The Impact of Legal Rights to Housing for Homeless People

A Normative Comparison of Scotland and Ireland

Elizabeth Watts

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Abstract

Taking as its starting point persistent debates about the appropriate balance between rights and discretion in the design and delivery of welfare policies, this thesis seeks to illuminate the contribution 'rights-based approaches' can make in responding to homelessness. It aims to bring conceptual clarity and empirical evidence to bear on the growing European and wider international focus on 'rights-based approaches to homelessness'. Integrating classic debates in moral philosophy regarding the nature and status of rights with contemporary ideas about rights in social policy, the thesis distinguishes between various understandings of 'rights'. Whereas deontological perspectives see rights as moral statements about human beings, consequentialist perspectives direct attention to the efficacy of *legal* or *'black letter'* rights as a policy tool for achieving better outcomes for those in housing need.

Focusing on legal rights to housing for homeless households, the thesis asks whether policy approaches founded on such rights deliver what we expect them to in practice. Specifically, it considers the impact of rights-based compared with non-rights based approaches, across four dimensions: meeting housing needs; juridification; minimising the stigma of homelessness; and empowering homeless households. A qualitative comparative study of homelessness policy in Scotland and Ireland forms the empirical core of the thesis. Scotland has attracted international recognition, having developed a strong legal safety net for homeless households, which in effect gives the vast majority of homeless households an individually enforceable legal right to settled housing. In Ireland, homelessness policy has also become a focal point for reform, but a rights-based approach has been rejected in favour of a 'social partnership' model, relying on a 'problem solving approach' among key stakeholders to build consensus and 'ratchet up' standards. The study involved interviews with key national stakeholders in both jurisdictions, and two local case studies in Edinburgh and Dublin, through which the perspectives and experiences of service providers, key local stakeholders and single homeless men were explored.

The findings of the study add empirical weight to the current orthodoxy that rights-based approaches offer progressive solutions to the needs of homeless households. The research points to two key mechanisms through which legal rights help secure positive outcomes for single homeless men. First, legal rights minimise provider discretion, ensuring a focus on meeting the needs of homeless single men and crowing out competing policy objectives. A wider set of goals – including considerations of desert, 'housing readiness', social mix and community reactions – influence service provision in Dublin. This led to inertia in the Irish system, stemming flow through temporary accommodation. The comparative success of the Scottish approach in meeting the needs of homeless people, however, has implications for the capacity of other (non-homeless) groups in housing need to access social housing. It is argued, based on the empirical findings of the research, and within a normative framework of value pluralism and 'tragic-realism', that the Scottish approach strikes a 'less worse' balance between competing objectives than Ireland's social partnership approach. Support for the Scottish model remains closely tied, however, to the capacity of the statutory system to not *entirely* crowd out the needs of other non-homeless households. Scotland's approach remains vulnerable to the criticism that it sharpens perverse incentives for people to manufacture homelessness in order to gain priority in the allocation of social housing. Such a perverse incentive is, however, inherent to any approach to homelessness that prioritises homeless people in social housing allocations, and is present - albeit substantially dulled - in Ireland. This 'moral hazard' then, needs to be understood in the context of the choice stakeholders face between homelessness policies that prioritise need and create moral hazard, and approaches that do neither.

Legal rights-based approaches also help secure better outcomes for homeless men through a second mechanism, namely their psycho-social impacts and their effect on discourses on homelessness. The framework of legal rights in Scotland helps construct those who are homeless as 'entitled rights-holders', supporting structural understandings of the causes of homelessness. In Ireland, homeless men were instead cast as 'grateful supplicants' and explanations of homelessness tended to emphasize personal responsibility and individual pathology. On this basis, it is argued that legal rights both minimise stigma and 'empower' homeless people, encouraging a more demanding and assertive set of attitudes, dispositions and expectations among homeless men that help maintain standards of service. According to this analysis, the capacity of legal rights to secure better outcomes does not rely primarily on the pursuit of legal challenges, but on the more subtle impacts of a rights-based policy framework.

Integrating the key normative and empirical findings of the research, the thesis concludes by making three substantive ethical arguments concerning the design of homelessness policy. First, it is argued that in the case of homelessness, legitimate considerations about desert and deservingness in the allocation of social resources ought to be suspended. This argument rests on the empirical insight that Ireland's 'desert-sensitive' approach appears to foster a set of dispositions among homeless men that stifle their progress out of homelessness, and on a normative perspective that seeks to suspend desert in the allocation of social goods that are deemed to be necessities for a 'well-lived life'. Second, and by extension, it is argued that discretion in the delivery of homelessness policies ought to be minimised. In Ireland, providers' over-riding discretion - and resulting attempt to balance various objectives, including 'desert-sensitivity' - places substantial hurdles in the path of homeless men seeking to access settled housing. The boundaries legal rights cast around provider discretion 'empower' homeless men in their interactions with providers, helping maintain a more purely needs-focused response to homelessness. Third and finally, it is argued that homelessness policies that bolster a sense of entitlement among those who are homeless – and recognition among others that this sense of entitlement is legitimate - are desirable. Such a sense of entitlement appears to form part of a wider 'virtuous circle' achieved by Scotland's rights-based approach, which helps maintain pressure for – and achieve - positive outcomes for homeless men.

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Chapter One Introduction

1.1 Introduction

Homelessness prompts a variety of 'ethical impulses' (Cloke, et al., 2005): the homeless person may spark sympathy, compassion and a sense of charity; a recognition of inequality and a sense of injustice; feelings of guilt and pity; or judgements regarding the culpability of homeless people for their situation (Somerville, 1992, Phillips, 2000, Cloke, et al., 2005, Breeze and Dean, 2012). Similarly, while it is widely accepted that the state has *some* legitimate role to play in responding to homelessness (Rosenthal and Foscarinis, 2006; Fitzpatrick and Stephens, 2007; FEANTSA, 2012), the specific objectives of homelessness policies vary, from those seeking only to manage homelessness, to those seeking to resolve, prevent or 'end' homelessness altogether (FEANTSA, 2012). Moreover, although a broad shift towards more preventative and 'housing-led' responses has been identified across Europe (FEANTSA, 2012), significant variations in the policy mechanisms and interventions designed to meet these objectives remain (Anderson, et al., 2008; Stephens, et al., 2010; FEANTSA, 2012; Fitzpatrick and Stephens, 2007).

These variations in moral discourses, policy objectives and policy mechanisms are related to one another. One key distinction which threads across these fault lines is between states whose response to homelessness incorporates a legislative dimension, acknowledging a 'right to housing' in some legal form, and those relying on 'softer' policy instruments and 'enabling' approaches to encourage the discretionary provision of assistance to homeless households (Anderson, 2012). 'Rights-based approaches' to homelessness remain fairly unusual, with individually enforceable legal rights to settled housing for homeless households particularly rare (Fitzpatrick and Stephens, 2007; Fitzpatrick and Watts, 2012). Nevertheless, 'rights-based approaches' have increasingly been held up as models of best practice (FEANTSA, 2010a/2012; Tars. and Egleson, 2009; Bratt, et al., 2006).

1.2 Rights-based approaches to homelessness

The growing commitment to 'rights-based approaches' to homelessness has not been matched by clarity about precisely what such an approach involves. A commitment to 'rights-based approaches' is often articulated in the context of understanding homelessness as "*a denial of fundamental human rights*" (FEANTSA, 2010a, p1; see also Committee of the Regions, 1999; Kenna, 2005; Kenna, 2012; FEANTSA, 2010b), but how a 'human rights-based approach' to homelessness becomes institutionalised in a specific context is not entirely clear (Bengtsson, et al., 2012; Fitzpatrick and Watts, 2012).

In a 2010 'toolkit', FEANTSA proposed the elements they considered to constitute a rights-based approach to homelessness. Such approaches promote "*access to decent, stable housing as the indispensable precondition for the exercise of most of the other fundamental rights*" (FEANTSA, 2010a, p23) and involve: the use of international treaties on housing rights as a basis for developing homelessness strategies; a focus on enforceable rights to housing; and an acknowledgement of the interdependence of housing and other rights (such as the right to live in dignity and the right to health). This 'composite' account of rights-based approaches raises further questions however: which elements of this approach are expected to achieve which outcomes? Where are efforts best directed between the very distinct elements identified? What is the relationship between 'fundamental' (moral) rights and enforceable (legal) rights?

1.3 Research objectives

This thesis aims to bring conceptual clarity and empirical evidence to bear on the growing focus on rights-based approaches to homelessness. First, it seeks to distinguish between

various understandings of 'rights', specifying the implications of these different *philosophical* positions in the context of statutory responses to homelessness. This requires the integrations of classic debates in moral philosophy regarding the nature and status of rights, with contemporary ideas about rights in social policy.

The thesis further seeks to assess whether rights-based approaches deliver what we expect them to in practice. This requires an empirical exploration of the dynamics and impact of rights-based, compared with non rights-based, approaches to homelessness. Focusing specifically on *legal rights to housing for homeless households*, the thesis reengages with debates regarding the extent to which statutory responses to social need (specifically, homelessness) should be founded on the discretion of service providers or on a system of 'rules' in the form of legal welfare rights.

1.4 Legal rights, discretion and homelessness

The tension between *rights* and *discretion* in the design of welfare policies is a key thread running through social policy debates over the twentieth century. Despite the intuitive appeal of legal welfare rights, the appropriate balance between rights-based and discretionary approaches is not as easily seized upon as it might first seem. In 1977, Donnison described a *"reliance on the discretion and judgement of administrators" and* a reliance on *"detailed specification procedures and rights"* as hallmarks of British social policy (Donnison, 1977, p534).

On the one hand, rights appear to offer clarity and equity in the provision of services - 'empowering' welfare beneficiaries in their interactions with services and reducing stigma by casting them as 'rights-holders' - where discretion leads to at best inconsistency, bias and inequity and at worse, the manipulation and exploitation of welfare users by *"petty officials"* (Goodin, 1986, p233) administering *"semi-charitable hand-outs"* (Donnison, 1977, p534) to those in need. On the other hand, legal rights may impose bewildering complexity and administrative rigidity on responses to social need – Titmuss described this as the *"pathology of legalism"* (1971, p124) – stifling the potential for the *"humane and flexible exercise of discretion"* (Donnison, 1977, p535), which allows for creative, individualised responses to social need by public (and public-spirited) officials (Titmuss, 1971. See also Donnison, 1976; Walker, 2005).

These debates reached a zenith in Britain the 1970s, as the Supplementary Benefit Commission sought to improve the design and delivery of social security payments. Titmuss framed this in terms of seeking a balance between 'creative justice' and 'proportional justice', defending the importance of discretion in enabling welfare bureaucrats to flexibly respond to complex individual circumstances (Titmuss, 1971). Donnison argued that the discretionary powers of public bureaucrats in this field ought to be substantially cut back in favour of transparent and equitable rights (Donnison, 1977).

This debate is particularly pertinent in the area of homelessness. Historically, responses to homelessness have been characterised by voluntary sector and charitable provision (Anderson, 2004; Cloke, et al., 2005, Johnsen and Fitzpatrick, 2009) and sometimes by criminal justice based responses (Baker, 2009; O'Sullivan, 2012). Indeed, coercive responses to homelessness have seen something of a renaissance in recent decades (O'Sullivan, 2012; Minnery and Greenlaugh, 2007), with debates continuing about the efficacy of 'coercive care' as a feature of homelessness policy (Fitzpatrick and Jones, 2005; Johnsen and Fitzpatrick, 2010; FEANTSA, 2012). In this context, rights-based approaches to homelessness hold a particular appeal, offering to establish a counter-hierarchy of power in welfare interactions. The primary empirical research pursued in this study, exploring how the dynamics associated with legal rights in the sphere of homelessness compare to 'softer', discretionary approaches, is intended to contribute to these debates.

1.5 Comparing rights-based and non rights-based approaches

The empirical component of this thesis involves a qualitative comparison of two jurisdictions pursuing markedly different approaches to homelessness. Following devolution in 1999, Scottish legislation set in train reforms to establish an individually enforceable legal right to settled housing for virtually all homeless households, establishing Scotland as an international exemplar in the field of homelessness policy (Anderson, 2007 and 2012; Fitzpatrick, et al., 2012d). In contrast, Ireland – having explicitly rejected a legal rights-based response to homelessness - has pursued a 'social partnership' model, rooted in *"a consensual or negotiated problem-solving approach"* (O'Sullivan, 2008b, p205; see also Fitzpatrick, et al., 2012a) between key partners. These sharply contrasting policy approaches in two otherwise similar jurisdictions (in terms of size and the broadly liberal nature of their welfare regimes) offer useful comparators in an empirical investigation of the impact and efficacy of legal rights-based approaches to homelessness.

This comparison examines four core research questions:

1. Do rights-based approaches to homelessness help ensure that those in greatest *need* access suitable housing?

2. Do rights-based approaches to homelessness lead to *juridification* in the delivery of homelessness services?

3. Do rights-based approaches to homelessness ameliorate the *stigma* of homelessness?

4. Do rights-based approaches to homelessness help *empower* those who experience homelessness?

Throughout the thesis, an explicitly normative approach is pursued, drawing on moral and political philosophy, in an attempt to make transparent the moral frames of reference underpinning perspectives on policy responses to homelessness. In addition to exploring the impacts of rights-based approaches across the four conceptual dimensions of *need*, *juridification*, *stigma* and *empowerment*, the research seeks to map and evaluate the normative underpinnings of Scottish and Irish approaches to homelessness and to explore the relationship between moral discourses in each country and their contrasting policy approaches. This approach leads to the specification of a fifth and final research question:

5. Under which normative frameworks can the policies and discourses associated with rights-based and non rights-based approaches be justified?

1.6 Structure of thesis

Chapter 2 begins by considering understandings of 'rights-based approaches' from a moral philosophy perspective, distinguishing between 'deontological' and 'consequentialist' perspectives and their implications for understanding the meaning of 'rights' in social policy. This discussion clarifies the different things that can be meant by a 'rights-based approach to homelessness' and informs a focus, in the remainder of the thesis, on individually enforceable legal rights to housing for homeless households. Key debates about the strengths and weaknesses of such legal rights are reviewed, leading to the specification of the five research questions listed above.

Chapter 3 considers theorisations of the key *concepts* in the thesis, operationalizing the ideas of *need*, *juridifcation*, *stigma* and *empowerment* for the purpose of the study and reviewing what existing research suggests the impact of legal rights may be across these dimensions.

Chapter 4 describes and provides a rationale for the qualitative comparative *methods* employed here, explaining the choice of Scotland and Ireland as comparators, the choice of local case studies in each jurisdiction and the decision to focus on single homeless men specifically.

Chapter 5 describes current *policy approaches* to homelessness (and their evolution) in Scotland and Ireland, focusing in particular on the ethos and rationale underpinning Scotland's rights-based and Ireland's social partnership approach.

Chapters 6 to 8 provide a detailed analysis of the empirical findings of the study. Chapter 6 considers the impact of legal rights on meeting the housing *needs* of single homeless men ('insiders'), focusing on issues of housing supply, access and quality of temporary accommodation and access to settled housing for this group. It also explores whether legal rights lead to *juridification* in the delivery of homelessness services. Chapter 7 focuses on *'outsider needs'*, considering whether rights-based approaches unfairly disadvantage those in housing need but who are not homeless (and do not benefit from a legal right to housing) and whether Ireland's policy model is better able to balance the needs of different groups. The chapter closes by considering a key objection to rights-based approaches: that they create *perverse incentives* that undermine their legitimacy. Chapter 8 shifts focus onto the psycho-social dimensions of homelessness in Scotland and Ireland, asking what difference legal rights to housing make to the *stigma* experienced by those who are homeless, and the extent to which they '*empower*' homeless households.

Chapter 9 reconsiders the empirical findings of the study through the lens of moral and political philosophy, seeking to map and then ethically evaluate the moral discourses associated with Scotland's rights-based and Ireland's non rights-based approach.

Chapter 10 concludes by reviewing the most significant findings of the study. The implications of the research are presented in the form of three substantive normative arguments regarding the design of homelessness policy. These arguments concern: the relevance and value of incorporating ideas of *desert* into the design and delivery of homelessness policy; the cost of homelessness policies that leave significant scope for the *discretion* of 'street level bureaucrats' and service providers; and the benefits of homelessness policies that promote a *'sense of entitlement'* among homeless people.

Chapter Two Rights-based approaches to homelessness in theory and practice

2.1 Introduction

This chapter explores the concept of 'rights' (specifically 'social rights'[1]) and the centuries-long theoretical and philosophical debates that run beneath the surface of contemporary ideas about a 'right to housing' and specifically 'rights-based approaches to homelessness'. The tenacity of these debates reflects the multiple discourses and meanings associated with the idea of rights. In particular, the growth of the *human rights* discourse - and its intersection with social policy debates - has reinvigorated clashes between different schools of thought.

Laying the groundwork for the empirical work that follows, this chapter unpicks these different strands of thought. The discussion seeks to provide clarity about the nature and intended objectives of 'rights-based approaches to homelessness', so that their capacity to deliver these objectives in practice, and their strengths and limitations, can be explored. First, the philosophical distinction between *'natural'* or *'moral'* versus *'positive'* or *'legal rights'* is explained and connected to alternative approaches – deontological and consequential - to ethics. This discussion aims to clarify the variety of things described by the terminology 'rights-based approaches to homelessness'. Focusing on one specific kind of 'rights-based approach to homelessness' (individually enforceable legal rights), the second half of the chapter considers key arguments in favour of pursuing such an approach, and replies to such arguments. The chapter closes by drawing out five research questions that provide the framework for the rest of the thesis.

2.2 Deontological ethics: from natural to human rights

Natural or doctrinal rights refer to a set of universal, inalienable rights that every human being is born with (Dean, 2002, p7; Norman, 1998, p188). According to advocates of this traditional liberal notion of rights, rights are held by individuals *"simply by virtue of being a person (human being)"* (Donnelly, 1982). They are fundamental moral rights, not dependent upon society, law or policy. John Locke (1690) identified life, liberty and property as natural rights of this sort.

Notwithstanding certain differences in emphasis – specifically a greater emphasis on civil and political rather than social rights in Lockean natural rights theory - human rights are generally considered to be the contemporary successor to natural rights (Donnelly, 1982; Cohen, 2003). Echoing natural law theory, human rights have tended to be seen as founded on ideas about human nature, and more specifically, human dignity and respect (Donnelly, 1982, p397; cf. Turner, 1993). In the specific field of housing, Kenna comments: *"International human rights are based on the inherent dignity possessed by every human being, and provide a moral compass for the development of housing law and policy across the world"* (2011, p220). Statements about natural and human rights then, are moral statements about human beings.

'Moral rights' of this kind can be thought of as reflecting a deontological approach to ethics, according to which an action is right or wrong on the basis of moral rules or moral duties or obligations we have to do that action. Whether such an action is right or wrong – its 'ethical value' - is independent of its consequences. A rights-based approach is most often interpreted as deontological because rights can be seen as rules or 'side constraints'

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[1] As opposed to civil or political rights (also described as 'first generation' rights), which include the right to freedom of speech, procedural justice and the right to vote (Marshall, 1949/1992; see also Plant, R, 1998).

that limit the actions that can be taken in order to pursue other goals (Dworkin, 1977, Kymlicka, 2002). People must be treated as ends in themselves, not means to other people's ends, according to Kant's famous formulation: this imposes 'moral limits' on human behaviour, establishing *"a bottom-line of what is acceptable"* irrespective of the consequences of following these moral norms (Van Staveren, 2007, p23).

Discourses on human rights have been influential in housing policy and homelessness specifically, with homelessness now widely understood as "*a denial of fundamental human rights"* across Europe (FEANTSA, 2010a, p1; see also Committee of the Regions, 1999; Kenna, 2005). Whilst conceptually human rights operate in the 'universal realm' (Fitzpatrick and Watts, 2010), this discourse of homelessness as a human rights issue is most dominant in Europe and in particular remains weak in discussions about homelessness in the US (Holms, 2001; Tars and Egleson, 2009; Byrne and Culhane, 2011).

Various international and European human rights instruments articulate the current and ambitious account of the content of human rights that has evolved over the twentieth century (Cohen, 2003), and housing rights[2] (variously formulated and including a 'right to housing') have emerged as an integral element within this (Kenna, 2011, p515).

Article 24 of the United Nations Universal Declaration of Human Rights (1948) states for example that *"Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care and necessary social services"* (cited in Dean, 2002, p11; see also Kenna, 2011, p515-517). Furthermore, the UN International Covenant on Economic, Social and Cultural Rights (1966) the Charter of Fundamental Rights (European Union) (2000) and the European Social Charter (Council of Europe) (1961, revised in 1996) incorporate obligations on ratifying states relevant to the right to housing (see Kenna, 2005; Hunter, 2010).

Article 31 of the Revised European Social Charter (1996) obliges ratifying states to take measures designed to promote access to housing of an adequate standard, prevent and reduce homelessness with a view to its gradual elimination and make the price of housing accessible to those without adequate resources. FEANTSA has bought collective complaints (a mechanisms introduced under the charter) against France and Slovenia for their failure to comply with the charter (Kenna and Uhry, 2008; FEANTSA, 2010c). More widely, FEANTSA has undertaken a range of activities to promote housing rights and rights-based approaches to homelessness, including establishing an Expert Group on Housing Rights, a database of international case law and the Housing Rights Watch network (see Fitzpatrick and Watts, 2010).

An important critique of understandings of rights as moral statements about human beings concerns the ontology of such rights, questioning claims regarding their status as 'natural'. Those who advocate 'moral rights' rely on accounts of their 'naturalness' to secure their status as fundamentally important and inalienable. Nevertheless, they remain open to responses that these rights are not in fact fundamental, but merely claimed by their proponents (Ross, 1974). Any consensus regarding such rights reflects not that they are intrinsic to human nature, but that such a consensus has been socially and politically negotiated (Dean, 2002). Indeed, the claim that such rights describe moral truths about human beings is at least questionable from a philosophical point of view, and ignores persistent debates about the epistemological status of moral statements and about what specific moral rights people are owed (Norman, 1998).

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[2] 'Housing rights' refer to a broader set of rights including rights protecting tenants from unlawful eviction. The 'right to housing' refers more specifically to the right for homeless people to access housing (Bengtsson, 2001; Kenna, 2005; Fitzpatrick and Watts, 2010)

It would seem after all that the content of human rights is not self-evident (Lukes, 2008), as reflected in debates about housing rights: the Habitat II Conference in 1996[3] for example hosted disagreements between the US and the EU over the right to housing (Committee of the Regions, 1999). On this basis, claims about moral rights, the best distribution of resources and the correct aims of welfare states and non-governmental organisations ought to be subject to open debate (Dean, 2002).

Norman (1998) has proposed a more robust route to establishing the content of moral rights, based on a convincing account of what constitutes a 'good human life'. He proposes that by determining in rational and objective ways what people's *needs* are, a derivative concept of rights can be developed (Norman, 1998, p189). Others similarly identify a close connection between needs and rights. According to Gough:

> *If human needs are universal preconditions for participation in social life, we contend that all people have a strong right to need satisfaction. This follows because …. It is contradictory to ask of someone that they fulfil their social duties, yet to deny them the prerequisite need satisfaction which will enable them to do so. This is why social rights of citizenship follow from an unambiguous concept of human need* (1998, p52).

Similarly, Dean argues that *"when, as human beings, we name our needs there is a sense in which we implicitly claim a right to the means to satisfy those needs"* (2010, p142, see also Dean, 2007). Others see the equation of needs with moral rights as problematic (McLachlin, 1998). According to Ignatieff (1984) for example love, belonging, dignity and respect are all things that people need, but which cannot be provided within a framework of rights (see chapter three for further discussion about the concept of 'need').

Much work has been undertaken in seeking to arrive at such an account of basic human needs (Doyal and Gough, 1991), or to use an alternative terminology 'capabilities' and 'functions' (Nussbaum, 1992). McNaughton Nicholls (2010) discusses this body of work in her consideration of the role of housing in enabling a 'well-lived' life, advocating a 'moderate essentialism', according to which people do share an inherent nature and a set of functions required for them to flourish, but without presupposing any unchanging natural order of things. Rather, what those functions are may change over time and in different contexts (Sayer, 1997). There may then be ways to establish a defensible account of the content of 'human rights' based on ideas about human need and the 'well-lived' life, ways that allow for the content of human rights to evolve and change according to context. Such approaches are particularly important as the status of moral rights as self-evident, inalienable and natural cannot easily be maintained in a 'post-metaphysical age' (Lukes, 2008; Fitzpatrick and Watts, 2010).

2.3 Consequentialist ethics: from moral rights to legal rights

Deontological moral theories are normally understood in contrast to consequential approaches, which judge actions in terms of their consequences and in the case of utilitarianism, their contribution to the maximisation of human well-being (Norman, 1998). According to such an approach, an action should be pursued not because it realises some moral obligation, right or duty, but because it achieves desirable outcomes. The core criticism of a utilitarian approach is its failure to be concerned with the distribution of (rather than overall) outcomes and as such, to respect people as ends and not means (this is of course often viewed as the key strength of rule-bound deontological ethics).

A consequentialist perspective in this field directs attention to the capacity of current institutional arrangements to enforce and realise social rights (see Cohen, 2003). Issac

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[3] A United Nations conference focusing on the priorities of adequate shelter for all and sustainable cities.

(2002), drawing on the work of Hannah Arendt comments: *"those very rights long considered universal and attached, as it were, to individuals by virtue of their very humanity, require for their existence institutional supports that are utterly contingent and by no means universal"* (p509). Arendt (1973) writing after two world wars that had prompted the ascendance of the human rights discourse, exposed its limits, hypocrisy and *"hopeless idealism"* (p269) pointing to:

> *the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as 'inalienable' those human rights, which are enjoyed only by citizens of the most prosperous and civilised countries, and the situation of the rightless themselves* (Arendt, 1973, p279).

Writing specifically about housing rights and sympathetic to these critiques of the human rights discourse, Kenna (2005) focuses on the ways in which institutional reform could narrow this gap and help realise housing rights within and beyond[4] nation state boundaries. Whilst enforceable rights on a global scale aren't a current reality, citizenship of this form is at least conceivable (Klausen, 1995; Isaac, 2002) and ideas about human rights may provide a useful tool – and if their foundation is in dispute, a 'useful fiction' (Fitzpatrick and Watts, 2010) - in moving towards better systems of international governance and accountability that enable the enforcement of such rights.

Leaving behind any notion of 'moral rights', many who have considered the question of rights have, within a legal positivist tradition, refused to separate the *nature* and *content* of rights from the *mechanisms* that exist to realise them:

> *Rights do not come into existence merely because they are declared. They come into existence because they can be enforced. They can be enforced only where there is a rule of law... Outside the nation state those conditions have never arisen in modern times... When embedded in the law of nation states, therefore, rights become realities; when declared by transnational committees they remain in the realm of dreams – or, if you prefer Bentham's expression 'nonsense on stilts'* (Scruton, 2006, p20-21).

Scruton sees the notion of human rights as absurd in the absence of mechanisms of accountability and enforcement of international law as it stands. According to this perspective, the human rights discourse has appropriated the language of rights in the absence of the institutional mechanisms that make rights what they are – individually enforceable legal entitlements. In the case of moral rights, the question of whether and which rights exist is quite separate from the questions of who (if anyone) enforces them: nation states as well as international organisations, play a mediating role in *articulating* and *enforcing* these rights, but are not the source of them. For those focusing on legal rights, nation states and their institutions are both the source and guarantor of these rights.

2.4 'Programmatic' and 'juridical' rights

Not all rights that find their expression through the nation state and in law are guaranteed entitlements however. A distinction must be drawn between *programmatic* rights and *'juridical' legal* rights, sometimes known as 'black letter' rights. Black letter rights are substantive entitlements to goods or services owed to individuals by the state that are enforceable through the domestic court system: where such rights exist, the judiciary has the capacity to review the lawfulness of specific decisions made or actions taken by public bodies and in cases where individuals feel their legal entitlements have not been, met they can seek such judicial review and redress.

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[4] Indeed, this is one of the key strengths of the human rights discourse – it's capacity to highlight the needs of displaced, 'stateless' and 'rightless' people (asylum seekers for example) (Isaac, 2002).

By contrast, *programmatic* rights (Mabbett, 2005) - often finding expression in national constitutions - "*express goals which political actors… agree to pursue*" (Mabbett, 2005, p98), committing the state "*to the development and implementation of social policies, rather than to the legal protection of individuals*" (Kenna and Uhry, 2006, p.1; see also Glendon, 1992). They constitute, according to Bengtsson, 'political markers of concern' (Bengtsson, 2001). In the case of homelessness for example, several countries (Belgium, Finland, Portugal, Spain and Sweden) articulate a 'right to housing' in their constitution, but these 'rights' remain unenforceable for individuals (Fitzpatrick and Stevens, 2007; Sahlin, 2005).

Viewed from within the legal positivist tradition, such rights are not rights at all as they flout the common law maxim 'no rights without remedy' (Fitzpatrick and Watts, 2010). Glendon comments that programmatic rights are a continental (and in particular, Scandinavian) model, "*unfamiliar and uncongenial*" to a US audience, for whom it would be "*almost inconceivable that constitutional welfare rights [would be regarded] as purely aspirational*" (Glendon, 1992, p532). From a UK perspective, Lister (2004) argues that rights that are not enshrined in concrete legal entitlements can "*generate a symbolic rhetorical force that appeals to the imagination*" (p159) and support the demands and needs-based claims of those people living in poverty (p162). Furthermore, Bengtsson (2001) defends the inclusive and universal nature of programmatic rights - which seek to create conditions in which the needs of all households can be met - over the selective and targeted nature of legalistic welfare rights.

2.5 'Rights-based approaches to homelessness'

The discussion above has sought to clarify and separate various understandings of social rights, as 'moral rights', 'legal rights' or 'programmatic rights'. The language of 'rights' is used in various ways that reflect different philosophical foundations and institutional requirements. The key point here is that whether or not a moral philosophy based on natural or human rights is adopted, the question of whether *legal* rights achieve socially desirable outcomes is an empirical one (the specification of those outcomes remains, of course, a normative questions).

FEANTSA's handbook for policy makers identifies 10 approaches important in developing 'integrated approaches to homelessness', including a 'rights-based approach' (FEANTSA, 2010a, p23). Melding together elements of the different strands of thinking above, they describe such an approach as involving the "*use of international treaties on housing rights as a basis for developing a homeless strategy*" and a "*focus on enforceable right[s] to housing to ensure the effective exercise of the right to housing*" (FEANTSAa, 2010, p23). Similarly, in the 2008 annual report on housing policy in Ireland, FEANTSA advocate a rights-based approach, arguing that it would "*ensure that housing need is acknowledged as not merely being denied access to a commodity but to a basic human right*" (FEANTSA, 2008, p37). Kenna (2005) employs an explicitly deontological justification of rights-based approaches to housing, arguing that housing rights provide a counterweight (or 'side constraint') to neo-liberal consequentialist concerns to maximise profits, market competitiveness, efficiency and cost-effectiveness (p9).

This ambiguity and complexity around ideas about 'rights-based approaches to homelessness' makes the task of understanding how such approaches work and the benefits they offer a complex task. This thesis however approaches this exercise through the lens of individually enforceable *legal* rights to housing for homeless households. The endeavour seeks to evaluate the extent to which such approaches achieve better outcomes than alternative approaches and is therefore firmly rooted in the consequentialist mode of thinking. What follows is an empirical investigation of the efficacy of legal rights as a policy tool in responding to homelessness, not a philosophical investigation of the right to housing as a moral statement about human beings. The next section explores social rights

qua legal rights in more depth, before considering their application and prevalence in the field of homelessness.

2.6 Legal rights, social policy and homelessness

The development of the welfare state can be traced in terms of the expansion of goods and services available to citizens as a matter of right (Marshall, 1949/1992). Certain key social goods are 'decommodified' through collective compulsory provision by the state (Marshall, 1949/1992; Dwyer, 2004b; Goodin, 1986). According to Marshall, social rights stand in dynamic tension with capitalism and the inequalities it creates, offering a way of to mitigate (though not eliminate) the worst excesses of capitalism by altering the distribution of income and wealth that the economic system generates. Tobin argues that people's willingness to accept inequality is tempered by 'specific egalitarianism', that is, the idea that *"certain specific scarce commodities should be distributed less unequally than the ability to pay for them"* (Tobin, 1970).

These social rights range from *"the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society"* (Marshall, 1949/1992, p71-2). Typically, healthcare, education and a basic income are all provided through the welfare state as a matter of right. In most developed countries, citizens enjoy a bundle legal rights relating to housing, ranging from a right to purchase and own property and rights protecting homeowners from eviction and repossession, to tenants' rights in the private and social rented sectors. These range from rights to assistance with the payment of housing costs for those on low incomes, to protections against unsatisfactory housing conditions (see Dean, 2002, chapter 7).

Establishing a right to housing itself has been more controversial however, in part because of the contested status of housing as a market commodity and a welfare good. Housing is seen as both an important element of citizens' welfare, *and* something which should be distributed according to consumer preferences and market dynamics (Bengtsson, 2001). This ambiguity underpins housing's status as the 'wobbly pillar' between the state and the market (Torgerson, 1987; Franklin, 1998; Hunter, 2010).

Reflecting this, legal rights to housing for homeless people are rare internationally (Fitzpatrick and Stephens, 2007). Where such rights do exist, in the main they entitle homeless households only to emergency accommodation rather than settled housing. Under police laws, German local authorities are legally obliged to accommodate those who would otherwise be roofless. Social welfare laws in Sweden, Poland and Hungary provide enforceable rights to emergency accommodation for those who are roofless, or in the case of Hungary, whose 'physical well-being is at risk'. In the United States, one city – New York City – has a legally enforceable right to accommodation for the 'truly homeless' who have nowhere else to go (Fitzpatrick and Stephens, 2007; Fitzpatrick and Watts, 2010).

Legally enforceable rights to *settled* or *permanent* accommodation for homeless households are rarer still, with the only clear examples of such an approach being the UK and France. Helenelund (2008) has argued that Finnish legislation delineating the state's obligations to specific vulnerable groups (for example, mental health patients and those with substance abuse problems) in fact give such individuals an individually enforceable right to accommodation, but litigation demonstrating the enforceability of this right is *"very difficult to find"* (p26).

The enforceable right to housing in France (known as the DALO) was introduced though emergency legislation in 2007 after voluntary sector campaigning activity and media pressure forced a government response. Certain priority groups (including homeless people) have benefited from these rights from 2008 and as of 2012 all social housing

applicants who have experienced 'an abnormally long delay' in being allocated accommodation can seek to enforce their right to housing through a two stage appeals process, first through a mediation committee and where accommodation is still not provided, through an 'appeal to judicial review' to the administrative court (Loison-Leruste and Quilgars, 2009). Those considering the mechanism through which this right to housing is to be vindicated have raised concerns about its implementation (Loison-Leruste and Quilgars, 2009), although clear evidence speaking to the difference the DALO has made is not yet available. Evidence to date suggests that the numbers accessing housing through this route are far lower than anticipated, although the reasons for this are at present unclear (Olds, 2010).

The UK established a legally enforceable right to settled housing for some groups of homeless households in the Housing (Homeless Persons) Act (1977). In England, the legislation[5] imposes an obligation on local authorities to provide *"suitable temporary accommodation which lasts, in most cases, until 'settled' housing becomes available"*, although in practice settled housing is almost always secured by the local authority (Fitzpatrick and Stevens, 2007, p58). Historically, the legal duty has tended to be discharged by offering the homeless household a social rented tenancy. Measures introduced in the 2011 Localism Act however enable local authorities to discharge their duty into a private rented tenancy of 12 months without the consent of the applicant (Fitzpatrick, et al., 2012a).

The right is owed to households who meet four qualifying criteria: they are eligible (certain people from abroad are ineligible, including asylum seekers[6]), they are homeless, they are in 'priority need', and they did not become homeless 'intentionally' (i.e. did not bring about homelessness by their own action or inaction). The definition of homelessness is wide by international standards, including households residing in accommodation it is not 'reasonable' to expect them to occupy (due to the risk of violence for example), but the full statutory duty is reserved for 'priority need' groups, which include households that contain dependent children or a pregnant woman; young people aged 16/17; 18-20 year olds formerly in local authority care; 'vulnerable' adults; and households made homeless by an emergency, for example flood or fire (see Fitzpatrick and Stevens, 2007 and Loison-Leruste and Quilgars, 2009)[7]. Where an applicant passes all these tests, a local authority can in most circumstances transfer the duty to another authority if the applicant does not have a 'local connection' where they have presented (Fitzpatrick and Pleace, 2012).

The presence of these multiple qualifying criteria have led some to criticise the framework. They reflect the political context in which the legislation was passed: strong opposition to the bill and the risk that extended debate would mean it didn't get through parliamentary proceedings led to compromise (Raynsford, 1986; Loveland, 1992/1995). The final Act was described by some MPs at the time as *"a little bit of window dressing"*, *"contaminated almost to an intolerable extent"* and *"the worst-drafted, worst-constructed, worst-conceived and worst prepared Bill [one MP] had ever seen"* (Robson and Poustie, 1996, p46). Dean (2002) describes the rights as *"complex and qualified"* (p138) and Mullins and Niner (1998) go further, arguing that the highly differentiated rights can hardly be regarded as a 'prize of citizenship' (see also Cowan, 1999).

Nevertheless, from an international perspective the framework of rights in England (and the rest of the UK) is generous: the definition of homelessness is wide and crucially, the rights are legally enforceable (as opposed to programmatic) (Fitzpatrick and Stephens,

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[5] In England, the legal framework was re-enacted in the Housing Act 1985 and modified by Part 7 of the Housing Act 1996. Part 7 was amended by the Homelessness Act 2002.
[6] Asylum seekers are provided with support through the National Asylum Support Service. Those granted refugee status have the same entitlements under the legislation as UK nationals.
[7] Priority need groups are slightly different in Wales and Scotland.

2007; Hunter, 2010). In England, homeless applicants are entitled to an internal review of the local authority's decision within 21 days of the first decision; a statutory appeal to the County Court (on a point of law); and judicial review through the courts' supervisory jurisdiction (Loison-Leruste and Quilgars, 2009). Indeed, since 1977 a very substantial body of administrative case law has been generated by the statutory homelessness provisions (Loveland, 1992; Robson and Poustie, 1996).

Devolution within the UK has led to significant divergence in homelessness policy and law (Wilcox, et al., 2010; Fitzpatrick, et al., 2012c). Developments in Scotland have been particularly noteworthy in relation to the statutory rights afforded to homeless households: policy makers have both built upon and 'radically diverged' from the existing legislative framework, widening and deepening these legal rights and establishing what is seen as a ground breaking, inclusive and progressive rights-based approach to homelessness (Pawson and Davidson, 2008; Anderson, 2012). The focal point of these reforms has been the gradual phasing out of the 'priority need category' – the key rationing device under previous legislation - meaning that from December 2012 virtually all homeless people in Scotland are entitled to settled housing through their local authority, a duty normally discharged through the allocation of a social housing tenancy (Fitzpatrick et al, 2009). The resulting policy framework provides an inclusive and extensive legal safety-net for those experiencing homelessness (Anderson, 2009). The policy and legal framework established by these reforms is discussed in chapter five of this thesis and will therefore not be discussed further here.

There are then, few examples internationally of approaches to homelessness based on legally enforceable rights to housing, and the specific impact of these kinds of approaches on the experiences of homeless households – and overall housing outcomes - is not yet entirely clear (Fitzpatrick and Pleace 2012 offers one exception, exploring the impacts of the English statutory homelessness system. See below). In particular, the advantages that legal rights to housing offer over alternative approaches to homelessness have not been sufficiently explored. Nevertheless, there is a growing sense that such approaches are the best way to respond to homelessness (Anderson, 2009; Kenna, 2005; Loison-Leruste and Quilgars, 2009; Fitzpatrick and Watts, 2010; FEANTSA, 2010a/2012; Bratt, et al., 2009): claims regarding the self-evidence of *moral* rights to housing appear to have seeped into talk about legal rights as a policy approach.

The next section interrogates this orthodoxy, exploring the why legal rights to housing may offer the best response to homelessness and identifying the empirical differences that advocates of such approaches expect them to achieve. The case against legal rights is then considered, drawing on ideas about the limitations of 'legalistic' approaches to welfare provision. This discussion will lay the foundation for the research design and empirical investigation that follows.

2.7 The case for a legal rights-based approach to homelessness

Anderson (2012) draws a distinction in the specific field of homelessness between rights-based, legal approaches and *"'softer' policy instruments such as offering financial incentives to local agencies to assist homeless households or otherwise encouraging 'enabling' approaches at the local level"*. 'Softer' policy approaches to homelessness rely on local authorities and municipalities to take action; to utilise the funds made available; and to act in accordance with national strategies, but do not *oblige* those authorities to do anything or *guarantee* citizens any kind of assistance. This distinction references fundamental and enduring debates in social policy regarding the correct balance between discretionary and 'rule bound', legalistic approaches in the design and delivery of welfare services (Donnison, 1977; Titmuss, 1971; Goodin, 1986; Walker, 2005). This section first makes some clarifying points regarding the difference between such approaches, before considering substantive arguments in favour of rights-based responses to homelessness.

According to Goodin, discretion *"refers to an area of conduct which is generally governed by rules but where the dictates of rules are indeterminate. In short, discretion refers, negatively, to a lacuna in a system of rules"* (Goodin, 1986, p234). It should be noted that discretionary approaches do not imply that public officials can act in any way they see fit or make arbitrary decisions: discretionary decisions remain subject to principles governing the proper exercise of discretionary powers (and must therefore be proportionate, consistent and based on the consideration relevant factors for instance) (Loveland, 1992; see also Robson and Poustie, 1996). In addition, discretionary approaches to welfare remain regulated in a variety of ways (Fitzpatrick and Wygnańska, 2007). Discretion therefore doesn't imply *license,* but that officials are able to choose between two or more equally valid courses of action (Goodin, 1986; Walker, 2005).

It is frequently emphasised that *"discretion is inherent in welfare delivery, even in the most apparently rule-bound system"* (Brodkin, 1997, p4). There is perhaps then a continuum, rather than a stark choice between discretionary and legalistic or rule-bound approaches in social policy (Jones, et al., 1978; Smith and Mallinson, 1996; Evans and Harris, 2004). According to this point of view, the *implementation* of a rights-based policy for example will involve discretion to a greater or lesser extent (Goodin, 1986). In this vein, however, Donnison (1977) distinguishes between *judgement* and *discretion*: judgement involves the *interpretation of rules* (for instance, the decision as to whether a particular individual is in fact homeless). Discretion on the other hand, leaves space within a system of rules for officials to make a decision as they see fit (see also Booth, 1996, p111). According to Donnison, whilst judgement cannot be avoided in public bureaucracies, discretion can be reduced (and even eliminated) by rules restricting its scope (1977, p534).

A further relevant distinction should be made between *discretionary* and *charitable* modes of provision. Discretionary provision refers to welfare goods or services provided and delivered by the state, but not within a legalistic, rights-based and heavily rule-bound model. Charitable provision refers to goods or services provided independently by organisations in the non-profit, or voluntary sector. The blurring of this distinction reflects in part the professionalization and governance of the voluntary sector over the late twentieth century, as they have increasingly taken on statutory service provision on behalf of (and funded by) the 'dispersed' state and been subjected to processes of procurement and performance management (see Carmel and Harlock, 2008). The association and sometimes conflation of discretionary and charitable provision may reflect that beneficiaries of both kinds of provision can be seen as passive recipients of charity or government largesse, rather than legitimate claimants of entitlements, as in the case of rights-based provision (Le Grand, 1997; Lister, 2004; Fitzpatrick, 2005b). This thesis is particularly concerned with difference between legal rights and discretionary *statutory* provision in the field of homelessness services, although such services may be provided *through* voluntary sector organisations.

Discretionary policies may nevertheless be seen as *public* charity – something recipients should be *grateful for* rather than have a *sense of entitlement to* (Lewis and Smithson, 2001) - and therefore be vulnerable to the same critiques as 'private charity' (Plant, 1998, p58). Debates endure concerning the legitimacy of a sense of entitlement among recipients of services: in some spheres, such a disposition among services users or claimants seems uncontroversial (in health care for instance), but in others – including homelessness – it is more controversial. This is likely to reflect the stigmatisation of specific groups of welfare claimants and contrasting public attitudes on the extent to which various groups *deserve* or *merit* publicly funded assistance. In more theoretical debates, different perspectives on welfare users having a sense of entitlement can also be distinguished. On the one hand, it may be seen that welfare recipients having a sense of entitlement to statutory services that meet their needs is both legitimate and desirable (Gough, 1998, p52; O'Brien and Major, 2009, p430; Kenna, 2011, p572). On the other, welfare rights (and therefore the legitimacy of a sense of entitlement) are often understood as being normatively dependent

upon certain responsibilities being met (Giddens, 1998; Dean, 1998; Dean, 2007). Further still, a sense of entitlement among recipients of services may be deemed *always* undesirable, because it may promote dependence on statutory welfare provision and dull incentives to be self-reliant (Plant, 2003).

Returning to debates regarding the efficacy of rights-based versus discretionary approaches to social policy, according to Brodkin (1997), *"discretion is axiomatically neither good nor bad"* (p4), because how and to what ends public officials and service providers employ discretion will be contingent on various factors. Nevertheless, Jones, et al. (1978) characterise the development of social policy as, in part, a gradual movement from discretion to legalism (see also Loveland, 1992; Adler, 1997) and rights have come to be seen as the preferred alternative to "*more odious forms of official discretion*" (Goodin, 1986, p232). Various arguments underpin the frequent presumption in favour of rules and rights over discretion. The focus here is on arguments that rights-based approaches lead to better consequences for homeless households, and more specifically that they have a positive impact with respect to a) meeting the material needs of homeless households, and b) 'empowering' homeless service users; and c) combatting the stigma of homelessness.

a) Meeting the material needs of homeless household

A key concern with discretionary approaches to welfare provision is that the decisions of state actors about how to distribute social goods and resources will reflect their *"personal suspicions"* and *"biased evaluations of social worth"* (Brodkin, 1997, pp. 3-4, see also Goodin, 1986), rather than intended policy objectives. In particular, in the case of policies responding to homelessness, discretion among service providers may subvert one of the key intended aims of homelessness policies – to rehouse homeless households and meet their housing needs. Focusing on the allocation of social housing, Smith and Mallinson (1996) describe how in Britain in the 1970s/80s, discretion was:

> *depicted as the bug in the system - a source of deviance which allowed short-term management goals to compromise the principle of social justice. It was the smokescreen behind which housing departments infused an agreed hierarchy of needs with a range of other, more dubious, allocative principles* (p341).

Indeed, housing policies across Europe have been shown to often fail to adequately address the needs of homeless households and those experiencing the most severe forms of housing exclusion, even where social housing is potentially available to fulfil such a role (Pleace, et al., 2012).

Available evidence suggests that legally enforceable rights to housing, such as those in England and France, offer *"considerable potential to increase access to housing for homeless people"* (Loison-Leruste and Quilgars, 2009, p96). A survey of families rehoused through the statutory homelessness system in England has shown improved outcomes in terms of housing standards, health and quality of life (Fitzpatrick and Pleace, 2012). In their comparison of American and Scottish approaches to homelessness, Tars and Egleson (2009) - as well as forwarding a deontological position that human beings have a basic human right to housing – argue that government programmes in the U.S. *"are a piecemeal solution representing a discretionary approach"* (p214). They criticise what they call a '*charity model*', arguing that it *"laments the current conditions of housing crisis but fails to provide the accountability necessary for ending it"* (p216).

It has been suggested that public officials will use their discretion to balance the demands of their work with the resources available to meet them (Donnison, 1977; Lipsky, 1980; Smith and Mallinson, 1996; Brodkin, 1997): in this context, legal rights give those administering welfare the incentive to balance heavy workloads and other pressures with the requirements established by a rights-based framework (De Wispelaere and Walsh,

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2007). One of the key arguments in favour of legal rights then, is that they may better meet the needs of those in housing need than alternative approaches.

b) 'Empowering' homeless service users

One of the posited reasons for this is that legal rights-based approaches are 'empowering' (Kenna, 2005; Fitzpatrick, 2005b). Criticisms of discretionary policies often point to the lack of *power* held by recipients vis-à-vis service providers in this model: those who administer welfare goods or services have power over claimants because they have an effective sanction against them (Spicker, 1984, p82), i.e. they can either deem them eligible for assistance/receipt of the good, or not (see also Donnison, 1977). Goodin (1986) describes how this power dynamic creates opportunities for manipulation and exploitation of welfare recipients; allows for arbitrary and potentially unjustified decision making; leaves welfare recipients uncertain of the assistance they will receive and thus insecure; and allows service providers to intrude into welfare recipients' private lives in search of reasons to use their discretion one way or another (see also Brodkin, 1997). Furthermore, this power extends beyond the welfare provider's control over the recipient's access to specific welfare goods or services: the notion that social welfare is a gratuity provided by the state means that it can legitimately be made subject to whatever conditions the state sees fit to impose (Reich, 1965, p1245).

Legal rights, of course, can be - and according to Dwyer (2004a) increasingly are - conditional and selective (see below) and therefore subject to some of the criticisms above. For example, Lidstone (1994) emphasised the discretion afforded to housing officers operating *within* the 1977 framework of statutory rights for homeless households in the UK (see also Hunter, 2010), identifying a risk that individual attitudes and negative stereotypes may infiltrate the decision-making process, creating barriers to the equal treatment of applicants (Lidstone, 1994, p469, see also Lipsky, 1980). More generally, Goodin (1986) argues that legal rights cannot in and of themselves overcome the substantial issues associated with discretion (see above): he concludes that these issues (concerning manipulation and exploitation; arbitrary decision making; uncertainty and intrusion) are insurmountable and insoluble (p259) and result not from discretion *per se*, but from attempts to *"make sure that assistance is granted to everyone who needs/deserves assistance, and **only** to those who need/deserve it"* (Goodin, 1986, p259, emphasis in original). He concludes that the only means to avoid these issues, is to circumvent them (rather than seek to resolve them), by applying a 'meta-rule of generosity' (over the top of a rule-based, not discretionary approach) according to which bureaucrats systematically err on the side of generosity *"anxious to ensure that everyone who needs/deserves benefits gets them, but… utterly unconcerned to ensure that only they receive them"* (1986, p259).

Against Goodin (1986), the weight of opinion perceives some role for legal welfare rights in creating a counter-hierarchy of power in the context of delivering various forms of social assistance, mitigating the potential lack of transparency of purely discretionary approaches; providing clarity in terms of assessment criteria; establishing clear channels of accountability; and giving service users an effective sanction against those administering them (a legal right and associated means of redress when those rights are not met). The entitlements that rights-based approaches bestow give them a *"right of action"*, as opposed to the services they receive being *"considered simply as a political issue, or a bureaucratic issue that relies entirely on administrative or discretionary managerial action"* (Kenna, 2005, p8). According to this line of thinking, rights empower service users, providing a weapon for challenging inequalities in power (Lister, 2004; Fitzpatrick, 2005b).

c) Combatting the stigma of homelessness

A further key argument underpinning justifications of rights-based approaches is that providing welfare benefits as a matter of discretion stigmatises recipients, whereas receiving them as a matter of right does not. That discretionary modes of provision are stigmatizing relates in part to the power dynamic described above: service users who are beneficiaries, rather than rights-holders, lack the social status (both subjective and objective) associated with claiming entitlements. Moreover, there is an implied debt of gratitude as the beneficiary is unable to honour the norm of reciprocity. As such, the giver gains status, and the receiver loses it (Spicker, 1984, p98). This lower status is emphasised by the fact that discretionary social welfare tends to be delivered selectively to the group that needs it. That group is therefore separated out from other citizens and becomes labelled as dependent (Spicker, 1984, ch3). This stigma may serve an important social function, controlling *"the undesirable behaviour of individuals, in cases where that behaviour is itself detrimental to other people [...or] inconsistent with the maintenance of the social structure"* (Spicker, 1984, p118).

Advocates of rights-based approaches reject this view, tending to see poverty as a symptom of structural factors rather than (or in addition to) individual behaviour (Jones, et al., 1978). Furthermore, the defence of the role of stigma in reinforcing preferred modes of behaviour is rejected due to the damaging effects of stigma, which may encourage people to deny their problems and avoid seeking help, and lead to harassment and humiliation (Spicker, 1984, p118). Lister (2004, pp. 117-119) adds that stigma can overshadow relationships with other people (especially those not in a similar position of need and official agencies) and internalised stigma can affect self-esteem and identity, fostering a sense of shame and humiliation.

Rights-based approaches, it is argued, overcome this problem of stigmatisation (Dwyer, 2004b, p9) and safeguard the self-respect of welfare recipients (a 'primary good'[8] in Rawls' Theory of Justice, 1971/1999). According to Feinberg (1980, cited in De Wispelaere and Walsh, 2007, p531) the act of claiming rights may *itself* foster a sense of self-respect and personal dignity among welfare recipients. To adopt Lister's (2004) terminology, rights become a key instrument in supporting a 'politics of recognition' that affords dignity to those living in poverty and using welfare services (see also Honneth, 1995; Dean, 2000). The psycho-social significance of legal rights is acknowledged by Tars and Egleson, who argue in the context of homelessness policies that rights-based approaches provide a *"psychological cushion of knowing there is a social safety net (which) is an essential component of maintaining basic human dignity"* (p213). That recipients claim welfare as a right, reflects their *equal* status as a citizen rather than their unequal status as a dependent (Spicker, 1984, p183). According to these arguments, rights help mitigate the stigma of homelessness.

2.8 The case against a legal rights-based approach to homelessness

Despite the weight of opinion supporting the idea that legal rights help achieve a gamut of desirable social outcomes, some depart from this view. At the broadest level, legal welfare rights may fail to distribute goods and services in a way that mitigates market inequalities and the worst excesses of capitalism, as T. H. Marshall (1949/1992) argued was their function. According to Runciman (1996), the *middle* classes have been the main beneficiaries of the welfare state and welfare rights in England. Similarly, in her critique of Marshall's account of social rights, Klausen (1995) highlights the importance of not conflating *redistributive policy* with *citizenship rights* (pp. 245-6). Focusing on Scandinavian welfare states, she argues that social legislation built upon the citizenship

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[8] A primary good is something that is useful to all people, no matter what their conception of the good life may be (Rawls, 1971/1999).

approach was *"designed to appease a broad electoral coalition [and] used selectively when it suited political interests"*, rather than representing an explicit attempt to prioritise the needs of the marginalised or disadvantaged groups (p253).

Legal rights then may not aim to improve - let alone succeed in improving - the lot of those experiencing the most severe forms of social exclusion or disadvantage. Jones, et al. (1978) argue that to properly understand the role of legal welfare rights, the underlying conception of society and the nature of power relations must be made explicit. They distinguish between three such models. In a *consensual model*, rights are unnecessary as the power of the state is benign and discretionary policies will be used to help those in need. If society is characterised by structural *conflict* between those with power and wealth and those without, rights will serve only as a mechanism of social control reinforcing those power hierarchies. If society is *open* and pluralistic, characterised by multiple on-going conflicts between many overlapping groups, rights are essential as a means of managing such conflicts and protecting certain groups.

Assuming socially progressive objectives on the part of the political coalitions that instate legal rights and an open/pluralistic society, the greater fiscal burden such rights place on the state (as compared to political and civil rights) means that realising those rights remains contingent on both on-going political processes and propitious (or at least, adequate) economic conditions (Klausen, 1995; Dean, 2000/2002; Breiner, 2006; cf Kenna, 2011, pp. 124-125). Just as a legislature can instate legal rights, so they can remove them, make them less generous or alter who is 'eligible' for the entitlement[9]. Moreover, administrative processes may reconstitute legal structures in various ways in different local contexts, opening up a gap between law and practice (e.g. Loveland, 1992; Jeffers and Hogget, 1995; Smith and Mallinson, 1996).

This inherent 'conditionality' of legal welfare rights on political will, spending commitments and administrative processes has led some to argue that such welfare rights remain best understood not as 'rights' (*qua* civil or political rights), but as ideals. Jones (1980, p131) defends their status as rights, arguing that it is consistent to hold that if x conditions are met, then there exists a right to a specified welfare good, and in cases where those conditions are not met, no such right exists. He calls these 'prima facie' rights. Indeed, this critique of legal welfare rights as ideals, not rights at all, seems to rest on a conflation of *legal* and *moral* rights: legal rights are not vulnerable to critique *because* they depend upon legal articulation, administrative structures and judicial redress for their realisation. They are defined by just these characteristics.

More practically, there may be barriers that protect existing social rights (advocacy and campaigning from civil society, media coverage and a public backlash) and such reforms would have to survive the process of policy reform. Indeed, from an institutionalist perspective, policy approaches get locked into a process of 'path dependence', which limits the extent to which legal welfare rights can easily be withdraw (Pierson, 2000; Hudson and Lowe, 2009). Fundamentally however, rights-based approaches and the resources committed to realising them are not insulated from political change: indeed, they are socially constructed, contingent on and guaranteed by a set of political institutions.

Critiquing legal rights-based approaches from an alternative standpoint, Bengtsson (2001) draws a distinction between the nature and content of rights to housing in selective and universal housing policy regimes. In a selective housing policy, a right to housing consists of the allocation or provision of housing to those of lesser means who are unable to access

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[9] This is a UK perspective. Where rights are enshrined in a constitution it may be harder to amend or remove these rights. The US constitution is a good example of this, although the rights enshrined within it are in general civil or political rights rather than the kind of legal social rights, which are the focus of this thesis.

it in the general market: rights form a legally enforceable safety net for the worst off, who are directed into a protected market for accommodation (as in the UK and France). While such rights may improve the lot of those who have legal entitlements, they respond to the symptoms of deeper social processes. As Dean (2000) put is: "*[they are] more 'attenuating' than ameliorative or adaptive. They may ease the symptoms of deprivation, but they never cure the causes*" (Dean, 2000, p153).

In a universal housing policy, the right to housing involves state intervention in the functioning of the *general* market, to ensure that all households are able to fulfil their housing needs in that market[10]. Bengtsson points to Sweden as an example of this kind of policy[11]. In such a system, *"instead of granting citizens the formal right to go to court and try to play trumps, the state cares about their capacity to provide for themselves in the market"* (p265). According to Bengtsson, such an approach reflects Marshall's (1949/1992) conception of social rights, as things which are owed by the state to society as a whole, rather than in each individual case (i.e. a legally enforceable right, which is what Marshall's account of social citizenship is often taken to mean) (Bengtsson, 2001, p264).

This distinction between rights in universal and selective housing policy regimes clarifies and emphasises that 'rights-based approaches' cannot be equated with 'universal approaches' to social policy (Thompson and Hoggett, 1996). Legal welfare rights are inevitably both selective and conditional, creating 'insiders' and 'outsiders' regarding legal entitlements to services and resources. As Dean also warns: *"where rights that are fought for involve access to scarce resources, successful action on behalf of one individual or group may be won at the expense of others"* (Dean, 2000, p153). Partly due to the conflation of moral rights and legal rights, legal rights are often perceived or assumed to be inclusive and universal entitlements. In practice, legal rights tend to entitle people to the good or service in question only if they meet specific qualifying criteria. Klausen refers to this as the gap between *"the rhetoric of inclusion and the reality of entitlement policing"* (1995, p261). While the ethos manifested in a *universal* housing policy is one of solidarity, in a selective housing policy, legal rights to a minimal standard of housing are bestowed on a narrow 'residual' group[12].

Such residual approaches raise the possibility of various unintended and undesirable consequences. For example, there have been enduring concerns in the specific case of legal rights to housing for homeless households, that such rights create a 'moral hazard', leading to a perverse incentive for those who do not in fact qualify for these entitlements to manipulate the system (by fabricating or making themselves homeless) in order to gain access to housing (Robson and Poustie, 1996; Fitzpatrick and Pawson, 2007; Fitzpatrick and Pleace, 2012). This concern is distinct from, but related to, wider criticisms that citizenship rights will *"foster the habits of mind and character that lead individuals into poverty and lack of attachment to the labour market"* (Plant, 2003, p160, see also Deacon and Mann, 1999).

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[10] It is often assumed that social rights involve the provision of goods and services by the state at no cost to the rights-holder. In other words, they involve a person being entitled to something without having to pay for it. The National Health Service in the UK, for example, is free at the point of delivery. This is not necessarily the case however (see McLachlin, 1998). Bengtsson's (2001) conception of a 'right to housing' involves the state providing correctives to the market that enable all individuals to access housing, rather than the state providing that good or service itself.

[11] Although he argues that recent reforms are moving the policy approach in a more selective direction (Bengtsson, 2001).

[12] Legal welfare rights in the UK operate within such a residualised model, with the possible exception of treatment under the National Health Service (Dwyer, 2004a, p10-11). Indeed, Dwyer (2004b) argues that welfare entitlements are increasingly dependent on individuals meeting a strict set of behavioural conditions. He describes a process of 'creeping conditionality' that is systematically undermining the idea of inclusive welfare rights.

From an alternative perspective, residual and selective rights-based approaches have also been linked to negative psycho-social outcomes for those targeted by such policies. Spicker explains that *"the problem with selection is that it separates the poor from the rest of society and makes them aware of the separation... whether or not the services are given as right"* (1984, p182). Rights in this context form a safety net for those who cannot compete within the competitive economic system. Drawing on such rights therefore reflects negatively on the capacity of the individual to be self-reliant and independent. Bengtsson draws here on Rawls' (1971/1999) notion of self-respect as a 'primary good': in contrast to those who see legal rights as a source of empowerment and self-respect, he argues that residual and legalistic rights within selective housing policy regimes may themselves stigmatise those who are owed them (Bengtsson, 2001, pp. 265-6).

There are further reasons to be sceptical about the capacity of rights-based approaches to overcome the problems of stigma associated with discretionary forms of welfare provision. Spicker (1984) emphasises that stigmatisation of welfare recipients is not caused just by the kind of systems that deliver welfare (discretionary or rights-based), but by dependency on welfare itself. In the case of homelessness then, it is not (only) a homeless person's use of or dependency upon welfare provision that stigmatises them: it is homelessness itself and the status and reputation of homeless people as a group. As such, even where goods and services are provided to those experiencing homelessness as of right, they will still be stigmatised. Moffatt and Higgs (2007), exploring understandings of entitlement among over 60 year olds in North-east England, found that even when people were legally entitled to particular benefits, asking for such help was associated with begging and charity and felt to be stigmatising.

If dependency itself is stigmatising, then *"the association of stigma with the social services is unavoidable; dependency is inherent in their nature"* (Spicker, 1984, p100). Rights-based policy provision may rest on notions of entitlement and citizenship, but this does not mean that welfare recipients perceive the service as non-stigmatising or that the general population do not perceive that group of service users as stigmatised: *"entitlement is not enough"* (Spicker, 1984, p51). Nor, Spicker adds, do rights-based approaches ensure that welfare providers deliver services in non-stigmatising ways. This chimes with Ignatieff's (1984) analysis of welfare systems founded on individual rights: *"the administrative good conscience of our time seems to consist in respecting individuals' rights while demeaning them as persons"* (p13).

The assertion that rights-based approaches may mitigate the stigma of homelessness has been brought into doubt. The claim that they 'empower' those with entitlements has also been brought into question. Goodin (1986) highlights that rights-based approaches depend upon rights holders having *"legal standing to complain if officials fail to do their correlative duties"* (p255). He goes on that: "*It seems to be sheer folly... to make their getting their due contingent upon their demanding it, since we know so well that (for one reason or another) a substantial number of them will in fact not do so"* (Goodin, 1986, p255). In order to seek redress, welfare recipients must: be aware they have a right; be aware that there is a means of redress; have the resources to take the issue forward; and deem that the effort involved in doing so outweighs the cost. Even robust supports in terms of advice and advocacy will not remove these barriers: they are inherent in a rights-based system. According to this argument, legalistic rights-based approaches are fundamentally flawed as they place the burden of responsibility for ensuring that rights are met in the wrong place: they redistribute power to the people least likely to use it.

Responding to this kind of objection, Reich (1965) emphasises the importance of legal activism on the part of a wider constituency, decoupling the success of legal rights from the capacity of welfare recipients to pursue legal challenges. He advocates a *"constructive alliance of law and social welfare"*, which involves adequate funding of research to

determine when legal changes are needed and lawyers representing clients who cannot pay for such representation (Reich, 1965, p1256-7). Welfare recipients therefore need not be the key activists within a rights-based policy framework, but the success of that framework may depend on wider factors than the mere presence of legal rights.

Critics of rights-based approaches however, typically point to such a 'legal industry' as an argument *against* legal welfare rights. Delivering social welfare policies through legal entitlements risks *"subordinating the substance of social rights to the procedural process of individual redress"* (Dean, 2000, p153) and therefore, it is argued, is likely to direct resources (time and money) into the legal profession and away from service provision and addressing social need (De Wispelaere and Walsh, 2007). More fundamentally, there are concerns that relying on the law as a means for delivering social policy may distort and frustrate the aims of policy, leading to unintended and undesirable consequences, including making welfare services risk-averse, adversarial and process driven (Cooper, 1995, p508-9; Dean, 2002, p157). This is known as 'juridification' (Teubner, 1987). Titmuss articulated these concerns in terms of a defence of the role of discretion in achieving 'creative', personalised justice - as opposed to only proportional justice - highlighting the 'pathologies of legalism' that characterised American approaches to welfare at the time (Titmuss, 1971; Donnison, 1977; Walker, 2005).

2.9 Conclusion

Debates endure regarding the coherence and logic of 'moral rights': for some, claims of moral rights remain 'nonsense on stilts'; for others, such claims amount to moral truths. The ascendance of a human rights discourse has served to reignite these debates. This chapter's first objective was to distinguish between moral rights and legal rights. Whether or not a deontological philosophy based on moral rights is accepted, legal social rights as a policy instrument to achieve socially desirable goals can be assessed empirically from a consequentialist perspective. Ambiguity about what constitutes a rights-based approach to homelessness has at times limited existing debates about the best ways to respond to homelessness.

Focusing on legal rights to housing for homeless households, the chapter then considered available arguments and evidence regarding the efficacy of such approaches, what advocates of legal rights-based approaches claim they can achieve and the counter-arguments to such claims provided by existing literature. Arbitrating between these perspectives requires empirical research to explore the impact of legal rights-based approaches to homelessness in practice: do such approaches leads to better outcomes than alternative policy approaches? In particular, do they overcome or weaken some of the negative consequences of discretionary approaches to welfare provision?

The terrain covered above suggests an empirical investigation of rights-based approaches focusing on four key questions, relating to both the *material* and *psycho-social* impacts of rights-based approaches to homelessness:

1. Do rights-based approaches to homelessness help ensure that those in greatest *need* access suitable housing?

2. Do rights-based approaches to homelessness lead to *juridification* in the delivery of homelessness services?

3. Do rights-based approaches to homelessness ameliorate the *stigma* of homelessness?

4. Do rights-based approaches to homelessness help *empower* those who experience homelessness?

The next chapter reviews key theoretical debates and existing research in order to conceptualise the key concepts (need, juridification, stigma and empowerment) used in these research questions. The discussion in chapter five leads to the identification of a fifth and final research question:

5. Under which normative frameworks can the policies and discourses associated with rights-based and non rights-based approaches be justified?

The thinking informing the specification of this research question is laid out below, but it is given here for the sake of completeness.

Chapter Three Deepening four key concepts: need, juridification, stigma and empowerment.

3.1 Introduction

The research questions framing this thesis include four key concepts: *need*, *juridification*, *stigma* and *empowerment*. Drawing on existing research and theoretical debates, this chapter deepens understandings of these concepts by providing an account of how they are understood and operationalised in this thesis. The conceptualisations presented here offer a framework for the analysis that follows in chapters six to eight. In line with the qualitative research strategy pursued here (see chapter four), these conceptualisations are not proposed as *"fixed empirical referents which are then applied to the real world"* (Bryman 1988, p63), but as 'sensitising concepts' that will act as signposts for the researcher, but also enable these conceptualisations to be refined and placed into context during fieldwork and data analysis.

3.2 Need

Dean has argued that need *"represents a pivotally important concept and, arguably, the single most important organising principle in social policy"* (Dean, 2010, p2). Indeed, welfare states have been in part defined as *"the collective recognition by society of certain human needs, and the organisation of mechanisms to meet those needs"* (Doyal and Gough, 1984, p7). Reflecting on the value of the concept of 'need' in social science research however, Bradshaw comments that it *"has always been too imprecise, too complex, too contentious to be a useful target for policy"* (1994, p45). Despite its imprecision and enduring debates about its meaning, need remains a central concept in social policy generally, and in debates around housing and homelessness policy. This section reviews some of the key conceptual debates around the concept of need, before proposing a framework for understanding and applying the concept in this study.

Various typologies, taxonomies and theories of need have been developed (for example Bradshaw, 1972/1994; Doyal and Gough, 1984/1991; Kenna, 2011). Nussbaum (2003) and Sen's (1980) development of a 'capabilities approach' and Rawls' account of 'primary goods' (1971/1999) - while departing from the explicit language of 'needs' - are also key contributions to this debate. Dean (2010) seeks to bring these perspectives together into *"comprehensible meta-classification of needs concepts"* (p2). He makes two key distinctions, between inherent and interpreted, and thin and thick conceptions of need.

A conception of needs as *interpreted* would look to observation and the claims people make to identify needs. Kenna (2011) similarly discusses 'relativist' conceptions of need, according to which norms or minimum standards are established or 'socially constructed', against which needs can be measured. Bradshaw's distinction between normative need (defined by experts, professionals and policy-makers); felt need (wants, desire or subjective views of need); expressed need (demand or felt need turned into action); and relative need (unfair and unequal distribution) (1972, 1994, see also Clayton, 1983) is identified by Dean (2010) as an interpreted view of need. More recently, Bradshaw, et al. have established a 'minimum income standard' (Bradshaw et al., 2008) by *"involving members of the public in reaching agreement (consensus) about what people need as a minimum and drawing up budgets to meet those needs"* (p2). In the field of housing, Fitzpatrick and Stephens (2007) propose that "*when it is claimed that housing should be allocated to those in most need, what is really meant is that it should be allocated to those who are in greatest housing deprivation*" (p420) where housing deprivation is understood as the difference between a minimum acceptable standards of housing and that person or household's actual housing conditions. Such approaches highlight the social interpretation, negotiation and 'embeddedness' of need.

Inherent conceptions of need on the other hand draw on some theory or doctrine of what it is to be human to identify needs (Dean, 2010, p121). Needs are therefore objective and held universally. Doyal and Gough's theory of human need (1984, 1991) is an example of such an approach. People have needs for the things they require to avoid harm and suffering: the things that are required to achieve *any* goal and are preconditions for human action and interaction. Kenna (2011) refers to this as a 'universalist' approach to need. These basic needs are identified as physical health and autonomy. Further intermediate needs are also identified, including adequate protective housing, physical security, significant primary relationships and a non-hazardous physical environment, although these may be met in various ways in different social and cultural contexts. In the field of homelessness, McNaughton Nicholls draws on Nussbaum's work, placing housing as an 'inherent need' (McNaughton Nicholls, 2010). Adding a further layer to understandings of need, she illuminates the trade-offs rough sleepers face between finding shelter and meeting their other needs and priorities (for relationships and social networks for example). Her analysis suggests a conceptualisation of housing as: *"more than a material unit, but as a part of a broader complex system of interconnected factors that operate to constrain and enable the capability that individuals have to lead a well lived life"* (2010, p38).

Dean draws a further distinction between thick and thin conceptions of need. *Thin* needs are those things required for a person to achieve pleasure and avoid pain. This approach rests on a 'hedonic' understanding of wellbeing: whether a person's needs are met relates to whether their preferences have been realised and their subjective wellbeing. This is an individualistic and utilitarian perspective (Dean, 2010, p101-107). A *thick* conception of need shifts focus from pleasure and preferences, to a deeper notion of 'eudaimonic' wellbeing. Dean links such conceptions of need to solidaristic understandings of human nature and a richer account of what human beings need to flourish (Dean, 2010, p107-116). Nussbaum's capabilities approach reflects a 'thick' conception of human wellbeing (Dean, 2010, p111). She identifies a set of core capabilities that are essential to human functioning[13], (2003, p41-42) although she acknowledges that any such account *"will always be contested and remade"* (p56, see also McNaughton Nicholls, 2010).

Central to 'thick' conceptions of need are notions of freedom and autonomy, which are seen as constitutive of functioning and flourishing human subjects. Doyal and Gough for example identify two kinds of autonomy as important: personal autonomy (which is required for human beings to exist with dignity) and critical autonomy (which is required for optimal needs satisfaction). Critical autonomy involves the capacity to *"question and to participate in agreeing or changing the rules"* (Doyal and Gough, 1991, p67). Such approaches foreground an understanding of human beings as interdependent. Dean comments for example that *"we have to situate our understandings of social need in relation to our identities as unique individuals and our interconnectedness as social beings"* (Dean, 2010, p97).

These various accounts of need reveal why attempts to apply the concept in designing and implementing social policies is complex: these varying conceptions of need imply very different policy approaches (Dean, 2010, p119-137). In the case of homelessness, meeting need might be conceptualised as ensuring that people have access to shelter to survive (to avoid pain and achieve pleasure). Such a minimalist notion of need might underpin approaches to homelessness that seek to provide (whether as a legal right or through other policy approaches) emergency, hostel-type accommodation to homeless households. Alternatively, policy might seek to bring all members of the population up to some collectively defined minimum standard of acceptable accommodation, whether that standard is one of basic shelter or a more expansive notion of adequate housing.

[13] Life; Bodily health; Bodily Integrity; Senses, imagination and thought; Emotions; Practical reason; Affiliation; Other Species; Play; Control over one's environment.

Underpinning such a position may lie a 'residual' or 'selective' approach to housing need, which seeks to cater for those who are unable to secure adequate housing in the market place (Whitehead, 1991; Bengtsson, 2001; Kenna, 2011). Efforts to meet housing need might lastly be understood in terms of 'eudaimonic' need, as an attempt to ensure access to housing of a standard that ensures its function as *"a base for emotional development, social participation, personal status and ontological security"* (Kenna, 2011, p192, see also Doyal and Gough, 1991; King, 2001; McNaughton Nicholls, 2010). Such an approach would presumably demand a holistic approach to responding to the needs of homeless people, focusing not just on their housing needs, but on a wider set of factors that determine their wellbeing.

While such 'thicker' conceptions dominate in scholarship around housing need, in practice the idea of need in housing and homelessness policy tends to be employed as a tool for rationing scarce resources and prioritising certain claims over others (Clayton, 1983). Whilst there appears to be some consensus among scholars writing in the field that 'thinner' conceptions of need (that allow for the avoidance of pain or harm) are inadequate as a guide for policy, the pursuit of 'thicker' conceptions of need through policy is limited, not least by the fiscal constraints faced by policy makers, but also by competing underlying conceptions of need. Provision of a right to *settled* housing would at first seem to reflect a 'thicker' and 'inherent' conception of need, premised on principles of social citizenship, which seeks to enable people to meaningfully participate in society (Dean, 2010). The extent to which this is the case however, will depend upon how the *boundaries* of those legal rights are drawn: who is eligible for the legal entitlements in question and what are the conditions of entitlement? Bengtsson (2001 and see chapter two) has argued for example that legal rights to housing are selective, targeted and residual and therefore fail to reflect a universalist and solidaristic approach to housing.

Three core points are taken from this overview of conceptual debates. First, 'need' can be understood in a variety of ways, with implications for how the role of social policy in meeting housing needs is understood. The comparative qualitative approach pursued here (see chapter four) allows for the question of how need is operationalised in homelessness policy and practice to be explored, rather than rigidly defined at the outset. Nevertheless, in comparing approaches to homelessness, the focus will be on the difference legal rights make to meeting *housing* needs, specifically the need for emergency shelter or temporary accommodation on the one hand, and settled housing of an adequate quality on the other. This reflects an attempt to hold alternative policy approaches to a common standard, albeit that alternative policy frameworks may seek to respond to 'thinner' or 'thicker' notions of need. It further reflects the idea that adequate accommodation is a 'foundational' or 'basic' need (King, 2001; McNaughton Nicholls, 2010). Whilst the support needs of homeless households are acknowledged as a crucial aspect of homelessness policy, they are not the main focus here.

Second, 'homelessness' (however defined) is only one form of housing need. Whilst the need for basic shelter is highlighted as fundamental in several theories of need, more ambitious accounts of housing need as demanding accommodation of a reasonable or adequate standard are also reflected in the literature. Homeless households then, will not be the only focus of policies seeking to address housing need. Such policies are likely to focus more broadly on the housing needs of those in inadequate or insecure housing (for example overcrowded accommodation, or accommodation that residents have no right to occupy). A consideration of the multiple dimensions of housing need underpins the ETHOS typology of homelessness and housing exclusion (FEANTSA, 2005), which distinguishes between *rooflessness* (lack of shelter of any kind/sleeping rough); *houselessness* (a temporary place to sleep in e.g. a shelter or hostel); *insecure housing* (threatened with severe exclusion due to insecure tenancies, eviction or domestic violence) and living in *inadequate housing* (in caravans on illegal campsites, in unfit housing, in extreme overcrowding).

Third and building on this last point, in the context of a study exploring the impact of legal rights-based approaches to homelessness, the question of *who's needs are prioritised* comes to the fore. By casting entitlement across a specifically defined group, legal rights necessarily create 'insiders', who qualify for the legal entitlements in question, and 'outsiders', who do not (Habermas, 1988, p210; Bengtsson, 2001; Thompson and Hoggett, 1996, p37). By directing resources (in this case, social housing) towards 'insiders', 'outsiders' lose out in the allocation of resources: not *all* housing needs are met simultaneously. This is particular pertinent in the case of housing: unlike other welfare goods and services (such as income) where supply is more 'elastic' (provision can respond more quickly to demand) and the good is 'continuous', the supply of housing is inelastic and housing is a 'discrete' good (only consumable in units). As such, in the short to medium term, 'insiders' and 'outsiders' compete for a set quantity of social housing in a 'zero-sum' situation (Fitzpatrick and Stephens, 1999; Fitzpatrick and Pawson, 2007). Whilst Bradshaw (1994) proposes that 'inequality' offers a superior organising principle than 'need' in the context of health services, the nature of housing necessitates the prioritisation of certain groups over others as opposed to an attempt to smooth consumption across groups. Considering the impact of legal rights on housing needs therefore requires attention to their impact on 'insider' and 'outsider' housing needs.

This dynamic has led to the identification of 'moral hazard' as a key concern within rights-based approaches. This criticism rests on the idea that legal rights create a 'perverse incentive' for those seeking social housing to fabricate or engineer a situation of homelessness in order to get priority (Fitzpatrick and Pawson, 2007; Fitzpatrick and Pleace, 2012). An example of such behaviour would be a young person colluding with their parents in order to be rehoused. The concern to guard against this perverse incentive has been a significant feature of debates about the homelessness legislation in the UK (see Fitzpatrick and Stephens, 1999). Indeed, it dominated parliamentary debates preceding the passing of the 1977 Housing (Homeless Persons) Act (Robson and Poustie, 1996, pp. 45-46). If acted upon, this perverse incentive will undermine the legitimacy of the allocations process by failing to ensure that those in greatest housing need access social housing (Pawson, et al, 2007, p27; Fitzpatrick and Pleace, 2012, p234).

More broadly, this concern compliments Jeffers and Hoggett's (1995) conceptualisation of social housing allocations systems as a 'dynamic game', *"in which no one, least of all those in housing need, is simply an object or pawn but all are creative agents with differential resources pursuing varying strategies"* to 'make out' or 'play' the system (Jeffers and Hoggett, 1995, p340; Hoggett, 2001). Whilst the problem of perverse incentives has invariably been framed in terms of applicants 'abusing' the system (playing into debates about the 'deservingness' of homeless households), it is more appropriately conceptualised (in line with economic theory of 'moral hazard') as a system design issue, in which rational individuals face incentives to act in ways that cause unintended and undesirable consequences.

Behind the complexities of how to operationalise the concept of need, lies the fundamental issue that meeting housing needs is likely to compete with other policy objectives as a principle according to which resources are prioritised and services designed. For example, in a report monitoring the impact of key housing legislation in Scotland (the Housing (Scotland) Act 2001), Fitzpatrick, et al. (2002) identify eight 'top level goals' that the Act aimed to contribute to, including social justice/needs prioritisation, social cohesion (building sustainable communities) and consumer empowerment. More generally, key objectives for housing and homelessness policies include to avoid spatial concentrations of deprivation or poverty (to ensure 'social mix'); to encourage certain behaviours; and/or allocate housing to those who 'deserve' or merit it.

The objective to ensure 'social mix' and avoid geographical concentrations of poverty is in part a response to the unintended impacts of needs-based social housing allocation

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(Fitzpatrick and Pawson, 2007). There has been concern about the 'residualisation' of social housing and that the concentration of social housing in particular areas will reinforce 'social exclusion', placing constraints on the economic and social opportunities of households living in such areas, negatively impacting on quality of life and life chances (Atkinson and Kintrae, 2002; Fitzpatrick and Pawson, 2007). There is a clear tension then between pursuing housing policies that respond to need and those that seek to create sustainable communities (McKee and Phillips, 2012).

'Desert' is a further policy objective potentially competing with need in the context of social welfare provision (Miller, 1999; Fraser and Gordon, 1994), and provision for homeless people in particular. According to Fitzpatrick and Stephens (1999), social housing allocations in Britain have reflected two basic objectives: allocation to people in housing need and allocation to people who deserve it most (see also Smith and Mallinson, 1996). They identify a shift over time towards allocations criteria emphasising need over desert (Fitzpatrick and Stephens, 1999, pp. 415-416). Nevertheless, questions of merit and 'desert-sensitivity' loom large in the case of social housing allocations, due to the competitive nature of the resource and the perception that homeless households may in some cases be less deserving than others (Fitzpatrick and Jones, 2005), due (for instance) to drug or alcohol addictions, a history of anti-social behaviour/criminal convictions or a general 'resistance' to engaging with services (Phelan, et al., 1997).

A related objective of homelessness and housing policy might be to both foster personal responsibility and self-reliance among those engaging with services (Deacon and Mann, 1999; Clarke, 2005) and to reward 'deserving' applicants that display these characteristics and show the ambition to move beyond homelessness and 'make the most' of settled accommodation (Loveland, 1992, p353). Such a philosophy in part underpins 'linear housing models' that seek to resettle homeless households after they have progressed along a 'continuum' - or up a 'staircase' - of care and interventions, with progress being conditional on acceptable behaviour and compliance with the programme (Johnsen and Teixeira, 2010). To use the language of Dworkin (1981), the distribution of housing should be 'ambition-sensitive', and respond to their freely chosen courses of behaviour (Kymlicka, 2004, p73-74). More generally, this relates to a communitarian mode of thinking, according to which welfare provision can play a role in *"regenerating the moral infrastructure of… societies"*, promoting *"a proper balance of autonomy and order, of individual rights and communal obligations"* (Deacon and Mann, 1999, p426; Etzioni, 1997). It has been acknowledged however, that such approaches may have unintended consequences, for instance, undermining the self-respect of those denied assistance within 'desert-sensitive' approaches (Knight and Stemplowska. 2011).

These potentially competing policy objectives reflect alternative dimensions of social justice or fairness in housing and homelessness policy. Meeting need is not coterminous with achieving social justice: desert, freedom, cohesion, equality and/or recognition may also play a key role as principles of justice (Walzer, 1983; Thompson and Hoggett, 1996; Miller, 1992 and 1999; Honneth, 1995; Fitzpatrick and Jones, 2005). Evaluating policies through the lens of housing need must incorporate a consideration of these potential trade-offs and choices and of how such objectives may weigh against and conflict with needs-based policy approaches.

This section has considered theories and conceptualisations of need. The discussion has demonstrated the complexity of analysing homelessness policies through the lens of need, which has been revealed as a complex and multidimensional concept, subject to varying interpretations with different implications for what homelessness policy should seek to achieve. Standing in contrast to these theorisations of need, in practice, distinctions based on the severity of need tend to be used to prioritise scarce resources between competing groups. Moreover, non needs-based considerations likely to inform a just or fair set of homelessness and housing policies have been identified: these principles (including, most

importantly here, desert) are potentially in tension with a focus on needs, suggesting that trade-offs may be faced in the pursuit of policy objectives.

Need is therefore not a straightforward tool to bring to bear in an evaluation of homelessness policy. In this study, legal rights to housing as a policy tool for meeting needs are considered, with a particular focus on their capacity to meet the housing needs of 'insiders' (that is, those who qualify for this legal entitlement), more specifically their need for both emergency/temporary and settled accommodation of an adequate quality. The research also explores the impact of legal rights on meeting the housing needs of 'outsiders', who while in housing need have no legal entitlement to settled housing. Last, the research considers how housing need is in practice operationalised by housing professionals and those working in the homelessness sector, and how it is weighed against alternative policy objectives (like desert) in determining who accesses accommodation, how and when.

3.3 Juridification

A possible objection to legal rights-based approaches noted in chapter two, was the risk that structuring responses to homelessness around statutory legal obligations and entitlements will have unintended and negative consequences. While the terms 'juridification' or 'legalism' may be used in a purely descriptive sense, labelling a process involving the *"quantitative growth of law or legal interventions"* (Cooper, 1995, p507) or the 'expansion' and 'densification' of law (Habermas, 1988, p204), in general the use of such terminology is bound up with a normative critique of the impact of law on social relations, including the delivery of social welfare (Teubner, 1987/1988; Habermas, 1988; Cooper, 1995; Kagan, 1997; Cowan, 2004).

Concerns about 'juridification' (or 'legalism) are underpinned by the view that social welfare policy and practice can become 'colonised' or 'contaminated' by law, undermining the aims of policy and distorting processes of implementation (Cooper, 1995, p508-9; Dean, 2002, p157). In part, this relates to the claimed unsuitability of law as a means of structuring social relations: 'concrete life problems' - such as homelessness and housing need - become subject to *"violent abstraction"* in order that they can be *"subsumed under the law [and...] handled administratively"* (Habermas, 1987, p210). This alienates welfare users, creating *"social and psychological distance of the client from the welfare bureaucracy"* (Habermas, 1987, p210), and as Cowan (2004) argues in the context of homeless applicant/local authority relations in the UK, leads to *"dehumanising processes and practices"* (p957).

It is not only the psycho-social impact of juridification that is a concern, however. Juridification, by relying on law to resolve disputes, militates against *"an adequate future oriented, socially rewarding resolution"* (Teubner, 1987, p8). In other words, rights-based approaches risk creating a model of service delivery that is process-driven and adversarial, rather than outcome-focused (Cooper, 1995, p508-9; Dean, 2002, p157). Delivering social welfare policies through legal entitlements risks *"subordinating the substance of social rights to the procedural process of individual redress"* (Dean, 2000, p153). It is interesting to note that Donnison (1976) departs from this view, highlighting that the increasing reliance on *discretion* (as opposed to clear legal rules) in the delivery of supplementary benefit in Britain in the 1970s had provoked conflict and adversary, and a growing number of appeals, in part due to officials having to resort to *"moral judgments of the kind which we constantly try to exclude from our decisions"* (Donnison, 1976, p348) in order to discriminate between 'needy cases'.

According to the argument from juridification, in a legalised environment, public service professionals face incentives to pursue the 'letter' of the law, as opposed to its spirit, becoming risk-averse and failing to respond effectively to the needs of those using welfare

services (Titmuss, 1971). As Cooper describes it, service providers 'internalise a judicial gaze', in an attempt to avoid legal challenge (Cooper, 1995, p508; see also Cowan, 2004). Moreover, it is argued that service providers operating in such an environment will focus on meeting their minimal legal duties, rather than approaching service provision in a more ambitious, client-focussed manner (Loveland, 1992, p352; Bengtsson, 2001). This set of ideas compliments the shift, described by Le Grand (1997), from thinking of public sector professionals as 'knightly' and acting in the public interest, to an acceptance that their behaviour *"could be better understood, if the assumption was made that they were largely self-interested"* (p158). As such, those working in the public sector can be expected to respond to, rather than resist, the incentives created within a framework of legal rights.

Other concerns about juridification focus on the 'macro' impacts of framing social welfare in terms of legal entitlements. In particular, the cost of legal contestations is seen as a risk (Kagan, 1997). This is particularly pertinent in the case of social welfare provision, where it is feared that legal challenges will direct public resources away from service provision and responding to social need and into the legal profession (De Wispelaere and Walsh, 2007; Harvey, 2008).

A related concern focuses on the determination of social spending and resource allocation by the judiciary, rather than democratically elected politicians. This is a particular concern where the rights in question are broad and abstract (as in the case of 'rights' articulated in international instruments), rather than detailed, delimited and contextualised (Watts and Fitzpatrick, 2010). Dean (2002) has described situations in which the courts inappropriately decide policy issues as 'over-socialisation'. In addition to the democratic concerns raised by such a trend, Griffiths (1991) warns that the judiciary should not be relied upon to make decisions in line with the progressive intensions of those advocating more generous social rights (for an example from the field of homelessness, see Cowan 1997).

This discussion suggests several points of focus when considering whether rights-based approaches to homelessness lead to juridification in the delivery of homelessness services. Specifically, do legal rights in this area lead to a focus on process and legal obligations, to the exclusion of a focus on outcomes and the needs of service users? Related to this, is there evidence that service providers within rights-based frameworks tend to focus on their minimal legal obligations, leading to a 'levelling-down' in service provision? Further, do rights-based create an adversarial context, leading to legal challenges with cost implications and shifting power over resource allocation into the hands of the courts? More broadly, the research will allow for a consideration of how homeless service users experiences homelessness policy within rights-based and non rights-based frameworks and whether services delivered under the aegis of legal rights are 'dehumanising' and impersonal - as Cowan (2004) argues - or whether the law is a useful tool for service users in resolving their homelessness.

3.4 Stigma

As discussed in chapter two, one argument in favour of rights-based approaches is that they help minimise the stigma of homelessness. Other perspectives suggest that, on the contrary, legal rights may exacerbate stigma among those they target. This section considers a) how 'stigma' is best understood and operationalised; b) in what ways stigma may apply to those experiencing homelessness; and c), what grounds there are for thinking that rights-based approaches may impact, either positively or negatively, on the stigma experienced by homeless people.

According to Goffman, stigma refers *"to an attribute that is deeply discrediting"* (1963, p13). He goes on to explain however that a language of *relations* - rather than attributes - is required, because stigma concerns the identity that people *impute* to a person or group

on the basis of surface appearances, judgements or stereotypes: a stigmatised person is *"devalued, spoiled or flawed in the eyes of others"* (Crocker and Quinn, 2000, p153). The attributes that are stigmatised change over time and in different contexts (Lloyd, 2010). While stigma can be understood as an articulation of the 'moral voice' of the community (Etzioni, 1997); as promoting 'pro-social' behaviour; and as discouraging undesirable behaviour (such as 'welfare dependence', see below), it has negative consequences for the stigmatised group, undermining self-esteem and psychological wellbeing, leading to depression in severe cases and dis-incentivising take-up of support services (Phelan, et al., 1997, p335; Lister, 2004, p117-120)[14]. Various factors have been identified that impact on experiences of stigma. Three are considered here: the *visibility* of the stigmatising attribute; the perceived *threat* posed by the stigmatised person; and the perceived *culpability* of the person for their stigmatising attribute.

Goffman (1963) distinguishes between people who are discredit*ed* (where the attribute that causes stigma is clearly visible) and those who are discredit*able* (where the attribute is not immediately visible). He refers to 'stigma symbols', which mark a person off as different and describes how those without an overt 'stigma symbol' seek to control and manage information about themselves (to 'pass' as normal) in order to avoid stigma. Whilst the visibility of a stigma has been identified as an important predictor of self-esteem, problematic social interactions and anxiety (Hebl and Leck, 2000, p427), the negative impacts of stigma on the individual remain (informing their self-perception and social interactions) even in cases where the stigma is 'hidden' (Smart and Wegner, 2000).

The *threat* that a stigmatised person is perceived to pose is also likely to influence the nature of negative attitudes and experiences of stigmatisation (Spicker, 1984). Groups who are deemed to be violent or unpredictable (e.g. drug users or those with mental health issues) may experience more overt stigmatisation – reactions of anxiety and fear - than other more 'benign' stigmatised groups (Jones et al, 1984, p64). Less threatening groups do not escape stigma however, but prompt alternative responses of pity, implying inferiority and experienced as demoralising and humiliating (Spicker, 1984).

Culpability or *blame* is a third factor influencing the nature and impacts of stigma (Spicker, 1984). Hebl and Kleck (2000) make a distinction between stigmas that are deemed to be 'uncontrollable' (e.g. in most cases, physical disabilities) and 'controllable' (e.g. child abuse, obesity, homosexuality). On this topic, Phelan et al. (1997) discuss the 'fundamental attribution error', which refers to *"a reliable cognitive inclination to underestimate the power of situations to influence other people's behavior (but not one's own) and to correspondingly overestimate the role of personal attributes"* (Phelan, et al., 1997, p325). It has been argued that the perception that people are *not* responsible for their stigmas creates dissonance, as it fails to affirm the view that people get what they deserve (Hebl and Kleck, 2000), hence (to avoid such dissonance) people tend to revert to 'blaming the victim' (Spicker, 1984). Stigma will tend to illicit different responses depending on the perceived culpability of the stigmatised person, with those seen to be to blame attracting more hostility and negativity than those not, who will tend to attract pity instead (Hebl and Kleck, 2000, p427).

Link and Phelan (2001) describe the considerable variability in definitions and conceptualisations of stigma, due in part to the wide range of circumstances to which the

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[14] Stigma can also be understood as an ideological tool that helps legitimate inequality. Where inequalities are seen as unfair or unjust, they may threaten social order. Stigmatisation of disadvantages and marginalised groups provides a rationale for such inequalities, devaluing disadvantaged groups and legitimising their position in the social hierarchy (Phelan, et al, 1997 p324-5). Stigma therefore can be seen as part of a system of beliefs and values that support the status quo.

concept is applied and to the multidisciplinary nature of stigma research (Link and Phelan, 2001, p365). For example, offering an economic model of welfare stigma, Moffit (1983) describes stigma as the 'disutility' arising from a particular activity, in this case participation in a welfare programme (see also Goodban, 1985). In view of this variability, Link and Phelan (2001) propose a conceptualisation of stigma based on the co-occurrence of six inter-related components:

- **Labelling:** some difference between people is singled out and deemed salient. Categorisations are made.
- **Stereotyping:** the labelled differences are associated with negative attributes or undesirable characteristics.
- **Separation:** these labels and stereotypes are used to separate 'us' from 'them'.
- **Status loss:** this separated group experience downward placement in the status hierarchy, shaping social interactions in a way that produces unequal outcomes.
- **Discrimination:** the labelled group is discriminated against, overtly or through 'structural discrimination' (accumulated institutional practices that work to their disadvantage, as in the case of institutional racism).
- **A 'power situation':** the preceding five factors must converge in the context of inequalities in social, economic or political power. Such power differences are essential to the social production of stigma.

This account will be used as a framework for analysing the impact of legal rights on stigma in chapter eight. This section now moves on to consider why stigma is a useful concept for understanding homelessness specifically.

According to Wardhaugh, *"'being at home' is an unselfconscious and taken-for-granted state: to be homeless brings with it an awareness of absence, a consciousness of difference, of deviation from the norm"* (1999, p93). Homelessness stands in contrast to people's 'natural', accommodated status. This analysis is borne out by empirical evidence that homelessness has important psycho-social implications. McNaughton describes the *"acute sense of stigma"* associated with being homeless (2008, p140). In a review of single homelessness in England, Jones and Pleace report that homeless people found hostel life stigmatizing due to their association with social problems like drug and alcohol abuse (2010, p61) and research exploring youth homelessness in the UK identified stigma as a key barrier to blocking young people from accessing support (YMCA, 2008).

Visibility, threat and *culpability* were identified above as key factors effecting experiences of stigma and are now applied to the specific case of homelessness. The *visibility* of rough sleepers or other homeless people engaged in 'street activities' (Johnsen and Fitzpatrick, 2010) is likely to cement and deepen the stigma they face as homeless people. As Phelan et al. note, *"homelessness is often more visible and more disruptive than other forms of poverty"* (Phelan, et al., 1997, p325). In this light, Snow and Anderson (1987) give an account of the 'identity work' of rough sleepers (in Austin, Texas) describing (in line with Goffman) how some rough sleepers reject an identity of 'homelessness', while others embrace the identity positively, resisting stigma by, for example, comparing themselves to other less skilled or experienced rough sleepers. Fitzpatrick and Pleace (2012, p242) provide evidence that homelessness remains stigmatising in cases where it is not 'visible' in this way: they report that 15% of respondents (in their survey of statutory homeless families in England, who in general would not have experienced rough sleeping) reported being concerned about approaching their local authority because they would be 'labelled' as homeless.

In terms of the *threat* posed by homeless households, rough sleepers (or 'vagrants') have historically been criminalised and subject to punitive response, under the system of Poor Laws in the UK for example (Robson and Poustie, 1996; Jones, 2000), with some arguing that such punitive responses have extended into the twentieth and twenty-first centuries

(Raynsford, in Deakin, 1986; Lowe, 2004; see also Johnsen and Fitzpatrick, 2010). More broadly, statutory homeless households in the UK may be perceived as a threat to other households in housing need, due to the competitive nature of social housing allocations and the priority owed to homeless households within the statutory system. Moreover, concerns about 'social mix' and 'sustainable communities' cast homeless households as a threat to social order and cohesion in neighbourhoods with a high proportion of housing (see above and McKee and Phillips, 2012).

The punitive nature of responses to homelessness historically, and contemporary debates casting homeless households as a threat to social order, social cohesion or to more 'deserving' households, reflects that they tend to be seen as to some extent *culpable* for their situation. Indeed, in the UK the statutory system established in 1977 incorporated explicit measures (the intentionality criterion) to restrict legal rights to housing to those not deemed blameworthy or culpable for their homelessness (Robson and Poustie, 1996, p45-6; Cowan, 1999, p213). The extent to which homeless households are perceived to be culpable for their homelessness may determine whether the stigmatising response is one based upon vilification or pity. More broadly, it has been argued that homelessness itself *"explicitly calls an individual's character into question"* (Boydell, et al., 2000, p28). This makes particular sense in light of contemporary discourses on poverty and welfare dependence, attributes that (in addition to homelessness) are likely to leave homeless households vulnerable to stigma.

According to Lister, public discourses on poverty reflect a devaluing of people living on low incomes: they are 'othered' (Lister, 2004; see also Fraser and Gordon, 1994). Spicker (1984, p100) distinguishes between stigma relating directly to an individual's situation (their homelessness or low income) and stigma relating to that person's response to their situation, in particular, their reliance upon welfare assistance. Indeed, Lister (2004) describes the ways in which poor people are stigmatised by discourses of welfare dependency and research has documented the psychological impacts of claiming welfare (Goodban, 1985; Moffit, 1983; Rogers-Dillon, 1985; Fraser and Gordon, 1994b). In the specific context of homelessness, McNaughton describes how reliance on the state can exacerbate the marginality of homeless people, rather than offer a route out of it (2008, p58).

The strength of this 'welfare stigma' is brought into relief by a focus on contemporary discourses of welfare that value self-reliance (see Clarke, 2005). In this context, the notion of 'welfare dependency' *"leaks a profusion of stigmatising connotations"* (Fraser and Gordon, 1994, p4). Giddens for example envisions systems of *"positive welfare"* that seeks to foster the *"autotelic self"*, described as:

> *a person able to translate potential threats into rewarding challenges, someone who is able to turn entropy into a constant flow of experience. The autotelic self does not seek to neutralise risk or suppose that 'someone else will take care of the problem': risk is confronted as the active challenge which generates self-actualisation* (Giddens, 1994, p192).

By definition then, homelessness is a 'failed identity' (McNaughton, 2008). Whilst 'welfare dependence' is stigmatising, receipt of *some* kinds of statutory support is not: there are *"dignified ways of getting help from the state"* (Fraser and Gordon, 1994a, p23), in particular where receipt of statutory benefits does not violate the 'norm of reciprocity' (Spicker, 1984, p170). In the case of contributory, social insurance programmes such as pensions *"an honorable status for recipients"* is preserved (Fraser and Gordon, 1994b, p13). Non-contributory social assistance programmes on the other hand, create the appearance that welfare recipients are getting 'something for nothing', reinforcing their stigmatised status unless the legitimacy of such approaches can be secured independently

of considerations of reciprocity (because they meet needs or reduce inequality for example).

Stigma then is a particularly important concept in understanding homelessness. Homeless households (whether rough sleeping or not) are vulnerable to the stigma not only of homelessness itself, but of poverty and welfare dependence. This analysis, which points to the multifaceted nature of the stigma associated with homelessness, is supported by Phelan, et al. (1997) who compare the stigma attached to *homelessness* and *poverty* through a telephone survey in the United States. Employing vignette techniques, they compared public attitudes to a fictive accommodated poor man and a homeless man, finding that the latter character was stigmatised more severely than the former.

The proposition that rights-based approaches minimise the stigma of homelessness rests on the idea that social rights create a uniform status of citizenship, binding members of the community together with a common identity (Marshall, 1949/1992). Such approaches cast homeless people as rights-bearers with entitlements, rather than recipients of state largesse. Titmuss, also writing in the mid-twentieth century, proposed that in order to promote a sense of mutual obligation, *"welfare had to be provided as of right and without stigma"* (Deacon and Mann, 1999, p418).

The application of this conception of social rights (and their capacity to minimise stigma) to *legal* rights as a policy tool is problematic, however, in light of Bengtsson and others account of legal rights as residual and selective (Habermas, 1988; Bengtsson, 2001; Thompson and Hoggett, 1996). Titmuss himself recognised this tension, describing the *"problem of stigma or 'spoiled identity'"* (1976, p159) as at the heart of debates about the future of social policy:

> *There is, I think, no escaping the conclusion that if we are effectively to reach the poor we must differentiate and discriminate. We have to do so if we wish to channel proportionately more economic and social resources to aid the poor and the handicapped, and to compensate them as best we can for bearing part of the social costs of other people's progress... The problem, then, is not whether to differentiate in access, treatment, giving and outcome but how to differentiate... We cannot now disengage ourselves from the challenge of distributing social rights without stigma* (Titmuss, 1976, p159).

As previously noted, Bengtsson (2001) sees selective, legalistic approaches to housing policy (such as legal rights to housing for homeless households) as ill equipped to reconcile this tension: by differentiating particular groups as in need of assistance (and thus as unable to meet their needs in the general market), they risk stigmatising that group as opposed to promoting a sense of mutual obligation.

Complimenting such a perspective, comparative welfare state literature has suggested that welfare state structures affect attitudes to disadvantaged groups. Using Esping-Anderson's 'three worlds of welfare' typology, studies have demonstrated high support for welfare policy in social democratic regimes, medium support in conservative regimes, and low support in liberal regimes (Larsen, 2006). Larsen (2006) develops an explanation of this pattern, proposing that key features of welfare institutions (namely selectivity, generosity and labour market opportunities) influence public perceptions of welfare recipients and ideas about the 'deservingness' of these groups, thereby affecting support for welfare institutions (Larsen, 2006, p4). Low support in liberal regimes reflects that strict targeting and ungenerous social assistance programmes create a clear distinction between 'them' (recipients of state welfare) and 'us', generating negative attitudes towards these groups. The stigmatisation of disadvantaged groups is then likely to feedback, reinforcing the dearth of public support for policies to improve the situation of those who are stigmatised (Phelan, et al, 1997, p335).

In light of these perspectives, the proposition that legal rights will help minimise stigma is brought into question. The claim appears to rest on a misinterpretation of the social rights literature and, more specifically, a conflation of 'legal rights-based approaches' with 'universalism'. 'Universalism', as Thompson and Hoggett (1996) argue, is a concept employed inconsistently and often without clarity (see also Larsen, 2006, p 101). On the one hand, 'universalism' can be understood as an approach to welfare policy that allocates the same good or service to every citizen regardless of their circumstances or needs (a 'pure flat-rate' approach, Larsen, 2006, p101). Such approaches may minimise stigma as they do not discriminate or differentiate between citizens. Legal rights to housing for homeless households are explicitly not 'universal' in this sense and homeless households within liberal welfare regimes that employ selective approaches (even if they are rights-based) can be expected to face greater stigma than those employing 'universal' approaches to housing policy. On the other hand, 'universalism' could be understood as an attempt to bring all citizens up to some defined minimum adequate standard (a 'need-graduated' approach to universalism, Larsen, 2006, p101). Where the market cannot be made to operate in a way that ensures all households are able to meet such a standard (see Bengtsson, 2001), such a 'universal' approach would appear to *demand* differentiation on the basis of need (or some alternative criteria) and is therefore consistent with (but does not require) a legal rights-based approach to homelessness.

In this context, the argument that legal rights help minimise stigma would rely on alternative foundations, namely, the claim that legal rights cast welfare recipients as rights-bearers with entitlements - rather than supplicants benefiting from the generosity of others. In doing so, they may cultivate a sense that accessing such services is legitimate and fair among recipients of services, providers, policy-makers, political elites and/or the population more broadly. As noted in chapter two, the existence and cultivation of such a 'sense of entitlement' or *"expectation with normative force"* (Singer, 1981, p88) among welfare recipients may be seen in negative terms, reflecting enduring criticisms of welfare policies that sap personal responsibility and create dependence (Plant, 2003, p156) and that such a sense of entitlement appears to be in tension with the mantra of contractualism – 'no rights without responsibilities' – that has characterised political and popular discourse in recent years (Dean, 1998 and 2003b). A sense of entitlement to housing among homeless households may be particularly problematic as their prioritisation in social housing allocations has direct impacts on the capacity of others to access the tenure (Mckee and Phillips, 2012). On the other hand, it has been argued that such a sense of entitlement may lead to better outcomes for disadvantaged groups (Major, 1994; Lewis and Smithson, 2001; O'Brien and Major, 2009). According to Major, having a sense of entitlement produces a:

> *unique set of emotional and behavioural consequences… People may feel sad if they don't get what they want, and disappointed and frustrated if they don't get what they expect. If their sense of entitlement is violated however, they will experience a sharper emotion, anger, which produces a more consistent motivation to seek change* (Major, 1994, p299).

And on the flip side, O'Brien and Major have argued that:

> *a depressed sense of entitlement… may prevent members of low-status groups from seeing when they are targets of discrimination… and reduce the likelihood that they will engage in collective action to challenge the distribution of social goods… In this way, group differences in feelings of personal entitlement serve to perpetuate and maintain social inequality* (O'Brien and Major, 2009, p430).

That legal rights have such an impact is an empirical question, with some existing evidence suggesting that the presence of legal entitlements is *not sufficient* to create such a sense of entitlement, for example where recipients of welfare consider themselves personally

responsible for their situation (Goodban, 1985) or where accessing entitlements is nevertheless perceived to be taking 'charity' (Moffatt and Higgs, 2007).

This thesis focuses on the capacity of alternative approaches to homelessness within *liberal* welfare regimes to ameliorate the stigma of homelessness. Finer grained, within regime type differences in policy design may make little difference to public perceptions of or experiences of homelessness, but if liberal welfare regimes are associated with *greater* stigmatisation of marginalised groups, finding ways to organise welfare policies that minimise stigma may be considered of particular importance.

This section has considered key factors impacting on experiences of stigma (visibility, threat, culpability) and has highlighted the multiple layers of stigma to which homeless households are vulnerable. Link and Phelan's (2001) multi-faceted operationalization of stigma has been proposed as a framework for analysis and the grounds for thinking that legal rights may either exacerbate or ameliorate stigma have been explored. In light of these debates, this thesis aims to bring empirical evidence to bear regarding the impact of legal rights on homeless people's experiences of stigma.

3.5 Empowerment

Link and Phelan argue that stigma depends on there being power differences between the stigmatised and stigmatising group (2001, p375). 'Empowering' those who are homeless then, offers one means of combating stigma and has increasingly become seen as an important policy objective in itself (Edgar et al, 2000; Anderson, 2007/10; see also Clarke, 2005; Barnes and Prior, 2009). While empowerment is often equated with increasing the service users involvement (or "*voice and choice*", Clarke, 2005, p449) in service provision and design, the establishment of empowerment as a policy objective has not been informed by clear theorisations of empowerment (Starkey, 2003; Baistow, 1994). Baistow has commented that empowerment is *"ambiguous and flexible enough in its meanings to allow many possible interpretations whilst, at the same time, carrying with it a stamp of ethical creditability that rubs-off on those who 'empower'"* (1994, p45). This poses an obstacle to this thesis' objective of considering whether and to what extent legal rights 'empower' homeless households.

Unlike 'empowerment', 'power' is a concept subject to rich theorisations, but which remains (some argue) 'essentially contested' or 'polysemic', subject to varying applications and persistent disputes regarding its meaning (Lukes, 2005). Bringing together literature on 'power' and 'empowerment', this section proposes two conceptions of power – one 'traditional', one 'radical' - of particular relevance to a consideration of rights-based approaches to homelessness. While the research also allows for an exploration of what those working in the sector understand by 'empowerment', the conceptualisations offered here provide a starting point for analysis. These two conceptions of power are distinct, but not incompatible: the position taken here is that an adequate understanding of power must incorporate both of these perspectives.

Conception 1: A 'traditional' view of power

According to Polsby, power is *"the capacity of one actor to do something affecting another actor, which changes the probable patterns of specified future events. This can be envisaged most easily in decision-making situations"* (1962, pp. 3-4 cited in Lukes, 2005, pp. 17-18). Lukes labels this one-dimensional power, the key elements of which are *"a focus on behaviour in the making of decisions on issues over which there is an observable conflict of (subjective) interests"* (Lukes, 2005, p19). Lukes adds that power can also be wielded by excluding potential issues from decision-making processes (non-decision making). He labels this two-dimensional power.

From this perspective, power is locatable, wielded intentionally and observable in decision-making (and non-decision making/agenda setting) processes and can be thought of in terms of a capability to influence outcomes in spite of the contrary interests of others: this is 'power over' or power as domination. Such power can be secured in several ways: by force (the removal of choice), coercion (the threat of deprivation), influence (persuasion) or authority (because compliance is recognised as reasonable) (Bachrach and Baratz, 1970, cited in Lukes 2005).

This conception of power can be applied at both the macro-level, leading to a focus on how power is distributed within society, and at the micro-level, leading to a focus on who holds power in particular interactions. Taking a macro perspective, 'classic pluralists' see power dispersed among numerous groups, including interest groups and voluntary organizations. The state tends to be conceived of as a neutral arbiter between competing interests and the political arena as open, and defined by conflict between countervailing forces (Hudson and Lowe, 2009, pp. 111-118). In the context of homelessness, such a perspective would highlight the dispersion of power between the state (central and local government); private and social landlords; homeowners and tenants; and third sector organisations representing those experiencing homelessness.

Revisions and critiques of pluralism have contended that power is concentrated, rather than dispersed, among members of the dominant class (a Marxist/neo-Marxist perspective) or among those who *"occupy the strategic command posts of the social structure"* – the 'power elite' - consisting of those leading business corporations, the government and the military (Mills, 1956, pp. 3-4; Domhoff, 2007, p102). According to this view, power is rooted in organizations, which are power bases for elites who control the information and resources that can be employed in the 'decisional arena' (Domhoff, 2007). Such a perspective would tend to highlight that homeless households lack power, due to their position in the class structure, their lack of economic power and their dispersion outwith any organisational structure.

The traditional view of power can also be applied at the local or community level (Hunter, 1953) and at the level of interpersonal interactions (Boje and Rosile, 2001). Of particular relevance here, this conception of power can be used as a lens to understand welfare interactions between users and providers of homelessness services. Power becomes visible where there is a conflict of interests and someone is able to realise their interests in spite of the interests of others. Notwithstanding the 'moral hazard' problem discussed above, in this context, the homeless person's interests can be conceptualised as having their need adequate housing met. There is ambiguity however with regards to how the interests of the service provider can best be construed.

Le Grand describes a shift from thinking that public sector workers are best conceptualised as 'knights', working in the public or service users' interest, to thinking that they are 'knaves', whose behaviour is best understood if the assumption is made that they are self-interested (Le Grand, 1997, p158). The motivation of public sector workers may lie in responding to the interests or needs of the service user, but will also reflect: organisational imperatives to ration resources and prioritise certain needs over others; a desire to minimise the stress or workload associated with their role; and respond to managerially or legally imposed rules or guidance. In addition, providers may be motivated to prioritise or exclude certain groups from assistance, reflecting their own prejudices and/or perceptions of deservingness (Lipsky, 1980; Jeffers and Hoggett, 1995). For these reasons, service providers are often conceived of as 'gatekeepers'. The extent to which the 'street-level bureaucrat' can pursue these interests will depend on the balance between rules and discretion that defines the parameters and scope of their role.

In this way, welfare interactions at the micro-level reflect broader debates about the function and objectives of social policy. Within the Marxist tradition and according

theorists such as Foucault and Bourdieu, welfare institutions are institutions of control and normalisation (Peillon, 1998). On the other hand the welfare state can be understood as a mechanism for achieving social justice, promoting the interests of marginalised groups and challenging economic and social inequalities (Lund, 2002). In view of these competing accounts of welfare institutions, Clarke, (2004, p2) emphasises that *"welfare states may be more than one thing at once".* In the specific context of policy responses to begging, street drinking and rough sleeping, Johnsen and Fitzpatrick (2010) argue that the use of enforcement as a response to such street activity should be understood not *only* as coercive and potentially illiberal, but also as 'caring'. They explain that *"whilst concepts of coercion and care might at first appear incompatible – even contradictory … a great deal of social policy is in fact concerned with both"* (Johnsen and Fitzpatrick, 2010, p10). Social policies, welfare institutions and those administering services may have a *plurality* of objectives (see also Hoggett, 2006).

In this context, welfare interactions are likely to be characterised by a conflict of interest between user and provider and can be interpreted as interactions structured by power differences. In the case of homelessness services, the power of the service provider may manifest as coercion (the threat of – in this case continued – deprivation); influence or persuasion; and/or authority (because compliance with the requests of the provider are recognised as reasonable) (Bachrach and Baratz, 1970). Empowerment on this view would involve either a) enabling homeless people to avoid the welfare action altogether or b) within the welfare interaction, reducing the extent to which the service provider can threaten the homeless person with continued deprivation and/or reducing their capacity to persuade or have authority in that situation.

Understanding empowerment as enabling people to avoid welfare interactions altogether compliments the importance of independence and self-reliance in debates about welfare provision (see above): on this view, dependence on the state is itself disempowerment and empowerment *"liberating the 'natural' characteristics of individuals that have previously been confined, constrained or oppressed by 'big government'"* (Clarke, 2005, p452). Clarke goes onto describe this vision of the empowered citizen as a bearer of *"responsibilities as well as rights"*, explaining that at the core of these responsibilities is "*the responsibility to produce the conditions of one's own independence"* (2005, p451). From this perspective, the capacity of legal rights to housing to empower is brought into question: such entitlements, on the contrary, risk disempowering citizens. Efforts to prevent homelessness or enhance the capacity of households to meet their own needs in the general market would better meet objective to empower formulated as such.

This conception of empowerment has been subject to critique however. Clarke has described it as:

> *rhetoric that conceals the systematic stripping of forms of… protection developed in western capitalist states institutionalized in conceptions of welfare… responsibility appears as a smokescreen behind which the state is systematically divesting its responsibilities … to safeguard citizens* (Clarke, 2005, p453)

Dean has pointed to the inconsistent problematisation of 'dependency', arguing that dependence on employers (for the means of subsistence) and upon families (for care and support) has been *"conjured out of sight (or made perversely to appear as 'independence'), whilst dependency on the state (which can, paradoxically, ensure freedom from exploitation by others) [has been] made to appear uniquely problematic"* (Dean, 2000, p156).

If, on the other hand, empowerment *within* welfare interactions is the focus, legal rights offer to empower to the extent that they establish a set of transparent, clear and enforceable rules that prioritise and foreground the 'interests' (needs) of the homeless person and reduce the latitude for provider discretion in deviating from those rules

(lessening the 'coercive power' of the service provider). They may further contribute to empowerment if they challenge the *authority* or *influence* of the provider, promoting greater assertiveness among service users and dispositions that reflect a sense of entitlement. Legal rights of course do not ensure compliance with the law (providers may deviate from legal requirements). Moreover, discretion (defined by the clarity of legal entitlements and obligations) will remain within a framework of legal rights. However, by providing legal redress, rights afford greater opportunities for accountability and transparency than approaches founded on higher levels of provider discretion.

This view of power also offers the opportunity to consider why service user involvement is often equated with empowerment. This seems to reflect a 'traditional' conception of power in the sense that participatory approaches to service design and delivery rest on the idea that it is desirable to allow service users greater choice and voice, extending their control over their environment in accordance with their expressed interests. The limits of such approaches are well understood: efforts to involve service users may result in tokenism or co-option, failing to improve the experiences of or outcomes for those using services (Clarke, 2005). The transitional nature of homelessness adds a further dimension to the challenge of effectively enabling users to *"defend their interests"* (Anker, 2009; Anderson, 2010). More fundamentally, participatory approach may rest on a conception of users as *"individuated agents pursuing selfish interests"* (Clarke, 2005, p450). On the contrary however, the 'voice' of service users may not in fact articulate their interests: subjective or perceived interests may not be coterminous with (and may even contradict) objective or real interests (Lukes, 2005). Whereas the 'traditional' view of power assumes the validity of subjective interests (and sees them as central to realising the objective of empowerment), the 'radical' view of power seeks to problematise them.

Conception 2: a 'radical' view of power

The 'radical' view of power disposes of the assumption that people will express or be conscious of their 'real interests' and thus that power is revealed in decision-making behaviours or political structures and processes. Echoing the Marxist concept of 'false consciousness', a distinction is drawn between people's *expressed preferences* and their *real interests*. This kind of power exists when the mechanism is not coercion, influence, authority or force, but where power is exerted by shaping people's wants and preferences (Lukes, 2005, p27). The mechanisms of power include indoctrination; hegemony and the production of discourse; the control of information through mass media; and processes of socialization, through which social norms are internalised and may be experienced as freely chosen (Lukes, 2005, p97). Of particular interest here is the concept of 'discourse', which can be understood as *"the language and communicative practices by which inter-subjective meanings are represented, apprehended or established"* (Dean, 2003a, p2). The exercise of this kind of power need not be intentional or observable, but can operate more subtly. Lukes' (2005) 'third face of power' is one exposition of the 'radical' view.

Lukes' perspective is still consistent with the location of power with specific individuals or groups. Foucault (1980) however, completely decentres the concept of power, seeing it as inherent in all social relationship. It is ubiquitous and *"there can be no personalities that are formed independently of its effects"* (Hindess, 1996 cited in Lukes, 2005, p92). Foucault focuses on the power created by knowledge; discourses; and disciplinary and medical practices and posits that wherever power operates there is resistance to that power (Lukes, 2005, p95-6). Dean comments for instance that *"competing discourses… are on the one hand objects of hegemonic struggle, and on the other… resources in struggle"* (Dean, 2003a, p2) and according to Barnes and Prior, citizens can *"challenge or resist the identities that are offered to or imposed on them be government"* (Barnes and Prior, 2009, p3).

Bourdieu similarly presents power as a generalised force. Central to his conception of power is the idea of *capital*, which comes in various forms and yields power for those who

hold it. Economic capital corresponds to material wealth; cultural capital to educational credentials and cultural goods; and social capital to social networks and group membership. Symbolic capital is the form taken by all types of capital when their possession is seen as legitimate. The value of these forms of capital depends upon the specific 'field' (broadly understood as the social context) of the interaction (Peillon, 1998, p216) and the dynamics of the 'field' determine how one form of capital is convertible into another (Greener, 2002). Welfare interactions can therefore be viewed as a site of struggle, the outcomes of which will depend upon the capital held by each player and the convertibility of that capital into other forms of capital (including capital that can secure welfare outcomes) (Greener, 2002).

Bourdieu's concept of *habitus* describes *"a system of durable and transposable dispositions which, integrating all past experiences, functions at every moment as a matrix of perceptions, appreciations, and actions"* (Bourdieu, 1972/1977, p261 cited in Wacquant, 2004, p318). Habitus then, is the way in which society becomes deposited or sedimented in a person in the form of dispositions and propensities to think, feel and act in certain ways (Wacquant, 2004, p318) and will structure how they act in particular situations, for example welfare interactions. *Misrecognition* is a further concept employed by Bourdieu, and echoes Lukes' concern with false beliefs (including the mismatch between subjective preferences and objective interests). Misrecognitions may stifle people's capacity to use the capital they possess effectively.

Peillon (1998) considers Bourdieu's framework particularly helpful in understanding welfare institutions and practices because it *"sets welfare in its social context, while at the same grasping the internal structure of welfare activity"* and illuminates how *"the welfare situation activates a range of micro-powers, of practices which aim at normalising"* (Peillon, 1998, p217). Applying the concept of misrecognition to welfare interactions, Peillon (1998) explains:

> *Welfare agencies and welfare clients belong to a structure of domination, but one which is largely misrecognised... the relationship between administrative agencies and welfare recipients, which is organised in terms of control, is misrecognised as caring* (Peillon, 1998, p221).

It was argued above that welfare institutions may pursue plural objectives (Miller, 1999; Clarke, 2004; Hoggett, 2006) and thus that the relationship may be one of both care *and* control (Johnsen and Fitzpatrick, 2010). Perceiving these objectives partially or imperfectly would constitute misrecognition and may skew the ways in which service users and providers interact. For example, the user may feel gratitude, perceiving that they are benefiting from state beneficence or charity, where a sense of entitlement or resistance to the demands of the welfare provider might serve their interests better.

Misrecognition then will stifle resistance, legitimate current practices and thereby tend to reproduce the status quo. Symbolic power, which is not perceived as power *"but as a source of legitimate demands on the services of others"* (Brubaker, 2004, p40) will serve the same purpose. Crucially, people's habitus' will tend to *"lead individuals to act in ways that reproduce the social structure... without radically transforming it"* (Brubaker, 2004, p43). To put it differently, this understanding of power would suggest that people's habitus, the distribution of capital and dominant understandings (discourses and misrecognitions) will tend to generate system justifying (as opposed to system challenging) beliefs (Jost, et al., 2004). In this light, Lukes asks:

> *Is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things,*

either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable...?" (Lukes, 2005, p28).

These perspectives on power suggest a conception of empowerment that recognises the subtle ways in which discourses, understandings and dispositions may influence the nature and outcomes of welfare interactions. Specifically, and in stark contrast to 'traditional' notions of empowerment, this conception accepts that people's articulations of their needs, preferences and/or interests may not reflect their 'objective' needs or interests: people may be *"constrained by hegemonic power, trapped in its third face"* (Greener, 2002, p697). Empowerment then would constitute enabling or enhancing welfare users capacity to engage with, understand and resist dominant discourses, exposing misrecognitions and power differences where they are hidden or seen as legitimate or 'natural'. In other words, empowerment would involve working against the subjective and inter-subjective patterns of interaction that tend to reinforce the status quo.

This conception of empowerment resonates with Doyal and Gough's identification of 'critical autonomy' as a basic need, by which they mean a person's capacity to *"question and to participate in agreeing or changing the rules"* (Doyal and Gough, 1991, p67). Similarly, Hoggett distinguishes between two kinds of agency, first the 'limited' agency which can bring about first-order change or change within the existing 'rules' (by which we can understand existing discourses, as well as formal and institutional rules) and more 'radical' agency that can secure second-order change, which challenges and alters those rules or discourses (Hoggett, 2001, p50-51). Empowerment on this view consists not in coping with or making the best within existing constraints and power relations, but in perceiving and confronting those constraints and being able or enabled to have 'system challenging beliefs' (Jost, et al., 2004).

This conceptualisation of empowerment suggests several lines of inquiry for an empirical exploration of how rights-based approaches to homelessness impact on the experiences and outcomes of homeless households. On the one hand, rights-based approaches might be expected to be a weak tool in unsettling existing distributions of economic and social power. Legal rights tie substantive entitlements not only to eligibility criteria, but often behavioural conditions, embodying an ethos of coercion and/or control, as well as care and/or justice. This perspective emphasises that in spite of the rhetoric that often surrounds 'rights-talk', rights are a 'top-down' tool of the state. Writing in the context of child welfare, Danzelot comments *"the more rights are proclaimed, the more the stranglehold of the tutelary authority tightens around the poor family"* (1980, p103, cited in Hewitt, 1983, p72). In addition to this, the radical perspective on power emphasises that the operation of legal rights and other policy frameworks and tools will be mediated by existing discourses (that problematise dependence and emphasise reciprocity and deservingness) and the 'habitus' of both providers and users of services. These factors may limit and override the capacity of legal rights to challenge negative discourses, weaken habitus' that casts service users as supplicants rather than rights-holders, and challenge the power of welfare providers.

Alternatively, it may be that legal rights, by casting welfare interactions as relationships of entitlement (based on foundations other than reciprocity), rather than discretion or (public) charity, may sow the seeds of alternative discourses that help legitimate claims for a public response to homelessness, illuminating and exposing the power of welfare providers and therefore enabling the more coercive elements of a policy framework to be perceived (and not 'misrecognised'). They may in doing so encourage assertiveness and demandingness rather than passivity and gratitude among those who use services, promoting habitus' that embody resistance to rather than acceptance of current distributions of power. Although rights are instruments of the state, they can be seen as a state sponsored challenge to historic distributions of power between providers (the state)

and users (citizens). To borrow Clarke's terminology, legal rights appear to 'activate' and 'empower', but not 'responsibilise' and 'abandon' service users (cf Clarke, 2005).

In addition, Bourdieu's understanding of power suggests an understanding of legal rights as a form of capital, a 'currency' that can be used in welfare interactions. Indeed, they can be thought of as *symbolic* capital, the possession of which enables the person to make claims on others that are perceived to be legitimate, rather than problematic. Legal rights can be seen as a form of capital convertible (Greener, 2002) into better housing outcomes. The 'convertibility' of this kind of capital will depend on a several factors, not least the availability of appropriate housing; whether homeless households take on the identity of active rights-claiming citizens with legitimate entitlements and whether those working in the sector perceive legal rights as embodying legitimate claims.

Concerns have been voiced that such convertibility may not be straightforward, insofar as it requires that those who are most vulnerable actively assert, demand and seek their rights (see chapter two and Goodin, 1986, p255). The risk then is that legal rights *assume* an empowered actor, as opposed to creating one and that such an assumption *"may serve to conceal the deep-seated structural power relationships that exist"* (Greener, 2002, p697). At the base of these concerns lies the criticism that rights-based approaches rest on skewed assumptions about human agency (Le Grand, 1997; Hoggett, 2001; Greener, 2002). Le Grand argues that to be 'robust', policies must be effective whatever assumptions are made about human motivation and agency (Le Grand, 1997, p163). While Bourdieu understands human agency as habitual and instinctual (Greener, 2002, p694), Giddens (1984, 1998) sees human agency as reflexive, rational and intentional (Greener, 2002, p692-694). Hoggett (2001) argues that static assumptions about human agency are misguided and that agency can take several forms, relating to two key dimensions: whether the person is an object or agent in interactions, and whether they are reflexive or non-reflexive. This leads to a distinction between four kinds of *"subject positions that we all occupy at times"* with important implications for social policy (Hoggett, 2001, pp. 47-8; see also Greener, 2002):

- **Reflexive self-as-object:** the subject is a responsible agent, reflexive in their choices and actions and capable of shaping his/her circumstances;
- **Non-reflexive self-as-object:** the subject is not reflexive in their choices and actions, but is capable of shaping his/her circumstances (the spontaneous hero or regretful violent partner).
- **Reflexive self-as-subject:** the subject is reflexive within an environment they cannot shape or influence (the subject is aware of their powerlessness).
- **Non-reflexive self-as-subject:** the subject is not reflexive in an environment they cannot shape or control.

This framework illuminates the various 'subject positions' people may occupy in different contexts or at different times. In addition to seeking policy responses that are 'robust', it may be that policies are designed in an attempt to promote one or other of these subject positions. Policy regimes may shape dispositions, discourses or habitus' in ways that either support and legitimate or undermine and resist existing distributions of power. This leads to the question of whether rights-based approaches play a role in creating service users who are reflective agents, capable of resisting dominant discourses and recognising their 'real interests' accurately.

This section has considered the idea of empowerment in the context of policy approaches to homelessness. It has distinguished between two conceptions of power, identifying two corresponding understandings of empowerment which illuminate the ways in which welfare interactions can be viewed as 'power situations' and sites of struggle. According to the traditional conception of power, empowerment constitutes minimising the 'coercive' power of welfare providers, limiting discretion and establishing clear rules that prioritise

the needs of homeless people. 'Radical' perspectives on power shift the focus to deeper processes that impact on the articulation of interests and to the subtle ways in which distributions of power tend to be reproduced, rather than challenged. There is a disjuncture between these perspectives, one of which sees subjective interests as fundamental to empowerment, the other of which problematises them. Nevertheless, the analysis that follows in chapter eight will be guided by both perspectives on empowerment. On the one hand, it will consider the difference legal rights make to homeless households' capacity to realise their subjective interests and service providers' capacity to threaten continued deprivation and exercise authority and influence. On the other, it will consider the impact of a presence or absence of legal rights on the discourses, dispositions and 'habitus' of both providers and users in the context of homelessness services.

3.6 Conclusions

This chapter has sought to deepen understanding of the four key concepts that frame this exploration of rights-based approaches to homelessness by reviewing existing theoretical and conceptual debates, and research. The discussion has also shed further light on the ways in which rights-based approaches to homelessness might be expected to impact on meeting needs; juridification; stigma; and empowerment and highlighted some of the complexities and tensions involved in operationalizing these concepts. For example, the importance of considering the impact of legal rights on both 'insider' and 'outsider' housing needs and the multi-dimensional and complex nature of stigma and empowerment has been emphasised. The aim has been to propose conceptualisations that can guide the research design and analysis that follows.

The issues pursued in this chapter have also illuminated the normative debates and moral discourses that inevitably suffuse considerations of homelessness policy, informing (implicitly, if not explicitly) conclusions about its efficacy. Recognition of the inherent ethicality of the questions pursued in this thesis leads to the specification of a fifth and final research question: Under which normative frameworks can the policies and discourses associated with rights-based and non rights-based approaches be justified? The next chapter gives an account and justification of the comparative qualitative research design used in this study.

Chapter Four Methodological context and research design

4.1 Introduction

This chapter provides an account of the comparative qualitative methods adopted in this study. The discussion covers the rationale for the selection of Scotland and Ireland as comparators and reflections on the units of comparison chosen. An account of the fieldwork is given, with a particular focus on the selection of local case studies (Edinburgh and Dublin); sampling techniques; and the use of 'vignettes' in interviews with service providers. The process of and approach to data analysis is then explained. The chapter closes by considering the strengths and limitations of the methods used.

Before this, the study is placed in the context of existing comparative qualitative research and comparative research in the fields of housing and homelessness. Some methodological challenges highlighted by this expanding body of research - and that have informed the design of this study - are reviewed. These concern causation in comparative research; contextualisation and policy transfer; conceptual equivalence; and the impact of researcher perspectives.

4.2 Methodological context: debates and challenges in comparative qualitative research

A comparative approach

This study seeks to open up and contribute to debates around rights-based approaches to homelessness. A comparative approach is well suited to the research objectives as it affords the opportunity to contrast rights-based approaches with alternative models. One of the key strengths of comparative research is its capacity to bring the characteristics of social phenomena in different contexts into relief, enabling researchers to challenge local and/or national assumptions (Fitzpatrick, 2012; Quilgars et al., 2009, Hantrais, 1999). In addition to describing and juxtaposing alternative approaches, the study seeks to explicitly compare approaches to homelessness – what Oxley (2001) describes as 'high level comparative analysis' – and to explore and explain the *causes* of observed variations. Pickvance (2001, p8-11) sees the attempt to explore causation as fundamental to comparative analysis. In this case, a comparative approach has been used to explore the effects of employing legal rights in the field of homelessness.

Kemeny and Lowe (1998) distinguish between three approaches to comparative housing research: universalistic approaches pursue the highest level of generalisation, pointing to the underlying similarities that pertain across countries and contexts (e.g. Castells, 1977). Such approaches have dominated post-war welfare analysis and lead to convergence models identifying common trajectories of change. Pluralistic approaches juxtapose cases and eschew attempts at generalisation. Such approaches are often informed by assumptions that national context and nation states are the key influences on housing systems and outcomes. This study takes the third and favoured approach identified by these authors: 'theories of the middle range' or 'divergence theses' require *"more fine grained analysis of individual countries in order to be able to produce theories that are well grounded"* (Kemeny and Lowe, 1998, p174). The comparison of Scotland and Ireland proposed here aims to at once test the accuracy of theories about rights-based approaches to homelessness; provide a fine-grained analysis of the experiences of homeless households in these contexts and the factors influencing these experiences; and generate data which may be used to develop theories concerning the causal relationships between policy frameworks and household experiences in different social, political and cultural contexts. The challenge of seeking to understand causation through comparative research is considered further below.

Comparative empirical research has been identified as a priority for future research in the field of homelessness (Fitzpatrick, 2012). A growing body of comparative housing research has emerged over several decades (see Kemeny and Lowe, 1998), sparked by the emergence of comparative welfare state analysis, and galvanised by the absence of housing from Esping-Anderson's account of three worlds of welfare (Esping-Andersen, 1990; see also Stephens, et al., 2010a). In spite of this, comparative studies of homelessness specifically remain unusual. A special issue of the US Journal of Social Issues (September 2007) focused on cross-national and international perspectives on homelessness (see Toro, 2007), but the majority of articles reviewed existing literature and data rather than generating empirical comparative evidence on homelessness. Other comparative homelessness research (including research led by the European Observatory on Homelessness, part of FEANTSA) has relied on existing literature and national expert testimony. Comparative analysis underpinned by primary data collection in multiple countries has been rare (Fitzpatrick, 2012, p373), reflecting in part that such research is resource intensive. A comparative approach therefore offers not only the best opportunity to consider rights-based approaches to homelessness, but also represents a valuable contribution to this emerging field of enquiry.

A qualitative approach

A *qualitative* approach has been pursued for several reasons. Robust and comparable quantitative data in the field of homelessness is scarce and although generating such data has been identified as a priority for future research (Fitzpatrick, 2012, p371), doing so is beyond the resources and scope of this thesis. Secondary data (e.g. existing research) and available quantitative data (including statistical returns detailing the operation of the Scottish statutory homeless system) have been used where possible to inform the study. All primary data collection has been qualitative in nature. Gomez and Kuronen suggest that a lack of standardized statistical information on a particular topic, as well being a methodological challenge, can be taken as a 'subject of inquiry' (2011): the reasons underpinning the asymmetry of data on homelessness in Scotland Ireland can therefore be explored in this study.

In addition to these practical considerations, a qualitative strategy was selected due to the experiential focus of the research questions. Among the key strengths of qualitative social research are its capacity to understand social phenomena by 'seeing through the eyes of the people being studied', its emphasis on understanding and explaining processes and its capacity to provide a rich description of social phenomena in their context (Bryman, 1988, p61-66). According to Quilgars et al. (2009), the qualitative aspect of their eight-nation study of housing security enabled the research team to *"to understand and explain the behaviour of households [and] grasp the meaning of certain national policies and their relative importance for the behaviour of households in different countries"* (Quilgars, et al., 2009, p28). Qualitative methods therefore offer the tools to understand policy-maker, provider, and service user experiences of legal rights (and alternative policy approaches) and to shed light on the specific processes that characterise the implementation of these different policy frameworks. As noted in the previous chapter, while the research is framed by research questions and key concepts that reflect current thinking on rights-based approaches to homelessness, a qualitative research strategy enables the research to be conducted in an open and flexible way, maximising the opportunity to explore participant perspectives (Bryman, 1988, p66-9).

Given this study's focus on single homeless men (see below), it could also be argued that there are certain ethical reasons for pursuing a qualitative approach. Given the vulnerable nature of homeless households, a methodology that allows space for the 'voice' and perspectives of research participants to emerge through the research process (as opposed to researcher categories and priorities being imposed upon them) seems more appropriate.

Comparing homelessness policies in two jurisdictions offered the opportunity to explore rights-based and non rights-based approaches to homeless in their cultural, institutional and historical contexts (Gomez and Kuronen, 2011). Having selected the jurisdictions under consideration (see below), a case-study approach was adopted (Yin, 2004). One of the key objectives of this thesis is to consider the relationship between national law and policy and localised practices and experiences, with a particular focus on the perspectives of service users and 'institutional actors' (Quilgars, et al., 2009), in this case service providers, who are necessarily embedded in a local context of delivery. A case study research design suited these ambitions, enabling an investigation of rights-based and alternative approaches to homelessness in their 'real-life', local context (Yin, 1994). Through such methods, Gomez and Kuronen argue that *"the 'macro' becomes visible through the lens of the 'micro'"* (2011, p694).

According to Yin (2004), a case study approach is particularly appropriate when the boundaries between the phenomenon in question (in this case, policy approaches to homelessness) and the wider context are not clear or obvious: the qualitative, local and in-depth approach allows for a detailed exploration of where these boundaries lay (between national policy approaches and service user experiences for example) and what causal relations are at play (is the presence or absence of legal rights the key causal factor underpinning observed variations between cases?). Last, this case study approach within a comparative study allowed for the generation of rich, in-depth data in a manner that was feasible given the resources available.

The specific approach to the case studies, including local case study selection, sampling, research tools and analysis are discussed below. The next section of this chapter identifies and discusses several key methodological challenges associated with comparative research (see Ploeger, et al., 2001), focusing on how these challenges have been managed in this study.

Causation in comparative research

Drawing conclusions about the causation of social phenomena is a challenge for all social research, not least due the challenges of conceptualising causal relationships (Fitzpatrick, 2005a and 2012). Scholars have argued that the challenge of causation is particularly severe in housing and homelessness research, due the complexity of housing networks (Lawson, 2001); the embedded nature of housing in social structures (Kemeny, 2001); and the disparate causal factors thought to be associated with homelessness (Fitzpatrick, 2005a).

Kemeny (2001) argues that housing is pivotal in defining lifestyles and urban environments and more embedded in social structures than other areas of welfare provision. As such, comparative housing research is both essential and problematic. Lawson (2001) offers a conceptualisation of the complexity of housing networks and how comparative analysis can help explain them. She argues that comparative analysis should seek to compare *clusters* of causal relations, rather than particular causes of events or experiences, which cannot meaningfully be isolated from their context (see also Hantrais, 1999). In the case of housing, these causal clusters include financial, property, tenure, welfare, labour and production relations. Adding further complexity, Pickvance (2001) distinguishes between two commonly recognised kinds of causation: *simple* causation (when one or more cause has a direct effect on the dependent variable) and *complex* causation (when one or more cause indirectly - through an intermediate variable - affects the dependent variable). He argues that a further distinction (between multiple and plural causation) is often neglected. *Multiple* causation involves more than one cause acting together and *plural* causation involves different sets of causes acting to produce the same outcome in a different place and/or at a different time.

Fitzpatrick also advocates a 'complicated' and 'complex' approach to causation (2005a, p11). She writes from a critical realist perspective, sitting between positivist and interpretivist approaches to 'social reality'. Critical realists hold that the social word exists independent of our knowledge of it, unlike 'interpretivists' for whom the 'social world' is reducible to the construction of meaning and interpretations people apply to it. Critical realists would nevertheless emphasise the centrality and importance of meaning and interpretation in mediating our knowledge of the social world: the world is *"imperfectly apprehendable"* (Guba and Lincoln, 1994, p110). Fitzpatrick (2005a) advocates an approach to causation (in the field of homelessness) that recognises the operation of causal factors on multiple levels (individual and structural) *"without the need to assume that one is 'prior' in importance to the other"* (2012, p363).

Qualitative methods offer particularly useful tools in negotiating this complexity of causal relations. According to Mangen, the strength of qualitative comparative approaches is their capacity to *"reconcile complexity, detail and context"* (1999, p110). Comparisons based on quantitative variables abstracted from their contexts can, for example, conceal cases of plural causation (Pickvance, 2001; Crompton and Lyonette, 2005). In the case of qualitative comparative research, such 'decontextualisation' is less likely due to the emphasis such methodologies tend to place on meaning and context.

In the context of this study, which focuses on exploring the role of legal rights specifically, these perspectives emphasise the complex, stratified and interconnected nature of causal relations and that naïve attributions of cause and effect should be avoided. By focusing on two cases and exploring multiple perspectives, the study seeks to develop insights into the impact of legal rights on experiences and outcomes of homelessness. As Pickvance argues, *"the structure of causes present in each society [will be] an important goal of explanation"* (2001, p22). Pickvance suggests that causal relations can be postulated where there is a) a theoretical reason for accepting that the relation is causal (for example, a mechanism can be identified); b) the causal variable(s) is (are) logically or temporally prior to the variable explained; and c) the correlation is predicted by the theoretical model. That this comparative study is rooted in clear conceptual foundations and a consideration of the mechanisms linking different policy approaches to welfare outcomes (see chapters two and three) will therefore aid the analysis.

This study seeks to explore the impact of rights-based or alternative national policy frameworks on experiences of homelessness, homelessness services and outcomes of homelessness. This section has emphasised the complexity of separating out the impacts of macro-level policy structures from other causal factors. The qualitative approach adopted and the 'triangulation' (see below) of various perspectives hopes to allow for this investigation to consider the multiple, nuanced and interrelated factors that determine variations in experiences of homelessness and the impacts of policy responses to homelessness.

Contextualisation and policy transfer

Contextualisation is an essential component of comparative research and analysis, not only to underpin and inform analyses of causal relations, but also to inform attempts to extrapolate from or apply findings in different contexts (Oxley, 2001). Hantrais (1999) distinguishes between universalism, according to which context is irrelevant to understanding social reality, and culturalism, according to which context is *the* object of study. Following Hantrais, this study aims to tread a line between these approaches, seeing context *"as an important explanatory variable and an enabling tool, rather than constituting a barrier to effective cross-national comparison"* (Hantrais, 1999, p94).

Hantrais goes on that *"in-depth understanding of the socio-cultural, economic and political contexts in which social phenomena develop is a precondition for successful cross-national*

comparative research" (Hantrais, 1999, p94). This study takes a pragmatic approach, acknowledging that such comprehensive contextualisation of the countries and case studies of choice is not possible within the scope of the thesis. Reflecting the research objectives, various elements of contextualisation are prioritised, in particular the contemporary policy frameworks and institutions of service delivery that structure and define homeless households' current engagement with welfare services. The wider socio-cultural (and specifically socio-*political*) context in each country is also prioritised as likely to influence how different policy approaches work out in practice. Gomez and Kuronen describe this context as including *"social class and gender systems as well as historical and cultural traditions, customs, and ways of thinking in a certain culture and society"*, commenting that it is *"highly important [but can be] abstract to identify and difficult to analyse empirically"* (2011, p693). An historical focus on the political dynamics and power relations that led to these differences and alternative welfare regimes (which might be prioritised in a historical institutional approach for example) is referenced but not pursued in detail.

In this light, it should be emphasised that whilst one of the aims of this study is to inform better approaches to homelessness policy and practice, assumptions about the 'transferability' of approaches in Scotland or Ireland to elsewhere should be avoided (Oxley, 2001, p98). Drawing on theories of path dependency (see Hudson and Lowe, 2009, ch10), homelessness policies are understood as embedded. The structure of welfare states and social policies depends on the specific constellation of power relations in each society (Esping-Anderson, 1990; Kemeny, 2001). These structures of power relations are stable and significant policy change (as opposed to incremental change) is only likely to occur in the context of some shock to the system (Hudson and Lowe, 2009, p192). In this light, the aim of this research is to develop insights into the way these alternative policy frameworks operate, to illuminate the advantages and disadvantages of both and any trade-offs made within each system. The study hopes to offer a contextualised understanding of the experiences and outcomes associated with the alternative approaches to homelessness in Scotland and Ireland that can be drawn on to inform improvements in those specific contexts and (with caution) when opportunities for radical or incremental policy change occur elsewhere.

Conceptual equivalence

A key challenge for comparative research concerns whether concepts are used consistently, referring to the same set of ideas and understandings in different research settings (Hantrais, 1999, p98). Even in non-comparative research, it may erroneously be assumed that researchers and research participants are using and understanding concepts in the same way. Nevertheless, research across national, linguistic and/or cultural contexts heightens the risk that concepts will be interpreted and used differently. Tenure categories, for example, can mean different things in different places: Pickvance (2001) points out that whilst 'owner occupier' may mean broadly similar things across countries, the specific rights of home owners varies, imbuing the term with different meanings. Quilgars, et al. (2009) give a practical account of how they dealt with the 'conceptual relativism' of terms such as 'work', 'homeownership', 'risk' and 'security' in the eight-nation study referred to above. Following discussions between the research teams in different countries, concepts that appeared to be specific to one or a few countries were excluded from topic guides. In addition, the qualitative methodology employed allowed researchers to explore the meaning of concepts with respondents, making conceptual equivalence a subject of inquiry, rather a methodological weakness (Quilgars, et al., 2009, 23).

The focus on two countries in this study, their shared a language, geographic and to an extent cultural proximity may help mitigate the extent of differences in understandings of key concepts. Nevertheless, various concepts may still be subject to different

interpretations and meaning in Scotland and Ireland, and between different groups of participants (homeless people, service providers and policy makers), including the concepts of 'homelessness' and 'rights', which as previous chapters have demonstrated, are subject to different theorisations and understandings. In the case of homelessness, public images of homelessness as rough sleeping often contrast with wider official definitions, which themselves vary extensively (Fitzpatrick and Stephens, 2007), including between Scotland and Ireland (see chapter five). The ETHOS typology - which distinguishes between rooflessness, houselessness, insecure accommodation and inadequate accommodation - was developed in order to provide a framework within which to understand these different interpretations of the term (Fitzpatrick, 2012).

Chapter five's review of homelessness policy (including official definitions of homelessness) and surrounding literature in Scotland and Ireland is intended to reveal different understandings and usages of key concepts. Different official definitions and understandings of homelessness across countries, case studies and participants are considered a crucial consideration in the analysis of data generated in the study. Similarly, the research aims to explore whether, to what extent and why homeless service users see themselves as bearers of rights, and what the basis of these rights is (moral or legal for example). 'Vignettes' in local informant interviews (discussed further below) have been used to illuminate the kinds of service response that different kinds of homeless people experience, but also the different discourses, understandings and attitudes that underpin service provider responses. More broadly, the use of consistent research instruments across cases has allowed divergent responses to similar questions to be tracked. The flexibility of qualitative interviews has also meant that specific understandings of particular concepts can be explored in more depth using prompts.

Researcher perspective

A reflexive approach to the relationship between the researcher and her research environment is particularly important in comparative research. Hantrais comments that:

> *the researcher's own cultural and linguistic knowledge, disciplinary affiliations and financial and logistic resources also serve as important determinants of the choice of topic, the country mix, the contextual variables and the approach adopted* (Hantrais, 1999, p103).

In the present study, the foundation of the research questions in both social policy and political/moral philosophy reflect the specific interests of the researcher. In addition, the choice of cases (Scotland and the Republic of Ireland) was founded on theoretical/purposive, but also pragmatic considerations of language, cost and geography (see below). Somewhat unusually in comparative research (see for example Gomez and Kuronen, 2011), the researcher (an English female based at the University of York) is an 'outsider' in both of the research sites chosen. Arguably, this position as a 'proximate outsider' was helpful, as the researcher came to the Scottish and Irish research context with few preconceptions or assumptions beyond the perspectives garnered from the policy and research literature and was not seen as an 'insider' or 'local' by any research participants. The phasing of the fieldwork (with key informant interviews preceding local case study fieldwork) nevertheless helped establish the researcher as trustworthy, credible and professional, with the researcher then able to use this network of relationships as a 'way in' to the homelessness sector.

Conducting comparative research as part of a team and ensuring open communication and dialogue between team members has been identified as one mechanism for exposing assumptions or preconceptions that researchers bring to fieldwork and analysis (Quilgars et al., 2009, p28). For example, having multiple researchers discuss and compare their approach to analysis may be a way to increase the 'confirmability' or 'internal reliability' of

research (Bryman, 2004; LeCompte and Geotz, 1982). As a doctoral study undertaken by a sole researcher, such dialogue between research team members was not possible. Various other means were used to test the researcher's analysis however, including discussing interpretations of data with academic experts (including the researcher's supervisor and key informants in each country) and presenting emerging findings at seminars and conferences (including to national experts) throughout the process of analysis and write-up.

The specific research design pursued in this study was formulated and executed with the methodological challenges and strategies discussed above in mind. The rest of this chapter explains what data was collected and how; the approach taken to data analysis; and the ways in which the research design, data collection and analysis sought to ensure quality in research processes and outputs.

4.3 Fieldwork and data analysis

Selection of Scotland and Ireland

Scotland and the Republic of Ireland were selected as comparators. The jurisdictions offer examples of two very different approaches to homelessness when approached through the lens of legal rights. Scottish homelessness policy and law offers an exemplary application of a legal rights-based approach.

Legal rights to housing for homeless households are unusual, but not unprecedented (Fitzpatrick and Stephens, 2007). The UK has pursued such an approach since the late 1970s with France introducing an enforceable right to housing (the DALO) in 2007 (Loison-Leruste and Quilgars, 2009). The rights-based approach of the rest of the UK (excluding Scotland) remains highly conditional. As such Scotland's more expansive approach (which eliminates the key rationing mechanism of 'priority need' still operative in the rest of the UK) offered a 'purer' or 'stronger' model of a rights-based approach to investigate.

The French DALO on the other hand was not chosen as a case due to its recent introduction. Whilst Scottish homelessness policy has evolved in recent years, its foundations in the wider UK model mean the approach is more deeply embedded than in France. Since 1999, when the Scottish Parliament gained legislative power over homelessness policies (and the majority of domestic social policy areas), the jurisdiction has led the way in developing a legal rights-based approach, diverging from the UK model (Pawson and Davidson, 2008) and receiving international accolades recognising its rights-based approach. It thus stood out as a robust case of a rights-based approach to homelessness to explore in this study.

The Republic of Ireland offers a useful comparator to the Scottish case. As in Scotland, over the last two decades or so policy makers have sought to reform policy responses to homelessness. In contrast to their Scottish counterparts, Ireland's Oireachtas (Parliament) explicitly considered and rejected a rights-based approach, opting instead to develop a strategy that emphasises 'social partnership' between the state and voluntary sector, with central government taking the lead in directing strategies that are delivered locally (O'Sullivan, 2008b). Whilst there is an apparently robust commitment to respond to homelessness in Ireland, in terms of both political will and financial investment, homeless people have no enforceable legal rights to accommodation (temporary or settled).

As such, Ireland and Scotland differ with respect to the key focus of this study: whereas Scotland has developed the most pronounced rights-based approach to homelessness among Western welfare states, Ireland has explicitly rejected this approach. In addition to differing on this key variable, Scotland and Ireland share several other characteristics,

namely, their size (both have a population of around 5 million, see chapter five), political history and the liberal nature of their welfare states (although there are enduring debates on this last point, see chapter five). These common features offer an important further rationale for selecting these cases. Przeworski and Teune (1970, cited in Pickvance, 2001, p14) distinguish between two kinds of comparative research: 'most similar systems' and 'most different systems'. This study can be thought of as an example of the former approach, which aims to reduce the number of uncontrolled variables:

> *The idea is to choose societies which have most features in common but which show variation among them in the independent variables whose effects are of interest. The hope is that the effects that are observed are those of the independent variables of interest and not of the uncontrolled variables* (Pickvance, 2001, p14).

Choosing two countries that are broadly similar in these ways thus helps limit the extent of contextual differences and confounding variables. Whilst Scotland and Ireland therefore provide a 'least worst' selection, differences in the socio-cultural, institutional and political contexts remain. For example, while Scottish society and politics is often seen to be imbued with social democratic, statist and progressive leanings (Mooney and Scott, 2012, p1-18), Ireland's religious history has led to a more conservative set of social attitudes and a less statist approach towards welfare provision. The Church and faith-based organisations have played a pivotal role in welfare provision for example, including in the area of homelessness. These socio-cultural and institutional differences are likely to both underpin political choices around welfare provision in each country, but may also influence attitudes towards and experiences of those welfare systems. The contextualisation offered in the next chapter aims to mitigate this risk, combined with a cautious approach to analysis that resists making simplistic assumptions about causation (see above) and the relationship between the approach to homelessness in each country and observed differences in participant testimonies.

The selection of these cases, while theoretically motivated, was also informed by more pragmatic considerations. That Scotland and Ireland share a language in which the researcher is fluent, and are easily accessible from the researchers location (York, England), where significant considerations. They minimised the cost of the research (funded by an Economic and Social Research Council scholarship, plus a supplementary Overseas Fieldwork Allowance) by minimising travel time and expenses and by avoiding the need to translate interview transcripts. Scotland and Ireland thus offer a useful comparison in the analysis of rights-based approaches to homelessness, both theoretically and practically.

A variety of units of analysis have been used in comparative research: households, organisations, neighbourhoods, cities, regions, countries, cultures (Pickvance, 2001, p11; Gomez and Kuronen, 2011). Nevertheless the 'nation state' is often presumed to be the relevant unit of comparison. In the discipline of social policy in particular there are good reasons to compare nation states: legal, political and welfare institutions invariably correspond to state boundaries (Hantrais, 1999, p97-98). Kemeny and Lowe (1998) suggest that comparative housing research often rests on an implicit theoretical perspective that central government is the formative influence on housing systems. The efficacy of using the nation state as the unit of analysis should not to be assumed however (Mangen, 1999; Hantrais, 1999). The concepts of nation, country and state are overlapping, but not always coterminous: national identities may span territorial boundaries and legislative power may lay below the level of the nation state, as in federal or devolved systems of government. Comparative cross-national studies involving highly differentiated countries risks obscuring within country differences (Hantrais, 1999, p98; Mangen, 1999, p114; Gomez and Kuronen, 2011). Indeed, studies using smaller units of analysis (local authority area, city or region) provide ways of exploring how common national structures often lead to different outcomes locally.

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The units of analysis chosen here reflect the objective of exploring the experiences and outcomes of homelessness policy frameworks. While Ireland is a sovereign state with complete legislative power over welfare policies, Scotland is a constituent country within the UK, subject to two tiers of government. Today, the devolved Scottish Parliament has legislative power over all matters, except those explicitly reserved by the UK's Westminster Parliament in the Scotland Act 1998 (Mooney and Scott, 2012). The Scottish Parliament has full legislative control over housing and homelessness and indeed, as already noted, has 'radically diverged' from UK homelessness policy (Pawson and Davidson, 2008). As such, Scotland rather than the UK represents the meaningful unit of analysis for the present study (see also Gomez and Kuronen, 2011). That several key related functions remain under UK control, including housing benefit (Wilcox, et al., 2010) remains an important context for the study, however.

The fieldwork for the study took place in two main stages: a set of national key informant interviews, followed by one in-depth case study in each country. Figure 4.1 provides a summary of each stage of fieldwork.

Figure 4.1 Summary of fieldwork

		Scotland	*Ireland*
Phase 1	National key informants	Policy makers (3) Voluntary sector (5) Academics (2) Total 10	Policy makers (5) Voluntary sector (4) Academics (4) Total 13
Phase 2	*Local case studies*	*Edinburgh*	*Dublin*
	Local informants	Local authority staff (7) Voluntary sector (3) Total 10	Local authority staff (7) Voluntary sector (1) Total 8
	Single homeless men	In temporary accommodation (8) Resettled (3) Total 11	In temporary accommodation (11) Resettled (4) Total 15

Before fieldwork began, key policy documents and literature was reviewed, in order to build a clear picture of the current situation in Scotland and Ireland with regards to homelessness policy and provide a context for further stages of data collection and analysis. Sources included statutory and non-statutory documents on homelessness policy, law and strategies and statutory and non-statutory data covering, where possible, the scale of homelessness; use of temporary accommodation; demographic and other characteristics of homeless households; proportion of social housing lets to homeless households and trend data on homelessness; regional data etc. (see chapter five).

Phase 1: Key informant interviews

Key informant interviews with national stakeholders were undertaken to enrich and complement this review, providing a snap shot of current perspectives, opinions and 'institutional discourses' (Miller, 1997) on the nature, operation and success of homelessness policies in each jurisdiction. Key informants were identified in discussion with academic contacts with experience in the sector, with further informants invited to take part on the recommendation of other participants. They included representatives from across the statutory and non-statutory sectors, including policy-makers, representatives from the voluntary sector (campaigning, advocacy, support and social housing sector organisations), and key academics in the field. Informants were selected to represent the diversity of perspectives on and experiences of working with homelessness policies. In particular, the selection of participants aimed to include both 'insiders' (those

involved in policy formulation) and 'outsiders' (those not involved in policy formulation and/or those critical of current approaches).

In Scotland, ten key informant interviews were undertaken, three with policy makers and senior civil servants; five with key voluntary sector representatives and two with academics with expertise in the field of homelessness and housing policy. In Ireland, thirteen interview were conducted, five with policy-makers and senior civil servants, four with voluntary sector representatives and four with academics in the field. Topics covered in these interviews included perceptions of the rationale and objectives underpinning the policy framework, perceptions of its efficacy and outcomes, as well as the drawbacks and trade-offs they perceive to be associated with the approach. The interviews also involved discussions with stakeholders regarding the second phase of research, in particular their perspectives on case study selection and strategies for purposively sampling homeless households within chosen case studies (see below). Topic guides for all stages of the research can be found in the appendices.

Phase 2: Selection of case studies

The second stage of fieldwork constituted two local case studies aiming to explore the delivery and implementation of homelessness policies and explore homeless households' experiences of those policies. The research focused on the implementation and operation of homelessness law, policies and strategies in the cities of Edinburgh and Dublin, cases selected as 'exemplars' of the countries' national homelessness policy (an approach defended by Yin, 1981 and Patton, 1980). Efforts to tackle homelessness in Ireland have largely been focused in Dublin (where homelessness itself is concentrated, Anderson, et al., 2008) and remain most advanced there. Edinburgh offered a good comparison as both a large city and local authority that has performed well (receiving an A grade) in inspections considering homeless services (Communities Scotland, 2006).

If resources had permitted, more than one case study would have been pursued in each country to shed light on the ways in which policy frameworks are implemented in different areas, however, focusing on only two areas offered the opportunity for more in-depth fieldwork. The selection of such non-representative case studies has implications for the extent to which the findings of the study can be extrapolated to other areas. As such, the findings of the study should be read as illuminating how rights-based and non rights-based approaches *can* work in practice: such an approach is sufficient to test the theory of rights-based approaches, if not to illuminate the diversity of ways in which policy approaches manifest themselves in different contexts.

Case study design

Within each case study, an initial overview of area specific research, homelessness strategies and policy was undertaken. This was followed by a set of interviews with local informants and service providers, which aimed to explore perspectives on and experiences of working with homelessness policies in practice. Wherever possible, interviews were conducted face-to-face, although a phone interview was conducted with one participant in Edinburgh due to time constraints. Furthermore, whilst the intention was to conduct one-to-one interviews, in several cases, time constraints necessitated that participants took part in small focus groups, with a maximum of three participants. These deviations from the intended research design in the main posed few challenges to data generation, with the exception of one focus group in each city in which participants were interviewed at the same time as their managers. It was felt this hierarchical structure (and therefore power dynamic present in the interview) may have influenced the discussion and in view of this, particular care was taken first, to ensure that sufficient interviews had taken place to garner a range of perspectives and second, in the analysis of this data.

In Edinburgh, two small focus groups were undertaken, each involving two local authority housing officers. A further focus group was undertaken with strategic and operational managers (three in total) within the local authority. Three interviews were undertaken with voluntary sector leaders working in the homelessness sector in the city. In Dublin, two focus groups involving key members of operational and strategic staff working in the homelessness sector were conducted. A further two interviews were conducted with hostel managers/key workers (one statutory sector, one voluntary sector). Some of the participants interviewed in phase one of the fieldwork as *national* informants were also considered to be local informants with expertise on the homelessness sector in the city in question. With one exception in Dublin, such participants were not re-interviewed.

Vignettes – stimuli (in the form of text or images for example) that research participants are asked to respond to (Hughes and Huby, 2004, p37) - were used in this stage of the fieldwork to explore how those in the homelessness sector would respond to different kinds of homeless households and illuminate the kind of support available to them. Hypothetical vignettes of 'typical' service users profiles were described to service providers in each country to help elicit their understandings of and approaches to providing homeless households with support. Such an approach has been successfully used in key informant interviews to identify cultural differences in understandings, attitudes and assumptions (Mangen, 1999; Hughes and Huby, 2004; Quilgars et al, 2009; Stephens, et al., 2010a). Vignettes are therefore particularly well suited to comparative research, as they offer the opportunity to decouple the perspectives of service providers from their institutional context, and can cut through the complexity of programme and organisational structures, enabling a comparison of outcomes for and experiences of service users in similar circumstances, but different contexts.

Five vignettes were used in local informant interviews, covering a range of 'typical' circumstances of homeless households. Participants were asked to explain for each vignette what this 'hypothetical' person's likely route through homeless services would be; whether this was a typical case; how much discretion providers would have in responding to the case; and what the likely outcome for that individual would be. The following is an example of one of the vignettes that was used:

> *A 24 year old man has been asked to leave by the friend he's staying with. He has a history of drug use and mental health issues and has spent time in prison. He has exhausted family and friends as a source of accommodation.*

A full list of the vignettes used can be found in the local informant topic guides in appendices three and four. Although a range of hypothetical cases were devised and used during fieldwork, vignette A (above) delivered the most relevant data in terms of the study's research questions, and is used as a framework for much of the analysis in chapter six.

The final component of the case studies constituted a set of interviews with homeless households accessing (or who had recently accessed) statutory services. The decision was taken to focus this stage of the fieldwork on single homeless men (men of adult age without dependent children, see Jones and Pleace, 2010). Whilst a variety of household types experience homelessness, concentrating on one household type offered the opportunity to generate detailed data on their experiences of homelessness and homeless services in each case study area. It was considered that conducting a greater number of interviews with one household type would provide a more robust comparison than conducting fewer interviews with a variety of household types.

Focusing on single men (rather than another household type) offered a particularly useful opportunity to consider the difference legal rights make to the experiences of a group who tend not to be prioritised in homelessness policy (families with children, for example, are

often prioritised even where there are no legal rights to housing for any group). This focus therefore enabled the differences between rights-based and non rights-based approaches to be brought into the sharpest relief possible. It also provided a means of accounting for the varying official definitions of homelessness in Scotland and Ireland (see chapter five). While Ireland employs a narrower definition of homelessness than Scotland, single men residing in temporary/emergency accommodation are considered homeless in both countries. In Scotland, only men assessed as in 'priority need' and owed the full statutory duty were included (see chapter five).

Currently and recently homeless households were included in the sample in order to explore the experience of being homeless and of being rehoused in the contrasting policy regimes. Participants were accessed through homeless services in the city. Three different services were used to ensure a diversity of experiences. In Dublin, five participants were residents of a local authority hostel; six of a voluntary sector hostel; and four were men who had recently experienced homelessness, but were now in settled accommodation. The latter group were accessed through the Homeless Agency (now Dublin Region Homeless Executive or DRHE). In Scotland, five participants were accessed through a local authority hostel; three through a voluntary sector residential resettlement services working with young adults; and three through a voluntary sector agency providing housing support to recently homeless households.

Interviews were conducted in the premises of the service through which participants had been contacted. Recently homeless households were reimbursed for travel costs and all participants received a £15 or €15 voucher in recognition of their time. The selection of specific participants was discussed between the researcher and the organisational contact and in the case of hostel residents, depended upon the residents present and willing to participate at the time of fieldwork. In this sense, the approach to sampling was 'opportunistic', although within constraints defined by a purposive sampling strategy (Bryman, 2004, p333-4). Selecting the sample in this way risked organisational contacts selecting those with positive experiences of services. In order to address this, discussions with staff emphasised that participants with a range of experiences would be valuable and anonymity of both services and all research participants was also guaranteed. During fieldwork, it was not considered that 'positive bias' was compromising the data: service users and providers who took part were open and critical about services in both case study areas.

These interviews with homeless men focused on their experiences of accessing statutory homelessness services; their perceptions of the quality of support and accommodation they were accessing; and whether or not they felt they were entitled (both morally and in fact) to the services they were accessing. As in all interviews, a topic guide was used to flexibly frame and direct the discussion to ensure that all relevant issues were explored. Participants were left space within this framework to discuss issues they deemed relevant.

All interviews/focus groups at each stage of fieldwork were recorded, with the participant's informed consent, and transcribed to ensure an accurate record was available for analysis. A copy of all topic guides is provided in the appendices.

4.4 Ethical considerations

Relevant ethical considerations were taken into account in the design of this research. The study was undertaken according to the principles of informed consent: all prospective participants were provided with an information sheet telling them about the purpose of the research; the identity of the researcher; her contact details and the contact details of her supervisor; what would happen in the interview; that they were free to choose to end the interview and any time and to refrain from answering any questions; and in the case of service users, about the voucher that they would receive as a 'thank you' for participation.

It was explained that participation was confidential and individuals would not be named in any reports. In the case of national and local informants, it was decided to ensure both personal and organisational anonymity. All participants were asked to sign a written consent form confirming that they were happy to take part on this basis.

Data was collected and has been stored in a way that adheres to the principles of the Data Protection Act, following most recent university guidance. Signed consent forms have been kept in a locked cabinet and separate from transcripts. Files containing data are labelled with a code that does not identify participants. The research design was approved by the University of York's Humanities and Social Sciences Ethics Committee.

It was anticipated that the homeless men sought to take part in the research would, to a greater or lesser extent, be vulnerable, with the sample likely to include individuals who suffer with addiction issues and/or mental health problems. The researcher has experience working with vulnerable groups and was therefore equipped to approach the fieldwork with sensitivity. Conducting interviews with participants within a service setting and whilst in contact with service providers who have been (and in most cases were still) working with them was seen to further mitigate these ethical concerns. Selecting participants in dialogue with service providers also allowed those who may be too vulnerable to be filtered out of the sample.

Researcher safety was a final ethical concern and university guidelines regarding personal safety of staff during fieldwork were followed. These cover: preparation (e.g. ensuring colleagues know where the researcher is and what time they are expected to report back); the need to carry identification and an attack alarm at all times; the importance of using reputable accommodation and transport firms; protocol for minimising risk in interviews (e.g. conducting them in public places, or aborting them if concerns about safety arise) etc.

4.5 Data analysis

In total, 59 interviews/focus groups were undertaken in the course of fieldwork, involving 67 participants and generating a large amount of qualitative data in the form of transcripts. The approach to managing and organising this material was driven by a concern to facilitate the retrieval of data around key themes, enabling clear and transparent analysis and in particular, the *comparison* of themes and concepts emerging between different groups of participants, especially between countries/case study sites.

Atlas-Ti – a software package designed for qualitative analysis – was used to organise the data and aid analysis. There have been debates about the utility of using computer-assisted qualitative data analysis software. In particular, it has been suggested that such an approach risks fragmenting data, leading to de-contextualization and the removal of segments of text from the narrative flow and processes of communication in which they were originally embedded (Bryman, 2004, p419). Despite these concerns, the code and retrieve, code auditing and code mapping functions offered by Atlas-Ti provided a relatively fast and transparent way of managing the data and reviewing the coding frame as it took shape. The package helped make clear where overlapping codes were being used, and where codes labelling an unmanageable quantity of data were emerging, the package allowed the analysis to be refined. Crucially, the software maintains a clear link between coded segments of text and their source in the original transcript.

The approach to analysis taken reflects an attempt to both 'test the theory' of rights-based approaches to homelessness, with reference to the specific research questions framing the study (see chapter two), but also to explore differences in experiences and outcomes of homelessness between Scotland and Ireland, and allow theories regarding the explanations of those differences to emerge 'inductively' from the data. In addition to exploring whether rights-based approaches to homelessness achieve better/worse

outcomes in terms of need, juridification, stigma and empowerment, the research strategy aimed to allow for an exploration of whether rights-based approaches are desirable for alternative reasons.

This strategy treads a middle ground between deductive, theory-testing (Popper, 1961) and inductive, theory-generating (Glaser and Strauss, 2009) approaches to social research (Bryman, 2004, p10). Although qualitative research has generally been associated with the attempt to generate - rather than test - hypotheses and theories, is has been used for both (Bryman, 1988). The strategy to both test and generate theories also responded to the risk that comparative qualitative research may generate *"intrinsically fascinating but largely un-interpretable material"* (Quilgars et al., 2009, p20): having a core of research questions and sensitising concepts provided a means of focusing the analysis in the context of large amounts of data. Attempts to test theory in qualitative research, however, are constrained by issues of generalizability. For example, in this research, two case studies, selected as exemplars of national policy, are used to generate data. Whilst these case studies can illuminate how the alternative policy approaches play out in these environments, they cannot demonstrate the range of impacts these approaches may have in other contexts.

Reflecting this analytical approach, the process of analysis involved both deductive (sometimes called 'a priori') coding, using key concepts elaborated in the formulation of the research project (including rights, entitlement, discretion, need, stigma, etc., see chapters two and three) and inductive coding, loosely following a 'grounded theory' approach, that sought to allow categories and concepts to emerge from the data. More practically, the process of coding allowed for the management of various aspects of the research process, including the labelling of responses to vignettes.

Having pursued the indexing and organization of data in this way, the emerging coding frame, connections between codes, and asymmetries and inconsistencies within the data were explored. Patterns and potential causes underpinning these patterns were tentatively identified. The 'memo' function within Atlas-Ti was used here to aid this iterative process and keep tabs on the evolution and refinement of (and relationships between) codes. Strauss and Corbin (1990, see also Bryman, 2004) describe this second stage of coding as 'axial coding'. In the final stages of analysis, core themes and emerging patterns were developed and refined through the *"constant comparison"* (Bryman, 2004, p403) of the data and emerging conceptualizations and explanations. Direct quotations are used in chapters six to nine to illustrate observed differences and illuminate conclusions in a transparent way. Where appropriate, several quotations are used to show the nuances or subtle differences in perspectives.

The comparative nature of the study steered the approach to data analysis. Two main loci of comparison can be distinguished: first, cross-case comparison between Scotland/Edinburgh and Ireland/Dublin. This focus of this comparison can be broken down as focusing on *processes*, *experiences* and *discourses*. In terms of *processes,* the vignettes played a key role in helping to map the different processes entailed by the alternative policy regimes. The focus was not only on processes homeless men go through when interacting with service providers, but also on processes of case management and monitoring/regulation of services, for example. This focus sought to bring into relief and compare the 'institutional frameworks' within which the research was taking place. The comparison also sought to illuminate differences in *experiences* of participants (national experts, service providers and homeless men), including participants' perspectives on the strengths and weaknesses of homelessness policy and service delivery and a comparison of these perspectives between Scotland/Edinburgh and Ireland/Dublin. Finally, there was a focus on comparing underlying *discourses* and conceptual frameworks in each country (Gomez and Kuronen, 2011): did understandings, explanations and experiences of homelessness differ between Scotland/Edinburgh and Ireland/Dublin? Why and how did

these differences relate to the policy approach, wider socio-cultural differences, or other factors?

Second, as well as focusing on cross-case comparisons, attention was paid to the relationship between 'official' institutional discourses and accounts of how homelessness policy and services work in practice. This approach directed attention to *"inconsistencies with the official discourse, to contradictions and ambiguities, to anxiety, ambivalence and uncertainty, to all these nuances that sometimes lie behind the institutional discourse"* (Gomez and Kuronen, 2011, p691). Engaging with a range of perspectives allowed for these gaps and inconsistencies to be explored. In particular, there was a focus on whether, and to what extent, strategic policy objectives were achieved in practice and where a disjuncture was identified, the factors that allowed for that deviation.

As a last note, it is worth highlighting that in the analysis of data, and throughout this thesis, an explicitly *normative* approach has been taken (Tulloch, 1978). Central to this approach is an engagement with a range of relevant ideas and perspectives, offered by moral and political philosophy, about distributive justice and fairness. The aim of this approach is to make explicit the normative frames of reference underpinning the contributions of research participants, and the analysis and conclusions presented in the thesis. This reflects an acknowledgement that the formulation of social policy, and analyses of it, are *"ultimately, although rarely explicitly, informed by a particular view of social justice"* and set of values (Tulloch, 1978, p68). Watson describes social policy as a *"highly normative discipline which constructs ideal models of society based on notions of social justice"* (Watson, 2000, p73). Accepting the inherent normativity of social policy implies an acknowledgement that *"explanation and reform become indistinguishable objectives"* (Tulloch, 1978, p70). In this light, and taking on board Tulloch's suggested criteria of evaluating normative approaches (clarity; meaningfulness; relevance and congruence; and explanation and challenge), this study seeks to make explicit, map and normatively evaluate homelessness policies in Scotland and Ireland, offering a critical analysis of their contrasting approaches and *"a realistic challenge to the existing order"* (Tulloch, 1978, p70).

4.6 Strengths and limitations of the research design

Debates continue regarding the specific criteria by which the quality of qualitative research can be judged (see Bryman, 2004, p272-276). Drawing together the discussions above, this section considers the strengths and limitations of the proposed research design in light of these debates. The primary strength of this research design lies in the volume of rich data and *"holistic understanding of the distinctive dynamics, mechanics, and particularity of each case"* (Gomez and Kuronen, 2011, p685) generated by the study. The approach pursued has captured a rich set of perspectives on the policy approaches pursued in Scotland and Ireland, and has allowed for a comparison of processes, experiences, perspectives, discourses and normative frameworks that characterise understandings of homelessness in Scotland and Ireland. The qualitative methods pursued have maximised the researchers capacity to get 'close' to the social phenomena and experiences under investigation, and thus the 'internal validity' of the findings (the *"match between research observations and the theoretical ideas they develop"*, Bryman, 2004, p373) is considered a key strength of the study.

This data offers insights into the operation and delivery of homelessness policy and services from the perspectives of three key groups: policy makers and other key national experts; service providers and those involved in the design and delivery of homelessness services locally; and homeless men. This approach can be described as one kind of 'triangulation'. Denzin uses this term to describe (among other things) approaches that use multiple perspectives and observers to study a social phenomenon (1990, p310). By bringing multiple perspectives to bear (rather than just the perspectives of service

providers or homeless people for example) this approach helps increase the *credibility* of the findings. This approach is particularly valuable in the field of comparative homelessness research, where studies have tended to rely on national expert testimony (Fitzpatrick, 2012).

The subjectivity of the process of data analysis described cannot be denied and indeed, is considered a flaw of qualitative research generally. In the context of a doctoral study, where a sole researcher (as opposed to a team of researchers) designs, conducts and analyses the data, issues of transparency and reliability can be hard to overcome. The systematic and auditable approach described here hopes to allay potential concerns of anecdotalism and a lack of transparency however (Bryman, 2004).

As with qualitative research generally, the 'external validity' or generalizability of findings is perhaps the biggest limitation of the approach pursued. Case study approaches have been particularly vulnerable to this criticism (Yin, 1994; Gomez and Kuronen, 2011). For this reason, Yin (1994) advocates multiple case studies over an extended period and different sites, which can then be used cumulatively to produce generalizations. Such an approach was not practical within the resources and time constraints of a doctoral study: depth and detail (a focus on two cases, two case study areas and single homeless men) were prioritised over breadth and coverage (including more countries, more case studies and more households types) in the research design. Nevertheless, as Gomez and Kuronen have argued *"studying the local and particular is not only revealing of the local and particular but also of the social relations and structures embedded in it"* (2011, p693).

Despite this limitation, the jurisdictions and case study locations were purposively selected (see above) to maximise the value of the insights generated: whilst they do not reveal 'universal truths' about how rights-based and non rights-based approaches to homelessness play out in practice, they give a detailed account of how exemplary cases of such approaches work. Moreover, within the constraints of qualitative research, the sample size (67 participants in total) is fairly sizeable, adding weight to the evidence and analysis presented here. This thesis therefore offers a robust and significant insight into the experiences of those designing, implementing and using homeless services in Scotland (Edinburgh) and Ireland (Dublin). The transferability of the research findings presented in this thesis, and the capacity to extrapolate the analysis to other cases, should be understood in this light: the comparisons described and explanations ventured cannot be separated from the particular contexts in which the research took place, but seek to provide useful *orientation,* in combination with wider literature and research, to those considering the efficacy of rights-based approaches in other contexts.

4.7 Conclusion

This chapter has provided an account of the methods of data generation and analysis used in this study, placing it in the wider context of comparative homelessness research and considering the strengths and limitations of the approaches adopted. Chapter five describes current policy approaches to homelessness (and their evolution) in Scotland and Ireland, focusing in particular on the ethos and rationale underpinning Scotland's rights-based and Ireland's social partnership approach.

Chapter Five Scottish and Irish Homelessness Policy in Context

5.1 Introduction

This chapter gives an account of homelessness policies in Scotland and the Ireland. In each case, this account begins with a wider consideration of the socio-political context in which these policies have evolved. There is a particular focus on the ethos and rationale underpinning the policy frameworks. The chapter also provides an overview of available data on the extent of (and trends in) homelessness in each country.

5.2 Scottish homelessness policy in context

This section begins with an account of the specific socio-political context of Scotland, focusing on devolution, the Scottish 'welfare regime' and broader socio-political characteristics attributed to the jurisdiction. The evolution of and rationale underpinning Scottish homelessness policy, previously introduced in chapters two and four, is then described. The section ends by considering the role and nature of social housing in Scotland and the scale of and trends in homelessness over recent years.

Socio-political context

Scotland is typically considered, as part of the wider UK, to be a 'liberal welfare regime' (Esping-Anderson, 1980; Anderson, et al., 2008; Benjaminsen, et al., 2009; Stephens, et al., 2010b). Some have contested - or at least qualified - this classification, pointing to the social-democratic roots and universalistic tendencies of the British welfare state (Anderson, 2004, p382) and the wider and more generous welfare safety net offered in the UK than the archetypal 'liberal' welfare state (the US) (Stephens, et al., 2010b, p7). Moreover, Scotland (having retained many of its distinct institutions, including its legal and education systems and national Church after the formation of the British state in 1707) is often described as having a distinct socio-political culture, which is characterised as more in line with social democratic values (Scott and Mooney, 2009; Mooney and Scott, 2012).

Devolution in 1999, enabling a greater level of self-government, has left room for these differences to become more pronounced (McCrone, 2005). According to Stephens, et al. (2010b, p7) the main powers directly concerning the 'welfare regime' remain reserved: all social security, social insurance taxation and employment law remain the responsibility of the UK government. The devolved Scottish Parliament does have power to make primary legislation in the case of housing policy (including homelessness). While this devolution of housing powers is constrained by budget constrains set in Westminster and reserved powers around the regulation of financial institutions and housing benefits (Wilcox, et al., 2010, p15), it has left scope for a *"distinctively Scottish agenda"* (Anderson, 2007, p164) in homelessness policy to develop (see below). This is particularly important given that housing systems, including homelessness and housing policy appear to *"have an effect independent of welfare regimes on the nature and scale homelessness"* (Stephens, et al., 2010a, p268).

More broadly, Pawson and Davidson suggest that this process has allowed Scotland to build upon and formalise the *"'welfarist' traditions commanding consensual support across the political spectrum and previously somewhat suppressed under Westminster control"* (2008, p55). In the context of describing a shift towards communitarian and consumerist ideas in England, Keating argues that *"Scotland tends to retain the egalitarian and universalist assumptions of the old British welfare state"* (Keating, 2007, p. 242). Pawson and Davidson add that in Scotland a *"citizenship based on social rights is favoured above the*

consumerist model more influential in policymaking at the Westminster parliament" (Pawson and Davidson, 2008, p42).

Scottish homelessness policy: the evolution of a rights-based approach

In light of this political history, an account of current homelessness policies in Scotland begins with an account of landmark British[15] legislation passed in the 1970s. Following a decade of growing public concern and media attention around the issue of homelessness, the 1977 Housing (Homeless Persons) Act established a legal duty on local authorities to rehouse certain groups of homeless people (Robson and Poustie, 1996). The Act was subject to extended debate, considerable opposition and political compromise in Parliament however, and applicants were to be subject to various 'tests' before a local authority had a legal duty to rehouse them: they had to be eligible, considered homeless, in 'priority need' and not deemed to be 'intentionally homeless' (i.e. responsible for their homelessness through an act or omission). This last test aimed to prevent abuse of the new legislation and weaken perverse incentives for households to manufacture their homelessness to gain social housing more quickly. Where an applicant was owed the main homelessness duty, but had no 'local connection' to the local authority to which they'd applied, the duty to secure settled accommodation could (in most cases) be transferred to another authority to which they did have such a connection (Fitzpatrick and Stephens, 2007; Fitzpatrick, et al., 2012d). In practice, these tests meant that in the main, only families with children or pregnant women were owed the full rehousing duty under the legislation (Fitzpatrick and Stephens, 1999), although the legislation was always interpreted more generously in Scotland (Pawson and Davidson, 2008).

At the time, these 'rationing criteria' led some to criticise the Bill as weak (Robson and Poustie, 1996). Indeed, Cowan has argued that it is better regarding as "a *method of excluding applicants*" than *"a method of 'access' to accommodation"* (Cowan, 1999, p221). From an international perspective however, this was a ground-breaking piece of legislation on several counts. First, the framework employed a wide definition of homelessness. The current Scottish definition of homelessness remains similarly wide and is laid out in the Housing (Scotland) Act 1987, as amended:

> *A person is homeless if he/she has no accommodation in the UK or elsewhere. A person is also homeless if he/she has accommodation but cannot reasonably occupy it, for example because of a threat of violence. A person is potentially homeless (threatened with homelessness) if it is likely that he/she will become homeless within two months* (Scottish Government, 2012).

Second, the 1977 framework was (and remains) extremely unusual in an international context in creating a justiciable right to settled housing for certain groups (Fitzpatrick and Stephens, 2007). Where this 'main homelessness duty' is owed, Scottish local authorities (the entitlement is slightly different in England, see Fitzpatrick and Stephens, 2007) are obliged to provide homeless households with 'settled accommodation', defined as a Scottish secure tenancy (in social housing) or an assured tenancy (in the private rented sector). In addition, there are now some circumstances in which the duty can be discharged into non-permanent housing, such as supported accommodation (where the household has specific support needs) or a fixed-term private rented ('short assured') tenancy if certain conditions around tenancy length, support, affordability and consent of the applicant are met (Fitzpatrick, et al., 2012d). Available evidence suggests however that these provisions are not being widely used by local authorities (SCSH and Crisis, 2011).

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[15] The 1977 Act covered all of Great Britain, with the legislation extended to Northern Ireland in 1988.

The consolidation of the 1977 homelessness legislation in the mid 1980s into two separate acts (Housing Act 1985 for England and Wales and Housing (Scotland) Act 1987) began a process of divergence between Scottish homelessness law and the framework elsewhere in Great Britain. Although the basic framework remained very similar until the mid 1990s (Fitzpatrick et al, 2009, p6), divergences in practice were apparent before that, with Scotland tending to interpret the framework somewhat less narrowly than south of the border (Pawson and Davidson, 2008, p41). The establishment of a devolved Scottish Parliament in 1999 allowed the pace and scale of this divergence to dramatically increase in a context where homelessness became a 'flagship' area for policy reform for the first Labour-Liberal Democrat Scottish Executive (Fitzpatrick, et al., 2012d).

In August 1999, the newly elected Scottish Executive launched a comprehensive review of the causes and nature of homelessness. Its function was *"to examine current practice in dealing with cases of homelessness; and to make recommendations on how homelessness in Scotland can best be prevented and, where it does occur, tackled effectively"* (Scottish Executive, 2002). The Homelessness Task Force (HTF) – chaired by the Scottish Minister for Social Justice and intended to embrace a *"consensual and 'inclusive'"* approach (Fitzpatrick, et al., 2012d, p4, see also Anderson, 2009) - brought together representatives from central and local government, service providers from the homelessness sector, voluntary sector and campaigning organisation representatives and an academic (Fitzpatrick, 2004; Anderson, 2007). It was provided with administrative support and a budget to fund research and evidence gathering activities. In total, the Task Force published 13 research studies (Fitzpatrick, 2001), although, as Anderson (2009) emphasises, the review built on 30 years of previous research and debate.

The conclusions of the HTF's deliberations were published in two reports (Scottish Executive, 2000; Scottish Executive, 2002), the first of which focused on legislative proposals, the second of which comprised a more fundamental review of homelessness policy and law and presented 59 recommendations (Fitzpatrick, et al., 2012d). Virtually all of the legislative proposals in the first report were enacted in the Housing (Scotland) Act 2001, with the 5 recommendations in the final report that required legislative change incorporated into the Homeless Etc. (Scotland) Act 2003. These pieces of legislation form legislative basis of the now internationally praised 'Scottish model' on homelessness (Fitzpatrick, et al., 2012d). The rest of this section reviews the legislative provisions of most relevance to this thesis (for a wider review of policy and practice changes in the field of homelessness in Scotland, see Fitzpatrick, et al., 2012d, pp. 5-10).

The Housing (Scotland) Act 2001 requires local authorities to produce comprehensive strategies to assess levels of homelessness in their area and to develop multi-agency responses. It also placed an expanded duty on local authorities to provide temporary accommodation for all homeless households, both during the process of their application being assessed and a short (normally 28 day) period afterwards. The Act also placed new duties on housing associations to give reasonable preference to homeless households in their allocations policies and to provide accommodation for homeless households owed the full statutory duty and nominated or referred to them by local authorities (such nominations are called 'Section 5 referrals' reflecting the location of these provisions in the Act) (Fitzpatrick, 2004; Anderson, 2007; Anderson, 2009; Fitzpatrick, et al., 2012d).

Of most relevance here, the 2003 Act made *"uniquely ambitious"* (Fitzpatrick, 2012d, p8) provisions to gradually expand and then eliminate the 'priority need' category, the key-rationing device under previous legislation. Although not announced as a 'right to housing' (Anderson, 2007), these reforms mean that virtually all homeless people in Scotland would be entitled to settled housing (see above) through their local authority by the end of 2012 (Anderson, 2007; Anderson, 2009; Fitzpatrick et al., 2012d). Applicants are entitled to request an internal review of the local authority's decision on their application and these rights are individually enforceable through domestic courts (by judicial review).

Ministers specified that the proportion of non-priority need decisions should be halved by 2009 and reduced to zero by 2012. The long time-scale attached to the reforms was in recognition of the significant additional resources (in terms of housing and support) that would be needed to implement them (Anderson, 2009). There appears to be considerable support for the elimination of the priority need category (along with other shifts in homelessness policy and practice) both among local authorities and across other sectors (Anderson, 2009, p209; Fitzpatrick, et al., 2012d, p55). This target has now been met in virtually all local authorities, although one (East Lothian) has reported that it is unlikely to fulfil the legislative requirement within the specific timescale (Fitzpatrick, et al., 2012d, p8, see also Anderson, 2009). 91% of applicants assessed as homeless were deemed to be in priority need in 2011-12, compared to 75% in 2004-5 (Fitzpatrick, et al., 2012d, p60). The number of households classified as non-priority was 3,119 in 2011-12, reduced from over ten thousand in 2004-5 (Fitzpatrick, et al., 2012d, p60). The statutory instrument (Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012) eradicating priority need testing from the homelessness legislation came into force on 31st December 2012.

Following recommendations of the Task Force, the 2003 Act also put in place measures to suspend the local connection referral rules and 'soften' the intentionality criterion (see Rosengard, et al., 2006), meaning that even households considered to be intentionally homeless would be re-housed, albeit with slightly tighter conditions on their tenancy. Secondary commencing legislation bringing these amendments into force has not yet been passed and there is no indication that such action will be taken at present or in the near future (Anderson, 2007, p171; Fitzpatrick, et al., 2012d, p8).

In 2007, the Scottish National Party (SNP) was elected as a minority government and confirmed its commitment to the previous administration's '2012 target', reconstituting the 'Homeless Monitoring Group' (the successor to the Homelessness Task Force). They also showed signs of a shift in focus, to an emphasis on service delivery in homelessness services (Anderson, 2007). The consultation on housing policy, initiated by the publication of *Firm Foundations* (Scottish Government, 2007) did not focus significantly on homelessness, but did emphasise the role that private rented housing should play in meeting the 2012 target, particular as an appropriate housing option for younger people. Instead, the document focused on the need to increase the supply of affordable and social housing (see below).

In addition to the expansion of the legal safety net to virtually all homeless households, two other shifts in Scottish homelessness policy and practice since devolution are worthy of note. First, there has been a marked shift towards preventative approaches to homelessness, drawing lessons from the English 'housing options' model (Pawson, et al., 2007; Fitzpatrick, et al., 2012d). While initial moves towards homelessness prevention were cautious and relatively limited (Pawson, et al., 2007; Wilcox, et al., 2010), since 2010 there has been a more ambitious and wide-reaching attempt to pursue the 'housing options' model (Shelter Scotland, 2011a; Ipsos MORI Scotland, 2012; Fitzpatrick, et al., 2012d). In 2010, Scottish Government launched an 'enabling fund' to encourage local authorities to take forward the 'housing options' approach and established five regional 'Hubs' bringing together neighbouring clusters of local authorities to promote *"knowledge sharing and learning"* on the issue (Ipsos MORI Scotland, 2012, p9). An evaluation of the programme concluded that it had effectively promoted a 'housing options' approach and, moreover, helped generate a consensus and 'buy in' with regards to this more 'activist' approach to homelessness (Ipsos MORI Scotland, 2012, p28; Fitzpatrick, et al., 2012d, p35). It has been suggested that a shift in the regulatory inspections of local authorities housing and homelessness functions has allowed for this shift (Fitzpatrick, et al., 2012d, p35/63): the rolling programme of inspections (according to which each local authority underwent a comprehensive inspection every 5 years) has now been scaled down to a

'risk-based approach'. Moreover, the Scottish Housing Regulator has now reassured local authorities that robust preventative approaches are consistent with the legislation and good practice, allaying fears that local authorities taking an activist 'housing options' approach would be vulnerable to accusations of 'gatekeeping'[16] (Fitzpatrick, et al., 2012a).

Second, there have been significant shifts in the funding regime for homeless resettlement services. The Supporting People funding stream, introduced in 2003, allowed for an expansion of such services across the UK, but in 2008, the ring-fence on these funds was removed in Scotland, meaning that local authorities could chose to spend this money according to local priorities. According to Fitzpatrick, et al. (2012d, pxiii) this change (in combination with cuts to the Supporting People budget) is likely to impact on support services available to homeless people, particularly low intensity, floating support services (see also Anderson, 2007; Pleace, 2008; Wilcox, et a., 2010). The introduction - through the Housing (Scotland) Act 2010 and responding to lobbying from Shelter (Shelter, 2009 and 2010) - of a new legal duty on local authorities to assess – and provide services to meet – the support needs of statutorily homeless households may help counteract this trend (Fitzpatrick, et al., 2012d, pxiii).

Social housing in Scotland

The legal rights owed to homeless households in Scotland are in the main met through the allocation of a social rented housing tenancy: in 2011-12, 70% of applicants assessed as homeless and in priority need were offered a social rented tenancy by their local authority (Scottish Government, 2012, p55). Homeless lets accounted for around 42% of new social lettings in 2011/12, up from 26.8% in 2004/5, although a reduction on the 2010/11 peak of 44.5% (Pawson and Wilcox, 2012, Table 103). This substantial increase in the proportion of lets allocated to homeless households has occurred in the context of a continuing decline in the availability of social housing lets (Fitzpatrick, et al., 2012d; Pawson and Wilcox, 2012, Table 103). These trends have played a key role in maintaining enduring debates about the proper role of the social rented sector in Scotland (see Anderson, 2009, McKee and Phillips, 2012).

Along with the rest of the UK, Scotland is considered to have a 'dualist' rental system (Kemeny, 1995), with the rental market divided into a high-rent, largely unregulated, profit making sector and a state-owned (or at least highly regulated) 'cost' rental sector in which rents are below market rates and the state determines access (see also Stephens, et al., 2010a, p9-10). Historically, social rented housing has formed a larger proportion of the Scottish housing stock than elsewhere in the UK however (Wilcox, et al., 2010, p28). In 2010, 24% of Scottish housing stock was social rented, compared with 17% in England and Wales and 18% in Northern Ireland (Fitzpatrick, et al., 2012d, p25), although this relative advantage has narrowed in recent years with Scottish social housing stock declining faster (between 1998 and 2007) than elsewhere in the UK (Wilcox, et al., 2010, p28). It should also be noted that only 15% of homes in the city of Edinburgh (the case study area in this research) are social rented housing (City of Edinburgh Council, 2011), similar to levels in Ireland (see below).

Scotland's higher stock of social housing may partly underpin moves to extend the safety net of a right to housing to almost all homeless households (Anderson, 2007, p175). However, despite its advantage over elsewhere in the UK and other countries in this regard (see Pleace, et al., 2012, p39), an increasingly pressured housing supply (combined

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[16] 'Gatekeeping' involves the unlawful practice of reducing the number of those owed a duty under the homelessness legislation without helping to resolve individuals' housing problems (Pawson et al., 2007). This might manifest as front line staff informally directing potential applicants away from the local authority to other services, denying them their statutory entitlements.

with the impacts of the 2012 homelessness target) remains a key concern in Scotland (Fitzpatrick, et al., 2012d).

The SNP government appears to be committed to expanding housing supply: in *Firm Foundations* (Scottish Government, 2007) they proposed an expansion in the overall supply of new houses to 35,000 a year by 2015, an agenda also taken forward in the establishment of 'Housing Supply Task Force'. There has also been a specific emphasis on increasing the supply of social rented housing (in spite of substantial budget cuts), through, on the one hand, supporting and directing funding towards social rented housing construction and, on the other, restricting sales under the 'Right to Buy' scheme (Fitzpatrick, et al., 2012d, p52). Nevertheless, new build completion of social rented dwellings fell from a peak of nearly 7,000 in 2009 to 3,450 in 2011 (Fitzpatrick, et al., 2012d, p52) and despite plans to abolish to scheme altogether, past sales under the Right to Buy will continue to impact on the availability of social housing lets over the next decade (Fitzpatrick, et al., 2012d, p56). This wider housing market context is relevant to understanding the impacts of the reforms to homelessness policy and law described above, and goes some way to explaining the increasing emphasis on the private rented sector as a source of accommodation for homeless households and the increasingly sharp focus on homelessness prevention (Anderson, 2009).

Homelessness in Scotland

This section reviews available evidence on homelessness in Scotland under three headings: rough sleeping, statutory homelessness and households in temporary accommodation. In Scotland, rough sleeping is measured indirectly through local authority statistical ('HL1') returns, which ask applicants approaching their local authority as homeless about their history of rough sleeping. This method of monitoring is therefore likely to underestimate levels of rough sleeping (Anderson et al, 2008, p47-48). Both the absolute number and proportion of applicants reporting that they slept rough the night prior to their application and that reported a history of 'long term rooflessness' has declined since 2007/8 (see Fig 5.1). This decline must be interpreted in the context of the overall reduction in homelessness applications (discussed below). Nevertheless, Fitzpatrick, et al., conclude (taking the wider context and other research into account) that levels of rough sleeping have been steady or falling in recent years (2012d, p58), a trend they consider likely to be related to the expansion of the 'priority need' category to include single men (otherwise vulnerable to rough sleeping). Despite this positive 'headline' story, there are reports of increases in rough sleeping in Glasgow, with particular concerns around the number of failed asylum seekers without access to any accommodation (Fitzpatrick, et al., 2012d, p58).

Figure 5.1 Rough Sleeping in Scotland

	2007/8	2008/9	2009/10	2010/11	2011/12
Number of applicants sleeping out night prior to application	3,394	3,075	2,518	2,384	1,931
Percent of applicants sleeping out night prior to application	5.9	5.3	4.4	4.3	4.3
Number of applicants previously 'long term roofless'	289	332	296	240	18
Percent of applicants previously 'long term roofless'	0.5	0.6	0.5	0.4	0.4

Source: Fitzpatrick, et al., 2012d, p57.

Statutory homelessness consists of households who apply to their local authority for assistance on the basis of being homeless or at risk of homelessness. Between 2004/5 and 2011/12, there was a 19% drop (from 57,395 to 42,322) in the number of households applying to their local authority as homeless (Fitzpatrick, et al., 2012d, p57). This

reduction followed substantial increases in applications that occurred in the early 2000s following the introduction of greater entitlements for non-priority homeless households (Anderson, 2009; Fitzpatrick, et al., 2009) and that Scottish local authorities have increasingly pursued active homelessness prevention over the time period (Shelter Scotland, 2011a). Whether this downward trend represents a real decline in homelessness is debated, particularly in light of significant variations in the extent of declines between local authorities, with fears surrounding the question of whether it reflects the 'genuine' prevention of homelessness or 'gatekeeping' by some local authorities (Shelter Scotland, 2011a; Fitzpatrick, et al., 2012d, p59-64; Scottish Government, 2012, p4). The decline in applications in the city of Edinburgh has been significant, but more modest than elsewhere, with a reduction of 13% since 2005/6 and 5% over the past year (Fitzpatrick, et al., 2012d, p61).

In their analysis, Fitzpatrick, et al. (2012d) make three further observations regarding trends in homelessness. First, the profile of statutory homeless households in terms of the immediate causes of homelessness has remained relatively stable: homelessness due to mortgage default, rent arrears or private tenancy terminations have not increased significantly. Second, despite the phasing out of the 'priority need' category, there has not been a substantial increase in the proportion of single people among those accepted as owed the main duty (57% in 2002/3 and 59% in 2011/12). Third, there has been a decline in the proportion of homelessness assessments recorded as repeat applications from 9.8% in 2002/03 to 5.8% in 2011/12. The authors suggest that the expansion of entitlements owed to single homeless people (among whom men with complex needs, who have tended to form the bulk of multiple repeat homelessness applications) may underlie this positive trend (Fitzpatrick, et al., 2012d, pp. 65-57).

Fitzpatrick, et al. describe the *"acute pressure"* on temporary accommodation across Scotland (2012d, p67): the combination of housing market conditions and legislative reforms increasing the entitlements of those who are homeless have led to a substantial increase in the number of homeless households in temporary accommodation over the last decade (Anderson, 2009). Between 2001 and 2012, the number of households in such accommodation has almost trebled. Over the same period, the number of homeless households in hostel accommodation specifically has declined by 12%. In line with the trend in homeless acceptances generally, placements in temporary accommodation appear to have peaked at around 11,000 in 2011 with a 5% decline since then.

5.3 Irish homelessness policy in context

This section focuses on homelessness policies in the Republic of Ireland, drawing out key comparisons with Scotland. It begins with a brief overview of the broader socio-political context in the country. This is followed by an account of Ireland's 'social partnership' approach to policy making and consideration of the evolution and rationale underpinning Ireland's 'social partnership' approach to homelessness specifically. The nature of social housing in Ireland is briefly described, before a review of available data on the extent of and trends in homelessness in the country (with a specific focus on Dublin).

Socio-political context

Ireland is often considered (along with Scotland and the rest of the UK) to be a 'liberal welfare regime' (Esping-Anderson, 1990; Stephens, et al., 2010a). According to O'Sullivan (2004) however, Ireland is rather more difficult to situate within typologies of welfare (see also Cousins, 1997), reflecting the specific history of welfare policies in the country. In articulating their vision of a 'developmental welfare state', the Irish National Economic and Social Council (NESC) (2005) emphasises the 'hybridity' of the Irish welfare state. Table 5.2 summarises the various classifications that have been applied to the Irish welfare regime.

Figure 5.2 Ireland in the worlds of welfare capitalism

Author	Classification/description
Esping-Andersen, 1990	Liberal welfare regime
Daly, 1998	Modified Beveridge model
Lewis, 1992	Strong male-breadwinner welfare state
Higgins, 1981 and McLaughlin, 2001	Corporatist (catholic) welfare state
Arts and Gelissen, 2002	'Immature' welfare state with high levels of solidarity
Castles, 1998	Part of the Anglo-Saxon family
Obinger and Wagschal, 2001	Shift from Anglo-Saxon family to Southern/ Peripheral family between 1960 and 1995

Source: Adapted from O'Sullivan (2004, pp. 325-326).

Underpinning these debates, various factors are key to understanding the evolution and current nature of Irish social policy. According to Coakley (2005, p61), the Irish path of socio-economic development needs to be understood in terms of agrarianism and the existence of a strong farming class; late industrialisation; and the 'retarded development' of class-consciousness. In combination with the absence of significant urbanisation (which underpinned welfare state development elsewhere, see O'Sullivan, 2004) and the influence of Catholic social thinking (e.g. the principal of 'subsidiarity'), the role of the family and a large, church influenced voluntary sector in responding to social issues has been emphasised (O'Sullivan, 1999; McCashin, et al., 2002; Acheson, et al., 2005). Whilst the role of Catholic social thinking is now muted, the legacy of this ideology is still reflected in the provision of services (Baptista and O'Sullivan, 2008). Indeed, the voluntary sector has also had significant influence in processes of policy formation (McCashin, et al., 2002; Acheson, et al., 2005). According to Acheson, et al., the voluntary sector in Ireland is in a *"more advantaged situation than the voluntary sector in almost any other European country"* (2005, p96, for a contrary view see Meade, 2005),

This history has heavily influenced the current socio-political context in Ireland, which Coakley describes in terms of *"a new form of conservative individualism"* (2005, p61). The recent re-orientation of the Church towards support for more egalitarian values have according to Coakley *"probably come too late to have much impact on deeply ingrained popular values"* and in this context, the rapid economic growth in the late 1990s has led *"not to an erosion in wealth inequalities but in a growing disposition to tolerate these"* (2005, p61). Indeed, Ireland is a *"particularly low spender"* on social protection by EU and OECD standards (NESC, 2005, p113). While the 1990s saw absolute increases in social spending, levels have been falling as a proportion of national wealth (GNP) (NESC, 2005, p105). For these reasons, Ireland is often characterised as a 'welfare laggard', but this characterisation should not be over-stated: some commentators have pointed for instance to commitments to maintain the real value of welfare payments and clear political commitment to reduce poverty (O'Sullivan, 2004). Indeed, the areas of housing and homelessness specifically have been highlighted as one that may cut against the grain of these characterisations (O'Sullivan, 2004; Anderson, et al., 2008).

Social partnership and social policy in Ireland

'Social partnership' refers to a process that took place in Ireland every three years (since 1987) whereby the key social partners (initially the government, employers and trade unions/farmers) negotiate a programme of economic and social policy (O'Sullivan, 2012). This system has been described, in contrast to 'corporatism', as a *"hybrid pragmatic response"* to the severe social and economic problems that emerged in the 1980s (O'Donnell, 1998 cited in O'Sullivan, 2004). From 1996, a group of community and

voluntary sector organisations were accorded the status of 'social partners' and included in these negotiations (Acheson, et al., 2005; Meade, 2005; O'Sullivan, 2012). This national approach has been echoed in the development of local partnership structures, including the development of 38 Area-Based Partnerships to combat long term unemployment and social exclusion (McCashin, et al., 2002).

According to O'Sullivan the ethos of these social partnership structures *"has become calcified in the administrative mindset"* (O'Sullivan, 2004, p325) and in addition to the formal national and local social partnership arrangements, a parallel 'social partnership approach' to the governance of social problems can be identified (see Benjaminsen, et al., 2008 for a brief discussion of the concept of 'governance' in this context). This approach:

> *involves the players in a process of deliberation that has the potential to shape and reshape their understanding, identity and preferences. This idea, that identity can be shaped in interaction, is important. It is implicit in NESC's description of the process as 'dependent on a shared understanding', and 'characterised by a problem-solving approach designed to produce consensus'* (O'Donnell, 2008, p20).

It is within this institutional context - and according to this ethos of decision-making and governance - that social rights are understood in Ireland.

A key player in debates about social partnership and social rights has been NESC, a forum for engagement between government and the Social Partners on strategic economic and social issues, which is attached, and reports to, the Taoiseach's (Prime Minister's) office. NESC's 2002 review *An Investment in Quality: Services, Inclusion and Enterprise* specifically considered the issue of social and economic rights. According to the Council:

> *social inclusion is not based on a set of specific rights understood in a justiciable sense… The Council sees the challenge of social and economic rights as involving the challenge of creating effective institutions and policies for social and economic services* (NESC, 2002, p106-111).

The Council proposes that a focus on *"how standards of public service can better be identified, monitored, achieved and improved"* (NESC, 2002, p113) provides the best opportunity to vindicate socio-economic rights in the *moral* sense (see chapter two). Debates continue regarding whether such a view reflects Ireland's status as a 'welfare laggard' or a meaningful and effective alternative to legal rights-based approaches to social issues (O'Donnell, 2003; De Wispelaere and Walsh, 2007).

An area in which this debate has become particularly heated is disability policy. Reflecting many of the ideas discussed in chapters two and three, those in the Irish disability sector advocated a legal rights-based approach to disability policy, seeing *"legal remedies"* and a *"substantive role for the legal system"* as fundamentally important (see De Wispeleare and Walsh, 2007 for a full discussion). In a 2003 paper, O'Donnell (current Director of NESC) lays out in some detail a contrary view, arguing against a descent into binary opposition between 'rights resistance' and 'rights essentialism' (the belief that the legal or constitutional declaration of a right is itself the remedy) and *"a vicious circle in which two polar opposite positions re-enforce one another"* (O'Donnell, 2003, p4) leading to gridlock and antagonism between key stakeholders and a 'low road' approach to disability policy. Reflecting ideas around the issue of 'juridification' discussed in chapters two and three, O'Donnell also argues that a focus on the justiciability of rights will maximise disagreement and minimise consensus:

> *There is a danger that a certain form of compromise on justiciability could put us in the worst of all worlds. We would not have the symbolic and solidaristic benefits that*

do seem [to] derive when rights are defined in law, but we might still have many of the pathologies of a juridified system (O'Donnell, 2003, p5).

Drawing heavily on new models and theories of governance (e.g. Simon, 2003), O'Donnell proposes a set of alternative approaches to ensuring standards and quality in the design and delivery of services. According to this view *"it is more important to achieve a dynamic process which ratchets standards upwards, than a strict set of rules and regulations that set in a minimum standard"* (O'Donnell, 2003, p27). The key features or 'operating premises' of this 'social partnership approach' (see NESC, 2002; O'Donnell, 2003; Simon, 2003 and O'Donnell, 2008) are:

- **Stakeholder negotiation:** key stakeholders are involved in a deliberative process of negotiation supported and channelled by authoritative government coordination, which ensures representation; provides support; gives effect to the solution and assists in monitoring and enforcement among actors that implement agreed policy;
- **Rolling rule regimes:** implementation is seen as a process of learning, accountability and continuous improvement; a rolling rule regime includes *process* norms (covering how operations are conducted and over which actors have some discretion) and *performance* norms (covering the results of operations). Performance norms are based on standardised measures and are used to rank organisations (rather than monitor compliance); to track progress over time; and identify the best/worst performance.
- **Transparency:** negotiations will involve the transparent sharing of information; enforcement will involve the independent audit of performance; failure triggers supportive intervention and then loss of control, rather than punitive sanctions. This approach reflects that failure may result from incapacity, not deliberate action, and that severe punishment may incentivise a lack of transparency and encourage actors to distort or resist disclosing information.

O'Donnell does not necessarily see an opposition between this approach and rights-based approaches. Indeed, he proposes that the model can *"meet the concerns of those whose focus is on human rights ... [and is] not so much an alternative to rights and a rights-based approach as a contemporary version of the civil rights approach"* (2003, p38).

This section has sought to demonstrate that it is at least arguable that Ireland's social partnership approach is based on no less a firm ethos and rationale than rights-based approaches to social issues. This rationale rests on the position that justiciable rights are likely to lead to unintended and undesirable consequences in the design and delivery of social policy and the belief that key stakeholders can work in partnership to collectively and consensually define and effectively pursue policy goals, with an adequate set of 'light touch' governance structures to monitor performance and share 'best practice'. Enforcement, sanctions and compulsion of actors to behave in ways defined by the state or by law are viewed as unnecessary and undesirable according to this approach. It is in the context of this set of ideas that the evolution of homelessness policy in Ireland must be understood and which has led some to term the approach to homelessness pursued there as a 'social partnership' approach:

> *starting at a national level, new forms of governance which gradually filtered down to local areas and to diffuse areas of concern emerged from the late 1980s. As a consequence, a focus on shared understanding and problem-solving permeated the majority of policy areas; homelessness was no exception* (O'Sullivan, 2008b, p209).

The next section turns specifically to the development of homelessness policy in Ireland, tracing the evolution of the current approach from the first attempts at a co-ordinated government response to homelessness in the 1980s.

Homelessness Policy in Ireland: the evolution of a social partnership approach.

Historically, responses to homelessness in Ireland have reflected *"a somewhat extreme Irish interpretation of the contours of the public and private"* (Harvey, in Downey, 2008, p11): families and voluntary organisations, rather than the state, were seen to have responsibility for homeless people (see also O'Sullivan, 2004). This began to change in the late 1970s when increasing public concern, a 'new social movement' led by the Simon Community and related media attention prompted a government response.

Senator Brendan Ryan, a candidate to the Seaned Eireann supported by the Simon Community, introduced the Homeless Persons Bill to the Oireachtas as a private members bill in November 1983. The Bill took cues from the 1977 Housing (Homeless Persons) Act in the UK, defining homelessness in law and obliging local authorities to provide homeless people with suitable accommodation and would have in effect created a legal right to housing for homeless households. Harvey describes the strong reaction the Bill generated:

> *The concept of a 'right' to housing was anathema to an Irish constitution and administrative practice where social rights had not been a prominent characteristic. [...] There was a fear by the financial and legal side of government that a right to housing, even only for homeless people, would open up a vista of court actions and unbearable, crippling financial burdens on the state* (2008, p11).

Attitudes of local authorities and the Department of the Environment also weighed against the Bill's progression: they objected that it would interfere with the way in which homes were currently allocated (by prioritising homeless households), an objection which reflected stigmatizing attitudes to homeless people in some local authorities (Harvey, 2008, pp. 11-12). Some argued against the Bill on the basis that it would prioritise 'down and outs' over 'needy families' (Harvey, 2008, p12). These issues echoed debates during the passage of the UK 1977 bill in the House of Commons, but unlike in Westminster the Irish Bill did not survive this opposition. Continued protests from voluntary and community organizations led the government to pledge that it would introduce its own legislation. In 1985, the Housing (Miscellaneous Provisions) Bill, which maintained the legal duties of local authorities, was introduced. Once again, the Bill failed to make it into law: a year after its introduction, protests led by the Simon Community secured the Bill's progress to the second stage, but shortly after in early 1987 the Fine-Gael/Labour Party coalition government broke down following disagreements over budget proposals (Harvey, 2008).

Fianna Fail formed a minority government following the 1987 general election. The party had been petitioned by The Simon Community to tackle the issue of homeless if elected and did so in the form of the 1988 Housing Bill, a shorter document than the previous two bills, which replaced legal obligations on local authorities with *"expectation, assessment and enablement"* and passed with *"exemplary speed"* (Harvey, 2008, p12). The Bill represented a compromise and was less ambitious than campaigners had wanted. The relevant minister had apparently assured activists that should the legislation not lead to the desired results he would *"look at it again"* (Harvey, 2008, p12). Despite significant issues implementing the Act, and attempts by the Labour Party to introduce amendments restoring the 'right to housing', the Housing Act 1988 remains the cornerstone of Irish homelessness policy.

The Housing Act 1988 specified local authorities as the statutory body responsible for homelessness, but gave them considerable flexibility in how they responded to it: it obliged them to monitor and assess the numbers of households that were homeless or in housing need on a three yearly basis and devise a scheme of letting priority for social

housing (O'Sullivan, 2004 and 2012). The 1988 Act also introduced a legal definition of homelessness. A person is formally considered to homeless:

> *if the local housing department judges that they have no accommodation that they can reasonably occupy, or are living in some form of emergency accommodation and are judged to have insufficient resources to secure reasonable accommodation* (Benjaminsen, 2009, p33)

On the surface, this appears to be a fairly wide definition of homelessness by international standards, but the 'elasticity' of the definition has enabled a somewhat narrower interpretation to emerge in practice, one that focuses on rough sleepers, those in temporary accommodation and those soon to be released from an institution (e.g. prison) without an address (Anderson, et al., 2008).

By the mid-1990s there was a growing consensus acknowledging the flaws of the 1988 Act and its implementation (O'Sullivan, 2004; Anderson, et al., 2008; Harvey, 2008; O'Sullivan, 2012). These flaws were linked to the failure of the legislation to encourage the prioritisation of homeless households in social housing allocations (Anderson, et al., 2008; Harvey, 2008) and to substantial increases in homelessness over the 1990s (Phelan and Norris, 2008) (although the figures monitoring these trends are problematic, see O'Sullivan 2004). Local authorities responded to the Act unevenly, some ignoring its provisions altogether (Harvey, 2008, p13). A review of service provision in Dublin in 1996 highlighted issues about the range of services on offer to homeless households and particularly emphasised a lack planning and coordination between the relevant agencies (Harvey, 2008).

These developments led to the establishment of the Homeless Initiative in October 1996, jointly funded by the Departments of Health and Environment. Whilst this only covered the greater Dublin region (Dublin City and the three surrounding local authorities), it was the first systematic attempt to improve the implementation of homelessness policy in Ireland. A management group of senior officials from Dublin local authority and the regional health authority led the Initiative. A consultative forum was also convened, made up of other local authority and health board representatives, along with voluntary organisations in the homelessness sector (O'Sullivan, 2008b). The initiative (replaced by the Homeless Agency in 2000) aimed to improve the planning, co-ordination and delivery of services and enable homeless people to move out of cycles of homelessness. The key mechanisms to achieve this were research and analysis; evaluations of services and intervention models; and the development of strong partnership between the relevant agencies (O'Sullivan, 2008a). A 2001 evaluation commented: *"As an innovative approach to addressing problems of co-operation and co-ordination which apply across many areas of the public sector, the Initiative represented an important new way of working"* (Boyle et al., 2001, p34).

This Dublin specific initiative fed into the development of the first *national* strategy to approach homelessness across Ireland. In 1998 a Cross-Departmental Team on Homelessness was established under the Cabinet Committee on Social Inclusion. The Department of the Environment led the team, working in partnership with eight government departments and engaging in extensive consultation with voluntary bodies, health boards and local authorities. In 2000 they published *Homelessness: An Integrated Strategy*, identifying gaps in services and barriers to effective delivery and seeking to develop emergency, transitional and long term responses to homelessness, which encompassed the health, education and employment needs of homeless households (Brownlee, 2008; O'Sullivan, 2008b).

Some of the key actions proposed in the strategy (Department of the Environment and Local Government, 2000) were:

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- To establish local 'homeless forums' in each county, bringing together local authority representatives, the health board and voluntary organizations.
- To supersede the Homeless Initiative with the new Homeless Agency (a statutory/voluntary partnership and joint executive homeless services center).
- These forums, and the Homeless Agency in the Dublin region, were to be responsible for producing homeless action plans and managing and coordinating service delivery in their area.
- A clarification of the division of funding responsibilities: local authorities were identified as responsible for the provision of emergency hostel and temporary accommodation as part of their housing responsibility; health boards were identified as responsible for the health and in-house care needs of homeless people.

The strategy also articulated a 'continuum of care' model for homelessness services, emphasizing the need to expand outreach services; the provision of sheltered, supported and long term move on accommodation to facilitate movement out of homelessness; and preventative services for at-risk groups. In a parallel development, the Planning and Development Act, 2000 introduced a statutory requirement for local authorities to prepare housing strategies to ensure that the appropriate amount, types and sizes of accommodation were available to meet local needs for households on different incomes. Authorities had to ensure that a mix of housing types, sizes and tenures were provided to cater for people on different income levels.

This national homelessness strategy was followed by the publication in 2002 of the *Homeless Preventative Strategy* (Department of Environment and Local Government et al., 2002). A *Youth Homeless Strategy* was also published by the Department of Health and Children in 2001. This 2002 strategy focused narrowly on target groups, specifically those leaving state care (prison and psychiatric hospitals). This differs from the English 'housing options' approach which uses interviews with all households approaching their local authority to prevent homelessness, without a specific focus on 'at risk' groups (Pawson, 2007). Whilst the preventative strategy has been praised for progressing the development of protocols around working with people at risk of homelessness leaving state institutions, it has been criticised as having limited impacts, reflecting a lack of resources directed at the issue and the absence of specific targets (Threshold, 2005, p9; FEANTSA, 2012, p72).

An independent review of the impact of the strategies was commissioned by the Department of Environment in 2005. Published in 2006, this report (Fitzpatrick Associates, 2006) reviewed progress on all of the strategies' 43 proposals and recommended 21 actions to further implementation. These recommendations were all accepted by government and almost universally accepted by voluntary sector organizations in the homelessness sector, representing a noteworthy degree of consensus (Brownlee, 2008).

The review was positive about progress since the publication of the strategies: it concluded that 60% of the objectives in the integrated strategy and 30% of the preventative strategies had been fully or significantly progressed (O'Sullivan, 2008b). The review made two main critical observations. First, it pointed to significant inconsistencies across the country resulting in inequality of treatment for homeless people in different areas (Fitzpatrick Associates, 2006, p28). It proposed that the homeless action plans proposed in the integrated strategy be placed on a statutory footing (as housing strategies had been). This was realised in the 2009 Housing Act meaning that local authorities are now legally required to establish homeless forums (with input from the statutory and voluntary sector) and produce homeless action plans.

Second, the review argued that attention needed to be refocused on providing long term housing and care options for homeless people and away from emergency accommodation,

of which it was deemed there were sufficient amounts. The report went so far as to argue that agencies working in homelessness ought to work towards making themselves *"largely obsolete"* (Fitzpatrick Associates, 2006, p128). As a consequence of the review, the National Homeless Consultative Committee was established to revise and amalgamate the existing homeless strategies. At the same time, the voluntary sector launched the 'Make Room' campaign, to end *all* homelessness by 2010. Brownlee (2008, p34) describes the *"generally positive mood across the homeless sector"* at this point and O'Sullivan (2008b) draws a contrast between this and the pessimism that dominated in the mid 1980s when homelessness first came onto the political agenda.

The years 2006-8, in which the consultative committee consulted partners and drew up a new strategy, marked something of a turning point for the homelessness sector however. The consensus of 2006 ebbed, and was replaced by a more fractious mood by 2008 (Brownlee, 2008; O'Sullivan, 2008b). Brownlee (2008) and O'Sullivan (2008b) highlight several factors underpinning this shift: a downturn in Government finances due to global economic conditions (a trend that has accelerated since these authors contributions culminating in the 'austerity budget' of December 2010); a change in key personnel in voluntary and statutory agencies; and the establishment in 2008 of the Health Service Executive, a statutory body partly responsible for funding homeless services who experienced considerable bureaucratic difficulties is its first years. Last, O'Sullivan in particular suggests that the vested interests of voluntary sector organisations may have contributed to this loss of momentum due to their reluctance *"to realise the ambition of the strategy as it may result in the diminution of their services"* (O'Sullivan, 2008b, p217; see also Downey, 2011).

The new strategy *(The Way Home: A Strategy to Address Adult Homelessness in Ireland, 2008-2013)*, which drew on the findings of the 2006 review, was published in August 2008. The document lays out six strategic aims: preventing homelessness; eliminating the need to sleep rough; eliminating long term homelessness; meeting long term housing needs; ensuring effective services and better coordinating funding arrangements. The strategy made clear that services no longer meeting needs, or which duplicate other services, will have funding withdrawn and also articulated targets and priorities, including a focus on providing long term accommodation for formerly homeless households; reducing time spent in emergency accommodation; enabling settlement and independence and improving the health, wellbeing, education and training opportunities of people who are or who are at risk of homelessness. The strategy also indicated a more proactive role for central government in leading and monitoring implementation and the Dublin Region Homeless Executive (DRHE) has since developed a voluntary quality framework (FEANTSA, 2012, p75). That being said, Ireland - unlike Scotland – has no independent housing regulator to assess quality and standards, but relies instead on the 'financial regulation' offered by Service Level Agreements (SLAs) with service providers.

In Dublin specifically, the Homeless Agency published 'Pathway to Home' (Homeless Agency, 2009), articulating a new model of service delivery and an implementation plan to move towards that model. This involved a reconfiguration of housing, homeless and support services in the city, drawing on the results of the 'Counted In' survey of homelessness in Dublin (Homeless Agency, 2008a); an evaluation of homeless services in the city (Homeless Agency, 2008b); and a formal review of expenditure on homelessness (Homeless Agency, 2008c) (see Downey, 2011). Key to the reconfiguration of services outlined in 'Pathway to Home' was a shift away from emergency accommodation provision to a focus on ensuring that homeless people are able to swiftly exit homelessness and move into settled housing (with support if required) (Homeless Agency, 2009; Murphy, 2011).

As in Scotland, privately rented accommodation is becoming a key source of housing for low-income (including homeless) households in Ireland (O'Sullivan, 2008b; Anderson, et

al., 2008; FEANTSA, 2012). The supply of such housing has substantially increased (accounting for 8% of housing stock in 1991 and 13% in 2008). Tenants' rights have been significantly improved by legislation passed in 2004, with access to the tenure becoming progressively easier for low-income tenants. This has been facilitated through the Rent Supplement Scheme (RSS) (with around 60,000 claimants) and more recently the Rental Accommodation Scheme (RAS), which caters for those claiming RSS for over 18 months (with around 14,000 claimants) (O'Sullivan, 2008b).

Overall, there have been substantial and important shifts in responses to homelessness in Ireland since the mid 1990s. While establishing justiciable rights for homeless people has *"been consistently refused by the Irish State"* (Kenna, 2011, p267), there is no doubt that significant efforts have been made to better design and co-ordinate services and improve outcomes for those experiencing homelessness. Underlying these improvements is a fundamental shift in understandings of homelessness, from seeing it as a 'private matter', to seeing it as a public issue that demands a government-led response (for a more critical interpretation see Phelan and Norris, 2008).

This shift is evidenced not least by the significant level of resources directed at homelessness over this time. Between 2000 and 2007, average yearly expenditure on homelessness services was €67 million, increasing to over €90 million in 2007 (O'Sullivan, 2008). Expenditure on homelessness services in Dublin increased from €50.9 in 2005 to €62.3 million in 2008 (Homeless Agency, 2008c). Such investment was facilitated by the 'Celtic Tiger' boom of the late 1990s and early 2000s, but writing in 2008, O'Sullivan observed that while better use of funding and improved standards would increasingly be demanded in a harsher economic climate, there was *"no indication that services for the homeless will be cut"* (O'Sullivan, 2008b, p220). Indeed, funding for homeless services has been maintained in the context of austerity measures, with €60 million earmarked for homeless services in 2012 (FEANTSA, 2012, p37). More broadly, there have been efforts to maintain the value of 'core' social welfare payments (including pensions, Jobseeker Benefit and Allowance, Illness Benefit and Disability Allowance) in recent budgets (Department of Social Protection, 2012). This positive story must be interpreted in the context of wider welfare reforms and budget cuts that have increased vulnerability to homelessness and exacerbated issues of access to affordable, adequate housing for homeless households (FEANTSA, 2012 and see below).

Social housing and housing supply in Ireland

O'Sullivan (2004) describes the Irish housing market as 'strongly dualist' (see above and Kemeny, 1995) (although emphasises the different roots of this 'dualism' in the UK/Scotland and Ireland). Despite a long history of social rented housing in Ireland, the sector accounts for only around 11-15% of housing stock (Anderson, 2008; Fitzpatrick, et al., 2012b; Pleace, et al., 2012), around half the proportion in Scotland (see above).

Whilst O'Sullivan (2004) emphasises the ongoing commitment of the Irish state to social housing (and the redistributive impacts of this commitment), routes from homelessness into social housing are problematic (especially when compared to Scotland). According to Burke (2008), social housing has been allocated to homeless households in *"a rather localised, individualised and ad hoc fashion"* (Burke, 2008, p93), with even this mode of allocation undermined by various pressures, including increasing demand from homeless households (as homelessness services have expanded); limited availability of social housing vacancies and a long term decline in social housing stock; and the fact that existing social housing stock tends to be suitable for families rather than single people (who account for around 80% of homeless households) (Burke, 2008; O'Sullivan, 2008b). As such, even where quotas for allocating social housing tenancies to homeless households exist (as in Dublin), there are significant challenges meeting them (Burke, 2008).

As in Scotland, the Irish government has shown commitment to increasing the supply of social housing, publishing a housing strategy - *Delivering Homes, Sustaining Communities* - in 2007. There have however been significant changes to the funding mechanisms underpinning social housing provision recently: capital funding has been reduced by 67% between 2008 and 2011 (from €1.38 billion to €450 million) and attempts to acquire social housing through lease arrangements have not been sufficient to meet demand (FEANTSA, 2012). This has been instrumental in driving attempts to improve access to private rented housing for homeless households (FEANTSA, 2012, p66). Challenges in funding and procuring move-on accommodation for homeless households – compounded by the economic crisis - has been identified as a *"major barrier"* in achieving the goals of the 2008 strategy, in particular to reduce the use of temporary and emergency accommodation (FEANTSA, 2012, p21) and to move from having a housing-led *strategy* to having housing-led services as an *"operational reality"* (FEANTSA, 2012, p63).

Homelessness in Ireland

Data recording levels of homelessness is less reliable than in the Scottish case (see O'Sullivan, 2008; FEANTSA, 2012, p54). In particular, there is a regional disparity in data collection, with more robust and comprehensive figures available in Dublin (and to an extent, other cities) than elsewhere. Where national data is available, it shows a concentration of homelessness in major cities and Dublin in particular (Anderson, et al., 2008). There are plans to introduce a national monitoring client-registration system ('PASS'), shared by all services engaging with those who are homeless, which would generate 'real-time' data on the movement of homeless households through and out of homeless services (Downey, 2011). Implementation of PASS has been *"very weak"* however, with problems meaning the system has still not been rolled out nationally (FEANTSA, 2012, p54). Drawing on available evidence, this section considers levels of rough sleeping, the number in homeless accommodation and the numbers of homeless households waiting for social housing according to Irish local authorities.

Two key sources of data are available on rough sleeping in Ireland. The most recent census sought to capture levels of rough sleeping in Ireland on census night and recorded 64 individuals as sleeping rough in April 2011 (Central Statistics Office, 2012a). This is likely to be an underestimate however, as rough sleepers not known to key agencies were not included, nor were those staying with friends of family due to no other accommodation. Based on twice-yearly street counts, the Dublin Region Homeless Executive (DRHE) reports that 87 people were sleeping rough in the city in November 2011. This marks a significant decrease from levels in 1999 (O'Sullivan, 2008b), but an increase on the numbers counted at the same time of year in 2009 (60) and 2010 (70).

The 2011 census recorded 3,744 people as residing in accommodation for homeless people in Ireland in April 2011, with the majority in Dublin, and in either emergency (1,648) or 'long term' (992) accommodation for homeless people (Central Statistics Office, 2012a). According to 'Counted In', a Dublin based survey conducted around every three years between 1999 and 2008, 2,366 adults (2144 households) were in homeless services in Dublin in March 2008, a small increase on 2005 levels (Homeless Agency, 2008a). The majority (59%) were resident in either emergency accommodation or 'private emergency accommodation' (Homeless Agency, 2008a). 84% of adults in the survey had been homeless for over six months and nearly a third for over five years (Homeless Agency, 2008a). Of the households included in the survey, 17.5% reported having previous experiences of homelessness (Homeless Agency, 2008a).

Data is also available from the three yearly assessment of housing need, based on local authority reporting and collated by the Department of Environment, Community and Local Government. According to these figures (which do not include those not on local authority waiting lists or those residing in transitional and supported housing) there were 2,348

homeless households waiting for social housing in 2011, up from 1,394 in 2008 to (FEANTSA, 2012, p18). In addition, the assessment reported that 1,708 households are in unfit accommodation; 4,594 in overcrowded accommodation; 8,534 are involuntarily sharing; and 65,643 are not reasonably able to meet the cost of accommodation (FEANTSA, 2012, p18).

Reviewing this data, FEANTSA conclude in their 2012 European monitoring report that the previous downward trend in homelessness appears to have been reversed in Ireland due to the impacts of the economic crisis and consequent austerity measures (FEANTSA, 2012, p18). In particular, cuts in welfare, housing, health, probation, education and training services, and reforms to rent supplement that require tenants to pay a larger share of their rent have been held responsible for 'aggravating' homelessness (FEANTSA, 2012, p30). Nevertheless, the report concludes that these adverse impacts have been *"partly mitigated by an integrated strategy and well-developed services"* (FEANTSA, 2012, p18).

5.4 Scotland and Ireland compared: an overview

This chapter has described the evolution of current approaches to homelessness in Scotland and Ireland, and sought to describe key contextual factors (see figure 5.3 for a summary of headline facts). The focus of the thesis is on the impact of the contrasting approaches pursued in these jurisdictions. Scotland has pursued a legal rights-based approach to homelessness, expanding the previously highly targeted rights to (both temporary and settled) housing to virtually all homeless households. Ireland has pursued a 'social partnership' approach, based on: 'stakeholder negotiation' and partnership working (through the Homeless Initiative, now the DRHE, and elsewhere Homeless Forums); 'authoritative government co-ordination' (through key legislation, leadership from the Cross-Departmental team on Homelessness, substantial funding commitments and the development of a series of national strategies) and 'transparency and monitoring' (through PASS for instance, although progress has been more problematic in this aspect) (O'Donnell, 2003; Simon, 2003). Despite the different, and in some ways contradictory (see above), rationales underpinning these approaches, some similarities are worth noting.

Figure 5.3 Scotland and Ireland: Key Facts

	Scotland	*Ireland*
Population*	5,254,800	4,585,400
Welfare regime type	Liberal	Liberal
Rental system	Dualist	Dualist
Tenure breakdown**	Social Housing 24% Home ownership 64% Private rented 12%	Social Housing – 11% Home Ownership – 76% Private rented housing – 13%
Trends in homelessness (previous 1-5 years)***	Reduction	Increase

Sources: * Scottish figures from National Statistics (2012); Irish figures from Central Statistics Office (2012b) ** Scottish figures from Fitzpatrick, et al. (2012d); Irish figures from Fitzpatrick, et al., (2012b) *** FEANTSA (2012)

Scotland and Ireland share a recent history in which approaches to homelessness have been substantially and ambitiously altered, opening up services and directing resources towards groups previously not (or inadequately) catered for. More specifically, despite differences in scope (the Scottish HTF undertook a more systematic and holistic review of homelessness policy and law), both emphasised cross-sector partnership and consensus (in tandem with research and evaluation) to define and drive forward improved responses

to homelessness. In Scotland this took the form of the Homelessness Task Force and in Ireland the Cross-Departmental Team on Homelessness and Homeless Initiative (now DRHE). Notwithstanding the reputation of rights-based approaches as adversarial, in the early to mid 2000s *both* countries experienced a high degree of consensus between key partners around the collectively defined ambitions of homelessness reforms.

In a comparison of homelessness policy in Ireland, Scotland and Norway, Anderson, et al. (2008) argue further that there has been a *convergence* in approaches to homelessness in these countries both in terms of substantive goals to improve services and reduce homelessness and in terms of process, involving an emphasis on networks and collaborative partnerships, both vertically (between layers of central and local government) and horizontally (between statutory, market and voluntary sectors). In the context of this observed convergence, the authors note Scotland's *"greater willingness to resort to legislation"*, compared to Ireland reliance on *"financial incentives to encourage local delivery (which were also adopted in Scotland)"* (Anderson et al., 2008, p52). For O'Sullivan, this marks a significant divergence in approaches. Whilst not specifically referring the Scottish model, he contrasts Ireland's approach "*based on shared understanding and a problem-solving methodology"* with *"an aggressive legalistic approach which utilises the Courts in an adversarial manner, in an attempt to generate a desired outcome"* (2008, p229). He goes on to suggest that although rights-based approaches may have *"intuitive appeal… [offering] radical and relatively immediate solutions to righting social wrongs"*, Ireland's *"low key, incremental"* approach *"may provide more robust and intended outcomes than those offered by the legalistic route"* (2008, p229). This thesis focuses on this particular difference between Scotland and Ireland, interrogating assumptions on the one hand, that rights-based approaches offer the best response to homelessness, improving material outcomes and pyscho-social experiences of homelessness, and on the other, that they are bound to distort and lead to 'juridification' if the delivery of homelessness services.

5.5 Conclusion

This chapter has described the development and nature of current homelessness policy in Scotland and Ireland. It has highlighted the contrasting, and to an extent contradictory rationales that underpin the approaches, providing a context for the analysis that follows, which seeks to bring empirical evidence to bear on whether one rationale is better justified than the other. As well as highlighting the key differences between Scotland's rights-based and Ireland's social partnership approach to homelessness, some similarities in the jurisdictions' efforts to improve homelessness services have been noted, namely their emphasis on consensual and partnership driven patterns of reform. The next chapter focuses specifically on the difference legal rights make to meeting the housing needs of those experiencing homelessness and on the issue of juridification.

Chapter Six Homelessness and 'insider' housing needs

6.1 Introduction

This chapter turns to the first research question specified in chapter two, and begins to consider whether rights-based approaches to homelessness help ensure that those in greatest *need* access suitable housing. As discussed in chapter three, exploring the impact of legal rights on housing need requires attention to several sub questions, including the impact of legal rights on *'insider' housing needs* (the housing needs of homeless households with legal entitlements) and *'outsider' housing needs* (the housing needs of other non-homeless/non-entitled groups). 'Insider' needs are the focus of this chapter and 'outsider' needs the focus of the next. This chapter considers three distinct questions relating to the capacity of rights-based approaches to better meet the needs of 'insiders'.

First, do rights-based approaches promote greater social housing *supply*, easing competition and widening access? Second, do rights-based approaches better meet the *housing needs* of homeless households than non rights-based approaches? Here, the impacts of legal rights are considered in terms of: access to temporary accommodation; quality of temporary accommodation; and access to settled housing. Third and finally, the chapter considers whether rights-based approaches lead to *juridification* in the delivery of homelessness services.

6.2 Housing supply and legal rights

By imposing legal obligations on local authorities to provide certain groups with settled housing, rights-based approaches might be expected to foster an environment where the provision of social housing is prioritised. Indeed, one Irish key informant considered the capacity of legal rights to *"deliver homes"* as *"probably the most compelling reason"* to adopt such an approach (National stakeholder, Ireland). Others were more sceptical. One Irish participant asked for example *"how do you legislate for the availability of accommodation in a mixed economy?"* (Senior civil servant, Ireland). This perspective echoes academic debates, considered in chapter two, regarding the validity of *social* rights, given that they depend on propitious economic conditions for their realisation.

Evidence gathered from the Scottish case would suggest a middle ground between these optimistic and pessimistic perspectives. The years since legal rights were expanded in Scotland have been characterised by a 'seizing up' of the housing supply apparatus, with *"the climate for providing social housing proving more difficult and more challenging than was anticipated in the 1990s when these discussions were going on"* (National stakeholder, academic, Scotland). Nevertheless it would seem that Scotland's rights-based approach has played a protective role, buffering social housing supply from the worst impacts of a recessionary climate and fiscal austerity.

Scottish key informants noted that the ambition to eliminate the priority need category garnered support in large part because stakeholders saw it as an opportunity to improve their strategic strength in arguing for social housing investment:

> *the social landlord lobby went along with it very easily, the politics of it in 2001 were don't rock the boat, don't make any objections.... it's very good leverage to exert on central government to provide more funding for social housing and to increase supply by new provision* (National stakeholder, academic, Scotland).

A decade on, participants in this study reflected that this hope had been naïve:

> *I think that the expectation was that everybody was going to get a house and it was all going to be hunky-dory and we'd get a lot more supply and a lot more investment.*

That's the bit I was sceptical about (Local authority service manager and national stakeholder, Scotland)

I think it was always obvious that it was going to be very difficult in certain parts of the country to deliver what was being asked for … [local authorities] didn't really think through the feasibility or practicality of how much of an increase would be needed to simply carry on with their existing practice and be enabled to fulfil these new duties 10 years down the track without changing their approach (National stakeholder, academic, Scotland).

Despite these reservations, participants still saw the reform package as the sector's 'single best card in arguing for new resources' and felt that it had played an important role in protecting supply:

the fact that they haven't had every single new house that they wanted kind of shouldn't disguise the fact that there would have been some carnage in the housing budget without 2012 acting as a kind of buffer zone… having that programme of action protected budgets, protected homelessness (National stakeholder, voluntary sector, Scotland)

this has given us an amazing platform to bash government and say, if you don't build x number more houses, we'll never meet the 2012 target… Was it effective? … the message from providers, from local authorities is still tremendous pressure on waiting lists, not enough supply, got to use private rented sector, so I'm not getting a message that people are saying 'it's ok we've got enough housing', but you know that's very very idealistic" (National stakeholder, academic, Scotland).

The 2012 target was also identified as having prompted detailed work by the government and local authorities to predict the level of supply needed to meet legislative commitments. It was considered that much more is now known about the housing system than would otherwise have been the case.

Overall, the expanded duties placed on Scottish local authorities by the 2001 and 2003 reforms can be seen to have had a limited, but still significant impact on the supply of social housing. This is supported by evidence showing the very substantial investment in social housing in Scotland compared to England (Pawson and Wilcox, 2011, p19, see also Fitzpatrick, et al., 2012d, p51-2). Other things being equal, Scotland's rights-based approach has acted to protect and enhance supply within the parameters available, providing leverage to stakeholders arguing for investment and resisting reductions in funding. The statutory obligations created by Scottish legislation may have reinforced and strengthened political commitments to ensure adequate supply, locking stakeholders into efforts to ensure that these expanded legal rights are practicable.

This impact of the rights-based framework has not been sufficient to meet local authorities' obligations under the homelessness legislation, however. The residual pressure on local authorities has prompted (even necessitated) innovation. Two key levers are increasingly being relied upon in this context: preventative or 'housing options' approaches, and increasing access to the private rented sector. The reforms may also have influenced moves to end the Right to Buy Scheme for new social housing tenants and new social housing in the Housing (Scotland) Act (2010) (McKee, 2010). These reforms emerged from a commitment to *"strike a better and fairer balance between tenants who wish to own their own home and the needs of prospective tenants for social rented accommodation"* (Scottish Government, 2009, p. 13).

Although increasing access to social housing (through various procurement strategies); homelessness prevention; and access to private rented housing for homeless households

also feature in Ireland's strategy to better address homelessness, the lack of legal force underpinning homelessness provision appears to have dulled the impact of these approaches with (as demonstrated later in this chapter) flow through homelessness services remaining difficult to achieve.

Given the complex set of factors that determine social housing supply, the capacity of different homelessness policy regimes to *significantly* and *sufficiently* increase supply is limited. Rights-based approaches do not then eliminate the competitive nature of social housing[17]. Consequently, whilst increasing supply was seen as crucial to better meeting housing needs, in the short to medium-term, questions about *distribution* and *prioritisation* are brought to the fore. Expanding legal rights to more homeless households necessarily restricts access for others. Whether this prioritisation is legitimate and represents an improvement in how well housing needs are met overall is not a straightforward question. These issues are the focus of the remainder of this chapter and the next.

6.3 'Insider needs' and legal rights

This section turns away from questions of housing supply and towards the question of the distribution of available housing, a theme continued in chapter seven. The rights owed to homeless households in Scotland are an example of a selective, conditional and enforceable welfare right (see chapter two). The reforms of the early 2000s redrew the boundaries (established by earlier UK-wide legislation) between 'insiders' and 'outsiders', in particular changing the status of single homeless people to 'insiders' owed the full statutory duty, regardless of their status as specifically 'vulnerable'. The rest of this chapter focuses on what practical difference legal rights make to these 'insiders'. While there are enduring debates about whether the statutory system enhances or reduces the welfare of homeless households, evidence from England focusing on homeless families suggests that the system seems:

> to not only protect low-income families from 'literal homelessness', but also to move them from stressful personal and accommodation circumstances into more appropriate housing environments, which particularly benefits the children in these families (Fitzpatrick and Pleace, 2012, p247).

The section considers whether Scotland's statutory homeless system can achieve positive outcomes for single homeless men, focusing on meeting their accommodation and housing needs in particular. It also considers whether Irish homelessness policy can achieve such outcomes outside of a rights-based framework. The discussion is structured under three themes:

1. Access to temporary accommodation;
2. Quality of temporary accommodation; and
3. Access to settled housing.

Each section compares perspectives and experiences in Scotland and Ireland, focusing on the extent to which observed differences reflect the presence or absence of legal rights to housing for homeless households.

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[17] Access to social housing remains competitive in spite of it being a residualised and stigmatised tenure. See Fitzpatrick and Stephens, 2008, p156-157 for a discussion of this apparent contradiction.

Access to temporary accommodation

That Scottish local authorities have a statutory duty to provide temporary accommodation to anyone they believe to be homeless seems to offer an accessible *"safety net for everyone"* (Housing officer, Edinburgh). The expanded temporary accommodation duties of local authorities were perceived by housing officers to have almost eliminated the need to sleep rough in Edinburgh: *"it's not like before where people were sleeping on the streets through not having any other option other than doing that"* (Housing Officer, Edinburgh). Indeed, the homeless single men interviewed were aware of their entitlements to temporary accommodation and had not experienced problems accessing it. These men voiced concerns about the location and quality of their temporary accommodation, but were not concerned about access *per se*. Issues of quality and location could lead homeless men to ('choose' to) sleep rough however[18].

The expanding duties of local authorities have led to 'very substantial' increases in the number of households in temporary accommodation (Fitzpatrick, et al., 2012d). In a 2005 overview of inspections, Communities Scotland reported that two councils had failed on several occasions to meet their duty to provide temporary accommodation to people who were roofless (Communities Scotland, 2005, p2). More recently, sharp and uneven declines in applications to local authorities under the homelessness legislation[19] (Scottish Government, 2012) have raised questions about the possibility of gatekeeping (Fitzpatrick, et al., 2012d). There have also been reports that in some areas, namely Glasgow, local authorities are failing to meet their statutory obligations to provide temporary accommodation (Fitzpatrick, et al., 2012d, p58).

No signs of gatekeeping were detected in the Edinburgh fieldwork conducted for this study, though high demand for temporary accommodation in the city has led to the use of less desirably located and less good quality stock. In addition, and echoing the Scottish Government's explanation of the decrease in applications (Scottish Government, 2012, see also Ipsos Mori Scotland, 2012), there is now a strong focus on 'housing options' and preventative approaches in the city, which key informants consistently identified as one of the key tools for meeting the 2012 target, combined with expanded use of the private rented sector (see also Fitzpatrick, et al., 2012d). Although there have been concerns – reiterated by participants in this study - about the extent to which such approaches constitute gatekeeping (Pawson, 2007 and 2009), the Scottish Housing Regulator has now reassured local authorities that robust preventative approaches are consistent with homelessness legislation and good practice (Fitzpatrick et al., 2012a).

Some key informants suggested that increased demand for temporary accommodation could encourage local authorities to tighten interpretations of the legislation, in particular

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[18] One hostel resident who took part in the study, and had been sleeping rough intermittently for a number of years, explained that although he could access Bed and Breakfast or hostel accommodation when he needed to (for example, during the coldest months), he often chose to sleep rough in order to be with his friends. This 'choice' however was influenced by the kind of accommodation this participant could secure through the statutory system, both in terms of temporary accommodation (in which he had had some bad experiences) and in terms of settled accommodation, in which he was concerned about social isolation and the areas he might have to live in. Whilst some service users therefore appeared to 'choose' to sleep rough, better quality temporary accommodation and more intensive support of this entrenched homeless group could aid the more effective resolution of their housing needs.

[19] Following a substantial rise in applications under the homelessness legislation from 2002, the period since 2010 has been characterised by a fall in applications in most local authorities. Aberdeen City, Falkirk, Highland, Scottish Border, East Lothian and Stirling reported falls of 35% or over, with more modest, but still significant reductions in the majority of local authorities. Only two councils reported an increase in applications (South Ayrshire and Midlothian) (Scottish Government, 2012).

regarding whether someone is assessed as homeless or not. Figure 6.1 shows however that there has in fact been a gentle downward trend in those found not to be homeless or threatened with homelessness. This may reflect the progressive mood surrounding the reforms and the inclusive approach they were seen to represent.

Figure 6.1 Applications assessed as not homeless or threatened with homelessness
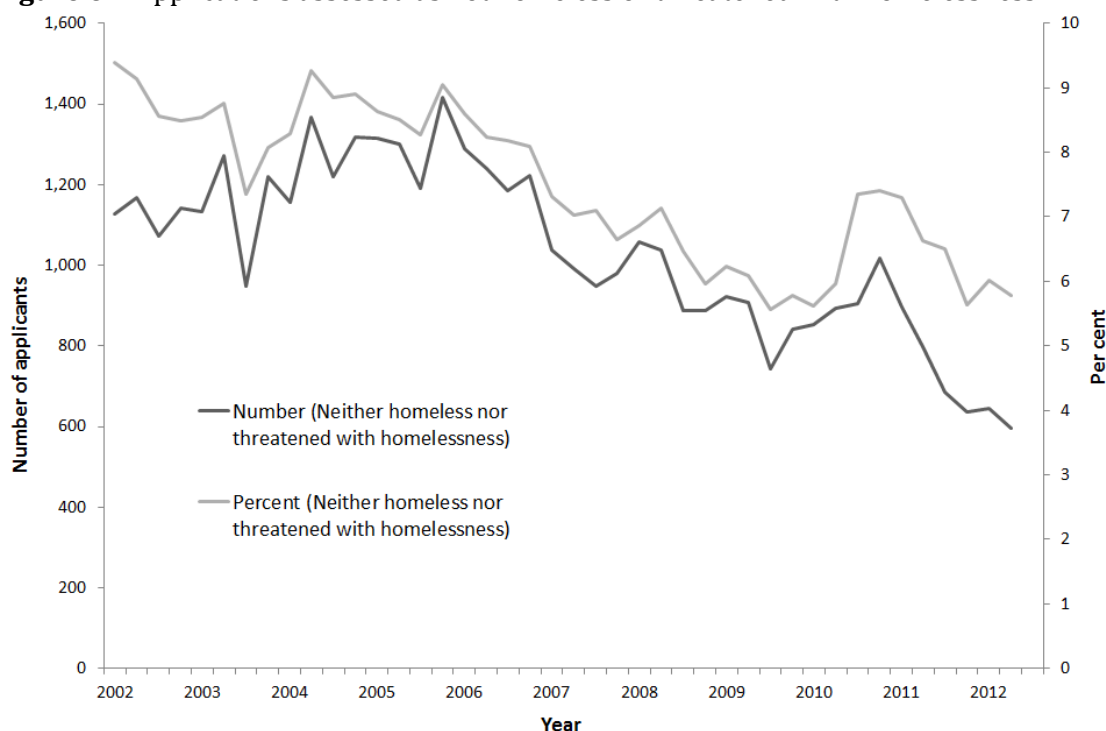
Source: Computed from Scottish Government quarterly homelessness statistics.

While the evidence from this study suggests that Scotland's rights-based approach does not, at least in the case of Edinburgh, lead to gatekeeping or tighter interpretations of the legislation, the role of the Scottish Housing Regulator was seen as a crucial guard against such responses. Some key informants were concerned that the shift from a rolling inspection regime to a risk-based approach would weaken this role. Despite these risks, fieldwork in Edinburgh suggests that the vast majority of people who are homeless or threatened with homelessness are able to access temporary accommodation of some kind with relative ease. Clear access to temporary accommodation was more problematic for homeless men in Dublin.

Although some of the literature directed at those at risk of homelessness in Dublin employs the language of 'entitlement' (Dublin City Council, 2011), local authorities have no statutory duty to provide temporary accommodation. That said, the 2008 strategy, *The Way Home,* explicitly articulates an aim to eliminate the need to sleep rough by 2010. This study (see also Downey, 2011) suggests that this goal has not been achieved:

> *we have for the last number of years at least, tried to get a bed for every single person presented on a night, now we've been failing in that in the last while because of capacity, there's an undersupply issue right now* (Local authority service provider, Dublin).

Although figures on rough sleeping in Dublin and Edinburgh are not comparable, the impression garnered during fieldwork, and supported by key informant perspectives, is that rough sleeping is a more substantial problem in Dublin than in Edinburgh. The best available evidence on trends in rough sleeping supports these impressions. Local authority statistics in Scotland, which indirectly monitor rough sleeping, show a downward trend in

both the number and proportion of homeless applicants recorded as sleeping rough on the night preceding their application (see chapter five and Fitzpatrick, et al., 2012d, p57). By contrast, whilst such extensive data is not available in Ireland, recent rough sleepers counts in Dublin suggest that the previous downward trend in rough sleeping (O'Sullivan, 2008b, p224) is faltering (DRHE, 2012).

This research would suggest then, that while in Edinburgh capacity issues are resolved by finding more temporary accommodation (albeit at the expense of the quality and/or location of that accommodation) and seeking to prevent homelessness, in Dublin capacity issues are more likely to lead to rough sleeping. Capacity issues in Dublin have, moreover, been directly influenced by the reconfiguration of homelessness services in the city since 2008 (see chapter five):

> *we took beds out of the emergency system and it's had a knock on effect is the reality, the idea was to put more resources onto the long term and to the move on and to reduce the amount of money that was being spent on emergency… it's difficult to do unless you tackle the move on first, because we're not moving people on… not the numbers that we had to* (Local authority service provider, Dublin).

This echoes Fitzpatrick and Wygnanska's (2007) concern that efforts to improve hostel standards *"may well act to the detriment rather than to the advantage of many homeless people"* (p61) if they involve a reduction in capacity. Whereas Scotland's legal rights-based framework has guarded against this, Irish policy makers have had latitude to initiate a reconfiguration of services that has, at least in the short term, compromised access to temporary accommodation in the city.

Quality of temporary accommodation

Service users in Edinburgh and Dublin had varying experiences of temporary accommodation. There were particular concerns around the use of Bed and Breakfast hotels, relating to the distance of such accommodation from the city centre; restrictive policies (e.g. curfews that made shift work difficult); little support; difficult residents (e.g. with drug problems); and the state of repair of the accommodation (e.g. there being no hot water).

As noted above, for those with experiences of rough sleeping, the choice between poor quality temporary accommodation and remaining on the streets was sometimes not straightforward. This might suggest that placing those with complex needs and experiences of rough sleeping in temporary accommodation without support or in isolated locations should be avoided. In Scotland, this dynamic may threaten single homeless households with the most complex needs benefiting from their statutory rights.

Housing officers in Edinburgh were aware of these issues, reporting that high demand was forcing them to use a wider variety of accommodation (dispersed flats, hostels and Bed and Breakfast hotels):

> *we're really struggling for vacancies… Bed and Breakfast would be the last thing we'd ever use… but now it's like if you can get a Bed and Breakfast space you're laughing… It's really difficult. We try and get people into accommodation where they have cooking facilities, maybe a shared kitchen, hostels, unit-type accommodation, but just the number of vacancies in any type of accommodation for single people or families seems to have become much worse* (Housing Officer, Edinburgh).

Homeless applicants were placed in the best accommodation available when they approached the Housing Options Team, with Bed and Breakfast accommodation far away from the city centre only used when no other options were available. Relocations from Bed

and Breakfast into better quality, better supported and better located hostel-type accommodation were a common experience. As the number of applications through the statutory homeless system is now in decline (Scottish Government, 2012), this may enable Edinburgh City Council to reduce reliance on less desirable temporary accommodation.

The study suggests that more assertive service users with more supportive social networks may be able to access better quality accommodation. This participant had sought advice from friends and family before approaching the local authority and benefitted from this in terms of the temporary accommodation he accessed:

> *if I went into Bed and Breakfast I don't think I would have got the same service as I've got here [a city centre hostel]… when I went to [the Housing Options Team], my options were Bed and Breakfast in Leith, or Salvation Army in Cowgate and I said, neither will suit my needs, and she went away came back and she advised me to sofa surf, which I could do, because I have friends obviously… she says well you basically ring [the hostel] everyday … so I did that religiously for 3 weeks phoning night or day and I think it was the third week, I got a phone call [saying] she'd got me in here* (Hostel resident, Edinburgh).

The council run hostel to which this service user gained access was of excellent quality in terms of cleanliness, state of repair, facilities and support services, in particular when compared to the hostels in Dublin in which fieldwork was conducted. His experience also suggests that Scotland's legal rights-based approach permits some flexibility, enabling applicants to avail themselves of their statutory entitlements without forcing them into poor standard temporary accommodation when they have other informal temporary solutions available.

Insofar as this study can offer evidence on the comparative quality of temporary accommodation in the case study areas, accommodation in Dublin appeared during fieldwork to be of a significantly and uniformly lower standard than in Edinburgh. The facilities observed were in a worse state of repair and less well maintained than equivalent Edinburgh hostels. One Dublin hostel resident commented that he thought standards were kept low *"so you don't get too comfortable, to try and keep you looking for somewhere, to get you moving"* (Hostel resident, Dublin). Strides have been made as part of the reconfiguration of services away from dormitory-type night shelters and at the time fieldwork such accommodation was not in use. Some hostels in Dublin were undergoing modernisation during the fieldwork and informants felt that progress had already been made in terms of the quality of accommodation and range of services available.

Moves from better to worse quality temporary accommodation were less common in Dublin than Edinburgh, and relocations often followed a resident being 'evicted' from Bed and Breakfast accommodation for failing to adhere to the rules and constraints (e.g. curfews or not bringing alcohol into the property). This was particularly significant for those in accommodation with no on-site support, including in Bed and Breakfast accommodation, 'private emergency' accommodation and also some hostel-type accommodation that was not affiliated to the Homeless Agency (now DRHE) and network of services. Homeless men directed into these kinds of accommodation could get into a situation of being 'held' in temporary accommodation, with minimal support and very limited opportunities to move on.

One Dublin Hostel manager who took part in this study reflected that these service users are *"kept out of the system in one sense… [they] get no key working, no move on per se and it's not ideal to be honest with you"* (Hostel manager, voluntary sector, Dublin). Several Dublin service users who took part in this study had experienced this kind of temporary accommodation. One explained his reluctance to leave the hostel he currently resided in (and where he has a support worker) to go to accommodation like this (where no such on-

site support would be available): *"you're just a number. No key workers, once you pay your rent, you're just a number… and with it being so big and everything and with being just a number etc. … there's people who'd stayed there for years and years"* (Hostel resident, Dublin). Indeed, another participant had spent five of the seven years he had been homeless in this particular hostel.

There is, it would seem, a two-stream service for homeless men in Dublin, with some having access to professional support, and others being 'warehoused' in temporary accommodation with little prospect of moving into settled housing (see also O'Brien, 2012). Service providers emphasised the risks of long periods in temporary accommodation for homeless single men. 'Institutionalisation' in hostel accommodation (Edgar and Doherty, 2001; Blid and Gerdner, 2006) emerged as a far greater concern for providers than in Edinburgh, where the statutory system provides some guard against service users getting 'lost in the system'.

Monitoring, licensing and regulation

This observed difference in temporary accommodation standards in Edinburgh and Dublin makes considerable sense in the context of the different monitoring, licensing and regulation regimes in Scotland and Ireland. In Scotland, statistics monitoring the operation of the homelessness legislation are collected quarterly, providing information on trends in applications, assessments and outcomes in every local authority. In Ireland, no such national statistical returns system is in operation. One of the aims of the reconfiguration of services in Dublin is to introduce the monitoring system 'PASS' (Pathway Accommodation and Support System) (Downey, 2011), which aims to counter the potential for homeless people in the city to get 'lost in the system', their progress untracked and their chances for moving into a settled tenancy low. At the time of fieldwork, PASS was not yet in place (FEANTSA, 2012, p54) and Dublin homeless services were still struggling with the issues identified in the 2008 evaluation (Homeless Agency, 2008b):

> *in reality there are many people who are just living in homeless services who are not registered and so they never even show up on the radar in terms of being offered accommodation, they just literally get into the homeless system, they stay in the homeless system and we manage them within homelessness* (Local authority service provider, Dublin).

Similarly, while Scotland benefits from a licensing regime for homeless services and a housing regulator, Ireland has neither. Scotland employs regulation in the legal, administrative *and* financial arena[20]. Self-regulation also plays a role through, for example, the Housing Options Hubs, which seek to share best practice on homelessness prevention among local authorities (Ipsos MORI Scotland, 2012).

Ireland, by contrast, currently relies on financial and self-regulation. In terms of financial regulation, the Service Level Agreements (SLAs) that structure funding between delivery organisations and the DRHE were perceived to be ineffective at ensuring quality in service

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[20] Regulation in the legal arena comprises legal obligations and entitlements; licensing, inspection, court and tribunal processes; and legal sanctions. Regulation in the administrative arena comprises practice standards and guidance; inspection regimes (that go beyond ensuring compliance with basic legal requirements), monitoring and complaints procedures; and administrative sanctions (such as a poor grading in public inspection reports, and having functions removed). Regulation in the financial arena includes competitive tendering and/or other forms of public procurement within which standards are taken into account; financial penalties (e. g. loss of funding, ineligibility to apply for funding) if required standards are not met. Self-regulation may be imposed by regional networks of service providers on its members, for example, by joint drafting of standards by members and their promotion as a good practice. Sanctions here are generally confined to a loss of prestige or standing amongst peer organizations (Fitzpatrick and Wygnanska, 2007, pp. 51-52).

delivery. Although formally funding can be withdrawn where providers are not fulfilling their contractual obligations, informants reported that this was politically and culturally difficult in the Irish context, due to the strength of the voluntary sector, the role of the media and a 'clientelist' culture:

> *It's impossible to say 'oh sorry, all that guaranteed annual funding you had in return for no particular measures of output, we're pulling that'… That is politically impossible and it is actually politically very difficult to criticise the standard of homeless services in Ireland… the media just won't cover it. And there's been a lot of criticism, for instance, of the Homeless Agency, by some prominent people working in the homeless sector, basically objecting to being answerable for the money they get from government, and this is treated by the media in a completely uncritical fashion* (National stakeholder, academic, Ireland)

According to this informant, the sector is funded *"to meet the service providers priorities, rather than to meet the priorities of client"*[21]. In this context, attempts to professionalise the sector are both necessary and particularly hard to achieve.

Irish key informants recognised regulation and licensing as key areas to be strengthened and there are plans to establish a quality standards framework with the management group of the DRHE (formerly the Homeless Agency) having the inspection role (voluntary quality standards have already been established, FEANTSA, 2012, p75). Downey (2011), however, has identified several barriers to strengthening monitoring and regulation. He highlights: voluntary sector providers' reluctance to agree to initiatives in homeless service provision focusing on accountability, transparency and performance management; a failure to resource gathering and reporting evidence effectively; and a reaction against 'bean-counting' methods perceived by some to disregard the identity, privacy and needs of the individual experiencing homelessness (Downey, 2011, p102-3). This response to proposed monitoring processes suggests that a more interventionist licensing and regulation programme may face significant resistance.

That service providers also signed up to the 2008 strategy *The Way Home* might be interpreted as a form of self-regulation, through which service providers and statutory bodies – in line with the 'social partnership' model - have mutually agreed to a programme of reform. Scepticism was voiced about the effectiveness of homelessness strategies and consensus building as a form of self-regulation: *"momentum is repeatedly lost and regained. It took a huge amount of effort for everybody to agree we'll do this, and then somebody turns their back … and it just completely unfolds"* (National stakeholder, voluntary sector, Ireland).

These issues underpin an appetite among senior staff in DRHE for *"a more explicitly stated regulatory framework to work within"*:

> *there needs to be some kind of a watch dog and licensing regulatory system, which has the power to essentially go in and review services against quality standards and have the power to make certain recommendations and/or in extreme cases close places* (Local authority service provider, Dublin).

The combined impact of more robust monitoring and regulatory mechanisms in Ireland is likely to be fundamental to driving higher standards of temporary accommodation. These factors underpin the higher standards observed in Scotland. That being said, efforts to date in Dublin have illuminated the resistance and challenges strategic policy makers face introducing such mechanisms. The sluggishness of reforms there stands in contrast to the

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[21] See also Fitzpatrick and Wygnanska (2007, p61), Ravenhill (2008) and Busch-Geertsema and Sahlin (2007).

fast paced change that has characterised Scottish homelessness policy and practice over the last 10 years.

Scotland's framework of legal rights for homeless households both reflects and supports a culture of transparency and accountability: whilst regulation and monitoring help ensure high standards, the framework of legal rights and obligations establishes a power dynamic between the central and local state, service providers and service users that cuts through vested interests that may inhibit the achievement of agreed objectives. As such, it may be more accurate to see legal rights not only as one form of (substitutable) regulation, but as playing a fundamental role in reinforcing and supporting other forms of regulation as part of a 'virtuous circle'[22].

Access to settled housing

This section considers how and why routes out of homelessness differ in Scotland and Ireland, leading to different patterns of access to settled housing in each country.

It was suggested in chapter two that the distinction between discretionary and legalistic or rule-bound policy approaches is one of degree rather than type. Indeed, a Scottish key informant commented that despite Scotland's legally defined homelessness policy, the legal framework is *"interpreted differently and with very different outcomes across the country"* (Local authority manager and national stakeholder, Scotland). Nevertheless, Scottish homelessness policy remains more rule-bound than Irish, leaving a more constrained territory for discretion. This leads to a significant difference in the tenor and culture of homeless services.

The clear parameters within which Scottish housing officers operate - set by legislation, supported by a code of guidance, monitored through routine data collection, and subject to regulation, internal review and ultimately legal redress - provide clarity to a 'hard to reach' group. This was highlighted as one of the key advantages of Scotland's statutory homelessness system: *"people are clear on or can be made clear on what their rights are and that, to a large extent, forces local authorities to deal equitably with homeless people"* (Local authority manager and national stakeholder, Scotland). A local informant agreed:

> *the key to it is it acts as a safety net. The government are quite clear to all local authorities: this is exactly what you have to provide and what you have to do, you know? For the most vulnerable people it ensures that there is provision there* (Local authority service provider, Edinburgh).

This clarity is foundational to psycho-social impacts of legal rights identified later in this thesis.

In Dublin on the other hand, processes around homelessness service provision were far more opaque and the outcomes of those processes more contingent. As noted above, case management and monitoring processes were ineffective, with implications for service user outcomes. There were further practical issues with the cumbersome processes homeless men had to negotiate in order to access settled housing, something that effected vulnerable service users more than others. Accessing private rented accommodation (the only option for many single homeless men) was particularly complex, as one key worker explained:

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[22] This 'virtuous circle' is further nourished by higher expectations, greater assertiveness and a sense of entitlement among Scottish service users identified and discussed in chapters eight and ten.

out of every 30 people we get in, you'll probably have 5 or 6 that would be very capable of moving on very fast. But [to get rent allowance]… they have to get a landlord to stamp the form, that then has to go back to the community welfare officer, the community welfare officer has to go out and see the flat, you know, there are problems with paying the deposit, they have to do what's called a Housing Needs Assessment as well, so… there's about ten little things they have to do, but that seems to be the problem, they can't seem to get the focus into it (Key worker, local authority hostel, Dublin).

This convoluted process further damaged men's chances of competing for private tenancies against non-homeless households.

The difference in the 'rule-boundedness' of Scottish and Irish approaches also manifested itself in a wider gap between strategic policy objectives and service provision in Dublin, where the fit between practice and policy was far less close than in Edinburgh. At the strategic level, *both* countries articulate a 'housing-led' approach to homelessness, aiming to get homeless households into settled housing, with appropriate supports, as soon as practicable. There is similarly a resistance to strict 'staircase' or 'continuum of care' models, whereby service users must progress through various levels of service in order to become 'housing ready'. At the operational level however, Edinburgh appeared to be far further towards achieving this than Dublin, where a philosophy of progression and 'housing readiness' permeated services strongly.

This disjuncture is possible in Dublin due to the considerable level of discretion those in the sector retain in the implementation of homelessness policy. This creates room for a wider chasm to emerge between policy and practice, according to the perspectives and priorities of service providers. Some strategic local informants questioned the motivations of service providers, suggesting that they might seek to retain a 'nice group' in their service rather than *"move them all out and bring in a whole load of 'service resistant' people [who] cause trouble"* (Local authority service provider, Dublin). Distrust between, and scepticism regarding the motives of, those in the sector is a recurring theme in the literature (O'Sullivan, 2008b; Phelan and Norris, 2008; Downey, 2011) and is also evident in this study. It cuts sharply against the rhetoric of consensus and partnership that is often used to describe the Irish approach (see chapter five). In Edinburgh, legal obligations provided some tension pulling policy and practice closer together, limiting (though not eliminating) the extent to which discretion (however motivated) could wrench them apart.

These differences are clearly revealed in responses to one of the vignettes presented to local informants. They were asked about the likely route of a 24 year old man through homeless services in the city. The man was described as having spent time in prison; a history of drug use and mental health issues; and exhausted friends and family as a source of accommodation. Edinburgh local informants had various concerns about this individual's capacity to engage with services and address addiction issues and warned that he might remain homeless for some time for these reasons. Nevertheless, he would be owed a full statutory duty for settled accommodation, most likely discharged with an offer of a social housing tenancy with support. It was not within the discretion of local authority staff to exclude him from accessing settled accommodation on the basis of any other considerations:

if somebody was in that situation, a single homeless male, or anyone else, however difficult it is for us backstage behind the scenes, they always get people what they need, we never turn people away, we never say sorry we can't help you. And within that, whatever our case loads are like, we make absolutely every effort to re-house them (Housing Officer, Edinburgh).

The relative simplicity of these considerations stands in stark contrast to the responses given in Dublin, where a much wider range of factors - mediated by service provider discretion - influenced this man's route to settled housing. First of all, whether he was deemed ready for his own tenancy was important, as illustrated in these comments from local authority staff in Dublin:

> *The concern for us there in allocations is, would he be capable of independent living? So we wouldn't give a unit where we felt really he wasn't able to look after himself… we'd take the recommendation from [the temporary accommodation staff] to say yes, he can manage it* (Local authority service provider, Dublin)

> *he's still young, he still wants to enjoy life and get up to mischief and things like that, so he's not stable enough I would feel….. Being at that younger age, he hasn't really addressed all those issues of why he became homeless* (Local authority service provider, Dublin).

If the man was judged to be 'housing ready' and was under consideration for a social housing tenancy in a particular area, the housing managers for that area would run an 'estate management check' establishing his criminal record. How the results of this check are employed remains at the discretion of the housing managers and would depend upon the views of that housing officer and the nature of the man's criminal record. In practice, however, a negative result weighed heavily against his chances of being allocated the property:

> *if he's been in trouble with the Guards [police]… that could put a stop on him being housed for another 12 months* (Local authority service provider, Dublin)

> *the Guarda [police] check everybody before we put them into standard social housing, and a lot of them because of their past would raise alarm bells to be honest with you* (Local authority service provider, Dublin).

Whilst considerations of desert were not explicit in the policy framework or homeless strategies, there was clear scope for them to play a fundamental role in deciding whether, when and where a homeless man was rehoused.

Considerations of 'social mix' also loomed large in decisions about allocating homeless men settled housing in Dublin. This relates to the idea that there will be 'negative externalities' for local residents if significant numbers of homeless people are housed in their community. It has been argued that concentrations of disadvantaged households can lead to a lack of 'social capital', social exclusion, stigmatisation, reduced job opportunities and exposure to a high level of 'deviant activities' leading to fear of crime and resident dissatisfaction (see Busch-Geertsema, 2007, p214). Housing managers in Dublin could use their discretion on a case-by-case basis to resist rehousing a homeless person due to a perceived need to avoid 'saturating' certain areas of the city with 'needy' households:

> *there are a couple of specific areas in Dublin… that have a disproportionately high level of social housing of various types, so there are times then when the housing manager will say look, you need to pepper-pot it more around, there needs to be more of an integration* (Local authority service provider, Dublin).

It was not only ideas about how 'balanced' certain communities were, but also awareness of specific dynamics in local areas that were brought into play in making these decisions. A Dublin service provider commented on the vignette:

> *If you were putting [him] into a high demand area and the residents are very active, the manager has to say 'no, I can't take him into that property, but I would consider*

him down the road where residents are not as active and they do accept people on their doorstep' (Local authority service provider, Dublin).

Issues of social mix have been an area of considerable debate in Scotland, particular between RSLs and the homelessness lobby. This has oriented around the apparent trade-off between meeting obligations under the homeless legislation and maintaining 'sustainable communities' (Anderson, 2007). The statutory homelessness system requires local authorities to meet their duties, regardless of the impact on concentrations of disadvantaged households in particular areas. Participants in this study tended to support this prioritisation:

> *people quite often see meeting housing need and creating balanced communities as in opposition… But we're all interested in creating balanced communities and the fact is the people we house through the homeless route come from those communities… to me they're not in conflict, creating balanced communities means meeting the needs of everybody in the community, it's not about excluding people* (Local authority manager and national stakeholder, Scotland).

Whilst a concern in both cities, the different policy frameworks allowed the issue of social mix to influence decisions within homeless services very differently, with Scotland's rights-based approach crowding out these considerations. Similarly, while service providers and key workers may have thought about the deservingness of applicants (e.g. their criminal record) and their readiness to sustain a tenancy, their ability to bring these issues to bear in their response was minimised.

These very different dynamics were reflected in service users perspectives. As well as being more satisfied with what appeared to be lower quality temporary accommodation (see chapter eight), Dublin participants were more accepting of longer periods in temporary accommodation and more concerned about managing day-to-day life in that environment than moving on. This comment was made by a man who had been homeless and in various forms of temporary accommodation for three years: *"you wait years in Ireland and even then you're not assured of a place… I know they don't look too favourably on criminal convictions and things like that. I don't know how long I'll be waiting. I was told 18 months on the homeless list"* (Hostel resident, Dublin). Another explained his understanding of being in temporary accommodation:

> *It's supposed to be temporary and as I say, I've been here now a year… it's sort of a trial, in a place like this, to see who's worthy of getting [move on accommodation] and whose pulling their socks up and putting the effort in and staying clean and things like that, and getting back to their normal life (*Hostel resident, Dublin).

This account of the different dynamics determining the pace and outcome of homeless men's route through homeless services should be tempered with an acknowledgement of the issues that remain for single homeless men within the Scottish system and of the factors that may limit the capacity of Irish service providers to move beyond this seemingly paternalistic, barrier-ridden approach to getting homeless men into settled housing.

Longstanding concerns about the quality of accommodation accessed through the statutory system (Somerville, 1999; Fitzpatrick and Pawson, 2007; Fitzpatrick and Pleace, 2012) were echoed by service users, who worried about being housed in undesirable areas and/or in accommodation in a poor state of repair. Tenancy sustainment and the provision of adequate on-going support once the local authority's duty is discharged remains a potential weakness in the Scottish system. That being said, informants were positive about support provision and the percentage of assessments identified as repeat

cases[23] has fallen from 9.8% in 2002-3 to 5.8% in 2011-12 (Scottish Government, 2012). Moreover, the Housing (Scotland) Act 2010 introduced a statutory duty[24] on local authorities to assess the support needs of homeless households and provide that support. These provisions, supported by housing support regulations, will come into force on 1 June 2013 (Fitzpatrick, et al., 2012d).

In the Irish case, in light of continuing difficulties procuring move on accommodation for homeless households, considerations of desert, housing readiness and local communities offer one way for service providers to prioritise some service users over others. These factors may become less influential if underlying of supply issues resolved. As one key informant suggested:

> *it's a big step to make for homeless organisations to move from managing homelessness… to actually believing that the people they've been working with are actually capable of sustaining themselves in a home with support, and I think the sector would rise to that challenge, but we… haven't yet been tested on it because they couldn't move on* (National stakeholder, voluntary sector, Ireland),

The findings of this study suggest however that attitudinal factors and the culture of service provision remain important barriers to resettling homeless households, as well as these underlying supply issues.

In sum, in Dublin, there appears to be a more plural concern to balance different policy objectives. This attempt to have regard for multiple policy goals creates barriers to homeless households accessing settled accommodation through various mechanisms - considerations of desert, housing readiness, social mix and community reactions, estate management checks and ultimately, service provider discretion. Embracing these wider objectives works against the more strictly needs-based response to homelessness that Scotland's rights-based approach achieves. The overall effect of these dynamics is to create inertia in the Irish system, stemming a more dynamic flow of homeless men through temporary accommodation and legitimising what one key informant described as the *"group-think that's out there, that the poor will always be with us"* (National stakeholder, Ireland). Although this key informant felt the work of the Homeless Agency (now DRHE) had helped challenge this, the findings of this study suggest its remaining legacy. The statutory duties of Scottish local authorities seem to offer a *blunter*, but *more effective* policy tool, creating clarity for providers and users and greater momentum and flow through services, with considerations of need crowding out and trumping competing policy objectives. While theoretical perspectives on social rights emphasise their contingency on available resources (see chapter two), this analysis suggests that legal entitlements can help create the context in which resources will be directed to honouring those rights. Moreover, while 'street level bureaucrats' retain discretion in both jurisdictions (Lipsky, 1980), the alternative policy approaches cast very different boundaries within which service providers can use this discretion.

6.4 Rights-based approaches and the risk of 'juridification'

The last section of this chapter turns to the issue of 'juridification' and 'adversarial legalism'. As described in chapter three, the core to this strand of objections to rights-based approaches is that relying on the law in social welfare provision can distort and frustrate the aims of policy, leading to unintended and undesirable consequences (Cooper, 1995, p508-9; Dean, 2002, p157). The risk of Scotland's rights-based approach to homelessness is that homelessness policy and service delivery will become subsumed by

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[23] Where a previous application from the household had been closed less than 12 months before the current assessment.
[24] Under section 32B of The Housing (Scotland) Act 1987.

the law and bureaucratic procedures, subjecting the *"concrete life-problem"* of homelessness to *"violent abstraction"*, rather than constructive resolution or amelioration (Teubner, 1987, p24), and encouraging service providers to 'internalise a judicial gaze', becoming risk-averse in their practices to avoid challenge (Cooper, 1995, p508). In other words, rights-based approaches risk creating a model of service delivery that is process-driven and adversarial, rather than outcome-focused. This section draws on the data gathered in this study to consider whether these objections offer legitimate characterisations of Scottish homelessness policy, and whether Ireland's 'social partnership' model avoids these claimed pitfalls of rights-based approaches.

Irish perspectives on rights-based approaches

There was a strong perception in Ireland that rights-based approaches are adversarial, inflexible and 'mechanical'. The social partnership model in Ireland attracted support in part because it is perceived to *"allow for complexities that sometimes a rights-based approach wouldn't"* (Local authority service provider, Dublin). There was a concern that legal rights would distract providers away from a genuine focus on the needs of service users: *"I think all your resources would be targeted at covering your bases... you'll put people somewhere as opposed to what is the best outcome for that person"* (Local authority service provider, Dublin).

Another strong concern oriented around the 'infinite potential bill' associated with a rights-based approach and related to that, who has control of those costs. A key informant closely involved in debates about approaches to social welfare explained that the reluctance among policy makers to pursue rights-based approaches *"came from not wanting decisions with expenditure consequences to be made in the courts"* (National stakeholder, Ireland). This reticence extended beyond policy makers however, with Irish academics also voicing scepticism about the capacity of legal rights to lead to desirable outcomes: *"I suppose on ethical/moral grounds I support a legal right to housing... it's just that I'd have concerns over litigation around that being overused... somebody has to pay for all this litigation and it's generally the tax payer"* (National stakeholder, academic, Ireland). Informants also commented that the 'judicial route' had been taken in areas other than homelessness, for example to petition the state to better meet the needs of young people in residential care. The eventual impact of this approach had disillusioned some key players from pursuing legal, court-based approaches. The perception was that social justice issues had not been progressed by this approach, which had had unintended and negative consequences for the group it intended to help.

These reservations regarding rights-based approaches sat against an acknowledgement of the limits - and fundamental flaws - of the social partnership model. Indeed, the wider findings of this thesis demonstrate that beneath the appealing rhetoric of the Irish approach lies a story of the grim sluggishness that has characterised Dublin's attempts to implement policy objectives. In particular, the attempt to drive policy forward through consensus building has come up short: *"everyone is obviously fighting their own corner, for their perspective"* (Local authority service provider, Dublin). A representative from the voluntary sector described the Irish homelessness sector as 'riddled with' adversarial relationships (National stakeholder, voluntary sector, Ireland).

The perspectives of service providers and policy makers in Dublin more than once echoed the 'prisoner's dilemma', a model offered by game theory, which demonstrates how 'rational actors' may individually chose to pursue courses of action that when taken by all 'players' lead to a sub-optimal outcomes. In other words, the Irish case highlights the challenge of achieving cooperation and socially desirable outcomes in the absence of compulsion. A service provider in Dublin commented:

it's great that there's consensus but what we really also need is strong and robust systems for checking and monitoring … [there] needs to be very robust systems of what is expected from each service… and I suppose maybe sometimes with the goal of achieving consensus we maybe lose out a little bit on that (Local authority service provider, Dublin).

In the absence of a legal framework compelling certain actions, or a regulatory regime monitoring action, the desirable outcomes sought slip out of reach. A participant from the DRHE further explained how support for the existing approach is waning:

at the local level there certainly would be weaknesses from the point of view of getting traction on implementing change… we've gone to great depths in terms of consulting, we've researched and evaluated the thing to death at this stage, and really where are we? What tends to happen is the organisational needs tend to take precedence then over the needs of service users (Local authority service provider, Dublin).

Experiences of the reform process to date have led some in the sector to lose faith in the social partnership approach and seek a more 'top-down' model. Indeed, the seeds of a more top-down (although not rights-based) approach were being sewn during fieldwork, with the DRHE planned to have a more hierarchical structure than its predecessor the Homeless Agency, led by a management group rather than a board. It is hoped that this change in structure will help push forward reforms and overcome obstructions that have delayed progress to date.

Ireland's lack of legal rights for homeless households was described as the 'big black hole' in the Irish model by a senior local authority service provider. Another key informant concurred that *"ultimately, the notion that you can bring an issue to court is a highly desirable one"* (National stakeholder, Ireland). A voluntary sector leader summarised the point:

It's easier to empower someone when you can say 'and this is the law' as opposed to 'look, this is what you should do and hopefully you'll get lucky or you'll get the service you need'… because there's no legislation, so there's nothing for them to kind of argue against as such … Where someone has a legal right, they have an answer to their naysayers as such, 'no, this is the law' (National stakeholder, voluntary sector, Ireland).

Scottish perspectives on juridification and legalism

In line with the concern that legal rights might lead to a focus on process rather than outcome, a member of local authority staff in Edinburgh felt that the statutory system sometimes *"leads people down a route that isn't going to have the best outcome for them"* (Local authority service provider, Edinburgh). One key informant saw this as a particular risk for young people who present as homeless after leaving the family home:

you get so caught up in the legal knitty gritty and the case law… and who's right and who's wrong, but someone's become homeless and is facing a very difficult and often very damaging system. Brilliant that they've had their rights adhered to. Great. But they're living in a hideous council flat on their own as an 18 year old in Craig Miller surrounded by very vulnerable people" (National stakeholder, voluntary sector, Scotland).

There was also some suggestion that rights-based approaches may encourage providers and funders to only meet their minimal legal duties, rather than taking a more holistic or ambitious approach. For example, a voluntary sector service manager suggested that resettlement may happen too fast as providers seek to discharge their legal duties

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efficiently: *"our concern is… that this kind of sausage machine, throughput, quick results, large capacity of people moving through will not always work"* (Service provider, voluntary sector, Edinburgh). This concern should be weighed against the known negative consequences of homeless people spending considerable amounts of time in temporary accommodation however, as they do in Ireland. It should also be noted that housing support is available to households resettled through the homeless route in Scotland, with a legal right to support recently introduced (see above).

Fears about 'levelling down' or a lack of focus on service user needs were not borne out in the Edinburgh case study. For example, significant efforts have been made in Edinburgh to roll out robust preventative services and a 'housing options' approach. This aims to make the legal duties of the local authority more manageable, but is not required by the legislation. Bretherton and Pleace (2011, p53) similarly found that social landlords in Scotland acted in ways that were *more generous* than required by reasonable preference legislation. Contrary to some expectations then, far from prompting a levelling down to minimal legal obligations, the reforms appear to have prompted innovation and a more holistic and preventative approach to homelessness.

Participants also noted the uneven pursuit of the Homelessness Task Force's recommendations, with the 'overwhelming focus' being on the priority need target: *"2012 looms large… it's the kind of beacon to which we're heading, and has become a short hand for the homelessness programme that was sketched out by the homelessness task force… in practice it is one of 59 recommendations"* (National stakeholder, voluntary sector, Scotland). The target (up to December 2012 at least) appears to have eclipsed wider ambitions (see also Shelter Scotland, 2011b), but this should not be interpreted as 'legalism' or 'juridification'. Other *legislative* provisions around intentional homelessness and local connection (as well as non-legislative elements of the Task Force's recommendations) have drifted, suggesting that the focus on the 2012 target doesn't just reflect its legal footing. It may be that the considerable political will focused on the expansion of legal rights among stakeholders - an expansion achieved primarily through the priority need recommendation specifically – underpins this skew of efforts towards the target. As argued earlier in this chapter, the phasing out of priority need appears to have achieved significant gains in meeting the housing needs of homeless single men, minimising provider discretion and removing barriers (in the form of legal tests) restricting homeless men's access to settled housing.

Participants also discussed the extent to which Scotland's rights-based approach is adversarial. A consensus emerged that there is potential for levels of adversary - between local authorities, users/applicants, voluntary sector organisations, RSLs and/or private landlords - to become problematic. Hostility between RSLs and local authorities, particularly when Section 5 provisions are used, was emphasised. A representative from the social housing sector described Section 5 as a *"negative tool"*, commenting that *"there must be a better way of working in partnership than… when a local authority hands over a piece of paper to a housing association and says 'find me a house in 6 weeks for that person, or else' and that can't be good for anybody"* (National stakeholder, social housing sector, Scotland).

Overall however, where adversary occurs, it tended to be seen as proportionate and justified. Despite regretting the adversarial nature of Section 5 provisions, the social housing sector representative above saw them as a *"necessary evil"* enabling local authorities to force the hand of RSLs (especially smaller community-based RSLs) that can be resistant to housing homeless households. Another example came from a senior manager in a local authority, who commented that having decisions appealed and sometimes overturned was part of the policy model. This was not seen to be problematic however and she commented, *"it doesn't feel particularly adversarial"* (Local authority manager and national stakeholder, Scotland).

Contrary to these concerns, this study supports a characterisation of Scottish homelessness policy as partnership-driven and outcome-focused. Local and national key informants in Scotland described a shift in the culture of homelessness services over time, away from the 'naïve legalism' of the early 2000s that pulled some households through the statutory route unnecessarily:

> *we were kind of at a level where we even sit back and kind of look at our services and say do our services drive homelessness?... If someone presents are we being overly responsive in bringing them in through that homeless route? ... We're trying now to get a little bit more smart, and by the same token understanding our statutory responsibilities* (Local authority service provider, Edinburgh).

This 'maturation' has involved a transformation of the role of housing officers from 'eligibility testers' processing applications, to a more 'person-centred' and outcome focused approach that acknowledges that a discharge of duty into a social rented tenancy may not be the best response to all homeless households. It is perhaps not incidental that this culture change has to some degree coincided with the simplification of formal qualifying tests homeless people must 'pass' before being owed the full statutory entitlement. This suggests that legalism and juridification may be a greater risk in rights-based systems that are highly qualified and conditional. Indeed, this resonates with the greater level of case law generated in the UK during the 1980s and 1990s under the 1977 framework (see chapter two). Fitzpatrick, et al. (2012d) also identify culture change in the delivery of homelessness services in Scotland, one that they argue has particularly benefitted single homeless households. The combination of Scotland's simplified framework of legal rights and its more recent move towards preventative, 'housing options' approaches seems to underpin this evolution and enable a culture of provision (Wilcox and Fitzpatrick, 2010; Fitzpatrick, et al., 2012d) that avoids some of the potential flaws of a rights-based approach.

In line with this positive culture of service provision, although those working in the homelessness sector saw access to legal redress as important, it was not seen to drive the day-to-day good functioning of homelessness services. Indeed, legal challenges are rare in Scotland and participants reported that when proceedings are initiated, local authorities tend to reconsider their decision. A local authority manager of homelessness services commented that the approach is *"absolutely not about the fact [that homeless households have] got a right to go to court"*, rather: *"it is embedded... people get what they're due to get as of right by and large... Local government and others were very engaged in drawing up the legislation in the first place... people still very much buy in to that"* (Local authority manager and national stakeholder, Scotland). The right of an applicant to request an internal review by a senior officer of a decision under the homelessness legislation (introduced in the Housing (Scotland) Act 2001) and the role of the housing regulator providing national oversight (see above) were also seen to be crucial.

Participants saw clear capacity for those in the sector to resist a 'legalistic' culture: *"there are parameters, because we're a regulated service but... each case will very much be tailored on the profile of the individual"* (Local authority service provider, Edinburgh). A senior local authority manager agreed, reflecting on the impact of the 'housing options' approach that: *"there are some people still moaning about the legislation and being bound by it, but actually, you're not bound by it in the very rigorous way they're talking about it... there's a whole range of things you can do"* (Local authority manager and national stakeholder, Scotland).

Moreover, partnership across sectors and between organisations appears to be a key part of the Scottish model. Joint working around health and homelessness has been a particular focus (Jones and Pleace, 2010, p75) and Alex Neil (Minister for Housing and Communities) described partnership working as *"the way to deliver on the 2012 target and the prevention*

of homelessness" (SP OR 3 November 2010 col 29915). Edinburgh local authority staff saw joined-up, co-ordinated working and an inclusive approach to involving other agencies (including prisons, health services and the voluntary sector) as key to their success. A common housing register in Edinburgh also underpinned close working between RSLs and the local authority, meaning that Section 5 referrals were rarely employed. The culmination of these elements was seen to underpin the good functioning of homelessness legislation in Scotland.

Informants highlighted several factors that might undermine this non-adversarial and outcomes focused culture. First, the level of buy-in from key stakeholders: *"If there had been huge resistance to [the reform package] then that's when the rights-based confrontation comes in, to force people"* (National stakeholder, voluntary sector, Scotland). This was seen as an undesirable route because informants saw judicial review as a blunt, and unresponsive tool for realising rights. Echoing the perspective of 'embeddedness' above, a senior civil servant commented:

> *homeless people don't really take people to court… legally they can do it, but there's so many structural reasons and personal reasons why people can't do it, it doesn't really work that way. So it's about the framework being in existence within a local authority and understanding of it* (Senior civil servant, Scotland).

The potential for service provision to become adversarial was also seen to relate to *"the vibrancy and energy of the independent advice sector"* (Senior civil servant, Scotland). It was not felt that a voluntary sector eager to pursue legal challenges was desirable. Local authority staff in Edinburgh commented that while they endeavour to 'stretch the boundaries to suit personal need', advocacy from a solicitor or voluntary organisation might force them to *"play it by the letter of the law"* (Local authority service provider, Edinburgh), something that may in fact disadvantage the homeless household. This was also acknowledged by voluntary sector informants:

> *our role is to look at all the options available to that individual, one of which may be about helping the person to enforce their rights, but … we'll be doing so in a way that's logical, well thought out and evidenced… as an organisation we are far less adversarial than we were 26 years ago … we can work jointly, and do good joint case work with local authorities … Sometimes… what we have to say is the same as what the council are saying, but we're listened to by the individual because we're seen as being independent* (Advocacy and advice service manager, voluntary sector, Edinburgh).

Rights-based approaches misunderstood: the possibility of 'having it all'

The Scottish approach does not appear to live up to the characterisation of rights-based approaches as adversarial, process-driven and legalistic, a perspective underpinning resistance to such an approach in Ireland. On the contrary, partnership working and a focus on outcomes emerged as entirely consistent with a rights-based framework and the absence of clear legislative requirements in Dublin has hampered progress within the consensual policy model. A rights-based approach may be necessary, but is certainly not sufficient to guarantee this reconciliation of goals however. The 'housing options' approach pursued in tandem with the legislative reforms in Edinburgh has been important in achieving this balance.

This discussion raises the question of how stable this culture of provision is in Edinburgh, and of how widespread this 'enlightened' approach is across Scotland. Whilst key informants (as well as participants in Edinburgh) spoke to this narrative of 'maturation', the methods used in this study do not allow for a full consideration of the nature of this culture change across Scotland and it is likely that Edinburgh is a front-runner in this regard. Fitzpatrick, et al. (2012d) note in particular that exactly what kind of activity and

approaches are being pursued under the mantle of 'housing options' is not yet clear. They also note the less successful implementation of homelessness policy in some areas, particularly Glasgow.

Participants awareness of the factors that may threated this culture of provision in the future support Kagan's warning that legal practices and cultures are not stable (Kagan, 1997, p70). A growth in legal challenges and a decline in partnership working and cross-sector buy-in to the reform package is therefore something policy-makers in Scotland should be alert to. The volume of case law generated following the 1977 Housing (Homeless Person's Act) across the UK is a good example of the 'juridification' and 'legalism' that rights-based approaches may enable (see Robson and Poustie, 1996). As such, the concerns of Irish participants cannot simply by ignored. Some participants identified Ireland as a particularly litigious society, so it may be that a rights-based approach would be less well suited to the Irish context.

6.5 Conclusion

This chapter has considered the capacity of Scotland's legal rights-based approach to better meet the needs of those experiencing homelessness than Ireland's social partnership approach. The findings offer empirical backing to the emerging consensus that rights-based approaches can achieve positive outcomes in this area. Scotland's expansion of legal rights appears to have played some protective role with regards to the *supply* of social housing in a difficult economic climate, providing stakeholders with considerable leverage in petitioning decision-makers to protect budgets in this area, where possible promote new supply, and protect (i.e. prevent the sale of) existing social housing. Nevertheless, access to social housing remains competitive in both Scotland and Ireland.

Scottish local authorities' legal duties to provide temporary accommodation appear to ensure *access* for single homeless men in Edinburgh. While there were concerns about the location and quality of some of the temporary accommodation being used, access *per se* was not an area of substantial concern. In Dublin, the absence of legal rights to temporary accommodation and the reconfiguration of services underway in the city have combined to reduce capacity in the cities' temporary accommodation sector and leave homeless men more vulnerable to rough sleeping. The rights-based framework in Scotland also appears to underpin a better *quality* of service delivery and support in temporary accommodation: robust and transparent case management systems and a licensing and regulatory regime guard against the risk evident in Dublin that homeless men will end up residing in poor quality temporary accommodation with very little support for substantial periods of time.

In addition, and crucially, the legal rights owed to homeless men in Scotland ensure that meeting the housing needs of this group is prioritised over competing policy objectives. The statutory system 'crowds out' concerns about the 'housing readiness', deservingness or motivation of homeless men, as well as concerns about maintaining sustainable communities or responding to the preferences of existing residents. This crowding out is achieved by casting clear, legally defined boundaries around the discretion of service providers. In Ireland, the absence of legal entitlements leaves considerable scope for 'street-level bureaucrats' to seek to meet a more plural set of policy objectives. In this way, homeless men in Ireland face considerably greater barriers accessing settled housing than those in Scotland. Scotland's rights-based approach appears to offer a blunt, but effective tool in meeting the needs of homeless households. Moreover, at present, it appears to do so without imposing the cost of a 'juridified', adversarial and legalistic culture of homelessness service provision, in part reflecting the substantial cross-sector buy in currently underpinning the Scottish reform package.

The responsiveness of the Scottish system to the housing needs of homeless households in large part reflects the prioritization of this group over others in situations of housing

needs. While this represents a key strength of the Scottish system, this prioritisation is also problematic. In this light, the next chapter considers two key objections to rights-based approaches to homelessness. These concern first, the impact of legal rights on 'outsiders' with housing needs, but who lack the legal entitlements homeless households benefit from, and second, the perverse incentive rights-based approaches create for those who seek access to social housing to manufacture a situation of homelessness in order to gain priority in the allocations process.

Chapter Seven Rights, 'outsider' needs and perverse incentives

7.1 Introduction

This chapter considers the impact of legal rights on those who are in housing need, but not homeless and therefore excluded from the legal entitlements offered within rights-based approaches. It asks whether rights-based approaches unfairly disadvantage such groups in the allocation of social housing and whether Ireland's alternative approach is better able to balance the needs of different groups in housing need. Evidence from the study is then brought to bear on the issue of 'perverse incentives', which has persistently formed the focus of objections to rights-based approaches to homelessness.

7.2 'Outsider' needs and legal rights

The last chapter presented evidence that Scotland's rights-based approach better meets the needs of homeless households than Ireland's social partnership approach, by helping ensure a greater flow of homeless households through temporary accommodation and into settled (invariably social) housing. Following Fitzpatrick and Pleace (2012) however, this achievement also suggests *"a failure to realise a potential welfare gain… experienced by those non-homeless households who are given a lower priority in allocations because of the existence of the homelessness legislation"* (Fitzpatrick and Pleace, 2012, p247).

This section considers how the presence of legal rights to settled housing for homeless households ('insiders') impacts on the needs of households with 'comparable underlying housing needs' (DoE 1994, quoted in Fitzpatrick and Pleace, 2012, p235), but who are not owed the full statutory homeless duty ('outsiders'). The question concerns how different policy regimes balance and prioritise the interests of different groups. The section closes by considering, with reference to wider debates in social policy and political philosophy, how best to arbitrate between competing needs in this area.

The critique that rights-based approaches to homelessness unfairly disadvantage those who fall just outside the remit of statutory entitlement has a long history in housing and homelessness policy, with many UK legislative reforms seeking to redress the perceived imbalance in favour of homeless households and against those on 'normal' waiting lists for social housing. This study provides an opportunity to consider the issue in the Scottish context, in light of the reforms of the early 2000s that profoundly altered the boundaries between insiders and outsiders, bringing single homeless men into the insider category for the first time. Whilst these debates have usually focused on those on social housing waiting lists, there are in fact several relevant groups of outsiders to consider:

- **Applicants who do not quality for support:** not all households that apply to their local authority as homeless are entitled to the full statutory homeless duty. This could be for several reasons:
    - Applicants assessed as non-priority homeless.
    - Applicants assessed as not homeless or threatened with homelessness.
    - Applicants assessed as intentionally homeless.
- **Others in housing need:** this (the most significant and largest) group comprises non-homeless households seeking social housing.

These groups are considered in turn.

Applicants assessed as non-priority

The priority need category has historically served to exclude single homeless adults from the full statutory duty, prioritising in the main families with children and pregnant women

(Fitzpatrick and Stephens, 1999)[25]. The Scottish reforms of the early 2000s marked a firm move away from this settlement, requiring local authorities to phase out the priority need distinction by December 2012. As such, the group of 'outsiders' created by the priority need category is shrinking: in 2004/5, 75% of applicants assessed as homeless were considered in priority need, increasing to 91% in 2011/12 (Fitzpatrick, et al., 2012d, p60).

Scottish informants acknowledged that by bringing single homeless households into the statutory safety net, other households on social housing waiting lists would be excluded from social housing or have to wait longer for it. This was seen to be a particular problem in areas where the proportion of social housing lets going to homeless households is especially high. These issues are discussed in more depth later.

According to some stakeholders, phasing out the priority need category (and the consequent increase in the scope of legal obligations) risks focusing local authorities' minds on where they don't have a legal duty, potentially leading to tighter interpretations of whether or not someone is homeless or threatened with homelessness or greater use of intentionality provisions: *"local authorities try to manage pressures within the system… there's always a risk that some of the other rationing mechanisms start to become more attractive as you start to open up the biggest rationing mechanism, which is priority need"* (Senior civil servant, Scotland). The next two sections consider the rationale and implementation of these exclusionary criteria, suggesting that there is little evidence of more restrictive interpretations of these tests emerging to date.

Applicants assessed as not homeless or not threatened with homelessness

The exclusion of households not considered homeless or threatened with homelessness aims to reserve the legal safety net for those in the most serious need, with homelessness prioritised over other kinds of housing need. This however, is not a straightforward position and the efficacy of this prioritisation rests on whether the definition of homelessness and implementation of policy succeeds in singling out the group most in need. Arguably, this approach relies on a blunt distinction where a more finely stratification of housing need would be more appropriate. These issues are discussed at length below.

It has already been shown (see figure 6.1) that there has been a gentle downward trend in households assessed as not homeless or threatened with homelessness, suggesting that concerns about the tighter interpretations of this part of the legislation are not materialising. This may reflect the inclusive approach these reforms were seen to represent and the buy in of relevant stakeholders across the sector to the wider safety net established by the reforms.

Applicants assessed as intentionally homeless

One key informant commented that they are already noticing a *"much more rigorous interpretation of the intentionality part of the assessment process"* (National stakeholder, voluntary sector, Scotland) as local authorities seek ways to continue legally rationing

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[25] Whilst framed in terms of 'need' this rationing mechanism may be better understood as reflecting a combination of ideas about need and desert in the allocation of settled housing. `Priority' groups were distinguished in relation to their 'vulnerability', reflecting an idea that those who are less able fend for themselves are in greater need and more deserving of assistance, meaning that society has a moral responsibility for their welfare (Fitzpatrick and Stephens, 1999, p427). By contrast, single or childless homeless households might be considered better able to fend for themselves, especially in the absence of any other specified vulnerability (e.g. health or mental health problems) and thus less deserving of public assistance.

resources. Indeed, there is some evidence of an upward trend since 2004/5 (see figure 7.1).

Figure 7.1 Homeless applications assessed as intentionally homeless
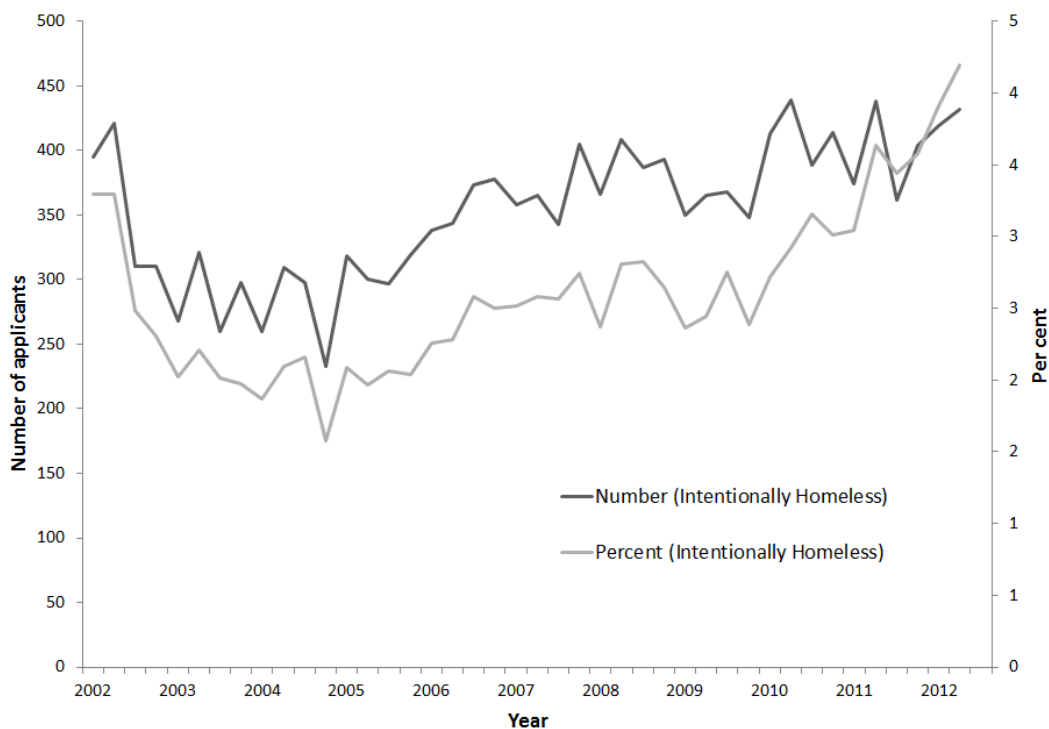
Source: Computed from Scottish Government quarterly homelessness statistics.

The absolute numbers of households found intentionally homeless are still very low however. Moreover, service providers noted that assessments of intentionality are unlikely to climb significantly due to the high workload associated with such decisions. There was a consensus that intentionality cases were only pursued where there was a *"watertight"* case (Local authority service provider, Edinburgh): *"establishing intentionality is difficult and time consuming… [We] only pursue [it] where there's a very clear cut case"* (Housing Officer, Edinburgh).

If commenced (which seems unlikely in the near future), proposed reforms to the intentionality criterion (see chapter five) would move Scotland further towards a purely needs-based response to homelessness. Those deemed culpable for their own homelessness would be entitled to housing support and settled accommodation, bringing them firmly within the legal safety net. The study revealed a commitment among those working in the sector to maintain current intentionality provisions. One senior manager in a Scottish local authority described intentionality as a 'line in the sand': *"you don't have an unending duty to someone… no one's going to say to me I can't reserve the right to say 'no you're not getting another house'"* (Local authority manager and national stakeholder, Scotland). For some, the proposed reforms to these provisions go a step too far in widening the statutory safety net.

Others in housing need

By far the most significant group of 'outsiders' in this debate are those seeking to access social housing through waiting lists. One of the central grounds upon which the fairness of the UK's statutory homeless system has been questioned relates to scepticism that statutorily homeless households' long term housing needs are in fact any greater than those of other applicants for social housing. If this scepticism is justified *"there is disutility associated with the statutory system because there will be systematic sub-optimal housing*

allocations which fail to prioritise those in greatest need, and thus to maximise overall welfare" (Fitzpatrick and Pleace, 2012, p239).

Existing evidence provides some defence of the statutory system against this objection. CORE[26] data on the characteristics of new tenants in social housing has shown that statutorily homeless households in England are more socially disadvantaged (more likely to be lone parents, less likely to be in work and have a lower average weekly income) than other new social housing tenants, with a similar pattern evident in Scotland (although based on less reliable evidence) (Wilcox and Fitzpatrick, 2010, p42). Wilcox and Fitzpatrick conclude that these findings are *"at least suggestive of statutory homelessness being a reasonable proxy for sustained housing need"* (2010, p42).

By bringing single homeless households into the statutory homeless safety net, the Scottish reforms of the early 2000s may arguably *better* prioritise those with the most serious needs, as this group tend to have greater support needs and are more likely to have experienced institutional care, substance misuse and mental health issues than statutorily homeless families (Jones and Pleace, 2010; Fitzpatrick and Pleace, 2012; Fitzpatrick, et al., 2011). On the other hand, it might be considered that the extension of the priority need category to include these groups represents a significant departure from the original intent of the statutory homelessness system, now less responsive to the *"'structural' housing needs of low income households"* (Fitzpatrick and Pleace, 2012, p242) and more sensitive to a host of *non-housing* needs.

Still further, the reforms may reignite debates about the role of 'desert' in the allocation of social housing. First, single homeless households with complex needs may be perceived to be at least in part responsible for their homeless and therefore not *morally* entitled to priority in the allocation of social housing. Second, the extension of the priority need category places single homeless households on a par with homeless families in terms of *legal* entitlements to settled housing. Commenting on the English system, Fitzpatrick and Pleace postulate that homeless families with children are given rehousing priority over single homeless adults despite the specific vulnerabilities of the latter group, because:

> *children are perceived as more 'deserving' of help than adults because they are less able to fend for themselves, and therefore society perceives a moral responsibility for their welfare and derives utility from seeing them housed* (Fitzpatrick and Pleace, 2012, p237).

This section adds to this evidence base by gauging key and local informant perspectives on whether Scotland's rights-based approach promotes a fair distribution of housing or whether the legal rights of homeless households come at too great an expense to other groups in housing need. The comparison with Ireland throws into relief the strengths and weaknesses of the Scottish system, illuminating whether different needs can be better balanced within the social partnership model.

Balancing housing needs in Scotland

There were conflicting perspectives among those working in the housing and homelessness sectors regarding whether the progressive vision articulated through Scottish homelessness legislation came at too high a cost to other groups. Some local and key informants defended the system's prioritisation of homeless households, undercutting the criticism that it unfairly prioritises 'insiders' over 'outsiders':

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[26] CORE (COre REcording) is a national information system on the characteristics of new tenants in the housing association and local authority sectors.

ultimately it comes down to the fact that we need to provide everyone with a roof over their heads, and if you've been self-sufficient, if you've done that for yourself, then you know, don't bemoan someone else who hasn't been able to (Housing Officer, Edinburgh).

One participant working in the voluntary sector in Edinburgh felt that there are *"as many safeguards, checks and balances in place as possible"* (Service provider, voluntary sector, Edinburgh) to ensure that the statutory system achieves equitable outcomes in this regard. A senior civil servant felt that whilst the prioritisation of people experiencing homelessness and at 'crisis point' seemed justifiable, the key was *"to make sure [there is an] evidence base around the fact that the ones you're helping through the homelessness route actually are [in the most acute need]"* (Senior civil servant, Scotland).

To date, the existing evidence base has proved insufficient to allay these concerns. Underneath a recognition and acceptance of the progressiveness of the Scottish reforms was a sense of unease about their 'micro-level' implications for 'outsiders' seeking to access social housing and the 'macro-level' implications of Scottish homelessness policy on the role of the social rented sector (see also McKee and Phillips, 2012):

> *I think that there's a danger in creating a social rented sector which is completely aligned with needy client groups... I think that the changes to the homelessness legislation [are] pushing towards that outcome and I think it's questionable whether it's necessarily a fair approach* (National stakeholder, academic, Scotland).

As such, a major focus of concern, and a threat to the perceived legitimacy of the statutory homeless system, is the proportion of social housing lets being allocated to homeless households. One participant argued that a very high proportion of social housing being allocated to homeless households *"undermines the homelessness agenda, because people perceive it to be really really unfair"* (Local authority manager and national stakeholder, Scotland).

This key informant went on to explain the significance of this issue to the *politics* of the Scottish approach, recounting how one MSP had described the homelessness reforms *"a naïve piece of legislation by a young parliament"* (Local authority manager and national stakeholder, Scotland). Key informants also pointed to difficult dynamics at the local level, identifying resentment and frustration among households on the social housing waiting list, existing social housing tenants and staff in the social housing sector where homeless households dominate social housing allocations:

> *there's still a strong feeling that in the popular mind, legitimacy is about 'wait your turn', and systems that very clearly depart from [that] - where such a high proportion of prioritisation is based on a needs assessment - don't generate outcomes which people consider to be fair* (National stakeholder, academic, Scotland).

These tensions have a specific geography, because how 'insiders' and 'outsiders' fair in terms of access to social housing depends on where they live. Key informants identified areas in Scotland where there is *"still a degree of housing choice"* (Local authority manager and national stakeholder, Scotland) and others where *"housing stock is under really significant pressure... so the idea that people have lots of choices is ridiculous"* (National stakeholder, voluntary sector, Scotland). This potential for significant regional inequality stands in tension with ideas of fairness and equality that are seen to define 'rights-based approaches'.

How 'homelessness' is defined in Scotland was also a source of unease surrounding the homelessness legislation. While the wide legal definition of homelessness is, on the one hand, a hallmark of the progressive Scottish approach, it was also seen to be problematic,

as it blurs the boundary between homeless and non-homeless households. As such, the wide definition sharpens concerns about the relative prioritisation of homeless households and others seeking social housing. Key informants suggested that expanding duties under the homelessness legislation may lead to *"a greater attempt to be more rigorous in defining what we mean by homelessness"* (National stakeholder, academic, Scotland). When asked whether the Scottish approach was transferable to other countries, this participant argued that it has *"a lot to be said for it"* but only if a narrower definition of homelessness is employed (National stakeholder, academic, Scotland). He saw particular latitude for tightening definitions of homelessness in cases of newly forming households, i.e. young people leaving the family home. Another informant agreed:

> *local authorities have fallen into a habit of not asking the question of whether someone's homeless or threatened with homelessness or whether they're not… they're too scared to ask those questions anymore and that's a bit of the change that needs to happen. We have a very scarce resource and we need to be clear that the people who are getting access to it in this particular way are the people who meet the needs around that* (Senior civil servant, Scotland).

More fundamentally, it was suggested in both Scotland and Ireland that any attempt to distinguish between homeless and not homeless households will be problematic and arbitrary, as homelessness marks one position on a *spectrum* or *continuum* of housing need, rather than a distinct category. The operationalization of 'housing need' *as* homelessness, and of homelessness as *"a holy cow really, which trumps everything else"* was perceived by one academic to be the key flaw in the Scottish model:

> *I think it creates a privileged group and really glosses over the fact that homelessness is a form of housing need, it's not unique, I think it gives it too much status… there's a continuum of housing need and there are people who are homeless in any one's book, but there aren't very many of them. The numbers of people who get re-housed because they are homeless in administrative terms is vastly greater than that and there's something a bit artificial about that* (National stakeholder, academic, Scotland).

This reflects a common recognition from Scottish key informants that *"there are a range of other needs that do need to be addressed, but the focus because of the legislation has been primarily around homelessness"* (National stakeholder, voluntary, Scotland). Another key informant underlined the importance of distinguishing between meeting housing need and achieving the 2012 target, which has been the 'overwhelming focus' (National stakeholder, academic, Scotland). A representative from the Scottish social housing sector perceived an 'imbalance' in the system as it stands: "*other needs aren't being catered for… if homeless allocations are going to take up so high a percentage of your allocations it doesn't leave very many left to cater for all the different elements of housing needs*" (National stakeholder, social housing sector, Scotland). He highlighted the needs not only of other households on social housing waiting lists, but also of existing long term tenants who have aspirations (or 'aspirational needs' as he put it) to move from, for example, a flat into a more desirable house:

> *that's where communities start to get a little bit disillusioned [and] where the tensions arise and that's a difficult problem to overcome within an allocations policy… the unintended consequence of 2012 is to put pressure on council's to house all these people and leave the people in that tower block absolutely snookered because there's absolutely no way they're ever going to get a move, because they won't be classified as homeless* (National stakeholder, social housing sector, Scotland).

Two Irish key informants – one senior civil servant and one academic – made similar arguments about the conflation of housing need and homelessness or the straightforward prioritisation of homelessness over other kinds of housing need:

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too much has been made of homelessness as a category, as a brand almost… we need to be maybe focusing less on homelessness as an issue and more on addressing housing need of which people who are in these certain categories of [homeless] accommodation is a subset really (Senior civil servant, Ireland).

housing rights are not just about homeless people, housing rights are about people who are in poor housing conditions … it should cover people in poor housing conditions, people living in unaffordable housing… it's not just about their right to a home, it's just one of them and it's a small part actually… I think there's a real danger of separating out homelessness from other categories of housing need (National stakeholder, academic, Ireland).

While the academic quoted above argued for a rights-based approach to *housing* issues, all these perspectives raise fundamental questions for rights-based approaches to *homelessness*, which depend on this categorisation and separating out of a particular section of the population as homeless. For some, the task of meaningfully distinguishing homeless households from others in housing need is too challenging to pursue such an approach. For others the key task is to seek a more defensible, nuanced and fair way of distinguishing between those in housing need as a basis for prioritising social housing allocations.

Scottish key informants in the homelessness sector saw potential to redress the current imbalance by seeking to:

strengthen the legal framework so it doesn't just give homeless people a right to housing, but … treats everybody fairly… There's certainly the potential for it to become a fair system which balances really urgent need for people who need housing now, with people who are in difficult circumstances for a long time (National stakeholder, academic, Scotland).

Achieving this balance, and easing the pressure on social housing allocations, will rely upon a variety of factors. First, and as has already been noted, homelessness prevention/'housing options' approaches and harnessing the capacity of the private rented sector for homeless households are seen as fundamentally important. A key informant working in a Scottish local authority commented on the impact of developing homelessness prevention there:

the people we're giving ultimate priority through homelessness, that is because that is the right thing for them, it's because they genuinely need it… in the early days, we have housed people through the homelessness route without much investigation who shouldn't have got it, I'll be perfectly blunt. We now realise that, we've now got the balance right (Local authority manager and national stakeholder, Scotland).

These emerging emphases, however, are seen as challenging within the sector due to the historically blurred line between homelessness prevention and gatekeeping (particularly in Scotland) and to concerns about the suitability of private rented housing for those with experiences of homelessness. It would seem, nevertheless, that negotiating these challenges is essential to stabilising and defending the legitimacy of Scotland's rights-based approach.

Second, and more fundamentally, the capacity to balance different kinds of housing needs is effected by housing market and economic conditions, in terms of both the supply of and demand for social housing. As one key informant noted, *"where the market is at any one point changes… There are people for whom the market isn't providing a solution at the moment who would have been interim, marginal home ownership 3 years ago"* (National stakeholder, voluntary sector, Scotland). In a challenging economic environment then, the

strains on social housing from the statutory homelessness system are likely to be both greater and seen as more problematic, as the needs of the non-homeless population shift and their position in the housing market becomes less stable.

Balancing needs in Ireland: a more flexible approach?

The above analysis would suggest that achieving a fair balance between different groups in housing needs is the most difficult trade-off faced within Scotland's rights-based approach to homelessness. Chapter six suggesed that Scotland meets the needs of homeless households significantly more effectively than the Irish social partnership approach, but is Ireland less vulnerable to the kinds of criticisms levelled against the Scottish approach in the section above?

Some Irish key informants defended the Irish approach along these lines, arguing that its' flexibility renders it *"in tune in a deep way with social realities…. And with what welfare states will have to become now"* (National stakeholder, Ireland). This was contrasted with the perceived rigidity of legal rights-based approaches:

> *what it is someone needs or has a right to is genuinely contextual and there's a limit to how much you can define that and in addition… the social context is very dynamic. The problem is changing the whole time and therefore what will work now mightn't work then or mightn't work here, mightn't work there* (National stakeholder, Ireland).

Cutting against the 'centralism' of Scotland's rights-based model, another informant saw balancing the needs between homeless households and others in housing need as *"an issue for the managers of social housing to address… a question of management of resources, I think that's up to them to say what's the best way to balance these competing demands"* (National stakeholder, academic, Ireland).

Irish (and wider) experience shows however that if decisions about social housing allocation are left to providers of social housing, homeless household are likely to be largely excluded from social housing stock (Pleace et al., 2012). Traditionally, the needs of homeless households in Ireland have not been responded to using social housing stock, and single homeless people have *been "fairly low down on the list of priorities in terms of being allocated local authority housing"* (National stakeholder, academic, Ireland). A 2005 survey of eight Irish local authorities found (where data was useable) that 8% of local authority housing allocations were made to homeless people in 2002, rising to 16% in 2003 (Bergin, et al., 2005). Other research has similarly illuminated the lack of flow out of homeless services in Dublin (Homeless Agency, 2008b). This compares to 43% of social lets being allocated to homeless applicants across Scotland in 2011-12 (Scottish Government (2012). Comparing 2011-12 and 2002-03, the number of social lets allocated to homeless households in Scotland has increased by 68%. Moreover, in 2011-12, 53% of all homeless households where the outcome was a local authority or RSL let were *single* households[27]. Taking into account Scotland's broader definition of homelessness, these figures suggest that a much greater proportion of social housing is allocated to homeless households (and single homeless households specifically) in Scotland than in Ireland.

It is therefore not surprising that the controversy surrounding homelessness policy and social housing allocations evident Scotland is largely absent in Ireland. This directly reflects the lack of priority homeless households are given in the allocation of social housing and the difficulties homeless people (particularly those who are single) face in negotiating their way out of homeless services and into settled housing. While Scotland is vulnerable to the criticism that too much of its social housing stock is taken up meeting local authority obligations under the homelessness legislation, Ireland is vulnerable to the

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[27] Computed from Scottish Government homelessness statistics.

opposite criticism. Scotland is unusual in facing this particular issue, with social housing allocations failing to respond to the needs of homeless households adequately in almost all of the 13 European countries studied by Pleace, et al. (2012).

While some Irish local authorities have set quotas to allocate a certain proportion of social housing lets to homeless households, many have not and there are no robust mechanisms in place to ensure such quotas are met. As such, the drive to prioritise homeless households relies on political will. As one member of staff in Dublin City Council referred to it, there was at the time of fieldwork a *"special sort of push going on"* to get homeless households in the city into social housing (Local authority manager, Dublin), but there is no permanent institutional mechanism to ensure that they have access as a matter of course. In a context where few social housing units suitable for single homeless households are available, it is easy to see why the existence of these 'soft measures' may be inadequate. In Scotland, by contrast, legal obligations have forced local authorities to find means to discharge homelessness duties even where the available stock is limited, leading for example to flexibility in allocating single homeless households two bedroomed accommodation where no other stock is available.

This reliance on a *"coalition of the willing"* is the key weakness of the Irish social partnership approach: Dublin's response to homelessness remains *"vulnerable to any step changes at a national or international level because it doesn't actually have the legislative basis that compels it to continue"* (Local authority service provider, Dublin). Another local informant acknowledged that relying on:

> *policy… is vulnerable to change of governments, it seems vulnerable to the recession … if it goes in the right way, if there's enough money, if the will is there, but if it's law to do things it would be easier you know… it has been very vulnerable to what's going on in Ireland at the moment* (Hostel manager, voluntary sector, Dublin).

Indeed, informants commented that despite the investment and effort directed at homelessness in recent years, *"political will hasn't aligned with the policy objective"* (National stakeholder, Ireland)*.* This informant cited examples of councillors from the party in office resisting the location of homeless services in their constituency. Despite the anxieties of Scottish politicians and policy-makers around the homelessness legislation, the legal framework leaves them locked into the statutory homeless system for at least the medium term.

It is this set of issues – the vulnerability of Irish policy to the waxing and waning of political will and the discretion of street-level bureaucrats - that led some Irish informants to acknowledge the virtues of rights-based approaches. As one participant described it, because homeless people as a political constituency:

> *will not achieve much political weight… the administrative response will be ineffective… too inflexible or just not caring, or inefficient… the weaknesses are, you might get no action or insufficient action… in a sense, the bureaucratic door is closed* (National stakeholder, Ireland).

Cutting through this web of complexities, vested interests and blockages in the system, legal rights were seen by some key informants to offer a route forward: *"it means the 'go away we don't want you' type approach that we're still familiar with, that could not happen"* (National stakeholder, Ireland). A senior civil servant in Ireland, whilst reluctant to pursue a whole-sale rights-based model (which, in any case, seems highly unlikely in the near future), argued for taking a 'more mandatory approach' if current efforts to procure move on accommodation fail, requiring local authorities to allocate a certain proportion of accommodation to homeless households on a time-limited basis in order to address the backlog of homeless people currently residing in hostel-type institutional accommodation

in Dublin.

The tensions created by the Scottish statutory homeless system identified above should not be taken lightly, but they are the mirror image of the significant achievements of its rights-based approach. The strengths of Scotland's approach are brought into sharp relief when considered next to the Irish model, within which deprioritising the needs of homeless households entirely is far too easy. This is an issue in many social housing allocation systems (Ball, 2009; Pleace, et al., 2012), an observation that underlines the significance of Scotland's achievements to date. Despite the imbalances some fear risk destabilising the legitimacy of the Scottish system, legal rights go some significant way beyond a social partnership model in unsettling and working against the vested interests that stymie and slow the pursuit of the interests of this marginalised group.

Arbitrating between different needs

It has been argued that as well as crowding out considerations of desert, responsibility, social mix and 'housing readiness' in providing homeless households with access to settled housing, Scotland's statutory system also crowds out *other legitimate kinds of housing needs* that – according to many - social housing ought to respond to. The statutory homelessness system offers a blunt tool that succeeds on its own terms, but whose broader legitimacy is unstable and contested. McKee and Phillips have suggested for example that the statutory system achieves social justice for some, but not all (2012, p223). This insight should not be lost, even if the comparison with Ireland casts Scotland in a positive light. This section briefly turns to debates in moral and political philosophy to reconsider the findings presented in this chapter so far and help arbitrate between the strengths and weaknesses of Scottish and Irish approaches to homelessness.

Some of the objections to the Scottish model articulated above crystallise around a problem identified by Rawls: *"The serious difficulty is how to define the least fortunate group... It seems impossible to avoid a certain arbitrariness in actually identifying the least favoured group"* (1971/1999, pp. 83-4). He acknowledges that *"any procedure [to identify this group] is bound to be somewhat ad hoc. Yet we are entitled at some point to plead practical considerations, for sooner or later the capacity of philosophical or other arguments to make finer discriminations must run out"* (1971/1999, p84). On this basis, the group given priority through the statutory homeless system in Scotland should be monitored (through statistical returns and research for example) and a better match between the group prioritised in practice and the ethical principles underpinning their prioritisation continually sought (through regulatory processes and policy and practice reform).

The legitimacy of the statutory system will also depend on how other welfare arrangements affect the situation of outsiders and insiders to the statutory homeless system. In addition and pragmatically speaking, it will depend on whether there are sufficient resources available in the short to medium term to practically widen the range of households given legal priority in the allocation of social housing? If the answer is no – keeping in mind the economic context in which this thesis has been written - it may be that the statutory system represents the 'least worst' prioritisation of resources possible within current socio-economic parameters. This may entail the acknowledgement and acceptance of trade-offs ('tragic choices' even) between the needs of various groups and the achievement of various policy objectives.

These issues are exactly those considered by Hoggett (2006) in an article considering the role and purpose of public organisations and casting them as *"unique moral institutions where questions of technical efficacy ('what works') can be integrated with value questions"* and *"definitions of purpose are constantly and necessarily contested"* (p187-8). He argues that the public sector is founded on 'ambivalence' as it faces the impossible task of seeking to reconcile suppressed and inherent value conflicts. 'Street level bureaucrats' are seen to

live out these value conflicts and contradictions, which are passed onto them (rather than resolved) by legislatures (*"the emotional labour of the bureaucrat"*). Public bureaucracies are seen to 'contain' these anxieties, contradictions and unresolved issues (Hoggett, 2006, p183-4) and thus, modern politics *"must accept division and conflict as unavoidable, and the reconciliation of rival claims and conflicting interests can only be partial and provisional"* (Mouffe, 1993, p113, cited in Hoggett, 2006, p178).

On the basis of this 'tragic' acknowledgement of value pluralism and the incapacity of social policies to 'succeed' in this light, Scotland's rights-based approach to homelessness may be understood in the spirit of Bernard Williams assertion that there may be no right thing to do, we just have to act for the best (1973, p173, cited in Hoggett, 2006, p186):

> *Things just don't fit together as we would like them to, values rub up against each other, the moral agent has to live with conflicts that cannot easily be resolved and simply have to be lived with. You have to end up disappointing someone* (Hoggett, 2006, p186).

This perspective resonates strongly with the perspectives of Scottish informants involved in this study, who as well as defending the prioritisation of homeless households, often simultaneously recognised the challenges faced in seeking to balance the needs and rights of homeless households with other legitimate objectives. The rigidity and arbitrariness of the definition of homelessness underpinned the instability, tension and contestation in this sector that Hoggett identifies in public bureaucracies generally. This key informant describes an anxiety in the sector as entitlements and expectations diverge from resources and what can be delivered in practice:

> *there's a lot of anxiety around meeting housing need at the local authority level, so a lot of operational people in local authorities, it's sort of like they have their tin hats on and they feel this relentless pressure to house people and then they don't have the housing stock to meet those needs, and so what you get is a real sense of frustration and also pressure and stress* (National stakeholder, voluntary sector, Scotland).

Hoggett draws on Williams again to defend his perspective against the criticism of pessimism: *"If only we could abandon the chimerical pursuit of 'excellence' or 'total quality' we could focus our energies on creating systems of welfare and governance which were 'good enough'"* (2006, p187). This leads Hoggett to conclude that organisations have no 'primary task', but multiple and contradictory tasks. This offers a framework within which to understand the instability and contested nature of Scotland's rights-based approach to homelessness. It may be that the statutory system cannot reconcile these trade-offs and is forced to prioritise (in a 'tragic choice') the needs of the *very* least fortunate, over the least fortunate.

While this trade-off is itself is undesirable, the prioritisation of homeless households represents a significant achievement nonetheless. The comparison with Ireland - and wider research on the difficulties homeless households face accessing social housing (Pleace, et al., 2012) – exposes the significance of the achievements of the Scottish model. Arguably, Scotland is currently pursuing policies that strike a more progressive trade-off than elsewhere, where more advantaged constituencies are able to effectively exclude the least advantaged from accessing social housing (e.g. Ball, 2009). Moreover, by establishing this prioritisation of a certain group in law, the statutory system may lessen the 'emotional labour' of the public bureaucrat, crowding out some of the 'moral' considerations that remain influential in the Irish system (see chapter six).

This 'tragic-realist' perspective does not preclude the pursuit of a more radical, inclusive and/or just future for Scottish homelessness and housing policy. The trade-offs identified may evaporate, for example, in a country with a 'universal welfare logic' and a 'social

concept of rights' (as opposed to a 'selective welfare logic' and 'legalistic concept of rights') in which *"even worse-off households should be able to satisfy their housing needs in the general market"* (Bengtsson, 2001, p263). Hoggett's perspective reminds us however that alternative trade-offs and contested objectives are inevitable within such regimes.

At present, within Scotland's liberal welfare regime and selective housing and homelessness policies, and in the context of a finite social housing stock, distributional questions about how to prioritise needs remain. This is the tension the Scottish system will continue to negotiate, and perhaps not entirely resolve. Some of the ways in which this negotiation can be facilitated in order to stabilise the contested settlement embodied in the statutory approach were outlined above. The success of this negotiation will determine whether the new approach can maintain enough legitimacy to survive or whether it will succumb to pressures culminating in gatekeeping at the local level, a more adversarial policy environment and less satisfactory outcomes for homeless households. Whilst the prioritisation of homeless households lies beneath Scotland's international reputation of being at the vanguard of progressive homelessness policy, domestically, support for the rights-based approach depends upon the capacity of the system not to *entirely* crowd out other policy objectives and housing needs.

7.3 Perverse incentives

A criticism to which rights-based approaches to homelessness have consistently been vulnerable, is that they create an incentive for people to 'manufacture' or 'engineer' homelessness in order to gain priority in the allocation of social housing (Robson and Poustie, 1996; Greenhalgh and Moss, 2009). If this perverse incentive is acted upon, it risks undermining the legitimacy of the allocations process by failing to direct social housing towards those households in the greatest housing need (Pawson, et al, 2007, p27; Fitzpatrick and Pleace, 2012, p234).

That rights-based approaches in areas of high housing pressure risk 'squeezing out' other groups in housing need is likely to exacerbate the inherent perverse incentive within the system, as the 'homelessness route' appears to provide the fastest and potentially only access to social housing for many people (Wilcox, et al., 2010; Hills, 2007; Pawson, et al., 2007). This has led to concerns about perverse incentives being acted upon in London (Pawson, et al., 2007, p27; Pleace, et al., 2008, p101). The scope for 'collusion' between young people and their families (or other householders with which they live) has also been noted (Fitzpatrick and Pawson, 2007, p169), although previous research and participants in this study emphasised the thin line between 'genuine' homelessness and collusion in such situations (Niner, 1989; ODPM 2003; Fitzpatrick and Pawson, 2007).

The 'moral hazard' within the statutory system is likely to be diminished first, by the fact that housing accessed by homeless households tends to be less desirable (in terms of neighbourhood and quality) than housing allocated to non-homeless households and second, that accessing social housing through the statutory system can involve lengthy stays in temporary accommodation (Fitzpatrick and Stephens, 1999, p429; Fitzpatrick and Pawson, 2007, p172; Fitzpatrick and Stephens, 2008; Pleace, et al., 2008). Furthermore, investigations as part of a homelessness application afford local authorities the opportunity to check the course of events that led to an applicant's homelessness and in some circumstances these investigations may lead to the denial of a statutory right to rehousing (Pawson, 2007, p28).

Evidence regarding the extent to which this perverse incentive is acted upon is limited (Cloke et al., 2000), and indeed robust evidence on this point would be hard to gather (Pawson, et al., 2007, p28). Available evidence on the English case however *"weigh[s] against suggestions of widespread manipulation of the statutory homelessness arrangements"* (Pleace, et al., 2008, p101; see also Fitzpatrick and Pleace, 2012).

This study offers an opportunity to explore this shortcoming of rights-based approach, first, through key informant and service provider perspectives on the extent of abuse of the system[28] and second, through the perspectives of Scottish single homeless men on their reasons for presenting as homeless and on the role of being 'accepted as homeless' in accessing social housing. It also affords the chance to consider whether abuses of the system are a concern in the Republic of Ireland and whether these concerns have or continue to influence the direction of policy there. The main argument put forward is that despite much discussion about the perverse incentives associated with legal rights-based approaches, any allocations system that prioritises housing needs generates such incentives.

Perspectives on perverse incentives in Scotland

Reflecting the existing evidence base, informants in this study acknowledged that whilst it is hard to know how many applicants seek to and succeed in manufacturing a situation of homelessness in order to access social housing, it is likely to occur, especially in the case of young people presenting as homeless after a family dispute. There was also an acknowledgement that the homelessness route was seen to be among the only routes through which people could access social housing: *"there has been an increase in homeless applications because it's understood now that unless you are considered to be in dire housing need, i.e. homeless, you are not going to get social housing"* (Housing officer, Edinburgh). In this situation, it was considered understandable that people in a variety of circumstances would seek to *"find some way to fight through the system"* (Senior civil servant, Scotland).

These views were supported by those of the homeless and ex-homeless men who participated in this study, who saw a homeless application as the best or only way for them to access a social housing tenancy: *"It's the only way I know of getting a tenancy from the council and or a housing association, it's all I know."* (Hostel resident, Edinburgh). Another Edinburgh hostel resident agreed:

> *Unfortunately, you have to be homeless and have a priority to come anywhere near to getting a flat, so like, that's why people are doing it... a lot of people are doing this for a reason, and a lot of other people are doing it because they need this, like really need the support and stuff* (Hostel resident, Edinburgh).

No participants described their presentation to the local authority as homeless as 'engineered' specifically for this reason, but they did see abuse of the system among other homeless applicants as a problem. One participant explained however that he had *"spun a few yarns"* to make sure he was assessed as in priority need, as he perceived the distinction between priority and non-priority homelessness as unfair (a view also held by other participants):

> *I told them that I smoked cannabis, and that I gamble, because I don't think it's fair... I don't think someone that buys drugs and stuff like that, all the stuff that's going on here... I don't think they people should be helped again after they've already been helped once* (Hostel resident, Edinburgh).

While this specific incentive to be found homeless *and* in priority need - rather than 'just homeless' - does not apply post-2012, the incentive to be found homeless itself remains. Moreover, if the proportion of lets allocated to homeless households remains high and/or increases, this incentive may sharpen.

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[28] According to Pawson, et al. (2007) the 'perverse incentives' objection has currency among local authority housing staff (p27).

Despite this agreement among all groups of participants that manipulation of the system does occur (and is inevitable within any system), there was a strong consensus among informants - including local authority housing officers - that the extent of the problem did not pose a serious threat to the legitimacy of Scottish homelessness policy or give sufficient cause to move away from a rights-based approach:

> *the numbers of people who I think are abusing the system or who are maybe disingenuous I think is relatively small compared to the good that comes out of it… there are by far more people who come in to use the service because they absolutely crucially need the service than there are people who come in to perversely present as homeless because they want social housing* (Housing officer, Edinburgh).

> *I don't think very many consumers set out to defraud the system or understand so clearly what they're entitled to that they look to manipulate their circumstances. It certainly happens but it's not something that's widespread, I don't think it's a major reason for saying the rights-based approach or the legislation is a mistake* (National stakeholder, academic, Scotland).

In the round, the benefits of the system to those in genuine need are perceived to far outweigh the benefits of the system to those manipulating it: those working in the homelessness sector defend the system in spite of the perverse incentives inherent to it.

Whilst the tendency for homeless households to access poorer quality social housing than non-homeless households[29] and the stigma associated with label of homelessness[30] (see chapter eight) likely act as some guard against this perverse incentive, this study also brings to light various ways in which the impact of the perverse incentive might more reasonably be minimised. The extent of the incentive is likely to be lessened where the proportion of social lets allocated to homeless households is fairly low and social housing stock turnover reasonably high. Effective housing management and ensuring (as far as possible) an adequate supply of social housing therefore plays some role, as does the pursuit of 'housing options' approaches and homelessness prevention. Through 'housing options' interviews housing officers can enter into a dialogue with prospective applicants about the process and probable outcome of a homeless application and any other alternatives. This reflects a 'maturation' of the Scottish model away from a 'purist' rights-based approach and towards a more balanced and holistic approach (see chapter six) which may help counter the perverse incentives within the system.

A local informant commented that private rented sector reform and regulation may play a role in minimising perverse incentives. If private and social rented sector rents were less divergent, more people would be happy to find private rented sector accommodation rather than seeking social housing through the homeless route. Moves in England to enable local authorities to compulsorily discharge their homelessness duty into fixed term

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[29] There is a perception for some that the use of 'choice based lettings' systems and the expectation that households accepted as homeless place 'reasonable bids' (i.e. for accommodation in more accessible and less desirable areas) may continue the tendency for homeless households to be allocated the least desirable stock despite the demise of 'one offer' policies. A local authority manager explained that she was relatively unconcerned about perverse incentives, because *"in this environment… it doesn't give people a huge advantage… They get enhanced priority for bidding, but we actively manage that bidding and expect them to bid regularly for suitable homes and in doing that we almost limit their choice… we're meeting your acute need and we expect you to take a house that meets that need, so to some extent the advantage of the priority is constrained by the restriction of choice."* (Local authority manager and national stakeholder, Scotland)

[30] Indeed, one hostel resident who took part in the study described how a friend of his responded to the suggestion that he apply as homeless *"he's living with his Mum and she's like, why don't you go and do what Bob's done? … And he just came out and said to me, I'm not going with all the junkies and that"* (Hostel resident, Edinburgh).

tenancies in the private rented sector are likely to also weaken the perverse incentive in the statutory system as they block homelessness as a straightforward route into social housing. While intentionality provisions were seen as an ineffective response to the perverse incentive issue in practice (due to the high burden of proof they place on local authorities, see above) they may still play a preventative role in deterring potential applicants seeking to manipulate the system. Lastly, that assessments and investigations are carried out *"properly, effectively and honestly"* (Advocacy and advice service manager, voluntary sector, Edinburgh) was also seen to play a role in guarding against manipulation of the system.

Perverse incentives in the Republic of Ireland

The study revealed emerging concerns about perverse incentives in the Irish context, particular in Dublin. Specifically, national and local informants observed that improved standards of homelessness services; increased efforts to resettle homeless people into settled accommodation; and quotas stating that one in three social housing allocations should go to a homeless person, risked drawing people into homeless services even when they have viable alternatives:

> *that has been said by some local authorities, that people were deliberately making themselves homeless to jump the queue… It emerges just in cases where there would be say a points system for priority for social housing and homeless [people] might get a higher number of points… or equally where they have a quota of allocating a certain proportion [of social let's to homeless people]* (Local authority manger, Dublin).

In Dublin, service providers perceived that recent improvements in the provision of homeless services mean that people are attempting to *"scam"* homeless services or (put differently) *"optimise their opportunities"*:

> *we possibly are being a bit of a victim of our own successes… I'm finding a lot of new people presenting to the service on a daily basis… I just feel we're providing such a very good service that it's almost attractive… and it's so hard to get placed now, to get housed on the housing list, if through the avenue of homelessness people are seeing that they can get placed in a supported temporary accommodation and at the end of that they have a council apartment in a 6 months period. Is that not maybe encouraging, you know?* (Local authority service provider, Dublin).

As in Scotland, the single homeless men interviewed perceived that some people using services were making use of the system, rather than in genuine need:

> *there was guys up there [in a homeless hostel] living with their girlfriends and just down as living there so they could get their own place… they'd be staying [at the hostel] maybe once a week… and staying at their girlfriends for the other, so I don't really understand that and I used to question it a bit, saying Jesus you know, you're not homeless, you've somewhere to go, you know?* (Hostel resident, Dublin).

Local authority staff also felt that when allocated accommodation in an area or property they do not like, tenants sometimes leave the property and expect to be reallocated another by presenting at homeless services.

Although these perverse incentives were identified and seen to be acted upon in Ireland, they were considerable dulled in comparison to Scotland. This reflects the contingency of the process through which homeless men may gain access to social housing (see chapter six). Homeless men in Dublin were likely to spend long periods in poor quality temporary accommodation and even then, would often be rehoused in a private rented tenancy. A voluntary sector service manager commented: *"I don't know why on earth you'd make*

yourself homeless and turn up in one of the hostels, because getting out of it is incredibly difficult… I can't see why you'd choose to do that" (National stakeholder, voluntary sector, Dublin). A key worker in a Dublin hostel agreed:

> *some people make themselves homeless to try and get, thinking they'll get a city council property … they come in here and we say to them, ok, well this is how this works, "oh no no, I just come here for 6 months and then I get a bed", no you don't, and then they leave* (Local authority hostel manager, Dublin).

That homeless men in Dublin are less likely to be allocated a social housing tenancy than those in Edinburgh was also reflected in participants responses when asked whether being in homeless services provided a faster route to social housing. Service users who took part in this study perceived themselves to be a low priority in this regard: *"with the council and all, you're a single man, on your own, in other words like, piss off, you're way down the line somewhere"* (Hostel resident, Dublin). Another hostel resident similarly commented: *"as a single male without children, your only option is a one bed private rented flat and that will put you in a poverty trap… single people are it seems to me on the bottom of the ladder"* (Hostel resident, Dublin).

Although Scottish participants did not see perverse incentives as sufficient reason to abandon or compromise the rights-based approach, the sharpening of this at present weak perverse incentive in Ireland under a *non* rights-based approach was identified as a key reason to resist moving towards the Scottish model:

> *It's difficult for people to get homes now, extremely difficult… I've met a couple of guys who've made themselves homeless to try and get it … it's not a huge amount but I'm sure it goes on… I believe that that would happen on a regular basis if [a rights-based approach was adopted]. It's a small problem now, but would definitely be a bigger problem… that's the vulnerability I see in the [rights-based] system* (Hostel manager, voluntary sector, Edinburgh).

Perverse incentives and legal rights

This study serves to decouple the issue of perverse incentives from rights-based approaches to homelessness specifically. Perverse incentives are an intrinsic feature of responses to homelessness that seek to prioritise the needs of homeless households in the allocation of social housing, and the only way to avoid such incentives would be to avoid allocating housing on the basis of need. The 'moral hazard' inherent to the Irish *and* Scottish systems reflects that both seek to respond to the needs of homeless households in this way. This is one of several criticisms of needs-based social housing allocations systems discussed by Fitzpatrick and Pawson (2007, p169).

The strength and clarity of perverse incentives in Scotland are then a side effect of the internationally renowned attempt to better meet the needs of homeless households by enshrining their prioritisation in law. Despite this flaw, Scottish informants defended the efficacy and overall legitimacy of the system, failing to see the 'moral hazard' that emerges from the structure of homelessness policies as something that undermines the system to a significant enough degree to truly compromise it. By moving towards a more needs-sensitive set of homelessness and social housing policies, Ireland may create greater incentives for people to abuse the system, but at significant gain to many homeless people in genuine need.

7.4 Conclusion

Rights-based approaches to homelessness create 'insiders' (with legal entitlements to housing) and 'outsiders' (who lack such entitlements, even if they are in a situation of

housing need). This chapter has considered the extent to which this differentiation and prioritisation brings the fairness and legitimacy of Scotland's approach into question, first, by giving too much priority to homeless households, thereby unfairly disadvantaging others seeking social housing, and second, by creating an incentive for 'outsiders' to manufacture a situation of homelessness in order to avail themselves of benefits of being legally homeless.

The chapter has presented evidence to illustrate the contested and unstable nature of Scotland's rights-based approach in this regard: the prioritization of homeless households over others in housing need is seen as problematic by key stakeholders, who acknowledge that homelessness is not coterminous with housing need, but one manifestation of it. Prioritising homeless households by giving them a legal right to settled housing not only lessens the chances of other households in housing need accessing the social rented sector, but risks further residualising that tenure. Whilst acknowledging this as the 'Achilles' heel' of the Scottish model, this prioritisation of 'insiders' is also the statutory systems' major achievement. In Ireland, homeless households are not legally defined as insiders and lack any formal priority in the allocation of social housing. Their lack of legal standing means that significant efforts to increase homeless households' access to social rented housing in Ireland have met with limited success. It has been suggested, within a framework of tragic-realism and value pluralism, that the Scottish approach, by prioritizing the very worst off, may offer a 'less worse' response to housing need than the Irish model, which fails to interrupt or challenge the marginalization of homeless households through social housing allocations.

This chapter has also considered the extent to which the legitimacy of Scotland's rights-based approach is brought into question by the 'perverse incentives' legal rights create. It has been argued that such perverse incentives are inherent to *any* set of homelessness and social housing policies that prioritise allocations based on housing need. This connection – between meeting the housing needs of those who are 'genuinely' homeless and introducing 'moral hazard' to homelessness policy – brings into question the strength of this objection to the Scottish approach. Indeed, there was a consensus among those working in the sector that the legitimacy of the Scottish approach was not significantly undermined by the sharpness of perverse incentives in the largely needs-based system.

The next chapter moves on to consider the capacity of Scotland's rights-based approach to empower homeless households and mitigate the stigma of homelessness compared to Ireland's social partnership approach.

Chapter Eight Homelessness, Stigma and Empowerment

8.1 Introduction

Moving from the previous two chapters' focus on the 'material' aspects of homelessness, this chapter focuses on the psycho-social impacts of rights-based approaches, considering whether, and to what extent, legal rights to housing for homeless households can challenge or weaken the stigma of homelessness. Link and Phelan's (2001) account of stigma as complex and multifaceted, discussed in chapter three, is used as a framework for analysis. The empirical data from Scotland and Ireland generated in the study is compared through the lens of the six components Link and Phelan identify as constituting stigma. The chapter also considers the extent to which legal rights can 'empower' those who are homeless, drawing on the two conceptions of power – one 'traditional', one 'radical' - elaborated in chapter three.

8.2 Homelessness and stigma

The homeless or recently homeless men involved in this study were vulnerable to stigmatisation for a range of reasons: mental and physical health issues, drug addiction, alcoholism, unemployment, poverty, 'welfare dependence' and engagement in street activities, like begging. Nevertheless, homelessness specifically was found to be a source of stigma, reinforcing existing evidence about the psycho-social dimensions of homelessness (McNaughton, 2008).

Rough sleeping was something participants found physically difficult, but also shameful and frightening. Participants described being embarrassed about disclosing their homelessness to other people (friends, family or health care professionals): *"the embarrassment was the thing that killed me… I'd lie about where I live because of the embarrassment to say I lived in there [a homeless hostel]"* (Service user, Dublin). This stigma was not only something experienced 'in public', but in their experiences of homeless services. One participant described being ignored by a member of staff when they met them outside of the homeless service environment. Another spoke about his interactions with service providers:

> *I think they're used to seeing the same faces going through the system… they don't understand that I used to have a home and this isn't life for me, this isn't normal day-to-day life, me coming in saying 'I'm homeless I need somewhere to stay'… it's quite eh, it's not like a usual thing to do* (Hostel resident, Edinburgh).

Some participants described feeling ashamed about having to rely on the help of others, the state and/or charities and a perception that as a single homeless man they were at 'the 'back of the queue' or 'the bottom of the pile' and least deserving of such help.

Homelessness is revealed in this and other research as a 'failed identity' and participants often sought to salvage a less 'discredited' identity, emphasising their good or reformed character (that they're 'no trouble' in the hostel or that they're doing well on a methadone maintenance programme) and/or distinguishing themselves from other homeless people, as more deserving or in genuine need. In seeking to 'pass' as normal and minimise stigma, homeless men sought to establish themselves as 'not a normal homeless person', often articulating the stigmatising attitudes they themselves were victim to:

> *with the council and all, you're a single man, on your own, in other words like, piss off, you're way down the line… The whole system is wrong. They're looking after young women, babies, rehousing all them first… 16 or 17 years of age and they're getting places. I worked all me life, you know what I mean? They haven't worked, and they will*

never work again… they'll never be anything to society like. I mean, I've done me time (Hostel resident, Dublin).

These efforts to 'pass' did not enable participants to escape from the stigma of homelessness. Moving on from homelessness was equated with 'getting back to normal': *"I'd love if the council just gave me somewhere and then you can get on with your life and you can go back to work and go back to being a normal person, because when you're in this you don't feel like you're a normal person"* (Hostel resident, Dublin).

These themes were common to both case study areas. It is clear then, that Scotland's rights-based approach does not eliminate the stigma of homelessness. To the extent that a rights-based approach might have any effect on stigma among homeless people, it is likely to be a fairly blunt tool, which at best might contribute, along with other approaches, to lessening stigma among marginalised groups. This echoes Link and Phelan's (2001) argument that attempts to tackle stigma must be multi-faceted, reflecting the multi-dimensional character of stigma itself. Other approaches might include, for example, public awareness campaigns seeking to shift public understandings of homelessness. It is notable that neither jurisdiction under consideration here has invested resources in this direction.

8.3 Legal rights and stigma

Link and Phelan conceptualise stigma as the convergence of six interrelated components: labelling, stereotyping, separation, status loss, discrimination and a 'power situation' (2001, p367 and see chapter three). This section considers whether Scotland's legal rights-based approach to homelessness weakens stigma by making a difference to any of these dimensions of stigmatisation in turn.

Labelling

Link and Phelan (2001) describe how certain differences between people are socially selected as salient, labelled and established as taken-for-granted categories. 'Homelessness' can be understood in this way. This process involves oversimplification, requiring that people in a variety of circumstances for a diverse set of reasons are 'lumped together' in one category.

Scotland's rights-based approach appears to make little contribution to weakening this process of labelling. A national stakeholder expressed scepticism that Scotland's homelessness policies have had much of an effect on stigma. He explained that *"there's still too much of a stigma attached to being homeless and I think that a lot of people will still hate to have the label of being homeless"* (National stakeholder, voluntary sector, Scotland). Indeed, another informant commented that service users often resist the label:

> *we regularly see people who to you and I would be homeless but would say things like, 'I'm not homeless, I'm just sleeping on friends couches and I move round every day', and things like that, so I think for some people there still is the stigma of homelessness… People don't want to be called homeless* (Local authority manager and national stakeholder, Scotland).

Other Scottish key informants went further, suggesting that the rights-based approach may actually crystallise and render more salient the label of homelessness, potentially *increasing* stigma. Homelessness is *legally* defined and delineated and used as a key criterion in the allocation of scarce social goods (social housing). In Ireland by contrast, homelessness remains, in the main, a category 'socially selected as salient', hence the divergence between the (potentially broad) legal definition of homelessness in the 1988 Act and the (narrower) definition of homelessness employed in practice (see chapter five).

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That Ireland's legal definition of homelessness does not correspond to any enforceable legal entitlements allows for this divergence. Furthermore, Scotland's wide definition of homelessness means that households outwith public understandings of homelessness may be subject to the stigmatising effects of the label. Asked whether rights-based approaches to homelessness help overcome the stigma of homelessness, one Scottish key informant commented that they risk doing the opposite:

> *the label 'homeless' is something that's applied to more people, [it] becomes better known… I think that the homeless label is still a problem. It's still something which gives you access to something valuable, but it's not necessarily in your interests* (National stakeholder, academic, Scotland).

A local authority senior manager went so far as to describe this as *"one of the early failures of the legislation"*, arguing that *"people should be able to access what they need… without having to get the tag of being 'homeless'"* (Local authority manager and national stakeholder, Scotland). This key informant explained that these considerations led the local authority to redesign responses to young people leaving care with nowhere to live. In the past this group would have been 'put through the homeless route' and providers saw this as *"a good thing … they're getting their right to be homeless and the right to temporary accommodation, the right to permanent accommodation"*. But, she went on:

> *when we actually started working with young people, they felt incredibly stigmatised by that … They associated homelessness with people sleeping rough, they saw it as stigmatising, they did not want that label, did not want to go through a homeless assessment, did not want to go down the homeless route* (Local authority manager and national stakeholder, Scotland).

This local authority amended their allocations policy so this group can access social housing without making a statutory homeless application. In Edinburgh, efforts to prevent homelessness are seen to be important not only to alleviate the issues of housing supply, but also because the 'housing options' approach has *"helped people avoid the homelessness label"* (Local authority service provider, Edinburgh).

Attempts to minimise the number of people who must access the legal safety net may therefore pay dividends in terms of minimising stigma. On the other, Scotland's wide definition of homelessness and inclusive legal safety net may, at the same time as subjecting more people to the label of homelessness, play an educative role in terms of public attitudes, helping move away from stereotypical images of 'the homeless'.

Stereotypes

This dimension of stigma refers to the linking of undesirable characteristic and attributes to the labelled group. When asked how legal rights may help overcome stigma, one Scottish key informant explained it in these terms: *"by saying that it's a civil right [settled housing] and everyone's entitled to it, so [homelessness is] promoted as something that could happen to anyone"* (National stakeholder, academic, Scotland). By casting homeless people as active rights-bearing citizens making legitimate claims on public resources and identifying a wider section of the population as homeless than existing stereotypes might suggest, legal rights may support a move away from discredited associations of homeless people (and homeless single men in particular) as passive and/or undeserving and as failures in a society that values self-sufficiency and self-reliance. This alternative discourse emphasises structural and social inequalities and exclusion from the housing market as causes of homelessness, instead of or as well as factors at the individual level, working against an exclusively individualistic framing of homelessness.

This study suggests that in Scotland this alternative discourse operates *alongside* devaluing stereotypes and associations, not that it has replaced them. This is clear from the fact that as well as seeing themselves as rights-bearers entitled to support (see below), the homeless men who took part in the research also felt stigmatised and judged according to negative stereotypes.

It was felt that the rights-based approach to homelessness may only have weakened stigma *"in the circle that it immediately effects"* (National stakeholder, voluntary sector, Scotland) i.e. homeless service users and those who work in the sector. This key informant went on, *"I don't think the 2001 or 3 Act more widely moved any of those stigmas or stereotypes".* Assessing changes in public attitudes towards homeless people is beyond the scope of this study, but there was a suggestion that culture and attitude changes may be restricted to those working in the sector. It was noted that shifting public attitudes has not been a main plank of recent homelessness policy:

> One of the things that was discussed very early on in the Homelessness Task Force is whether we needed, linked to everything, a major public awareness campaign of the range of people who become homeless. I just think that we haven't even begun to address the picture someone has in their head when they hear the term homelessness or homeless person (National stakeholder, voluntary sector, Scotland).

Separation

This component of stigma involves the labels and associations applied to the stigmatised group becoming the rationale for believing that group ('them') are very different from 'us'. It was noted in chapter three, drawing on comparative welfare state literature, that the more visibly separate a group are perceived to be from the 'normal' population, the less support there may be for redistributive policies. Residual welfare policies in liberal welfare regimes may generate support for themselves by making poorer groups - including homeless people - more visibly separate (Larsen, 2006), undermining a sense of common citizenship and solidarity.

Three alternative perspectives are relevant when considering the impact of Scotland's legal rights-based approach on the 'separation' of homeless households from the 'normal' population. First, Scotland's wide definition of homelessness brings a broader spectrum of the population into this category than might otherwise be the case (and than is the case in Ireland). Those brought into the legal safety-net who do not visibly appear to be homeless (those not engaging in street activity for example) may avoid stigma because they are not visibly distinct as homeless households or attract stigma because they are legally classified as homeless. The findings of this study are not definitive in this regard due to the focus on homeless single men specifically, but it would seem likely that levels of stigma may vary between subgroups of homeless households.

Second, if rights-based approaches more successfully meet the needs of homeless households and specifically, if they reduce the most visible manifestations of homelessness (rough sleeping and other elements of 'street culture'), this may help undermine or weaken public perception of the 'separateness' of this group. Chapters five and six presented evidence that trends in rough sleeping are declining in Scotland, but increasing, or at least faltering, in Dublin (Fitzpatrick, et al., 2012d; DRHE, 2012). In line with this, observations during fieldwork would suggest that street activity is more obvious in Dublin than in Edinburgh. This likely reflects the absence of legal rights to temporary/emergency accommodation in Ireland and that demand for hostels spaces outstrips supply in the city. Moreover, night shelters requiring users to leave the premises during the day were only in the process of being phased out during fieldwork and the night bus service (through which those sleeping rough access emergency accommodation) leaves homeless people on the streets during the day. It was also noted in chapter six that

the quality of temporary accommodation appears generally to be lower in Dublin, which may mean homeless men chose not to stay in these facilities during the day.

All these factors increase the visibility of homeless people as a disadvantaged and problematic group in the urban environment in Dublin compared to Edinburgh. Irish homelessness policy may be able to lessen the visible separation of this group outside of a rights-based framework by successfully completing the reconfiguration of services, ensuring that temporary accommodation is available to those who may otherwise sleep rough and of sufficient quality to keep homeless men off the street.

Third, however, rights-based approaches may exacerbate the perception of homeless households as separate and different. The Scottish approach *literally* establishes homeless households as a separate and prioritised group in social housing allocations, giving those who are homeless a status that reinforces the separateness of homeless households in the eyes of those working in the social housing sector and in communities where it is clear to residents that a large proportion of social housing lets are being allocated to homeless people:

> *in terms of stigmatising homeless people, it doesn't actually help when you're almost having, I was going to say 'them' I don't mean it in a negative way but you're almost having homeless people foisted upon you or forced upon you* (National stakeholder, social housing sector, Scotland).

While the study suggests that the Scottish approach may help weaken separation in the eyes of some (those working in the homelessness sector for instance), for specific groups – those working in the social housing sector, living in areas with a high proportion of social housing or seeking to live in social housing – it may exacerbate it.

Status loss

Status loss involves the labelled and stereotyped person or group experiencing downward placement in the status hierarchy. According to Link and Phelan (2001) this shapes social interactions in a way that produces unequal outcomes, even where overt discrimination is not obvious. Scotland's rights-based approach appears to offer advantages in this regard, by strengthening an alternative discourse around homelessness emphasising the legitimate entitlements of homeless households, rather than their status as 'failed individuals', dependent on the generosity of the state, for which they should be grateful.

One of the clearest ways in which this was manifested was in the sense of entitlement services users articulated. This appeared to be substantially stronger in Edinburgh than in Dublin. Scottish service users tended to be unapologetic about using welfare services, feeling that 'everybody has a right' to receive assistance. A hostel resident stated for example that *"everybody's entitled to help, it doesn't matter if you're poor or what country you come from, you're always entitled to help"* (Hostel resident, Dublin).

This sense of legitimate entitlement also manifested itself in higher expectations about the level of services they should receive as homeless people. Edinburgh service users were focused on how long they have to wait in temporary accommodation until they access settled housing; their choice over resettlement options; the quality of services they receive; and the facilities they had access to in temporary accommodation. Service providers reported complaints about there not being televisions in rooms or microwaves available to those in temporary accommodation. Service users therefore saw their use of public resources as legitimate, lessening the impact of homelessness as a status of failure.

This is not to say that homeless men in Scotland always had an accurate awareness of their actual legal entitlements: knowledge of entitlements varied and the law was often 'unseen'

(Cowan, 2004, p957). Rather, homeless men tended to have a sense of their *moral* entitlement to assistance as homeless households. They perceived it as morally justified that they should receive assistance (and assistance of a certain quality) from the state. The 'is' and 'ought' of entitlement therefore appeared to be implicated in one another in the Scottish context. These observations suggest that, contrary to a potential criticism of rights-based approaches, their efficacy may *not* depend on people's accurate knowledge of their legal rights. The sense of moral entitlement and associated expectations mean that benefits may accrue to service users even if they are unclear about their statutory entitlements.

In the main, informants saw this sense of entitlement among service users as justified and desirable: *"there is a sense of people knowing that if they're homeless, they can expect a service provided to them… and I think that's an advantage"* (National stakeholder, voluntary sector, Scotland). Reflecting on hearing a homelessness practitioner complaining that homeless people are *"much less grateful"* for assistance than they used to be, another Scottish key informant argued that *"if there's a view in other parts of Scotland that [service users] are getting a bit more 'angsty', then fantastic!"* (National stakeholder, voluntary sector, Scotland).

This same informant did acknowledge, however, that this could lead to a 'clash' between users and providers in front-line service delivery in cases where housing officers *"have a less sophisticated understanding of life and are making harsh judgment on people who are coming either seeking help or sometimes asserting their rights"* (National stakeholder, voluntary sector, Scotland). From the alternative perspective, another key informant commented that people can approach the council *"quite aggressively"* demanding accommodation and/or accommodation in a particular place, resisting the advice of housing officers (about their need for support, for example) or misunderstanding the local authority's legal duties (Local authority manager and national stakeholder, Scotland). A local authority provider also acknowledged that service users can have 'unrealistic expectations' about the quality of services, but went on:

> if we go in and say well actually we're only statutorily obliged to provide you with this, if we get ourselves into that defensive position we've just lost everything we've tried to gain… What we're trying to do is move ourselves away from that and deal with individual, and if they have issues then try and deal with them (Local authority service provider, Edinburgh).

These perspectives from Edinburgh stand in stark contrast to those in Dublin, where homeless men had a *"depressed sense of entitlement"* (O'Brien and Major, 2009, p430) and instead emphasised their luck and gratitude at receiving assistance. Asked whether he was anxious about approaching homeless services, a Dublin man answered: *"I didn't know which way to turn and I was never in that situation in me life, so… I was happy to get the help that I got"* (Hostel resident, Dublin). Another described how he felt when he was told he could stay in his current hostel (which was downsizing as part of the reconfiguration of services): *"I'm grateful… I was lucky when I got the letter under the door, I'm staying, they said… I was grateful for that"* (Hostel resident, Dublin).

This propensity for those accessing services to feel gratitude, luck and relief is likely to reflect a variety of factors, including the high competition for hostel spaces in Dublin. It may also relate to awareness among service users that they have no legal entitlements. In addition, this tendency may reflect wider socio-cultural features of Irish society – a society lacking the social democratic traditions of Scotland (Mooney and Scott, 2012) - in which provision for those 'in need', including homeless people, has invariably been by voluntary (often faith-based) organisations (McCashin, O'Sullivan and Brennan, 2002; Acheson, et al., 2005; Baptista and O'Sullivan, 2008, Harvey, 2008). This history of charity in the country reflects itself in both the nature of provision for homeless households and, it would seem,

in service users' dispositions and attitudes towards these services (their 'habitus', see chapter four).

Dublin service users also appeared to have lower expectations about the level of services they should receive and appeared to be less frustrated at being in temporary accommodation than their Scottish counterparts. Scottish hostel residents described how being in temporary accommodation was like being 'in limbo' *("every day that goes past is just like a waste, cos I could've been doing something more constructive"*, Hostel resident, Edinburgh) and that they were *"champing at the bit, ready to go"* (Hostel resident, Edinburgh). In stark contrast, when asked how they felt about where they were staying, comments from Dublin hostel residents included *"where I am here, is perfect"* (Hostel resident, Dublin) and *"this is like excellent... you can play pool, and snooker and stuff like that, and that's where people get together out there... I'm glad to be here...it's a good place to get breathing space, I can't knock it really"* (Hostel resident, Dublin). Even when Irish service users were dissatisfied with levels of service, they seemed less likely to complain about it: *"I was told a couple of times to put complaints in about people and I wouldn't. I'm not that type, I don't know what it is, but I just didn't feel I was entitled to it"* (Service user, Dublin).

As well as having a greater sense of gratitude and lower expectations about levels of service, Dublin service users emphasised their personal responsibility in moving on from homelessness, rather than seeing statutory services and support as key to resolving their homelessness. This hostel resident was clear in his view that *"key workers haven't got a magic wand... you have to help yourself"*. He went on:

> *if I've got any fault let's say, it's towards meself, because I should've been personally linking in myself... I should've been maybe talking more about what's on me mind and everything, so it's not the staff's fault... to a very large degree it's what you do and say, so no, I've got no qualms... I think, if only for alcohol getting in the way I would've been housed, because I've not been pushing it as hard as I should have* (Hostel resident, Dublin).

Similarly, another Dublin hostel resident reflected on his experiences since becoming homeless:

> *when I was awarded the place in the B and B I never thought for a minute that I'd still be living in town in three years time. Six months, I thought I would be definitely gone in 6 months, but as I said, I fell into a rut, just of not doing anything, which is half my fault, because if you need help I suppose you need to look for it, you can't expect people to just ring and knock on your door* (Hostel resident, Dublin).

It was noted in chapter six that temporary accommodation in Edinburgh appears to be better quality than in Dublin. This does not align with the observation here that service users in Edinburgh tend to be more critical of the quality of such accommodation and drive for improvements in quality more vocally than those in Dublin. This apparent disconnect between *actual* and *perceived* standards likely reflects the different expectations and levels of assertiveness of service users in Edinburgh and Dublin. These observations have implications for debates about 'service user involvement' in homelessness services (see below). Specifically, they would suggest caution in relying on service user 'voice' to gain insight into the quality of hostels and temporary accommodation, as expectations and perceptions of standards may be affected by factors other than the quality of services.

O'Brien and Major (2009) have argued that a depressed sense of entitlement undermines the potential for *collective* action to challenge social inequalities (see chapter three). There are recognised barriers, however, to effective *collective* action among homeless

households, namely, the transitional and transient nature of homelessness and the lack of capital and resources among homeless households (see Anker, 2009). Moreover, the stigmatising attitudes homeless households appear to have towards each other (see above) also suggest that a sense of solidarity or common cause is weak for this group in Scotland and Ireland at present. The analysis presented in this section, however, would add to O'Brien and Major's conclusions that a depressed sense of entitlement may undermine *individual* actions and dispositions that taken together may challenge social inequalities (this theme is discussed further below).

Discrimination

According to Link and Phelan (2001) stigma involves the labelled group being discriminated against, either overtly or through structural discrimination i.e. accumulated institutional practices working to their disadvantages. It has been reported elsewhere that homeless people face discrimination in various spheres, including employment and healthcare (Jones and Pleace, 2010).

It is beyond the remit of this study to provide insights on the impact of rights-based approaches on patterns of discrimination against homeless people. Nevertheless, it may be worth noting that any accumulated institutional practices that work to disadvantage homeless households in the allocation of social housing may be displaced by legal rights to housing for this group, which compel social landlords to house them (see chapter six). Such rights leave less room for negative judgements to exclude such households (due to the perception that they would be 'undesirable' tenants or are 'undeserving', for example). Furthermore, by creating a legal framework that casts them as having a legitimate claim on public resources, rights-based approaches may contribute to overcoming some of the negative stereotypes and attitudes that might underpin exclusion and discrimination in the first place.

Power situation

Finally, Link and Phelan propose that stigma depends on there being (social, economic and/or political) power differences between the stigmatised and stigmatising group (2001, p375), although they do not offer an account of exactly how they conceptualise 'power'. In outlining the key concepts employed in this study, it was argued that 'empowerment' is an ambiguous concept, lacking a clear set of theoretical roots or obvious interpretation in the context of homelessness policy. This conceptual ambiguity was mirrored in the perspectives of participants in this study, with informants articulating various (and at times contradictory) understandings of empowerment.

Often the idea of empowerment in the context of homelessness was seen as reducible to meeting people's need for settled housing. This reflects the idea that housing is a 'foundational need' that provides an individual with the means to *"get on with their lives"* (National stakeholder, academic, Scotland). This went alongside a recognition of the complex needs faced by many of those accessing homeless services and that the provision of settled housing was no panacea. Nevertheless, settled housing was accorded some priority as providing a context within which to address these other needs. One Irish key informant described that resolving homelessness gives the person *"security and a foothold from which they can create a whole identity and from there you've actually got autonomy and independence"* (National stakeholder, Dublin). A Scottish key informant agreed that accessing housing empowers people to *"go on and take charge and sort out the other things in their life which are very difficult to do if they're worried about a roof over their head"* (National stakeholder, academic, Scotland).

The capacity of legal rights-based approaches to better meet the needs of homeless households was the subject of chapter six and so will not be discussed further here. The

next section returns to the distinction between 'traditional' and 'radical' conceptions of power made in chapter three and considers the extent to which Irish and Scottish policy approaches 'empower' single homeless men when the term is operationalised in these ways.

8.4 Legal Rights and Empowerment

Legal rights and 'traditional' conceptions of power

Traditional conceptions of power focus our attention on decision-making processes (Polsby, 1962; Lukes, 2005), and in the context of this study, on decision-making processes that occur in welfare interactions between homeless households and service providers. A conflict of interest may exist as the service user seeks to access a resource that the service provider seeks to ration according to various criteria – this underlines the understanding of service providers as 'gatekeepers'. As well as implementing pre-defined eligibility criteria, service providers retain discretion (and/or 'judgement') in their interpretation of these parameters and rules (see chapters two and three). This conception of power highlights that in welfare interactions, service providers hold more power than service users, who are subject to their judgement and interpretation of the situation, assessment and decision. It may also suggest a focus on 'service user involvement' as a mechanism of empowerment.

The scope for discretion among 'street-level bureaucrats' (Donnison, 1977; Lipsky, 1980; Brodkin, 1997) is fundamental to understanding how legal rights impact on this 'power situation'. This study suggests that rights-based approaches offer some counter to existing power relationships by constraining the scope of provider discretion. Whilst this constraint is imposed from above (i.e. by the state through law), it has the effect of redistributing some power 'down' to the homeless service user. While providers must still make judgements and interpret rules within a legal rights-based framework (Donnison, 1977) (and while they retain some discretion depending on the structure of those rights, see Hunter, 2010), the service user is empowered by transparency and clarity about criteria of assessment and in decision-making processes. This transparency is backed up by a right to review and redress, as well as regulation and monitoring processes.

The greater clarity and 'rule-boundedness' of rights-based approaches, and the shift away from discretion they afford, was seen as empowering by participants, particularly in Ireland where discretion appeared to work against the interests and needs of homeless households. The mechanisms by which this discretion impacts on homeless services were discussed at length in chapter six. The important point here is that legal rights were seen to offer a way of minimising this:

> *it overrides discretion basically, there's a sense at the moment, under the 1988 Act … [that] you could be homeless, you could qualify and you might say, 'we don't have any and there's nothing you can do'… but by saying there is an obligation, it's saying they must, so it gives power to the person, the consumer of services, to say I have a legal right, I can call on the courts and the state to enforce it. It changes the power dynamic* (National stakeholder, academic, Ireland).

> *[legal rights] encourage accountability because if things are not provided, you have right to courts or the parliamentary system for recourse and redress and so on… it means the 'go away we don't want you' type approach that we're still familiar with, that could not happen* (National stakeholder, Ireland).

The legal framework in Scotland imposes limits on the capacity of service providers to respond to homeless households according to their own priorities, whether these priorities reflect organisational agendas (to ration access to fit resources for example) or

personal views (judgements about the relative deservingness of applicants or discriminatory views). As one key informant put it, legal rights create a *"fundamentally empowering environment that allows them to navigate a route out of homelessness where the law is on their side"* (National stakeholder, voluntary sector, Scotland).

Crucial to this achievement in Scotland is the removal of the priority need category, which afforded housing officers considerable discretion *within* a rights-based regime (Hunter, 2010). It is not then simply the existence of legal rights that can empower homeless households in this way, but the *form* of those rights. As noted in chapter two, all policy approaches tend to involve a combination of rules, discretion and judgement. Complex rules around eligibility that leave significant space for discretion in the interpretation and implementation of those rights, may militate against the benefits of such approaches.

Reducing discretion may have disadvantages however. Scottish service users, in line with their propensity to be more critical of services than their Irish counterparts, described the process of applying as homeless as impersonal: *"I was just another person… I got treated with as much respect as if I was buying a coke in MacDonald's… I don't think they were judging me or anything like that, but I just think they could've been a bit more supportive"* (Hostel resident, Edinburgh). This sense of being processed through an impersonal, rule-bound system was less evident in Dublin, where service users' main interface was with hostel staff rather than the council and they were often positive about these relationships: *"you're not just a number in here, everyone is judged individually"* (Hostel resident, Dublin). This echoes Titmuss' (1971) defence of the role of discretion in achieving 'creative', 'individualised' justice (see also Walker, 2005).

Scotland's rule-bound system may in be part characterised by less personal interactions with providers, who are seeking to process people through the statutory system into settled accommodation to meet their legal duties. In Ireland by contrast, where there is no legal entitlement, service providers have both opportunity and good reason to build more personal relationships with those they work with. Such supportive relationships are more likely to make a significant difference to that person than in Scotland, where legal rights - not personal relationships or effort - define access to accommodation.

Service user involvement - the scope given to homeless households to participate in the management and delivery of the services they use - was presented in chapter three as one dimension of the first conception of power, as it seeks to increase the control of users over their environment and experiences in accordance with their expressed interests and preferences. The challenges of service user involvement in the context of homelessness services - due to the high turnover of hostel residents for instance - have been noted in previous research (Van Doorn 2000; Fitzpatrick and Wygnanska, 2007; Busch-Geertsema and Sahlin, 2007)[31]. Scotland seemed further ahead than Ireland in this regard, with Irish key informants identifying a lack of user involvement as a weakness in the approach. In 2002, the Homelessness Task Force emphasised the importance of "*achieving the effective participation of people affected by homelessness in the development of future policy, practice and service delivery*" (Scottish Executive, 2002)[32] and in 2008 the Scottish Homelessness Empowerment and Involvement Network (SHEIN)– funded by Scottish government – was established to promote more participative practice among network members.

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[31] Busch-Geertsema and Sahlin (2007, p78) identify several barriers to involving hostel residents in how services and support are organised, including their lack of social capital and political power and the element of control that often permeates service delivery in these institutions.

[32] This followed a report (Ann Rosengard Associates, 2001) that resident involvement in the running of hostels was rare in Scotland. In 2006, the UK government also articulated a commitment to service user involvement in homeless services (CLG, 2006, p5). This reflected a broader and deep commitment of New Labour to consultative participative approaches (Clarke, 2005, p450).

It was not clear however that Scotland's progress on this is linked specifically to its rights-based approach. A key informant involved in SHEIN commented that this work has been driven by voluntary sector organisations and evolved *"quite far away from the legislation"* (Senior civil servant, Scotland). As noted above, however, the sense of entitlement and higher expectations among Scottish service users may provide a more conducive environment for effective user involvement than exists in Ireland. There may then be some symbiosis between rights-based approaches and a culture of effective service user participation.

Legal rights and 'radical' conceptions of power

The second conception of power turns our attention away from a focus on decision-making processes and towards the dispositions and ways of thinking that determine how welfare interactions occur and their outcomes. Bourdieu's concept of 'habitus' was outlined in chapter three, which describes *"the system of internalized dispositions that mediates between social structures and practical activity, being shaped by the former and regulating the latter"* (Brubaker, 2004, p43). Habitus structures perceptions and actions at every moment: Wacquant describes it as the way in which society becomes 'sedimented' in a person, forming propensities to think, feel and act in certain ways (Wacquant, 2004, p318). This concept offers one way of understanding the different tendencies in Scottish and Irish homeless men suggested by the study.

It was argued above that Scottish homeless men tend to see their interactions with services in terms of entitlement and have higher expectations about levels of provision. It was also suggested that they have a greater sense of agency, in the sense of an eagerness to move on from temporary accommodation and an overt desire to 'get on with their lives'. This collection of perceptions, beliefs and dispositions were contrasted with tendencies revealed among Irish homeless men to feel gratitude and luck for the help they receive, have lower expectations about services, and towards passivity, quiescence and acceptance around their current living situation.

Homeless men in Dublin and Edinburgh then, reveal different sets of dispositions towards homelessness and homeless services – different habitus'. It appears that in Scotland, homeless people's legal rights transmit into a set of discourses and dispositions that reflect and support the moral legitimacy of those rights. Legal structures are internalised, bridging the gap between the 'is' of law, and the 'ought' of just responses to homelessness. The extent to which the homelessness policy frameworks are responsible for these different dispositions is not clear. It is likely that they also reflect – are 'sedimented from' - broader socio-political and socio-cultural tendencies in the jurisdictions, which also feed into decisions about which policy approaches are taken. It may also be that homelessness policies play some role in directly contributing to and bolstering these alternative sets of internalised dispositions and discourses (see chapter nine for a full discussion).

In Ireland, homeless men's lack of legal entitlement, and the key role of voluntary/faith-based organisations in provision, is 'sedimented' in their dispositions and ways of thinking about homelessness and the services they access. Brubaker, commenting on the concept of habitus, explains that these internalised dispositions tend to *"lead individuals to act in ways that reproduce the social structure... without radically transforming it"* (Brubaker, 2004, p43). This analysis seems particularly pertinent to the Irish case, in which homeless men appear - against their 'real interests' - to respond to their situation (their status as homeless and their residence in temporary accommodation) with quiescence, rather than assertiveness or resistance.

As such, rights-based approaches appear to help counter the potential 'misrecognition' of relationships between providers and welfare recipients as purely one of *care*, when they are in fact relationships of *control* and *care* (Peillon, 1998; Johnsen and Fitzpatrick, 2010).

Casting this relationship in terms of rights and entitlements references - and is honest about - the power dynamic underpinning welfare provision. Whereas in Ireland service users tended to see providers as 'doing their best', service users in Scotland were less forgiving, recognising the power and resources at the disposal of the local authority and service providers and being more demanding about accessing those resources.

For Bourdieu, the power of different individuals and groups is determined by their access to different forms of capital and the 'convertibility' of those forms of capital – what that capital can achieve (Greener, 2002). Homeless households tend to have low levels of capital (McNaughton, 2008). One way of understanding legal rights then, is as a form of *state-sponsored capital*[33], which is perceived as legitimate by both homeless men and those administering homelessness policies. This capital can be used or converted, through the statutory system, into access to settled housing. In Ireland, where no legal rights frame or underpin welfare interactions in homelessness services, homeless men remain capital poor and subject to the discretion of street-level bureaucrats and/or the vagaries of the housing market.

On this understanding of power, the evidence gathered in this study would suggest that legal rights do empower homeless service users to a substantial degree, helping create a demanding welfare agent - rather than a passive welfare subject - able to articulate legitimate claims against the state from a position of relative disadvantage. This offers one response to Goodin's (1986) criticism that rights-based approaches wrongly assume an empowered, demanding, boisterous citizen. This analysis suggests that rights-based approaches may in fact help create or construct that citizen, and posits a connection between policy approaches (and whether or not they are based on legal entitlements) and the agency and reflexivity of the people who use and engage with the services that operate within the parameters of that policy approach.

Figure 8.1 Plotting the 'subject positions' of homeless service users: applying Hoggett's model of agency

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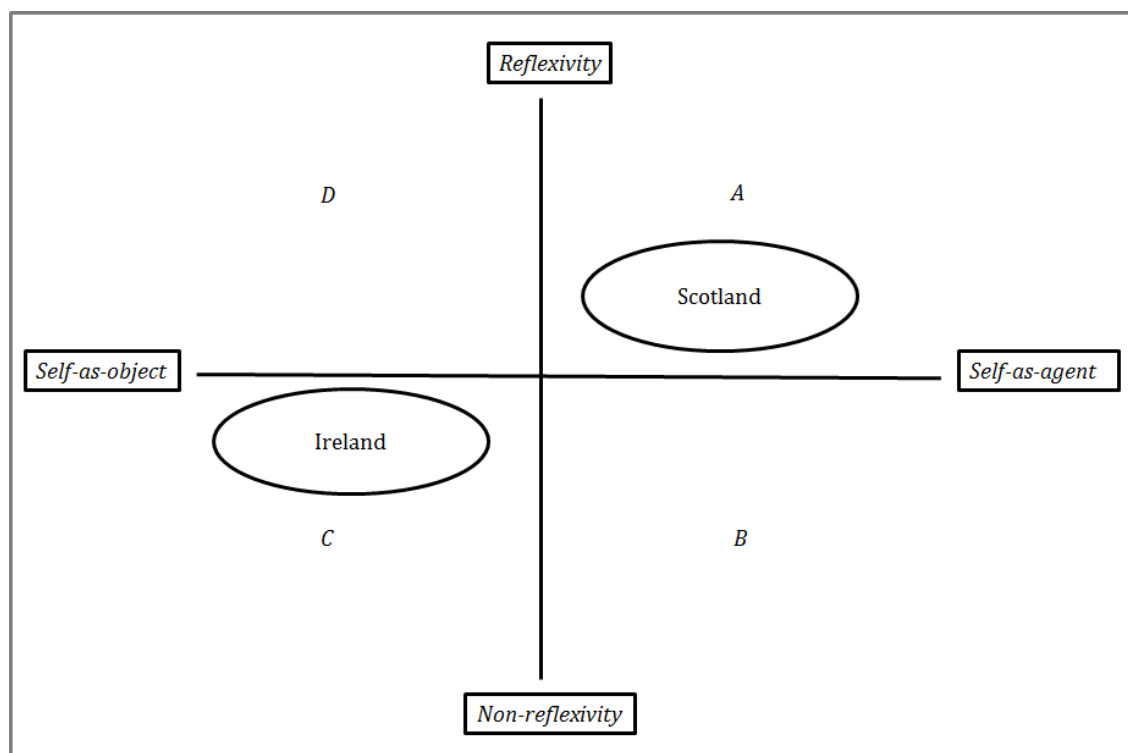
[33] Bourdieu understands the state as 'the culmination of a process of concentration of the different species of capital' (Bourdieu, 1998: 41 cited in Greener, 2001, p701).

Hoggett's (2001) model of agency, reflecting his *"non-unitary conception of the self"* (p41 and see chapter three) is a useful framework to reintroduce here. He offers the model as *"as a way of thinking about the different subject positions that we all occupy at times rather than as a typology for characterising particular individuals"* (Hoggett, 2001, p47). In the spirit of that approach, the placement of Ireland and Scotland on the model (see figure 8.1) aims to suggest only that the policy approaches to homelessness pursued in each jurisdiction - and the resulting interactions with service providers, expectations and experiences of services - may bring out or nurture some 'subject positions' rather than others, with Ireland's discretionary mode of provision failing to promote agency and reflexivity among homeless service users and with Scotland rights-based approach more conducive to constructing homeless service users as agents making a claim on public resources to improve their situation. The analysis also suggests, in line with an American body of pyscho-social literature, that policy frameworks and/or broader welfare and socio-cultural structures may generate 'system justifying' ways of thinking, beliefs or 'habitus' (Jost, et al., 2004).

Not all participants would concur with this interpretation of the empowering nature of legal rights to housing. Some participants emphasised an understanding of empowerment foregrounding ideas about choice, responsibility and independence and expressed concerns that in these ways, the rights-based approach risks *dis*empowering homeless households:

> *there's a risk of taking away any incentive for people to take more responsibility for their own housing situation and the danger that systems are operated or designed with an assumption that no one in our client group is capable of doing that... they are set up for people who need their hands held, need everything done for them... that's the way the system works and they can't be offered any greater incentive to take responsibility* (National stakeholder, academic, Scotland).

The objection here is that giving homeless households a legal right to housing dulls incentives and their capacity to resolve homelessness themselves. It chimes with well-rehearsed ideas about the flaws of a welfare state that 'spoon feeds' citizens, creating dependence (Dean, 2003b, p696). This same participant identified a *"tension between meeting housing need and empowering individuals or creating a system where there's a greater degree of choice"*. Another described the process of applying as homeless as one in which people *"surrender quite a lot of control"* (National stakeholder, voluntary sector, Scotland). Another agreed, commenting: *"I'm not sure the way that people are herded into situations through the homeless route actually does empower them at all"* (National stakeholder, social housing sector, Scotland).

This was echoed by an Irish key informant who saw a contradiction in the thinking behind rights-based approaches: *"the notion of people being the bearers of very defined rights sits alongside the notion that they should have some authorship of their own lives and some authorship of what those rights should mean"* (National stakeholder, Ireland). A statutory service provider in Dublin described their opposition to rights-based approaches in these terms, explaining that they would be *"much more in favour of encouraging people's ability to take responsibility and accountability and taking charge of their own life"* (Local authority service provider, Dublin). Indeed, this was echoed by some Dublin service users who favoured the 'stricter' Irish response to homelessness as better reflecting 'human nature' by leaving the onus on the individual/homeless person to resolve their situation. This was not just seen to be a better approach *morally*, but as one that would yield better outcomes in terms of respecting, looking after and holding on to new accommodation.

According to these perspectives, legal rights fail to enable and encourage service users to *"produce the conditions of [their] own independence"* (Clarke, 2005, p451). Legal rights emerge as a model of homelessness policy inconsistent with Giddens' 'autotelic self'

(Giddens, 1998; Greener, 2002). They cast homeless people as 'pawns' (passive recipients of welfare) rather than rational, self-interested 'queens' (Le Grand, 1997; Dean, 2003b, p698), offering a 'top down' response that directs homeless households in a particular, pre-defined direction that may meet their housing needs, but does not promote autonomy and responsibility. While it may be ventured that attempts have been made to increase opportunities for autonomy and choice for homeless households (for instance, the emphasis on 'housing options' approaches across Scotland and the use in Edinburgh of a 'choice-based lettings' system) the rights-based approach is fundamentally disempowering on this understanding of the concept.

It is not clear however that Ireland's approach achieves this kind of empowerment any more successfully. Whilst the system places greater onus on the individual, it is not clear in the case of the homeless men involved in this study, that this has enabled them to adequately resolve their situation or afforded them opportunities to act as autonomous, self-reliant individuals. As discussed in chapter six, the Irish approach comes at the expense of a quick and effective response to their housing need, with homeless men often spending long periods in temporary accommodation, risking institutionalisation and entrenching homeless men in damaging lifestyles. It was therefore argued by some that a focus on ensuring homeless households access accommodation – even at the expense of *this* kind of empowerment (as self-reliance) – is the correct focus of homelessness policy and provision. One Scottish key informant argued that because homelessness services tend to respond to crises i.e. situations in which personal attempts to resolve the situation have failed, empowering these households is a more appropriate focus for housing support services working with people in the longer term to develop skills.

Indeed, it has been argued more broadly in response to this conception of empowerment as self-reliance, personal responsibility, reflexivity and autonomy that claims to meet basic needs are *prior* to demands for such self-reliance (Doyal and Gough, 1991; White, 2000 and 2003). Provision for basic needs like housing in other words precedes the request or requirement for autonomy, independence and self-reliance. It might also be argued that responding to homelessness in ways that demand self-reliance and independence from this group fails to acknowledge people's inevitable inter-dependence (Dean, 2003b and 2007) and the lack of capital and resources at the disposal of homeless people.

8.5 Conclusion

Returning again to Link and Phelan's (2001) account of stigma, and drawing on the discussion of empowerment above, table 8.2 summarises the analysis presented in this chapter. This study suggests that the effect of legal rights on the stigma experienced by single homeless men is complex. On the one hand, legal rights appear to exacerbate and crystallise stigma, rendering homelessness more visible and salient by legally prioritising it; granting homeless households access to a competitive and scare social resource; and potentially fuelling negative attitudes towards them among certain groups and in certain areas. It should be noted that even if legal rights exacerbate stigma in these ways, the material advantages of these rights (see chapter six) may outweigh the psycho-social costs of pursuing a homeless application. Moreover, the effects of this crystallisation of the label of homelessness and greater salience of homeless people as a group within rights-based frameworks will be less significant overall if legal rights also play a role in weakening negative stereotypes or enhancing the status of homeless households.

Figure 8.2 Approaches to homelessness and stigma

	Scotland's rights-based approach	Ireland's social partnership approach
Labelling	• Being labelled 'homeless' required to access entitlements • Entitlements make label more salient and significant • Wide definition applies label to more people	• Legal definition less salient as associated with no entitlement • Divergence between definition of homelessness in law and practice • Label still operative and stigmatising
Stereotyping	• Supports alternative discourse around homelessness: homeless people as rights-bearing citizens. Impact limited to homelessness sector.	• Individualistic discourses on homelessness: personal responsibility foregrounded. • Understanding of homeless people as passive recipients of state largesse unchallenged.
Separation	• Wide definition lessens differences between homeless and non-homeless households. • Entitlement to temporary accommodation makes homeless people less visible as a distinct group. • Perception of separate group among social housing tenants and those working in the sector: group explicitly prioritised in allocations.	• Narrow definition in practice: homeless people distinct, narrow and different group. • Homeless people visible group in urban environment, increasing perceptions that they are a separate and distinct group. • No distinct entitlements so less likely to be focus of resentment by those seeking social housing or working in the sector.
Status Loss	• Legal rights bolster sense of entitlement, higher expectations and assertive/demanding stance towards services. • Solidaristic understandings of homelessness as related to social inequality/injustice.	• Lack of entitlements fosters sense of gratitude and luck in accessing services, low expectations and passive/quiescent stance towards services. • Individualistic understandings of homelessness as matter of personal responsibility.
Discrimination	• By minimising discretion, legal rights may crowd out room for discriminatory practices. • Alternative discourse may help overcome discriminatory attitudes.	• Considerable room for provider discretion. Discriminatory attitudes able to influence service responses and allocations.
Power situation / Empowerment	• Minimises provider discretion • Rights define access to settled housing • De-emphasises personal responsibility, independence and autonomy • Fosters a sense of entitlement among service users • Constructs an assertive and demanding welfare subject > Symbiosis with participative approaches to service provision	• Considerable scope for provider discretion • Relationships with providers and effort define access to settled housing • Emphasises personal responsibility, independence and autonomy • Fosters a sense of gratitude among service users • Constructs a passive and quiescent welfare subject

On the other hand, it was argued that homelessness has different implications for the status of homeless men in Edinburgh and Dublin. In Edinburgh, homeless men were entitled recipients of welfare services, with expectations about the quality of those services. This stronger sense of entitlement and associated dispositions appeared to augment and undermine (though not remove) the stigmatising identity of homeless men as passive recipients of state assistance, foregrounding their status as rights-bearing citizens making a legitimate claim on public resources. This went some way in countering the status loss associated with homelessness, a 'failed identity'. In Dublin, homeless men saw themselves as lucky to receive assistance, were grateful for support and had lower expectations about levels of service: they appeared weighed down by a sense of personal responsibility for their situation and gratitude for the help they were receiving.

It was also argued that Scotland's rights-based approach offers significant advantages in terms of 'empowering' single homeless men, providing clarity by reducing scope for discretion in decisions determining access to social housing. Furthermore, legal rights appear to bolster a set of dispositions among single homeless men that encourage a more assertive and demanding orientation towards service providers. Although, according to an alternative conception of empowerment (as self-reliance and independence), Scotland's policy model fared poorly, it was argued that the underlying conception of empowerment was wanting in the context of homelessness policy. The next chapter considers some of the issues raised here in greater depth, focusing in particular on the normative frameworks underpinning discourses on homelessness in Scotland and Ireland.

Chapter Nine Describing and evaluating the normative frameworks for homelessness policies

9.1 Introduction

This chapter considers the findings of this research through the lens of moral and political philosophy, seeking to answer the fifth and final research question pursued in the thesis: *under which normative frameworks can the policies and discourses associated with rights-based and non rights-based approaches be justified?* Answering this question returns to some of the key debates about legal rights and social policy introduced in chapters two and three, and in particular to the relevance of the concepts of *need* and *desert* in responses to homelessness. First, the distinct normative frameworks underpinning understandings of and responses to homelessness in Scotland and Ireland are mapped and clarified. The relationship between these narratives and the presence or absence of legal rights to housing for homeless households in each jurisdiction is then considered. Finally, the contrasting normative frameworks are evaluated and ethically assessed, using perspectives offered in moral and political philosophy.

9.2 Mapping moral discourses on homelessness in Scotland and Ireland

Variations between Scotland and Ireland across two dimensions were identified in this study. These variations concern the moral discourses expressed by both professionals/service providers working in the sector and homeless people themselves. First, alternative constructions of homeless 'welfare subjects' were revealed in each jurisdiction: the 'grateful supplicant' in Ireland and the 'entitled rights-holder' in Scotland. Second, alternative ideas about the causes of homelessness were prominent in the two jurisdictions, with Irish perspectives foregrounding personal responsibility, and Scottish perspectives foregrounding social injustice and inequality.

Grateful supplicant versus entitled rights holder

Narratives of gratitude for assistance were more prominent in the responses of Irish service users. The absence of legal rights and the presence of a sense of gratitude construct those availing themselves of assistance from service providers as 'grateful supplicants'. This description of Irish homeless men as supplicants resonates with the analysis in chapter eight, which described the greater passivity and quiescence of the Irish homeless men who took part in this research. Moreover, it chimes with many of the ideas presented in chapter two, regarding the advantages of rights-based over discretionary approaches to welfare provision (see in particular Donnison, 1976 and 1977).

This set of narratives 'fit' with Ireland's non rights-based approach to homelessness. In the absence of legal rights, resolving homelessness depends not on ensuring legal entitlements are met, but is contingent to a greater extent on being prioritised by service providers and benefitting from their over-riding discretion. A sense of gratitude for help (an acknowledgement of this contingency) makes considerable sense in this environment. The social partnership approach therefore allows for the continuation of 'system justifying' constructions of homeless service users (see Jost, et al., 2004; O'Brien and Major, 2009), that justify a set of attitudes that question the moral rights of homeless households to such assistance. These attitudes and constructions found their foundations in ideas of charity and voluntarism, with the state (whilst taking on an expanded role, see chapter five) remaining an enabler of service provision, rather than the guarantor of rights.

Scottish service users, by contrast, had a sense of legitimate entitlement to services and assistance, which seemed to eclipse any strong sense of gratitude for the help they were receiving. This was echoed in provider and other stakeholder perspectives that tended to

see such a sense of entitlement (and the more assertive dispositions that went with it) as legitimate. This 'is' and 'ought' of entitlement therefore appear to be closely linked in Scotland: reforms to homelessness policy have not only expanded legal rights, but also expanded and strengthened narratives that frame homeless people as morally entitled to such assistance. The fact and sense of entitlement jointly underpin (it is suggested here) higher expectations about services and a more 'activated' and demanding stance among service users.

In chapter eight, it was acknowledged that the 'assertive citizenship' Scotland's rights-based approach helps to foster, can create challenges, for instance, when service users become not just assertive, but antagonistic in their interactions with providers, or where service providers are particularly critical, judgemental or defensive in response to those claiming their entitlements. While acknowledging these issues, it is important to note that the weight of opinion among Scottish informants was in favour of homeless households asserting their rights and having high expectations. Moreover, it has been argued here that the 'habitus' bolstered and strengthened by Scotland's legal rights has substantial positive implications, helping to ensure better quality homelessness services and better outcomes for homeless households.

Wider research has similarly drawn links between the design of welfare policies and people's sense of entitlement to statutory assistance, lending credence to the conclusions draw in this study. In research comparing young people's attitudes to statutory support for families reconciling employment and care, Lewis and Smithson (2001), found that:

> *[a] sense of entitlement to support for reconciling work and family varied among the participants in different national contexts, reflecting the gender contracts underpinning welfare states and the gender-related values on which they are based* (Lewis and Smithson, 2001, p1474).

They found that a sense of entitlement was strongest in Norway and Sweden (where reconciliation of work and family is seen as a collective responsibility) and weakest in Portugal, the UK and Ireland. In Ireland, statutory support in this sphere was perceived as a last resort and no sense of entitlement to support for mothers to work outside the home was revealed. Self or family reliance was instead emphasised. They concluded, as argued above, that *"statutory rights… become internalised as a sense of entitlement"* (Lewis and Smithson, 2001, p1477).

While Lewis and Smithson draw a link between the presence and strength of a sense of entitlement to support and the wider welfare regime (as reflected in a particular policy area), this study suggests that the emergence of a sense of entitlement is linked to the difference in policies at the 'sector level' to use Bengtsson's terminology i.e. in the specific area of housing/homelessness. While Ireland and Scotland are both considered 'liberal welfare regimes', the difference in homelessness policy specifically (in combination with more subtle socio-political and cultural differences, see below) has allowed for differences in homeless people's sense of entitlement to emerge. This implies that differences in welfare regimes may be 'interrupted' by sector level/lower level policy differences.

Personal responsibility versus social injustice

Scotland and Ireland also varied in terms of discourses on homelessness causation. The difference between the jurisdictions is less marked and more subtle than the difference discussed in the section above and concerns in large part the different manner in which ideas about *deservingness* – and its relevance in responses to homelessness - manifest themselves in the two jurisdictions. It was noted in chapter seven that considerations of desert play a significant role in determining how homeless men access settled housing in

Ireland, whereas in Scotland notions of desert were 'crowded out' by homeless people's statutory entitlements.

Across *both* jurisdictions there was some commitment (among both homeless people and professionals) to the idea that homelessness is to some degree a matter of personal responsibility. In Ireland however, participants tended to draw more heavily than their Scottish counterparts on discourses revealing individualistic understandings of homelessness. Relating to this, there was also some commitment in both places to the intuition that considerations of *desert* are relevant in responses to homelessness, and particularly in the allocation of housing. Again, this commitment was far stronger in Ireland than in Scotland.

Among professionals working in the sector in Ireland, the legitimacy of considerations of desert was often taken for granted. In Scotland by contrast, discourses and narratives of personal responsibility and the importance of desert were weaker and ran alongside more solidaristic narratives, framing homelessness as an issue of social inequality and injustice. The prioritisation of homeless households over others in housing need (who may be more deserving) was acknowledged as problematic (see chapter seven), but defensible.

Turning to the perspectives of homeless service users, Irish homeless men were more likely to emphasise their and other homeless people's personal responsibility for being homeless than those in Scotland. An Irish service user commented:

> *you see people in the Dublin Corporation every day... looking for a place to live, but they're coming in with bottles of beer and stoned or whatever... you've got to take everything into consideration. They need to take a hard look at what they really want before going down to Dublin Corporation* (Previously homeless man, Dublin).

Having had Scotland's rights-based approach explained to them, Irish homeless men tended to dispute its fairness on the basis that it is largely 'desert-insensitive' (Dworkin, 1981; Kymlicka, 2004 and see chapter three): *"Why should there be a legal right for people to be housed? You should work towards it"* (Previously homeless man, Dublin). Another felt that the system 'creates laziness', preferring the 'stricter' Irish system on the basis that it *"makes you do a bit more, and then when you get [settled accommodation], you'll appreciate it more, you're more likely to hold onto it"* (Hostel resident, Dublin).

The sentiment that 'desert-sensitivity' is important was also present, though less strong, among Scottish service users. An Edinburgh hostel resident commented:

> *there's people in this hostel that, they've stayed here before... they've had properties and you know, they're back in the system again, they've lost the property, and they're on drugs... I don't think they people should be helped again ... They should go right to the bottom of the pile, and they should help anybody that hasn't been helped before* (Hostel resident, Edinburgh).

Despite these kinds of frustrations sometimes being articulated, service users in Scotland were overwhelmingly in favour of the legal rights owed to homeless people under the statutory system, and rarely articulated views suggesting that access to settled housing should be conditional on desert in the way Irish service users did. They were also less weighed down by a sense of personal responsibility for their situation (see chapter eight).

In addition to these intuitions about desert, the study illuminated a competing intuition: that everybody – regardless of the extent to which they deserve it – should have access to adequate housing. A Scottish key informant commented that: "*It's a fundamental principal of fairness and recognition that everybody needs to have a home to get on and do anything in their life*" (National stakeholder, Scotland). A hostel resident agreed that "*Society is wrong*

where people sleep on the street… I think that everybody has a right to be housed… there's a lot of wealth in Britain, so, I think it's ridiculous that people are homeless (Hostel resident, Edinburgh). The intuition was also articulated in Ireland: a service user explained for instance that in his opinion "*every man deserves a chance, every girl deserves a chance, especially coming from addiction, especially coming from the streets* (Previously homeless man, Dublin). In Ireland however, this intuition didn't translate into a strong sense of entitlement, nor did it appear to effectively counter participants' commitment to the importance of desert-sensitivity in the way that it did in Scotland.

The intuition (that everyone should have access to adequate housing) did not seem to reflect a commitment that homeless people, *qua* human beings with human rights, have a moral and unconditional right to housing. Articulations of the idea hardly ever took this format and when discussions of such rights did occur, they often shaded or collapsed into a contractarian view that there ought to be 'no rights without responsibilities' (Giddens, 1998; Dean, 1998; Dean, 2007), reigniting the ambivalence between the competing intuitions around desert identified in this chapter. For some, the moral entitlement came from being the member of a community or social unit: these were national citizenship rights, bound up with notions of belonging. One Dublin service user explained: *"I'm from Dublin, these are social accommodation… of course I'm entitled to it. I'm from the city"* (Hostel resident, Dublin). Others felt that everyone should have access to adequate housing *in the specific context* of abundant or wasted resources (vacant properties in particular) or significant national wealth. Commitment to rights-based approaches to homelessness seemed to rest most strongly on the idea that such rights would reduce the incidence of homelessness. One Scottish service user was concerned that without them *"you'd have hundreds, well thousands of people sleeping on the street every night"* (Hostel resident, Edinburgh). This seems to suggest that those who favour rights do so due to a normative commitment that people should have their basic *need* for housing met, not to a commitment to a human *right* to housing (see chapter two).

Overall, in both jurisdictions there was ambivalence between these two competing intuitions: that homelessness policy and access to housing should be 'desert-sensitive' and that it shouldn't be. This ambivalence reflects the choice in practice between designing homelessness policies that respond to need and those that respond to desert. In this context, Scotland's rights-based approach appears to promote a less stigmatising understanding of homelessness as an issue not primarily of individual pathology, highlighting instead the socio-economic and structural context in which homelessness occurs. This correlates with the lesser importance given to ideas of desert in Scotland. It is particularly interesting to note that participants in this study coming from different perspectives - professionals and service users - articulated similar normative discourses in this regard, with ideas of desert more important to *both* groups in Ireland and less important to *both* groups in Scotland.

Following Dean's approach of mapping the discursive and moral 'repertoires' or 'narratives' used by research participants (see for example Dean, 1998 and 2011), figure 9.1 plots the differences between Scotland and Ireland presented above. These dimensions – and the suggested placement of Scotland and Ireland on the matrix - are not presented as clear-cut patterns or categorisations into which participants can be organised (Dean, 1998 and 2011). As demonstrated in this chapter, and elsewhere in the thesis, participants sometimes drew on both narratives simultaneously, sometimes in inconsistent and contradictory ways. The matrix is offered instead to suggest tendencies in the timbre of discussions about homelessness in each jurisdiction and to summarise the analysis presented in this chapter so far.

Figure 9.1 Mapping discourses on homelessness in Scotland and Ireland
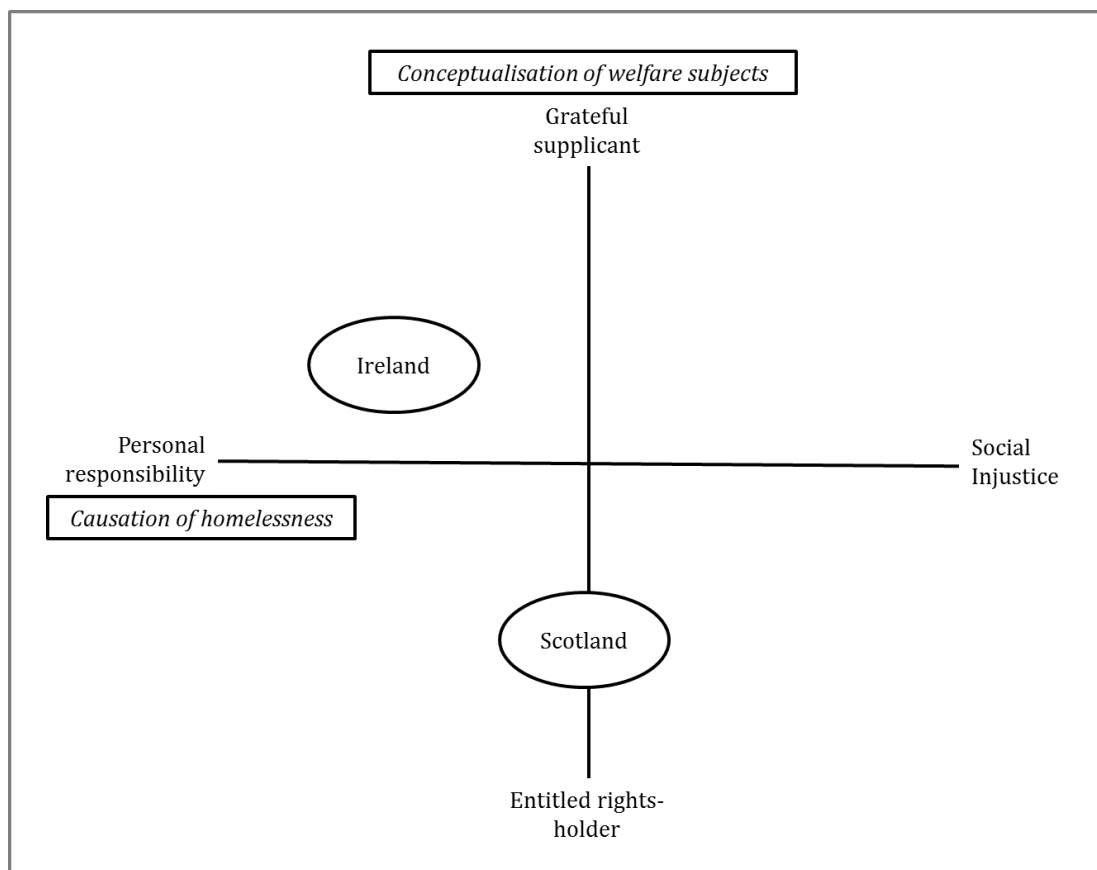
The analysis above may prompt the riposte that homelessness policies in Scotland and Ireland reflect socio-political and socio-cultural differences between the two jurisdictions, namely, the social democratic inclinations associated with Scottish society and the 'conservative individualism' of Ireland (see chapter five). Moreover, it may be ventured that the contrasting narratives around homelessness and constructions of homeless 'welfare subjects' identified in this chapter, reflect *not* the presence or absence of legal rights, but these broader socio-political and socio-cultural differences also. Reflecting debates about causality and homelessness considered in chapter four, the idea that legal rights alone (or their absence) cause these variations would indeed seem naïve.

Rather, it is suggested here that these three features of Irish and Scottish society (discourses and constructions around homelessness; homelessness policies; and dominant socio-political and socio-cultural values) may be in a mutually reinforcing relationship of 'triadic symbiosis' (see figure 9.2). In other words, the policy approaches to homelessness in each jurisdiction *bolster* and *lend support* to (but do not fully determine) these different narratives and discourses, which in turn bolster and lend support to those policies. Similarly, discourses on homelessness and the broader socio-political context may be in a similar relationship to one another, each buoying and reinforcing the other. Lastly, the design of homelessness policy frameworks is likely to be informed by broader socio-political characteristics, which are in turn reinforced by those policies. It is likely in this case however that the influence of the socio-political context on specific policy regimes will be much more significant than the reverse relationship.

Figure 9.2 The relationship between homelessness policies, discourses and constructions around homelessness and the socio-political context
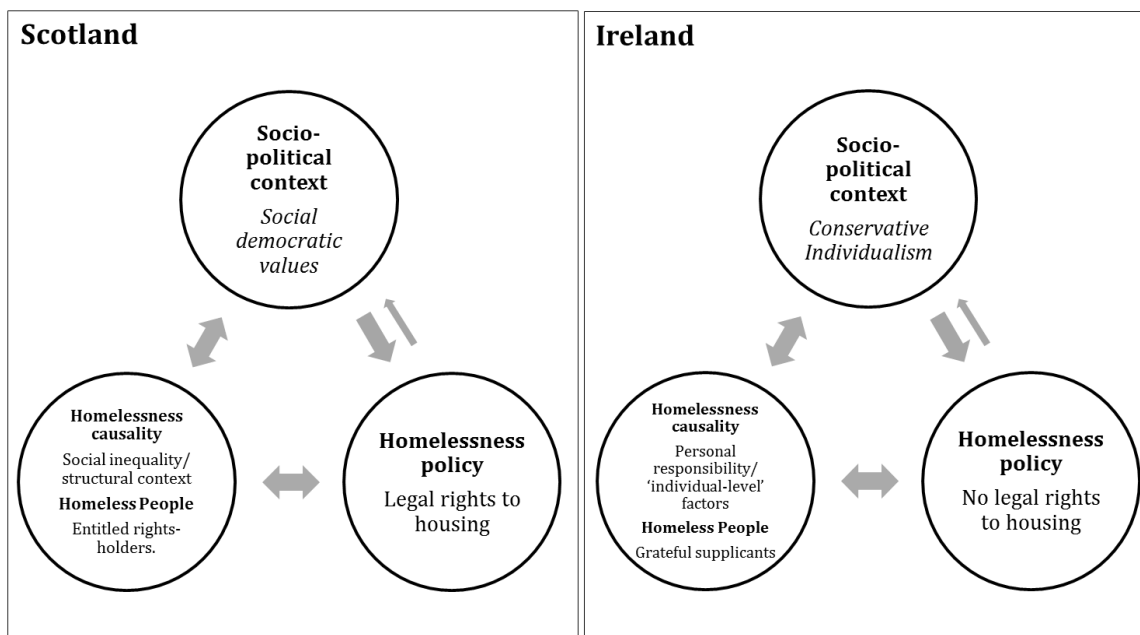
9.3 Ethically evaluating approaches to homelessness in Scotland and Ireland

The tension between competing moral intuitions identified above parallel debates about desert and need in moral and political philosophy. This section considers the findings of this study in relation to those debates, seeking to identify the normative frameworks within which Scottish and Irish homelessness policy might be justified.

For some, the tension between competing intuitions about the relevance of desert reflect the progression of responses to homelessness from those based on *charity* (incorporating ideas of *desert*), to those based on *needs*, and lastly to those founded on ideas about housing *rights* (Kirkeman Boesen and Martin, 2007; Kenna, 2011) (see figure 9.3). Viewed within this framework, the Irish approach to homelessness described in this study may best be understood as a (publicly funded) 'charity approach' – in the sense that ideas about desert are highly influential - despite efforts to move towards a needs-based model. Scotland's approach does not strictly fit within the rights-based approach described in figure 9.3 however. First, it was suggested above that Scottish participants who favoured the jurisdiction's rights-based model of homelessness policy did so on the basis of a commitment to people's *needs,* rather than due to a strong *human rights* orientation. Moreover, the Scottish approach has largely, but not entirely, dispensed with considerations of desert. Despite legislation reforming the intentionality test being passed in Scotland, this legislation has not yet been brought into force and thus intentionality remains a criteria determining Scottish homeless people's access to housing through the statutory system. More broadly, *legal* rights-based approaches to homelessness are entirely consistent with considerations of desert where such legal rights are designed to be conditional upon on criteria (for example, intentionality and priority need tests) aiming to capture and assess the deservingness of potential beneficiaries. As Bengtsson (2001) highlights, *legal* rights-based approaches are a selective and targeted response to homelessness and housing need. On this basis, the 'rights-based approach' described in figure 9.3 would appear to represent a *human rights-based approach* to homelessness, one that does not fit entirely the Scottish approach.

Figure 9.3 The shift in ideas from charitable to rights-based approaches

Charity Approach	Needs Approach	Rights-Based Approach
Focus on input not outcome	Focus on input and outcome	Focus on process and outcome
Emphasises increasing charity	Emphasises meeting needs	Emphasises realising rights
Recognises moral responsibility of rich towards poor	Recognises needs as valid claims	Recognises individual and group rights as claims towards legal and moral duty bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on manifestations of problems	Focuses on immediate causes of problems	Focuses on structural causes and their manifestations

Source: Kenna (2011, p572).

According to the perspective articulated in figure 9.3, and in much talk about 'rights' generally (see chapter two), notions of desert are anathema to (human) rights-based approaches. An alternative view would be that these competing moral intuitions (about the relevance and irrelevance of desert) *each* have legitimacy. The idea that there is a plurality of potentially incommensurable values was starkly articulated by Isaiah Berlin in his essay 'Two Concepts of Liberty':

> *the belief that some single formula can in principle be found whereby all the diverse ends of men can be harmoniously realised is demonstrably false… the ends of men are many, and not all of them are in principle compatible with each other… The necessity of choosing between absolute claims is then an inescapable characteristic of the human condition* (Berlin, 1969, p54-55).

According to Rawls, such tensions should be considered as part of a process of 'reflective equilibrium' (Rawls, 1971/1999). This process begins with moral judgements emerging from an intuitive 'sense of justice' (for instance, the relevance of desert in the allocation of housing to homeless people). These institutions are then generalised into moral principles applicable in similar situations (for instance, that desert is an important criterion in distributive justice generally). These moral intuitions and general principles then play off each other, with inconsistencies or conflicts between them leading to mutual revisions and ultimately a balance or *"reflective equilibrium"* between our intuitive sense of justice and our rationalised principles (Rawls, 1971/1999, pp. 46-49, see also Miller, 1992; Kruse, 2005). For instance, the intuition that desert is *not* relevant in, say, the provision of basic health care, may lead to a revision of the commitment to principles of desert in other areas, say, housing.

For Rawls then, how such intuitions are prioritised or how trade-offs or choices between them are made is properly a matter both personal reflection and democratic debate and deliberation: moral pluralism is the natural outcome of human reason in a liberal society (Rawls, 1993; Mendus, 2002; Kruse, 2005). Frameworks offered in moral and political philosophy offer various tools and arguments that can be brought to bear in this debate. Crucially, this approach also implies however that *"evidence of firmly and consistently held beliefs about justice"* can be used as *"data against which prospective theories of justice may be tested"* (Miller, 1992, p557).

Some moral and political philosophical perspectives suggest that considerations of desert are irrelevant in decisions regarding the distribution of resources. From a utilitarian perspective, Kymlicka, following Dworkin (1977/1985), argues that people's 'external' or 'selfish' preferences (about what other people should receive and why) should be discounted, as they contradict *"utilitarianism's own deepest principle… [that] each person has an equal moral standing, each person matters as much as any other"* (Kymlicka, 2002, p38). What someone is rightfully owed ought not to depend on what others think of them, but on 'calculations of utility' that exclude such preferences.

Rawls also argues fundamentally against bringing considerations of merit or deservingness into questions of distributive justice on the basis that meaningful statements about desert are not possible. He considers that seeking to do so will *"in the end reward individuals for inherited traits for which the bearers of these favored traits can claim no credit"* (Arneson, 2008, p83). For Rawls, *"Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances"* (Rawls, 1971/1999, p64). He goes on:

> it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune" (Rawls, 1971/1999, p274).

Even if this conclusion is resisted and it is maintained that in principle robust statements about deservingness can be made, practical obstacles present themselves in attempts to employ such judgements in the allocation of social resources. Knight and Stemplowska (2011, p21) point to the *"informational difficulties in gathering the type of information that would be needed to determine who is responsible for their (dis)advantage… [and] the costliness of setting up the necessary administrative system".* Similarly, Arneson expresses concern that *"the attempt by institutions or individuals to guess at the [deservingness] of people they are dealing with would surely dissolve into giving vent to one's prejudices and piques"* (Arneson 2000, p97).

These perspectives however do not sit comfortably with the empirically established importance of desert in people's conceptions of justice and fairness (Miller, 1992 and 1999; Taylor-Gooby, 2005). As Knight and Stemplowska comment: *"In post-Rawlsian scholarship the idea that desert should dictate people's entitlements is not fashionable, but it persists and perhaps nowhere more visibly than in the debates over responsibility and distributive justice"* (2011, p17). While Rawls himself rejects the relevance of considerations of desert, his model of 'reflective equilibrium' makes it hard to leave behind altogether (Rawls, 1971/1999). Miller (1991) argues against the 'Platonic line' that *"popular belief about justice are one thing, the truth on the subject quite another"* (Miller, 1991, p372), proposing instead that *"an adequate theory of justice must pay attention to empirical evidence about how the public at large understands justice"* (Miller, 1999, p42). Indeed, a commitment to democratic values would seem to demand that popular conceptions of justice are deemed relevant in theorisations of justice. In his considerations of an array of empirical research, Miller (1992 and 1999) convincingly establishes the normative relevance of desert in popular conceptions of distributive justice. Taylor Gooby (2005) reaches similar conclusions in his analysis of the British Social Attitudes survey.

Miller, in his consideration of various 'principles of justice', offers a way forward, acknowledging the relevance of ideas of desert in questions of justice, but questioning its validity in *some* distributive decisions. This conclusion rests on the fact that desert is not the *only* criterion underpinning public ideas about justice: in line with a perspective of value pluralism, *equality* and (crucially for our purposes here) *need* also emerge from the empirical data he considers as independently relevant criteria (Miller, 1992 and 1999; see also Tulloch, 1978). In this light, Miller defines the task of empirical research as *"to*

discover what these criteria amount to in practice, under what circumstances each is used, and what their relative strengths are when choices have to be made" (Miller, 1992, p559). On this basis, he argues in 'Principles of Justice' that:

> *a just society is, in considerable part, a society whose institutions are arranged so that people get the benefits they deserve, and many legitimate complaints about existing societies appeal to this principle. But considerations of desert do not fully determine these institutional arrangements. They do not, for instance... tell us precisely how wide the dispersion of incomes should be... Because it is not wholly determinate, desert leaves room for other principles of justice to operate... A society can give people what they deserve but also set resources aside to cater to needs* (1999, p155).

Later, he goes further, commenting that *"merit of any sort should only be allowed to govern the distribution of a certain range of goods and services, and in particular not those goods and services that people regard as necessities, such as health care"* (Miller, 1999, p200). Doyal and Gough (1991) make a similar argument, namely that the right to basic needs-satisfaction ought to logically precede any duty of social contribution (see Dean, 2000, p156). White, whilst defending the importance of 'reciprocity' and obligations to productively contribute to society, also argues that these obligations only hold sway if the background distribution of social resources is a just and fair one (White, 2000 and 2003; see also Dworkin, 1981 and Kymlicka, 2002). These arguments suggest that 'desert-sensitive' allocations of social resources are only valid in some circumstances and/or in relation to some goods.

Various theoretical perspectives can be brought to bear in establishing housing as good the distribution of which should not (or at least not entirely) be determined by considerations of desert. Doyal and Gough describe housing as an 'intermediate need', which must be met if the basic and universal needs of health and autonomy are to be fulfilled (Doyal and Gough, 1991: 157). Nussbaum (1999) conceives of housing as a means of guaranteeing bodily health and integrity, which are listed among her list of universal functional capabilities required for human flourishing (see also McNaughton, 2010 and Kenna, 2011, p136-7). King (2003), drawing on Nussbaum, has argued that housing is *"an elemental condition for human flourishing"* and should be seen as *"a freedom right"* rather than a socio-economic claim.

On this basis, the Scottish approach to homelessness can be justified with reference to normative frameworks that move away from considerations of desert in the allocation of (some level of) housing. This may be on the basis that either (a) 'external preferences' should not figure in any 'utilitarian calculus' or (b) (from the perspective of value pluralism favoured here) that desert is not relevant in the distribution of housing, as housing is a basic human need and fundamental to human flourishing. The Irish approach to homelessness, by contrast, can only be justified within a normative framework that sees desert as a valid criterion *not just* in the allocation of resources generally, but in the specific case of housing for homeless people. This implies an emphasis on the priority of desert over need. While various moral philosophical perspectives endorse the relevance of considerations of desert to some degree (Dworkin, 1981; Miller, 1999; White, 2003), this endorsement tends to be subject to specific conditions, for instance that the background distribution of social and economic resources is fair and where there are fair opportunities to secure the means to an adequate quality of life (see above). As such, the Irish approach to homelessness policy described in this thesis is hard to convincingly justify within the normative frameworks considered here.

9.4 Conclusion

This chapter has mapped the moral discourses on homelessness in Scotland and Ireland. It has identified contrasting constructions of homeless 'welfare subjects' - the 'entitled

rights-holder' in Scotland and the 'grateful supplicant' in Ireland – and posited that different understandings of the *causes* of homelessness dominate in each jurisdiction. These differences have been attributed in part to the presence and absence of legal rights in each country, in combination with broader socio-political differences between Scottish and Irish society. These varying moral discourses - and the different importance they attach to considerations of *need* and *desert* in the design of homelessness policies - have then been ethically evaluated, using tools provided by moral and political philosophy. It has been argued within a framework of 'value pluralism' that in the specific context of housing for homeless people, there are good reasons to prioritise the normative category of *need* over the normative category of *desert*. The next chapter looks back at both the empirical findings of this study and normative perspectives and arguments brought to bear in the analysis, drawing three substantive normative conclusions of relevance in considering alternative policy responses to homelessness.

Chapter ten Conclusions

10.1 Introduction

Taking as its starting point enduring debates about the appropriate balance between rights and discretion in the design and delivery of welfare policies, this thesis has sought to illuminate the contribution rights-based approaches make in responding to homelessness. In the context of an emerging European and wider international consensus that rights-based approaches to homelessness are best, the research began with a fundamental exploration of what such approaches might involve and their philosophical underpinnings. This early section of the thesis sought to link debates in moral philosophy about the status and nature of rights, with contemporary debates about rights in social policy. In particular, a distinction was drawn between deontological and consequentialist approaches to 'rights' in the field of housing and homelessness

Having distinguished between several distinct ways of thinking about rights, the thesis took a purely consequentialist focus on legal rights to housing for homeless people as a policy tool for responding to homelessness. An empirical investigation of the impact of such approaches was designed, based on a qualitative comparison of Scotland (where a strong rights-based approach to homelessness has been pursued) and Ireland (where a non rights-based, 'social partnership' approach has been pursued). Account was taken of the perspectives and experiences of policy makers, voluntary sector leaders and key national stakeholders in the homelessness sector in each jurisdiction, as well as of providers of homelessness services and homeless single men using those services in two major cities, Edinburgh and Dublin. This empirical research sought to explore the impact of legal rights across four dimensions: meeting 'insider' and 'outsider' housing *needs*; '*juridification*'; minimising the *stigma* of homelessness; and *empowering* homeless people. An explicitly normative approach has been taken in this comparison: as well as describing the dynamics of homelessness policy and practice in Scotland and Ireland, the moral discourses associated with those approaches have been mapped and then ethically assessed using tools provided by moral and political philosophy.

This chapter integrates the most significant empirical and normative findings of the research. Cutting across the five research questions that framed the study, three substantive ethical arguments concerning how homelessness policies should be designed are presented. These three arguments, building upon the answers to the core research questions presented earlier in the thesis, draw out key threads that have emerged from the analysis. First, it is proposed that in the case of homelessness, legitimate considerations about desert and deservingness in the allocation of social resources ought to be suspended; second, an argument is presented against discretionary approaches to homelessness; and third, it is argued that homelessness policies that bolster a sense of entitlement among those who are homeless are desirable. These three conclusions are closely intertwined, each providing a platform for the next.

10.2 Against desert-sensitive homelessness policies

In chapter six, it was argued that Scotland's rights-based approach crowds out considerations of desert (and other policy objectives) in favour of those based on need and as such, provides a better framework for meeting the needs of homeless people than Ireland's social partnership approach. It was acknowledged however that the Scottish approach was 'blunt' in this regard, crowding out what might be considered alternative legitimate objectives of homelessness policy. Arguments were presented in chapter nine, however, that there are good reasons, based on a series of perspectives in moral and political philosophy, to suspend considerations of desert from the allocation of housing to homeless households. These arguments are not necessarily underpinned by a commitment to the *irrelevance* of desert in conceptions of social justice or ideas about fairness, but by a

commitment to the relevance of other ethical criteria (in particular, need), and to the priority of these criteria in certain circumstances (Miller, 1992, 1996 and 1999; Doyal and Gough, 1991; Dean, 2000; White, 2000 and 2003, Dworkin, 1981 and Kymlicka, 2002).

The findings presented in chapter eight provide further, and this time empirical and 'consequentialist', arguments against desert-sensitive homelessness policies. Previous authors have noted the potential ill effects of desert-sensitive welfare policies (Knight and Stemplowska, 2011 and see chapter three). This study provides empirical force to that perspective, describing how Irish homeless men appeared to be weighed down by a sense of personal responsibility for their situation and that this seemed to interrupt the sense of agency and motivation that Scottish homeless men appeared to display in the context of feeling a sense of entitlement to assistance. More individualistic understandings of homelessness – that downplay the role of social inequalities and structural factors influencing homelessness – appear to 'disempower' homeless men in Ireland, reinforcing a sense that they are incapable of or not ready for independent living, stifling their confidence and demands to move beyond an the institutional setting of the hostel. This empowerment, it has been suggested, not only lessens the psycho-social cost of being homeless for the welfare claimant, but may help them move out of temporary accommodation and into settled housing faster and may help form part of a 'virtuous circle' in which there is constant pressure on those in the sector, from a variety of sources, to provide services of a good standard.

This set of arguments chime with existing research (see chapter two) that those who internalise a sense of responsibility for being reliant on state welfare are less 'assertive' and 'activist' as welfare clients (Goodban, 1985). There are also parallels with critiques of institutionalising responses to homelessness (see also Edgar and Doherty, 2001; Blid and Gerdner, 2006). What this study adds to such critiques however, is that where institutional emergency accommodation does play a role in responses to homelessness (as is the case in both Scotland and Ireland at present), a framework of legal rights may help mitigate and guard against the potential for institutionalisation.

More broadly, these arguments are also complimented by wider social policy debates suggesting that an active, demanding and assertive citizen can be harnessed for the public good (Le Grand, 1997; Barnes and Prior, 2009). Le Grand (1997) proposes that 'robust' social policies should be sought, which do not rely on any particular assumptions about human behaviour and motivation. What this research adds to these accounts is that certain kinds of dispositions among service users may be encouraged or discouraged by particular policy and legal frameworks, and that legal rights may be associated with a culture of more active and assertive engagement with providers (see chapter eight).

This conclusion, against desert-sensitive homelessness policies, raises further questions however. Key amongst them is the *extent to which* considerations of desert should be suspended in policy responses to homelessness, or, put differently, if homelessness policies should be desert insensitive *up until the point that people's needs are met*, what specifically does meeting people's needs look like? Is the provision of emergency accommodation sufficient, or is mainstream settled or permanent accommodation required? Returning to theoretical perspectives laid out in chapter nine, if considerations of desert ought to be suspended where the goods or resources in question are a matter of human necessity and conditions of human flourishing (Doyal and Gough, 1991; Nussbaum, 1999; King, 2003; McNaughton, 2010; Kenna, 2011), it would seem likely that something more than basic emergency shelter would be required. Concerns regarding the negative consequences of spending long periods in temporary and emergency accommodation – raised in this study and elsewhere (Edgar and Doherty, 2001; Blid and Gerdner, 2006) - would also appear to endorse such a view. More practically, given that extended assistance for *intentionally* homeless households has been legislated for in Scotland, but not brought into force (see chapter five), it appears there is a continuing debate in Scotland about how

far down the route towards complete desert-insensitivity Scottish stakeholders wish to travel. Some key informants involved in this study strongly supported maintaining intentionality provisions as they stand, although it was not clear whether this reflected a desire to ensure some desert-sensitivity or to ensure that priority in social housing allocations is given only to those in genuine need i.e. not those who manufacture homelessness to access social housing.

10.3 Against discretionary approaches to homelessness

The findings of this study highlight that the relative simplicity and bluntness of the Scottish homelessness legislation vastly constrains provider discretion in determining whether and how quickly homeless single men access settled housing. While the legislative framework does not, and indeed could not (Donnison, 1977), eliminate the need for housing officers and others in the sector to interpret which individuals fall under which rules ('judgement'), it does effectively limit the impact of the ethical impulse of those working in homelessness sector to exercise their discretion to the advantage of those they perceived as most deserving. It has been argued above that this ethical impulse, whilst more broadly understood as a legitimate and relevant component of conceptions of justice and fairness in the distribution of resources and goods, should nevertheless be suspended in the case of responding to the needs of homeless people. The bluntness of the Scottish approach then, should not be regarding as a limitation, but as one its key strengths.

By contrast, Ireland's approach, underpinned by consensus-building; homelessness strategies; a weak licensing, monitoring and regulation regime; and no legal rights to housing for homeless households, leaves substantial scope for provider discretion in determining when, how and whether single homeless men access settled housing. This creates a series of barriers to homeless men moving out of homelessness. Despite the rhetoric of pursuing a 'housing-led' response to homelessness at the strategic level, other considerations are influential in practice, not least the apparent deservingness, responsibility and 'housing readiness' of the homeless person in question. In order to achieve the ambitious stated policy goals, a more single-minded prioritisation of homeless peoples' needs for settled housing is required, with the implication that competing policy objectives must be accorded less priority. The influence of competing considerations appears to reflect a underlying paternalism among those working in the homelessness sector in Ireland, rather than discrimination or favouritism, but viewed through a 'consequentialist' lens this paternalism appears to be misguided: as well as creating external barriers (mediated by provider discretion) to homeless men accessing housing, it also appears to create internal barriers, constructing a more passive and quiescent service user, and stifling agency or resistance among the group that may help drive up standards, failing to challenge a wider individualistic framing of homelessness and ultimately reinforcing the status quo. The argument proposed above, that desert-sensitivity in the design and delivery of homeless policy is undesirable, appears by extension to demand the minimisation of discretion in the delivery of homelessness services.

It has frequently been argued that discretion is inherent in the delivery of welfare services, even the most rule-bound systems (Lipsky, 1980; Goodin, 1986; Brodkin, 1997). This study highlights, however, that the axiom that discretion cannot be eliminated from the delivery of social policies should not disguise the fact that different policy approaches cast very different boundaries within which service providers can exercise discretion. Existing research has clearly demonstrated how street-level bureaucrats can implement policy in ways that skew intended objectives and how the same structures of law and policy can be reconstituted in various ways in different local contexts (e.g. Jeffers and Hogget, 1985; Smith and Mallinson, 1996). Street level bureaucrats, however, do not implement policies in circumstances of their own choosing and existing research has revealed much less about how the scope for discretion varies substantially, with significant impacts, *between*

different policy and legal frameworks. While Lipsky's insights remain fundamental to understanding social policy implementation, they are not the full story and comparative social policy research plays an important role in illuminating the parameters within which street-level bureaucrats exercise the discretion he describes.

This argument takes us full circle and back to one of the key debates that set the context for this thesis, that is, whether *"we [are] to have a system of social assistance which offers the greatest possible discretion and flexibility, or a system which gives people rather rigid but clearly understood rights?"* (Donnison, 1976, p348). According to this study, in the case of policy responses to single homeless men, the latter option is substantially more desirable than the former. As made explicit in chapter nine, this argument against discretion depends on the empirical evidence presented here being interpreted through particular normative lenses, namely, those that prioritise meeting needs over responding to desert in the case of homelessness. Moreover, it may be that in other spheres of welfare policy, Titmuss' (1971) defense of the positive role of discretion in welfare services may win out, with the advantages of flexibility and 'creative, personalised justice' outweighing the advantages of clear, rigid and legally enforceable rights. It seems plausible, for instance, that the negative (material and psycho-social) impacts of discretion will be less significant where those targeted by those policies tend to be considered deserving. Rights-based approaches may therefore hold particular value in spheres where there is ambivalence around meeting the needs of certain groups due to concerns and beliefs that they may be underserving.

10.4 In favour of an ethic of entitlement

This section makes the argument that rights-based approaches to homelessness are not desirable *in spite* of their propensity to promote a sense of entitlement among homeless people, but in part *because* of that propensity. In some spheres, the legitimacy of a sense of entitlement seems uncontroversial (health care for instance), but in others – including homelessness – it is more controversial. This is likely to reflect the greater stigmatisation attached to homelessness than some other situations of social need and associated ambivalence regarding the deservingness of single homeless men (see chapter nine). Various arguments in favour of an ethic of entitlement present themselves: first, in the rare cases where legal rights already exist, such as Scotland, it would seem inconsistent to hold that those who do *in fact* have legal entitlements ought not to *feel* a sense of entitlement. Moreover, arguments have been put forward in favour of a sense of entitlement based on the *principle* that it reflects a more progressive attitude to social inequality and social needs than alternative attitudes. Kenna for instance has observed that:

> *People are often expected to be grateful when their needs are met; this is not the case when people's rights are met. This reminds us not to campaign for 'the needy', but rather to support marginalized people as equal human beings in their efforts to claim their rights and address the poverty, suffering and injustice in their lives* (Kenna, 2011, p572).

The contribution of this study, however, is in adding to these debates empirical evidence to suggest that, from a consequentialist perspective, a sense of entitlement among homeless people may lead to desirable outcomes (see chapter eight and O'Brien and Major, 2009). This argument is the flip side of the arguments against desert-sensitivity and discretion presented above, namely that the sense of entitlement that appears to flourish when desert and substantial provider discretion are taken out of the equation, helps foster more assertive and demanding dispositions among service users in their interactions with providers, creating pressure on services to drive up and/or maintain standards and to respond to their housing needs effectively.

This analysis suggests that it is not incidental that in Ireland, in which service users have a weaker sense of entitlement, there is an issue with inertia in homelessness services. While in part this is connected to problems in procuring settled housing for homeless households, it also reflects attitudes, dispositions and ways of thinking about homelessness among homeless people and those in the sector. To put it differently, greater assertiveness and a more demanding stance towards service providers among homeless people appears to feed into a 'virtuous circle', helping to maintain and drive up standards of service delivery, even if these demands aren't *collectively* articulated (cf O'Brien and Major, 2009).

Crucially the arguments presented in this study respond to a key criticism of rights-based approaches, namely, that they rely on welfare users' accurate knowledge of their legal rights and capacity/willingness to enforce them through them through the courts (see Goodin, 1986). The empirical evidence presented here decouples the achievement of positive outcomes within a rights-based approach from the pursuit of the judicial route: instead, the minimisation of provider discretion and the psycho-social impacts of legal rights on the dispositions and ways of thinking of both service users and providers (including a sense of *moral* entitlement among homeless people) have been pinpointed as crucially important mechanisms. The benefits of legal rights will therefore accrue to those who are homeless, even if they are unclear about their statutory entitlements or unwilling/unable to pursue legal remedies. The capacity of legal rights to secure better outcomes for single homeless men appears to lie in the potential for, rather than the reality of, legal challenge.

10.5 The role and limits of legal rights

The findings of this study have added empirical weight and normative structure to the presumption that has emerged in recent years that rights-based approaches to homelessness offer progressive solutions to the needs of this group. Two key mechanisms have been identified that help achieve these positive outcomes: the 'crowding out' of provider discretion in favour of a focus on meeting housing needs; and the psycho-social effects of legal rights on the dispositions and understandings of both 'welfare subjects' and service providers working in the sector. These two mechanisms have also been identified as part of a wider 'virtuous circle' achieved by Scotland's rights-based approach, which helps maintain pressure for positive outcomes for homeless people. Other elements of this ' virtuous circle' include the presence of processes of review, regulation and monitoring; a supporting culture of transparency and accountability; and considerable cross-sector buy in to the reform package. The legal rights owed to homeless people in Scotland underpin these factors, but the success of the approach is not defined by constant legal battles. The legislative framework is the foundation of the approach, with legal enforceability remaining a last resort, rather than a crucial mechanism relied upon to ensure that policy objectives are met.

Overall, Scotland's rights-based approach appears to offer significant advantages over Ireland's social partnership model. This thesis has also considered and revealed some of the limits and risks of legal rights-based approaches to homelessness. On the evidence presented here, the risk of 'juridification' in the implementation a rights-based homelessness policy does not appear to be borne out in Scotland at present. On the contrary, partnership working and a focus on outcomes (as opposed to legal process) emerged as entirely consistent with a rights-based framework. Indeed, the Scottish approach – which was itself built up from cross-sector consensus - appears to have 'matured', away from a system based on 'eligibility testing' and towards a more person-centred, holistic and outcome-focused approach (largely through the housing options agenda) since legal rights were expanded and (crucially) simplified (see chapter six). Adversary (in this case between organisations in the homelessness sector) characterised the implementation of homelessness policy far more accurately in Dublin than in

Edinburgh: a reliance on consensus building and negotiation in Ireland, in the absence of legal obligations, appears to have hampered progress, with collectively articulated and progressive policy objectives slipping out of reach despite significant reform efforts.

The 'moral hazard' objection to rights-based approaches held more weight. Perverse incentives to 'go homeless' are doubtlessly sharpened within a framework of rights that give homeless people legal priority in the allocation of social housing. Crucially however, such incentives are inevitable in any system that successfully prioritises the allocation of social housing based on need. The sharpness of perverse incentives in Scotland, and the vulnerability of the policy approach to this objection, are a direct reflection of the legal and policy framework's success in prioritising considerations of housing need. This moral hazard then needs to be understood in the context of the choice stakeholders face between homelessness policies that prioritise need and create moral hazard, and approaches that do neither.

Last, this research has illuminated a trade-off between prioritising the needs of homeless households and ensuring that other groups in housing need (who lack the legal rights of homeless people) have reasonable access to social housing. This trade-off represents perhaps the most significant factor challenging the legitimacy of Scotland's rights-based approach (see McKee and Phillips, 2012). On the one hand, rights-based approaches sharpen perverse incentives, meaning that challenges remain in ensuring that those who are in *genuine* need are prioritised. Maintaining intentionality provisions are seen by some as a key deterrent to people acting on perverse incentives. Second, this trade-off requires that best efforts are made to minimise the 'burden' of homelessness on social housing stocks, driving down 'demand' and the proportion of lets allocated to those coming through the homelessness route. Various practical means of doing so have been emphasised: homelessness prevention and use of private rented sector housing to accommodate previously homeless households are seen as fundamental to maintaining the efficacy of the Scottish model. More fundamentally however, this trade-off reflects that welfare states and institutions within them have no 'primary task' (Hoggett, 2006), but seek to contain and reconcile ineliminable value conflicts. Within a framework of value pluralism and 'tragic-realism', it was argued that Scotland's rights-based approach strikes a 'less worse' balance between competing objectives than Ireland's social policy approach, but that support for the Scottish model remains closely tied to the capacity of the statutory system to not *entirely* crowd out the needs of other non-homeless households.

10.6 Wider implications

This final section addresses the wider implications of this study, highlighting several potential avenues for future research. In doing so, the value of two of the key analytical approaches and frameworks pursued within the thesis – a comparative approach and a normative approach - is also commented upon.

The comparative approach pursued in this study has offered the opportunity to explore the dynamics of Scotland's rights-based approach to homelessness in direct contrast to Ireland's alternative approach. The qualitative comparative design has generated a multifaceted and rich set of data through which the *processes*, *experiences* and *discourses* associated with the two approaches have been investigated, at the level of national stakeholders, service providers and 'welfare subjects'. This approach has thrown into sharp relief the advantages offered by legal rights as a policy tool in responding to homelessness, adding empirical weight and texture to the presumption in favour of rights-based approaches that has recently emerged. In addition, it has added a new dimension to persistent debates in social policy regarding the efficacy of rights-based and rule-bound versus discretionary models of welfare provision. It has been suggested that the efficacy of either approach may depend on the 'normative status' of the group of 'welfare subjects' in question, with rights-based approaches offering particular advantages for those groups

who risk being seen as less deserving of assistance. Moreover, whilst the importance of discretion in understanding how social policies work 'on the ground' has been reiterated, the capacity of policy and legal frameworks to mold and limit that discretion has also been revealed.

In light of this, further insights could be generated by further, broader-based comparative research. While legal rights to settled housing for homeless households remain rare (Fitzpatrick and Stephens, 2007), the French 'DALO', recent developments in Wales (Fitzpatrick, et al., 2012c) and the English statutory system (Fitzpatrick, et al., 2012c) provide further comparative cases of such approaches and qualitative research exploring the dynamics of the implementation of these differently structured rights may lend support to the conclusions drawn in this study, or illuminate how differently structured rights lead to different outcomes.

A normative approach, engaging with a range of relevant ideas and perspectives offered by moral and political philosophy, has been also pursued in this thesis. This approach was prompted by a recognition of the ethical discourses that have threaded through policy debates around homelessness historically. It sought to make explicit some of the nuances of the policy questions at hand, making transparent trade-offs and 'tragic choices' between incommensurate, but simultaneously desirable, policy objectives and (at a deeper level) values. A framework of value pluralism has been drawn upon to help clarify, and then seek to prioritise between, different values and goals. This arbitration between goals has been informed by empirical evidence of public attitudes to social justice (Miller, 1999; Taylor-Gooby, 2005); empirical evidence on the specific impacts of (in this case) homelessness policies; and tools offered by moral and political philosophy. Drawing on these various elements, the study has endeavoured to normatively evaluate two contrasting approaches to homelessness and in so doing offer *"a realistic challenge to the existing order"* (Tulloch, 1978, p70), attempting to bring clarity to the choices and trade-offs faced in seeking to ensure access for those who most need it to a scarce and competitive social resource (housing) that is widely considered a fundamental necessity in living a well-lived life.

Appendix One Key informant Interview Topic Guide - Scotland

Section 1: Introduction
- Reiterate aims of the study
- Remind that participation is voluntary and confidentiality
- Describe when and how a summary of the findings can be accessed
- Consent to record
- Any questions?

Section 2: Role and organisation
- What is your current job title/role?
- How long have you been in this role?
- How long have you worked in the housing/homelessness sector?
- Can you tell me about the organisation you work for?

Section 3: Housing and Homelessness Policy
- Can you tell me from your perspective what the key priorities are currently in housing policy in Scotland?

- How much priority is given to meeting (genuine/the most serious) housing need in housing policy?

- Are there other conflicting objectives from housing policy?
Probe re:
    - Mixed communities/tackling/residualised social rented sector
    - Promoting choice/choice based lettings
    - Any others?

- What do you mean by housing need? How is housing need defined in housing policy?

- Can you tell me from your perspective what the key priorities are in homelessness policy in Scotland at the moment?
Probe re:
    - 2012 target
    - Prevention
    - Maximising housing supply
    - Bringing the 2003 Act into force
    - Anything else?

- Would you say that these are the right priorities? What should the priorities be?

Section 4: Prioritisation
- Are some groups better protected than others under the system? Who gets the best/worst deal?
Probe re:
    - Household type (Single homelessness people, lone parent family headed by a woman, childless couple)
    - Gender e.g. Single homeless men/women.
    - Immigration status (migrants, A2/A8 nationals, asylum seekers, refugees).
    - Reasons for homelessness (Domestic violence, Rent/Mortgage arrears, Anti-social behaviour

- Why are different groups prioritised in that way?
    - Law and policy
    - Guidance

- Local practice

- Do you think this way of prioritising homeless households is fair?
  - Why?
  - What would be fairer?

Section 5: Strengths and weaknesses
I've asked you about how the system works, but now I want to hear your opinions on the Scottish approach.

- Can I ask you overall what would say are the key strengths and weaknesses of the Scottish approach are?
  - Why do you say that?
  - *On weaknesses* how could that be better addressed?

As you already know, I'm particularly interested in comparing approaches to homelessness in Scotland and the Republic of Ireland. It's often said that Scotland is fairly unusual in pursuing a rights-based approach to homelessness based on the legal duties of local authorities to homeless households.

- Is it your perception that Scotland has a strongly rights-based approach?

- What do you understand as constituting a rights-based approach?

- What would you say are the advantages and disadvantages of such a rights-based approach?

Probe re:
Advantages:
- It's sometimes argued that giving people a right to housing weakens any stigma they may feel in seeking help. Do you think that's right?
- I've heard it said that the rights-based approaches empower service users. Do you think that's right?
- Do you think people act or think different because there are rights to housing? How would it be if people if people didn't have those rights?
  - Service providers more respectful, more likely to allocate by need, less discriminatory.
  - Service users have a sense of entitlement. Is this a good thing?
- Do you think overall that the homelessness system makes it more of less easy to address housing need?
  - Does the system promote or undermine the fair distribution of the housing that's available?
  - Do you think that the balance between meeting the needs of homeless households and others in housing need is fair at the moment?
  - How could it be fairer? What would you change?

Disadvantages:
  - Does a rights-based approach create perverse incentives do you think?
  - It's sometimes said that rights-based approaches create an adversarial environment. Do you think that's true here?
  - Legalistic (resources to lawyers, ethos of defensiveness/covering your back)
  - Does a rights-based approach lead to rationing rather than a problem solving approach?
  - Relies on 'active' service users

Section 6: Transferability
- How transferable do you think the Scottish approach is to other countries?
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Probe re:
- Social housing stock
- Political culture (statist approach, tradition of enforceable rights)
- Nature and causes of homelessness
- Any others?

Section 7: Conclusion
The next stage of the research project is to select two local authorities as case studies and explore the implementation of homelessness policy there.

- Is there anything you think I should keep in mind when selecting the areas?

- Do you have any suggestions? Contacts?

- Is there anything else I should have asked you, or that you would like to add?

Appendix Two Key informant Interview Topic Guide – Republic of Ireland

Section 1: Introduction
- Reiterate aims of the study
- Remind that participation is voluntary and confidentiality
- Describe when and how a summary of the findings can be accessed
- Consent to record
- Any questions?

Section 2: Role and organisation
- What is your current job title/role? Time in role?
- What is your experience in/length of time in the housing/homelessness sector?
- Can you tell me about the organisation you work for?

Section 3: Housing and Homelessness Policy
- Can you tell me from your perspective what the key priorities are currently in housing policy in Ireland?

Probe re:
   - Managing housing market (over/undersupply, housing crisis)
   - December budget
   - Affordability
   - Part V of 2000 Planning and Dev Act
   - Anything else?

- How much priority is given to meeting (genuine/the most serious) housing need in housing policy?

- Are there other/conflicting objectives from housing policy?
Probe re:
   - Economic/development objectives
   - Mixed communities/tackling/residualised social rented sector
   - Any others?

- How is housing need defined/understood in housing policy?

- Can you tell me from your perspective what the key priorities are in homelessness policy in Ireland at the moment?

Probe re:
   - 2010 target – eliminate long term homelessness
   - Prevention (approach?)
   - Housing First
   - Implementing strategies (local or national) *(The Way Home, 2008)*
   - Progress against 2006 review (long term acc')
   - Anything else?

- Would you say that these are the right priorities? What should the priorities be?

- How is the financial crisis in Ireland affecting homelessness and relate policies?
   - Resilience of strategies to retrenchment
   - Impact of cuts (services/areas most affected?)
   - Impact of potential bailout
   - Consensus between partners eroded

Section 4: Prioritisation

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- Are some groups better protected than others under the system? Who gets the best/worst deal?

Probe re:
  - Household type (Single homelessness people, lone parent family headed by a woman, childless couple)
  - Gender e.g. Single homeless men/women.
  - Scottish government status (migrants, asylum seekers, refugees).
  - Reasons for homelessness (Domestic violence, Rent/Mortgage arrears, Anti-social behaviour

- Why are different groups prioritised in that way?
  - Law and policy
  - Guidance
  - Local practice or central policy
  - Desert/normative reasons

- Do you think this way of prioritising homeless households is fair?
  - Why?
  - What would be fairer?

Section 5: Strengths and weaknesses
- Can I ask you overall what would say are the key strengths and weaknesses of the Irish approach are?

Probe re: Progressive, Fair, Effective, HAPs, strategies and for a serve function etc.
  - Why do you say that?
  - *On weaknesses* how could that be better addressed?

Section 6: Rights-based approaches
As you already know, my PhD is comparing approaches to homelessness in Scotland and the Republic of Ireland. As I understand it, Ireland has pursued a 'social partnership' model and explicitly rejected an approach based on individually enforceable legal rights.
- Is that right? Can you tell me more about the 'social partnership' approach and what it means in the context of homelessness policy?

- What would you say are the advantages and disadvantages of such an approach?
Probe re:
Advantages:
  - Problem solving
  - Partnership working (local and cross sector)
  - Inclusive (across vol' sector)
  - Accessibility
  - Consensual
Disadvantages:
  - Perverse incentives
  - Unrepresentative group of orgs involved
  - Discretionary
  - Relationship between partners ('fragile', O'Sullivan, 2008)
  - Fairness/equity in different areas
  - Funding/resources
  - Implementation challenges

Scotland has pursued a legal rights-based approach to homelessness, according to which local authorities have legal duties to provide homeless people with settled accommodation.
- What do you think would be the advantages and disadvantages of pursuing a rights-based approach in Ireland?
  - Advantages: Stigma, empowerment, prioritising need.

- Disadvantages: legalistic, adversarial, unfair, perverse incentives.

Section 7: Transferability
- How transferable do you think the Irish approach is to other countries?
Probe re:
- Housing market
- Political culture
- Nature and causes of homelessness
- Any others?

Section 7: Conclusion
The next stage of the research project is to undertake one or two local authority case studies in Scotland and Ireland and explore the implementation of homelessness policy there.

- One case study (Dublin) or two (which other?)?

- Is there anything else I should have asked you, or that you would like to add?

Appendix Three Local Informant Interview Topic Guide - Scotland

Section 1: Introduction
- Reiterate aims of the study
- Summary of the findings will be made available
- Voluntary and confidentiality
- Consent to record
- Questions

Section 2: Role and organisation
- What is your current job/role?
- Length of time in role/homelessness sector?

Section 3: Local authority homelessness service
It would be helpful to know about how services for homeless people work here.

- Can you tell me how statutory homeless services are organised in Edinburgh?
Probe re:
    - Centralised or not
    - Key deliverers/providers

- What would be a typical route through homelessness services for a homeless household?
(flag that you will talk through specific cases later)
    - How do people access the service? (Access point, neighbourhood offices, other)
    - What happens when someone comes in?
    - Main objectives when working with homeless household?
    - What's the most likely outcome? (LA acc, HA acc, PRS)

- What are the main challenges for you and the organisation at the moment?
    - Levels of homelessness
    - Local housing market
    - Housing availability (PRS, SH waiting lists)
    - Support services
    - Capacity/Caseload
    - Policy changes (2012 target)
    - Any others?

Section 4: Evaluating services for single homeless people
*I've asked you about how the system works, but now I want to hear your opinions on homeless services in Edinburgh, focusing on those for **single** adults.*

- Can I ask you overall what would say are the key strengths and weaknesses of network of services for single homeless people in Edinburgh?
    - Why do you say that?
    - *On weaknesses* how could that be better addressed?
Probe re:
- Statutory versus non-statutory services
- How will these things change after 2012? What impact has the phasing out of priority need had?

Vignettes
Can you explain in relation to the following cases:

- What will be this person's route through homelessness?
    - Emergency response (where would they first go)
    - Housing outcome/pathway (end up in PRS or SRS)

- Wider support (income maximisation/benefits, health services, social services, social support)
- Is this a typical case? If not, what would be a more typical case?
- How much discretion will service providers/housing officers have in dealing with this person/reaching a decision on their application?
- Will this be the same or different after 2012? What difference would it make if this person were entitled to the full statutory duty?
- What different will it make if/when the support duty/provisions in the Housing Act 2010 come into force?

These prompts are to help provoke discussion on the individual vignettes – they are not all relevant to every vignette, so only use as appropriate/helpful (i.e. as a sort of checklist to ensure all relevant points have been covered):

VIGNETTE A
An 18 year old woman has been asked to leave the family home by her mother and step-father after a long run dispute about her behaviour. She is not in employment, education or training and has a low level of educational qualifications. She has no other vulnerability.

VIGNETTE B
A 24 year old man has been asked to leave by the friend he's staying with. He has a history of drug use and mental health issues and has spent time in prison. He has exhausted family and friends as a source of accommodation.

VIGNETTE C
A 50 year old man with a history of homelessness and alcoholism is about to leave prison and has no job, no housing and no family to turn to and is in poor health.

VIGNETTE D
A 32 year old man has nowhere to live following a relationship breakdown with his partner. He is unemployed, but has no specific support needs.

VIGNETTE E
A 35 year old single male immigrant (A10) has been undertaking casual work but this has declined with the economic downturn. He can no longer afford to rent a room and has recently been sleeping rough. He has worked in Scotland for 7 months altogether.

Section 5: The rights-based approach
I'm particularly interested in comparing approaches to homelessness in Scotland and the Republic of Ireland. It's often said that Scotland is unusual in pursuing a rights-based approach to homelessness based on the legal duties of local authorities to homeless households.

- What are the advantages and disadvantages of people having a statutory right to housing?
    - For homeless people
    - For single homeless people
    - For homeless families
    - For other people in housing need
    - For service providers

Probe re:
Advantages:
- It's argued that giving people a right to housing weakens any stigma they may feel in seeking help. Do you think that's right?
- I've heard it said that the rights-based approaches empower service users. Do you think that's right?

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- Do you think people act or think different because there are legal rights to housing? How would it be if people didn't have those rights?
    - Service providers more respectful, more likely to allocate by need, less discriminatory.
    - Service users have a sense of entitlement. Is this a good thing?
- Do you think overall that the homelessness system makes it more or less easy to address housing need?
    - Does the system promote or undermine the fair distribution of the housing that's available?
    - Do you think that the balance between meeting the needs of homeless households and others in housing need is fair?
    - How could it be fairer? What would you change?

Disadvantages:
- Do you think people manipulate the system to try and gain access to housing? Would people still manipulate the system if there weren't statutory rights?
- It's sometimes said that rights-based approaches create an adversarial environment. Do you think that's true here?
- Legalistic (resources to lawyers, ethos of defensiveness/covering your back)
- Does a rights-based approach lead to rationing rather than a problem solving approach?
- Relies on 'active' service users?

Section 6: Conclusion
- Is there anything else I should have asked you, or that you would like to add?

Appendix Four Local Informant Interview Topic Guide - Ireland

Section 1: Introduction
- Reiterate aims of the study
- Summary of the findings will be made available
- Voluntary and confidentiality
- Consent to record
- Questions

Section 2: Role and organisation
- What is your current job/role?
- Time in role/homelessness sector?

Section 3: Dublin homelessness service
It would be helpful to know about how services for homeless people work here.
- Can you tell me how homeless services are organised in Dublin? *Probe re:*
    - Role of Council/Voluntary sector
    - Key deliverers/providers
    - Centralised or not

- What would be a typical route through homelessness services for a homeless person?
(flag that you will talk through specific cases later)
    - How do people access homelessness services? What happens when someone comes in?
    - Main objectives when working with homeless household?
    - What's the most likely outcome? (LA acc, HA acc, PRS, other)

- What are the main challenges for you and the organisation at the moment?
    - Levels of homelessness
    - Local housing market / Housing availability (PRS, SH waiting lists)
    - Support services (mental health, tenancy support)
    - Capacity/Caseload
    - Policy changes (strategy, reconfiguration, targets)
    - Any others?

Section 4: Evaluating services for single homeless people
*I've asked you about how the system works, but now I want to hear your opinions on homeless services in Dublin, focusing on those for **single** adults.*

- Can I ask you overall what would say are the key strengths and weaknesses of network of services for single homeless people in Dublin?
    - Why do you say that?
    - *On weaknesses* how could that be better addressed? *Probe re:*
Strengths:
    - Access to housing
    - Interagency working
    - Problem solving
Weaknesses:
    - Discretionary
    - Local variation
    - Implementation challenges
    - Need for culture change amongst staff

Vignettes
Can you explain in relation to the following cases:

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- What will be this person's route through homelessness?
  - Emergency response (where would they first go)
  - Housing outcome/pathway (end up in PRS or SRS)
  - Wider support (income max/benefits, health services, social services, social support)
- Is this a typical case? If not, what would be a more typical case?
- How much discretion will service providers have in dealing with this person?

These prompts are to help provoke discussion on the individual vignettes – they are not all relevant to every vignette, so only use as appropriate/helpful (i.e. as a sort of checklist to ensure all relevant points have been covered):

VIGNETTE A
An 18 year old woman has been asked to leave the family home by her mother and step-father after a long run dispute about her behaviour. She is not in employment, education or training and has a low level of educational qualifications. She has no other vulnerability.

VIGNETTE B
A 24 year old man has been asked to leave by the friend he's staying with. He has a history of drug use and mental health issues and has spent time in prison. He has exhausted family and friends as a source of accommodation.

VIGNETTE C
A 50 year old man with a history of homelessness and alcoholism is about to leave prison and has no job, no housing and no family to turn to and is in poor health.

VIGNETTE D
A 32 year old man has nowhere to live following a relationship breakdown with his partner. He is unemployed, but has no specific support needs.

VIGNETTE E
A 35 year old single male immigrant (A10) has been undertaking casual work but this has declined with the economic downturn. He can no longer afford to rent a room and has recently been sleeping rough. He has worked in Scotland for 7 months altogether.

Section 5: The rights-based approach
As you already know, my PhD is comparing approaches to homelessness in Scotland and the Republic of Ireland. As I understand it, Ireland has pursued a 'social partnership' model and explicitly rejected an approach based on individually enforceable legal rights.

- Would you agree that Ireland has a 'social partnership' approach to homelessness`?
  - If so, what do you take that to mean/what does that approach involve?
  - If not, how would you characterise Ireland's approach to homelessness?

- What would you say are the advantages and disadvantages of such an approach? *Probe re:*

Advantages:
  - Local and cross-sector partnership
  - Problem solving
  - Consensual

Disadvantages:
  - Discretionary
  - Relationship between partners
  - Coordination
  - Perverse incentives (targeted services)

Some people argue that Ireland should move towards a 'rights-based approach' such as that used in Scotland, where homeless people have enforceable legal rights to settled housing.

- What do you think would be the advantages and disadvantages of having a rights-based approach in Ireland?

Probe re:
Advantages:
- It's argued that giving people a right to housing weakens any stigma they may feel in seeking help. Do you think that's right?
- I've heard it said that the rights-based approaches empower service users. Do you think that's right?
- Do you think people would act or think different because there are legal rights to housing?
    - Service providers would be more respectful, more likely to allocate by need, less discriminatory.
    - Service users would have a sense of entitlement. Is this a good thing?
- Do you think a rights-based approach to homelessness would give too much priority to the needs of homeless people relative to others in housing need?

Disadvantages:
    - Do you think people would manipulate a rights-based system to try and gain access to housing? Is this an issue you face in Ireland anyway?
    – It's sometimes said that rights-based approaches create an adversarial environment. Would that concern you if such an approach were pursued here?
    - Legalistic (resources to lawyers, ethos of defensiveness/covering your back)
    - Do you think a rights-based approach would lead to rationing rather than a problem solving approach?
    - Relies on 'active' service users?

Section 6: Conclusion
- Is there anything else I should have asked you, or that you would like to add?

Appendix Five Service User Topic Guide - Scotland

Section 1: Introduction
- Explain aims of the study and give information sheet
- Summary of the findings will be made available
- Confidential and views will be reported anonymously
- Explain do not have to answer any questions/ can leave at any point
- Permission to record
- Any Questions
- Complete consent forms

Section 2: General background
Can I start by asking a bit about yourself.
- Name, age, and where are you staying at the moment?

I understand you got this accommodation with help from the council.
- When did you approach the council for help? What prompted you to do that? Did you do anything else first?
- How did you know to go to the council / How did you find out that the council could help?
- Did you go to the Access Point on Leith St, Housing Options Team at Cockburn St, one of the neighborhood offices? Which one? Why was that?

Section 3: Current housing and temporary accommodation
- How long have you been living where you are at the moment?

- How do you feel about the housing you're in at the moment? Are there things you particularly like/dislike about living there?
Probe
    - Quality of accommodation (state of repair, furnishings etc.)
    - Facilities (bathroom, kitchen, laundry)
    - Location/neighborhood (proximity to friends/family/work, facilities/infrastructure)
    - How safe do you feel at home/in the neighbourhood (esp. at night)?
    - What is it like sharing or living alone?
    - Would you like to stay there or move?

- How did you come to be living where you are at the moment? Did you feel like you had choice/control about deciding to move there? Who arranged this accommodation?

- Where were you living before you moved there?

- If in temporary accommodation, how was it being in temporary accommodation?
Probe
    - Quality of accommodation (state of repair, furnishings etc.)
    - Facilities (bathroom, kitchen, laundry)
    - Location/neighborhood (proximity to friends/family/work, facilities/infrastructure)
    - How safe do you feel at home/in the neighbourhood (esp. at night)?
    - What is it like sharing or living alone?

- Did you feel like you had choice/control about deciding to move there?

- Some people say that when you're in temporary accommodation it feels like life is on hold. Would you say that was right, or did you feel like you could get on with things?

- If not in temporary accommodation, where else where you living? Why did you leave there?

Section 3: Evaluation of experiences
Thinking back to when you approached the council for help:
- Did you feel you anxious about approaching council? Did you feel awkward or were you comfortable doing that? Why/Why not?

- Did anything in particular worry you about approaching the council for help?

- Did you tell anyone you were going to the council for help? Why/why not? How did they react?

- How were you treated? *Probe: were staff there…?*
  - Friendly
  - Respectful
  - Efficient
  - Helpful

- How much control did you feel you had over what was happening? *Probe:*
  - Did you feel like you had a say/had choice about what was happening?
  - Did you feel you had to take the first place that was offered to you?

- Did you feel that you were receiving help you were *entitled* to as of right?
  - *Only if prompt needed:* As opposed to the help being discretionary/charitable**?**

- Did you get all the advice and support you needed from the council? Other services? What was missing? What would have made a difference?

- Would you recommend for someone else to go to the council or would you advise them to try and deal with their housing issue in another way?

- Some people say that they apply for social housing because it's the fastest/easiest/only way of getting social housing. Would say that's true in your case?

SECTION 4: Conclusion
Looking back on your experiences with the council…
- Do you feel you were treated fairly? Is the outcome fair?

- *If owed full duty:* Were you aware that you have a legal right to settled housing before you approached the council?
  - If so, how did you know/find out? If not, when did you find out?
  - Was it explained to you by the council/ was it made clear to you that you have a legal right/entitlement?
  -
- Do you think it made a difference to how you were treated/how things went for you?
  - *Prompts:* Were you treated with more respect do you think? Do you think it made a difference to how things went for you that you had a legal right?

- *Or if wasn't owed full duty:* Did you know before you approached the council, that some homeless people in Scotland have a legal right to housing?
  - If yes, do you think that's a good thing/fair? Why/why not?
  - If no, does it surprise you? Do you think it's good that homeless people have legal rights? Why/why not?

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- Is there anything else you wanted to say/add?

AT END OF INTERVIEW:
Remind people of what will happen to the information now (will go into report, anonymous etc.). Give £20 voucher and get receipt signed. Ask if any other questions
MANY THANKS FOR YOUR PARTICIPATION

Appendix Six Service User Topic Guide – Ireland

Section 1: Introduction
- Explain aims of the study and give information sheet
- Summary of the findings will be made available
- Confidential and views will be reported anonymously
- Explain do not have to answer any questions/ can leave at any point
- Permission to record
- Any Questions
- Complete consent forms

Section 2: General background
Can I start by asking a bit about yourself?
- Name, age, and where are you staying at the moment?

How did you come to be staying/living here?
- When did you approach [organization/hostel] for help? What prompted you to do that?
- Did you try anything else first to deal with your housing situation? Go to any other organizations to see if they could help you?
- How did you know where to go for help/find out they could help?

Section 3: Current housing
- How long have you been living where you are at the moment? Is it temporary accommodation or longer term?

- How do you feel about the accommodation? Are there things you particularly like/dislike about living there?
Probe
  - Quality (state of repair, furnishings etc.)
  - Facilities (bathroom, kitchen, laundry)
  - Location/neighborhood (proximity to friends/family/work, facilities/infrastructure)
  - How safe do you feel at home/in the neighbourhood (esp. at night)?
  - What is it like sharing or living alone?
  - Would you like to stay there or move?
  - If temporary: Does it bother you that it's temporary or are you not too bothered?
  - If secure: is it important that it's secure/long term accommodation or are you not too bothered?

- Did you feel like you had choice/control about deciding to move there? Who arranged this accommodation?

- Where were you staying before you moved there?

- If in temporary accommodation, how was it being in temporary accommodation?
Probe
  - Quality of accommodation (state of repair, furnishings etc.)
  - Facilities (bathroom, kitchen, laundry)
  - Location/neighborhood (proximity to friends/family/work, facilities/infrastructure)
  - How safe do you feel at home/in the neighbourhood (esp. at night)?
  - What is it like sharing or living alone?
  - Did you feel like you had choice/control about deciding to move there?

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- If not in temporary accommodation, where else where you living? Why did you leave there?

Section 3: Evaluation of experiences
Thinking back to when you approached [organization/hostel] for help:
- Did you feel anxious about approaching them? Did you feel awkward or were you comfortable doing that? Why/Why not?

- Did you tell anyone you were going to them for help? Why/why not? How did they react?

- How were you treated?
Probe: were staff there…?
    - Friendly
    - Respectful
    - Efficient
    - Helpful

- How much control did you feel you had over what was happening?
Probe:
    - Did you feel like you had a say/had choice about what was happening?
    - Did you feel you had to take whatever was given to you?

- Did you feel that you were receiving help you were *entitled* to or were you made to feel that they were doing you a good turn/favour?

- Did you get all the advice and support you needed from the organization? What was missing? What would have made a difference?

- Would you recommend for someone else to go to this organization or would you advise them to try and deal with their housing issue in another way?

- Some people have told me that they approached organization/LA because it was the quickest way to get housing. Was this true for you?

SECTION 4: Conclusion
Looking back on your experiences since being homeless…
- Do you feel you were treated fairly? Is the outcome fair?

In other countries, like Scotland, homeless people have a right to settled housing, which means that the council has a legal obligation to find people accommodation.
- Do you think it would a good thing if homeless people had legal rights to settled housing here? Would it make a big difference to how things are here? Why/why not?

- Is there anything else you wanted to say/add?

AT END OF INTERVIEW:
Remind people of what will happen to the information now (will go into report, anonymous etc.). Give €15 voucher and get receipt signed
Ask if any other questions
MANY THANKS FOR YOUR PARTICIPATION

List of Acronyms

B&B   Bed and Breakfast hotel

DALO   *Droit au logement opposable* or the enforceable right to housing (France)

DRHE   Dublin Region Homeless Executive (formerly, the Homeless Agency)

FEANTSA   European Federation of National Organizations Working with the Homeless

HTF   Homelessness Task Force

MSP   Member of Scottish Parliament

NESC   National Economic & Social Council

ODPM   Office of the Deputy Prime Minister

SLA   Service Level Agreement

RAS   Rental Accommodation Scheme

RSL   Registered Social Landlord

RSS   Rent Supplement Scheme

SHEIN   Scottish Homelessness Empowerment and Involvement Network

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