

Police renew calls for more Gypsy and Traveller sites in opposition to the criminalisation of unauthorised encampments

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On 5 November 2019, the Government launched a consultation ‘Strengthening police powers to tackle unauthorised encampments’. The aim of the consultation was to gather views from the public on criminalising trespass and introducing stronger police powers against Travellers living on roadside encampments. Research shows that the majority of police bodies who responded to a previous consultation ‘Powers for dealing with unauthorised development and encampments’ in 2018 were opposed to more powers and the criminalisation of trespass¹. Therefore, in this piece of research, we have set to find out the responses of police bodies to the Government’s 2019 consultation, the full results of which are due to be published by the Government in Autumn 2020.

Methodology

We submitted Freedom of Information (FOI) requests to all 45 Police Forces, 40 Police and Crime Commissioners in England and Wales, as well as the National Police Chief Council (NPCC) and the Association of Police and Crime Commissioners (APCC). Of these, 50 police bodies confirmed that they did not respond to the consultation, 6 did not respond to our FOI request within the 20 working days set out by the FOI Act 2000, and 23 police bodies confirmed that they had responded directly to the 2019 Home Office consultation². Of the 23 police bodies who did respond to the consultation, 16 police bodies shared a copy of their submission with us³.

Key findings

- Only 21.7% of police respondents agreed with the Home Office proposals to criminalise unauthorised encampments⁴.
- 93.7% of police bodies called for site provision as the solution to unauthorised encampments.
- Only 37.5% of police respondents agreed with the Home Office proposals to grant powers to direct families across local authority lines.
- Only 18.7% of police respondents agreed with Home Office proposals to give police power to seize vehicles of those on unauthorised encampments.
- Only 37.5% of police respondents agreed with the Home Office proposals to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from 6 to 2 vehicles.
- Only 43.7% of police respondents agreed with the Home Office proposals to increase the period of time in which those on encampments would be unable to return from 3 months to 12 months.

¹ <https://www.gypsy-traveller.org/wp-content/uploads/2019/11/FINAL-Police-oppose-criminalising-unauthorised-encampments-and-call-for-more-sites-to-be-published-9am-13.11.19.pdf>

² 8 Police bodies told us they submitted evidence via the APCC or NPCC representative submission

³ 4 police bodies advised they did not have to share a copy of their submission under the FOI Act 2000, 1 confirmed they submitted their response via the online survey but had no copy of this to release under our request, 1 did not provide us with their submission in time for the publication of this report and 1 shared a copy of their submission, but it did not contain clear answers to the questions set out by the Home Office, so we were unable to analyse the response in the context of this research.

⁴ This includes findings from 15 individual submissions, as well as findings from the APCC’s submission which disaggregated the response of the eight police forces they were submitting on behalf of for this question only.

Recommendations

- The Government should change their approach to unauthorised encampments from punitive enforcement measures, to an approach which prioritises provision of sites and negotiated stopping arrangements⁵.
- The Government should abolish proposals to criminalise trespass and quash plans to strengthen police powers to evict.
- The Government should reintroduce pitch targets and a statutory duty onto local authorities to meet the assessed need for Gypsy and Traveller sites.
- The Government should adopt a definition of a Traveller in planning terms that incorporates all Gypsies and Travellers who need a pitch to live on.
- The Government should ring-fence funding for local authorities to build Gypsy and Traveller sites.

Introduction

Romany Gypsies and Irish Travellers experience some of the starkest inequalities of any ethnic group in the United Kingdom, in terms of health, education, employment, criminal justice and hate crime (Women and Equalities Committee, 2019). Unsurprisingly, research has shown there is a direct correlation between poor health and inadequate site provision. Greenfields and Brindley (2016) found that those living on unauthorised encampments had the highest rates of self-reported bad, very bad or poor mental and physical health, whilst those on private sites with planning permission were most likely to report good or very good health.

It is widely acknowledged there is a persistent shortage of adequate transit and permanent sites for Gypsies and Travellers to stop across the UK (DCLC, 2008; Cromarty *et al*, 2019). Recent research carried out by Friends, Families and Travellers found that only 8 out of 68 local authorities in the South East of England had identified a 5-year supply of specific deliverable sites to meet the need for Gypsy and Traveller sites⁶ (Nuttall, Gilmore & Buck, 2020).

Despite the existence of a national policy for site provision (DCLG, 2015), the combination of a lack of will from local authorities to accommodate their Gypsy and Traveller communities and the lack of national enforcement of the policies designed to provide sites, means the shortage of sites persists.

There are approximately 700 caravans on encampments in England (Caravan Count, 2020), which leads to many families facing constant evictions and disruption in accessing basic facilities, healthcare and education, and causing significant distress.

The Equality and Human Rights Commission report 'Simple solutions for living together' (2009) highlighted that:

"Creating authorised sites for Britain's Gypsies and Travellers is a small solution to what is often perceived to be a big problem. It is estimated that the entire Gypsy and Traveller population could be legally accommodated if as little as one square mile of land were allocated for sites in England."

Despite this, the Home Office has adopted a hostile approach towards Gypsies and Travellers who have no place to stop and in 2019 launched a consultation with a range of draconian powers set to

⁵ <https://www.negotiatedstopping.co.uk/>

⁶ Each local authority must carry out 'Periodical review of housing needs' which includes those living in caravans, in which they assess the need for pitches for the next 5 years, at least. After the accommodation needs assessment for Gypsies and Travellers, local authorities should identify land on which these pitches/sites can be built in their Local Plan, as outlined in 'Planning Policy for Traveller Sites' (DCLG, 2015).

have a devastating impact on Gypsy and Traveller families. The proposals include legislative changes that will severely limit freedom to roam, turning trespass from a civil offence into a criminal offence (which specifically targets Gypsies and Travellers who have no place to stop), subjecting people to fines, criminal charges and seizure of homes.

The Government proposals to increase enforcement against those on unauthorised encampments are disproportionate both in terms of the lack of site provision and in terms of the negative impact on Gypsy and Traveller communities. Notably, the 2019 Home Office consultation contained no recognition or information regarding the recognised right of Gypsies and Travellers to lead a nomadic way of life and the overall lack of site provision.

The recent landmark judgement passed down by the Court of Appeal in January 2020⁷ in favour of Gypsies' and Travellers' right to travel has clear and direct implications for the Home Office proposals. The judgement indicated that should the proposals be taken forward, they may be left open to legal challenge with respect to the Equality Act 2010 and the European Convention on Human Rights. Lord Justice Coulson stated in the judgement;

“There is an inescapable tension between the Article 8 [European Convention on Human Rights] rights of the Gypsy and Traveller community... and the common law of trespass. The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community... the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.”

Background to the 2019 ‘Strengthening police powers to tackle unauthorised encampments’ consultation

In April 2018, the Ministry of Housing, Communities and Local Government, the Home Office and the Ministry of Justice launched the consultation on ‘powers for dealing with unauthorised development and encampments’ (MHCLG, 2018). Based on the responses to the 2018 consultation, the Government proposed to either change trespass from a civil offence to a criminal offence, or make the following amendments to the Criminal Justice and Public Order Act 1994 (CJPOA);

- Amend section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas.
- Amend sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to increase the period of time in which trespassers directed from land would be unable to return from 3 months to 12 months.
- Amend section 61 of the Criminal Justice and Public Order Act 1994 to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from 6 to 2.
- Amend section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway.

Subsequently, on the 5th November 2019 the Home Office launched a second consultation on these specific proposals. The consultation itself has come under significant criticism in relation to accessibility, clarity and some particularly leading questions which are in direct conflict with the first

⁷ Court of Appeal in the case of *The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown and Others* [2020] EWCA Civ 12

principle of the 'Consultation Principles 2018'; "*Consultations should be clear and concise*", which includes being "*easy to understand and easy to answer*".

The form itself was inaccessible to many of those who stand to be directly affected by the proposals. In order to address this, Friends, Families and Travellers launched a short, easy-read version of the consultation form. Our team supported community members to fill out the form via telephone, face-to-face and online. Over 10,000 people filled in the form to oppose the criminalisation of unauthorised encampments and many of the amendments to the CJPOA 1994. Human rights campaign group, Liberty, also launched a simplified form which received over 7000 responses to oppose the proposals⁸. Respondents overwhelmingly raised concerns of human rights violations against Gypsies and Travellers and the freedom to roam. Many wider equality organisations and law firms also joined forces to oppose the Home Office plans⁹. Friends, Families and Travellers' own submission raised a number of wider concerns about the proposals¹⁰. The consultation closed on the 4th of March 2020 and the Home Office are currently analysing the responses, with a response anticipated in autumn 2020¹¹.

Methods

The research was carried out due to serious concern for the detrimental and disproportionate impact these proposals will have on nomadic Gypsies and Travellers. The research focusses specifically on police body views as the primary actors in enforcing any amendments to existing or new laws against Gypsy and Traveller communities. As a result, police bodies offer a unique and detailed perspective of the practical implications of the proposed new powers.

In order to find out police views on the Home Office's proposed new powers, we submitted Freedom of Information (FOI) requests to all 45 Police Forces, 40 Police and Crime Commissioners in England and Wales, as well as the National Police Chief Council and the Association of Police and Crime Commissioners in order to find out how many submitted to the 2019 consultation and to request a copy of their full submission. 16 of the 23 police bodies that submitted views to the Home Office provided a copy of their full consultation response, a number of which were joint responses¹². The submissions were analysed using quantitative methods for the multiple choice sections of the form and qualitative methods for the comments sections. The key findings are presented below.

Findings

Only 21% of police respondents agreed with the Home Office proposals to criminalise unauthorised encampments.

⁸ These responses received through Friends Families and Travellers and Liberty have been included in the Home Office consultation response analysis

⁹ Equality organisations and legal firms who submitted to the Home Office consultation to oppose the proposals: Community Law Partnership; Catholic Association For Racial Justice; Clinks; Friends of the Earth, Garden Court Chambers; Hodge Jones and Allen Solicitors; Homeless Link; Liberty; Peabody; Rene Cassin; Board of Deputies of British Jews.

¹⁰ View the Friends Families and Traveller consultation submission: <https://www.gypsy-traveller.org/wp-content/uploads/2020/02/Friends-Families-and-Travellers-Home-Office-submission.pdf>

¹¹ The outcome of the consultation will be available [here](#) when the Home Office publish their response.

¹² Four police bodies confirmed they did submit a response to the 2019 Home Office consultation however refused to disclose their response under the Freedom of Information Act 2000; 6 police bodies notified us that they fed into the APCC submission, 2 confirmed they contributed to the NPCC submission, 1 confirmed they submitted their response via the online survey but had no copy of this to release under our request; 1 did not submit using the Home Office consultation form but sent general evidence relating to unauthorised encampments, 1 did not provide us with their submission in time for the publication of this report 6 Police bodies failed to respond to the FOI request at all.

13% of police respondents 'neither agreed or disagreed' and 60% objected¹³ to this proposal based on the inevitable violation of nomadic Gypsies' and Travellers' human rights. Many stressed that to introduce this legislation would be to criminalise a way of life which is protected by law and would likely result in legal challenges under the Human Rights Act 1998 and the Equality Act 2010.

"The criminalisation of unauthorised encampments is unnecessary and incompatible with regard to the Human Rights Act 1998 and the Public Sector Equality Duty under the Equality Act 2010 on the grounds that this essentially criminalises and impedes an entire culture and lifestyle considering there are insufficient alternatives such as authorised transit sites, pitches and stopping places." - West Midlands PCC.

"Looking to criminalise persons who are seeking to find a home is not proportionate as a wide ranging, one size fits all decision. Under legislation written in that way the emphasis would be on Police to take action against persons who simply seek somewhere to be... I would also be concerned that this offence removes responsibility for private landowners and local authorities to protect their own land, preferring to leave this responsibility to the Police, something that realistically is going to be un-achievable in respect of meeting landowners' expectations." - Norfolk Police Force

"Given that the consultation document itself recognises that the vast majority of travelling communities reside on authorised traveller sites, and only a very small minority on unauthorised sites, I would question whether this would be the right and proportionate response to the issue." - Dorset PCC

93% of police respondents called for site provision as the solution to unauthorised encampments.

Although the consultation document fails to mention the lack of site provision as the context for unauthorised encampments, an overwhelming majority of police bodies stated in their submissions that, regardless of existing or new police powers, unauthorised encampments would continue to exist unless; a) local authorities provided sufficient permanent and transit sites and b) national Government enforced this strictly with local authorities.

"The Government need to engage with and support local authorities to ensure sufficient provision of accommodation. Criminalising trespass simply moves the problem to another location and fails to address the cause, meanwhile requiring further policing resources." - North Wales PCC

"It is recognised that the nomadic lifestyle is an integral part of Gypsy and Traveller tradition and culture, it is the serious shortfall of sites across the Country that is the main ingredient for unauthorised encampments and if rectified would eliminate the need for considering this option." - Warwickshire Police Force

"Beyond that, legislation needs to compel these local authorities to provide appropriate housing opportunities, within Norfolk there are currently no available pitches on managed sites." - Norfolk Police Force

"It is clear that the major cause of unauthorised encampments is the lack of authorised sites for GRT families within our communities. The obvious answer to unauthorised encampments (and unauthorised developments) is the provision of pitches, both public and private, including not only permanent pitches but also transit pitches and emergency stopping places." - Hampshire Police Force

¹³ The Association of Police and Crime Commissioners separated out responses to the question of criminalisation as there were diverging views. 5 contributors to the APCC submission disagreed with criminalisation and 3 agreed.

Only 18% of police respondents agreed with Home Office proposals to give police power to seize vehicles of those on unauthorised encampments.

Question 13 of the 2019 Home Office consultation asked “To what extent do you agree or disagree that the police should be granted the power to seize property, including vehicles, from trespassers who are on land with the purpose of residing on it?”. The majority of police respondents were in fact opposed to this. 25% of police respondents ‘neither agreed or disagreed’ and 56% disagreed with this proposal. Many stressed concerns with potential human rights violations as the seizure of caravans would mean taking people’s homes and forcing entire families into homelessness in an instant.

“I would not support this. Fundamentally seizure of caravans is the taking of family homes and would present a burden on local authorities having to potentially rehome families with children. If we acknowledge that Irish Travellers and Gypsies are recognised ethnic groups with protected characteristics including a nomadic way of life, then I can’t see how these actions would be compatible with human rights and equality legislation. What would happen to the individuals once all their property, vehicles, etc. has been seized – given that the seizure would effectively include the homes in which they live?” - Hampshire Police Force.

“Thames Valley Police agrees with the National Police Chief’s Council that this is not far short of criminalization. The seizure of vehicles, that are also likely to be the homes of the persons in a site, is likely to create more issues than it resolves. There are significant practical considerations in terms of the costs for police forces in seizing and storing large numbers of vehicles. In addition this is likely to create significant issues for local authority housing teams who could then find themselves with large numbers of people from an unauthorized site, where vehicles have been seized, reporting as homeless.” - Thames Valley Police Force

Only 37% of police respondents agreed with the Home Office proposals to grant powers to direct families across local authority lines.

43% of police respondents ‘neither agreed or disagreed’ and 18% disagreed with this proposal. Some police respondents criticised the lack of detail in the consultation regarding how the amendment to section 62a of the CJPOA 1994 would work in practice, and therefore many refrained from answering the multiple choice section of this consultation question. Many highlighted that fact that this power would only be effective if there was adequate site provision in each local authority, which in many cases there is not. Warwickshire Police Force point out in their response to this proposed amendment that only 34 Local Authorities out of 343 in England have transit site provision. In addition to this, many stressed the need for collaboration between police forces and local authorities for this to be practicable.

“This question assumes that there is already a provision in every local authority area, which is not the case, and that police forces are familiar with sites which are not within their own police force areas, which is similarly not the case. In order to be effective there needs to be a commitment from each local authority that they provide either temporary, permanent or tolerated sites otherwise some local authority areas will be artificially affected.” - Devon & Cornwall PCC

“Before this power could be introduced, there needs to be a commitment from each local authority that they provide authorised encampment and transit sites, otherwise there could potentially be an overwhelming influx to areas with a greater number of approved sites.” - Association of Police and Crime Commissioners.

“Any law, policy and guidance would need to consider the employment, educational, medical and social care elements of those present and the extent to which restriction on their rights may be disproportionate.” - South Wales Police Force and PCC

Only 37% of police respondents agreed with the Home Office proposals to lower the number of vehicles needing to be on an unauthorised encampment before police powers can be exercised from 6 to 2 vehicles.

37% ‘neither agreed or disagreed’ and 25% disagreed with the proposal. Those who raised concerns with this proposal pointed out that two vehicles could be counted as one car and one caravan and therefore they questioned the proportionality and felt this would in fact remove the incentive to travel in small groups, resulting in larger encampments. Some also argued that in light of the site shortage, reducing the number of vehicles would be inherently unfair.

“The current six vehicle limit allows families or groups to travel and camp in smaller groups whereas the removal of that possibility could lead to larger groups travelling together which could cause more resource implications for police and local authority services. Given that the 1994 Act referred to originally intended to address situations of “mass trespass”, lowering the number to two vehicles would be a very different approach and again, very careful thought would need to be given to the possible effects this would have.” - National Police Chiefs’ Council.

Only 43% of police respondents agreed with the Home Office proposals to increase the period of time in which those on encampments would be unable to return from 3 months to 12 months.

37% of police respondents ‘neither agreed or disagreed’ and 18% disagreed with this proposal. Some highlighted the significant disruption this increase could cause to families and stressed that the length of time should be considered on a case by case basis. Others pointed out that this amendment would only be proportionate and effective if there was adequate site provision as increasing the period of time families can return to a piece of land would not reduce the number of encampments, but would only increase the number of people in breach of the law.

“The issue to address is that of provision of sufficient, permanent sites and temporary stopping places. Without addressing this, then increasing the length of time that people cannot return to a location/la area, is likely to have only limited impact on the issue of UE’s.” - Thames Valley Police Force.

“12 months seems a very large increase on the 3-month current period. Ultimately, people need somewhere to go and if accommodation is not provided across the country as it should be, this change will not help.” - National Police Chiefs’ Council

Recommendations

- The Government should change their approach to unauthorised encampments from enforcement, to an approach which prioritises provision of sites and negotiated stopping arrangements.
- The Government should abolish proposals to criminalise trespass and quash plans to strengthen police powers to evict.
- The Government should reintroduce pitch targets and a statutory duty onto local authorities to meet the assessed need for Gypsy and Traveller sites.
- The Government should adopt a definition of a Traveller in planning terms that incorporates all Gypsies and Travellers who need a pitch to live on.

- The Government should ring-fence funding for local authorities to build Gypsy and Traveller sites.

Conclusion

A common theme runs through the police respondents' submissions on the proposed amendments to the Criminal Justice and Public Order Act 1994 and the criminalisation of trespass. That is, in the absence of adequate site provision, increased enforcement in any form will be ineffective in reducing the overall number of encampments nationally. The only likely result would be an increase in the number of Gypsies and Travellers who have suddenly been criminalised solely for adopting a culturally pertinent way of life, which is deemed unacceptable by others.

A significant number of police respondents raised concerns about the detrimental impact of the Home Office proposals on Gypsy and Traveller families and highlighted the inherent incompatibility with the Equality Act 2010 and the Human Rights Act 1998, as the proposed changes would effectively criminalise a culture and leave the Home Office open to legal challenge.

The findings clearly show that only a small percentage of police respondents are in favour of criminalising trespass and the majority have not agreed with the proposed amendments to the CJPOA 1994. This is a significant finding as the police have the practical knowledge and experience of the implications of these proposed amendments.

The hostile approach of the Home Office towards Gypsies and Travellers is at odds with the Government's acknowledgement of the need to address the glaring race disparities that exist. The draconian measures laid out in the Home Office consultation paper are also at odds with the Government's commitment to develop a cross-departmental strategy to tackle the stark inequalities experienced by Gypsy, Roma and Traveller communities. The message is loud and clear: to reduce the number of encampments, the only effective strategy is to ensure the provision of adequate transit and permanent sites, and negotiated stopping arrangements.

About us

Friends, Families and Travellers is a leading national charity that works on behalf of all Gypsies, Roma and Travellers regardless of ethnicity, culture or background.

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