

Traveller Law Reform Project

Newsletter: May 2010

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The Traveller Law Reform Project appointed a new Policy Development Officer in mid January 2010. The focus is on promoting law reform to have a positive impact on Traveller communities, and supporting members of those communities to participate in the policy formulation process. The work also encompasses a range of areas including parliamentary links/lobbying, Government Departments, Equalities and Human Rights Commission, and a wide alliance of organisations.

The first months of 2010 have been framed by the context of the pending General Election, and the significant issues for TLRP and the G/T communities.

An important theme of the work is public service delivery. There is a focus on the interlinked areas of - accommodation, education, health and others ,as a whole.

The shortage of sites and pitches, and the issues around 'security of tenure' (SEE REPORT) lead to major difficulties accessing public services, and this is, of course, a major impediment to social inclusion and community cohesion.

The Project is aiming to build on a capacity to develop and extend existing networks of consultation with the Traveller communities, and also at a strategic level, support strategies for a successful engagement in the political process.

The framework for the TLRP at the start of 2010 has included; The Mobile Homes Act and security of tenure issues; Single Equalities Act; Government Departments – CLG/DCSF/ Health – single equality schemes; APPG status pre and post election; policy positions relating to Travellers; EHRC practice and guidance; The Criminal Justice System; Human Rights Inquiry; Traveller Education/ access for GRT children and young people to education/mainstreaming agenda/other; Equality Impact Assessments – Delivery of public service.

In the months ahead the aim will be to clarify the status of legislation in relation to Traveller communities, with a view to reassure members of those communities that there can be confidence in the government to ensure that Human Rights and anti-discrimination legislation is being used to protect the interests of those communities.

Security of Tenure

On 10th Feb 2010 an email regarding the Government's decision to not implement the provision in the Housing Regeneration Act 2008- (That there was insufficient parliamentary

time before the General Election)- to extend security of tenure on local authority Gypsy and Traveller sites under the Mobile Homes Act 1983.

Chris Johnson, solicitor of the Community Law Partnership, made available detailed information, and supported Travellers who wished to put the case to government and local councils, that security of tenure should be introduced. Clients of CLP and Gypsy and Traveller support groups were informed that **elements** could be made of local authorities to add 'provisions' to their licence agreements to avoid a continuing breach of the European Convention. In a letter to CLG Chris Johnson pointed out the following 'by the time of the General Election it will be six years since the European Court of Human Rights Judgement accepted by the British Government in 2007, indicated this would be a change in law by way of the Mobile Homes Act 1983.

An immense amount of work was put into a consultation process over that period of time by Traveller support groups and lawyers of behalf of Travellers.

- In brief: February 2010 CLG announced that parliamentary time could not be found to debate the Statutory Instruments that would bring into force Section 318 of the Housing and Regeneration Act. (SEE NOTES) SEE – Security of Tenure on L.A Gypsy Traveller sites BRIEFING Paper – Community Law Partnership/
- Possible Action – Judicial Review; distribution of CLP flyer – Gypsies and Travellers Put Your Case; MPs and Lords contacted- support for adjournment debates and Ministerial statement; ask Chairs of the Joint Parliamentary Committee on Human Rights and the APPG to take action.
- TLRP Contact with CLG.
- Report AOR.
- SEE Baroness Janet Whittaker –tabled Question 17th March 2010-

House of Lords/ 17 March 2010: Column 598 <http://tinyurl.com/y9shhnc>

A petition was handed into Downing Street calling for a Statutory Instrument dealing with security of tenure, to be presented to Parliament.

SEE letter from The National Federation of Gypsy Liaison Groups "... agree with and support the statement made by Lord McKenzie of Luton: House of Lords/ 17th March 2010:

Column 598 in reply to

"The issue needs to be brought in without the assignment clause."

... [NFGLG] fully support the full debate and a decision that will improve security of tenure for the communities as a whole."

Education

In Brief

Traveller Education Services were established in local authorities around the country in order to address the issues underpinning Traveller children accessing education.

Mechanisms for funding varied from the 1970's onwards through No Area Pool arrangements, Bids to the Department for Education for matched grant funding, to local authorities having amounts of money for a range of groups including Travellers.

TEs have been specialist teams, addressing the needs of Traveller children and young people from 0-19years. They have supported schools, and worked in partnership with other agencies, and most importantly have been a key liaison link with the Traveller communities.

There has been a major shift in the way services are organised and delivered, although the specific character varies between local authorities.

At a national and local level there is a mainstreaming agenda which will result in the loss of specialist expert services with Good Practice being embedded in schools, and guidance being available from government departments. This will

be linked to funding going to schools.

SEE SUMMARY REPORT – Notes and References

TLRP

References:

Commence January 2010

- Human Rights Inquiry – research, public polling focus group work, and public evidence sessions. Reports and summary
www.equalityhumanrights.com/humanrightsinquiry
- Report - Human Rights Inquiry – Executive SUMMARY – EHRC

- HRA plus Human Rights for 21st Century Britain - A response to the Green Paper Rights and Responsibilities: developing our constitutional framework; developing a Bill of Rights for the U.K
- Joint Commission on Human Rights – publications – www.tso.co.uk/bookshop
scr@parliament.uk
- EHRC Inequalities experienced by Gypsy and Traveller communities; a review – Sarah Cemlyn, Margaret Greenfields, Sally Burnett, Zoe Matthews and Chris Whitwell.
- All Party Parliamentary Group- SEE notices post General Election

- Publications

Legislative Scrutiny; Crime and Security Bill; Personal care at home Bill; Children schools and families Bill. Children’s Rights; Government response to the Committee’s 25th report of session 2008/9.

Reports available from the Stationary Office

- CLG: Single Equality Scheme; ‘security of tenure’ matters; political party policies.
- DCSF
 - Equalities Issues
 - Consultation on Education Funding

Other References

- Government Departments – matters arising
- TESSs/NATT/ACERT/DCSF
- Post General Election
- London TESSs co-ordinators
- LGT forum
- NATT conference
- Political parties – policies
- Security of Tenure – Report A o R, SEE notes
- Child Poverty Bill – SEE Reference Notes

- British Waterways Consultation on Moorings Policy for England and Wales;
pandorinbow@hotmail.com
- GRTHM
- Government Equalities Office – Equality Act – Policy Statement
- Paper – Facilitating the Gypsy and Traveller Way of Life in England and Wales through the courts – M. Willers, A. Ryder, C. Johnson
- EHRC – stakeholders - Single Equality Act
- Guidance Documents
- Inter Agency Links SEE List
- Shelter Training – SEE notes
- Roma Support Group
- Romani Mobilities in Europe – Oxford University Conference Paper
- Scottish Gypsy Travellers – SEE
www.publications.parliament.uk/pa/dhonsard/text/1100111-0011.htm

- Child Poverty Bill

Lords Hansard for 21st January 2010 [Grand Committee – columns 175-187] Note: ‘qualifying household’ - relevant income group, communal accommodation Child Poverty target 2010.

The draft regulation requires a qualifying household to have a postcode and receive no more than fifty items of mail per day. ‘Child Poverty needs assessment on local areas – child poverty strategy

Consultation with....persons or bodies as the authorities think fit. Meaning CHILD – under age 16yrs.

- Security of Tenure [Mobile Homes Act – L.A. Gypsy and Traveller sites.]

Matters arising – CLG announced that parliamentary time could not be found to debate the statutory instruments that would bring into force section 318 of the

Housing and Regeneration Act ...make amendments to Schedule One of the Mobile Homes Act. SEE Report/Notes. SEE – Security of Tenure on L.A. Gypsy and Traveller sites Briefing Paper – Community Law Partnership.

- Baroness Janet Whitaker tabled Question **17th** March 2010
- Article – Notes on the new Conservative Party Policy by Lord Avebury/ Thomas Acton/ Andrew Ryder/ Marc Willers – www.irr.org.uk/2010/february/ha000032.html
- Reference: DCSF Equality Impact Assessments

N.B Abrams Dominic and Diane Houston (2005) Equalities, Diversity and Prejudice in Britain; results from the 2005 National Survey, Centre for the Study of Group Processes (University of Kent) for the Cabinet Office Equalities Review:
[//archive.cabinetoffice.gov.uk/org.uk/kentequality.pdf](http://archive.cabinetoffice.gov.uk/org.uk/kentequality.pdf)

Other

- The Future Distribution of School Funding
consultaion.unit@dcsf.gi.gv.uk
- EHRC
- Equality Act – Monitoring/Audit
- Human Rights
- Post General Election 2010

NOTICE

All citizens have the right to request an Equality Impact Assessment from the Chief Executive of their local authority to confirm that, a review takes place, if the delivery of services including education, has been affected by any changes or re-organisation within a local authority.

For advice and/ or support contact: info@travellerslaw.org.uk

THE HISTORY OF LOCAL AUTHORITY GYPSY/TRAVELLER SITES WITH REGARD TO THE QUESTION OF SECURITY TENURE

Domestic attempts to challenge the lack of security of tenure on local authority sites and relying on the Human Rights Act 1998 were unsuccessful – see Somerset County Council – v – Isaacs and Security State for Transport, Local Government and Regions [2002] EWHC 1014 Admin, and R (Smith) – v – Barking and Dagenham LBC Secretary of State for the Office of the Deputy Prime Minister [2002] EWHC 2400 Admin. Petitions to the House of Lords were refused leave in those cases.

In May 2004 Mr Connors application to the European Court of Human Rights (Connors – v – UK [2005] 40 EHHR 9) was successful and the ECtHR indicated that the eviction of Mr Connors without him being able to put his case in Court was a breach of Article 8.

In a memorandum to the Committee of Ministers the Government indicated that they would need to change the law and that the change of the law in the Housing Act 2004 by allowing (under Caravan Sites Act 1968 Section 4) Judges to suspend Possession Orders against residents of local authority sites was not sufficient. Thus is stated: -

“The UK government accepts that [the power to suspend] does not fully resolve all the issues raised by the case...Ministers have accepted during the passage of the Housing Act 2004 that tenure on local authority Gypsy and Traveller sites is out of line with tenure in bricks and mortar social housing, and that public sites have strong similarities to social housing in terms of client profile, landlord profile and management needs...Ministers have indicated that the most suitable way to take any proposals forward would be as part of future legislation on tenure reform relation to bricks and mortar housing.”

In early 2005 Chris Johnson (C.J.) suggested to the then Head of Gypsy and Traveller Unit within the Office of the Deputy Prime Minister that the “Connors problem” could be resolved by amending Section 5 of the Mobile Homes Act (MHA) 1983. She did not think it was a suitable suggestion.

On the 4th of July 2006 Julie Morgan MP moved a Ten Minute Rule Bill (The Caravan Sites Security of Tenure (and Related Clauses) Bill 2006). That was the first and last appearance of that matter before the House of Commons and that Bill was largely produced to indicate security of tenure could be introduced without great difficulty. (Bill drafted by Chris Johnson)

On 15th November 2007 the Housing and Regeneration Bill was published and this included a clause (which eventually became Section 318 of the Housing and the Regeneration Act 2008) which would duly amend Section 5 of the MHA 1983 (!)

In the case of *Doherty – v – Birmingham City Council* [2008] UK HL57, the house of lords indicated that they would have granted a declaration of incompatibility with regard to MHA 1983 Section 5 but for the fact that the Government were now in the process of amending the legislation, For example, Lord Hope stated at paragraph 51:

[It is worth noting that in July 2005 Oxfordshire County Council introduced a clause into their new licence of agreements for their six Gypsy/Traveller sites that incorporated security of tenure (along the lines of the security of tenure enjoyed by Council tenants of houses and flats), such clause lasting until such time as the Government introduced security of tenure on all sites.]

On reflection I agreed that it would be appropriate to make such a declaration in this case Indeed I have considered that the decision of the Strasbourg Court in Connors left the House with no alternative but to do this...In the events that have happened, however, the making of a declaration has become unnecessary. Sections...of the Housing and Regeneration Act 2008 leave the choice of the commencement date for the relevant provisions to the secretary of state but there is no longer any need for the 1983 Act to be amended under the power of section 10 (2) HRA gives to the Minister

In the meantime the Government had entered into a consultation process dealing with how all of the provisions of the MHA 1983 would apply (or otherwise) on local authority sites. It should be noted that it has always been accepted that the security of tenure provisions (as contained in MHA 1983 Schedule 1 Part 1 paragraphs 4 to 6) would remain the same. Thus the consultation dealt with all other aspects of the MHA 1983 such as assignment succession, right to repair, right to move the mobile home, written statements etc. On this point, add that in early 2008 C.J. had made the point to CLG that they could just proceed with bringing into force the security of tenure provisions and then take their time with regard to the other provisions, but was informed that the matter could not be dealt with “piecemeal”.

There have been four consultation papers all from Communities and Local Government during this process namely:-

1. *A new approach for resolving disputes and proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended): a consultation paper; (May 2008);*
2. *Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites: Consultation (September 2008);*
3. *Dispute resolution under the Mobile Homes Act 1983 (as amended): Summary of responses and further consultation; (May 2009);*
4. *Further consultation on termination provisions in the Mobile Homes Act 1983 (as amended): Government response; (December 2009);*

The latest paper (not strictly a consultation paper) reported back on jurisdiction with regard to possession actions and concluded that actions brought under paragraph 4 or 5 should still be brought in the County Court but that actions brought under paragraph 6 [detrimental to the amenity of the site] would need to be commenced in the Residential Property Tribunal and that no application for termination of an agreement could be made to the County Court until that tribunal had concluded that the house was detrimental and was satisfied either that it should not make a repairs order or was satisfied that, having made an order, the repairs ordered had not been carried out.

CLG indicated that the necessary changes to the MHA 1983 would be brought through parliament and that the MHA 1983 would be brought into force on local authority sites by or on 6th April 2010.

In an email from an officer of CLG on 10th February 2010 to various Gypsy and Traveller organisations-

Unfortunately, due to pressure on parliamentary time leading up to the General Election, slots cannot be found to debate Statutory Instruments that would: -

- *Bring into force section 318 of the Housing and Regeneration Act (bringing LA sites into the Mobile Homes Act) and make consequential amendments to the Mobile Homes Act and*
- *Make amendments to Schedule 1 (the implied terms) the Mobile Homes Act*

[Therefore these Statutory Instruments will not be laid in parliament before the General Election]

The Whips advised that time could not be found for all the proposed secondary legislation from across all Government departments and ministers were asked to make a decision on Government priority...

We have to been given a publication date for the summary of responses for the consultation and doubt we will publish this before the election. The work that has been done will put aside pending decisions by ministers following the election...

Notes taken-courtesy- Chris Johnson CLP

SEE: Briefing paper.//Note on Actions//Housing and Regeneration A2008S. 318//A.O.R.

Notes

SEE: CLG Gypsy and Traveller Site Management; Good Practice Guide (July 2009)

SEE: Oral question in the House of Lords – Baroness Whitaker – 17th March 2010-05-09

SEE: Attendance note of Chris Johnson (CLP) on some issues surrounding the Security of Tenure Issue

Memorandum to Committee of Ministers regarding Connors v. United Kingdom judgement.

The United Kingdom accepts that certain general measures are necessary in order to give effect to the judgement of the Court in case of Connors v. United Kingdom. In this context, the Government draws attention to the following changes in domestic law:

The housing Act 2004 allows judges to suspend eviction orders against residents of local authority sites. This brings the situation for residents of local authority sites in line with those on private Gypsy and Travellers sites and those with secure tenancies in bricks and mortar housing in this respect. It gives discretion to a court, which is able to suspend the eviction for periods of up to 12 months at a time on terms. This provision will come into force on 18 January 2005. So, in cases on anti-social behaviour an eviction order could be suspended on condition that there is no further anti-social behaviour.

The nature of judicial review has also changed after the Human Rights Act came into force (Mr Connors' case predates the Act). In R (Wilkinson) v Broadmoor Hospital RMO [2002] 1 WLR 419, in application for judicial review of decisions on essentially factual questions, the Court of Appeal held that there should be cross-examination of witness in order to determine those matters and that, on that basis, the judicial review procedure would be compatible with Article 6.

The UK government accepts that the above does not fully resolve all the issues raised by the case. ODPM is currently carrying out a comprehensive Review of Gypsy Traveller accommodation policy which, among other things, is considering further the issue of security of tenure and how to give the effect to the judgement of the Court in *Connors v. United Kingdom*.

Ministers have accepted during the passage of the Housing Act 2004 that tenure on local authority Gypsy and Traveller sites is out of line with tenure in bricks and mortar social housing, and that public sites have strong similarities to social housing in terms of client profile, landlord profile and management needs.

To make reforms to the security of tenure of gypsies on local authority sites requires a great deal of further work. This work could not be carried out in the timescales of the Housing Act 2004., which was already well advanced when the *Connors* judgement was given. The policy review is considering what is the best way forward and whether that would be to align the position of Gypsies and Travellers on local authority sites with those in mainstream social housing.

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Ministers have indicated that the most suitable way to take any proposals forward be as part of future legislation on tenure reform relating to bricks and mortar housing. The Law Commission are preparing a draft Bill which will be delivered to the Department early in 2005. The Law Commission's original consultation did not address security of tenure issues for Memorandum to Committee of Ministers regarding *Connors v United Kingdom* judgement.

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Annexe to the memorandum

Other changes are currently underway or have been put in place which will improve the overall position of Gypsies and Travellers in terms of their accommodation and social inclusion:

Steps are being taken to mainstream Gypsy and Traveller provision within the housing and planning systems, to ensure that their needs are properly considered alongside the needs of other groups/

Under new measures in the Housing Act 2004, local authorities will be required to review the accommodation needs of 'gypsies and travellers' residing in, or resorting to, their district when carrying out reviews of housing needs under section 8 of the Housing Act 1985.

Under section 87 of the Local Government Act 2003, the Secretary of State (in respect of England) or the National Assembly for Wales (in respect of Wales) may require a local housing authority to prepare and supply them with a strategy in respect of housing matters. It is anticipated that the Secretary of State and the National Assembly for Wales will require local housing authorities to prepare and supply a strategy under the section in respect of the meeting of the accommodating needs of Gypsies and Travellers in their district. The new measures in the Housing Act 2004 require local authorities to take any such strategy into account when exercising their other function. This can include functions relating to planning, education, social care etc as well as housing.

The new planning system will ensure a systematic and comprehensive approach is taken to the assessment of housing needs and site provision and that sites are included in local development plan documents.

The permissible purposes of the Housing Corporation will be extended to allow Registered Social Landlords (private sector providers of publicly funded social housing) to provide as well as manage Gypsy and Traveller sites, and receive public subsidy to do so.

We are also revising Planning Circular 1/94, which deals with Gypsy and Traveller sites, to overcome some of the obstacles to site provision.

The Gypsy Sites Refurbishment Grant (GSRG) continues to support the improvement and expansion of the local authority network of sites. GSRG will be providing £8m funding for this purpose in 2005/06. The scope of the grant has also been widened for 2005/06 to cover the provision of new residential sites.

The Social Exclusion Unit based within ODPM has embarked on a study into 'Better Service Delivery for Disadvantaged People who Move Frequently' which will include an examination of the particular issues faced by Gypsies and Travellers.

The ODPM Policy Review is also considering further what actions can be taken to improve the availability of sites and overcome the barriers to provision.

End of Section