

End the criminalisation of Homelessness: Why the Vagrancy Act 1824 must be repealed

Introduction

Homelessness is an endemic social issue present in every society, both historically and geographically.¹ Yet the combined jurisdiction of England and Wales is one of the few places where it is also criminalised. Despite the fact that it is considered a fundamental basis of criminal justice that the law should only punish voluntary acts, the penalisation of the involuntary status of being homeless and the consequential need to seek alms, as found in the Vagrancy Act 1824, provides a dark and unnecessary exception to that rule.

In this paper, I argue that the Vagrancy Act should be repealed for multiple reasons. First, the law reflects an antiquated understanding of homelessness as a penal rather than social issue, long since outmoded. This is particularly pertinent in the light of COVID-19, and current economic uncertainty which impacts all sectors of society, from manual workers to elite professionals, and has already caused a 33% increase in homelessness.² To treat this as a criminal issue ignores its involuntary basis. Second, I argue that its vague wording has made its application arbitrary and inconsistent, manifested in its historic abuse as a mechanism to deal with unfavoured activities. Third, the law has proven ineffective in practice, cruel in theory, and redundant to the needs of modern society to control criminal behaviour,

¹Leach, M. "A roof is not enough – a look at homelessness worldwide, by Monte Leach, Share International Archives". *Share-international.org*. <https://web.archive.org/web/20171207075749/http://www.share-international.org/archives/homelessness/hi-mlarroof.htm>

²WLM "Rough Sleeping in London increased during the Covid-19 lockdown, says CHAIN" <https://www.wlm.org.uk/news/rough-sleeping-in-london-increased-during-the-covid-19-lockdown-says-chain>

with alternative civil penalties available which do not leave defendants with a criminal record. Finally, I will address recent arguments put forward by the government that the Act can be reformed, either by reducing its practical use, or through amendment. I contend that neither of these provide an adequate solution: the government should instead listen to public opinion and finally repeal this unfair law.

History of the law

Although begging has been criminalised in England in some form since 1370, it was not until the introduction of the Vagrancy Act in 1824, '*An Act for the Punishment of idle and disorderly Persons*', that homelessness itself faced penal punishment.³ Originally a means to clear the streets of soldiers returning from the Napoleonic Wars (as is evident from the criminalisation of those begging '*by the exposure of wounds*'),⁴ it was more broadly a response to the increased visibility of poverty.⁵ It reflected the contemporary view that homelessness was a lifestyle choice rather than a structural issue, as is evident from a report at the time of the law's introduction:

*'The threat of commitment has lost its terror. The vagrant himself, so far from shrinking...steps forward as a volunteer for a prison.'*⁶

Whilst the majority of its provisions have long since been repealed, two are still widely used. Section 3 (the 'begging' offence) criminalises individuals for:

³ Keniston McIntosh, M. (1998). *Controlling Misbehavior in England, 1370–1600*.

⁴ Vagrancy Act 1824, s4

⁵ 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

⁶ UK Parliamentary Papers (1821), Report from the Select Committee on The Existing Laws Relating to Vagrants, p.4

“wandering abroad, or placing himself or herself in any public place, street, or passage, to beg or gather alms”

and can lead to a fine of up to £1000 as punishment. Section 4, (the ‘rough sleeping’ offence), proscribes those who:

‘wander abroad and lodge in any barn...unoccupied building, in the open air, or under a tent... not giving a good account of himself or herself’.

and is accompanied by a maximum of 3 months’ imprisonment. The law has remained in continuous use over the last 200 years, with at one point 39,000 individuals being prosecuted for it in the 1920s.⁷ To this day, around 2000 people a year are still being prosecuted due to its wide remit for criminalisation, despite the fact the law itself is poorly understood.⁸

Analysis of the law

Its inadequacy as legislation

As is clear even from the description of the accused as ‘vagrants’, the law is out of date. It was created at a time when the response to those in poverty was overwhelmingly punitive, on the basis their circumstances denoted a moral failure which merited criminal punishment. Whilst our modern understanding of criminal justice intends to deter behaviour which threatens others’ security, the substantive language of the act indicates a concern instead with morality, and the juxtaposition of rough sleeping to the lack of a ‘protestant work ethic’ in the accused. The Act itself

⁷ Home Office, *Criminal Statistics England and Wales 1924* (London, 1926), Cmd. 2602

⁸ It was only in 2010 that the Courts ‘rediscovered’ the original penal punishment under s3 of the Act of up to 1 month in prison had been abolished by the Criminal Justice Act 1982. *R v Fagan* [2010] EWCA Crim 2449 [3]

predates the modern police service and, despite immense changes in the nature of policing and the well-evidenced links between trauma, poverty and rough sleeping, it is still used across police force areas today.⁹ Even by 1906 its suitability was being questioned, with a Commons committee noting that the language of the Act was “simply a means of repression.”¹⁰ As Lord Young summarised bluntly in a House of Lords debate this year, legislation which refers to the “idle and disorderly”, “rogues” and “vagabonds” living in “coach-houses” and “stables” has no place in modern legislation, let alone criminal prosecution.¹¹

The Act has been abolished in the Republic of Ireland since 1980, in Scotland since 1982.¹² All other countries with similar laws have since repealed them:¹³ There have been concerted attempts to repeal it in England, through both private members’ bills and opposition manifestos.¹⁴ An online petition to ‘Repeal the Vagrancy Act 1824’ in 2018 gained 20,549 signatures, and surveys have shown the majority of the public viewing the criminalisation of rough sleeping as ‘a waste of police time’.¹⁵ Clearly, it is the view internationally and in domestic public opinion that the Vagrancy Act is outdated: an antiquated outpost of Victorian criminalisation in the modern world.

⁹ Draine, J. et al. (2002). Role of social disadvantage in crime, joblessness, and homelessness among persons with serious mental illness. *Psychiatric Services*, 53(5), 565-573.

¹⁰ UK Parliamentary Papers (1906), *Report of the Departmental Committee on Vagrancy*, cd 2852, p.8

¹¹ Lord Young, Hansard, HL Debate, 23 April 2020, c84

¹² Firearms and Offensive Weapons Act 1990 (Ireland); Civic Government (Scotland) Act 1982

¹³ *Papachristou v. City of Jacksonville (1972)*, 405 U.S. 156; 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

¹⁴ [Hansard: HC Deb \(24 February 1981\) vol 999 cc756-8](#); [Hansard: HC Deb \(07 February 2018\) Vol 635 cc1504](#)
Labour Party “Labour to repeal nineteenth century law criminalising rough sleepers” Friday 21 December 2018, <https://labour.org.uk/press/labour-repeal-nineteenth-century-law-criminalising-rough-sleepers/>

¹⁵ Petition 205388: Repeal the Vagrancy Act 1824 [Accessed 27 September 2020]; Crisis “Over 70% of the public think arresting people sleeping rough is a waste of police time” <https://www.crisis.org.uk/about-us/media-centre/over-70-of-the-public-think-arresting-people-sleeping-rough-is-a-waste-of-police-time/>

The Law is vague

Beyond the use of antiquated language, the Act's wording is so vague as to encompass almost any unwonted behaviour on the street. The blanket term "vagrant" has no precise meaning attached to it, leaving it open to manipulation., Many groups have fallen foul of its wide definition, from owners of shops displaying 'obscene prints',¹⁶ people playing dice in the streets,¹⁷ to young black men pre-emptively stopped on the street.¹⁸

Indeed, it is not clear *what* action is required to merit punishment. In November 2017 Kevin Bigg, who was rough sleeping in Carlisle, was arrested under section 3 for begging after a child threw £2 into his sleeping bag. Although clearly in breach of the rough sleeping provision in section 4, there was no indication that he was in fact begging, nor asking for the £2 himself.¹⁹ As a police officer recently commented in an undercover documentary about homelessness:

*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.*²⁰

¹⁶ Vagrancy Act 1838

¹⁷ Vagrancy Act 1875

¹⁸ 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

¹⁹ Homeless Link 'Join the campaign for the repeal of the Vagrancy Act' 18 March 2019, <https://www.homeless.org.uk/connect/blogs/2019/mar/18/join-campaign-for-repeal-of-vagrancy-act>

²⁰ 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/greatermanchester-news/brutal-60-days-street-viewers-15977153> ;

Furthermore, section 4 at least appears to impose a reverse burden of proof on defendants, an aspect which may be in breach of a defendant's right to fair trial under Article 6 ECHR.²¹ This states that a defendant is in violation of this provision if caught '*wandering abroad*' and '*cannot give a good account of themselves*', implying the burden is on the defence to prove otherwise. There is no indication of what '*giving a good account of oneself*' should entail. This has allowed the law to be applied in a cruel and vindictive manner. In 2014, three men were prosecuted after having been caught taking food placed in skips outside the back of Iceland, despite the store's repeated statement they did not consider the defendants' activity criminal.²²

The Law's impact

Such issues would not be of great concern if the law was not regularly implemented. Yet in the last decade figures show an increase in the number of prosecutions under section 3 (begging) from 1,510 in 2006-7 to 2,365 in 2015-16, with over three-quarters of these resulting in a guilty verdict.²³ Indeed, more than 2,000 people have been prosecuted under the Act every year over the last 10 years, leading to over 15,000 convictions.²⁴ Whilst only 34% of local authorities in England and Wales still use it, those areas which do have acknowledged that it has become the default position for dealing with homelessness.²⁵ In Blackpool, for instance, it was reported that over half of those homeless in the city centre had been sentenced under the Act,

²¹ Lord Judge, Hansard, HL Deb, 23 April 2020, c85

²² BBC News "Three accused of stealing food from Iceland store bins" 29 January 2014. <https://www.bbc.co.uk/news/uk-england-london-25945052>

²³ Crown Prosecution Service, Response to Freedom of Information Act 2000 Request – Ref: 6127, 6 July 2016.

²⁴ FEANTSA, Homeless in Europe: The Criminalisation of homelessness, Spring 2020

²⁵ Crisis 'Scrap the Act: The case for repealing the Vagrancy Act (1824)' p29.

receiving a £100 fine and ban from the town centre, with failure to comply potentially leading to a jail sentence.²⁶

The discrepancy between different authorities also highlights the arbitrariness of the Act's implementation, with differences in policing practice significantly affecting the number of rough sleepers subject to penalisation. Furthermore, the *threat* of its reintroduction is still present in councils which don't currently use it: notoriously, prior to Prince Harry's royal wedding, the Council Leader of Windsor, Simon Dudley, threatened to reimplement the law to clear the area, describing an 'epidemic' of vagrancy which had resulted in the 'exploitation of residents.'²⁷

These figures of course fail to acknowledge the law's informal use without prosecution. For example, in Wales the law is regularly used as a mechanism to move rough sleepers, or challenge them without formal caution or arrest.²⁸ Such threats can have a significant psycho-social impact, forcing rough sleepers to move to areas where they are unknown to social services and outreach charities, placing them in an even more vulnerable position than their original precarious existence.

²⁶ Mount, J. 'UK: Over 1,300 homeless people penalised last year under the 1824 Vagrancy Act' 2 August 2019 <https://www.wsws.org/en/articles/2019/08/02/vagr-a02.html>

²⁷ Sherwood, H. "Windsor council leader calls for removal of homeless before royal wedding" 3 January 2018, The Guardian <https://www.theguardian.com/society/2018/jan/03/windsor-council-calls-removal-homeless-people-before-royal-wedding>

²⁸ Cymorthcymru, 'Campaign to scrap the Vagrancy Act', 19 June 2019, <https://www.cymorthcymru.org.uk/en/news-blog/news/campaign-scrap-vagrancy-act>

The Law's inadequacy from a policy perspective

A failure of deterrence

The Act is equally ineffective as a mechanism to remedy homelessness. As previously noted, section 4 of the Act, which criminalises rough sleeping, can lead to a 3-month prison sentence, destroying any sustained employment that a rough sleeper may have gained, and threatening future job opportunities. Even fines can have devastating consequences; the average charge representing half of any welfare payment a rough sleeper is likely to receive, with the threat of prison if left unpaid.²⁹ This creates an impossible burden on such individuals, with fines quickly adding up. It leads to state-enforced criminality, as the only means to pay the fine and avoid prison is to beg, rob or commit other criminal acts.³⁰ The law therefore becomes a pointless exercise in the pursuit of criminal deterrence.

Fines are often accompanied by a community order banning individuals from town and city centres.³¹ Whilst representing a response to complaints by local residents that rough sleepers bring crime and reduce the neighbourhood's appeal, exclusion orders also prevent rough sleepers from accessing basic services provided by outreach charities in the city centre, and preclude contact with their support network. As noted, this leaves such vulnerable individuals at even greater risk, and only increases their likelihood of remaining homeless.

²⁹ Ministry of Justice (2019) *Prosecutions and convictions data tool*; HM Government *Income Support* <https://www.gov.uk/income-support/what-youll-get>

³⁰ Crisis 'Scrap the Act: The case for repealing the Vagrancy Act (1824)' pXV

³¹ Ministry of Justice (2019) *Prosecutions and convictions data tool*

Criminalisation means rough sleepers are less likely to seek help from the police, given their fear of potential arrest when contacted. This has a particular impact given that rough sleepers are 17 times more likely to be victims of violence, with 25% of all female rough sleepers reporting having been sexually assaulted.³² Indeed, 50% of abuse received by rough sleepers went unreported to the police.³³ This presents a damning lacuna in the report and prosecution of crime in England and Wales.

A failure to end homelessness

The 2-year criminal record, given to any of the thousands found guilty under the Act, can also have significant impact on rough sleepers' opportunities and protections. 70% of recruiters will ask for details of an individual's criminal record.³⁴ Given the urgent need for state housing, councils also regularly consider those with a criminal record as 'low priority'.³⁵ This creates a vicious cycle, in which those who lack shelter get subsequently sentenced and given a criminal record, thereby reducing their opportunities for housing even further.

The failure of the act to limit homelessness, despite its consistent use over the last two centuries, is evident from the statistics. In 1909, a Royal Commission found that

³² Genesis Trust 'Gender and Homelessness' <http://genesistrust.org.uk/news/gender-and-homelessness/#:~:text=In%202017%20just%2014%25%20of,and%20breakfasts%20or%20with%20friends>.

³³ Cooper, V. (2017), 'No Fixed Abode: The Continuum of Policing and Incarcerating the Homeless', *Policing*, Vol. 11 (1), p. 31

³⁴ UNLOCKED 'A question of fairness: Research into employers asking about criminal records at application stage' October 2018.

³⁵ Home Protect 'Housing Issues with a criminal record' <https://www.homeprotect.co.uk/criminal-convictions-insurance/housing-issues-with-a-criminal-record>

vagrancy levels had increased tenfold since its introduction, despite a general decline in poverty.³⁶ Today homelessness is more closely related to a lack of spending on social housing and healthcare, rather than the deterrents of prosecution.³⁷ Over the last 10 years, there has been a 300% increase in the number of rough sleepers.³⁸ As the charity Homeless Link emphasises:

*We are convinced that the present system neither deters the vagrant nor affords any means of reclaiming him, and are unanimous that a thorough reform is necessary.*³⁹

The original justification for the Act, that homelessness is a voluntary act which can be deterred through criminalisation, is clearly belied by the facts. Prosecuting rough sleepers does nothing to end this vicious cycle, and makes demands on the justice system at a time of severe financial constraints, that are only likely to increase once the impact of COVID-19 effects government spending.

Even excluding popular opinion, and the potential to fall into an 'ad populum' fallacy, there is a clear moral argument why such treatment of rough sleepers is fundamentally wrong. Homelessness is a health and social issue, with clear correlations between mental health, poverty, and the likelihood of being made homeless. It is almost never a voluntary choice, and thus criminalising such 'behaviour' is in fact to criminalise someone for the situation they find themselves in,

³⁶ *Royal Commission on the Poor Laws and the Relief of Distress* (1909). London. p. 572

³⁷ Humphreys, R. (1999), *No fixed abode: a history of responses to the roofless and the rootless in Britain*. Basingstoke: Macmillan, p.140

³⁸ MHCLG, *Rough sleeping in England: Autumn 2018*, 31 January 2019

³⁹ Homeless Link 'Join the campaign for the repeal of the Vagrancy Act' 18 March 2019, <https://www.homeless.org.uk/connect/blogs/2019/mar/18/join-campaign-for-repeal-of-vagrancy-act>

rather than for an act. There should be nothing 'criminal' about sitting on a street corner, or seeking support from others who are voluntarily willing to provide financial support through donations. The law as it currently stands criminalises such behaviour, and therefore condemns the struggle of vulnerable individuals just to survive.

Moving forward: retain, amend, repeal?

As one might expect, it is difficult to find anyone who advocates for the Vagrancy Act being implemented in its current form. One possible justification would be the desire of local residents for rough sleepers to be moved on, believing their presence impacts local businesses and tourism, intimidating members of the public. Yet as recent legal advice provided by Bindmans LLP has shown, these fears are addressed through other modern legislation, such the Anti-social Behaviour Crime and Policing Act (ASB), which importantly doesn't impose criminal sanctions on rough sleepers.⁴⁰ This law's further benefit is that it requires a genuine element of criminal anti-social behaviour before individuals can be prosecuted, and therefore removes the reverse burden of proof which renders rough sleepers automatically in breach of the law.

⁴⁰ Crisis 'Scrap the Act: The case for repealing the Vagrancy Act (1824)', Appendix 2: Legal advice from Mike Schwarz, Bindmans LLP

Accepting such criticisms, the government has committed to reviewing the Act's status, but plans to consider 'all options' in how to deal with it.⁴¹ There are generally considered three options:

- (1) Retain the law, but discourage its use
- (2) Amend the law
- (3) Scrap the law altogether.

Whilst retaining the law but discouraging its use reduces the need for additional legislation, this option would have questionable impact. Historically, the Act's implementation *has* gone through peaks and troughs as government policy changed. Leaving it in law retains the possibility of its future use and fails to address many of the legislation's inherent defects. It is also unclear whether local authorities who control local policing matters will follow such guidance, given that many consider it their best method for dealing with homelessness in their area.

The second option is to amend the law as the Advocate-General for Scotland, Lord Keen, outlined, most likely by repealing section 4 criminalising rough-sleeping but maintaining the punishment for begging in section 3.⁴² Both sections are used interchangeably in practice, however, as is evident statistically by how falls in prosecutions for section 4 are often accompanied by rises for section 3.⁴³ Anecdotally, police officers are happy to charge rough sleepers under section 3 as

⁴¹Lord Keen, HL Deb, 23 April 2020, c84

⁴² Lord Keen, HL Deb, 23 April 2020, c84

⁴³ Ministry of Justice (2019) *Prosecutions and convictions data tool*.

'placed to beg'.⁴⁴ The removal of section 4 is therefore unlikely to have any impact on the numbers of homeless who are charged.

Scrap the Act

Given the issues with retaining or amending the Act, by process of elimination the best option would be to repeal the Act altogether. There are several reasons why this move would be beneficial. First, it is likely to save police and prosecutor's time and money. Rough sleeping is endemic, with police charging under the Vagrancy Act almost once every 8 hours. Those who are arrested will almost certainly be convicted again for the same crime, given that criminal punishment will do nothing but worsen the likelihood of someone being on the streets. Saving arrest and prosecution for only those who perform the more aggravated offences provided under ASB will still allow those who are a public danger to be arrested, whilst reducing the overall numbers who need to be prosecuted.

Secondly, removing the Act will reduce the unfair expectations the public place on police to deal with rough sleeping. If it is accepted that rough sleeping is not a criminal offence, but a socio-health issue, less responsibility is placed solely on the

⁴⁴ "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" 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/greatermanchester-news/brutal-60-days-street-viewers-15977153> ;

police to deal with it; a thankless task given that arrest does nothing to help. Scrapping the Act will also improve rough sleepers' attitude to law enforcement, increasing the likelihood they will report the violence they regularly suffer, and encouraging them to identify themselves to police, who can signpost access to more targeted support services.

By scrapping the Act, we would implicitly accept that rough sleeping is an issue requiring social rather than criminal services. There are many examples of successful strategies to end rough sleeping; almost all of these involve co-operation between charities and local services, with the police responding only when all other options will not work.⁴⁵ Such an approach cannot be taken whilst those who need help are at risk of criminalisation.

Conclusion

Despite much of this paper focusing on the legal and practical issues with the Vagrancy Act, arguably the most cogent is the simplest. Homelessness arises for many individuals through no fault of their own, and as a society we should not punish those who are placed in this situation. It is as true now as it was from its inception: homelessness, with its constant threats of violence and poverty, is rarely a choice. Rather than labelling rough sleepers as 'vagrants' and worthy of criminal punishment, they deserve compassion. Repealing the act is therefore more than just a legal matter: it represents a judgment on society's treatment of its most vulnerable

⁴⁵ Mackie, P., Johnsen, S. and Wood, J. (2017), Ending rough sleeping: what works? An international evidence review. London: Crisis.

members for almost 200 years. At a time when the government's response to COVID has finally placed the majority of rough sleepers into accommodation,⁴⁶ it is high time we decriminalise their position when they inevitably return.

Word Count: 2992

⁴⁶ Francisco Garcia "Coronavirus nearly ended homelessness in the UK. Why can't we end it for good?", 11 June 2020, <https://www.theguardian.com/commentisfree/2020/jun/11/coronavirus-homelessness-uk-rough-sleepers-lockdown-tories>