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## Response to the Communities and Local Government Consultation Paper

### *A new approach for resolving disputes and proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)*

#### 1. Introduction

This paper is submitted by the Traveller Law Reform Project in response to the above Consultation paper. The paper has been drafted with the assistance of the Travellers' Advice Team at the Community Law Partnership (solicitors in Birmingham) and the Gypsy and Traveller Team at Garden Court Chambers in London.

The Consultation paper presents itself as an analysis of the position with regard to the Mobile Homes Act 1983 as it currently stands. In so doing, the paper fails to properly address the fact that the Housing and Regeneration Bill which is currently passing through Parliament will remove the exclusion of local authority Gypsy and Traveller sites from the protections of the MHA 1983.

Aside from that, the Consultation paper also fails to properly address the fact that Gypsies and Travellers on non-local authority rented sites are already within the provisions of the MHA 1983.

Basically, the situation for residents on MHA 1983 sites as at present can be summarised as follows:-

1. In terms of possession/termination actions, the park owner will require a court order whether or not there is an arbitration clause in the licence agreement;
2. It appears that the majority of licence agreements do not have arbitration clauses. In terms of other types of disputes, residents will, if necessary, be able to issue or defend such actions in the county court;
3. A minority of agreements do have arbitration clauses Residents who have such agreements will have to have any disputes dealt with by way of arbitration apart from possession actions.

## 2. Chapter 2 – Options for Change

### 2A. Option 1

2.1. Para 13. We agree.

2.2. Para 14. Generally speaking, tribunal proceedings are just as formal, adversarial and legally complex as court proceedings. It is just as likely that people of low or modest incomes will require the services of a lawyer or expert adviser but the difference is that Legal Aid is not available for such proceedings and thus those on the lowest incomes will be deprived of any representation (unlike in county court proceedings). Any switch to the use of tribunals rather than the courts is likely to result in the majority of the poorest and most vulnerable residents of mobile home parks (including the poorest and most vulnerable of the Gypsy and Traveller community under the new proposals) being deprived of any legal representations. In cases that did not involve possession proceedings, the poorest and most vulnerable residents would clearly not be able to obtain any legal representation whatsoever.

2.3. Paras 15 and 16. Historically, the problem with certain mobile home parks has been individual rogue park owners using intimidation and harassment. It is not made clear what evidence there is to show that such rogue owners rely on threats of court action. The anecdotal evidence that is available rather points to such rogue owners using whatever methods might work best to their ends. Additionally, it is not accepted that a threat of court action is any different from the threat of tribunal action in terms of attempts at intimidation of residents. Threats of court action will be just one of many methods of intimidation and threats used by rogue park owners. No hard evidence is produced to back up the statements made in this paragraph.

2.4. Para 17. We do not believe there is any evidence that the situation “in this particular sector of the residential market” is any different from the situation in any other sector. Moreover Gypsies and Irish Travellers (recognised ethnic groups under the Race Relations Act 1976) are now to be included within the provisions of the MHA 1983. This is in response to the finding of the European Court of Human Rights in *Connors – v – UK* (May 2004) that, effectively, the lack of security of tenure on local authority Gypsy and Traveller sites amounted to a breach of Article 8 (right to respect for private and family life and home) of the European Convention.

2.5. It would be most unfortunate if the poorest and most vulnerable members of the Gypsy and Traveller community were immediately deprived of (where necessary) their access to the courts. How is this discrimination against two ethnic groups to be justified? Moreover, since these Gypsies and Travellers have local authority landlords, it is to be hoped that the kind of problems experienced with “rogue park owners” will not be replicated.

**For all of the above reasons we believe that disputes and proceedings under the MHA 1983 should remain within the jurisdiction of the county court.**

2B. Option 2

- 2.6. Para 20. It is a major disadvantage that Residential Property Tribunals (RPTs) do not (as accepted by the Government) have any relevant knowledge or experience.
- 2.7. Para 21. The major problem is the lack of Legal Aid and the lack (in most cases) of costs awards. Most disputes will inevitably involve complex legal issues which residents of MHA sites will find it very difficult, if not impossible, to deal with without legal advice and representation. Some cases will involve complex facts and may (for example, in a disrepair case) involve expert evidence which the park home owner may be able to afford. Most residents will not be able to do so. In certain cases, without expert evidence the resident will be unable to prove his/her case.
- 2.8. Once again two ethnic groups will be specifically excluded from proper access to advice and representation without proper justification. All tenants of bricks and mortar accommodation have a right, if it proves necessary, to take disputes to court and to obtain Legal Aid if they are financially eligible. Gypsies and Travellers on MHA sites will be excluded from those possibilities.
- 2.9. Yet again, no statistical or other evidence is provided to back up the Government's case. Indeed the authors of this paper are unaware of any such evidence. There is a strong suspicion that this is mainly a cost cutting exercise largely to benefit the Legal Aid budget.
- 2.10. Para 22. We do not believe that cases before RPTs are dealt with anymore speedily or, in reality, any more informally than cases before county courts. The authors deal with many planning public inquiry cases on behalf of Gypsies and Travellers. These cases take place before Planning Inspectors. These supposedly informal tribunals are, in fact, just as formal as a county court. Witnesses are heard and examined and cross-examined in the usual way. Hearing bundles are used. There are opening and closing speeches. Experts are called.
- 2.11. In Public Inquiries, in planning cases, the appellant can also request that the matter be dealt with on the papers. However, it is undoubtedly our experience that an appellant is much more likely to be successful at the full hearing when all the evidence can be presented and tested.

**For the reasons given above, we do not believe that disputes and proceedings under the MHA should be transferred to residential property tribunals. The consultation paper gives the impression that the exclusion of disputes relating to termination of agreements is a concession whereas it has always been the case, since the inception of the MHA, that a park owner can only obtain possession by means of a court order.**

2C. Option 3

2.12. Para 29. We agree with the additional disadvantages listed here.

**For the reasons given above, we do not believe that disputes and proceedings under the MHA should be transferred to a dedicated tribunal.**

**We support Option 1**

**3. Chapter 3. Which jurisdictions to transfer to a tribunal**

**Question 5. We do not feel that any matters should be transferred to tribunals. We would point out that Alternative Dispute Resolution (ADR) is an essential part of the Civil Procedure Rules (the White Book Volume 2 2008 Edition from p2503). If the parties are willing to enter into a mediation process, then a county court judge would expect them to do so before any court adjudication takes place.**

**Question 6. We believe, for all the reasons we have given above and for the reasons elucidated at para 34 of the Consultation paper, that it would be completely unjust, unreasonable and discriminatory if possession/termination of cases were referred to tribunals. People should not face the risk of being evicted without having the chance of proper advice and representation (see *Connors – v – the UK, McCann – v – the UK* and *Tsfayo – v – the UK*).**

Proposals relating to the general jurisdiction of county court

3.1. We have already explained why we feel that disputes, if not resolvable by informal mediation or by ADR, should be resolved by the county court. The county court has the requisite vast breadth of experience. Legal Aid is available for the poorest and most vulnerable residents. Costs can be awarded. Unless there is to be a general proposal by Government to transfer certain disputes from the courts (which we would wish to address if that occurred), we do not believe that there is any justification for introducing a different system for residents of mobile home parks and for Gypsies and Travellers.

**Question 7 and 8. For all the reasons given above, we do not agree.**

**Question 9. We do not agree. All matters involved in a possession action should be dealt with together.**

**Question 10. We have already given full reasoning.**

Proposals on arbitration

3.2. Paras 41 onwards. Extremely important points are made here. The power balance between park owners and potential new residents dictates that the new resident will not be in a position to insist on re-negotiation of any clause or

clauses of the park homes agreement, including any arbitration clause (whether that clause is good, bad or indifferent). Additionally, the prospective resident may not understand the relevant clause or clauses.

- 3.3. We have already mentioned the possibility (also referred to at para 42) that the proposed arbitrator may not necessarily act impartially.

**Question 11. We feel the Government has very accurately expressed the case against compulsory referrals to arbitration. It is, therefore, most unfortunate that, effectively, a gun is put to the head of residents and Gypsies and Travellers on this issue: “either accept our proposal of referral to tribunals or we will leave you with an admittedly unsatisfactory system”. For all the reasons explained in the Consultation paper, we feel a *separate* decision should be made to remove compulsory referral to arbitration.**

**Question 12. We believe it should apply retrospectively. It would be most unfortunate if there were totally different agreements running in tandem. Moreover, park owners might avoid the need to renegotiate agreements so as to retain the arbitration clause.**

**Question 13. We agree that there should be the possibility of referral to arbitration. We agree that any such voluntary arbitration should be binding. We believe that there should be an independent arbitration service available, independent of site owners.**

#### Site Licensing

**Question 14. For the reasons given in the consultation paper, we agree.**

#### **4. Chapter 4 – Onward Appeals**

- 4.1. Our responses here are, of course, subject to our position that Option 1 is the correct option.

**Question 15. For the reasons given in the consultation paper, we prefer Option 3 (right to appeal with permission).**

#### **5. Chapter 5 – Procedure Rules and Fee Structures**

Since we are opposed to referral of disputes to the RPT, we will not comment on this section.

#### **6. Annexes**

##### Annex B

- 6.1. We welcome the clause in the HRB which will remove the exclusion of Gypsies and Travellers from the protection of the MHA 1983. Given that, in the near future, the MHA will apply to all Gypsies and Travellers on rented sites and

given the fact that it already applies to Gypsies and Travellers resident on non-local authority sites, we are surprised that only one Gypsy and Traveller organisation has been included in the list of consultees, albeit that that is our organisation!

**We ask that the consultation be urgently widened out.**

Annex E – Legal Aid and Justice Impact Test

- 6.2. We do not believe that any savings would be justified in the face of effectively denying poor and vulnerable members of the community access to justice.
- 6.3. The estimated legal costs given at p51 seem far too generalised (based on legal costs of all cases heard by county courts).
- 6.4. At p52 it is stated that “RPT hearings are usually held locally”, “RPTs can deal with cases speedily” and “RPT decisions are published and are available to members of the public”. All of this can equally be said of the county court.
- 6.5. Specific Impact Tests (p59). Given the impact this will have on Romani Gypsies and Irish Travellers on rented sites, both now and in the future, race equality and human rights impact assessments should have been carried out.

**We recommend that such assessments now be carried out as a matter of urgency.**

Traveller Law Reform Project, July 2008