7

Over-arching issues

The case for change? *Michelle Lloyd and Richard Morran*

Introduction

Any process of legal reform is slow, but the momentum for changes to the law affecting Gypsies and Travellers grew from the introduction of the Criminal Justice and Public Order Act 1994. Many agencies collaborated during the Parliamentary progress of this Bill to press for removal of certain clauses which would directly affect Gypsies and Travellers. Unfortunately, the government chose to ignore the lobbying.

Since 1994, there have been significant developments in relation to Travellers and ethnic minorities which have reoriented the basis for reform. These were the enactment of the Race Relations (N.I.) Order 1997, the Commission for Racial Equality's proposals for reform of the Race Relations Act 1976, the introduction of racially aggravated offences in the Crime and Disorder Act 1998, and, most recently, the publication of the Lawrence Inquiry Report.

These developments signal a growing understanding that racism, particularly institutional racism, is endemic in British society and further legislation or the reform of present statutes is required. Despite this realisation it is our view that Gypsies and Travellers are not perceived as the subjects of racial harassment and discrimination because racism is only considered in terms of colour. Our research in *Failing the Test* (1997) clearly illustrated the extensive levels of overt discrimination faced by Travellers in trying to access accommodation.

Criminal Justice and Public Order Act 1994

The draconian nature of the legislation united a broad church of interested bodies in lobbying against the particular sections affecting Travellers. The government, however, chose to ignore the representations and ensured that the clauses directed at assembly; the lowering of the number of caravans and other vehicles needed to trigger an eviction; the removal of duty on local authority to provide sites (in England and Wales); the associated 100 per cent central government capital grant for such

provision; and the power to impound vehicles and caravans and charge owners for their storage, were all passed.

The concerted opposition resulted in monitoring of the Act's usage and, where appropriate, challenge in the Courts. The controversy engendered during the Bill's Parliamentary stages made the Police and Prosecuting authorities wary of using the appropriate sections. The judgement of Sedley J. in R v Lincolnshire County Council in 1995 partly resulted in the publication of the DETR Good Practice Guide which makes it clear that "Local authorities must consider welfare issues when deciding whether to proceed with eviction whatever the powers being used..."[96]

Non-statutory agencies have closely monitored the Circulars and Government Codes of Guidance introduced at the commencement of the Act. In the four years since the enactment of the legislation various agencies have continued to observe the authorities' use of the particular sections of the Act, including TLRU, Friends and Families of Travellers, the Children's Society, Save the Children (Scotland), and Gypsy and Traveller organisations. A number of agencies have also researched the effects of the Act – in Scotland, SCF are currently carrying out research with Dundee University which looks at the social and legal effects of being 'moved on', in particular examining use of the CJPOA. In England and Wales the Traveller Law Research Unit (TLRU) have conducted research into the after-effects of the Act.

Context

The conference in Cardiff in March 1997 organised by TLRU 'formalised' the lobby and the sub-groups have met to discuss and clarify proposals which could be incorporated in an agenda for change and possibly presented in the form of a Private Members Bill. In the intervening period four developments, in relation to ethnic minorities and Travellers, have helped to progress the debate.

The first of these changes was the passing of the Race Relations (Northern Ireland) Order 1997 which named Irish Travellers as a racial group[97] and provided a significantly more accurate definition – "the community of people commonly so called who are identified, both by themselves and others, as people with a shared history, culture and traditions including historically a nomadic way of life, on the island of Ireland" (section 5(2)a) – than the definition in the Caravan Sites Act 1968 (section 16), which uses the term "gipsies", or the interpretation used in the case of CRE v Dutton (1989).

The second development in April 1998 was the submission to the Home Office by the Commission for Racial Equality of proposals for reform of the Race Relations Act 1976. The proposals include:

- extending the obligations on public bodies not to discriminate;
- allowing the CRE to bring proceedings if a public body has failed in its racial equality duties;
- clarifying the definition of indirect discrimination with the proposal that

96 Department of the Environment, Transport and Regions and the Home Office. *Good Practice Guide to Managing Unauthorised Camping, 1998*. para.4.11

97 In the parliamentary debates the terms racial and ethnic were used interchangeably. See Molloy, S. *Accommodating Nomadism*, 1998

"Indirect discrimination occurs where an apparently neutral provision, criterion, practice or policy which is applied to persons of all racial groups cannot be as easily satisfied or complied with by persons of a particular group, or where there is a risk that the provision, criterion, practice or policy may operate to the disadvantage of a particular racial group, unless the provision, criterion, practice or policy can be justified by objective factors unrelated to race";[98]

- and introducing the possibility of a 'class action' whereby courts and tribunals would be required to consider group complaints where discrimination affects a number of people.

The third development was the introduction of the racially aggravated offences in the Crime and Disorder Act 1998. Section 33, which only applies in Scotland, introduces a new specific offence of racial harassment, and section 96 provides that where it is proved that any offence was racially aggravated, that aggravation should be taken into account when sentencing. In the Scottish Office Introductory Guide to racially aggravated offences the definition of "racial group" includes a number of sub-groups including "Ethnic origin - such as Indian or Gypsy".[99]

In Britain there is still considerable ignorance and confusion about the 'ethnic status' of Gypsies and Travellers amongst local authorities, the police and government departments. This was illustrated in Scotland by the unwillingness of the Scottish Office or the Secretary of State's Advisory Committee on Scotland's Travelling People to confront or investigate the prevalence of discrimination towards Travellers.[100] This reluctance to take action, until there is a watertight legal precedent clarifying that Gypsies and Travellers come within the definition of an ethnic group as described in the Race Relations Act 1976, highlights the institutional complacency referred to in the Lawrence Inquiry Report.[101]

With regard to racial hostility, the new provisions in the Crime and Disorder Act refer to 'presumed membership of a racial group', making it clear that "regardless of which racial group the offender believes the victim to belong to, an offence will be racially aggravated if racial hostility is proved".[102] In this way hostility directed at a person because he was a Gypsy would meet the test even if the victim defined himself as a Traveller. Therefore, in this context, the legal definition of Gypsies and Travellers is largely irrelevant since it is the perception of the offender which matters.

The fourth development in March 1999 was the publication of Sir William McPherson's *Report on the Stephen Lawrence Inquiry* which makes seventy recommendations, a number of which are particularly relevant to the Gypsy and Traveller communities in England, Wales, Scotland and Northern Ireland. At least seven are important to note:

Recommendation 1, that a Ministerial Priority be established for all Police Services; "To increase trust and confidence in policing amongst minority ethnic communities".

98 Commission for Racial Equality. *Summary – Reform of the Race Relations Act 1976*, London, 1998. p.3

99 The Scottish Office Circular 12/1998, *Crime and Disorder Act 1998 Introductory Guide: Racially Aggravated Offences*. para.2.2

100 Meeting between SCF, Advisory Committee and Scottish Office, 3 March 1999, Edinburgh.

101 Sir William McPherson. *The Stephen Lawrence Inquiry Report*, 1999. p.321, para. 46.27

102 The Scottish Office, Circular 12/1998, op cit; para.3.9

Recommendation 11, 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.

Recommendation 12, definition of a racist incident: "A racist incident is any incident which is perceived to be racist by the victim or any other person".

Recommendation 13, that the term "racist incident" must be understood to include crimes and non-crimes in policing terms. Both must be reported, recorded and investigated with equal commitment.

Recommendation 61, that the Home Secretary, in consultation with Police Services, should ensure that a record is made by Police officers of all "stops" and "stops and searches" made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called 'voluntary' stops must also be recorded. The record to include the reason for the stop, the outcome, and the self defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.

Recommendation 62, that these records should be monitored and analysed by Police Services and Police Authorities, and reviewed by HMIC on inspections. The information and analysis should be published.

Recommendation 70, that in creating strategies under the provision of the Crime and Disorder Act or otherwise Police Services, local government and relevant agencies should specifically consider implementing community and local initiatives aimed at promoting cultural diversity and addressing racism and the need for focussed, consistent support for such initiatives.

These four developments signal a growing realisation that many organisations within British and Irish society are discriminatory and their actions can be institutionally racist. The difficulty is that many individuals and agencies view racism and discrimination in terms of colour and consequently place Gypsies and Travellers outside that frame of reference. The CRE, in its evidence to Part 2 of the Lawrence Inquiry, maintained that racist crimes and incidents also affect white minorities such as Gypsies and the Irish.[103] Our experience shows that a wide range of police forces, central and local government officials, health authorities, the Crown Office, etc. view Travellers as a minority group to be 'suffered / tolerated / designated'.

In Northern Ireland and Scotland the government introduced and maintained policies of 'toleration' and 'designation' from the mid 1980s for specific numbers of Travellers in each area. The mere existence of 'toleration Policies' in the 1990s enshrines and legitimises the harassment of Travellers once the 'government quota' has been reached in a local Council area. Such government practices clearly fall within accepted definitions of 'institutional racism'; for the purpose of this article we will use the McPherson definition:

"Institutional racism has been defined as those established laws, customs, and practices which systematically reflect and produce racial inequalities in society. If racist consequences accrue to institutional laws, customs or practices, the institution is racist whether or not the individuals maintaining those practices have racial intentions".[104]

This State attitude towards Gypsies and Travellers is not unique to Britain and

103 Commission for Racial Equality. Submission to Part 2 of the Lawrence Inquiry, 1998. p.2, para.1.8

104 Sir William McPherson, op. cit. p.28, para. 6.34

Ireland but rather reflects a pattern across European countries. In her booklet *The Roma/Gypsies of Europe: a persecuted people* Brearley maintains that "[t]he problem of racist violence, racial discrimination and disadvantage experienced by minority ethnic groups across Europe has been subject to considerable attention in recent years, by policy makers and academics. But the contemporary experience of historically persecuted groups such as Roma and other Gypsy communities, has been relatively neglected."[105]

Our experience shows that despite legal judgements[106] and the policy of the CRE, the majority of central and local government officials refuse to acknowledge the position of Gypsies and Travellers as coming within the definition of an ethnic group as described in the Race Relations Act 1976. For the debate to move forward we consider there must be commitment, at a senior political level, to Gypsies and Travellers being expressly included in any amendments to Race Relations legislation to remove further avoidance of the issue.

Failing the Test

In 1997 Save the Children (SCF) instituted fieldwork in twelve local authority areas of Scotland – from the Highlands to Dumfries and Galloway. This involved visiting caravan parks to test whether they would provide space to Travellers when the park was not full. We found a consistent pattern of rejection and discrimination with 63 per cent of requests for accommodation refused – this dropped to 50 per cent where the caravan park was owned by the local authority. The reason for our research was to clarify whether the experience of our staff, Scottish Gypsy and Traveller Association members and Travellers was typical, and to 'test' whether the motivation for refusal was the ethnic origins of the applicant.

The exercise involved three field trips, all outside the peak holiday period, and our results were presented to the Scottish Office in March 1998. A number of meetings and correspondence with the Scottish Office and the Secretary of State's Advisory Committee resulted in the official view that "discrimination is deplored"[107] but, until there is a relevant court action, the case remains 'unproven'. Such official inertia, in the light of clearly researched evidence, highlights the need for legislative reform.

Recommendations

Our experience is not particular to Scotland, despite Northern Ireland and Scotland having had a government 'quango' for many years exclusively concerned with the welfare of Travellers; we perceive little difference in the level of discrimination between England and Wales and Scotland. We support Brearley's argument that "[a]ll European countries should ensure that they explicitly outlaw discrimination against Gypsies within the broader framework of 'race' discrimination legislation – according to the definitions and guiding principles of the International Convention on the

105 *Jewish Policy Research Paper No 3.* p.39

106 For example, Lord Fraser Mandla v Lee and others (1983) IRLR 209

107 Letter from the Secretary of State's Advisory Committee to Save the Children, dated 15 October 1998.

Elimination of All Forms of Racial Discrimination. In each country, Gypsies should be explicitly acknowledged as an ethnic group to be protected by legislative provision".[108]

In addition we would propose:

- commitment at Home Office/Scottish Office level to investigate discrimination towards Gypsies and Travellers;
- amendment to the Race Relations Act 1976 to include Gypsies and Travellers utilising the form of words in the Northern Ireland Statutory Instrument;
- the replacement of 'toleration Policies' with less discriminatory policies;
- the adoption and monitoring of the McPherson recommendations as noted above;
- adoption of the EC Burden of Proof directive, which provides for a partial shifting of the burden of proof to the respondent in sex discrimination cases, should be applied to race discrimination complaints;
- the legal aid scheme should be expanded to cover those seeking to take action in discrimination cases.

What is a Gypsy? *Dr Donald Kenrick*

Why do we need to define 'Gypsy'?

Even after Department of the Environment Circular 1/94 the fact that an applicant for planning permission is a Gypsy is a material factor and therefore it is important to define who is and who is not a 'Gypsy' in British law.

Historical introduction

I will deal only with the definition of 'Gypsy' in planning law and criminal law and will not consider the definition for the purposes of the Race Relations Act, nor that of 'Traveller' for the Education Acts.

Etymologically the word 'Gypsy' comes from 'Egyptian' and logically should therefore be spelled with a capital letter. It was the name given to the Romanies when they came to Western Europe as it was thought that they came from Egypt. In fact they came from India.

Until 1967 it was considered that the word Egyptian or Gypsy applied to a race, and indeed a foreign race. The first Act which was passed and applied in this sense was 22 Henry VIII c. 10 of 1530: Imposed a ban on the immigration of Egipcions and notice given to all Egipcions in England to leave the country. Similarly 1 and 2 Philip and Mary c. 4 of 1554: Egyptians forbidden to enter the country. Made provisions for the capital punishment of Egyptians if they remained in the country for more than one month.[109] In 1783 all existing laws concerning Gypsies were repealed. However, in 1822 the Turnpike Roads Act and, in 1835, the Highways Act, reintroduced the term 'Gypsy' into legislation.

The Highways Act 1835 penalised Gypsies who camped on the highway with a fine

108 Brearley, M. op.cit. p.41

109 Summaries from Mayall, David. *Gypsy Travellers in 19th Century Society*. p.189

of 40 shillings. The later Highways Act of 1959 section 127 said "If ... a Gypsy pitches a booth, stall or stand, or encamps on a highway he shall be guilty of an offence ...". For over a hundred years Gypsies who camped on the highway regularly paid up their 40 shillings until 1967, when a Mr Cooper contested a case and pleaded not guilty, saying that he was not a Gypsy, as it could not be proved that he was descended from Indian immigrants and of Romany race.[110] At this point it became necessary for the courts to decide on a definition of the term.

The Divisional Court in 1967 finally laid down that – as British law at that time could no longer be seen to be discriminating against a race – the definition of 'Gypsy' for the purposes of the Highways Act must refer to a way of life. Lord Parker said, "I think that in this context 'gipsy' means no more than a person leading a nomadic life with no, or no fixed, employment and with no fixed abode." Lord Diplock indicated that in his view 'gipsy' bore "its popular meaning, which I would define as a person without a fixed abode who leads a nomadic life dwelling in tents or other shelters or in caravans or other vehicles."

The Caravan Sites Act 1968 did not adopt this definition of 'Gypsy' but gave a wider definition, and also refers to "Gypsies residing in or resorting to an area". It seems clear that the drafter of the Caravan Sites Bill was aware that s/he was not following the earlier 1967 definition, as Lord Diplock stated in Greenwich v Powell. This case defined a council-run 'Gypsy' caravan site in reference to the position of those sites as opposed to other caravan sites. The 1968 Act and the Mobile Homes Act 1983 made a distinction between these types of sites. (In particular, residents of pitches on Gypsy sites are not tenants but licensees and so lack all of the rights of tenants). The question before the Court was whether the Greenwich Gypsy Site was a Gypsy site for the purposes of the Mobile Homes Act. Their Lordships decided that if the Council had set up a Gypsy site it did not matter whether the people residing on it were Gypsies or not, the site remained a Gypsy site for legal purposes. Contained in their judgement was an obiter (as an aside) definition of 'Gypsy'. Lord Bridge said, "I am inclined to conclude ... that a person may be within the definition if he leads a nomadic life only seasonally and notwithstanding that he regularly returns for part of the year to the same place where he may be said to have a fixed abode or residence." This means that a person can be settled for part of the year, but as long as they travel at times they are still Gypsies at law.

This was important at the time because the Caravan Sites Act 1968 made a distinction between Gypsies and non-Gypsies stopping in areas designated under the Act and also because of Circular advice from the Ministry of Housing and the Department of the Environment in which councils were encouraged to give planning permission to Gypsies.

With the emergence from 1965–70 onwards of 'New' Travellers – non-Romany house-dwellers who left their houses to travel, in caravans and buses – the question arose as to whether non-Romanies could be classed as Gypsies if they were nomadic. The key cases are *Rexworthy and Capstick*. In the case of *Rexworthy* the Council accepted that for the purpose of that case Mr Rexworthy was a Gypsy. However, the *Capstick* case was more important as it had a more general significance.

In the case of Mrs Capstick, Mr Justice Herrod heard that the "defendants had

110 Mills v Cooper [1967] 2 All ER 100, [1967] 2 QB

adopted, and intended to continue with, a travelling life-style and [travelled] basically from Yorkshire to the West Country and back during the year. None of the defendants, with one possible exception, came from families with a tradition of travelling but they had adopted such a life for various reasons e.g. force of circumstances, the absence of settled accommodation and attraction to the way of life." It was held that the applicants were Gypsies within the meaning of the Caravan Sites Act 1968 as they were, on the evidence, 'persons of nomadic habit of life'.

The definition of 'nomadic habit of life' was later refined in the case of *R v South Hams ex parte Gibb*. It was established in this case that be to be a Gypsy one had to travel for an economic purpose. The definition of 'Gypsies' in section 16 of the 1968 Act imported the requirement that there should be some recognisable connection between the wandering or travelling and the means whereby the persons concerned made or sought their livelihood.

This judgement was clouded by the statements of two of the judges that to be a Gypsy one had to travel in a group. However, Lord Justice Leggatt said that the term 'Gypsy' "was not expressly confined to those who travelled in groups and the Act did not stipulate that persons could not be Gypsies unless they did so.[111] Travelling in groups is now difficult as the Criminal Justice and Public Order Act 1994 for practical purposes dissuades Gypsies from travelling in groups; if more than six vehicles stop in one place, the police powers to evict under the Act may be triggered. Taken together, Lords Neil and Milletts' opinions that to be a Gypsy one must travel in a group, and the difficulty of doing do so following the 1994 Act, could mean that there are no longer such persons as 'Gypsies'.

Finally, the cases of *Dunn v Maidstone* and *Secretary of State v Dunn* have established the principle that the amount of money earned while travelling does not have to be more than the amount earned while not travelling. Maidstone contested the Inspectors' opinion that Mr Dunn was a Gypsy. However, the court found that Mr Dunn's "main occupation and source of income is from landscape gardening around the Maidstone area which does not normally entail other than daily travel to work. However, I note that he also breeds horses of which he currently owns eight and travels to horse fairs including Appleby, Stow-on-the-Wold and the New Forest where he buys and sells horses ... He could be away for up to two months of the year at least partly in connection with a traditional Gypsy activity which I consider ... also has an economic justification. I do not therefore conclude that taking into account the relatively short time during which he has adopted a generally more settled life-style, that the appellant has so abandoned travelling as to lose his status as a Gypsy under s. 16 of the 1968 Act."

The importance of these cases is that they mean a Gypsy family can settle during the winter and let their children go to school while travelling mainly in the Easter and summer holidays for an economic purpose and retaining Gypsy status and identity.

Questions pertaining to and arising from these cases

Do you have to be born a Gypsy to be a Gypsy?
No. It is possible for a house-dweller to obtain Gypsy status if they start nomadising.

111 *The Times* law report 8 June 1994

If you are not traditionally a Gypsy how long do you have to travel to become a Gypsy in the legal sense?
A case brought by Avon Council established the principle that 'New Travellers' had to travel for at least two years before the Council would class them as Gypsies.

If you are brought up as a Gypsy how long can you be non-nomadic without losing Gypsy status?
I would suggest five years. The first case known to me where it was ruled that an ethnic Gypsy was not a statutory Gypsy is *Horsham District Council v Secretary of State and Giles*,[112] where Mr Justice McCullough said that "Clearly there can, and indeed must, come a time when as a matter of fact the nomadic habit of life has been lost. When it is lost the Gypsy is no longer a Gypsy for the purposes of the Act." Mr Giles had lived at Billingshurst on the same site continuously since 1969 and before then in another settled place in Worthing since 1957 – a total of thirty two years, by far the majority of his life. It was argued on Mr Giles' behalf that he was a Gypsy because part of a family group, some members of which had travelled a great deal, but this was not accepted by the judge.

The judgement was reaffirmed in Cuss v Secretary of State and Wychavon District Council,[113] in which Mr Justice Vandermeer said it was "clear that the element of the nomadic habit of life had to present albeit that it might be seasonal. The Inspector had found that the predominant picture was of a relatively settled life-style and that Mr Cuss did not appear to have undertaken any regular seasonal migration or other travelling apart from occasional moves in search of a permanent pitch." However, the case note said that, although Gypsy status can be lost, "[t]he Converse is that the status can be regained again and so if the Cuss family were to take up again even just seasonal travelling the status could be regained."

Periods from two to five years have been suggested. It is also suggested that 'New' Travellers will lose their status more quickly than an ethnic Gypsy. In the 1990 case of a Mr Stacey it was ruled that he was not a Gypsy because he had a mobile home (not a touring caravan), and lived not on a Gypsy site but on a private site.

Is it possible to stop travelling but retain Gypsy status?
Yes, in certain circumstances. In the case of illness of the person or a relative, Gypsy status is retained while not travelling as long as there is an intention to resume travel at some time.[114] If a Gypsy stops travelling because of old age s/he retains the status. This was agreed by the Inspector in a planning case,[115] although permission was refused on other grounds. The question of whether a Gypsy still has that status at law when prevented from travelling due a prison sentence was discussed informally in the case of a Mr P. The Council felt that he should not benefit from being allowed to keep his Gypsy status because he had committed a crime. However, the punishment for committing the crime was a prison sentence. It would be unfair if, in addition to the sentence, the Gypsy also lost his status and the right to live on his own land. In the

112 QB 1989, cited in Dunn at p.586
113 1991 JPL 1033
114 *R v Shropshire County Council ex parte Bungay* (1990)
115 Re Mr Latimer

event the planning appeal was refused on another ground and no decision was taken as to whether Mr P had retained or lost his status.

If you have lost Gypsy status, how long do you have to travel to regain it?
As the note in Cuss states, if a Gypsy were "to take up again even just seasonal travelling the status could be regained." It is generally considered that a non-Gypsy needs longer to establish or re-establish Gypsy status than a Romany or other ethnic nomad.

Does applying for permission at all mean loss of Gypsy status?
Logically, applying for permission to reside on land implies the intention to give up nomadising and therefore ceasing to be a Gypsy. However, this would lead to a catch-22 situation in which an applicant could be refused permission on ground of not being a Gypsy; would be forced back onto the road; and would again become a Gypsy.[116]

Does applying for permission for a bungalow (as opposed to a caravan) mean that a person has given up Gypsy status?
No. As long as there is travelling for part of the year there seems to be no reason why living in a bungalow for the rest of the year is different from living on a fixed pitch on a caravan site.

In a study by Barbara Adams and others, they included in their study families which they found travelling in the summer although they had a house in the winter. There is an unreported case from Kensington Magistrates Court where a group of Irish Travellers stopping on unoccupied land were taken to court under the designation provisions of the Caravan Sites Act. It was claimed in their defence that they had houses in Ireland and were therefore not Gypsies to whom the Act applied. The court rejected this argument.[117] It should also be noted that the term 'caravan' includes a twin-unit mobile home which is – in spite of the name – not particularly mobile at all. It is brought onto a site in two parts on a lorry and put together on-site. It cannot be towed by a lorry and for practical purposes (as opposed to legal niceties) is the same as a chalet or bungalow. That is, it is a form of accommodation which falls between moveable (a trailer, tent, or other home which can be transported without being structurally dismantled) and unmoveable (a bricks and mortar dwelling, which must not only be dismantled but demolished in order to be moved).

The reason why Gypsies prefer a mobile home to a bungalow is partly financial (as cheaper), and partly because a mobile home is close in style to a caravan, which they are used to living in.

What happens if only one member of a family is a Gypsy?
In the case of a man who was brought up as a Gypsy and who marries a house-dweller, we may arrive at the situation whereby the husband has Gypsy status but the wife has not yet gained this status. If planning permission is sought for Mr X and his immediate family, then theoretically the wife would not be allowed to live on the site. Any children born during a period of settlement would not have Gypsy status and also would be unable to live on the site. This may be an argument for Inspectors to make permissions personal prior to some resolution of this apparent paradox.

116 The circular nature of such reasoning has not prevented some planning authorities from using it to justify refusal of planning permission.

117 It was later pointed out to the Department of the Environment that the Council had at one and the same time claimed to the court that these families were Gypsies but had not recorded them on their return for the Gypsy census. Irish Travellers are not protected as a distinct group under the Race Relations Act 1976 as Gypsies are, unless they experience discrimination by 'virtue' of their Irishness.

How long each year does a person have to travel in order to retain Gypsy status?
The Comment in the case note for Dunn says: "This sporadic nomadic life ... does not have to be very substantial." Mr Dunn travelled for up to two months each year. In the case of the Greenwich site the occupants (at the time of the case) were allowed to leave the site for twenty weeks, paying half rent, without losing their pitch.

Does it matter what sort of economic activity is carried on?
I say no. References have been made by Inspectors and judges to 'traditional occupations'. (See Dunn, previously). However, Gypsies' occupations have changed over the years.

When Gypsies first came to Europe many were snake charmers and acrobats. In the early part of this century common occupations were door to door selling of clothes pegs and crochet work, fortune telling and, for the men, casual farm work. Times have changed and tarmacing, roofing and garden landscaping are important new ways of earning a living. In the case of New Travellers with Gypsy status, occupations have included running a vegetarian canteen at fairs and festivals.

There seems no reason for the economic activity practised to be a traditional Gypsy trade.

Listening to children *Liz Hughes*

"We can't even get a library ticket. We can go and look at the books but we can't take them home."[118]

In the current debate around site provision the voices of children are often missed out. Yet it has been shown that issues of site provision and accommodation often affect Traveller children greatly. Research (Webster, 1995) has found that out of a group of Travellers who experienced multiple eviction from a number of sites in a short space of time only 15 per cent of the children were able to access school places. A lack of stable and secure sites led to other essential services such as healthcare being difficult to attain.

The United Nations Convention on the Rights of the Child, which has been ratified by the UK, affirms in Article 8 that "State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference" and, in Article 30, that "in those States, in which ethnic, religious or linguistic minorities of persons of indigenous origin exist, a child belong-

118 Bob, Travelling child. The Children's Society. *Out of Site, Out of Mind*, 1995. p.15

ing to such a minority shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

In examining the issues of site provision and accommodation, and how these affect Travelling children. I will be drawing from the results of the recent research carried out by the Children's Society with thirty travelling children in south-western England. The research examined what services and facilities children wanted on or near to their site, and came about as a result of the renewed interest by some local authorities into the issue of site provision. We felt that within this debate it was important that the views of Traveller children were represented. "Including children in any decision-making processes leads to a greater involvement and ownership over decisions and a feeling of inclusion and support for any outcome or changes that might happen. As well as all of the above it is worth remembering that one of the best reasons for consulting with children is that they often have some very good ideas. Children also have a right to be consulted. The United Nations Convention on the Rights of the Child, particularly Article 12 ... gives children the right to be consulted over matters which affect them...".[119]

The children who participated in the research were aged between three and thirteen years. They lived on a variety of sites, some with planning permission, but most unofficial.[120] Their life-styles varied between highly mobile and living in vehicles to children who had lived all their lives on one site and lived in benders. "Over half the children were born on the road and although they often had some experience of living on a house, most of their life had been spent living on sites".[121] All the children involved were 'new' Travellers but the main findings of the research and the recommendations that came from it could apply to all Travelling children.

The research asked the children about their ideal size of site, the location, what facilities they would want near to their site, and how long a time they would want on a site. The responses from the children were both reasoned and articulate. They talked about the experiences that they had on different sites, with different facilities, and why this affected the choices that they made. The research never set out to provide a blueprint of a Traveller site from a child's perspective but it did set out to raise awareness of the importance of incorporating a child's perspective on issues which affect children.

When looking at site provision there needs to be a recognition of the nomadic nature of the Travelling life-style. When talking to children about their ideal site it became clear that they did not want to stop permanently on one site. The issue of sites and accommodation was not about having a pitch on one site, it was about being able to move from place to place. The services, locations and facilities might need to change depending on the circumstances of the different Travellers. There needed to be a diversity of sites and stopping places to enable people to move around. It is important that this is recognised when looking at the issue of site provision.

119 The Children's Participation Project (Wessex), the Children's Society. *My Dream Site*, 92B High Street, Midsomer Norton, Bath, BA3 2DE, 1998. p.2

120 For the purpose of this article, and in line with the research carried out, a broad definition of 'site' which includes both legal and unofficial stopping places is used.

121 *My Dream Site*. p.3

One of the main findings of the research was the consensus around play space. Children, when asked about play space on-site, saw it as important for them to have a safe area on-site in which to play. All of the additional suggestions that they made about site provision related to play tools such as swings and slides, places to ride bikes, and tree houses. A safe place to play on a site can be a luxury for many Traveller children. The inadequate number of sites provided for Travellers and the preventative measures taken to stop access to traditional stopping places has forced families to stop in places where the external environment is not conducive to safe play. The other main findings were the needs for trees, grass and grazing on-site. Almost all of the children asked wanted to have these things on their site.

The recommendations which result from the research, then, are that:

- Children should be consulted over decisions that affect them, particularly in relation to sites and eviction.
- Site provision needs to represent the diversity of life-style that is found within the Traveller communities.
- Planning procedures should take into account the needs and wishes of children.
- Play space needs to be given greater priority when considering site suitability.