



Newsletter of the Travellers Advice Team at Community Law Partnership

No. 33 – Glastonbury Special 2016

Travellers Advice Team national telephone helpline for Gypsies and Travellers
0121 685 8677 Monday - Friday 9am - 5pm
No operator service. Get straight through to an expert.

HELLO TO GLASTONBURY

To celebrate the wonderful Glastonbury Festival at which representatives of the Travellers Advice Team will be present, we are producing this special edition pulling together some of the best articles that have featured in the TAT News E-Bulletin over the year since the last Festival. We hope you enjoy them.



Defining Travellers out of Existence

As regular readers will be aware, we have been seeking for some time to get legal aid for three Gypsies and Travellers who wish to challenge the new definition of Gypsy and Traveller for planning purposes which was imposed by the Government on August 31 2016. The new definition excludes those who have stopped travelling permanently for reasons of old age, illness or disability (who were previously included within the definition). For two of these clients, the original application was refused and we appealed against that refusal. The appeal was dismissed by the Legal Aid Agency (LAA). We felt that that dismissal was totally unreasonable and threatened a judicial review application against the LAA. The decision was withdrawn and the matter returned to a new adjudicator. The third application was then joined with that matter. On the 4 May 2016 the new adjudicator refused the application again but this time for a different reason. We have now threatened judicial review yet again against the LAA with regard to these refusals.

TAT remain very interested in hearing from any Gypsies and Travellers who are adversely affected by the new definition e.g. by having planning permission refused or by being excluded from a Gypsy and Traveller Accommodation Needs Assessment. We would urge any such Gypsies and Travellers to phone us on our advice line and we are happy to discuss these issues on our advice line with Gypsies and Travellers or with members of support groups.

The new definition has led to a position where the organisation ORS have come up with Gypsy and Traveller Accommodation Needs Assessment (GTANAs) in Old Oak and Park Royal Development Corporation and in London Borough of Newham stating that there is no need for any pitches! The new definition is, thus, being used to deny Gypsies and Travellers access to site provision and it is essential that this discriminatory and unreasonable definition is challenged.

From the May edition no 32



‘Off the Cut’

This short film concentrates on the issues which the Travellers Advice Team, amongst other things, advise boat dwellers on and we are happy to hear from boat dwellers who are facing injunction action by Canal and River Trust (CRT) because CRT state that they are not complying with their “Continuous Cruising Guidance”. It should be noted in the film that Mr Symonds for CRT incorrectly states that they are not a public authority. You can find the film here:- <https://www.youtube.com/watch?v=5upAf7waaLg&feature=youtu.be>.

From the May Edition No. 32



Lord Avebury

Lord Eric Avebury, who passed away on 14 February 2016, caused a political sensation when, as Eric Lubbock, he took the rock-solid Tory seat of Orpington for the Liberals at the 1959 General Election. Thereafter he became known as ‘Orpington Man’. He held the seat until 1970. A year later he succeeded to the Avebury baronetcy and took a seat in the Lords. He remained in the Lords until his death.

Eric, as he always preferred to be called, fought for a bewildering number of issues and campaigns over the years but he campaigned for the rights of Gypsies and Travellers throughout his political life. Historically, Orpington (especially the area of the Crays) had a large Gypsy and Traveller population, with many in housing, and this is where he first came across the prejudice and discrimination faced by these communities. In 1968 he introduced the Caravan Sites Bill as a private members’ bill. The government of Harold Wilson supported the Bill and it became an Act. Famously the Act contained a duty on local authorities to facilitate the provision of Gypsy and Traveller sites (the duty was repealed by the Tories in the Criminal Justice and Public Order Act 1994). Unfortunately, many councils failed to comply with their duty to provide sites. Nevertheless, it is fair to say that, without this duty, the vast majority of the 350 local authority sites that exist in England and Wales today would never have been built.

Eric has continued to fight for Gypsies and Travellers ever since. We will pick out just one example here as representing the fantastic and vital work he did in this field. The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill was introduced to Parliament in 2012. Its provisions with regard to legal aid were clearly going to have very detrimental consequences on Gypsies and Travellers. In conjunction with the Labour peer, Baroness Whitaker, Eric rallied many peers to oppose the relevant provisions of the Bill leading to some of the finest parliamentary debates on Gypsy and Traveller issues that have ever been seen. Here is an example of one of many contributions from Eric in the House of Lords debate on the LASPO Bill on 12 March 2012.

Lord Avebury:

As the Minister is aware, we are still deeply concerned about the Bill's impact on people living on unauthorised encampments on council-owned land. At present, if a local authority takes action to evict Gypsies and Travellers using a procedure other than a county court possession action—for instance, by using Section 77 of the Criminal Justice and Public Order Act 1994—then any public law challenge based, for example, on the fact that the local authority has failed to conduct welfare inquiries would have to be by way of judicial review. No doubt the Minister will confirm that such a challenge will continue to be available under the Bill as presently drafted.

*If, on the other hand, the local authority decides to evict Gypsies and Travellers from its land by seeking possession in the county court, then the decision of the House of Lords in *Doherty v Birmingham City Council* makes it clear that any public law challenge to such action should be pursued in the county court and not by way of a separate judicial review application. However, paragraph 28(10) of Part 1, Schedule 1, provides that trespassers living in caravans facing repossession actions in the county court will no longer be entitled to legal aid to defend such proceedings. The effect of it would be that Gypsies and Travellers, having public law grounds to challenge a local authority's decision to seek possession, will be forced to make an application in the High Court for judicial review.*

Perhaps I may give an example of the sort of case in which this would apply. Government guidance states that local authorities should carry out welfare inquiries before deciding whether to evict an unauthorised encampment. If a Traveller family, whose members are in very poor health and are pursuing a homeless application with the council by asking it to find them a pitch where they can lawfully place their caravan, is camped on the land of a local authority without authorisation, but is not causing any obstruction, and the local authority then decides to commence eviction action without making any welfare inquiries, the family would like to ask the court not to make the possession order because of ill health and the pending homelessness application. However, the family would not be able to do so if sub-paragraph (10) is retained. It would have to go for judicial review of the council's decision to seek possession in the High Court on the basis of the local authority's failure to take into account relevant considerations and rationality. If the Minister will confirm that this would be within scope, does he also agree that there is no merit in removing legal aid for the defence of possession proceedings in the county court on public law grounds, leaving the option only to go to the High Court?

We had an actual example of this only this morning in an e-mail from a lady whose brother and sister-in-law are in precisely this position. They are encamped on the borders of a local authority highway. They are both 57 and are in poor health. The lady's brother has recently seen a doctor and has been diagnosed as having lesions in his lungs and her sister-in-law has emphysema. They stopped at this place because they wanted to consult a general practitioner, which they have been able to do, and to

seek treatment for these conditions. They have been fortunate in having remained on this site for the past four months without being noticed but, at any moment, the local authority could seek possession and they would be removed from the site and would be unable to continue to obtain medical advice and treatment, which clearly they desperately need.

Satellite judicial review proceedings in the High Court can be expensive and can result in delaying the resolution of the possession proceedings. The House of Lords in Doherty considered that public law arguments relating to possession proceedings should be determined by county court judges and we respectfully agree. Is it not far more sensible, I ask my noble and learned friend, to encourage local authorities to deal with these matters in their local county court where, self-evidently, they can be settled far more cheaply and more effectively? If this local authority commences action under the Criminal Justice and Public Order Act 1994, the Traveller family, assuming that it is financially eligible, of course, will be able to obtain legal aid judicially to review the council's decision but if the council issues possession proceedings in the county court, the family will not be able to seek legal aid for representation so that they can defend these proceedings on public law grounds. I suggest that this is an arbitrary and perverse distinction. I am absolutely sure that the Government did not intend to undermine the Doherty ruling and make it inevitable that cases that ought to be dealt with in the county court have to be heard in the High Court at far greater cost to public funds, a point which I hope that my noble and learned friend has been able to consider, since we brought it to his attention when he kindly received us to discuss these amendments last week.

I would be grateful if my noble and learned friend could confirm that the trespasser exception to the loss of home being within scope was originally intended to deal with the problem of squatters in buildings. At some point it was decided-wrongly, in my opinion-to make this a criminal offence, as provided elsewhere in the Bill. This means that the vast majority, if not all, of the cases that will remain within the trespasser exception will involve Gypsies and Travellers on unauthorised encampments. The reason why they are there is because of the admitted failure by successive Governments to ensure adequate site provision, for which the UK is the target of trenchant criticism by the Council of Europe's High Commissioner for Human Rights.

We must assume that the Government have not intentionally set out to discriminate against two ethnic minority groups, although that is the unlawful result of paragraph 28(10) following the decision about squatting in buildings. Given this unintended consequence, we invite the Government to reconsider their position on the amendment...

In response to this contribution from Eric, the government spokesman, Lord Wallace of Tankerness, conceded that judicial review challenges would still be available to Gypsies and Travellers on unauthorised encampments. These and many other

important concessions have been vital to lawyers and advisers acting for Gypsies and Travellers on a variety of matters since the LASPO Bill became an Act.

The authors worked with Eric on many issues and we would adopt a description given to him in the Times obituary (16 February 2016): “*courteous, candid, resourceful and resilient*”. We think it is fair to describe Eric as possibly the greatest campaigner for Gypsies and Travellers in the past 50 years and there is no doubt that his Caravan Sites Act made the most significant positive impact for Gypsies and Travellers of any piece of legislation during that period of time. If only more of his fellow politicians were so enlightened.

Eric was a great man. We will all miss him.

Marc Willers QC, Dr Simon Ruston and Chris Johnson

This piece appeared as a blog on the Travellers Times website. See <http://travellerstimes.org.uk/Blogs--Features/The-Travellers-Champion.aspx>.



Wales Shows the Way

Part 3 of the Housing (Wales) Act 2014 deals with Gypsies and Travellers. Section 103 introduces a duty to meet assessed needs, stating:-

If a local housing authority's approved assessment identifies needs within the authority's area with respect to the provision of sites on which mobile homes may be stationed the authority must exercise its power in Section 56 of the Mobile Homes (Wales) Act 2013 (power of authority to provide sites for mobile homes) so far as may be necessary to meet those needs.

The Mobile Homes (Wales) Act 2013 Section 56 states:-

A local authority may within its area provide sites where mobile homes may be brought, whether for holidays or other temporary purposes or for use as permanent residences, and may manage the sites or lease them to another person.

Part 3 of the Act comes into force on 16 March 2016 (The Housing (Wales) Act 2014 (Commencement No. 6) Order 2016).

This is an extremely significant development to say the least. It is a great shame that things are moving in something of an opposite direction in England.

Garden Court Funding

Inevitably we end up doing a great deal of free work on our advice line and this does make it difficult to continue with the advice line though we are determined to do our best to do so. Therefore we are very grateful to Garden Court Chambers in London who have provided partial funding for the advice line to cover some of this free work.

Local Connection in Site Allocation Policies

This claim concerned a challenge brought by an Irish Traveller to a “local connection” requirement contained within North Somerset Council’s housing allocations scheme, which had been extended beyond Part VI Housing Act 1996 allocations to cover Gypsy/Traveller site allocations. The effect of that requirement was that the Claimant, who could not point to a local connection to North Somerset, was denied entry to the Council’s housing register.

The claim was brought on a number of grounds including, in particular, that the Council had failed to pay due regard to statutory equality objectives (in accordance with section 149 of the Equality Act 2010) and that the local connection requirement was, in any event, indirectly discriminatory in relation to Gypsies and Travellers and unjustifiably so.

The Claimant had argued that many ethnic Gypsies and Travellers still lived a nomadic lifestyle (in the absence of sufficient permanent sites to meet their accommodation needs) and that, as a consequence, the local connection requirement was likely to have an adverse effect on proportionately more Gypsies and Travellers than members of the settled population.

The Claimant’s case was supported by the Equality and Human Rights Commission, which agreed that there was a differential impact and that it was difficult to see how a local connection requirement in an allocations scheme could ever be justified for ethnic groups whose members are nomadic.

The Defendant Council did not file any evidence to suggest that it had discharged its duty under section 149 of the Equality Act 2010 or to support its position that any discrimination could be objectively justified.

In the event the case settled on the day before the trial of the claim and, on 2 February 2016, Collins J approved an order by which the Defendant Council undertook:

(a) To place the Claimant on its housing register; and (b) To undertake a review of its housing allocations scheme, specifically with reference to section 149 of the Equality Act 2010.

Collins J also ordered the Defendant Council to pay the Claimant's costs of bringing the claim for judicial review.

The Claimant was represented by Marc Willers QC (Garden Court Chambers) and Joseph Markus (Garden Court North Chambers), instructed by Parminder Sanghera of TAT.

R (VC) - v - North Somerset Council (Equality and Human Rights Commission Intervening) CO/3801/2015.

From the Spring Edition No. 31



20 Years of the Travellers Advice Team

The Travellers Advice Team celebrated their 20th Anniversary at the Birmingham Botanical Gardens on Friday 6th November 2015. This also amounted to a celebration of the great work of the CLP Housing Team and the great work of Gypsy and Traveller support and campaigning organisations throughout the country. The party was preceded by an excellent seminar run by Garden Court Chambers concerning the disastrous Government changes to planning policies and especially the appalling change to the definition of Gypsy and Traveller under planning law.

From the Christmas Edition No. 30

CLP FORCES GOVERNMENT U TURN

Readers will recall that, on the bank holiday weekend on August 31st, the Government introduced disastrous changes to their policies with regard to Gypsies and Travellers including changing the definition of Gypsies and Travellers for planning purposes so that those Gypsies and Travellers who had ceased travelling permanently due to old age, ill health and disability were no longer within the definition and by withdrawing the Office of the Deputy Prime Minister 2006 Guidance on Unauthorised Camping.

CLP were instructed to challenge the Government on both these issues by a Romani Gypsy woman and we sent a pre-action letter. In response the Government Legal Department have stated:

Whilst my client was careful to have due regard to his PSED [Public Sector Equality Duty] when considering and resolving on his position in respect of the wider process and package of measures, the Secretary of State accepts that he did not have regard to that duty when he decided to cancel the 2006 guidance, only, and should have done so. Accordingly, and for that reason only, my client has today reinstated the guidance pending a review on its continued status.

We have asked the Secretary of State to ensure that he writes to all local authority planning officers to inform them of this decision (as he did regarding the original decision to withdraw the guidance).

Unfortunately , in the same letter, the Government Legal Department have refused to withdraw the new definition and, thus, we are now seeking legal aid for our client to challenge this matter.

We are still very keen to hear from any Gypsies and Travellers affected by these issues and by the other changes brought in on August 31st with regard to the Green Belt, open countryside etc. Please phone us on our advice line which is 0121 685 8677.

We are very pleased indeed that the vital 2006 Guidance has been reinstated and well done to our client for bringing forward the challenge.

LOCAL CONNECTION AND TRAVELLERS

Connors v Forest of Dean DC, Bristol County Court, Recorder Blunt QC

Ms Connors is an Irish Traveller with 5 children, 2 of whom are disabled owing to a lung condition and hearing impairments. She had travelled all her life except for a short period in which she lived in a house. In June 2014 she had to leave a Traveller site in Stroud and relocated to the Forest of Dean District Council ('FoD') area. She moved her caravan onto a former Traveller site and commenced occupation. Her sister, who helped her with managing the children, lived just 5 minutes away. FoD commenced possession proceedings and Ms Connors made a homeless application. In August 2014, FoD decided that Ms Connors was owed a full re-housing duty but that she did not have a local connection with the FoD area because she was not normally resident or employed or had any enduring family relationships with others in the area, and also that there were no special circumstances to take into account. Accordingly, her local connection was with Stroud DC and they sought to refer her back there. That decision was upheld in a homeless review in December 2014. An appeal was subsequently issued.

The appeal raised seven grounds of appeal including that FoD had erred in law in failing to take account of or have any regard to Ms Connors' protected characteristic, namely being a member of an ethnic group of Irish Travellers capable of being discriminated against on the grounds of her membership of that group. In particular, that FoD had failed to properly consider: (a) how long a Traveller's relatives should be required to be normally resident in an area before establishing a connection by family association, as by the very nature of their way of life residence for five years is much less likely to be established than if they were not a Traveller; and (b) in failing to have regard to the same matters when deciding to exercise its discretion to refer and, in doing so, failing to comply with its public sector equality duty under s149 Equality Act 2010. It was submitted that the travelling way of life means by its very nature that Irish Travellers are less likely to remain in particular areas for long periods, and that this should be taken into account in considering whether an Irish Traveller is normally resident in that area or has a local connection by reason of family associations. Irish Travellers might well have areas to which they resort much more often than others, and the likelihood that due to their way of life they may stay in one area for shorter periods should be taken into account in deciding whether they have a local connection. This is underlined by s149 Equality Act 2010, which requires, in relation to every decision taken by a public authority, proper consideration of their protected characteristic and whether it should be taken into account in the decision making process. The respondent council only considered this question in relation to what accommodation could be provided and this was plainly inadequate.

The appeal was allowed on 6 of the 7 grounds, including the Equality Act ground. Recorder Blunt QC found that, while the FoD had been mindful of the fact that Ms Connors is an Irish Traveller with protected characteristics:-

they only took account of those characteristics when referring to attempts to find an alternative traveller's pitch, as well as in relation to the suitability of conventional housing. However, it is plain that no account was taken of them in relation to the question of whether or not the Appellant has a local connection with the Respondents' district by reason of the length of her residence or her sister's residence there: this is because the Review Panel effectively treated any periods of residence short of those set out in the guidelines... as being irrelevant. The Review Panel ...were obliged to take account of the Appellant's and her sister's 'protected characteristic'. Again, therefore, I consider this ground of appeal to be made out.

Ms Connors was represented by barrister James Stark of Garden Court North Chambers and solicitor Craig Keenan at CLP.

From the August Edition No. 27



LIGHT AT THE END OF THE TUNNEL

We are very pleased to inform our readers that Charmaine Moore has obtained permanent permission for her site in Bromley and Sarah Coates has obtained a three year temporary permission for her site in Dartford. Many readers will be aware of the long haul story involved here but we will provide a brief summary below. Charmaine Moore lost her first planning appeal and appealed against that to the High Court. That appeal was successful. The Secretary of State for Communities and Local Government then appealed to the Court of Appeal but that appeal was dismissed. Therefore the Planning Inspector's original decision was quashed and the matter was referred back to a different Planning Inspector. In the meantime, Sarah Coates' appeal was now heading for a Planning Inspector.

Both our clients were separately informed that the Secretary of State for Communities and Local Government (then Mr Pickles) had recovered their appeals for his own decision because their land was in the Green Belt albeit that these were just applications for a single pitch Gypsy/Traveller site. Both our clients challenged this decision, as readers will also probably recall, in the High Court and the recovery process was found to be discriminatory and unlawful in a judgment in January 2015 (see our report on this judgment at:- <http://www.communitylawpartnership.co.uk/noticeboard/news/306-green-belt-recovery-cases>).

The Public Inquiry for Sarah Coates took place over (in total) 19 days and Ms Coates was represented by the following: the Barrister, Tim Jones; the Planning Consultant, Dr Angus Murdoch; Parminder Sanghera from TAT. During this Inquiry there was **no guarantee** of funding since an exceptional funding application under the Access to Justice Act had been made but not yet determined. Fortunately, in the end, the application was allowed. An application for exceptional funding for Charmaine Moore's Public Inquiry was also successful. However, it must be said that these exceptional funding applications were only successful after, in one case, a judicial review against the Director of Legal Aid Casework had been lodged and, in the other case, after a pre-action protocol letter had been sent to the Director.

Angus was the planning consultant on both cases. Tim Jones and Stephen Cottle were the barristers and Parminder was the solicitor on both cases. Well done to this team for these really excellent results which we hope have now dislodged the backlog of decisions on Green Belt Gypsy and Traveller cases (we have heard of one other decision since then). Obviously, above all, well done to our clients who had to go through such a long process to obtain this result.

From the July Edition No. 26

Housing and Planning Act 2016

This Act received the Royal Assent on 12 May 2016. What was clause 115 in the Bill re accommodation assessments has ended up as section 124 in the final Act. This will come into force on 12 July 2016:

124 Assessment of accommodation needs

(1) In section 8 of the Housing Act 1985 (periodical review of housing needs), after subsection (2) insert—

“(3) In the case of a local housing authority in England, the duty under subsection (1) includes a duty to consider the needs of people residing in or resorting to their district with respect to the provision of—

(a) sites on which caravans can be stationed, or

(b) places on inland waterways where houseboats can be moored.

(4) In subsection (3)—

“caravan” has the meaning given by section 29 of the Caravan Sites and Control of Development Act 1960;

“houseboat” means a boat or similar structure designed or adapted for use as a place to live.”

(2) In the Housing Act 2004 omit sections 225 and 226 (accommodation needs of gypsies and travellers).

Well done to everyone who fed in submissions to peers during the Bill's passage through Parliament though, unfortunately, none of the amendments were accepted by the Government.

We wait to hear whether the draft guidance will remain the same or will be adjusted at all. The only submission made by CLP re the draft guidance concerned the definition of 'houseboat' and they do seem to have taken that on board (excuse pun!).

News in Brief

Exceptional Case Funding

Unfortunately the Court of Appeal, by a majority of 2:1, has rejected the challenge to the systematic unfairness of the exceptional case funding scheme. Please see the report on the CLP website at:- <http://www.communitylawpartnership.co.uk/noticeboard/news>.

Direct Action case

There is a report on the CLP website about a recent direct action case called *R (Eastwood) – v – the Royal Borough of Windsor and Maidenhead* and you can find that report here:- <http://www.communitylawpartnership.co.uk/noticeboard/gypsy-and-traveller-cases>.

Travellers Times Law Blogs

Marc Willers QC of Garden Court Chambers, Dr Simon Ruston and Chris Johnson of TAT provide regular law blogs for Travellers Times website. Here is a recent blog:- <http://travellerstimes.org.uk/Blogs--Features/The-Travellers-Champion.aspx>.

The Travellers Advice Team

The members of TAT are Chris Johnson, Parminder Sanghera and Sharon Baxter. The TAT Administrator is Emma Westwood and thanks to Emma for producing this Bulletin.

CLP Website

On our website you can find:

- News items about Gypsy and Traveller issues:

<http://www.communitylawpartnership.co.uk/noticeboard/news>

- Updates on campaigns and consultations:

<http://www.communitylawpartnership.co.uk/noticeboard/campaigns-and-consultations>

- Recent Gypsy and Traveller legal cases:

<http://www.communitylawpartnership.co.uk/noticeboard/gypsy-and-traveller-cases>

- Judgments and reports on our leading cases:

<http://www.communitylawpartnership.co.uk/our-leading-cases>

- Links to Gypsy and Traveller groups:

<http://www.communitylawpartnership.co.uk/links/travellers>

- And , of course, previous TAT News E Bulletins:

<http://www.communitylawpartnership.co.uk/links/tat-news>

- Plus lots of information about the Housing and Public Law Teams who, amongst other things, represent Gypsies and Travellers in housing and homeless Gypsies and Travellers who are seeking housing in the Midlands and surrounding areas. For full details of the Housing Team see:

<http://www.communitylawpartnership.co.uk/our-services/housing-law>

and the Public Law Team see:

<http://www.communitylawpartnership.co.uk/our-services/public-law>

Until Next Time

We hope you find our E-Bulletin useful. All and any comments very welcome.

Don't forget our national self-funded advice line for Gypsies and Travellers:

0121 685 8677

Monday to Friday 9am to 5pm

Keep up the good fight! Best wishes to all our readers. Kushti bok!

The Travellers Advice Team
Part of The Community Law Partnership
Solicitors
4th Floor, Ruskin Chambers
191 Corporation Street
Birmingham B4 6RP

Tel: 0121 685 8595

Fax: 0121 236 5121

E-mail: office@communitylawpartnership.co.uk

Website: www.communitylawpartnership.co.uk



TRAVELLERS ADVICE TEAM
NATIONAL TELEPHONE HELPLINE FOR GYPSIES AND
TRAVELLERS



Tel.:- 0121 685 8677

Monday to Friday 9.00 am to 5.00 pm

The Travellers' Advice Team (TAT) at Community Law Partnership (CLP) provide advice and representation to Gypsies and Travellers throughout England and Wales in the following areas:-

- Evictions from unauthorised encampments;
- Evictions from rented sites (local authority, housing association and private);
- Serious disrepair on rented sites;
- High Court Planning Appeals;
- Planning Injunctions;
- Stop Notices and direct action;
- Homelessness (including for those in houses who need a pitch);
- Allocation of pitches on local authority sites and increases in pitch fees;
- Cases for boatdwellers especially concerning the Continuous Cruising Guidance.

The Community Law Partnership
4th Floor Ruskin Chambers
191 Corporation Street
Birmingham B4 6RP

Email - office@communitylawpartnership.co.uk