

Legal Briefing on disparaging comments about Gypsy Travellers and their sites

Council obligations on providing Gypsy 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 Gypsy Travellers. If unmet need is found the Council is required to identify places for new site provision.

In some instances the search for possible sites has prompted negative comments from 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.

The Commission is publishing this briefing note to set out the legal position in relation to Gypsy Travellers and their sites, indicating the responsibilities of Councillors and County Councils.

Commission research

EHRC research has shown that Gypsy and Traveller communities in Britain experience wide-ranging inequalities. Many stereotypes about Gypsy Travellers already exist, and negative attitudes and ingrained prejudices within parts of wider society can be hard to tackle. In addition, racism towards Gypsies and Travellers is still common. 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 2009 showed that the most frequently cited barrier to the provision of Gypsy and Traveller sites was objections from Councillors and local residents. There is a significant shortfall in suitable accommodation for this community of whom 20% are technically homeless as they have no lawful place to put their caravans.

The severe shortage of sites is linked to serious health problems within the community and has an impact on children's education and educational attainment. A constant cycle of evictions severely constrains employment opportunities.

Our most recent publication (covering Scotland) indicates that with planning and care it is perfectly possible to develop new Gypsy and Traveller sites while balancing the needs of the Gypsy and Traveller community with the concerns of the settled community¹

Codes of Conduct for Councillors

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.*

Legal position

Gypsies and Travellers are a racial group as defined in s9 Equality Act 2010. They are therefore protected, from direct discrimination (s13), indirect discrimination (s15) and harassment (s26).

Section 26(1) 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.

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.

An example of this would be if a Local Authority refused a planning application solely on the basis someone was a Gypsy or Traveller.

¹ <http://www.equalityhumanrights.com/equality-commission-publishes-guide-establishing-gypsy-and-traveller-sites>

Every County Council has duties under the Public Sector Equality Duty (PSED) 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.*

Disparaging, disrespectful, inaccurate and hurtful comments made by Councillors or employees may amount to racial harassment as defined in section 26 Equality Act 2010. They constitute unwanted conduct relevant to a protected characteristic (race) which has the effect of violating the dignity of Gypsies and Travellers and creating an intimidating, humiliating or offensive environment for them in relation to consultation about proposed sites. They are words which Gypsies present or reading them would regard as offensive, would have an offensive and harmful, degrading and humiliating effect in the context, and it would be reasonable for such persons to be offended by them.

For example, an insinuation by a Councillor that Gypsies 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 community there are individuals who engage in anti-social behaviour. Such comments about Gypsies and 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.

Giving due regard to fostering Good Relations

The need to have due regard is high when it concerns the housing needs of Gypsies and Travellers who are a seriously disadvantaged group, particularly when one fifth are homeless. To comply with the PSED 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 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 and Travellers.

Chief Executives should remind Councillors of their duty under the law, and ensure they understand they are required to take the PSED duty into account in any communication connected to their role as a Councillor.