THE IMPLEMENTATION OF THE HOMELESSNESS REDUCTION ACT 2017: AN EMPIRICAL STUDY

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ABSTRACT

This thesis is a socio-legal study of the implementation of the Homelessness Reduction Act 2017, an ambitious piece of legislative reform introducing new statutory duties on local authorities in England to intervene earlier to prevent and relieve homelessness. It analyses original findings from in-depth ethnographic case studies in two local authority housing departments in the Midlands to explore how the Act was implemented on the frontline. It utilises a Foucauldian theoretical framework to explore how new duties are performed, how housing officers perceive their role after the Act, and how homelessness and the individual experiencing homelessness are governed. The thesis finishes by concluding that while the Act is a step in the right direction, it struggles to deliver on its bold title, failing to make any substantial strides in *reducing* homelessness. There is a clear need for a much broader policy response - working to improve the availability, accessibility and affordability of accommodation, working to address the root causes of homelessness, and to ensure a robust welfare safety net, before local authority duties can be performed in such a way as to substantively reduce homelessness.

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LIST OF ABBREVIATIONS

APA – Alternative Payment Arrangement

AST – Assured Shorthold Tenancy

CaCHE – UK Collaborative Centre for Housing Evidence

DLUHC – Department for Levelling Up, Housing and Communities

DSS – Department Social Security

DWP – Department for Work and Pensions

ESA – Employment Support Allowance

HA 1996 – Housing Act 1996

HO – Housing Officer

HRA 2017 – Homelessness Reduction Act 2017

JRF – Joseph Rowntree Foundation

LA – Local Authority

LGA – Local Government Association

LHA – Local Housing Allowance

MHCLG – Ministry of Housing Communities and Local Government

MP – Member of Parliament

ONS – Office National Statistics

PHP – Personal Housing Plan

PRS – Private Rented Sector

RSI – Rough Sleepers Initiative

SWEP – Severe Weather Emergency Provision

TA – Temporary Accommodation

UC – Universal Credit

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CHAPTER 1 – INTRODUCTION

1.1 Introduction

With a bold title and ambitious aims, the Homelessness Reduction Act 2017 came into force in April 2018, carrying with it high expectations. The then chief executive of Crisis labelled the Act "a big step in the right direction towards ending homelessness for good" and promised, "[a]ll homeless people will now be entitled to more meaningful support from their local council".[1] This Act represents the most significant reform in the last 40 years to the English statutory framework governing the duties of local authorities towards people experiencing homelessness. It introduces new duties to prevent and relieve homelessness, aiming for earlier intervention.[2] It further pursues a greater cooperation between public services who may come into contact with an individual at threat of homelessness, putting a duty on certain public authorities such as prisons, social services and Jobcentre Plus to refer people at risk of homelessness to a local housing authority.[3] Bob Blackman, the MP responsible for sponsoring the Homelessness Reduction Bill, claimed it would revolutionise the culture in local authorities "away from a crisis response towards prevention strategies and a more compassionate approach to helping people who are in that desperate crisis".[4]

This thesis will explore the implementation of this significant piece of legislation, conducting a socio-legal exploration of frontline practice in two

[1] Jon Sparkes, 'Homelessness Reduction Act Comes into Force Across England' (Crisis, 03 April 2018) <www.crisis.org.uk/about-us/media-centre/homelessness-reduction-act-comes-into-force-across-england/> accessed 23 May 2020.
[2] Homelessness Reduction Act 2017, s 4 and s 5.
[3] ibid, s 10; Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (Gov.UK last updated 22 March 2022) <www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-4-the-duty-to-refer-cases-in-england-to-housing-authorities> accessed 24 May 2022, para 4.3.
[4] HC Deb 28 October 2016, vol 616, cols 543 and 544.

local housing authorities in the Midlands. This introductory chapter sets out why research into the implementation of the Homelessness Reduction Act 2017 (HRA 2017) is interesting and important by demonstrating the broader policy context within which it emerged, and then provides a summary of the structure of thesis. It finishes by outlining the contribution this thesis makes to existing academic knowledge and literature.

1.2 The Homelessness Reduction Act 2017 in Context

While there was, and still is, no single way to reliably measure the full scale of incidences of homelessness in England, it was clear that before the introduction of the Homelessness Reduction Act 2017 all forms of recorded homelessness and precarious accommodation were increasing.[5] One of the most visible forms of homelessness, rough sleeping, had increased a considerable 169% between 2009/2010 and 2016/2017.[6] Local authority homelessness cases had shown a more gradual increase of roughly 30% over the same period, going from 89,120 applications processed during the year 2009/2010 to 115,550 in 2016/2017.[7] Households placed in temporary accommodation by local authorities were increasing much more rapidly from its low point in 2010 at just under 50,000 households, to 78,000 placements in March 2017 (a 61% increase), just before the passing of the HRA 2017.[8] It was also discernible that forms of 'hidden' homelessness, homelessness that is not visible either on the streets or in official statistics, had also increased, with more concealed, sharing, or overcrowded households.[9]

[5] Suzanne Fitzpatrick, Hal Pawson, Glen Bramley, Steve Wilcox, Beth Watts and Jenny Wood, *The Homelessness Monitor: England 2018* (Crisis 2018) xiv.
[6] ibid xv.
[7] ibid Table 1.0 xv.
[8] ibid 62 and 65.
[9] ibid xvii and xviii.

These increases in homelessness have been associated with various broader policy changes across social welfare. Under the umbrella of the austerity agenda, a renewed concern for 'welfare dependency' and a 'culture of worklessness' has led to successive legislative changes which reduce entitlement to, and levels of, welfare benefit, promote an increase in individualism over state intervention, and conditionality over passive entitlement.[10] Many of these changes are consolidated within the Welfare Reforms Acts of 2012 and 2016.

The introduction of Universal Credit (UC) is one such development and was, in theory, a much needed simplification of a complex and arduous benefits system, making it easier for people in receipt of social security to understand and making it cheaper to administer.[11] It replaced 6 different welfare benefits: child tax credit, housing benefit, income support, income-based jobseeker's allowance (JSA), income-related employment and support allowance (ESA) and working tax credit, combining them into one single benefit called Universal Credit. It was also intended to improve work incentives through a combination of improved earnings disregards and lower benefit withdrawal rates (lowering how much your benefit is reduced by as you receive income from work – previously known as the poverty trap when a person ends up no better off in work than out of work), to improve transition into work through a monthly paid award, reduce in-work poverty and cut back on fraud and error.[12] However, the roll out of Universal Credit has been fraught with problems.[13]

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[10] Philip Larkin, 'The New Puritanism: The Resurgence of Contractarian Citizenship in Common Law Welfare States' (2014) 41(2) Journal of Law and Society 227; Anne Power, Bert Provan, Eileen Herden and Nicola Serle, *The impact of welfare reform on social landlords and tenants* (Joseph Rowntree Foundation 2014).
[11] Welfare Reform Act 2012, Pt 1.
[12] Department for Work and Pensions, 'Universal Credit Introduced' (Gov.UK 05 October 2010) <www.gov.uk/government/news/universal-credit-introduced> accessed 24 May 2022.
[13] Stephanie Kleynhans and Thomas Weekes, 'From the frontline Universal Credit and the broken housing safety net' (Shelter 2019) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/report_from_the_frontline> accessed 24 May 2022.

Also part of the Welfare Reform Act 2012 was the introduction of the benefit cap, a limit on the total amount of benefits an individual household can receive, initially set at £26,000 a year for households with dependent children and £18,200 for single households, but since the Welfare Reform Act 2016 has been reduced further to £20,000 for a household with children (£23,000 inside London) and £13,400 for single households (£15,410 inside London).[14] The key justifications of the cap are again to increase incentives to work (to eradicate the 'culture of worklessness'), introduce fairness between those on out-of-work benefits and those in work so those out of work will never be better off, and finally to make financial savings.[15] The benefit cap has been subject to substantial litigation, both under the initial higher amount, and under the lower amount post-2016, where twice in the Supreme Court it has been deemed not to contravene human rights.[16]

A final significant welfare reform that relates directly to housing is the bedroom tax, an initiative designed to disincentivise people from under-occupying social housing. If their home is deemed too big for their needs, then a claimant in receipt of housing benefit will again see their housing benefit reduced, by 14% for one extra bedroom, or 25% for two or more bedrooms.[17]

While certainly not a comprehensive account of the welfare reform agenda in the years preceding the HRA 2017, these policy developments have a direct impact on the ability of low income households to secure or retain

[14] Welfare Reform Act 2012, ss 96(2), 96(6) and s 96(7); Housing Benefit Regulations 2006, SI 2006/213, reg 75D; Welfare Reform and Work Act 2016, s 8(2).
[15] Chartered Institute Housing, 'Feeling the Pinch – The Lowered Benefit Cap One Year On…' (CIH 17 November 2017) <www.cih.org/publications/feeling-the-pinch> accessed 24 May 2022.
[16] *R (JS) v Secretary of State for Work and Pensions* [2015] UKSC 16, [2015] 1 WLR 1449; *R (DA and DS) v Secretary of State for Work and Pensions* [2019] UKSC 21.
[17] Housing Benefit Regulations 2006, SI 2006/213, reg B13; Housing Benefit (Amendment) Regulations 2012, SI 2012/3040; Housing Benefit (Amendment) Regulations 2013, SI 2013/665.

accommodation,[18] framing the broader context for the introduction of the HRA 2017 and the discharge of duties to people experiencing homelessness.

The Homelessness Reduction Act 2017 therefore appears to stand out. Among a broader context of welfare retrenchment, the HRA 2017 appears to *increase* the responsibility of the state for addressing housing need, as opposed to cutting back. The HRA 2017 also appears to stand out within broader development of homelessness policy. As suggested in the introduction, it represents the most significant change to the homelessness statutory framework in the last 40 years. The first real acceptance that the state had a role in addressing the social problem of homelessness came with the Housing (Homeless Persons) Act 1977, which introduced the first duties on local housing authorities in England to provide assistance to those who were homeless. However, for the local authority to provide the applicant with long-term social housing the applicant had to surpass a number of hurdles, including that the authority deemed them homeless, in priority need, and not intentionally homeless.[19] These conditions convey the desire to exclude the "undeserving" from access to housing, setting homelessness duties up to be more about who is to be excluded from housing rather than providing rehousing opportunities.[20] The duties underwent relatively minor reform in 1996, adding an extra condition of eligibility (excluding applicants with no recourse to public funds), to form Part VII of the Housing Act 1996 (HA 1996) which is where the current statutory homelessness duties are now contained.[21] This statutory

[18] Fitzpatrick et al. (n 5) 34.
[19] For discussion of the original Act, see Robert Carnwath, *Guide to the Housing (Homeless Persons) Act 1977* (Knight & Co 1978).
[20] Dave Cowan, *Housing Law and Policy* (Macmillan 1999) 198.
[21] Cloke, Milbourne and Widdowfield, 'Change But No Change: Dealing with Home-lessness under the 1996 Housing Act' (2000) 15 Housing Studies 739. The current statutory framework will be discussed in more detail in Chapter 2.

framework continued to remain largely unscathed until the Homelessness Reduction Act 2017 (HRA 2017) some 40 years later.

Although not the significant modification of the HRA 2017, the statutory homelessness structure has been surrounded by various policy development. Moving from the 1977 Act to the 1996 Act was more of a reflection of political appetite than a drive to reform homelessness duties. The election of the Thatcher government in 1979 sparked the beginning of a recommodification of housing, characterised by a residualisation of the social housing sector and valorising a shift into the market of homeownership and the private rented sector, in line with the general conservative commitment to roll back the welfare state.[22] By 1996 a significant portion of local authority housing stock had been sold to housing associations or through the Right To Buy scheme, which gives social tenants the right to purchase their property at a significant discount under the Housing Act 1980.[23] As this stock dwindled, attention turned to how limited supply should be allocated, leading to the Housing Act 1996.[24] Within the proposed reforms came suggestions that the majority of cases accepted under the homelessness duties by local authorities were not genuine, people were in fact not homeless, or were just trying to jump the queue in the waiting list for social housing.[25] It was apparently due to this practice that social housing was unable to go to those with the "best claim to it", reasserting the notion that those owed a homeless duty were less deserving.[26] This rhetoric justified the introduction of the above mentioned

[22] ibid 741.
[23] Alan Murie, 'The Right To Buy: History and Prospect' (History and Policy, 11 November 2015) <www.historyandpolicy.org/policy-papers/papers/the-right-to-buy-history-and-prospect> accessed 24 May 2022.
[24] Cloke, Milbourne and Widdowfield (n 21) 741.
[25] ibid 741-742. The perception of 'queue jumping' can be attributed to the obligation on housing authorities to give reasonable preference within allocation policies to people who are homeless, and in particular people owed a main housing duty within Part 7 Housing Act 1996; Housing Act 1996, s 166A(3).
[26] ibid 742.

eligibility criteria, adding a duty to ensure accommodation provided was within the private sector, and also limiting the duty to provide accommodation to only two years, all restricting access to social housing for those who were homeless.[27] The two year time limit was eventually removed by the Homelessness Act 2002 and the duty to discharge within the private sector was turned into only a power.[28] This however, was not the end of the privatisation of housing provision, with the Localism Act 2011 re-introducing the mechanism for using the private sector to discharge the duty to provide accommodation, allowing a 12 month assured shorthold tenancy.[29] The Housing and Planning Act 2016 introduced the creation of Starter Homes, supposedly 'affordable homes' at a 20% discount for first-time buyers, and sought to eradicate the security of tenure for social tenants by mandating the offer of fixed term, 2-5 year tenancies as opposed to secure 'lifetime' tenancies (a provision the government later promised not to bring into effect in their social housing green paper after the measure received substantial criticism[30]).[31] These measures both show again a valorisation of home ownership and the private market, and the further residualisation of social housing.[32]

As will be established in later chapters, the Homelessness Reduction Act 2017 does not sit entirely counter to these trends, yet the act of introducing new and expanded duties on local authorities for those who are homeless or at risk of homelessness does appear, on its face, to stand out against a broader rhetoric, mirroring that of the Thatcher era, for a

[27] Dave Cowan, 'Reducing Homelessness or Re-ordering the Deckchairs?' (2019) 82(1) Modern Law Review 105, 108-109.
[28] Homelessness Act 2002, ss 5,6,7 and 9.
[29] Localism Act 2011, s 148; Chris Bevan, 'The Localism Act 2011: The Hollow Housing Law Revolution' (2014) 77(6) Modern Law Review 964, 971.
[30] Ministry of Housing, Communities and Local Government, 'A New Deal for Social Housing' (Gov.UK 14 August 2018) <www.gov.uk/government/consultations/a-new-deal-for-social-housing> accessed 24 May 2022.
[31] Housing and Planning Act 2016, ss 2(1), 2(6) and 118, and sch 7.
[32] Chris Bevan and Emma Laurie, 'The Housing and Planning Act 2016: Rewarding the Aspiration of Homeownership?' (2017) 80(4) Modern Law Review 661.

withdrawal of social support. This therefore makes the content, implementation, and every-day application of this legislation particularly intriguing.

This intrigue ultimately led to the following research questions which have been explored within this thesis.

The primary research question:

- How is the HRA 2017 implemented in local authority housing/homelessness departments?

Within this primary research question, specific interest focussed on:

- How are the new duties under the HRA 2017 carried out?
- How do housing officers and other staff within local authority housing departments perceive their roles after the HRA 2017?
- How is homelessness and the homeless individual governed under the HRA 2017?
- How is homelessness and the homeless individual governed through local-level implementation of the HRA 2017?

The next section of this chapter below will outline the structure of the following thesis as it seeks to answer these questions.

1.3 Structure of Thesis

The next chapter (Chapter 2) provides a detailed overview of the homelessness legislative framework. It allows for an appreciation of the doctrinal reforms made by the HRA 2017 by beginning with an account of the law governing local authority duties pre-HRA 2017, then offers an outline of some of the key critiques of that legal framework which led to calls for reform. It finishes by detailing the key provisions of the

Homelessness Reduction Act 2017, indicating how the changes made by the Act fit in with and modify the pre-existing framework.

Chapter Three details the research methodology adopted in this study. It further explores the development of the research questions addressed within the thesis, and outlines that in order to explore these questions, a qualitative research methodology was adopted through the performance of two ethnographic case studies in two local authorities in England. The approach to recruitment of these authorities is discussed, along with the multiple data collection techniques utilised including observations of practice, interviews, and documentary analysis. Ethical concerns raised by the study are explored, and a reflexive account of my experiences conducting the research is provided. It finishes by identifying the approach taken to data analysis in the thesis, which involves combining thematic analysis with a Foucauldian discourse analysis.

The fourth chapter explores the theoretical framework that will be utilised in this thesis to help interpret data and provide a narrative linking remaining discussion chapters together. The theoretical framework chosen is Foucault's account of Governmentality. This chapter offers a detailed overview of the development of the construct of government and governmentality, and within that, Foucault's interpretation of the exercise of power as performing a normalising function in society. This chapter ends by performing a stand-alone discourse analysis on the provisions of the Homelessness Reduction Act 2017, demonstrating that while it does indeed appear at first glance to distinguish itself from the trend identified above found in broader housing and welfare policy, it is in fact still a tool in the exercise of power as normalisation, with the neoliberal individual as the target norm.

Chapters Five to Seven provide in depth discussion and analysis of data collected. The first of these chapters considers the administrative implementation of the Act in both authorities, highlighting three particular areas of implementation which were identified as presenting particular challenges to achieving desired goals of implementation, namely: managing increased case load, in particular meeting statutorily imposed time limits on holding applicants within the new prevention and relief duties, completing necessary administrative tasks such as compiling personal housing plans and issuing decision letters to applicants, and finally collecting and submitting local homelessness statistics to Government under H-CLIC, a new national data collection system. Chapter 6 explores how the local authorities studied discharged their new duties under the HRA 2017, selecting three key duties to investigate including: the construction of personalised housing plans, the performance of the prevention duty, and the performance of the relief duty. Discussion of personal housing plans seeks to unpick the 'personal' in personalised housing plans, considering the extent to which they can be appropriately tailored to individual households. Discussion of the prevention duty applies the UK Collaborative Centre for Housing Evidence (CaCHE) prevention typology[33] and considers the extent to which the duty under the HRA, and the way the local authorities were meeting that duty, attends to that typology. Finally, discussion of the performance of the relief duty, identifies and problematises how the HRA 2017 promotes an increased role for the private rented sector in addressing housing need. It considers the difficulties faced in both local authority areas in accessing social and privately rented accommodation in order to meet duties owed to low-

[33] Suzanne Fitzpatrick, Peter Mackie and Jenny Wood, 'Homelessness Prevention in the UK: Policy Briefing' (CaCHE 2019) < https://housingevidence.ac.uk/wp-content/uploads/2019/07/Homelessness-Prevention-in-the-UK-Policy-Brief-July-2019-final.pdf> accessed 23 May 2022.

income households, ultimately impacting the ability of the new statutory duties to reduce homelessness. Chapter 7 considers the performance of duties with reference to a particular group of individuals experiencing homelessness, single households. This grouping was expected to benefit the most from the introduction of the HRA 2017, so this final discussion chapter explores the extent to which the HRA can provide an answer for rough sleeping and other experiences of single homelessness.

Finally, Chapter 8 draws the thesis to a close with a conclusion. Here the key outcomes emerging from the above chapters are consolidated, and the implications of these research outcomes for the current social context are discussed. It finishes by considering potential future directions for research that have emerged through the conduct and write up of this study.

1.4 Key Arguments and Contributions

This final section introduces some of the key arguments this thesis will go on to make through the above described Chapters, and identifies the key contributions these arguments make to existing academic literature.

The first key contribution is to methodological literature on ethnographic practice and research reporting. There has been a notable shift in ethnographic methodological texts calling for more reflexive ethnographical research,[34] particularly in the field of feminist ethnography as highlighted by Skeggs,[35] recognising the researchers own position and role in the creation of research. Key reflexive works in this context have explored

[34] Examples include: Charlotte Davies, *Reflexive Ethnography: A Guide to Researching Selves and Others* (2nd edn, Routledge 2007); Amanda Coffey, *The Ethnographic Self: Fieldwork and the Representation of Identity* (SAGE 1999).
[35] Beverley Skeggs, 'Feminist Ethnography' in Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland and Lyn Lofland (eds), *Handbook of Ethnography* (SAGE Publications 2001).

gendered positionality[36], nationality and ethnicity[37] and emotional engagement with the community of study.[38] Chapter 3.7 contributes to this literature by offering a highly transparent account of conducting legal ethnography in a local authority institutional setting, reflecting on my positionality as a researcher within that environment, and drawing on my emotional engagement with the research process. It promotes an open and honest reflection of the role of the researcher in the construction of ethnographic research and reveals the personal and emotional investment required to adopt such a methodology.

On a broader basis, this thesis joins an extensive body of socio-legal, law in action studies which explore the implementation of law and policy in practice on the ground, where law meets the individual.[39] Law in action studies have included a focus on legal compliance, questioning why front-line public officers fail to comply with law 'in the books', or even identifying factors which may in fact encourage compliance.[40] However explorations of law in action and socio-legal approaches are also further complimented by an extensive literature on 'street-level bureaucracy', originating from foundational works of Prottas[41] and Michael Lipsky,[42] and literature on

[36] Gurney, 'Not One of the Guys: The Female Researcher in a Male Dominated Setting' (1985) 8(1) Qualitative Sociology 42; Karen Lumsden, 'Don't Ask a Woman to do Another Woman's Job: Gendered Interactions and the Emotional Ethnographer (2009) 43(3) Sociology 497.
[37] Rafael Alcadipani, Robert Westwood and Alexandre Rosa, 'The Politics of Identity in Organizational Ethnographic Research: Ethnicity and Tropicalist Intrusions' (2015) 68(1) Human Relations 79.
[38] Karen Lumsden (n 36); Sarah Gilmore and Kate Kenny, 'Work-worlds Colliding: Self-Reflexivity, Power and Emotion in Organizational Ethnography' (2015) 68(1) Human Relations 55.
[39] Roscoe Pound, 'Law in Books and Law in Action' (1910) 44 American Law Review 12; Jean-Louis Halperin, 'Law in Books and Law in Action: The Problem of Legal Change (2011) 64(1) Maine Law Review 45.
[40] Marc Hertogh and Simon Halliday, *Judicial Review and Bureaucratic Impact: International and Interdisciplinary Perspectives* (Cambridge University Press 2004); Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart 2004); Caroline Hunter, Joanne Bretherton, Simon Halliday and Sarah Johnsen, 'Legal Compliance in Street-Level Bureaucracy: A Study of UK Housing Officers' (2016) 38(1) Law and Policy 81.
[41] Jeffrey Prottas, *People-Processing: The Street-Level Bureaucrat in Public Service Bureaucracies* (Lexington Press 1978).
[42] Michael Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services* (Russel Sage Foundation 1983).

administrative justice,[43] and a growing body of work on legal consciousness.[44]

The study conducted for this thesis builds on existing socio-legal examinations of earlier iterations of homelessness statutory frameworks, including salient work by Loveland,[45] Cowan[46] and Halliday.[47] It presents the first detailed academic socio-legal study of the implementation of the Homelessness Reduction Act 2017, offering insights into how the new framework is operating in practice. In Chapters 5-7 key arguments are constructed to that end, including setting off the bold policy aims of the HRA 2017 detailed at the start of this Introduction Chapter, with the assertion that the HRA 2017 creates a new process, a process which removes some of the previous barriers to access to local authority resources, and creates a richer assessment procedure, but is a process nonetheless. This process fails to guarantee positive substantive outcomes addressing underlying causes of homelessness or providing suitable accommodation, shifting the role of housing officers into procedural compliance (see Chapter 5 and 8.1).

This is furthered by arguments made in Chapter 6 recognising resource pressures on local authorities from a housing market that cannot provide adequate availability of accommodation for low-income households, and from a lack of sufficient tenancy maintenance support, in part due to a

[43] Michael Adler (ed), *Administrative Justice in Context* (Bloomsbury Publishing 2010); Robert Thomas and Joe Tomlinson, 'Mapping Current Issues in Administrative Justice: Austerity and the 'More Bureaucratic Rationality' Approach' (2017) 39(3) Journal of Social Welfare and Family Law 380; Marc Hertogh, Richard Kirkha, Robert Thomas and Joe Tomlinson, *The Oxford Handbook of Administrative Justice* (Oxford University Press 2022).
[44] Beth Ann Hoffmann, 'Legal Consciousness and Dispute Resolution: Different Disputing Behaviour and Two Similar Taxicab Companies' (2003) 28(4) Law and Social Inquiry 691; Rosie Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Routledge 2011); Simon Halliday and Morgan Bronwen, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66(1) Current Legal Problems 1; Simon Halliday, 'After Hegemony: The Varieties of Legal Consciousness Research' (2019) 28(6) Social and Legal Studies 859.
[45] Ian Loveland, *Housing Homeless Persons: Administrative Law and the Administrative Process* (Oxford University Press 1995).
[46] Dave Cowan, *The (In-) Appropriate Applicant* (Dartmouth Publishing 1997).
[47] Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart 2004).

diminished social security safety net, meaning that even the most well-intentioned housing officers struggle to effectively and consistently reduce homelessness (see Chapter 6 and 8.1).

Chapter 7 identifies single people experiencing homelessness as a key group who often fell through the cracks of statutory homelessness duties before the coming into force of the HRA 2017 (see also Chapter 2.3), but goes on to argue that while the provisions of the HRA 2017 do bring single homeless individuals into the scope of legal duties, these duties still struggle to provide meaningful outcomes for this population (see also 8.1).

While these discussions in later chapters do not draw explicitly from street-level bureaucracy, legal consciousness, and administrative justice literature referred to above, there is significant scope for findings discussed to make these contributions, and could be drawn out in distinct publications at a later date. For example, the discussion through Chapter 6 on the implementation of new duties under the HRA 2017, and consideration of the resources available to meet those duties and the discretion available to decide as an authority in what way to meet those duties, would lend itself well to analysis within street-Level bureaucratic theory considering how availability of resources and discretion impacts on policy delivery to the homeless individual.[48] Particular interactions and tensions are raised in Chapter 5 between procedural administrative justice and substantive administrative justice that would be interesting to explore further.[49] Chapter 5, particularly in 5.2 and 5.3, includes discussion of the perceived level of legal consciousness within the housing officers at the two different local authority sites, and considers the effect this could have had on

[48] Michael Lipsky (n 42); Steven Maynard-Moody and Michael Musheno, 'State-Agent or Citizen-Agent: Two Narratives of Discretion' (2000) 10 Journal of Public Administration Research and Theory 329.
[49] Michael Adler, 'Understanding and Analysing Administrative Justice' in Michael Alder (ed), *Administrative Justice in Context* (Bloomsbury Publishing 2010).

legislative compliance with procedural obligations, which could be explored from both a street-level bureaucratic perspective, or legal consciousness perspective.[50]

Finally, this thesis offers a significant contribution to Foucauldian Governmentality analysis,[51] applying Foucauldian concepts of government, governmentality and power as normalisation to frame understanding of the implementation of the new legislative framework, showing how it acts on both the conduct of staff within local authority housing departments, and housing applicants themselves. Governmentality analysis is popular in the housing field, this thesis sitting in good company with Cowan and McDermont's exploration of political rationalities in the regulation of social housing,[52] Blandy and Hunter's analysis of risk and responsibilization in relation to the Right to Buy scheme,[53] and Jacobs and Manzi's examination of neoliberal rationality in the context of Housing Association practice.[54]

In Chapter 4.4 an analysis of governmentality is performed on the specific provisions of the HRA 2017, complimenting existing work by Cowan[55] and Bevan.[56] This analysis argues that while the HRA 2017 does indeed appear at face value to stand out against policy trends identified above towards the withdrawal of the welfare state, on deeper exploration, it will argue

[50] Caroline Hunter et al (n 40).
[51] Michael Foucault, 'Governmentality' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (Harvester Wheatsheaf 1991); Nikolas Rose, 'Governing "Advanced" Liberal Democracies' in Andrew Barry, Thomas Osborne and Nikholas Rose (eds), *Foucault and Political Reason* (UCL Press 1996); Nikolas Rose, 'Government and Control' (2000) 40 British Journal of Criminology 321.
[52] Dave Cowan and Morag McDermont, *Regulating Social Housing: Governing Decline* (Routledge 2006).
[53] Sarah Blandy and Caroline Hunter, 'The Right to Buy: Examination of an Exercise in Allocating, Shifting and Re-branding Risks' (2012) 33(1) Critical Social Policy 17
[54] Keith Jacobs and Tony Manzi, 'Neoliberalism as Entrepreneurial Governmentality: Contradictions and Dissonance Within Contemporary English Housing Associations' (2019) 35(4) Housing Studies 573.
[55] Dave Cowan, 'Reducing Homelessness or Re-ordering the Deckchairs?' (2019) 82(1) Modern Law Review 105
[56] Chris Bevan, 'Governing "The Homeless" in English Homelessness Legislation: Foucauldian Governmentality and the Homelessness Reduction Act 2017' (2021) 38(3) Housing, Theory and Society 259; Chris Bevan, 'Reconceptualising Homelessness Legislation in England' (2021) 84(5) Modern Law Review 953.

that the HRA 2017 is a tool for furthering neoliberal rationalities, introducing an increased regulatory and disciplinary framework for the individual experiencing homelessness.

Chapter 5 explores the governance of housing officers themselves, arguing that the imposition of certain procedural requirements (including statutory time limits on cases, requirements to communicate with an applicant, and data reporting requirements) act on the housing officers to ensure applicants are able to access legal entitlements, but the Chapter also observes scope for resistance where frustrations are experienced by housing officers when procedural requirements are deemed to hamper effective performance of duties to achieve good substantive outcomes for applicants.

Chapter 6 tracks the presence of a neoliberal rationality in local authority performance of new statutory duties and argues that the attempt to normalise homeless individuals as active participants in the housing market is fundamentally flawed where resources to enable the functioning of the free market for low-income households are simply not available. Chapter 7 explores the position of single people experiencing homelessness, making a key distinction between an 'entrenched rough sleeper' and 'other' single people experiencing homelessness, to argue that the more an individual falls into the former category, the less they come within the governance practices and normalisation of the HRA 2017, and instead might fall within parallel investment in a variety of rough sleeping focussed programmes that are more likely to be successful and result in sustained accommodation.

This section has sought to assert the key contributions to academic knowledge made by this thesis by introducing some of the key arguments that will be detailed throughout the following chapters, and setting them in

the context of existing literature. Before these arguments can be explored in more depth, it is necessary to set out the relevant legislative framework which is the subject of the next Chapter.

CHAPTER 2 – LEGISLATIVE FRAMEWORK

2.1 Introduction

The purpose of this chapter is to highlight the significance of the HRA 2017 and its legislative changes by setting out the legislative framework prior to the HRA 2017 under Part VII of the Housing Act 1996, before then setting out the problems with this pre-existing framework, and then how the HRA 2017 amends the Housing Act 1996 in an attempt to address some of those problems. It finishes by performing a brief literature review, summarising early commentary published on the potential impact of the HRA 2017, drawing into the broader surroundings in which the HRA 2017 emerged to frame the context of the data collected and reported in the remainder of this thesis.

2.2 Pre – HRA 2017 Framework

This section will summarise the legal framework of duties on local housing authorities in England towards those who are experiencing homelessness or threatened homelessness under Part VII of the HA 1996 as it existed before the HRA 2017. The legal framework is extensive and complex, supplemented by various other bits of primary legislation, statutory instruments, case law and a hefty code of guidance. Therefore, this summary will only provide an overview of key areas and duties. However,

as the framework before the HRA 2017 largely still exists after the HRA 2017, any expansion necessary to understand the provisions drawing on case law or the code of guidance, which the HRA did not affect, will utilise up to date resources such as the updated 2018 code of guidance[57] and recent case law. Further, since a significant number of key duties remain untouched by the HRA 2017, with the HRA being mostly 'additive' in construction, duties that exist in the same format today are described in the present tense, with any elements specific to the *pre*-HRA 2017 framework highlighted along the way. In section 2.4 later in the Chapter, the modifications made to the framework by the HRA 2017 will be clarified, and there will be a summary of how the framework now comes together.

Since 1996 local housing authorities have had a duty to provide, or secure the provision of, general advice and information on homelessness and the prevention of homelessness free of charge to any person who would like to access that information, regardless of whether they meet criteria to be owed any other duty under Part VII HA 1996.[58] If a person needs more than advice and assistance they can apply for accommodation or assistance obtaining accommodation.[59] The threshold for accepting that application is low - if the authority has reason to believe an applicant is homeless or threatened with homelessness they have a duty under s.184 HA 1996 to make further inquiries.[60] An applicant is homeless if they have no accommodation available for their occupation,[61] where accommodation is only treated as available to occupy if it is available for occupation by the applicant and any other person who normally resides with them as a

[57] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (Gov.UK last updated 22 March 2022) <www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-4-the-duty-to-refer-cases-in-england-to-housing-authorities> accessed 24 May 2022.
[58] Housing Act 1996, s 179 (version in force 27 April 2015).
[59] ibid s 183.
[60] ibid s 184 (version in force 02 March 2009).
[61] ibid s 175(1) (as enacted).

member of their family, or might reasonably reside with them.[62] An applicant is also homeless if they have accommodation but they cannot secure entry to it, it is a moveable structure with no entitlement or permission to place it or reside in it,[63] or it is accommodation that is not reasonable to continue to occupy.[64]

There is no exhaustive list of the circumstances that would make it unreasonable for an applicant to continue to occupy accommodation, it is for the authority to make a judgment call taking into account all the circumstances of each individual case.[65] Circumstances specified within the HA 1996 that make it unreasonable to continue to occupy accommodation include if it is probable that continued occupation will lead to violence or domestic abuse against the applicant or any member of their household, including actual violence or threats of violence likely to be carried out.[66] Authorities may also have regard to the general circumstances prevailing in relation to housing in the district when deciding if circumstances are reasonable to continue living in,[67] including comparisons of circumstances such as poor physical condition or overcrowding.[68] The Homelessness (Suitability of Accommodation) Order 1996 further specifies that the affordability of accommodation is to be taken into account in all cases, where it cannot be deemed reasonable to occupy property that is unaffordable for the applicant.[69] The recent case of *Samuels v Birmingham City Council* [2019] determined that where an applicant's only source of income is social security benefits, and there is a gap between the amount

[62] ibid s 176.
[63] ibid s 175(2) (as enacted).
[64] ibid s 175 (3) (as enacted).
[65] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 57) para 6.23.
[66] Housing Act 1996, s 177(1) and s 177(1A).
[67] ibid 177(2).
[68] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 57) para 6.25-6.27.
[69] Homelessness (Suitability of Accommodation) Order 1996, SI 1996/3204, art 2.

the applicant receives in housing costs/housing benefit and the rent payable for the property, this property cannot be deemed affordable and therefore reasonable to occupy, setting social security levels as an objective benchmark.[70]

The definition of threatened homelessness draws on that of homelessness. Before the HRA 2017, a person was deemed threatened with homelessness if they were likely to become homeless within 28 days.[71] Once there is a reason to believe an applicant is homeless or threatened with homelessness as per the above definitions, an authority must make inquiries under s.184 HA 1996 into an applicant's eligibility, what further duties are owed (if any), and may inquire into an applicant's local connection to any authority district, and must then notify the applicant of any decisions made and the reasons for such decisions.[72] An applicant is ineligible for housing assistance if they are a person from abroad who is subject to immigration control and is not of a class prescribed as eligible by the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006.[73] A person who is ineligible for universal credit or housing benefit cannot be prescribed as eligible for housing assistance under Part 7[74] therefore an ineligible applicant is commonly referred to as a person with 'no recourse to public funds'. The eligibility provisions are complicated and extensive, and were not affected by the HRA 2017, so will not be discussed here in any further detail.[75] If an applicant is ineligible the only duty available under the statutory homeless provisions is the s.179 duty to provide general information and advice. If, however, the applicant

[70] *Samuels v Birmingham City Council* [2019] UKSC 28, [2019] 4 All ER 773, [36].
[71] Housing Act 1996, s 175(4) (as enacted).
[72] ibid s 184 HA 1996 (version in force 02 March 2009).
[73] ibid s 185 HA 1996; The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, SI 2006/1294.
[74] Housing Act 1996, s 185(2A) HA 1996.
[75] For detailed discussion see Jan Luba, Liz Davies, Connor Johnston and Tessa Buchanan, *Housing Allocation and Homelessness* (5th edn, Lexis Nexis 2018), chapter 11.

is eligible it will be considered what further duties under Part VII HA 1996 may be owed.[76]

Pre-HRA 2017, the most important duty that existed was the s.193 HA 1996 duty to secure that accommodation is available for occupation by the applicant. This duty, however, is only owed to those who are found to be homeless, eligible, in priority need, and not homeless intentionally - often referred to as the "main housing duty" or "full housing duty".[77] To be in priority need an applicant must fall within one of the categories listed within s.189(1) HA 1996 or the Homelessness (Priority Need for Accommodation) (England) Order 2002, some of the main categories being: a pregnant person,[78] a person with dependent children,[79] a person who is homeless as a result of experiencing domestic abuse,[80] a person who is vulnerable (as a result of various different characteristics such as old age, mental ill health, having served a custodial sentence etc;[81] evaluated as a person who is significantly more vulnerable than an ordinary person if made homeless)[82], a person aged 16 or 17 who is not a child in need or looked after child,[83] a person under 21 who was a looked after child, accommodated or fostered,[84] or a person who is threatened homeless or homeless due to an emergency such as a fire or flood.[85]

A person would be deemed intentionally homeless if they deliberately do or fail to do anything which causes them to lose accommodation that was

[76] Housing Act 1996, s 184(1)(b).
[77] ibid s 193(1) (version in force 27 April 2015).
[78] ibid s 189(1)(a).
[79] ibid s 189(1)(b).
[80] ibid s 189(1)(e), as amended by the Domestic Abuse Act 2021, s 78(5).
[81] ibid s 189(1)(c); Homelessness (Priority Need for Accommodation) (England) Order 2002, SI 2002/2051, art 5 and 6.
[82] *Hotak v Southwark London Borough Council, Johnson v Solihull Metropolitan Borough Council, Kanu v Southwark London Borough Council* [2015] UKSC 30, [2016] AC 811, to be discussed more below in section 2.3
[83] Homelessness (Priority Need for Accommodation) (England) Order 2002, SI 2002/2051, art 3.
[84] ibid art 4.
[85] Housing Act 1996, s 189(1)(d).

available for them to occupy and reasonable for them to continue to occupy.[86] However, an act or omission in good faith by someone who was unaware of any relevant facts, cannot be treated as deliberate.[87] The case of *Samuels* was in fact a case regarding intentional homelessness and whether none payment of a shortfall in rent leading to eviction could amount to intentional homelessness, depending on whether the property Ms Samuels was previously occupying, with its shortfall in rent, could be deemed affordable and therefore reasonable to continue occupying. [88] As stated above, Ms Samuels income was made up solely of social security benefits where housing benefit did not cover the full amount of rent, therefore the property could not be deemed affordable so Ms Samuels should not be intentionally homeless. Actions that could still be regarded as deliberate include surrendering adequate accommodation in England or abroad, wilful refusal to pay rent or mortgage (on an affordable property) or being evicted due to antisocial behaviour.[89]

If an applicant is both deemed intentionally homeless and deemed not to meet one of the categories of priority need, the only duty available pre-HRA 2017 was the provision of advice and assistance in their own attempts at securing accommodation.[90] If, however, an applicant was unintentionally homeless, but again deemed not to meet one of the categories of priority need, general advice and assistance was available and the authority *may* have provided accommodation, but did not have to.[91] If an applicant is in priority need but has become homeless intentionally the authority must provide accommodation but only for such a period as they consider will

[86] ibid s 191(1).
[87] ibid s 191(2).
[88] *Samuels* (n 70).
[89] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 57) para 9.20.
[90] Housing Act 1996, s 190(1) and 190(3) (version in force 31 July 2002).
[91] ibid s 192 HA 1996 (version in force 31 July 2002, now repealed).

give the applicant a reasonable opportunity of securing their own accommodation (which is often for around 28 days).[92]

If the applicant can meet all four criteria of the main housing duty, including being unintentionally homeless and in priority need, then they are owed a duty to secure accommodation if they or a member of their household also have a local connection to that local authority area.[93] A local connection is determined via residency, employment, family associations or due to special circumstances.[94] Local authorities have agreed guidelines on procedures for referral between them, and to help in resolving disputes.[95] This agreement suggests that to establish normal residency for the purposes of a local connection, residence should be for at least 6 months in an area during the previous 12 months, or for 3 years during the previous 5 year period, although these are merely guidelines and each case should be considered individually.[96] If a local authority in making their inquiries believe an applicant is owed a main housing duty but has a local connection to another authority, they can choose instead to refer the applicant to that other authority to secure accommodation and discharge the s.193 HA 1996 duty.[97]

Whether it is discharged by the authority applied to, or referred to another authority, the main methods by which this duty can be brought to an end is with a final offer of accommodation: an offer of a suitable private sector fixed term 12 months assured shorthold tenancy, or a suitable social sector Part VI HA 1996 offer, or if either of these offers are made and refused by

[92] ibid s 190(1) and s 190(2) (version in force 31 July 2002); Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 57) para 15.13 – 15.15.
[93] Housing Act 1996, s 193(2) (version in force 27 April 2015).
[94] ibid s 199(1).
[95] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 57) para 10.2.
[96] ibid para 10.7 and 10.2.
[97] Housing Act 1996, s 193(2) (version in force 27 April 2015) and 198 HA 1996 (version in force 27 April 2015).

the applicant, the applicant having been informed of the possible consequences of such refusal.[98]

During the course of inquiries, a local authority could have an interim duty to provide accommodation until it is decided what duties, if any, are owed. This duty, often called the temporary accommodation duty, is owed if there is a reason to believe an applicant is homeless, eligible, and in priority need.[99] Prior to the HRA 2017, the interim accommodation duty came to an end once a decision was made around what duty (if any) was owed and this decision was notified to the applicant.[100] If one of the above duties was accepted and the applicant continues to be provided with accommodation, for example, for a reasonable period under s.190(2) HA 1996, or until the s.193 HA 1996 duty can be discharged with an offer of accommodation, or are being accommodated under s.200(1) HA 1996 until the applicant is notified as to whether the conditions for a referral to another authority are met, they will likely stay in temporary forms of accommodation but are instead accommodated in this way under those alternative duties. The interim accommodation duty would apply even if an authority believed the applicant might not have a local connection and a referral to another authority was likely, until inquiries were complete and the applicant was notified of the referral of the case, or that no s.193 HA 1996 main housing duty was owed.[101]

For those who were threatened homeless, likely to become homeless within 28 days, there was a parallel scale of duties owed, ranging from only

[98] ibid s 193(6) – (8) (version 27 April 2015). Also includes where an offer that is not a private rented or social sector offer is made to discharge the duty and refused, where an applicant ceases to be eligible, becomes homeless intentionally from accommodation provided (including temporary accommodation if it is provided while longer term housing is found), or voluntarily ceases to occupy their principal home – Housing Act 1996, s 193 (5) and (6).
[99] ibid s 188 (version in force 09 November 2012).
[100] ibid s 188(3) (version in force 09 November 2012).
[101] ibid s 188(2) (version in force 09 November 2012) and s 200 (version in force 27 April 2015).

advice and assistance,[102] to a duty to take reasonable steps to secure that accommodation does not cease to be available for occupation, the latter reserved only for those deemed threatened with homelessness, eligible for assistance, unintentionally threatened with homeless, and in priority need.[103]

At various points where a decision is made by the local housing authority in relation to the housing application, the applicant has a right to request a review of that decision.[104] This is a form of internal administrative review where the authority itself will reconsider its own decision. Pre-HRA 2017 the decisions that could be reviewed were any decision on eligibility, any decision on which duty (if any) is owed, decisions relating to the referral of an applicant to another authority, including the decision to notify the other authority of the referral or the decision as to whether the conditions for referral are met, a decision as to the suitability of any accommodation offered in the discharge of any of the above duties (including the suitability of a private rented sector offer).[105] A request for review of any decision must be made before the end of the period of 21 days beginning with the day on which the applicant was notified of any decision, and there is no further right to request a review of the outcome of an earlier review request.[106] The necessary procedures to be followed when carrying out a review are contained within regulations,[107] and include a requirement that an officer not involved in the original decision carry out the review, and that officer must be more senior than the original officer.[108] Where an applicant requests a review of a decision, the authority may provide (or

[102] ibid s 195(5)-(9) (version in force 09 November 2012).
[103] ibid s 195(1) and s 195(2) (version in force 09 November 2012) and s 196 (version in force 31 July 2002).
[104] ibid s 202.
[105] ibid s 202(1) (version in force 27 April 2015).
[106] ibid s 202(2) and (3) (version in force 27 April 2015).
[107] Homelessness (Review Procedures etc.) Regulations 2018, SI 2018/223 (previously The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999, SI 2019/71).
[108] ibid reg 8.

continue to provide) accommodation pending the decision of the review, but they do not have to.[109] After exercising the right of review, if the applicant is dissatisfied with the review decision or does not receive a decision on the review within the prescribed time frames,[110] they may appeal to the county court on any point of law arising from the decision on review, or as the case may be the original decision.[111] The appeal to the county court must again be brought within 21 days of being notified of the review decision unless the court decides there is a good reason for not doing so.[112] The authority may again choose to provide accommodation during the appeal process.[113]

2.3 Key Critique of the old framework

The key overarching critique of the pre-HRA framework was that it failed to give a significant number of people proper access to the housing and support they needed to prevent or end their homelessness. Since the first entitlements in 1977, the ability to access statutory assistance, in particular an offer of accommodation, was restricted behind a set of hurdles and qualifications only for those who are deemed in most desperate need (priority need) and 'deserve' it (are not deemed intentionally homeless). This created a long-standing distinction between those who were defined as priority need and were owed the main housing duty (predominantly families with dependent children) and those who were not (predominantly single people, including couples without dependent

[109] Housing Act 1996, s 188(3) (version in force 09 November 2012). Since the introduction of the Homelessness Reduction Act 2017 local authorities now must provide interim accommodation where an applicant requests a review of the suitability of accommodation provided: Housing Act 2017, s 188(2A) as inserted by Homelessness Reduction Act 2017, s 5(4).
[110] ibid s 203.
[111] ibid s 204(1).
[112] ibid s 204(2) and (2A).
[113] ibid s 204(4).

children).[114] An expert panel of housing and homelessness specialists was established in 2015 by Crisis to examine the strengths and weakness of the current homelessness legislation in England, with a particular focus on single homelessness as the key group excluded from homelessness provision. The Communities and Local Government Committee also launched an inquiry into levels of increasing homelessness to try and understand more about levels of homelessness and the pressures affecting people experiencing homelessness.[115] A significant part of their evidence covered the role of local authorities and the statutory framework, with committee member Mr Bob Blackman's Private Member's Bill, The Homelessness Reduction Bill, being among the key recommendations.[116]

Both investigations recognised the problems with the requirement of priority need and the poor quality, inconsistent advice and assistance left for those not qualifying as in priority need.[117] Some of the priority need categories are demonstrated factually and are unproblematic in principle, including for e.g. the categories of pregnancy, dependent children, or a 16 or 17 year old.[118] The categories become problematic when they rely on satisfying an element of vulnerability which requires the discretionary judgement of the local authority. This is due to the high threshold historically applied when interpreting that characteristic. For almost 20 years this threshold was deemed to come from the case of *R v Camden L.B.C. Ex parte. Pereira*[119], termed the Pereira test, which was "whether Mr Pereira is, when homeless, less able to fend for himself than an ordinary

[114] Crisis, *The Homelessness Legislation: An Independent Review of the Legal Duties Owed to Homeless People* (Crisis 2015) <www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/housing-models-and-access/the-homelessness-legislation-an-independent-review-of-the-legal-duties-owed-to-homeless-people-2015/>accessed 29 May 2022, 8.
[115] Communities and Local Government Committee, *Homelessness* (HC 2016-17, 40) 3.
[116] ibid 4.
[117] ibid 16-20; Crisis, *The Homelessness Legislation: An Independent Review of the Legal Duties Owed to Homeless People* (n 114) 13-16.
[118] Housing Act 1996, s 189(1)(a), s 189(1)(b); Homelessness (Priority Need for Accommodation) (England) Order 2002, SI 2002/2051, art 3.
[119] *R v Camden London Borough Council Ex p Pereira* (1999) 31 HLR 317.

homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects".[120] This was adopted as the correct test to apply when assessing an applicant's vulnerability. The ordinary homeless person was taken to mean the ordinary person who is actually homeless, which makes it significantly harder for applicants to demonstrate they are more likely to suffer injury or detriment when homeless, compared to another person who is already experiencing homelessness. General ill health, drug or alcohol addiction, physical and mental health conditions, are more frequent among people experiencing homelessness, so using people who are already homeless as a comparator set the bar for vulnerability very high.[121] The point had been reached where people with serious mental or physical disabilities were deemed not to be vulnerable for the purposes of the main housing duty.[122]

In 2015 the conjoined appeal of *Hotak v Southwark LBC*[123] reached the supreme court and attempted to address this problem. It retained the use of a comparator, stating the word 'vulnerable' carried with it a necessary implication of vulnerability, but changed the comparator to an ordinary person *if* made homeless.[124] Lord Neuberger determined that since all homeless people are vulnerable, s189(1)(c) HA 1996 must contemplate those who are "significantly more vulnerable" than others in the same position.[125] Which means that now the test to apply when asking if an applicant is vulnerable, is whether they are significantly more vulnerable than an ordinary person if made homeless.[126] Cases since *Hotak* have

[120] ibid, 330.
[121] Crisis, *The Homelessness Legislation: An Independent Review of the Legal Duties Owed to Homeless People* (n 114) 12.
[122] Caroline Hunter, 'Denying the severity of mental health problems to deny rights to the homeless' [2007] 2(1) People Place and Policy Online 17.
[123] *Hotak v Southwark London Borough Council, Johnson v Solihull Metropolitan Borough Council, Kanu v Southwark London Borough Council* [2015] UKSC 30, [2016] AC 811.
[124] ibid [50], [57] and [58].
[125] ibid [51], [53].
[126] ibid [53], [57].

attempted to clarify various elements of the test to varying success. *Pannayiotou* [2017][127] attempted to address the meaning of the term "significantly" in "significantly more vulnerable" stating that it was a qualitative enquiry and not a quantitative one, adding that an applicant would be vulnerable if he were at risk of more harm in a significant way.[128] *Rother DC v Freeman-Loach* [2018][129] confirmed that a review officer did not need to define "vulnerable" or "significantly" beyond stating the *Hotak* test,[130] and *Guiste* (2019)[131] confirmed the ordinary person is one "in normal health".[132] There was optimism that this new test from *Hotak* (as now also clarified) would mark an important development for defining vulnerability, leading to more priority need acceptances.[133] However, its impact appears to be limited, with 51% of local authorities admitting the ruling would have little impact on their practice.[134] This would mean those who satisfy no other priority need requirement, often single homeless or couples with no children, and still cannot satisfy that vulnerability requirement despite *Hotak,* were still in a position of significant disadvantage in relation to access to housing support. Given this, Crisis were calling for more inclusive legislation, that would provide meaningful support to all homeless applicants.[135]

Housing Options approaches in local authorities in 2003 led to an increase in some prevention and relief work, which sat outside the statutory framework so was inconsistently delivered, but could generate positive outcomes for those unlikely to be housed due to not meeting the main duty criteria.[136]

[127] *Panayiotou v London Borough of Waltham Forest* (2017) EWCA Civ 1624.
[128] ibid [64].
[129] *Rother DC v Freeman-Loach* (2018) EWCA Civ 368.
[130] ibid [35].
[131] *Guiste v Lambeth LBC* (2019) EWCA Civ 1758
[132] ibid [54].
[133] Jed Meers, 'A Return to Purer Waters? 'Vulnerability' Under s. 189 Housing Act 1996' (2015) 37(4) Journal Social Welfare Family Law 473; Southwark News, 'Landmark Supreme Court Ruling on Southwark Homeless Case' <www.southwarknews.co.uk/news/landmark-supreme-court-ruling-on-southwark-homeless-case/> accessed 29 May 2022.
[134] Crisis, *The Homelessness Legislation: An Independent Review of the Legal Duties Owed to Homeless People* (n 114) 13.
[135] ibid 20.
[136] ibid 14.

However, it was often the concern that instead the approach was being used to reduce the number of people accepted as homeless, being signposted away without the chance to speak to a housing advisor or make a homeless application.[137] There were suggestions of applicants with eviction notices from private sector accommodation being turned away and told to return once the possession order was given or bailiffs arrived.[138] It was also the case that even if local authorities were attempting to perform prevention work, it couldn't be meaningful as the definition of threatened homelessness means the authority only had 28 days in which to try work with the applicant before they become homeless.[139] Research had demonstrated the significant potential cost savings of preventative work over crisis intervention. Through conducting interviews with 86 people who had been homeless for at least 90 days, it was possible for Pleace and Culhane, on behalf of Crisis, to estimate that if that homelessness had extended for one year, the estimated public spending would amount to £34,518 on average per person per year.[140] If, however, homelessness was prevented for a year, the potential reduction in public expenditure could be on average £9,266 per person.[141] There was increased desire therefore to make prevention activities stronger and put them on a statutory footing.[142]

In recognition of the limitations of the criteria like priority need and intentionality, the devolved nations of Scotland and Wales had made considerable inroads in opening up their statutory homelessness services.

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[137] ibid.
[138] Department for Communities and Local Government, 'Policy Fact Sheet: Threatened with Homelessness' (Gov.UK last updated 22 February) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/592993/170206_-_Policy_Fact_Sheets_-_Threatened_with_Homelessness.pdf> accessed 29 May 2022, 2.
[139] Hannah Gousy, *No One Turned Away: Changing the Law to Prevent and Tackle Homelessness* (Crisis 2016) 5.
[140] Nicholas Pleace and Dennis Culhane, *Better Than a Cure?: Testing the Case for Enhancing Prevention of Single Homelessness in England* (Crisis 2016) 7.
[141] ibid.
[142] Crisis, *The Homelessness Legislation: An Independent Review of the Legal Duties Owed to Homeless People* (n 114) 15.

Scotland abolished priority need altogether with the Homelessness etc. (Scotland) Act (2003), so since December 2012 their local authorities have had a duty to secure settled accommodation for all eligible applicants who are unintentionally homeless.[143] Wales also made significant reform with the Housing (Wales) Act 2014, introducing stronger prevention and relief duties for all eligible households regardless of priority need status.[144] The definition of threatened homelessness was expanded from 28 days to 56 days and a requirement to set out the steps authorities were to take to prevent or relieve homelessness was introduced.[145] The Welsh government also made commitments to phase out the intentionality requirements, removing the requirement altogether for homeless households with children and young people from December 2019.[146]

While it was perceived that England wasn't quite ready to get rid of priority need altogether, the Welsh approach to prevention and relief, creating better entitlements for single people experiencing homelessness, was attractive. The provisions received high praise, and after a year of implementation, were perceived to be working effectively at preventing homelessness.[147] The Homelessness Reduction Bill and eventual Homelessness Reduction Act 2017 are based around some of the key elements of the Welsh statutory homelessness structure.

[143] ibid 16.
[144] ibid 17.
[145] ibid 18.
[146] Shelter Cymru, 'Legal: How Intentional Homelessness is Changing in Wales' (Shelter Cymru undated) < https://sheltercymru.org.uk/legal-how-intentional-homelessness-is-changing-in-wales/> accessed 29 May 2022.
[147] Crisis, *The Homelessness Legislation: An Independent Review of the Legal Duties Owed to Homeless People* (n 114) 19; Communities and Local Government Committee (n 115) 36; Andrew Arden and Justin Bates, 'Homelessness Reduction Act 2017: Much Done but More to Do' (Legal Action Group 2018) <www.lag.org.uk/article/204820/homelessness-reduction-act-2017--much-done-but-more-to-do> accessed 29 May 2022.

2.4 The New Framework – The Homelessness Reduction Act 2017

The HRA 2017, in force since April 2018,[148] works by amending Part VII of the Housing Act 1996, introducing new duties and expanding existing ones to create an extended framework of duties on local housing authorities towards people who are homeless or threatened with homelessness. The framework as it existed before has remained largely intact, with the new extras worked in. The following sections will cover the amendments made by the HRA 2017 to the legislative framework, what the amendments were intending to achieve, and early analysis of the provisions and their potential impact.

In order to standardise and improve the quality of information and advice given by local authorities free of charge to any person, s.2 HRA 2017 amended the duty to specify the type of information and advice to be provided, including information on preventing homelessness, securing accommodation when homeless, the rights of persons who are homeless or threatened homeless and duties towards them, any help available from the authority or anyone else for people who are homeless in the district, and how to access that help.[149] This advice and information must be tailored to meet the needs of certain specified groups of people who are more at risk of homelessness including: persons released from prison or youth detention accommodation, care leavers, former members of the regular armed forces, victims of domestic abuse, persons leaving hospital, persons suffering from a mental illness or impairment, and any other group that the authority identify as being at particular risk of homelessness in their local

[148] The Homelessness Reduction Act 2017 (Commencement and Transitional and Savings Provisions) Regulations 2018, SI 2018/167 - With the exception of the new duty to refer, explained below, which entered into force on 1st October.
[149] Housing Act 1996, s 179(1) as amended by the Homelessness Reduction Act, s 2.

area.[150] These amendments are intended to enable households to help themselves and seek support or solutions to resolve their current situation with more effective, detailed information.[151]

For all applicants that are homeless or threatened with homelessness and are deemed eligible after inquiries have been made, there is a new duty to assess every applicant's case and agree a housing plan.[152] The authorities assessment of the case must include consideration of the circumstances that caused the homelessness or threatened homelessness, the housing needs of the applicant and their household, and any support needs of the applicant or their household to be able to retain accommodation.[153] Once the assessment has been made the authority must try to agree with the applicant any steps the applicant is to be required to take for the purposes of securing that the applicant has and retains accommodation, and any steps the authority are to take under Part VII of the HA 1996 for that purpose, and record this in writing, often termed a personal housing plan.[154] If the authority and the applicant can't agree on the steps to be taken, the authority must record why they cannot agree and still write down any steps it considers reasonable for the applicant and itself to take.[155] While the authority continues to work with the applicant and their household they must keep under review the assessment and the appropriateness of the steps recorded in the housing plans.[156] Further, when discharging duties owed to the applicant and deciding what steps to take, they must have continuous regard to the applicant's assessment.[157]

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[150] ibid s 179(2) as amended by the Homelessness Reduction Act s 2.
[151] Department for Communities and Local Government, 'Policy Fact Sheet: Duty to Provide Advisory Services' (Gov.UK last updated 22 February 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/573121/161128_-_Policy_Fact_Sheets_-_Advice_and_information.pdf> accessed 24 May 2022.
[152] Housing Act 1996, s 189A, as inserted by the Homelessness Reduction Act 2017, s 3.
[153] ibid 189A(2).
[154] ibid s 189A(4) and s 189A(5).
[155] ibid s 189A(6).
[156] ibid s 189A(9).
[157] ibid s 189B(3), s 190(4) and s 195(3).

Housing plans are often termed personal housing plans as the actions included are intended to be reasonable and achievable actions tailored to the individual needs of the applicant and their household.[158] Together, the assessments and plans are designed to encourage the authority to respond to particular circumstances of the applicant and attempt to address the causes of the homelessness or threatened homelessness, addressing the broader support needs of an applicant to ensure more effective prevention and longer term retention of accommodation.[159]

The HRA 2017 is also directly targeted at increasing the prevention of homelessness by improving the overall position of those who are at risk of becoming homelessness. S.1 HRA 2017 extends the definition of threatened homelessness from a person likely to become homeless within 28 days, to likely to become homeless within 56 days.[160] The definition further specifically includes where a valid s.21 Notice has been issued under the Housing Act 1988 for possession of a property after the expiry or termination of an assured shorthold tenancy, that will expire within 56 days.[161] The extended definition is supported by an extended duty towards those who are threatened with homelessness. For all who are threatened with homelessness and eligible, regardless of intentionality or priority need, the authority will owe them a single duty to take reasonable steps to help the applicant secure that accommodation does not cease to be available, termed the prevention duty.[162] This is also a duty where the local connection of the applicant does not matter so the authority cannot refer

[158] Department for Communities and Local Government 'Policy Fact Sheet: Duty to Assess All Eligible
Applicants' Cases and Agree a Plan' (Gov.UK last updated 22 February 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/573123/161128_-_Policy_Fact_Sheets_-_Assessment_and_personal_plans.pdf> accessed 29 May 2022.
[159] ibid.
[160] Housing Act 1996, s 175(4) as amended by the Homelessness Reduction Act 2017, s 1.
[161] ibid s 175(5) as amended by the Homelessness Reduction Act, s 1.
[162] ibid s 175(1) and s 175(2) as amended by the Homelessness Reduction Act 2017, s 4.

an applicant to another district while under prevention.[163] The duty lasts for 56 days and can be brought to an end with notice if suitable accommodation is available, or has a reasonable prospect of being available, for at least 6 months (whether that be the existing accommodation or alternative accommodation), if the 56 day period has come to an end (whether or not the applicant remains threatened homeless, unless a valid s.21 notice is still in effect or has expired in respect of the only accommodation available), if prevention is unsuccessful and the applicant becomes homeless, or if the applicant refuses an offer of suitable accommodation for at least 6 months.[164] These provisions together enable people to seek support earlier and require local authorities to work with someone who is at risk of homelessness sooner and for longer than under the previous framework, with the intent that this will ensure authorities work more proactively to find longer term housing solutions successfully preventing instances of homelessness.[165] It also aims to stop local authorities turning people away until they are at crisis point, particularly with private sector tenants when loss of assured shorthold tenancies was the biggest cause of homelessness.[166]

For those who approach the local authority as already homeless (or become homeless) and are eligible for assistance, there is a new initial duty on local authorities to take reasonable steps to help the applicant secure accommodation, termed the relief duty.[167] The new s.189B HA 1996 duty is again owed regardless of an applicant's intentionality or priority

[163] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 57) para 12.5.
[164] Housing Act 1996, s 175(8) including further, if the applicant becomes homeless intentionally from any accommodation provided under the duty (largely redundant, provision of accommodation will mostly end the duty under s.175(8)(a) securing suitable accommodation), applicant has become ineligible, or withdraws application.
[165] Department for Communities and Local Government, 'Policy Fact Sheet: Threatened with Homelessness' (n 138).
[166] ibid.
[167] Housing Act 1996, s 189B as amended by the Homelessness Reduction Act 2017, s 5.

need, and spans for up to 56 days, although local connection becomes relevant and the authority could refer the applicant to another authority to discharge the duty.[168] The duty can be brought to an end, with notice, if suitable accommodation is available, or has a reasonable prospect of being available, for at least 6 months, if the 56 day period has come to an end (whether or not the applicant has secured accommodation), or an offer of suitable accommodation was refused.[169] If the 56 days of relief duty end unsuccessfully, the applicant is assessed for the main housing duty to secure accommodation as before, needing the further requirements of unintentional homelessness and priority need to qualify.[170] However, where an applicant refuses a final offer of accommodation while under the relief duty, that being a suitable private rented sector offer of an assured shorthold tenancy of at least 6 months, or a suitable social sector tenancy offer made in writing and stated to be a final offer, not only will the relief duty end, but the main housing duty will not apply.[171] The requirement to ensure the applicant is informed of the consequences of refusal and the right to request a review of the suitability of the accommodation offered,[172] therefore feels even more crucial. As before, where an applicant is in priority need but is deemed intentionally homeless, they will be provided with accommodation for a period giving reasonable opportunity for them to secure their own accommodation under s.190 HA 1996.[173]

The new initial relief duty was intended to strengthen the existing homelessness safety net, ensuring a wider range of applicants have chance

[168] ibid s 189B(2), s 198(A1) and s 199A HA 1996 as amended by the Homelessness Reduction Act 2017, s 5.
[169] ibid s 189B(7), including further, if the applicant becomes homeless intentionally from any accommodation provided under the duty (largely redundant, provision of accommodation will mostly end the duty under s.189B(7)(a) securing suitable accommodation), applicant has become ineligible, or withdraws application.
[170] ibid s 193(1).
[171] ibid s 193A, as inserted by the Homelessness Reduction Act s 7(1); Housing Act 1996 s 193(1A)(a).
[172] ibid s 193(1)(b).
[173] ibid s 190(1) and s 190(2).

of receiving help, regardless of priority need.[174] The provision was expected to benefit those who would previously struggle to qualify as priority need and be left with very limited help, particularly single person households. A key characteristic however, of both the prevention and relief duties, is that they are *not* duties to provide longer term accommodation. S.205(3) HA 1996 enables a local authority to discharge those duties with an offer of accommodation if they wish, but do not have to,[175] and as summarised above, if the applicant refuses an offer of suitable accommodation offered under those duties, the duties can be brought to an end. Also worthy of note is that accommodation found for only 6 months is enough to discharge both duties, clearly indicating the expected use of the private rented sector.

Another key provision introduced by the HRA 2017 is a new way of ending both the prevention and relief duties, and also disapplying the main duty, due to the deliberate and unreasonable refusal to cooperate by the applicant. This links back to the personalised housing plans drawn up with the applicant, as an authority may serve a notice to any applicant owed a prevention or relief duty who they consider has deliberately and unreasonably refused to take any step that was agreed or recorded in their personalised action plan.[176] This notice has the effect of bringing to an end the prevention and relief duties, and if ended due to this reason during the relief duty, works to disapply the main housing duty if it would be owed (although accommodation must still be secured, but can be for at least 6 months unlike the main housing duty where at least 12 months is

[174] Department for Communities and Local Government, Policy Fact Sheet: Relief (Gov.UK last updated 22 February 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/592996/170203_-_Policy_Fact_Sheets_-_Relief.pdf> accessed 29 May 2022.
[175] Housing Act 1996, s 205(3), as amended by the Homelessness Reduction Act 2017, s 6.
[176] ibid s 193B, as inserted by the Homelessness Reduction Act 2017, s 7.

required[177]).[178] An authority cannot bring the notice, however, without first having issued a warning about the consequences of not carrying out said steps, and when considering if refusal is unreasonable, must take into account the particular circumstances and needs of the applicant.[179] These provisions are intended to encourage an applicant to take responsibility for working proactively with the local authority, but are stated as not intending to target vulnerable people who may struggle to co-operate due to a mental illness or other health need, or because of a difficulty in communicating.[180]

A final key provision introduced by the HRA 2017, further supporting the prevention and early intervention agenda, is a duty on specified public authorities to refer people who they believe are homeless or threatened with homelessness to the local housing authority.[181] This is to be done with the consent of the individual and to the local housing authority they specify.[182] This aims to encourage services to work together to prevent homelessness and ensure a person's housing situation is considered in a wider context. The public authorities under the duty are listed in the Homelessness (Review Procedure etc.) Regulations 2018 and include: prisons, youth offender institutions, secure training centres, secure colleges, youth offending teams, probation services, Jobcentre Plus, social service authorities, emergency departments, urgent treatment centres, and hospitals in their function of providing inpatient care.[183]

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[177] ibid s 193C(5)-(7), as inserted by the Homelessness Reduction Act 2017, s 7.
[178] ibid s 193C, as inserted by the Homelessness Reduction Act 2017, s 7; Housing Act 1996, s 189B(9)(b), s 195(10) and s 193(1A)(b).
[179] ibid s 193B(4) – s.193B(6).
[180] Department for Communities and Local Government, 'Policy Fact Sheet: Non-Cooperation' (Gov.UK last updated 22 February 2018) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/592998/170206_-_Policy_Fact_Sheets_-_Non-Cooperation.pdf> accessed 29 May 2022; Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 57) para 14.53.
[181] Housing Act 1996, s 213B, as inserted by the Homelessness Reduction Act 2017, s 10.
[182] ibid s 213B(2) and 213B(3).
[183] Homelessness (Review Procedure etc.) Regulations (n 107) reg 10.

The interim accommodation duty, for individuals who there is a reason to believe are homeless, eligible and in priority need, has also been expanded to cover the period of the relief duty. The interim accommodation duty now ends if it is determined at any point that the applicant is not owed a relief duty, or is owed a relief duty and it comes to an end and the applicant is notified as to whether or not there is a further duty (the main housing duty or a duty under s.190 HA 1996), or is deemed to not in fact be in priority need.[184] The right of the applicant to request a review of any decision has been expanded to include the addition of decisions as to whether the applicant is owed a prevention or relief duty, as to the reasonable steps they are to take under the prevention or relief duty, decisions to bring the prevention or relief duty to an end, and decisions to end either duty via a deliberate and unreasonable refusal to cooperate.[185] The local authority must now also continue to provide interim accommodation for an applicant requesting a review of the suitability of any accommodation offered as a final offer under the relief duty until notified of the review decision, but remains with only a power to do so for any other review requests.[186]

As a whole, the prevention function is now a key feature of the framework, seen practically as the first stage in a three-stage process through prevention, relief and main duty. Since the HRA 2017, a person who meets the definition of homelessness or threatened homelessness and applies to a local housing authority for assistance, will first undergo inquiries in relation to their eligibility under s.184 HA 1996. If eligible they will receive an assessment and a personal housing plan. If the applicant approaches as threatened homelessness, they will fall under the first stage and be owed a

[184] Housing Act 1996, s 188(1ZA) and (1ZB), as amended by the Homelessness Reduction Act 2917, s 5(4)(a).
[185] ibid s 202(1)(b), s 202(1)(ba), s 202(1)(bb), s 202(1)(bc), as amended by the Homelessness Reduction Act 2017, s 9.
[186] ibid s 188(2A) and s 188(3).

prevention duty. If they then become homeless or approached as already homeless there is the second stage of relief duty and consideration as to whether an interim accommodation duty is owed. If prevention and/or relief are unsuccessful, the applicant will then be considered for what is now the final stage, the main housing duty (or s.190 HA 1996 duty for those who are intentionally homeless), which if owed can now come potentially 112 days later.

2.5 Early Review of the Homelessness Reduction Act 2017

This final section of the Chapter will perform a summary literature review on some of the early commentary published regarding the introduction and implementation of the Homelessness Reduction Act 2017. The purpose of this is to set the data that is to come and the HRA 2017 in further context.[187]

The Homelessness Reduction Act 2017 was undoubtedly a popular measure, receiving cross-party political support and broad favour from charitable organisations. The push towards the principle of prevention over crisis intervention is a laudable aim of the legislation and was desperately needed. The focus on earlier intervention can direct attention more towards the causes of homelessness, identifying more of the precursors that lead to

[187] There are key pieces of literature not recognised in the following review that were released during the course of this thesis, but after a substantial amount of data collection had already been done. These are omitted here simply because this section is attempting to frame the existing context pre-data collection and is not attempting an exhaustive literature review of content related to the HRA 2017. A selection of these more recent pieces are noted here for reference: Ministry of Housing, Communities and Local Government, 'Evaluation of The Implementation of the Homelesssness Reduction Act: Final Report' (Gov.UK 16 March 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919748/Evaluation_of_the_Implementation_of_the_Homelessness_Reduction_Act_Final_Report.pdf> accessed 29 May 2022; Chris Bevan, 'Governing "The Homeless" in English Homelessness Legislation: Foucauldian Governmentality and the Homelessness Reduction Act 2017' (2021) 38(3) Housing, Theory and Society 259; Chris Bevan, 'Reconceptualising Homelessness Legislation in England' (2021) 84(5) Modern Law Review 953; Chris Bevan, 'The Homelessness Reduction Act 2017: Furthering not Fracturing Marginalisation of Those Experiencing Homelessness' (2022) 18(1) International Journal of Law in Context 41.

people needing help from the local authority. In their HRA 2017 Briefing, Shelter praised the extended entitlements, enabling those who were poorly served under the previous legislative framework, particularly single households not considered vulnerable who were often turned away without meaningful assistance, and intentionally homeless families who may have to turn to social services for support, to access meaningful and personalised help.[188] They emphasised the potential for a culture shift in service provision, moving towards a 'how can I help', person-centred approach.[189] Meeting the outcomes and preferences of the HRA 2017 creates more scope to develop trust and better working relationships with applicants, leading to more satisfactory and sustainable outcomes.[190] They were also optimistic about improvements to joint working between authorities and local agencies and hoped the ethos of the Act would enable people to have more autonomy over the help they want or need to keep their home.[191]

Andrew Arden, did not quite share the same optimism regarding the autonomy of the individual to structure interactions with the authority, asserting a power imbalance between housing officers and homeless applicants.[192] This is supported by the fact that where an applicant doesn't agree on what steps are to be taken in the housing plan, an authority can still list steps it thinks are reasonable for the applicant to take, and if the applicant then refuses to take them, could potentially face a notice for deliberate and unreasonable refusal to cooperate and the end of homelessness duties.[193] Despite this however, he saw potential for an

[188] Deborah Garvie, 'Homelessness Reduction Act 2017: Policy and Practice Briefing' (Shelter 2018) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/briefing_homelessness_reduction_act_2017> accessed 28 May 2022, 17.
[189] ibid 18.
[190] ibid.
[191] ibid 19.
[192] Andrew Arden, 'Reflections On Reduction' (2018) 21(5) Journal Housing Law 83, 84-85.
[193] Housing Act 1996, s 189A(6), s 193B and s 193C Housing Act 1996.

opportunity to change the debate and focus around homelessness.[194] Utilising the assessment and plan to inquire deeper into the circumstances as to why an applicant is homeless or threatened homeless, an exercise approached with rigour and reality, could change perceptions and sympathies around homelessness.[195] He also saw the potential of the requirement to assess the support needs of the applicant, considering that if recorded well, in detail around what support could comprise, it could be used to craft new support services and quantify their potential effect - including being able to demonstrate that the cost of providing accommodation and appropriate support is vastly lower than adding up the collective cost of prolonged homelessness to services and the individual.[196] He viewed the Act as opening the door to a more discursive approach to homelessness services than the previous "investigate and decide" attitude.[197]

Local authorities' early reports were encouraging, with over half of authority respondents to the Homelessness Monitor's online survey stating the HRA 2017 enabled a "more person-centred approach", with fewer than a quarter of respondents saying it had little positive effect.[198] Elements of positivity were mirrored in a survey conducted by the Local Government Association (LGA) in November 2018, receiving 151 respondents, where results demonstrated early indications of improvements. Since the HRA came into force 30% of the local authorities felt homelessness presentations had significantly increased, with 24% somewhat increased, where around half would attribute this change significantly to the HRA, with

[194] Andrew Arden, 'Reflections On Reduction' (n 192) 85.
[195] ibid 85-86.
[196] ibid 86.
[197] ibid.
[198] Suzanne Fitzpatrick, Hal Pawson, Glen Bramley, Jenny Wood, Beth Watts, Mark Stephens and Janice Blenkinsopp, *The Homelessness Monitor: England 2019* (Crisis 2019) xxi.

a further 23% saying somewhat attributed to the HRA.[199] When asked what effect the new duties had on the authorities abilities to prevent and relieve homelessness for particular groups, the group who saw the most improvement overall was single homeless people.[200] Although delayed due to a new method of national statistical data collection,[201] the first release of post-HRA 2017 data demonstrated that in the first quarter of the new legislation, 58,660 households were owed a new statutory duty.[202] One year later, during the April-June 2019 quarter, 68,170 households were owed either the prevention or relief duties and 33,450 households had secured accommodation for 6 months or more when their prevention or relief duty had come to an end (amounting to 57.2% of prevention duties which ended in that quarter and 40.1% of relief duties ending in the quarter).[203] The number of households accepted as owed a main homelessness duty was 8,360, lower than pre-HRA levels.[204] This seemed to suggest the HRA 2017 started strong, successfully preventing and relieving homelessness, pointing to a positive outcome.[205]

However, for all the praise and excitement it attracted, the HRA 2017 also received a wealth of criticism and caution around the effectiveness of its implementation. While initial statistics suggested homelessness was being

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[199] Local Government Association, 'Homelessness Reduction Act Survey 2018 – Survey Report' (LGA 25 March 2019) <https://www.local.gov.uk/homelessness-reduction-act-survey-2018-survey-report> accessed 27 May 2022, 8.
[200] ibid 9 and 10.
[201] Ministry of Housing, Communities and Local Government, 'Guidance Changes to Statutory Homelessness Statistics: User Note' (Gov.UK 27 June 2018) <https://www.gov.uk/government/publications/changes-to-statutory-homelessness-statistics-user-note> accessed 27 May 2022; see also Chapter 5.4.
[202] Ministry of Housing Communities and Local Government, 'Experimental Statistics: Statutory Homelessness in England: April to June 2018' (Gov.UK 13 December 2018) <https://www.gov.uk/government/statistics/statutory-homelessness-in-england-april-to-june-2018https://www.gov.uk/government/collections/homelessness-statistics - statutory-homelessness> accessed 27 May 2022.
[203] Ministry of Housing Communities and Local Government, 'Experimental Statistics: Statutory Homelessness, April to June (Q2) 2019:England' (Gov.UK 18 December 2019)< https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852953/Statutory_Homelessness_Statistical_Release_Apr-Jun_2019.pdf> accessed 29 May 2022.
[204] ibid.
[205] Caroline Hunter, 'Promising Much, Delivering What?' (2020) 23(1) Journal Housing Law 1, 4.

prevented and relieved, the number of households in temporary accommodation continued to rise, with 86,130 households in temporary accommodation on June 30th 2019, including 61,800 households with children.[206] In Wales both those numbers had successfully dropped after the implementation of the Housing (Wales) Act 2014, raising questions around the recourses of local authorities in England and the affordability of housing.[207] Local authorities were quick to express significant concern with the monitoring and record-keeping requirements of the new national data collection method, H-CLIC, which was implemented across England at the same time the Homelessness Reduction Act entered into force.[208] Questions were raised about whether the new method had added value to data collection or simply complexity to the system.[209]

The praise and potential for opportunity offered by Shelter was soon followed in the same report by a list of threats to successful implementation. The list reflected a concern for the inability to reduce homelessness without also addressing underlying structural issues which both cause homelessness and make it difficult to resolve.[210] Local housing allowance (LHA), which determines the maximum amount a household could receive in housing benefit or housing costs under Universal Credit to help pay their rent in the private sector, was first on the list. LHA rates mean that by 2019/20, 83% of private rented property in England was unaffordable with a shortfall in rent between what is due and what the LHA entitlement would cover.[211] LHA was supposed to meet rent levels at the

[206] Ministry of Housing Communities and Local Government, 'Experimental Statistics: Statutory Homelessness, April to June (Q2) 2019: England' (n 203) 2.
[207] Caroline Hunter 'Promising Much, Delivering What?' (n 205) 4.
[208] Suzanne Fitzpatrick et al. (n 198) xxi.
[209] ibid 33.
[210] Deborah Garvie (n 188) 19.
[211] ibid 19-20. The LHA was once again set at the 30th percentile during the pandemic, but has since been frozen again going forward Beth Watts, Glen Bramley, Hal Pawson, Gillian Young, Suzanne Fitzpatrick, and Lynne McMordie, *The Homelessness Monitor: England 2022* (Crisis 2022) 26.

bottom 30th percentile of market rents, but Shelter's research demonstrated that in 97% of areas in England, the amount payable through LHA would not cover the cost of renting a two-bedroom home at that 30th percentile.[212] Tenants facing a shortfall respond by reducing household expenditure on essentials, which fails as a strategy in the long-term as tenants become unable to accommodate both a shortfall and price inflation on food an utilities, leading to increased risk of arrears and homelessness.[213]

Other welfare reforms were also causing significant concern among commentators on the Act, in particular the benefit cap and the roll out of Universal Credit. The reduction in housing benefit entitlement (or housing costs of Universal Credit) caused by being capped, affecting both the social and private sectors, again impacts on the ability to pay rent, leading to a risk of rent arrears and homelessness.[214] In 2018 the cap affected almost 53,000 households[215] and more than 10,000 households were losing more than £100 each week.[216] In the 2019 Homelessness Monitor 47% of councils anticipated a significant increase in homelessness due to the benefit cap.[217] Universal Credit caused even more anticipation (two thirds of local authorities)[218] with key concerns relating to delays in receiving payments, administrative errors, deductions and sanctions, and the housing cost element being paid directly to the tenant.[219]

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[212] Stephanie Kleynhans and Thomas Weekes, 'From the Frontline: Universal Credit and the Broken Housing Safety Net' (Shelter August 2019) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/report_from_the_frontline> accessed 28 May 2022, 5.
[213] Julie Rugg and David Rhodes, *The Evolving Private Rented Sector: Its Contribution and Potential* (Centre of Housing Policy 2018) 10 and 127; Tom Simcock, 'Welfare Reform and Universal Credit: The Impact on the Private Sector' (Residential Landlords Association 2017) <https://research.rla.org.uk/wp-content/uploads/Welfare-Reform-and-Universal-Credit-The-impact-on-the-private-rented-sector-2017.pdf> accessed 28 May 2022.
[214] Deborah Garvie (n 188) 20.
[215] Suzanne Fitzpatrick et al. (n 198) 56 and 85.
[216] Deborah Garvie (n 188) 20.
[217] Suzanne Fitzpatrick et al. (n 198) 53.
[218] ibid.
[219] ibid 45-47.

Results from the LGA survey in November 2018 on the Homelessness Reduction Act 2017 demonstrated these concerns were mirrored on the ground by local authorities. Responses were received by 151 local authorities and when asked to what extent certain factors affected their ability to meet their clients' needs: "the factors most commonly chosen as affecting respondents to more than a slight extent were welfare reform (59 per cent to a great extent and by 33 per cent to a moderate extent), followed by affordability of PRS housing which was selected by 64 per cent as affecting them to a great extent and 22 per cent to a moderate extent, and access to private rental sector (PRS) housing was picked by 66 per cent as a factor that affected them to a great extent and by 21 per cent as affecting them to a moderate extent.".[220] When asked for more detail on how the above factors had affected the respondent councils, "the themes which emerged […] were the gap between rents and the Local Housing Allowance (LHA), the benefit cap, delays in payments caused by the roll out of Universal Credit, and reluctance among landlords to take on Universal Credit (UC) clients as they no longer get direct payments for these tenants".[221]

The majority of the above has highlighted key potential problems for homeless households, and low-income households, in accessing the private rented sector. Yet concerns were also aimed at access to the social sector. Social housing provides an alternative tenure for people who struggle to find or keep stable accommodation in the private market, offering lower up-front access costs, more objective lettings practices, affordable rents and better stability.[222] Shelter identify the failure of successive governments to deliver the social homes needed as the heart of the

[220] Local Government Association (n 199) 12.
[221] ibid 13.
[222] Deborah Garvie (n 188) 22.

national housing emergency, calling for 3.2 million more social homes, with investment into rediscovering the purpose of social housing and linking affordable housing to what people can actually afford.[223] Responses from local authorities as part of the LGA 2018 survey indicated a concern with general lack of social housing, particularly in relation to single or large family units.[224]

These factors have led Dave Cowan to suggest the HRA may simply be a "re-ordering of the deckchairs on the titanic", the aim of the HRA 2017 to 'reduce' homelessness likely distracting from long-term systemic issues within the housing system.[225] As already discussed above, the Act does nothing to address the shortage of low cost private or social housing, but Cowan takes a step further suggesting that the Act makes fundamental changes to the mentality of government of the homeless.[226] Until the HRA 2017 homelessness applicants were understood through a welfarist lens, as passive recipients of state welfare, but are now understood through a lens of neoliberal governance.[227] Cowan asserts, with force, that despite the achievements of HRA 2017, the one thing it does not do is 'reduce' homelessness, merely masking it through new duties and a new relationship between the citizen-consumer, the state, and the private sector.[228]

[223] Shelter, 'A Vision for Social Housing' (Shelter 2019) <https://england.shelter.org.uk/support_us/campaigns/a_vision_for_social_housing> accessed 24 May 2022.
[224] Local Government Association (n 199) 13.
[225] Dave Cowan, 'Reducing Homelessness or Re-ordering the Deckchairs?' (2019) 82(1) Modern Law Review 105, 106.
[226] ibid 122.
[227] ibid.
[228] ibid 127.

2.6 Conclusion

It is clear from coverage of the amendments to the legal framework under Part VII of the Housing Act 1996, that the HRA 2017 presents the largest change to statutory homeless services in the last 40 years, likely also resulting in the most significant change to practices and statutory delivery in 40 years. Despite these amendments it is key to note that the vast majority of the pre-existing framework remains and therefore so do many of the problems associated with it. The HRA 2017 may remove consideration of priority need and intentionality at those early stages but in a significant of number cases, it won't take long for these criteria to crop back up for the final stages, bringing with them the complexity of vulnerability assessments and harshness of intentionality, England sitting well behind our devolved nations.[229] A significant hurdle also remains in the form of eligibility assessments which is still a pre-requisite for getting anything other than advice and information. This, alongside other government policies which switch off access to employment and social security, will result in increased homelessness of migrant communities and a lack of recording or monitoring of the scale of the problem. Eligibility provisions are also notoriously difficult to understand and apply, making it harder to get decisions right. While there are fewer overall criteria to meet in order to qualify for homelessness duties, this hurdle stands tall.

It is also clear from early commentary and analysis that judging the impact of the HRA 2017 will be complex and cannot be separated from the broader context within which the Act sits. Elements of the HRA 2017 have certainty pointed the homelessness agenda in a desirable direction, prioritising prevention over cure, and opening up access to services by removing some

[229] Andrew Arden and Justin Bates (n 147).

of the many hurdles an applicant had to jump over before receiving any significant kind of help. But early analysis also suggested concerns regarding the interaction of the performance of duties with other broader elements of the welfare state. The following chapters in this thesis will report and analyse data collected from research conducted with two local authorities in the Midlands to investigate the implementation of the HRA 2017 on the frontline. The next Chapter will detail the research methodology utilised to do this.

CHAPTER 3 – RESEARCH METHODS

3.1 Introduction

This chapter details the research design for the study underpinning this thesis, which involved the performance of qualitative, ethnographic studies in two local authority homelessness departments in the Midlands. It initially outlines the research questions explored and justifies the theoretical lens which is adopted throughout the remainder of the thesis. It explains the qualitative, ethnographical methodology utilised and then provides further detail as to the way access to local authority sites was obtained and a description of the methods used, and data collected. It outlines the ethical issues raised by the study, which are often complicated by an ethnographic methodology, and how these were addressed. Data quality is discussed, considering how quality can be scrutinised in qualitative research, leading to a reflective consideration of my experiences conducting ethnography. Finally, the approach to data analysis is detailed.

3.2 Research questions

As has been reviewed in the previous chapter, the HRA 2017 has made significant changes to the statutory framework governing homelessness, introducing new and expanding on existing statutory duties imposed on local authorities. This represents the most substantial change to the statutory framework since the first imposition of legal duties on local authorities to address homelessness in the Housing (Homeless Persons) Act 1977. Such significant changes trigger doctrinal interest in how these new duties interact with existing duties, and how the legal rights of individuals who are experiencing homelessness or threatened homelessness have developed. That said, more compelling interests are practical in nature,

concerned with how the HRA 2017 would be performed on the frontline, directly where these statutory duties are delivered to individuals. In order to establish the impact of such a significant change in the legislative framework it is necessary to explore how such changes are interpreted by those responsible for implementing the statutory duties. This led to the primary research question:

- How is the HRA 2017 implemented in local authority housing/homelessness departments?

Within this primary research question, specific interest focussed on:

- How are the new duties under the HRA 2017 carried out?
- How do housing officers and other staff within local authority housing departments perceive their roles after the HRA 2017?

During initial research design for this study and prior to data collection, it was expected that an appropriate theoretical lens to explore these questions would be Michael Lipsky's Street Level Bureaucracy, exploring how the influences and practices of frontline policy workers shape the everyday implementation of policy.[230] Numerous studies exploring the implementation of the homelessness legislation have utilised this theoretical position to analyse frontline decision making and practice.[231] As data collection began, it became apparent that a broader theoretical framework would be more compelling, something that didn't just look at the role of the frontline workers themselves in framing implementation, but

[230] Michael Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services* (Russel Sage Foundation 1983); Steven Maynard-Moody and Shannon Portillo, 'Street-Level Bureaucracy Theory' in Robert F Durant (ed) *The Oxford Handbook of American Bureaucracy* (OUP 2010).

[231] Examples include: Ian Loveland, *Housing Homeless Persons: Administrative Law and the Administrative Process* (Oxford University Press 1995); Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart 2004); Sarah Louise Alden, ''At the Coalface': The Role of the Street Level Bureaucrat in Provision of Statutory Services to Older People Affected by Homelessness' (PhD thesis, University of Sheffield 2014). Caroline Hunter, Joanne Bretherton, Simon Halliday and Sarah Johnsen, 'Legal Compliance in Street-Level Bureaucracy: A Study of UK Housing Officers' (2016) 38(1) Law and Policy 81.

at broader discourses and rationalities for governing homelessness. As will be outlined in the following chapter, the more appropriate theoretical lens became Foucault's exposition of governmentality, power and resistance. Applying this theoretical lens led to the development of further analytical questions:

- How is homelessness and the homeless individual governed under the HRA 2017?
- How is homelessness and the homeless individual governed through local-level implementation of the HRA 2017?

In order to address these questions a qualitative methodology, namely ethnography, was utilised.

3.3 Methodology

3.3.1 Why Qualitative Research

A unified understanding as to the definition of qualitative research is impossible to find, however it can be characterised by an interest in everyday social practices and everyday knowledge, "qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them. Qualitative research involves the studied use and collection of a variety of empirical materials – case study, personal experience, introspective, life story, interview, observational, historical, interactional, and visual texts – that describe routine and problematic moments and meanings in individuals' lives".[232] Qualitative research has often been described in

[232] Norman K Denzin and Yvonna S Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research' in Norman K Denzin and Yvonna S Lincoln (eds) *The Sage Handbook of Qualitative Research* (3rd edn, SAGE Publications 2005) 2-3.

comparison with quantitative research, as anything that is not quantitative, i.e. the researching of phenomena that cannot be measured by numbers.[233] Flick has asserted that qualitative methods emerged partially due to the principle of 'appropriateness', where existing methods such as experimentation, surveys or application of grand theory were not appropriate to investigate practical social phenomena, forcing the creation of new methods.[234]

Considering the application of the principle of appropriateness to the research questions at issue in this thesis, while it is indeed possible to investigate the implementation of the HRA 2017 quantitatively, through statistical analysis of national homelessness data for example, or surveying local authorities, these methods can have more extensive reach but can only explore the surface of the above research questions. It is also possible to explore the HRA 2017 doctrinally, indeed the previous chapter explored how the HRA 2017 has changed the law 'in the books' and how it interacts with the existing statutory framework. However, housing and homelessness law is situated within a complex social and political context. National legislation is applied locally to individuals and households in a way which directly influences their wellbeing and social circumstances. There is a clear contextual separation between the level at which legislation and judicial decisions are made, and the level at which these provisions are then applied on the ground. Law and policy are intertwined, law is shaped by, but can also shape and address, society and its interests and problems.[235] Therefore, law should be explored within its social, political historical contexts, which makes qualitative methodology more

[233] Patrick Aspers and Ugo Corte, 'What is Qualitative in Qualitative Research' (2019) 42 Qualitative Sociology 139, 145.
[234] Uwe Flick, *Designing Qualitative Research* (SAGE Publications 2007) 4-5.
[235] Malcolm M Feeley, 'Three Voices of Socio-Legal Studies' (2001) 35 Israel Law Review 175, 176-179.

appropriate. This research is interested in how the homelessness statutory framework, as amended by the HRA 2017, is applied to individuals, how individuals are governed by such a framework and by local authority interpretations of the framework. This is often referred to in the socio-legal sphere as researching 'law in action'.[236] The appropriate way to explore this is to go into the environment where the law operates in practice at the front-line - an approach embedded into Ethnographic methodology.

3.3.2 Why Ethnography

Ethnography originates from the study of anthropology in the late 19th and early 20th century and developed on the basis of the belief that only in the field can a scholar truly encounter the dynamics of the lived human experience.[237] It is deemed to have found its way into the social sciences from the 20th century, popularised within Sociology by the Chicago School between 1920-1950 although under the title 'case study', and has since expanded broadly across disciplines.[238] It involves a prolonged presence within a community of study where the researcher explores group culture through the researching of behaviours, actions, beliefs and customs - "the art and science of describing a human group – its institutions, interpersonal behaviours, material productions and beliefs".[239] Data is collected on site about lived human experience in order to discern patterns within a community.[240] Classic ethnographers are considered participatory observers due to the nature of the methodology, integrating themselves into and participating in the natural setting of the study with immense

[236] Roscoe Pound, 'Law in Books and Law in Action' (1910) 44 American Law Review 12; Jean-Louis Halperin, 'Law in Books and Law in Action: The Problem of Legal Change (2011) 64(1) Maine Law Review 45.
[237] Michael Angrosino, *Doing Ethnographic and Observational Research* (SAGE Publications 2007) 1 and 2; Martyn Hammersley and Paul Atkinson, *Ethnography: Principles in Practice* (4th edn Routledge 2019) 1.
[238] Martyn Hammersley and Paul Atkinson (n 237) 2.
[239] Michael Angrosino, (n 237) 14.
[240] ibid 35.

investment.[241] Yet as ethnography has evolved, particularly with institutional ethnography, participation can follow a continuum where at only one extreme the researcher actively engages in the everyday activities of the participants.[242] Often an ethnography will be an integrated period of observation developed with several discrete methods of formal data collection including interviews/focus groups, observations, documentary analysis, media analysis etc.[243] The focus is usually on a very small number of settings to allow for in-depth investigation.[244] Multiple methods of data collection allows for triangulation, which involves checking inferences from one type of data source by comparing it with another.[245] It allows the researcher to substantiate interpretations with multiple data sources drawing on different perspectives of the field of study.[246] Triangulation contributes to the quality of qualitative research because "[b]y combining methods and investigators in the same study, observers can partially overcome the deficiencies that flow from one investigator and/or method".[247]

The research conducted for the production of this thesis involved the undertaking of ethnographic research within two local authority homelessness departments in the Midlands for a period of four months in each site. Ethnography is particularly well suited for exploring the above research questions as only within local authorities where statutory services are delivered on the frontline, can the implementation of the HRA 2017 be observed. My research questions are not interested in theorising how the Act might be implemented based on legislative changes, but are interested

[241] ibid 35.
[242] Charlotte Davies, *Reflexive Ethnography: A Guide to Researching Selves and Others* (2nd edn, Routledge 2007) 77.
[243] Karen O'Reilly, *Ethnographic Methods* (Routledge 2005) 2.
[244] Martyn Hammersley and Paul Atkinson (n 237) 3.
[245] ibid 195.
[246] Uwe Flick, *Managing Quality in Qualitative Research* (SAGE Publications 2007) 41.
[247] Norman K Denzin, *The Research Act* (Aldine 1970), 300 (as cited in Uwe Flick, *Managing Quality in Qualitative Research* (SAGE Publications 2007) 42.

in how legislation is translated into practice, how individuals applying to the local authority as homeless or threatened with homelessness are governed, which necessitates the observation of actions and behaviours of local authority departments. The use of several methods of data collection (namely: observation, interviews and documentary analysis) allows the culture, the behaviours, the decisions made as law is applied, to be experienced first-hand as well as through the perspectives of those within, creating a rich picture of the environment studied. An extended, integrated presence in the local authorities also enables a more relaxed, less artificial engagement with the research process, and minimised pressure to incorporate me into busy timetables. While research with an ethnographic methodology is practically intense for a single researcher, and entirely reliant on willing participant authorities, it is worth the investment for the data it produced.

Ethnography has been associated with a variety of theoretical standpoints, including naturalism, interactionism, structuralism, grounded theory, feminism, ethnomethodology, realism, critical theory, and postmodernism, a list which is in no way exhaustive.[248] The research study undertaken for the production of this thesis takes a postmodern approach to ethnography. Postmodern ethnography critiques naturalist and realist standpoints which assert the ostensive and objective nature of reality, claiming a discoverable truth that privileges the position and account of the researcher.[249] Postmodernism challenges the objective participant observer as being falsely neutral, asserting that 'truth' is relative and constructed.[250] The researcher does not 'discover' a natural truth but provides an interpretation

[248] Michael Angrosino (n 237) 3; Giampietro Gobo, *Doing Ethnography* (SAGE Productions 2008), 34-66; Martyn Hammersley and Paul Atkinson (n 237), 5-20. Karen O'Reilly, *Ethnographic Methods* (n 243) 22.
[249] Giampietro Gobo (n 248) 59-62.
[250] ibid 61.

of the everyday life observed.[251] This thesis does not attempt to de-privilege the position of the researcher to the point of removing or curtailing the authors voice,[252] it accepts that the "author always has the last word"[253], but further accepts that my account of everyday life is not the only possible interpretation of the phenomena observed. In order to provide credibility to my interpretation, the thesis attempts to be transparent in data analysis and as referred to below, presents evidence throughout of the data relied upon to reach conclusions so interpretations can be challenged.[254] The analytical methodology utilised is Foucauldian discourse analysis, to be discussed further in a later section below.

3.4 Recruitment and Methods

3.4.1 Recruitment and Access

Access to the local authorities studied was to be obtained through negotiation with a 'gatekeeper' at each potential site. A gatekeeper is an individual who is in a position to permit access and ultimately give permission on behalf of the authority as an organisation to conduct the research.[255] It became clear on starting these meetings that discussion with gatekeepers regarding the potential to conduct research within the authority, also centred on an overview of how the individual departments had responded to the HRA 2017, so it would be beneficial for these

[251] Karen O'Reilly, *Key Concepts in Ethnography* (SAGE Publications 2009) 169.
[252] ibid 172.
[253] Max Travers, *Qualitative Research Through Case Studies* (SAGE 2001) (as cited in Karen O'Reilly, *Key Concepts in Ethnography* (SAGE Publications 2009) 172).
[254] Robert Dingwall, 'Don't Mind Him – He's From Barcelona: Qualitative Methods in Health Studies' in Jeanne Daly, Ian McDonald and Evan Willis (eds), *Researching Health Care* (Routledge 1992) (as cited in Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' in Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland and Lyn Lofland (eds), *Handbook of Ethnography* (SAGE Publications 2001) 345).
[255] Tina Miller and Linda Bell, 'Consenting to What? Issues of Access, Gate-keeping and Informed Consent' in Tina Miller, Maxine Birch, Melanie Mauthner and Julie Jessop (eds), *Ethics in Qualitative research* (2nd edn, SAGE Publications 2012) 62.

meetings to be included in the dataset. Ethical approval was obtained (separate from ethical approval to conduct the ethnographic studies themselves) to seek permission from the gatekeepers in future meetings to record meetings and include these initial conversations in the data set. For both of the authorities eventually studied, those initial interviews did ultimately form part of the data set.

Potential local authority research sites were ultimately identified through utilising existing contacts of my supervisor, and then utilising their contacts, to be introduced to appropriate gatekeepers. It was initially intended that purposive sampling would be used to select authorities to be studied,[256] on the basis of variables such as geographic location (urban/rural), volume of homeless applications, funding availability and organisational structure (unitary or two-tier authority) aiming to maximise variability. It was also deemed desirable to conduct fieldwork in three local authorities in keeping with previous academic studies conducted in local authority homelessness departments.[257] This would enable the potential comparators between the sites to be broader, exploring the factors considered above such as geographical location and organisation structure and whether they could have an impact on implementation of the HRA 2917. However, as study design progressed and recruiting local authorities progressed it became clear that studying three local authority sites would not be possible. There was an understandable reluctance from the gatekeepers to local authority departments to take part in this research, for reasons mostly relating to not perceiving themselves as having the time or space to accommodate a researcher while trying to implement the largest change to homelessness legislation in the last 40 years. By the time

[256] Rosaline Barbour, *Introducing Qualitative Research* (SAGE Publications 2008) 52.
[257] Ian Loveland (n 231); Dave Cowan, *Homelessness: The (In-) Appropriate Applicant* (Dartmouth Publishing 1997); Simon Halliday (n 231); Caroline Hunter et al. (n 231).

a single local authority site had been recruited it became clear that there would not be enough time remaining within the programme of study to conduct research across three sites. Given the reluctance of local authorities to take part it also became clear there was limited space to be too selective as to which local authority sites I wanted to study. Geographical reach was limited to the Midlands due to funding limitations and travel practicalities. After two local authority housing departments had agreed to take part, the search stopped.

Given there were only two sites of study, homogeneity of the sites became more important than maximising variability. If both sites differed considerably, it would not be possible to offer any analysis on any similarities or differences in practice as there would be too many potentially influencing factors. The characteristics of both authorities are summarised in the below table. Local authorities are referred to as local authority one/the first local authority/LA1 or local authority two/the second local authority/LA2 hereinafter.

	LA1	LA2
Government structure	Unitary	Unitary
Geography	Midlands	Midlands
Population Density (2019 0NS)[258]	Between 250,000 - 350,000	Between 250,000 - 350,000

[258] Office for National Statistics, 'Dataset: Estimates of the Population for the UK, England and Wales, Scotland and Northern Ireland' (Mid-2019: April 2020 Local Authority District Codes Edition of this Dataset, ONS 25 June 2021) <www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland> accessed 27 May 2022.

No. of homelessness applications per year (2019/2020)[259]	> 2000	< 1500

3.4.2 Observation

Ethnography is often perceived as inseparable from participant observation, even used interchangeably to identify the overarching methodology.[260] Here observation is discussed as one of several methods of data collection used within the ethnographic methodology adopted, often deemed to be the primary source of information.[261] Observation can, broadly speaking, be participatory, where the researcher becomes or is already a full member of the setting studied, or non-participatory, although this is more accurately conceived as a continuum between the two, with varying degrees of involvement in the every-day lives of those studied.[262] However, this distinction can often be perceived as misleading, as ethnographic observation is conducted within a natural setting and therefore the observer will in some way always be involved in that which is being observed.[263] An alternative categorisation would centre on 'membership', with the researcher adopting either 'peripheral membership' (interacting closely with the people under study but not participating in the activities constituting the core of the group membership), 'active membership' (engaging in core activities but refraining from committing to

[259] Statistics for financial year 2018/2019 would have been preferable to reflect the year the HRA 2017 came into force, however this data is not available. This necessitated the use of 2019/2020 statistics as the most recent financial year statistics will be heavily impacted unpredictably by the COVID-19 pandemic: Ministry of Housing, Communities and Local Government, 'Statutory Homelessness in England: Financial Year 2019-20: Detailed Local Authority Level Tables' (Table No. A1, Gov.UK published 1 October 2020) < https://www.gov.uk/government/statistics/statutory-homelessness-in-england-financial-year-2019-20> accessed 27 May 2022.
[260] Norman K Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (3rd edn, Prentice Hall 1989) 157-158.
[261] Giampietro Gobo (n 248) 5.
[262] Michael Angrosino (n 237) 54-55.
[263] ibid 54.

the groups values, goals and attitudes), or 'complete membership' (active and engaged members, often advocates for the positions adopted by the group).[264] Adopting one of these membership roles is known as participant observation, where observation is the method of data collection, and participant observation as the strategy that facilitates such data collection.[265] Participant observation involves "establishing a place in some natural setting on a relatively long-term basis in order to investigate, experience and represent the social life and social processes that occur in that setting".[266] Observation is the systematic and formal noting of a phenomena, and within ethnography involves the regular and repeated observation of people and situations with "the intention of responding to some theoretical question about the nature of behaviour or social organization".[267] In the ethnographic studies conducted for the production of this thesis, a position of 'peripheral membership' was adopted.

Observation was the most varied and expansive method of data collection used. A number of different activities were observed during the time spent in each authority. This could include more formal activities such as team meetings, training activities and interactions between housing officers and members of the public, which could be an initial interaction to determine the nature of the enquiry and whether there was a reason to believe the individual/household was homeless or threatened with homelessness and thus triggering a statutory application,[268] it could be an interview to conduct statutory inquiries pertaining to eligibility for assistance and what

[264] ibid 55-56; Patricia A Adler and Peter Adler, 'Observational Techniques' in Norman K Denzin and Yvonna S Lincoln (eds), *Handbook of Qualitative Research* (1st edn, SAGE Publications 1994).
[265] Michael Angrosino, (n 237) 56; Russell H Bernard, *Research Methods in Cultural Anthropology* (SAGE Publications 1988) 150.
[266] Robert M Emerson, Rachel I Fretz and Linda L Shaw, 'Participant Observations and Fieldnotes' in Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland and Lyn Lofland (eds), *Handbook of Ethnography* (SAGE Publications 2001) 352.
[267] Michael Angrosino, (n 237) 54.
[268] Housing Act 1996, s 183.

if any duties are owed under the statutory framework,[269] it could be an appointment to conduct an assessment of the applicant's case or construct a personal housing plan,[270] it could be a follow-up/further enquiry from an already existing homelessness applicant. Meetings with members of the public could often combine elements of the above, for example in the first local authority if there were no doubts regarding the eligibility of the applicant and confidence the applicant was indeed homeless or threatened homeless, a prevention or relief duty would be accepted at that same appointment, conducting an applicant assessment and constructing a personal housing plan. Informal every-day office activities were also observed and recorded in fieldnotes, including telephone conversations, informal conversations between participants in the field, informal conversations with myself. Which activities were observed depended on a variety of factors including: interactions I had negotiated access to with the gatekeeper before entry to the field, interactions participants invited me to observe while in the field, and simple opportunity (right place, right time). I attempted to take advantage of every opportunity offered while in the field that related in some way to my research questions and fell within the ethical approval I had obtained for the study.

3.4.3 Interviews

Ethnographic interviews are distinguished from interviews as a stand-alone qualitative method because they are typically conducted with participants with whom there is an emerging, respectful relationship, a rapport, which allows for a genuine exchange of views and openness in the interviews.[271]

[269] ibid s 184.
[270] ibid s 189A.
[271] Barbara Sherman Heyl, 'Ethnographic Interviewing' in Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland and Lyn Lofland (eds), *Handbook of Ethnography* (SAGE Publications 2001) 369.

The key strength of interviews as a method is the opportunity to hear directly from participants in their own words how they interpret their lives, actions and experiences.[272] In line with a postmodern epistemological approach, the knowledge an interview produces is constructed between the interviewer and the interviewee, it is dependent on the specific situation created by the interaction and with another interviewer "a different interaction may be created and a different knowledge produced".[273] Common critiques of using interviews include reference to the inherent power differential between researcher and interviewee, possibly influencing the interviewee to say what they expect the researcher wants to hear.[274] A further critique of using interviews when studying behaviour or action is that there can be a gap between what people say and what people do; "interviews cannot be a substitute for the observation of actual behaviour".[275] Both concerns can be lessened when conducting interviews within ethnography, as although the power imbalance remains, with the researcher choosing the topic of the interview and asking the questions, and holding a monopoly on interpretation of what the interviewee has said,[276] there is hopefully a relationship that has developed between the parties that encourages openness rather than attempting to give what the interviewee perceives the researcher to want to hear. A concern for a contrast between what is said by interviewees and what happens in practice can be offset within ethnography by the combination of interviews with observation as described above, in fact, the data from each can be used to inform the other.[277]

[272] ibid 370; Steinar Kvale, *Doing Interviews* (SAGE Publications 2007) 11.
[273] Steinar Kvale (n 272) 14 and 21.
[274] ibid 14-15.
[275] John Heritage, *Garfinkel and Ethnomethodology* (Polity 1984) (as cited in Giampietro Gobo and Lukas T Marciniak, 'What is Ethnography?' in David Silverman (ed), *Qualitative Research* (4th edn, SAGE Publications 2016) 113.
[276] Steinar Kvale (n 272) 15.
[277] Martyn Hammersley and Paul Atkinson (n 237) 107.

Interviews conducted within both sites of study were aided by an interview guide constructed beforehand, much like a semi-structured interview. Interview guides were constructed prior to entry to the field, creating main questions based on the research questions discussed above. Main questions were used to focus the participant on the topic of research, but follow up questions were often asked based on what the participant said in response, prompting for further elaboration or following a direction elicited by the participant.[278] In most instances only a selection of the main questions were asked as several questions at once were often covered within an extended answer to one, or answers relevant to later questions were offered unprompted earlier in interview. A separate interview guide was drawn up based on the expected role of the interviewee, either manager level or frontline (Appendix 4 and 5), but ultimately questions were amended (added to/missed out) based on the role description given by the participant at the start of the interview. This meant that a more reflexive approach to interviews was ultimately taken, where questions were tailored to the participant in question, and were not asked in a fixed order, allowing the discussion to flow in a way which seemed natural.[279]

Interviews were recorded via a dictaphone and then transcribed verbatim. Within the first local authority a total of 15 interviews were conducted including: one head of service, two senior managers, one in-house consultant/manager, three team managers, three senior housing officers, and five housing officers. Within the second local authority a total of 11 interviews were conducted including: one head of service, one senior manager, one team manager, one senior housing officer, four housing officers, one temporary accommodation officer, one administrative support

[278] Herbert J Rubin and Irene S Rubin, *Qualitative Interviewing: The Art of Hearing Data* (2nd edn, SAGE Publications 2005) 134-137.
[279] Martyn Hammersley and Paul Atkinson (n 237) 122.

officer, and one private sector landlord. Participants were selected initially based on gatekeeper recommendations, but these recommendations were requested with an intention to cover as many job roles as possible within the department in each authority. It would be impossible to find one person within the authority with knowledge on all the information sought, so "you look for people who know about particular parts of a problem and then piece together what they collectively know".[280] The private sector landlord was recruited opportunistically after I was introduced to them after observing a landlord liaison forum held by the authority. Interviews ranged in length from approximately 40 minutes to 1 hour 40 minutes. It is recognised that the initial suggestion of interview participants by the gatekeeper of each authority could influence data quality in that individuals could have been selected for holding a particular perspective and so alternative perspectives were missing from the data set. It could also have an impact on consent to participate as discussed below. Despite this however, a range of participants were still reached, and further participants than were initially offered by gatekeepers were included after relationships were developed in the field.

3.4.4 Documents

Within ethnography it is common for the most attention to be focussed on what people say or do, but the various forms of written documentation that also play a role in social life can be a crucial source of information. Documents are created, used, collected, circulated by social actors, they are created using shared social conventions and resources.[281] How local authorities implement the HRA 2017 and how they carry out their duties, how individuals are governed, can be informed by or represented within

[280] Herbert J Rubin and Irene S Rubin (n 278) 66.
[281] Martyn Hammersley and Paul Atkinson (n 237) 125.

various documents. Hammersley and Atkinson identify government departments and other types of organisation as generating and consuming significant amounts of documentation, and recognise that Western societies often place particular weight on written documents, with 'official' documents created by these organisations treated as containing 'facts'.[282] It is important for the researcher however to recognise these 'facts' are also constructed in the same way interview data is constructed, and can be shaped by the imperatives of the recording process.[283] This process and how the documents are interpreted and understood can form an important part of the researcher's examination.[284]

A small variety of physical documents were collected across the authorities, in the first local authority a printed copy of a blank personal housing plan, in the second local authority copies of the paper application form given to all individuals/households with a reason to believe they are homeless or threatened with homelessness, training documents provided to staff in commissioned training and sometimes referred to in practice, guidance/policy documents staff deemed helpful in practice, information and advice documents provided to applicants such as a list of local private sector landlords or supported housing providers. These were overall of limited use in analysis but served to triangulate information obtained in interviews or through observations.

The primary documents intended for collection that were expected to be of more use were examples of applicant case files. It was initially intended that a sample of historic closed case files (still post-HRA 2017) would be obtained from each authority, and then also a sample of live case files, which would be obtained on leaving the field after having received written

[282] ibid 125 and 126.
[283] ibid 126.
[284] ibid.

informed consent from the applicant at the time of their approach to the local authority. This was intending to provide a further perspective on how local authorities carried out statutory duties, and how local authorities constructed case records.

Both authorities declined access to historic case files, this was because it would be too burdensome to acquire retrospective consent from the applicants and would need to be done by local authority staff so as not to disclose personal information, and it would be too burdensome to select and anonymise case files without gaining applicant consent. Both authorities did however give permission to approach applicants for housing assistance and obtain informed consent to follow the progression of their cases which included access to their case files. Each authority required a different process in order to access the case files. The change in data protection regulation with the coming into force of the General Data Protection Regulation 2016 and the Data Protection Act 2018, appeared to cause an over-abundance of caution in the first local authority regarding the release of case files by the local authority themselves, despite having obtained informed consent from applicants. It was expected instead that I would require the applicants who had consented to submit data subject access requests for their files at the end of the period of fieldwork, which they would then hand over to myself. The complexity and impracticality of getting back in contact with applicants, requesting them to go through a procedure which had no benefit for them, and arranging a suitable time/place to retrieve the files, quickly became apparent. The final solution was for the data protection department of the local authority to send letters to the applicants asking specifically for follow-up consent via telephone call/return letter/email to release the case file now the period of

observation was complete. No applicants responded so no case files were released.

The second local authority reviewed my consent forms, requested I take their own internal introduction to data protection training course mandated for all employees of the authority, and then gave me a temporary local authority staff account allowing access to their case recording system. I was to only view case files of the individuals who gave written consent, and any anonymised data within their case reporting system, such as tables presenting number of open cases across the department as per case stage (such as 'triage', 'under prevention', 'under relief' etc). There was institutional oversight provided by the fact the system could track what my user profile had viewed, and I was also in close proximity to local authority staff at all times when accessing data so they could visibly see what I was viewing. In order to minimise personal data collected to only that which was necessary, I made detailed handwritten notes of all actions taken and logged on each case, exactly as described/detailed on the system (with unnecessary personal data redacted), and printed off copies of documentation attached to the files such as the application form the authority used to collect initial information from the applicant about themselves, their circumstances and their housing need, the personal housing plan, and any decision letters. A totally of six case files were collected.

Despite problems accessing case files in the first authority, it was still expected that I would at least have a sample of live cases from each authority recorded in field notes, detailing each interaction the applicant had with staff within the department, enabling the progression of cases to be observed. Unfortunately, accounts in fieldnotes of these cases ultimately

ended up providing little further data than general observations of practice detailed above.

The difficulty was practical. Beyond the applicants' initial interview with the local authority to determine their circumstances and ideally whether any statutory duties were owed (sometimes this could not be done at initial interview if there were, for example, questions regarding an applicant's eligibility) it was almost impossible to predict any further direct interactions the applicant would have with the authority. In the first authority, if it was possible to determine that a prevention or relief duty was owed at the initial appointment, a personal housing plan (PHP) would be constructed at the same time. In the second local authority the initial interaction served more of a triage purpose, if it appeared likely a duty would be owed at the initial interaction, the applicant would leave with a paper application form and book a future appointment for the acceptance of duty and construction of the personal housing plan. It was therefore possible for each applicant 'followed' to observe their initial interview and personal housing plan creation in the first local authority, and at least the second interaction accepting duty and creating a PHP in the second local authority. However, beyond that, it was then impossible to predict when the applicant would have another direct interaction with either local authority to ensure it could be observed or recorded in field notes. My presence in the field was not constant in either authority and the responsibility of the applicant cases was spread across different housing officers. Therefore, I would need to be informed of any further interactions by the responsible officer, either before or after the fact, which could easily be forgotten, or for example a brief telephone interaction deemed trivial and therefore not communicated, or I would need to opportunistically happen to be observing the right housing officer at the right time on the days I was in the field. Overall, this means

fieldnotes recorded on the cases of directly consenting applicants were not any more detailed or revealing than fieldnotes recording anonymised everyday practice and applicant interactions.

This means that the case files themselves that were ultimately accessed in the second local authority might be important in offering more insight into what an applicant's interactions with a local authority might look like and how a case progresses. However, the information obtainable from case files was limited. Through looking at the case files it was possible to observe the formal documentation attached to an applicants' case, like any letters issued informing the applicant of decisions made on the case, for example acceptance of a statutory duty, or the personal housing plan that was constructed, and also formal documentation provided by the applicant like proof of ID. A key document attached to an applicant file will be a scanned copy of their paper application form, which contained information like their personal details, what they wanted assistance with from the authority, the circumstances leading to their current housing situation, their housing need, any support they needed to maintain accommodation. The detail in these applications depended on the extent to which the applicant had filled them out. It was possible to see the information fields required by the case management system, largely driven by Government data collection requirements, and the status given to the case like which statutory duty was owed and how long the case had been open in that duty. There were also open text fields within the case file where a housing officer could input updates and actions taken on the case. It was here where I hoped to gain the most insight.

However, the amount and quality of this information varied, with different housing officers taking different approaches to record taking. One housing officer I regularly observed, told me they took their case files very

seriously and tried to record absolutely everything, even for example copy and pasting emails between the applicant and the housing officer, or between the housing officer and other people regarding the case, into the case file. Every interaction with or regarding the applicant was recorded. One case file obtained represented an example of this. For other housing officers file management took less of a priority, not always recording every interaction. One reason for this could be attributed to the fact housing officers kept handwritten notebook records of their day to day interactions, often updating the computerised case management system at later points, potentially not always remembering to do so. The chance of an interaction not being recorded on the case management system was increased if an interaction occurred between the applicant and a different housing officer to the one assigned on the case. This lack of detail was observed in the rest of the case files I was able to obtain, with some generally containing very little information, and instances of missing information being observable in the field. For example, the housing officer responsible for one of the cases I was following provided a verbal update as to a telephone conversation they had had with the applicant where the applicant had found a possible private rented property, which I recorded in fieldnotes, to then find that interaction missing from the case file when it was accessed at the end of the fieldwork.

Such variable quality in case files is not surprising, it has been well recognised by authors such as Garfinkel who suggests "good" organisational reasons for "bad" records,[285] but does leave an incomplete picture within the data collected.

[285] Harold Garfinkel, *Studies in Ethnomethodology* (Englewood Cliffs 1967).

3.5 Ethics

This study received ethical approval from the University of Nottingham School of Law Research Ethics Committee. It is recognised that ethics research codes and regulatory systems, based on biomedical models of research, can be deficient or even inappropriate when applied to practical ethnographic research.[286] This is due to the fact ethnography involves researching a 'collectivity' in a social setting as opposed to just distinct individual research subjects, it generally involves ongoing presence and relationship formation in the research field, and is exploratory in nature so it is impossible to predict ahead of time exactly what shape the research will take and the nature of all interactions. There is an increased need for professional decision-making over the course of the research while in the field that a 'checklist' approach protocol cannot substitute or entirely predict in advance;[287] ethnographic researchers ethical obligations are not fulfilled through simple adherence to the standard university ethics procedures.[288] There is concern that ethical approaches or committees that are not method-sensitive may constrain ethnographic research unnecessarily and inappropriately, and/or that ritualistic observations to such procedures may not give sufficient protection to research participants.[289] In regards to my own research, I did not face any unnecessary constraints, the School of Law Ethics Committee further provides opportunity to give open-ended, detailed considerations within the

[286] Publications in this area are extensive – a selection consulted include: Joan Cassell, 'Risk and Benefit to Subjects of Fieldwork' (1978) 13 The American Sociologist 134; Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' in Ron Iphofen and Martin Tolich (eds), *The Sage Handbook of Qualitative Research Ethics* (SAGE Publications 2018); Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' in Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland and Lyn Lofland (eds), *Handbook of Ethnography* (SAGE Publications 2001); Elizabeth Murphy and Robert Dingwall, 'Informed Consent, Anticipatory Regulation and Ethnographic Practice' (2007) 65 Social Science and Medicine 2223.
[287] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' in Ron Iphofen and Martin Tolich (eds), *The Sage Handbook of Qualitative Research Ethics* (SAGE Publications 2018) 120.
[288] Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' (n 286) 347.
[289] ibid 340.

ethical approval form (as opposed to a closed question checklist) as to how I would take steps to attempt to protect as much as possible research participants. These protections will be detailed below, highlighting some of the key areas where the exploratory nature of ethnographic fieldwork and analysis has raised problems for ethical regulatory oversight.

3.5.1 Informed Consent and Gatekeeper Access

It is generally expected that research will be conducted with individuals who have voluntarily consented to participation on an informed basis, it only being possible to withhold information from participants or conduct covert research where the aims and objectives of the research cannot be achieved any other way, it being impossible to use other methods to obtain data.[290] This concept was developed in the context of discrete episodic interventions typical of experimental research, however in ethnographic research presence in the field is prolonged, making it more appropriate for consent to be interpreted as something that is continuing.[291] The submission of ethics forms to ethics committees can obstruct the on-going nature of ethical issues, leading to things like informed consent being treat simply as a one-time formal requirement for the initiation of a study and not as something that can be fluid and continuous over the length of the entire study.[292] In ethnographic research consent is more likely to be negotiated and renegotiated over time.[293] Further to this, it is often

[290] University of Nottingham, 'Code of Conduct and Research Ethics' (Version 8, University of Nottingham revised 18 November 2021) <www.nottingham.ac.uk/research/resources/documents/code-of-research-conduct-and-research-ethics-v8.0-18-nov.-2021-.pdf> accessed 27 May 2022, 16, 25, 30; Economic and Social Research Council, 'Framework for Research Ethics: Our Core Principles' (UK Research and Innovation updated 17 August 2021) <www.ukri.org/councils/esrc/guidance-for-applicants/research-ethics-guidance/framework-for-research-ethics/#contents-list> accessed 27 May 2022.
[291] Elizabeth Murphy and Robert Dingwall, 'Informed Consent, Anticipatory Regulation and Ethnographic Practice' (n 286) 2225.
[292] Tina Miller and Linda Bell, 'Consenting to What? Issues of Access, Gate-keeping and Informed Consent' (n 255) 62.
[293] Elizabeth Murphy and Robert Dingwall, 'Informed Consent, Anticipatory Regulation and Ethnographic Practice' (n 286), 2225.

impossible to determine in advance the full nature and purposes of the research, what it will involve or the outcomes that will result, an exhaustive list of all data a researcher may want to collect or insights they may want to gather.[294] "They [the researcher] may not know in advance what information will drift their way that may prove explicitly useful, either currently or in the future. And it is often not exactly clear when, where, and how research begins"[295]. This makes giving fully 'informed' consent difficult, and contributes to the need to negotiate and renegotiate consent over the course of the fieldwork. Within the every-day site of fieldwork relationships of varying intensity will be encountered, from a participant formally interviewed and regularly observed, to a fleeting 'passing through' encounter, with differing appropriate degrees of consent and disclosure for each.[296]

An additional issue relating to informed consent is connected to the fact that in order to gain access to the local authority departments it was necessary to get approval in each site from a 'gatekeeper'. The use of gatekeepers to access sites of study raises various concerns related to informed consent on the basis that gatekeepers usually occupy positions of power within the context concerned and could potentially have a role in both dictating what the researcher has access to, who the researcher has access to, and may leave individuals within the field feeling like they must participate within the study due to the fact the gatekeeper has given permission.[297]

[294] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' (n 287)122.
[295] Patricia A. Adler and Peter Adler, 'Do University Lawyers and the Police Define Research Values?' in Will C. van den Hoonaard (ed), *Walking the Tightrope: Ethical Issues for Qualitative Research* (University of Toronto Press 2002) 40.
[296] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' (n 287) 124.
[297] Tina Miller and Linda Bell, 'Consenting to What? Issues of Access, Gate-keeping and Informed Consent' (n 255) 69.

In recognition of the above complexities, the approach taken within the two local authority sites attempted to address consent on a continual basis. Initial informed consent for access and the scope of the study was obtained from the appropriate gatekeeper, with further explicit written informed consent obtained from any member of staff interviewed and any applicant for housing assistance whose case was followed. In both instances, participants were given copies of an information sheet, a consent form, and data privacy notices. Attempts were made to design these documents in more accessible language for housing applicants. Participants were given the opportunity to read through the documents, but they were also verbally explained. Housing applicants were given the physical copies to take away with them. Local authority staff were given the option of either physical copies or copies delivered to their email address. Local authority staff tended to have a brief read of the documents, but housing applicants very rarely did and appeared to find verbal explanations more accessible. Participants of interviews were given the option of reading and amending interview transcripts (three participants requested transcripts but none offered amendments).

Before entry to the field general information sheets were distributed to all staff within the department by the gatekeeper detailing why I was there, the purpose of the study, and giving non-exhaustive examples of the kinds of data collection staff could be involved in (excluding interviews which, as above, had their own consent process). Within this information sheet staff were reassured that their personal information would not be collected and their identity would not be recorded, all observations were documented as anonymously as possible (see below discussion of anonymity) in hand-written fieldnotes. This information was repeated on physical introduction, in the first local authority this was done in a team meeting on the first day

of entry, in the second local authority they did not hold team meetings, so this was done via individual introductions. All staff were given the individual option not to be interviewed or observed. This was deemed to be particularly important given concerns regarding gate-keeper access. This option was revisited throughout the period of time spent at each authority, with permission regularly asked to observe particular interactions, such as applicant interviews, with particular housing officers. An approach of ongoing transparency was taken, with regular conversations with staff, particularly housing officers, as to why I was there, what I was writing down (with open offers to read field notes – which no participant ever took), and what I was hoping to get from the research experience, particularly in the first authority who were a little more cautious of my presence (to be explored further below).

Finally, the principal of informed consent is linked to a participant's right to withdraw from a study. Due to the fact ethnographic research studies individuals in the field collectively, and is dependent on 'gatekeeper' access, the right to withdraw from the study is also more complex than in traditional experimental research. It is not possible for a 'gatekeeper' or member of the observed field who controls access to withdraw from an ethnographic project without effectively vetoing participation of others who are willing.[298] Equally it can be difficult to separate one individual from the 'collective', for example in observations of group meetings. Despite this complexity, the right to withdraw on an individual basis was offered wherever possible, or a complementary ability to decline to be involved individually in the study as mentioned above. The right to withdraw was offered formally within consent forms to those who gave written consent for interviews, to withdraw their interview data. It was also offered in

[298] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' (n 287) 121.

consent forms to any applicants for housing assistance whose particular cases were being followed and case files obtained. The ability to decline interview or refuse observation was informally offered to all members of staff within the authority departments, and all fieldnotes of any observations, or informal conversations, were written as anonymously as possible (see below discussion of anonymity). This did mean that there were instances where a couple of members of staff across the local authorities were not interviewed or observed whose insights could have provided valuable data, but this was deemed a necessary loss in order to balance the above discussed ethical considerations.

3.5.2 Anonymity and Confidentiality

Respect for anonymity is one of the University of Nottingham's core key principles for ethical research, and it is accepted generally that participants privacy should be respected and confidentiality should be guaranteed and maintained.[299] Where personal data (including special category (or sensitive) data) is collected, stored and processed during the course of research, this is further governed by legislation including Data Protection Act 1998 and 2018, and the General Data Protection Regulation 2016.[300] Rigorous procedures for data anonymisation and data storage are usually enough in quantitative research to ensure anonymity and confidentiality, however within ethnographic research, the single or small number of settings studied means it is much more difficult to ensure data recorded is unattributable and absent of sufficient detail to make identification possible.[301] Many people related to the site of study, even if not

[299] University of Nottingham, 'Code of Conduct and Research Ethics' (n 290) 26; Uwe Flick, *Designing Qualitative Research* (n 234) 69.
[300] Regulation (EU) 2016/679 of the European Parliament and of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation) [2016] OJ L119/1.
[301] Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' (n 286) 341.

participants themselves, could become aware research is taking place, particularly given presence in the field is often prolonged. It is entirely possible participants could identify themselves in the write up of data or each other, particularly if the site studied is small or there is a single individual holding a particular role in the setting.[302] While it is still crucial to undertake rigorous procedures for anonymisation and storage, it is not possible to give absolute guarantees the identities of research sites and/or the participants within will remain hidden.

All participants were explicitly made aware that anonymisation could not be 100% guaranteed within relevant information sheets, which was reiterated verbally wherever possible, particularly before participation in interviews. Participants were specifically cautioned that they may be able to identify themselves within the thesis write up and/or others within the authority may be able to identify them, especially if there was only one individual performing a particular job role. Despite this, full attempts have been made to conceal the identity of participants involved in the research in the write up of the thesis, with the same approach taken in any resulting/connected publications and in research paperwork/computer files. Pseudonymisation has been utilised to identify participants within research data and the write up of the thesis, and to correspond research data in any research paperwork and computer files.

As detailed above, local authorities are referred to as local authority one/the first local authority/LA1 or local authority two/the second local authority/LA2. Individual participants have been grouped in the write up of the following chapters according to their level of employment into generic identity categories that closest matched their role, namely: Head of Service, Housing Manager, Senior Housing Officer, or Housing Officer. This

[302] ibid.

measure was taken despite the fact equivalent roles within the local authorities were not necessarily titled with exactly the same language as listed above, for example managers could be specialist over particular teams, housing officer's specialist in particular areas such as domestic violence or single homelessness. It was deemed appropriate however to remove references to specific titles or specialisms to add an extra level of generalisation and abstraction to the identifiers used, in order to reduce the risk of identification of the local authorities studied due to use of unique titles, and to reduce the ability for staff within the authority to identify each other, particularly for example where there may be only one housing officer with a particular specialism. There is a handful of exceptions to this: the first is where the roles of the individuals could not fit within the general categories above including the administrative support officer, the temporary accommodation officer, and the private landlord interviewed in the second local authority, and the second exception is the Head of Service for each authority, where it was deemed appropriate to keep the identifier of position within the authority despite there only being one Head of Service in each authority, due to the contribution that knowledge of the position of power could contribute to data analysis. Individual participants within each category were also given a number identifier to enable a distinction to be made between different individuals within each category. When locating quotations pulled from interview transcripts the code used will contain either LA1 or LA2 for the relevant local authority, one of the above categories representing position in the authority, and a number representing an individual within the category (for example: LA1 – Housing Officer 3). The exceptions mentioned above follow the same rule, for example in the second local authority the private sector landlord who was interviewed is referred to as "LA2 – Private Sector Landlord 1".

The key for the identification coding system which contains confidential personal data has been stored separately to corresponding research data and has been stored securely in line with the University of Nottingham's Information Security Policy and my data management plan. In describing characteristics of local authorities involved in the research above, specific descriptive detail has been left out in order to avoid identification of the authority as a whole. In some instances, it was necessary to edit quotations in the course of the inclusion of data in the thesis in order to remove identifying information. Where this was done edits are represented in square brackets and identifying language is replaced with generic language.

Participant's confidentiality was maintained throughout the study. The collection, holding and use of personal data conformed to the Data Protection Act's 1998 and 2018 and the General Data Protection Regulation 2016. Individual participants within the study did not have access to another's research data, for example, data obtained from participants in interviews is confidential and was not available to any other participants. This was interestingly a particular concern among housing officers when interviewed, that what they said in interview would not reach higher management. In all cases officers were reassured that their interview data would be collected and stored confidentially. A participant would only have access to their own data for e.g. their own interview transcripts or their own personal data in accordance with the General Data Protection Regulation 2016 and Data Protection Act 2018. Where personal data was collected, confidentiality was ensured by utilising pseudonymisation to correspond research data in any research paperwork and computer files. Where personal data would be collected, participants gave separate

informed consent to the consent given for participation, and were given a privacy notice.

3.5.3 Vulnerable participants

The only definition provided as to the meaning of vulnerable adults in relation to ethics in the University of Nottingham Code of Research Conduct is adults "such as those with a mental incapacity or prisoners".[303] While this research did not involve any participants that lacked mental capacity, it is generally understood that the meaning of vulnerable adults spans broader than the above definition, requiring researchers to pay attention to "power imbalances, capacity to consent, and increased potential for harm".[304] The ESRC Research Ethics Guidance suggests "Vulnerability may be defined in different ways and may arise as a result of being in an abusive relationship, vulnerability due to age, potential marginalisation, disability, and due to disadvantageous power relationships within personal and professional roles".[305] Recognising power imbalances, applicants for housing assistance whose cases were followed could fall within the category of vulnerable adults. There is a risk that due to fact that I approached local authority applicants alongside a housing officer, and so carried a perceived association with the local authority, that housing applicants may deem giving permission for me to follow their cases can play a part of their application for housing assistance. Applicants could also fall into the above categories of marginalisation or may be experiencing domestic violence from abusive relationships. While a small number of applicant case files

[303] University of Nottingham, 'Code of Conduct and Research Ethics' (n 290) 29.
[304] Will C. van der Hoonaard, 'The Vulnerability of Vulnerability: Why Social Science Researchers Should Abandon the Doctrine of Vulnerability' in Ron Iphofen and Martin Tolich (eds), *The Sage Handbook of Qualitative Research Ethics* (SAGE Publications 2018) 305.
[305] Economic and Social Research Council, 'Research With Potentially Vulnerable People' (UK Research and Innovation updated 12 October 2021) <www.ukri.org/councils/esrc/guidance-for-applicants/research-ethics-guidance/research-with-potentially-vulnerable-people/> accessed 27 May 2022.

were collected, this research was not performed from the perspective of individuals experiencing homelessness, but instead from a local authority perspective, so homelessness applicants were secondary participants rather than direct participants meaning any potential impact of the research could be minimalised.[306]

Particular care was taken to ensure that all participating applicants were participating freely, that they were aware their participation is entirely voluntary and that they could withdraw at any time with no consequence. It was further made clear that their involvement in my research and my presence in their interactions with the local authority was in no way related to their application to the local authority, I could not influence the outcome of their applications. Further, choosing *not* to take part in the research would also have no consequence on the outcome of their application. It was also highlighted that the purpose of the research was not to observe or question the applicant themselves, but to observe the local authority's behaviour and actions. Confidentiality and anonymity measures outlined above would also aid in protecting vulnerable participants and information sheets, consent forms, and privacy notices were drafted in more accessible language, with copies provided to the applicant. However, since the documentation provided simply added to the several pieces of documentation already provided to the applicant over the course of their interaction with the authority, which could include information and advice documents, a paper application form, personal housing plans, decision letters, it quickly became apparent that thorough verbal explanation was the most accessible and effective way to communicate. Written consent was used more as a formality to evidence consent and to provide my contact details if needed rather than to provide information (with verbal

[306] See Chapter 8 – Conclusion for limitations of this approach and future research directions.

assurance that if these documents were lost, they could simply contact the local authority to get in contact with me, or receive another copy of documentation).

3.6 Data Quality

A common critique of qualitative and indeed ethnographic research is a lack of 'quality'.[307] That notion of quality however is based on standardised and experimental research paradigms, which prioritise reliability, validity, objectivity and generalisability.[308] These qualities are often incompatible with qualitative research design. Generalisability is not ordinarily the primary aim of qualitative research, in particular ethnographic research, which aims for depth as opposed to breadth, with potential for some modest, context specific, generalisability (indeed this thesis undertakes an exercise of theoretical generalisation[309]).[310] Ethnographies are conducted in everyday social settings where it is impossible to standardise and control variables and the naturally occurring phenomena observed certainly aren't replicable. A claim to objectivity would also be false. During ethnographic study, the researcher is inevitably involved in the everyday lives of the participants studied, leading Davies to assert "the relationships between ethnographer and informants in the field, which form the bases of subsequent theorizing and conclusions, are expressed through social interaction in which the ethnographer participates; thus ethnographers help to construct the observations that become their data".[311] This is consistent with the postmodern approach taken within this thesis.[312]

[307] Uwe Flick, *Designing Qualitative Research* (n 234) 61.
[308] ibid.
[309] Karen O'Reilly, *Key Concepts in Ethnography* (n 251) 86.
[310] ibid 82-86.
[311] Charlotte Aull Davies, *Reflexive Ethnography: A Guide to Researching Self and Others* (Routledge 2007), 5.
[312] Karen O'Reilly, *Key Concepts in Ethnography* (n 251) 169.

Despite it being clear that these attributes are not characteristic of qualitative research, there is no consensus as to what quality should instead look like, what makes 'good' or 'bad' qualitative research.[313] Flick suggests that instead quality is more often an appraisal of the soundness of the research as a whole; the rigour of the research design, the data analysis and the research reporting.[314] This includes an appropriate and justified research design and methodology,[315] which in the context of this thesis has been the focus of this chapter. Another indicator of quality in qualitative research is suggested by Flick to be how researchers manage diversity in design and conducting research - the extent to which a variety of experiences are reflected in the data collected and in analysis.[316] This is an area where my data could be limited by some of the factors discussed above such as gatekeeper influence impacting who was interviewed or observed within the authorities, or a sensitive approach to informed consent meaning some individuals were not observed/interviewed and therefore are not represented in the data, and others who were more comfortable with my presence observed more, potentially reducing diversity. Only two sites of study were involved as opposed to three and were ultimately conveniently sampled rather than purposively.

Another method suggested to improve quality is one which ethnography invites quite naturally, the practice of triangulation. This is comparing conclusions drawn from one data source with another to see if findings are consistent across a range of data.[317] Over the course of this thesis this has involved comparing inferences from different methods of data collection (interviews with observations with documentary analysis) and also from

[313] Uwe Flick, *Designing Qualitative Research* (n 234) 65.
[314] ibid 62.
[315] ibid 62-63.
[316] ibid 63.
[317] Martyn Hammersley and Paul Atkinson (n 237) 195.

different participants within the same data collection method.[318] Due to the combination of methods used in data collection within ethnography, triangulation is deemed 'implicit' even if not expressly recognised as taking place.[319] Triangulation does not unproblematically add up to a necessarily more accurate or complete picture,[320] but it does allow for exploration of patterns and points of divergence. It allows data relating to the same concept but collected from multiple different perspectives within the field to be compared and contrasted, similarities and differences highlighted and analysed.

A final key character of research displaying quality is that it is reported transparently. This means making visible the reasons for conducting research in the particular way it was done and displaying how findings and conclusions were reached.[321] The former can be done through the above justifications of research method and methodology. The latter, by making the data analysis method transparent (Foucauldian Discourse Analysis as detailed below) and by displaying evidence of findings and conclusions through reporting of primary data (such as interview quotations) which will be done throughout the remaining discussion chapters. Further, due to the inability to separate the researcher from the research experience it is important to reflect on the researcher's position, influence, and the context of the research, considering intended or unintended consequences of the researcher position and influences.[322] This has the effect of making the researcher transparent within the research process further aiding in

[318] ibid 195-196.
[319] Uwe Flick, *Managing Quality in Qualitative Research* (n 246) 77.
[320] Martyn Hammersley and Paul Atkinson (n 237) 196.
[321] Uwe Flick, *Designing Qualitative Research* (n 234) 66.
[322] Aileen Barrett, Anu Kajamaa and Jenny Johnston, 'How to…be Reflexive When Conducting Qualitative Research' (2020) 17(1) The Clinical Teacher 9, 10.

demonstrating rigour and the confirmability of qualitative, postmodern, research.[323] This leads directly in to the next section of the chapter.

3.7 Reflection

Due to the extended presence of the researcher in the field, and the desire for participants to show as natural behaviour as possible despite the researcher's presence, it is important for the researcher to reflect a position that encourages an acceptance of the researcher's presence, even becoming comfortable with that presence. Murphy and Dingwall prefer to term participants as 'hosts' to reflect the nature of this relationship: "ethnographers are guests in someone else's setting and, like guests every-where, there are clear, if not always explicitly articulated, expectations of proper behaviour. The status of guests is always fragile and depends on appropriate conduct towards their hosts".[324] This means that a researcher can take on variable roles while in the field, ranging from 'novice' to 'expert' or 'critic', with these roles being adopted intentionally by the researcher, or can be presumed or cast by participants.[325]

In the first local authority there was initially quite a significant amount of apprehension and caution regarding my presence. In negotiation for access to the site, it was clear that there was a desire for the research to take place, but for it to be as minimally burdensome as possible for the department. The Head of Service made clear that the team were extremely busy and they were also still trying to fill some positions so were understaffed.

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[323] Yvonna S Lincoln and Egon G Guba, *Naturalistic Inquiry* (SAGE Publications 1985), 319 and 327.
[324] Elizabeth Murphy and Robert Dingwall, 'Informed Consent, Anticipatory Regulation and Ethnographic Practice' (n 286) 2225.
[325] Martyn Hammersley and Paul Atkinson (n 237) 83 and 87; Herbert J Rubin and Irene S Rubin, *Qualitative Interviewing: The Art of Hearing Data* (n 278) 84-85.

> "I originally asked our homeless lead for singles to have a chat with you, and the response, her response was, well I could do but I don't really think I've got the time, so then I asked the managers if they could identify a couple of people to talk to you, and it was there was kind of well what would she want to know what would she want to do because we are really busy" (LA1 – Head of Service).

My presence in the field would be viewed as an additional task on the to-do list, to conduct interviews, to 'show me the ropes', to explain processes and practices would take time and attention away from their every-day roles. There was an explicit approach to negotiation that took my ideal of what I would like to do, and to step down from that to something that would be more realistic or acceptable for the department. It was clear that my observation was to be as far in the background as possible. This ended up mirrored in some of the practical experiences I had while at the site, including the fact I was only ever granted 'guest' status in terms of security access, so needed to be 'picked up' at the entrance to the offices every time I arrived, and needed to be escorted around the building at all times. I also tended to sit separately from the rest of the team in an adjacent canteen-like social space, however this was primarily due to space constraints as the authority did not have enough desk spaces for the entire team at any one time, necessitating a hot-desk system. If there was a free space, or I was invited over to sit near a housing officer I was observing, I would sit within the team.

The caution with my presence came not only from the time I would take, but a perception that I was there to assess what the authority were doing right or wrong in their practice and perform an evaluation. The Head of Service and managers were keen to receive that kind of input, however with frontline staff this perception lead to unease with my presence. There

was a particular concern within frontline staff, particularly housing officers, directed towards myself but also more generally regarding their own practice, with legislative compliance and doing things 'right'. There was a concern that their behaviour would be reported up to management.

The above considerations meant that while in the field I was particularly cautious of 'pushing my luck' and asking for too much. There were individuals who appeared more comfortable with my presence who I observed more frequently, and others who were less comfortable whom I would not observe or whom I would 'pester' less.[326] This will have ultimately impacted on the richness of the data collected as I did not become as immersed in the department as would have been ideal. There were practices I did not observe such as team meetings between managers, and I was only present in the field two-three times a week at most. As people became used to my presence, and I became more familiar with practices, I was invited to observe more than was initially expected and managed to conduct a breadth of interviews. While I believe I took every opportunity that I could, it was important to try and respect the wishes of the gatekeeper and to keep imposition to the minimum possible to conduct the research. Further, the perception of my presence as an assessment of the 'correctness' of their practice meant I took on a presentation of self which emphasised my identity as a 'student doing a PhD' and downplayed an identity of 'specialist researcher', particularly with frontline workers. It seemed like foregrounding an identity as a student gave an impression that I was learning rather than passing judgment or assessing, I would emphasise my lack of practical on-the-ground knowledge and stress the position of the frontline worker as the expert. I

[326] An element of this was an attentiveness to ongoing consent, as referred to above. I did not want individuals to feel like they *had* to participate because their Head of Service had authorised my access.

also made a conscious effort to be as transparent as possible, explaining openly whenever asked why I was there, what I hoped to get from my time there, the kind of things I was interested in and what I was writing down. This presentation of self was in no way deceptive. My research questions are not concerned directly with legislative compliance, and were instead interested in how staff within the local authority, rather than I, interpreted the HRA 2017, and were interested in exploring frontline practice, which I indeed had no knowledge of before beginning research. But this was a different presentation of self than I was used to taking within academia.

In the second local authority, experiences were notably different. While there was still an initial caution that my presence may cause tension, this was because the department had just undergone a controversial restructure, merging two departments, which had led to people losing their jobs and those who did remain had fought hard for their jobs, sometimes through three rounds of interviews, or had been denied voluntary redundancy. There was a warning from the gatekeeper that I may therefore face apprehension or low morale leading to a lack of desire to participate. In terms of negotiating access, I was granted full access and permission to do everything I desired (except obtaining historical case files as discussed above). I was given my own temporary local authority security access card, which granted full access to secure areas within the building and to equipment such as printers. I was given my own desk space among the housing officers and spent four days a week, 9am-5pm there.

When arriving in the field, I in fact received the opposite reception to that which had been expected. After some initial questioning about why I was there and what I was interested in, there appeared to be no further caution or suspicion regarding my presence. There was much less of a concern that

I may be judging the 'correctness' of their practice, and my position as a researcher and academic appeared to be welcomed. I was told that there was an appreciation for my knowledge of the statutory framework, with occasional questions being asked of me as to legislative interpretation, the content of the code of guidance for local authorities, or for academic literature on a particular area. This enabled me to give something back in return for the time they were offering, even if this exchange was still very disproportionate. The security access card meant I was able to move around freely and able to do favours for those I was observing, such as running back to the office from the front triage desk to pass on a message or retrieve a colleague, or to print documents. On one occasion I assisted a housing officer with studying for a professional qualification exam they were due to take. This allowed for more of a reciprocal relationship to develop and meant I felt much more comfortable asking to observe interactions, and was indeed invited to observe a lot more frequently. Staff would approach me with things they thought might be of interest and ask if I would like to observe. While there were still individuals and housing officers who were more comfortable than others with my presence and whom I observed more frequently, and a very small number who did not want to be interviewed or observed, I did not find any barriers to my presence.

The above accounts help to demonstrate that continued access and participation is constantly negotiated in ethnographic research, so it is therefore necessary to establish relationships in the field based on trust and where possible, some amount of reciprocity. The research is dependent on the general conduct of the researcher, whose conduct must represent ordinary social conventions of everyday life in order to establish those

relationships.[327] It is therefore impossible to separate the human being and emotion from the research process. Gilmore and Kenny suggest that reflexive accounts within research often downplay the emotional engagement of the researcher with the research experience and the relationships formed with participants, possibly due to a preoccupation with appearing rational, detached, or objective as reflected in more 'realist' approaches, leading to tokenistic style of self-reflexivity.[328] They emphasise however that recognising and reflecting on emotional responses is a crucial part of ethnographic research as "they inscribe every aspect of it", this practice having the potential to deepen understanding of ethnography and demonstrate recognition of the embeddedness of the researcher.[329] Gilmore and Kenny undertake a 'pair-interview' method, conducting interviews of each other on their experiences of conducting ethnography in organisations, in order to draw out those emotional responses, finding themes relating to feeling an attachment to their respective organisations, while also remaining an 'outsider', and a sense of discomfort and guilt having emerged from the field and having to 'write up' their findings for the consumption of other academics.[330] This account provided of their emotional responses resonates highly with my own experiences of researching within the local authorities studied.

Developing attachment to the organisation and individuals within the field appears to draw from the above-mentioned prolonged presence in the field, the need to conduct oneself according to everyday social norms, and also maintain trusting relationships in order to continue to be accepted within the field. This can lead to development of various friendships and

[327] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' (n 287) 124.
[328] Sarah Gilmore and Kate Kenny, 'Work-worlds Colliding: Self-reflexivity, Power and Emotion in Organizational Ethnography' (2015) 68(1) Human Relations 55, 57.
[329] ibid 59,73 and 74.
[330] ibid 60-61.

acquaintances beyond the researcher/researched relationship, and a sense of connection with the organisation studied. This was particularly so for myself in the second local authority, where I ultimately spent more time present on site, developing friendships over time with the housing officers at the next and surrounding desks, and those who I regularly observed or had more frequent informal conversations with. A couple of housing officers had particular interest in holding more 'academic' discussion around broader housing and welfare policy and requested academic literature, through which I drew connection.

At the same time as feeling connected or attached to the research setting, there still remained a sense of otherness, a conflict created by the necessary continued role of researcher, engaging in the practices and norms of academic work, while also needing to develop proficiency in the life-world of the studied organisation and understand the norms therein.[331] This conflict with sense of self and dual identity is well-recognised as particularly prominent in ethnographic research due to the need to become more immersed in the research setting, often for long periods of time.[332] This conflict in sense of self was felt particularly in the first local authority setting where I perceived it to be helpful to generally attempt to downplay my legal knowledge and identity as 'academic researcher' and emphasise my lack of 'on the ground' knowledge and experience. This presentation was deemed appropriate to ultimately do less harm to participating staff, to enable them to feel more comfortable and less anxious with my presence, but felt highly self-conscious. I ultimately maintained more of an identity as an 'outsider', whereas by contrast in the second authority, due to the

[331] ibid 70.
[332] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' (n 287); Olivia Marcus and Shir Lerman, 'Ethics Working in Ever-Changing Ethnographic Environments' in Ron Iphofen and Martin Tolich (eds), *The Sage Handbook of Qualitative Research Ethics* (SAGE Publications 2018); John L. Wengle, *Ethnographers in the Field: The Psychology of Research* (University of Alabama Press 1988); Vincent Crapanzano, 'On the Writing of Ethnography' (1977) 2 Dialectical Anthropology 69, 70.

increased ability to participate, I was able to develop more of an 'insider' identity. Where quite informal and friendly relationships had been developed with officers in the field, it did however create awkwardness when information sheets, consent forms, privacy notices were presented at the time of a more formal interview, particularly when these interviews were recorded with a Dictaphone, when all previous and post interactions were informally recorded more subtly in written notebooks.

The emotion that resonates the most from Gilmore and Kenny's account of their own responses is one of discomfort and guilt when transitioning from leaving the field to analysing data and writing up findings, a guilt that writing may now be critiquing friends and acquaintances, a discomfort with having to maintain an emotional distance when writing up findings, and concern for how that might be perceived by participants of the study.[333] Delamont and Atkinson recognise a potential for ethnographers to feel that "that they cannot ever quite do justice to the social worlds and social actors they attempt to reconstruct in their texts".[334] There is a risk that interpretations taken by the researcher may cause hurt and offence to those studied, not only through what is contained in the write up, but also by what has been omitted, which may be perceived as valuable information or perspective that has been deemed trivial or unimportant.[335] The fact that the reporting of the thesis is another step removed from the everyday practical reality of participants may lead to "[t]he translation of individual accounts into examples of larger social phenomena, with the attendant loss of uniqueness, may be disconcerting"[336].

[333] Sarah Gilmore and Kate Kenny (n 328) 64-65 and 69.
[334] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' (n 287) 129.
[335] Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' (n 286) 341.
[336] Susan Chase, 'Personal Vulnerability and Interpretive Authority in Narrative Research' in Ruthellen Josselson (ed), *Ethics and Process in Narrative Study of Lives* (SAGE Publications 1996) (as cited in Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' in Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland and Lyn Lofland (eds), *Handbook of Ethnography* (SAGE Publications 2001), 342).

I have encountered similar experiences of guilt and discomfort, questioning whether my analysis represents the experiences of those I observed and interviewed, guilt over choosing which data to reflect in the thesis, which quotations to use, which themes to include discussion of in write up and those to leave out. Participants who I observed more frequently, or had more informal conversations with, are likely to be overrepresented in data reported, or when multiple interviewees express similar discourse, those who I perceived to articulate themselves particularly well would be chosen, leaving a sense of guilt for those who contributed significant time but may not be as individually represented. It is suggested that the greatest risk of harm to participants of the kind described above will arise at the time of publication,[337] and since it is not possible to predict ahead of data collection how that data will then be analysed and interpreted by the researcher, procedures of informed consent cannot sufficiently mitigate the risk of that harm as it arguably could in say biomedical, experimental research.[338] Therefore, researchers should aim instead to ensure they are visible in texts written and make the process of data analysis transparent, presenting evidence from data collection upon which interpretations are based. This opens up the possibility for interpretations to later be challenged by participants themselves or other researchers.[339] I have attempted to make myself as the researcher more visible in the above reflections of my experiences of the research encounter and my role within the authorities studied. I have also outlined above the approach taken to data analysis and attempted throughout the thesis to provide evidence

[337] Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' (n 286), 341.
[338] Sara Delamont and Paul Atkinson, 'The Ethics of Ethnography' (n 287) 123.
[339] Susan Chase, 'Personal Vulnerability and Interpretive Authority in Narrative Research' in Ruthellen Josselson (ed), *Ethics and Process in Narrative Study of Lives* (SAGE Publications 1996) and Robert Dingwall, 'Don't Mind Him – He's From Barcelona: Qualitative Methods in Health Studies' in Jeanne Daly, Ian McDonald and Evan Willis (eds), *Researching Health Care* (Routledge 1992) (as cited in Elizabeth Murphy and Robert Dingwall, 'The Ethics of Ethnography' in Paul Atkinson, Amanda Coffey, Sara Delamont, John Lofland and Lyn Lofland (eds), *Handbook of Ethnography* (SAGE Publications 2001), 345).

from the various discourses analysed, in particular through use of interview quotations and descriptions from fieldnotes, to support interpretations and analysis. Interpretations of data have been explored throughout the construction of the thesis with thesis supervisors, and will also be discussed and defended in viva examination. Once completed a copy of the thesis will be made available to both authorities studied to provide participants with the opportunity to challenge and discuss interpretations if they so wished.

In recognising the above emotional responses to the fieldwork conducted, an anxiety is raised that the connections formed in the field, the discomfort and guilt experienced in write up, may indeed have impacted on data collection, the way accounts of observations were detailed, the way participants behaved and the views they expressed, the way data is later interpreted and analysed. However, to suggest otherwise would be disingenuous of the reality of ethnographic research and epistemological commitments expressed above; "no one, including ourselves, can stand outside their own epistemological and ontological commitments".[340] Instead, researchers should practice transparency in reflexivity, and attempt to engage in collective reflection with colleagues, supervisors, even potentially with participants in the field through co-construction of the research process and account, to create a reflexive account that is more than simply a 'mechanistic' afterthought.[341]

3.8 Data analysis

This thesis employs a Foucauldian discourse analysis method. There is no universally accepted understanding as to what Foucauldian discourse

[340] Phil Johnson and Joanne Duberley, 'Reflexivity in Management Research' (2003) 40 Journal of Management Studies 1279, 1294.
[341] Sarah Gilmore and Kate Kenny (n 328) 73-74.

analysis is and how it should be performed. This is in part due to Foucault's inaccessible preferred writing style, but also due to the fact that his methods and ideas change over time as his focus of attention shifts and develops over the course of his research.[342] In Foucauldian discourse analysis, 'discourse' is not only referring to linguistic expression, to statements and utterances which have been constructed to provide meaning and have some effect in society, but it is also regulated practice: unwritten rules, regulations, cultural and value structures, which produce and reproduce certain statements and utterances.[343] These practices have the effect of prioritising certain statements and keeping them in circulation, but also the effect of excluding others - "in every society the production of discourse is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to ward off its powers and dangers".[344] Foucault suggests several procedures of exclusion: prohibition, division and rejection, and the opposition between truth and falsity, with the will to 'truth' exerting a power of constraint on other discourses.[345] The power relationship between inclusion/exclusion of discourse is productive rather than oppressive or destructive, producing 'norms', instructing individuals to behave in a certain way.[346] Since discourse produces certain 'norms' about the way we understand and the way we act, it is strongly implicated in the exercise of legitimation, privileging and replicating existing power relations and social structures.[347] While alternative and

[342] Michael Arribas-Ayllon and Valarie Walkerdine, 'Foucauldian Discourse Analysis' in Carla Willig and Wendy Stainton Rogers (eds), *The SAGE Handbook of Qualitative Research in Psychology* (2nd edn, SAGE Publications 2017) 110.
[343] Tauhid Hossain Khan and Ellen MacEachen, 'Foucauldian Discourse Analysis: Moving Beyond a Social Constructionist Analytic' (2021) 20 International Journal of Qualitative Methods 1, 5; Michael Foucault, *The Archaeology of Knowledge* (A M Sheridan Smith tr, Pantheon Books 1972).
[344] Michael Foucault, 'The Order of Discourse' in Robert Young (ed) *Untying the Text: The Poststructuralist Reader* (Routledge 1981) 52.
[345] ibid 52-55.
[346] Tauhid Hossain Khan and Ellen MacEachen (n 343) 5; Michael Foucault, *Power: Essential Works of Foucault 1954-1984, vol 3* (James Faubion ed, Penguin 1994) 343-345. To be explored further in the Theoretical Framework, Chapter 4.2.
[347] Carla Willig, *Introducing Qualitative Research in Psychology* (2nd edn, McGraw-Hill Education 2008) 113.

counter discourses are always possible, dominant discourse can become almost 'common sense'.[348]

So Foucauldian discourse analysis seeks to look at statements for what they do, the constitutive, political effect on norms, as opposed to seeking to revel the true meaning behind what is said.[349] Why do certain statements emerge to the exclusion of others and what function do they serve?[350] Other approaches to discourse analysis may focus on the linguistics within examples of text and language, focussing on the micro aspects, the structural, grammatical, linguistic, semiotic figures, that make up the text itself, whereas Foucauldian discourse analysis focuses on what is *made up* by the text itself.[351] Analysis may start with an interest in a particular 'problem' and explore how that problematisation is constructed: "The discourse analyst might ask: under what circumstances and by whom are aspects of human being rendered problematic? In other words, problematizations draw our attention to the material practices that render aspects of our being human thinkable, manage-able, and governable".[352] Foucauldian discourse analysis also considers the role of the institution, how institutional practice organises, regulates and administers social life: "while discourses legitimate and reinforce existing social and institutional structures, these structures in turn also support and validate the discourses".[353]

This thesis focuses on the 'problem' of homelessness, and through the theoretical lens of governmentality (to be discussed in more detail in the next chapter) explores how homelessness is thought about, managed, and

[348] ibid.
[349] Linda Graham, 'The Product of Text and 'Other' Statements: Discourse Analysis and the Critical Use of Foucault' (2011) 43(6) Educational Philosophy and Theory 663, 667.
[350] Michael Foucault, *The Archaeology of Knowledge* (n 343) 134.
[351] Linda Graham (n 349) 671.
[352] Michael Arribas-Ayllon and Valarie Walkerdine (n 342) 116.
[353] Carla Willig, *Introducing Qualitative Research in Psychology* (n 347) 113.

governed through the performance of statutory duties in local authorities. It explores how a certain discourse surrounding a way of thinking about how to govern, a discourse of neoliberalism, produces 'norms' both in the way local authorities are to behave and how the person experiencing homelessness is to behave. The examples of discourse analysed within Foucauldian Discourse Analysis are not limited to any particular kind of 'text' or 'speech', but anything where a particular object of enquiry is constituted or problematised, including: fieldnotes and interview transcripts, audio-visual documentation, policy documents, official reports, sources of law, academic or expert text, news articles, autobiographical accounts, social practice or social interaction, spatial arrangement, art and performance.[354] Indeed, the following thesis analyses a range of different examples of discourse, including legislation (the Homelessness Reduction Act 2017 itself), regulation, policy documents, local authority practice, interview transcripts, fieldnotes, training documents, case files, academic text.

Alongside Foucauldian discourse analysis, thematic analysis was used to assist in coding data and identifying themes within interviews and fieldnotes. Thematic analysis is a highly flexible data analysis method, both a method in its own right[355] but also a coding process performed within other data analysis methods.[356] Braun and Clarke's six-step approach was utilised: first familiarising myself with primary data, including transcribing interviews and noting down initial ideas; second generating initial codes within the data set, first coding interview transcripts and then applying those codes to fieldnotes (adding any additional codes identified in

[354] Michael Arribas-Ayllon and Valarie Walkerdine (n 342) 115; Linda Graham (n 349) 668.
[355] Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) Qualitative Research in Psychology 77, 78.
[356] Gery W Ryan and H Russell Bernard, 'Data Management and Analysis Methods' in Norman Denzin and Yvonna Lincoln (eds), *The SAGE Handbook of Qualitative Research* (2nd edn, SAGE Publications 2000).

fieldnotes); third searching for themes, collecting codes into potential broader themes; these themes were then reviewed at the fourth stage, including generating initial thematic 'maps' of the analysis along with my thesis supervisors; the fifth stage was choosing and constructing themes into an overall narrative and grouping themes into broader data chapters; before finally producing the thesis, selecting compelling extract examples and relating these back to the analysis of the research questions and applying the theoretical framework.[357] Although these stages are presented as distinct phases, they are not necessarily linear, with movement back and forth across phases as research develops.[358] As the transcription of interviews started before fieldwork in the second local authority was complete, stages one and two occurred on more of an ongoing basis alongside the completion of fieldwork. Stages three to five were completed and reflected upon, and themes reconstructed, several times through write up of the thesis.

The identification of initial codes and themes was neither done entirely inductively or deductively (theoretically). Initial coding was done as broadly as possible without any particular coding frame or theoretical direction (recognising however that even with the aim of a more inductive approach data cannot be coded completely free from a researchers existing knowledge and interpretations, or theoretical commitments[359]) and then at later stages when selecting which themes to include in overall write up, this was done with a more deductive approach with research questions and theoretical concepts in mind.

[357] Virginia Braun and Victoria Clarke (n 355) 86-93.
[358] ibid 86-87.
[359] ibid 84.

3.9 Conclusion

This chapter has detailed the overall research design of this thesis project, outlining how the primary research question, exploring how the Homelessness Reduction Act 2017 is implemented in local authorities, has been investigated. It justifies a rich, qualitative, ethnographic methodology, collecting a broad, diverse data set through the use of multiple methods, in order to analyse the discourses involved in governing homelessness on the frontline. Data quality was discussed, highlighting the difficulty of demonstrating quality and rigour in qualitative analysis. This chapter also includes a transparent reflexive account of my research experiences, often missing from academic report, demonstrating the emotional intensity of ethnographic research.[360] The following chapter expands on the theoretical framework adopted throughout the remainder of the thesis.

[360] Sarah Gilmore and Kate Kenny (n 328) 63 and 67; John L. Wengle, *Ethnographers in the Field: The Psychology of Research* (University of Alabama Press 1988).

CHAPTER 4 – THEORETICAL FRAMEWORK

4.1 Introduction

As indicated in Chapter 1, the Homelessness Reduction Act 2017 emerges following a period of significant welfare regression within the UK, characterised by reductions and limitations on the receipt of social security, and increased conditionality and individual responsibility. Successive legislative and policy changes have materially altered the environment of the welfare state, justified in the wake of the 2008 economic crisis by the need for reduced public expenditure and framed by a concern for "welfare dependency" and a "culture of worklessness".[361] These developments are commonly explained and critiqued through the discourse of neoliberalism. Neoliberalism is often understood as a political-economic ideology commonly associated with a particular type of politics, characterised by a shift from Keynesian welfarism, where the state provision of goods and services is understood as a means of ensuring social well-being, to a preference for a minimalist state premised on the extension of unfettered market relationships.[362] Neoliberalism can also be seen, however, as a rationality of government, based on Michael Foucault's concept of governmentality.[363] Here, the idea of government is seen in a much broader sense as being any attempt to affect the behaviour of individuals and society as a whole. Within this understanding, neoliberalism becomes a rationality which directs the conduct of the behaviour of individuals, and the way individuals conduct themselves. Under Foucault's concept of

[361] Department for Work and Pensions, 'Speech: A Welfare State Fit for the 21st Century' (Gov.UK 2014) <www.gov.uk/government/speeches/a-welfare-state-fit-for-the-21st-century> accessed 24 May 2022.
[362] Wendy Larner, 'Neo-liberalism: Policy, Ideology, Governmentality' (2016) 63(1) Studies in Political Economy 5, 5.
[363] Michael Foucault, 'Governmentality' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (Harvester Wheatsheaf 1991).

governmentality it is possible to explore how particular rationalities are embedded in practice, how a particular way of doing things is reasoned and justified.[364] While neoliberal rationality is premised on a minimalist state, that does not necessarily mean an absence of government, but instead a mixture of direct intervention by means of empowered and specialised state apparatuses, and also indirect techniques for leading and controlling individuals without at the same time being responsible for them.[365] The responsibility of social risks such as unemployment, illness, poverty, homelessness, is instead shifted to the individual as an active subject in ensuring their own wellbeing.[366] A neoliberal governmentality analysis will allow the exploration of how this shift has occurred within the specific practice of the provision of homelessness services through the implementation of the Homelessness Reduction Act 2017.

This exploration is complimented by Foucault's proposition of the exercise of power and government as a practice of normalisation. The exercise of power and control to affect the behaviour of individuals does not have repression and exclusion as its aim, but instead inclusion and normalisation of the population.[367] Through an application of this interpretation of power, individuals experiencing homelessness are identified as 'abnormal' and in need of normalisation, the ideal 'norm' being the neoliberal individual. Within the HRA 2017 itself it is possible to identify and explore its attempt to govern through normalisation, covering both the behaviour and actions of local authorities themselves as an object of government and a governing

[364] Michael Foucault, 'Questions of Method' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (Harvester Wheatsheaf 1991) 77 and 79.
[365] Thomas Lemke, 'The Birth of Bio-politics': Michel Foucault's lecture at the Collège de France on neo-liberal governmentality' (2001) 30(2) Economy and Society 190, 201.
[366] ibid.
[367] Michael Foucault, *Abnormal* (Valerio Marchetti and Antonella Salomoni ed, Graham Burchell tr, 2nd edn, Kindle edn, Verso 2016) ch 2, location 1170-1267.

body, and further the homeless individual as the governed and self-governing.

This chapter will first summarise Foucault's work on government and governmentality, outlining an understanding of power as normalisation, then tracing its link with liberal and neoliberal rationalities. It will justify why neoliberal governmentality is an appropriate framework for exploring the impact of the Homelessness Reduction Act 2017, finishing by applying an analysis of government to the legislation itself, paving the way for the remainder of the thesis to explore how the HRA 2017 is implemented on the frontline using data collected from two local housing authorities.

4.2 Government, Governmentality and Power

The theoretical approach of governmentality is attributed to a series of lectures delivered by Michael Foucault between 1977 and 1979, most notably his lecture entitled "Governmentality" delivered at the Collège de France in 1978. The approach is made up of the exploration of two key constructs: government and governmentality. The term government encapsulates the "conduct of conduct", meaning any form of activity aiming to shape, guide or affect the conduct of some person or persons.[368] The term governmentality seeks to distinguish how we think about government, the theories, ideas, philosophies and forms of knowledge that shape the exercise of authority; the particular mentalities, arts and regimes of government.[369] The construct of government, the conduct of conduct, has two aspects. It involves the exploration of actions done to lead or direct the behaviours of individuals according to a particular set of

[368] Michael Foucault, *Power: Essential Works of Foucault 1954-1984, vol 3* (James Faubion ed, Penguin 1994) 341; Colin Gordon, 'Governmental Rationality: An Introduction' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (Harvester Wheatsheaf 1991) 2.
[369] Mitchell Dean, *Governmentality* (SAGE 1999) 2 and 16.

norms, but also how individuals conduct their own conduct, how these practices guide individuals to reflect and self-regulate according to these norms.[370]

Government is concerned with the conduct of people, but also with their relations and links to all facets of life; wealth, resources, means of subsistence, the territory, climate, fertility; their relation to customs, habits, ways of acting and thinking; their relation to accidents and misfortunes such as famine, epidemics and death.[371] Given the multitude of people and relations governed, there are also a multitude of ends to such governance relating to the ultimate prosperity of citizens, including ensuring the greatest possible quantity of wealth is produced, that people have sufficient means of subsistence and sufficient means to multiply etc.[372] The idea of government as the "conduct of conduct" presupposes an element of freedom, that the governed is a free actor; individual or collective subjects endowed with bodily and mental capacities, holding the ability to choose between several ways of reacting or behaving.[373] Government and freedom are not mutually exclusive. This creates at least the opportunity or potential for resistance, for power struggle or possible reversal.[374]

For Foucault, the problem of government first explodes within the sixteenth century, reflecting the beginning of a move away from singular modes of power exercised as sovereignty.[375] Within the art of government power instead exists at many levels, where the relationship between the governor and his state is only one mode of power, the rest are internal to the state

[370] ibid 10.
[371] Michael Foucault, 'Governmentality' (n 363) 93.
[372] ibid 95.
[373] Michael Foucault, *Power: Essential works of Foucault* (n 368) 342; Mitchell Dean, *Governmentality* (n 369) 13-16.
[374] Michael Foucault, *Power: Essential Works of Foucault* (n 368) 346-348.
[375] Michael Foucault, 'Governmentality' (n 363) 87.

or society or the individual.[376] Power is not possessed, like property, it is not a privilege acquired by a dominant class and then imposed.[377] It is fluid, constantly in tension, and is exercised rather than possessed. It can influence the individual and put pressure on them to act in a certain way, but individuals can also exercise their own power in resistance.[378] In this way, the practices of government involve relationships of power between many kinds of people, examples given include the head of the family and their family members, or a teacher and their pupils.[379] Power relations are formed wherever there is action upon the actions of others, conduct of conduct, which means government does not only refer to political structures but, in a much broader sense, designates the way in which the conduct of individuals or of groups might be directed.[380] This means power relations are rooted deeply in society, not a supplementary structure over and above "society".[381] To live in society is to accept that some can act over others, making government an inevitability, a necessity.[382] To say there cannot be a society without power relations is not to say the particular power relations that are formed are necessary and cannot be challenged: the differentiations that enable power relations to be formed, the objectives pursued and methods used, the degree of rationality involved and institutions formed, can be analysed and elaborated.[383]

Within Foucault's conception of government, the state is recast, not as a body imposing power down on subjects in a hierarchical structure, but as part of a system of power relations.[384] Yet that does not mean it should be

[376] ibid, page 91.
[377] Michael Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, 2nd edn, Vintage Books 1995) 31-32.
[378] ibid 32.
[379] Michael Foucault, 'Governmentality' (n 363) 91.
[380] Michael Foucault, *Power: Essential Works of Foucault* (n 368) 338 to 341; Michael Foucault, *Discipline and Punish* (n 377) 32.
[381] Michael Foucault, *Power: Essential Works of Foucault* (n 368) 343.
[382] ibid 343.
[383] ibid 343-345.
[384] ibid 345.

seen simply as only one instance of the exercise of power. He asserts that while power relations are diffuse, in contemporary society all power relations ultimately refer back to the state and its particular institutions, not because they are derived from it, but because power relations have come more and more under state control, more governmentalised.[385] It is the necessary task of government to find a particular form of governing that applies to the state as a whole, to permeate all levels of power relation.[386]

For Foucault, government of individuals is achieved through an exercise of power understood as an exercise of normalisation.[387] His exposition of how power is conceptualised and exercised as normalisation can be found in lectures delivered at the Collège de France in January 1975 - March 1975, where he suggests that prior to his own analysis, the evaluation of power as a means of controlling behaviour is generally done through the conceptualisation of power as fundamentally repressive and exclusionary.[388] Power exercised over "the mad, criminals, deviants, children and the poor" has as its effect "exclusion, disqualification, exile, rejection, deprivation, refusal and incomprehension" which is ultimately negative.[389] Foucault suggests however that an alternative model of control had reactivated and spread at the end of the seventeenth century and beginning of the eighteenth century, which has enjoyed much wider and longer success.[390] This alternative model presents the exercise of power as inherently positive with the ultimate aim of inclusion. Power is instead exercised through techniques of observation, monitoring, formation of

[385] ibid 345.
[386] Michael Foucault, 'Governmentality' (n 363) 91 and 92.
[387] Michael Foucault, *Abnormal* (n 367) location 1267.
[388] ibid location 1188.
[389] ibid location 1188.
[390] ibid location 1194.

knowledge - techniques of discipline – with the aim of 'normalisation' of the population.[391]

The act of discipline involves a normalising judgment – the establishment of a series of rules with which the individual must conform, and a corresponding punishment.[392] Punishment for non-conformity should, however, be a last resort, with the aim of reducing gaps and correcting non-conformity, in this way discipline becomes inclusive rather than exclusive.[393] These rules offer a minimum threshold, an optimum that an individual must move towards, creating a norm by which people will be compared and differentiated against.[394] The further away an individual operates from that norm, the more 'abnormal' they become, justifying a correcting discipline and punishment. "In a sense, the power of normalization imposes homogeneity; but it individualizes by making it possible to measure gaps".[395]

The exercise of discipline necessitates mechanisms of observation, to render the individual visible and to facilitate a control on conduct, "to carry the effects of power right to them, to make it possible to know them, to alter them".[396] For Foucault techniques of observation and normalising judgment are combined to create an 'examination' of the individual – "It is a normalizing gaze, a surveillance that makes it possible to qualify, to classify and to punish. It establishes over individuals a visibility through which one differentiates them and judges them".[397] The examination of individuals places them within surveillance that also situates them in a network of administrative documentation and registration. An individual

[391] ibid location 1261 and 1279.
[392] Michael Foucault, *Discipline and Punish* (n 377) 172.
[393] ibid 169.
[394] ibid 172.
[395] ibid 174.
[396] ibid 161-162.
[397] ibid 174.

becomes a 'case' by which they may be "described, judged, measured, compared with others, in his very individuality; and it is also the individual who has to be trained or corrected, classified, normalized, excluded, etc".[398]

An example given to elucidate Foucault's understanding of power as normalisation (replicated later in Discipline and Punish: the birth of the prison)[399] contrasts the historical exclusion of lepers in the mid seventeenth century and the inclusion and regulation of plague victims.[400] Lepers are identified as abnormal and therefore separated and excluded from society. Plague victims by contrast were not excluded but instead subjected to regulatory regimes of discipline, constant surveillance, supervision of behaviour, record keeping, with the aim of inclusion.[401] The 'abnormal' can no longer simply be excluded if the population as a whole is to strive and prosper, health needs to be maximised for the greatest production of wealth.[402] There is no longer a binary upon which to divide, inclusion or exclusion, but a spectrum of scrutiny of individuals from normal through to varying degrees of abnormal, with power exercised as regulation and observation in order to 'normalise' and reintegrate. Instead of societies being 'purified' and individuals who create a threat to society marginalised, they are subject to "a field of regularity" where they are constantly assessed to determine whether they conform to the ideal norm (which in the case of the plague is a healthy subject).[403] These techniques of power can be transferred to all societal institutions, from the family to

[398] ibid 181.
[399] ibid 184-188.
[400] Michael Foucault, *Abnormal* (n 367) location 1176-1279.
[401] ibid location 1176-1279; Michael Foucault, *Discipline and Punish* (n 377) 184-188.
[402] Michael Foucault, *Abnormal* (n 367) location 1232 and 1261.
[403] ibid location 1237.

state institutions, permeating all aspects of everyday life and develops what Foucault terms the "art of government".[404]

The exercise of government and the power of normalisation presumes it is possible to regulate and control behaviour, which means it also presumes a rationality, some deliberation about how to govern. To discuss the specific objectives or rationalities of practices of government moves into thinking about government, the objects and borders of government, the arguments and justifications for government, which in its general sense is termed governmentality.[405] The government of individuals and the government of the self draws upon a body of knowledge and expertise, theories, ideas and philosophies about our existence and the nature of human beings, who and what are to be governed.[406] This is also true of any attempt of normalisation, the 'norm' by which individuals are to be compared is to be drawn from such knowledge and expertise, theories, ideas and philosophies. Governmentality is therefore a collective activity in the sense that the way we think about exercising authority, power, comes from the bodies of knowledge, belief and opinion in which we are immersed, are a part of our culture and society.[407]

Government employs a variety of tactics and technologies for embedding these rationalities into the shaping of conduct. These technologies include agencies, procedures, administration, institutions, law and statistics.[408] They are implemented within an apparatus of security including armies, police forces, intelligence services, along with health, education, and social welfare systems and mechanisms of the management of the national economy.[409] An analysis of government is concerned with how these

[404] ibid location 1267.
[405] Thomas Lemke (n 365) 191.
[406] Mitchell Dean, *Governmentality* (n 369) 16-19.
[407] ibid 16.
[408] Thomas Lemke (n 365) 191.
[409] Mitchel Dean, *Governmentality* (n 369) 20.

rationalities and techniques operate within regimes of practice, examining how forms of rationality inscribe themselves in practices and what role they play within them, how a particular way of doing things is justified and reasoned.[410]

4.3 The Development of Governmentality and the Economy

4.3.1 Government and the Economy

Foucault also described governmentality as a relationship to other forms of power, namely: sovereignty and discipline.[411] Sovereignty has its history in monarchical rule, later democratised by liberal and democratic states, characterised by constitutions, laws and parliaments with power exercised over subjects through juridical and executive arms of the state.[412] Discipline, on the other hand, is concerned with power over and through the individual, with its history in monastic, military and educational practices.[413] Governmentality recasts these concepts within the eighteenth century where, with a demographic expansion, governmental practice encountered the problems of a group of living humans constituted as a population: health, sanitation, birth-rate, longevity, race etc., the rationality of these problems Foucault termed "Biopolitics".[414] Statistics gradually revealed that population has its own regularities, its own rate of deaths and diseases, cycles of scarcity etc.[415] In response, population appears above all else as the ultimate end of government, the welfare of

[410] Michael Foucault, 'Questions of Method' (n 364) 77 and 79.
[411] Michael Foucault, 'Governmentality' (n 363) 102.
[412] Mitchell Dean, *Governmentality* (n 369) 19; Michael Foucault, 'Governmentality' (n 363) 94-95 and 98.
[413] Michael Foucault, *Discipline and Punish* (n 377) 130.
[414] Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault 1954-1984, vol 1* (Paul Rabinow ed, Penguin 2000) 73.
[415] Michael Foucault, 'Governmentality' (n 363) 99.

the population, the improvement of its conditions, the increase of its wealth etc.[416] Sovereignty and discipline however do not become obsolete with the art of government, quite the opposite, both becoming more acute at the moment when it became important to manage a population.[417] Government did not replace sovereignty and discipline but becomes a triangle of sovereignty-discipline-government, with the population as its primary target.[418]

In order for the population to be the object of all actions of government, it must be inseparable from the knowledge of all the processes that relate to population in its larger sense: the economy.[419] For Foucault, the art of government becomes the art of exercising power in the form and according to the model of the economy.[420] Knowledge, theories, ideologies about the economy become the way in which government is thought about and put into practice. For Foucault governmentality becomes "the ensemble formed by institutions, procedures, analysis and reflections, the calculations and tactics that allow the exercise of this […]complex form of power, which has as its target the population, as its principle form of knowledge the political economy".[421]

4.3.2 Liberalism to Advanced Liberalism

Foucault asserts that the problem of population appears within the framework of the political rationality of liberalism. Within the framework of liberalism, a system which is anxious for the respect of its legal subjects and to ensure the free enterprise of individuals, how can the population be

[416] ibid 100.
[417] ibid 101-102.
[418] ibid 102.
[419] ibid 100.
[420] ibid 92.
[421] ibid 102.

managed?[422] He analyses liberalism as a principle and method of rationalising the exercise of government. Under liberalism, government is not its own end, but instead, government aims for maximum economy.[423] Economic analysis demonstrated a basic incompatibility between the optimal development of the economic process and a maximisation of governmental procedures.[424] The market represents a test from which we can monitor the effects of excessive governmentality and should be placed at the limit of governmental action.[425] The aim of maximum economy should therefore be achieved with a constant critique of the practice of government, asking why one must govern and whether the means sought to achieve its effects are possible and lawful.[426] Political subjects are seen as individuals with rights, desires, needs and interests that cannot be dictated by the state.[427] Such rights and liberties are necessary to the operation of the autonomous processes of the economy, population and society and therefore should be protected through limited government, only intervening when it is necessary to ensure the security of those processes.[428] Liberalism therefore starts from the proposition that one always governs too much, or at least must suspect one is governing too much.[429]

In answering the question as to why governing is necessary at all, liberalism finds that answer in "society".[430] It is on the behalf of society that one will determine why there has to be government, to what extent it can be dispensed with, and in which cases it is needless or harmful to

[422] Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault* (n 414) 73.
[423] ibid 74.
[424] ibid 76.
[425] ibid 76.
[426] ibid 74-75.
[427] Mitchell Dean, *Governmentality* (n 369) 50.
[428] ibid 51.
[429] Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault* (n 414) 74.
[430] ibid 75

intervene.[431] In the nineteenth and early twentieth century a number of disciplines began to criticise liberal government, demonstrating that economy is only self-regulating within certain parameters, showing the insecurity of a population affected by unemployment, poor hygiene, pauperism, sickness and old age.[432] This critique of government and risk to the population justified the formation of the social; to forms of social provision, agents, specialists and institutions; to public schools, juvenile courts, government departments, unemployment exchanges, social insurance.[433] From the social a specific rationality of government emerged known as welfarism.[434] The 'welfare state' was to be the end goal of particular intervention and practices concerning unemployment, old age, disability, sickness, public education and housing, health administration, and the norms of family life.[435] A key technology of government regulating these interventions is the law. Regulation through the juridical form appeared as the most effective tool in that the law defines forms of general intervention excluding particular, individual or exceptional measures, and, because the participation of the governed in the formulation of the law in a parliamentary system, constitutes the most effective system of governmental economy.[436]

Liberalism is therefore a constant balancing act between excessive government and a social government, between economic norms and biopolitical norms.[437] Liberalism must find a set of political norms which balance the competing imperatives of a knowledge of the processes that constitute the health, happiness, and wellbeing of the population, with the

[431] ibid.
[432] Mitchell Dean, *Governmentality* (n 369) 52.
[433] ibid 52-53.
[434] ibid 54.
[435] ibid 55.
[436] Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault* (n 414) 76-77.
[437] Mitchell Dean, *Governmentality* (n 369) 50 and 55.

knowledge of economic processes, whereby excessive interference can endanger the security of the economic processes on which the material wellbeing of the population depends.[438]

Rather than being a coherent doctrine or a politics pursuing a number of defined goals, liberalism is a critique of governmental practice.[439] The core of liberal rationality is a tool for critiquing the reality of a previous governmentality, of a current governmentality, whose abuses it tries to limit.[440] Liberalism can therefore be found in different forms as a regulative scheme of governmental practice.[441] Foucault describes this reflection on liberalism as an analysis of governmental reason, that is the types of rationality which are brought into play in the methods by which human behaviour is directed via a state administration.[442] He attempts to demonstrate this further with contemporary examples at the time of his lectures, German post-war Ordo-liberalism, and the American liberalism of the Chicago School, the early developments of neoliberal rationality (also termed advanced liberalism).[443] Neoliberalism is a form of political economy which applies a particular form of economic rationality to the welfare state.

Ordo-Liberalism originates from members of the 'Freiburg School' who published in the journal Ordo.[444] They play a substantial role in devising the 'social market economy'. Ordo-liberalism recognises the threat to liberty of state intervention yet holds that the market can only be constituted and kept alive by organisation within an institutional and

[438] ibid 50.
[439] Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault* (n 414) page 77.
[440] ibid 75.
[441] ibid.
[442] ibid 77.
[443] ibid 77.
[444] ibid 78.

juridical framework.[445] The market itself, and competition, are not naturally occurring, instead needing the practice of government through the guarantees and limitations of law to ensure that freedom of economic process did not cause social distortion.[446] Ordo-liberalism considers the regulation of prices by the market to be so fragile in itself that it must be supported, managed by an internal policy of social interventions involving assistance to the unemployed, health care coverage, a housing policy etc.[447] The Ordo-liberals therefore replace the conception of the economy as an autonomous domain, with a concept of 'economic order' as an object of social intervention and political regulation.[448] This intervention however is still to be set on a basis of economic liberty.

The neo-liberalism of the Chicago School also opposed state interventionism in the name of economic liberty, criticising the uncontrolled growth of bureaucratic apparatuses and the threat to individual rights.[449] However, by contrast to the Ordo-liberals, social policy interventions represent excessive government.[450] The Chicago School's approach seeks instead to expand the rationality of the market, the scheme of analysis it proposes and the decision making criteria it suggests, into areas that are not exclusively or primarily economic; into the social sphere.[451] While the Ordo-Liberals pursued the idea of governing society in the name of the economy, the US neo-liberals attempt to redefine the social sphere as a form of the economic domain.[452] The economy is no longer one social domain among others with its own rationality and laws, but instead the area covered by the economy embraces the entirety of human action and

[445] ibid.
[446] ibid; Thomas Lemke, (n 365) 193.
[447] Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault* (n 414) 79.
[448] Thomas Lemke (n 365) 194.
[449] ibid 197.
[450] Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault* (n 414) 78.
[451] ibid 79.
[452] Thomas Lemke (n 365) 197.

behaviour.[453] This allows governmental practices to be evaluated by a means of market concepts, to show whether they are excessive or entail abuse, thereby limiting government action and returning to a technology of 'frugal government'.[454]

Foucault suggests classic liberalism and neoliberalism differ on two key points, the first being the re-definition of the relation between the state and the economy, where under neoliberal rationality the state no longer defines and monitors market freedom, the market itself is the organising and regulative principle underlying the state.[455] The state is controlled by the market rather than the market supervised by the state.[456] The second difference comes from the justification for government. Under neoliberalism, market criteria can be applied to decision making processes within the social domain (family life, married life, professional life etc), thereby making the individual an economic individual who rationally calculates costs and benefits. This still ties the rationality of government to the individual and the social as in classic liberalism, but the point of reference for the individual is not a pre-given human nature and natural freedom, but an artificially created form of entrepreneurial and competitive behaviour of economic-rational individuals.[457]

4.3.3 Contemporary Neoliberalism

While today there is no single unified understanding of neoliberalism, the key tenets of contemporary neoliberalism in the UK has taken more from the Chicago School approach than the German Ordo-liberals. Its emergence in the UK is most notably associated with the political agenda of

[453] ibid 197-198.
[454] ibid 198; Michael Foucault, *Ethics: Subjectivity and Truth: Essential Works of Foucault* (n 414) 77.
[455] Thomas Lemke (n 365) 200.
[456] ibid 200.
[457] ibid 200.

Thatcherism from 1979, influenced by the market-oriented philosophy of the World Bank and the International Monetary Fund.[458] The agenda referred to centres around the ultimate goal of complete individual freedom and the structure best placed to guarantee that freedom is deemed to be the free market. Neoliberal policy agendas are therefore directed towards the privatisation of goods and services and freeing up the market through deregulation, in particular deregulation of capital markets by loosening or abolishing controls over banking, currency exchange and capital movement.[459] For individuals to be free, their right to freedom of action, expression and choice must be protected within the market, so competition – between individuals, between firms, between territorial entities (cities, regions, nations) – is a primary virtue.[460] Privatisation and deregulation combined with competition is said to eliminate bureaucratic red tape, increase efficiency and productivity, thereby reducing costs and improving the quality of services delivered.[461] To just unbind existing markets however is not sufficient. Contemporary neoliberalism adopts the economic expansion of the Chicago school, creating markets where they did not exist before, leading to a strategy not just of deregulation but one of commodification. Needs formerly met by public agencies on the principle of citizen rights are now met by private companies selling services in a market.[462] State intervention can only do harm, obstructing the private market and therefore individual freedoms, so neoliberal politics is also characterised by the withdrawal of state intervention in welfare and mass social programmes.[463] This is justified under the assumption that 'a rising tide lifts all boats', or of a 'trickle down' effect, holding that the elimination

[458] Jamie Peck, *Constructions of Neoliberal Reason* (OUP 2010) 1 and 2.
[459] Raewyn Connell, 'Understanding Neoliberalism' in Susan Braedley and Meg Luxton, *Neoliberalism and Everyday Life* (McGill-Queen's University Press 2010) 23.
[460] David Harvey, *A Brief History of Neoliberalism* (OUP 2007) 65.
[461] ibid.
[462] Raewyn Connell (n 459) 23.
[463] Mitchell Dean, 'Rethinking Neoliberalism' (2014) 50(2) Journal of Sociology 150, 152.

of poverty (both domestically and worldwide) can best be achieved through free markets and free trade.[464] If however individual freedom is guaranteed, individual agency and capacity to participate in the market presumed, then the consequence is that each individual is held responsible and accountable for their own actions and wellbeing. Individual success or failure is deemed to be personal rather than attributable to any systemic or structural property.[465] Overall, neoliberalism can be seen to rest on five key values: the individual; freedom of choice; market security; laissez faire, and minimal government.[466]

Despite its identifiable key tenets, and common associations with particular political points in time, neoliberalism, like classical liberalism, has been recognised to be dynamic and even contradictory, rather than static and taxonomic.[467] It is alleged to comprise of "double truths", truths that can be expressed differently depending on the audience for whom it is intended.[468] Thatcherism has been recognised for its ability to articulate the interests of a wide range of groups, intertwining "pure" neoliberal ideology premised on the individual and the free market, with more traditional conservative ideology based on family and nation.[469] There is no simple relationship between neoliberal ideology and a particular political programme or public policy framework; close inspection of neoliberal projects are more likely to reveal a complex and hybrid political imaginary rather than the straightforward implementation of a unified and coherent philosophy.[470] It is suggested that the "neo" in neoliberalism represents

[464] David Harvey (n 460) 64 and 65.
[465] ibid 65-66.
[466] Andrew Belsey, 'The New Right, Social Order and Civil Liberties' in Ruth Levitas (ed), *The Ideology of the New Right* (Polity Press 1996).
[467] Jamie Peck (n 458) 19 and 20.
[468] Mitchell Dean, 'Rethinking Neoliberalism' (n 463) 153.
[469] Stuart Hall, 'The Toad in the Garden: Thatcherism Among the Theorists' in Cary Nelson and Lawrence Grossberg (eds), *Marxism and the Interpretation of Culture* (Macmillan Education 1988).
[470] Wendy Larner (n 362) 11 and 12.

both a historical and ideological positioning after nineteenth century liberalism, but is also suggestive of a project that undergoes renewal and reinvention.[471]

As suggested above, neoliberalism's origin in the UK is often attributed to the late 70's, yet its critique of the welfare state remain as a guiding influence through different compositions of government to the present, undergoing periods of renewal. It has been suggested that neoliberalism was partially interrupted by the 'quiet redistribution' of the New Labour years.[472] Yet clear focus on individual responsibility and concern for welfare dependency due to state intervention feature prominently in the Labour governments legislative agenda, balancing sticks (sanctions) and carrots (work incentives) within the social security framework.[473] This is demonstrated well through New Labour's 'New Deal' schemes, further developed by the Welfare Reform Act 2009, combining work incentives, compulsory training and work-related programmes for young people, the long-term unemployed, single parents, and those in receipt of sick/disability benefits, with benefit sanctions for noncompliance with programme requirements.[474] All individuals are to be treated as part of the economically active population.[475]

Peck has further suggested that neoliberalism lost one of its nine lives in the financial crash of 2008 - the economic policies which loosened the controls over banking, currency exchange, and capital movement,

[471] Jamie Peck (n 458) 20.
[472] Grainne McKeever and Mark Simpson, 'World of Welfare Collide: Implementing a European Unemployment Benefit Scheme in the UK' (2017) 19(1) European Journal Social Security 21, 25; Ruth Lister, 'Doing Good by Stealth: The Politics of Poverty and Inequality Under New Labour' (2001) 8(2) New Economy 65.
[473] Anne Daguerre and David Etherington, 'Workfare in 21st Century Britain' (Working Paper, workfare.org 2014) < http://workfare.org.uk/images/uploads/docs/Workfare_in_21st_century_Britain-Final.pdf> accessed 24 May 2022, 23.
[474] ibid 24 to 31.
[475] ibid 29.

attracting blame for the crisis – yet it has survived intact. [476] The argument is now how to make the free market work better, not what could replace it.[477] Neoliberal ideals of minimalist state intervention combine with the desire to reduce public expenditure in the wake of the financial crash, prompting a series of policy measures post-2010 which materially alter the composition of the welfare state. Measures such as the benefit cap, the bedroom tax, the two-child tax credit limit, the introduction of Universal Credit, the reduction of local housing allowance, the freeze on benefits, changes to entitlement and reassessment of disability benefit, claimant commitments and benefit sanctions, all combine to effect a retrenchment of the welfare state through reduced entitlement, increased conditionality and punitive enforcement, increased individual responsibility. Restrictions on benefit entitlement and increases in conditionality and sanctioning are justified in policy discourse, spear headed by key figures such as Ian Duncan Smith, the Secretary for Work and Pensions at the time, through a renewal of behavioural explanations of poverty. Neoliberal ideals of individual responsibility are entwined with the notions of an "underclass" society where poverty is identified by a particular type of individual.[478] Derived from the narratives of Charles Murray and Lawrence Mead, the underclass are represented by individuals who - due to the generosity of state interventions – lose their sense of responsibility, their habits of work and self-help, creating a benefit dependency that passes between generations.[479] Based on rational economic thought, these individuals claim

[476] Jamie Peck (n 458) 8.
[477] Raewyn Connell (n 459) 22.
[478] Department for Work and Pensions, *21st Century Welfare* (Cm 7913, 2010); and Department for Work and Pensions, *Universal Credit: Welfare That Works* (Cm 7957, 2010); Department for Work and Pensions, 'Speech: A Welfare State Fit For The 21st Century' (n 361).
[479] Simon John Prideaux, 'The Welfare Politics of Charles Murray Are Alive and Well in the UK' [2009] International Journal Social Welfare 293; Paul Michael Garrett, 'Words Matter: Deconstructing 'Welfare Dependency' in the UK' (LSE 2019) <https://blogs.lse.ac.uk/politicsandpolicy/%EF%BB%BFwords-matter-deconstructing-welfare-dependency-in-the-uk/> accessed 24 May 2022.

social security as it is a better option than work, it is more secure and attractive than employment.[480] Through this kind of discourse, state intervention through social security systems becomes the direct cause and persistence of poverty, rather than a solution to insecurity and need related to business cycles or regional imbalances in employment demand.[481]

Since the late seventies housing policy has been subjected to the same neoliberal influence, placing housing firmly within the economic sphere. Housing becomes a commodity instead of a social necessity. In the year of Thatcher's election, the public rented housing stock stood at roughly 6.5 million homes, providing the cornerstone for the post-war government commitment to meet housing need and regulate the private sector.[482] However, as outlined in the Introduction Chapter, housing has become increasingly privatised, through a residualisation of social housing and increased reliance on the private rented sector. Intervention by the state as a supplier of housing distorts housing markets, so instead key neoliberal influencers such as the World Bank encouraged the adoption of policies to enable housing markets to work without state intervention.[483] This has led to the creation programmes which support housing finance systems to promote homeownership, and the private housing market become the primary mechanisms for allocating housing solutions.[484] Policies such as the right to buy scheme, where public housing can be purchased by tenants, both increase homeownership while decreasing the states' role in the

[480] Jay Wiggan, 'Telling Stories of 21st Century Welfare: The UK Coalition Government and the Neo-liberal Discourse of Worklessness and Dependency' (2012) 32(3) Critical Social Policy 383, 389
[481] ibid.
[482] Stuart Hodkinson, Paul Watt and Gerry Mooney, 'Introduction: Neoliberal Housing Policy – Time for a Critical Re-appraisal' (2012) 33(1) Critical Social Policy 3, 4.
[483] World Bank, 'Housing: Enabling Markets to Work: A World Bank Policy Paper' (World Bank 1993) <https://elibrary.worldbank.org/doi/epdf/10.1596/0-8213-2434-9> accessed 24 May 2022, 6.
[484] Raquel Bolnik and Lidia Rabinovich, 'Late-neoliberalism: The Financialisation of Homeownership and the Housing Rights of the Poor' in Aoife Nolan (ed), *Economic and Social Rights After the Global Financial Crises* (CUP 2014) 60.

market and its expenditure.[485] The potential impact on homelessness and housing provision of neoliberal welfare reform such as the benefit cap, bedroom tax, the introduction of universal credit and changes to local housing allowance is also self-evident, having a direct impact on the ability for low income households to secure or retain accommodation.[486]

4.3.4 Neoliberalism as Governance

While the most common understanding of neoliberalism is its conceptualisation as a policy framework, Wendy Larner asserts that characterising neoliberalism solely in this manner risks under-estimating the significance of contemporary transformations in governance: "Neo-liberalism is both a political discourse about the nature of rule and a set of practices that facilitate the governing of individuals from a distance".[487] While neoliberalism means less Government, problematising the state and specifying its limits through the invocation of individual choice, it does not follow that there is less government of the population encouraging both institutions and individuals to conform to the norms of the market.[488] Neoliberal critique tends to focus on arguments over the success or otherwise of policy programmes, advocating for a reform of the policy agenda to return to the more protectionist stance associated with Keynesian welfarism.[489] Larner suggests that while accounts of neoliberalism as policy serve a useful purpose in terms of elaborating the consequences of welfare state restructuring, they do not go far enough in exploring how the phenomena of welfare state restructuring is achieved.[490]

[485] ibid 61.
[486] Suzanne Fitzpatrick, Hal Pawson, Glen Bramley, Steve Wilcox, Beth Watts and Jenny Wood, *The Homelessness Monitor: England 2018* (Crisis 2018) 35.
[487] Wendy Larner (n 362) 6.
[488] ibid 12.
[489] ibid 8.
[490] ibid 9.

An analysis of neoliberal governmentality considers how the mentality of neoliberalism is reflected and operates in regimes of practice, how individuals are governed, and how they self-govern, through the mentality of neoliberalism. It demonstrates how social policy reform incorporates neoliberal strategies of rule which encourages people to see themselves as "individualised and active subjects responsible for enhancing their own well-being".[491] The neoliberal agenda for the 'withdrawal of the state' is viewed as a technique for government, where the state does not completely lose powers of regulation and control but instead redirects regulatory competence onto responsible and rational individuals.[492] It becomes possible to explore the procedures and apparatuses that seek to give effect to this governance.[493] Neoliberalism as a political rationality can be explored, allowing the questioning of those who would exercise rule on the reasons, justifications, means and ends of that rule.[494]

The final section of this chapter will apply an analysis of government and neoliberal governmentality to the Homelessness Reduction Act 2017. Law is a key technology of government within liberalism, providing a far-reaching method of general intervention, and offering insight into the governing rationale of the state. The extent to which the HRA 2017 effects a neoliberal rationality within its provisions will be explored, determining whether it conforms or departs from the existing trends identified within housing and broader welfare policy. Within the neoliberal rationality reflected in broader housing and welfare policy an individual is able to independently maintain successful housing market participation, by sustaining accommodation or exercising an ability to find alternative

[491] ibid 13.
[492] Thomas Lemke (n 365) 201-202.
[493] Nikolas Rose, 'Governing "Advanced" Liberal Democracies' in Andrew Barry, Thomas Osborne and Nikholas Rose (eds), *Foucault and Political Reason* (UCL Press 1996) 41.
[494] ibid 42.

accommodation that is within their means if needed. The neoliberal individual does not rely on social housing, or if they do this is a temporary measure until they can participate within the private market, with the ultimate aspiration of home ownership. Experiencing homelessness or the threat of homelessness (in any of a variety of forms, from rough sleeping to a private rented sector eviction) represents a divergence from this norm, an inability to successfully navigate the housing market, it is an 'abnormal' behaviour in need of discipline and correction. The below section will create the framework for the assertion that the HRA 2017 is in fact a tool in the exercise of power as normalisation, with the neoliberal individual as the target norm. Analysing the HRA 2017 itself also provides a springboard onto the remainder of the thesis which will analyse the practices of local housing authorities tasked with implementing that legislation at the level of the individual.

4.4 Neoliberal Governmentality and the Homelessness Reduction Act 2017

On its face the HRA 2017 appears to completely contradict neoliberal ideals for the withdrawal of the state by creating new, and expanding existing, duties on local housing authorities towards homeless applicants, a direct measure of state intervention when individuals and households struggle to maintain accommodation within the housing market. The expanded prevention duty, to take reasonable steps to help the applicant keep their home, and the new relief duty, to take reasonable steps to help the applicant secure new accommodation, are both owed to all who are threatened with homelessness or homeless, and eligible for assistance.[495] While meeting the statutory definitions of homelessness and the

[495] Housing Act 1996, s 195 and s 189B.

requirements for eligibility are both barriers to triggering those duties, other barriers, in the form of priority need and intentionality assessments that were also required to access any meaningful assistance before the HRA 2017 (in the form of the main housing duty) have been removed, opening up access to services and local authority resources.

It is not only local housing authorities who have experienced an increase in responsibility, but, under the new duty to refer, other specified public authorities have a role in preventing homelessness through an obligation to refer those they believe are homeless or threatened with homelessness to the local housing authority.[496] This aims to encourage public bodies to cooperate and work together in identifying and preventing homelessness, rather than working in silos.[497]

The requirement to identify the housing needs and support needs of applicants when assessing an applicant's case[498] further accepts local authorities have an obligation to identify and measure the needs of local individuals, and it is suggested in the Homelessness Code of Guidance that authorities should prioritise funding for the provision of services and partnerships to meet these needs.[499] These provisions make the HRA 2017 stand out from within the swathe of recent policy measures discussed above which reduce the role of the state, and run directly counter to the idea that the individual should be responsible for their own participation (or lack of participation) in the market. This raises the question of whether homelessness is an exception to neoliberal rationality? Looking beyond the

[496] Housing Act 1996, s 213B.
[497] Department for Communities & Local Government, 'Policy Fact Sheet: Duty of Public Authority to Refer Cases to Local Housing Authority' (Gov.UK 29 November 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/573129/161128_-_Policy_Factsheets_-_Duty_to_Refer.pdf> accessed 24 May 2022.
[498] Housing Act 1996, s 189A.
[499] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (Gov.UK last updated 22 March 2022) <www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-4-the-duty-to-refer-cases-in-england-to-housing-authorities> accessed 24 May 2022, para 11.21.

surface however, it becomes very clear that the HRA 2017 is still a tool for effecting a neoliberal rationality of government, attempting to normalise individuals experiencing homelessness as a neoliberal individual who is able to participate successfully in a neoliberal housing market.[500]

One of the ways in which it is possible to bring the prevention and relief duties to an end is through the securing of suitable accommodation for at least six months, either by the applicant themselves or by the local authority (which is under no obligation to offer accommodation under these duties).[501] The use of the six month period reflects a common practice within the private rented sector to offer six month assured shorthold tenancies, which is a clear indication from the HRA 2017 that the private rental market is expected to be the primary method of alleviating homelessness in these early stages of intervention. Bevan suggests some authorities were already planning on offering accommodation within the private sector to all homeless applicants owed a duty back when the Localism Act 2011 made it possible to discharge the main housing duty with a 12 month assured shorthold tenancy.[502] With a general undersupply of housing,[503] this being particularly acute within the social housing sector demonstrated by approximately 1.16 million people on council waiting lists for social housing on 1st April 2019,[504] and Shelter estimating 3.1 million

[500] This has already been explicitly asserted by Dave Cowan in: Dave Cowan, 'Reducing Homelessness or Re-ordering the Deckchairs?' (2019) 82(1) Modern Law Review 105. This analysis provides some further expansion and exemplification.
[501] Housing Act 1996, s 189B(7)(a) and s 195(8)(a) and s 205(3).
[502] Chris Bevan, 'The Localism Act: The Hollow Housing Law Revolution' (2014) 77(6) Modern Law Review 964, 971.
[503] Wendy Wilson and Cassie Barton, 'Research Briefing: Tackling the Under-Supply of Housing in England' (CBP 7671, House of Commons Library 04 February 2022) <https://commonslibrary.parliament.uk/research-briefings/cbp-7671/> accessed 24 May 2022.
[504] Ministry of Housing Communities & Local Government, 'Local Authority Housing Statistics: Year Ending March 2018, England' (Gov.UK 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773079/Local_Authority_Housing_Statistics_England_year_ending_March_2018.pdf> accessed 24 May 2022.

new social homes would be needed to meet demand,[505] it is clear that even if local authorities wanted to provide in the social sector it is not possible to rely on this method of provision alone. This effects the residualisation of social housing even further, where even within a group deemed high in social need, it will not be commonplace to address this need through provision of social housing.

As it is expected that individuals and families would be forced to rely increasingly on short term tenancies in the private sector, there is increased concern that this will result in people experiencing a revolving door of homelessness with repeated loss of several different tenancies over a short period of time.[506] This is evidenced by local authority social housing allocation schemes which offer an increased chance on social housing waiting lists to obtain a property if the applicant first satisfies their housing need within the private rented sector, Bracknell Forest council offering their second highest priority banding to those who have avoided homelessness a shocking five times or more since being on the Housing register by securing alternative private rented accommodation.[507] It is not currently possible within national level data reported on homelessness applicants to track the incidences of repeat application, yet it is entirely possible that a revolving cycle of repeat homelessness and precarious housing conditions are becoming normalised with the HRA 2017.

[505] Shelter, 'A Vision for Social Housing' (Shelter 2019) <https://england.shelter.org.uk/support_us/campaigns/a_vision_for_social_housing> accessed 24 May 2022.
[506] For concern expressed with the introduction of 12 month tenancies under the Localism Act 2011 see Chris Bevan, ''The Localism Act: The Hollow Housing Law Revolution' (2014) 77(6) Modern Law Review 964, 971-972.
[507] Bracknell Forest Council, 'Bracknell Forest Council Allocations Policy' (date unknown) <http://democratic.bracknell-forest.gov.uk/mgconvert2pdf.aspx?id=17139> accessed 24 May 2022, 14. Since the time of writing Bracknell have revised their policy but this criteria still remains: Bracknell Forest Council, 'Bracknell Forest Council Housing Allocations Policy' (revised April 2021) <www.bfcmychoice.org.uk/Data/Pub/PublicWebsite/ImageLibrary/Housing%20Allocations%20Policy%20revised%20April%202021.pdf> accessed 24 May 2022, 15.

Dave Cowan further comments that, through its reliance on the private rented sector, the HRA 2017 brings the private sector further within the practices of government.[508] Despite some limited price control on the sector through LHA, the prevailing rhetoric has been that the private rented sector has grown due to deregulation, and yet offers of private rented sector accommodation to homeless households are subject to strict suitability requirements,[509] subjecting the sector to a considerable amount of re-regulation over and above that ascribed to non-homeless households.[510] This creates a risk that private landlords will opt not to provide to homeless households in order to avoid such regulation.

The HRA 2017 also embarks on a project of individual responsibilisation. Despite the new duties on local authorities there are provisions within the HRA 2017 which divert or share responsibility for alleviating homelessness with the homeless individual. The first of these is through the expanded duty to provide advisory services, which now contains further specificities on exactly what information must be provided and requires services to be designed to meet the needs of certain groups (including care leavers, victims of domestic abuse, former members of the armed forces, persons leaving hospital or released from prison, and persons suffering from mental illness). While expanded detail on the extent of the duty, and a requirement for specialised advice is certainly positive, it is suggested by policy factsheets published by the then Department for Communities & Local Government that the provision of such advice is important in enabling households to help themselves and seek their own support or solutions to resolve their own situation.[511] As this duty is available to all individuals

[508] Dave Cowan (n 500) 125.
[509] Homelessness (Suitability of Accommodation) (England) Order 2012, SI 2012/2601.
[510] Dave Cowan (n 500) 125.
[511] Department for Communities and Local Government, 'Policy Fact Sheet: Duty to Provide Advisory Services' (Gov.UK last updated 22 February 2018)

within the local authority without restriction it is suggestive to households that their first option should be to resolve their situation without the assistance of further local authority resources. Taken alone, this is unlikely enough to establish a narrative of individualisation, however, it is complimented by consideration of the production of personal housing plans.

Personal housing plans contain actions (reasonable steps) for the local authority to take to assist in preventing the loss of accommodation or in securing new accommodation, but also contain actions for the individual.[512] While s 189A(4) of the Housing Act 1996 dictates that the authority must try to create these plans with the agreement of the individual, it is possible for the authority to record any steps it thinks reasonable for the applicant to take regardless of agreement.[513] It is also possible for homeless duties to come to an end if an applicant is deemed to deliberately and unreasonably refuse to take any steps included in the personal housing plan.[514] The HRA 2017 therefore uses a combination of techniques to try to induce the homeless individual to behave in a particular way, to encourage self-governance through the taking of responsible actions necessary to retain or secure accommodation, yet reinforcing that approach with discipline and sanctions. This necessitates the active participation of the individual in a solution to a problem that had previously been tasked to state agencies, incurring a resultant risk of responsibility for any failure.[515] If an individual is however successful in this participation, they are 'normalised' as an active participant in the neoliberal housing market.

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/573121/161128_-_Policy_Fact_Sheets_-_Advice_and_information.pdf> accessed 24 May 2022.

[512] Housing Act 1996, s 189A(4)-(7).

[513] ibid s 189A(6).

[514] ibid s 193B and s 193C

[515] Thomas Lemke (n 365), 202.

The personal housing plans can be seen more positively as an attempt to bring service users closer to the decision-making process. Foucault himself advocates such an approach, suggesting that giving the individual a voice in the matter makes decisions more intelligible and plays a role in balancing optimal social coverage with maximum independence.[516] He suggests that it is entirely possible for the governed to work with government without an assumption of compliance or complicity, "one can simultaneously work and be resistive".[517] This however is where the HRA 2017 fails to meet such an aspiration, as compliance is certainly presumed within the provisions. The fact that it is possible to include steps in the personal housing plan that the individual did not agree to, and to sanction any individuals deemed to be deliberately and unreasonably refusing to cooperate, means there is little space for resistance and a presumption of complicity.

It is also worth highlighting that while the prevention and relief duties are acceptance of new responsibilities on local authorities, they are limited in scope, being only duties to take reasonable steps to help secure accommodation rather than duties to provide. Local authorities can make offers of accommodation for at least 6 months in order to discharge those duties but do not have to.[518] Again, returning to policy fact sheets published by the then Department for Communities & Local Government, the reasoning for this is framed as empowering choice and control for the applicants who will be responsible for securing their own accommodation.[519] This is a clear example of neoliberal discourse which

[516] Michael Foucault, *Power: Essential Works of Foucault* (n 368) 373.
[517] Colin Gordon, 'Governmental Rationality: An Introduction' (n 368) 48.
[518] Housing Act 1996, s 205(3).
[519] Department for Communities and Local Government, 'Policy Fact Sheet: Help to Secure and Suitability' (Gov.UK last updated 22 February 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/592997/170210_-_Policy_Fact_Sheets_-_Help_to_secure_and_suitability.pdf> accessed 24 May 2022.

regards the ability of the individual to participate freely and exercise choice in the market as crucial to the overall success of participation. This justification however bypasses a necessary interaction with other neoliberal policy imperatives such as the benefit cap, the transition to universal credit, and the restriction on local housing allowance, which all limit an individuals' choice within the housing market, before and after approaching an authority for assistance. There is also a discourse of responsibilisation within the Policy Fact Sheet, justifying the need for the legislation as avoiding the taking of action by the local authority that "people are perfectly capable of taking themselves".[520]

This, combined with other measures discussed above such as the personal housing plan, reflects the idea that homelessness is simply a short term problem caused by irresponsible individual behaviour which can be 'normalised' through an action plan which teaches applicants to retain or secure accommodation.[521] As Rose suggests, these strategies aim to reaffiliate individuals back into the market, reattaching them to "circuits of civility".[522] The focus on short term tenancies as solutions to homelessness also supports this approach. Despite the focus on prevention within the Act, short term housing solutions have the effect of a preventative approach which focusses on securing a roof rather than addressing any underlying causes of homelessness, further opening up the possibility of repeat homelessness.

Despite its apparent presentation, the HRA 2017 is a key tool in effecting a neoliberal rationality seeking to encourage individuals to act in morally responsible ways and actively participate in their reintegration back into the market. The market they are reintegrated into is also clearly intended

[520] ibid.
[521] Dave Cowan (n 500) 123.
[522] Nikolas Rose, 'Government and Control' (2000) 40 British Journal Criminology 321, 330.

to be the private rental market with a residuary role for public provision. While the overall composition of the HRA appears to show a contradiction, this likely represents the several perspectives from competing and conflicting interests that were involved in the creation of the HRA 2017, including those of charities such as Crisis, Shelter, Homeless Link (and others), those of local government through the Local Government Association, those of private landlords, and those of central government and the treasury.[523] While the proposition that more needed to be done for the population experiencing homelessness attracted support across all stakeholders, the HRA 2017 is a result of negotiating and balancing the different rationalities and reasoning in *how* that was to be done.[524] Overall, reflections of neoliberal governmentality within the HRA 2017 are dominant. While the HRA 2017 removed barriers that were previously used to justify the exclusion of individuals from statutory duties, and is therefore much more inclusive, it also introduces an increased regulatory and disciplinary framework for the homeless individual. More individuals are assessed and identified as needing a process of normalisation, appropriate behaviour is suggested and monitored with personal housing plans and stark consequences for non-compliance. Households are presented with the private market as the solution to housing need and encouraged to take responsibility for their own outcomes under the rationality of free market prosperity.

4.5 Conclusion

This chapter has sought to introduce a theoretical framework for the analysis of the practices of homelessness service delivery within local

[523] HL Deb 24 February 2017, vol 779, col 494.
[524] ibid.

housing authorities. It has done so through Foucault's concept of governmentality, advancing the neoliberal rationale not solely as a political or economic ideology, but instead as a specification of governance and tool in the normalisation of the population. It has analysed the Homelessness Reduction Act 2017 as a technology in the governance of homelessness service delivery and of homeless individuals, in order to lay the foundation for the remainder of this thesis to explore how this legislation is implemented on the frontline using data collected from two local housing authorities. The key strength of an analysis of government is that it looks at practices not just with "what" questions but also with "how" questions. Foucault's earlier works exploring prisons and the history of madness delves deeper than an exploration of what is punished and why, or what is regarded as sanity or insanity, and instead explore questions such as how does one punish, or how divisions in mental illness and normal behaviour are operated.[525] The target of analysis is not institutions or ideologies but practices and what makes practices acceptable in a given moment.[526] The practices are not just governed by institutions, prescribed by ideologies, or guided by pragmatic circumstances (as much as these do play a role), but possess their own specific regularities, logic, strategy, self-evidence and reason.[527] This is true of the practices of local authorities, in particular local housing authorities. Analysing government and governmentality involves exploring those regimes of practices "where what is said and what is done, rules imposed and reasons given, the planned and the taken for granted, meet and interconnect".[528] It involves analysing programmes of conduct which have both prescriptive effects regarding what is to be done, and codifying effects regarding what is to be known.[529] Within the delivery of

[525] Michael Foucault, 'Questions of Method' (n 364) 74.
[526] ibid 75.
[527] ibid.
[528] ibid.
[529] ibid.

homelessness services it is possible to observe what is done, how statutory duties are applied and delivered, and what is expected of the individual applicant. It is also possible to observe practices which shape what is known about homelessness and the homeless individual. Housing authority assessments of applicants' cases, where they account for the reasons why an applicant is homeless, their housing needs and their support needs, all shape what is known about that applicant and experiences of homelessness. Local authority internal case recording systems and national government statistical collection further frame the knowledge reported and available for analysis. The rest of this thesis will explore the practice of the delivery of homelessness services through an analytics of government in order to analyse how the Homelessness Reduction Act 2017 has been implemented within local authorities and its impact.

CHAPTER 5 – IMPLEMENTATION

5.1 Introduction

The implementation of the Homelessness Reduction Act 2017 is difficult to evaluate. It is not necessarily clear at the outset what successful implementation of the Act looks like within a local authority. At its core the HRA 2017 is a set of statutory duties that the authority must perform, so an evaluation of implementation could consider legal compliance; whether an authority is indeed performing those duties to the extent that is required under the legislation. However, discourse alongside the HRA 2017 suggested a much broader vision. It was hoped that the performance of the duties under the HRA 2017 would result in earlier identification and intervention for those experiencing homelessness or a threat of homelessness, so fewer households become homeless in the first place, and fewer households hit what is referred to as a 'crisis' point in their situation needing the provision of housing through the pre-existing main housing duty.[530] It was hoped it would lead to fewer households in or needing temporary accommodation.[531] A culture shift would be promoted within authorities, moving towards a more supportive, personalised approach to service delivery.[532]

The unifying feature of these broader ambitions is that they are based on more substantive, practical outcomes. They are based on delivering a service which in some way addresses the housing need of an applicant.

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[530] Department for Communities and Local Government, 'Policy Fact Sheet: Homelessness Prevention Duty' (Gov.UK last updated 22 February 2018) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/592995/170203_-_Policy_Fact_Sheets_-_Prevention.pdf> accessed 27 May 2022.
[531] Hannah Rich and Deborah Garvie, 'Caught in the Act: A Review of the New Homelessness Legislation' (Shelter 2020) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/report_caught_in_the_act> accessed 23 May 2022, 27.
[532] HC Deb 28 October 2016, vol 616, cols 543 and 544 (comments by Bob Blackman, MP).

Successful implementation isn't purely about following process or strict legal compliance, but an expectation that doing so will lead to outcomes for applicant households. This expectation that implementation of the HRA 2017 will lead to outcomes for the applicant is mirrored by staff within the local authorities studied.

> "…they [housing officers] just need to worry about prevention and getting very much into that customer first and walking in the footsteps, the shoes of a customer, what sort of services do they want, how do they want to be helped and they will get far more enjoyment out of that anyway, rather than just processing and waiting you know to make a decision, you know we don't really want to make any decisions do we, we just want to prevent or relive it, it would be better all round for everybody." (LA1 – Head of Service).

> "I'm gonna use the title, Homeless Reduction Act, and that I think it speaks for itself really, to reduce the number of applicants, no I wouldn't say to reduce the number of applicants coming through the door although it seems that way, but it is about those that need to be supported into accommodation, to do that." (LA2 – Housing Officer 1).

Comparisons were made to the pre-HRA 2017 practice, with one homelessness manager in the first local authority suggesting that prevention before the HRA 2017 was often about avoiding the acceptance of a statutory duty, whereas post-HRA 2017 it is about 'real' prevention, intervening successfully before someone becomes homeless.

> "Essentially the Act was to help people to try and get back to real prevention and that is not avoidance that is prevention, two

> different things, and our goal is to get back to there. […] so the aim is to get back to prevention, relief, and trying to help people earlier" (LA1 – Homelessness Manager 1).

> "The point before was trying to get rid of the duty, the point now is to try and get people housed, I don't know, that's what I'd see it as." (LA1 – Housing Officer 4).

While there was consistency across authorities and across staff within authorities as to what it was hoped the HRA 2017 would ultimately be able to achieve, exactly how that should be achieved and what successfully meeting an applicant's housing need looked like, would differ. This will be discussed further in later chapters, but regardless of opinion as to how housing need should be met, the most significantly perceived challenges with implementation were experienced when housing officers felt they were unable to spend the appropriate time needed to assist in achieving successful outcomes for applicants.

Despite holding the above expectations, staff within both authorities also recognised that the statutory framework introduced by the HRA 2017 does not guarantee outcomes for applicants. It does not commit to the provision of accommodation for homeless households or successful prevention for threatened homeless applicants, it provides an opportunity to help to those who would previously have been excluded.

> "…we look for solutions we always have, we haven't necessarily always found a solution, and the Homelessness Reduction Act isn't saying you will always find a solution, but it is saying you will try" (LA1 – Homelessness Manager 2).

The HRA 2017 creates a new *process*, a process which removes some of the previous barriers to access to local authority resources, creates a richer

assessment procedure, and introduces a public authority referral procedure for earlier identification. Alongside these measures in the HRA, a new national data collection system was introduced prescribing a new process of data collection on statutory homelessness and steps taken in the performance of statutory duties.[533] What these new processes do not do however, is address any of the underlying causes of homelessness, increase the availability of affordable accommodation, or guarantee individual provision of suitable accommodation. As will be demonstrated within this chapter and in the upcoming chapters, the achievement of any more substantive outcomes are an incidental aspiration of the HRA, rather than designed in to the statutory reform. The discourse displayed above regarding actually supporting households into accommodation, and 'real' prevention, seems to demonstrate an alternative narrative to that which is actually found in the obligations of the HRA.

> "I can see the point…I was just very sceptical when it all came out, I was of the attitude that it had been brought out to…so you can say oh look all our homeless people have dropped but actually it's not dropped and I kind of was dead cynical saying this is the only reason it's been brought in so you can house people in the relief period where you are saying gosh your homeless but we are not going to accept a full duty towards you we will house you in the relief period and have these figures and say oh no we don't have any homeless people and we don't have any stat homeless people, we had so many thousands of homeless people and now we haven't,

[533] Ministry of Housing, Communities and Local Government, 'Guidance Changes to Statutory Homelessness Statistics: User Note' (Gov.UK 27 June 2018) <https://www.gov.uk/government/publications/changes-to-statutory-homelessness-statistics-user-note> accessed 27 May 2022. To be explained further in section 5.4.

and I think well you have but you are just not showing it in the same way" (LA1 – Housing Officer 1).

"…it seems very wishy washy and very easy for authorities to do very little and say they have fulfilled their obligations" (LA2 – Housing Officer 4).

If fewer households are to become homeless in the first place, fewer reach perceived 'crisis' stages, fewer are in need of temporary accommodation, and there is to be a culture shift in service delivery, this is left down to the individual local authorities to achieve after implementing the relevant process changes. Substantive success appears to be dependent on local level practices, local level priorities and interpretations, the surrounding local housing and welfare context.

This chapter will focus on some of the key challenges for the two local authorities studied in implementing the HRA. While both authorities responded to the HRA 2017 by implementing a number of practical changes such as training new staff, procuring new IT systems, recruiting additional or specialist staff, undergoing internal team restructuring,[534] in this study the local authorities described larger challenges in implementing the administrative process introduced alongside new duties which created barriers in achieving the substantive goal of implementing homelessness reduction. These elements included managing increased caseload, in particular meeting statutorily imposed time limits on holding applicants within the prevention or relief duties (56 days), completing necessary administrative tasks such as compiling personal housing plans and issuing

[534] These responses to implementation were common in local authorities across the country – Ministry of Housing, Communities and Local Government, 'Evaluation of the Implementation of the Homelessness Reduction Act: Final Report' (Gov.UK 16 March 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919748/Evaluation_of_the_Implementation_of_the_Homelessness_Reduction_Act_Final_Report.pdf> accessed 27 May 2022, 20-26.

letters to applicants outlining decisions made in relation to their application, and, linked further to this, collecting and submitting local homelessness statistics to Government under H-CLIC, the new national data collection system introduced alongside the coming into force of the HRA 2017.

This chapter will focus on the time limits imposed on the new statutory prevention and relief duties, the administrative communication requirements, and the data collection obligations, and assert that they represent practices of discipline and normalisation. As outlined in the previous chapter, the exercise of power as an exercise of normalisation seeks to include and reintegrate 'abnormal' individuals into a population, rather than to exclude.[535] Societies are not 'purified' of individuals who are non-conforming but instead are governed through observation and regulation with the view to normalising their behaviour. This observation and regulation is done through techniques of discipline. Discipline combines observation, punishment, normalising judgement and the examination of the individual to facilitate the exercise of power.[536] The three focal points of discussion in this chapter all form part of the process of the observation and examination of the individual, making each individual a 'case', setting out the individual "as he may be described, judged measured, compared with others, in his very individuality; and it is also the individual who has to be trained or corrected, classified, normalised, excluded etc".[537]

These statutory requirements and related national data collection requirements govern both the local authority themselves as well as the homeless individual. This chapter focusses on the perspective of the local

[535] Michael Foucault, *Abnormal* (Valerio Marchetti and Antonella Salomoni ed, Graham Burchell tr, 2nd edn, Kindle edn, Verso 2016) location 1176-1279; Michael Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, 2nd ed, Vintage Books 1995) 184-188.
[536] Michael Foucault, *Discipline and Punish* (n 535) 161.
[537] ibid 181.

authority, how keeping the provision of duties within strict time frames, producing administrative documents, reporting data to national Government, act as a form of discipline on local authorities to ensure they are facilitating the surveillance of the homeless individual to enable the process of normalisation. This chapter explores how individuals within local authorities performing these processes struggle with these requirements, sometimes acting in resistance, as they ultimately do not align with the perceived interpretation of what implementing the HRA 2017 should enable them to do. The processes of observation and examination required is deemed to inhibit their practice and the achievement of substantive outcomes for individuals experiencing homelessness.

5.2 Caseloads – Keeping up

It is broadly understood that the HRA 2017 was to result in 'new burdens' being put on local authorities, and generally accepted that this was a positive change. The HRA 2017 expanded the existing prevention duty to all those who are eligible for assistance and threatened with homelessness,[538] expanding the definition of threatened homelessness to include a 56 day period from a 28 day period,[539] the duty itself also correspondingly expanded to 56 days,[540] and further introduced the relief duty, again owed to all those eligible for assistance and homeless.[541] It opens up statutory duties to more individuals who were previously left out, removing hurdles such as priority need and intentionality in those early duties. It was clear from the experiences of Welsh Local Authorities who implemented similar legislation, through Part 2 Housing (Wales) Act 2014, that the demand for services and caseloads would increase. The majority of

[538] Homelessness Reduction Act 2017, s 4.
[539] ibid s 1.
[540] ibid s 4.
[541] ibid s 5.

Welsh Local Authorities reported either a slight or substantial increase in demand for their homelessness services, both due to an increase in the number of people accessing services but also due to expanded preventative work and owing a duty to people who they previously didn't (predominantly single people).[542] It was also suggested that cases were open for longer periods of time contributing to an increase in caseloads.[543] In the English context, in a survey conducted by the Local Government Association (LGA) in 2018 to gather information on the experiences of local authorities after the implementation of the Homelessness Reduction Act 2017, similar increases were reported. 83% of local authorities reported an increase in homelessness presentations, with 78% of those councils attributing this directly to the HRA 2017.[544]

5.2.1 LA1

The first local authority experienced a significant increase in housing officer caseload after the HRA 2017 entered into force. On the very first day observing within the local authority, the topic of the first informal conversation with a housing officer was how busy staff are and how much they were struggling against a backlog of cases. Senior management within the local authority had attempted to predict the impact on caseloads of the

[542] A Ahmed, M Wilding, A Gibbens, K Jones, M Rogers and I Madoc-Jones, 'Post-implementation Evaluation of Part 2 of the Housing Act (Wales) 2014 Interim Report ' (Welsh Government 2017) < https://gov.wales/evaluation-homelessness-legislation-part-2-housing-act-wales-2014-interim-report> accessed 27 May 2022, 56 and 114; A Ahmed, M Wilding, A Gibbens, K Jones, M Rogers and I Madoc-Jones, 'Post-implementation Evaluation of Part 2 of the Housing Act (Wales) 2014: Final Report' (Welsh Government 2018) < https://gov.wales/evaluation-homelessness-legislation-part-2-housing-act-wales-2014-final-report> accessed 27 May 2022, 79.
[543] A Ahmed, M Wilding, A Gibbens, K Jones, M Rogers and I Madoc-Jones, 'Post-implementation Evaluation of Part 2 of the Housing Act (Wales) 2014 Interim Report ' (n 542) 114.
[544] Local Government Association, 'Homelessness Reduction Act Survey 2018 – Survey Report' (LGA 25 March 2019) <https://www.local.gov.uk/homelessness-reduction-act-survey-2018-survey-report> accessed 27 May 2022, 8.

HRA 2017 coming into force, based in particular on experiences of Welsh Authorities, but what transpired was much more than expected.

> " […] based on some forecasting, some modelling that we'd done in anticipation of what the Homelessness Reduction Act was going to bring and based on what happened in Wales we were anticipating a 50% increase in work. Erm it has actually probably been closer on 100% you know it is double" (LA1 –Homelessness Manager 2).

This increase in work was reflected in the number of cases each housing officer held on average at a point in time. When workload was at its highest, for some housing officers their case numbers almost tripled. One housing officer also reported that an applicant could be waiting up to six weeks for an initial assessment as to what, if any, statutory duties were owed, as opposed to a previous maximum wait of ten days.

> "Prior to the HRA the caseloads typically were about 60ish per worker, at one point we had caseloads of 170 […] how does anybody manage a caseload of that? You know, at some point it just becomes overwhelming" (LA1 - Senior Housing Officer 1).

This increase in caseloads was difficult for staff within the local authority to attribute. They did not generally align with the LGA survey responses reporting an increase in homeless presentations or footfall, but suggested the increased caseload is due to holding on to cases for longer, and accepting people who may not have met the requirements for a statutory duty under the pre-HRA 2017 framework.

> "… because you potentially have the 56 day prevention duty, and then the relief duty, cases are open for a lot longer period, they are open for 4 months aren't they whereas previously you could potentially close a case in a day. […] the opening of a HRA case, if

> someone is, as long as they are eligible for assistance and homeless or threatened homeless within 56 days then we start opening that case don't we" (LA1 – Homelessness Manager 2).
>
> "…everybody sees their caseloads going higher, and I think it is more we are holding on to them longer, I don't think the footfall" (LA1 – Homelessness Manager 4).

While there was some suggestion that the HRA 2017 was responsible for caseload increase, the local authority had also undergone a restructure of the department in response to the HRA 2017. Delay in filling the posts under the restructure meant the department was understaffed for at least the first six months of implementation, and there were disagreements among the staff as to whether the new structure was the most efficient way of working.

> "So erm, you will probably find that people are less clear about what has been an impact of the new legislation and what's caused us an impact from the restructure. Yeah, it has kind of muddied the waters a little bit. […] at the moment, we are a little bit unsure about what has caused it, is it because of the way we are structured now or is it because of the legislation." (LA1 – Senior Housing Officer 1).

5.2.2 LA2

In the second local authority it was not perceived that they had experienced the same kind of increase. As the HRA 2017 was developing senior management within the local authority considered which groups of people in their local area they would likely see an increase in duty to, and began to take steps to work more intensively with those individuals prior to

the Act coming into force. The particular focus was on single people experiencing rough sleeping, expanding night shelter provision and working with a local housing association to begin a housing first scheme. While the head of service in the second authority recognised they did indeed have more households coming through the door they would owe a duty to, they felt they had prepared in advance of the HRA 2017 coming into force so this increase wasn't felt so harshly.

> "So whereas other authorities, I guess day one of the Homelessness Reduction Act coming in suddenly had people coming through the door they newly had a responsibility for, we actually knew a lot about this particular group of people and had done a lot already to try to work through. And I think that's why if you look at our statistics and compared to other people's nationally, we didn't day one have a massive you know increase spike" (LA2 – Head of Service).

Further to this, the second local authority had also undergone a restructure of the department as the HRA 2017 came into force. This restructure was part of a broader local authority initiative to save costs, which involved merging and reducing two teams together, the welfare rights team and the housing/homelessness team. There was however a strong desire to keep the skillset of both teams, enabling the new housing and welfare officers tasked with statutory homelessness duties to approach casework more holistically. In the process of this restructure the authority had received consultant recommendations as to optimum case ratios, how many people were needed to do holistic casework properly, which they then took into account when deciding the final team structure for the merged housing and welfare department.

> "…they will tell you that they are under pressure and they have lots of cases but the reality is they haven't got mega numbers and when we do benchmarking and comparisons with other authorities they have got a really low, low case numbers […] and I want them to do the holistic stuff, I want them to do the psychological informed stuff, the stuff that makes, that makes the accommodation sustainable long term." (LA2 – Head of Service).

Further, within the restructure, a specialist team of housing officers focussing on young people experiencing homelessness were reduced from eight team members to four. This is where the most pressure around workloads was felt by the officers within the team. This was suggested to be because the young persons' housing officers didn't just perform the typical housing officer role, but also provided floating support for young persons who had been placed within the local authority's young person's housing schemes. Young person's housing officers also spoke of standard practices like providing advice on things such as finding properties, Universal Credit, Local Housing Allowance, going through personal housing plans, all needing more time, particularly for young persons who may have never lived by themselves or maintained a tenancy before. Their role rarely stopped with a successful prevention or relief, describing that in order to ensure accommodation secured wasn't then lost, young people would often still need ongoing support. Since moving down to a team of four members young persons housing officers described, feeling like they were simply firefighting, accepting homeless applications and statutory duties but then being unable to work on those cases or provide the support needed to assist in maintaining tenancies.

5.2.3 Following Procedure: Meeting time frames

Despite distinctly different experiences regarding increase in caseload across authorities, they did share similar experiences in difficulties with implementation of the early prevention and relief duties. Both authorities showed evidence of holding on to cases longer than the 56-day time periods within the prevention and relief duty. In the first local authority it was clear this was due to the increased overwhelming caseload of housing officers, in the second the reason was much harder to establish, but suggestions included the need to foster more of a focus on stricter legislative compliance. Both authorities' experiences and the resulting implications for applicants will be explored.

In the first local authority the overwhelming caseload meant housing officers felt they did not have appropriate time to work with applicants to help prevent or relieve their homelessness. Officers spoke of feeling like they had two choices for service delivery, doing the minimum needed for statutory compliance: performing initial assessments with applicants to assess whether they were owed a statutory duty and if so, completing personal housing plans in a reasonable time frame, but then doing little further work on the case; or attempting to do targeted work on cases, but ended up falling behind on initial assessments and leaving people waiting unreasonable times to be seen. More often than not officers felt they were working within the former.

> " […] we hold cases a lot longer, because especially with s.21 notices, so you've got a couple of months there, you've then got the 56 days relief, and then quite a few of them I think will be filtering down to homelessness [the main housing duty] because we are not

effectively preventing and relieving for some households at the moment." (LA1 – Homelessness Manager 1).

"I know that because the caseloads are so high that work isn't being done on the cases constantly, they are just - it would be impossible." (LA1 – Senior Housing Officer 1).

Staff expressed frustration at a perception they were simply putting applicants through a process for at least 56 days, often longer if both prevention and relief duty ends up owed, to little substantive end. Further, due to this practice of focussing on getting applicants through the initial process of the HRA, accepting duties and completing PHP's but then taking little additional action, and being overwhelmed with growing numbers, officers were losing track of cases and admitting to working mainly with 'whoever shouts the loudest'. Housing officers felt unable to take the time to make the necessary decisions when hitting relevant time frames on the early HRA duties. This meant applicants were staying in the prevention duty, even after becoming homeless, or staying in the relief duty instead of having a decision made as to whether any further duties were owed. One housing officer confessed to unintentionally having had cases in the early prevention or relief duty for over 100 days before being able to spend time reviewing them and making relevant decisions.

In the second local authority similar reports were made by the young persons' team in that there was a perception they were able to either provide the process of the application and acceptance of the duties, but could not provide the increased support required for assisting a young person to maintain any accommodation found or provided and avoid simply becoming homeless again in the future. One officer described an analogy feeling like they were firefighting on an island where they are able to process everyone arriving on the island, but then those admitted would

simply overflow the island and drop off the other side and come right back around to the queue waiting for admission. Within the general housing officers there was also strong evidence of cases going over the relevant time periods, although by contrast, this didn't appear to be due to overwhelming caseloads. In this authority a sample of six case files were obtained as part of data collection (none were a young persons' case file), where five out of the six files all displayed evidence of cases remaining open beyond the 56-day time periods. In three out of the six cases the applicant was originally accepted into the prevention duty, and at the time observations in the authority stopped, the cases were still open, in a prevention duty, all over 80 days showing no evidence of a conscious decision to review the case or extend the duty. In one further case the applicant was accepted into a prevention duty but after 15 days became homeless and was placed in a B&B by the local authority, however the case was not moved into the relief stage until day 37 of the prevention duty. At the time observations finished this case was still open in the relief stage at 63 days. A fifth case was successfully relieved into a social rented tenancy, but on day 66 of the relief duty.

Under the statutory framework, it is possible to bring the prevention duty to an end if the authority has taken reasonable steps to help prevent homelessness and the 56 day period has come to an end, regardless as to whether the applicant is still threatened with homelessness.[545] If the applicant becomes homeless during that period the prevention duty should be brought to an end, and the relief duty owed provided the applicant is still eligible for assistance.[546] Under the Homelessness Code of Guidance for Local Authorities it is possible to choose to extend the prevention duty longer than 56 days provided another duty does not take precedence, so

[545] Housing Act 1996, s 195(8)(b).
[546] ibid s 195(8)(c).

where an applicant becomes homeless the relief duty would take precedence.[547] The relief duty also comes to an end after a 56 day period has ended, whether or not the applicant has secured accommodation.[548] At that point, if the applicant remains homeless and eligible for assistance, the applicant must be assessed as to whether any further statutory duties are owed. For those who are deemed to be homeless intentionally[549] and not in priority need,[550] there are no further statutory duties. For those who are in priority need but deemed to be homeless intentionally, there is the duty to secure accommodation for a reasonable period.[551] For those in priority need and unintentionally homeless, they will be owed the main housing duty.[552] Again, it is possible for housing officers to extend the relief duty if there are no further duties that would be owed.[553] The Homelessness Code of Guidance instructs authorities not to delay in making decisions as to whether further duties are owed, informing the applicant on day 57 where they have made sufficient inquiries to make a decision, but if further inquiries are needed recommending a maximum of a further 15 working days to complete them.[554] As will be discussed below, the requirement to assess cases for further duties and suitably move them on where required is to ensure an applicant is not denied further statutory rights, in particular, where they would be owed a main housing duty, to ensure they are not denied a statutory right that is substantively stronger than any preceding.

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[547] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (Gov.UK last updated 22 March 2022) <www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-4-the-duty-to-refer-cases-in-england-to-housing-authorities> accessed 24 May 2022, para 14.15.
[548] Housing Act 1996, s 189B(7)(b).
[549] ibid s 191.
[550] ibid s 189.
[551] ibid s 190.
[552] ibid s 193.
[553] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 547) para 14.15.
[554] ibid para 14.16.

In the first local authority it was clear that delays in reviewing cases and moving them on was simply due to overwhelming caseload within the first six-eight months of implementation. Over the period of observation at the authority, the caseloads steadily became more manageable due to hiring temporary staff to get on top of the backlog, and as this improved, there was then a focus in team meetings and subsequent practice on the importance for legislative compliance of reviewing all cases and making decisions at the appropriate point. In the second local authority it was much harder to establish the reason. By contrast to the first authority the delay in cases was not raised within the data by housing officers themselves in informal conversations and team meetings, but only once case files were collected on the observation period coming to an end. It had been raised by the head of service at interview that a strong understanding of the legislative provisions across the department at all levels, and an operational structure that can support adequate supervision of housing officers' caseloads by seniors so legislative compliance could be monitored, was only just starting to manifest. While initial training and implementation within the first year had focussed on understanding the broader process changes brought in by the HRA 2017, and completing the internal department restructure, now that was done, focus was shifting to finer points of legislative understanding and compliance, which was considered the more bureaucratic side of the legislation and had been deprioritised.

> "And the new structure allows for a more appropriate balance between supervision, so um, none of the seniors have more than 10 direct reports now, 8-10, direct reports so you can do meaningful supervision on casework with that kind of number of people every couple of weeks. Whereas, actually prior to this it was really difficult

> to do that, it would've been very hard to help and support those people. We are only just at the point where that is starting to bed in, but erm that is part of what we've been putting in, some measures around compliance with PHPs, compliance with letters, length of time it takes us to do certain things. (LA2 - Head of Service).

The implications for the applicant of not being able to keep track of cases or not making decisions at the appropriate point varies. For some this may actually appear beneficial. If the applicant is threatened with homelessness and thereby owed a prevention duty, but at the end of the 56 days remain threatened with homelessness, having the case remain open and the duty extended instead of bringing the duty to an end appears beneficial, extending potential access to local authority resources. Of course, the same potential benefit exits where a relief duty remains open if no further duty would be available and allows continued access to services such as the payment of deposits and rent in advance by the local authority if the applicant found a private rented tenancy. A further benefit is identifiable for applicants who are homeless and owed a relief duty, and are also owed an interim accommodation duty under s.188 HA 1996, are in priority need but would be deemed to be homeless intentionally so will only be owed duty to secure accommodation for a reasonable period after the relief duty comes to an end.[555] In this scenario the longer the relief duty remains open, the longer that applicant has the benefit of the interim accommodation duty and then the further more limited duty. However, given the practice referred to above of holding open cases but not being

[555] Housing Act 1996, s 188(1).

able to do much to support their resolution, the apparent benefit of having a case remain open is still relatively limited.[556]

However, if an applicant is remaining in the prevention duty simply because a housing officer hasn't had the time to review the case and have actually become homeless within that period, the applicant is delayed in progressing through to further statutory duties. This potential effect is compounded when considering the implications of being unable to make decisions in appropriate time frames at the end of the 56-day period of the relief duty. For an applicant who is in priority need and deemed unintentionally homeless so would ultimately be owed a main housing duty, a delay in bringing the relief duty to an end and accepting a main duty denies the applicant a stronger set of rights within the main duty. As a comparison, the relief duty is a duty for the authority to take reasonable steps to help the applicant secure accommodation, the main duty is a duty for the local authority to secure that accommodation is available.[557] Under the relief duty the availability of accommodation for at least six months is enough to bring the duty to an end, under the main duty an offer of a Part 6 HA 1996 social sector tenancy is required, or, if within the private sector, an assured shorthold tenancy of at least 12 months[558]. In both local authorities there also appeared to be an increased chance of securing a social rented tenancy once in the main duty. In the first local authority the social housing allocation scheme determined that the highest level of priority banding for social housing was reserved for those within the main duty. In the second local authority, housing officers appeared to have the discretion to nominate applicants to the highest banding of priority, but based on an interpretation taken to the HRA 2017 were instructed not to

[556] Further discussion as to the performance of duties can be found in the following Chapter 6.
[557] Housing Act 1996, s 189B(2) and s 193(2).
[558] ibid s 189B(7) and s 193(7AC).

do so until applicants reached the main housing duty, and to utilise and encourage the use of private rented accommodation until that point.[559]

In both local authorities therefore, it was possible to observe a concerning procedural irregularity in not reviewing and making decisions on cases resulting in unintentional gatekeeping of applicants from their further, more substantively favourable statutory duties. It was, however, hoped by staff in both authorities that this would improve over time, with the first local authorities case loads becoming more manageable, and the second purchasing external 'HRA refresher' training to start embedding more of a culture of legal compliance.

That said, adhering to strict legal compliance to the procedures imposed by the statutory time limits on the earlier duties does have interesting consequences. As procedural compliance increases that does not necessarily result in an improvement in substantive outcomes. The frustration referred to above by housing officers comes from those cases who end up sitting with an authority longer than the relevant time frames having had no successful outcome addressing their housing need. In the first local authority, for those households who would ultimately be owed the stronger main housing duty, under the pre-HRA framework they would have been owed that stronger duty from the outset once it was determined they were homeless, eligible for assistance, in priority need and unintentionally homeless (with a local connection to the area).[560] Having to go through the earlier duties first under the HRA 2017, where there is not a duty to provide accommodation, and in both local authorities a lower priority for an offer of social housing, and an ability to discharge the duty with a six month private tenancy, this puts them in a less substantively

[559] See further Chapter 6.3.2
[560] Housing Act 1996, s 193 (version in force pre-03 April 2018).

beneficial position than under the previous statutory framework. For those who were sitting longer in the prevention or relief duties than a strict approach to compliance would allow, and who would not be owed any further duties, or only the duty to provide accommodation for a reasonable period, will loose their access to local authority resources and temporary accommodation sooner if strict compliance is adopted. In both of these scenarios, applying a strict procedural approach would result in a potentially weaker substantive outcome.

A technique which disciplines local authorities into exercising a concern for strict legislative compliance is the perceived threat of legal challenge to authority practices. The first local authority hired a specialist housing consultant to train staff in house on the legislative changes when the HRA was coming into force, and this consultant was later hired elsewhere within the department as a team manager. They maintained a presence in team meetings in their new role, so regularly reminded staff of the importance of legislative compliance and the threat of legal challenge where practice may be slipping up. This included a specific focus on reviewing cases within the relevant time frames to determine if further duties are owed or to bring cases to a close where no further duties were owed.

In the second local authority a different interaction is observable. In the above-mentioned case file where an applicant has their case successfully relieved into a social rented tenancy, but on day 66 of the relief duty, their substantive outcome would not change regardless as to whether their case had been moved on and assessed for further duties at day 56. The applicant was fleeing domestic violence with dependent children so would have ultimately been found to be in priority need and unintentionally homeless. The offer made of a social rented tenancy would have been made regardless as to the strict duty owed by the authority, suggesting an

artificiality to the procedural time frames in cases such as these. This was supported by the local authority's general approach to training and practice priorities, prioritising fundamental understanding of the new duties on officers over what were deemed to be less important bureaucratic aspects of legislative compliance including moving applicants through the relevant duties within the specified time frames. If a household is provided with accommodation that suitably addresses their housing need regardless of the duty stage they are in, the statutory framework of duties, and any potential threat of legal challenge, appears to pale in importance.

> "You know the law is there obviously to help people and we should help people, you will only get challenged by the law if you are not helping people so by their own nature we are good at helping people here" (LA2 – Homelessness Manager 1).

This appears to demonstrate an exercise in resistance against the discipline imposed on local authorities by the legislative framework. That said, the frequency in which this approach was used by officers varied. As referred to above, due to an interpretation of the HRA 2017 and the new duties that it was expected that any discharge of new duties be into the private sector (to be covered in more detail in Chapter 6), housing officers had been initially instructed not to nominate households for the highest priority provision of social housing from their social housing providers during the earlier prevention and relief stages. Some officers chose to apply this policy stricter than others. One housing officer was observed informing applicants at initial interview that they would only be nominated for the highest priority access to social housing if they reached the main duty. Whereas another housing officer was observed nominating an applicant for a specific social housing property on the same day the applicant was assessed under

the Act and given a personal housing plan.[561] The extent to which strict application of time frames affected the substantive outcome for the applicant could vary depending on the housing officer's application of discretion. This observable difference in practice between authorities appeared to be primarily a result of local affordable housing availability. In the second local authority social housing was in higher supply, sometimes enabling officers to use more discretion to achieve a desired substantive outcome, whereas this was not a luxury available to the first local authority. The second local authority also had fewer cases per officer, as detailed above, and also had less of a focus on strict legislative compliance as a priority.

5.3 Administrative burden

A further significant challenge cited by local authorities in the implementation of the HRA 2017 is the burden presented by increased administrative duties. This includes additional Government data reporting obligations introduced alongside the HRA 2017, to be discussed below, but also an increase in the documentation produced for applicants in the performance of duties. In particular, this refers to the obligation to construct personal housing plans,[562] a focal point of the next chapter, and the construction of letters used to notify applicants of the various decisions made on their applications. The HRA 2017, in introducing and expanding statutory duties to applicants, introducing new applicant assessment and planning procedures and introducing the ability to bring duties to an end due to a deliberate and unreasonable refusal to cooperate,[563] all contribute

[561] Housing Act 1996, s 189A.
[562] Housing Act 1996, s 189A.
[563] Housing Act 1996 s 193B and 193C, as inserted by the Homelessness Reduction Act 2017, s 7.

to the increase in administration. Whenever a household applies to a local authority as homeless or threatened with homelessness, the local authority must make inquiries as to whether they owe the household a statutory duty, which includes the new and expanded prevention and relief duties, and must then notify the applicant of their decision and the right to request a review of that decision, providing reasons as to why the decision was made if the decision is negative.[564] If it is accepted that a prevention or relief duty is owed, the authority must perform an assessment of the applicant's case and notify the applicant in writing of the assessment made.[565] As mentioned above a personal housing plan must also be created and recorded in writing by the local authority.[566] The assessment of the applicant's case and personal housing plan must be kept under review and if the assessment of the case or the perceived appropriateness of the personal housing plan are deemed to change, the applicant must be notified.[567] If the prevention or relief duties are brought to an end the applicant must be given notice specifying why the relevant duty has come to an end and inform them of their right to request a review of the decision.[568] Although local authorities do not have to make an offer of accommodation to discharge the relief duty, they may choose to do so.[569] If this is done they must inform the applicant of the right to request a review of the suitability of the offer and the consequences of a refusal of the offer.[570] Where the applicant is informed of the consequences of refusal, and refuses the offer, the relief duty comes to an end and the main

[564] ibid ss 184(3) and 184(5).
[565] ibid s 189A(3)
[566] ibid s 189A(4)
[567] ibid s 189A(10) and 189A(11)
[568] ibid s 189B(5) and (6); where the relief duty has ended due to the circumstance under Housing Act 1996, s 189B(4) – the authority are satisfied the applicant has a priority need and did not become homeless intentionally and a period of 56 days have passed – this will happen automatically and does not need a written notice, the applicant would then be owed the main housing duty under Housing Act 1996, s 193.
[569] Housing Act 1996, s 205(3).
[570] ibid s 193A(1).

housing duty does not apply.[571] If the local authority deem it appropriate to bring the prevention or relief duties to an end due to an applicant's "deliberate and unreasonable refusal to cooperate" with a step contained in the personal housing plan, the authority must first give the applicant a notice warning them of the prospective decision and explaining the consequences of such a decision if the applicant does not perform the step in question.[572] If the applicant does not perform the step and the authority proceeds with the decision, they must provide a notice explaining why the decision was made, the effect, and inform the applicant of their right to request a review of the decision.[573]

The above account of instances in which a notice must be given, or a written record produced, is not exhaustive, it covers key instances that have been affected or introduced by the HRA 2017. A complete list of instances within the entire statutory framework under Part 7 HA 1996 where a notice is needed would be considerably longer.[574] It is also clear that not every single applicant will require a significant number of letters. Applicants who are turned down at the first stage as not being owed any duties under the statutory framework will likely only require one letter (unless they go on to challenge that decision). Applicants who enter the prevention duty on presentation to the local authority, and then continue through the statutory framework through several decision points, will ultimately require more. Where circumstances mean that more than one notification is required at the same time, it is possible for authorities to

[571] ibid s 193A(2).
[572] ibid s 193B(4) and 193B(5).
[573] ibid s 193B(2) and 193B(3).
[574] To illustrate the variety of letters a local authority might send out see documents provided by Housing Consultant Mark Prichard: Mark Prichard, 'Documents: Homelessness Letters For English Local Housing Authorities: An Index' (MarkPrichard.co.uk 21 January 2019) <https://markprichard.co.uk/documents/homelessness-letters-england-index> accessed 27 May 2022.

combine the information required into one notification letter, but this must remain clear and comprehensive.[575]

For housing officers, getting to grips with every point at which they are required to send a notice, what to have within the notice, and to then ensure they were produced at the appropriate points, was a significant source of challenge and frustration. This frustration stemmed from the amount of 'paperwork' it created, particularly when combined with other administrative obligations such as the creation of PHP's and submission of H-CLIC data, but also led to a persistent concern with whether they were acting in a way which was legally compliant. In the first local authority there had been a particular focus from day one in attempting to ensure correct administrative procedures were followed, including the correct issuing of notices, which was supported by the hiring of the specialist in house consultant to deliver HRA 2017 training. In the second local authority the push for this particular element of legislative compliance came later, roughly one year after the HRA 2017 first came into force at the time of observation.

> "…it's administratively much more burdensome because you are making decisions at various stages throughout the process and each decision requires a letter. And ending each stage requires a letter, erm so there is a lot, there is a big admin burden." (LA1 – Senior Housing Officer 1).

> "I think the admin side of things was a big step up for people, I don't know what was done before but I know now we have a lot more paperwork to keep on top of there are a lot of letters to be sent out all the time, on our systems there is a lot to update and all

[575] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 547) para 18.33.

> of the time, especially with H-CLIC, you have to ensure that the case passes, for it to submit. So you are just checking all the time, so I think that was difficult." (LA1 – Housing Officer 3)
>
> "yeah I send out all the legal letters which is an onerous process" (LA2 – Housing Officer 4).
>
> "But that said, you know you've spent time in the department, it is new legislation, it is new burdens, and we are not yet at a point where I can say we are absolutely fully compliant with every aspect of the legislation but we are trying our best with what we are doing, and we are trying to get people to a point where they really fully understand what it is that is required of them and that they understand what letters to send when they are supposed to send them." (LA2 – Head of Service).

The problem cited with the additional workload these administrative responsibilities create is that it takes time away from other responsibilities that are perceived to be of a higher priority, in particular active casework, which is more likely to result in a successful prevention or relief for the applicant. As indicated above, what is deemed consistently to be the underlying intention of the HRA 2017, and what is needed to say implementation has been successful, is substantive outcomes which in some way practically address the housing need of the applicant. It is clear from interview and informal conversational data gathered from within both authorities that the administrative responsibilities referred to above, particularly administering appropriate letters, does not form a part of achieving those aims. Doing the "right thing" by their applicants or providing a "good service" is not deemed to include writing letters and in fact detracts from the delivery of such a service. In the first authority this resulted in a dissatisfaction within housing officers themselves and senior

staff with the way housing officers practiced their role, and in the second a de-prioritisation with strict compliance until it was perceived that other aspects of implementation of the legislation had been completed.

> "…we are very focused on trying to do the right thing by people, obviously what this does bring is some legislative burdens, the admin, it is not always that helpful all of the legislation that goes along with it, but I guess it has been done for the best of intentions so" (LA2 – Head of Service).

> "However – and I think this is quite damning – I used to spend most of my time helping people, there is always admin in any role. I believe that the way [case reporting software] works we are spending a massive amount of time ensuring we comply with legislation and send the right letters out, and put things in the correct status rather than assisting people. I don't blame the council for this, just the unnecessary administrative burden placed on the council by central government" (LA2 – Housing Officer 4).

> "I think they [housing officers] are worried that they are not compliant, I think that's…I think there's a preoccupation with compliancy rather than practically helping the individual, I think that is probably the biggest outcome of it. I am negative about it, I'm not a fan, I'm not a fan, you know, and I think again I can't believe that that was ever the intention that you know the staff would be whittling about sending out/making sure they send the correct 6 letters out during the process you know, that can feel a bit of a waste of time, you feel like you are not actually doing what you are there to do." (LA1 – Senior Housing Officer 1)

One homelessness manager in the first local authority perceived housing officers to be "deskilling" as a result of these additional administrative burdens, becoming overly concerned with administrative legal compliance and losing time to develop broader knowledge and connections deemed necessary for helping to secure successful housing outcomes for applicants.

> "…the homelessness advisors are deskilling themselves, because they haven't got a handle on universal credit, haven't got a handle on what is happening in the private sector…so…I don't know. You know the Homelessness Reduction Act it has administratively brought about a nightmare and they are getting so enveloped in is that the right letter, have they done the right bit, that you know they are losing the skills and knowledge that they need to in the bigger world to get these people housed." (LA1 – Homelessness Manager 6).

The two authorities observed were not the only authorities struggling with the additional administrative burden brought in with the HRA 2017. In an evaluation of the implementation of the HRA 2017 commissioned by the Ministry of Housing Communities and Local Government, 43% of local authority respondents cited administrative burden associated with the new assessment and PHP requirements and the volume of written correspondence with applicants as a significant challenge in responding to the HRA 2017.[576] The concerns expressed by frontline and senior staff in respondent authorities mirror those discussed above, namely the additional time implications for frontline staff but also a concern that the HRA 2017 emphasises process at the expense of practical casework to help applicants.[577] In response to these findings the report recommends that

[576] Ministry of Housing, Communities and Local Government, 'Evaluation of the Implementation of the Homelessness Reduction Act 2017: Final Report' (n 534) 39 and 40.
[577] ibid 40-41.

some flexibility is introduced into the requirements of the Act, in particular a reduction in the number of letters they are required to produce, which could reduce the perceived administration burden and create more time for casework.[578]

Such recommendations, and the internal perception of such administrative work as holding a low priority, can suggest an underappreciation of the importance of notices to the applicant and their ability to claim and enforce statutory entitlements. The notices required by the HRA 2017 and indeed within the rest of the statutory framework, play a key role in informing applicants of the process they are going through, of their rights and how to assert them, of the reasons for key decisions made by the authority along the way. These decisions can have significant social and personal impact, for example: those deemed not homeless or threatened with homelessness, or not eligible for assistance, those decisions would be the difference between receiving a statutory duty and assistance from the authority in resolving their housing situation and receiving virtually nothing. The notices produced informing of such decisions are crucial in providing applicants with information to use in understanding those decisions and the possibility of challenging those decisions.[579] In this way, from the perspective of the applicant, notices contribute towards upholding administrative justice. They allow an opportunity to explore the correctness of decisions made about applicants and are a gateway to opportunities to question and challenge decisions. [580] As such, the issuing of the notices itself forms part of a fair administrative procedure.

[578] ibid 77-78.
[579] Via internal review under Housing Act 1996, s 202, external review in the county courts under Housing Act 1996, s 204, or if unavailable, judicial review.
[580] Varda Bondy, Margaret Doyle and Maurice Sunkin, 'A Research Roadmap for Administrative Justice' (UK Administrative Justice Institute 2018) <https://ukaji.org/ukaji-research-roadmap-consultation/> accessed 27 May 2022, 5.

Research on the impact to applicants of not issuing such notices is sparse, however there is evidence that applicants may be dissuaded from exercising their rights to challenge decisions through internal review, or even challenging further through the county court, due to a lack of adequate information about their rights.[581] The practice of challenging decisions can ultimately improve the quality of initial decision making through the adoption of 'organisational learning' and pick up on any repeated common errors within a local authority context. In the second local authority several instances of decisions being made that the applicant was not in fact homeless were observed, particularly in the factual scenario where an applicant had been given an invalid s.21 notice for eviction from a private assured shorthold tenancy. In these instances, the authority should accept an application when the individual approaches as the attempted eviction creates a 'reason to believe' an applicant might be homeless, but should then issue a formal not homeless decision letter under s.184 HA 1996 when that attempt at issuing a s.21 eviction notice is deemed invalid by the housing officer. However, in practice an application was not taken and the case recorded as merely triage, advice and information given, denying those households the potential chance and information needed to challenge the negative decision that they do not in fact fall within the remit of the statutory prevention duties. These potential applicants were not however turned away without any help at all, being informed as to what a landlord would need to do before the notice is valid, and were also observed contacting the relevant landlord/letting agent and informing them the notice issued was invalid. Where the same household returned multiple times with repeated invalid attempts at issuing a s.21 notice, at that point often an application and prevention duty was accepted

[581] Dave Cowan and Simon Halliday, *The Appeal of Internal Review: Law, Administrative Justice and the (non-) Emergence of Disputes* (Hart 2003) 112-118.

despite not strictly being threatened with homelessness within 56 days.[582] This practice ultimately appears to link back to the view expressed above by the second local authority homelessness manager 1 that helping the applicant is deemed more important than strict legal duties, and when done effectively will avoid the need for legal challenge.

Alternatively, data collected also suggests that the above analysis overstates the ability of notices produced by the local authority to ensure due process. Even when notices are given at the appropriate points, they are heavily criticised for a lack of ability to effectively communicate. Cowan and Halliday also attributed reluctance with exercising the right to challenge decisions through internal review to having been given letters but not being able to extract from them reasons for decisions and relevant information as to rights of review.[583] Letters in the study conducted by Cowan and Halliday were reported to be highly legalistic in language and difficult to read, with the further suggestion that pairing the letters with verbal explanation was the more effective means of successfully communicating relevant information.[584] Similarly to those findings, letters collected in both local authorities studied here were also highly legalistic in the language used, referring to sections of the Housing Act 1996 or copying in wording from those sections, and using legal terms without further definition, despite the Homelessness Code of Guidance suggestion that they should be written clearly and in plain English.[585] Instead, letters appear drafted as if for judges or legal advisors, as opposed to speaking to the applicant themselves. This is so even though local authorities are granted considerable deference by the court when interpreting their

[582] See further Chapter 6.3.1.
[583] Dave Cowan and Simon Halliday (n 581) 114-118.
[584] ibid 116-117.
[585] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 547) para 18.30.

decisions, as demonstrated in the much-quoted judgment of Lord Neuberger in *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009]: "review decisions are prepared by housing officers, who occupy a post of considerable responsibility and who have substantial experience in the housing field, but they are not lawyers. It is not therefore appropriate to subject their decisions to the same sort of analysis as may be applied to a contract drafted by solicitors, to an Act of Parliament, or to a court's judgment. […] Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions".[586]

Given this, it is entirely possible that when housing officers are expressing frustration at the obstructive nature of the administrative burden in actually helping applicants, they are not understating the importance of the issuing of notices at all, but are in fact recognising their inability to be an effective communication tool.

> "…you've got to send out letters constantly really, the PHP, changing the PHP, the ending of any duty, the idea that you might be ending something, you know it's sort of a real, it's good as we should be communicating with our customers but I'm not sure half of our clients want letters as well" (LA1 – Homelessness Manager 1).

[586] *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, [47], [50].

This data suggests there is a need for different questions to be asked. Rather than simply addressing concerns that administrative burden is overwhelming by introducing flexibility into the statutory framework and reducing the communicative requirements between local authority and applicant, there is space for research into how this communication can be improved to both ensure the communication had is useful to the applicant and protects their administrative rights, thereby improving the perception of its importance as part of the process of assisting applicants, while at the same time ensuring communication obligations do not put an obstructive administrative burden on local authorities achieving substantive outcomes to address housing need.

5.4 H-CLIC

For both local authorities studied, and indeed local authorities across England,[587] one of the most significant new burdens to come alongside the HRA 2017 was the introduction of a new national data collection system called H-CLIC.[588] This system collects individual case level information, replacing the previous method of data collection called P1E which produced quarterly data returns aggregated at the local authority level. Under P1E the aggregated returns provided information on the number of households owed a statutory duty and in temporary accommodation in each local authority, and also collected information on prevention and relief activities conducted, which before the HRA 2017 was delivered largely outside of the statutory framework on a discretionary basis.[589] While there was a level of

[587] Local Government Association, 'Homelessness Reduction Act Survey 2018 – Survey Report' (n 544) 5.
[588] Ministry of Housing, Communities and Local Government, 'Guidance Changes to Statutory Homelessness Statistics: User Note' (n 533).
[589] Supported by a statutory requirement to produce a Homelessness Strategy; Homelessness Act 2002, s 1-3.

detail achieved within that information, it was not possible to gain any further detail or breakdown of information at the individual level.[590] H-CLIC, by providing quarterly individual case level data, is intending to enable more detailed information about homelessness and local authority activities to be collected and reported.[591] It is envisioned that this will provide more insight into "the causes and effects of homelessness, long term outcomes and what works to prevent it".[592]

This change was initially prompted by a UK Statistics Authority report published in 2015 which suggested there was considerable space for improvement in the trustworthiness, quality and value of official homelessness statistics.[593] It was deemed, after consultation, that case level information collection would help achieve the recommendations of the Authority, with the introduction of the HRA 2017 making the move from P1E unavoidable.[594] MHCLG recognised that the move to a new data reporting system may have an impact on data quality so initially published statistics with Experimental status.[595] It was expected the statistical returns would be under Experimental status for approximately twelve

[590] Ministry of Housing, Communities and Local Government, 'Guidance Changes to Statutory Homelessness Statistics: User Note' (n 533).
[591] ibid.
[592] Department for Communities and Local Government, 'H-CLIC Frequently Asked Questions: V1.0' (Government Statistical Service 13 December 2017) <https://gss.civilservice.gov.uk/wp-content/uploads/2017/12/HCLIC-FAQs-v1-0.pdf> accessed 27 May 2022, 6.
[593] UK Statistics Authority, 'Assessment of Compliance With the Code of Practice for Official Statistics: Statistics on Homelessness and Rough Sleeping in England' (Assessment Report 320, Office for Statistics Regulation December 2015) <www.statisticsauthority.gov.uk/publication/statistics-on-homelessness-and-rough-sleeping-in-england-department-for-communities-and-local-government/> accessed 27 May 2022.
[594] Sandra Tudor, 'Changes to Statutory Homelessness Statistics' (Office for Statistics Regulation 2018) <https://osr.statisticsauthority.gov.uk/correspondence/letter-from-sandra-tudor-to-ed-humpherson-regarding-changes-to-statutory-homelessness-statistics/> accessed 27 May 2022.
[595] Office for Statistics Regulation, 'Regulatory Guidance: Experimental Statistics – Official Statistics in Development' (Office for Statistics Regulation 02 August 2019) <https://osr.statisticsauthority.gov.uk/publication/experimental-statistics-official-statistics-in-development/> accessed 27 May 2022.

months from April 2018,[596] but this status remained for three years until April 2021.[597]

H-CLIC collects vastly more data than the previous system covering information on: the main applicant and details of the homelessness application, details of any other household members, any support needs in the household, activity if the prevention duty is owed, activity if the relief duty is owed, information regarding the decision made as to any further duties under the statutory framework, activity if the case was assessed as owed a main housing duty, any assistance received by the household for support needs, temporary accommodation, and information on any reviews requested of the decisions made by the local authority.[598] Data is collected on all homelessness applications that are taken[599] and is submitted by local authorities at the end of each quarter for every case that has been active within the last quarter (new or existing).[600] This is determined by a number of trigger points based on key decisions and outcomes within the legislative framework (for example when an initial assessment as to duties owed is completed or when a relief duty is ended successfully),[601] if a case hits one

[596] Sandra Tudor, 'Changes to Statutory Homelessness Statistics' (n 594).
[597] Ministry of Housing Communities and Local Government, 'Official Statistics Release: Statutory Homelessness October to December (Q4) 2020: England' (Gov.UK 2021) <www.gov.uk/government/statistics/statutory-homelessness-in-england-october-to-december-2020> accessed 27 May 2022, 4.
[598] Ministry of Housing Communities and Local Government, 'The Homelessness Case Level Information Collection (H-CLIC) to Monitor The Homelessness Reduction Act 2017: Summary of the Data Monitoring Specification v1.4.4' (Government Statistical Service 11 April 2019) < https://gss.civilservice.gov.uk/user-facing-pages/mhclg-homelessness-statistics-user-forum/> accessed 11 August 2021, 2.
[599] Housing Act 1996, s 183; Any household that the authority has a reason to believe may be homeless or threatened with homelessness is entitled to an application.
[600] There is also detailed guidance as to how to report activity on 'legacy cases'; cases where homeless applications were taken before 3rd April 2018, the date in which the HRA 2017 and the new H-CLIC data reporting requirements came into force, and continue to be owed a duty under the pre-HRA statutory framework; Department for Communities and Local Government, 'H-CLIC Frequently Asked Questions: V1.0' (Government Statistical Service 13 December 2017) <https://gss.civilservice.gov.uk/wp-content/uploads/2017/12/HCLIC-FAQs-v1-0.pdf> accessed 11 August 2021, 19 and 20).
[601] Ministry of Housing Community and Local Government, 'The Homelessness Case Level Information Collection (H-CLIC) For the Monitoring of the Homelessness Reduction Act 2017: Guidance for the Completion and Return of H-CLIC Data Version 1.1 (Consistent with v1.4.3 of the Data Specification)' (Government Statistical Service 28 September 2018) <https://gss.civilservice.gov.uk/user-facing-pages/mhclg-homelessness-statistics-user-forum/> accessed 11 August 2021, 8 and 9.

of these points as it moves through the legal framework within the given quarter, this case becomes reportable and the LA must have completed all relevant mandatory sections of the data requirement and submit the case to MHCLG along with all others hitting a trigger point.[602] The data is submitted as individual case level information at the LA side directly from case management systems[603] into an MHCLG online platform called DELTA,[604] where it undergoes validation via a Schematron to see if data conforms to MHCLG's data structure and expectations for data accuracy and completeness.[605] After validation, data is then aggregated by MHCLG and sent back to the local authorities for them to check and approve a summary of headline figures for quality assurance.[606] It was initially intended that there would be an immediate migration of reporting from P1E to H-CLIC for all new cases received after 03rd April 2018, the date of the coming into force of the HRA 2017, and for legacy cases accepted prior to 03rd April 2018 there would be an optional overlap period of 6 months (two reporting quarters).[607] This period of overlap however was extended first to April 2020, with the option of reporting temporary accommodation data and main duty data via P1E, and then extended again due to the impact of the COVID-19 pandemic allowing authorities to provide any data through

[602] ibid 9.
[603] Or via manual input for authorities receiving very few homelessness applications and without a compatible IT system - ibid 10.
[604] Gov.UK, 'DELTA Frequently Asked Questions' (*Gov.UK* undated) <https://delta.communities.gov.uk/FAQs> accessed 27 May 2022.
[605] Ministry of Housing Community and Local Government, 'The Homelessness Case Level Information Collection (H-CLIC) For the Monitoring of the Homelessness Reduction Act 2017: Guidance for the Completion and Return of H-CLIC Data Version 1.1 (Consistent with v1.4.3 of the Data Specification)' (n 601) 11.
[606] Ministry of Housing Communities and Local Government, 'H-CLIC QA Reports Frequently Asked Questions' (Government Statistical Service 03 July 2020) < https://gss.civilservice.gov.uk/user-facing-pages/mhclg-homelessness-statistics-user-forum/> accessed 11 August 2021.
[607] Ministry of Housing, Communities and Local Government, 'H-CLIC Frequently Asked Questions: V2.0' (Government Statistical Service 09 March 2018) <https://gss.civilservice.gov.uk/wp-content/uploads/2018/05/HCLIC-FAQs-v2.0.pdf> accessed 11 August, 11.

P1E that they couldn't provide through H-CLIC.[608] The P1E form was finally discontinued from the April-June 2021 collection.[609]

5.4.1 Implementing H-CLIC

At the time of study in both local authorities, data was reported fully via H-CLIC. The standout finding regarding the impact of H-CLIC in both authorities is the sheer extent of the administrative burden it presented. As suggested above, H-CLIC collects vastly more data than the previous reporting system and since data is transferred directly from local authority case management systems, it requires housing officers to routinely collect and record significantly more data about each case as it progresses than prior to the HRA 2017. While there was some acceptance by housing officers and managers that H-CLIC was likely collecting more relevant information as compared to P1E, there was considerable frustration at the additional contribution to workload at a time when the HRA 2017 was already requiring significant changes in practice.

> "[…] the volume of data is just colossal […] I can't overstate how phenomenal the amount of data that they are collecting" (LA1 – Senior Housing Officer 1).

> "[…] on our systems there is a lot to update and all of the time, especially with H-CLIC, you have to ensure that the case passes, for it to submit. So you are just checking all the time, so I think that was difficult." (LA1 – Housing Officer 3).

[608] Ministry of Housing Communities and Local Government, 'Statutory Homelessness January to March (Q1) 2021: England: Technical Note' (Gov.UK July 2021) <www.gov.uk/government/statistics/statutory-homelessness-in-england-january-to-march-2021> accessed 27 May 2022, 8.
[609] Department for Levelling Up, Housing and Communities, 'Statutory Homelessness April to June (Q2) 2021: England: Technical Note' (Gov.UK 28 October 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1028994/Statutory_Homelessness_Technical_Note_Apr-Jun_2021.pdf> accessed 27 May 2022.

This concern was compounded by the validation process the data undergoes once submitted, where cases are flagged with errors if the data submitted does not match expected values. Authorities cite around 300 potential points of failure. Cases can flag with errors that must be corrected before the data will be accepted and can also flag with warnings that will not prevent a case from being accepted, but calls for the authority to double check the accuracy of the data. A simple example at the time of study: when inputting the age of each household member the age inputted cannot be over 120 or negative, so would flag as an error in these instances, and is not expected to be over 100, so any input over 100 would flag with a warning.[610] The majority of required data is inputted into case management systems by housing officers through the selection of pre-determined values from drop down menus, meaning housing officers report that many errors flagged are a result of a simple oversight or a slip of the finger, a mistake that is easy to make given the intensity of caseloads (as explored above) and the sheer amount of data collected. Within the validation system data fields are connected, so, for example, it will not accept an input selection for the outcome of an assessment of the applicant's case as 'Threatened with homelessness due to service of valid Section 21 Notice – Prevention Duty owed' unless the input for current accommodation is also listed as 'private rented sector – self-contained, private rented sector – HMO or registered provider tenancy',[611] yet an authorities case management system may still allow other selections to be

[610] Ministry of Housing Community and Local Government, 'The Homelessness Case Level Information Collection (H-CLIC) For the Monitoring of the Homelessness Reduction Act 2017: Guidance for the Completion and Return of H-CLIC Data Version 1.1 (Consistent with v1.4.3 of the Data Specification)' (n 601) 49; This also meant it wasn't possible at the time to record unborn children within a household, which was eventually amended in May 2020 - Ministry of Housing Communities and Local Government, 'H-CLIC QA Reports Frequently Asked Questions' (n 606) 5.

[611] Ministry of Housing Community and Local Government, 'The Homelessness Case Level Information Collection (H-CLIC) For the Monitoring of the Homelessness Reduction Act 2017: Guidance for the Completion and Return of H-CLIC Data Version 1.1 (Consistent with v1.4.3 of the Data Specification)' (n 601) 21.

made so the error is not highlighted until a data submission is attempted at the end of the quarter.

> "Let me think of an example…say you have set the case up but you don't set it up for a few days cos you are busy maybe and you write it on your [note] pad, and then you go oh I need to set that up so you set it up and it'll default to today's date of set up, but then they'll put the date that they did the interview 5 days ago, well the system thinks well you can't do that, because they've only come in today, but somehow it will allow you to finish that case off and complete it so when you then dump it into DELTA, DELTA picks up on it straight away […] so if you make a mistake in it, [the case management system] will let you do it, but when you put it in DELTA, DELTA will say oh you can't do this" (LA2 – Homelessness Manager 1).

While the validation process is there to alleviate issues human error can cause for data quality, it takes up a significant amount of time to correct submissions so that they are accepted by MHCLG, with both authorities reporting several hundreds of cases returning with some kind of flag.

> "So basically what you have to do all these warnings and errors you have to put them right, so it took me fifteen days while I was on the first quarter April to June" (LA2 – Homelessness Manager 1).

In both authorities there was a particular member of staff who took on the key role of managing the data submissions and also attempting to address the validation flags. In the first authority this was a senior housing officer, and in the second a manager (although the manager stated it would likely eventually be delegated to a senior housing officer). Despite this, the impact of the validation process was felt throughout the team. While both

of these particular members of staff did what they could to correct the errors within the cases themselves, this was not always possible where the correct input is only discernible from more in-depth knowledge of the case, so would need the responsible housing officer to correct. In the second local authority, aspects of the validation system were embedded into the case management system, so housing officers could not progress from one data section to another without having filled out all required data fields. This has the advantage of potentially resulting in fewer errors when submitting cases to MHCLG at the end of a quarter, but regular instances of frustration were observed by officers struggling to navigate the validations.

> "[…] there was a lot of expletives in the office from those that were trying to, because clearly it was such a complicated bureaucratic system, […] there was thousands of errors that they had to correct and constantly correct and constantly correct." (LA2 – Head of Service).

The issues above were exacerbated by the perception that the goalposts set by MHCLG were continuously changing. Within the first year of reporting via H-CLIC, submission deadlines for each reporting quarter were pushed back as local authorities across the country struggled to submit data and errors within the validation system were fixed, meaning quarters began to overlap.

> "[…] we are actually in to quarter three now, quarter one ended at the end of September, and we are still getting/we have just had a load more of information from MHCLG saying that there are still errors in the data…and that we are in the period now where we should be submitting quarter two data but we've been told that

we've got to submit/resubmit some quarter one data" (LA1 – Senior Housing Officer 1).

While delaying submission deadlines and updating the validation system were attempts to be responsive to issues local authorities were facing and to reduce pressure, they also added to the frustration and burden authorities were already experiencing. Changes to the validation system meant cases that were previously accepted turned into fails, extending the work required by local authority staff to submit returns.

> "I'd like to say I was good and I met the deadline and I worked very hard and then sat back and just basked in the glory of it - until I got an email from them saying actually we've changed the Schematron it's not passing anymore so your like oh right back to square one then" (LA1 – Senior Housing Officer 1).

> "I'll be honest with you I thought I will get 100% and do you know what I got within 2 or 3 a few times, but because the system is live if somebody alters something, in the meantime, say I had a couple of days off and I thought what I'll do is I'll clear all the errors today erm and then let's say I had the Friday and the Monday after, I'd come back in on Tuesday and there is 5 errors now! […] And it is because somebody has changed something in the system! So it was like (sighs) oh it was a nightmare, but I got 100% but since then I haven't, because […] well it does take too much time" (LA2 – Homelessness Manager 1).

Managers and housing officers were forced to invest significant amounts of time simply getting to grips with the technical aspects of the system, inputting newly increased amounts of data and rectifying failed submissions, without any targeted training programme from MHCLG. There

are thousands of pages worth of guidance documents, FAQ's documents, a copy of the H-CLIC data requirement, a glossary of validation errors, all available to local authorities to assist them with the data reporting,[612] yet these are numerous, lengthy and time consuming to explore, simply adding to the complexity despite providing assistance. It was suggested by both authorities that direct training from MHCLG would be preferred, but even this would have limited utility as each local authority has the freedom to commission their own case management system from any IT supplier, so day to day data input looks different in each authority.

When submissions take such considerable time and effort to complete to a format acceptable by the MHCLG Schematron, there is a risk that the concern for simply having a submission that passes outweighs the concern for accuracy in data reporting. There is further risk that the burden imposed by H-CLIC on daily workload and the complexity of the system further risks data quality at the point of collection. These concerns were reflected by both authorities.

> "[…] we were one of the only authorities that did get it in, but it was after an awful lot of work and how accurate it was, or would have been I'm not sure." (LA2 – Head of Service).

> "[…] if something is so administratively burdensome you've got to question the quality of that data that's getting sent through to MHCLG" (LA1 – Senior Housing Officer 1).

A further issue presented by the new H-CLIC data collection system is that since data is collected at individual case level and uploaded directly from case management systems to DELTA, local authorities no longer had their

[612] Government Statistical Service, 'Homelessness Case Level Collection (H-CLIC) Updates' (Government Statistical Service undated) <https://gss.civilservice.gov.uk/user-facing-pages/mhclg-homelessness-statistics-user-forum/> accessed 27 May 2022.

own aggregated data summaries of how many homelessness applications they were taking, which duties were owed and how cases were progressing, to inform their practices. While MHCLG do aggregate submitted data and return headline figures for quality assurance, and eventually publish statistical releases, there is a gap between each of these activities, particularly within the first quarters of implementation. The statistical release for the first quarter after implementation of H-CLIC, April-June 2018, was not ready for publication until December 2018.[613] The first local authority in particular described a situation where they did not foresee the effect such delays would have on their internal monitoring and ability to apply for government funding bids, and were therefore left scrambling to try figure out how to generate data reports from their case management system, and identify which data they now wanted local reports on.

> "Our [case management system] doesn't do what we want it to do, report wise it is still struggling with that you know and getting the right data that we need, as seniors and management we had a management meeting the other day and I wanted to know what data do they want […] it's time consuming again changing things upgrading things or even getting the changes in the first place. Even though we love the [case management system] we like it as a reporter you know when you are putting all your notes on, but the actual exit reporting, that we've got to sort out" (LA1 – Senior Housing Officer 3).

[613] Ministry of Housing Communities and Local Government, 'Experimental Statistics: Statutory Homelessness in England: April to June 2018' (Gov.UK 13 December 2018) <https://www.gov.uk/government/statistics/statutory-homelessness-in-england-april-to-june-2018https://www.gov.uk/government/collections/homelessness-statistics - statutory-homelessness> accessed 27 May 2022.

Even in the second local authority where their case management system was better able to produce localised reports, the Head of Service still expressed frustration around relying on lagging figures from MHCLG.

> "[…] you can duplicate their reports so you can pull off parts of it as indicators for yourself, and we do, not all of it is particularly meaningful, and because there is a lag, because they're all, if you think about them you can have lagging measures or leading measures, so you know, the real time measures are important, more important in some respects, the number of customers that you see on that day or the number of cases that you've prevented that week, kind of help you to influence the system quicker, whereas if you wait for the statutory measures hahah it's all happened. Oh well okay we obviously didn't prevent very well three months ago" (LA2 – Head of Service).

It is possible some of the issues discussed above could have been eased by sufficient investment from government to implement H-CLIC. The rollout of H-CLIC was supported by an additional £3 million investment from central government to local government, which translated to only £9,202 to each authority.[614] With this, local authorities were expected to ensure their case management systems were compatible with H-CLIC data requirements and could export H-CLIC data to DELTA. MHCLG did not develop or endorse any particular case management system in order to do this, but instead engaged with a minimum of 13 different IT providers to support implementation.[615] For some, if their current system was not fit for purpose, this would mean purchasing new software from a new IT supplier, as in the second local authority. For others this could mean purchasing an

[614] Ministry of Housing, Communities and Local Government, 'H-CLIC Frequently Asked Questions: V2.0' (n 607) 10.
[615] ibid 18.

amendment to their current system, as in the first local authority. As of July 2021, there were still a number of authorities who have not been able to adopt a H-CLIC compatible management system so are reporting data through manually filling out case level forms, which is deemed less reliable and therefore carries the risk the data is omitted from published releases.[616] Both local authorities studied were able to adopt compatible systems in time but ended up with very little lead in to prepare with their new/amended systems, both receiving the software only a week before the HRA 2017 entered into force alongside the new H-CLIC system. The first local authority reported that their system was amended through the addition of a new bolt on tab containing all of the new required data fields. This new tab however wasn't necessarily always confluent with the existing tab, leading to a cross-over of information input.

> "if you don't add a household member - so you have the client tab and all the family will be on there but they won't transfer automatically onto the H-clic bit, so you have to add them yourself so quite often you forget to do that, so then that comes back as an error" (LA1 – Housing Officer 3).

The senior housing officer responsible for the H-CLIC submissions reported that while their new software solution did have all of the required data fields under the various categorisation tabs their case management system had, they weren't in the same order or number sequence as the governments data specification, or under the same categorisation headers, causing further confusion amongst staff when inputting data or problem-solving errors. To assist themselves and the rest of the team the senior officer created their own data specification for the case management

[616] Ministry of Housing Communities and Local Government, 'Statutory Homelessness January to March (Q1) 2021: England: Technical Note' (n 608) 12.

software, finding the location of all of the required fields within the IT system, creating a document to record them and how they correspond with the published H-CLIC data specification. This again contributes to the significant time investment needed to navigate the complexity of the implementation. Responsible staff members in both authorities reported discovering errors with either their case management system or DELTA and the Schematron, and despite best efforts of the individuals involved, felt passed back and forth between IT providers and MHCLG, with nothing getting fixed.

> "What I'm finding is that I am getting stuck between the software supplier and MHCLG because if I talk to one they say well that software is right you need to talk to them and if I talk to MHCLG they/well you need to talk to the supplier and you keep getting passed between the two" (LA1 – Senior Housing Officer 1).

> "What happens is there is a number of things that are set in the system that are a fault at the DELTA end or the [IT supplier] end, so whatever you do you can't deal with it" (LA2 – Homelessness Manager 1).

This, combined with the above issues led to a Senior Housing Officer declaring the implementation of H-CLIC by MHCLG to be:

> "[…] shambolic…it's absolutely shambolic" (LA1 – Senior Housing Officer 1).

5.4.2 "Normal, Natural Troubles"

It is possible to infer that some of the issues experienced above were simply teething issues as a complex new system was implemented. It is likely that familiarity with the H-CLIC data requirements and with any changes to case management systems would improve over time, leading to better data quality at the point of collection. Efforts made by MHCLG to have an open line of communication with IT providers, and to fix issues where possible on an ongoing basis, were likely to also help reduce hurdles faced by authorities and improve data quality, despite causing the earlier discussed frustrations with validation errors when the Schematron is changed. Both local authorities expressed that eventually they were able to generate some of their own data reports to use locally and MHCLG have more recently moved the management of quality assurance reports onto the DELTA platform to allow for smoother interaction with the aggregated reports, and have also provided a guidance document detailing the filters applied by MHCLG to the DELTA data submissions to generate the quality assurance reports.[617] However, evidence from online surveys of data users and providers conducted by MHCLG in May 2021 demonstrate that these concerns appear to go beyond early teething issues.[618] There is still reported frustration within authorities with the delay involved in accessing aggregated data via the quality assurance reports and the eventual statistical release publications.[619] Authorities continue to report problems with understanding data entry requirements, and with the way errors in cases are produced and resolved, requesting improved access to guidance with more examples of H-CLIC errors and how to solve them.[620] Finally, authorities are also continuing to report issues with their IT software

[617] ibid 12-13.
[618] Ministry of Housing Communities and Local Government, ' Official Statistics Release: Statutory Homelessness January to March (Q1) 2021: England' (Gov.UK 22 July 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004845/Statutory_homelessness_release_Jan-Mar_2021.pdf> accessed 27 May 2022, 6.
[619] ibid.
[620] ibid.

providers, and an inability to provide the functionality needed to incorporate MHCLG's formatting requirements.[621] Concerns for data quality therefore remain.

Having accurate, reliable data following the implementation of the HRA 2017 is vital for being able to monitor the effectiveness of national policy and for local authorities to identify local need and track the effectiveness of their interventions. To understand the causes of homelessness and what works to prevent it, good quality data on the characteristics of people who need assistance with housing, the factors leading to their current situation, and the interventions offered by local authorities as a response, is crucial. As suggested above the implementation of H-CLIC was intended to contribute to exactly this, but observations of frontline practice cast doubt on its ability to do so.

Poor quality data can be interpreted simply as a managerial issue, where conditions that contribute to bad records are deemed remediable through better management and more consistent control.[622] This however overlooks the fact that reporting procedures in their own right are an integral feature of the same social orders they describe, they are an element of the institutionalised practices under observation.[623] Exploring poor records as a sociological phenomena provides insight into "the ties between records and the social system that services and is serviced by these records".[624] This was explored in a medical context by Harold Garfinkel in 1967, explicating the sources of so called "normal, natural troubles" with clinical data records.[625] Normal, natural troubles – perceived issues with reported data

[621] Ministry of Housing, Communities and Local Government, 'Statutory Homelessness Data: User and Data Provider Survey Results' (Gov.UK May 2021) <https://www.gov.uk/government/statistics/statutory-homelessness-in-england-january-to-march-2021> accessed 27 May 2022.
[622] Harold Garfinkel, *Studies in Ethnomethodology* (Englewood Cliffs 1967), 197.
[623] ibid 192.
[624] ibid.
[625] ibid 186.

quality - occur due to self-reporters seeking to act in a way that is compliant with the prevailing rules of practice, with rules and operating procedures that are taken for granted as the right way of doing things. The 'troubles' outlined above with H-CLIC data reporting are not only the result of underinvestment or of 'careless' reporting, but have a fundamental organisational rationale.

Garfinkel explores a number of sources of normal, natural troubles in clinical data reporting which resonate highly with experiences observed in the reporting of H-CLIC data. A key problem for institutions who operate within the context of scarce resources is balancing the resource costs of obtaining and recording data, with the perceived utility of recording such data.[626] Where information desired is of high resource cost, it needs to be possible to foresee the utility of this information to the users of such data in order to establish that it will have been worth the investment of valuable resources. It needs to be possible for housing officers performing the data collection to see how this process assists in disciplining the homeless individual. As evidenced above, the resource cost of collecting and submitting H-CLIC data is high. A key problem is that at this stage the staff shouldering the burden of the resource cost cannot see the utility of such a burden. This was particularly the case in the first local authority studied where H-CLIC was observed as a regular topic of conversation within team meetings, with frustrated managers and housing officers asking rhetorically why they have to collect so much data, who is using it at the other side and what are they doing with it? This issue is compounded when local authorities themselves as a potential data user struggle to utilise the case level data they are submitting due to delays in the return of the more

[626] ibid 192.

usefully perceived aggregated data, and find the need to generate their own additional local data reports.

This issue contributes to a further difficulty encountered in ensuring the organisational motivation for the collection of data. When standards required for 'good' reporting performance contradict the service interests of professional persons within the data reporting institution, there is increased risk of normal, natural troubles, or even the development of informal data recording practices which allow the maintenance of priority of other occupational obligations over 'good' quality data reporting.[627] Where the burden of H-CLIC reporting practices is deemed to detract from meeting the obligations imposed by the HRA 2017, this is going to create such a conflict. It is clear from the discussion through this chapter that local authority officers and managers perceive substantive outcomes for applicants are the priority and ultimate goal of implementation of the HRA 2017, with necessary bureaucracy brought along with it presenting an obstruction to achieving that goal.

> "[…] they have brought with it [the HRA] quite a lot of bureaucracy which doesn't necessarily help people" (LA2 – Head of Service).

The motivation for good data reporting is also likely to be negatively impacted where goalposts are changed and data submissions that appear at first to pass validation, fail at later dates when changes are made to the underlying Schematron.

A final source of "bad" records explored by Garfinkel stems from the fact that requiring standardised reporting of a phenomena carries the risk of imposing on that phenomenon a structure of practice derived from the features of the reporting procedure, rather than from the actual events

[627] ibid 194.

themselves.[628] This can be demonstrated in the homelessness context when the London Borough of Southwark Council, an early trailblazer area for the duties implemented under the HRA 2017, cite redesigning their 'customer journey' to mirror the H-CLIC data requirements.[629] Examination and documentation of individuals experiencing homelessness through H-CLIC data collection, plays a significant role in how power is exercised in relation to those individuals. It creates a description of an individual, a point of comparison to others, to identify which individuals are to be 'normalised', or corrected or excluded.[630] It structures understandings as to what is 'abnormal' within the phenomena of homelessness and in turn allows judgements as to what actions should be taken as a response.

By contrast, in the first local authority studied, frustration was expressed in a team meeting by a housing officer regarding the H-CLIC data reporting requirements explicitly because they felt H-CLIC did not represent the client's 'journey', and perceived being forced to record information that was not relevant to the applicant or assisting with their housing situation. A parallel concern is raised when considering that standardised reporting forms not only provide categories with which to describe events, but also impose rules of reporting conduct.[631] Rule governed conduct suffers from the well-known problem that differences occur between rules and practice, meaning that self-reporters may find themselves in a situation where it is difficult to reconcile what they know about a particular event in practice, and what the form provides as a rule for deciding the relevance of what is

[628] ibid 195.
[629] Vincent Lawal, 'Southwark Council: Embedding the Homelessness Reduction Duties – A Whole System Approach' (Local Government Association 2018) <www.local.gov.uk/sites/default/files/documents/Embedding%20the%20Homelessness%20Reduction%20Duites%20-%20Vincent%20Lawal%20WEB.pdf> accessed 11 August 2021.
[630] Michael Foucault, *Discipline and Punish* (n 535) 181.
[631] Harold Garfinkel (n 622), 195.

known.[632] This can result in issues for data quality where data reporters distort the reality of a case in order to comply with the reporting form.[633]

During the period of study at both authorities, instances of frustration were observed where housing officers struggled to identify the appropriate data field selection from the relevant drop down options for the particular situation they were describing. This could stem from either struggling to understand the terminology used within the data fields, and which option matched the scenario they were attempting to describe, or feeling like there simply wasn't an option that matched the scenario. In the second local authority a situation was observed where two housing officers were troubling over a computer screen trying to assist a third officer in identifying the correct selection for the main activity undertaken during the prevention duty, and all three agreed they couldn't identify an appropriate option, leading one officer to suggest to just "put anything". This particular data field also caused a problem in the first local authority, where officers perceived that if the prevention duty had been unsuccessful at preventing homelessness and the case moved on to the relief duty, the appropriate drop down selection should be 'no activity - advice and information provided' as all other available options, including things such as 'Accommodation secured by local authority', 'Helped to secure accommodation found by applicant, with financial payment', 'Negotiation/mediation work to secure return to family or friend', 'Financial payments to reduce rent service charge or mortgage arrears'[634] were interpreted by the authority as suggesting the prevention had been successful which was deemed to be misleading if reported. Within the H-

[632] ibid 196.
[633] ibid.
[634] Ministry of Housing Community and Local Government, 'The Homelessness Case Level Information Collection (H-CLIC) For the Monitoring of the Homelessness Reduction Act 2017: Guidance for the Completion and Return of H-CLIC Data Version 1.1 (Consistent with v1.4.3 of the Data Specification)' (n 601) 56-59.

CLIC data specification it is entirely possible to record prevention activities even if these were eventually unsuccessful, the only limitation is that only one activity can be recorded so authorities are advised to select the main activity contributing to the outcome.[635] This approach by the authority demonstrates that data is distorted, either knowingly or unknowingly, by local interpretation and understanding of reporting requirements, and implies that in order to accurately interpret and attach meaning to H-CLIC data, these local insights would need to be known by the data user. This observed risk of data distortion appears to also be supported by an open text survey response to MHCLG's research in May 2021 into experiences with homelessness statistics:

> "I think the quality of the data is affected by how the questions appear within the case management system […] Officers that progress cases may input an incorrect value/inappropriate value into a field because they are doing their best to answer a question but they are unfamiliar with the requirements/meanings of some HCLIC questions".[636]

5.4.3 "Good" Reasons For "bad" records

Within the context of clinical records, Garfinkel posits that the above explored sources of normal, natural troubles can amount to "good" organisational reasons for "bad" clinical records. This is because when interpreting clinical folders, it should be recognised that data records can be read in one of two contrasting ways, as an actuarial record, or as a

[635] ibid 54 and 56.
[636] Ministry of Housing, Communities and Local Government, 'Statutory Homelessness Data: User and Data Provider Survey Results' (n 621).

record of a therapeutic contract between the clinic and the patient.[637] When medical agencies act, they commit themselves to honouring legitimate public claims to 'good healing', thereby, an indispensable way clinics demonstrate they have honoured such claims is through procedures for formulating relevant accounts of their interactions with patients.[638] These accounts make up clinic records. When these data records are read through an actuarial lens, contents often fall short of adequacy. However, when read as unformulated terms of a potential therapeutic contract, they make more sense. The issue here is that in order to read the record contents without incongruity, it requires an expectation of certain knowledge relevant to the context in which the data is formulated including, knowledge of the particular person whom the record refers, knowledge of the persons who contributed to the record, knowledge of clinic organisation and operating procedures at the time the record is being consulted, knowledge of any mutual history with other persons, and finally, knowledge of clinic procedures including procedures for reading a record.[639] This can be done by medical clinic members but is information that would need to be first obtained by 'outsiders', other data users such as researchers.

Where the primary purpose of data records is to represent a therapeutic contract, to form a documented representation of the patient-clinic relationship, concerns about "bad" data, or an inability to interpret data without the required knowledge, can be put aside or deprioritised.[640] The ability of the records to demonstrate the legitimacy of the agency - to demonstrate they have honoured claims for adequate medical care - takes

[637] Harold Garfinkel, (n 622) 198.
[638] ibid 199.
[639] ibid 206.
[640] ibid 206 and 207.

priority.[641] Bad data from the actuarial perspective can be somewhat excused. The same however, cannot be said for H-CLIC data. H-CLIC data is not intended to be a representation of the developing relationship between individual applicant and local authority, but more of an actuarial data record, from which it is possible to identify factors associated with better or worse outcomes for households at risk of homelessness, and to understand more about factors that drive homelessness and how best to address them. Given that, the organisational reasons explored above which may explicate poorer data quality in H-CLIC returns cannot be labelled "good". If local organisational knowledge is needed, knowledge of any localised institutional factors that could contribute to the procedures of data recording at the point of collection or submission, before the quality of data can be reconciled, this cannot provide a reliable 'actuarial' type record.

In fact, it is doubtful as to whether it is possible within the current methods of data collection to create a reliable actuarial record. H-CLIC data is collected for submission to Government through the local authority's own case management system, where the local authority creates the exact kind of 'therapeutic' records described by Garfinkel. Data is collected to detail the interactions between the applicant and the authority, to assist in determining whether the legitimate public claim to 'good service' was provided. This is the case whether this is to address moral claims as to the adequacy of service - whether the authority has done the 'right thing' by the applicant - or to evidence the legal satisfaction of statutory duties if there were to be a legal challenge. Given that, and given that the H-CLIC data requirement has been moulded inextricably into this record creation through integration into case management systems (and the 'customer

[641] ibid 199 and 207.

journey'), H-CLIC data produced cannot be separated from the local organisational context that is needed to interpret these records.

5.5 Conclusion

This chapter has explored three areas of implementation of the HRA 2017 that were observable in the local authorities studied as causing barriers or challenges to implementation, including difficulties meeting required 56-day time frames in the performance of prevention and relief duties, an increase in administrative burden caused by an increase in the production of letters informing applicants of different decisions made on their application, and an increased burden on data reporting for the production of official homelessness statistics.

The implementation of legislative obligations, including strict legislative compliance with required time frames during the prevention and relief duties, ensures local authorities are partaking in the required observation and measurement of individuals (particularly so when combined with data collection requirements demanded by H-CLIC during the performance of those duties), to ensure that, in turn, those individuals are disciplined appropriately by the legislative framework. This can work positively to ensure applicants are able to access the legal duties they are entitled to, particularly if they will ultimately go beyond the HRA 2017 into the more substantive main housing duty. However, the above discussion has also demonstrated the potential for local authorities to resist the perceived arbitrariness of these time frames, at the potential risk of challenge, if they deem a better/the same substantive outcome could be achieved for the individual in doing so. Letters produced for an applicant over the course of their interaction with a local authority document the individual's status within the statutory framework, forming part of their examination

as a 'case' to be normalised through the performance of duties (or potentially excluded). However, the information contained within those letters regarding an applicant's right to challenge local authority decisions also play a role in bottom-up discipline of local authority practice. Observation of local authorities suggests this administrative requirement may not be fit for purpose in enabling either of these aims. And finally, how effective can data collection be as a tool for the discipline of homelessness, for use as a predictor of incidences of homelessness and for informing normalisation, if the quality of data collected is flawed?

Ultimately, housing officers performing statutory duties deem these particular surveillance and examination techniques built in to the regulation of homelessness are excessive and detract from what they perceive as their primary aim of reducing homelessness by supporting households into accommodation. Prior to the HRA 2017, barriers to substantive assistance were written into the statutory framework in the form of exclusionary decision making around criteria such as priority need and intentionality. Now, post-HRA 2017, these exclusionary barriers have been significantly reduced, but in its place comes a new process of regulatory surveillance that housing officers do not believe contributes to substantive outcomes.

While this chapter has focussed on administrative challenges associated with implementation, these were certainly not the only issues impeding on an authority's ability to achieve substantive outcomes for people experiencing homelessness. Further challenges will be explored in the following chapters as consideration moves to the performance of specific duties.

CHAPTER 6 – DISCHARGING DUTIES

6.1 Introduction

The Homelessness Reduction Act 2017 resulted in significant changes in practice within local authority homeless departments. By expanding the duties owed towards those who are threatened with homelessness,[642] and by introducing a new duty towards those who are homeless,[643] alongside a new framework for assessing an applicant's case and creating housing plans,[644] new working practices were necessitated and also new ways of processing applicants. The new focus on the authority taking 'reasonable steps'[645] to assist the applicant as opposed to the direct provision of accommodation signifies new ways of discharging statutory homelessness duties. The focus on these duties being discharged via accommodation available for six months[646] suggests these new ways should be aimed towards the private rented sector. As discussed in earlier chapters, this direction of travel presented by the HRA 2017 is not new. Various policy developments prior to the HRA 2017 have shifted how housing is understood, as a commodity rather than a basic need, privatising housing provision and residualising social housing. Since the Localism Act 2011 it has been possible to discharge homelessness duties with a twelve-month AST in the private rented sector.[647] Even a focus on prevention activities is not new, with the Homelessness Act 2002 requiring local housing authorities to publish prevention focused homelessness strategies.[648] In

[642] Housing Act 1996, ss 175 and 195, as amended by the Homelessness Reduction Act 2017, ss 2 and 4.
[643] ibid s 189B, as inserted by the Homelessness Reduction Act 2017, s 5.
[644] ibid s 189A, as inserted by the Homelessness Reduction Act 2017, s 3.
[645] ibid s 189B(2) and 195(2).
[646] ibid ss 189B(7) and 195(8).
[647] Localism Act 2011, ss148 and 149.
[648] Homelessness Act 2002, ss 1-4.

response to this local authorities began developing preventative practices, including help to access the private rented sector, family mediation and debt advice, most often through the popular structure of Housing Options.[649] The Housing Options approach was sold as improving service to all customers with less of an emphasis on who does or does not qualify for statutory homelessness services, but instead how the authority could help facilitate options for those seeking accommodation.[650] While claiming to empower choice and control in the individual, it has also received criticism for 'gatekeeping' individuals from their entitlement to a statutory homeless duty to be provided with accommodation.[651] While under this approach local authorities would have done varying elements of prevention and relief work prior to the HRA 2017, this now forms part of the statutory duties of all local authorities in England to all those who are eligible for assistance and homeless or threatened homeless.

This chapter will explore some of the key aspects of the new statutory framework as amended by the HRA 2017, investigating how local authorities are discharging the new and expanded homelessness duties on the frontline. It will focus particularly on the operation of personal housing plans and the introduction of the personalisation narrative into general homelessness service delivery. It will evaluate the extent to which personal housing plans are indeed personal in a way which facilitates the effective prevention and relief of homelessness, or whether they operate simply as a tool in the exercise of normalisation, furthering neoliberal rationalities of individualism and privatisation. The chapter will then go on to discuss the new and expanded prevention and relief duties, considering the

[649] Hal Pawson, 'Local Authority Homelessness Prevention in England: Empowering Consumers or Denying Rights?' (2007) 22(6) Housing Studies 867, 872 and 873; Suzanne Fitzpatrick and Hal Pawson, 'Fifty Years Since *Cathy Come Home*: Critical Reflections on the UK Homelessness Safety Net' (2016) 16(4) International Journal of Housing Policy 543, 574.
[650] Hal Pawson (n 649) 873.
[651] Suzanne Fitzpatrick and Hal Pawson (n 649) 574.

reorientation of homelessness practice towards a preventative agenda. It will finish by exploring the impact of the availability of accommodation on a housing officers' ability to meet their new statutory duties.

6.2 Personal Housing Plans

6.2.1 A Narrative of Personalisation.

Section 3 of the HRA 2017 introduced the idea of a 'personalised plan' through the insertion of s.189A into the HA 1996. Section 189A(4) HA 1996 instructs authorities to agree with an applicant any steps an applicant is required to take to retain accommodation, and any steps the authority are to take. If the applicant and the authority cannot agree on required steps, the authority must record why they cannot agree and state any steps it considers reasonable for the applicant to take and any steps it is taking.[652] It is these recorded steps that make up an applicant's 'personalised plan'. Personalised plans are more commonly referred to as 'personalised housing plans' or 'personal housing plans' – a 'PHP' for short.[653] What it means for a plan to be 'personalised' is not expanded on in the relevant sections of the HRA 2017 or therefore the HA 1996 itself. It is, however, expressed within the Homelessness Code of Guidance that "housing authorities should adopt a positive and collaborative approach toward applicants, taking account of their particular needs and making all reasonable efforts to engage their cooperation".[654] It is also stated that

[652] Housing Act 1996, s 189A(6).
[653] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (Gov.UK last updated 22 March 2022) <www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-4-the-duty-to-refer-cases-in-england-to-housing-authorities> accessed 24 May 2022, para11.2; Shelter, 'Homeless: Get Help From the Council: Personal Housing Plans' (Shelter undated) < https://england.shelter.org.uk/housing_advice/homelessness/guide/homeless_get_help_from_the_council/personal_housing_plans> accessed 28 May 2022.
[654] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 653) para 11.2.

reasonable steps contained within the personal housing plans should be "tailored to the household"[655] and that efforts should be made to ensure "genuine personalisation in response to the wide range of circumstances and needs experienced by applicants".[656] Authorities are further encouraged to make every effort to obtain the applicant's agreement when formulating plans, where it is expected that "Identifying and attempting to address personal wishes and preferences will help achieve that agreement, and improve the likelihood that the plan will be successful in preventing or relieving homelessness".[657] From these extractions it is suggestive that housing plans will be personal when they take account of an applicant's wishes and preferences, are tailored to the particular needs and circumstances of the household, and applicants are involved in their creation. It is clear that through personal housing plans it is intended that a more individualised approach to homelessness services will improve effective prevention and/or relief.

The idea of the personalisation of public services is not a novel concept. Initially emerging from grassroots disabled people's movements in their demands for independent living, the narrative has spread quickly through social care policy and out into other areas including welfare policy, criminal justice, education, and healthcare, leading to various public service interventions which all aim to modify the service to meet the specific circumstances facing individual users.[658] Most notably within social care, personalisation has become synonymous with the provision of personal budgets: a notional sum of money for individual service users to spend on support and services, either through receipt of a direct payment to

[655] ibid 11.18.
[656] ibid 11.19.
[657] ibid 11.29.
[658] Catherine Needham, *Personalising Public Services: Understanding the Personalisation Narrative* (Policy Press 2011) 1 and 29-46.

themselves or through a local authority or third party commissioning services on their behalf.[659] These became enshrined in legislation for the first time under the Care Act 2014 rendering them obligatory for all people receiving support under the Act.[660] The use of personal budgets in particular as a mechanism of personalisation has attracted more popularity in other public sector areas including in health provision and meeting special educational needs.[661] Their promise to offer greater choice, control and independence for people with complex health and social care needs has encouraged an exploration of their use in the housing and homelessness context for rough sleepers.[662]

Personalisation as a narrative of policy change has attracted wide reaching political popularity. It was introduced into the broader policy sphere on the back of a report by the think tank Demos in 2004, authored by Charles Leadbeater.[663] Here Leadbeater presents what he asserts is a simple understanding of personalisation: "by putting users at the heart of services, enabling them to become participants in the design and delivery, services will be more effective by mobilising millions of people as coproducers of the public goods they value".[664] If individuals can be encouraged to be more adept at self-assessing and self-managing health, education, welfare and taxes this in turn enhances the states capacity to deliver better services with limited resources.[665] The narrative of personalisation is suggested however to carry some ambiguity despite Leadbeater's assertion of simplicity, but it is exactly this ambiguity that

[659] Alison Tarrant, 'Personal Budgets in Adult Social Care: The Fact and the Fiction of the Care Act 2014' (2020) 42(3) Journal Social Welfare Family Law 281, 281 and 283.
[660] Care Act 2014, s 25(1)(e).
[661] Alison Tarrant (n 659) 282.
[662] Peter Mackie, Sarah Johnsen and Jenny Wood, 'Ending Street Homelessness: What Works and Why We Don't Do It.' (2019) 13(1) European Journal of Homelessness 85, 87; Liz Blackender and Jo Prestidge, 'Pan London Personalise Budgets for Rough Sleepers' (2014) 22(1) Journal of Integrated Care 23.
[663] Charles Leadbeater, *Personalisation Through Participation: A New Script For Public Services* (Demos 2004).
[664] ibid 19.
[665] ibid 17.

enables it to carry traction across political parties and into various public spheres.[666] Personalisation has been positioned as a tool for achieving a variety of different aims. Within the grassroots movements personalisation is linked strongly with social justice; playing a key role in facilitating independent living, enabling disabled people to have self-control, self-determination and equality of opportunity and choices.[667] Needham asserts that at least in its early manifestation in policy, personalisation was best understood as a string of interventions which sought to improve front-line practice, responding to the failings of other bureaucratic approaches.[668] However, it has also been associated with cost-cutting and efficiency, carrying a dual purpose of creating public savings while also producing better services and increasing value for money for the taxpayer.[669] Commentators have further highlighted the congruence between the notion of personalisation and neoliberal ideals of shifting responsibility for public services onto the individual, privatisation and consumerism.[670] The notion that effective personalisation enables individuals to find the best way to solve their problems themselves is found throughout the initial writings of Charles Leadbeater.[671] The cross party appeal comes precisely from the ability to mobilise personalisation to further a variety of political strategies and compliment multiple mentalities.

The introduction of personalisation into the homelessness application process through applicant assessments and personal housing plans was popular across proponents of the Act. As with the introduction of personalisation into health and social care services, it is hard to argue

[666] Catherine Needham (n 658) 6 and 23.
[667] Alison Tarrant (n 659) 282-283.
[668] Catherine Needham (n 658) 3.
[669] Charles Leadbeater (n 663) 17 and 19; Charles Leadbeater, Jamie Bartlett and Niamh Gallagher, *Making it Personal* (Demos 2008) 14, 27 and 29-41.
[670] Iain Ferguson, 'Increasing User Choice or Privatizing Risk? The Antinomies of Personalization' (2007) 37 British Journal of Social Work 387, 389; Catherine Needham (n 658) 111.
[671] Charles Leadbeater (n 663) 60.

against a narrative of personalisation which promotes choice, involvement, empowerment.[672] As suggested above, it is clear that personal housing plans should be co-operative, reflecting an individual's needs and circumstances and drawing on their wishes and preferences. This is the personalisation narrative that charitable proponents of the HRA 2017 hoped could promote a culture shift within homelessness services. Shelter suggest it is this element of the HRA 2017 that sits at the heart of the new legislation, anticipating that a person-centred approach taking into account the preferences and desired outcomes of households has the potential to develop better working relationships leading to more satisfactory and sustainable outcomes.[673] On the other hand, personal housing plans carry the risk of simply complimenting neoliberal mentalities. Cowan warns that personal housing plans play a key function in promoting ideals expressed by Bob Blackman, the MP responsible for tabling the Homelessness Reduction Bill, that the HRA 2017 also ensures "everyone takes an aspect of personal responsibility, so that people will be rewarded with good outcomes for co-operation and engagement with the process."[674] To explore how far these narratives of personalisation are borne out, it is necessary to investigate the operation of personal housing plans at the frontline. As suggested by Needham, the narrative of personalisation is made meaningful by those charged with implementing it.[675] The question therefore becomes how personal are personal housing plans in practice?

[672] Iain Ferguson (n 670) 388.
[673] Deborah Garvie, 'Homelessness Reduction Act 2017: Policy and Practice Briefing' (Shelter 2018) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/briefing_homelessness_reduction_act_2017> accessed 28 May 2022, 8 and 17.
[674] Dave Cowan, 'Reducing Homelessness or Re-ordering the Deckchairs' (2019) 82(1) Modern Law Review 71, 122-123; HC Deb 28 October 2016, vol 616, col 544
[675] Catherine Needham (n 658) 8 and 87.

6.2.2 How Personal are Personal Housing Plans?

Housing officers recognised the importance of a personalised approach which attempts to take account of an applicant's wishes and preferences.

> "I do like to get to the point of the plan and ask them what they want to get out of it, what they want to get accommodation wise, I think that is an important question, and I have sat with people and they've not asked that question they have just gone and done the assessment and then said I suggest you do this and never asked that person what they want. But erm, I come from a support background and I think you should always ask that question even if it's something that you can't do for them and explain the reasons why that's not going to be appropriate, and looking at maybe doing that in the future with them" (LA1 – Housing Officer 4).

There is growing evidence that a person-centred approach and the availability of choice is particularly important for individuals experiencing homelessness who also have support needs.[676] This is especially the case for rough sleepers who may not have had previous engagement with services, who show improved outcomes for housing retention and wider support needs when they are given the opportunity to identify their own needs and shape their own support.[677] Similarly, when personalisation is applied to the wider homeless population through personal housing plans, an expert advisory panel of Shelter service users confirm that it is

[676] Peter Mackie, Sarah Johnsen and Jenny Wood, 'Ending Street Homelessness: What Works and Why We Don't Do It.' (n 662) 87; Peter Mackie, Sarah Johnsen and Jenny Wood, *Ending Rough Sleeping: What Works? An International Evidence Review* (Crisis 2017) 91-96 and 107.
[677] Liz Blackender and Jo Prestidge (n 662).

important for their preferences to be at least a starting point in the discussion of reasonable steps, in particular preferences around location.[678]

Housing officers also spoke of the practice of tailoring actions and plans to the circumstances and needs of the applicant, particularly in the first local authority.

> "[…] we'd put that on their bits to do and then they sort of make sure that they are aware of what their responsibilities are and we're/they're aware of what we can do. And then sort of work it from there. But it does change. There are usual ones that you put in every time […] but then you sort of tailor it to what their needs are." (LA1 – Housing Officer 5).

> "There is other things but sometimes it's a bit more specialised to that individual, you know with this job we get anybody in and you think I've never dealt with that before, you've seen 100s of people but it's like a totally new thing, a new circumstance that has never crossed your mind […] so maybe something will crop up on that plan that we've never put on before and will never put on again" (LA1 – Housing Officer 4)

In both local authorities the delivery of tailored services was further facilitated through the use of specialisms. In the first local authority housing officers were divided into roles targeting either single homelessness, family homelessness and domestic violence, and homelessness from the private rented sector. The second local authority had a specialist domestic violence housing officer trained as an

[678] Deborah Garvie, 'Briefing: "It's a personal thing" What Service Users Need from Assessments and Personalised Housing Plans – Homelessness Reduction Act 2017' (Shelter 2017) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/briefing_its_a_personal_thing_what_service_users_need_from_assessments_and_personalised_housing_plans_-_homelessness_reduction_act_2017> accessed 28 May 2022, 19-21.

Independent Domestic Violence Advisor and a team of housing officers with a young person's specialism. Both authorities had dedicated rough sleeping teams.

However, despite this awareness and appreciation of the benefit of tailored approaches to service delivery and personal housing plans, when it came down to the content of plans the extent to which they were tailored to the individual, recognised an applicant's preferences and choices, and provided a genuine opportunity for participation and agreement, was limited overall.

6.2.2.1 Preformatting

Experiences across both local authorities observed demonstrated that the information and depth contained within personal housing plans varied considerably across each authority and sometimes across housing officers. In the second authority their personal housing plans contained arguably more information but were heavily preformatted with considerable amounts of generic information. There were several documents a housing officer could choose from depending on the circumstances or characteristics of the applicant, such as a family, or a single applicant, or a family with rent arrears, where the content within was intended to be more relevant to that particular circumstance. These preformatted plans had suggested steps for the applicant to take and the authority to take already included, and also contained information intended to assist the applicant in searching for a new home such as information on local housing allowance rates, a list of property advertisement websites, and a section suggesting that obtaining accommodation within the social sector would be unlikely. There was an additional space at the end of the plan to insert any additional steps for either party to take, where housing officers would insert two or three additional steps. A blank personal housing plan was available, with no

preformatting or additional information. Yet housing officers more often preferred the preformatted plans for the details on local housing allowance and property advertisement websites, with only one housing officer observed utilising the blank plan.

The key problem with preformatted plans is that they are simply not personal. Despite attempts within the preformatted templates to tailor these plans to be more appropriate for the various circumstances with which an applicant might approach, it is not possible to individualise a plan before knowing more about each applicants' experiences. Often the suggested steps and the preformatted information were inappropriate. Preformatted information contained within every plan told every applicant they were unlikely to receive an offer of social housing. As will be seen below, this simply was not true in the second local authority where officers considered the majority of their cases were discharged within the social sector, and certain household compositions, such as those requiring a 2-bedroom property, were more likely to receive an offer. While officers did find themselves regularly deleting some of the already suggested steps that were not appropriate in order to make the plans more relevant, the majority of the pre-formatted content remained. Officers certainly did not have the time to delete or modify any of the preformatted information and advice.

The existence of preformatted plans is prompted by the desire to increase the efficiency of a housing officers use of time. It also links to concerns discussed in the previous chapter around the additional administrative burden introduced by the HRA 2017. PHP's are largely considered a necessary administrative task of little utility to themselves or the applicant.

6.2.2.2 Choice and Preferences

The ability to take account of an applicant's wishes and preferences is a key element in the personalisation of housing plans. This is recognised within the code of guidance as being an important aspect in encouraging an applicant's agreement and therefore making successful prevention and relief more likely.[679] It is, however, further qualified by the proviso that personal housing plans should be realistic, taking into account local housing markets.[680] The code of guidance provides an example, suggesting that where a plan is limited to a particular area in which the applicant would like to live, this is likely to be unreasonable where there is little prospect of finding affordable housing.[681] While this appears entirely sensible, reflecting the practicalities which restrict the capabilities of housing officers and the choices available, the current lack of affordable housing options within the housing market overwhelms any availability of choice in many cases.

As will be explored in more detail below, the social housing sector has a long history of providing affordable, secure accommodation but is now in chronic undersupply.[682] By contrast the alternative, the private rented sector, is expensive, insecure and difficult to access by anyone in receipt of social security.[683] This significantly restricts the availability of choice for applicants at the outset. Despite a recognition (discussed further below) that this leaves very little options for many homeless applicants, housing officers still need to find a way to discharge their duties. Given the significant undersupply of social accommodation, the perception is that

[679] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 653) para 11.29.
[680] ibid 11.20.
[681] ibid.
[682] Shelter, 'Building for our Future: A Visions for Social Housing: Executive Summary' (Shelter 2019) <https://england.shelter.org.uk/support_us/campaigns/a_vision_for_social_housing> accessed 28 May 2022, 3.
[683] Ibid.

there is no choice but for applicants to look themselves privately or accept a private offer. In interviews with staff and general conversations there was a strong emergent theme that the introduction of the HRA 2017 linked with a need to change applicant expectations, or "managing expectations", around what could be available for them, disciplining applicants to only ask for what can be given rather than what they might want.

> "But also it is about changing or educating people's perception, it is about us being true, and this is what I love about the personal housing plan, it is about saying to customers, what used to be available now, the demand is more than the supply, erm and we've changed some mind sets, erm and we are working on the others […] we can sit our customers down and we can go through the personal housing plan with them, and realistically say this is what is available" (LA2 – Housing Officer 1).

There is the perception of a need for a culture change around the role of social housing and the expectation that social housing is the major provider in addressing housing need. Where applicants attempt to express their preferences for the affordability and security of the social sector and show reluctance to search in the private sector, this can be seen as the individual being responsible for limiting their own options.

> "[…] and people, even now you know you say we can close your application with a private rented or a social housing offer and you can see them going, I don't want it. And we'll go well if we find you one/I've been saying it, we aren't going to, but if we find you one and it's deemed to be suitable and affordable and you know, erm then that would be your offer. And even then you're going I know they are not going to look for themselves private because they don't want it so they'll sit and wait. And I don't know how, at the moment

I don't have the time to start looking for them" (LA1 – Housing Officer 3)

"[…] the universal challenge, with this whole legislation is the customer. Because the expectation of I'm homeless, my route is into temp accommodation which might be bed and breakfast it might be a temp tenancy, all of which I hate, but at the end of it, my route is into a 100 year long tenancy with a local authority or registered provider […] and trying to, both the customers and staff, er, enlist a new culture that says actually this is about accommodation capable of being available for up to six months […] erm so the whole ethos of the legislation is not about social housing as a response, it is about something else. That's very difficult to transition our customers and our staff into that mindset" (LA1 – Head of Service)

As the quote above from Housing Officer 3 demonstrates, where an officer suggests the step of searching for privately rented accommodation and the applicant expresses reluctance, the step was included anyway, it often explained to the applicant that they were expected to look privately and that the authority could discharge their duties if they so wished with an offer of a private rented property they deemed suitable, closing the case if the applicant refused that offer.[684] The Head of Service also demonstrated that there is not only a struggle to discipline the applicants into expecting something different, there is a need to discipline housing officers too.

In the second local authority the problem was more conceptual than practical. While the private sector in the local authority area remained largely unaffordable and inaccessible, they had a relatively good supply of

[684] As per the Housing Act 1996, s 189B(7)(c) and s 195(8)(d).

social housing to meet general demand. Despite this, housing officers were still instructed not to utilise the social sector in the discharge of early prevention and relief duties. All applicants were to first search for accommodation in the private sector regardless of their individual circumstances, often being required to produce some evidence or logs of searches and their outcomes before housing officers would consider nominating applicants to social housing providers.

> "[…] when the new Act came in the nominations [to social housing providers] fell […because of] the private push and we were told not to nominate hahah because of the new Act and that we shouldn't be nominating for at least 56 days" (LA2 – Housing Officer 2).

There were some inconsistencies in practice, with some housing officers resisting suggested practice and still nominating for social properties where they saw the chances of being able to find affordable privately rented accommodation were low, but the household were quite likely to be offered a social property within a reasonable time. In one instance where this was observed, the housing officer still felt they had to list searching for privately rented properties as a step for the applicant on the personal housing plan.

6.2.2.3 Agreement and Co-construction

It is envisioned within s.189A(4) Housing Act 1996 that the personal housing plan is to be formulated in agreement with the applicant, contributing to the personalisation narrative surrounding personal housing plans by enabling applicants to play a more active role in their service

provision.[685] An element of co-production in shaping the service users receive is a key aspect of Leadbeater's personalisation by participation, meaning individuals become more active and responsible.[686] However, as highlighted by Andrew Arden, agreement presupposes equality between the parties.[687] Commentary on the similar homeless duties in Wales reflects the optimism that this intended co-construction of plans has in itself potential to address the power imbalances that exist between housing officers and individuals experiencing homelessness.[688]

However, further provisions put an end to such hopes only two subsections later. Ultimately, under s 189A(6) HA 1996, if it was not possible to reach agreement with an applicant, an authority simply records why this was not possible, and includes anyway whichever steps it considers reasonable for the applicant and the authority to take.[689] It therefore appears that the cooperation envisioned by s.189A(4) Housing Act 1996 is largely illusory. There is little incentive for authorities to go to great pains to secure an applicant's agreement.

> "So at the end of the plan we would obviously go through that with them, that has to be something they agree to do and obviously we put that they agree to it or not, if they don't agree to it it's very hard to help them, so it's kind of a catch 22, we explain if they are not going to do these things on the plan we will not be able to help you with your homelessness so the majority of them do agree thank god" (LA1 – Housing Officer 4).

[685] ibid s 189A(4).
[686] Charles Leadbeater (n 663) 59.
[687] Andrew Arden, 'Reflections On Reduction' (2018) 21(5) Journal Housing Law 83, 84.
[688] Michaela Rogers et al 'Interrogating the Prevention Approach of the Housing (Wales) Act 2014 for People with Mental Health Needs Who are Homeless' (2020) 19(1) Social Policy & Society 109, 115.
[689] Housing Act 1996, s 189A(6).

This power imbalance is further sustained by the ability to bring the prevention and relief duties to an end where an applicant is deemed to be deliberately and unreasonably refusing to cooperate with the steps listed on the personal housing plan.[690] In the first local authority this possibility was often used as a very conscious method of discipline, as a tool to encourage engagement, where in almost every appointment after having gone through the personal housing plan with the applicant they were reminded that if they failed to take any of the steps listed in the plan the authority could potentially end their duties. Common steps entered onto personal housing plans reflected this desire to try encourage responsible behaviour, focussing on engagement and rule following through requiring attendance at any appointments made, to keep in touch with housing officers, to follow the rules applicable to any placements such as in bed and breakfast hotels or hostels, to pay service charges, to engage with any support or social workers.

> "I've sent warning letters, but erm I've never ended the duty, I've just tried to use it as a bit of a tool to get them to actually help themselves, usually, more than that, we'd close it because we've lost contact or not engaging, we just can't get a hold of them, rather/because that would be the case why, it wouldn't be that they are not doing the things on the plan because it might be they are chaotic and they actually couldn't do that anyway so it would be unfair to close it in that respect, and that's just a guideline to keep prompting" (LA1 – Housing Officer 4).

The ability to end duties in this manner cannot however be taken lightly. Where it appears that an individual is not cooperating with the personalised housing plan the authority must arrange a review of the plan and assess

[690] Housing Act 1996, s 193B and 193C.

whether the applicant's circumstances or needs have changed and whether the steps remain appropriate to require.[691] When considering whether a failure to cooperate is deliberate and unreasonable the authority should consider the particular circumstances and needs of the applicant, any difficulties the applicant has in managing communication, and must also ensure the applicant understands what is required of them and is not refusing to cooperate as a result of mental illness or other health need for which they are not being provided with support.[692] The ending of the prevention duty or relief duty in this way also carries a strict process, where first a warning letter must be issued to the applicant informing of the intention to issue a notice that would bring an end to the duty,[693] which must explain the consequences of such notice and give a reasonable time to allow the rectification of the non-cooperation. In order to then issue a notice under s.193B(2) Housing Act 1996 the decision has to have been made by a local housing authority housing officer and authorised by an appropriate person who is at least as senior as the decision making officer, and was not involved in the decision to give notice.[694] The applicant may also request a review of the decision to issue a notice.[695]

In the authorities observed, while a couple of officers could potentially see the benefit of this method of ending duties, the majority of officers found difficulty with ending the duty in this way as they struggled to envision applicants who were deliberatively uncooperative, suggesting they would be very unlikely to use this method of ending a duty. While as discussed above, officers have utilised the threat of ending the duty in this way as an

[691] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 653) para 11.33 and 14.50.
[692] ibid para 14.52 and 14.53.
[693] Housing Act 1996, ss 189B(4) and (5).
[694] The Homelessness (Review Procedure etc.) Regulations 2018, SI 2018/223, regulation 3.
[695] Housing Act 1996, s 202(1).

attempt to encourage engagement, they do not envision following through on that threat.

> "I think it's a bit woolly, and I think a lot of the time that will apply mostly to single people, you are always going to get people that don't cooperate and sometimes they can't, it's not because they are just being difficult, obviously you are going to get people that are just difficult but at the same time you close it on the basis that they won't cooperate they will be back three months later in exactly the same situation so it is almost a revolving door what's the point […] it doesn't feel like you are doing them any kind of service because you are not getting anywhere. […] So no I've never used it and I can't see me using it. (LA1 – Housing Officer 1).

Other officers and staff considered that ending the duty in this way would be too open to legal challenge, and expressed a lot of uncertainty about being able to make the case for a deliberate and unreasonable refusal.

> "I don't think we've used it at all, and going through the code of guidance and picking up the vibe that it is not intended to be used a lot and that it is very challengeable, so I'm not saying that we won't use it, but you really have got to look very carefully at the history of the client […] I think it it's quite obvious from the code of guidance that it is not meant to be used as a sort of an easy way out, and I don't think that/we certainly won't be using it like that" (LA1 – Senior Housing Officer 1).

> "[…] the obvious one is around non-compliance, can you legitimately say someone is not complying and can you, can you, win if it goes to a challenge, a legal challenge. What's the burden of

evidence that you need to show that and demonstrate that is the case." (LA2 – Head of Service).

Despite reluctance within both authorities studied to utilise refusal to cooperate as a method of ending the prevention and relief duties, national statistics provided for the last quarter of 2019 suggest that out of 34,770 prevention duties that came to an end during that quarter, 90 of them did so due to a refusal to cooperate, showing some, albeit limited, use.[696]

6.2.2.4 Which Narrative of Personalisation Prevails?

While the introduction of assessments and personal housing plans was intended to put the individual at the centre of the application process and the discharge of duties, even with the best of intentions the ability to recognise and meet identified needs and personal preferences is ultimately driven by the availability of options in the local area to meet those needs. The focus in appointments and through these plans is on the individual to perform their listed actions, whether or not duties would actually be brought to an end if steps were not taken. The ability to put down steps regardless of an applicant's agreement and to discharge duties for non-cooperation both demonstrates and reinforces power differentials between applicants and officers, weakening perceived notions of choice or control in the applicant. As soon as housing plans lose considerable elements of meaningful personalisation, they also lose considerable utility as a useful tool in effecting successful prevention and relief, becoming more of a necessary administrative task to complete. This then invites concerns

[696] Ministry of Housing Communities and Local Government, 'Statutory Homelessness Live Tables: Detailed Local Authority-Level Tables October to December 2019 England' (Table P1, Gov.UK revised 20 August 2020) <www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness> accessed 28 May 2022.

around the efficient use of time, leading to practices like the use of preformatted documents, reducing the opportunity for personalisation and to tailor a plan to the circumstances and needs of a household at the outset.

Concerns relating to the level of personalisation achieved by local authorities when making plans was reflected in the Crisis review of the implementation of the HRA 2017. Plans were criticised for not accurately reflecting the personal circumstances of the applicant, and for being more of an information leaflet than personalised plan.[697] The report criticised plans for containing generic statements explaining that applicants were unlikely to receive an offer of social housing and that due to little suitable accommodation being available in the area, advice on personal housing plans ultimately amounts to 'find your own accommodation'.[698]

Given this, what is it that personal housing plans offer? It appears that housing plans operate more effectively as a tool of government and normalisation, furthering neoliberal rationalities of privatisation and individualisation. They form a part of progressive housing policy which directs homeless applicants towards the private market to address housing need and away from public resources. Where an applicant became frustrated at the options presented to them, or felt like the authority were not doing enough to help them, they were reminded that the service they had approached was called housing options, where the task was to present the applicant with their options as opposed to presenting them with a direct solution. The obligation was on the authority to provide advice and

[697] Hannah Rich and Deborah Garvie, 'Caught in the Act: A Review of the New Homelessness Legislation' (Shelter 2020) < https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/report_caught_in_the_act> accessed 28 May 2022, 18-19.
[698] ibid 19.

assistance only, the applicant's housing situation was ultimately theirs to resolve.

> "I think there is [a lot of responsibility on the individual] and I think that is good because I think erm, you know we are there for advice and guidance but this is ultimately their responsibility as it is their housing situation which I can help them and guide them all they want but I can't do it for them. Yeah." (LA1 -Housing Officer 3).

This level of individual responsibility reflects Charles Leadbeater's ultimate end goal, whereby professionals help clients find the best way to solve their problems themselves, but does so without empowerment, choice or control.[699] In this way, connecting public provision with responsible behaviour on the part of those in receipt, is illustrative of a neoliberal governmentality which places the responsibility for homelessness with 'irresponsible' individuals and passes them the blame where services fail to address multiple needs.[700] Personal housing plans attempt to reactivate individuals into the neoliberal housing market through the suggestion of choice and empowerment, promising a set of steps that, if followed, will lead to successful market participation, and hence normalisation. However, where an individual will not or cannot be normalised, for example attempts to resist the idealisation of the private market, the threat of ending statutory duties resulting in exclusion from local authority provision of services is triggered, tightly controlling individuals' behaviour and increasing disciplinary control through the threat of punishment and exclusion.

[699] Charles Leadbeater (n 663) 57-60.
[700] Peter Dwyer, Graham Bowpitt, Eva Sundin and Mark Weinstein 'Rights, Responsibilities and refusals: Homelessness Policy and the Exclusion of Single Homeless People With Complex Needs' (2014) 35(1) Critical Social Policy 3, 13.

6.3 Prevention and Relief

6.3.1 Prevention

After longer than a decade of innovation and policy development within homelessness prevention across Europe, it is no longer disputable that focussing attention on the prevention of homelessness over crisis intervention is the best way to address homelessness.[701] Despite this consensus, it remained that four key challenges existed in the implementation of the prevention agenda, namely that: 1. systems are not fully reoriented towards homelessness prevention, instead focussing on temporary accommodation; 2. Even once prevention services develop, there tends to be geographical variation in support provided; 3. There is often selectivity in service provision; and finally 4. A lack of any requirement to deliver preventative homelessness services.[702] Similarly to the new prevention and relief duties introduced in Wales under the Housing (Wales) Act 2014, the new duties introduced via the HRA 2017 seek to address these challenges.[703] The prevention duty under the HRA 2017 simultaneously mandates a requirement to deliver preventative services while also encouraging a reorientation of the English statutory system away from temporary accommodation and onto early intervention.[704] It is further intended that by ensuring a prevention duty is owed to all eligible applicants who are threatened with homelessness, this removes some of

[701] Matt Downie, *Everybody in: How to End Homelessness in Great Britain' Crisis – the Plan to End Homelessness* (Crisis 2018), 96-101; Nicholas Pleace and Dennis Culhane, *Better Than a Cure?: Testing the Case for Enhancing Prevention of Single Homelessness in England* (Crisis 2016); Peter Mackie, Ian Thomas and Jennie Bibbings, 'Homelessness Prevention: Reflecting on a Year of Pioneering Welsh Legislation in Practice' (2017) 11(1) European Journal of Homelessness 81, 81-82.
[702] Peter Mackie, Ian Thomas and Jennie Bibbings (n 701), 82.
[703] Ibid, 82-85.
[704] Hannah Gousy, *No One Turned Away: Changing the Law to Prevent and Tackle Homelessness* (Crisis 2016) 8, 24.

the previous selectivity contained within the homelessness statutory framework which largely excluded single households from any meaningful support.[705] By bringing prevention within the statutory framework this ensures that all local authorities in England provide a minimum preventative service reducing the extent of geographical variation.[706]

The refocused attention on preventative homelessness services was widely welcomed. Both authorities observed felt like they had a strong preventative ethos before the HRA 2017 came into force, so were both well prepared to respond to the new culture envisioned by the HRA 2017. Both authorities suggested they weren't in the practice of simply turning people away without any assistance prior to the HRA 2017 if they didn't fall within the statutory framework, even if what they could offer was more limited, so were now simply more able to justify existing values.

> "I don't think it's really any different from what we've been doing before….see we've always had quite a good focus on prevention, a few years ago we were really good at it did loads of it and then it disappeared, but it's been there at the back of our minds, because as I said earlier on preventing someone's homelessness takes a lot more time then accepting them as homeless, preventing someone's homelessness is a lot more satisfying to you as a person than it is accepting a homeless duty to someone, so I think we are still, especially those that have been there a long time, we've always had that mindset of can we prevent it, it's better for them and also gives you some satisfaction" (LA1 – Housing Officer 1)

> "[…] I think we are trying to do the right thing by people, I think that is in the culture […] To be honest, if you wanted to help

[705] ibid 16-18 and 32.
[706] ibid 18-20.

someone through the old legislation, you had so much discretion in the old legislation you could have done it. It is more about whether or not there is the investment or the political will to allow you to do that. The HRA definitely made it easier to argue that it was the right thing to do because we have to do it now kind of thing" (LA2 – Head of Service).

In the first local authority in particular they were positive about the potential of the HRA 2017 to enable them to get back to doing preventative work. Not unlike other authorities across the country,[707] budgetary constraints had impacted particularly strongly on the first authority so for a few years prior to the introduction of the HRA 2017 they had lost the majority of prevention work for the focus on delivery of statutory duties. The changes introduced through the HRA 2017 made the authority hopeful they could refocus.

"[…]up until the new legislation of course there was no statutory duties around prevention so whilst everybody would accept that whilst prevention is better than responding to actual homelessness erm, the law said this is the bit you need to focus on and because that area was growing experientially in [local authority 1], we were diverting all of our resources to the statutory end so all of our prevention went down down down down" (LA1 – Head of Service).

"[…] well we are getting back to prevention. Erm we used to work preventively a few years ago, and then of course we had to swing round again because government changes, erm and the preventative work is slightly different to this, it was a case of individuality, who wanted to go the extra mile did it. But this is structured going the extra

[707] ibid 21.

mile. So from that point of view it is very positive, because we are going back to prevention work" (LA1 – Senior Housing Officer 3).

Despite the shift created by HRA 2017 towards a more consistent preventative approach across local authorities in England, it is still focussed almost entirely on crisis and emergency intervention. A prevention typology created by the UK Collaborative Centre for Housing Evidence (CaCHE) demonstrates the breadth of homelessness prevention needed to successfully reduce instances of homelessness.[708] It sets out five categories of prevention: universal prevention which prevents or minimises homelessness risks across the population at large; targeted prevention which is upstream prevention focussed on high risk groups, such as vulnerable young people and risky transitions; crisis prevention which focuses on homelessness likely to occur within 56 days, emergency prevention supports those at immediate risk of homelessness, especially those sleeping rough; and finally recovery prevention focusses on the prevention of repeat homelessness and rough sleeping.[709] The key changes introduced by the HRA 2017 fall firmly within crisis prevention, responding to applicants who can prove they are likely to become homeless within 56 days.

It is entirely possible to take effective preventative action despite responding within a 'crisis' period. Housing Officers described a number of different options for preventative work that could enable a household to stay in the accommodation from which they are threatened with homelessness. These included activities such as conducting home visits and family mediation, negotiating with landlords and paying off arrears, and

[708] Suzanne Fitzpatrick, Peter Mackie and Jenny Wood, 'Homelessness Prevention in the UK: Policy Briefing' (CaCHE 2019) <https://housingevidence.ac.uk/wp-content/uploads/2019/07/Homelessness-Prevention-in-the-UK-Policy-Brief-July-2019-final.pdf> accessed 28 May 2022.
[709] ibid 3.

attending court with clients in an attempt to interrupt possession proceedings. However, a focus on crisis prevention risks excluding households who are experiencing considerable precarity in their housing situation yet do not fall within the limited definition employed with the statutory framework.

This could be seen particularly in the second local authority who experience especially high incidences of people approaching the team with invalid s.21 notices; landlords attempting to evict tenants via text messages, phone calls, hand written letters or other forms of letter in incorrect formats.[710] During the period of observation, instances of attempted eviction through invalid s.21 notices significantly outweighed instances of eviction through valid notices. For many approaching with invalid s.21 notices they were informed that as the invalid notices were legally incapable of effecting an eviction, they were not considered threatened with homelessness within 56 days and were sent away with advice that they could not be evicted and to tell their landlord/letting agent that their notice was invalid.

> "I've had a s.21 notice, a customer came in erm about 4 or 5 times, within a three week radius, yeah? And every time I looked on the system, whoever spoke to the customer just put 's.21 incorrect, I've told the customer to tell the solicitor' […] I rang the solicitor I'm ever so sorry to tell you this but I believe this is the 4th time this customer has come to you but I'm just ringing you now, and he amended it, so it was sorted, but why did it take 5 times, that customer had to come in 5 times, different officers saw them" (LA2 – Housing Officer 1).

[710] A s.21 notice must be issued via a prescribed form found at: Department for Levelling Up, Housing and Communities, 'Assured Tenancy Forms: Form 6A' (Gov.Uk last updated 1 October 2021) <www.gov.uk/guidance/assured-tenancy-forms> accessed 28 May 2022.

This often placed people in stressful situations where they felt they could not communicate adequately with their landlords/letting agents, did not want conflict with their landlords, held a fear of aggression where their landlords were behaving threateningly or seemed likely to carry out an illegal eviction. Where individuals feared illegal or forceful eviction, they were advised to call the police[711] and assured that they had a continuing right to stay in the property. Housing officers felt they were in a catch 22 position as they had been instructed they were unable to work with clients to tell landlords why a s.21 notice was invalid as this would be assisting them to evict a tenant and make an applicant homeless, which conflicts with the authorities aims and duties. Yet they were also reluctant to work to keep an applicant in the property or seek alternative accommodation as they still had a legal right to stay.

This raises an interesting conflict between what is expected of the neoliberal individual and the role of the local authority. The validity requirements attached to the issuing of a s.21 notice form part of the government of private sector landlords, and under neoliberal rationality tenants are expected to be able to enforce their rights and either challenge or ignore invalid notices. From observations in the second local authority it is clear this isn't a reasonable expectation, and certainly isn't happening. However, under the HRA 2017 prevention duty the local authority role isn't to be a guardian of tenant rights but to act as a last preserve of accommodation when rights have been eroded. This leaves a precarious gap in the protection of tenant's rights.

[711] Doubts are often expressed around police willingness to intervene in illegal eviction cases, often claiming they are a civil matter between landlord and tenant as opposed to a criminal matter – Daniel Clarke, 'An Uncivil Matter: Unlawful Eviction and the Police' (Doughty Street Chambers 03 June 2020) < https://insights.doughtystreet.co.uk/post/102g8qi/an-uncivil-matter-unlawful-eviction-and-the-police> accessed 28 May 2022.

Despite this, where the same household returned multiple times with invalid notices or repeated threats of eviction from their landlord some officers did provide further assistance. This could include attempting to contact landlords/letting agents to inform them that their s.21 notices were invalid and suggest they seek legal advice if they wished to proceed with eviction, or providing advice and assistance to help the applicant move on to alternative accommodation if this was desired. This was either done within a case triage/initial advice stage or through the acceptance of a prevention duty. The homelessness code of guidance encourages authorities to take a flexible approach towards applications for assistance where there is an evidenced risk of homelessness which may not necessarily result in homelessness within 56 days instead of delaying the provision of support which may be effective in preventing homelessness.[712] Despite an invalid s.21 notice being unable to legally effect an eviction, it is a clear suggestion of a landlords intention to evict a tenant, particularly if there are multiple failed attempts to issue a correct notice, so therefore should be enough to suggest a tenant is likely to, at some point, become threatened with homelessness within 56 days.

Focussing on crisis intervention further risks looking soley at prevention as an accommodation issue and not at surrounding causes of homelessness, making incidences of prolonged homelessness or repeat homelessness more likely. Despite cuts to services prior to the HRA 2017, the second local authority were able to retain a more holistic service which attempted to address these issues in the context of debt.

Applicants approaching authorities with an imminent threat to their home due to rent arrears are often experiencing a variety of other issues,

[712] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (n 653) para 11.6 and 12.2.

including problems with other forms of debt or issues with social security such as experiencing benefit changes, not receiving something they should be or not having claimed for elements they may be entitled to.[713] Prior to the HRA 2017, the second local authority met these needs through a welfare rights team who did non-statutory work assisting people in applying for benefits and maximising income, and through a team of qualified debt advisors. Reductions in council funding led to the authority consolidating their non-statutory welfare rights team in with their homelessness statutory services. Staff from both teams were retained in order to try and keep the knowledge base of the welfare rights advisors and the debt advisors also became housing officers with the qualified debt specialism.

> "[…] it is not a statutory service and that's the problem because authorities have been so squeezed that they don't have any extra money to provide things that aren't a statutory service, which is why we've almost been tagged on to a statutory service with housing so they can justify it within the budget" (LA2 – Housing Officer 4).

The housing officers with a debt specialism still picked up 'pure' debt advice work and delivered debt advice to cases belonging to other housing officers but were also able to conduct homelessness case work. Debt services and income maximisation is in this way entwined with homelessness prevention, providing a more holistic prevention service targeted at broader issues which link in with homelessness and housing debt as opposed to simply addressing accommodation issues. The specialist debt housing officers were able to deliver housing advise and statutory duties

[713] Rachael Emmett, 'The Experiences of People in Housing Debt' (Shelter March 2016) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/research_experiences_of_people_in_housing_debt> accessed 28 May 2022, 3.

but also explore maximising income, assist applicants with benefit assessments, benefit appeal representation and submission, assisting in applying for DHP's, assistance to stop enforcement action, and deliver debt counselling ranging from budgeting to bankruptcy.

> "I suppose sometimes they come in with issues financial issues and you can tell it's gonna impact on the rent and I suppose we can help them not be homeless [through our debt advisors] […] maximising income as well, so like they will have a look/like if we get someone in and we ask what income they are on if it don't seem to be a lot then/and if they have got debts as well then I will refer them to the debt officers and they can see if they have income missing" (LA2 – Housing Officer 2).

> "[…] if someone came to me and said they were struggling to maintain a tenancy I would look at their income and expenditure and see if it was something that was sustainable, if it wasn't sustainable I would see how it could be sustainable and if I can get it sustainable either by increasing income, reducing debts, often a combination of the two, I would then apply for discretionary housing payments, clear the arrears, and get the tenancy going forward on a stable footing without the burden of debt. So I…I don't actually agree with short term grants in order to keep somebody in a tenancy anyway because I think you are delaying a problem that will occur again." (LA2 – Housing Officer 4).

As suggested above by the housing officer, focussing on removing rent arrears to enable an applicant to stay in their property or to find a new property without also ensuring any broader financial issues are addressed

risks repeated housing debt and homelessness.[714] Research conducted for the Joseph Rowntree Foundation exploring the links between homelessness and poverty suggested that many households who are rehoused after a period of homelessness carry debts over, continuing to struggle with budgeting and managing financially after being housed.[715] This concern is increased when individuals are rehoused in the private rented sector.[716] Housing officers with the debt specialism in the second local authority recognised this risk, focussing their services on the future sustainability of the households finances and housing situation. It was felt that having debt services integrated into the authority's services enabled them to fully address the financial issues a household may face alongside their homelessness in that single approach, meaning they would be less likely to experience repeat housing debt or homelessness, and means they do not have to approach a number of different services to achieve that. This demonstrates a local attempt at recovery prevention, aiming for sustainability in the solution provided to individual housing need.

> "I'd like to think we can give them a bit of financial capability […] because every time that I pull a creditor when I'm with somebody and say […] they have to take account of your financial situation, if you tell them you are struggling they have to give you breathing space, people don't know this. So you give people the confidence to deal with things themselves. But more important than that I think is most people when they are dealing with debt they don't have a long term solution […] we are probably putting them in a better situation because we are actually dealing with the debts, all of it, and

[714] ibid 16.
[715] Sarah Johnsen and Beth Watts, 'Homelessness and Poverty: Reviewing the Links: A Report for the Joseph Rowntree Foundation Anti-Poverty Programme' (I-SPHERE 2014) < https://researchportal.hw.ac.uk/files/7467281/Homelessness_Poverty_FullReport.pdf> accessed 28 May 2022, 20.
[716] ibid 20.

> hopefully in a way that is gonna deal with those problems forever." (LA2 – Housing Officer 4).

This was supported in the research conducted for the Joseph Rowntree Foundation where the provision of support during and after the resettlement process was shown to contribute to an improvement in financial circumstances after periods of homelessness.[717]

Regardless of the approach taken to prevention, there remained a key barrier to housing officers being able to do any prevention work effectively: the time available in their working days to be proactive. This was particularly acute in the first local authority where officers were positive about the opportunity presented by the HRA 2017 to get back to prevention work, but still felt like they could not actually perform it. As discussed in the previous chapter, due to the increase in acceptances of duties under the new framework, and due to restructures leaving a staffing shortage, housing officers' caseloads were so high they felt for the first few months of the operation of the HRA 2017 they were not able to actively carry out any meaningful prevention work.

> "I think, up until probably where we are now we've not being doing any prevention really because it's been so manic we've not been able to, a couple of years ago we were quite good at it, used to get loads of prevention cases, […] then as the numbers increase and your caseloads increase you haven't got the time, as awful as it sounds to prevent someone from being homeless takes a lot more work than just accepting they are homeless so we haven't done so much" (LA1 – Housing Officer 1).

[717] ibid 21.

> "[…] yeah well for us in particular, erm, we haven't had the resources, we haven't had the resources in place to actually effectively prevent as a first port of call so we are still playing catch up […] quite a few of them I think will be filtering down to homelessness because we are not effectively preventing and relieving for some households at the moment" (LA1 - Homelessness Manager 1).

As the period of observation was coming to an end and officers' caseloads were perceived as being more manageable, there was a lot more positivity around being able to do prevention work, with activities like increased engagement with landlords, home visits and court attendance starting to occur.

6.3.2 An Increased Role for the Private Rented Sector

If it was ultimately not possible to keep the applicant in their current accommodation, the other option is to take reasonable steps to assist the applicant in finding alternative accommodation before they become homeless. The actions that could be taken to assist an applicant in finding alternative accommodation and the accommodation options available to the applicant are ultimately the same in this kind of prevention work as under the relief duty if an applicant subsequently becomes homeless or first approaches the authority as homeless. The potential sector options for rehousing applicants, under prevention or relief, are limited to either the social rented sector or the private rented sector. Where an individual has some level of support needs officers also looked within the supported housing sector. Traditionally homelessness duties have been met through

provision in the social rented sector. Over time this has been subject to a neoliberal governmentality which promotes an individual's unobstructed participation in the private market over state supported structures, resulting in a policy direction which residualises the role of social housing in addressing housing need and prioritises the role of the private market.[718] Since 2011 local authorities have been discharging statutory homeless duties with 12 month assured shorthold tenancies alongside the social sector.[719] In Chapter 4 it was considered how the HRA 2017, through the focus on assistance over provision and the ability for accommodation of only six months to discharge the new prevention and relief duties, further sought to effect neoliberal government.[720]

The periods of observation within the two authorities have demonstrated that this interpretation of the HRA 2017 has indeed manifested in local authorities on the ground. A combination of a shortage in available social housing combined with an increase in 'burden' on authorities due to the new duties has led to an increased push into the private sector for meeting housing need.

> "[…] if you are going to open the door to non-priority homeless for the local authority to prevent homelessness as a stat role, you are going to have to look outside your social housing stock because you simply are not going to be able to respond.[…] hence the development of the private sector team, so we didn't have that before" (LA1 – Head of Service).

> "[…] like weakening it [the homelessness duties] you know, sort of erm…by like I say being able to end duties without going through social housing, because there is not a massive appetite for social

[718] See Chapter 4.3.3.
[719] Localism Act 2011, s 148 and 149.
[720] See Chapter 4.4

> housing or developing social housing is there so erm, sort of almost to force people into the private sector" (LA1 – Senior Housing Officer 1).
>
> "[…] social housing shouldn't come until later down there, to those most in need. And the idea of the Homelessness Reduction Act to me is, there's a bigger wider world out there with/we are never going to get private sector housing to a better level if we don't start using it and working with it, so it should be feeding in, it should be private sector and only if well that's not possible, that's not possible, full duty or not, it's down there that they get social" (LA1 – Homelessness Manager 6).

Even in the second local authority where social housing provision was more readily available and the majority of duties were discharged through social housing, the HRA 2017 was still seen as meaning prevention and relief duties should be discharged within the private rented sector. It is relevant to highlight again that applicants were expected to exhaust the private rented sector before officers would nominate them to social housing providers, often being required to produce some evidence or logs of searches and their outcomes.

In interviews with applicants both authorities were informing applicants that they now have to look private due to a new way of working introduced by the Homelessness Reduction Act, often stressing that social accommodation simply wasn't available, or at least not for a number of weeks or months. As described above, for those who were reluctant they were informed during the formation of personal housing plans that if the authority found a private property on their behalf that they thought was suitable for the household they would be able to end their duties. In both authorities if the applicant expressed that they did not want privately

rented accommodation or did not feel they could afford it, the HRA 2017 and a new way of doing things was to blame, as if it was out of the authority's hands. Further, prior to the coming into force of the HRA 2017 it was also the case that while the private sector was an option for the applicant in meeting the main housing duty, neither authority were using the ability introduced under the Localism Act 2011 to formally discharge the duty with private tenancies. After the HRA 2017 both were developing policies in order to do so.

The onus was also largely on the individual to find their own privately rented accommodation, and to inform the authority when they did for assistance with meeting upfront costs such as rent in advance and deposits. In the second local authority applicants were provided on presenting to the authority with a list of social registered providers and told to register with them, and a list of private landlords, along with their application pack. The list of private landlords contained landlords and letting agents whom the authority believed would be open to taking homelessness applicants, and contained their contact information and a list of the things the landlord/letting agent required from any potential tenants such as whether they required a guarantor or asked for rent in advance (and prior to the Tenant Fees Act 2019, whether they required application fees). When first compiled the list was likely useful for some applicants, but by the time of observation had become very outdated. A list of website links to online property advertisement platforms and information about local housing allowance levels was also provided within the more detailed personal housing plans.

In the first local authority, as well as expecting applicants to search for their own private properties, they had developed a private rented team on the introduction of the HRA 2017 tasked specifically with working with the

private sector to acquire properties they could offer to applicants to discharge homelessness duties, particularly early prevention and relief duties.

> "When it was set up because obviously that team has only be set up since the beginning of the restructure, and that was with the introduction of the new prevention and relief duties. Realising that social housing for everybody wasn't an option, we need to be discharging that duty elsewhere before we even, put added pressure onto the register, erm, and to be able to *source* and build those relationships with landlords." (LA1 – Homelessness Manager 6).

As will be discussed further below, the private rented sector is difficult for authorities to access as landlords are reluctant to let to homeless applicants and welfare recipients due to a perceived increased risk of rent arrears and tenancy failure. In order to overcome this reluctance and source properties to use in the discharge of duties, the private rented team pull together a variety of techniques to offer landlords. The most common thing landlords would like paid is rent in advance and a cash deposit, which is a basic service both authorities offered to assist applicants. Most often the rent in advance offered covered the first month, but in some cases three months may be appropriate and both authorities suggested that once or twice they had given six months in advance for applicants they were struggling to accommodate with the highest risk of rent default. The first authority were also willing to give a deposit guarantee instead of a cash deposit if the landlord agreed, which saved the authority spending outright and potentially allowed them to guarantee a higher amount for tenants they were struggling to place. If an inspection of the property found repairs or a particular job needed doing to bring the property up to suitable standards, the team could offer to pay to have that done as an incentive to

source the property. The manager of the team spoke of needing to have a 'spend to save attitude', where spending to incentivise landlords will ultimately help to increase successful preventions to save on more expensive temporary accommodation costs. The average cost to the authority in securing a tenancy, either through sourcing it through the work of the private rented team or where an applicant had found one themselves and needed assistance with costs, could be anywhere between £400 and £3000. Sometimes this would be on a grant basis for the tenant, or sometimes a loan basis, or a combination of both depending on the applicant's circumstances. To address landlords anxieties around letting to tenants in receipt of social security members of the team would assist applicants to apply for universal credit, ensuring they apply for the housing costs element correctly and also assist them in applying for an alternative payment arrangement so that the housing cost element goes directly to the landlord.[721] It was suggested that a flexibility to address whatever factors are leading to an eviction or the barriers stopping a landlord from offering his property was needed.

> "Just, finding out what the landlord wants and not saying no, I'll find out, I'll see what I can do, we'll try it, we've tried a lot of things […] Its/*nothing* is unreasonable if it prevents […] I'll do whatever it takes." (LA1 – Homelessness Manager 6).

The team and authority felt they were managing to source a significant number of properties, but the challenge wasn't necessarily sourcing the properties but in maintaining those relationships and sustaining the

[721] Department for Work and Pensions, 'Guidance: Alternative Payment Arrangement' (Gov.UK last updated 13 May 2020) <www.gov.uk/government/publications/universal-credit-alternative-payment-arrangements/alternative-payment-arrangements> accessed 28 May 2022, para 1-1.2.

tenancies that had been placed there. This was the more challenging and time-consuming aspect of the role.

> "[…] it would be very easy for us to go out there and say have you got a property, yes here's a property and pass it back to the housing advisors. But there is the whole issue of sustaining, flourishing those relationships, and keeping the landlords on board, for instance we've got a few cases at the minute that have been in properties we sourced for them for about a year, so prevention duty or a lot of them were legacy cases, up until three quarters of the way through last year, erm and we've had to do an awful lot of prevention and sustainment work, to ensure that they don't lose those tenancies and to keep those landlords on side" (LA1 – Homelessness Manager 6).

The fact that it became necessary to adopt a sustainment approach in order to maintain tenancies that had been placed under homelessness duties demonstrates the lack of stability within the private rented sector needed to prevent repeat instances of homelessness. Without the sustainment work of the private team staff it is highly likely those tenancies experiencing difficulties would have otherwise been lost within six-twelve months after being placed and the household could very well have had to re-approach the authority for further assistance. The team therefore began to develop a homelessness prevention role, offering sustainment, support, mediation to the landlords they worked with and the tenants they have placed. This also worked as an attraction to landlords who wanted that element of tenancy management, someone on the end of the phone to help resolve any issues quickly. The team were also looking to develop a scheme where any landlord and letting agent in the area could call the authority when any issues or rent arrears began to appear in the tenancy, so attempts could be made to resolve them before it reached the

stage where the landlord wanted to serve a notice. Again, this was intended to work further upstream to help prevent homelessness.

The push into the private rented market has been progressively effected and justified by various housing and welfare policies, including the HRA 2017, which residualise social housing and encourage use of the private market. The discussion explored in the sections above, including discussion relating to the formulation of personal housing plans, demonstrate that individuals are governed into participating in the private market through the statutory homelessness process, often against what they feel would be secure or manageable for them to sustain independently without the looming threat of future homelessness. However, while on the one hand pushing applicants towards market participation, broader housing and welfare policies simultaneously restrict the accessibility and affordability of the private market, making successful participation in that market difficult.

The following paragraphs will explore further the challenges faced by applicants and housing officers in finding suitable, affordable and sustainable accommodation to meet homelessness duties and housing need, considering how the residualisation of social housing is operating in practice and the barriers that exist in accessing the private rented sector.

6.3.3 Securing Alternative Accommodation

Whether or not an authority can discharge the new prevention or relief duties effectively can depend entirely on whether or not the household in question has viable options within the housing market. In their report "Building for our Future: A Vision for Social Housing" Shelter outline a

country experiencing a Housing Crisis.[722] This crisis is principally for those who rent, broadly due to two factors: an insecure and expensive private rented sector and a chronic undersupply of social rented accommodation.[723] These issues combine to both increase incidences of homelessness and also make it much harder for local authorities to meet their statutory duties to prevent and relieve homelessness. A Local Government Association survey conducted in 2018 found that some respondent local authorities perceived that "increasingly hostile housing market conditions" combined with welfare reform and increased evictions from the private sector through the issuing of s.21's, was leading to an increase in overall homelessness.[724] In the survey respondents were also asked which factors affected their council's ability to meet its clients' needs and factors most commonly selected as affecting ability to a moderate or great extent include welfare reform (92%), access to private rented sector housing (87%), affordability of private rented sector housing (86%), and access to social housing (77%).[725] These findings were broadly mirrored by the homelessness teams in the two local authorities observed.

6.3.3.1 Social rented sector

Despite being further down in the above list than other factors such as accessing the private rented sector, the availability of social housing was often at the forefront of many discussions on availability of accommodation for homeless applicants using local authority services. In fact, as discussed

[722] Shelter, 'Building for our Future: A Visions for Social Housing: Executive Summary' (n 682) 3.
[723] ibid.
[724] Local Government Association, 'Homelessness Reduction Act Survey 2018 – Supplementary Report' (2019) LGA <https://www.local.gov.uk/sites/default/files/documents/Homelessness%20Reduction%20Act%20Survey%20Report%202018%20-%20Supplementary%20Report%20WEB.pdf > accessed 28 May 2022, 4-9.
[725] Local Government Association, 'Homelessness Reduction Act Survey 2018 – Survey Report' (LGA 2019) <https://www.local.gov.uk/homelessness-reduction-act-survey-2018-survey-report> accessed 28 May 2022, 12.

above, the lack of availability of social housing is one factor which pushes the conversation to the private rented market. The social rented sector has a long history of providing for those in need of affordable, secure accommodation, for many years being the key provider in addressing homelessness. Despite policy and practice trends now diverting away from the social sector, Shelter assert that social housing must be seen as a vital solution in tackling homelessness.[726] It helps equally to prevent homelessness and address incidences of homelessness by providing an alternative tenure for those who struggle to find or keep a stable home in the private rental market, due to requiring lower up-front access costs, more objective lettings practices, more affordable rents, better conditions, staff trained to identify and help with support needs, and much greater stability.[727]

However, since 1980 almost 2 million social homes have been sold under Right to Buy schemes and not adequately replaced,[728] with only 6,338 new social homes entering the market in 2018-19.[729] Due to a lack of social housing there are millions of households waiting for a social home. While social units are spread across local authority owned stock and housing association stock, statistics by the Ministry of Housing Communities and Local Government suggest in the year 2018-19 there were 1.15 million households on local authority waiting lists alone.[730] This has increased from

[726] Deborah Garvie, 'Homelessness Reduction Act 2017 Policy and Practice Briefing' (n 673), 22.
[727] Ibid.
[728] Shelter, 'Building for our Future: A Visions for Social Housing' (Shelter 2019) < https://england.shelter.org.uk/support_us/campaigns/a_vision_for_social_housing> accessed 28 May 2022, 37.
[729] Department for Levelling Up, Housing Communities and Ministry of Housing, Communities and Local Government, 'Live Tables on Affordable Housing Supply (Table 1009, Gov.UK 2018/2019) <https://www.gov.uk/government/statistical-data-sets/live-tables-on-affordable-housing-supply#contents> accessed 28 May 2022.
[730] Ministry of Housing Communities and Local Government, 'Local Authority Housing Statistics Dataset 2018-2019: Section C – Allocations' (Gov.UK last updated `16 July 2020) <www.gov.uk/government/statistical-data-sets/local-authority-housing-statistics-data-returns-for-2018-to-2019> accessed 28 May 2022.

1.11 million in the year 2017-2018.[731] Shelter suggest that a total of 3.1 million more social homes over a 20 year period would be needed to begin to meet demand for the sector.[732]

The general lack of availability of social housing and high waiting lists is a significant factor in limiting options for homeless applicants and local authority housing officers in discharging their duties. This was particularly acute for local authority one and less so in local authority two who still had a relatively good supply of social housing to meet their needs.

> "[…] well the social housing is not going to be there at the end! And I know they've announced this investment but isn't it up to 2030 or something, and you are thinking, that's not going to be a lot across the board, and we are still dealing with a decrease in our housing stock, more people buying them than we can [replace] so we have to be innovative." (LA1 – Homelessness Manager 1).

The lack of availability of social housing also appeared to be more acute for certain groups approaching the authority. Officers spoke of victims of domestic violence for example having a higher chance of getting a social sector offer, whereas those who have very little needs other than having been evicted from a private rented property, have no chance of a social sector offer. This is due to the way local allocation schemes determine priority over available properties. Local authority allocation schemes are a statutory requirement under Part 6 Housing Act 1996[733] and determine the circumstances in which a household can apply for social housing (and when

[731] Ministry of Housing, Communities and Local Government, 'Housing Statistical Release: Local authority Housing Statistics: Year Ending March 2018, England' (Gov.UK 24 January 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773079/Local_Authority_Housing_Statistics_England_year_ending_March_2018.pdf> accessed 28 May 2022, 6.
[732] Shelter, 'Building for our Future: A Visions for Social Housing' (n 728), 172.
[733] For full detail on the operation of Housing Act 1996, Part 6, see Jan Luba, Liz Davies, Connor Johnston and Tessa Buchanan, *Housing Allocation and Homelessness* (5th edn, Lexis Nexis 2018).

they cannot apply),[734] what type of social housing they can be eligible for (flat/house, 1 bed or 2 bed etc), and within those who qualify, who will take priority over other households when properties become available. Allocation schemes utilise a variety of different systems across local authorities to determine this priority, including banding, points, or needs based systems (or some combination of these), where broadly speaking the higher the banding, points or 'need' you have, often combined with the length of time you have been registered on the waiting list, the more likely you are to be offered a property.

> "I find that, you know they are not getting anything in the [choice based letting system] because they've got/especially now they'll have one homeless need, they may have a working need, and they may have a medical need, but sometimes there's people sitting there with one homeless need because they've got nothing else they've got/all they've been given is notice. They are not going to get anything, so they sit there for 112 days with absolutely no chance […] if you've got dv (domestic violence) then you get a dv need and you've probably got a medical duty for stress and everything rightly so, and you can sort of sort of get a few more needs out of it, but notices, there isn't anything, you just can't, so I very rarely get any offers from social housing, which I understand, we are not pushing people towards that but again then, we haven't got the private rented to offer them. So they are sitting in, like they were before, on social housing waiting list and then it adds stress" (LA1 – Housing Officer 5).

[734] For an analysis of the types of circumstances barring applicants from eligibility for social housing within allocation schemes, see Chris Bevan and Dave Cowan, 'Uses of Macro Social Theory: A Social Housing Case Study' (2016) 79(1) Modern Law Review 76.

Housing officers identified additional frustrations due to the fact their allocation policies had not yet been updated to reflect the new processes under the HRA 2017. As reflected in the quote above, officers in the first authority were finding that the current scheme left those who would struggle to afford properties in the private market but attract low priority under the allocation scheme in operation at the time, are left waiting with no solutions. Housing officers on the frontline attempting to discharge duties within the early stages were hoping revised allocation schemes would create some kind of increased access to social housing for those in the earlier prevention and relief duties

> "I would have thought there would be an escalating amount of priority for somebody depending on where they are in the HRA, so if you are in prevention you'll get a certain amount of priority, increasing when you get into relief and further increasing if you get into main duty, that's how I would have thought it'd come out. I think there were always concerns that we didn't have enough properties in the private sector to, to sort of erm I think I think we all thought that was very optimistic, that it was going to make a massive difference" (LA1 – Senior Housing Officer 1).

The type of property required to meet a household's needs was also a factor in the likelihood of securing a social property. In the second local authority, families requiring a two bedroomed property often received social housing offers much quicker than those requiring three bedrooms or more. Both authorities also spoke of a lower availability of one-bedroom social properties for single households and next to no availability for larger families.

> "I think families that just require a 2 bed are easier to rehouse than the 3 beds, single people can be quite difficult because there are

> only [named provider 1] who will give us their properties really because with [named provider 2] they give us very few 1 beds, whereas [named provider 1] they will send 1 beds every few days but then they are all in one particular area […] I was gonna say if you get large families as well that is awkward as we don't get that many 4 beds come through either so…" (LA2 – Housing Officer 2).

> "[…] we are blocked at the moment with large families, we've got several families with, er 6 or more children, and it's a big ask trying to get accommodation that is suitable for that size of family." (LA1 – Homelessness Manager 1).

Even authorities who have a relatively strong supply of social housing to meet demand can still struggle with accessing accommodation that they need. The second local authority observed fall into this category, with a good supply of social housing yet still experiencing some difficulties rehousing applicants. As described above, the introduction of the HRA 2017 led to confusion around whether social housing stock should be used in the same way to discharge duties and at which point should duties be discharged with social housing. Some officers were nominating households for top priority banding, where properties were often found relatively quickly, during early prevention and relief stages. Whereas other officers were under the belief that since the HRA 2017 came into force this should not be done until a household has reached the main housing duty or at least looked first for private properties and evidenced their searches.

> "[…] when the new Act came in the nominations fell [… because of] the private push, and we were told not to nominate haha, because of the new Act and that we shouldn't be nominating for at least 56 days. But I think as we've all worked through cases you think well if we leave it till after the 56 days of prevention and nominate when

> they are in relief how is that preventing them from becoming homeless? Whereas you could get them gold banded within the 56 days and maybe they will get offered a property." (LA2 – Housing Officer 2).

One housing officer expressed frustration at feeling forced to look in the private rented sector when there is good social housing stock. They believed the private sector should only be used in certain circumstances like where the individual wants to look in the private sector or for whatever reason cannot access social housing.

The second local authority further experienced some frustration around their relationship with their registered social providers which created barriers to discharging duties and moving households out of temporary accommodation. The local authority were finding burdensome administrative barriers to making nominations where providers were asking for information from applicants that had already been provided to the local authority.

> "[…] we are working with [housing provider] to change how we nominate, to try to free up and make it a much quicker process to get people into accommodation […] we've had a big debate around what type of information they need and they require, and whether or not they actually need to duplicate some of the assessments that we already do, whether we can share information more effectively, or whether erm, we've had some specific discussion around particular cases […] so statistically I am now seeing them actually put people into [higher priority category] much faster in the last couple of weeks it has made a big difference" (LA2 – Head of Service).

Across both local authorities, applicants were finding barriers to accessing social accommodation due to local authorities and social housing providers refusing to let to applicants they believed would present an element of risk, particularly if they had a history of rent arrears or anti-social behaviour. If a household had been evicted from a social property before, either with the same provider or a different one, this further increased the chance of a refusal.

> "[…] obviously, sometimes we don't have the option of putting them into social housing because they won't accept them […] often they seem to be a bit too choosey about who they are taking on, and our agreements with them should be more flexible. So I know that that is something that is being looked at." (LA2 – Temporary Accommodation Officer 1).

The second local authority also experienced a situation where a housing provider turned down a family for a property stating it would be unaffordable for them due to the family being benefit capped. If benefit capped families are being turned away from social housing there is little other option for them as the private rented sector tends to be even more expensive with a similar reluctance by landlords to take on benefit capped tenants.[735] There is growing apprehension around local authorities and social providers becoming increasingly selective about who they will offer tenancies to, questioning applicant incomes and independent living skills.[736] Research from the Chartered Institute of Housing further demonstrates housing associations screening out homeless applicants nominated for lets due to likelihood of accruing rent arrears (due to moving onto UC or being

[735] As will be explored further below in Chapter 6.3.3.2.
[736] Jenny Preece, Paul Hickman and Ben Pattison, 'The Affordability of "Affordable" Housing in England: Conditionality and Exclusion in a Context of Welfare Reform' (2020) 35(7) Housing Studies 1214.

hit by the bedroom tax or benefit cap), or due to unmet mental health or addiction problems, placing homeless people in a perverse situation where the reasons people may need access to social homes become the barriers to accessing them.[737]

The practical result of an undersupply of social housing and difficulties meeting need within a sector split across local authorities and social housing providers, is an increased focus on delivery in the private rented sector. This shift in focus is causing delivery within the social rented market and private rented market to become intertwined. Authorities are aware of the preference by homeless applicants to be in the social sector due to the numerous reasons listed by Shelter above, including cheaper rents and more stability. Yet also cannot deliver social properties to all those in need. Authorities are therefore having to come up with incentives to encourage applicants to make use of the private rental market over the social market. One such incentive is worked into social housing allocation schemes and promises applicants an increase in priority on the social housing register if for their immediate needs they take accommodation in the private sector. The form of this incentive can vary across authorities due to the varying nature of the local allocation of social housing, but a good example is presented by Lambeth Council. Under Lambeth's allocation policy a scheme titled "Temp2Settled" operated where if a homelessness applicant agreed to forgo their entitlements under the homelessness legislation and accept an offer of private rented accommodation, they would be granted a higher priority band on the housing register, Band B

[737] Faye Greaves, 'Rethinking Allocations' (Chartered Institute Housing 17 September 2019) <www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/Rethinking_allocations%2520Final> accessed 28 May 2022. Patrick Butler, 'Homeless Denied Social Housing for Being Too Poor, Study Says' (The Guardian 17 September 2019) <www.theguardian.com/society/2019/sep/17/homeless-denied-housing-over-fears-they-are-too-poor-study-says> accessed 28 May 2022.

over Band C, making it more likely they would secure a property.[738] Another element of Lambeth's allocation policy is that any households who have lived outside of Lambeth for two years are removed from the waiting list. This meant that for households who were placed in private accommodation under the "Temp2Settled'" scheme outside of the Lambeth Borough, after two years would lose their 'local connection', meaning they would be removed from the housing register altogether.[739] As the average wait time for securing a property is 5.5 years, up to 6.8 years for families needing more than one bedroom, hundreds of families were impacted.[740] As a result of foregoing entitlements under the homelessness legislation, it was also not possible to challenge the suitability of private rented placements so many were placed in unsanitary or uninhabitable living conditions.[741] A challenge was raised in the high court against the scheme and shortly before the case was due to be heard, Lambeth agreed to amend the scheme and reinstate applicants back onto the register who had opted for the scheme and dropped off due to being placed out of borough.[742]

While Lambeth is hopefully an extreme example of the operation of these kind of incentives, similar initiatives appear to be spreading in use, although further research is necessary to establish the extent of the use of these schemes and how allocations policies have been adapted to take account of the HRA 2017. Lambeth has had their "Temp2Settled" policy in place since 2014, yet it is expected that the use of these incentives will be

[738] Public Interest Law Centre, 'Important Win for Homeless Families in Lambeth' (23 June 2020) < https://www.pilc.org.uk/news/story/lambeth-council-defeated/> accessed 28 May 2022.
[739] Lucie Heath, 'Council Taken to Court Over Allocation Scheme That 'Removes Homeless Families From the Housing Register'' (Inside Housing, 20 November 2019) < https://www.insidehousing.co.uk/news/news/council-taken-to-court-over-allocation-scheme-that-removes-homeless-families-from-housing-register-64157> accessed 28 May 2022.
[740] ibid.
[741] Public Interest Law Centre (n 738).
[742] ibid.

increasing due to increased pressure placed on local authorities and on temporary accommodation by the additional homelessness duties under the HRA 2017. London Borough of Camden are praised by the Children's Commissioner in their "Bleak Houses" report on homelessness families in temporary accommodation for their allocation scheme, updated in 2018.[743] This scheme provides households owed a prevention or relief duty 50 points of priority and those owed a main housing duty with 100 points of priority.[744] If however you are homeless or threatened with homelessness and would normally eventually be owed a main housing duty, if you accept a private rented sector offer in order to prevent or relieve your homelessness, you are eligible for a further 100 points, and then a further additional 100 points if your homelessness is prevented in this manner for 6 months.[745] Under this scheme the priority for social housing increases with the number of points awarded, therefore taking a private rented sector tenancy and staying there for six months offers a clear incentive.

Bracknell Forest Council are operating an allocations policy whereby an applicant earns a higher priority depending on how many times they have successfully prevented their homelessness within the private sector. Avoiding homelessness up to three times since being on the housing register by securing alternative private rented accommodation attracts a Band D medium priority.[746] Avoiding homelessness four times attracts Band C high priority, and avoiding homelessness five times through the private rented sector attracts Band B Urgent priority.[747] This allocation scheme

[743] Children's Commissioner, 'Bleak Houses: Tackling the Crisis of Family Homelessness in England' (Children's Commissioner August 2019) < https://www.childrenscommissioner.gov.uk/wp-content/uploads/2019/08/cco-bleak-houses-report-august-2019.pdf> accessed 28 May 2022, 23.
[744] London Borough of Camden, 'Housing Allocation Scheme 2018' (Camden.gov 2018) < https://www.camden.gov.uk/documents/20142/1730554/Housing+allocation+scheme+2018.pdf/69d244d4-198f-b3f6-c138-33dd8c829ee9> accessed 28 May 2022, 18.
[745] ibid 19.
[746] Bracknell Forest Council, 'Bracknell Forest Council Allocations Policy' (undated) < http://democratic.bracknell-forest.gov.uk/mgconvert2pdf.aspx?id=17139> accessed 28 May 2022, 14.
[747] ibid.

represents a strong example of how neoliberal governmentality, which prioritises the role of the private sector in addressing housing need, creates a homelessness framework which puts its solution in temporary rooflessness as opposed to addressing the root causes of homelessness. The homelessness framework does not encourage sustainable accommodation solutions which reduce homelessness by preventing it from occurring again in the future, but instead treats homelessness as isolated short-term incidences that can be resolved through the availability of a roof for six months.

6.3.3.2 Private Rented Sector

While it is certainly clear that the role of the private sector in addressing homelessness is growing, it is also clear that this alternative also carries significant barriers, meaning there is a further lack of availability within the private rented sector for local authorities to discharge their duties.

> "if the tenancy can't be salvaged we'd really be looking intensively at something else for them in the private sector, but there is very little out there, that is/that can't be overstated really." (LA1 – Senior Housing Officer 1).

The first of these barriers relates to affordability. The market rent chargeable on private properties is often a lot higher than that for social housing. The maximum amount of social security a household can receive to help meet rental costs in the private sector, either through housing benefit or the housing costs element of Universal Credit (UC), is limited by the Local Housing Allowance (LHA) rate. The LHA rate has been subject to a number of government policy changes over the last decade. Initially the LHA rates were calculated to cover up to 50% of market rents up to a

household size of five bedrooms, yet in 2011 this was dropped to 30% of market rents and a household size of 4 bedrooms.[748] The LHA rates include the Shared Accommodation Rate which is a lower rate for people presumed to live in a shared property. This was initially for people under 25 but since 2015 was extended for people under 35.[749] In 2016 LHA rates were frozen for four years until 2020.[750] At the time of observation for this research, Shelter estimated that under the freeze LHA covered the cost of renting a two-bedroom home at the 30th percentile of local market rents in only 3% of rental market areas in England.[751] This leaves households relying on housing benefit/housing costs with a significant shortfall in rent which is both a contributing cause of rent arrears and therefore homelessness,[752] but also severely limits an authorities rehousing options in discharging their prevention and relief homelessness duties.

> "[…] But it's just difficult because options are limited and sometimes […] because if you've got a family that neither are working […] and they've got a few kids, you know, obviously they get child benefit and everything but how much money is coming in, it is hardly anything […] they are absolutely stuffed! So they have to wait [for social housing]. Because they haven't got any other option because we wouldn't put them into a [private] property because it wouldn't be affordable, and they have to go through the whole process. But anyway. It's difficult." (LA1 - Housing Officer 5).

[748] Jasmine Basran, 'Cover the Cost: How Gaps in Local Housing Allowance are Impacting Homelessness' (Crisis May 2019) <https://www.crisis.org.uk/media/240399/cri0226_cover_the_cost_report_aw_web.pdf> accessed 28 May 2022, 15.
[749] ibid.
[750] ibid
[751] Stephanie Kleynhans and Thomas Weekes, 'From the Frontline: Universal Credit and the Broken Housing Safety Net' (Shelter August 2019) < https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/report_from_the_frontline> accessed 28 May 2022, 13.
[752] Jasmine Basran (n 748) 8.

During observations of homelessness applicant interviews and personal housing plan appointments, many applicants expressed concern around not being able to find a private rented property that was affordable for them and fell within the LHA rates applicable for the size of property that met their needs. This was particularly acute for households whose income was made up entirely of social security. Taking on a property where the rent charged is higher than the LHA rates means a household faces cutting back on essentials and having to spend income directed towards other needs on rent, or getting into debt borrowing from friends, family or lending institutions.[753] The alternative is facing rent arrears. While the Department for Work and Pensions (DWP) guidance manual on DHP's specifies the ability of DHP's to cover shortfalls created by reductions in UC or housing benefit due to LHA restrictions,[754] the deficiency of DHP's in adequately mitigating the impact of these shortfalls, alongside shortfalls caused by other welfare policies such as the benefit cap and bedroom tax, is becoming well documented.[755] Whenever a household is re-housed into a property with a shortfall in housing benefit/housing costs where their income is made up of social security, there is a risk of repeat homelessness.

The case of *Samuels v Birmingham CC* [2019] recently suggested that a property should be deemed unaffordable for an applicant if the applicant's

[753] Department for Work and Pensions, 'The Impact of Changes to the Local Housing Allowance in the Private Rented Sector: The Response of Tenants' (2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380461/rr872-nov-14.pdf> accessed 28 May 2022, 101-105; Jasmine Basran (n 748) 14.

[754] Department for Work and Pensions, 'Discretionary Housing Payment Guidance Manual' (Gov.UK last updated May 2022) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827510/discretionary-housing-payments-guide.pdf> accessed 28 May 2022, 8 and 9.

[755] In particular work by Jed Meers: Jed Meers, 'Panacean Payments: the Role of Discretionary housing Payments in the Welfare Reform Agenda' (2015) 22(3) Journal Social Security Law 115; Jed Meers, 'Awarding Discretionary Housing Payments: Constraints of Time, Conditionality and the Assessment of Income/Expenditure' (2018) 25(2) Journal Social Security Law 102; Jed Meers, 'The Resistible Rise of Discretionary Housing Payments: Rehoune v Islington LBC' (2019) 22(6) Journal Housing Law 118.

income is made up entirely of social security and the rental cost of the property exceeds LHA rates, and therefore the amount they would receive in housing benefit/housing costs.[756] Social security benefits are set at a subsistence level with no surplus income available to pay a gap in rent.[757] While this was decided in the context of the main housing duty and an intentional homelessness decision, the same regulations discussed in the case, the Homelessness (Suitability of Accommodation) Order 1996,[758] apply when determining whether accommodation is suitable for the purposes of discharging homelessness duties, including the prevention and relief duties. If the same interpretation of affordability assessments is applied to judging whether a property is affordable and therefore suitable in order to discharge homeless duties, research referred to above by Shelter[759] suggests there are very few properties that would be deemed affordable and available for letting, making it even harder for authorities to discharge their duties.[760] Experiences observing practice after the judgment in *Samuels* was handed down suggested no evidence that the decision had been interpreted in this way, with officers still advising applicants reliant on social security they would be looking at properties above the LHA rate. The reasoning for this could be due to not realising the wider implications of the decision, or simply down to not being able practically to restrict options in that way. Joint research conducted by Crisis and the Chartered Institute of Housing in 2018 explored the ability of single people, couples and small families to find accommodation within the LHA rates for 2018/2019.[761] The research found that in England, 97% of areas were unaffordable for at least one household type demonstrating

[756] *Samuels v Birmingham City Council* [2019] UKSC 28, [2019] 4 All ER 773, [36].
[757] ibid [26],[27] and [35].
[758] Homelessness (Suitability of Accommodation) Order 1996, SI 1996/3204.
[759] Stephanie Kleynhans and Thomas Weekes (n 751) 13.
[760] Carla Reeson, 'Intentional Homelessness and Affordability of Accommodation' (2019) 41(4) Journal Social Welfare Family Law 483.
[761] Jasmine Basran (n 748) 19.

how difficult it would be to only secure accommodation falling within the LHA rates.[762]

In some cases, where housing officers were made aware that an applicant had become homeless from or wished to live in an area of the local authority where market rents were often significantly higher than the LHA rates, they were advised they would need to consider looking at other cheaper areas. In some authorities where market rents are particularly high this could lead to more out of borough placements. While the phenomena of out of area placements is largely discussed in the context of temporary accommodation offers, it also occurs when authorities make offers of accommodation.[763]

> "I can look at the affordability. What I did do last week I went out to two families at the projects, they are larger families […] to say I know you want to live in [specified area], I've looked at your family circumstances, none of your children are doing their GCSE's or won't be doing their SAT's, […] so it is probably about you then thinking, instead of just wanting to live in [specified area] it may be that [you] have to go to [different specified area]." (LA2 – Housing Officer 1)

Moving to a cheaper area is often given as an option for those impacted by shortfalls in rent due to LHA rates, yet it is clear options available are severely limited, and often further limited to particular geographical areas where market rents are cheaper.[764] This raises concerns about property quality in these areas as homes in the private rented sector are generally

[762] ibid.
[763] Kevin Garvey and Jenny Pennington, 'Home and Away: The Rise in Homeless Families Moved Away From Their Local Area' (Shelter 2016) < https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/briefing_home_and_away_the_rise_in_homeless_families_moved_away_from_their_local_area> accessed 28 May 2022.
[764] Julie Rugg and David Rhodes, *The Evolving Private Rented Sector: Its Contribution and Potential* (Centre of Housing Policy 2018) 129.

the worst performing tenure in relation to the incidence of homes not meeting the Decent Homes Standard.[765] Lowest cost homes are more likely to be non-decent at a rate of 36% in the lowest rent quintile, compared to 19% in the highest rent quintile and a 27% sector average.[766] People on lower incomes, including people experiencing homelessness, are therefore likely to be disproportionately impacted by poorer quality homes.[767]

Since the time of research, as a response to the COVID-19 pandemic, the Social Security (Coronavirus) (Further Measures) Regulations 2020 have raised the LHA back up to 30% of local market rents.[768] These increased rates are now applicable until March 2022.[769] This measure is certainly welcomed, enabling housing benefit/housing costs to fully cover rent payable in more cases helping prevent rent arrears. It will also contribute to an increase in affordable rehousing options. Early reports by Centrepoint suggest almost half of authorities (48%) said that restoring the LHA to the 30th percentile had made preventing and relieving homelessness easier.[770] Despite this uplift, councils still reported difficulty in securing accommodation due to an overall lack of affordable accommodation options where high rents and low benefit entitlements still make the private rented sector largely inaccessible for people moving on from homelessness.[771] More than three quarter of authorities (77%) said that restoring LHA rates

[765] ibid 73.
[766] ibid 95.
[767] Jasmine Basran (n 748) 14; Adriana Mihaela Soaita, Moira Munro and Kim McKee, 'Private Renters' Housing Experiences in Lightly Regulated Markets: Review of Qualitative Research: Executive Summary' (UK Collaborative Centre for Housing Evidence 2020) <https://housingevidence.ac.uk/wp-content/uploads/2020/04/200429_PRS_evidence_review_exec_summary_final.pdf> accessed 28 May 2022.
[768] The Social Security (Coronavirus) (Further Measures) Regulations 2020, SI 2020/371, reg 4.
[769] Valuation Office Agency, 'Local Housing Allowance (LHA) Rates appliable from March 2021 to March 2022' (Gov.uk, January 2021) <www.gov.uk/government/publications/local-housing-allowance-lha-rates-applicable-from-april-2021-to-march-2022> accessed 28 May 2022.
[770] Centrepoint, 'Locked Out: Youth Homelessness During and Beyond the Covid-19 Pandemic' (2020) < https://centrepoint.org.uk/media/4293/locked-out-report.pdf> accessed 28 May 2022, 24.
[771] ibid 27.

further up to the 50th percentile of local market rents would help efforts to prevent and relieve homelessness going forward.[772] However, there are still households unable to benefit from the restoration to the 30th percentile and again would not benefit from any lift to the 50th percentile due to another problematic policy measure, the benefit cap.

The benefit cap was first introduced as part of the reforms initiated under the Welfare Reform Act 2012. It sets a limit on the total amount of benefits an individual household can receive, initially set at £26,000 for households with dependent children and £18,200 for single households, but reduced further by the Welfare Reform Act 2016 to £20,000 for a household with children (£23,000 inside London) and £13,400 for single households (£15,410 inside London).[773] Where a households entitlement to social security would exceed those amounts, a reduction is met through reducing housing benefit or the housing costs element of UC. In their report on the DWP's response to the coronavirus outbreak, the Work and Pensions committee highlight concerns by organisations including CPAG, Citizens Advice and Shelter that the increase in the LHA could push households over the maximum amount of benefit they are able to receive.[774] Alongside the increase in LHA rates, the value of the Universal Credit personal allowance was also uplifted by £20 a week[775] and Research by the Resolution Foundation suggests that due to both of these measures combined, couples with two children living in a three-bedroom home will now fall foul of the benefit cap in 107 out of 152 local areas.[776]

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[772] ibid 28.
[773] Welfare Reform Act 2016, s 8(2) amending Welfare Reform Act 2012, s 96(5).
[774] Work and Pensions Committee, *DWP's Response to the Coronavirus Outbreak* (HC 2019-21, 178) para 90.
[775] The Social Security (Coronavirus) (Further Measures) Regulations 2020, SI 2020/371, reg 3.
[776] Lindsay Judge and Cara Pacitti, 'The Resolution Foundation Housing Outlook: Quarterly Briefing Q2 2020' (Resolution Foundation 2020) <www.resolutionfoundation.org/app/uploads/2020/04/Housing-Outlook-April-2020.pdf> accessed 28 May 2022, 3.

Before the pandemic, research published by the DWP demonstrated that 79,000 households were subject to the cap, with 7 out of 10 households being single parent households, and 93% of capped households including children.[777] Along with the LHA rate, the benefit cap is also a significant piece of welfare reform which affects affordability in both the social and the private sector, particularly for larger families who are more likely to be capped, again creating a shortfall between the rent charged and amount received in social security. The result of these measures means many homeless applicants do not wish to live in the private sector or feel that they cannot.

A further effect of the last decade of welfare reforms is to make the sector less accessible due to a reluctance by private sector landlords to let to those in receipt of social security and/or those who are homeless. Landlords are aware that those in receipt of housing benefit/housing costs will only receive a maximum of the local housing allowance rate as a contribution towards the rental costs of the property, and that in the majority of scenarios the market rent chargeable for their property will be higher than that LHA rate. Where this is the case, it creates a risk that the household may be unable to make up the shortfall in rent and therefore increases the perceived risk of the tenant getting into arrears over the course of the tenancy. For any tenant that is also benefit capped, that perceived risk will be even higher.

> "I would've said we were renting about 85% to people on benefits. […] That has changed a lot since the election in 2010 when the coalition government introduced welfare reform. […] people on

[777] Department for Work and Pensions, 'Benefit Cap: Data to February 2020: Quarterly Official Statistics' (Gov.UK 7 May 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892994/benefit-cap-statistics-february-2020-revised-17-june-2020.pdf> accessed 28 May 2022.

> benefits are becoming…their affordability has been diminished, because rents are continuing to go up and their ability to pay that rent while the contribution to the local authority in housing benefit is staying static. […] Consequently, when I said I think at the beginning I might have been renting 85% benefits, when I say that I'm saying people who are completely relying on benefits, […] I'd say that is [now] coming out about 35%." (LA2 – Landlord/Letting Agent 1).

The perceived risk for landlords associated with people claiming social security is further compounded by the roll out of Universal Credit. A key objective in the functioning of Universal Credit is to mimic the world of work as much of possible, so in accordance with that all elements that make up the single payment of UC go directly to the applicant for the applicant to manage, including housing costs. Prior to the introduction of Universal Credit, payments of housing benefit would often go directly to the landlord, bypassing the applicant themselves. Where any issues relating to the payment of rent or application for housing benefit did arise with tenants, local authority homelessness teams, and even landlords or letting agents, had strong relationships with housing benefit departments which facilitated the resolution of those issues.[778] Now the operation of Universal Credit, and therefore housing costs, is governed by the Department for Work and Pensions and job centre staff where those strong cross departmental relationships do not exist.

> "[…] one of the things we've always helped with in the past with relationships with landlords is trying to sort out housing benefit, and now they are like we are not going to take them private if they've got all that trouble, so we are having to go back through all that

[778] Julie Rugg and David Rhodes (n 764) 131.

> now with DWP, who don't have to do anything, we've got to get those relationships going." (LA1 – Homelessness Manager 1)
>
> "[…] now Universal Credit has made it even worse because […] as a landlord and agent [we] have over a long period of time have developed good relationships with housing benefit departments, so now we have the DWP come in. And we don't know who we are talking to anymore." (LA2 – Landlord/Letting Agent 1).

A landlord survey conducted by the Residential Landlords Association in 2017 found that when landlords have managed to contact DWP staff for assistance with their UC tenant, 45% found them unhelpful or very unhelpful.[779] The direct payment of housing costs to the tenant is therefore a significant barrier preventing landlords who might otherwise be willing to let to those in receipt of UC from doing so. Before the introduction of UC landlords would be more willing to accept the lower rent payable under housing benefit because, due to the good relationships with housing benefit departments and direct payments, the rent became 'guaranteed'.[780] The Universal Credit system does allow for Alternative Payment Arrangements (APA's) meant for claimants who cannot manage their single monthly payment and there is a risk of financial harm to the claimant and/or their family.[781] One of the available APA's is for a Managed Payment of housing costs direct to the landlord.[782] These however are not the default and must be applied for by the claimant or by the landlord, with a consensus across homelessness teams that these can be difficult for claimants and landlords to secure. The reasons as to why this is difficult varied. Officers spoke of a

[779] Tom Simcock, 'Welfare Reform and Universal Credit: The Impact on the Private Sector' (Residential Landlords Association 2017) <https://research.rla.org.uk/wp-content/uploads/Welfare-Reform-and-Universal-Credit-The-impact-on-the-private-rented-sector-2017.pdf> accessed 28 May 2022, 11.
[780] Julie Rugg and David Rhodes (n 764) 131.
[781] Department for Work and Pensions, 'Guidance: Alternative Payment Arrangements' (n 721) para 1.
[782] ibid.

belief that a managed payment can only be arranged where the tenant is already in rent arrears, or of it being easier to secure if they are in rent arrears.

> "[…]yeah, because my understanding is, and again it is what has been banded around, landlords are of the perception they can only have it if they are in rent arrears" (LA2 – Housing Officer 1).

> "[…] it is difficult, and it remains difficult to get the DWP to pay direct to us. It is easy if they are 2 months in arrears, but who wants to be in that position. But to get it paid direct at the outset, remains quite difficult" (LA2 – Landlord/Letting Agent 1).

There is now an express line in DWP guidance on APA's making clear that "A claimant does not need to be in rent arrears to be considered for an APA".[783] A decision as to whether to award an APA takes account of numerous factors referred to as tier 1 factors (highly likely for an APA) and tier 2 factors (less likely need for an APA).[784] The listed factors in tier 1 are broad and cover things such as drug or alcohol problems, severe or multiple debt, the claimant is in temporary accommodation, the claimant is homeless, suffering or has suffered domestic violence, families with multiple or complex needs, and the popular currently in rent arrears/ facing a threat of eviction.[785] Tier 2 factors include a history of rent arrears and the claimant was previously homeless or in temporary or supported accommodation.[786] Across the two tiers there are numerous factors that could apply to homelessness applicants falling under the services of homeless departments. Therefore, it appears likely that for applicants owed a homeless duty by the authority, they would be able to secure an APA,

[783] ibid para 1.1.
[784] ibid para 5 Annex A.
[785] Also including other factors not listed: ibid para 5.1.
[786] Also including other factors not listed: ibid para 5.2.

either to help maintain a current tenancy in the private sector preventing homelessness, or to support a new tenancy at the outset with a private landlord. As these claims are dealt with entirely by the DWP, where the interdepartmental relationships have not had time to grow, the general knowledge of these factors and how an APA is assessed across housing officers in both authorities was low. Where previously officers had built up in-depth knowledge of housing benefit to support the delivery of their service, general knowledge of the workings of Universal Credit, which brings a variety of different benefits together into a single payment, is lower.

Local authority departments are therefore having to respond to this general lack of knowledge by thinking of ways to make the securing of APA's more reliable and therefore encouraging private landlords to let to their applicants. The team at the first local authority dedicated to securing privately rented properties and building relationships with landlords spoke of the need to 'upskill' their officers so they are fully knowledgeable on the workings of Universal Credit and APA's.

> "[…] we've obviously had the UC full service roll out so that has been an absolute nightmare, so I would say that [named staff, two team members] have upskilled themselves *massively* on universal credit, far more than anybody else in the office actually, because what they are doing is to placate landlords, they are getting that tenant that is signing up, walking them round to UC, that's a good thing for us them being in the building, and sitting with them and making them claim the housing element and feeding all that back and doing APA's" (LA1 – Homelessness Manager 6).

The local authority were also seeking to fund a member of DWP staff to work within the homelessness department to help resolve issues relating to Universal Credit and help facilitate that relationship across departments.

> "[…] we wanted also to get some funding to have a dedicated UC work coach […] we wouldn't want someone working in here full time, we don't have you know, there wouldn't be that need, but if we could say two or three times a week we want you, to deal with that person, to sort out that UC claim and to look at that APA, and we would fund that and I think that would be/ it's that massive incentive to landlords in the private sector, who are terrified." (LA1 – Homelessness Manager 6)

The above issues relating to social security and Universal Credit combine to mean a considerable proportion of private landlords and letting agents simply refuse to consider tenants who are in receipt of social security. Some of these landlords and letting agents are blatant about their refusals, attaching the commonly used phrase 'no DSS' or 'no benefits' to their property advertisements or letting conditions. These phrases are intended to cover anyone who is supplementing any part of their income with social security, whether in work or out of work.

> "[…] well I'll tell you there is a lot of, *lots* and *lots* of landlords and agents that have put a ban just because/well it is blanket on anybody that is on UC. But actually, they don't really differentiate between UC and anything else, they just say no benefits or no DSS. Whether they do it overtly or with most of them if they are savvy don't because you don't really want to be seen as being discriminate, but I know a lot of people in the industry who just say bang that is it we ain't renting to anybody on universal credit." (LA2 – Landlord/Letting Agent 1).

Shelter have recently focussed on fighting these practices by supporting challenges to letting agents sporting 'no DSS' practices, yet many of the claims brought were often settled out of court.[787] A case recently made it to judgment in the County Court in July 2020, where it was declared that a blanket policy of rejecting tenancy applications because an applicant is in receipt of housing benefit is unlawfully discriminatory on the grounds of sex and disability contrary to sections 19 and 29 of the Equality Act 2010.[788] This was reasoned on the basis that within the private sector women are 1.5 times more likely to rely on housing benefit, and disabled households are almost three times more likely to rely on housing benefit, and are therefore disproportionately excluded by a 'No DSS' policy.[789] This is a firm confirmation that 'No DSS' policies are unlawful due to indirect discrimination and should lead to the end of overt blanket policies preventing benefit claimants applying for properties. However, the case is only a County Court judgment so is not binding on other courts, and does not stop an applicant claiming housing benefit from being refused.[790] The above issues relating to the operation of social security within the private sector remain and continue to make those in receipt of housing benefit or UC undesirable to landlords/letting agents.

A further factor which is often cited as making the private sector less accessible for homelessness officers to discharge their duties into is the perception that homeless applicants are more likely to be problematic or complex.

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[787] Maddy Moore, 'No DSS: Landmark Court Ruling Declares Housing Benefit Discrimination is Unlawful' (Shelter Blog 14 July 2020) <https://blog.shelter.org.uk/2020/07/no-dss-landmark-court-ruling%E2%80%AFdeclares%E2%80%AFhousing-benefit%E2%80%AFdiscrimination%E2%80%AFis%E2%80%AFunlawful%E2%80%AF/> accessed 28 May 2022.
[788] Giles Peaker, 'Discrimination and 'No DSS'' (Nearly Legal Blog 14 July 2020) < https://nearlylegal.co.uk/2020/07/discrimination-and-no-dss/> accessed 28 May 2022.
[789] ibid.
[790] ibid.

> "[…] it's also very difficult to enlist the private sector into wanting to take some of the complexities of the individuals that we deal with […] I think it's a combination of so many things, you know, you only have to switch the media on to see the kind of benefit street connotation of council tenants so I think that feeds in […] and of course the more complex the individual the higher likelihood of tenancy failure in some way or another erm and for a private landlord all they want to see is their money coming in each month, don't they, there are some people, we have certainly worked with some landlords that are have social conscience in terms of wanting to help vulnerable people, but you know that is secondary to being able to pay their own mortgages you know, and their own costs in relation to the properties" (LA1 – Head of Service).

This is compounded where the individual or household in question is linked to criminal convictions (particularly convictions like arson or sex offences) and/or anti-social behaviour. Ultimately, homelessness applicants and local authorities seeking to discharge their homelessness duties are left attempting to access a market that is largely reluctant to work with them due to an overall perception of the increased risk of taking on those individuals.

> "[…] the other one we've got is prison releases, difficult one for us, and you know especially if they have someone coming in with an arson offence. Erm that really is one of the worst ones and you know you've got your sexual things that erm where we have, we can't put that person there, we can't put the person here, we are *very* restricted" (LA1 – Senior Housing Officer 3).

> "I mean at the end of the day you/the reality of it is, as an agent or a landlord, do we want to be bothering erm housing homeless

> people, criminals, paedophiles, when there is an abundance of what you'd call… normal people who go to work and apply for the property because it is on zoopla in the normal way. If there is always an abundance of those you wouldn't take the risk with others." (LA2 – Landlord/Letting Agent).

In an attempt to counter these issues, as described above local authorities invest significant amounts of resources into trying to access the sector, acquire properties in which to discharge their duties, and build relationships within the private sector. Even in the second local authority, where duties were mostly discharged into the social sector, resources were still utilised paying deposits, paying rent in advance, sometimes up to three or in the most difficult cases to rehouse 6 months' worth of rent in advance, applying for DHP's, in order to enable applicants to access the sector and encourage landlords to accept them. Rugg and Rhodes term these efforts 'mediated tenancies', where statutory and third sector agencies develop "access" schemes or "help to rent" schemes in order to procure properties through offering landlords services or incentives.[791] Since 2010 welfare reform has seen an increase in these practices yet the perceived push of the HRA 2017 towards further utilisation of the private sector has created even further need.

The considerable investment of public resources into the private sector raises questions about the 'value' of private renting. Rugg and Rhodes suggest this is particularly so "when households are reliant on some level of Housing Benefit to meet a higher rental cost than would be paid to a social landlord, and so inflating the national welfare budget".[792] This view

[791] Julie Rugg and David Rhodes (n 764) 132-135.
[792] ibid 124.

was sometimes mirrored by local authority staff who believed social housing was more suited to the homeless applicants they served.

> "I'm old fashioned I believe in social housing I think there needs to be a lot more regulation in the private sector if we are going to rely on it for some of our clients […] I would say more social housing is needed not more private housing really, I mean you know don't get me started on this one, but you know it's expensive […] a good portion of our clients are on housing benefit, it is public money paying private landlords. And to me that is a no brainer, why aren't we putting the money into social housing which is an investment you know for the future" (LA1 – Senior Housing Officer 1).

Overall, the combination of lack of availability and access to affordable housing, both in the social and private sectors, made more acute by welfare reform, leaves housing officers with little options to work with when seeking to rehouse and discharge their statutory duties. This leads to longer periods of homelessness and threatened homelessness and further reliance on expensive temporary accommodation. It also reduces the effectiveness of the new prevention and relief duties to do as intended and stop households reaching a crisis point.

> "I think…obviously you've got your private and social housing, that's about it, but in [local authority 1] there's a shortage of social housing so people don't understand that we don't have enough, private properties are more difficult and people are less willing to accept that so, there should be a third option but I don't know what that should be hahah." (LA1 – Housing Officer 3).

> "I mean I think I'm frustrated because more money has been/has been sort of provided for the implementation, I don't think, I don't

think there is any improvement of service to the customer, theirs is no more accommodation to customers, they are not getting housed quicker." (LA1 – Senior Housing Officer 1).

"I felt like you are delaying the inevitable, […] they aren't going to get housed so what you are practically saying to them for 8 weeks is you are just going to have to sit there and then you are going to have to go through the [statutory] homeless route, and it felt very much for the first few weeks like we weren't actually doing anything" (LA1 - Housing Officer 1).

6.4 Conclusion

While new duties introduced by the HRA 2017 have refocused the attention of local authorities onto preventative practices and early intervention, this chapter has demonstrated the limitations of the HRA 2017 in achieving a reduction in homelessness. Where authorities continue to be time and resource pressured, internally and through a housing market hostile to low-income households, with inadequate provision of support services to meet homeless households needs, the potential for assessments and personal housing plans to effect meaningful, targeted support is limited. Progressive housing and welfare policies ensure that the options available to meet acute housing need are in short supply and increased reliance on the private sector through the use of six or twelve month tenancies does little to ensure longer-term stability which would prevent repeat incidences of housing insecurity and homelessness.

This chapter has also demonstrated how the HRA 2017 as a tool of government has effected a neoliberal rationality, leading to an intensification of individualisation and privatisation in homelessness

practice, both working to shift responsibility in reducing homelessness away from the state. Shrouded in a personalisation narrative, personal housing plans play a key role in this outcome, promising greater choice and involvement in the homelessness process, but in practice working to direct applicants into the private sector and control behaviour. The increased 'burden' on local authorities created through the new duties introduced under the HRA 2017, without simultaneously increasing the availability of affordable social housing, has pushed authorities to operate even further within the private market, with only the most needy or vulnerable able to access the social sector. Even this is not guaranteed with the limitations applied by authorities and social providers excluding those with rent arrears or on the lowest of incomes from accessing accommodation due to affordability concerns.

As discussed above, despite a reorientation in the focus of tackling homelessness onto prevention, it is still focussed almost entirely on crisis and emergency intervention. The homelessness legislation and the majority of the activities discussed in this chapter are firmly focused on crisis prevention, responding to applicants who can prove they are likely to become homeless within 56 days. There was some exploration by the private rented team within the first authority into more upstream prevention, working with landlords before they serve eviction notices to sustain tenancies, but this was limited at the time of observation only to the landlords they were already working with and individuals they had already placed under homelessness duties. The approach in the second authority towards applicants presenting with invalid s.21 notices demonstrates a reluctance or lack of ability to spread resources beyond crisis prevention. While the homelessness legislation overall does provide for some emergency prevention through the interim accommodation duty,

this is still limited to those with a reason to believe they are in priority need.[793] Targeted upstream prevention was limited across both authorities, although both were developing or had developed pathways for care leavers and were looking to develop better pathways for prison leavers. However, there were still instances of individuals turning up at the authorities having just been released from prison or hospital. As reflected by the CaCHE, universal prevention is particularly poor in England as a result of a diminished social security safety net, shortages of affordable housing and exclusionary allocation practices, all which have been shown through this chapter to affect the ability of both local authorities to address homelessness.[794] Finally, recovery prevention remains generally poor (with some local attempts observed through the work of the private rented sector team in the first authority, and the specialist debt housing officers in the second authority). Increased reliance on insecure accommodation options, encouraged by the structure of the HRA 2017, coupled with a poor welfare safety net increases the risk of revolving homelessness. While national level statistics are still unable to reflect incidences of repeat homelessness and re-approaches, both authorities spoke anecdotally about having repeat applicants, particularly single applicants. The private rented team in the first authority found themselves needing to provide targeted sustainment work with some applicants placed in the private sector through the homelessness duties to avoid instances of repeat homelessness. As long as the legislative framework on homelessness focusses attention on crisis and emergency prevention, addressing only short-term accommodation need, supported in this direction by broader

[793] Housing Act 1996, s 188.
[794] Suzanne Fitzpatrick, Peter Mackie and Jenny Wood, 'Homelessness Prevention in the UK: Policy Briefing' (n 708) 3.

housing and welfare policies, the ability of the Homelessness Reduction Act 2017 to effectively reduce homelessness will be limited.

This ultimately demonstrates a fundamental flaw in the attempts of normalisation through a neoliberal governmentality. It has been demonstrated in the early sections of this chapter that personal housing plans are a crucial tool in the regulation of applicant behaviour, directing them towards resolving their situation within the private market and creating little opportunity for wilful resistance for risk of exclusion from services. Increased narratives of individual responsibilisation mean that where normalisation does not succeed in that context, the reckless individual is to blame rather than the state or the underlying rationality. However, regardless of the regulatory structure imposed, normalisation attempts will ultimately fail for many homeless or threatened homeless households despite allowing themselves to be disciplined if there simply are not the surrounding resources to enable the functioning of the free housing market for low-income households, with both the social and private sectors being largely inaccessible for the variety of reasons discussed above. Further, provided homelessness is continually perceived as a short-term, temporary problem caused by irresponsible individual behaviour which can be normalised through the operation of the HRA 2017 prevention and relief duties over a limited period of 56 days in each duty, it can never recognise these other fundamental structural factors which create risk of homelessness for the population at a universal level such as the lack of accessible, affordable, secure accommodation and robust social security safety net. It will never be possible to achieve a strong grounding in universal prevention under neoliberal rationalities as this would require direct state intervention in progressive welfare policy and regulation of the housing market to ensure sufficient and accessible affordable housing

supply.[795] It is apparent from decades of neoliberal housing policy that this is not occurring naturally through a trickle-down effect. This means that any techniques of normalisation with the neoliberal individual as their goal, will ultimately be limited in scope for actually reducing homelessness.

[795] Beth Watts and Neil Morland, 'Homelessness Prevention in England: What Can Central Government do to Help Councils Prevent Homelessness?' (Institute for Social Policy, Housing and Equalities Research, 2020) < https://researchportal.hw.ac.uk/en/publications/homelessness-prevention-in-england-what-can-central-government-do> accessed 28 May 2022, 7.

CHAPTER 7 - SINGLE HOMELESSNESS AND THE HRA 2017

7.1 Introduction

Prior to the Homelessness Reduction Act 2017 a key group of homeless individuals who often fell through the cracks in statutory homelessness provision were single households. A key driver in the Crisis campaign to bring into being the HRA 2017 was to open up access to support for single people who were experiencing homelessness.[796] The key reason why single homeless applicants (and also couples without dependant children) fell through the net under the pre-HRA 2017 statutory framework is largely due to not being deemed to be in priority need.[797]

> "I mean before, even in that short period that I had […] we'll do the assessment […] make the no priority need decision, do you know what I mean, and it was like that really quick, unless you were priority in singles you didn't really get a look in, and that was very rare anyway like I said, there is only gonna be a few each month" (LA1 – Housing Officer 4).

The prevention and relief duties introduced and extended by the HRA 2017 are now owed to all homeless and threatened homeless applicants who are eligible for assistance regardless of priority need.[798] This brings single homeless individuals (and couples without children) within the scope of the statutory duties providing them with more of an opportunity to access help and support. Given this, it is important to explore the single homelessness

[796] Hannah Gousy, *No One Turned Away: Changing the Law to Prevent and Tackle Homelessness* (Crisis 2016), 14-20.
[797] See Chapter 2.2 and 2.3 for expansion on priority need.
[798] Housing Act 1996, ss 189B and 195, as inserted and amended by Homelessness Reduction Act, ss 4 and 5.

provision post-HRA 2017 in both local authorities observed, considering whether the HRA 2017 has been able to achieve this aim.

In both local authorities, while single homeless applicants could fall into a number of categories, there appeared to be a key divide between those who were regularly sleeping rough or 'entrenched rough sleepers' who would be able to access specialist rough sleeping service provision, and other single homeless people, who were often homeless but precariously accommodated sofa surfing with friends and family, or had experienced some kind of relationship or family breakdown and had been asked to leave, or were being evicted from the private rented sector under a s.21 notice. In the second local authority single homelessness was divided further with a specialised service directed towards young persons aged 16-29.

This chapter will consider the extent to which the HRA 2017 as a neoliberal tool of governance is capable of reintegrating single households into the housing market. The split within local authority service provision between 'entrenched rough sleepers' on the one hand and other single households on the other, is interesting to consider through a Foucauldian lens, as it appears to make a distinction between the extent to which individuals within each context are diverging from the expected 'norm'. If a neoliberal individual is the norm, who can successfully participate in the housing market by maintaining accommodation, ideally within the private sector or seeking home ownership, then anyone experiencing homelessness is characterised as 'abnormal'. That said, the extent to which an individual is representing a divergence from that norm can vary considerably, with 'entrenched rough sleepers' arguably diverging the most. Where an individual is sleeping rough and has been regularly doing so over a long period of time, this demonstrates prolonged minimal active participation in

the housing market. There are also likely to be other acts of divergence from other sets of norms of expected behaviour for example where an individual may also be engaging in criminal activity, or be experiencing substance dependence, or some form of mental or physical ill health. On the other hand, an individual who has experienced a short period of unemployment and is being evicted from a private rented sector tenancy and needs help paying a deposit and rent in advance on another private rented property, is not perceived as 'abnormal' to the same degree. It would logically follow that individuals in these scenarios may need different responses by way of support and assistance in order to reintegrate into the housing market, yet the HRA 2017 is a generalised policy reform to general statutory duties that does not make or require such distinction. This chapter will therefore consider the extent to which the HRA 2017 can 'normalise' within these varied contexts.

7.2 Other Single Homeless

7.2.1 General Single Homelessness Service

Any single homeless person who was not deemed to be an "entrenched" rough sleeper, fell under the responsibility of statutory housing officers. In the first local authority housing officers were split into distinct teams, one of these teams had a designated singles speciality (two further teams of housing officers were designated 'families and domestic violence' specialism, and 'eviction from private rented sector' specialism). In the second local authority the majority of the housing officers were generalist housing officers, responsible for any homeless application that was made regardless of the circumstances of the applicant, one housing officer had a domestic violence specialism, and for 16-29 year olds, there was a team of

four housing officers with a young person's specialism. The majority of single homeless falling under the specialist singles officers in the first authority, or the generalist housing officers in the second, would present to the authority already homeless and so if eligible would be owed a relief duty. As referred to above, many singles are not deemed to be in a priority need so are not owed a duty to be provided with temporary accommodation under the legislative framework. In winter, singles who were not owed an interim accommodation duty had access to emergency provision like night shelters, and in the first local authority, where there were spaces, the supported hostel accommodation. In the second local authority, there was supported temporary accommodation available for young persons, but otherwise no interim accommodation was provided for singles in no priority need. These individuals would therefore often be experiencing precarious living arrangements such as sofa surfing, sleeping in cars, or in the worst case observed rough sleeping/walking the streets until an option for longer-term accommodation was found.

In the first local authority in response to the HRA 2017 coming into force they underwent a department restructure and developed specialisms within their housing officers targeted at the key groups of homeless individuals in their area, families and domestic violence, private rented sector evictions, and single homeless. The single homeless specialism also reflected the fact that the HRA 2017 would open up access to support for more single individuals who previously would receive very little, and indeed the authority experienced an increase in service provision to single homeless people.

> " [The HRA 2017] was mainly sort of for the singles, coming in and it has, we have had the numbers, because we can prove that with

> our stats our data, a lot of singles coming in" (LA1 – Senior Housing Officer 3).

It was deemed that generally the authority were able to meet this increased demand rather effectively due to a particularly good availability of varied supported housing providers in the area.

> "[…] to be fair there is a lot of provision for single people in [local authority area], which means we can get them housed quite quickly before we need to make that [priority need] decision. […there] are quite quick fixes referring to [named supported provider 1] or [named supported provider 2], that's a quick fix to get somebody in there and get them closed down, they are on [the social housing register] for long term or private, they know they can come back, it's quite a quick thing". (LA1 – Housing Officer 4).

Despite this however, the homelessness team also spoke of frequent cases falling into the opposite bracket where it was very difficult or not possible to successfully discharge relief duties due to various complexities surrounding the cases. Cases often cited as being the most difficult to find accommodation for were those with criminal convictions, in particular, convictions for arson or sex offences. This is also likely to cross over with individuals who experience multiple disadvantages and may have a variety of more complicated support needs that would need to be addressed before the individual was able to sustain accommodation and live independently.

> "[…] the more complex ones […] we know in our minds we need to probably work on those the most because the other ones are quite quick fixes […] with singles sometimes it can be a bit disheartening in the fact that people are coming around, you know you can have the same person 5 times in a year that have been kicked out of

> every place that you line them up, and then they've come back in again because they are chaotic they get evicted or you know they are fighting or taking drugs smoking mamba, so I think with the singles team it can be quite disheartening when you keep seeing the same people and it gets tough to solve their homelessness because everywhere has had them they are not ready for their own tenancy, everybody is checking what's happened and saying we've had them before we are not going to take them again. So sometimes we get to the point where we have people with no priority need and not actually getting them any accommodation. So that can be a bit disheartening." (LA1 – Housing Officer 4).

The options available for these individuals are particularly limited. While they tended to experience repeat incidences of homeless over a prolonged period of time, they would not fall within the specialist rough sleeping services as the individuals concerned did not have a prolonged rough sleeping presence, more often bouncing through several different accommodation placements which each fall through as each placement is not able to adequately support the individual's needs. The reasoning given by housing officers for this gap in suitable provision is strongly linked to the loss of the Supporting People programme. The Supporting People programme provided a ring-fenced pot of £1.8 billion in 2003 to local authorities to help vulnerable people live independently.[799] Supporting People services delivered a range of housing related support which helped people obtain suitable housing, sustain tenancies, gain key skills and confidence for independent living.[800] The amount of funding available for the programme was steadily reduced over subsequent years with the ring-

[799] Tim Jarrett, 'The Supporting People Programme: Research Paper 12/40' (House of Commons Library 16 July 2012) <https://commonslibrary.parliament.uk/research-briefings/rp12-40/> accessed 28 May 2022, IV.
[800] ibid 5.

fence removed in 2009, meaning from that point on the pot has generally dissipated into other expenditure across cash strapped local authorities, prioritising statutory services over non-statutory housing support services.[801]

> "[…] a new application isn't going to change the fact that there isn't any supporting people money in place at the moment, there is still limited resources available for people and you know I know they've put more money in [with the HRA 2017] which they needed to do, but I think that was a backlash because they took everything out […] we've made a massive mistake and we need to put back" (LA1 – Housing Officer 5).

> "[…] the other one we've got is prison releases, difficult one for us, and you know especially if they have someone coming in with an arson offence. Erm that really is one of the worst ones and you know you've got your sexual things that erm where we have, we can't put that person there, we can't put the person here, we are *very* restricted, and since we lost the supporting people funding, it's more and more difficult to place people with certain sort of additions to their lives. […] supporting people funding helped *everything*. Helped *everything*. […] it is the support element […] it's not just doing that housing case, you've housed that person, you've got to follow it up with support" (LA1 – Senior Housing Officer 3).

In their annual review of the support available for people experiencing single homelessness, Homeless Link report that the most commonly cited barrier to accessing accommodation providers is due to people being

[801] ibid 12-23.

deemed too high a risk or too high need.[802] They report that specialist provision is often lacking, and without specialist commissioning service providers often struggle to provide the intensive one-to-one support required by people facing multiple disadvantage and to accommodate unpredictable behaviour.[803] The type of accommodation and support needed for people deemed to have high support needs, or deemed to be a high risk individual is going to very considerable. An ex-arsonist (presuming that is the only factor deeming them high risk) is unlikely to need the same intensive one-to-one support that an individual with substance dependence and complex mental and physical ill health might need. Housing offers deemed the supporting people programme gave them the flexibility to source the accommodation that was needed in their local area to meet their demand, rather than relying only on what happens to be provided by the sector.

This inability to find suitable accommodation for single homeless individuals with support needs is compounded by difficulty in accessing adult social services for additional resources. Frustrations are caused by housing officers seeking to assist an individual who they perceive as vulnerable and in clear need of additional support, who they believe would benefit significantly from a social worker to support their individual needs, which in turn would help the individual maintain and sustain a property. However, when they make a referral of that individual over to adult social services and request an assessment, adult services do not deem the individual eligible for care and support services.

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[802] Homeless Link, 'Support For People Experiencing Single Homelessness in England: Annual Review 2019' (Homeless Link March 2020) <https://homelesslinkstage-1b54.kxcdn.com/staging/media/documents/Single_Homelessness_Support_in_England_-_Annual_Review_2019_0.pdfhttp://www.homeless.org.uk/sites/default/files/site-attachments/Single Homelessness Support in England - Annual Review 2019.pdf> accessed 28 May 2022, 31.
[803] ibid 32.

> "[…] we might assess that we think somebody could do with some lower level but nonetheless needed support around you know alcohol drugs mental health or just general eerm personal welfare, erm, it is not necessarily the case that our assessment will marry with the thresholds that are there to access services" (LA1 – Head of Service).

> "See I've got one at the minute who's/she's got serious mental health problems, she would be priority need, erm, she's had a complete breakdown now since I've started taking on a duty with her […] she lost her last tenancy through rent arrears, a private tenancy, she's got a CPN (community psychiatric nurse), they took her social worker away, she was working really well with a social worker and since they took them away she's gone really downhill. She's not been taking her meds, she's not been engaging with her CPN or anything. […] so I've been trying to get her engaging with CPN again, trying to get her a new social worker, but they are saying it is not their responsibility to help her with her mental health. […] she's got a CPN and if she gets a social worker, she can get her own place […] I'm really really annoyed with the social there. They should be helping." (LA1 – Housing Officer 4).

There is the perception within the housing authority that adult social care services apply a high threshold for accessing care and support and therefore only those with particularly high needs are able to qualify. This leaves a support gap where those with needs that do not meet the high threshold cannot reliably receive services to meet their needs and therefore risk homelessness or repeat homelessness. This issue has become more acute since the introduction of the HRA 2017 where prevention and relief duties are owed to more single households who despite some identifiable

support needs, may otherwise have fallen below the threshold to be considered in priority need and therefore previously would have received very little or no housing support from authorities.

> "[…] you know when you are assessing someone's need particularly when the thresholds for social care have gone up and up and up […] I don't want to tell you the specifics of their criteria as it is not my expertise but they are kind of, I know that they have, in my world I convert it to a low, medium, high and emergency need, in my conclusion to that they operate at high and emergency and for medium and low there is no real provision, so a lot of people we see could fall into medium and low so we can identify the need but there would be no provision" (LA1 – Head of Service).

There was a particular concern by the first local authority that they may be reporting support needs in their applicant assessments under s.189A of the Housing Act 1996 but will not actually be able to offer any services to meet those needs. While there is no obligation under the statutory framework to actually address any support needs identified in assessments, this reflects the authorities desire as reported in Chapter 5.1 to do more for applicants than just follow procedure and actually be able to achieve a substantive outcome that is sustainable for the individual.

In the second local authority, it was perceived that the majority of single individuals who would now fall under the new HRA 2017 duties were rough sleepers or young persons who therefore fell under the targeted support available that had been building and developing well before the HRA 2017 was introduced, which will be explored further below. Despite this, it was still possible to regularly observe eligible single homeless or homeless couples with no dependent children who did not fall within these brackets, who in the vast majority of cases were already homeless so would be owed

the relief duty. In conversations with housing officers it was regularly expressed that meeting duties towards the single homeless population was particularly difficult within the local area. This was largely down to having few options available or where options were available, there were doubts around quality and suitability.

Supported housing provision in the second local authority area was significantly poorer than in the first local authority. There wasn't a single supported housing provider within the area that housing officers were able to use to help discharge duties. One reasoning for this was simply due to a significant lack of supply. The loss of Supporting People was again cited as impacting what limited supply of supported accommodation there once was. Yet it was also down to the fact the authority had performed a review of the supported housing providers in the area and found the remaining to be fraudulent, or to be too poor in quality to use. This means the authority was relying on supported providers in other local authority areas to discharge their duties where they had no knowledge of or confidence in the quality of the provision of support. These providers were often low or basic needs providers. One provider required an individual to have at least five needs from a list provided before they could be referred, but options within the list included that they were homeless, needed help budgeting, needed help finding accommodation, needed help acquiring forms of ID or needed access to move-on accommodation. This was similar across providers and a very easy threshold to meet so could often result in quick referrals and acceptances, sometimes enabling a same day discharge of duty when spaces were available. Homeless Link found in their 2019 annual review of support available that accommodation providers were particularly unlikely to refuse access to accommodation on the basis that the client's needs

were too low.[804] However, this is likely to mean that where individuals presented with more complex needs, there could be a lack of bed spaces available.

Access to the private rented sector as an option for single people experiencing homelessness was also deemed particularly problematic within the second local authority. This was primarily due to the restrictions resulting from the Local Housing Allowance shared accommodation rate, a lower rate of housing benefit/housing costs for under 35's who are presumed to be sharing accommodation. This means that for many single people experiencing homelessness they can only afford single rooms in shared accommodation. Doubt was often expressed around the quality of available accommodation, with a number of landlords in the area with a strong stake in that particular sector known for being poor landlords who regularly failed to uphold tenants' rights. The shared Local Housing Allowance rate also presented a regular issue for single people who had experienced a relationship breakdown and a gap in employment but had children. While they were not responsible for their children's care enough for them to amount to dependent children, they still wished for them to be able to visit and stay overnight. However, they were told by housing officers that due to the shared accommodation rate and the fact the children were not dependent, the only option available and deemed suitable for them was a room in a shared house, that may not be appropriate for their children to visit and stay.

The key concern for housing officers was the number of single people experiencing homelessness that were placed out of area due to the lack of options, there being a significant exasperation around not having any other choice. Individuals placed out of area were more likely to be individuals

[804] Homeless Link, ibid 34.

who would be less able to sustain a private tenancy due to some kind of support needs, or unable to access the private sector due to landlords being reluctant to provide for those with criminal convictions. This was particularly problematic for those with criminal convictions where their accommodation option is out of area, but their probation appointments may still be within the local area, requiring regular travel back and forth which may be difficult for someone with support needs or who has difficulty engaging with services. There was also one particular scenario observed where an individual with support needs presented back to the authority for further assistance as they had been placed several months previously in accommodation out of area, meaning their carer had to travel from the local area to the accommodation provided out of area to provide support, often in the middle of the night. This became too difficult to the point where the carer was not able to provide the support needed.[805] In the most extreme cases, out of area placements led to rough sleeping back within the local area further down the line.

> "[…]what we've found is we are picking up other individuals that have become rough sleepers that have been referred out of area so for example, we've got no property here in [local area] they have come into the normal housing team that are looking at prevention and things but the properties aren't here so they have referred them to [accommodation in different local area] and within so many months they don't like [different area] or there is an issue in [different area] and rather than coming back to here, because obviously we've closed our file, they revert to the streets and then my team pick them up" (LA2 – Homelessness Manager 2).

[805] The local authority accepted another homeless application with the intention of attempting to find something for the individual in the local area.

This lack of good options in the second local authority meant that for the single people falling into that bracket, the HRA 2017 has done little to improve their circumstances or outcomes. While in the second local authority singles were rarely turned away pre-HRA 2017 with nothing, able to access assistance to access the private rented sector, the post-HRA 2017 situation has not been able to greatly improve outcomes due to the lack of local provision of supported accommodation.

7.2.2 Young Persons

For both authorities, opportunities to prevent homelessness for single homeless individuals were few and far between. In the first local authority the main cases that would fall under the prevention duty as opposed to the relief duty were young people approaching the authority due to a relationship breakdown in their family and had been asked to leave or they were looking to leave home for the first time.

> "…that is on the singles team to do, to try and get our preventions up, and the ones that we do do usually end up staying at home, because it's just the child wanting to leave. […]we have a lot of young people coming through that you interview them and they just haven't got the skills, they don't want to go supported because they've heard things about [named supported provider] or [named supported provider], and it's our job to say you are not ready for a tenancy and that is a very hard thing to say to someone. We do get people that kick off or you know they are not very happy with the advice we give, but we are doing it because when they do get a tenancy we want them to keep it and not get into rent arrears and lose it […] it is probably 75% of ours are relief when we get them, so the prevention part of our job is very very small, so if we can

> solve that by them not going into relief that is a really good thing for us." (LA1 – Housing Officer 4).

While young persons represented a smaller portion of their single applicants, there was a perception that due to single homeless applicants now falling within the new framework this type of applicant was growing in number. There was a particular desire to improve prevention work with single applicants experiencing a breakdown in family relationships through providing some kind of counselling/mediation services (terms used interchangeably), either internally provided or through commissioning a support service.

> "[…] there are a lot of single people coming through on breakdowns in relationships. So again it is going into counselling, talking, listening, seeing how you can prevent that. And erm, counselling is a biggie for me […] it does help/it's a slow process, but it does help […] (LA1 – Senior Housing Officer 3).

In the second local authority a more significant proportion of single people experiencing homelessness fell into the young person's category and in recognising the need for targeted, specialist approaches, developed the young person's team. The specialist services could be accessed by anyone aged 16-29. While this team was developed prior to the introduction of the HRA 2017, the head of service in the second authority felt confident that the majority of single people approaching the authority and falling under the new prevention and relief duties would be captured by the specialist young person's support (or under rough sleeping support). Under the young persons team, the approach taken to homeless applicant interviews and PHP's tended to be entirely different, with a focus on framing the housing context applicable to the individual and providing information about independent living. Information booklets given provided in depth

information about Local Housing Allowance and shared accommodation rates, the costs of living, relevant bills that would need to be paid, and how to search for and find accommodation. This is in contrast to generalist interviews where this kind of knowledge would for the most part be presumed as most of those approaching have at some point had some kind of accommodation of their own before becoming homeless or threatened with homelessness. Initial interactions with young persons tended to take a lot longer due to the need to take these extra steps and support the young person through the homelessness application process and the options that might be open to them. Housing Officers spoke of the need to often have more than one initial appointment to allow the young person to get through and process the amount of information they needed.

As well as the more conciliatory preventative actions as described by Centrepoint such as providing the individual with information and assistance to move away themselves in a planned way,[806] there was also more holistic support services available. There was direct access through the young persons team to specialist young person's employability officers who sat within the homelessness department, providing advice and assistance relating to employment, education and training. Where the young person approached as homeless or prevention was not possible the authority had specialist young person's 24 hour supported temporary accommodation. The authority also had a strong relationship with their social housing providers, offering a young person's accommodation scheme targeted at under 29's who would benefit from accommodation with floating support. A local registered provider would provide properties, initially on a licence basis as temporary accommodation, with floating

[806] Centrepoint, 'The Homelessness Reduction Act: Will it Work for Young People?' (Centrepoint 2018) <https://centrepoint.org.uk/media/4195/11-the-homelessness-reduction-act-will-it-work-for-young-people.pdf> accessed 28 May 2022, 13 and 14.

support provided by both local authority specialist young person's housing officers and also by the registered provider support workers. Support provided would include day-to-day support but also include employment support, facilitating access to training and education. If the placement went well and the young person progressed to independent living, the licence could be converted into a social rented tenancy, either in the same property or a different general needs property if desired, or the individual could choose to move on to alternative accommodation sources like the private rented sector.

> "For the under 29's we have the [registered housing provider] scheme, which is erm, not supported accommodation but is accommodation for singles to go into, in shared or single accommodation, and some of them will need some floating support. I'd like to think that they turn it around within 12 months, sometimes it's 18 months, but we can flip it […] once they have proven they can sustain accommodation they don't need support they can stay there, they don't have to move again, […] and the young person carries on happily ever as a [registered housing provider] tenant" (LA2 - Head of Service).

Research by Centrepoint suggests young people typically struggle to find longer term accommodation to move on to after being supported into independent living, due to a critical shortage of social housing, a shortage of affordable accommodation in the private rented sector, lower benefit rates for young people combined with lower wages and higher rates of unemployment or insecure employment.[807] This scheme provides suitable

[807] Billy Harding, 'Ready To Move On: Barriers to Homeless Young People Accessing Longer-term Accommodation' (Centrepoint 2018) < https://centrepoint.org.uk/media/4192/8-ready-to-move-on-barriers-to-homeless-young-people-accessing-longer-term-accommodation.pdf> accessed 28 May 2022.

temporary accommodation with floating support services in order to guide the young person to independent living, and if all goes well, also provides them with that safety net of guaranteed long-term accommodation when the individual is ready.

There were, however, limited places within the above scheme and so other accommodation options such as rooms in shared private rented accommodation were explored, and if there were no other choices and support was needed, again supported accommodation providers out of area were utilised, although not as often as with other single homeless. The housing officers with the young person's specialism had a general support role alongside the statutory role to provide day to day and housing related support to their cases, which applied to all of their cases not only the young people taking part in the accommodation scheme.

It is due to the need within the young persons team to provide an extra level of service and support that it could be perceived that the HRA 2017 structure is inappropriate for the majority of young persons. Housing officers would work with and support the young people in their accommodation scheme until they were ready for independent living, which as described above on average could be around 12-18 months. Officers spoke of holding cases open and individuals requiring some level of support long after homelessness duties are technically discharged under the statutory framework. They also described concern that when the statutory side of their workloads are high and their support role cannot take the priority they would like it to, they can see people they have helped find accommodation start to struggle to sustain it. In order to successfully address the homelessness of the young people approaching the service it is necessary to go beyond the obligations of the statutory framework.

This demonstrates the limited ability of the HRA 2017 to address the housing need of young people. The service described above delivered by the second authority is certainly not required to meet statutory duties. Again, while the statutory framework requires the recording of support needs, it does not require them to be met. The process of normalisation envisioned within the prevention and relief duties, that steps will be taken by both the authority and the individual to secure the availability of accommodation,[808] and that this will result in a successful discharge of duty and therefore reduction in homelessness, would not be enough in many cases approaching the second local authority's young persons team to ensure they can sustain that accommodation.

7.3 Rough sleeping

The relationship between rough sleeping and the Homelessness Reduction Act 2017 is intriguing. The HRA 2017 came at a time when rough sleeping was attracting increased political and public concern, having shown a 169% increase in national officially estimated rough sleeper numbers between 2010 and 2017.[809] In 2018 the Theresa May government published a rough sleeping strategy to half rough sleeping by 2022 and end it by 2027.[810] Yet the HRA 2017 does not directly address issues associated with rough sleeping, it is a generalist intervention.

While the prevention and relief duty are owed to all eligible individuals, which can include individuals who are experiencing rough sleeping, no change was made to the fact that there is no duty on local authorities to

[808] Housing Act 1996, s 189B(2) and s 195(2).
[809] Suzanne Fitzpatrick, Hal Pawson, Glen Bramley, Steve Wilcox, Beth Watts and Jenny Wood, *The Homelessness Monitor: England 2018* (Crisis 2018) xiv.
[810] Ministry of Housing, Communities and Local Government, 'Rough Sleeping Strategy' (Gov.UK August 2018) <https://www.gov.uk/government/publications/the-rough-sleeping-strategy> accessed 28 May 2022.

provide emergency or temporary accommodation to anyone where there is no reason to believe they are in priority need.[811] In practice, this again predominantly excludes single homeless individuals from accessing temporary accommodation. Local authorities follow Severe Weather Emergency Protocols, which are typically triggered when there is a forecast of zero degrees or below for three consecutive nights.[812] However, this can result in piecemeal provision with no guarantees as to when or for how long emergency provision will be in place. Most authorities also have independent emergency access accommodation provided often by charity, faith-based and other voluntary agencies.[813] Some authorities will offer more flexible triggers to the severe weather provision, commissioning or working in partnership with those agencies to provide extended winter or year-round provision.[814] Both local authorities studied offered generally accessible extended night shelter provision in this way, working alongside charity and faith-based organisations to run the shelters. In the first local authority they went beyond statutory duties and commissioned a supported hostel to meet temporary accommodation needs of both those in priority need and those not deemed to be in priority need. Applicants in priority need were prioritised daily for available rooms, and if there were any additional rooms available, would be offered to those not in priority need.

> "[…] so some people do get a bit upset and say well you have to provide me with something, well actually we don't if you are a single person and not a priority, we don't *have* to provide anything but we do, but it just might be you have to go for three days before you

[811] Housing Act 1996, s 188.
[812] These protocols are not a legal obligation - Homeless Link Innovation and Good Practice Team, 'Severe Weather Emergency Protocol (SWEP) Frequently Asked Questions' (Homeless Link February 2020) <https://homeless.org.uk/knowledge-hub/guidance-on-cold-weather-provision-swep-and-heatwaves/> accessed 28 May 2022.
[813] ibid.
[814] ibid.

> can get in there, everybody is entitled to a room but if somebody comes along as a priority they would always get that room." (LA1 – Housing Officer 4).

In addition, both local authorities had targeted rough sleeping teams aimed at reducing rough sleeping in the local area. These teams were focussed particularly on regular rough sleepers, or often termed 'entrenched rough sleepers'. The services provided by these teams were only available to those who fell within the team's understanding of 'entrenched rough sleeping'.

> " […] there is actually a definition of rough sleeping here, if they have just split up with their partner or gone though a relationship breakdown, being out one night and then come in, that's not really classed as rough sleeping, we tend to work with entrenched rough sleepers, which means they have been sleeping on the streets, in shop doorways, in derelict buildings, you know, for, I would say a good couple of nights. Sofa surfing isn't classed as rough sleeping unfortunately, so we've got a definition" (LA2 – Homelessness Manager 2).

The teams were funded in both local authorities by Rough Sleepers Initiative (RSI) budgets. The RSI was launched in 2018[815] to ensure local areas were given resources to directly address rough sleeping.[816] It has

[815] Or more accurately 're-launched', a Rough Sleepers Initiative was launched previously and expanded under New Labour in 1997 with similar goals; Hal Pawson, 'Local Authority Homelessness Prevention in England: Empowering Consumers or Denying Rights?' (2007) 22(6) Housing Studies 867, 871; Wendy Wilson and Cassie Barton, 'Research Briefing: Rough Sleeping (England)' (CPB02007, Commons Library 22 April 2022) < https://researchbriefings.files.parliament.uk/documents/SN02007/SN02007.pdf> accessed 28 May 2022.

[816] Ministry of Housing, Communities & Local Government, 'Official Statistics: Rough Sleeping Snapshot in England: Autumn 2019' (Gov.UK 27 February 2020) <www.gov.uk/government/publications/rough-sleeping-snapshot-in-england-autumn-2019/rough-sleeping-snapshot-in-england-autumn-2019#rough-sleeping-initiative> accessed 28 May 2022, Part 3 Rough Sleeping Initiative.

been expanded in subsequent years to cover approximately three-quarters of local authorities in England.[817]

Staff within the teams conducted outreach work to identify and begin engaging with individuals, identified and arranged suitable temporary and longer-term accommodation, and providing on going day to day support to encourage the individual to keep engaging with services and maintain accommodation. In the first local authority temporary accommodation for rough sleepers was often provided through the hostel, or where the hostel was full, the individual couldn't access the hostel for a particular reason, or to provide an incentive for engagement, bed and breakfast placements in hotels were used. In the second local authority they utilised a couple of units of shared accommodation within council owned temporary accommodation and arrangements with private landlords for short-term lets. For longer-term accommodation, both authorities used predominantly placements with supported accommodation providers or projects like housing first, and private rented sector tenancies with ongoing floating support provided by the rough sleeping team. Both authorities also developed strong multi -agency relationships in order to develop coordinated responses to meeting an individual's needs. The rough sleeping teams worked closely with various stakeholders in the local areas who were involved in some kind of contact with rough sleepers, both in order to aid in the locating of rough sleepers in order to target out-reach activities, but also to develop coordinated planning addressing the needs of individual rough sleepers and working towards moving them into secure, sustainable accommodation. Across the two authorities these stakeholders included, supported housing providers, charities providing day centre

[817] ibid.

services, night shelter services or other supporting services, community practice nurses, probation, drug or alcohol workers, community police.

There is evidence within official government statistics that the RSI is working to successfully reduce homelessness, with rough sleeping snapshot figures falling for two years in a row since 2018 after a peak in 2017.[818] A Rough Sleepers Initiative Impact Evaluation published in 2018 found that the number of people sleeping rough was 32% lower than it would have been had the RSI not been in place in the local authorities in receipt of the funds.[819] Across all 244 local authorities receiving RSI funding in 2019, the number of people estimated to be sleeping rough on a single night in autumn 2019 was down by 12% on the previous year.[820] Both local authorities observed felt that the introduction of the targeted rough sleeping approaches had successfully reduced their rough sleeping numbers.

However, this improvement to service delivery and outcomes for rough sleepers in the local authorities studied was considered largely disconnected to the HRA 2017. While the head of service in the second local authority believed it was the various measures taken over the couple of years prior to the HRA 2017 aimed at improving outcomes for rough sleepers (the introduction of the night shelter and a housing first scheme discussed above) that meant the authority were more prepared for the additional duties created by the HRA 2017, there was a perception across both authorities in rough sleeping teams that the HRA 2017 and the new processes intended to include single people, were largely unsuitable for the

[818] ibid, Part 1 Main Findings.
[819] Ministry of Housing, Communities & Local Government, 'Impact Evaluation of the Rough Sleeping Initiative 2018' (Gov.UK September 2019) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831133/RSI_Impact_Evaluation.pdf> accessed 28 May 2022, 6.
[820] Ministry of Housing, Communities & Local Government, 'Official Statistics: Rough Sleeping Snapshot in England: Autumn 2019' (n 816) Part 3 Rough Sleeping Initiative.

single rough sleepers they were engaging with. Any emergency and temporary accommodation provision arranged by these teams was not provided on a duty basis under the statutory framework but through general local authority powers. Where relief duties were owed for eligible applicants, it was deemed that 56 days was not long enough to engage with an "entrenched" rough sleeper and progress them to longer-term accommodation. Simply encouraging an individual to speak to the members of the rough sleeping teams, to keep them updated as to how they were and to begin engaging with their support needs can take an indeterminate amount of time. It was considered that the time needed to build a trusting relationship with the individual, so they believed and understood that the support and relationship being offered was not going to disappear, could not fit inside prescribed length of time. In many cases, if the 56-day period was adhered to, once that time frame comes to an end an individual is likely to be deemed not in priority need and therefore owed no further duties. Under the legislative framework an authority would be entitled at this point to stop providing any more services.

> "I think by putting an actual time span on the customers, what you have to remember is the individuals that myself and the team are working with have got chaotic life styles, their addiction will always come before anything until the address that addiction. So within that 56 day period you might not have a lot of engagement but from showing within that 56 day period that they know you are still around, you still want to help, they may want to engage after. For the clientele that I am working with I would say that structure is quite hard really, because it is not like we can pick a chaotic rough sleeper up, don't get me wrong we may be able to, it just depends what journey that rough sleeper/service user/individual has been

> through and have they come to those crossroads yet where they want to change? That is the crossroads you have to get to, so in regards to putting a time period on the people we are actually working with, I find it very difficult […] so no it is not appropriate really. (LA2 – Homelessness Manager 2).

Even when accommodation is provided, whether within that 56-day period or not, there is often a need for continued support to help the individual maintain that tenancy and meet their day-to-day needs. Although strictly under the HRA 2017 process the relief duty has been successfully discharged into accommodation that is available for at least six months, the case in practice remains open and the individual remains supported and provided with further services where needed.

> "So my staff don't close down the cases […] it's not as straight forward as getting them housed and then pulling away like the other housing staff you have probably discussed with. My staff actually provide the ongoing support, even when they are housed, we don't pull away. It might just be that they don't want as much support as time goes on but there is still that engagement to make sure everything is going okay. 9 times out of 10 you find the service users that have been housed come back in if they have an issue and get used to working with that support worker" (LA2 – Homelessness Manager 2).

In the second local authority the provision of this additional support was key in maintaining the team's relationships with private landlords, enabling them to feel comfortable working with the team in providing accommodation to individuals who were previously rough sleeping. They also ensured that managed payments were arranged for universal credit so housing costs were sent directly to the landlord.

> "I think basically it is about the landlords knowing that it's not this individual is going to be placed with you and that's it, you know we've closed our file we've housed them that's it, they are aware they have a point of contact in the council […] it is about building up the relationships with those private landlords […] the landlords know and have that engagement with the support worker […] he knows that this individual has got the support network around him so they are not being left with this chaotic service user and then that's it." (LA2 – Homelessness Manager 2).

The development of the specialised teams in both authorities to support rough sleepers is funded through the Rough Sleepers Initiative and any success under those activities is attributable to the availability of those resources and how the local authority decided to utilise them, not to the opening up of access to statutory homeless services under the HRA 2017. While the RSI was developed and has grown alongside the HRA 2017, they are largely unconnected in practice.

7.4 Conclusion

Overall, it appears that the changes made by the HRA 2017 may not in themselves be enough to significantly improve the outcomes for single homeless people. While it is true that many of those previously excluded due to a lack of priority need are now captured by at least a 56-day duty to take reasonable steps to assist, whether or not an authority is able to achieve meaningful outcomes seems to depend on factors beyond simply falling within a homelessness statutory duty. Any successes in reducing rough sleeping and the outcomes for individuals experiencing rough sleeping is dependent on separate schemes of resources and funding, where the 56-day relief period created by the HRA 2017 is unlikely to be

enough time to adequately support individuals. Similarly, targeted approaches for young people developed in the second authority prior to the HRA 2017 coming into force and again the success of these approaches requires a much more holistic package of support than is envisioned by the 'reasonable steps' needed to meet the prevention and relief homelessness duties.[821]

For other single homeless individuals not deemed in priority need, any provision of emergency and temporary accommodation is done so beyond statutory duties. In the first local authority, successful rehousing of single individuals with any support needs was dependent on a good availability of supported housing provided by charities and registered providers with strong links to the homelessness team. This provision cannot be relied upon across the country and where there were no quality supported housing providers in the local area, as in the second local authority, it was possible to see incidences of repeat homelessness and even rough sleeping. This apparent dependence on the supported housing sector to address homelessness in single households is even more concerning given the launch of a recent inquiry into the quality and viability of supported accommodation by the Levelling Up, Housing and Communities Select Committee after several reports from the Regulator of Social Housing revealing unscrupulous landlords failing to provide care and support, and maintain adequate standards of accommodation.[822] There is also a growing research base to demonstrate that shared temporary accommodation, hostel or move-on accommodation that is not self-contained is not suitable for all single people experiencing homelessness, and due to the lack of

[821] FEANTSA, 'Locked Out: Housing Solutions for Vulnerable Young People Transitioning to Independence' (FEANTSA 2017) <www.feantsa.org/download/report-chloe-eng5472656428791867789.pdf> accessed 28 May 2022.
[822] Levelling Up, Housing and Communities Committee, 'Exempt Accommodation Inquiry' (UK Parliament December 2021) < https://committees.parliament.uk/work/1688/exempt-accommodation/> accessed 28 May 2022.

control single homeless people have over stressor and threats within the hostel environment, may result in increased abandonment and repeat homelessness.[823] Issues in the supported housing sector are compounded by an unaffordable and inaccessible private rented sector, a lack of resources and funding to target provision for specific support needs in the local area such as the Supporting People Programme, and unreliable access to adult social care and support services.

For single individuals experiencing homelessness, it appears that the more 'abnormal' the individual's circumstances, the more they diverge from the norm of successful housing market participation, the less the HRA 2017 is able to effect normalisation and reintegrate individuals back into the housing market. That said, the more an individual diverges from the norm, the more likely they are to fall under a parallel investment in a variety of rough sleeping focussed programmes and support that are more likely to successfully lead to sustained accommodation. The HRA 2017 brings single households into the statutory framework, allowing their measurement as accepted prevention and relief figures, yet as reported by Crisis in the most recent Homelessness Monitor, a substantial number of mainly single households still reach the end of the relief duty with no accommodation secured, and no further duties owed.[824] There is a need to use the increased knowledge gained from bringing single households into the governance of homelessness, into the field of examination, to consider the variety of contexts and housing needs across the spectrum of single homelessness and consider shifts needed within the broader housing

[823] Lynne McMordie, 'Avoidance Strategies: Stress, Appraisal and Coping in Hostel Accommodation' (2021) 36(3) Housing Studies 380; Peter Mackie, Sarah Johnsen and Jenny Wood, *Ending Rough Sleeping: What Works? An International Evidence Review* (Crisis 2017). A positive outcome of the COVID-19 pandemic is an apparent reduction in widespread use of dormitory, shelter style accommodation Beth Watts, Glen Bramley, Hal Pawson, Gillian Young, Suzanne Fitzpatrick, and Lynne McMordie, *The Homelessness Monitor: England 2022* (Crisis 2022) 36-39.
[824] Beth Watts, Glen Bramley, Hal Pawson, Gillian Young, Suzanne Fitzpatrick, and Lynne McMordie, *The Homelessness Monitor: England 2022* (Crisis 2022) 84.

market to allow the HRA 2017 and local authorities performing those duties to effect successful homelessness reduction for this grouping.

CHAPTER 8 – CONCLUSION

8.1 Summary of Thesis and Key Outcomes

This thesis set out to explore how the Homelessness Reduction Act 2017 has been implemented in two local authorities in the Midlands, considering how homelessness is governed under the new legislative framework. Chapter 2 offered an overview of this legislative framework and set out the contributions made by the HRA 2017. Chapter 3 outlined how these research questions were explored, through rich, qualitative ethnographies, and provided insight into my research experiences through a reflexive account.

Chapter 4 describes key Foucauldian concepts that were utilised within this thesis to interpret and analyse data. Through a Foucauldian discourse analysis of the legislative provisions and surrounding policy documents, the HRA 2017 was identified as a tool of neoliberal governance. While appearing to stand out among broader policy developments within social welfare made over the last decade by expanding statutory duties owed to individuals experiencing homelessness and making these duties more inclusive, it also introduced an increased regulatory and disciplinary framework imposing responsibility on the individual to reintegrate themselves back into the housing market. Chapter 5 explored how local authority housing officers are themselves disciplined by administrative bureaucracy which is perceived to hamper the effective implementation of new duties in order to reduce homelessness. Chapter 6 took a closer look at the performance of a selection of the new and expanded duties under the HRA 2017, including the duty to construct a personalised housing plan, the prevention duty and the relief duty. This chapter demonstrates that

authorities are further hampered in the performance of their duties by a housing market hostile to low-income households - progressive housing and welfare policies ensuring that the options available to meet acute housing need are in short supply, and increased reliance on the private sector through the use of six or twelve month tenancies does little to ensure longer-term stability which would prevent repeat incidences of housing insecurity and homelessness. Finally, Chapter 7 considered the ability of the HRA 2017 to meet the needs of single people experiencing homelessness, concluding that while it does indeed mean that more single households are falling within the remit of statutory duties, this does not necessarily mean the HRA 2017 is improving outcomes for this cohort. In particular, gains made in the area of rough sleeping appear to run parallel to the HRA 2017 not as a consequence of it.

A key problem with the Homelessness Reduction Act 2017 is that it does not appear ultimately to make any substantial strides in *reducing* homelessness, the homelessness framework is still largely attempting to *respond* to homelessness, and even there it is struggling. As demonstrated in Chapter 6, preventative work carried out under the prevention duty is still largely crisis stage intervention, treating homelessness as a temporary, situational threat, which can be adequately addressed with a short 56-day intervention. Local authorities have been shown in previous chapters to need to go above and beyond what is strictly obligated by the statutory framework to try ensure the households they help are able to maintain their accommodation and do not ultimately come back around at a later point. While it is highly positive when local authorities are able to do this additional work, this is not going to be consistently possible across the country and is not going to be effective on a national scale to reduce the threat of homelessness at the outset. Local authorities are still constrained

by their own local housing market, their available resources, and the complexity of the varied needs individuals present with. Unsurprisingly, and entirely predictably, an overwhelming outcome of this research is to back up assertions that the HRA 2017 does nothing to address the underlying causes of homelessness, it does nothing to address poverty and destitution a key predictor in incidences of homeless,[825] and does nothing to improve the availability, accessibility, affordability of accommodation, or the variety of accommodation options that are needed to enable homelessness to be alleviated when it does occur.

The Homelessness Reduction Act 2017 was a popular measure, supported across political divides and sectors, because it was able to incorporate multiple discourses. The formal changes in duties and responsibilities of local authorities, the broader consideration of support needs and the suggestion of a personalised response to housing need, along with the requirement for public bodies to alert housing authorities to people at risk of homelessness, was enough of a shift in discourse to allow for the hope of a culture change in practice and more autonomy for the homeless individual as to how their situation is resolved. As demonstrated in Chapter 5, housing officers on the frontline were expecting it to allow them to achieve substantive successful outcomes for more households.

However, once the provisions of the Act are explored a little closer, and the duties are implemented into the broader housing and welfare context that homelessness exists within, these outcomes are limited to those who can be normalised within a neoliberal rationality. This can be seen quite starkly in Chapter 6 when considering the operation of personal housing plans, it is

[825] Glen Bramley and Suzanne Fitzpatrick, 'Homelessness In The UK: Who Is Most At Risk?' (2018) 33(1) Housing Studies 96; Sarah Johnsen and Beth Watts, 'Homelessness and Poverty: Reviewing the Links: A Report for the Joseph Rowntree Foundation Anti-Poverty Programme' (I-SPHERE 2014) < https://researchportal.hw.ac.uk/files/7467281/Homelessness_Poverty_FullReport.pdf> accessed 28 May 2022.

only possible to deliver a tailored service that incorporates the individual's choices and preferences when the individual is willing and able to fit into the neoliberal model. Overall, the judgment as to the impact of the HRA 2017 and whether it has been implemented successfully depends on what the Act was believed to be in the first place. As a means of reducing incidences of homelessness and housing precarity, it hasn't gone far enough, but as a tool for neoliberal government, it does its job quite well. It is clear however from the exploration contained within the previous chapters that the neoliberal rationality is not sufficient to adequately address the complexities of homelessness.

The remainder of this final chapter moves on to consider a selection of implications that can be drawn from this thesis for the current homelessness context, and highlights potential future research interests that have arisen through the performance of this research.

8.2 Implications of the Research

Conclusions drawn in Chapter 5 raise concerns about the reliability and usefulness of data captured by H-CLIC submissions, especially given further complications of the COVID-19 pandemic. It was always going to be difficult to assess trends and draw quantitative conclusions regarding the effectiveness of the HRA 2017 given that the new dataset is largely incomparable with the old, and because of the issues identified in Chapter 5 regarding data collection, but the data set has been even further disrupted by the COVID-19 pandemic. The inherently disruptive nature of a pandemic, combined with the changes in policy focus such as the instruction from the then Minister for Local Government and Homelessness

to bring 'everyone in' who was sleeping rough,[826] and concerns for the safety of frontline workers, will have been highly disruptive to local authority practice and day-to-day priorities. If it was already hard to justify why, in the eyes of housing officers, such extensive, burdensome data should be collected, this was going to drop even further in priority during the onset and height of the pandemic.

It is likely that many authorities struggled particularly to accurately record action taken in response to the 'Everyone In' programme. Many of those brought 'in' would have been accommodated despite not being owed a statutory duty at all, either due to being ineligible for assistance or already having been owed a duty in the past which has come to an end without a sufficient change in circumstances to trigger a new application.[827] Others may have been owed a relief duty, but not owed an interim accommodation (often called temporary accommodation) duty due to having no reason to believe they are in a priority need.[828] For those brought in who were previously unknown to an authority, assessing those individuals for statutory duties, creating a personalised plan, and then thoroughly recording them through H-CLIC data fields may not have been an immediate priority. Due to the complexity and urgency of the situation there is a real risk data was not always accurately or consistently recorded across authorities. In fact, there was a need to make adaptations to H-CLIC and software systems to ensure it was possible to record data of placements in temporary accommodation that were performed under a

[826] Luke Hall, 'Coronavirus (COVID-19): Letter from Minister Hall to Local Authorities on Plans to Protect Rough Sleepers' (Gov.UK 26 March 2020) <www.gov.uk/government/publications/letter-from-minister-hall-to-local-authorities> accessed 24 May 2022.
[827] Department for Levelling Up, Housing and Communities, 'Homelessness Code of Guidance for Local Authorities' (Gov.UK last updated 22 March 2022) <www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities/chapter-4-the-duty-to-refer-cases-in-england-to-housing-authorities> accessed 24 May 2022, para 18.11.
[828] Housing Act 1996, s 188.

power rather than a statutory duty.[829] This means that the most comparable data measure with pre-HRA 2017 data, data on temporary accommodation use, where it was possible to be able to draw more longitudinal trends, is likely to be impacted with data quality issues. Overall, this means it is still going to be some time before it is possible to quantitively discern any detailed trends in the effectiveness of the HRA 2017.

A second area of interest is the possible implications of conclusions in Chapter 7 regarding the suitability of the HRA 2017 to address rough sleeping. As referred to above, there was an unprecedented move from 26th March 2020 for local housing authorities to bring 'everyone in', with authorities encouraged to provide self-contained accommodation for anyone sleeping rough or in accommodation where it is hard to self-isolate.[830] While there is some doubt as to the robustness of the data set, it is suggested that a total of 37,450 individuals were helped by the programme,[831] and a further University College of London study suggested 21,092 infections, 1,164 hospital admissions and 338 intensive care admissions, and 266 deaths were avoided due to this assistance.[832] Despite the undoubtedly positive outcomes of having taken this action, it was not taken due to the standard operating practice under statutory homelessness duties. While a number of those provided with accommodation will have

[829] Ministry of Housing, Communities and Local Government, 'Guidance for Reporting Rough Sleepers Accommodated Under a S189 Power on H-CLIC' (Government Statistical Service 18 May 2020) <https://gss.civilservice.gov.uk/wp-content/uploads/2020/10/h-clic-rough-sleepers-guidance-local-authorities.pdf> accessed 24 May 2022.
[830] Luke Hall (n 826).
[831] Ministry of Housing, Communities and Local Government, 'Coronavirus (COVID-19) Emergency Accommodation Survey Data: May 2020' (Gov.UK 03 June 2020) <www.gov.uk/government/publications/coronavirus-covid-19-rough-sleeper-accommodation-survey-data-may-2020> accessed 25 May 2022.
[832] Dan Lewer, Isobel Braithwaite, Miriam Bullock, Max T Eyre, Peter J White, Robert W Aldridge, Alistair Story and Andrew C Hayward, 'COVID-19 Among People Experiencing Homelessness in England: A Modelling Study' (2020) 8(12) The Lancet Respiratory Medicine 1181.http://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30396-9/fulltext

been owed statutory duties as suggested above, many will not. The swift, broad action taken to accommodate several thousand individuals was only possible due to the pandemic itself, meaning accommodations like hotels had self-contained rooms available to offer on such a wide scale, and an initial funding influx of £3.2 million to cover the increase in cost of providing such accommodation.[833]

If the gains made during the pandemic in reducing the number of people sleeping rough are to be maintained, there needs to be continuous and significant additional investment over and above the statutory framework to provide emergency accommodation to all individuals experiencing rough sleeping, and to source and provide suitable longer-term accommodation, with appropriate wrap-around personalised support services.[834] Currently one of the most comprehensive overview reports of the experiences of local authorities during and after the Everyone In programme is provided by the 2022 Crisis Homelessness Monitor.[835] The limits of the current statutory framework in keeping *everyone* in has been highlighted quite starkly by difficulties local authorities have experienced in continuing to accommodate or find move-on accommodation for individuals not eligible for public funds once Government messaging shifted after the initial response to a lack of clarity regarding whether non-eligible individuals were included in the programme.[836] Further difficulties have been reported in finding suitable longer-term accommodation for individuals with more complex needs, referencing in particular a lack of quality supported housing, a concern

[833] Ministry of Housing, Communities and Local Government and Robert Jenrick, 'Press Release £3.2 Million Emergency Support for Rough Sleepers During Coronavirus Outbreak' (Gov.UK 17 March 2020) <www.gov.uk/government/news/3-2-million-emergency-support-for-rough-sleepers-during-coronavirus-outbreak> accessed 25 May 2022.
[834] Peter Mackie, Sarah Johnsen and Jenny Wood, *Ending Rough Sleeping: What Works? An International Evidence Review* (Crisis 2017).
[835] Beth Watts, Glen Bramley, Hal Pawson, Gillian Young, Suzanne Fitzpatrick, and Lynne McMordie, *The Homelessness Monitor: England 2022* (Crisis 2022) Chapter 3.
[836] ibid 41-43.

consistent with data reported in Chapter 7 pre-pandemic.[837] Local authorities have highlighted a difficulty in being able to reach all individuals and 'get them in', and once in, to adequately support them enough to keep them in, particularly individuals with a long history of rough sleeping and complex needs.[838] This is consistent with experiences in the first and second local authority discussed in Chapter 7, finding the time frames of the statutory duties inappropriate to work with due to the need to develop trusting relationships and build progress over time, and to provide floating ongoing support to any accommodation to enable it to be sustained. Finally, concerns were raised regarding the often short-term nature of funding measures and accommodation programmes surrounding progress made relating to rough sleeping both before and after the pandemic, including the Rough Sleeping Accommodation Programme (part of the Governments Next Steps Accommodation Programme post-Everyone In), the Rough Sleepers Initiative and investment in Housing First.[839]

Ultimately, the HRA 2017 duties themselves cannot adequately address rough sleeping or the homelessness of people with multiple and complex needs, this is done through much larger discretionary investment on policy initiatives, for e.g., the Rough Sleepers Initiative, which is not guaranteed to sustain. The 2022 Crisis Homelessness Monitor suggests that the pandemic has radically accelerated the aims of the HRA 2017 in enhancing support available to single homeless households, which includes those experiencing rough sleeping.[840] While this is true, this is not because of the existence of the HRA 2017, even without the Act it is highly likely the Everyone In response would have been the same given that it was driven by public health concerns rather than statutory obligation, and applies to

[837] ibid 44-45.
[838] ibid 39-40 and 43.
[839] ibid 49-54.
[840] ibid 56.

capture a much broader population than statutory obligations alone would have. It just so happens that a number of individuals assisted will have fallen within the statutory framework at the time of the provision of accommodation, being owed a 56-day relief duty, and possibly an interim accommodation duty, but equally a number of those individuals would have come to the end of a relief duty and would not have been owed further statutory duties, and a number of individuals will not have been owed statutory duties at all, but will still have been accommodated. It is important to recognise that this makes the sustainability of successes achieved during the pandemic uncertain, and that a return to a pre-pandemic 'business as usual' will not be enough to achieve the Government's pledge to end rough sleeping by 2024.[841]

Following on from this, a final significant implication of this research is that the HRA 2017 alone is not capable of addressing any significant increases in general homelessness caused by broader social and economic contexts. A homelessness crisis appears to have been averted during the height of the COVID-19 pandemic due to a variety of temporary emergency measures implemented that in no way affected statutory rights under the homelessness legislative framework but have worked to protect household income and prevent evictions.[842] This included an uplift in Universal Credit of £20 a week, a realignment of Local Housing Allowance to the 30th percentile of market rents, a moratorium on evictions, an extension to notice periods when issuing s.21 eviction notices and the Job Retention

[841] Ministry of Housing, Communities and Local Government, 'Press Release: Prime Minister Pledges New Action to Eliminate Homelessness and Rough Sleeping' (Gov.UK 23 December 2019) <www.gov.uk/government/news/prime-minister-pledges-new-action-to-eliminate-homelessness-and-rough-sleeping> accessed 24 May 2022.
[842] Noting that an attempt by Crisis to lobby for a temporary legislative measure to secure emergency accommodation to all (including those with no recourse to public funds), to suspend the benefit cap, and provide an element of statutory protection from eviction, did not make any progress – Crisis, 'Crisis Calls For Emergency Legislation to Protect Against Homelessness During Pandemic' (Crisis, 02 July 2020) < www.crisis.org.uk/about-us/media-centre/crisis-calls-for-emergency-legislation-to-protect-against-homelessness-during-pandemic/> accessed 24 May 2022.

Scheme, which have all since come to an end.[843] This aversion of a homelessness crisis is however, at risk of being short lived. Research from the Joseph Rowntree Foundation demonstrates that despite measures taken there are millions of low-income households now in arrears or have taken on new or increased borrowing through the pandemic, many of these who were not in arrears before the pandemic.[844] Rising inflation and increasing energy bills are plunging households into a cost of living crisis[845] that if not adequately addressed will lead to a further threat of a significant increase in incidences of homelessness.

The homelessness legislative framework is not equipped to provide an answer. All the HRA 2017 can ensure is a significant proportion of households who may experience homelessness or threats of homelessness will fall within legal entitlements for a local authority to take 'reasonable steps' to help under prevention and relief duties. It does not guarantee the local authority resources to be able to meet those duties, it does not guarantee a solution in the form of provision of affordable accommodation, it does not guarantee a household can sustain any accommodation that is found or provided. The ability of local authorities to contribute to alleviating or reducing homelessness is dependent on the surrounding social and economic context, and on broader housing and welfare policy. If this surrounding context is contributing to significant increases in homelessness, and policy decisions are taken such as removing the uplift of UC, a return to a freezing of the LHA rates, a continual underinvestment in

[843] For a full discussion as to the policy responses taken during the pandemic and the effect of these on homelessness see Beth Watts et al. (n 835) Chapter 2.
[844] Rachelle Earwaker and Morgan Bestwick, 'Dragged Down by Debt: Millions of Low-income Households Pulled Under by Arrears While Living Costs Rise' (JRF 21 October 2021) <www.jrf.org.uk/report/dragged-down-debt-millions-low-income-households-pulled-under-arrears-while-living-costs-rise> accessed 24 May 2022.
[845] Katherine Hill and Ruth Webber, 'From Pandemic to Cost of Living Crisis: Low-income Families in Challenging Times' (JRF 12 May 2022) <www.jrf.org.uk/report/pandemic-cost-living-crisis-low-income-families-challenging-times> accessed 24 May 2022; Daniel Harari, Brigid Francis-Devine, Paul Bolton and Matthew Keep, 'Rising Cost of Living in the UK' (House of Commons Library 19 May 2022) <https://commonslibrary.parliament.uk/research-briefings/cbp-9428/> accessed 24 May 2022.

social housing, this continues to obstruct the ability of local authorities to help people experiencing homelessness find affordable, sustainable accommodation.

8.3 Future Research Directions

The process of conducting this research and writing up this thesis highlighted several areas of potential future research interest. A key limitation of the data collected and reported in this study is that there is an important voice missing, that of the applicants themselves, people experiencing homelessness and going through the system of statutory support. This is particularly so given the difficulties described in Chapter 3 in following specific cases and gaining case files. Even if this had been easier, the applicant is still represented only indirectly through the lens of the local authority case reporting system and observations of practice from the local authority side of the desk. This limitation is justifiable in the context of the focus of this study; research questions were targeted at how those responsible for carrying out statutory duties are implementing the legislation, and practical constraints mean an expansion of the study to include data collection from applicants themselves was not deemed feasible for a single researcher in the time frame available. It is, however, important to acknowledge this thesis does not reflect the experiences of applicants from their perspective and their interpretations of their interactions with the local authorities. This is instead a prime target for further research.

This research could explore not only what delivery of homelessness duties looks like from the applicant's perspective, but also what access to homelessness statutory services currently looks like. This is particularly topical given the likely changes to public service delivery during the

COVID-19 pandemic, which would have necessitated different ways of working due to safety concerns and national lockdown responses. It would be interesting to explore service delivery now all social restrictions have lifted, to see if authorities have adopted different ways of working on a permanent basis, with particular interest in any digital methods of interaction or other alternatives to face-to-face interaction, and the impact this has on individuals seeking to access services and the performance of duties. The House of Lords Public Services Committee published a report in November 2020 exploring how public services can learn from experiences during the pandemic, where it encourages the facilitation of innovation in digital technologies, particularly where this results in increased engagement with and access to services.[846] However, they also stress a caution to ensure online services never replace face-to-face services where these are needed, and the importance of evaluating and designing service delivery in collaboration with service users.[847] Research conducted pre-pandemic has already highlighted the variation and complexity surrounding use of technology by those experiencing homelessness, so there is a need to ensure any developments in the delivery of homelessness services are able to meet different needs, capabilities and circumstances.[848]

Other questions that were raised during the course of this research include whether statutory 'notices' that local authorities are obligated to create to explain decisions made and the individuals rights under the statutory framework, are fit for purpose. It is crucial that applicants are provided with information as to why they have been refused a duty, how they can challenge decisions made, what it means for them when duties are

[846] Public Services Committee, *A Critical Juncture For Public Services: Lessons From COVID-19* (HL 2019-21, 167-1) 50.
[847] ibid.
[848] Jennifer Harris, 'The Digitization of Advice and Welfare Benefits Services: Re-imagining the Homeless User' (2020) 35(1) Housing Studies 143.

accepted, but questions have been raised in Chapter 5 as to whether the current means of communication through often physically printed letter are 1: effectively communicating that information and 2: are an appropriate means of doing so. This could be the topic of further research.

A final topic of future research is to investigate temporary accommodation (TA) use, particularly with regards to experiences of families. Data collected during research which did not make it into this thesis demonstrated that both local authorities studied experienced increased pressure regarding temporary accommodation since the implementation of the HRA 2017. This is despite the fact it was hoped that the increased focus on prevention and early intervention would prevent people at risk of homelessness from actually becoming homeless and therefore needing temporary accommodation and further services.[849] A reason given for the increased pressure in temporary accommodation is a lack of availability of affordable move on options, a lack of accommodation options within which to discharge the relief and main housing duties, which is consistent with conclusions reported in Chapter 6. While focussed research into temporary accommodation use would have been appropriate post-HRA 2017 and pre-COVID-19 pandemic, it has become even more pertinent as policy measures adopted to prevent evictions and protect household incomes during the pandemic, as discussed above, have come to an end and a cost-of-living crisis has begun. While there has been and still is a heightened policy and public focus on rough sleeping during the pandemic and post-'everyone in', there appears to be little attention on family homelessness. This has been reflected in the most recent Crisis Homelessness Monitor,

[849] Hannah Rich and Deborah Garvie, 'Caught in the Act: A Review of the New Homelessness Legislation' (Shelter 2020) <https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/report_caught_in_the_act> accessed 23 May 2022, 27.

reporting concern for minimal movement within TA for families.[850] While numbers of households in TA showed a slight decline on pre-pandemic levels, this is likely due to a reduced flow of households *entering* TA due to reduced approaches by families protected by emergency policy measures taken during the pandemic such as the moratorium on evictions, rather than an increased flow of families moving *out* of TA. This hypothesis is supported by the fact that in the latest DLUHC (formerly MHCLG) report of homelessness statistics covering October-December 2021 numbers of families in TA has started to increase.[851] This raises concerning questions about the experiences of homeless families in TA during the pandemic, and going forward into an uncertain economic period.

8.4 Conclusion

Overall, this thesis has utilised a rich, detailed data set, collected from the observation of frontline practice, to explore how the Homelessness Reduction Act 2017 has been implemented in local authorities. It contributes to understandings of how key legislative reforms are applied to the individuals they affect. It has highlighted the importance of analysing legislative reforms within the broader context of what they are seeking to address, here, attempts to address homelessness cannot be separated from the broader welfare context within which it exists. It identifies the key changes made by the Homelessness Reduction Act 2017 to the homelessness statutory framework, but ultimately sets out its limited ability to match its bold title in performance. This raises significant concerns in the current socio-economic context post-pandemic where

[850] Beth Watts et al. (n 835) 79-80.
[851] Department for Levelling Up, Housing and Communities, 'Official Statistics Release: Statutory Homelessness October to December (Q4) 2021: England' (Gov.UK 28 April 2022) <www.gov.uk/government/collections/homelessness-statistics> accessed 24 May 2022, 6.

incidences of homelessness are expected to rise, unfortunately generating the need for further research.

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APPENDIX 1

PARTICIPANT PROJECT INFORMATION SHEET – LA EMPLOYEE (General)

Project Title

The Implementation of the Homelessness Reduction Act 2017.

Aims of the Project

My PhD research is exploring how local authorities are implementing the Homelessness Reduction Act with particular interest in how the Act is being interpreted on the frontline, how housing officers/employees are executing their new and expanded duties, how these duties interact with existing housing duties, and how the roles and goals of housing officers/employees are perceived after the Homelessness Reduction Act. I will do this through conducting ethnographic case studies in two local authority housing departments for a period of approximately three-four months. Ethnographic case studies are used to explore group culture in depth through the researching of behaviours, actions, beliefs and customs. They utilise multiple methods of data collection so this study therefore seeks to conduct interviews, observe day to day practices within the department, observe and follow a number of live cases of those applying for housing assistance, and analyse the type of documentary guidance available to you to assist in performing your duties.

Participation

- During the course of this research you may be involved in the collection of data.
    - You may be involved in a live case that I am following as part of this research. This could be for e.g. (non-exhaustively) through your presence at meetings with the applicant where I will be observing or through your supervision of a live case.
    - You may be asked to supply a copy of any documentary guidance that is available to you to assist in the performance of your duties.
    - You may be present in a case conference or a meeting I am observing.
    - You may be observed in any general field notes that are written over the course of the research project.

Confidentiality and Anonymity Statement

At this level of participation your personal information will not be collected. While you may be facilitating access to data collection or being observed in

field notes, you will not be identified. If you are referred to within field notes or any write up of the research data – including my PhD thesis and any related work or publications or future research – pseudonymisation will be used to conceal your identity. If you believe any personal data about yourself may have been collected, you have the right to request to see my field notes and to request the withdrawal of any personal data.

However, despite measures taken, it will not be possible to fully *guarantee* anonymity due to the context of my PhD research. The studies will take place within a limited geographical area due to lone working, time frame and monetary constraints. Some employees of local authority housing departments, particularly senior members, are identified in publications and online, and participants within the departments of study may also be identifiable to each other within the PhD thesis or related work and publications or future research despite anonymisation measures. Maximum efforts will be made to anonymise, but any concerns can be discussed.

Data Security and Retention

Data collected through your facilitation of data collection or in the writing of field notes will be managed and stored securely in accordance with University of Nottingham policies concerning information security and data management. Any soft (electronic) files will be stored on the University of Nottingham's password protected network. Any hard copy (paper) files will be stored in locked storage. Data will be transferred or temporarily stored on a USB with password protection and encryption software.

Research data will be retained for a period of at least 7 years from the end of the project as required by the University of Nottingham's data retention policy and may be stored within an internal (University) or external data archive in a way that protects your identity as much as is possible. If stored in an archive the data may be used by other researchers or other persons for purposes that are different to the purpose of the original data collection. The collection, use and storage of data will conform to the Data Protection Act 2018 and the General Data Protection Regulation 2016.

Contact details

Researcher: carla.reeson@nottingham.ac.uk

Supervisors: christopher.bevan@nottingham.ac.uk;
sandra.frisby@nottingham.ac.uk

School of Law Research Ethics Committee:
vicky.spencer1@nottingham.ac.uk

If you require further information about the research, you may contact myself or my supervisors. If you wish to make a complaint relating to your involvement you may contact myself or my supervisors in the first instance, and the School of Law Research Ethics Committee in the second instance.

APPENDIX 2

PARTICIPANT PROJECT INFORMATION SHEET – LA EMPLOYEE - INTERVIEW

Project Title

The Implementation of the Homelessness Reduction Act 2017.

Aims of the Project

My PhD research will explore how local authorities are implementing the Homelessness Reduction Act with particular interest in how local authorities have responded to the Act, how the Act is being interpreted on the frontline, how housing officers/employees are executing their new and expanded duties, how these duties interact with existing housing duties, and how the roles and goals of housing officers/employees are perceived after the Homelessness Reduction Act. I will do this through conducting ethnographic case studies in two local authority housing departments for a period of approximately three-four months.

Ethnographic case studies use multiple methods of data collection to explore group culture in depth through the researching of behaviours, actions, beliefs and customs. One of these methods of data collection is to conduct interviews. I am therefore conducting approximately 8-10 interviews with individuals at various levels of the organisational hierarchy within each local authority.

Project Participants

- You have been asked to participate in this study based on your role within [local authority] selected for involvement within this research project.

- You will participate in an interview approximately 45-60 minutes long to discuss a variety of points, examples being: how your authority has responded to the Act, your role within the authority, how the Act is being interpreted on the frontline, how housing officers/employees are executing their new and expanded duties, how these duties interact with existing housing duties, and how the roles and goals of housing officers/employees are perceived after the Act. Points discussed will vary dependent on your role within the authority.

- This interview will be recorded with an audio recording device. If you would prefer, handwritten notes will be taken instead, and the meeting will not be audio recorded.

- Consenting to participate in this interview is entirely voluntary. You may withdraw your consent by contacting the researcher at any time without prejudice or negative consequence. It is possible to withdraw your consent even though others within your authority are still participating. In this instance no further data will be collected

about you and any existing data referring to you or your activities will be destroyed.

Confidentiality and Anonymity Statement

Any personal information obtained as a result of participation in this study is considered confidential and will not be disclosed to third parties. Only myself and my supervisory team will have access to this information. The collection and use of personal data will conform to the Data Protection Act 2018 and the General Data Protection Regulation 2016. Please also refer to the Privacy Notice that has been provided.

Full attempts will be made to conceal the identity of participants involved. Pseudonyms and/or coding will be used to identify participants within research data and within any write up of the research data - including my PhD thesis and any related works/publications or future research. Measures to conceal the identity of your local authorities as an organisation will be taken and can include limiting the information given about a particular authority to broad categories of description.

However, despite measures taken, it will not be possible to fully *guarantee* anonymity due to the context of my PhD research. The studies will take place within a limited geographical area due to lone working, time frame and monetary constraints. Some employees of local authority housing departments, particularly senior members, are identified in publications and online, and participants within the departments of study may also be identifiable to themselves or each other within the PhD thesis or related publications despite anonymisation measures. Maximum efforts will be made to anonymise, but any concerns can be discussed.

Data Security and Retention

Data will be collected through audio recordings, field notes, or copies of documentation. Data will be managed and stored securely in accordance with University of Nottingham policies concerning information security and data management. Any soft (electronic) files will be stored on the University of Nottingham's password protected network. Any hard copy (paper) files will be stored in locked storage. Data will be transferred or temporarily stored on a USB with password protection and encryption software.

Data will be retained for a period of at least 7 years from the end of the project as required by the University of Nottingham's data retention policy and may be stored within an internal or external data archive in a way which conceals your identity as much as possible. A data archive is a place where data is stored in a digital form for long periods of time for potential reuse by the researcher or other parties. The reuse of information may be for a different purpose than why it was originally collected. The collection, use and storage of data will conform to the Data Protection Act 2018 and the General Data Protection Regulation 2016.

Contact details

Researcher: carla.reeson@nottingham.ac.uk

Supervisors:

sandra.frisby@nottingham.ac.uk; christopher.bevan@nottingham.ac.uk

School of Law Research Ethics Committee:
vicky.spencer1@nottingham.ac.uk

If you require further information about the research, you may contact myself or my supervisors. If you wish to make a complaint relating to your involvement you may contact myself or my supervisors in the first instance, and the School of Law Research Ethics Committee in the second instance.

APPENDIX 3
PARTICIPANT CONSENT FORM – LA EMPLOYEE - INTERVIEW

Project Title: The Implementation of the Homelessness Reduction Act 2017

Researcher's name: Carla Reeson

Names of Supervisors Dr Sandra Frisby, Mr Chris Bevan.

- I have read the Participant Information Sheet and the nature and purpose of the research project has been explained to me. I understand and agree to take part. ☐

- I understand that I may withdraw from the research project by contacting the researcher at any time, and that this will be without prejudice or negative consequence. ☐

- I give consent for personal data, including special category data, to be collected and processed for the purpose of this research and any related work or publications, and I have read and understood the Privacy Notice given to me. ☐

- I understand that I may withdraw my consent for the processing of my personal data at any time, and that this will be without prejudice or negative consequence. ☐

- I understand that while information gained during the study may be published, I will not be identified, and my personal information will remain confidential. ☐

- I understand that data collected will be stored securely in locked storage or on the University of Nottingham's network which is password protected. ☐

- I understand that data will be retained for at least 7 years in accordance with the University of Nottingham's data management policy and there will be full compliance with the Data Protection Act 2018 and General Data Protection Regulation 2016. ☐

- I understand that I may contact the researcher or supervisors if I require further information about the research, and that I may contact the supervisors in the first instance, and the School of Law Research Ethics Committee in the second instance, if I wish to make a complaint relating to my involvement in the research. ☐

Signed …… (Research Participant)

Print name …… **Date** ……

Contact details

Researcher: carla.reeson@nottingham.ac.uk

Supervisors:
sandra.frisby@nottingham.ac.uk; christopher.bevan@nottingham.ac.uk

School of Law Research Ethics Committee:
vicky.spencer1@nottingham.ac.uk

APPENDIX 4

PARTICIPANT PROJECT INFORMATION SHEET- APPLICANT

Project Title

The Implementation of the Homelessness Reduction Act 2017.

Aims of the Project

My PhD research is exploring how local authorities (councils) are putting into effect the Homelessness Reduction Act 2017. I am interested in how housing employees are meeting their duties to you as an applicant for housing assistance. I am looking into areas such as how councils provide homelessness and housing advice, how councils help prevent homelessness and how councils help to relieve homelessness.

I am doing this through a number of case studies within council housing departments which involves spending time there for a period of approximately 4 months. As part of these case studies I am following how council employees behave and meet their duties to applicants by following the progression of a number of individual applicant cases.

Your Participation

- I am asking you to participate in this research project due to your application for assistance with housing to [local authority] Council.

- If you agree to take part in this research, you agree to me being at meetings you have with the Council about your housing application. I will take notes about how the meeting goes. I am not trying to find out how good a job the Council employee does.

- If you agree to take part in this research, you are also agreeing to me being able to access the electronic records the council holds about your case. This includes all of the information you give to the council about your housing situation, and also any information the council collect about your housing situation, and any actions taken to resolve your housing situation. I will use the information contained within your electronic file to further explore how the Council meet their duties to you as an applicant.

- Your participation in this research means I will have access to and store your personal information, including sensitive information. Please read the Privacy Notice that has been given to you which provides more information on why your data is being collected and the privacy of your data.

- Consenting to participate in this research is voluntary. You **do not** have to participate in this research. If you do agree to participate,

you may withdraw your consent by contacting the researcher at any time with no negative consequences.

- Your participation in this research will not affect how the Council approaches your application or the outcome of your application.

Confidentiality and Anonymity

Any personal information about you that is collected and used within the research is considered confidential and will not be shared with anyone else. Only I as researcher will have access to your personal information such as your name, but my supervisors may also see notes that I take during your participation, although you will not be identified. The collection and use of personal data will follow relevant data protection laws: The Data Protection Act 2018 and the General Data Protection Regulation 2016. Please read the Privacy Notice that has been given to you.

Full attempts will be made to hide your identity. Fake names or codes will be used to identify you in the data I collect and in any writing completed which uses the data. This includes my PhD thesis and any related work or publications or future research. It may be possible for you as the applicant to identify yourself, or the council employees to identify your case in my writing, even though your identity has been hidden.

Keeping your Information Secure

Information will be collected through notetaking during the observation of your interactions with the local authority, and through access to your electronic file documents. All of this data will be stored securely following University of Nottingham policies on information security and the management of data. Electronic files will be stored on the University of Nottingham's computer system which is password protected. Any hard copy paper files (including the notebooks used to take notes on your interactions) will be stored in locked storage. I have a portable memory stick for storing information temporarily or to transfer files on to the University of Nottingham's system which is password protected.

The information collected will be kept for a period of at least 7 years from the end of the research project as required by the University of Nottingham's data retention policy. At the end of the research project information may be stored in a data archive, for e.g. the UK Data Archive, in a form which conceals or protects your identity and maintains the security of your information as much as is possible. A data archive is a place where information is stored in a digital form for long periods of time for potential reuse by the researcher or other parties. The reuse of information may be for a different purpose than why it was originally collected. The collection, use and storage of information will follow relevant data protection laws: the Data Protection Act 2018 and the General Data Protection Regulation 2016.

Contact details

Researcher: carla.reeson@nottingham.ac.uk

Supervisors:sandra.frisby@nottingham.ac.uk;
christopher.bevan@nottingham.ac.uk

School of Law Research Ethics Committee:
vicky.spencer1@nottingham.ac.uk

If you require further information about the research, you may contact myself or my supervisors. If you wish to make a complaint relating to your involvement you may contact myself or my supervisors first, and the School of Law Research Ethics Committee second.
If you would like to reach me but do not have an email address, please contact your housing officer(s) at the council and they will be able to put you in touch.

APPENDIX 5

PARTICIPANT CONSENT FORM - APPLICANT

Project Title: The Implementation of the Homelessness Reduction Act 2017

Researcher's name: Carla Reeson

Names of Supervisors Dr Sandra Frisby, Mr Chris Bevan.

Please tick the statements you agree with.

- I have read the Participant Information Sheet and the nature and purpose of the research project has been explained to me. I understand and agree to take part. ☐

- I understand that I may withdraw from the research project by contacting the researcher at any time. I understand that withdrawing my consent has no negative consequence. ☐

- I give consent for my personal data, including special category (sensitive) personal data, to be collected and processed for the purpose of conducting this research and any related work or publications. ☐

- I have been given a Privacy Notice and I understand my rights in relation to the researcher's use of my personal data. ☐

- I understand that I may withdraw my consent for the processing of my personal data by contacting the researcher at any time. I understand that withdrawing my consent has no negative consequence. ☐

- I understand that while information gained during the study may be published, I will not be named or identified, and my personal information will remain private and confidential. ☐

- I understand that data collected will be stored securely in locked storage and/or on the University of Nottingham's computer system which is password protected. ☐

- I understand that data collected will be retained for at least 7 years under the University of Nottingham's data management policy and there will be full compliance with the Data Protection Act 2018 and General Data Protection Regulation 2016. ☐

- I understand that I may contact the researcher or her supervisors if I require further information about the research, and that I may contact the supervisors in the first instance, and the School of Law Research Ethics Committee in the second instance, if I wish to make a complaint relating to my involvement in the research. ☐

Signed …… (Research Participant)

Print name …… **Date** ……

Contact details

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APPENDIX 6

Sample Interview Guide – Managers

1. **What is your job title? What are your day-to-day tasks?**

2. **How do LA's implement significant legislative developments?**

    - What actions have [insert local authority] taken in order to implement the HRA 2017?
    - Has [local authority] undergone a restructuring or hired new staff? Why? /For what roles?
    - How were staff prepared for the HRA 2017?

    - What challenges have you faced along the way?
    - Have you had any concerns regarding the HRA 2017 and its operation so far? What are they?
    - What positives have come from the HRA 2017 for your authority?
    - What questions do you still have?

    - Has [local authority] had sufficient funding to cover the implementation of the HRA 2017? Do you feel you have sufficient funding for the future?

3. **How are roles/goals perceived after the Homelessness Reduction Act?**

    - How has the HRA impacted your role as a manager?
    - How have you modified your information and advisory services since the HRA 2017?
    - Has your use of interim and temporary accommodation changed? Do you have stats? What type of accommodation do you use?
    - Have you experienced a change in the number of challenges to decisions (reviews)?

APPENDIX 7

Sample Interview Guide – Housing Officers

1. **What is your job title? What are your day-to-day tasks?**

2. **How does the Homelessness Reduction Act interact with existing housing duties?**

    - How long does a case typically take to complete? What is the longest a case could take to complete?
    - Have you experienced a change in the number or type of cases you are experiencing?
    - Are the new prevention and relief duties affecting the exercise of further potential duties such as the full housing duty? Have you experienced a change in the number of cases reaching the full housing duty?
    - What are your practices around temporary accommodation – how often do you use it and how long do people typically stay? What type of accommodation do you use?

3. **How do housing officers execute their new and expanded duties?**

    - How do you carry out the duty to prevent homelessness? What kind of actions can you take? (Ask for examples).
    - How do you carry out the initial duty to relieve homelessness? What actions (reasonable steps) do you take with the view to helping the applicant secure suitable accommodation? (Ask for examples).

    - How do you carry out applicant assessments? What steps do you go through? What questions do you ask/what information do you require?
    - How do you formulate personalised plans?
    - Do you find these expanded assessments and personalised plans useful in carrying out your duties? How often do you refer to them? Are they useful for the applicant?

    - What do you think of the introduction of the deliberate and unreasonable refusal to cooperate?
    - Have you utilised this option? Do you envision using this option?
    - In what circumstances do you/might you think it appropriate to use this option?
    - Does intentionality and priority need remain important? How often are these assessments carried out?

4. **How are roles/goals perceived after the Homelessness Reduction Act?**

    - How has the HRA affected your role? How do you perceive your role and goals?
    - What are the roles and goals of [insert local authority] since the HRA? Has this changed?
    - What do you think are the goals/aims of the HRA? What is it attempting to do? *