

TAT NEWS

Summer Edition

June 2002

Newsletter of the Travellers Advice Team, part of the Community Law Partnership Solicitors,
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TAT wins Community Legal Service telephone project funding

Community We now have a free telephone advice line to give advice and assistance to **Legal Service** Travellers facing eviction and other problems affecting their accommodation.

Below, Peter Jones of the Legal Services Commission describes the new service.

Call 0845 120 2980

• **advice on eviction, planning, site and other problems Monday to Friday, 10am-1pm and 2pm-5pm**

At the start of April the Community Law Partnership's (CLP) Travellers' Advice Team (TAT) began work on a telephone advice pilot project. The project is one of several telephone advice lines now funded by the Government through the Community Legal Service (CLS), which has taken the place of the old civil legal aid scheme. TAT will be able to use the funding to provide legal advice to Travellers with housing law problems over the telephone.-

This project is one of thirteen telephone advice pilot projects that the CLS has agreed to fund. The whole

project aims to make legal advice available to people who will find it difficult to go to a lawyer's office, whether because they live in a remote rural area, because they have a disability; or because they have a responsibility as a carer.

Most of the other projects are aimed at particular regions of the country but the TAT

service will be available free to Travellers across England

and Wales who meet the financial eligibility test. It will offer one-off advice as well as

ongoing help with more complex problems; however, the project does not fund representation at a court or tribunal. The advice is free, confidential, impartial and independent. It is provided by expert staff: the TAT has been giving advice and representation to travellers since 1995, and CLP has obtained the CLS's Specialist Quality Mark in housing law. If you need housing advice, the number to call is 0845 210 2980. Because this is a local rate number it will cost no more than 4p per minute, wherever in the country you may be. •

2 Garden Court

We would like to acknowledge with gratitude a donation of £2,500 per annum which has been given to us by the barristers' chambers, 2 Garden Court, to fund

the publishing of TAT News over the coming three years. Many of you will be aware that this chambers includes a number of barristers with considerable experience

and expertise in the area of Travellers' law, and in representing our clients at court in challenges to the actions of Local Authorities, the Police and others. •

SQUATTERS' RIGHTS?

In January of this year we successfully challenged a decision of Bedfordshire County Council to refuse to consider an application from Bidy Piggott for a pitch on their Pepperstock official site. Mrs. Piggott had entered the site without permission and squatted on a pitch. She is an elderly lady suffering from various health problems which necessitate her having access to both electricity and WC facilities. Living with her is her young granddaughter who had started attending school locally.

Furthermore, her daughter lives on the same site, and Mrs. Piggott wished to be close to

her for support. Despite these pressing considerations, the Council refused to accept a formal application from her for a licence of the pitch, on the basis that she had unlawfully occupied the plot in question. They also decided to take possession proceedings.

We launched Judicial Review proceedings in the High Court, and the Council then offered Mrs. Piggott a temporary move to another site 25 miles away, so that they could carry out repairs to the pitch on which Mrs. Piggott was squatting. Subsequently, they changed this to a permanent offer of a licence on the alternative site. On the

morning of the court hearing, they offered her a permanent pitch at another Site only 5 miles away.

Mr. Justice Burton decided that the council's decision to refuse to consider the application for a plot was wrong, and ordered that the Council take a fresh decision in relation to the application which properly took into account the needs of Mrs; Piggott, as well as the needs of the community generally and the fact of Mrs. Piggott's unlawful entry onto the site. The Council subsequently granted Mrs. Piggott a licence of a pitch at the Pepperstock site. •

Police too eager to evict!

In July 2001 a group of Travellers moved onto land owned by Weymouth and Portland Borough Council at Lodmoor rubbish tip. Following making some enquiries regarding welfare considerations, the Council decided to tolerate the site until the end of August, i.e. for a further period of approximately 6 weeks subject to 'good behaviour'. However, on the 14th of August, there was an altercation on the site between some of the Travellers and two police officers.

A meeting was held between the Council and the police, and the police decided to issue a removal

direction under section 61 of the Criminal Justice and Public Order Act 1994 (cJPOA). The Council decided to post 48 hour notices to vacate the site on the basis that the toleration criteria had been breached, at the same time as the police issued the removal direction.

We applied for Judicial Review of the section 61 removal direction. Under the CJPOA, the police's power to serve a removal direction only arises AFTER the landowner has taken reasonable steps to ask the trespassers to leave. Mr. Justice Stanley Burnton said that it should be implied into the statute that the police's power only arises where the

steps taken by the landowner to ask the trespassers to leave have been ineffective i.e. where the trespassers have failed to leave within the time that the land owner has requested. He therefore found that the removal direction was not a lawful or valid direction, as the Travellers were not given the opportunity to comply with the Council's request that they leave within 24 hours before the removal direction was issued. The Judge did not, however, agree that section 61 is, in itself, incompatible with the European Convention on Human Rights. •

LACK OF SECURITY FOR SITE LICENSEES

We have received permission to Judicially review Barking and Dagenham Borough Council, for deciding to evict a Gypsy who has been a licensee on the Chase caravan site for over 10 years. The decision to evict came after allegations of a fight between our client and another long term licensee. There are no other allegations of our client ever causing any problems of a violent

nature during all his years on the site. Our application for Judicial Review also includes an application for a declaration that the Caravan Sites Act 1968 is incompatible with the Human Rights Act 1998, in that it discriminates against Travellers as opposed to Council tenants, due to the very limited security given by the Act to residents of caravan sites. A final hearing took place in May

relating to the same point in the case of Isaacs v Somerset County Council, which is being dealt with by another firm of solicitors. The judgement in that case has just been received and the application for a declaration of incompatibility was dismissed. An appeal is expected. In any event, it may be that our case will be settled by the withdrawal of the possession proceedings. •

PLANNING VICTORY IN EVESHAM

Last year we helped Mrs. Mary Smith in her appeal against the decision of the Planning Inspector to refuse her application for planning permission to continue to live on her land in her caravan. She lives there with her husband and children, having bought the land after years of constant evictions had driven her to

breaking point. The main reason given by the inspector for his decision was that Mrs. Smith (who is a traditional Romany who has never lived in settled accommodation) was not a Gypsy within the legal definition of the word.

We appealed to the High Court against this decision

and the Secretary of State eventually conceded the appeal. We are now helping Mrs. Smith with a fresh appeal against the refusal of Planning Permission, and are also hopeful that she will be awarded exceptional Public Funding for this appeal, enabling her to be fully represented. •

TRAVELLER LAW REFORM BILL

Many of you will already be aware of the publication of the Traveller Law Reform Bill recently by the Traveller Law Research Unit at Cardiff Law School. This is a document which proposes changes to the law which would improve the position of Travellers. We understand that an MP is to propose this Bill as a ten minute rule Bill. But it may be unlikely that the whole Bill will find its way onto the statute book. However, it is hoped that some of the clauses in it might be incorporated into other legislation passing through parliament. If you want a copy of the Bill you can obtain one from the Traveller Law Research

Unit, Cardiff Law School, PO Box 427, Cardiff, CF1 1XD phone number: 02920 874580. If you agree with its contents, you could send a copy to your M.P. requesting his or her support for the Bill to be made law. The Bill provides for the establishment of a Gypsy and Traveller Accommodation Commission which would have responsibility for putting into effect the changes proposed. These include placing a duty on certain councils to 'provide or facilitate the provision of adequate accommodation for Gypsies and Travellers', and encourages the provision of working areas and play areas on official sites. The Bill seeks to grant Travellers on official

sites the same degree of security of tenure afforded to residents on private sites covered by the Mobile Homes Act 1983, and encourages the provision of sites by Housing Associations and other registered social landlords, and to provide them with the protection afforded against eviction by the Protection from Eviction Act 1977. Unfortunately, although the bill does suggest some amelioration of the situation faced by Travellers where the police threaten eviction, it is regretted that the Bill does not propose the abolition of the police powers of eviction contained in sections 61 and 62 of the Criminal Justice and Public Order Act 1994. •

'NEW' TRAVELLERS SITE IN HEREFORD

Last year the official site at Luston in Hereford was squatted by a large group of New Travellers. The site had been empty for many months, and the utility blocks had been boarded up by the Council. The Council threatened to evict the Travellers, and some of them sought our assistance.

Following lengthy negotiations with the Council, they agreed to offer the Travellers licences to

remain. We successfully negotiated some changes to the licence agreement, e.g. to enable outdoor cooking which was prohibited in the original agreement, as well as some changes necessitated by the different living habits of 'New' as opposed to traditional Travellers. The original licence had prohibited anyone from bringing vehicles over a specified weight onto the site, but this needed to be changed as many of the

residents live in large trailers or buses. As far as we are aware, this is only the second official site in the country for New Travellers. We believe that the Travellers should be signing their licence agreements in the near future, this having been delayed somewhat by the need to make amendments to the agreement and the need for extensive works to the site. •

CITY OF SWANSEA ASKED TO SHOW MERCY

Rose McDonagh is a Traveller who was camped at an unauthorised roadside encampment in the area of Swansea in Wales. The council served her with a removal direction under section 77 of the 1994 Act, requiring her to vacate the site or risk a criminal prosecution and/or the impoundment of her vehicles. Our

application for permission to judicially review their decision to serve the notice was unsuccessful, and we therefore appealed to the Court of Appeal. At the hearing the court decided to adjourn the hearing so that the Council could try to find a suitable alternative site. This was despite the fact that the council had by that time

already offered her a pitch on one of their official sites. It was accepted that this offer was not suitable in all the circumstances of the case. As our client has now moved from the original encampment, and the Council are continuing to try to identify a suitable alternative site, we have withdrawn the appeal from court. •

The Porter saga continues...

Regular readers may remember the case of the Porters, a small, extended family group of traditional Gypsies who had been living on their own land in the Green Belt for more than 15 years. The Porters were the lead case in the Injunction hearings taken to the Court of Appeal which we featured in the last TAT News. In that same issue, we also raised the fact that we had successfully achieved exceptional public

funding for Gypsies at Public Inquiries in situations where the absence of such funding rendered the proceedings unfair, thereby falling foul of Article 6, the right to a fair hearing.

The Porters case demonstrates the significance such funding can make: before funding was available, the Porters had lost two Appeals and had their application to the European Court declared inadmissible on the same grounds as Chapman v the UK. Previously, the Porters had been represented by volunteers who, although committed and well intentioned, simply lacked the resources of their adversaries,

for example being unable to call upon any professional witnesses whatsoever. This time it was different: the Porters were represented by the same barrister who represented them in the Court of Appeal; they called upon expert planners and landscapers, researchers in Travellers health and education and a national support group. No evidence of this kind had been put to the Inspectors previously. At the end of February, the Porters were granted permanent, personal planning permission for their site on the grounds of general unmet need and individual personal circumstances.

and continues...

To recap: the Porters had won in the Court of Appeal, had the Injunction quashed as a result and now, at long last, had planning permission to remain living in caravans on their land for the rest of their lives. You might be tempted to think it was all over but the Porter's local planning authority had other plans. Shortly before going to press, we received their application to the High Court challenging the

Inspector's decision to grant planning permission. We are instructed by the Porters to lodge a reply and to represent them at any hearing. We'll keep you informed.

and continues...

In a further dramatic development, in the fourth case which went to the Court of Appeal along with Porter (taken by another firm of solicitors), which was dismissed by the Court of Appeal on its particular facts, planning permission has now been granted on appeal by the Planning Inspector. The appeal was called in by the Secretary of State, who endorsed the Planning Inspector's decision. ~Casey~v Hertsmere BC APP/N1920/A/10/ 106832). The decision strongly criticised the failure of Hertsmere B.C. to carry out any quantitative assessment of the need for gypsy accommodation, and stated that circular 1/94 does require this to be done by local authorities. This was despite the very recent decision of Mr. Justice Sullivan in the case of Egan v SSTLR & Hertsmere BC (another of our cases), where he stated that it was by

the need for gypsy accommodation, and stated that circular 1/94 does require this to be done by local authorities. This was despite the very recent decision of Mr. Justice Sullivan in the case of Egan v SSTLR & Hertsmere BC (another of our cases), where he stated that it was by no means self evident that a policy in respect of gypsy sites must contain a quantitative element in order to comply with circular 1/94.

The decision letter needs to be read in full as it is very instructive, but here are some useful passages one can draw upon immediately: "...The Inspector was critical of both Structure and emerging Local Plan policies because neither derived from an assessment of need for

Gypsy site provision in the area and also because Ethel local policy did not accord with the requirements of the latest version of PPG3. The Secretary of State agrees with the criticism in respect of PPG3. In respect of the assessment of need, he notes that while Mr Justice Sullivan said in his judgement in Egan v SSTLR and Hertsmere BC that it was by no means self-evident that a policy in respect of Gypsy caravan sites must contain a quantitative element in order to comply with the requirement in circular 1/94, iii this case the Inspector's criticism is that there is no quantitative assessment underlying the policy. Circular 1/94 does require a quantitative assessment to be made of the amount of accommodation required yet the Inspector

found nothing in the supporting text to either policy to indicate that this had happened... The Secretary of State agrees with this criticism and for these reasons he considers that no more weight should be given to the draft policy than the Inspector accorded it" (paragraph 13).

and continues...

All three of the local authorities involved in the Court of Appeal cases have been granted leave to Appeal to the House of Lords against the Court of Appeal decision to quash the injunctions. Again, we are instructed by the four families concerned (two families share one site) and, while it is early days yet, we'll update readers regularly

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TAT continues below:

OTHER PLANNING RESULTS

CORNISH BEAUTY ENHANCED

In Cornwall, we represented a small family group in an Area of Outstanding Natural Beauty on the Heritage Coast, something of a difficult area normally to get planning permission in. We are delighted to report that the local authority concerned granted permission (albeit temporary), thus sparing the family the stress of having to appeal.

PLANNING APPEALS

At the end of March, we received a permanent planning permission on Appeal for a Romani Gypsy we represented in South Somerset. The distinguishing factor here was that the site, being close to a military heliport, fell within noise contours where conventional accommodation would not be permitted. On a more individual point, the Appellant received the Appeal decision in the week before his wedding! We wish the family well in their new home.

NATIONAL PLANNING NEWS

TAT has submitted representations to the DTLR following the Government's Green Paper on the future of the planning system.

In the midst of some sensible ideas, we found a very worrying proposal: to make breaches of planning control such as living in a caravan on land without planning permission a criminal offence in itself. Nationally there are more than 2,500 families without a lawful place to live in their caravans already and these proposals would make an already bad situation much worse, with no visible gain.

Continues below:

HORSMONDEN CHALLENGE FAILS

Unfortunately we have just heard that our application to the European Court of Human Rights concerning the banning of the ancient annual Gypsy Horse Fair at Hormonden in Kent, has been declared inadmissible. It may be that the loss of this historical event will now have to be taken up more actively in the political arena to try and restore an important part of the Gypsy history and heritage.



Travellers (relatives of one of our clients) at Menora Lane in Corwall in about 1950

Front Cover Picture below:

TAT NEWS



The late Queen Mother stepping out of Mrs.Porter's mother's varda at Epsom races many years ago.

Note from Len:...this waggon is now in Paultons Park Romany Museum. Built in the Reading style by Orton, Sons, & Spooner, Burton on Trent, 1915