

6. NEW IDEAS – WHAT'S WORKING?

In addition to expanding the way we think about these complex issues, the purpose of an opportunity like this fellowship is to get new ideas, develop constructive recommendations, broaden insights and renew motivation for improving the way we address issues of homelessness and public space regulation.

There is no single jurisdiction that is managing public space and homelessness perfectly – it is a complex social, economic and legal issue and one that requires careful balancing of competing needs, interests and priorities. There are, however, a number of innovative, thoughtful, effective measures being taken throughout the world, which can be shared and learned from.

This section sets out these insights and ideas in the following categories:

- effective research, planning and evaluation;
- new partnerships and working with 'non-traditional allies';
- non-justice based responses – focussing on health, housing and practical solutions;
- strong, effective relationships with police; and
- the role for the courts – innovative justice models.

6.1. Effective research, planning and evaluation

In the same way that this report encourages advocates to consider the motivations behind enforcement-based approaches to homelessness, it is essential that decision-makers base laws and policies on research and evidence about the causes of problematic conduct in public spaces.

Given the general trend toward enforcement-based approaches to homelessness, you might expect that there is a solid body of evidence supporting this approach as an effective way of addressing 'public space offending'. Troublingly, however, research about people experiencing homelessness and the causes of their activities, including public drunkenness, sleeping rough and begging, is relatively scarce. Certainly, this insight or evidence-base has not been a prerequisite or sometimes even a consideration in developing enforcement-based approaches to homelessness.

By way of example, there are a number common assumptions that inform enforcement-based approaches to begging in local areas – including that people who beg are not homeless, are addicted to drugs or alcohol, are 'professional' or part of an organised initiative and/or earn more money than people engaged in standard employment²⁶⁴ – but there is often an absence of robust research and evidence supporting these assumptions.

In Melbourne, for example, anecdotal evidence informed the begging strategy, Operation Minta. There was an indication that there had been an increase in 'aggressive' begging and a suggestion that not all of the people

²⁶⁴ See, eg, Angus Erskine and Ian McIntosh, 'Why begging offends: historical perspectives and continuities' in Dean, *Begging Questions*, above n 159, 27, 28–9, which refers to media reports that 'consistently portray people who beg as dishonest and undeserving of sympathy or generosity of the passer-by', and identifying two key features of these stories: 'that those who beg may not be what they seem, and questions about the amount of money that they make'.

begging in the CBD were experiencing homelessness.²⁶⁵ However, it wasn't clear that research had been done about people begging in the CBD, including their circumstances, why they were begging or what might need to change for them to stop begging. Some impressive research has since been carried out by the City of Melbourne in relation to the circumstances of people sleeping rough in the City,²⁶⁶ but at this stage no link has been made between these insights and the enforcement-based response to begging.

The City of London Police's Operation Fennel, also an enforcement-based approach to begging, is collecting data, including information about why people are begging, but it is being collected as part of the active enforcement operation rather than as part of the planning phase. It is preferable, this report suggests, for this research to be undertaken prior to the development of programs aimed at dealing with homelessness and public space.

In the absence of understanding why people are engaging in the conduct that is the subject of concern, it is difficult if not impossible to develop sensible, effective, sustainable solutions to the perceived problem.

With this in mind, this section showcases some examples of research that examines the causes of problematic conduct in public places by people experiencing homelessness and the impact of enforcement-based approaches to addressing this conduct. It is recommended that research takes places at each of the following phases of designing and implementing strategies for managing the use of public space by people experiencing homelessness:

- in designing responses – considering causes and appropriate responses;
- during and after implementation – assessing the impacts and outcomes (including assessment of the impact of enforcement-based approaches on people experiencing homelessness); and
- before, during and after implementation – undertaking transparent, accountable cost assessments.

This sample checklist for designing, implementing and evaluating new models for regulating public space is provided by way of practical guidance about the research that should be undertaken and the evidence that should be evaluated as part of this process.

Eight step checklist for designing, implementing and evaluating approaches to dealing with homelessness and regulation of public space

1. What are we trying to do? For example, to clean up the streets, reduce homelessness, link people with services, stop people begging or reduce public drunkenness.
2. Why are we trying to do it? For example, in response to public concern about disorder or safety, pressure from businesses regarding commercial impacts, to improve the wellbeing of people experiencing homelessness or as part of a strategy to reduce homelessness.
3. Balancing the competing needs and interests – if we are trying to clean up the streets or respond to public pressure about disorder, for example, these concerns need to be balanced against other needs and interests, including those of individuals experiencing homelessness, service providers, the police and the courts.
4. Assess the proposed methods and what their impacts might be – consider the potential impact of the proposed method, for example, a 'crackdown' or 'blitz' on people begging will require significant police

²⁶⁵ See, eg. John Masanauskas, 'Police appeal to public to refuse aggressive begging' *The Australian* (19 April 2013), which quotes the responsible Victoria Police commander: 'We went out with the Salvos because they know who a lot of the beggars are. We categorised those who are genuinely homeless and needy, and those who are just looking for extra money ... some beggars are quite aggressive and people hand over money because they are in fear'.

²⁶⁶ City of Melbourne, *Living Rough in Melbourne*, above n 26.

resources, court intervention and service involvement. It will impact on people who are begging, including potentially through breaking links with services, prompting other more dangerous activities and damaging relationships with police.

5. Are there alternative ways of dealing with this problem? Consider interventions by services other than law enforcement, including housing, health, drug and alcohol or mental health services. Comparative research is important in this respect. It is a local problem, but it is not unique and we can look further afield for ideas about what is working. Consult with services and people with a direct experience of homelessness in considering alternatives.
6. What will this cost and how much would alternatives cost? Consider the costs of police and court resources, involvement of legal services, any jail time or administration costs and assess these costs against the cost of alternatives, including provision of housing with support or targeted health-based support.
7. Is this working? During the implementation of an enforcement-based approach to homelessness, assess the impacts on individuals, community, crime rates, courts, police and services.
8. What were the impacts and outcomes? Publicly discuss the impacts and re-evaluate the program.

The examples of research in this section show the types of information that should be gathered and the methods of collecting and analysing this evidence when developing, implementing and evaluating responses to homelessness and related conduct in public places.

In designing responses – considering causes and appropriate responses

The following are examples of the kinds of research that needs to be undertaken in developing responses to homelessness and public space. The case studies below highlight the method of research, some of the key findings and the implications for policy.

Multiple Exclusion Homelessness – a quantitative study of the causes of acutely visible hardship in the UK

Background on the research

A 2012 paper by Fitzpatrick, Bramley and Johnsen presented: 'the first statistically robust analysis of pathways into homelessness and associated forms of severe and multiple disadvantage in the UK' with the aim of 'deepen[ing] understanding of the causation of one of the most extreme, and visible, forms of social exclusion found in the UK and elsewhere in the developed world'.²⁶⁷

It was a quantitative analysis of routes into homelessness and multiple exclusion, as opposed to previous research on these pathways which was primarily qualitative: 'While qualitative research is well suited to providing in-depth, nuanced information about the nature of individual experiences and perceptions, it is not designed to address research questions that require quantification—such as the frequency with which particular combinations or sequences of experiences are found in the homeless population'.²⁶⁸

²⁶⁷ Suzanne Fitzpatrick, Glen Bramley and Sarah Johnsen, 'Pathways into Multiple Exclusion Homelessness in Seven UK Cities' (2013) 50(1) *Urban Studies* 148, 162.

²⁶⁸ *Ibid* 150.

The study defined a person as having experienced multiple exclusion homelessness (MEH) if they have, 'been "homeless" (including experience of temporary/unsuitable accommodation as well as sleeping rough) and have also experienced one or more of the following other "domains" of deep social exclusion: "institutional care" (prison, local authority care, mental health hospitals or wards); "substance misuse" (drug, alcohol, solvent or gas misuse); or participation in "street culture activities" (begging, street drinking, "survival" shoplifting or sex work)'.²⁶⁹

Research methodology

Research was carried out in seven cities where people experiencing MEH were concentrated between February and May 2010: Belfast; Birmingham; Bristol; Cardiff; Glasgow; and Westminster (London).

- **Agency selection** – agencies offering low threshold support services to people experiencing deep social exclusion were identified (such as street outreach, drop-in services, day centres, direct access accommodation, church-based soup runs, etc) as they make relatively few 'demands' on service users and might therefore be expected to reach the most excluded groups. From this sample frame, six services were randomly selected in each location (39 low threshold services in total).
- **Questionnaire** – a questionnaire survey was undertaken with the users of these low threshold services over a two-week time window. The questionnaire asked 14 yes/no questions to capture experience of the four domains of deep exclusion specified in the MEH definition (i.e. homelessness, substance misuse, institutional care and street culture activities). The questionnaire was designed for self-completion, but interviewers from the research team and staff from the relevant service were on hand to provide assistance and the questionnaire was translated into four other languages. In total, 1286 census survey questionnaires were returned, representing a response rate of 52%.
- **Extended face-to-face interviews** – interviews were conducted with users of low threshold services who had experienced MEH. A structured questionnaire was designed to generate detailed information on the characteristics and life experiences of these service users. Interviews were recorded via computer-assisted personal interviewing technology, and lasted 46 minutes on average. Particularly sensitive questions were asked in a self-completion section. Interpreting services were made available for those whose first language was not English. In total, 452 extended interviews were achieved, with a response rate of 51%.
- **Feedback seminars and a launch event** – these were conducted in all seven case study locations (attended by approximately 120 local policy-makers and practitioners) in addition to a national launch event (attended by almost 100 policy-makers, practitioners and service users).

Findings and policy implications

The findings are complex, but a summary is:

[T]he relationship between childhood deprivations and trauma and the more complex end of the MEH spectrum is striking. Sequencing analysis revealed that substance misuse and mental health issues tended to arise early in MEH pathways, consistent with the argument that childhood trauma can undermine coping mechanisms in young adulthood, with potentially long-term consequences for health, wellbeing and social functioning. Homelessness, street lifestyles and adverse life events typically occur later in these pathways, strongly implying that these experiences are more likely to be consequences than originating generative causes of deep exclusion.²⁷⁰

The authors consider the policy and practice implications, including:

- the need to co-ordinate responses across all aspects of people's lives, rather than view them through a series of separate professional lenses (for example, 'criminal justice', 'homelessness' and 'substance misuse');

²⁶⁹ Ibid 149.

²⁷⁰ Ibid 164.

- there is a 'forgotten middle' of men in their 30s who often face the most extreme forms of MEH, usually associated with hard drug use whose service needs were not being met; and
- the need to focus on homelessness prevention (applying for public housing or staying in homeless shelters are 'typically rather late signs of MEH' and instead 'preventative interventions should focus on earlier signs of distress wherever possible, with schools, drugs and alcohol services, and the criminal justice system, likely to come into contact with people vulnerable to MEH well before housing and homelessness agencies do, thus having a crucial role to play in prevention efforts').²⁷¹

While obviously specific to the context in which this research took place, the rigorous methodology (including the partnership with carefully selected direct service providers and the use of feedback sessions with practitioners and policy-makers) provides helpful guidance in terms of the kind of research that goes into understanding the pathways into rough sleeping. If we develop strategies for working with people experiencing this acute form of homelessness and social exclusion in the absence of an understanding of the causes of their circumstances, our strategies will inevitably be ineffective and will risk inflicting further hardship on intensely vulnerable people.

The case study below summarises research undertaken about people begging in the London. It deals with:

- the methodology of the research (including collaboration with a range of services, selection of appropriate interviewers and consultation with people with a direct experience of homelessness in survey design); and
- its key findings, which – contrary to a number of pre-existing assumptions about people who beg – paint a picture of acute vulnerability, homelessness, low yields and hopes for housing and a stable future.

We are Human Too: A Study of People Who Beg

In 1993 the Director of the UK's national charity for single homeless people, Crisis, said: 'When we reflected on the media coverage of some beggars, the impression left in a few quarters was of skilful con-artists feigning hardship and homelessness to beg money, aggressively, from a caring, guilty or scared public'.²⁷² Despite this, Crisis noted that 'hard facts about begging didn't exist'²⁷³ and set out to assess whether people begging 'actually need our help'.²⁷⁴

Research methodology

Between October and December 1993, 145 people were interviewed who had an experience of begging (either current or past) in central London. The interviews took place on the streets (30), in day centres and advice centres (82) and in hostels (33). No names were asked.

A structured questionnaire was developed with the help of a group of people experiencing homelessness 'so that it would be as user friendly as possible'. The survey was divided into two parts, one straightforward and one more

²⁷¹ Ibid 163.

²⁷² Alison Murdoch with Liz Connell, Jean Davis and Joanne Maher, *We are human too: a study of people who beg* (Crisis, London, 1994) vii (available at: <http://www.crisis.org.uk/data/files/publications/WeAreHumansToo.pdf>).

²⁷³ Ibid viii.

²⁷⁴ Ibid vii.

in-depth. The interviews took an average of 45 minutes each.

'All except one of the 16 interviewers were volunteers, from all different walks of life, chosen for their friendly manner and experience of working with homeless people. This made a major contribution to the success of the fieldwork, which took over 200 hours, spread over a mixture of mornings, afternoons, evenings and weekends'.²⁷⁵

A total of 29 agencies and organisations (predominantly housing, homelessness and support services, but also including the Metropolitan Police) were identified as having 'hosted the interviews or contributed ideas and support'.²⁷⁶

Key findings

Some of the key findings of the Crisis research were:

- People begging were of all ages and ethnic groups; most were men.
- There was a very clear link between begging and homelessness – almost 80% were homeless the previous night (30% slept rough and the remainder stayed in temporary accommodation such as a hostel). Sixteen per cent had accommodation of their own but just under half were in contact with social workers and most had been homeless previously. For almost all homeless people begging, homelessness was not a chosen way of life – four in five previously had a home (the loss of a partner was the most common reason for losing that home). All but two people who were homeless wanted a home.
- Most people found it very difficult to start begging – shortage of money (including delayed or stolen benefits) was the most common reason for doing so. Over three quarters found it extremely difficult and humiliating to start.
- Nearly half the people begging had been in care; one quarter slept rough before the age of 16. Almost one in two had no family contact whatsoever.
- One third of people had a history of mental health problems. Seventeen per cent had been in a psychiatric hospital.
- One third of people begging had a recognisable substance abuse problem, most commonly alcohol. The most common reason for using alcohol or drugs was to counter depression.
- The most common single wish of people begging was for housing, followed by work.
- The majority of people begging had been abused by the public. One in three had been physically assaulted. Over one third had been sexually harassed. Two thirds had received verbal abuse.
- Begging income was varied and fluctuated as most people beg sporadically – it is generally used to 'top-up' inadequate benefits to buy items to meet immediate needs. Average takings in a day were £10-£20. Food was the item most commonly bought with begging money.
- Four in five had been in contact with the police while begging. Seventy eight per cent had been moved on. One in two had been arrested. Almost three quarters of people begging thought the police were reasonable.

Recommendations

The paper presents recommendations for: government; the police; local authorities; not-for-profit sector agencies; and the general public. The recommendations highlight five urgent areas for action:

- Changes to the benefits system – in terms of levels, eligibility and delivery.

²⁷⁵ Ibid viii.

²⁷⁶ Ibid 34-5.

- Improved access to both emergency and long-term housing – for all ages and special needs groups, along with practical support to help people stay housed.
- Regional strategies to tackle homelessness – led by local authorities, but encouraging co-working between different departments, agencies and the police, and with the maximum involvement of the local community.
- Extended daytime and evening services for homeless people – offering practical help, access to specialised services and opportunities to get back into employment (noting this would need Government funding).
- Repeal of the *Vagrancy Act 1824* – ‘a costly and impractical piece of legislation designed in 1824 to criminalise people who are homeless and destitute’.²⁷⁷

Despite being 20 years old, the method of consultation (including involvement of people with a direct experience of homelessness in the survey design), careful research and analysis of the policy implications of the research findings is a model that should be emulated in other jurisdictions trying to develop effective responses to homelessness and related activities in public places, including begging, sleeping rough or drinking in public. This kind of informed consideration of the diverse and complex factors that push people into homelessness and begging is critical to the formulation and implementation of policy solutions.

During and after implementation – the impacts and outcomes

As has been discussed throughout this report, enforcement-based mechanisms are often introduced in response to public pressure to address visible homelessness in local areas. After their introduction, however, there is often little evaluation of the effectiveness or otherwise of these measures.

While local councils or police departments may report on reduced rates of rough sleeping or begging in their local area or the number of arrests under the relevant laws, it is rare that broader research is conducted on the impact of these initiatives on people experiencing homelessness. In this way, it is not clear whether enforcement, or the risk of it, has just altered or moved homeless people’s conduct to make it less visible and has simply moved the problem – in potentially exacerbated form – elsewhere.

Throughout my travels, I came across a number of impressive research projects, which involved academics partnering or working with homelessness agencies and speaking directly with people experiencing homelessness about the impact of enforcement on them. These projects are profiled below. Importantly, each of these projects has been conducted independently of the agency that introduced the enforcement measures. While the independence of the evaluation is important, impact evaluation should be built into enforcement-based initiatives and should be the responsibility of the government agency who introduced the particular enforcement-based program.

Surveying 512 homeless people about Denver’s urban camping ban

As discussed above (part 4.1), in May 2012 Denver introduced a ban on ‘urban camping’.

Local council representatives suggested that the ordinance would help link people experiencing homelessness with services and also that police were using their discretion in enforcing the ban so that people are linked with services rather than arrested.²⁷⁸

Local advocacy organisation, Denver Homeless Out Loud, and the University of Colorado undertook a survey of

²⁷⁷ Ibid x.

²⁷⁸ See, eg, Albus Brooks, ‘Denver’s camping ordinance helps us address needs of homeless’ *The Denver Post* (19 July 2013).

512 members of the homeless community to determine the impact of the ban on their day-to-day lives. The survey assessed:

- frequency and nature of police contacts with homeless individuals;
- result of those police contacts;
- patterns of shelter use or non-use;
- nature of services being offered to homeless individuals;
- whether homeless survey respondents have changed their behaviour following the ban, such as by changing sleeping arrangements, daily routines, service-access, or areas of town frequented;
- whether homeless people feel more or less safe since the ban, and why; and
- personal stories regarding experiences on the street that might shed light on the implementation of this new law.²⁷⁹

The survey results showed that the ban was not working as intended (for example, 83% of people approached by the police about violations of the camping ban, were asked to move on and were not offered alternative services).²⁸⁰

In summary, the respondents indicated that they: found it increasingly difficult to access overcrowded shelters; avoided well-lit and safe downtown areas for hidden locations; and felt less safe.²⁸¹

37 in-depth interviews with UK 'street users' about the impact of enforcement on their wellbeing

As discussed above, the research of Dr Johnsen and Professor Fitzpatrick assesses the impact of enforcement on the welfare of 'street users' in England.²⁸² As part of their study of five local areas that had introduced 'enforcement interventions' in response to 'problematic street culture', particularly begging and street drinking, Johnsen and Fitzpatrick:

- collected data on the use of enforcement interventions in the case study areas (for example, the number of ASBOs granted and breached and the number of prison sentences for breach);
- conducted interviews (either one-on-one or through focus groups) with a total of 82 frontline workers from a range of services and enforcement agents (including police officers, magistrates, city centre managers);
- conducted 37 in-depth interviews and held focus groups with 29 current or former 'street users' to assess the impact of enforcement on their wellbeing;
- undertook focus groups or one-on-one conversations with 27 local residents and business proprietors;
- attended multiagency anti-social behaviour operational forums and/or accompanied street outreach workers

²⁷⁹ See Denver Homeless Out Loud, *Denver Camping Ban Survey (2012)* (available at: <http://denverhomelessoutloud.files.wordpress.com/2012/10/camping-ban-survey-final.pdf>).

²⁸⁰ Denver Homeless Out Loud, *Report from the Street*, above n 29, 8–9.

²⁸¹ See Tony Robinson, 'Denver's camping ban is counterproductive' *The Denver Post* (19 July 2013).

²⁸² Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7.

or community police officers on their 'rounds'; and

- conducted 'feedback seminars' on the final draft of the report to confirm the factual content of each case study, test the recommendations against experience and 'give something back' to those who had assisted with the research.²⁸³

This comprehensive qualitative study provides insights into 'what works, for whom, in what circumstances'.²⁸⁴ In doing this, it is able to highlight the risks and benefits associated with enforcement-based approaches and to make suggestions about ways to reduce the risks that enforcement will have a damaging impact on 'street users'. The essential features of enforcement-based approaches (including immediately available, tailored services, warning stages and a policy not to use enforcement against people with a mental illness) that the research identified are discussed in part 4.1 above. Importantly, Johnsen and Fitzpatrick note that, although these features are essential to any potentially beneficial impact of enforcement on street users, the features do not guarantee success and nor do they eliminate the risk that enforcement will have a damaging impact on individuals experiencing homelessness.²⁸⁵

Even the most comprehensive research will not deliver clear-cut solutions to complex problems. It will, however, increase our understanding of the causes of the problems, identify necessary features of successful initiatives to address the problems and highlight any consequences that might otherwise be unanticipated (for example, increased isolation and risk for people experiencing homelessness). This information is essential to weighing up the proposed enforcement-based approach to homelessness against alternatives. It is also critical to reassessing whether an existing enforcement-based approach should be modified or discontinued because the risk of harmful impacts are unable to be effectively managed or are deemed to be too high for the approach to be justified.

Transparent, accountable cost assessments

The development and implementation of enforcement-based approaches to homelessness is never free. Accurate, open, accountable assessments of the financial costs are, however, less common than you would hope.

As governments are under pressure to cut spending, including on public housing, health and support services, it is important that we consider whether increased spending on enforcement-based mechanisms is the most efficient, effective way to deal with visible homelessness and poverty in our cities.

The costs of enforcement-based approaches are discussed in part 4.5, which sets out three studies that analyse the costs of enforcement-based approaches to homelessness, including by calculating:

- the prevalence of homelessness amongst a city's 'chronic offenders' (41% of those who were arrested at least five times in the prior year were homeless);²⁸⁶
- the average annual number of arrests and nights in jail for 33 people experiencing homelessness (and the annual cost of this of \$9,266.20 per offender or approximately \$306,000 in total);²⁸⁷
- the interactions with the justice system of 37 people experiencing homelessness over a three year period (they were arrested 1,271 times) and the cost of this (the jail cost alone was \$278,000);²⁸⁸

²⁸³ Ibid 4–6.

²⁸⁴ Ibid 7 citing R Pawson and N Tilley, *Realistic Evaluation* (1997) 85.

²⁸⁵ Johnsen and Fitzpatrick, *The Impact of Enforcement*, above n 7, 52: 'If taken into account within enforcement strategies, these considerations will minimise, although not eliminate, the risk of harm to vulnerable street users by enforcement action'.

²⁸⁶ NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Charlotte-Mecklenburg County, *More Than Shelter! Charlotte-Mecklenburg's Ten-Year Implementation Plan to End and Prevent Homelessness – One Person /One Family at a Time* (October 2006) 5 (available at: <http://charmeck.org/city/charlotte/nbs/housing/documents/10yearplantoendandpreventhomelessness.pdf>).

²⁸⁷ Ibid.

- the police time spent issuing tickets for begging and squeegeeing and the associated financial cost of this over an 11 year period (67,388 tickets were issued at a cost of \$936,019 and 16,847 hours of police time).²⁸⁹

It is strongly recommended that decision-makers proposing new enforcement-measures or evaluating existing programs consider the cost of:

- increased numbers of law enforcement officers;
- the time of enforcement officers issuing tickets or arresting people;
- jail time;
- administration costs, including issuing tickets, reminders, warrants, processing waiver applications; and
- court resources.

Governments should consider these costs against alternative mechanisms for dealing with conduct in public places by people experiencing homelessness (including the service-based approaches discussed in part 6.3 below).

In addition to the financial costs of enforcement-based approaches, decision-makers should consider the resource burden on related services, including legal services. The use of citations, tickets and warrants has resource implications for services that provide legal and non-legal assistance to people experiencing homelessness. These services are often required to assist vulnerable clients to navigate the legal system and to link them with the services they need to help address the underlying causes of the offending conduct.²⁹⁰ Importantly, the resources used by legal and non-legal services to assist clients to avoid prison or overwhelming debts are resources that are diverted from other areas of need, including homelessness prevention.

Currently this balancing of competing resource pressures and sensible assessment of the costs of alternative measures seems to be uncommon; the result can be costly, ineffective measures for regulating the use of public space by people experiencing homelessness.

6.2. New partnerships and working with 'non-traditional allies'

As discussed throughout this report, the commercial considerations of the business sector can motivate enforcement-based approaches to homelessness in local communities. Concerns about the impact of visible homelessness on local businesses can motivate local decision-makers to initiate 'crackdowns' or other measures to reduce the visibility of homelessness in the local area.

It is short sighted, however, to assume that the interests of local businesses and homelessness advocates are necessarily at odds. The role of the Business Improvement Districts in the US are an example of the way in which the interests of these different parties can be compatible and conducive to a collaborative, solution-focused approach.

²⁸⁸ NLCHP 2011, *Criminalizing Crisis*, above n 32, 40 citing Asheville and Buncombe County, North Carolina, *Looking Homeward: The 10-Year Plan to End Homelessness* (2005) 8 (available at: <http://www.ashevilenc.gov/Portals/0/city-documents/CommunityDevelopment/Homeless/10yearplan.pdf>).

²⁸⁹ O'Grady, Gaetz and Buccieri, *Can I See your ID?*, above n 10.

²⁹⁰ See, eg, Justice Connect Homeless Law, *What's the Cost?*, above n 3: an analysis by an independent consultant of 13 infringements files run by Homeless Law found that cases took between 6 months and 2.5 years to resolve; the average time taken to resolve an infringements matter was 14 months; the average cost to pro bono law firms of running an infringements matter was \$19,825. One matter required an investment equivalent to \$54,000 in fees to resolve.



Washington DC: Downtown DC Business Improvement District

Working with business – US Business Improvement Districts and homelessness

A relatively recent but now well established phenomenon across the US are local 'business improvement districts' (BIDs). There are approximately 1200 BIDs in the US. They are generally established by local legislation and funded by a levy paid by local businesses.

Businesses within a defined area contribute to a common fund for the 'improvement' of their shared business district. Their aim is to improve the commerciality of local areas and, accordingly, BIDs add another dimension to regulation of public space and homelessness, which can be positive or negative, depending on the predisposition of the particular BID and its members. On the one hand, BIDs are a strong lobby group and can be a source of pressure for 'crackdowns' on homeless people in public places motivated by commercial concerns. On the other, they can be an unconventional ally (and potential source of financial support) for initiatives that facilitate homeless people to move out of public places.

In their most positive form, BIDs have provided funding for outreach workers and drop-in clinics to link rough sleepers with support services.²⁹¹

Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department said that three of DC's eight BIDs had hired outreach workers with a mental health background and that this had played a significant role in reducing some of the need for police intervention.

The Downtown DC BID 'has the only non-governmental, clinically-based outreach team for individuals experiencing homelessness in Washington, DC'. The BID's website states:

²⁹¹ See, eg. US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 25 which refers to the Downtown Homeless Outreach Team in Washington DC, a multi-disciplinary team of outreach workers who engage people experiencing homelessness on the streets of downtown DC. The outreach team is fully funded by downtown property owners through the Downtown Business Improvement District and managed by the non-profit Pathways to Housing DC.

The BID's philosophy is that homeless individuals are part of the city's fabric, too. And like every other citizen – Downtown workers, residents and visitors – we need to serve this segment of the population. We're about finding solutions to people living on the streets. Our goal is not to maintain those who are homeless, but to provide a hand-up.²⁹²

The Downtown DC BID has partnered with the city government and 20 local service providers to 'facilitate overall best practices to end homelessness'. It partners with Pathways to Housing DC to employ the Downtown Homeless Services Team: 'a four-person, clinically-based outreach team that provides street-level intervention to move individuals beyond homelessness to independence'.²⁹³

Amy Horton-Newell, Director of the American Bar Association Commission on Homelessness and Poverty, provided helpful insights into working collaboratively with the business community in relation to addressing homelessness. She said, 'for the most part, the business community and advocates are on the same page – no one wants people drinking, begging or sleeping on the street, so the community should work collaboratively to address the problem by providing housing and supportive services.' Ms Horton-Newell said, from experience, a good starting point is to get a range of different parties around the table (business, elected officials, police, providers, advocates and consumers) and facilitate a constructive dialogue on moving people off the streets and into housing. She said, perhaps start from the point of: 'we understand what prompts criminalisation efforts, but it won't get the result you want; instead, we need to focus on ensuring sufficient housing and supportive services are available and accessible'.

Ms Horton-Newell explained that models that have been successful in the US proactively engage people experiencing homelessness through outreach and collaborative approaches. As an example, some BIDs collaborate with homeless outreach workers and service providers and encourage business owners with concerns to call outreach workers rather than the police, but 'the trick is to have a housing option for the homeless person sitting on the sidewalk ... and the reality in most communities in the US is that we don't have sufficient housing options'.

Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, also encouraged collaboration between different sectors. She said the starting point for 'community solutions' is to get people with a mix of perspectives round the table 'and agree what the problem is and make a start on some of the solutions'.

Searching for Balance – federal legislation and a summit of interested parties

The US Interagency Council on Homelessness has strongly recommended engaging broad sectors of the community to develop 'solutions that both help people who are homeless and address the concerns of the broader community'.²⁹⁴

The US Federal *Homeless Emergency Assistance and Rapid Transition to Housing Act 2009* required the US Interagency Council on Homelessness to 'develop alternatives to laws and policies that prohibit sleeping, eating, sitting, resting, or lying in public spaces when there are no suitable alternatives, result in destruction of property belonging to people experiencing homelessness without due process, or are selectively enforced against people experiencing homelessness'. As part of this, the US Interagency Council on Homelessness joined with the Access to Justice Initiative of the US Department of Justice and the Department of Housing and Urban Development to hold a summit on the 'development of constructive alternatives to the criminalization of homelessness' called

²⁹² Downtown DC Business Improvement District, *Homeless Services* (available at: <http://www.downtowndc.org/programs/homeless-services>).

²⁹³ *Ibid.*

²⁹⁴ *Ibid* 10.

Searching for Balance: Civic Engagement in Communities Responding to Homelessness.

The summit was a full day forum that brought together city and county government officials, police officers, business improvement district leaders, court officials, health providers, national advocates, federal partners, and men and women who had experienced homelessness. Based on the solutions proposed at the summit, the US Interagency Council on Homelessness prepared its ground-breaking report *Searching out Solutions: Constructive Alternatives to Criminalization*. *Searching Out Solutions* states:

Some of these solutions involved partnerships among sectors that have not previously worked together, some involve new programs and services funded all or in part by business and community associations, and some involve the donation of volunteer time and expertise by members of the community as leaders of coalitions or providers of needed skills or services. All involve communitywide collaboration, openness to innovation, and a commitment to real solutions to underlying problems rather than to short-term fixes.²⁹⁵

Often we assume that government, police, business, homeless advocates and people experiencing homelessness have incompatible interests in relation to homelessness and public space. Homelessness is a problem for the entire community and it requires us to work together to address it. It is important that we are cognisant of, and open to, the significant potential for these groups to work together to provide the expertise, insights and resources needed to develop and implement effective solutions to homelessness and associated conduct in public places.

6.3. Non-justice based models – focussing on health, housing and practical solutions

In most jurisdictions I visited we are in the disappointing position where law enforcement and the justice system have become the default mechanism for dealing with visible homelessness and associated activity in public places.

Whether or not police are the best equipped agency and individuals to carry out this role has received inadequate consideration. Berk and MacDonald reached positive conclusions about crime reduction under the Safer Cities Initiative in Los Angeles, but articulated the reminder: 'law enforcement actions do not address the roots of homelessness nor most of its consequences. Getting tough on the homeless should not be confused with policies or programs that respond fundamentally to the social and personal problems that homelessness presents'.²⁹⁶

Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, noted that thought also needs to go into who makes the offer of assistance and asked: 'how welcome is it if a police officer makes it?' While recognising that there are officers with homelessness expertise, Ms Poppe noted the risk that: 'links with services are less likely to be successful if they're coming from the arresting officer'.

With this in mind, we need to move to a position where law enforcement and the justice system are not the first resort for dealing with homelessness in our communities. As discussed in part 3.1 above, this often happens because of a lack of awareness of viable alternatives.

This section sets out a number of alternatives to enforcement-based responses to homelessness and related conduct in public places. It highlights examples of:

- dealing effectively with alcohol dependence and homelessness;

²⁹⁵ See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 10.

²⁹⁶ Berk and MacDonald, *Policing the homeless*, above n 97.

- housing-based solutions to public space offending; and
- practical alternatives to fines and tickets for jaywalking, public urination and illegal street vending.

Dealing effectively with alcohol dependence and homelessness

The motivation for this fellowship was my client Scott who had an acquired brain injury, anxiety and depression and who cycled in and out of homelessness. He also battled chronic alcohol dependence and had done for over 20 years. During periods of homelessness, Scott would be arrested for being drunk in a public place, taken to the cells for about four hours, released and issued with an infringement for approximately \$600. Sometimes this would happen multiple times in one day and Scott incurred about \$15,000 in infringements for being drunk in a public place in a five year period.

Scott's example - one of many - gives rise to questions about whether this is the most effective way of dealing with alcohol dependence and homelessness in our communities. It is a question other jurisdictions have given thought to and some insights are below.

Frank Paul's death – sobering centres recommended in Vancouver

Frank Paul was a 48-year-old Mi'kmaq who died of exposure and hypothermia in a Vancouver alley on 5 or 6 December 1998, after he was left there by police while severely intoxicated and wet. Mr Paul experienced homelessness, alcohol dependence and mental illness.

The Government of British Columbia appointed an independent commission of inquiry to examine the circumstances surrounding the death of Mr Paul. The Commissioner was former Supreme Court Justice William Davies QC.²⁹⁷ The Terms of Reference included inquiry into the:

- circumstances surrounding Mr Paul's death;
- response of five public bodies to his death;
- rules, policies and procedures of those bodies in their interaction with people incapacitated by alcohol or drug use, or when an individual dies in similar circumstances; and
- health care and social services programs and facilities available in Vancouver for people experiencing chronic alcohol dependence and homelessness.

The Commission held 60 days of evidentiary hearings at which 68 people testified. It also convened nine days of informal roundtable discussions of policy issues, and considered submissions from participants and members of the public.²⁹⁸

Commissioner Davies concluded: 'The evidence requires me to conclude that despite the service of many fine and diligent professionals, our systems of justice and social service ultimately failed Frank Paul'.

Commissioner Davies set out Vancouver's process for dealing with persons intoxicated in public:

[They] are transported to the sobering unit of the Detox Centre (operated by the Vancouver Coastal Health Authority) or, if they have a history of violence, to the Jail (which includes a separate holding facility for intoxicated people). Jail staff members are required to replace wet clothing and check on intoxicated prisoners every 15 minutes. Nursing

²⁹⁷ British Columbia Ministry of Justice, Independent Reports, *Davies Commission of Inquiry Into the Death of Frank Paul (2009 and 2010)* (available at: <http://www.pssg.gov.bc.ca/policeservices/reports/independent.htm#davies>).

²⁹⁸ William H Davies QC, Commissioner, *Alone and Cold: The Davies Commission Inquiry into the Death of Frank Paul* (12 February 2009) (see: <http://frankpaulinquiry.ca.nationprotect.net/>) (*Davies, Alone and Cold*). The Criminal Justice Branch of the Ministry of Attorney General challenged the commission's jurisdiction to inquire into its response to Mr Paul's death (i.e. the decision of whether or not to charge the police officers involved) and this decision was subject to an application for judicial review and appeal. The 2009 interim report dealt with all issues other than this question.

staff must visually assess prisoners on admission, and every hour thereafter. Before release, Jail staff must ensure that prisoners are able to care for themselves, are dressed appropriately for the weather, and have a place to go and a means to get there. Chronic alcoholics are released with few or no community supports, and the cycle of release and re-arrest repeats itself with alarming regularity.²⁹⁹

The Commissioner found:

In spite of universal recognition that chronic alcoholism is a medical condition deserving of a medical or harm reduction response, Vancouver's continued reliance on police officers to enforce the "state of intoxication in a public place" legislation is a drain on scarce police resources, a punitive revolving-door policy that ignores the underlying housing, medical and social needs of chronic alcoholics. Many jurisdictions have successfully converted to an entirely civilian-based response ... It is time for Vancouver to move toward a similar type of civilian response.³⁰⁰

His first recommendation was 'that the City of Vancouver, the Vancouver Coastal Health Authority, the provincial Ministry of Housing and Social Development, and the Aboriginal community jointly develop a comprehensive response to the needs of homeless chronic alcoholics within the city of Vancouver. This would include (but not be limited to) the following components:

- a civilian-operated program for attending to chronic alcoholics who are incapacitated in a public place;
- a civilian-operated sobering centre;
- an enhanced civilian-based detoxification program;
- the provision of permanent low-barrier housing designed for the specific needs of chronic alcoholics, which would offer (if needed) palatable alcohol substitution and managed alcohol programs; and
- the provision of community-based, multidisciplinary assertive community treatment services'.³⁰¹

The Commissioner recommended that a third party be appointed to lead the development of the response and that it be overseen by the Ombudsman.

Pivot Legal Society notes that this recommendation has not been followed yet. Pivot reports having two active cases where harms could have been avoided if the individuals involved had been taken to a sobering centre instead of to jail. They state: 'These cases are far too common, and we are using legal action and engagement with government to ensure that this important and potentially life-saving recommendation is followed'.³⁰²

Assistant Chief Groomes of the District of Columbia Metropolitan Police Department spoke about the value of detox centres for police. She said 'a lot of people want us to deal with public drunkenness, but we're not looking to arrest people. We try to take them to a detox centre ... We don't want to criminalise someone for a sickness. I don't believe in that'.

Two models where these centres are in place and working effectively are set out below.

A health-based response and Sobering Station in Portland, Oregon

In his recommendations in the inquiry into the social and justice systems for dealing with people experiencing chronic alcohol dependence and homelessness in Vancouver, Commissioner Davies said: 'Many jurisdictions have

²⁹⁹ Ibid.

³⁰⁰ Ibid. Commissioner Davies noted: 'I do not mean to suggest that the VPD favours retention of the current punitive approach. For more than a decade, the department has been advocating a civilian-based harm reduction response to public inebriation'.

³⁰¹ Ibid.

³⁰² Pivot Legal, *Accountable Policing*, above n 176.

successfully converted to an entirely civilian-based response. Portland, Oregon, for example, has developed expertise in providing assistance to homeless chronic alcoholics – even sometimes violent ones – in which their Hooper Center is an entry point to a continuum of care. It is time for Vancouver to move toward a similar type of civilian response.³⁰³

Portland's sobering station is run by Central City Concern. The introductory statement of its sister centre, the Hooper Detoxification Stabilization Center, is telling: 'It began here – His name was David P. Hooper. He was an eccentric, intelligent young man; a talented track star, aspiring politician and an alcoholic. He was also the last person to die of alcoholism in the Portland city jail. In 1971, Oregon made the momentous shift to define alcoholism as a disease, not a crime. That act also shifted the focus away from the legal system to the social service system to search for a better way to handle public drug and alcohol abuse'.³⁰⁴

The Portland Police Department does not arrest people for being intoxicated in a public place. The model does, however, recognise that 'severely intoxicated people, or those suffering from an acute reaction to drugs, are a potential risk to themselves and others. Public safety and personal health risks make it critical to get these individuals off the street quickly, and into a safe environment'.³⁰⁵ Rather than take intoxicated people to jail, Central City Concern staff and the police bring them to the sobering station where they can get sober in a safe, appropriate environment.

Central City Concern operates a roving van throughout the inner city to transport inebriated individuals to the sobering station. The van is staffed by Emergency Medical Technicians trained to work with people experiencing severe substance dependence and mental illness, 'thus providing significant assistance to the police'.³⁰⁶

People generally spend 3 – 5 hours getting sober. They are provided with information about treatment and recovery upon release.

Central City Concern reports that the sobering station was 'a safe place to sober up for more than 8,400 admissions; the Central City Concern van brought 2,200 admissions to the program'³⁰⁷ (i.e. about 75% are brought by police).

Central City Concern operates an emergency response phone line from 1:45 pm to 11:45 pm seven days per week. Outside these hours people need to contact the Portland Police Bureau's non-emergency line. Central City Concern has a range of other programs that it can link people to, including treatment programs, low barrier housing, employment and peer support.³⁰⁸

The van is funded by the Portland Police Bureau and the sobering station's annual budget is split between Portland City (which also funds the police) and Multnomah County.

³⁰³ Davies, *Alone and Cold*, above n 298.

³⁰⁴ Central City Concern, *Hooper Detoxification Stabilization Center* (available at: <http://www.centralcityconcern.org/services/health-recovery/hooper-detoxification-center/index.html>). The *Oregon Revised Statutes* (the codified laws of the State of Oregon) § 430.315 states: 'the Legislative Assembly finds alcoholism or drug dependence is an illness. The alcoholic or drug-dependent person is ill and should be afforded treatment for that illness'. Oregon has no law against public intoxication and treats public intoxication as a public health problem, not a crime. Under the *Oregon Revised Statutes* § 430.399 a police officer is required to take a person who is intoxicated in public to a treatment facility if: the person is incapacitated (unable to make rational decisions about the person's need for treatment); the person's health appears to be in danger; or the officer has reason to believe the person is dangerous to him or herself or others. If taken to a treatment centre, the person must be released from protective custody within 48 hours unless the person seeks voluntary admission to the centre. If no treatment centre is available, a person who is drunk or under the influence of drugs may be taken to jail until the person is no longer intoxicated, incapacitated, or under the influence. However, if an intoxicated person needs medical attention, police must take the person to the nearest medical facility. The *Oregon Revised Statutes* § 430.402 provides that local governments in Oregon are prohibited from adopting or enforcing local laws or regulation criminalising or penalising: public intoxication; public drinking (except that local governments may prohibit public drinking in places where any consumption of alcohol is forbidden); being drunk and disorderly; '[v]agrancy or other behavior that includes as one of its elements either drinking alcoholic beverages or using controlled substances in public, being an alcoholic or a drug-dependent person, or being found in specified places under the influence of alcohol or controlled substances'; or using or being under the influence of a controlled substance.

³⁰⁵ Central City Concern, *Sobering Station/CHIERS* (available at: <http://www.centralcityconcern.org/services/health-recovery/sobering-station-chiers/index.html>).

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*

³⁰⁸ See Central City Concern, *Services* (available at: <http://www.centralcityconcern.org/services/>).

Maryhaven Engagement Center in Columbus, Ohio

Maryhaven is a provider of 'integrated behavioral healthcare services, with a specialization in addiction recovery care, to help men, women, and adolescents restore their lives from addictive and mental illness'.³⁰⁹

Maryhaven runs a range of health services, one of which is the Maryhaven Engagement Center, which 'is designed to provide a refuge for public[ly] inebriated homeless men and women and to offer them the opportunities to begin making changes to rebuild their lives'.³¹⁰ When people experiencing homelessness are found drunk in public by outreach workers or safety officers, they are taken to a specialist centre where they can sleep and have a shower.

Individuals must meet the following criteria for admission: 18 years of age or older; transported by Reach Out Workers or Safety Officers; permanently or temporarily without a home; and publicly under the influence of alcohol and/or drugs.

The centre shelters 42 men and eight women per night. There is 24 hour medical care, and the centre is open 365 days a year. People are offered access to services when sober. The services are not compulsory or an ultimatum. Importantly, the centre is a medical facility, not a justice one.

Maryhaven Engagement Center staff also work with the Community Shelter Board's Rebuilding Lives Initiative, which provides transitional and permanent housing for individuals and families brought into the Maryhaven program.³¹¹

The reality is that these services are not inexpensive to operate and there would need to be discussion about the funding arrangements for such a centre, including the breakdown of local and state government contributions, as well as any potential partnerships with the private or not-for-profit sectors.

As discussed above, however, the current system of putting people in lock up, fining them and releasing them into a cycle of homelessness, hospitalisation and repeat offending is by no means inexpensive. In addition, the current system does nothing to assist the person to address the underlying causes of offending and therefore carries both a human and financial cost.

Barbara Poppe, Executive Director of the US Interagency Council on Homelessness, touched on this when she referred to the sobering or engagement centres. She said: 'It's not an inexpensive service to provide but it's highly valued by police, businesses and health services'.

In addition to cost, another barrier that is sometimes raised about civilian-based responses to public drunkenness is the inability of civilian staff to cope with severely substance affected individuals, whose behaviour may be aggressive. The Central City Concern sobering station has a number of solitary rooms for people to be taken to if they present a risk. Further, both the van and the station are staffed by medical professionals with specific expertise in dealing with people experiencing substance dependence and mental illness – it is strongly arguable that these professionals are better equipped to deal with the health-based symptoms of these conditions than most police officers.

³⁰⁹ Maryhaven, *Annual Report 2012 (2013)* (available at: https://www.maryhaven.com/annual_report.asp).

³¹⁰ Maryhaven, *Homeless Services* (available at: http://www.maryhaven.com/homeless_services.asp).

³¹¹ See also US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 17.



National Coalition for the Homeless: Everyone Deserves a Home campaign

A clear and obvious message coming out of my fellowship is that the ultimate solution to problematic conduct in public space is access to permanent supported housing. Patty Mullahy Fugere, co-founder and Executive Director of the Washington Legal Clinic for the Homeless summarised it well: 'we need to have a community where the reliance on public space to live private lives is minimised by having access to affordable housing ... public space issues arise because people don't have private space to do the things that we should all be able to do in private'.

Importantly, advocates remind us that housing alone is not enough. Amy Horton-Newell, Director of the American Bar Association Commission on Homelessness and Poverty said clearly: 'it's slightly misleading to say that housing alone is the ultimate solution'. For people who've experienced chronic homelessness, four walls and a roof is just the beginning – built-in support programs are critical.

Discussing effective models of tenancy sustainment is beyond the scope of this report,³¹² but they are worth keeping in mind when thinking about solutions to public space offences. To that end, here are two examples of models for helping people to access and then sustain housing that I had the benefit of hearing about.

Addressing chronic homelessness through personalised budgets

The personalised budget program has been run by City of London and Broadway since May 2009.³¹³ The program

³¹² For a comprehensive, insightful analysis on this topic, see Chris Povey, Churchill Fellowship Report, *Investigating tenancy sustainment programs and approaches in relation to clients at risk of homelessness* (2010) (available at: http://www.churchilltrust.com.au/media/fellows/2010_Povey_Christopher.pdf). See also US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 14–18 for a range of practical examples of US programs that combine housing with health and social service supports to prevent and end homelessness. One example is the Chicago Housing for Health Partnership (CHHP), a 'hospital-to-housing' program that identifies chronically ill individuals who are homeless at hospitals, places them in permanent supportive housing, and provides intensive case management services so that they can maintain their health and secure long-term housing stability. The program recognises that it is too common for people to be discharged from hospital into homelessness. A 2011 evaluation of CHHP showed that the costs of providing housing and case management are more than offset by the reduced costs of hospital and nursing home services, prison or jail, and other services. See US Interagency Council on Homelessness, *Chicago Housing for Health Partnership* (available at: http://usich.gov/usich_resources/solutions/explore/chicago_housing_for_health_partnership#CHHP 3) citing A Basu, R Kee, D Buchanan and L Sadowski, 'Comparative Cost Analysis of Housing and Case Management Program for Chronically Ill Homeless Adults Compared to Usual Care' *Health Services Research* (2011).

is described as 'new way of working to get the most entrenched long-term rough sleepers off the streets by giving back choice and control to the individual'.³¹⁴

Liz Blackender, Team Leader City Outreach and Pan London Personalised Budgets at Broadway Homelessness and Support explained: 'the key is that they have one dedicated worker who gets to know them, who is very flexible and adaptable and who understands that different people want different things. There are no pressures to make decisions'.

The personalised budget allocates up to £3,000 to the individual and supports them to make decisions about what they need to exit homelessness: 'it gives them a feeling of control over their life', Ms Blackender said. An action plan is developed, but there is no set time limit. The kinds of things people budget for are mobile phones, clothing to improve their self-esteem, acquiring their birth certificate, passport or ID and accommodation costs.

Once people are in accommodation, small amounts are spent on things that will help them to sustain their tenancy and reintegrate into the community, including courses, furniture, bikes, fishing rods or lap tops. An evaluation in 2010 found: 'Fifteen people who had been sleeping rough for between four and 45 years were offered a personalised budget. By the time of the evaluation, the majority were in accommodation (seven) or making plans to move into accommodation (two)'.³¹⁵

The evaluation also recognised: 'Many people experienced high levels of anxiety around moving into accommodation. Long-term personalised support after resettlement, provided by one dedicated worker, was seen as essential to maintaining tenancies'.³¹⁶

Approximately 80 chronic rough sleepers have now been referred to the program.

Social enterprises and sustaining housing

Tom Laviolette, Director of Project Development at PHS Community Services Society (PHS), said they were well aware that housing alone isn't enough for many people, particularly those who've experienced long-term homelessness and the hardship and isolation that come with it. Mr Laviolette spoke about a resident in PHS's community housing who disclosed: 'If I'm alone in a room at night, I start to panic'.

One approach PHS takes to addressing this is to create employment or community engagement opportunities for their residents through social enterprises. Examples include working in local cafes,³¹⁷ staffing and making items for retail stores³¹⁸ and working in community gardens.³¹⁹

Mr Laviolette spoke about the way these kinds of options can 'help people reintegrate into their community, build confidence and create further opportunities down the track'.

The effective integration of social enterprises, and the opportunities they create, into the operation of a housing provider is an interesting model for helping tenants to sustain their housing after periods of homelessness and accompanying hardship and social exclusion.

³¹³ Broadway Homelessness and Support, *Personalised Budgets for rough sleepers in the City of London wins Andy Ludlow Homelessness Awards* (available at: <http://www.broadwaylondon.org/aboutus/LatestNews/PersonalisedBudgetsProjectWinsAndyLudlowAward.html>) (Broadway Homelessness and Support). See also Homeless Link, *City of London – Personalisation Pilot working with entrenched rough sleepers in partnership with Broadway* (available at: <http://homeless.org.uk/london-broadway-personalisation-pilot#.Ux6tqjNWFD9>).

³¹⁴ Broadway Homelessness and Support, above n 313.

³¹⁵ Juliette Hough and Becky Rice, *Providing personalised support to rough sleepers: An evaluation of the City of London pilot* (Joseph Rowntree Foundation, October 2010) 5 (available at: <http://www.jrf.org.uk/sites/files/jrf/supporting-rough-sleepers-full.pdf>).

³¹⁶ *Ibid* 5.

³¹⁷ See: <http://scoutmagazine.ca/tag/portland-hotel-society/>.

³¹⁸ See: <http://www.thewindowartshop.com/>.

³¹⁹ David P Ball, 'Hastings Urban Farm offers food security and connection to land' *Vancouver Observer* (21 May 2012) (available at: <http://www.vancouverobserver.com/city/2012/05/21/hastings-urban-farm-offers-food-security-and-connection-land>).

The two examples in this section focus on using empowering, supportive, creative models for assisting people to access and sustain housing after periods of homelessness and acute hardship. They are programs that recognise that four walls and a roof will not be enough to successfully end a person's homelessness, particularly if that person has experienced long-term homelessness and any of the accompanying hardships, including mental illness or substance dependence, that can be both a cause and a consequence of protracted homelessness.

Practical alternatives to fines and tickets

A key theme throughout this report has been the tendency to turn to law enforcement because of a lack of awareness of other solutions to problems of homelessness and related conduct in public places. In many cases, what is required is careful consideration of the problem at hand and identification of potentially workable solutions. When I met with Aiyanas Ormond, Community Organiser from the Vancouver Area Network of Drug Users (VANDU) he spoke to me about the way in which the VANDU members had thought about the kinds of things that would help them and community members in the Downtown Eastside to avoid the conduct that they were being so heavily ticketed for.

Downtown Eastside – speed limits, public toilets and a market

The three offences that local residents are most frequently ticketed for in Vancouver's Downtown Eastside are jaywalking, public urination and illegal street vending.

In each case advocates and residents have proposed constructive, practical strategies that aim to prevent the 'offending' conduct and reduce the number of tickets issued.

- **Jaywalking** – over a tragic period there were numerous VANDU members and other Hastings Street residents killed or injured by cars as they crossed local streets. There was no evidence to suggest that issuing tickets for jaywalking increased pedestrian safety, so instead advocates successfully pushed for a 30km/hour zone to be introduced in recognition of the significant difference speed makes to a driver's ability to stop or at least to minimising impact.³²⁰ The numbers of injuries and fatalities have apparently significantly reduced since this change.
- **Public urination** – advocates called for more public toilets, noting that both people sleeping rough and people living in overcrowded, poorly equipped single room occupancies (SROs) lack access to toilets and are left with no alternative to public urination.³²¹
- **Illegal street vending** – steps are currently being taken to formalise the ad hoc markets that had previously been the subject of a ticketing blitz for street vendors. The more structured market currently operates once a week and there are hopes to expand it. On the issue of street vending and why he does it, a Downtown Eastside resident who has received multiple tickets, Dave Hamm, said: 'We don't have front yards because we live in SROs so in order for us to have a yard sale we need to set up on the sidewalk. We can't survive on the current welfare and disability rates, but we are allowed to make at least \$200 under the new rules – we shouldn't be criminalized for just trying to survive.'³²²

³²⁰ VANDU, 'Executive Summary' of 'We're all pedestrians': Final Report of the Downtown Eastside Pedestrian Project (2010) (available at: http://www.vandu.org/documents/WereAllPedestrians_EXECUTIVE_SUMMARY.pdf).

³²¹ City of Vancouver, *Toilet accessibility in the Downtown Eastside* (available at: <http://vancouver.ca/people-programs/toilet-accessibility-in-the-dtes.aspx>).

³²² King, *VANDU and Pivotal Alleged Discrimination*, above n 41.

This kind of advocacy is what we should all be trying to do. It recognises the concerns of decision-makers, considers mechanisms for addressing the underlying causes and presents constructive, workable solutions. Central to these examples was the guidance of people with an experience of homelessness as well as the recognition that fines and tickets were doing nothing to prevent the conduct or effectively address the concerns of government, police and other members of the community.

6.4. Strong, effective relationships with police

As has been discussed throughout the report, when considering enforcement-based approaches to homelessness the following factors are relevant:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers (including police and ticket inspectors and encompassing collaborative relationships with homeless services as part of ‘assertive outreach’); and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

The second limb – the point at which a decision is made about the appropriate way to deal with a person experiencing homelessness in a public place – is an area where there is enormous potential for a significant, positive change to occur. It is at this point, the front end, where police, advocates, decision-makers and people with an experience of homelessness need to work together to improve the options available to police and the knowledge that informs their exercise of discretion.

This section discusses key elements of policing and homelessness:

- building relationships with police and the need for leadership;
- training and education – Homelessness 101;
- a protocol – guidance for dealing with homeless people in public places (including supporting police in their interaction with, and exercise of discretion in relation to, people experiencing homelessness); and
- examples of best practice policing (including creating options other than tickets and charges for police to use in their interactions with people experiencing homelessness).

At the outset, a reminder that a key message from this research is that despite the potential for the police to play a positive role in dealing with people experiencing homelessness in their communities (particularly if equipped with a better understanding of other options for dealing with problematic conduct in public places), they should not be the automatic go-to agency for tackling visible homelessness.

This position is consistent with the views of police representatives I spoke with. By way of example, Assistant Chief Diane Groomes of the District of Columbia Metropolitan Police Department said:

A lot of what we deal with now is not crime ... a lot of investment should go into services instead of using police to solve these problems: we're not psychologists. Social workers and social services need to be 24 hours a day. My officers are frustrated – they want to help out but the resources aren't there. There aren't enough services to get people into. We need a redirection of resources. At the moment it's so easy to find police, but people need services.

On the question of whether police are the agents best placed to undertake outreach work for people who are homeless or begging in the City of London, Sergeant Montgomery said: ‘probably not ... it makes it conflictual straight away, but we're the ones people turn to’.

With these considerations in mind, this section presents constructive recommendations for working with police to reduce the negative impact of laws regulating public space on people experiencing homelessness in their communities.

Building relationships with police and the need for leadership

One of the impacts of enforcement-based approaches discussed in part 4.3 is that they can damage the relationship between police and people experiencing homelessness in the community, with the consequence that already vulnerable individuals can become further marginalised and subject to greater risk.

Both police and advocates spoke about the importance of maintaining relationships between police and homeless people. Tom Laviolette, Director of Project Development at PHS Community Services Society has worked on the Downtown Eastside for approximately 20 years. He said that throughout that time, relationships with police have 'ebbed and flowed'. Douglas King, Barrister and Solicitor with Vancouver's Pivot Legal Society said a 'ticketing blitz' in 2008 before the Olympics was a dramatic failure; it 'created havoc', damaged the relationship between the police and the Downtown Eastside community and drowned prosecutors and courts to the point that most of the tickets weren't prosecuted. Mr Laviolette said: 'The best times are when we've got a police contact person who sticks around long enough ... police sometimes move too much and then you have to start from scratch with building understanding'.

Constable Jodyne Keller, Homeless Outreach & SRO Liaison with Vancouver Police Department explained that her position has existed for approximately five years and, in that time, the VPD has 'changed how we offer services to the homeless and have bridged gaps which were originally faced by the homeless and the police'. In her role, she works closely 'with all levels of government as well as directly with the homeless on the street'.

Ultimately, leadership within the force is critical to improving approaches to people experiencing homelessness. Some of the suggested ways in which relationships can be improved include senior police officers attending regular meetings with community organisations, including peer representatives. Mr Laviolette said: 'Problems arise when you have less experienced, less acclimatised officers policing the streets ... We need officers attuned to the needs of the community to progress within the force'.

Assistant Chief Groomes from the District of Columbia Metropolitan Police Department said:

We need our officers to understand that we need really good relationships with the community. We can't just jump out and search people. It takes a very frank discussion and supervision is key. You must have supervision out there.

There is nothing wrong with initiating a conversation, but it's how you do it. That is the biggest gap – how we talk to people ... Intense training is needed. I'm worried for the future, because the new recruits who are coming through are used to emails and phones. You need to be able to talk to people. That's how things escalate if you don't talk to people well. There should always be verbal interactive components of training ... We need empathy.

Assistant Chief Groomes also explained that she plays a role in communicating to residents and business that 'it's not a crime to be homeless; just being homeless itself is not a crime and we cannot arbitrarily arrest or harass homeless people'.

In addition to leadership, supervision and encouragement from the top, police officers need training and education to assist them to understand and engage effectively with people experiencing homelessness. Formal training and guidance, as well as identification of alternative mechanisms for dealing with people experiencing homelessness (including access to services and referral pathways), are crucial to supporting police to exercise their discretion to choose options other than ticketing or arresting people experiencing homelessness on their beat.

Training and education – Homelessness 101

The causes of homelessness and its impacts on people's lives and conduct are complex and difficult to understand without well-designed, targeted training. New recruits and existing officers require training to assist them to better understand homelessness and deal appropriately with people experiencing homelessness. As Lucy Fitzpatrick, Supervising Senior Staff Attorney with the Homelessness Prevention Law Project at Public Counsel in Los Angeles phrased it: 'training is needed to help officers understand when a person's behaviour is caused by something other than defiance'.

Patty Mullahy Fugere, co-founder and Executive Director of the Washington Legal Clinic for the Homeless (WLCH) talked to me about the training the WLCH provides for the new recruits of the District of Columbia Metropolitan Police Department and the role it has played in developing a constructive relationship with the police in DC.³²³

Homelessness 101 and working with law enforcement officers in Washington DC

The WLCH runs regular training for new recruits to the District of Columbia Metropolitan Police Department (MPD) called 'Homelessness 101'. One of their expert lawyers runs the training in partnership with a person who has previously experienced homelessness and they aim to 'blow away some of the myths and stereotypes about homeless folks'.

The training has become a permanent component of MPD's training curriculum for new recruits. It includes key facts about homelessness that 'attempt to get to the heart of both the causes and the face of homelessness in the District': Who is homeless? Why are so many people homeless? Is there enough shelter? Is there enough housing?³²⁴

The training builds awareness about homelessness and its causes, as well as resources and services that are available to people experiencing homelessness. Ms Mullahy Fugere said the training has been 'helpful in getting people to understand and respond more appropriately to homelessness'.

In addition to its openness to training and education about homelessness, the MPD also nominates Assistant Chief Groomes as a representative on the District of Columbia Interagency Council on Homelessness (ICH). Assistant Chief Groomes spoke highly of the ICH, particularly because it gives people experiencing homelessness a chance to have their voices heard. Assistant Chief Groomes also spoke about the 'crisis intervention' training provided to MPD officers. She said that while the MPD does not have specialist homeless outreach officers, they have approximately 520 officers with 'crisis intervention' skills who are trained to respond to mental illness.

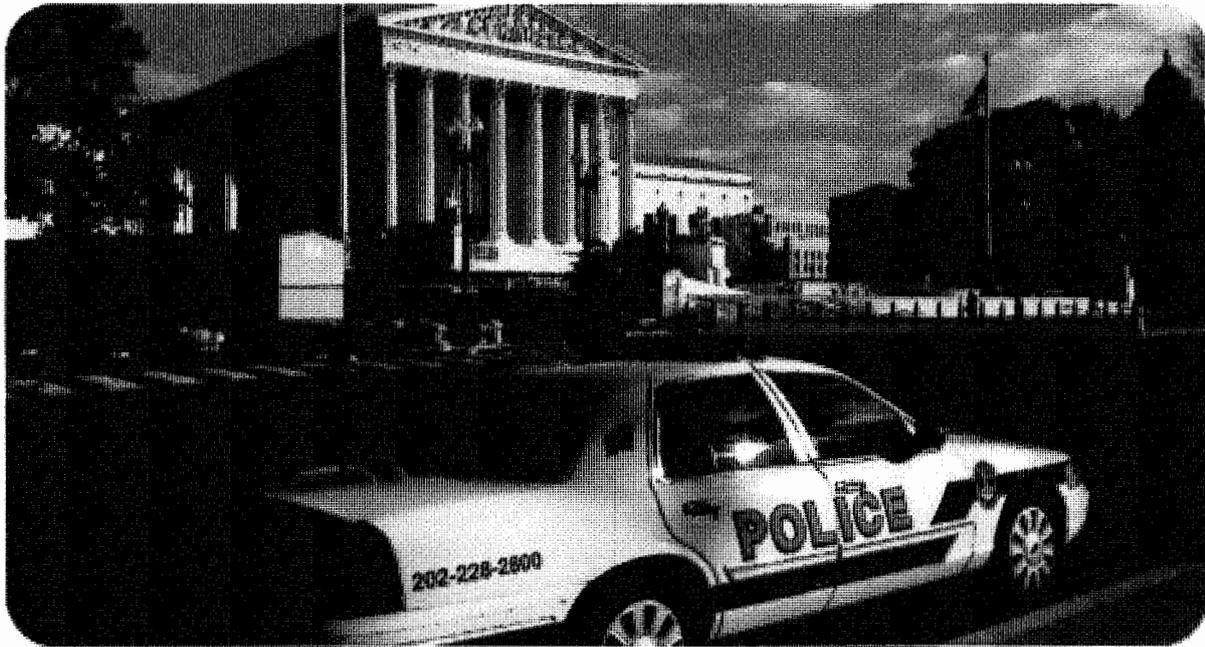
All new and existing issuing officers should be given training about the complex circumstances that may affect the people they're dealing with, including homelessness, mental illness and substance dependence.³²⁵ This training should involve people with a direct experience of these circumstances, who can play an effective role in improving understanding and addressing any pre-existing stereotypes or assumptions that officers may have.

³²³ See also See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 26 which refers to the Homelessness 101 'police sensitivity training project' in Broward County, Florida which aims to 'raise police officers' awareness to the reality and causes of homelessness, address the most effective intervention techniques, and decrease the number of trespassing arrests for individuals experiencing homelessness in the county'. It reports that since the training commenced, the total number of trespassing arrests in Fort Lauderdale has decreased 26%.

³²⁴ See Washington Legal Clinic for the Homeless, *WLCH's Fact Sheet on Homelessness and Poverty* (12 January 2012) (available at: <http://www.legalclinic.org/?p=533>).

³²⁵ See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 25 regarding the way in which 'cross-training' of police officers and service providers assists police officers to engage with people experiencing homelessness, identify and respond to mental health issues and make referrals to housing and service providers. It also notes that these training programs facilitate improved communication and trust between parties.

A protocol – guidance for dealing with homeless people in public places



Washington DC: Supreme Court of the United States

Police officers are required to make difficult on-the-spot decisions in the face of competing obligations and they need to be supported to balance competing priorities, consider people's individual circumstances, deal appropriately with vulnerable people and weigh up alternatives to tickets and arrests.

In recognition of the complexity of this role, the District of Columbia Metropolitan Police Department has a General Order, *Interactions with Homeless Persons (Order)*, which was introduced in 2011. Assistant Chief Diane Groomes of the MPD talked to me about the introduction of the Order. She said that the need for it arose because: 'one of the issues in DC is the shelter system is just for overnight, not a 24-hour shelter, again because of resources. People are pushed out, unless it's too cold, and there is no place for them to go but the public space'. She said there was some initial resistance to the Order, with people asking 'why are you treating the homeless differently?' Her response was: 'special populations need a little more detail. It's important to be clear so there's no doubt'.

District of Columbia Metropolitan Police Department – General Order: Interacting with Homeless Persons

Purpose

The stated purpose of the MPD General Order, *Interacting with Homeless Persons* is:

to ensure that members of the Metropolitan Police Department (MPD) understand and are sensitive to the needs and rights of homeless persons in the District of Columbia, and to set forth procedures for members to follow during

contacts with homeless persons. This policy recognizes that all persons, including people experiencing homelessness, have the right to be peacefully in any public place of the District of Columbia as long as their activities are lawful. It also explicitly affirms that homelessness is not a crime.³²⁶

Policy

The policy underpinning the Order is:

The policy of the Metropolitan Police Department is to treat homeless persons in a manner that protects their needs, rights and dignity, while providing appropriate law enforcement services to the entire community. The Department recognizes that in law enforcement situations involving homeless individuals, it is preferable to make referrals to organizations that provide services to them, and to refrain from initiating contacts that interrupt innocent activity and may violate an individual's constitutional rights.³²⁷

Key provisions

Some key elements of the guidance provided by the Order are:

- 'Members shall not detain arrest, interrogate, or initiate any other criminal law enforcement interaction with any persons based solely upon their "status" of being or appearing to be homeless, as long as they are not engaged in unlawful activities'.³²⁸
- 'Members shall not communicate in any way to persons who are or appear to be homeless that they are not allowed to be in a particular public space in the District because of their homeless status'.³²⁹
- 'Members shall not order any person to move to another location when that person has a legal right to be present where he or she is, absent safety, security, or other constitutionally permissible reasons'.³³⁰
- 'At no time shall members request or demand identification in order to harass, intimidate, threaten or make any other unwarranted show of authority toward a person who is or appears to be homeless'.³³¹
- 'Members shall refrain from instituting any search, frisk, or other such investigation where the elements of reasonable suspicion or probable cause are not met. A person's status of being or appearing to be homeless, without more, does not constitute reasonable suspicion for such a search'.³³²
- 'Nothing in this order is intended to preclude a member from arresting an individual, including a person who is or appears to be homeless, when the member has probable cause to believe the person has committed a crime'.³³³

New South Wales also has a protocol that guides police and agency interactions with people experiencing homelessness in public places.

³²⁶ District of Columbia Metropolitan Police Department, *General Order: Interactions with Homeless Persons* (31 October 2011) GO-OPS-308.14 (available at: <https://go.mpdconline.com/GO/GO-OPS-308-14.pdf>).

³²⁷ *Ibid.*

³²⁸ *Ibid.* 2.

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ *Ibid.* 3.

³³² *Ibid.*

³³³ *Ibid.* 4.

Responding effectively to homelessness – NSW Government Protocol for Homeless People in Public Places

Aims and signatories

The NSW Protocol aims to 'help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status' and to 'provide a framework for interactions between officials and homeless people in public places'.³³⁴

Signatories to the NSW Protocol are: Housing NSW, NSW Police Force, Community Services, Department of Premier and Cabinet, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs and Ambulance Service of NSW.³³⁵

Guidance on appropriate responses

The NSW Protocol acknowledges that 'like all other members of the public, homeless people have a right to be in public places ... at the same time respecting the right of local communities to live in a safe and peaceful environment'.

The NSW Protocol provides that a homeless person is not to be approached unless:

- they request assistance;
- they appear to be distressed or in need of assistance;
- an official seeks to engage with the person for the purpose of information exchange or provision of a service;
- their behaviour threatens their safety or the safety and security of people around them;
- their behaviour is likely to result in damage to property or have a negative impact on natural and cultural conservation of environment, including cultural heritage, water pollution and fire risks;
- they are sheltering in circumstances that place their or others' health and safety at risk (for example, staying in derelict buildings, high risk areas);
- they are a child who appears to be under the age of 16;
- they are a young person who appears to be 16 to 17 years old who may be at risk of significant harm; and
- they are a child or young person who is in the care of the Director-General of the Department of Family and Community Services or the parental responsibility of the Minister for Family and Community Services.

The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. It doesn't prevent agencies from acting where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred. It encourages officials to consider the individual's circumstances when enforcing laws and to use discretion which takes account of 'the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment'.³³⁶

Implementation and evaluation

'Guidelines for Implementation' have been published and it is recommended that the NSW Protocol is addressed

³³⁴ Family and Community Services Housing NSW, *Protocol for Homeless People in Public Places: Guidelines for Implementation* (May 2013) 4, 5.

³³⁵ *Ibid* 4.

³³⁶ *Ibid* 6.

in induction training for all new staff and in development training for existing staff. Housing NSW developed a 'Protocol Training Package' to support organisations to adopt and implement the protocol.

Signatories are also advised to conduct internal monitoring and review of the NSW Protocol and its implementation and impact. The Protocol will be reviewed every two years.

This kind of practical, clear guidance provides police with support and resources to engage appropriately and effectively with people experiencing homelessness.³³⁷ On their own these orders or protocols are not necessarily powerful documents (they are not prescriptive and they leave room for the discretion of the individual officer), but with appropriate training and leadership, they are a strong statement about expectations when dealing with people experiencing homelessness, as well as a source of direction or support for officers making difficult decisions in complex situations.

These documents – and the negotiation, education and leadership that accompany their development and implementation – have the potential to play a significant role in reducing the negative impact of laws regulating public space on people experiencing homelessness through improving the understanding of police and providing them with direction and guidance about when and how to interact with people experiencing homelessness.

They also support officers to exercise their discretion in a way that prevents homeless people entering the justice system when their needs could be more appropriately dealt with by health, housing and support services.³³⁸

Examples of best practice policing

Throughout the fellowship I experienced directly, and heard about, initiatives where police played a key role in addressing homelessness and related conduct in public places, in co-operation with a range of local service providers.

This section features two examples of carefully planned, well thought out roles for police as one part of a broader strategy to address homelessness in the community. It was clear that the jurisdictions where police played a positive, collaborative, constructive role in the response to homelessness had strong leaders within the police force. In a Canadian context, Professor Gaetz said: 'None of these initiatives would have happened without a particular person ... it takes that person'. In both North America and the UK, these initiatives were happening in communities that have robust, coordinated responses to homelessness where addressing homelessness isn't just seen as the role of the homeless sector, but also health, child protection, education and police services.

³³⁷ See also NLCHP 2011, *Criminalizing Crisis*, above n 32, Advocacy Manual 31, which includes 'model policies and procedures that cities can adopt to ensure their homeless residents are treated with respect and that their rights are respected', including a Model General Police Order. This model order is substantially the same as the MPD Order, except it contains the following helpful provision which is not included in the MPD Order: 'When encountering a homeless person who has allegedly committed a nonviolent misdemeanor, where the continued freedom of the individual would not result in a breach of the peace or a more serious crime, Members are encouraged to utilize referral to an appropriate social service provider in lieu of physical arrest, such referral being contingent on the voluntary treatment of the individual'.

³³⁸ See, eg, US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 27 which identifies the benefits of improved collaboration between police, social service providers and mental health providers as including: diversion from the criminal justice system and reduced costs associated with incidents of arrest; more appropriate use of jail and prison space and police time; increased knowledge and awareness by law enforcement about available services for people who are homeless; increased referrals to mental health systems and permanent supportive housing; enhanced communication and coordination between law enforcement and service providers to enable more efficient interventions; stronger focus on addressing the underlying causes of homelessness; and improved officer morale and job satisfaction with more effective use of police time.

Calgary, Canada – Police and Crisis Team: homelessness is not a criminal justice issue

The Calgary Police Service (CPS) website says: '[h]omelessness and poverty in itself are not criminal justice issues; they are societal issues that require a community response as a whole. The Calgary Police Service works closely with community members, partners and stakeholders to assist those experiencing homelessness'.³³⁹

The Police and Crisis Team (PACT) is a partnership between Alberta Health Services (AHS) and the CPS that was established in 2010 in response to an identified need for a joint mental health and police response:

AHS clinicians and CPS officers comprise two-person outreach teams that are intended to provide a joint response to incidents involving individuals/families experiencing a mental health, addiction, or psychosocial crisis, when homelessness and/or danger to the public are present. PACT teams assess and manage clients, conducting street level intervention where possible, with the aim of connecting clients to community resources and diverting service delivery away from the hospital Emergency Department and justice system when appropriate.³⁴⁰

It is a three year pilot project funded through the Safe Communities Initiative with the Government of Alberta. Meaghan Bell, Manager of Research and Policy at the Calgary Homeless Foundation said: 'It has been hugely successful in reducing the use of emergency response services for people experiencing homelessness as well as those who are recently rehoused. There was an evaluation done on the program ... that demonstrated tremendously positive outcomes and cost savings'.³⁴¹

She noted though: '[o]ne of the challenges with PACT is that it is a pilot project and it does not operate 24/7 – so there remains a gap in our services in the community'.

A second initiative was launched in Calgary in late 2013. The Safe Communities Opportunity and Resource Centre (SORCe), is a centralised location where people who are homeless (or at risk) can access programs and services. SORCe offers information; provides an initial assessment to determine a person's need; will offer counselling as required; facilitates referrals for individuals to a range of programs and services that respond to their unique circumstances; and transports people to agencies when appropriate.³⁴²

Ms Bell explained that: 'The intention of SORCe was to provide a physical location for people to go to access the multitude of services available in Calgary without having people knocking on doors throughout the city just to learn they do not qualify or there is a waitlist'. Furthermore, she said that SORCe

was also championed in the community as a new opportunity for police officers to connect vulnerable people with services rather than arresting or ticketing. There was a sense of frustration from officers that they were seeing the same guys out on the streets and, as police officers, they did not have the knowledge or awareness of resources in the community, so the idea (and expectation from our Police Chief), was the officers would be able to physically bring vulnerable people to the SORCe to get them connected.

The examples in Calgary show that once decision-makers and service providers begin to consider options other than ticketing or arresting people experiencing homelessness, there is room for new ideas about how to effectively deal with use of public space by people experiencing homelessness, which focus on addressing the underlying

³³⁹ Calgary Police Service, *Vulnerable persons – Services and resources* (available at: <http://www.calgary.ca/cps/Pages/Community-programs-and-resources/Vulnerable-persons/Vulnerable-persons.aspx>).

³⁴⁰ *Police and Crisis Team Charter* (2010). See also Alberta Justice and Solicitor General, *Success Story: Police and Crisis Team (PACT)* (available at: https://justice.alberta.ca/programs_services/safe/Pages/PACT.aspx).

³⁴¹ See, eg, Alberta Health Service and Calgary Police Service, *PACT Facts* (3 March 2010 – 30 June 2011) (available at: http://www.calgary.ca/_layouts/cocis/DirectDownload.aspx?target=http%3a%2f%2fwww.calgary.ca%2fcps%2fDocuments%2fPACT-facts.pdf&noredirect=1&sf=1).

³⁴² See Safe Communities Opportunity and Resource Centre (SORCe), *About SORCe* (available at: <http://www.sorce.ca/about-sorce>).

causes of the person's homelessness and public space offending rather than the symptoms. In both cases, the police themselves sought an alternative to ticketing or arresting people experiencing homelessness and mental illness.

The motivation within the police to find better ways of dealing with people begging in public places in the City of London was also the motivation for Operation Fennel.

Operation Fennel – City of London Police begging initiative

Background on Operation Fennel – targeting the causes of offending

Operation Fennel is the City of London Police initiative to combat begging in the City of London that has been running since June 2013.

In the early months of 2013 the City of London Police undertook a blitz on people begging in the City (an area of one square mile with a resident population of approximately 7,400 but a daily influx of approximately 300,000 commuters and business people per day).³⁴³ Police Sergeant Mark Montgomery from the City of London Police Street Intervention Team explained that after arresting 48 people and seeing the same faces 'again and again' they thought: 'this is ridiculous, surely there's got to be a better way of dealing with this'. Sergeant Montgomery said the motivation to implement a program that addressed the causes of offending behaviour led to Operation Fennel.

The first stated intention of the City of London Police for Operation Fennel is 'to provide help, guidance and assistance to persons suspected of begging with a view to preventing further offences'.³⁴⁴ In contrast to a number of other enforcement-based approaches to conduct in public places, which aim to clean up streets or remove visible homelessness, addressing the underlying causes of the person's offending conduct appear to be at the forefront of this program.

How Operation Fennel works – service hubs

Under Operation Fennel a person suspected of begging is given a 'Street Awareness Initiative' ticket, which requires them to attend an 'educational and welfare appointment' at a set time and place i.e. a 'hub' hosted every 4 – 5 weeks with a wide range of services, including Broadway Homelessness and Support, drug and alcohol workers, veterans' charities and 'people to discuss issues with in a completely private and confidential manner'.³⁴⁵

If people attend on this day it negates the summons for that offence and no prosecution will take place (there is no ongoing obligation to engage), but if they re-offend they will be given a summons (i.e. it's a 'one shot only' opportunity). The ticket contains the warning: 'If you do not attend the event, any offences will be logged by City of London Police and proceedings will take place in order to prosecute you for those offences'.³⁴⁶

The tickets allow for two warnings before arrest or summons, but in practice the police decide case by case whether more warnings should be given. Sergeant Montgomery pointed out that they do have to take action: 'if there's no action for non-compliance, there's no deterrent and it won't work'. The police documentation explains: 'as always our priority is to determine who is offending and how often, [to put] these people in touch with the services, charities and people best suited to combat their problems with them and get them off the streets and

³⁴³ Department of the Built Environment 2011, *City of London Census*, above n 49.

³⁴⁴ Operation Fennel, *City of London Policing Plan*, above n 100.

³⁴⁵ City of London Police, *Street Awareness Initiative Ticket* (copy provided by City of London Police on 2 December 2013).

³⁴⁶ *Ibid.*

into some sort of safety and rehabilitation programme. However, if these people continue to offend and not accept the help offered then actions will be taken to prosecute them and remove them from the City of London.³⁴⁷

The harsher enforcement-based aspect of Operation Fennel is discussed below.

Interim outcomes of Operation Fennel

The first 12 months of Operation Fennel will be the subject of a formal evaluation in mid-2014. The City of London Police are, however, keeping track of the outcomes of Operation Fennel in relation to the 180 tickets for begging issued to 94 people between July – November 2013. They report the following 10 outcomes:

1. 'Offenders put in touch with "The Big Issue" programme.
2. Links made between homeless individuals and housing charities.
3. Fifteen people currently engaging with drug workers through Operation Fennel.
4. Relocation assistance to homeless people who want to go home to other parts of the country.
5. Assistance on 'emergency housing' over the winter period given.
6. Three prolific and problem beggars have left the City area.
7. The business community has praised Operation Fennel for its success in dealing with their begging issues.
8. Public houses having far less trouble with anti-social behaviour.
9. Good relationships built between [City of London Police] and the begging community.
10. 15 beggars failing to engage and who still offend due in court in January where an ASBO ... will be applied for'.³⁴⁸

³⁴⁷ Operation Fennel, *City of London Policing Plan*, above n 100.

³⁴⁸ *Ibid.*



Many aspects of Operation Fennel can be classified as best practice, including the collaboration with services, genuine focus on addressing the underlying reasons for a person's begging, provision of a range of different service options, attempts to divert vulnerable people away from the criminal justice system, provision of warnings before harsher enforcement is pursued and the monitoring and evaluation of the impact of Operation Fennel.

As part of Operation Fennel, if people don't show up to the 'educational and welfare appointment' multiple times and continue to beg in the City of London, the police prosecute the begging offence and, if the person is convicted, the police request an anti-social behaviour order (ASBO): 'Prolific offenders who still fail to engage and continue to offend will be taken to court where an ASBO will be applied for'. At the time of my visit, there were 15 summonses for people to attend court and, if convicted, the police will be seeking an ASBO. The aim is that one court date will be allocated and all cases listed on that day. The police try to tailor the ASBOs to the defendant's particular conduct or circumstance and understand that the judge will strike them out if the terms are overly broad or if the requisite element of 'harassment, alarm or distress' cannot be made out.³⁴⁹

As has been discussed throughout this report, the high risk nature of anti-social behaviour orders (ASBOs) (including their potential to divert people into more damaging activities, exacerbate social isolation, disrupt engagement with services and lead to imprisonment) mean that they have not been identified as a best practice element of policing in this report.

Ultimately, Operation Fennel operates within an enforcement-based framework and it is arguable that civilian services, including homelessness and health-based outreach, could play a similar role with less cost to the police, the courts and the individuals targeted by the operation.

This is not to detract from the well-thought out best practice aspects of Operation Fennel and many of our cities still have much to learn from this program.

³⁴⁹ See UK Crown Prosecution Service, 'Guiding Principles' in *Guide to Anti-Social Behaviour Orders on Conviction (ASBOs)* (available at: http://www.cps.gov.uk/legal/a_to_c/anti_social_behaviour_guidance/) (ASBO Guide).

6.5. The role for the courts – innovative justice models

This report has considered enforcement-based approaches to homelessness in terms of the following factors:

- what the laws are;
- how the laws are enforced by decision-makers and enforcement officers; and
- how the justice system deals with people once they have entered it (including through tickets, fines, prison, anti-social behaviour orders or tailored community orders).

This section focuses on the third tier of this system, being the courts and their role in dealing with people brought before them for offences directly related to homelessness.

People experiencing homelessness can find themselves in court via a number of avenues, including warrants for unpaid fines or tickets, warrants for failure to appear at a previous court hearing, as a result of charges or as the subject of applications for court orders, including anti-social behaviour orders. The transience and chaos of homelessness and the circumstances that can accompany it, including poverty, mental illness or substance dependence, present significant barriers to the ability of people experiencing homelessness to engage with the court system.

Traditional court processes and sentencing options present a risk that people experiencing homelessness will 'cycle between the criminal justice and homeless worlds, seemingly without any means to stabilize their lives'.³⁵⁰

Through alternative justice models, however, the courts can play a different role in the trajectory of people experiencing homelessness and this section discusses examples of innovative court-based models aimed at addressing underlying causes of offending.

It also discusses the need for legal representation as part of these court-based programs and the importance of tailored, immediately available services.

At the same time as commending these innovative justice models, this section suggests that even for the most carefully designed, well-implemented court-based responses to homelessness, we need to consider whether the justice system is the best-equipped system to deal with homelessness and its symptoms in our communities.

Problem solving courts and innovative justice

Danielle Malangone, Associate Director, Training and Technical Assistance with the Center for Court Innovation, summarised the role of community courts or justice centres as: 'harnessing the power of the justice system to connect defendants to services'.

The understanding is that people will be more likely to engage with services to help address the underlying causes of their offending if there is court involvement.³⁵¹ Importantly, this is not solely based on ideas about the motivating power of potential criminal sanctions, but also on the concept of 'procedural justice'. Procedural justice is identified as being present 'when people perceive they have experiencing a decision-maker or decision-

³⁵⁰ US Interagency Council on Homelessness, *Searching Out Solutions*, above n 192, 29.

³⁵¹ See, eg. Glen Berman, Center for Court Innovation, *Principles of Community Justice: A Guide for Community Court Planners* (2010) (Berman, *Principles of Community Justice*) 9: 'The crisis of arrest may prompt a defendant to seek help. A court can use its coercive power and knowledge of available resources to reinforce that impulse'.

making institution that accords them respect, is neutral, offers an opportunity to participate, and has trustworthy motives'.³⁵²

This section sets out examples of justice models that have been set up, at least in part, with the intentions of assisting defendants to access the services and supports they need, building confidence and trust in the justice system and addressing the underlying causes of a person's offending conduct.

Community courts in New York City and beyond

New York City is home to the Center for Court Innovation and two of its trailblazing projects, the Midtown Community Court and the Red Hook Community Justice Center, both of which are credited with contributing to lower levels of re-offending by defendants, improved levels of trust in the justice system amongst defendants and increased perceptions of safety within their communities.³⁵³

The Center for Court Innovation and its court projects are well known by the international justice community.

Midtown Community Court was established in 1993 to deal with low-level criminality in and around Times Square, including prostitution, vandalism and minor drug possession. The Red Hook Community Justice Center started in 2000 in the Brooklyn community of the same name that was struggling with drug problems and high crime levels.³⁵⁴ The Center for Court Innovation notes: 'the Red Hook Community Justice Center shares the same basic DNA as the Midtown Community Court; each is a neighbourhood-based court that seeks to improve the local quality of life and re-engineer the relationship between the justice system and local residents'.³⁵⁵

Nearly two decades since Midtown Community Court was established, there are now at least 70 community courts worldwide,³⁵⁶ including our own Neighbourhood Justice Centre in Collingwood, Victoria.³⁵⁷ Community courts 'seek to address crime, public safety, and quality of life problems at the neighborhood level'. They are often multi-jurisdictional in that they cover a range of legal issues arising in the community, including some or all of family law, criminal matters and housing and tenancy, and a range of different support services are co-located at the court site, including job training, education, youth programs, mental health services, drug and alcohol programs, parenting courses and housing services.

Core characteristics of community courts are:

- they are focussed on problem solving in that they look at underlying reasons for offending and try to stop the defendant 'revolving through the justice system';³⁵⁸
- they focus on alternative sanctions and the process is 'as individualised as you can make it, rather than a

³⁵² Lee et al, *A Community Court Grown in Brooklyn*, above n 51. See Center for Court Innovation, *Red Hook Community Justice Center – Overview* (available at: <http://www.courtinnovation.org/project/red-hook-community-justice-center>): 'More than 85 percent of criminal defendants report that their cases were handled fairly by the Justice Center—results that were consistent regardless of defendant background (e.g. race, sex, education) or case outcome'. See also Lucy Kennedy, 'At Midtown Community Court, Justice with a Difference' *Chelsea Clinton News* (8 November 2007), which refers to 51 year old Wayne Manning who had spent 30 years in and out of New York prisons for petty larceny directly related to his drug dependence. Instead of sentencing him to prison again, Judge Weinberg at the Midtown Community Court gave Mr Manning an opportunity to enrol in a drug program. The article cites Mr Manning saying that Judge Weinberg's decision and the programs offered by the court gave him the confidence and structure to change his life.

³⁵³ See, eg, *ibid*; Center for Court Innovation, *Dispensing Justice Locally: The Implementation and Effects of Midtown Community Court (2000)* (Center for Court Innovation, *Dispensing Justice Locally*).

³⁵⁴ See Glen Berman, *Principles of Community Justice*, above n 351, 9.

³⁵⁵ *Ibid* 4.

³⁵⁶ Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 1. See also Center for Court Innovation, *Community Courts Around the World* (available at: <http://www.courtinnovation.org/research/community-courts-around-world?mode=4&url=research%2F4%2Farticle>) for a list of community courts.

³⁵⁷ See *Evaluating the Neighborhood Justice Centre in Yarra 2007 – 2009*, which covered the pilot period March 2007 – 30 June 2009 and found: reduced reoffending (in comparison to offenders with the same profile from other courts, NJC offenders were 14% less likely to reoffend); increased compliance with court ordered community work (75% of people completed their court ordered community work, compared with a statewide average of 65%); for every \$1 invested in the NJC, the expected return would range between \$1.09 and \$2.23; NJC clients reported very high levels of satisfaction with their experience of the NJC, compared to other courts and showed greater confidence in the justice system than at other courts; and since the establishment of the NJC, the crime rate in Yarra has reduced by 12% (residential burglaries are down 26% and motor vehicle theft is down 38%).

³⁵⁸ Quote from Judge Calabrese at the Red Hook Community Justice Center on 20 November 2013.

cookie cutter approach',³⁵⁹ and

- the courts are integrated into the local community through ongoing consultation, consideration of the community's needs and developing opportunities for people in the community ('[t]o establish such close ties to the community, a court must do much more than establish an advisory council of local residents or send offenders sentenced to community service out to paint over graffiti').³⁶⁰



New York City: Transform mural at the Red Hook Community Justice Center

Procedural justice in action in the Red Hook Community Justice Center

In the 1980s and 1990s Red Hook in Brooklyn was hit hard by drug use and gang related violence. In 1992 a school principal, Patrick Daly, was caught in gang cross-fire and killed. After discussion between Brooklyn judges and prosecutors about how to reduce the area's drug crimes, and consultation to understand the needs of the community, the Center for Court Innovation designed the Red Hook Community Justice Center to hear misdemeanour matters from three police precincts.³⁶¹

An underpinning concept of the Red Hook Community Justice Center is the understanding that the presence of procedural justice (i.e. the defendant's perception that the decision-maker has given them respect, has genuine motives and has acted neutrally) will strengthen their 'commitment to obey the law'.³⁶²

I had the privilege of speaking with and observing Judge Calabrese, the sole judge at Red Hook Community Justice Center since its inception, as he presided over the court. He reflected on a number of people who had been through his court, using their first names, and showed his photos of defendants graduating from the GED high school equivalency program. He spoke to people in his court with genuine respect and expressed confidence in

³⁵⁹ Ibid.

³⁶⁰ Lee et al, *A Community Court Grown in Brooklyn*, above n 51.

³⁶¹ See Tom Perrotta, 'Seen as Successful Model, Innovative Brooklyn Court Remains Work in Progress' *New York Law Journal* (17 March 2005) (Perrotta, *Innovative Brooklyn Court*).

³⁶² Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 3.

their ability to make progress toward their goals of education, rehabilitation and employment.

Judge Calabrese explained what happens if people do not comply with the court's order (for example, they do not attend their drug and alcohol treatment or appointments with a psychologist): 'we're not looking for a chance to send people to jail, if things don't work, if they don't comply, we ask why and try to make changes'.

Sonia Chowdhury, Program Associate, Technical Assistance with the Center for Court Innovation explained it as 'a common sense theory, if you treat someone fairly, like Judge Calabrese does, they will be more satisfied with how the system is treating them and more likely to comply with the orders'.

In the short session I observed, the overwhelming number of defendants had complied with the court orders in relation to their engagement with services. This is confirmed by the evidence, which shows 75% of respondents in the Red Hook Community Justice Center comply with their orders, which is 50% higher than in comparable ordinary courts.³⁶³

Judge Calabrese described it as 'the blend of services and the power of the court'.

A comprehensive evaluation of the Red Hook Community Justice Center in 2013 found (amongst other things):

- **increased use of alternative sanctions** - 78% of offenders received community service or social service sanctions, compared to 22% in comparable cases at the regular criminal court in Brooklyn;³⁶⁴
- **reduced recidivism** - adult defendants handled at Red Hook were 10% less likely to commit new offences than offenders processed in a traditional court (this figure was 20% for juvenile defendants); and
- **cost efficiency** - after factoring in the upfront costs of operating the Justice Center, total resource savings in 2008 were \$6,852,477; savings outweighed program costs by a factor of nearly 2 to 1.³⁶⁵

Part 4.4 of this report discusses the strain placed on the court system by enforcement-based approaches to homelessness. It also discusses the Homeless Court Program in the US as a judicial response to the inefficiency and ineffectiveness of the traditional court system when dealing with people experiencing homelessness in relation to offences directly related to their homelessness.

In addition to being a judicial response to the overwhelming number of homeless people being brought through the court system in relation to minor offences, the Homeless Court Program is an innovative justice model that aims to deliver positive outcomes for participants and to 'resolve the problems that homelessness represents with practical and effective solutions'.³⁶⁶

³⁶³ Center for Court Innovation, *Red Hook Community Justice Center - Overview* (available at: <http://www.courtinnovation.org/project/red-hook-community-justice-center>).

³⁶⁴ Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 5. Note that although the Red Hook Community Justice Center only used jail as a primary sentence in 1% of cases, when secondary sanctions were included (i.e. sanctions imposed when the defendant fails to fulfil a social or community service mandate), Red Hook ultimately sentenced 7% of its defendants to jail compared to 17% in the downtown court. Jail sentences at Red Hook were, on average, much longer than in the downtown court (64 days versus 15 days).

³⁶⁵ Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 168-9. This was based on the cost-benefit analysis comparing the costs of running the Red Hook Community Justice Center (including rent, wages for staff, costs for partner services) compared to the benefits or costs avoided (including the value of community service and the costs avoided due to lower rates of reoffending). The total estimated costs for the Red Hook Community Justice Center and its community partners amounted to \$7,500,000 during FY 2010, including \$ 6,693,915 in fixed costs and an estimated \$806,085 in variable costs. 'We are able to estimate the costs avoided related to victimization resulting from reoffending. Offenders processed by the RHCJC demonstrated significantly lower recidivism for both property and violent offenses than their Downtown counterparts ... [T]hese differences in recidivism produced more cost-avoidance of victimization costs for the RHCJC relative to the downtown court for both property re-arrests and violent re-offending. The costs of typical property and violent crimes are based on estimates made by Waller et. al (2012). When victimization costs for property and violent offenses are combined, 3,210 offenders processed in the RHCJC will generate \$15,266,760 in avoided victimization costs relative to a similar number of offenders processed at the downtown court'.

³⁶⁶ See Binder and Merriam, *San Diego Service Provider Toolkit*, above n 178, 3.

Specialist homeless courts

The foundation of the Homeless Court Program is 'a collaborative effort to promote trust and confidence in the court while addressing community safety issues and removing legal barriers to self-sufficiency'.³⁶⁷ The courts are usually held at a shelter or community-based location which is familiar and accessible to people experiencing homelessness, rather than in the ordinary court room. The courts build partnerships between the court, the prosecutor, the public defender (or non-profit or pro bono legal service providers), local shelters, service agencies and participants experiencing homelessness.

In talking about the Homeless Court Program, San Diego County Judge, Hon Robert Trentacosta said:

Any judge who is being honest feels, at some point or another, a sense of "revolving door justice" when dealing with the kinds of cases associated with homeless people. Many homeless individuals have serious long-term problems, they are punished by the criminal justice system ... and their problems don't go away. Most of the time, those problems remain unaddressed. Homeless Court changes the model so that individuals who are interested in changing their lives can get assistance. From the court's perspective, that works because we are able to address the real issues behind their individual situation or behaviours.³⁶⁸

...

If we keep doing the same thing and it isn't working, isn't it time to get realistic about solving the problem? That's what the Homeless Court does ... We've tried a "one-size-fits-all" approach with this population, and we've learned that one size doesn't fit all. The Homeless Court takes extra effort from a lot of people, but if you can get a community member sober, working, educated, and law-abiding, that's what the essence of justice is all about.³⁶⁹

The Deputy District Attorney in San Diego articulates the 'fundamental difference between the traditional court and Homeless Court' as being 'Homeless Court deals with people who have already changed their behaviour. In traditional court, we ask defendants to promise to change their behaviour with the threat of custody and fines – often getting mixed results. The people appearing before Homeless Court have overcome enormous obstacles ... prior to the hearing'.³⁷⁰

Safeguards or cautions

Innovative justice models allow the courts to play a role in contributing to a person's reintegration into the community, recovery and/or rehabilitation rather than impeding this progress through ordering fines or prison sentences. At the end of the day, however, these mechanisms still involve the individual entering the criminal justice system. The section below considers the safeguards that need to be in place to make sure people experiencing homelessness are able to: engage with the legal process, including understanding their rights, obligations and options; access appropriate services that will have a meaningful impact on their circumstances; and avoid entering the justice system when they would be more effectively and efficiently dealt with by agencies other than the courts.

Available, appropriate services

Danielle Malangone, Associate Director, Training and Technical Assistance with the Center for Court Innovation said 'a key philosophy is immediacy – people are linked with services the same day or the next day'. At the Red

³⁶⁷ Ibid x referring to the American Bar Association Homeless Court Program Guidelines (2006).

³⁶⁸ Ibid 50.

³⁶⁹ Ibid 51.

³⁷⁰ Ibid 54.

Hook Community Justice Center and Midtown Community Court, service providers are co-located at the court and people are generally linked immediately after their court hearing.

This immediate access to services was identified by experts as a key component of the success of innovative justice models. One expert noted: 'the existence of collaborative courts is premised on access to services. It's critical that these services are in fact available and effective ... referring people to a waiting list isn't doing them any favours'. He said: 'We feel good if we "connect" people with services, but if that service isn't genuinely available, we're wasting people's time'.

These comments highlight two critical aspects of court-based programs for people experiencing homelessness (1) the services need to be immediately available (in the current climate of cuts to social services this is not guaranteed); and (2) they need to be appropriate to the individual and their circumstances. Referring people with varied, complex circumstances to general supports is unlikely to play any meaningful role in addressing the factors contributing to their homelessness and related conduct.

Access to legal representation

Without legal advice and representation, it is incredibly difficult for people experiencing homelessness to engage with the complex legal system, to understand their rights, options and obligations and to have their circumstances put before the court. Access to free legal advice and representation is an essential component of court-based models for dealing with homelessness and associated conduct.³⁷¹

The role of legal representatives is sometimes raised in relation to problem solving courts, including concerns that the courts undermine the role of defence lawyers as strong advocates and pressure defendants into making guilty pleas in exchange for treatment.³⁷² Judge Calabrese has identified the importance of robust legal representation in problem solving courts:

The first thing that any problem solving court has to remember is that the Constitution comes first and problem-solving comes second ... I've seen other courts in the country that get roll-over defense lawyers. In Red Hook, our defense lawyers are not part of the team. What I love about Red Hook is that it is a really healthy court. The lawyers still go at it in court.³⁷³

Even therapeutic jurisdictions that aim to make orders that will assist the defendant in their recovery or reintegration into the community require access to legal advice and representation for people experiencing homelessness.

Legal representation is sometimes overlooked in the design of court-based models for dealing with homelessness for a variety of reasons, including: lack of resources to fund access to lawyers; and/or a sense that best efforts are being made by the court and/or the prosecutors to ensure a fair process with alternative sentencing, so legal defence is not necessary.

By way of example, when it commenced in 2013, Operation Minta (the operation targeting people begging in Melbourne) did not link the individuals with legal services to help them understand and navigate the court process. Similarly, access to legal representation has not been built into Operation Fennel, the City of London Police operation targeting begging in London, which involves an application for an anti-social behaviour order (ASBO) in the event that the individual does not engage with the services on offer and continues to beg in the city. The terms of the ASBOs can be very broad, including, for example, that the person must not enter the City of London for three years, and the consequences of non-compliance are significant (i.e. prison). Subject to merit

³⁷¹ Sepúlveda, *Report of the Special Rapporteur*, above n 65, [82]. The Special Rapporteur concludes: 'Access to legal representation is of utmost importance and underpins all forms of penalization of persons living in poverty. States shall ensure quality legal aid for the poorest segments of society, not only for criminal proceedings but also with respect to issues which are particularly relevant for persons living in poverty, such as social benefit appeals, eviction and child protection procedures'.

³⁷² Perrotta, *Innovative Brooklyn Court*, above n 361.

³⁷³ *Ibid.*

(and the client's instructions), the lawyer may try to have the application for the ASBO dismissed, but alternatively, they may request that its scope or timeframe is narrowed so that the respondent isn't 'set up to fail'. The legal representative may also be able to communicate to the police and the court any concerns about the operation of the ASBO, for example, that it excludes the respondent from an area that they need to enter to access health, familial or social supports that are vital to their recovery.

Legal representatives have an important role to play in conveying the respondent's information to the court and the prosecutor, assisting the respondent to understand what they need to do to comply with court orders and what the consequences of non-compliance will be. For these reasons, even the best intentioned processes are likely to be flawed if the respondent doesn't have access to a legal representative who can assist them to engage with the legal path they are taken down.

Avoiding unnecessary entry into the criminal justice system

A key aim of innovative justice models is to prevent recidivism through assisting the individual to address the underlying causes of offending, including homelessness, substance dependence or mental illness. In many cases, the courts play a role in linking people with health, housing or drug and alcohol services (or ordering that they be linked with these services), to help them address these circumstances. The Center for Court Innovation identifies that 'in many respects, community courts seek to use a court appearance as a gateway to treatment'.³⁷⁴

The Center for Court Innovation is also open about the enforcement-based component of the community court, noting that one of the objectives is to 'encourage the enforcement of low-level offenses [and to produce] an approach to low-level crime that was designed to "pay back" the victimized community, while addressing the underlying problems of defendants'.³⁷⁵ The recent evaluation of Red Hook Community Justice Center identified its success in motivating compliance through:

the increased use of alternative sanctions; a decrease in the probability of a "walk" without meaningful consequences; a reduced likelihood of a jail sentence; increased use of secondary jail sentences for initial noncompliance; stricter monitoring and enforcement of the court mandate; and an emphasis on procedural justice in the judge-defendant interaction.³⁷⁶

While considered court orders can undeniably play a role in shaping the conduct or engagement of defendants, we need to be mindful of the nature of many of the offences that have brought people before the court – they are by their nature largely focussed on 'low level offences'.

One person before the Red Hook Community Justice Center when I attended was a 16 year old boy who had been arrested for jumping a turnstile at a train station. Although he was unquestionably treated with respect and provided with a tailored program which linked him in with education, he had appeared multiple times in a courtroom for this offence. Arguably, this young man was experiencing what Nahal Zamani, Advocacy Program Manager, Government Misconduct and Racial Justice with the Center for Constitutional Rights described as: 'a forced introduction to the criminal justice system via tickets and arrests for minor offences'.

For other people, for example our client Scott who motivated this project, even tailored services mandated by a court with risk of harsher sanctions were not the best mechanism to address the underlying causes of offending. As discussed above in part 4.2, Scott's public intoxication was a result of addiction, mental illness and homelessness and his interaction with the justice system – although via the specialist list set up to deal with people experiencing homelessness, mental illness and/or substance dependence – did not support his recovery.

These risks were identified when San Francisco first pushed for a community court based on the Midtown Community Court model. There was resistance to the proposal that quality-of-life crimes such as camping on

³⁷⁴ Berman, *Principles of Community Justice*, above n 351, 9.

³⁷⁵ *Ibid.*

³⁷⁶ Lee et al, *A Community Court Grown in Brooklyn*, above n 51, 9.

sidewalks, public urination and public drunkenness would be included in the court's mandate because of the fear that people experiencing homelessness would be criminalised.³⁷⁷ The San Francisco Community Justice Center instead opted to focus the court on 'more serious crimes such as drug dealing, shop lifting and car break-ins'.³⁷⁸

As discussed throughout this part 6, there are a number of intervention points prior to a person being brought before the court at which they can be linked with services to address the underlying causes of their offending (in particular the point at which the person is identified engaging in problematic conduct in a public space and a decision is made about what action to take, including linking with outreach workers, delivering to a health-based service, arresting them or issuing them with a ticket or citation). When designing laws and systems to regulate the use of public space, we need to take a step back and consider whether the justice system is the system best equipped to deal with health and social problems. It is costly in terms of police and court time and it necessarily generates increased demand for free legal services. It can impose further strain on vulnerable people and it also provides an entry-point to the criminal justice system. For these reasons, we must consider whether even the most targeted, innovative, integrated court-based approaches are always the right mechanism for dealing with visible homelessness and its symptoms in our communities. While respectfully made, individualised court orders can have a positive impact on people, in many cases using earlier intervention points could prevent people entering the criminal justice system for conduct directly related to homelessness while still facilitating access to the services and supports needed to address the underlying causes of the conduct.

³⁷⁷ See, eg, Heather Knight '5 years in, verdict is positive for S.F. community court' *SF Gate* (5 March 2014); Bernice Yeung, 'A court where solutions rule' *San Francisco Chronicle* (12 August 2007).

³⁷⁸ Knight, above n 377.

ANNEXURE – TABLE OF CONSULTATIONS

City	Organisation	Expert(s)	Date of consultation	Type of consultation
LOS ANGELES, UNITED STATES	Public Counsel	Lucy Fitzpatrick Senior Staff Attorney Homelessness Prevention Law Project	4 November 2013	Meetings
	UCLA School of Law	Eric Post Staff Attorney Homelessness Prevention Law Project	6 November 2013	Meeting
	Skid Row Housing Trust	Gary Blasi Professor of Law Emeritus		
	Inner City Law Center	LaCheryl Porter Housing Operations Director	5 November 2013	Meeting
		Javier Beltran Directing Attorney Homelessness Prevention Project	5 November 2013	Meeting
WASHINGTON DC, UNITED STATES	National Law Centre on Homelessness and Poverty	Brett Terrell Director of Advocacy	14 November 2013	Roundtable, meeting and attendance at premiere of youth homelessness film, Sugar
		Harry Batt Director of Development		
		Maria Foscarinis Executive Director		
		Jeremy Rosen Policy Director		
		Eric Tars Director of Human Rights & Children's Rights Programs		
	Tristia Bauman Housing Director			
	Janelle Fernandez Law & Policy Program Associate			

Organisation	Expert(s)	Date of consultation	Type of consultation
	Cheryl Cortemeglia Volunteer Attorney		
National Alliance to End Homelessness	Kirsten Blume Human Rights and the Global Economy Fellow Nan Roiman President and CEO	15 November 2013	Meeting
National Coalition for the Homeless	Steve Berg Head of Policy Jerry Jones Executive Director	8 November 2013	Meeting
Washington Legal Clinic for the Homeless	Patty Mullahy Fugere Executive Director	12 November 2013	Meeting
American Bar Association Commission on Homelessness and Poverty	Amy Horton-Newell Director	13 November 2013	Meeting
United States Interagency Council on Homelessness	Barbara Poppe Executive Director	14 November 2013	Meeting and contribution to the <i>I Believe In Human Rights</i> blog
	Liz Osborn Management and Program Analyst		
District of Columbia Metropolitan Police Department	Diane Groomes Assistant Chief	25 November 2013	Teleconference
Center for Court Innovation	Danielle Malangone Associate Director, Training and Technical Assistance	19 and 20 November 2013	Meetings (as part of attendance at Red Hook Community Justice Center and Midtown Community Court)
Red Hook Community Justice Center	Sonia Chowdhury Program Associate, Technical Assistance Sonia Chowdhury Program Associate, Technical Assistance	20 November 2013	Meetings and court attendance
Midtown Community Court	Judge Alex Calabrese Danielle Malangone Associate Director, Training and Technical Assistance	19 November 2013	Meetings and court attendance
Center for Constitutional Rights	Nahai Zamani Advocacy Program Manager, Government Misconduct and Racial Justice	18 November 2013	Meeting

City	Organisation	Expert(s)	Date of consultation	Type of consultation
VANCOUVER, CANADA	Department of Homeless Services	Danielle Minelli Pagnotta Director, Street Homelessness Solutions	18 November 2013	Meeting (including representatives from the New York Police Department Homeless Outreach Unit and the New York City Department of Parks & Recreation) Attendance at fundraising event
		Echo Bonner Program Analyst		
	Picture the Homeless	Shaun Lin Community Organiser	21 November 2013	
	Urban Justice Center	Numerous members Robert Gangi Director, Police Reform Organizing Project	22 November 2013	Meeting
	Pivot Legal Society	Libby Mathewson Advocate, Safety Net Project Douglas King Barrister and Solicitor	27 and 28 November 2013	Meeting and attendance at homeless encampment.
	University of York and Canadian Homelessness Research Network	DJ Larkin Barrister and Solicitor Stephen Gaetz Associate Professor, Faculty of Education Director, Homeless Hub (Canadian Homelessness Research Network)	25 November 2013	Teleconference
	Vancouver Area Network of Drug Users	Aiyanas Ormond Community Organizer	26 November 2013	Meeting
	Vancouver Police Department	Jodyne Keller Constable Homeless Outreach & SRO Liaison	27 November 2013	Email
	PHS Community Services Society	Tom Laviolette Director of Project Development	26 November 2013	Meeting and visit to InSite, supervised safe injecting site
	Calgary Homeless Foundation	Meaghan Bell Manager, Research and Policy	20 February 2014	Email
LONDON & EDINBURGH, UNITED KINGDOM	Joseph Rowntree Foundation	Kathleen Kelly Policy and Research Manager – Homelessness	3 December 2013	Meeting
	Heriot-Watt University	Suzanne Fitzpatrick Professor/Director of Research Institute School of the Built Environment	4 December 2013	Meeting and attendance at seminar on UK Annual Homelessness Monitors
		Dr Sarah Johnsen Senior Research Fellow School of the Built Environment		

Organisation	Expert(s)	Date of consultation	Type of consultation
St Mungo's	Peter Cockersell Director of Health & Recovery	5 and 10 December 2013	Teleconference
Broadway Homelessness and Support	Liz Blackender Team Leader City Outreach and Pan London Personalised Budgets	5 December 2013	Meeting
City of London Police	Mark Montgomery Police Sergeant	2 December 2013	Meeting and attendance at City of London Anti-Social Behaviour Interagency Working Group Meeting
Crisis	Street Intervention Team Katharine Sacks-Jones Head of Policy and Campaigns	6 December 2013	Meeting
UN Special Rapporteur on Extreme Poverty and Human Rights	Magdalena Sepúlveda Carmona Special Rapporteur on Extreme Poverty and Human Rights (2010 – 2014)	10 December 2013	Meeting
Office of the United Nations High Commissioner for Human Rights	Caroline Avanzo Human Rights Officer Asia-Pacific Section Field Operations and Technical Cooperation Division	9 December 2013	Meeting
Office of the United Nations High Commissioner for Human Rights	Benjamin Schachter Associate Human Rights Officer Human Rights and Economic and Social Issues Section	10 December 2013	Meeting
UN Human Rights Committee	Research and Right to Development Division Professor Walter Kaelin	12 December 2013	Meeting
UN Committee on the Elimination of Discrimination against Women	Patricia Schulz Member of the Human Rights Committee Member of the Committee on the Elimination of Discrimination against Women	13 December 2013	Meeting
Geneva Housing Court	Florian Irminger Civilian Judge	11 December 2013	Meeting
Fondation Abbe Pierre Alpil	Marc Uhry Julie Clauzier Advocate	11 December 2013 11 December 2013	Meeting Meeting
FEANTSA, the European Federation of National Organisations working with the Homeless	Samara Jones Human Rights Policy Officer	16 December 2013	Meeting
Criminologist	Freek Spinnewijn Director Cory Potts	17 December 2013	Meeting