

Gypsies & Travellers: new policies, new approaches

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Abstract

A number of changes in British legislation and policy, whether recently implemented or coming into force in the coming year, are likely to affect the way in which police forces approach their interaction with members of the travelling communities. This article explores the issues raised by the Human Rights Act 1998, the Race Relations (Amendment) Act and the new 'Best Value' duty in this context.

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Introduction

Throughout this article the terms 'Travelling people' or 'Travellers' are employed to refer to: the minority ethnic group known as Gypsies - whether English, Scottish or Welsh - and Irish and Scottish Travellers, whether mobile, of limited mobility, or no longer living nomadically but settled in housing or in caravans on public or private sites; so-called 'new' Travellers (some of whom are second, third or fourth generation Travellers); and fairground and circus children.

Gypsies are known to have been travelling the roads of Great Britain since the early 1500s, but nomadic people were travelling in the British Isles for many centuries prior to that. Terms such as 'Gypsy' and 'Traveller' are capitalised as these groups are, for the most part, recognised as racial groups for the purposes of the Race Relations Act 1976; the words are therefore proper nouns comparable to 'Welsh' or 'Jewish'.

Background

In August 2000, over 500 Travelling people were evicted from at least 6 unauthorised encampments by Thames Valley Police. Some of the residents of the encampments had displayed criminal or anti-social behaviour, some had not; all were moved on. In some cases, the vehicles of the people evicted were accompanied by police vehicles along the motorway until their exit from the area entirely was assured. There is a rise in unauthorised encampments every summer, as more Travelling people are actively travelling. Sometimes the police are placed in a difficult position, as they may not wish to use their powers of eviction under section 61 of the Criminal Justice and Public Order Act 1994 but can be placed under great pressure to do by local - non-Traveller - residents and inflamed media coverage.

'There is general agreement that these matters would not be so problematic if the accommodation shortage for Travelling people were satisfactorily resolved; the question of accommodation lies at the heart of the need for reform. Nonetheless, it has been noted by many that on most occasions when settled people are discussing Travelling people, the topic of accommodation very quickly elides into assumptions and accusations of criminality. While it is acknowledged that the Travelling communities have their criminal elements as any other population, ACPO continues to assert that they have no disproportionate problems with criminality in the Travelling populations, and the continuing presumptions stem largely from stereotyping.'¹

Much of the contact between police officers and Travelling people results from the nomadic way of life of the latter and the lack of lawful halting sites to facilitate it. Increased development and zoning of land from the 19th through to the 21st century has led to less stopping places and increased conflict between travelling and 'settled' communities. The Caravan Sites Act 1968 placed a duty on local authorities to provide sites for Gypsies but when that part of the Act was repealed in 1994, only 46% of Gypsy caravans were accommodated on such sites.² Since January 1995 over 300 pitches have been lost from public Gypsy sites.³ Gypsies are expected to buy their own land, and apply for planning permission to live on it (but this is difficult to obtain).⁴ Sites never had to be built for Travelling people other than Gypsies.

As a result, many Travellers have to live on the roadside and the few portions of remaining accessible land – 2516 caravans according to the Government's January 2000 count – where they are increasingly liable to be evicted quickly by local authorities, police or private landowners. The latter appear to be turning increasingly to the use of bailiff firms for assistance, which can create public order problems for the police to deal with.

Race Relations

On August 28th 2000, Judge Goldstein gave judgement at London Central Court in the case of CRE v Punch Retail⁵, in which the Commission for Racial Equality (CRE) supported eight Irish Travellers in their allegations of racist exclusion by five pubs in North London. The judge and two assessors were satisfied that Irish Travellers have a shared history which can be traced back to at least the mid-19th century; the group are now therefore recognised as a racial group for the purposes of the Race Relations Act 1976. Gypsies have been so recognised for almost a dozen years.⁶ The judge noted that any other decision would allow three anomalies to continue: that Gypsies and Irish Travellers share many group characteristics but one would be recognised as a racial group and the other not; that it would not be in keeping with the timbre of the Human Rights Act 1998; and that it would be "strange" if Irish Travellers were so

recognised in Northern Ireland (as they have been since 1998) but not in other regions of the UK. Punch Retail were given 42 days from the date of judgement to decide whether to appeal the decision.

The CRE are also supporting a Gypsy family in a complaint against the police in the case of Smith & Smith v Cheltenham Borough Council, Avery, Lambert, and Hogg. A decision was handed down by Bristol County Court in April 1999 in this action, brought by a Gypsy woman and her daughter against the Council for breach of contract and the Race Relations Act (RRA) 1976 sections 20 and 21 (discrimination in the provision of goods and services), and against individual police officers for breach of the RRA section 33 ('A person who knowingly aids another person to do an act made unlawful by this Act shall be treated for the purposes of this Act as himself doing an unlawful act of the like description').

The women had hired the Pittville Pump Rooms for the daughter's wedding reception, for around 150 people, and paid a deposit on the booking. Based on several allegations of disorder in recent years, and rumours about the upcoming wedding, the police became concerned that the celebrations might involve public disorder; they met with the Council, including the manager of the venue, to voice these concerns. The Council called the mother to a meeting and attached new conditions to the venue hire, including a requirement that entry should be by ticket only, and that a further (large) deposit should be paid. Both women were very upset and booked an alternative venue (where the event took place without incident).

The judge at Bristol County Court stated: "I find that there is no foundation for the assertions of the police that the gypsy problems of 1997 were linked to the Smith family. The truth is that as soon as the word "gypsy" appears assumptions are made that large numbers will descend and cause trouble." In respect of the claims against the individual police officers, the judge held that "the police did not act well over this wedding", and that the women had cause for complaint against them. However, he found the police had not knowingly aided the Council to do an act made unlawful, as no officer was made party to the decision taken by the Council. This element of the judgement was then heard by the Court of Appeal (Hallam and Avery and Another)⁷ who upheld the judge's reasoning and decision, stressing the importance of the role of 'knowledge' under this section of the RRA. The case now awaits decision on a CRE appeal to the House of Lords.

As part of the movement towards combating discrimination - whether direct, indirect or 'institutionalised' - following the publication of the Stephen Lawrence Inquiry Report, the Race Relations Act 1976 has been amended and will most likely come into force in early or mid-2001. One of the major recommendations of the Macpherson Inquiry was that 'the full force of the race relations legislation should apply to all police

officers and that chief officers of police should be made vicariously liable for the acts and omissions of their officers relevant to that legislation'.⁸

Therefore, the revised Act contains a number of important provisions which considerably strengthen the original Act in recognition of and measures to combat different forms of discrimination. There will, most significantly, be positive duties on public authorities to ensure non-discrimination on racial grounds, which will require them to consider the race equality implications of the policies that shape their actions and inaction. Section 71 of the 1976 Act placed a duty on local authorities to make arrangements to ensure that their functions were carried out with due regard to the need: a) to eliminate unlawful discrimination; and b) to promote equality of opportunity and good relations between persons of different racial groups. This section will, as amended, apply to other public bodies, including the police service.

Its weakness is that the 'making of arrangements' need not be made publicly known; that is, there is no requirement that such arrangements be included in, for instance, annual reports or policy statements, or that consultation takes place as part of planning such arrangements. The CRE can pursue enquiries with regard to any public authority which it believes is not complying with the duties; however, it has rarely done so in relation to local authorities in the many years in which the duties applied to them. Court action can also be taken against failing authorities but, again, has thus far been rare and requires the agency of the CRE (who may disagree with or have insufficient resources to assist a complainant). It is therefore difficult to predict the effect in practice of the extension of the duties. This of course is not to imply that authorities may feel free to ignore them.

The CRE suggests that, prior to the amendments coming into force, 'all police forces should already be examining their policies and operations. This scrutiny should include justification for any practices, particularly in relation to victims and suspects, which are based on criteria that may not appear to be race-specific - for example, being in a particular neighbourhood, being involved in certain types of crimes or being homeless or unemployed - but which can in practice produce disproportionately adverse outcomes for different racial groups.'⁹

In the context of Travelling people, there are a number of areas of policy and practice employed by some police forces in the UK which may not be in keeping with the new race equality legislation:

- Raids on sites in pursuit of crime and disorder considerations, in which all vehicles are searched (unless there is a reasonable suspicion that all of the vehicles may be implicated in the ends the raid seeks to achieve). Police operations concerning a suspect or suspects in a house would not usually involve all other houses in the vicinity, so it is possible that such 'blanket' raids could be shown to be discriminatory.

- Excluding Gypsies and Travellers from the ethnic monitoring of the use of discretionary powers (such as 'stop and search').
- Action such as that in the Smith case outlined above could fall within another section of the Act as amended; one under which a requirement of 'knowing' of the discrimination is not imposed.
- Escorting recently-evicted Travellers to County boundaries.
- Evicting all Travellers from an unauthorised encampment on the grounds of criminal or anti-social behaviour, when prosecution of a few members of a group would be appropriate under those grounds.

The Human Rights Act 1998

There is an increased awareness by Travellers of their rights in recent years, and seemingly also an increased willingness to assert them. Thus far, the cases taken by Gypsy applicants to the European Court of Human Rights have been in the planning sphere; while one decision went against the applicant, a decision on a summary hearing of six cases by the Court in May 2000 is expected by the end of the year. The provisions of the Criminal Justice and Public Order Act 1994 have not yet been considered by the European bodies, but deliberation on the Act may well arise in domestic courts before too long.

There are number of elements of the Act, and the European Convention on Human Rights (ECHR) it incorporates into domestic law, which are particularly salient to issues around Travelling people. For example, Article 14 ECHR proscribes discrimination 'on any ground'. The Article does not stand alone¹⁰; a complaint must also relate to a right or freedom which falls within another Article. A person could then say to a court or tribunal that in a situation relative to their Article 8 right to privacy the right was breached, and that it was breached in a discriminatory manner so that a breach of Article 14 can also be claimed (breach of the former right need not be proven).

Probably the most significant change wrought by the Article is that the grounds on which discrimination are claimed are less important than the fact that discrimination has taken place; the list of grounds under the Convention - which includes race, gender and national or social origin - is not exhaustive and other grounds have been held to be acceptable (i.e. age and sexual orientation). This may put an end to arguments by judges and lawyers as to who is or is not a 'Gypsy'; a complainant may not have to prove that they are a Gypsy but only that their ECHR rights were breached in a discriminatory way.

Police raids on entire Gypsy sites rather than individual homes, where officers greatly outnumber the residents and no arrests are made, could possibly be challenged (as a disproportionate breach of the Article 8 right of privacy and Protocol 1 Article 1 right to peaceful enjoyment of possessions). Both of these rights are likely to be raised as relevant to

the police powers to impound living vehicles under section 62 of the 1994 Act.

Clements also argues that the common law of trespass may be threatened under Article 1 of the First Protocol. 'Trespass ... takes this right to an extreme, by protecting the right to 'exclusive' enjoyment. The Convention does not recognise such a right.'¹¹ An interference with the First Protocol right of a landowner requires evidence to be put forward that there was a significant hampering of the owner's right to peaceful enjoyment. Actions under trespass law in the UK require no such evidence and mere presence on another's land coupled with a claim to possession can be sufficient to uphold a claim of trespass. This is arguably not in keeping with the principal of 'proportionality'.

Of course, a number of these potential breaches of the ECHR are contained in primary legislation and are not therefore matters within police control. Nevertheless, it is recommended that police services examine their policies and practices with a view to ensuring that they are proportionate, not discriminatory, and are 'necessary in a democratic society', in keeping with the new Act.

Best Value

As most of the police service will be all too aware, Best Value is about securing continuous improvements to local services 'having regard to a combination of economy, efficiency and effectiveness.'¹² Police forces are ultimately responsible for meeting the duty, but police authorities will be accountable for ensuring that this is achieved. Each individual review must ensure that the steps known as the '4Cs' are undertaken.

In brief, these are:

- Challenge: meaning to think innovatively and question whether things need to be done in a particular way or at all.
- Consult: within existing consultation strategies (i.e. under the Crime and Disorder Act 1998) or as a new programme, to ensure that public views are considered when deciding Best Value approaches.
- Compare: comparing performance both with other forces and other organisations.
- Compete: questioning whether best value is best served in-house or externally.

Internet-based Home Office guidance to police authorities about their Best Value role¹³ states that authorities 'will have considerable difficulty in assessing progress towards Best Value, both of individual aspects of the service or of the force as a whole, without the ability to cost activities. The ability to do this varies across the country and authorities will wish urgently to examine the extent to which their force has costing mechanisms in place and the plans for improving on this.' In addition, the Government places great stress on the usefulness of 'benchmarking' as a tool for

carrying out the 'compare' element of Best Value. In its description of Process Benchmarking (as opposed to numeric, i.e. qualitative vs. quantitative) the guidance notes that if something is not measured, it is not possible to know how it is performing.

The August 2000 operation referred to above was estimated by the police forces to have cost in excess of £40,000. While the immediate aim of removing the Travellers from the area was achieved, in the absence of any lawful stopping place they will simply have set up further unauthorised encampments elsewhere, resulting in further evictions and further costs. The Traveller Law Research Unit at Cardiff Law School has conducted research into the costs of unauthorised encampments to local authorities – finding that the annual costs amount to many millions¹⁴ - but does not have the resources to conduct a similar investigation into the costs to police forces of dealing with these situations. However, although unquantified, it can safely be said that the costs are likely also to be considerable. Best value suggests that forces should now be attempting quantification of the costs.

Of course, police authorities already have considerable obligations to consult their local communities on policing issues and priorities¹⁵; but Best Value expands on these by demanding that authorities consult on priorities and service improvements with service users, local business and taxpayers and other partners and agencies. The Home Office has stated that research on consulting with 'hard to reach' groups should have been available in early 2000, but in fact the document will not be available until at least late-2000. It is therefore not possible to know whether Travellers would be identified as such a group (because of the nomadism of some of the travelling communities, or the ethnic minority status of some within them).

Anecdotal evidence in respect of Crime and Disorder partnerships suggests that Travellers are far more likely to be the focus of such partnerships than included within them. However, Travellers too can be victims of criminal and anti-social behaviour, from within and outside their communities. Those camping alone can be prey to violence from vigilantes and drunken homegoers. Stopping places cannot be left unoccupied for fear of criminal damage to and theft from dwellings and other vehicles.¹⁶ If Travelling people have not been consulted within community safety initiatives, they certainly should be as 'service users' under the best value legislation.

Conclusion

The research into the costs to local authorities of unauthorised encampments referred to previously made a very interesting finding. Some local authorities consider it a 'best value' approach to operate a 'zero-tolerance' policy to such encampments of Travelling people. The justification given is that the 'effectiveness' sought is the removal of all

Travellers from an area; therefore, the authority are following the most efficient policy and the one most likely to correspond to local residents' views should they be consulted on the matter. The approach is not, however, in keeping with the race relations and human rights legislation outlined above. 'Zero-tolerance' areas are at risk from expensive litigation if they persist with this approach into 2001.

The police service is operating under these same tensions with respect to Travelling people, caught between their needs for somewhere to stop and the fervent desire of many non-Travellers not to live in proximity to them. The police service can do little to effectively deal on a long-term basis with the problems caused by lack of suitable accommodation for Travellers. Police forces are also likely to be approached by non-Travellers with allegations of criminal and anti-social behaviour within Travelling communities, and will have to weigh the evidence and consider their actions carefully to ensure that the rights and responsibilities of both communities are carefully balanced at the same time that force policies (including Best Value Performance Plans) are adhered to.

However daunting this position may appear, the three new pieces of legislation outlined here need not be seen merely as obstacles to be overcome. They are also useful tools to developing best practice and ensuring that the police service attains its desire to offer a fair, effective, inclusive and commendable service to all of the communities, nomadic or otherwise, which it serves.

¹ Morris, R. and Clements, L. (eds.) (1999). *Gaining Ground: Law Reform for Gypsies and Travellers*, Hatfield, University of Hertfordshire Press, at p 33.

² Section 80(1) Criminal Justice and Public Order 1994; statistic cited by Earl Ferrers, Home Office Minister, House of Lords Committee, col. 1122.

³ Unpublished research by the Traveller Law Research Unit at Cardiff Law School, referred to in the House of Lords Hansard report for 29th March 2000, col. 1627.

⁴ Morris, R. (1998) 'Gypsies and the planning system.' *The Journal of Planning and Environment Law*, July, pp 635 - 643.

⁵ As yet unreported, but see the *Times*, 29th August 2000.

⁶ *CRE v Dutton* [1989] 1 All ER 306.

⁷ *Times Law Reports*, 7th February 2000.

⁸ Recommendation 11.

⁹ CRE, 'Race Relations Act Lords Briefing', February 2000.

¹⁰ The Council of Europe Protocol 12 to the ECHR, if adopted, signed and ratified by sufficient member states, will make non-discrimination a 'stand alone' provision.

¹¹ Luke Clements [1999] 'The Impact of the Human Rights Act'. Notes from the Legal Action Group course 'The Law Relating to Travellers', 23rd June 1999, p. 24.

¹² Section 3(2) Local Government Act 1999, amending the Police Act section 8(2).

¹³ <http://www.homeoffice.gov.uk/ppd/pru/bvpauth.htm>

¹⁴ Campbell, S. (1998) 'Eviction is a waste of money'. *Housing*, April, p 13.

¹⁵ Police Act 1996, sections 7 and 96.

¹⁶ (1996) *The Roma /Gypsies of Europe: a persecuted people*. Policy Paper 3, December, p 40.