

TAT NEWS

No. 59 June 2022



Newsletter of the Travellers Advice Team at Community Law Partnership

National telephone helpline for Gypsies and Travellers

0121 685 8677

Monday - Friday 9am - 1.00 pm

No operator service. Get straight through to an expert.

In your June issue...

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ART WORK

We would very much like to publish art work and photographs of Gypsy and Traveller life.

Please send any items you would like to be considered to office@communitylawpartnership.co.uk and mark them for the attention of 'TAT News Team'.

Many thanks,
TAT News Team

THE PERFECT STORM

This moment of time is a bit of a perfect storm for Gypsies and Travellers who are trying to maintain the nomadic way of life. A negative Court of Appeal judgment on wide injunctions in January is leading to local authorities seeking to continue or to obtain such injunctions covering vast areas of land. The discriminatory definition of Gypsy and Traveller for planning purposes is being challenged before the Court of Appeal at the end of June. In the meantime the Police, Crime, Sentencing and Courts Act has introduced a new criminal offence with regard to trespass situations.

You will find full reports on these matters in this special Glastonbury Festival edition of TAT News. Holly Sherratt and Fiona McGilvray will be

representing TAT so, if you are at the Festival, please do come and see them at the FFT stall in Green Futures or the Travellers' area in Leftfield.

We are very grateful to Moving for Change for providing us with 6 months funding for our telephone advice line. This is very important for the continuance of the line. Moving for Change exist to improve the quality of life for nomadic Gypsies and Travellers and the communities in which they live across the UK. Their primary focus is to secure the wellbeing and rights of Gypsies and Travellers living on roadside camps. Their vision is that Gypsy and Traveller people across the UK will be able to continue their traditional way of life, which is nomadic.



Please note that CLP have moved office as of the beginning of February to 4th Floor Clarence Chambers, 39 Corporation Street, Birmingham B2 4LS.



THE CRIMINALISATION OF TRESPASS

Police, Crime, Sentencing and Courts Act

In November 2019, the Home Office launched a consultation entitled 'Strengthening police powers to tackle unauthorised encampments'. This sought views on 'broadening the existing categories of criminal trespass'. On 8 March 2021, the Government produced its response to that consultation, in which it indicated the intention to introduce a new criminal offence relating to trespass.

See at:

<https://www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments/outcome/government-response-to-the-consultation-strengthening-police-powers-to-tackle-unauthorised-encampments-accessible-version>

The new offence was contained in Part 4 of the Police, Crime, Sentencing and Courts Bill (PCSCB) which received its first reading the next day. The Act received the Royal Assent on 28 April 2022.

You can find the Bill here:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf>

In summary, the Police Act inserts a new section 60C into the Criminal Justice and Public Order Act 1994 which makes it a criminal offence, punishable with up to three months imprisonment, for someone residing on land with a vehicle to fail to comply

with a request to leave the land. The offence applies if a person is residing, or intending to reside, on land without the consent of the occupier of the land, and has, or intends to have, a vehicle (including a caravan) on the land. The residence or intended residence must also have caused or be likely to cause significant disruption, damage, or distress. The request can be made by the occupier, a representative of the occupier or a police constable. If the person fails to leave the land or, having left, re-enters it, he or she can be arrested and his or her vehicle (which could include a caravan used as a home) can be impounded. It is a defence to show 'reasonable excuse' for failing to comply with a direction to leave the land. The new criminal offence, and the other changes to the existing provisions of the 1994 Act, would apply to both England and Wales.

Gypsy and Traveller support groups question the lawfulness of these new proposals. CLP are instructed by two Travellers to challenge this new offence and we are very interested in hearing from any other Gypsies and Travellers who may be adversely affected by the new criminal offence. Please phone our advice line on 0121 685 8677.

FFT have obtained funding for CLP to put together a training pack and carry out training on the new offence and other amendments to the existing police eviction powers.

WIDE INJUNCTIONS

LB Barking & Dagenham and others v Persons Unknown and others [2022] EWCA Civ 13, 13 January 2022.

Over the last 6 years, some 38 councils in England have obtained what have become known as ‘borough-wide’ injunctions prohibiting ‘persons unknown’ from camping on numerous sites and large swathes of public land within the boundaries of each local authority. Such injunctions have a disproportionate effect on nomadic Gypsies and Travellers, particularly given the long-standing shortage of lawful sites for them to camp on.

The lawfulness of borough-wide injunctions affecting Gypsies and Travellers was first considered, at an appellate level, in the case of *Bromley London Borough Council v Persons Unknown and others* [2020] EWCA Civ 12. The Court of Appeal dismissed an appeal by the local authority against the decision of a Deputy Judge in the High Court to refuse its application for a borough-wide injunction which would have restrained Gypsies and Travellers from camping on 171 pieces of land in Bromley. The Court of Appeal also gave general guidance about when such injunctions should be granted.

See our report here:

<http://www.communitylawpartnership.co.uk/news/the-enshrined-right-to-travel-the-bromley-case>

Shortly after the Court of Appeal had given judgment in the *Bromley* case, it gave judgment in the separate case of *Canada Goose v Person Unknown* [2020] 1

WLR 2802. This case concerned an injunction sought by a retail clothing company against protesters. The Court of Appeal considered the availability of final injunctions against persons unknown. Having considered the judgment of the Supreme Court in *Cameron v Liverpool Victoria Insurance* [2019] 1 WLR 1471, in which Lord Sumption reiterated the “*fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard*” (para 17), the Court of Appeal held (at para 89):

A final injunction cannot be granted in a protester case against “persons unknown” who are not parties at the date of the final order, that is to say Newcomers who have not by that time committed the prohibited acts and so do not fall within the description of the “persons unknown” and who have not been served with the claim form.

Following these decisions, the London Borough of Enfield applied to ‘extend’ the final injunction it had previously obtained in the High Court. The case came before Nicklin J, who made directions bringing all of the 38 borough-wide injunction cases back before the Court for review in the light of the Court of Appeal’s decisions in *Bromley* and *Canada Goose*. By the date of the consolidated hearing in January 2021, Nicklin J had discharged many of

the existing injunctions with the result that the number of claimants had been reduced to 13. In addition three Traveller organisations had formally intervened in the matter: London Gypsies and Travellers (LGT); Friends, Families and Travellers (FFT); and the National Federation of Gypsy Liaison Groups (NFGLG). The Attorney General had also appointed an Advocate to assist the Court.

Nicklin J handed down his judgment on 12 May 2021 - see *London Borough of Barking and Dagenham and Others v Persons Unknown and Others* [2021] EWHC 1201 (QB). Applying the principles laid down in *Canada Goose*, Nicklin J concluded that final injunction orders could not bind non-parties i.e. 'newcomers.'

For our report on this case see:
<http://www.communitylawpartnership.co.uk/news/press-release-is-this-the-end-of-the-wide-injunction>

12 local authorities appealed that decision to the Court of Appeal. The Court of Appeal allowed the appeal, having concluded that the Court of Appeal in *Canada Goose* had misunderstood the decision of the Supreme Court in the case of *Cameron* as well as previous Court of Appeal judgments involving persons unknown injunctions.

Sir Geoffrey Vos, Master of the Rolls, giving the leading judgment stated (at para 7):

I have concluded that: (i) the judge was wrong to hold that the court cannot grant final injunctions that

prevent persons, who are unknown and unidentified at the date of the order, from occupying and trespassing on land, and (ii) the procedure adopted by the judge was unorthodox. It was unusual insofar as it sought to call in final orders of the court for revision in the light of subsequent legal developments, but has nonetheless enabled a comprehensive review of the law applicable in an important field. Since most of the orders provided for review and nobody objected to the process at the time, there is now no need for further action. (iii) Section 37 of the Senior Courts Act 1981 (section 37) and section 187B [of the Town and Country Planning Act 1990] impose the same procedural limitations on applications for injunctions of this kind. (iv) Whilst it is the court's proper function to give procedural guidelines, the court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world.

The Court of Appeal thus concluded that final injunction orders could and did bind newcomers.

The Court also expressed some doubt over the comments made in *Bromley* that there was an "inescapable tension" between the Article 8 rights of the Gypsy and Traveller community and the common law of trespass and that the cases made plain that Gypsies and Travellers have an "enshrined freedom" to travel. However these comments were not part of the decision and it should be emphasised that the

guidance in the *Bromley* case remains good law.

It is important to also remember that, in order for the court to have jurisdiction over any defendants, the claim form must have been served, whether personally or pursuant to an order for alternative service (or service must have been dispensed with by the Court). Any order for alternative service must be such as would reasonably be expected to bring the proceedings to the unnamed defendants' attention.

CLP acted for LGT, FFT and NFGLG at high court and Court of Appeal level. Counsel were Marc Willers QC, Tessa Buchanan and Owen Greenhall of Garden Court Chambers. LGT, FFT and DGLG (in place of NFGLG) are seeking permission to appeal to the Supreme Court.

For the judgment see here:

<https://www.bailii.org/ew/cases/EWCA/Civ/2022/13.html>

THE DEFINITION OF GYPSY AND TRAVELLER

Lisa Smith -v- The Secretary of State for Levelling Up, Housing and Communities and Others [2021] EWHC 1650 (Admin) 17 June 2021

The Government's planning policy for Gypsy and Traveller caravan sites is contained in *Planning policy for traveller sites* (PPTS). Applicants who are covered by this policy benefit from a number of advantages, including a somewhat more relaxed approach to rural development. In the original version of PPTS, published in 2012, the policy was stated to apply to:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

In August 2015, the Department for Communities and Local Government published a revised version of PPTS which modified the definition to remove the words "or permanently", thus excluding from the policy those who had permanently ceased to travel on the grounds of their own, or their family's or dependants', educational or health needs or old age.

Lisa Smith is a Romany Gypsy who lives with her extended family in caravans on a private site. She challenged the lawfulness of the 2015 policy definition following the decision of a Planning Inspector to refuse her planning appeal. The Planning Inspector found that she did not come within the revised definition of Gypsies and Travellers and therefore could not rely upon the more permissive policies in PPTS. Ms Smith applied for a

statutory review of this decision under Town and Country Planning Act 1990 s 288. Four Gypsy and Traveller organisations together with Liberty and the Equality and Human Rights Commission were granted permission to intervene. The four organisations were: London Gypsies and Travellers; Friends, Families and Travellers; Southwark Travellers Action Group; and the National Federation of Gypsy Liaison Groups.

The Government did not dispute the fact that the amended definition was *prima facie* discriminatory. The Judge, Mr Justice Pepperall, referred to the equality impact assessment carried out by the Government prior to changing the policy:

49. In June 2015, the Secretary of State undertook an impact assessment of the new planning policy in accordance with the public sector equality duty pursuant to s149 of the Equality Act 2010. Such analysis concluded:

'We recognise that this proposal will have an impact on the identified racial group i.e. Gypsies and Travellers. We note, for example, that Romany Gypsies and Irish Travellers are a protected race under the Equality Act 2010....Additionally, within this group there is likely to be a specific impact on the elderly, disabled and possibly women (particularly those from single parent families). We recognise that age, disability and gender are also protected characteristics under the Act.

The impacts are likely to be on article 8 rights to private and family life, home and correspondence. For

example, this could mean that those persons without family connections will no longer be able to live with other members of their Gypsy and Traveller community'.

The only issue was therefore whether this discrimination was justified. Pepperall J accepted that Gypsies and Travellers faced serious difficulties in obtaining planning permission (para 47):

There is, however, clear evidence before me that there is an endemic problem, and I am entitled to express disquiet as to the poor outcomes achieved by so many Gypsies and the disproportionate difficulty faced by many Gypsies and Travellers in obtaining planning permission.

Pepperall J also noted the evidence of the Interveners as to the effect of the amended definition:

52. In 2019, the EHRC published its research report, Gypsy and Traveller Sites: The Revised Planning Definition's Impact on Assessing Accommodation Needs. The report's key finding was that the pre-2015 assessment of a sample of 20 local planning authorities that a further 1584 pitches were required fell to just 345 plus a further 450 pitches for households whose travelling status had not been ascertained. Dr Siobhan Spencer MBE, a trustee and co-founder of the National Federation of Gypsy Liaison Groups, observes that the report showed that PPTS 2015 had led to a sharp drop of almost 75% in the provision of pitches.

53. Ms Kirkby [of FFT] explains that nearly half of those assessed as needing a pitch in the south east fall outside the PPTS 2015 definition of

Gypsies and Travellers. Since the needs of such people will not be counted by Local Authorities assessing the required number of pitches, there will be inadequate provision for Gypsies and Travellers both now and for future generations.

Nevertheless, the Judge found that the amended definition was justified. He placed reliance on the Court of Appeal judgment in *Wrexham County Borough Council v National Assembly of Wales* [2003] EWCA Civ 835, which considered the lawfulness of a previous definition of Gypsies and Travellers for planning purposes:

78. The Wrexham Case authoritatively dealt with the position under article 8. While the case was not argued on the basis of article 14, the Court of Appeal's clear conclusions are instructive on three issues:

78.1 First, that the ambit of the then applicable planning policy for Gypsies and Travellers was functional in that it focused on the applicant's way of life and consequent land-use needs, rather than upon his or her cultural needs.

78.2 Secondly, the rationale for such policy was that a nomadic lifestyle brings with it special needs in that it renders nomads more vulnerable to homelessness if subjected to the normal rigours of planning control.

78.3 Thirdly, that once a Gypsy or Traveller gives up his or her nomadic lifestyle, there is no justification for continuing to apply a more relaxed planning regime provided the planning system continues to respect the applicant's article 8 rights.

79. I am satisfied that PPTS 2015 remains at its core a functional test of nomadism and that its focus is upon the specific land-use needs of those leading a nomadic lifestyle.

The Judge continued:

80. In my judgment, the Secretary of State was plainly justified in drawing a distinction between the specific land-use needs of those seeking to lead a nomadic lifestyle and those seeking a more settled existence. The former throws up particular challenges both for applicants and planning authorities, and the Secretary of State was entitled to devise a specific policy focusing on that issue which did not also seek to address the cultural needs of those Gypsies and Travellers now seeking a permanent home.

The Judge further stated:

81. It was a matter for the executive and not the judiciary to determine whether:

81.1 The PPTS should make provision for the land-use needs of all Gypsies and Travellers irrespective of whether they remain nomadic or have ceased travelling.

81.2 Alternatively, the policy should make discrete provision only for the land-use needs of Gypsies and Travellers who remain of a 'nomadic habit of life' and make provision for the needs of permanently settled Gypsies and Travellers through the mainstream planning system.

82. There is nothing inherently objectionable to the executive choosing to take the latter approach as it did between 1994 and 2006 and again from 2015, provided that the

system is capable of taking into account the article 8 rights of permanently settled Gypsies and Travellers and their particular personal circumstances.

means of achieving a legitimate aim to limit PPTS 2015 to the particular land-use needs of nomadic Gypsies and Travellers.

Pepperall J concluded:

87.1 It was a legitimate aim to distinguish between the land-use needs of nomadic people and of the settled community.

87.2 Provided the planning system as a whole takes into account the particular needs of Gypsies and Travellers who have retired from travelling, whether through age or disability, it was a proportionate

Ms Smith has been granted permission to appeal to the Court of Appeal and the final hearing of that appeal is listed for 29 and 30 June 2022. Three of the Gypsy and Traveller organisations that intervened in the court below (together with the Derbyshire Gypsy Liaison Group replacing the National Federation) have been given permission to put in written submissions.

ADVERSE POSSESSION

Milton Keynes Council v Nathan Wilsher and Persons Unknown [2022] EWHC 578 (QB), 23 March 2022.

The Claimant was the registered proprietor of Two Mile Ash Farm. The dispute concerned three fields (‘the Land’) that formed part of the land. The Claimant took action against the First Defendant as a trespasser. The First Defendant defended the action on the basis of adverse possession.

The relevant provisions of the Land Registration Act 2002 came into force on 13 October 2003. The First Defendant accepted that he could not satisfy the requirements of the 2002 Act so as to obtain registration on the basis of adverse possession since October 2003. However Mr Justice Eyre accepted on the evidence that the First Defendant

and his father before him had been in adverse possession of the Land by grazing horses and other livestock for a period of at least 12 years before 13 October 2003.

Thanks to Tim Jones of No 5 Chambers, who acted for Mr Wilsher, for bringing this case to our attention.

SITE ALLOCATIONS

Ashford Borough Council

Following a judicial review challenge by a Gypsy woman who is on the Council’s waiting list, the Council has withdrawn its site allocations policy, which simply allocated pitches on a first come first served basis (which, it was argued, was in breach of the Equality Act 2010) and replaced it with a banding system which takes account of personal circumstances such as health and disability.

Dame Laura Knight

In this edition we feature some of the paintings of Gypsies and Travellers by the British artist Dame Laura Knight.





TRAVELLERS ADVICE TEAM

The members of TAT are Chris Johnson, Parminder Sanghera and Sharon Baxter.
Our TAT Administrator is the CLP Practice Manager, Emma Westwood.
Thanks to TAT Admin Team for putting together this Bulletin.

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 1pm

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, Clarence Chambers
39 Corporation Street
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Tel: 0121 685 8595

E-mail: office@communitylawpartnership.co.uk

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