

# Rough patch

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**With homelessness becoming an increasingly visible problem across the country, Mike Appleby and Anthony Taylor consider the legal and ethical implications of dealing with rough sleepers around commercial properties**

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The number of homeless people sleeping rough on UK streets has increased in recent years. Their presence in the vicinity of commercial properties poses a growing ethical dilemma for property owners and managers as to how to respond.

Furthermore, according to [Homelessness projections: Core homelessness in Great Britain](#), a recent report by [Heriot-Watt University](#) commissioned by national homeless charity [Crisis](#), the number of rough sleepers on the UK's streets is set to rise by three-quarters over the next decade.

The research found that, at any one time in 2016, an estimated 9,100 people were sleeping rough, and it forecasts that by 2026 this number could rise to 16,000 if 'current policies continue unchanged'. It also predicts that the number could exceed 40,000 by 2041.

## Visible and vulnerable

Rough sleepers face a significant risk of victimisation, are likely to fall into crime and addiction, and are vulnerable to mental illness and severe health problems. However, while they comprise a small proportion of the total number of homeless people, rough sleepers are the most visible and have the greatest impact on local communities. Rough sleeping is often associated with nuisance activities such as begging, street drinking and antisocial behaviour that can make an area feel unsafe.

While rough sleeping is clearly an issue for both national and local government, it is property owners, managing agents, facilities managers or those deemed the 'person in control' of the property who all too often find themselves on the front line, managing problems that can have safety implications for their staff, building occupants, visitors and the general public. But what steps can be taken?

## A consistent approach

Persons in control need to adopt a consistent, measured approach, which could be set out in a protocol and agreed with relevant local agencies such as the police, local authorities and homeless charities, and which their staff can follow. Any management process is advised to address the following topics:

- deterrent measures
- signage
- managing rough sleepers
- contacting the police or local authorities, who can use their powers.

It is important that this approach is discussed with all those who have an interest in the property, which should include the relevant local agencies and potentially the occupants ? it is often they who are the most affected, as they enter and exit the building on a daily basis.

In each region there are usually a number of agencies, including the police, local authorities and homeless charities, which have dedicated teams to deal with homelessness and the homeless. However, there are significant differences in the way the issue is handled from region to region.

Building a relationship with these agencies is crucial. Knowing the likely vulnerability of the rough sleepers, it is of course most important that they are always treated in a considered and considerate manner. Where possible, the rough sleepers should be provided with information about local agencies that can assist them and encouraged to use the facilities they offer.

However, it is not uncommon for rough sleepers, particularly those with addictions, to refuse to enter hostels or similar shelter because they object to the 'rules of the house'.

## **Managing rough sleepers**

In the first instance, contact should be made with the local authority or other agencies such as housing charities to find out whether they are prepared to speak to the rough sleepers, provide assistance and encourage them to move on.

If these agencies are unable to assist, then the person in control, or representatives specifically trained to engage with rough sleepers, will need to assess the individuals from a safe distance. Should there be concerns about behaviour, the police ought to be contacted promptly.

If it is safe to do so, then the rough sleepers should be approached and asked to move on. Perhaps a leaflet could be compiled with the local agencies, which would advise the rough sleepers where they can seek help and assistance. This could be handed out by way of encouragement and providing a safe place to go.

Where items are left unattended, it may be appropriate to remove these, providing it is safe to do so and there are warning notices in place. Note, however, that the removal of personal property may in itself raise legal questions.

To avoid hygiene issues, it is important that any rubbish, including human or animal waste, syringes, broken glass or food, is cleared away regularly and thoroughly, with appropriate disinfectants used. It may be necessary to arrange specialist cleaners, particularly where there are sharp objects or faeces, which will need to be disposed of correctly.

If a camp of a number of rough sleepers becomes established, it may be necessary to refer the matter to lawyers to consider legal sanctions or the need to employ private bailiffs.

## **Deterrent measures**

The use of deterrents is controversial, and can present a risk that the person in control will seem uncaring or unethical. The House of Commons Briefing Paper *Rough Sleepers and Anti-Social Behaviour (England)*, published in December 2016, quotes the Chief Executive of Crisis Jon Sparkes on such measures: 'Rough sleeping is devastating enough without

homeless people having to endure such hostility from their surroundings'.

However, there might be occasions, at the discretion of the 'person in control', where the use of some form of deterrent is deemed appropriate, and this could include the following.

- Denying access with fencing or walling: such barriers will need to be at least 2.4m high as, if lower, they may present a risk of injury should people try to scale them. The fence or walling should not offer any handholds or footholds, so as to discourage climbing. Additional spikes or sharps should not be used, as these have the potential to injure people.
- Filling in areas that may attract rough sleepers: this might for example be achieved by planting a garden, installing bike racks or laying uneven ground cover. However, consideration will need to be given to positioning, legitimate access needs, whether the surface presents a risk of injury and the need for planning permission.
- Installation of CCTV: as well as acting as a deterrent, this can also provide evidence if the police or local authority are called.
- Use of devices that produce high-pitched noise or other sounds, or bright lights.
- Security guards at appropriate times of the day, such as dusk and evenings.

Where deterrents are used, additional signage is likely to be necessary to serve as a disclaimer. Further signs might warn that abuse of staff or the public will not be tolerated and that, for example, unattended items might be removed for reasons of health, security or safety.

## Antisocial behaviour

Where rough sleepers are engaged in criminal or nuisance behaviour then it may be appropriate to contact the police or the local authority. However, to take action they will need evidence, which might include witness testimony, photographs, or CCTV footage of sufficient quality to identify individuals. The police can be called if an offence has been committed, including:

- begging, which is an offence under [section 3 of the Vagrancy Act 1824](#) ;
- wilfully blocking free passage along a highway, as in [section 137 of the Highways Act 1980](#) ;
- using threatening or abusive words or behaviour, under [section 5 of the Public Order Act 1986](#) .

The [Anti-Social Behaviour, Crime and Policing Act 2014](#) provides local authorities and the police with powers to deter antisocial behaviour, and these powers include the following.

- **Civil injunctions:** the local authority or the police may apply for an Injunction to Prevent Nuisance and Annoyance (IPNA) to tackle people repetitively engaging in low-level antisocial behaviour. An IPNA can prohibit them from doing so, or impose requirements to engage in a particular activity and address the underlying causes of their behaviour.
- **Dispersal powers:** [section 35 of the 2014 Act](#) allows the police to disperse individuals or groups causing or likely to cause antisocial behaviour in public places or common areas of private land, directing them to leave a specified area and not to return for up to 48 hours.
- **Community Protection Notice (CPN):** this is intended to deal with particular ongoing problems, rather than single incidents, that are having a negative effect on the community. A CPN may be issued by local authorities or the police to stop persistent, unreasonable behaviour that is proving detrimental to the amenity of the locality.
- **Public Spaces Protection Order (PSPO):** following consultation with the police, local authorities may issue a PSPO to impose restrictions or conditions on the activities people can carry out in a designated area. They are designed to deal with problems that are having a detrimental impact on the community's quality of life.

The use of these powers by the police and local authorities varies across the country in terms of the preferred measures and the extent to which they are applied, so it is important to liaise with them to understand their approaches. Exercising these powers can also attract adverse press coverage.

In July 2017, Oxford City Council was criticised in the press for pinning notices to bags belonging to rough sleepers, warning them of action under the 2014 act; [according to the Evening Standard](#), homeless people were threatened with ?2,500 fines for their 'detrimental' presence.

On the publication of the Homelessness projections, Jon Sparkes of Crisis said:

'We still exist because homelessness still exists, and [the] report makes it only too clear that unless we take action as a society, the problem is only going to get worse ... [But] we warmly welcome the government's pledge to tackle rough sleeping and other forms of homelessness. Now is the time for action and long-term planning to end homelessness for good.'

As he recognises, the issue of rough sleepers can only be solved by society at large, and will inevitably take time and state resources. In the meantime, those in control of buildings will have to do their best to address this difficult and sensitive issue on behalf of their clients.

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## Further information

- View the London Assembly Housing Committee's report: [Hidden homeless in London](#)
- Related competencies include [Legal/regulatory compliance](#)
- This feature is taken from the [RICS Building surveying journal](#) (December/January 2018)
- Related categories: [Health and safety responsibilities](#)