

NEW GYPSY/TRAVELLER SITE **TENANCY AGREEMENTS**

All licence agreements and all matters appertaining to Local Authority sites, must now be seen in the context of the May 27th 2004 decision of the European Court of Human Rights Act in *Connors - v - the UK*. In this case, the European Court of Human Rights Act held that it was incompatible with Article 8 of the Convention for a Traveller family to be evicted on 28 days' notice where the underlying reason was nuisance allegations, which the family contested. The Court stated:- "the power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any benefit to members of the gypsy community" (paragraph 94). They further stated:- "the Court finds that the eviction of the applicant and his family from the Local Authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with his rights and consequently cannot be regarded as justified by a 'pressing social need' or proportionate to the legitimate aim being pursued" (paragraph 95).

I would strongly argue that, since any Local Authority is a public body and accordingly required by the Human Rights Act 1998 to act compatibly with the Convention, in the light of *Connors* a Local Authority would not be acting compatibly with the Convention if they did not introduce Security of Tenure in any new agreements they provide. It seems to me to follow on from that that other issues such as succession, assignment and the right to exchange would have to be dealt with. I therefore detail below what I believe would be suitable clauses to include within an agreement and to bring in these terms.

It is noted that Oxfordshire County Council, with great foresight, has, in July 2005, introduced a clause in their new Gypsy/Traveller site agreements that brings in security of tenure as well as making clear the Local Authority's repairing obligations and bringing in a right to succession.

Security of Tenure

Following on from what I say above about *Connors*, I strongly feel that Local Authorities would be obliged to include security of tenure in any new licence agreement. I therefore suggest the following clause:

"The Council reserves the right to take possession proceedings against you if you are in breach of a clause of this Tenancy Agreement or if one of the grounds specified in the Schedule to this clause applies. The Council must first terminate your tenancy agreement by giving at least 28 days notice terminating on a Monday or on the normal rent payment day. You do not have to leave the pitch unless the Court makes a Possession Order against you. The court will only make such an Order if any of the grounds set out in the schedule to this agreement Part 1 (discretionary grounds), Part 2 (suitable alternative accommodation grounds) or Part 3 (discretionary and suitable alternative accommodation grounds) are proven. The court will only make an Order under the discretionary grounds where the Court decides that it is reasonable to do so.

Schedule

Part I

Grounds on which Court may order possession if it considers it reasonable.

Ground 1

Rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed.

Ground 2

The tenant or a person residing in or visiting the pitch –

- (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
- (b) has been convicted of –
 - i) using the pitch or allowing it to be used for immoral or illegal purposes, or
 - ii) an arrestable offence committed in, or in the locality of, the pitch.

Ground 3

The pitch was occupied (whether alone or with others) by a married couple or a couple living together as husband and wife and –

- (a) one or both of the partners is a tenant of the pitch,
- (b) one partner has left because of violence or threats of violence by the other towards –
 - i) that partner or
 - ii) a member of the family of that partner who was residing with that partner immediately before the partner left and,
- (c) the Court is satisfied that the partner who has left is unlikely to return

Ground 4

The condition of the pitch or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or a person residing on the pitch and, in the case of an act of waste by, or the neglect or default of a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 5

The condition of furniture provided by the Landlord for use under the tenancy, or for use in the common parts, has deteriorated owing to ill-treatment by the tenant or a person residing on the pitch and, in the case of ill-treatment by a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 6

The tenant is the person, or one of the persons, to whom the tenancy was granted and the Landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by –

- (a) the tenant, or
- (b) a person acting at the tenant's instigation.

Ground 7

The tenancy was assigned to the tenant, or to a predecessor in title of his who is a member of his family and is residing on the pitch and a premium was paid in connection with that assignment. In this paragraph 'premium' means any fine or other like sum or any other pecuniary consideration in addition to rent.

Ground 8

The pitch was made available for occupation by the tenant (or a predecessor in title of his) while works were carried out the pitch which he previously occupied as his only or principal home and –

- (a) the tenant (or predecessor) was a secure tenant of the other pitch at the time when he ceased to occupy it as his home,
- (b) the tenant (or predecessor) accepted the tenancy of the pitch of which possession is sought on the understanding that he would give up occupation when, on completion of the works, the other pitch was again available for occupation by him under a secure tenancy, and
- (c) the works have been completed and the other pitch is so available.

Part II

Grounds on which the Court may order possession if suitable alternative accommodation is available.

Ground 9

The Landlord intends within a reasonable time of obtaining possession of the pitch –

- (a) to demolish or reconstruct the site or part of the site comprising the pitch, or
- (b) to carry out work on that site or on land let together with, and thus treated as part of, the pitch,

and cannot reasonably do so without obtaining possession of the pitch.

Ground 10

The Landlords is a charity and the tenant's continued occupation of the pitch would conflict with the objects of the charity.

Part III

Grounds on which the Court may order possession if it considers it reasonable and suitable alternative accommodation is available.

Ground 11

The pitch was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of the Landlord and that employment has ceased, and

The Landlord reasonably requires the pitch for occupation as a residence for some person either engaged in the employment of the Landlord, or of such a body, or with whom a contract for such employment has been entered into conditional on a pitch being provided.

Ground 12

The pitch has features which are substantially different from those of ordinary pitches and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of a kind provided by the pitch and –

- (a) there is no longer such a person residing on the pitch, and
- (b) the Landlord requires it for occupation (whether alone or with members of his family) by such a person.

Ground 13

The Landlord is a Housing Association or a Housing Trust which lets pitches only for occupation (whether alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for a pitch, and –

- (a) either there is no longer such a person residing on the pitch or the tenant has received from the Local Housing Authority an offer of accommodation in premises which are to be let as a separate pitch under a secure tenancy, and
- (b) the Landlord requires the pitch for occupation (whether alone or with members of his family) by such a person

Ground 14

The pitch is one of a group of pitches which it is the practice of the Landlord to let for occupation by persons with special needs and –

- (a) a social service or special facility is provided in close proximity to the group of pitches in order to assist persons with those special needs,
- (b) there is no longer a person with those special needs residing on the pitch, and
- (c) the Landlord requires the pitch for occupation (whether alone or with members of his family) by a person who has those special needs.

Ground 15

The accommodation afforded by the pitch is more extensive than is reasonably required by the tenant and –

- (a) the tenancy vested in the tenant by virtue of succession, the tenant being qualified to succeed by virtue of the tenancy agreement, and
- (b) notice of the proceedings was served more than 6 months but less than 12 months after the date of the previous tenant's death.

The matters to be taken into account by the Court in determining whether it is reasonable to make an order on this ground include-

- (a) the age of the tenant,

- (b) the period during which the tenant has occupied the pitch as his only or principal home, and
- (c) any financial or other support given by the tenant to the previous tenant.

Part IV

Suitability of Accommodation

For the purposes of Parts II and III, accommodation is suitable if it consists of premises –

1. Which are to be let as a separate pitch under a secure Gypsy/Traveller site tenancy and, in the opinion of the Court, the pitch is reasonably suitable to the needs of the tenant and his family
2. In determining whether the accommodation is reasonably suitable to the needs of the tenant and his family, regard shall be had to –
 - (a) the nature of the accommodation which it is the practice of the Landlord to allocate to persons with similar need;
 - (b) the distance of the accommodation available from the place of work or education of the tenant and any members of his family;
 - (c) its distance from the home of any member of the tenant's family if proximity is essential to that member's or the tenant's well-being;
 - (d) the needs (as regard extent of accommodation) and means of the tenant and his family;
 - (e) the terms on which the accommodation is available and the terms of the secure tenancy.
3.
 - (1) A certificate of the appropriate local Housing Authority that they will provide suitable accommodation for the tenant by a date specified in the Certificate is conclusive evidence that suitable accommodation will be available for him by that date.
 - (2) The appropriate local Housing Authority is the authority for the district in which the pitch of which possession is sought is situated.
 - (3) This paragraph does not apply where the Landlord is a local Housing Authority.

For the purposes of this schedule, the masculine (he or his) is taken to include the feminine

I would suggest that the same arguments as to the Connors case, can apply to other issues that are not as yet included in the agreement. The principle of the Connors case is that Gypsies and Travellers on official sites should have the same rights and obligations as secure tenants in Local Authority housing. I therefore suggest below clauses designed to take account of succession (modelled on Housing Act 1985 Section 113), repairs (modelled on Landlord and Tenant Act 1985 Section 11), assignment and the right to exchange (modelled on Housing Act 1985 Section 92).

Succession

‘Upon the death of the licensee, the Council will allow one succession to the licence. the person entitled to succeed to the licence will be:

- (1) The spouse of the licensee or, where the licensee has no spouse;
- (2) Another member of the licensee's family.

In both cases, the successor must have been occupying the plot/pitch as his or her only principal home at the time of the licensee's death. In the case of family members other than spouses, the potential successor must additionally have lived with the licensee throughout the 12 month period ending with the licensee's death. The person is a member of the family within the meaning of this clause if -

- (a) He or she is the spouse of that person, or he or she and that person live together as husband and wife or
- (b) He or she is that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

For the purposes of this clause -

- (i) A relationship by marriage should be treated as a relationship by blood;
- (ii) A relationship of the half-blood should be treated as a relationship of the whole blood;
- (iii) The stepchild of a person shall be treated as his or her child;
- (iv) An illegitimate child shall be treated as the legitimate child of his or her mother and reputed father'.

Assignment

'Assignment of a licence is not permitted except in certain circumstances. Assignment will be allowed pursuant to an Order of the Court. Assignment will also be allowed (subject to the current licensee giving the Council four weeks notice):

- (i) If it is to someone who qualifies as a 'successor' (see clause above);
- (ii) If it is pursuant to the 'right to exchange' (see clause below)'.

Right to Exchange

'All [] Council licensees have the right to exchange their licences with another [] Council licensee on another Gypsy or Traveller site. Upon notification by both licensees concerned at their wish to exchange, [] Council has 42 days in which to consent, and can only refuse consent on one of a specified schedule of grounds. [] Council loses the right to reply on any of the grounds unless they reply within 42 days.

If there are licence fee arrears or another breach of a term of the licence agreement, [] Council can require the arrears to be reduced to a nil balance or the breach to be remedied, before giving consent.

[] Council may not attach any other conditions to any consent given.

The grounds for refusing consent are:-

- (i) One of the licensees is under a Court Order to give up possession;
- (ii) Proceedings for possession have commenced or a notice terminating the licence has been served in the case of at least one of the licensees concerned;

- (iii) One of the pitches would be too large for the other licensee who wishes to move there or otherwise is not reasonably suitable for that licensee's needs;
- (iv) One of the pitches was let in consequence of employment;
- (v) One of the pitches is designed for a physically disabled person and, if the licensee who wishes to move there moved in, there would be no such person in occupation;
- (vi) One of the pitches is designed for an elderly person or a person with special needs and, if the licensee who wishes to move there moved in, there would be no such person in occupation'.

If dealing with Local Authorities who also have housing (i.e. Local Authorities other than County Councils) this clause could also be adapted to provide for exchange for Gypsies or Travellers between Council housing and a pitch on an official site. I see no reason why this should not also apply.

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