause, harassment, alarm or distress to any person' (Anti-Social Behaviour, Crime and Policing Act 2014, Section 2 (1a)). Thus, the behavioural threshold for a CPN is lower than previous ASB powers that utilised the legal definition. In addition, almost *any* behaviour can be captured by a CPN, as per the policy guidance which stresses the 'deliberately flexible' design of the powers under the legislation. CPNs are issued out of court by individual frontline officers from the local council, police, or registered social landlords where they have been delegated authority.

The CPN itself imposes a set of requirements for the recipient to undertake or cease certain behaviours. For example, to keep a dog on a lead, or not shout obscenities in the street. Breaching a CPN is a criminal offence, punishable by a £100 fixed penalty notice or a fine of up to £2,500 on conviction (£20,000 for organisations). Following the issuance of a CPN, recipients have 21 days to appeal to the Magistrates' Court if they contest that: the behaviour did not take place; the behaviour was not unreasonable; or that any of the requirements contained in the notice are unreasonable. If no appeal is made at the outset, a CPN could last indefinitely as there is no provision within the legislation for it to be discharged. Prior to a CPN being issued, the potential recipient is required to receive a written Community Protection Warning (CPW). This must outline the ASB in question, request the behaviour stops, and detail the consequences for non-compliance. The CPW should also indicate a timescale for the behaviour to be addressed, suggesting when a CPN may be issued. The timescales afforded to CPW recipients is at the discretion of the issuing officer. There is no legal basis to appeal a CPW, although there is evidence that some are informally dismissed (Heap et al., 2022).

Relatively little is known about how CPN policy has translated into practice, particularly because the Home Office does not scrutinise any of the powers contained in the Anti-Social Behaviour, Crime and Policing Act (2014) (Heap and Dickinson, 2018).

Freedom of Information (FOI) requests initiated by the Manifesto Club, an organisation that campaigns against the hyper-regulation of everyday life, have shed some light onto CPN issuing practices at local councils. Their reports have shown that an increasing number of local councils are issuing more CPNs. For example, 8,760 notices were issued by 202 councils in 2018/19, a significant increase from 2014/15 when 107 councils issued 3,943 notices (Manifesto Club, 2020). We also know that 22 per cent of councils in England and Wales do not issue CPNs (Heap et al., 2023), but there is no detail available about why they are not used. There is no CPN data available from the police or registered social landlords and no plans in place for data to be collected, thus the overall scale of use will likely remain unknown.

Our previous research has highlighted a range of tensions, specifically around the coercive nature of CPNs from the perspective of recipients (Heap et al., 2022). We found that CPNs appeared to be operating at the very edges of their flexibility due to the breadth of behaviours being sanctioned, varying from feeding cats in a private garden, to moving bins outside of a property. We also noted how the individual issuing officer's discretion and approach shaped the experience for recipients and resulted in very different applications, and subsequent understandings of the power. In addition, it was clear that a lack of transparency in the issuing process diminished the legitimacy of the CPN in the eyes of the recipient, rejecting the anti-social label and drawing on their identity as an 'upstanding citizen', especially those who felt compelled into compliance. Resultantly, these individuals distanced themselves from the issuing authority, which weakened trust and delegitimised the authority as a moral representative (Black and Heap, 2022). We have also reported how practitioners utilise CPNs to regulate ASB and have continued to find divergent practices, which we suggest compromises the procedural justice and distributive fairness of the issuing process (Heap et al., 2023). This was evident through the communication methods employed during the issuing of a notice, timescales for action to be taken to address the ASB, and the procedural safeguards employed. Further, a mixed picture of training provision was uncovered, which suggests many officers received little formal training. Nevertheless, CPNs were popular with practitioners, who considered them a fast and effective tool (Heap et al., 2023).

This article considers how officers utilise CPNs to manage the ASB attributed to people experiencing street homelessness. This requires scholarly attention for several reasons. First, sleeping rough does not, as a stand-alone behaviour, constitute ASB. Therefore, enforcement powers used to sanction people experiencing street homelessness have 'the potential to create new frontiers in exclusion, intolerance and criminalisation' (Heap and Dickinson, 2018: 184). Second, because the legislation is focused on 'behaviour which spoils the community's quality of life' (Home Office, 2022a: 52) CPN use is contentious in a rough sleeping context because there is a conflict between whose 'quality of life' is considered more important; that of the person experiencing street homelessness or the person who perceives the behaviour to be spoiling their community. Third, issuing a CPN to a person experiencing street homelessness where breach of the notice is a £100 fixed penalty notice appears counterintuitive as the recipient is extremely unlikely to be able to pay, making them disproportionately vulnerable to further criminal proceedings.

Subsequently, this research provides two significant and original contributions to the field. It is the first empirical work to consider the issuing of CPNs to people experiencing street homelessness, where there is currently a dearth of understanding about the processes and behavioural thresholds involved. Plus the use of Lipsky's (2010) street level bureaucracy and Tyler's (2006) distributive fairness in tandem provides a novel theoretical analysis which captures both the process and outcome dimensions of frontline ASB practice.

New Labour ASB policy and homelessness

Since specific ASB powers were introduced through New Labour's Crime and Disorder Act (1998), a limited number of studies have considered how they were used to manage behaviours associated with people experiencing street homelessness. Fitzpatrick and Jones (2005) highlighted the increasingly coercive and enforcement led approaches to the ASB attributed to people experiencing street homelessness under New Labour. They found that homelessness practitioners were divided on the use of enforcement. Whilst there could be some benefit to enforcing behavioural change, it was understood that many people will fail unless they themselves are ready to engage.

Johnsen and Fitzpatrick (2007) conducted a large-scale study in England that assessed how Anti-Social Behaviour Orders (ASBOs) and Acceptable Behaviour Contracts (ABCs) were used as enforcement measures against 'street users'. They found fewer ASBOs than expected were issued, but they brought about substantial behavioural change due to direct and indirect deterrent effects. In addition, where ASBOs were preceded by ABCs, they found positive benefits for street users, such as engagement with support services, which led to a reduction in ASB. Moore (2008) conducted an in-depth case study and explored how Dispersal Orders were used in conjunction with ASBOs to target the behaviours of a small number of 'street-life people'. Both tools were employed as a direct result of public complaints about the behaviours street-life people exhibited in that locality. Moore (2008) points out that initial results were positive, with a reduction in public complaints. However, the Dispersal Order created a displacement effect where the street-life people gathered elsewhere. Ultimately, Moore (2008) found unfavourable public attitudes towards street-life people, with the primary desire being to remove them from the locality entirely.

Coalition/Conservative ASB policy and homelessness

Since the introduction of the revised ASB powers in the Anti-Social Behaviour, Crime and Policing Act (2014) by the Conservative-Liberal Democrat Coalition government, there has been further academic interest in ASB and people experiencing street homelessness. Of the new powers, most attention has been paid to Public Spaces Protection Orders (PSPOs). PSPOs can place a range of specific prohibitions and requirements onto a defined public space, where the behaviour in question has, or is likely to have, a detrimental effect on the quality of life of those in the locality. The behaviour must also be persistent/continuing in nature, unreasonable, and justify the restrictions imposed; another wide-ranging definition that could include *any* behaviour. Breach of the order is a criminal offence, punishable by a fixed penalty notice of up to £100 or a fine on conviction of up to £1000. Most academic work in this area has taken the form of policy analyses of PSPOs. For example, O'Brien (2016: 187) draws on examples from practice to illustrate how the orders have been created to 'tackle the problem of homelessness' by removing structures associated with rough sleeping, but have been poorly written and are vague when it comes to enforcement. Brown (2017; 2020), Heap and Dickinson (2018), and Moss and Moss (2019) have all been critical about the potential of PSPOs to target vulnerable sections of society and criminalise people experiencing street homelessness.

Home Office guidance (2017) warned against creating PSPO prohibitions that target behaviours associated with people experiencing street homelessness. However, empirical work by Brown (2020) has highlighted how these types of prohibitions are prevalent. Sampling 125 local authorities, he found 27 had PSPOs with prohibitions related to begging and six for rough sleeping. Brown (2020: 583) also explains how fixed

penalty notices and prosecutions for a PSPO breach were rarely used, which he suggests is reassuring because criminalisation has not occurred but reflects the 'extensive use' of informal out of court disposals could be equally as exclusionary. Sanders and Albanese (2017) collected a range of data from local authorities via FOI requests, a survey and interviews with people experiencing street homelessness, and case study work in three locations. They found that of the 56 local authorities that replied to the FOI request, 17.2 per cent were using PSPOs to tackle rough sleeping, with 52 per cent planning to use them in the future. It was apparent that the PSPOs were worded in such a way that rough sleeping was not directly prohibited, but associated behaviours such as leaving bedding material or remaining in a temporary structure overnight were. Johnsen et al.'s (2016) work exploring the use of enforcement-led interventions with people experiencing street homelessness found that harder forms of enforcement that come with severe penalties (for example, fines of up to £1000) were seen as disproportionate to the initial behaviours in question. Support services were not always available or of sufficient quality to respond to those who were referred using enforcement interventions. Some individuals were encouraged to disengage with harmful behaviours through these interventions. Others, however, were further displaced and disengaged with services. Johnsen et al. (2016: 5) argued that enforcement-led interventions were a 'high risk strategy' which should only be used as a last resort.

Little research so far has considered CPNs being issued to people experiencing street homelessness. Sanders and Albanese (2017) captured some data about CPN use, with 37.9 per cent of 56 local authorities reporting that they were used to target rough sleeping. However, there were few details about exactly how they were used and in what context. Thus, we currently lack an understanding of the *process* frontline practitioners undertake when issuing CPNs to people experiencing street homelessness, which this article addresses.

Contextualising contemporary homelessness in England and Wales

Estimates of rough sleeper numbers in the UK are imperfect due to the differing methodologies employed by local councils (Randall and Brown, 1999; Robinson, 2004; Fetzer et al., 2019). However, across the first two terms of New Labour the official estimates of people rough sleeping on any given night decreased from 1850 in 1998 to 459 in 2005 (Office of the Deputy Prime Minister, 2005). This reduction was attributed to the 'Rough Sleepers Unit', a policy tool which viewed street homelessness as a form of 'social exclusion' assuagable by individuals utilising their 'rights' to support whilst simultaneously taking 'responsibility' for their situations and associated actions (chiefly ASB) to alleviate their predicaments (Cloke et al., 2010). The rates of homelessness and rough sleepers increased significantly with the financial crisis of 2008/9 and the commencement of austerity policies (see Fitzpatrick et al., 2012; Watts and Fitzpatrick, 2018). The impact of these overarching factors saw the number of people rough sleeping in England increase from 1,768 in 2010 to a peak of 4,751 in 2017 (MHCLG, 2021).

The Coalition/Conservative governments reinforced a 'localism agenda' alongside major housing reforms that included significant cuts to housing allowances for tenants in the private sector as well as sweeping cuts to local authority grants (Fitzpatrick et al, 2011; Beatty and Fothergill, 2017). Furthermore, the cuts in grants disproportionately affected cities in England and Wales compared to rural areas, inadvertently resulting in local authorities scaling back investment in housing and ring-fenced housing services for the urban homeless population (see Hastings et al., 2017). In the view of Fitzpatrick et al. (2020: 552) the model of localism in a time of austerity 'made a bad situation worse – enabling central government to evade responsibility for the consequences of its

actions, and leaving cash-strapped, ill-equipped local authorities, and increasingly civil society actors, to pick up the pieces of what has become a national homelessness crisis’.

The current Conservative government committed to ending rough sleeping by the next election, scheduled for 2024. The introduction of the Rough Sleeping Strategy and associated funding saw some success in reducing the numbers of rough sleepers (Fitzpatrick et al., 2021). The global coronavirus (COVID-19) pandemic that began in 2020 has disrupted this. The key policy intervention on homelessness at the onset of the pandemic in 2020 was the ‘Everyone In’ initiative. This intervention aimed to reduce transmission of coronavirus amongst the street sleeping population by providing rooms in hotels and the closure of night shelters and other forms of communal accommodation (Story and Hayward, 2020). Fitzpatrick et al. (2021) have argued, the ‘Everyone In’ pandemic crisis response reframed the homelessness situation as one of a public health issue, immediately housing around 15,000 people in self-contained temporary accommodation. However, many individuals would enter accommodation but not remain there (ibid).

The most recent policy development is the government’s repeal of the Vagrancy Act (1824) through the Police, Crime, Sentencing and Courts Act (2022). This will remove begging and rough sleeping as criminal offences, with the government committing to ‘deliver a bold, new rough sleeping strategy’ (Home Office, 2022b). Nevertheless, a consultation on an effective replacement for the Vagrancy Act was conducted in spring 2022 (GOV.UK, 2022). At the time of writing, there is space within Part Ten of the new Levelling Up and Regeneration Bill for the Vagrancy Act replacement to be included, although the results from the consultation are yet to be published. Thus our examination of how CPNs are used to manage ASB attributed to people experiencing street homelessness is particularly timely, as it will provide the first evidence of how this power is being used in a homelessness context.

In summary, the last 20 years have seen a gradual but perpetual shift away from centralised planning on homelessness policy to a more localised set of approaches. Simultaneously, funding to address the issues of homelessness have exacerbated existing social and economic disadvantages to result in higher rates of homelessness. Coupled with the introduction and subsequent revision of specific ASB-related powers during the same period, homelessness-related ASB is an extremely complex and multifaceted policy concern.

Theoretical framework

Two theoretical approaches offer useful lenses through which to analyse frontline practitioners’ CPN issuing practices towards people experiencing street homelessness. Lipsky’s (2010) work on street-level bureaucracy provides insights into how frontline officers utilise their discretion. This is relevant because CPNs are issued out of court by individual officers. Lipsky (2010: xvii) contends there is a difference between ‘policy as written’ and ‘policy as performed’, with street-level coping behaviours mediating any gap between the two, thus we examine what those coping behaviours are as part of the issuing process. Our research focuses on the operationalisation of policy in practice, with a specific emphasis on exploring discretion and decision making when CPNs are issued. Lipsky (2010) considers discretion and decision-making in two expedient ways. First, through frontline officers exercising discretion in their decision making, which results in agency behaviour when individual actions are taken as a whole. Important to this work is the fact that the tools under the Anti-Social Behaviour, Crime and Policing Act (2014) were designed to be flexible in their application. Therefore, the practitioners in this study

have scope to determine how to implement the policy in practice, establishing agency behaviour. And second, by having to operate within the confines of limited resources, frontline officers create 'shortcuts and simplifications' to manage their workload (p. 18). The resourcing issue is pertinent here because of the funding cuts made to local government and the police, the authorising bodies from where our participants were drawn. To illustrate, there was a 37 per cent real terms cut to local government funding in England between 2009/10 and 2019/20 (Institute for Government, 2021) and a 16 per cent real terms cut to police funding in England and Wales between 2009/10 and 2018/19 (Institute for Government, 2019).

Lipsky (2010: 12) also makes the link between decision-making and fairness, suggesting that 'street-level bureaucrats represent the hopes of citizens for fair and effective treatment by government', which relates to the notion of distributive fairness, a constituent part of procedural justice theory developed by Tyler (2006). Distributive fairness refers to the manner in which the public evaluates the distribution of government burdens and benefits fairly (Tyler, 2006). Our attention is on one component of distributive fairness, where 'an individual expects to receive the same outcome as another person who violates the law in the same way' (McLean, 2020: 337). More recent research in procedural justice has tended to focus on the procedural factors that affect individuals over their perceptions of distributive fairness (Tyler and Blader, 2003). However, given the focus of this article is the administrators of justice rather than the recipients, we find distributive fairness a useful framework for understanding the discretion and decision making that sits behind the practices of distribution. We know from previous ASB research that divergent frontline practices are not new (see Cooper et al., 2009; Crawford et al., 2017; Heap et al., 2023). However, due to the specific nature of this research focusing on CPNs being issued to people experiencing street homelessness, who are perceived to be exhibiting similar types of ASB in different areas of England and Wales, it provides an opportunity to examine how fairly distributed the issuing process is.

Methodology

Qualitative research was undertaken to explore a range of factors associated with the utilisation of CPNs by frontline practitioners. People experiencing street homelessness were not the primary focus of the research, but the issues raised by participants warranted further exploration and analysis, which prompted this article. Thirty-six semi-structured telephone interviews were conducted between 2019 and 2021 with 30 practitioners from four case study areas, supplemented by an additional six ASB training professionals. The sample comprised 14 council officers, 15 police officers, and one officer from a private company. None of the registered social landlords contacted had been delegated CPN issuing powers and so were not included in the analysis. The training professionals were included because our previous research highlighted the importance of training (Heap et al., 2022). This sub-sample contained three independent consultants, two council officers and one police officer.

A case study design was used to better understand CPN issuing practices across different geographical locations, a decision prompted by our previous research (Heap et al., 2022). The case study areas were selected based on the highest numbers of CPNs issued, as detailed by Manifesto Club data (2019), which is the only usage data available. Each area was approached in turn and where areas declined to participate or were unresponsive, we contacted the next highest issuer until our sample was complete. The four areas that took part were all in England, with one in the North East, one in Yorkshire and the Humber, one in the East Midlands, and one in the South East. Due to

their geographic locations all were served by different police forces. The sample comprised two cities and two large towns. Telephone interviews were utilised because they enabled us to cost effectively cover a wide geographical area whilst affording flexibility around the interview time and location for our practitioner participants. The fieldwork was undertaken immediately prior to and during the coronavirus pandemic, with 18 interviews conducted beforehand and 18 during. The pandemic did not alter the process of how CPNs were used to manage the ASB attributed to people experiencing street homelessness and issuing practices remained consistent. The interviews were audio recorded, transcribed, and analysed using Braun and Clarke's (2006) framework for thematic analysis. Ethical approval was obtained from the authors' institution with all participants anonymised and presented in this article by their case study area, role, and participant number.

Findings

The process of issuing CPNs to people experiencing street homelessness

Respondents detailed very different approaches to issuing CPNs to people experiencing street homelessness. There were both police and council officers that were adamant they would not issue a CPN to this group. As one police officer explained:

If a homeless person was causing considerable ASB, continual ASB I wouldn't look at CPNs because you're setting them up to fail, they're never going to be able to pay a fine so then what's the point of - it's almost like we're trying to catch them out, that's not what I'm about personally so I would look at something else. (Area D Police Officer 12)

The reasons for not issuing CPNs included: a lack of proportionality, recipients not being able to pay the fine, setting people up to fail, and it not being the right tool for the job. In general, there was a sense that CPNs should not be used to prevent people from begging. Nevertheless, CPNs were a popular enforcement tool for others and begging requirements were regularly included. However, the disparity in practices between those who did and did not issue notices to people experiencing street homelessness was not straightforward. For example, there were different approaches evident within a single case study area (Area C) between council officers who were in favour of issuing to people experiencing street homelessness, compared to police officers where some were in favour and others not.

In general, whether to issue CPNs to people experiencing street homelessness for begging was the most contentious matter and many officers described a range of caveats. For some, issuing CPNs for begging was rationalised if the notice contained further requirements related to other types of ASB. However, these caveats appeared to be unwritten rules which are not contained in the statutory guidance, nor were they applied consistently within or across our case study areas. A council officer stated:

Police have issued for begging offences and things like that, but alongside that we have also issued to street homeless as well where they've set up encampments and things like that, usually around that perspective as well where we've had associated ASB to it and not just as a tent's pitched up or anything like that. (Area B Council Officer 4)

Frontline practitioners were also acutely aware of the controversies associated with taking enforcement action against people experiencing street homelessness. For those who did issue CPNs, there was a sense that public perceptions were something to be handled carefully, with one participant stating that the council's press department managed this on their behalf to avoid stories being 'spun':

It's a managed approach and a well thought out approach when we're dealing with sensitive matters like that ... obviously it can be big press, it can be a big corporation picking on a headliner ... It's frustrating because you know the time and work that's been invested in an individual for it maybe to – if it does reach the press it can be spun which is a bit unfair but that's the press for you. As I said before, I'm very wary of that... (Area C Council Officer 8)

This example reflects how conscious frontline officers are about the reputation of their organisation, the level of public concern, and the complexities of taking enforcement action against people experiencing street homelessness. Previous research by Moore (2008) highlighted unfavourable public attitudes towards 'street life people', where the primary objective of complaints was to have that group removed from the locality. Over a decade later, this research offers a contrasting public stance.

Lipsky (2010) talks about individual decisions coming together to create agency behaviour. However, within this CPN issuing context the extent of discretion results in an uneven application of the power, the adoption of unwritten rules and a lack of agency behaviour. Such contradictory practices are allowed to happen because of a dearth of procedural safeguards to monitor how these notices are being issued, a concern we have raised elsewhere (Heap et al., 2022). Sometimes scrutiny occurs at an institutional level (Heap et al., 2023), but there is no onus for this to take place. The impact of these practices is that the outcomes for people experiencing street homelessness are not distributively fair because depending on their location, their engagement and experiences with the authorities could be very different.

The 'incremental approach' to interventions with people experiencing street homelessness

For those officers who did issue CPWs and CPNs to people experiencing street homelessness, this was framed as an incremental part of a wider package of interventions that together, could 'push' recipients in to support services which, if not accepted, can then act as a springboard to 'encourage' engagement with positive interventions (Area C Council Officer 8). The ethics and effectiveness of interventions that use enforcement or coercion to manage homelessness-related behaviours have been well debated (see Watts et al., 2017). Evidence suggests that in some cases there may be beneficial effects, as has been shown previously with ASBOs (Johnsen et al., 2016). However, this may also have detrimental effects, such as displacement into more dangerous activities or areas and damaging the relationship with existing services, in addition to personal consequences of distress and anxiety (Watts et al., 2017). Coerced approaches should only be utilised with vulnerable groups when less coercive options have been exhausted, though evidence suggests that in practice this is not the case (Johnsen et al., 2016).

The below example from a trainer documents some perceived success with using the CPW in conjunction with support services:

Where we've used them quite effectively is that we will do all the welfare checks and support first, and then where we have found the CPW to be quite effective is

p. 10. Understanding how Community Protection Notices are used to manage anti-social behaviour attributed to people experiencing street homelessness

that we will then serve that CPW once we have satisfied we have done absolutely everything we can, and then what we're finding then is that that individual then tends to engage when we move them on with the relevant services and then they will look for alternative accommodation for them. (Trainer 4)

Nevertheless, there is a requirement here that support is available to be offered to those who are 'pushed' towards it. The 'localism' approach in a time of reduced funding for homelessness services is likely to exacerbate the challenge for local areas to do this and to reflect the differences between areas. Prior research on enforcement approaches has also highlighted the limited or often poor quality of support on offer (Johnsen et al., 2016). The need for accessible support services is acknowledged by the council officer below:

The intervention does work but it's sustaining the intervention and that's where having this sort of carrot, this dangling of a carrot can assist but obviously I'm stressing that it would be no good if we don't have that support because it wouldn't be appropriate. You can't ask someone to try and alter their lives when they've no insurance or backup of getting a home or at least linking into a professional agency that's going to assist them. (Area C Council Officer 8)

Another trainer participant highlighted the need for partnership working to take a CPN enforcement approach:

It's very clear that there has to be an engagement with partners in outreach services and everything else before you even get down the route of CPNs, but using a CPN as a means to enforce engagement, rather than just to punish somebody (Trainer 5)

In this context, the CPN is reframed as a tool for engagement rather than for punishment. This mirrors other research in this area that has highlighted practitioners' use of enforcement as a last resort to improve the wellbeing of those experiencing street homelessness; a form of 'coercive care' (Johnsen and Fitzpatrick, 2010). Though as Fitzpatrick and Johnsen (2009) have argued, this is a 'high-risk' strategy with unpredictable outcomes and the potential for negative impacts. This supportive enforcement approach may also, of course, not be perceived as such by the recipient of the CPN. People experiencing street homelessness may feel unfairly targeted because of their visibility (Johnsen et al., 2016). This may add to their sense of distributive unfairness.

Enforcing CPNs with people experiencing street homelessness

Divergent monitoring and enforcement practices take place when practitioners use CPWs and CPNs (Heap et al., 2023). In general, it is uncommon for CPW/CPN recipients to be monitored to identify breaches. However, this was different for people experiencing street homelessness, whose breaches were often visible as a result of them inhabiting urban centres, which are covered by police, CCTV and/or local council surveillance on a daily basis, as explained by a police officer:

I mean the people in the town centre that we've been dealing with, we've got officers in the town centre, we've got CCTV so if we gave somebody a CPN saying we do not want you for example begging or loitering or rough sleeping in the town, our CCTV will be notified of that CPN, they would proactively tell us if there's a breach (Area A Police Officer 1)

Thus, the *location* of people experiencing street homelessness resulted in CPN/CPN breaches being more readily identified by proactive monitoring compared to other recipients. From a distributive fairness perspective, this shows how CPN monitoring falls disproportionately upon people experiencing street homelessness. Consequently, their cases are more likely to be discussed in relation to the pursuit of enforcement action than other CPN recipients which is not distributively fair (Tyler, 2006).

When deciding whether to pursue enforcement action against people experiencing street homelessness, it was evident that practitioners weighed-up the appropriateness of the enforcement action against the necessity to enforce the law. Even though they had issued the notice in the first instance, some did not think it was right to take enforcement action. To illustrate, a council officer said:

We haven't done the fixed penalty ones because of the clientele, as I say, it's just really not appropriate. (Area C Council Officer 8)

In this context, the inappropriateness reflected that people experiencing street homelessness were very unlikely to be able to pay the fixed penalty notice of £100. The proposed solution in this scenario was to take an informal approach to enforcement, chiefly by pursuing a series of warnings. If that method was unsuccessful the evidence base generated by the warnings would be used to apply for a Civil Injunction. As Trainer 6 explains:

Most people accept that actually prosecuting someone who is living in a hostel with a massive multiple complex health and substance misuse issues is not the right way forward. So, we use the CP warning as an opportunity for the person to engage, giving them a structure to engage. Not being able to, but then not then breaching the CPN, but actually going down and that is the evidence for an Injunction, where we can actually take it to a court. It can be court applied conditions which probably have a lot more chance of succeeding. (Trainer 6)

This is similar to the successful approach reported by Johnsen and Fitzpatrick (2007) who examined ASBOs. Civil Injunctions are the 'new ASBO', with the added ability to include 'positive requirements' that can compel recipients to engage in behaviours or activities to address the causes of their ASB. Pursuing a Civil Injunction also retains the civil preventive nature of the enforcement because breach of the order is not a criminal offence and the higher 'beyond reasonable doubt' standard of proof is required in any breach proceedings. Subsequently, any punishment for breach is based on civil contempt of court, which could result in an unlimited fine or up to two years in prison.

The other enforcement approach, which was favoured by a larger number of practitioners and especially by local councils, was to pursue criminal proceedings upon breach of the CPN. This took two forms. Most common was to prosecute breach of the CPN as a criminal offence to obtain a Criminal Behaviour Order (CBO) on conviction, as detailed by Council Officer 3:

Ultimately if they're persistent offenders we will apply for a Criminal Behaviour Order on the back of a breach of a CPN. It depends how far they want to take it. Sometimes I've had them where they've breached it. I've done two at the same time, two prolific rough sleepers, we've got evidence where they're urinating in doorways and all this type of stuff, constantly begging whereas one, we've got CCTV footage of her injecting twice and her swearing at neighbourhood wardens. (Area A Council Officer 3)

CBOs are the new 'CrASBO' (Criminal Anti-Social Behaviour Order) and their purpose is to 'tackle the most persistently anti-social individuals who are also engaged in criminal activity' (Home Office, 2022a: 39). Similar to a Civil Injunction, CBOs can include positive requirements as well as prohibitions, but the penalty for breach is more serious with adults subject to up to five years in prison if convicted on indictment. Utilising a CBO in this manner could be described as an innovative application of a flexible power. However, the very real risk of imprisonment for the non-committal of a criminal offence could also be seen as a means of short-cutting the rules of due process to obtain a more severe sanction. As Lipsky (2010) has argued, policy delivery may not match the policy writer's intention, with the delivery creating the policy in practice. CPNs were intentionally designed to be flexible. However, this innovative use of the power may serve to establish agency behaviour in a manner not in keeping with the spirit of the legislation nor in keeping with the fair application of justice.

Less commonly, and despite people experiencing street homelessness being unlikely to be able pay a fixed penalty notice, some officers pursued a criminal conviction for non-payment of the fixed penalty notice. According to the Sentencing Council (2021) this route is likely to result in a fine, potential court costs, and a criminal record. If the defendant is unable to pay the court fine, the money can be collected from benefit payments, which for people experiencing street homelessness could make their daily lives more challenging.

The varying ways frontline practitioners approach CPW/CPN enforcement with people experiencing street homelessness reflects how the officers, as street-level bureaucrats, 'perform' ASB policy (Lipsky, 2010). The consequence of being unable to pay a fixed penalty notice, which results in the pursuit of a criminal proceedings and possibly additional fines demonstrates how the punitiveness of the measure is dependent on the recipient's ability to pay, rather than being proportionate to the behaviour in question. This is a further example of how the use of CPNs is not distributively fair because someone breaching the notice with the ability to pay will simply settle the fine.

Discussion and conclusion

This article has provided an original contribution by demonstrating the wide range of different approaches used by frontline practitioners to manage the ASB attributed to people experiencing street homelessness through using CPNs. This analysis bolsters our previous research by providing specific evidence about how street homelessness brings additional complexities to the CPN issuing process, the incremental intervention approach, and enforcement techniques. The consequence of such varying practice appears to result in a lack of distributive fairness for people experiencing street homelessness within and between different local areas, who due to their circumstances are more visible in public spaces. Resultantly, this vulnerable population is subject to a 'postcode-lottery' of policy implementation which could result in an increased likelihood of surveillance, policing, criminalisation, and penal sanction depending on where and how they live.

The divergent responses to administering and enforcing CPNs against people experiencing street homelessness highlights that it continues to be a contested topic amongst issuing authorities. Localised practices demonstrated unwritten norms and rules around the types of behaviours considered acceptable to issue for, such as begging alone or begging in conjunction with other forms of ASB. These differing thresholds highlight the combined impact of a flexible definition for CPN usage alongside the discretion required to create locally specific policy implementation (Lipsky, 2010). In

favour of utilising CPNs were officers who felt they could be used as a mechanism to push people into engaging with support services. Previous research presents a mixed picture of this approach when dealing with vulnerable people, framing it as a 'high-risk' strategy that is likely to fail if the individual is not ready to engage (Johnsen and Fitzpatrick 2010: 1716). Using CPNs in this way could have beneficial outcomes for the individual. Though as previous research has established, this requires the availability of acceptable services and should be used as a last resort (Watts et al., 2017). The outcome of using CPNs in this manner is unknown and therefore additional research should explore the processes utilised to encourage or coerce this engagement, the impact on people experiencing street homelessness, and the capacity of areas to offer support services.

Little is known about the informal mechanisms employed to manage people experiencing street homelessness (Brown, 2020). Amongst our participants, some would issue warnings both formally and informally but not follow up with a formal sanction, such as a fixed penalty notice. Further research is required to grasp exactly how informal mechanisms impact on people experiencing street homelessness. This study has been able to shed light on how the formal powers are being used in practice, for example, some officers would enforce a breach through criminal proceedings to obtain either a Criminal Behaviour Order (CBO) or a Civil Injunction. Both sanctions may further criminalise people experiencing street homelessness. In particular, the CBO enables the possibility of five years' imprisonment; the only crime committed being breach of the CPN. Whilst the deliberate flexibility of the tool creates scope for using the power in this way, it raises questions of proportionality and due process. It also suggests the establishment of agency behaviour that is likely to be beyond the intention of the policy creators (Lipsky, 2010). There are also clear demarcations between the participants within this data that evidence differential outcomes for people experiencing street homelessness engaging in similar behaviours. The outcomes are therefore not distributively fair (McLean, 2020).

Lipsky (2010) evidenced the challenges that street level bureaucrats face when managing high workloads within available and often inadequate resources. The role of discretion was key to allocating resources where necessary and problem solving as required, often resulting in 'shortcuts and simplifications' used by practitioners to manage daily problems (Lipsky, 2010: 18), which the above examples highlight. The combination of local discretion, a lack of centralised accountability and the localised approach to resourcing and management of homelessness creates fertile ground for such innovative and potentially criminalising approaches. The significant cuts to resources that have been experienced through austerity policies (Institute for Government 2019; 2021) will have contributed to the resourcing capabilities of local councils and the police. In addition, localising the policy response to homelessness may require expertise from those who are not experts in this field (Fitzpatrick et al., 2020), highlighting the ongoing need for multi-agency working with vulnerable groups.

In response to our findings we offer three recommendations for frontline practice, which should temper the extent of discretionary decisions associated with CPNs, provide a level of protection for people experiencing street homelessness, and thus improve distributive fairness:

1. The section about CPNs in Home Office statutory guidance for frontline practitioners (2022a) should be revised to include a sub-section that specifically addresses people experiencing street homelessness. A similar sub-section entitled 'homeless people and rough sleepers' already exists for the guidance about PSPOs, hence there is a precedent for singling out this vulnerable group for enhanced consideration. The new sub-section for CPNs should make it clear that

the notices should not be used to target people experiencing street homelessness for sleeping rough, there should be greater clarity about CPN usage for begging with specific reference to the application of the 'detrimental effect' test, and that the potential impact upon the recipient should be thought through in relation to the availability of local support services.

2. To ensure frontline practitioners comply with the new guidance about CPNs and people experiencing street homelessness there should be an additional system of oversight. This could operate at a senior management level within the issuing organisation and closer scrutiny of the use of the powers by the Home Office through auditing and annual returns.
3. The Home Office statutory guidance (2022a) and strategic bodies such as the Local Government Association and Police and Crime Commissioners should encourage and facilitate better partnership working between local services, such as the police and teams within local councils, to ensure CPNs are being used in a consistent way within and between different locations to improve distributive fairness for all CPN recipients, including people experiencing street homelessness.

We also note how CPWs and CPNs could be used to sanction begging and rough sleeping more frequently following the repeal of the Vagrancy Act (1824). At this stage it is unclear what the replacement will hold, but nevertheless it reinforces the need for our first recommendation, to improve the statutory guidance for frontline practitioners, to be implemented without delay.

Overall, our growing body of work investigating CPNs is building a picture of how the legislation and policies operate in practice (Heap et al., 2022; Black and Heap, 2022; Heap et al., 2023). Many of the findings, including these, highlight how the powers have been stretched to operate at the limits of their flexibility or utilised in innovative ways that are not in the spirit of the original legislation or guidance. Additional research is still required in this area, particularly highlighting examples of good practice to further our understanding and provide as much evidence as possible to leverage policy development for the sake of practitioners, perpetrators, and victims alike.

Acknowledgements

Thank you to the anonymous reviewers for their constructive comments. We would also like to thank Zoe Rodgers for her excellent research assistance on this project, as well as Ruwani Fernando and Patricia Hynes for their helpful feedback on earlier versions of this article. This work was funded by the British Academy in partnership with the Department for Business, Energy and Industrial Strategy [SRG19\190003].

*Correspondence address: Department of Law and Criminology, Sheffield Hallam University, Collegiate Campus, Collegiate Crescent, Sheffield, S10 2BQ. Email: V.Heap@shu.ac.uk

References

- Beatty, C. and Fothergill, S. (2017) The impact on welfare and public finances of job loss in industrial Britain. *Regional Studies, Regional Science*, 4, 1, 161-180.
- Black, A. and Heap, V. (2022) Procedural justice, compliance and the 'upstanding citizen': a study of Community Protection Notices. *British Journal of Criminology*, 62, 6, 1414-1430.
- Braun, V. and Clarke, V. (2006) Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3, 2, 77-101.
- Brown, K. (2017) The hyper-regulation of public space: the use and abuse of Public Spaces Protection Orders in England and Wales. *Legal Studies*, 37, 3, 543-568.
- Brown, K. (2020) The banishment of the poor from public space: promoting and contesting neo-liberalisation at the municipal level. *Social and Legal Studies*, 29, 4, 574-595.
- Cloke, P., May, J. and Johnsen, S. (2010) *Swept up lives? Re-envisioning the Homeless City*. Chichester, UK: Wiley-Blackwell.
- Cooper, C., Brown, G., Powell, H. and Sapsed, E. (2009) *Exploration of local variations in the use of anti-social behaviour tools and powers*. Home Office Research Report 21. London: Crown Copyright.
- Crawford, A., Lewis, S. and Traynor, P. (2017) "It ain't (just) what you do, it's (also) the way that you do it": The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People. *European Journal on Criminal Policy and Research*, 23, 9-16.
- Fetzer, T., Sen, S. and Souza, P. C. (2019) *Housing insecurity, homelessness and populism: Evidence from the UK*. [The Warwick Economics Research Paper Series \(TWERPS\) 1232](#). Warwick: University of Warwick. [Accessed: December 2019].
- Fitzpatrick, S. and Jones, A. (2005) Pursuing social justice or social cohesion? Coercion in street homelessness policies in England. *Journal of Social Policy*, 4, 389-406.
- Fitzpatrick, S. and Johnsen, S. (2009) The use of enforcement to combat 'street culture' in England: An ethical approach? *Ethics and Social Welfare*, 3, 3, 284-302.
- Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S. and Watts, B. (2011) The homelessness monitor: Tracking the impacts of policy and economic change in England 2011-2013. London: Crisis. Available at: https://www.crisis.org.uk/media/237049/the_homelessness_monitor_england_2011.pdf [Accessed: April 2022].
- Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S. and Watts, B. (2012) The homelessness monitor: Scotland 2012. London: Institute for Housing, Urban and Real Estate Research. Available at: http://www.crisis.org.uk/data/files/publications/HomelessnessMonitor_Scotland_2012_complete.pdf [Accessed: March 2017].
- Fitzpatrick, S., Pawson, H. and Watts, B. (2020) The limits of localism: a decade of disaster on homelessness in England. *Policy & Politics*, 48, 4, 541-561.
- Fitzpatrick, S., Mackie, P., Pawson, H., Watts, B. and Wood, J. (2021) The COVID-19 Crisis Response to Homelessness in Great Britain: Interim Report. UK Collaborative Centre for Housing Evidence. Available at: https://housingevidence.ac.uk/wp-content/uploads/2021/02/12544_UoG_CaCHE_Covid_Homelessness_Report-Final.pdf [Accessed: March 2022].
- GOV.UK (2022) *Review of the Vagrancy Act: consultation on effective replacement*. Available at: <https://www.gov.uk/government/consultations/review-of-the-vagrancy-act-consultation-on-effective-replacement> [Accessed: April 2022].
- Hastings, A., Bailey, N., Bramley, G. and Gannon, M. (2017) Austerity urbanism in England: The 'regressive redistribution' of local government services and the

p. 16. Understanding how Community Protection Notices are used to manage anti-social behaviour attributed to people experiencing street homelessness

- impact on the poor and marginalised. *Environment and Planning A*, 49, 9, 2007-2024.
- Heap, V., Black, A. and Rodgers, Z. (2022) Preventive justice: exploring the coercive power of Community Protection Notices to tackle anti-social behaviour. *Punishment and Society*, 24, 3, 305-323.
- Heap, V., Black, A. and Rodgers, Z. (2023) Procedural justice and process-based models: understanding how practitioners utilise Community Protection Notices to regulate anti-social behaviour. *Criminology and Criminal Justice*. Early Online.
- Heap, V. and Dickinson, J. (2018) Public Spaces Protection Orders: A critical policy analysis. *Safer Communities*, 17, 3, 182-192.
- Home Office (2017) *Anti-Social Behaviour, Crime and Policing Act 2014: Anti-Social Behaviour Powers Statutory Guidance for Frontline Professionals*. London: Home Office.
- Home Office (2022a) *Anti-Social Behaviour, Crime and Policing Act 2014: Anti-Social Behaviour Powers Statutory Guidance for Frontline Professionals*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088750/2022_Updated_ASB_Statutory_Guidance_FINAL.pdf [Accessed: July 2022].
- Home Office (2022b) Policy Paper – Police, Crime, Sentencing and Courts Bill 2021: repeal of the Vagrancy Act 1824 factsheet. Available at: <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-repeal-of-the-vagrancy-act-1824-factsheet> [Accessed: April 2022].
- Institute for Government (2019) *Performance Tracker 2019: Police*. Available at: <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2019/police> [Accessed: December 2021].
- Institute for Government (2021) *Local government funding in England*. Available at: <https://www.instituteforgovernment.org.uk/explainers/local-government-funding-england> [Accessed: December 2021].
- Johnsen, S. and Fitzpatrick, S. (2007) *The Impact of Enforcement on Street Users in England*. York: Joseph Rowntree Foundation. Available at: <https://www.jrf.org.uk/report/impact-enforcement-street-users-england> [Accessed: November 2021].
- 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.
- Johnsen, S., Watts, B. and Fitzpatrick, S. (2016) *First Wave Findings: Homelessness. Welfare Conditionality: Sanctions, Support and Behaviour change project*. York: University of York. Available at: <http://www.welfareconditionality.ac.uk/wp-content/uploads/2016/05/WelCond-findings-homelessness-May16.pdf>
- Lipsky, M. (2010) *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Sage Russell Foundation.
- Manifesto Club (2019) CPNs: 20,000 New 'busybody ASBOs' Issued in Past 4 years. Available at: <https://manifestoclub.info/cpns-20000-new-busybody-asbos-issued-in-past-4-years/> [Accessed: January 2020].
- Manifesto Club (2020) CPNs and PSPOs: the use of 'busybody' powers in 2019. Available at: <https://manifestoclub.info/cpns-and-pspos-the-use-of-busybody-powers-in-2019/> [Accessed: November 2021].
- McLean, K. (2020) Revisiting the role of distributive justice in Tyler's legitimacy theory. *Journal of Experimental Criminology*, 16, 335-346.
- Ministry of Housing, Communities and Local Government (MHCLG) (2021) *Rough sleeping snapshot in England: autumn 2020*. Available at: <https://www.gov.uk/government/statistics/rough-sleeping-snapshot-in-england->

p. 17. Understanding how Community Protection Notices are used to manage anti-social behaviour attributed to people experiencing street homelessness

- [autumn-2020/rough-sleeping-snapshot-in-england-autumn-2020](#) [Accessed: May 2022].
- Moore, S. (2008) Street-life, neighbourhood policing and 'the community'. In: Squires, P. (Ed) *ASBO Nation: the criminalisation of nuisance*. Bristol: Policy Press.
- Moss, C. and Moss, K. (2019) Out of sight: Social control and the regulation of public space in Manchester. *Social Sciences*, 8, 146-158.
- O'Brien, B. (2016) Public spaces protection orders - an 'attack of vagueness' *Safer Communities*, 15, 4, 183-189.
- Office of the Deputy Prime Minister (2005) *Planning Policy Statement 6: Planning for Town Centres* (Vol. 6). The Stationery Office.
- Randall, G. and Brown, S. (1999) *Homes for street homeless people: an evaluation of the Rough Sleepers Initiative*. Department of the Environment, Transport and the Regions.
- Robinson, D. (2004) Rough sleeping in rural England: challenging a problem denied. *Policy & Politics*, 32, 4, 471-486.
- Sanders, B. and Albanese, F. (2017) *An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales*. Available at: https://www.crisis.org.uk/media/237532/an_examination_of_the_scale_and_impact_of_enforcement_2017.pdf [Accessed: November 2021].
- Sentencing Council (2021) *Penalty notices - fixed penalty notices and penalty notices for disorder*. Available at: <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/out-of-court-disposals/5-penalty-notices-fixed-penalty-notices-and-penalty-notices-for-disorder/> [Accessed: December 2021].
- Story, A. and Hayward, A. (2020) *COVID-19 homeless sector plan: test – triage – cohort – care*. Available at: <https://www.pathway.org.uk/wp-content/uploads/COVID-19-Homeless-Sector-Plan.pdf> [Accessed: March 2022].
- Tyler, T. (2006) *Why People Obey the Law*. Woodstock: Princeton University Press.
- Tyler, T. and Blader, S. (2003) The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behaviour. *Personality and Social Psychology Review*, 7, 4, 349-361.
- Watts, B. and Fitzpatrick, S. (2018) *Welfare conditionality*. Routledge.
- Watts, B., Fitzpatrick, S. and Johnsen, S. (2017) Controlling homeless people? Power, interventionism and legitimacy. *Journal of Social Policy*, 47, 2, 235-252.