



Comisiwn
Cydraddoldeb a
Hawliau Dynol

Equality and
Human Rights
Commission

Briefing

Legal Briefing on Racial discrimination: Gypsies, Roma, and Travellers and their sites in Wales

October 2021

The Commission is publishing this briefing note to set out the legal position in relation to racial discrimination against Gypsies, Roma and Travellers and their sites in Wales, indicating the responsibilities of Councillors and Councils in Wales.

All of the people who live in these caravans, on these sites and pitches are residents of local authority areas and are therefore constituents of local Councillors; they vote in local government elections, pay rent and Council tax. Councillors have obligations to all of their constituents.

“Gypsies, Roma and Travellers are amongst the most marginalised groups in our society. We know these groups often experience discrimination, inequality and a lack of opportunities. We want to ensure that members of these communities are supported to fulfil their potential and make a full contribution to Welsh society.

We also know that these communities are full of individuals with experience and skills which are useful to Wales and their inclusion will enhance our society as a whole. In some parts of Wales, Romani Gypsies or Irish Travellers form the largest ethnic minority group. Contrary to some perceptions they are generally well-integrated into local life, though they often still experience inequality in important areas of their lives. In other areas, more recent migration from other European Union Member States has led to an increased Roma community. They are welcome in Wales and it is our challenge to ensure we achieve community cohesion and equality of opportunity for all.”

Julie James, Leader of the House and Chief Whip,
Ministerial Forward to Enabling
Gypsies, Roma and Travellers, June 2018

There were 1,065 Gypsy and Traveller caravans reported in Wales on 31st January 2021. There were 139 sites across Wales and 435 pitches on Gypsy and Traveller sites provided by local authorities in Wales. (All Wales Caravan Count Welsh Government).

Council obligations to provide Gypsy and Traveller Sites in Wales

The Housing (Wales) Act 2014 places every Council in Wales under a statutory obligation to carry out an accommodation needs assessment in relation to Gypsies and Travellers. In carrying out an assessment, the Council must consult appropriate persons. Once an assessment has been completed, the Council must submit the report to Welsh Ministers for approval. The Welsh Ministers may approve an assessment, with or without modifications, or reject it. If the assessment is rejected, the Council must revise and resubmit it or carry out another assessment. If unmet need is found the Council is required to identify places for new site provision. If a Council does not meet these duties, then Welsh Government can direct them to meet that need and can withhold funding. Many families prefer to meet their own needs through the planning system and develop small family sites; Councils have an obligation to work with them to support them to do so without discrimination.

In some instances the search for possible sites has prompted negative comments, social media campaigns and community tensions. These are sometimes made by, promoted or exacerbated by local Councillors and/or other council or public service staff such as school staff. Protests have been organised and attended by Councillors, School Governors and others.

For a long time Gypsy, Roma and Traveller communities in Britain have experienced wide-ranging inequalities. Many stereotypes about Gypsies, Roma and Travellers already exist, and negative attitudes and ingrained prejudices within parts of wider society can be hard to tackle. In addition, racism towards Gypsies, Roma and Travellers is still common. Our 2018 survey ‘Developing a national barometer of prejudice and discrimination in Britain’ found that more people (44%) expressed openly negative feelings towards Gypsies, Roma and Travellers. It is important that public figures do not act in a way that adds to the ignorance and prejudice of many members of the settled population.

Our research in 2016 showed that the most frequently cited barrier to the provision of Gypsy and Traveller sites was the effect of Councillor and local resident opposition and negative media issues. There is still a significant shortfall in suitable accommodation for this group as they have no lawful place to put their caravans.

The severe shortage of sites is linked to serious health problems amongst Gypsies and Travellers and this has an impact on children’s education and educational attainment. A constant cycle of evictions severely constrains employment opportunities.

Our research report “How coronavirus has affected equality and human rights” published in October 2020 found that while everyone has been affected by either the virus or the restrictions imposed in response to it the negative impact has been more severe for some groups than others. Significantly, Gypsy, Roma and Traveller pupils continue to have the lowest attainment levels of any ethnic group by a significant amount. This has been worsened by remote learning and changes to grading systems. Councillors should be looking to support Gypsy, Roma and Traveller children and young people with positive comments. Our ‘Evidence to the Women and Equalities Committee inquiry on coronavirus (COVID-19) and the impact on people with protected characteristics’ in May 2020 highlighted the challenges faced by Gypsies, Roma and Travellers during the pandemic including the limited access to water and sanitation and inability to self-isolate - all exacerbated by the lack of suitable sites.

In December 2020 a UK Government funded report entitled Hate: “As regular as rain”,¹ a pilot research project into the psychological effects of hate crime on Gypsy, Roma and Traveller groups found clear links between hate incidents and poor mental health, suicides and attempted suicides. Many of these hate incidents were online comments.

Codes of Conduct for Councillors

In 2008 (as amended on 1st April 2016) Welsh Ministers issued the current Model Code of Conduct which Councils are required to adopt. Councils have Codes of Conduct for Councillors which include:

- carrying out their duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- showing respect and consideration for others;
- avoiding bullying behaviour or harassing any person;
- avoiding action which could compromise, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the authority.

¹ <https://gateherts.org.uk/wp-content/uploads/2020/12/Rain-Report-201211.pdf>

Legal Position

Gypsies, Roma and Travellers are protected from racial discrimination under the Equality Act 2010. They are therefore protected, from direct discrimination (s13), indirect discrimination (s15) and harassment (s26).

Section 26(1) of the Equality Act 2010 provides that a person, A, harasses another, B, if A engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Disparaging, disrespectful, inaccurate and hurtful comments made by Councillors or employees may amount to racial harassment. They constitute unwanted conduct relevant to a protected characteristic (race) which has the effect of violating the dignity of Gypsies, Roma and Travellers and creating an intimidating, humiliating or offensive environment for them in relation to consultation about proposed sites.

There are words which Gypsies, Roma and Travellers regard as offensive, harmful and degrading and it would be reasonable for such persons to take offence. Section 29 (6) of the Equality Act states the following; A person must not, in the exercise of a public function that is not a provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.

For example, an insinuation by a Councillor that Gypsies, Roma and Travellers are invariably linked to anti-social behaviour fails to comply with the Council's duty to foster good relations between different groups. In every group there are individuals who engage in anti-social behaviour. Such comments about Gypsies, Roman Travellers are likely to inflame relations between this protected group and the settled community. In this example both the Councillor and Council have responsibility for the Councillor's actions and words.

Public Sector Equality Duty

Every Council has duties under the Public Sector Equality Duty set out in section 149 Equality Act. In the exercise of all its functions, a Council has a duty to have 'due regard' to three statutory equality needs:

- eliminating discrimination and harassment;
- advancing equality of opportunity between members of protected groups and others; and
- fostering good relations between persons who share a relevant protected characteristic and persons who do not.

The need to have due regard is high when it concerns the housing needs of Gypsies, Roma and Travellers who are a seriously disadvantaged group. To comply with the public sector equality duty, Councillors have an important role to play in addressing stereotypes and fear, encouraging integration and cohesion in local communities and breaking down barriers between different racial groups. Disparaging comments do not help to improve relations between Gypsies, Roma and Travellers and the settled community.

Councillor and Council responsibilities

It is important that Councillors comply with the Public Sector Equality Duty when future sites are proposed. Councillors may feel they are representing the views of their constituency. However, Councillors should represent all of the racial groups in the community they serve, including Gypsies, Roma and Travellers. Councillors must be very careful to ensure that their comments do not breach the Equality Act 2010 by being discriminatory and be careful that their comments could be considered to be a hate crime. Chief Executives and Monitoring Officers should remind Councillors of their duty under the law, and ensure they understand they are required to take their duties under the Equality Act 2010 into account in any communication (including social media or in verbal conversations) connected to their role as a Councillor.

Possible Negative Consequences

For Councillors personally:

- Not being able to undertake their role as Councillor effectively because they have lost the confidence and trust of their constituents, both in the Gypsy, Roma Traveller and settled communities
- Facing a complaint to the Public Services Ombudsman for Wales
- Having to defend their actions in a personal legal claim against them for discrimination.
- Not being elected at the next election or having to stand down because of reputational damage or negative press coverage.

For Councils

- Not being able to carry out their statutory functions to provide services because their local constituents both in the Gypsy, Roma and Traveller and settled communities lose faith in their local council,
- Not being able to comply with the public sector equality duty because members of the Gypsy, Roma and Traveller group do not engage with the Council
- Significant discrimination being experienced in their local areas because there is inadequate site provision for Gypsies and Travellers and no safe homes for them and their families.
- Significant legal costs arising out of discrimination claims.
- Enforcement action by the Equality and Human Rights Commission.

What can Councillors do?

Community tensions often arise when sites are developed without planning permission. Experience shows that well-run, authorised sites, can be effectively integrated into local communities. Unauthorised sites are often located in unsafe or unsuitable places, such as close to motorways or rubbish dumps, and lack basic toilet and waste disposal facilities. As well as being a health hazard for those who live there, such sites can cause environmental damage and can create an eyesore for neighbours. Creating authorised sites for Britain's Gypsies and Travellers is a small solution to what is often perceived to be a big problem.

Councillors can be key in reducing community tensions if they engage well with Gypsy, Roma and Traveller constituents and settled constituents. This involves engaging with all constituents to understand their needs and concerns and not supporting one side over another. It is important that Gypsies, Roma and Travellers are consulted on wide ranging policy issues, not simply those relating to site provision. If you have difficulties doing so, seek support from your Council.

Councillors and local representatives who show clear leadership on Gypsy, Roma and Traveller matters set the tone for a more positive debate in their communities. Many organisations advocate for change using a whole variety of methods. For example, through using the media, meetings with policy makers, consultation responses, reports, research or events.

The Welsh Government Enabling Gypsies, Roma and Travellers Plan shows that with planning and care it is possible to develop new Gypsy and Traveller sites providing for the needs of the Gypsy and Traveller community without causing concern to the settled community. However, it is clear that further work is required to develop authorised sites as according to the 'Gypsy and Traveller Caravan Count: January 2021' eight local authorities reported

having no pitches on 31 January 2021². Welsh Government must ensure that Human Rights are embedded in all of their actions and that they fulfil international obligations. Providing suitable accommodation for Gypsies, Roma and Travellers is key to this. The UN Committee on the Elimination of Racial Discrimination has recommended that the provision of suitable sites is prioritised and in their ‘Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland’ they concluded that the situation of Gypsies, Roma and Travellers had not substantially improved³.

² <https://gov.wales/gypsy-and-traveller-caravan-count-january-2021-html>

³

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/GBR/CO/21-23&Lang=En