



**Margaret
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serving marginalised communities

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Rt Hon Robert Buckland QC MP
Secretary of State for Justice
Ministry of Justice
102 Pitty France
London
SW1H 9AJ

11th June 2021

Dear Secretary of State,

Re: Part 4 of the Police, Crime, Sentencing and Courts Bill

We are a charity specialising in work with Gypsy, Roma and Traveller (GRT) communities and we also offer GRT related training to public services, such as to the NHS and HM Probation Service. I write, on behalf of Margaret Clitherow Trust, to raise concerns regarding Part 4 of the Police, Crime, Sentencing and Courts Bill (the Bill), relating to unauthorised encampments, and to offer our recommendations on this matter.

As you are aware, Part 4 of the Bill seeks to criminalise unauthorised encampments. This is in response to grievances concerning the disruption caused by GRT communities residing on land without various forms of consent. While these grievances can be legitimate, the provisions of the Bill fail to include mitigation for the severe shortage of areas for GRT people to live on and transit through¹ and, as this letter will submit, are discriminatory and unlawful.

Only last year, the Court of Appeal affirmed the right of GRT communities to maintain their centuries old culture and way of life, including, inter alia, the freedom “to move from one place to another”². This was in reference to provisions of the Human Rights Act 1998 and Equality Act 2010.

In summary, our concerns related to the Bill are:

1. As far as we are aware, the Bill is the only attempt by the British government in modern times to create a criminal offence explicitly targeting the practices of a minority ethnic group³. The distinct ethnic groups I refer to are Gypsy, Roma and Traveller people, recognised as such in domestic⁴ and international⁵ law. The proposed offence I refer to in the Bill is ‘residing on land without consent in or with a vehicle’ and carries a prison sentence of up to three months or a fine.
2. The Bill is without precedent in how it proposes to give legal authority to remove people’s homes. The Bill proposes to allow police to seize the homes (i.e. caravans and such like) of GRT peoples, without a court order. Further, this section proposes that courts can then order the forfeiture of the homes of GRT peoples if they are proven to have committed the offence of ‘residing on land without consent in or with a vehicle’. The forfeiture relates not to the proceeds of crime nor prohibited items. The provision simply allows the court to

¹ Sweeney, S. and Dolling, B., 2021. *Last on the list: An overview of unmet need for pitches on Traveller sites in England*. Friends, Families and Travellers.

² *Bromley v Persons Unknown & Others* [2020] EWCA Civ 12

³ Brown, J., Lipscombe, S., 2021. *Police, Crime, Sentencing and Courts Bill: Part 3 and 4, Public order and unauthorised encampments*. House of Commons Library.

⁴ *Bromley v Persons Unknown & Others* [2020] EWCA Civ 12

⁵ *Connors v. The United Kingdom* [2004] ECHR 223

permanently confiscate the homes owned by marginalised people for a summary only offence.

3. Proposals under the Bill, in the absence of other measures, disregard the context of the scarcity of land for GRT communities to live on and their wider vulnerabilities. As acknowledged by the House of Commons Women and Equalities Select Committee in 2019 “Gypsy, Roma and Traveller people have the worst outcomes of any ethnic group across a huge range of areas, including education, health, employment, criminal justice and hate crime”⁶. **Representatives of GRT communities are clear that the scarcity of land on which they can reside and use for transit can be the principal reason for the difficulties that they face**⁷.
4. The Bill appears inconsistent with Article 8 of the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights (ECHR). Domestic and international caselaw has repeatedly affirmed the rights of GRT communities to enjoy respect for their homes (including caravans) and maintain their ethnic identity and way of life⁸. The practical consequence of the provisions in the Bill will leave many communities with no means to enjoy such rights. This will also mean worsening health and education outcomes, increasing homelessness and increasing family separation as parents and caregivers are detained. I submit that the impact of the Bill would be a disproportionate interference with the rights of GRT people under Article 8.
5. Further to Point 4, it appears that the Bill is inconsistent with Article 3 of the United Nations Convention on the Rights of a Child as well as Articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. The United Nations Committee on the Elimination of Racial Discrimination has criticised the UK for pursuing eviction policies related to GRT communities without providing suitable alternative provision as well as its lack of general services for these groups⁹.

Our recommendation to the government is to withdraw Part 4 of the Bill and instead address the issue of unauthorised encampments by:

1. Expanding the practice of ‘negotiated stopping’, which has been successfully trialled in Leeds by the Local Authority in collaboration with the third sector.
2. Seeking and implementing lessons from the actions of the Welsh Government on this issue, including, inter alia, Part 3 of the Housing (Wales) Act (H(W)A) 2014, as well as guidance for authorities on the management of unauthorised camping¹⁰.
3. Reinstating the now repealed provisions of Section 6 of the Caravan Sites Act 1968, enacting a duty on Local Authorities to provide adequate land for GRT peoples residing in or transiting through their area (which families pay rent for occupying). The benefits of this would be to:
 - (a) Meet, under the ECHR, the “positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life”, which has been specifically referenced by the European Court of Human Rights in relation to planning law.¹¹
 - (b) Provide space for GRT people to live on and transit through legally and continue their way of life peaceably without interference from or to other communities.

⁶ Women and Equalities Select Committee (2019). *Tackling inequalities faced by Gypsy, Roma and Traveller communities*. House of Commons.

⁷ Irving, A., 2020. *Court of Appeal upholds the right to roam of Romany and Travellers*. UK Human Rights Blog, 1 Crown Office Row Chambers, Available at: <<https://ukhumanrightsblog.com/2020/01/27/court-of-appeal-upholds-the-right-to-roam-of-romany-and-travellers/>> [Accessed 8 May 2021].

⁸ Willers, M. and Johnson, C. et al., 2020. *Gypsy and Traveller Law*. 3rd ed. Legal Action Group.

⁹ United Nations Committee on the Elimination of Racial Discrimination, 2011. *CERD/C/GBR/CO18-20*

¹⁰ Welsh Government (2003). *Guidance on Managing Unauthorised Camping*.

¹¹ Chapman vs UK (2001) 33 EHRR 399

- (c) Reduce or eliminate unauthorised encampments.
- (d) Give local councils control over decisions on where sites are located.
- (e) Allow local council services, the NHS and education providers to develop understanding and cooperation with an increased number of more established sites. This then provides an opportunity to tackle the longstanding marginalisation and hardships faced by GRT people, as recognised by government organisations ranging from NHS England¹² to the Cabinet Office¹³.

Throughout centuries of their history, GRT peoples have faced persecution, ethnic killings, sterilisation and forced emigration¹⁴ as well as enslavement, such as during the Atlantic Slave Trade¹⁵. As part of the atrocities of World War II, the Roma Genocide¹⁶ took place, where Roma peoples lost their lives alongside Jews and other minorities. To this day, across Europe, discrimination and violence against GRT peoples continue¹⁷. It is unsurprising then that GRT communities have come to rely on the European Convention on Human Rights, which sought to learn the lessons from World War II of mistreating those deemed to be the least by society. Drafted principally by British lawyers, the convention was signed by the UK just five years after the end of the war¹⁸.

With this history in mind, we have a choice. The first option is to continue to regard these communities as all being crooked, dirty and a nuisance, pushing them further outside of society, criminalising their way of life, stripping them of their physical homes and cleansing them from regions. The other option is to understand the realities of these traditional, family orientated and often impoverished communities¹⁹, working alongside them to address their needs and forge a trusting relationship between them and the population at large.

Therefore, we respectfully urge you to remove Part 4 of the Police, Crime, Sentencing and Courts Bill and consider transformational alternatives to this legislation, as proposed, consistent with domestic and international law.

Please find attached an Appendix setting out a brief background to the worsening accommodation issues facing GRT communities in the UK.

Thank you for your time. We would be pleased to meet you to discuss these issues further.

Please note that, as well as coping this letter to the Home Secretary, I may publish and distribute copies of this letter to interested parties and MPs.

With best wishes,
Yours faithfully,



Samuel Bowden
Chair of Trustees
Encl.

¹² NHS England. 2021. *NHS England » Improving uptake and delivery of health services to reduce health inequalities experienced by Gypsy, Roma, and Traveller people.* [online] Available at: <<https://www.england.nhs.uk/ltpimenu/improving-access/improving-uptake-and-delivery-of-health-services-to-reduce-health-inequalities-experienced-by-gypsy-roma-and-traveller-people/>> [Accessed 8 May 2021].

¹³ Cabinet Office, 2018. *Race Disparity Audit: Summary Findings.*

¹⁴ Muiżnieks, N., 2015. *Time to cure amnesia about the history of Roma in Europe.* [online] Council of Europe. Available at: <<https://www.coe.int/en/web/commissioner/-/time-to-cure-amnesia-about-the-history-of-roma-in-europe?desktop=true>>; Traveller Movement. n.d. *Gypsy Roma Traveller History and Culture.* [online] Available at: <<https://travellermovement.org.uk/about/gypsy-roma-traveller-history-and-culture>>

¹⁵ Travellers Times. 2017. *Feature - Roma and Gypsy Slavery.*

¹⁶ Council of Europe. n.d. *Chronology of the Roma Genocide.* [online] Available at: <<https://www.coe.int/en/web/roma-genocide/chronology-of-the-roma-genocide>>.

¹⁷ Commissioner of Human Rights, 2012. *Human rights of Roma and Travellers in Europe.* The Council of Europe. [report]

¹⁸ Equality and Human Rights Commission. 2017. *What is the European Convention on Human Rights?.* [online] Available at: <<https://www.equalityhumanrights.com/en/what-european-convention-human-rights#:~:text=Originally%20proposed%20by%20Winston%20Churchill,came%20into%20force%20in%201953>> [Accessed 30 May 2021].

¹⁹ Millan, M. and Smith, D., 2019. *A Comparative Sociology of Gypsy Traveller Health in the UK.* International Journal of Environmental Research and Public Health.

APPENDIX

Background: the availability of land for GRT communities to reside on in Britain

'A Steady Decline'

For context, GRT communities have rich histories and cultures, dating back in some cases before 1000 AD. In common, their lives are defined by the primacy of family, tradition, and faith. Frequently, rather than living in conventional homes, communities live together in groups of mobile residences and often practice nomadism, which has developed into many forms.

1. Historically, there was a relative abundance of common land to accommodate nomadic peoples in Britain. Over time, however, common sites for legal stoppage and transit became increasingly sparse, putting GRT communities at odds with local populations.
2. In 1968, Parliament passed the Caravan Sites Act 1968 (CSA), placing a duty on Local Authorities in Section 6 of the Act to provide sufficient land in their area to meet GRT needs. Local Authorities accelerated the building and maintaining of legal sites to accommodate GRT peoples to good effect.
3. However, in 1994, Section 6 was repealed. Planning circulars from 1994 to 2006 attempted to prevent or mitigate deterioration in land provision for GRT communities. However, we now know that in practice these measures were not as effective as primary legislation and provision steadily decreased.
4. The Localism Act 2011 brought further challenges for GRT communities. Regional strategies were abolished, leading to Local Authorities having less incentive to provide or grant planning for GRT sites. Planning circular 1/2006, as limited as it may have been in this area, was withdrawn and replaced by even weaker guidance on GRT planning ("Planning Policy for Traveller Sites (PPTS)").
5. Around this time, budget cuts meant that the rate at which councils sought to sell land that was rented or leased to GRT communities accelerated. Margaret Clitherow Trust dealt with such cases. In some cases, sales were made seemingly without thought to whether purchasers had the motive or expertise to take on the sound management of GRT sites. Notwithstanding protections under the Mobile Homes Act, some communities were uprooted. A parallel – in the general population – would be the mass privatisation of council estates.
6. Margaret Clitherow Trust has also dealt with several cases where planning permission is denied for residential caravans/mobile homes, even on land owned by GRT communities themselves. This is despite the national shortage of residential land for GRT peoples. Indeed we are yet to have handled a case where planning has been granted.
7. Increasingly, who is considered to have 'Gypsy Status' within the planning system is no longer based on ethnicity or indeed cultural requirements, but to the extent people are nomadic under an arbitrary definition. Please note:
 - i. This has failed on many occasions to account for Travellers who have stopped their nomadism for reasons related to ill health, disability and/or age, yet still need to live in accommodation that matches their cultural needs.
 - ii. This has failed to account for different types of GRT lifestyle, for example where a family may stay on one site with wider family during school term time and then visit other areas outside of term time.

- iii. Families who are forced to split up and live-in bricks and mortar accommodation rarely fare well in the absence of their cultural needs being met. For example, as noted by the Royal College of General Practitioners, “health outcomes among Travellers living in brick[s] and mortar are considerably worse than those of nomads [of various forms]” (see report below).
8. The duty on local authorities to *assess* the planning needs of GRT communities was repealed in the Housing and Planning Act 2016.
9. These influences, taken together, have created a chronic shortage of land for GRT communities to live on and transit through.
10. In 2021, over 1696 GRT households are on waiting lists for pitches, with just 59 permanent and 42 transit pitches available nationwide. **Given the difficulties in communication with communities and varying style of nomadism we suspect the problem to be much worse.**

References (appendix)

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