

**Response of the Equality and Human Rights Commission to the Consultation:  
“Powers for dealing with unauthorised development and encampments”**

**Consultation details**

Title:	Powers for dealing with unauthorised development and encampments.
Source of consultation:	<ul style="list-style-type: none"><li>• Ministry of Housing, Communities and Local Government</li><li>• Home Office</li><li>• Ministry of Justice</li></ul>
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**Introduction**

1. The Equality and Human Rights Commission (EHRC) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. Our job is to help make Britain fairer. We do this by safeguarding and enforcing the laws that protect people’s rights to fairness, dignity and respect.
2. We are committed to our vision of a modern Britain where everyone is treated with dignity and respect, and we all have an equal chance to succeed. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN level as an ‘A status’ National Human Rights Institution in recognition of its independence, powers and performance.
3. This response is structured as follows:
  - i. Context to the consultation;
  - ii. General points; and
  - iii. Responses to the individual consultation questions.

### Context to the consultation

4. The Commission considers it important to set out the following factual and legal context to this consultation.
5. Unauthorised encampments and developments are most likely to be occupied by people who do not live in conventional “*bricks and mortar*” housing. Some people reside in caravans out of need, or from a desire to pursue a certain lifestyle. For Romani Gypsies and Irish Travellers, however, living in caravans is an important part of their culture and ethnic tradition.
6. Romani Gypsies have been in Britain since at least the sixteenth century and Irish Travellers since the nineteenth. Although the majority of Romani Gypsies and Travellers (“Gypsies and Travellers”) now reside in conventional housing, a significant number (perhaps around 25%)<sup>1</sup> still live in caravans in accordance with their traditional way of life. Many of these will have a cultural aversion to conventional housing: for them, bricks and mortar would be as unsuitable as a “*rat-infested barn*”.<sup>2</sup>
7. Romani Gypsies and Irish Travellers are recognised as separate ethnic groups who are protected minorities under the Equality Act 2010 (“EA 2010”).<sup>3</sup> As a result, in its actions towards them the Government must ensure that it complies with its responsibilities under this legislation, including:
  - i. Its public sector equality duty under section 149 EA 2010;
  - ii. The prohibition against direct discrimination under section 13 EA 2010; and
  - iii. The prohibition against indirect discrimination under section 19 EA 2010.
8. The Commission considers that extending the powers to deal with unauthorised encampments and developments would put Gypsies and Travellers at a particular disadvantage when compared with non-Gypsies and Travellers, because Gypsies and Travellers are more likely to occupy unauthorised encampments and developments. The Government must therefore show it to be a proportionate means of achieving a legitimate aim, as otherwise the extension of powers will constitute unlawful indirect discrimination.
9. Gypsies and Travellers are widely recognised as being a particularly vulnerable minority. As the consultation document rightly recognises, they are “*amongst the most disadvantaged in British society and suffer from multiple forms of*

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<sup>1</sup> 2011 UK Census.

<sup>2</sup> Per Clarke J at para 34 of Clarke v Secretary of State for the Environment, Transport and the Regions [2002] JPL 552.

<sup>3</sup> Commission for Racial Equality v Dutton [1989] QB 783, O’Leary v Allied Domecq (unreported) 29 August 2000 (Case No CL 950275-79), Moore and Coates v Secretary of State for Communities and Local Government [2015] EWHC 44 (Admin).

*discrimination*".<sup>4</sup> In March 2016, the Commission published a spotlight report entitled "*England's most disadvantaged groups: Gypsies, Travellers and Roma*". This found that:

- i. Gypsy, Roma, and Traveller children were less likely to achieve a "*good level of development*" in their early years or to achieve the GCSE threshold. They were also amongst those most likely to be bullied or excluded from school.
  - ii. Compared to the general population, they are more likely to experience poor health, including lower life expectancy, high infant mortality rates, higher prevalence of anxiety and depression, asthma, chest pain, diabetes, and higher maternal mortality rates.
  - iii. Gypsies, Roma, and Travellers are over-represented in prison and were more likely to feel unsafe or be victimised whilst in custody.
  - iv. Discrimination against and harassment of Gypsies, Roma, and Travellers was common across Britain. Hostility towards these groups was often "*channelled through political rhetoric and the media*".
10. At the root of many of these inequalities is the accommodation crisis facing Gypsies and Travellers. It is well-established that there is a chronic national shortage of sites for Gypsies and Travellers.<sup>5</sup> This lack of suitable and secure accommodation forces many Gypsies and Travellers onto unauthorised encampments and developments. This fuels hostility towards them from local residents and also entraps them in a cycle of evictions, with devastating consequences for their access to healthcare, education, and employment.<sup>6</sup>

### **General points**

11. The Commission has a number of serious concerns about the content of this consultation and the manner in which it has been undertaken.
12. The first and most fundamental of our concerns is that the consultation document does not acknowledge, at any point, the severe shortage of authorised sites or the fact that this is a significant cause of the unauthorised encampments and developments of which complaint is made. In our view, any attempt to crack down on unauthorised encampments and developments without addressing the root cause would be both unfair and futile. An individual or family who is evicted from an unauthorised site but who has nowhere to go

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<sup>4</sup> Consultation document, para 44.

<sup>5</sup> See for example: Race Equality Foundation, *Better Housing Briefing 26* (April 2015); Friends, Families and Travellers, *Briefing: Lack of increase in affordable pitches for Gypsies and Travellers in England* (December 2017); EHRG, *Assessing local housing authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in England* (2009).

<sup>6</sup> See for example Cemlyn S. et al. (2009) *Inequalities experienced by Gypsy and Traveller communities: A review*; Greenfield, M. and Brindley, M. (2016) *Impact of insecure accommodation and the living environment on Gypsies' and Travellers' health*; UNHRC (2013) *Report of the special rapporteur on adequate housing*.

will have no option but to move to a different unauthorised site, where they will again simply face another eviction. This is likely to increase tensions within the community and the public costs incurred in effecting evictions, as well as have a detrimental impact on the individuals and families concerned. In contrast, the evidence shows that where a local authority focuses on increasing the supply of sites, their expenditure on enforcement is likely to drop considerably. For example, after creating two authorised sites, Bristol City Council's enforcement costs dropped from £200,000 per annum to £5,000 per annum. In addition to this they were able to make significant returns from rent, council tax, and utility bills as levied from the authorised sites.<sup>7</sup>

13. The Commission is concerned that the Government is inviting views on whether to increase the powers available for dealing with unauthorised encampments without explaining or acknowledging the cause of the problem. As a result consultees are not being given the information necessary to form a fair or accurate view.
14. Secondly, the Commission is concerned at the lack of an evidential basis to support the proposition, inherent in the consultation exercise, that unauthorised encampments are a pressing issue. There is no evidence within the consultation document to show that the number of unauthorised encampments is increasing. Indeed, what evidence does exist indicates that they are not: the Traveller Caravan Count shows that the number of caravans on unauthorised sites has remained fairly constant for at least the last twenty years. Nor is there any evidence within the consultation document to show that the unauthorised encampments that do exist are causing significant problems. The document contains a single case study which refers to two unauthorised encampments in one car park over a short period from which "problems" of an unspecified size were said to have result. It is apparent that both encampments were vacated reasonably promptly after enforcement action was taken. The Commission recognises that some unauthorised encampments may be problematic. But the Commission has not seen any evidence to suggest that the issue is either widespread or growing.
15. The Commission appreciates that the consultation exercise itself calls for evidence and may therefore be seen as an attempt to address this lacuna. However, the Commission is concerned that the manner in which the consultation exercise is being undertaken is not conducive to obtaining reliable evidence, or an accurate reflection of the situation. This is the Commission's third overarching concern, namely that the consultation exercise itself and the manner in which it is being undertaken may be contrary to the Government's responsibilities under the Equality Act 2010.

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<sup>7</sup> See EHRC (2009) *Gypsies and Travellers: Simple Solutions for Living Together*, pp.9-10.

16. Public bodies have a duty under the Public Sector Equality Duty (PSED) which is set out in section 149 of the Act. In the exercise of all its functions, they have a duty to have “*due regard*” to the need to:
- i. Eliminate discrimination and harassment;
  - ii. Advance equality of opportunity; and
  - iii. Foster good relations.
17. Under the duty, the Ministry of Housing, Communities and Local Government should consider the content of the press release announcing the consultation and the impact it may have on relations between Gypsies and Travellers and the settled community. The content of the press release is likely to have an adverse impact on those relations, and may result in increased hostility towards Gypsies and Travellers. It portrays them in a negative light.
18. It is the Commission’s view that this consultation risks encouraging and legitimising prejudice and discriminatory attitudes against a highly vulnerable minority. This began with the Parliamentary debate preceding the consultation in which discriminatory and inflammatory language was used. MPs referred to “*a big Traveller problem*”, “*a Traveller incursion*”, “*an irritant*”, and “*an expensive menace*”. Gypsies and Travellers were dehumanised, with descriptions of areas being “*plagued by groups who descend on open land*”, of “*regular incursions by Travellers*”, an “*unprecedented spate of Traveller incursions*” and of “*a rampage of Travellers*”. Aspersion was cast on whole communities, with MPs complaining of “*illegal activity perpetrated in the main by Travellers*”, of “*considerable and unpleasant experience of Travellers*”, and of “*the very high level of criminal activity among Gypsies and Travellers*”, and stating their desire for “*tougher enforcement against Gypsy Travellers*”. One MP stated that:
- “It breaks my heart that many of us who are of Irish origin or have Irish backgrounds feel that, in my respects, we are stigmatised by the association with Irish Travellers, when the truth is much more than that.”*
19. This unfair and unsubstantiated link between unauthorised encampments, Gypsies and Travellers, and anti-social behaviour was repeated, unquestioningly, in the press release announcing the consultation.
20. The Commission notes with regret that the consultation document continues to perpetuate and reinforce these discriminatory tropes. The very premise of the consultation is that unauthorised encampments are a nuisance which cause harm. Nowhere is there an acknowledgement of the unmet need causing such encampments: indeed, the Minister refers to a nomadic lifestyle as a choice rather than a cultural tradition. The consultation calls repeatedly for evidence expressly in favour of strengthening the powers, such as at paragraphs 12 (“*We would like to hear from local authorities that consider section 77 powers could be made to be more effective*”) and 15 (“*We would welcome views on whether*

*there is evidence supporting an extension of this period before a person can legally return to a site...”).*

21. In this context, it is disappointing that the Government embarked upon this consultation, and published the consultation document, without undertaking an Impact Assessment. The Parliamentary debate preceding the consultation was entitled “*Gypsies and Travellers and local communities*”<sup>8</sup> and therefore it cannot be said that the link between unauthorised encampments and Gypsies and Travellers was unknown. Indeed, it was or should have been clear that, firstly, strengthening the powers in respect of unauthorised encampments would have a disproportionate impact on Gypsies and Travellers and, secondly, that a Government document characterising unauthorised encampments as a social ill risked fuelling anti-Gypsy and Traveller prejudice. Despite this, the Government has paid no regard to the equality implications of its actions. The Commission is concerned by this serious omission.
22. The Commission is aware that an Equality Analysis was completed on 27<sup>th</sup> March 2018. This only came to the Commission’s attention after it was provided in response to a Freedom of Information request made by another organisation. It is concerning that this document was not referred to in the consultation document or made publicly available on the website.
23. The Commission does not consider that the Equality Analysis adequately addresses the equality implications arising from this consultation. There is no consideration of the extent to which the consultation itself, and the language in which it has been framed, may increase hostility towards Gypsies and Travellers. Nor does it take into account any adverse implications for groups or individuals with other protected characteristics.
24. However, the Equality Analysis does recognise, to a limited extent, the relationship between the existence of unauthorised encampments and the shortage of sites. The Equality Analysis states at question 4 that “*Any strengthening of powers to remove Gypsies and Travellers from unauthorised sites could be balanced with the provision of more authorised sites*”.<sup>9</sup> The Commission does not agree, for the reasons given below, that the powers of removal should be strengthened and it also considers that the provision of more authorised sites “*should*” rather than “*could*” be achieved, but it does agree with, and welcomes, this acknowledgement of the link between the existence of unauthorised encampments and the lack of sites. However, this makes the absence of such an acknowledgement from the consultation document itself all the more troubling. The Commission is concerned that the Government was aware of this relationship but did not refer to it in the consultation document.

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<sup>8</sup> It is difficult to envisage a debate entitled, for example “*Black people and local communities*” or “*Asian people and local communities*” ever being held.

<sup>9</sup> Emphasis added.

25. As a result of these failings, the Commission has concerns as to whether any decision to increase or extend the powers for dealing with unauthorised developments and encampments made as a result of this consultation will be lawful.

### Consultation questions

**Question 1: What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?**

**and**

**Question 2: We would like to invite evidence of unauthorised encampments which have occurred in the last 2 years, as follows:**

- a. the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.**
- b. whether the land in a) required cleaning or repair once the encampment had left, and if so, what was the cost?**
- c. how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?**

26. As a national human rights and equality body as opposed to a local authority or community organisation, the EHRC does not have evidence of its own to contribute.

27. However, the Commission does have concerns as to the nature of the evidence which may be forthcoming in response to these questions. Disruptive encampments are far more likely to be remembered than peaceable encampments which may well be overlooked. The Commission is concerned that Question 2's focus on difficult encampments will produce a skewed picture and will lead to the many unproblematic encampments being ignored. The Commission notes that in a recent presentation to the Public Policy Review Conference on *Fulfilling Responsibilities to Settled and Gypsy/Traveller Communities*, Bill Forrester, the Chair of the National Association of Gypsy and Traveller Officers (an organisation of local authority officials) stated that 80% of unauthorised encampments do not present any problems. Following on from this, the Commission disagrees with the statement made in Parliament on 9<sup>th</sup> October 2017 by the then Minister of State for the Department of Communities and Local Government, Alok Sharma, that "every incursion and illegal encampment causes problems". This is simply not correct.

28. Moreover, the Commission is concerned that the focus of the questions is on the speed with which encampments were removed, and the cost of doing so, as opposed to the lawfulness of the process of removal. Local authorities are required by Government guidance and case-law to use their powers to evict “*in a human and compassionate way, taking account of the rights and needs of the Gypsies concerned*” as well as of “*the owners of land in question, and the wider community whose lives may be affected by the situation*”.<sup>10</sup> “*Considerations of common humanity*” cannot be ignored.<sup>11</sup> Local authorities must also “*carry out welfare assessments on unauthorised campers to identify any welfare issues that need to be addressed, before taking enforcement action against them*”.<sup>12</sup> The Commission is concerned that the question will fail to elicit information to demonstrate whether these obligations are being complied with.

**Question 3: Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?**

29. Yes, to the extent that any powers will be effective in the context of a severe shortage of sites.

30. Section 77 of the Criminal Justice and Public Order Act 1994 (“CJPOA 1994”) applies where a person is, or people are, residing in a vehicle on any highway, unoccupied land, or occupied land, without the consent of the occupier. It will therefore cover almost every instance of unauthorised encampments. The deadline for compliance (“*as soon as practicable*”) is extremely tight. Breach of the direction is a criminal offence and the defences available are limited. If the direction is not complied with the local authority may obtain an order from the magistrates’ court under section 78 CJPOA 1994 authorising it to enter on the land and take steps to secure compliance. The direction is also proleptic, prohibiting the person(s) from returning within three months.

31. In the Commission’s view, sections 77 and 78 CJPOA 1994 therefore provide adequate and sufficient means of removing unauthorised campers.

**Question 4: Do you think local authorities could improve their use of existing powers?**

32. Yes.

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<sup>10</sup> Department of the Environment Circular 18/94, para 9.

<sup>11</sup> Per Sedley J in *R v Lincolnshire CC ex p Atkinson; Wealden DC ex p Wales and Stratford* (1996) 8 Admin LR 529; [1997] JPL 65 (at para 72).

<sup>12</sup> *Guide to effective use of enforcement powers – Part 1: Unauthorised encampments* (ODPM/Home Officer 2006).

33. The Commission believes that local authorities could improve their use of existing powers by exercising those powers in a more collaborative fashion, making greater use of negotiation and discussion.
34. The Commission invites the Government to consider carefully the approach taken by Leeds City Council. As an alternative to traditional enforcement techniques, Leeds City Council in conjunction with Leeds Gypsy and Traveller Exchange (“Leeds GATE”) have pioneered an approach of Negotiated Stopping. Under this, the local authority authorises encampments on a temporary basis, thus making “meanwhile” use of unused, derelict, or development land, provided that the families concerned abide by the terms of a good neighbour agreement. The use of basic facilities, including portaloos and household waste disposal, minimises any disruption caused. This approach was found to have reduced the local authority’s enforcement costs from an average of £255,000 per annum to £150,000 per annum.
35. Similarly, in a study published in 2009, Fenland District Council reported saving hundreds of thousands of pounds by building a good relationship with travelling communities, positively engaging with them, and, in particular, by advising them on making planning applications for privately-owned sites.<sup>13</sup>

**Question 5: What other powers may help local authorities deal with unauthorised encampments?**

36. The Commission considers that the single most significant power which would help local authorities address unauthorised encampments is the power available under section 24 of the Caravan Sites and Control of Development Act 1960 (“CSCDA 1960”) to provide sites for caravans. As stated above, in so far as there is a problem in dealing with unauthorised encampments, this does not arise from a paucity of powers on the part of local authorities. Instead, it is caused primarily by the fact that most Gypsies and Travellers on unauthorised encampments have nowhere to go, and are forced to move from unauthorised pitch to unauthorised pitch. The Commission does not, therefore, consider that increasing the powers of removal available to local authorities would assist in reducing encampments.
37. Conversely, increasing the powers available may well prove indirectly discriminatory if it would adversely affect Gypsies and Travellers without being a proportionate means of achieving a legitimate aim.

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<sup>13</sup> EHRC (2009) *Gypsies and Travellers: simple solutions for living together*, pp.7-8.

**Question 6: Do you consider that the current powers for police to direct trespassers to leave land are effective?**

38. Yes.

39. The police have the power under section 61 CJPOA 1994 to direct trespassers to leave land where (to summarise) it is reasonably believed that reasonable steps have been taken by the occupier to ask them to leave and any of them has caused damage to the land or property on the land, or used threatening or abusive words or behaviour, or they have six or more vehicles on the land. The direction must be complied with as soon as reasonably practicable. The person will be prohibited from returning to the land as a trespasser within three months. Breach of the direction is a criminal offence and the defences available are limited. In conjunction with this the police also have the power under section 69 CJPOA 1994 to direct a person who they reasonably believe is committing the offence of aggravated trespass (where a trespasser does something to intimidate a person engaging in lawful activity on the land or to disrupt or obstruct that activity) to leave the land. Again, the direction must be complied with as soon as reasonably practicable; the person will be prohibited from returning to the land as a trespasser within three months; and breach of the direction is a criminal offence the defences to which are limited.

40. The Commission believes that these powers are effective to remove trespassers from land. .

**Question 7: Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?**

41. No, save that we would provisionally support amending section 62A CJPOA 1994 as set out below.

42. The Commission does not believe that adding to or extending the powers available to the police to direct trespassers to leave land would make it “*easier to deal with unauthorised encampments*” and we would not support any such additions or extensions. We would remind the Government that all powers to remove unauthorised encampments must be exercised with a full awareness of the occupiers’ welfare needs, human rights, and, where applicable, their entitlement to protection under the Equality Act 2010. These cannot be circumvented by new powers.

43. The Commission does not agree with the suggestion at paragraph 17 of a possible new offence “*that further criminalises actions in relation to unauthorised encampments*” which (1) “*substantially damage land*” or (2) “*cause serious inconvenience to the land owner or other lawful users of the*

*land*". The former is covered by the existing offence of criminal damage under section 1 of the Criminal Damage Act 1971. The latter is covered by the offence of aggravated trespass under section 68 CJPOA 1994.

44. The Commission would, however, provisionally support an amendment to section 62A CJPOA 1994, subject to a public consultation on the question. This section allows the police to direct trespassers to leave land where there is a suitable pitch available on a caravan site in the same local authority area. We note that during the course of the debate in Parliament on 9<sup>th</sup> October 2017 complaints were made that restricting this section to the same local authority area was artificial and we sympathise with this to an extent, in that people may regard their local area as defined by distance or community links rather than local authority boundaries. We would not therefore oppose amending section 62A to require that a suitable pitch is available within the "*local*" area, with "*local*" being given its ordinary dictionary meaning.

**Question 8: Do you consider that the Government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass? If so, how should a new offence differ, and what actions and circumstances should it apply to?**

45. No. The Commission strongly opposes the criminalisation of unauthorised encampments:
- i. In the context of a serious national shortage of authorised permanent and transit sites, many Gypsies and Travellers seeking to pursue their centuries-old way of life have no option but to resort to unauthorised encampments.
  - ii. Moreover, following the amendments to *Planning Policy for Traveller Sites* ("PPTS") in August 2015 which excluded from the PPTS Gypsies and Travellers who had stopped travelling permanently, even if for reasons of old age or ill health, Gypsies and Travellers are obliged to travel in order to retain their status as Gypsies and Travellers for planning purposes. Given the lack of transit sites, many are forced onto unauthorised encampments.
  - iii. To criminalise unauthorised encampments per se, without the requirement for any harm to be caused, and without sufficient sites being available, would therefore be to criminalise a way of life.
  - iv. There can be no justification for this when the vast majority of these unauthorised encampments cause no problems.
  - v. Criminalisation would therefore almost certainly fall foul of the prohibition on indirect discrimination contained at section 19 EA 2010.

- vi. Moreover, it would clearly be contrary to the Government's positive obligation to facilitate the Gypsy way of life pursuant to Article 8 of the European Convention on Human Rights.<sup>14</sup>
46. The Commission is aware that during the debate in Parliament on 9<sup>th</sup> October 2017 repeated reference was made to the regime in Ireland, which is summarised in the consultation document on pages 10-11. In respect of this, we note the following:
- i. Firstly, and most importantly, the criminalisation of trespass has occurred in the context of a statutory requirement to provide sites.<sup>15</sup> There is no such requirement in England, the previous duty to provide sites under section 6 of the Caravan Sites Act 1968 having been repealed by the CJPOA 1994.
  - ii. Secondly, as the consultation document recognises, the Housing (Miscellaneous Provisions) Act 2002 in Ireland only criminalises trespass "*in certain circumstances*". These include where the act of trespass is likely to substantially damage the land, substantially and prejudicially affect any amenity in respect of the land, or substantially interfere with the land.<sup>16</sup> The Commission considers that any attempt to criminalise trespass which does not cause substantial harm of some sort would be wholly unjustified.

***Question 9: What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?***

47. The Commission is not aware of any barriers that exist to the lawful use of injunctions by local authorities. Injunctions are a discretionary remedy which will always require the oversight of the Court: they are not, or should not be, granted simply for the asking. Where, however, the local authority makes out its case for an injunction and the injunction would not breach the occupants' human rights or breach the Equality Act 2010, then it is likely to be granted.

***Question 10: Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?***

48. The Commission supports collaboration between local authorities, the police, the courts, and communities, including Gypsies and Travellers.

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<sup>14</sup> *Chapman v United Kingdom* (27238/95) (2001) 33 EHRR 18

<sup>15</sup> Under the Housing (Traveller Accommodation) Act 1998.

<sup>16</sup> Section 19C(1) Housing (Miscellaneous Provisions) Act 2002

49. As referred to above, the Commission is aware that Negotiated Stopping has been pioneered with significant success in Leeds. This involves increased dialogue between the local authority and Gypsies and Travellers leading to agreements on departure dates, acceptable behaviour, and waste disposal. This has reduced the number of unauthorised encampments in the area and substantially reduced the amount spent by the local authority on evictions.
50. In its 2009 publication *Gypsies and Travellers: Simple solutions for living together*, the Commission showcased a number of local authorities which had explored alternatives to traditional enforcement techniques as a way of dealing with unauthorised encampments. These included:
- i. Fenland District Council, which saved hundreds of thousands of pounds through positive engagement with the local Traveller community; and
  - ii. Bristol City Council, which reduced its spending on evictions from some £200,000-£350,000 per annum to £5,000 by creating two authorised sites.

**Question 11: Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly?**

51. The Commission welcomes the recognition that any modification to court processes must be proportionate.
52. The Commission considers that the current court procedures are already sufficiently expeditious. As the consultation document recognises, applications in respect of unauthorised encampments are already treated as urgent. In a claim against trespassers the defendants may be served with the papers as little as two days before the hearing date, and in some cases the hearing may even be listed on the same day as the claim is issued. Bringing the claim to court can therefore be done extremely quickly. Thereafter, case management of the matter lies with the court. If cases are not determined at the first hearing – and many are – then that will be because the court considers that further steps are necessary. This may be to give the defendant an opportunity to file a defence, or it may be because there is some problem with the claim which needs resolving. Courts are already required to deal with cases “*justly and at a proportionate cost*”.<sup>17</sup> Judges are well aware of the imperative to deal with trespass cases promptly and will do so. The Commission is concerned that any further abbreviation of the procedures will infringe the right to a fair trial at Article 6 of the European Convention on Human Rights.

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<sup>17</sup> Civil Procedure Rules (“CPR”), rule 1.1.

53. The Commission does however consider that the removal of legal aid from possession cases where the individual occupied and has always occupied the land as a trespasser<sup>18</sup> has led to delays. This is because individuals have either been forced to represent themselves as litigants in person, with the consequent complications this causes, or they have been obliged to judicially review decisions to seek possession rather than simply defend the possession proceedings in the county court.

**Question 12: In your view, what would the advantages and disadvantages be of extending the IPO process to open land?**

54. The Commission does not consider that extending the Interim Possession Order (“IPO”) regime to open land would expedite the possession process. Under the IPO procedure, the matter will be listed not less than three days after the date of issue (CPR 55.22). This is in contrast to the requirement that in other possession claims against trespassers the defendant must be served with the papers no less than two days before the hearing date (CPR 55.5), which may be the same day as the date of issue. There is therefore no guarantee that an application for an IPO will be heard any more quickly than an application for a (non-interim) possession order.

55. Moreover, the court when considering an application for an IPO must comply with the same obligations not to breach the defendants’ human rights or act unlawfully under the Equality Act 2010 as apply to a normal possession claim.

56. The statement at paragraph 29 of the consultation document that “*there are no appeals that can delay enforcement*” of the IPO is wrong. An IPO may be appealed under CPR Part 52 like any other order and, as in any other case, an appellant may seek a stay. Whilst the case will automatically be listed for a return date, this does not preclude an appeal.

57. The rationale for not including open land in the IPO procedure still holds good. There is a qualitative difference between a person occupying open land – which will not be somebody’s home, unless the landowner is also a Gypsy or Traveller, which would be rare – to a squatter occupying a residential property in which another person is entitled to reside.

58. The Commission considers that the IPO procedure therefore offers few advantages to landowners whilst carrying the risk of criminal sanction for occupants. We therefore do not recommend extending this regime to open land.

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<sup>18</sup> As a result of paragraph 9 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

**Question 13: Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?**

- 59.No. The Commission is not aware of any specific barriers preventing the effective use of current planning enforcement powers, which, as the consultation document notes, are “*extensive*” (paragraph 33).
- 60.Indeed, the introduction of section 70C of the Town and Country Planning Act 1990 (“TCPA 1990”) which gives local authorities the power to decline to determine retrospective planning applications, has placed a significant impediment in applicants’ attempts to gain planning permission for development in respect of which an enforcement notice exists.
- 61.The Commission would be very concerned by any attempt to characterise as “*barriers*” to be overcome an applicant’s right to have their planning application, and if necessary any appeal, determined fairly. We note that the appeal process is an important safeguard in ensuring that applications by Gypsies and Travellers are treated fairly and that it makes an important contribution to the general supply of Gypsy and Traveller sites: in 2009 it was calculated that 31% of applications by Gypsies and Travellers were only granted on appeal.<sup>19</sup>
- 62.Given the recent finding that the then Secretary of State for Communities and Local Government had behaved in a discriminatory manner in his handling of Gypsy and Traveller planning appeals,<sup>20</sup> any further attempt by the Government to intervene in this process must be undertaken cautiously and with equality considerations borne well in mind.

**Question 14: If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?**

- 63.The Commission is not aware of any specific barriers to effective enforcement and therefore has nothing to add in response to this question.

**Question 15: Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have a view on how these barriers can be overcome?**

- 64.The Commission is not aware of any specific barriers preventing the effective use of temporary stop notices.

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<sup>19</sup> EHRC (2009) *Gypsies and Travellers: simple solutions for living together*.

<sup>20</sup> Moore and Coates v Secretary of State for Communities and Local Government [2015] EWHC 44 (Admin).

**Question 16: How do you think the existing enforcement notice appeals process can be improved or streamlined?**

65. The Commission considers that the enforcement notice appeals process would be improved by increasing the resources available to the Planning Inspectorate. This would enable appeals to be held more quickly and decisions issued more promptly.
66. The Commission does not consider that the appeals process could be streamlined beyond the already simple and expeditious process outlined at paragraph 36 of the consultation document. We would be concerned by any attempt to further shorten the deadlines in this process which may well prevent appellants being able to fully prepare and present their case. This is particularly so for Gypsies and Travellers who are less likely to be literate than members of the settled population (and officers of the local planning authority) and for whom planning and presenting their case will therefore be a slower, more onerous process.
67. The Commission repeats its comments above at paragraphs 61 and 62 of this consultation response in respect of planning appeals generally.

**Question 17: How can Government make existing guidance more effective in informing and changing behaviour?**

68. The Commission does not consider that the existing guidance requires amendment.

**Question 18: If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?**

69. The Commission doubts that issuing future guidance as statutory guidance would make a significant difference. Whether it is issued on a statutory or extra-statutory basis, it will constitute a relevant factor that must be taken into account in decision-making and departure from which must be justified.

**Question 19: Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the Government could take to help overcome those barriers?**

70. The Commission considers that there are the following barriers to the provision of more authorised permanent and transit sites:

71. The repeal of section 6 CSA 1968, which imposed a duty on local authorities to provide caravan sites: the Government should reintroduce the duty, previously contained at section 6 CSA 1968, which required local authorities to provide sites for Gypsies and Travellers. This would be consistent with the position in Wales (under the Housing (Wales) Act 2014) and the Republic of Ireland (under the Housing (Traveller Accommodation) Act 1998). The severe national shortage of sites indicates that local authorities are not making sufficient use of their power to provide sites and in the Commission's view they should now be compelled to do so. Re-establishing this duty would have the additional benefit of relieving the pressure of inappropriate private development in the Green Belt.
72. Reintroduction of the duty should be accompanied by top-down monitoring and enforcement by the Government to ensure compliance. It is regrettable that even when the duty existed before, many local authorities failed to comply with it. Strong oversight by central Government would ensure that the duty is performed.
73. Discrimination towards Gypsies and Travellers, which fuels local opposition to the provision of Gypsy and Traveller sites: the Government should take the lead in tackling discriminatory attitudes towards and prejudice against Gypsies and Travellers. The Commission welcomes the Prime Minister's commitment to tackling race equality as a major priority and urges the Government to set an example by changing the rhetoric in respect of Gypsies and Travellers. Tackling prejudice towards this vulnerable minority would assist in reducing local opposition to sites.
74. The new definition of Gypsy and Traveller for planning purposes, which makes it harder for many Gypsies and Travellers to obtain planning permission on private sites: the Government should amend the definition of Gypsy and Traveller in *Planning Policy for Traveller Sites* so that Gypsies and Travellers who have stopped travelling permanently for one of the specified reasons (education, health needs, or old age) once again constitute Gypsies and Travellers for planning purposes. This would make more Gypsy and Traveller applicants eligible for the more permissive regime of the PPTS which would increase their prospects of obtaining planning permission.

***Question 20: What impact would extending local authority, police or land owner powers have on children and families and other groups with protected characteristics that public authorities must, in the exercise of its functions, have due regard to under their Public Sector Equality Duty?***

75. The Commission considers that the following protected characteristics would be engaged by an extension of local authority, policy, or land owner powers to deal with unauthorised encampments:

- i. Ethnicity: an extension of powers would disproportionately affect Gypsies and Travellers, who are more likely to reside on unauthorised encampments.
  - ii. Age: an extension of powers would have a severe impact on children, who are likely to suffer more from the experience of forced evictions.
  - iii. Disability: an extension of powers would also adversely affect the disabled, who may be less able to move quickly between encampments, and who would suffer more from the experience of being evicted and the hardship of life on the road.
  - iv. Pregnancy: an extension of powers would also have a more severe impact on those who are pregnant.
  
76. The Commission considers that the impact of extending the powers available would be adverse. The Commission largely agrees with the analysis at paragraphs 45 to 46 of the consultation document, which sets out the detrimental effects of accommodation insecurity on the Travelling community. However, the key factor which is missing is that most people on unauthorised encampments have nowhere to go. A more stringent approach to unauthorised encampments, where the occupants will be forced to go back on the road and move to other unauthorised encampments, will not be to the benefit of the occupants of such encampments.
  
77. The Commission notes that the public sector equality duty does not require public authorities simply to consider groups with protected characteristics, as the question appears to imply. In fact, it requires public authorities to have due regard to the need to achieve the equality objectives set out at section 149(1) EA 2010, namely:
  - i. Eliminating discrimination, harassment, victimisation, and any other conduct that is prohibited under the EA 2010;
  - ii. Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - iii. Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.
  
78. The Commission considers that all of these objectives are relevant both to a decision by the Government to extend the powers available and to a decision by a public authority to exercise any such powers. Criminalising unauthorised encampments, or taking more stringent enforcement action:
  - i. Is likely to constitute discrimination under the EA 2010;
  - ii. Would not advance equality of opportunity. It is well-established that accommodation insecurity has adverse impacts on Gypsies' and Travellers' ability to access healthcare, education, and employment. Increasing that accommodation insecurity would exacerbate that impact; and
  - iii. Would not foster good relations in the community. Increased evictions would create more disruption, incur greater expense, and lead to a

larger number of discrete encampments as people move from site to site.

79. The Commission reminds the Government that it is not only the Public Sector Equality Duty which is relevant to its consideration of whether to extend the powers available to deal with unauthorised encampments. The Government must also ensure that any action taken is not indirectly (or indeed directly) discriminatory. The Commission is concerned that extending removal powers without a sound evidence base that a pressing and widespread problem exists, which only extended powers will address, would not be a proportionate means of achieving a legitimate aim and would therefore fall foul of section 19 EA 2010.
80. Furthermore, the Government is also reminded of the obligation placed upon several public authorities by section 11 of the Children Act 2004, as construed in ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 and subsequent case-law, to treat the best interests of any relevant children as a primary consideration. The Commission considers that any measures which lead to increased evictions of families including children will not be consistent with this obligation.

***Question 21: Do you expect that extending the powers referred to above would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?***

81. The Commission considers that extending the powers referred to would have a negative impact on the health and educational outcomes of Gypsy, Roma, and Traveller communities.
82. There is ample evidence to show that accommodation insecurity has an adverse effect on the health and educational outcomes of such communities.<sup>21</sup> Extending the powers available to remove unauthorised encampments will not eliminate this accommodation insecurity: it will exacerbate it. Families will be forced to move from unauthorised encampment to unauthorised encampment. This will make it harder for children to attend school and for individuals to access healthcare. It will lead to increased stress and anxiety. It will cause families to seek out ever less attractive, and therefore less healthy, locations.

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<sup>21</sup> See for example Cemlyn S. et al. (2009) *Inequalities experienced by Gypsy and Traveller communities: A review*; Greenfield, M. and Brindley, M. (2016) *Impact of insecure accommodation and the living environment on Gypsies' and Travellers' health*; UNHRC (2013) *Report of the special rapporteur on adequate housing*.

83. The Commission considers that the negative impacts would be prevented by not extending the powers available and by instead increasing the supply of sites.

***Question 22: Do you have any other comments to make on the issue of unauthorised development and encampments not specifically addressed by any of the questions above?***

84. The Commission's comments are set out in full above.