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*The Traveller Law Reform Project works on behalf of London Gypsy and Traveller Unit,
the Irish Traveller Movement in Britain, the Gypsy Council,
Friends Families and Travellers, and Canterbury Gypsy Support Group.*

Traveller Law Reform Project response to *Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain – a Consultation Paper*

Introduction

For many years, Gypsies and Travellers benefitted little from race equality legislation until the Race Relations (Amendment) Act was passed in 2000. The introduction of a public duty to promote equality and good race relations and, more importantly, powers of enforcement, gave leverage to begin to address areas of grave inequality at legislative and local government level, which the CRE vigorously took up, particularly in accommodation and planning.

We do not want to lose these gains. We do not want to see any weakening of enforcement powers. Our experience prior to the passage of the 2000 Race Relations (Amendment) Act convinces us that voluntary guidance does not work. The Gypsy and Traveller communities are made up of small, unpopular, dispersed groups who former CRE Chair Trevor Philips recognised as routinely experiencing some of the worst discrimination. They make a very good litmus test for any equality legislation – if it works for them, it will probably work for everyone.

Overall, we think the language in the consultative document is too permissive. For instance, differential treatment should be seen as the exception which has to be rigorously justified, not one of various alternatives. There should be recognition of the uneven power relationships that any equality legislation should be addressing.

PART 1 – HARMONISING AND SIMPLIFYING THE LAW

Chapter 1

Insurance

1.82 – 1.85

The consultation document notes that different treatment is allowed in the supply of insurance products,

‘provided this treatment is **reasonable** and **based on actuarial or other data or information from a source on which it was reasonable to rely**. This permits insurers to treat certain groups differently if belonging to one category of persons or another is indicative of posing a different level of risk.’

It goes on to propose (1.84)

‘to amend the insurance provision in the Sex Discrimination Act in order to meet requirements in the EU Gender Directive, one of which is that data relevant to establishing the case for differential treatment by gender must be published and regularly updated.’

Insurance and financial services are notorious for their differential treatment of minorities, in particular, Gypsies and Travellers, giving a blanket negative response. We would like to emphasise the grave difficulties that Gypsies and Travellers living on caravan sites continue to have in obtaining insurance. In the recent floods affecting South Yorkshire, those site residents who have lost their homes and possessions had been unable to obtain insurance cover because they lived on Gypsy and Traveller sites. ‘Differential treatment’ should not include complete refusal to insure homes and possessions on caravan sites. This is grossly discriminatory.

We are wary of the use of the words ‘reasonable’ and ‘reasonably’ as too much is left open to interpretation. Any differential treatment of site residents by insurers must be based on relevant data which is published and regularly updated, but we repeat that a policy of blanket refusal to insure residents of Gypsy and Traveller sites is grossly discriminatory and must not be allowed.

Chapter 2

Provision of goods and services

The consultation document notes (section 2.4) that:

‘In general, anyone providing a service (or supplying goods or making available facilities or premises) to the public should not be able to pick and choose which section of the public he or she will serve. However, there may be good reasons for allowing differential treatment in particular cases. It is important that the law is as clear as possible, and that there is straightforward practical guidance so that organisations know where they stand.’

This seems an invitation for differential treatment. At present, a number of companies refuse to provide goods and services to Gypsies and Travellers because of their ethnicity. There should be far greater emphasis on effectively addressing this widespread inequality, rather than the suggestion that such differential treatment might be justified.

Given that many unauthorised encampments – which do not usually have a postcode – are a direct result of the serious shortage of legal sites, and that even some authorised Gypsy and Traveller sites have not been allocated postcodes, refusal to provide goods or services to people without a post code should also be forbidden on the grounds of its heavily discriminatory impact on Gypsies and Travellers.

PART 2 – MORE EFFECTIVE LAW

Introduction, paragraph 9 (page 62)

Purpose clause

We disagree with the consultation document's rejection of the suggestion that there should be a 'purpose clause' to explain why a Single Equality Act is necessary and to help judges to interpret it. We agree with the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission that a purpose clause is very important.

Chapter 4

Balancing measures

The consultation document explains that 'balancing measures' are

'measures designed to address the underrepresentation of particular groups in a variety of roles and situations. This approach recognises that under-representation is usually a consequence of historical or entrenched disadvantage...'

It says (section 4.45):

'The use of this kind of balancing measure would remain voluntary. This is to avoid imposing additional regulatory burdens on private sector organisations. However, there might in some cases be a greater expectation on public authorities to use such balancing measures to promote equality under public sector equality duties ... In any event, such balancing measures would provide an important tool for public authorities to use to promote equality.'

We believe that as long as measures needed to address discrimination and inequality of opportunity remain voluntary, they simply will not produce the hoped-for outcomes. This is particularly true when it concerns Gypsies and Travellers. Even compulsory measures such as the 1968 Caravan Sites Act duty on local authorities to provide caravan sites (repealed in 1994) have been widely flouted. We believe that voluntary measures will be even more widely ignored.

We also believe that if private sector organisations are not subject to compulsory measures to which the public sector is subject, it will simply increase the incidence of public sector organisations contracting out work to private sector organisations not bound by such stringent anti-discrimination law.

We understand that private companies above a certain size in the United States are bound by legal requirements such as ethnic monitoring of their workforce and reporting on this monitoring. If it is possible to implement such laws in the USA we believe it is possible in Britain.

The consultation document asks:

‘Do you agree that it would be helpful for organisations seeking to make progress towards their goals of tackling under-representation and disadvantage to be able to use a wider range of voluntary balancing measures?’

We do not agree that voluntary measures will work unless they are a supplement to well-enforced obligatory measures.

Chapter 5

A single equality duty

The consultation document asks:

‘Do you agree that the race, disability and gender equality duties should be replaced with a single duty on public authorities to promote race, disability and gender equality?’

We do not agree that separate equality duties should be replaced by a single duty if this means making any of the provisions of any of the existing duties less rigorous than it currently is. There should be a levelling up of standards, not a levelling down. If there is to be a Single Equality Duty, it must consistently apply the strictest existing standards to all equality strands.

The consultation document asks:

‘Do you agree that it would be helpful to provide a clear statement of the purpose of a single public sector duty which public authorities should use as a foundation for taking action to promote equality and good relations?’

We do agree that it would be helpful to provide a clear statement of purpose, just as we also believe that the whole Bill should include an overarching statement of purpose.

The consultation document asks:

‘Do you agree with the four areas set out in the proposed statement of purpose?’

The four areas are:

- Addressing disadvantage – taking steps to counter the effects of disadvantage experienced by groups protected by discrimination law, so as to place people on an equal footing with others.
- Promoting respect for the equal worth of different groups, and fostering good relations within and between groups – taking steps to treat people with dignity and respect and to promote understanding of diversity and mutual respect between groups, which is a prerequisite for strong, cohesive communities.
- Meeting different needs while promoting shared values– taking steps to meet the particular needs of different groups, while at the same time delivering functions in ways which emphasise shared values rather than difference and which provide opportunities for sustained interactions within and between groups.

- Promoting equal participation – taking steps to involve excluded or under-represented groups in employment and decision-making structures and processes and to promote equal citizenship.

The phrase ‘taking steps to treat’ in point 2 should be replaced with ‘treating’; ‘to promote’ should then be replaced with ‘promoting’.

The consultation document asks:

‘Do you think that the proposed statement of purpose adequately captures the need for work to build good relations and promote positive attitudes within and between groups and underpins efforts to build integration and cohesion?’

Although we believe that the four areas included in the statement of purpose are helpful, we do not believe that the proposed statement of purpose is adequate because it does not emphasise the difficulties posed by entrenched discrimination and prejudice. The ‘four areas’ must not replace the current clear duties laid on public bodies to eliminate unlawful racial discrimination and promote equality of opportunity and good race relations. The current race equality duty is of great importance to Gypsy and Traveller communities and we believe that without it Gypsies and Travellers would be treated with even less concern than they currently are. The CRE’s 2006 report *Common Ground* noted the potential which the current duty has, when intelligently used, for creating mutual understanding between Gypsies and Travellers and local settled communities.

The consultation document asks:

‘Do you agree that a single public sector equality duty should require public authorities to identify priority race, disability and gender equality objectives and take proportionate action towards their achievement? If not, please give your reasons and any alternative suggestions.’

No, we do not agree with this suggestion. There would be a grave danger that small, unpopular groups such as Gypsies and Travellers would never be considered a priority and would continue to suffer current levels of discrimination. Many local authority officials, according to *Common Ground*, are unaware that Gypsies and Irish Travellers are protected by race relations law and seem to categorise them along with criminals and risks to health and safety. This attitude is likely to inform any prioritising decisions that are made. Recognition needs to be given to the levels of prejudice that continue to exist amongst both elected members and council officers. We do not think it would be healthy for good community relations if different groups had to compete to be ‘a priority’.

We consider that within each minority group, priorities could be agreed and some would be overarching and more urgent. But there must be no legal possibility for any public authority in any part of the country to decide that, for instance, it will do nothing to assist Gypsies and Travellers because its priority for the next few years is gender equality or age. All the equality streams are important and none must be marginalised. Our experience of Gypsies and Travellers being included in general initiatives, however, is that they always fall off the agenda.

Tackling racism has to be part of every public body's agenda across all plans and activities. It must be mainstreamed. We strongly oppose any suggestion to make it optional in any way in any part of any public body's work.

Proportionality

The consultation document explains (section 5.34) that:

'Proportionality means that action taken by a public authority would need to be proportionate to the size, nature and impact of the inequality identified and to take into account other competing considerations.'

We have major concerns about what the call for proportionality may mean in practice. In areas with few members of minority ethnic communities, particularly in rural areas, the very small size of the minority population may at one and the same time worsen the marginalisation they suffer and lead the local authority to believe that the problem is unimportant. A response seen as 'proportionate' by the local authority may in fact be wholly inadequate to address entrenched discrimination and prejudice. This may have a disproportionate effect on Gypsies and Travellers, both in rural areas where they may constitute the largest ethnic minority but nonetheless represent a tiny percentage of the total population, and in urban areas where they are statistically 'invisible' if living in houses but still subject to routine discrimination.

The consultation document asks:

'Do you agree that public authorities should be required to review their priority equality objectives at least every three years? If not, please give your reasons and any alternative suggestions.'

We believe that an equalities strategy should be reviewed every three years, but as explained above we do not agree with priority equality objectives as proposed by the consultation document.

The consultation document asks:

'Would it be helpful for strategic equality outcomes to be set by the appropriate national Government? If so, what would be an appropriate way of doing this?'

Yes, as it would help overcome the extreme unwillingness at local level to do anything to help Gypsies and Travellers. Enforceable directions for addressing housing inequality would strengthen the existing requirement to identify land for caravan sites and remove the capacity of local councillors to argue that 'we've got enough Gypsies and Travellers here – they should go elsewhere'.

Ensuring effective performance

The consultation document says (section 5.45):

'Our proposed approach would therefore mean that the law would no longer specifically require, for example, employment monitoring of different racial groups, but would instead set out the key principles which support effective performance of a

single equality duty, and require these to be applied proportionately. This would give public authorities greater autonomy in determining their priority equality objectives and how they will be achieved, by reference to their particular functions and the communities they serve, while ensuring that the duty is performed in an inclusive, evidence-based and transparent way.'

We disagree with this proposal, because it weakens present requirements. If monitoring is not done, how can anyone know whether or not equality outcomes are being achieved? How can the duty be performed in an 'evidence-based way' if evidence is not collected? We fear that this approach, together with proportionality, may encourage public authorities to choose to work in a tokenistic manner on targets which are easy to achieve and which in any case will not have to be measured. The lack of ethnic monitoring and collection of data on Gypsies and Travellers which has been the norm until recently has contributed to the attitude of 'what we don't know about we don't have to deal with', and also to years of government policies, including the repeal of the 1968 Caravan sites Act, which were not based on any evidence at all.

What is needed instead is an extension of the type of specific duties adopted in current legislation, with better training and more rigorous enforcement to ensure that they are fulfilled. We agree that to concentrate on processes without concern for outcomes is not useful and we agree that outcomes are of prime importance. But we do not believe that the proposed arrangements will help at all. They leave too much room for manoeuvre to those many public bodies which have shown over and over again their ill will and lack of commitment to Gypsies and Travellers. Race Equality Schemes and Race Equality Impact Assessments are beginning to work where the CRE regional officers have been able to take the initiative. Instead of being abolished, they should be adapted to cover other forms of discrimination as well.

The consultation document asks:

'Do you think that the proposed single public sector equality duty should apply to all public authorities? If not, please say how you think it should be targeted and give your reasons.'

It would be possible to continue with the present Race Relations Act arrangement, listing the public authorities to which the duty applied, or it could be applied to all public authorities, but with different specific duties for very small authorities. We would be unhappy if public authorities were able to avoid being given specific duties just because they were small. Some small authorities such as parish councils can function as focuses for anti-Traveller feeling and campaigning activity. Public officials cannot be allowed to use public office as a platform for persecuting members of particular minorities.

Public sector procurement

The consultation document says (section 5.93):

'Having specific duties relating to procurement would risk confusion about the weight which public authorities should give to procurement compared with their other functions. In addition, such an approach would be inconsistent with our proposed model of a single public sector equality duty which has key principles to underpin how the duty to identify priority equality objectives and take proportionate action towards their achievement can be discharged.'

We cannot understand the reasoning for not making procurement explicit in the legislation. What evidence is there that the current system is working? We agree with the CRE (*Briefings on Discrimination Law Review: Public Procurement*) that experience to date suggests that it is not: 'The poor performance of public authorities under existing legislation, combined with the abundance of detailed and specific guidance on the subject, point clearly to a need for stronger, clearer and more enforceable legislation. Further guidance is unnecessary – it will delay the process of implementation while failing to address the crux of the issue [which the CRE briefing describes elsewhere as 'lack of will to act in this area unless explicitly obliged to do so']. Minimum equality standards in procurement are needed, laid down in legislation.'

It is important to ensure that, for instance, a contractor working on council houses is also willing to work on council run Gypsy sites, and to provide an equivalent standard of work there without extra costs. Gypsy and Traveller businesses should also be considered in public sector procurement.

We agree with the CRE's view that an explicit prohibition on discrimination in procurement in all sectors is needed. At present, although a public sector body must not discriminate against contractors or prospective contractors, but once the contract is awarded the contractor may legally discriminate in hiring sub-contractors. This must stop.

Chapter 6

Promoting good equality practice in the private sector

The consultation document says:

'Businesses of all sizes and in a wide variety of sectors have found benefits in taking a positive view of complying with equality legislation'.

This sounds very strange to us: it reads as if keeping the law were to be considered optional for businesses – they might wish to consider the possibility of keeping it only because it might benefit them to do so. Businesses are as much under an obligation to keep the law as individuals are. Perhaps this paragraph could be reworded to make it clearer – it surely cannot mean what it seems to mean.

We do not understand what is meant by a 'light touch equality check tool'. Whatever it is, it sounds less effective than a just law efficiently enforced.

Reporting on equality in the private sector

The consultative document says (section 6.11):

'Some stakeholders have argued for a specific statutory requirement on employers to monitor and report on their equality practices. We disagree. Although there is a precedent in Northern Ireland where all employers with more than ten employees are required to monitor the religious composition of their workforce and make an annual return to the Equality Commission, this stems from the particular historical and political context of Northern Ireland and we do not consider that this type of approach would be the right solution for Britain.'

We disagree. Entrenched discrimination such as that experienced for so long by Gypsies and Travellers needs careful work to remove, and the Northern Ireland precedent seems a helpful one to follow in Britain. Point 6.12, using the example of compulsory reporting of a variety of elements, suggests that such monitoring is already expected in a variety of spheres and that it cannot be so burdensome to businesses that they are unable to do it.

The consultative document says (section 6.13):

‘Some stakeholders have called for positive duties to be placed on private sector organisations similar to the public sector equality duties described in chapter 5. While we believe that the private sector has a valuable role to play in advancing good equality practice, we do not believe that this approach is the right one. As with any specific reporting requirement, this could not be enforced without creating a significant regulatory burden. Such a burden would be likely to have a disproportionate impact on small and medium-sized businesses, risking resentment and mere formal compliance.’

We believe that it should be possible to require businesses to do what is right and avoid what is unjust in this matter in the same way that the Government has already done – rightly – with regard to the minimum wage.

Chapter 7

Improving the handling of discrimination cases in the courts

The consultative document says (section 7.23):

‘We are not attracted by proposals made by some stakeholders for allowing goods, facilities and services cases to be dealt with within the tribunal system, using the discrimination law experience of employment tribunal chairs and members. This would divert specialist resources from the employment tribunals and would create significant jurisdictional problems, for example where claims of discrimination in goods and services are combined with other claims for civil wrongs which would still have to be heard in the courts.’

We endorse the views set out in the response to the consultative document by the Disability Rights Commission. The DLR points out that court proceedings are much more costly than proceedings in the employment tribunals. If the scope of the employment tribunals is not to be widened to enable them to hear other kinds of discrimination cases, then the cost of bringing a case in the courts must be brought into line with the cost of bringing a case in a tribunal. Compensation in discrimination cases heard in county courts should be greatly increased from the current low average award of £1000. But we think that it would be helpful to widen the tribunals’ scope. We agree with the Commission for Racial Equality’s view (*CRE Briefings on Discrimination Law Review: Enforcement and Remedies*, page 2) that ‘the powers of employment tribunals should be extended to enable them to make recommendations which have a wider impact than on merely the individual claimant.’

It is very important that individuals, groups of individuals, and organisations other than the CEHR, should have both the right to bring proceedings for discrimination, and the economic ability to do so. Costs should be kept low and legal aid should be available to those who need it.

Representative actions in goods and services cases (sections 7.28 – 7.30)

We believe that it is important that groups of people should be able to bring group proceedings ('class action suits') against individuals, companies or public bodies for discrimination in any of the areas covered by the consultative document. Gypsies and Travellers suffer discrimination as a group. They are often punished as a group for the actions of particular individuals. They should be able to seek redress for acts of discrimination as a group – and so should members of other groups.

PART 3 – MODERNISING THE LAW

Chapter 13

Improving access to and use of premises for disabled people

The consultative document asks:

'Do you agree with our proposal for requiring disability-related alterations to the common parts of let residential premises?'

We do agree with this – and in this context 'let residential premises' must include rented caravan sites for Gypsies and Travellers, whether owned by local authorities, registered social landlords or private landlords.

OMISSIONS

The Press Complaints Commission

We regret the fact that the consultative document does not deal with the Press Complaints Commission. We believe that the PCC should be given powers to punish publishers of material which defames Gypsies and Travellers as a group. At present it only has the power to discipline publishers of material defamatory to named individuals. We believe that several groups of people, including Gypsies and Travellers, are systematically singled out for abuse in certain sections of the press, and that this helps to nurture a climate of hostility towards them. We believe that any effort to address inequality also needs to challenge the kind of misrepresentation which contributes to prejudice and discrimination.

Racism in law enforcement

We also regret the fact that the consultative document says nothing about racism in law enforcement. Gypsies and Travellers are still subject to negative stereotyping by some police officers. Treatment of Gypsies and Travellers on sites can at times amount to harassment. Evictions by police as well as by officers working on behalf of local councils are sometimes carried out with disproportionate force. When a crime has been committed by an individual Gypsy or Traveller, a whole site can at times be treated as guilty. This behaviour must be brought to an end.