

Friends, Families and Travellers submission to the Joint Committee on Human Rights - legislative scrutiny of the Police Powers and Protections Bill: the impact on Gypsies and Travellers

Abbie Kirkby and Victoria Gilmore | 10 February 2021

Introduction

This submission focuses on the human rights implications of one particular element of the Police Powers and Protections Bill; *“Potential measures to criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales, and the introduction of new police powers to arrest and seize the property and vehicles of trespassers who set up unauthorised encampments¹.”*

Gypsies and Travellers are not explicitly mentioned here, but the fact remains that unauthorised encampments are invariably formed by Gypsy and Traveller communities. Therefore, this submission highlights the human rights implications of this part of the Bill on Gypsies and Travellers.

Romany Gypsies, Irish Travellers and Welsh and Scottish Gypsy Travellers are ethnically defined groups and therefore covered by the protections in the Equality Act 2010, the legal framework which seeks to protect the rights of individuals and advance equality of opportunity for all. However, the specific proposals we refer to in the Police Powers and Protections Bill pose a clear threat to Gypsies and Travellers and the right to pursue a nomadic way of life, which is an integral part of cultural identity. In this submission we outline how specific proposals in the Bill are not proportionate or reasonable and are in direct conflict with the Human Rights Act 1998 and the Public Sector Equality Duty requirements to ‘eliminate discrimination’ and ‘advance equality of opportunity’.

Inequalities experienced by Gypsy and Traveller communities

Gypsies and Travellers have long experienced some of the worst inequalities in terms of health, employment, education, criminal justice and hate crime. Shockingly, Gypsy and Traveller communities are estimated to have life expectancies of between ten and 25 years shorter than the general population²³, and such disparities span across a range of social indicators.

The Women and Equalities Committee carried out an Inquiry into the inequalities experienced by Gypsy, Roma and Traveller communities, with the Committee’s 2019 report⁴ concluding;

“Our inquiry has found that, while many inequalities have existed for a long time, there has been a persistent failure by both national and local policy-makers to tackle them in any sustained way.”

The context of the chronic shortage of Gypsy and Traveller sites

According to the Governments’ national Caravan Counts, there are currently over 3000 Gypsy and Traveller families without a place which they are permitted to stop in their caravans in England, and

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf#page=73

² <https://www.equalityhumanrights.com/en/gypsies-and-travellers-simple-solutions-living-together>

³ Baker, M, (2005) Leeds Baseline Census 2004-20005 Gypsies and Travellers. Leeds Racial Equality Council

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeg/360/360.pdf>

120 in Wales⁵⁶. This needs to be understood in the context of the chronic shortage of Gypsy and Traveller sites and stopping places due to many local authorities consistently failing to meet the accommodation needs of their Gypsy and Traveller population. With the lack of adequate site provision, families are forced to stop on 'unauthorised' land and face subsequent enforcement action from police and local authorities, constantly moving families from one place to the next, compounding existing inequalities in health, education and employment and overall risk of deprivation.

Friends Families and Travellers (FFT) conducted research into assessed need and supply of Gypsy and Traveller pitches in 2016⁷ and then again in 2019⁸ by analysing Gypsy and Traveller accommodation assessments and Local Plans from all local planning authorities in the South East of England. The most recent findings revealed shockingly low numbers on this, with only 8 out of 68 local authorities meeting their identified need for Gypsy and Traveller pitches. Furthermore, the Ministry of Housing, Communities & Local Government's Caravan Count shows a gross under-provision of transit sites across England with just 29 local authorities with transit provision. That is 354 transit pitches across the whole of England⁹.

Despite this widespread failure among local authorities to follow Government policy to identify sufficient land for Gypsies and Travellers to stop on, the UK Government have not held these local authorities to account. Instead we see the Government looking to address the issue of unauthorised encampments by introducing draconian legislation that threatens the rights of Gypsies and Travellers.

Criminalisation of trespass

The Police Powers and Protections Bill includes provisions to criminalise trespass. This is without doubt the most harmful proposed legislation affecting Gypsies and Travellers we have seen in decades - an approach that would compound the stark inequalities experienced by Gypsies and Travellers and conflicts with equality and human rights protections.

Currently there are requirements and processes for local authorities to conduct welfare checks before taking any enforcement action. If trespass was criminalised, the vital responsibilities to assess and address any serious welfare issues will disappear. This will put communities who have been widely recognised as being amongst the most marginalised and disadvantaged groups at further risk. It will compound any hardship and exacerbate the inequalities experienced by Gypsy and Traveller communities by having a lifestyle that has been criminalised.

Criminalisation of trespass would not comply with the positive duty imposed on the UK to 'facilitate the Gypsy way of life' (by the European Court of Human Rights ruling: Chapman v UK, 2001). Furthermore, the 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, recognised that where local authorities lack adequate site provision they will inevitably have instances of unauthorised

⁵ <https://gov.wales/gypsy-and-traveller-caravan-count-january-2020>

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848868/TCC_November19_Stats_Release.pdf

⁷ <https://www.gypsy-traveller.org/wp-content/uploads/2016/12/Five-Year-Supply-Research-Findings-Statement-FINAL.pdf>

⁸ <https://www.gypsy-traveller.org/wp-content/uploads/2020/02/Research-on-the-five-year-supply-of-deliverable-Gypsy-and-Traveller-sites-in-the-South-East-of-England.pdf>

⁹ <https://www.gov.uk/government/statistics/traveller-caravan-count-january-2020>

encampments, and where local authorities attempt to criminalise those encampments, would likely leave local authorities in breach of Article 8 of the European Convention on Human Rights. The judges stated that 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. It is a striking feature of many of the documents that the court was shown that 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...”

“Finally, it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act and in future should only be sought when, having taken all the steps above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise”.

In recognition of the equality and human rights implications of criminalising trespass, the majority of the Police Forces and Police and Crime Commissioners that responded to the Home Office consultation on this issue opposed the proposal to criminalise trespass¹⁰. Just 21.7% of Police bodies supported criminalisation in the 2019 consultation. The position of the National Chief Police Council and the Association of Police and Crime Commissioners was made plain in their joint submission to the 2018 Government consultation submission¹¹;

‘Trespass is a civil offence and our view is that it should remain so. The possibility of creating a new criminal offence of ‘intentional trespass’ or similar has been raised at various times over the years but the NPCC position has been – and remains – that no new criminal trespass offence is required. The co-ordinated use of the powers already available under the Criminal Justice and Public Order Act 1994 allows for a proportionate response to encampments based on the behaviour of the trespassers. Unauthorised encampments occupied by known individual families where there are small numbers in acceptable locations, not causing anti-social behaviour or crime, can be allowed to remain in that location longer than would otherwise be the case if the law were different. This approach leads to the Gypsies and Travellers having a real incentive to act in a responsible manner’

Increased police powers

The proposed strengthening of police powers linked to this Bill and to the Criminal Justice and Public Order Act 1994 (as laid out in the 2019 Home Office consultation) include;

- Giving police power to seize vehicles of those on unauthorised encampments
- Granting police powers to direct families across local authority lines

¹⁰ <https://www.gypsy-traveller.org/wp-content/uploads/2020/10/Full-Report-Police-repeat-calls-for-more-sites-not-powers-FINAL.pdf>

¹¹ <https://surrey-pcc.gov.uk/wp-content/uploads/2018/06/GRT-submission.pdf>

- Lowering the number of vehicles needing to be on an unauthorised encampment before police powers can be exercised from 6 to 2 vehicles
- Increasing the period of time in which those on encampments would be unable to return from 3 months to 12 months

If these police powers are strengthened in this way it will equate to the criminalisation of encampments, by posing insurmountable restrictions on nomadic Gypsy and Travellers families. These powers target Gypsies and Travellers and will disrupt access to health services, education and employment, break up families and most alarmingly threaten to remove a family's home from them when a caravan is seized. All of which interfere with the right to a nomadic lifestyle and the right to a private and family life.

Summary

Given the context of a national failure to ensure adequate provision of Gypsy and Traveller sites and stopping places, any national measures which seek to criminalise encampments or increase police powers are disproportionate and would result in the systemic eradication of the nomadic traditions of Gypsies and Travellers in England and Wales. New powers would exacerbate existing barriers to access basic facilities such as water and sanitation, health care, education and employment, and compound the inequalities experienced by Gypsies and Travellers. These elements of the Police Powers and Protection Bill fly in the face of equality and human rights legislation.

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.

fft@gypsy-traveller.org | www.gypsy-traveller.org | Twitter: @GypsyTravellers | Facebook: @FriendsFamiliesandTravellers | +44 (0) 1273 234 777