NOTES OF THE 3RD CONFERENCE ON TRAVELLER LAW REFORM, LONDON 20TH SEPTEMBER 2000

Introduction by the Chair, the Lord Avebury

I am delighted to be chairing this Third Conference on Traveller Law Reform, at which there are some very important issues to be discussed: the draft Traveller Law Reform Bill which you have before you; the Human Rights Act; and the Race Relations (Amendment) Bill, which is likely to be given the Royal Assent by about the early December. We should also look at the decision of the Central London County Court, that Irish Travellers are an ethnic group within the meaning of the Race Relations Act; the new guidance on unauthorised camping in DETR Circular 18/94, issued at the end of July, and the draft Guidance Document under discussion by the ACPO Public Order Committee, which the Home Office tried to influence by suggesting wording of their own.

We might also look at the use of Order 113 by local authorities, instead of the powers in the CJPOA 1994, and the various court cases in which it has been ruled that although Circular 18/94 did not apply to proceedings in which local authorities seek repossession of their land through the civil courts, they still had to have regard to considerations of common humanity in deciding whether and when to evict. The new Circular only amends the advice previously given as regards the meaning of toleration, and that is important, but it does not affect the duties of local authorities under other legislation, including the need to carry out welfare inquiries before considering eviction.

Finally, among recent developments of importance, the DETR have commissioned research by Heriot-Watt University on the effectiveness of the Good Practice Guide on Managing Unauthorised Camping, and we may have views on that question.

Being realistic about it, I am not hopeful that the Government will find time for legislation in the next session of Parliament, or even that they will agree that further legislation is necessary to ensure that Travellers have access to accommodation and education, which are dealt with explicitly in the Bill. What we do have, in the Race Relations (Amendment) Bill, largely as a result of the influence of my colleague Anthony Lester, is that in the delivery of all public services, both direct and indirect discrimination is to become unlawful. This means that practices and rules which apply equally to all in a formal sense, but which hit disproportionately at an ethnic minority such as Gypsies, must be eliminated.

There are also two EU Directives: the ‘race directive’ relates to implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin. The second, the ‘framework directive’, relates to establishing a general framework for equal treatment in employment and occupation. These generally follow British legislation, but they are important in helping to ensure that a person from an ethnic minority in Britain receives the same treatment elsewhere in Europe as he does here.

Manifestly, Gypsies in some parts of Europe and particularly in certain countries which are seeking entry to the EU, are treated worse than in Britain. These countries will have to bring themselves up to the common standard if they are to succeed with their applications. The OSCE High Commissioner for National Minorities published a report on the situation of Roma and Sinti in the region in March 2000, which was extremely critical of some eastern European countries such as Romania, Hungary and Bulgaria, but it did have some adverse comments to make about Britain (http://www.osce.org/hcnm/documents/). Negative stereotyping of Gypsies in the media, particularly in connection with asylum-seekers, was one cause of concern. The report also has a useful summary of the framework of legislation in the UK, in which the High Commissioner reached the conclusion that 'the 1968 Act achieved substantial – if still inadequate – results'. By implication, the High Commissioner was critical of the 1994 Act that eliminated local authorities' duty to provide adequate caravan sites, while at the same time enlarging the circumstances in which unauthorised parking may be determined illegal.

What we said at the time of the 1994 Act was that it was obvious that taking away the duty from local authorities would mean that after sites in the pipeline were completed, no more would be provided, and there was nothing in the Act or otherwise to enable Gypsies to get planning permission for private sites. We didn't predict that local authorities would try to close down existing sites, or use the land for other purposes, as is beginning to happen. Fairly extensive anecdotal evidence has been given to the Minister, Chris Mullin, of this alarming new trend, and he has made two points in reply. In this years' spending review £17 million has been made available for improving and refurbishing a limited number of sites, and the DETR are now about to commission their own research to discover the extent to which sites are being lost to other uses.

The money is welcome, and authorities like Hackney – which has been wanting to refurbish its Rendlesham Road site for years but had no way of financing it – will no doubt be putting in bids. However, the survey by TLRU last March showed that lack of money for refurbishment was not the main reason why sites were being closed, with the loss of 736 pitches since 1995. The survey being undertaken now means there will be a further delay of at least a year before any action is taken to stem the loss of sites, and by then the problem of unauthorised encampments will have worsened.

Finally, a few words on the educational provision of the draft Bill. I like the idea that LEAs should be obliged to produce a statement of their plans for Traveller education, and the encouragement of vocational training schemes by attaching conditions to s488 grants. Chris Mullin says that the Government commits considerable resources to helping to resolve the problems that Traveller children may have in gaining access to education, but he acknowledges that many Travellers have low educational achievement. It's no good saying that parents have the primary responsibility for ensuring that their children attend school. It is

also the Government's responsibility to identify the causes of educational deficit, as part of the more general attack on social exclusion. It is disappointing that so far the Social Exclusion Unit has not looked at the problems faced by the Gypsies, even though every observer agrees that they are among the most deprived of any section of the community. Worse, the Social Exclusion Unit has no plans to look at the needs of Gypsies in the future, and some political pressure is needed to put this right.

Luke Clements *is a Senior Research Fellow at Cardiff Law School and Co-Director of the Traveller Law Research Unit. He was admitted as a solicitor in 1981 and was in full time practice until 1998 when he took up his appointment at Cardiff Law School. He remains a consultant solicitor specializing in judicial review and applications to the European Court of Human Rights. He is Associate Fellow at the Department of Social Studies, University of Warwick; a member of the Law Society Mental Health and Disability Committee; a member of the Legal Advisory Committee of the European Roma Rights Centre and Community Care Legal Adviser to the Carers National Association.*

Thank you to Lord Avebury for his excellent speech and contribution to the Conference. The OSCE Report to which he refers received no small contribution from him, although he is too modest to note this. The 1968 Act to which he refers was his. Although he has many other commitments in the field of human rights, over more than 30 years, he has always found the time to work towards a better deal for Gypsies and other Travellers. Thank you also to the eminent speakers we will hear from throughout this morning, and to all who have taken the trouble to come and participate. Gypsies and Travellers will naturally have their differences on some matters, but can, have, and will continue to work together to agree on a basic recipe for necessary change.

You will have to suffer listening to me again after lunch, when I present the draft Traveller Law Reform Bill, but for now I want to speak briefly about the Human Rights Act 1998. I am conscious that there are a number of eminent barristers here today who have forgotten more about the Act than I know, so I feel rather a fraud speaking to it. Suffice it to say that the Act is the most fundamental law to be passed in the United Kingdom since the Bill of Rights in 1688.

At present, when you go to court the judge will be interested in only one thing: what is the law? He or she will not express any overt interest in what is fair or what is unjust. If you make any attempt to raise the question of fairness you may have the court rules (literally) thrown at you. Without the Human Rights Act, when law and justice collide, the law prevails. But in two weeks time, when there is such a collision, judges will have to do justice. So over time, things will change. But the Act is not a cure-all, and the process of change will be slow. It will, albeit

gradually, transform the legal environment. But it is important to remember that we will still have the same judges. To truly incorporate the spirit of the Act into our society and our legal system we will need a new generation on the bench.

The big change engendered by the Act will be within local authorities and other public bodies, not in the courts, which are anyway a last-ditch resort. Authorities will have to ask themselves: “Even if the law allows us to do something [or not to do it], can we act this way?”. Those here at this conference today may work within, or will have collaborators working within, education, health, a variety of local authority departments, police forces. The Human Rights Act gives such collaborations real opportunities for effective working and good practice.

The Act brings the European Convention on Human Rights (ECHR) into the body of British law. Murray Hunt, speaking shortly, has been involved in some of the cases on planning law taken by Gypsy families to Strasbourg. If they had commenced their complaints two weeks from now, from October 2nd 2000, they may have had to go only to Sheffield. Those cases largely concerned Article 8 of the ECHR, which we will look at as an example of how the 1998 Act will operate.

Article 8 recognises the right to respect for private and family life, home and correspondence, i.e. privacy. If you are travelling around, and someone interferes with that in some way, this is interference with family and home life. There should be no such interference unless:

- It is allowed by law.
- It is necessary for one of the reasons outlined in the Convention.
- It is proportionate.

For further information on the legal detail and wording, see the factsheet that Rachel Morris has provided (see TLRU web site, publications page).

I recently acted for a travelling family against a local authority, I won’t say where. The family concerned had regularly stopped on an isolated green spot on top of the moors, where one day they were handed a piece of paper. This told them to move within 14 days or be subject to the use by the authority of their eviction powers under section 77 of the Criminal Justice and Public Order Act 1994. I wrote to the authority to ask what democratic necessity existed enabling them to take this action. A clerk called in reply to say “but what they’re doing is against the law”. I asked him to put this in writing. Because I wanted to go to Strasbourg one more time instead of having to settle for the Magistrates’ Court.

What this authority did was allowed by law, was lawful, because of the existence of the 1994 Act. As to whether it was necessary, clearly national security wasn’t a justification in this case, although it might have been if the family had encamped, for example, next to the SAS training camp in Herefordshire. It couldn’t be justified by reference to the safety of the public, although things might be different if the family had been located too close to a busy road. The economic well-being of the United Kingdom is clearly not relevant in this example, nor are health and

morals, nor is crime and disorder. Even if there had been crime and disorder in association with this encampment, there are other laws and powers, other than those of eviction which could have been more appropriately used. That same principle applies if the health of the children was negatively impacted by being encamped in that place; it would be difficult for an authority to argue that their health would be improved by swift eviction to an uncertain location.

The rights and freedoms of others might of course provide a relevant justification for the breach of respect for privacy. Except that there was nobody else on this isolated moorland. The action of the authority violated Article 8 because they couldn't hang a justification on any one of those pegs. Even if they could, they would then also have to show that the action taken to achieve protection of one of those grounds was 'proportionate'. That is, effective, balanced, and the least possible interference with the right being breached.

For instance, let's assume that a hypothetical Mrs. Davies and her family have a home on that lonely moorland and the travelling family are within their view. The Davies' too have the Article 8 right to respect for their privacy. The authority must seek to find a balance between the competing rights of the travelling family and the Davies family. They cannot destroy the rights of one to protect the – potentially minor – rights of the other. It may, for example, be possible to screen the people from each other rather than moving one group on.

In effect this means that when the 1998 Act comes into force, 'zero-tolerance' councils will be dead in the water. 'Zero-tolerance' policies are not always written, but they do exist across the country. Henceforth any policy must be explicable, justified. If a group of Travellers has little local connection, arrives suddenly and in large numbers, behaves very badly and will not curtail such behavior, swift action may be justifiable. What is important is that the authority must undertake the action of justification.

This example is a very simple one. In reality, we have on our benches some judges who may not see even such a clear-cut case so plainly. Many come from a certain background, in which human rights may not have been a major formative influence. We all must do what we can to educate ourselves in the new human rights culture, in order that our judiciary – and, for that matter, legislature and executive – progressively learn what effective human rights really are.

Murray Hunt *is a practising barrister and a member of Matrix, a new legal practice specialising in constitutional and international law. He specialises in the law of human rights and judicial review. He has appeared before the European Court of Human Rights in a number of cases, most recently in Chapman v UK in May this year in which a number of British Gypsies alleged that it is impossible*

*for them to live according to their traditional way of life. He has also appeared in a number of cases in domestic courts concerning the ECHR, and is involved in general advisory work on human rights. He frequently lectures on the domestic application of the ECHR and the Human Rights Act, and is the author of '*Using Human Rights Law in English Courts' *and co-editor, with Rabinder Singh, of '*A Practitioners Guide to the Impact of the Human Rights Act 1998' (forthcoming). *He has published a number of articles on human rights in various journals, and contributes an annual survey of the European Court of Human Rights case law to the '*Yearbook of European Law'*.*

I wish to take up Luke's theme about the possibilities presented by the Human Rights Act. I am, as Lord Avebury stated, a barrister, and I think it very important and possible that if the Act is used sensibly as part of a wider strategy it presents all sorts of possibilities. I want to talk about rights in the context of accommodation, and about the law as a real, practical tool. Through my work in the Chapman cases – to which Luke has already referred - I have explored a very important question: how can rights on paper be turned into a legal and political tool which can be used to bring pressure to bear on authorities? How can hollow-sounding legal standards contained in international conventions with little direct applications in domestic courts be made real?

These questions sound hopelessly broad. But they did apply to a particular case such as Chapman. In that set of cases, we argued that the current legal and political system in the UK imposes upon Travelling people an unwelcome choice between assimilation and criminalisation, and that the European Court of Human Rights must do something about it. The Buckley case, which involved similar arguments, was the first attempt to get the Court to think of Gypsy accommodation as a legal issue. The inability of Mrs. Buckley to obtain planning permission and carry on her traditional way of life was a breach of her Article 8 right to respect for her private and family life. Although the breach was not held to be unacceptable in all the circumstances, the European Commission did accept in that case that Article 8 could be interpreted widely enough to encompass traditional ways of life.

Again, although this point was not won, the breach of Article 8 in these cases also breaches Article 14 – the anti-discrimination provision. Planning permission for a Gypsy site is almost impossible to get; the law fails to secure respect for Article 8 in a non-discriminatory way because others are not subject to the same disadvantage.

In Buckley, the Court said that Article 8 applied, but that the interference with the respect for this right was justified. In Chapman I was part of a large legal team which attempted to persuade the Court to decide differently. In our arguments we relied heavily on a growing consensus in Europe around the protection of national minorities. The Framework Convention on such protection was signed by the UK Government in 1995, and ratified by them in May 1998. They thereby

have committed themselves to positive obligations in this area (although they are not enforceable in the British courts). Parts of the Framework Convention are as follows:

> Strasbourg, 1.II.1995
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> The member States of the Council of Europe and the other States, signatories to the present framework Convention, Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage; Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms; Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993; Being resolved to protect within their respective territories the existence of national minorities; Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent; Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity; Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society; Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State; Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990; Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states; Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies; Have agreed as follows…
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> …Article 4:

1.The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2.The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

These are fine statements to which our Government have bound themselves internationally. In Strasbourg, in the Chapman set of cases, we stated that the European Court of Human Rights must interpret the European Convention on Human Rights in such a way as to ensure that effect was given to other obligations the state has entered into.

Last year the UK Government sent its first Report under the Framework Convention to the Advisory Committee that examines State compliance with the document (http://www.humanrights.coe.int/Minorities/Eng/SiteMap.htm). The UK uses the Race Relations Act as a reference point for its definition of 'national minority'; therefore, they acknowledge Gypsies as being such a minority in paragraph 2 of their Report. They go on to never mention Gypsies again in the Report. The Government clearly does not see the problem with our planning system, or see it as a minority issue, as evidenced by their omission. The OSCE report published in March of this year, to which Lord Avebury has already referred, takes the UK as an exemplar of problems with site provision, and looks in detail at contributions to the problem by the legal and administrative regime.

Another argument used before the Court in Chapman was that, because the protection of a traditional way of life falls within Article 8 - although bear in mind that the Commission, not the Court, have accepted this in the past - the margin of appreciation allowed to a state in its interference with the right should be more restricted. That is, justifications of interference must be more rigorous. The Framework Convention was referred to as evidence that there is now a greater onus of proof and justification on Governments than previously. It was also argued that our understanding of discrimination is much more sophisticated now than previously. To this end, the European Roma Rights Centre made an intervention in the case that referred to the crucial nature of the international dimension.

So the applicants put forward pieces of evidence to show that the UK system fails to deliver enough sites to meet need (at least 2500 more are needed, judging by the number of unauthorised encampments claimed in the biannual DETR Gypsy Counts). The research done by ACERT, and the DETR's own

research were also used to demonstrate the failure of the planning system and planning policy to meet its own stated aims.

When the Human Rights Act takes effect on 2nd October, the case law of the European Court of Human Rights will become even more relevant to domestic judicial decisions than it is currently. So the Chapman decision, (which could be published anytime between October 2000 and early 2001) will form an important background to what happens next within the UK planning regime. All public authorities will have to act compatibly with the Convention, not simply have regard to it. The Act will be both a discipline on and a stimulus to public authorities in the performance of their duties and delivery of their services. This all sounds rather abstract and illusory, but will be only if we let it.

Delia Lomax *has been a Researcher at the School of Planning and Housing, Heriot-Watt University for the past seven years and is currently the Course Leader of their Postgraduate Courses in Housing. Before that, she managed an advice agency in the voluntary sector, and has worked for two local authority housing departments. Delia's previous research interests have included strategic planning and inter-agency working in the field of housing and community care, homelessness and rough sleeping. In the last two years her research has focused on Travellers: the 'Survey of Travellers' Views in Scotland' (about which she will speak today) and research for the DETR and Home Office on the 'Good Practice Guidance on Managing Unauthorised Camping', which is ongoing.*

The survey of Travellers' views in Scotland had been published only the previous day (Development Department Research Programme Research Findings No. 94 - *Moving On: A Survey of Travellers' Views*). Delia began by making a number of points regarding the methodology of the research, including:

- The researchers used were all people who were already known to Travellers.
- A pilot was carried out to ascertain what questions should or should not be asked of Travellers.
- Travellers residing in housing were not interviewed as part of the research unless they happened to be met with on the roadside.
- Travellers themselves worked as researchers on the project.
- Some Travellers were reluctant to take part as they previously given their time and energy to research the results of which they had never seen, and/or which seemed to have produced no real results and improvements.

The main findings, taken from the Executive Summary, have been copied from the web site at www.scotland.gov.uk/cru/resfinds/drf94-00.asp[1]:

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[1] *Moving On: A Survey of Travellers' Views* by Delia Lomax, Sharon Lancester and Patrick Gray can be obtained by sending a cheque for £5.00 made payable to 'The Stationery Office' to: The Stationery Office Bookshop, 71 Lothian Road, Edinburgh, EH3 7AZ ☎ 0870 606 5566 🖹 0870 606 5588 🕸 http://www.tsonline.co.uk/

- Travellers are not a homogeneous group and the survey findings reflect mixed views on many issues.
- Site regulations appropriate to their lifestyle and fairly applied are acceptable to Travellers.
- The use of a site barrier is a difficult and complex problem for both residents and site managers.
- Travellers on LA sites were concerned about proximity to busy roads and to rivers. For those at roadside encampments, the most important issue was access to water, toilet facilities, and rubbish disposal.
- Over two-thirds of the Travellers had lived in housing at one time or another. Some found it did not suit their life as a Traveller or they encountered prejudice and harassment from neighbours.
- Finding work is the main reason for travelling; the time and distances traveled have fallen due to the lack of stopping places. Over a quarter of the Travellers had not traveled at all in the previous year, and a further quarter had traveled for less than 3 months in the year.
- Some find it difficult or are reluctant to use LA sites, and see unauthorised camps as an appropriate option, despite the lack of services and threat of eviction. Over half of Travellers would like more freedom to travel, and there is some support for a network of transit sites or short-stay pitches on existing sites.
- Travellers tend to use older family members and friends or trusted agencies and individuals for advice and information. Face-to-face contact is generally preferred, at least initially, to telephone or written advice.
- Many had experienced prejudice and harassment during the previous year; Travellers tend to either ignore such situations or move away rather than complain. Harassment from other Travellers was a problem in some areas.

Arthur Ivatts *worked as Her Majesty's Inspector from 1976 to 1998 with national responsibility for the education of Gypsies and other Travellers. He now works as a consultant for DfEE and OFSTED in respect of the education of Travellers, Refugees and asylum-seekers. He is the author of a number of official and other reports on the education of Gypsies and other Travellers. In the last year he has acted as a consultant to a DfEE-funded research project at the Institute of Education, London University, and has visited Hungary for the Foreign and Commonwealth Office with respect to the education of Roma.*

1. Introduction

With each passing day, this summer being no exception, the Gypsies/Roma and Travellers are in an ever-increasing social and political profile. We are reminded almost every month of the old adage, “Chickens come home to roost” and it could not be more true of Gypsies/Roma and Travellers. The pan-European racist prejudice and discrimination over four or five centuries is nicely catching up with us.

You will all be very familiar with the state of affairs in the UK and the circumstances re Gypsy Travellers. There is no need for me to rehearse these as you know them better than I. But it is worth doing an armchair audit of education and to identify both progress towards, and hindrances to, basic educational rights and entitlements. This, after all, is the central focus of today’s conference.

2. “The Good”

National educational legislation secures the right of all children to an education suitable to their age, aptitude and ability, and any special need they may have, and goes further in requiring that all children between the ages of 5 and 16 shall be educated either in school or ‘otherwise’. DES Circular 11/81 (paragraph 5), details that the LEA’s duty extends to *all* children residing in their area whether permanently or temporarily. “This thus embraces Traveller children”.

In reality, the duty for education falls on parents, and local authorities have a statutory duty to ensure that parents (or guardians/carers) fulfill this duty. The ‘policing’ of this duty in the form of the ‘school bobby’ has been a well-known feature of the system since public education was first introduced over 150 years ago. Schools have, by law, to report to the local education authority unauthorised absences or irregular attendance. This provides the ‘net’ of care.

Parents, in exercising their duty, also have rights. The Education Act 1996 (section 411) places a duty on LEAs to make arrangements enabling all parents in their area to express a preference as to which school they wish their child to attend. Parents also have a right, subject to certain conditions, to educate their children themselves or to make other arrangements.

Needless to say, the interests of ‘The State’ have usually predominated in educational legislation, as opposed to a concern for the individual and personal fulfillment. These more worthy motivations have been owned and exercised by the ruling elite.

Other rights are to be found in different bits of legislation. The 1989 Children Act establishes that the welfare of the child must come first in public policy, including education. The 1976 Race Relations Act enshrines the right not to be

discriminated against in education on racial grounds and as we know Gypsies are recognised as an ethnic minority group entitled to protection under the Act.

In the last century these national legal rights to education have been buttressed by the growth of international rights and conventions to which the British Government has been a signatory. For example, it was only the existence of the international rights that prevented the previous Home Secretary from denying education to the children of asylum seekers.

The UK Government became a signatory to the United Nations Convention on the Rights of the Child in 1991. This international legislation focuses on participation, provision and protection of children. In ratifying the Convention the government becomes a State Party to the Convention and in so doing is agreeing:

- to be bound by international law to create the necessary conditions to ensure realisation of the rights as set out in the Convention;
- to adopt such appropriate measures as are necessary to achieve the standards set out in the Convention. This may mean passing legislation to ensure that the laws of the country reflect the spirit of the Convention;
- to allocate the maximum amount of available resources in order to ensure implementation of the Convention.

Three important Articles re Education:

Article 28: Education. The child's right to education, and the State's duty to ensure that primary education at least is made free and compulsory. Administration of school discipline is to reflect the child's human dignity. Emphasis is laid on the need for international co-operation to ensure this right.

Article 29: Aims of Education. The State's recognition that education should be directed at developing the child's personality and talents, preparing the child for active life as an adult, *fostering respect for basic Human Rights and developing respect for the child's own culture and national values and those of others*.

Article 30: Children of minorities or of indigenous peoples. *The Right of children of minority communities and indigenous peoples to enjoy their own culture and to practice their own religion and language*[2].

The UNESCO Salamanca World Statement on Special Educational Needs (1994) calls on governments to adopt the principle of *inclusive education*. 91 nations signed the Salamanca Statement, including the UK.

[2] Italics added.

The international concept of inclusive education is now about the enrolment and successful participation of *all* groups of children in mainstream education and a corresponding change in teaching, curriculum, organisational structures and cultural understandings.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (in domestic law as of 2nd October 2000) enshrines the right to education in the First Protocol, Article 2:

'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'.

With all of this impressive national and international law in place, why do we still have serious concerns about rights and entitlements to education for Gypsy and Traveller children?

3. 'The Bad'

Despite the framework of rights which should ensure access to a happy and successful education, we know that the net has a mesh that allows many minority group pupils (social/ethnic/cultural) to slip through or even to miss the sweep of the good trawler altogether.

The main reason is an endemic hatred at all levels of society for the Gypsy and Traveller communities (and those associated with them). What is the evidence for this? Most of you will know all of these telling examples:

i. Was not the ground swell of support for Tony Martin partly responsible for the fact that the burglar was a 'Gypsy'? The 'evil eye' on jurors. 'Gypsies and other criminals' (Any Answers, BBC).
ii. Has not the recent embarrassing national display of racism and xenophobia against asylum-seekers got something to do with the fact that many of them are known to be Roma from Eastern and Central Europe? These are allegedly the 'bogus' economic migrants and scroungers who are aligned into mafia-type organisations, with aggressive street begging as a front for other criminal activities. 'Hoards of asylum-seeking gypsy thieves are overrunning our welfare state and using their children as props to get money on our streets. Victory for the 52,876 readers who supported our 'Britain has had enough' campaign to rid the nation of gypsy beggars' (*the Sun* newspaper, 20th March 2000). Acceptable and unacceptable begging!
iii. Last summer the Home Secretary said publicly that many Travellers were a criminal group and that some 'pretend' Travellers go about 'defecating in people's doorways'. The ill-informed nature of these comments are inevitable if responsible governments know nothing about the people

concerned. FCO/censes – How can Human Rights begin to be protected if there is such official ignorance.

iv. A school in Gloucestershire admitted 4 key stage 1 pupils; many settled parents withdrew their children. The local newspaper asked 'Would you object to gipsy children?'
v. Lower case 'g' often used for the proper noun Gypsy. "I can no more see the term 'gypsy' in the same language category as 'Afro-Caribbean' than I can fly" (comment by ?)
vi. Why did there seem to be no Roma among the refugees from Kosova? Just a question!

But how do people get away with it?

i. Ignorance: genuine and willful.
ii. A lack of clarity with regard to minority ethnic status. They are 'white' and so in some strange way not 'ethnic'. Eg. Home Office contract for race relations training for the police.
iii. Rights associated with any minority ethnic status are seriously undermined by a despised and outcast social status. Blind eyes are turned.

'The easiest way to de-humanise people is to strip them of any context, of any history. And, with very little in the way of a written history of their own, with no book, no anthem, no flag or popular story about the founding of their nation; with no state or power of any kind except in numbers, the Gypsies are particularly vulnerable to such mythologising'. (Isabel Fonseca, *The Guardian* newspaper, 24th March 2000).

And so if a society is going to ensure the protection of rights for *all* its citizens, then it must look very closely at its 'marginal' communities, and it is good that the government have an agenda to tackle social exclusion. Sadly, on present evidence, the Gypsies and Travellers are too far to the margins of the Government's vision.

Racism, which is a direct threat to all human rights and entitlements, will not be seriously addressed unless we identify and embrace those social and racial groups who occupy a 'scapegoat' or 'pariah' status / function for the majority. Perhaps it is useful for a society or government to have a community out there in the mist that can be 'blamed' for all 'our' social ills.

But surely all of this has not undermined human rights and entitlements to education in the UK for Gypsy and Traveller children?

Surprise surprise **IT HAS.**

4. 'The Ugly'

Rights to a happy and successful education have been undermined by restricted access, poor attendance and gross underachievement.

The record of poor access and underachievement by Gypsy and Traveller children has been well documented over the last 33 years. The record is contained in a string of official / commissioned government reports, all of which many of you will know almost off by heart.

But as you all know, sadly, the story is variable. Despite important and marked improvements each year, the messages coming through are still overall disappointing.

The Audit: The current legal, administrative and professional arrangements that threaten the rights and entitlements of Gypsies and Travellers to education and the ground already gained - The More serious structural factors contributing to denied rights and entitlements:

1) Restricted access to educational opportunities at all levels and legislation that can perpetuate this at school level (50% attendance regulation)
2) Still very poor and intermittent attendance and an 'untouchable' response by some Education Welfare Services
3) Premature departure from the formal education system with very little follow-up from the professional world.
4) Seriously restricted progression both in terms of phase transfers and learning achievements.
5) Ethnic and cultural identity frequently denied by schools. A curriculum that generally fails to include, promote and foster respect for the culture and language of Gypsies and Travellers.
6) Access secured on a tenuous basis frequently needing professional advocacy and within a system which is trigger-happy to exclude.
7) A legal structure, the essence and the spirit of which are incompatible with securing the necessary conditions to ensure educational rights and entitlements (e.g. CJPO Act and policies on site provision)
8) Inadequate resources to do the job properly or to respond appropriately to the educational needs of a nomadic community.
9) Few formal structures to facilitate parental views and wishes.
10) The promotion of individual institutional competition in which 'below average or problematic' children are structurally defined as 'less desirable'. Issues of access.
11) The setting of targets for individual schools which places negative labels on pupils and or groups who threaten the achievement of such targets.
12) The demonisation of groups of children by the organs of state that negatively influence public attitudes. For example, asylum-seekers 9or Gypsies and Travellers can give head teachers a seeming legitimacy in hesitating or refusing admission to school.

13) The lack of interest in the commercial promotion of books and materials that would correct, inform, and enrich knowledge to the benefit of all children via the curriculum.
14) The low priority given in some schools to relevant in-service training.
15) Other issues including: inclusion in the EDP; ODL not accepted as a viable alternative to school; Gypsies and Travellers left out of the category when 'ethnic monitoring' is introduced; a patchwork of different practice re EOTAS; and nomadic pupils being negatively recorded within school registers; and a variable response by EWO services.
16) Perhaps the ugliest of all: 'We propose that a fast-track, one-stop legal procedure should be created to streamline evictions … Travellers' children would also be subject to proper educational supervision. Children should not lose the right to a proper education because of the alternative lifestyles of their parents'. (New Conservative Party proposals for Travellers drawn up my Archie Norman MP and ratified by party leader William Hague and Shadow Home Secretary Anne Widdicombe).

The Home Secretary is also expected to announce new measures against Travellers just in time for the next election!

A land mine for human rights and entitlements to education is when the race card is thrown onto the gaming table of political elections!

It's not looking good, but let's pray that it can be avoided. THANK YOU.

Following these presentations, a number of the Advisory Group of the Traveller Law Research Unit were present and delegate discussion followed:

Eli Frankham and Hester Hedges sent apologies due to illness. TLRU Advisory Group members in attendance included:
The Lord Avebury
Susan Alexander, Co-ordinator, Friends, Families and Travellers
Sandra Clay, Co-ordinator, Cardiff Traveller Education Service
Sylvia Dunn, President, National Association of Gypsy Women
Yvonne MacNamara, Irish Travellers Project, Brent Irish Advisory Service
Peter Mercer MBE, General Secretary of the East Anglian Gypsy Council
Anne Bagehot, Secretary, Gypsy Council for Education, Culture, Welfare and Civil Rights
Tim Wilson, Liaison Officer, Cardiff Gypsy Sites Group.

Donald Kenrick: With regard to the '200 attendances' rule under the Education Act, if this were to be done away with the planning definition of 'Gypsy' would also have to change.

Arthur Ivatts: The rule takes responsibility away from local authorities to ensure the education of children. Which authority follows up whether a family has been travelling for 180 sessions of school? The rule is an anomalous and structural disadvantage for travelling children, who are entitled to a full time education of 380 sessions. A policy should perhaps be designed for those children who cannot remain at the same school for all or even some of those sessions to ensure that education otherwise or mainstream but highly mobile education is provided to them.

David Watkinson: If someone can remain a Gypsy for the purposes of planning law when they settle for a significant length of time for a particular reason or purpose (i.e. ill health), why does this not seem to also apply in the context of education?

Arthur Ivatts: While admittedly some authorities operate a loose 'two year' rule whereby a Traveller Education Service (TES) may not work so closely with a family who've been residing in housing for that period, in reality it seems to be a very small problem. Of much more importance, for example, is the fact that while a TES may be trying to get the children of a roadside family into school, colleagues within the same authority who may only work up the hallways are busy trying to remove that family from the area.

Frieda Schicker: If eviction proceedings are in train before the Human Rights Act comes into force, how easy will it be to shift gears and use the Act now?

Murray Hunt: The Act applies after October 2nd, certainly, but will be relevant to proceedings commenced before that date. Therefore even if a matter took place before the October 2nd the Act will apply. Even much of the judiciary does not seem to understand that this is the effect of one of the provisions of the Act.

Carol Waller: legal talk is all very well, but what actual practical positive effect can the Act have in eviction proceedings? For example, we have raised real medical reasons before why eviction should be delayed but the authority staff involved just ignored these circumstances.

Murray Hunt: many of us this morning have warned that the Act is not a cure-all. We will still have the same public officers carrying out acts (or failing to act where action would be appropriate), and we will still have the same judges interpreting our laws. Many of them are from a relatively restricted and similar background, one which may not always be conducive to a deep understanding of human rights principles and approaches. We need to manage our expectations about how people generally can be led to think differently using the Act as a tool.

Lord Avebury: Some judges have been trained very late in the day. Some will ignore the Act for a while, but will come to heel when a few Court of Appeal decisions have changed the legal landscape somewhat.

Mark Kennedy, Scottish Gypsy Traveller Association: We have already had the Human Rights Act in force in Scotland for some time but the only change has been for the worst. Article 8 can be turned against Gypsies and Travellers. Relying on the powerful of the majority to take a stand for us is pointless. I have never heard of the Scottish Executive research talked about here today. The same old research is being done over and over again but there is no change.

Delia Lomax: The Scottish Gypsy Traveller Association is on the Advisory Group for this research.

Rodney Stableford: In a recent Gypsy site case in Basildon in which Dr Donald Kenrick was involved, the Secretary of State came down in favour of the appellants. The appeal was in respect of Green Belt land.

Mark Kennedy: I wish to speak to the recent matter of the closure of Horsemonden Fair in Kent. I would question whether such a closure would take place if the event were in respect of any other ethnic minority group. How many of you present were there to stop the closure?

Marc Willers: I am a barrister who was involved in the appeal against the Home Secretary's granting of an exclusion order in relation to the protest against the closure. We tried to argue points under the Human Rights Act 1998 and raise the profile of Gypsies' rights. The Judge in that case did not accept our arguments. We may well appeal to Strasbourg – as the Exclusion Order arguably breaches Articles 11 and 14 of the Convention - and are perhaps more likely to find justice there. Success would be very important not only for the continuation of Horsemonden Fair, but because other Gypsy Fairs may be under threat in the future. This current decision may affect the attitudes of other local authorities. In the case of Horsemonden, the Fair was not run under a Royal Charter so its' taking place depends on permission of the landowner i.e. the Parish Council. (That is, there is no prescriptive property right). The Parish Council asked the police for an order under the Criminal Justice and Public Order Act 1994, arguing that the Fair (which has been going for anywhere between 100-300 years) is so successful that it was getting out of hand. If the decision expected from Strasbourg in Chapman recognises the importance of protecting Gypsies' rights, then we can rely on it in other cases, including threatened Fair closures.

Bill Forrester: Regarding the discussions of the Fair by the Parish Council, they undertook no consultation in the matter. They are the 3rd tier of local government, but undertook no discussions with the County Council. Alternative events have been arranged by the Gypsy community to seek better recognition of their history

and traditions. It is to be hoped that the actions of Horsemonden Parish Council are not the thin end of the wedge.

Anne Bagehot: The Gypsy Council for Education, Culture, Welfare and Civil Rights (GCECWCR) attended a meeting with the Parish Council to negotiate their decision. But the decision had already been taken. We were told that much of the land upon which the Fair has been geld was up for development. This was not true, and the minutes of the meeting as taken by Council members are inaccurate. We all need to work together to ensure that this does not happen again next year.

Carol Waller: How are ethnic minorities defined? Why does the term cover some Travellers and not others?

Rachel Morris: The Race Relations Act 1976 covers people who fall within a racial group as defined within what are known as 'the Mandla criteria'. These include shared customs, traditions, language, sense of identity and so on. This imply that a group must have been so definable for quite some time, so newer groups of people may well fall outside them. However, this may now be less relevant and limiting because of the Human Rights Act 1998. Article 14, while weak and reliant on another Article of the Convention being relevant, prohibits discrimination 'on any grounds'. There is a list of some of these grounds, but it is not to be exhaustive. Therefore, where rights can be raised, it may be the discrimination itself and not membership of any long-standing social group which is most important.

LUNCH BREAK taken at this time

LUKE CLEMENTS introduces the Traveller Law Reform Bill:

This is not the first Bill I have drafted – I did much drafting of the Carers Act some time ago. This Bill still needs some changes, but it comprises most of the major reforms as identified by the Law Reform Platform in *Gaining Ground*. What has been left out includes: desirable reforms which are too technical or practice-based to be include in primary legislation, and items upon which there is too little consensus. It should be remembered that the Bill is not a utopian blueprint or the final say; it is a lobbying tool and a working document. The Government are unlikely to take the Bill in this form, but it may give some of the provisions an airing and incorporate a few bits into other Acts as they are amended or introduced.

Some parts are likely to be taken up fairly quickly, not least because not to do so would leave laws in place, the effect of which breach the Human Rights Act 1998. Others laws and policies which do so have already been so amended by the Government, for example home repairs assistance grants to public and private Gypsy Site residents, and voting rights for Travelling people.

I shall leave detailed discussion of the Bill and its explanatory notes to the workshop that will take place later this afternoon.

Rachel Morris introduced Traveller Law Research Unit research on the Costs of Unauthorised Encampments.

Since coming to Britain from Canada in 1990, ***Rachel Morris*** *has obtained a BA from the Open University and an LL.B (Hons) at Cardiff Law School; she hopes to receive a PhD in 2001. She has worked as Co-ordinator of the Traveller Law Research Unit (formerly the Telephone Legal Advice Service for Travellers, TLAST) since July 1996. She researches, publishes and runs seminars and conferences on the Gypsy and Traveller-related aspects of planning and land use conflicts, policing, legal history, public policy, and the media; recent publications include* 'Gaining Ground: Law Reform for Gypsies and Travellers' *(joint editor with Luke Clements).*

Why count the costs? Because costs were used as a justification for the reform of the Caravan Sites Act 1968 by the previous government; because the new duty of best value may be relevant to the management of UEs (see previous comments); and because the Human Rights Act will effect changes to local authority practice in relation to UEs, as have crime & disorder partnerships.

Existing information on costs includes archival information, and comments on costs in the *Good Practice Guide to Managing Unauthorised Camping* and DETR

correspondence. TLRU sent a research questionnaire to every authority in the UK during 1999/2000 asking questions in relation to UEs:

- Do you count the costs?
- What are your costs?
- Do you have a budget?
- Are your costs rising or falling?

A response rate of 70% was obtained. At least 75% of respondents bore costs in relation to UEs in the period 1st September 1998 to 31st August 1999.
Considerable numbers of UEs were reported but these were not always recorded in detail. The majority of respondents saw the Travelling people involved in the UEs as 'long-distance'. This may have implications for 'best value' reviews, as Travellers are not always seen as potential consultees.

Only 26% of spending respondents had dedicated UE budgets. This clearly has implications for best value in that cost-effectiveness in relation to UEs in not being explored. Those budgets which do exist and were reported total almost £1m. A considerable number of local authorities employ Gypsy Liaison or Traveller Liaison Officers, and most would retain them if there were less or no UEs in their area (usually because the officers also have involvement with the management of permanent sites); 11 would not.

Less than half of the spending respondent authorities count the costs; some can only guess. Some can report overall figures but cannot break them down.
The overall figure reached in this research - £4,318,123 - is clearly an under-estimation as non-respondents have had UEs and therefore costs in the period; some costs cannot be quantified and/or are unrecorded; and the research does not include any formal quantification of the costs to the police, private landowners, health services and so on.

What is clear is that:

- the costs relating to UEs can be considerable.
- The costs of 'site protection' are high.
- Costs of clearing up after UEs are moved on are high.
- Many authorities feel that the costs are increasing.

The costs to Gypsies & other Travellers include:

- Lack of or reduced access to health, education & other services.
- Actual costs, such as extra fuel, more expensive food bought 'on the move' and so on.
- Reduced safety.
- Loss of dignity and social inclusion.
- Long-term social costs such as damaged relationships between 'settled' and travelling communities.

Best value issues arising from the research include:

- Non-toleration approaches are still common and are expressed as being unlikely to change; it is seen as 'best value' to move UEs on automatically as this is 'what local people want'. However, it may be an expensive approach when the Human Rights Act and Race Relations Act amendments come into force.
- The current invisibility of costs mean that much work needs to be done in this area to comply with the duty of continuous improvement in demonstrating cost-effectiveness.
- Balancing rights and interests will be more difficult if the financial aspect is not taken into account.
- Best value audits will look at the local planning system, which is bound to include a consideration of site / UE issues.
- Can 'economy, efficiency and effectiveness' be proven when the costs of UEs are not counted?

NOTES FROM AFTERNOON WORKSHOPS

The Traveller Law Reform Bill

Thanks to Terry Green, Chair, a Gypsy living in Sutton, and to Luke Clements, note-taker

Lord Avebury suggested that the Caravan Sites Authority should be re-named the Gypsy and Traveller Accommodation Authority since it might deem it appropriate to provide 'group housing' of the kind being pioneered in Northern Ireland: although 'bricks and mortar' these had proved popular in that they enabled extended Traveller families to live together in the same community.

Jerome Burns of the Northern Ireland Department for Social Development confirmed this view stating that many Travellers want settled accommodation but also wanted this to be in communities in which they lived with their extended families. These were in relatively low-density bungalow schemes with land for horses etc. Four such schemes are currently being progressed.

Terry Green said that he and his family had been forced through circumstances to live on a housing estate and disliked it largely due to the isolation and racism that accompanied it; they wanted to live amongst their family and that there was 'safety in numbers'. He thought that the Northern Ireland schemes sounded attractive; that what he wanted was to be able to look out of his window and see other family members living nearby.

Terry Holland concurred with Lord Avebury's proposed change of name for the Caravan Sites Authority.

David Cannon of Southwark Traveller Education Project described how the provision of hard-standing at minimal expense could dramatically improve the quality of life for Travellers and that this point should be emphasized: how cheap

such accommodation assistance could be compared to the cost of providing housing.
Susan Alexander of Friends Family and Travellers took up this point and referred to correspondence between Lord Avebury and the relevant Minister Chris Mullin. Lord Avebury explained that he had asked the DETR to investigate why so many Travellers were apparently moving into Council housing accommodation and to calculate the cost to such authorities of this trend. The DETR had been unhelpful in their response. Lord Avebury felt that this issue should be pursued as the cost of such involuntary transfers to scarce council housing accommodation could be considerable.
Pat Barr of the Intercultural and English Language service in Surrey noted that Travellers who had moved into council house accommodation frequently 'house hopped', with several moves in accommodation over a relatively short period. Terry Green confirmed this, suggesting that it was probably due to racism, isolation and the trend of Travellers to follow family members: thus if one moved, they all moved so as to remain together.
The workshop discussed the issue of transit accommodation and the question of encouraging regional co-operation between authorities. Lord Avebury suggested that the Caravan Sites Authority ought to have power to fund such sites and Norbert McCabe of Hertfordshire County Council confirmed that such a grant making power might make a real difference and result in the creation of such sites. This was echoed by Terry Holland's comment that the Housing Corporation's widened powers (as envisaged by the Bill) would probably not enable it to fund such sites in any event.
Sarah and Michael Cox made a number of detailed and extremely valuable comments upon the technical drafting of the Bill which were noted and Terry Holland endorsed the view that changes to the GDPO to legalise the temporary use of 'set aside' land for accommodation would be welcome.

The Crime and Disorder Act
Thanks to Peter Mercer, Chair, and Anne Bagehot, note-taker
It was identified as being used on some Gypsy Sites to impose curfews on the young male residents, which is 'over the top' and interferes with their working lives. Those not in school are taken back there by this means. It is not clear the Act is being used appropriately.
In one area there is a police officer assigned specially to work with Traveller families on the roadside. It is his job to build trust, talk to families and help them to adapt to the conditions required for evictions to be postponed. He works with other departments to assist 'toleration'. Fly-tipping is often the action of bad neighbors in housing. His view is that more help with skips and other rubbish disposal means on roadside sites is needed, and help getting and keeping children in school. Once an eviction has taken place you've lost the argument on both sides.
A local politician stated that the Act is unworkable – those from any community who are very badly behaved are impossible to help. On one Gypsy Site there are a handful of families who terrorize the rest and no-one dares complain for fear of

reprisals. A youth club has been tried but failed. One attendee pointed out that different groups within the Travelling communities may have different cultures. Some are more prepared to police themselves; tell someone else's child to behave or tell the parents of misbehavior and request co-operation. Different groups of Travellers won't always mix well on sites, as with areas of housing.
A probation officer agreed that the Act has failed: there have only been around 100 orders issued under the Act in England and Wales over 2 years. How many of these were issued against Gypsies and Travellers? Curfew orders are not generally used because it applies to a whole area and so is difficult to police. It is easier in relation to a particular residential site, which may make it more likely than on order will be sought in respect of these residents than housed ones.
What is 'bad behavior' and how do you separate it from cultural differences or social problems? There should be a review of these wider issues, how the Act has operated to date, and how better – more sensitive, workable and long-term - solutions might be identified and implemented.

The costs of unauthorised encampments
Thanks to Carol Waller of the Traveller organisation New Futures *Association,* Chair, *and Rachel Morris, note-taker*
A wish was expressed to see a solid plan brought out as a real alternative to the continual round of evictions throughout the country. It is important to remember that the 'honeypot' problem whereby those areas providing secure sites attract people from area with less provision and therefore sites can be become too large and unworkable. This is a very real problem and therefore a way must be found of getting site provision on a regional / national basis.
A strong multi-agency planning group has proven helpful in some areas and is needed within each authority.
One local authority employee is new to the field, but after a summer spent dealing with eviction of unauthorised encampments (UEs) has become convinced that there must be another way. Most UEs have been on private land, which may be a reflection of how much public land is now 'protected'. One person had done some working out of the costs of eviction (£23,000 per annum) compared with the cost of national provision of transit sites (£16,000 every 5 years). Local authorities, however, may not actually want a frank discussion of costs as it is easier just to do what 'local people want'. Some felt that the situation has deteriorated over the last year; others that some authorities have begun to realize that just pushing Travellers around is not cost-effective.
Education costs are far higher than in the draft report on this research. These include both financial and emotional costs: lost preparation by schools when Travellers moved on; expectations of parents raised then fail when evicted; driving to visit sites to liaise on education only to find they've been moved on; letter writing in support of 'toleration'.
So much more can be achieved if there is communication between local settled and temporary communities. One small community of young Traveller families have managed their own UE for some time now, and it's better managed than the official public site.

The Audit Commission now has a role in auditing Best Value and will have a role in auditing compliance with new positive Race Relations duties; these issues may fall within their purview.
There was a view expressed that fly-tipping and the location of UEs on inappropriate land does Travellers no favours: how do you get an official site set up when local perceptions have suffered for these reasons? Especially when you're talking about very densely populated areas.
It was pointed out that people look after land in which they feel they have a stake, and that it is not always Travellers who fly-tip but local residents who take advantage of their presence. And it may sometimes be the Travellers who are most harassed that leave the most mess: a vicious circle. We may be creating a generation of Traveller kids with an attitude. They need training but also assistance. They need to feel valued, trust needs to be created between communities.
Education and consultation has to cut both ways. There is still no direction from central Government regarding these issues, or sustainable development of living environments. Many councils are only concerned about costs insofar as *they* pay them; not current and future individual and social costs.
You don't have to be a financial expert to see the sheer pointlessness of a lot of current policies and expenditure. Even with good negotiation with councils, leaving sites really clean, and no complaints from locals, evictions still take place.

Bullying and exclusion
Thanks to Daniel Smith, a Gypsy resident in London, Chair, and Sandra Clay, note-taker
How have things changed over the years and where do we go from here? There was agreement that some good things are happening. It was stressed that housed Travellers do retain their culture. The experience of Traveller pupils varies: some experience prejudice and others don't. Housing may make a difference, and some schools are willing to include aspects of Traveller culture, which makes a positive difference. Some older Travellers had bad experiences of school. It is shocking that in the Gloucester case (1998) non-Traveller parents took their children out of school when Traveller children were admitted, but there are signs of progress even in this case because it made national news and the LEA and the Head Teacher support Travellers' right to school.
Where there are children of a certain nationality in a school, teachers from that nationality are employed – more teachers who are Travellers are needed. Many adult Travellers wish they had better educational opportunities – they realize that lacking what can be gained from schooling restricts their choices and opportunities.
The best schools welcome all children – the role of the Head is pivotal in combating bullying etc and has importance influence on a school's ethos. Good schools will reflect Traveller culture throughout the curriculum. Some Heads do nothing to celebrate Traveller culture as they feel Traveller pupils do not want to be identified. One person had been the subject of discrimination and prejudice for being proud of his identity and therefore could see why some children might deny

they're Gypsies. Models of good practice are not widespread enough. Gypsy children might be more easily accepted in inner city schools where there is an existing multi-cultural intake. Difficulties experienced with one Traveller pupil are often extended to relate to all Travellers. There is experience of Travellers being refused school places but this is not a universal situation.
A good school for Travellers is a good school for everybody. Schools suffer from mythologies about Gypsies – similar prejudices exist about children with special needs. Mums are often more supportive of schooling than Dads. Families are now not moving so rapidly in response to work opportunities so children's experience of schooling is not so fragmented.
Schools should have a whole school bullying policy to include all children so everyone feels safer. Many rural schools still think race issues are irrelevant to them – ironic as it could be more of an issue. Some schools deny that bullying is taking place. Gypsy parents may withdraw their children if they think they're bullied. Traveller children have problems as they're 'outsiders' but they're not the only ones. School rules should be explained to Traveller families. Large groups of Traveller pupils can make a big difference to small schools. Traveller Education Services should help Travellers feel welcome.
Anti-Traveller bullying is often not seen as racist (and will not always be about race). Many don't accept Travellers as an ethnic minority and seek to keep them invisible, so is it any wonder that the bullying goes unchallenged. Bullying 'hot spots' include the playground / before and after school, where it's difficult to monitor. Traveller awareness needs to be raised in schools. Many Travellers don't know their own history. It is not only pupils that bully – staff can bully and be bullied.
The power behind the Commission for Racial Equality is Black-orientated and Travellers may not be included in their dynamic.
'New' Travellers are a cultural minority, as are Fairground and Circus families; they will be better protected by the Human Rights Act.
Formal exclusions may not be abnormally high for Travellers, but exclusion is not being included / being left out in many different ways. Some schools don't value Traveller Education Service input if you don't do what they want. We don't see the true picture because most Travellers are not in school at Key Stage 3 onwards. Some schools still exclude Travellers for minor infringements i.e. wrong colour shirt. If Traveller children are repeatedly demeaned they will vote with their feet.

Family issues

Thanks to Kay Beard, a Gypsy fighting for planning permission to live on her own land, Chair, and Sarah Cemlyn of Bristol University, note-taker

Domestic violence on sites – how far should the Site Warden be involved? Are there other family members who could help, such as family elders? The Romany Gypsy community is a very tight one, and it is often probably best if problems are sorted out within the family. Would Gypsy women ever want to go to refuges? There may be times when it is best to remove a woman from a situation for a while. So how welcoming to Gypsies and Travellers are refuges? Experience in

one area is good, but this is not always the case. If an Irish Traveller woman left her husband and e.g. went to Ireland following violence, she would not necessarily be ostracized by her community. One worker with 'New' Travellers reported that domestic violence is often resolved very effectively by the community itself. Others concurred in relation to other Travelling communities, but concluded that sympathetic and appropriate outside help may also be needed at times.
There are difficulties over keeping children in secondary education, as parents are concerned about drugs and about sex education. If there are any lesbian and gay people in the community, they are still 'in the closet'. However, arrangements can be made to ensure that children do not receive sex education if the parents so choose, yet the children still don't go to school so what are the other reasons? Child care? Knowing good family skills from a young age is a form of educational attainment too. Although parents may believe in formal education, there is a general fear of loss of culture. Adult education is important too – 'lifelong learning'. In Stockton-on-Tees a tuck shop has been opened on Site. Girls who are not in school are running it e.g. doing maths, among other things. All sorts of things have educational value, not just school lessons, and this should be recognised. If you can't always take children to education, you can take education to children. For example, the Travellers School Charity does this; their materials are culturally specific and children want to go because it's relevant. Maybe the mainstreaming education system needs to change too.

Race relations

Thanks to Frieda Schicker, Co-ordinator of the London Gypsy and Traveller Unit, Chair, and Nikki Prince-Iles, note-taker

Regarding the media, the Commission for Racial Equality guidelines to the press on reporting on Gypsy and Traveller issues are useful. Complaints to the Press Complaints Commission must be specific in terms of how an article is believed to be distorted, misleading and so on. The media control the agenda: they can mislead the public, but can also educate it. Do the local media really reflect local opinion? It can be difficult to decide whether to contribute to a media piece; there is a tension between knowing that you could be misquoted, or that you can help to educate people. A number of people had horror stories about the times when they have co-operated with the media. There can be good pieces and the authors of these should be encouraged. Proactive approaches can be useful: identify responsible journalists, issue sound press releases and other useful materials. Find ways for Travellers to control the agenda.
The Race Relations Act: a guide for non-lawyers, for Travellers and those who support them, would be useful. The Human Rights Act approach is more inclusive than the Race Relations Act and therefore fairer. Discrimination is also faced by people who aren't protected by the Act. Gypsies and Travellers need good advice and advocacy support to really get a benefit from these legal developments, especially in rural areas. Local authority workers are not usually in a position to offer these. Local Race Equality Councils can be good but lacking in

rural areas, and possibly at Commission level they are less supportive of Gypsy and Traveller issues.
Re asylum-seekers: Families are disappearing from the view of those who could assist them; there is little or no follow-up of their needs. For example, education assessments done but then families are dispersed. Men are being detained and split up from their families. Lack of or inappropriate translation is a major problem. They come from traumatic incidences of discrimination and then suffer further such experiences here. Roma asylum-seekers are at a huge disadvantage.

Housing and site issues
Thanks to Mary Lee, a Gypsy and a Site Manager in Cheshire, Chair, and Delia Lomax, note-taker
Some participants thought that more Travellers are moving into housing, and from necessity rather than choice i.e. to access health services. Research being undertaken by the University of Central England for the Evesham and Pershore Housing Association was finding that there is a preference for sites but still moves into housing, often for negative reasons i.e. poor site conditions, stigma. Older people may seek housing due to health problems but would otherwise prefer caravans.
Important site issues are appropriate and sound management, community facilities. Some Gypsies and Travellers actually prefer management by a non-Traveller as it aids impartiality.
Research by the Northern Ireland Housing Executive (NIHE) showed a preference for Group Housing and this is being built, although there are problems i.e. choice of area. This is permanent residential housing with amenity facilities, enabling extended families to reside together or near each other. There is a preference for bungalows with the kitchen to the front. There has been consultation with Travellers on design and planning. Permission has been granted for two schemes, on the sites of long-term unauthorised encampments where relationships and integration with neighbors has already been established (funded by the Department of Social Development). There are non-standard and culturally appropriate elements incorporated into the design, such as hard-standings, storage, garages, play areas and paddock / grazing land. There are other issues around management of schemes: capacity building, training of residents. The Housing Association are initially being used as the managing agent, and issues such as long-term management and compatibility of residents for re-lets are still to be addressed. There are some differences from similar schemes being developed in the Republic of Ireland, for example a system of halting sites and a form of Group Housing. The Northern Ireland schemes are pilot schemes, on which the NIHE have a communication strategy and further information.
Many local authorities in the UK have begun to consult with Travellers but still do not listen i.e. size of sites. Many feel that 10-15 pitches is about right. Otherwise there can be privacy issues, i.e. over-crowding, too many Travellers with different lifestyles and/or travelling patterns. Bigger plots allow for visitors.

There is a huge need for transit sites if traditional lifestyles are to be maintained. Why are Gypsies and Travellers who were born in an area still not thought of as 'local people'?

The Human Rights Act 1998

Thanks to Tony Thomson of Friends, Families and Travellers, Chair, and Neil Weeks, note-taker

The Chair expressed the ideal that 'the best interpreter of the law is custom'. Magistrates have not had much training in relation to human rights, and certainly not as much as judges. Local authority employees stated that no information has been provided to them from their own legal departments. There is no clear guidance from central Government on training on the Act. The Home Office web site (www.homeoffice.gov.uk) has human rights and race relations sections which are accessible and useful. There is a Governmental Task Force and perhaps they will publish useful reports soon also.

The concern was expressed that the Human Rights Act has not worked in Scotland, and there isn't enough advice and training available generally throughout the UK. Scottish councils have been worried about being taken to courts if they get things wrong. The question and chances of 'getting it right' will develop as case law from the courts shows the way; this will take time. But the Act itself is an easy piece of legislation to understand, and existing domestic and European case law already provides guidance.

A local authority officer noted that Gypsy people never come to court to challenge a decision so how will case law develop? It only takes one decision to affect the future actions of a broad range of public bodies, as the Wealden case demonstrated.

Will the Act affect the amount of building that local authorities undertake? There is no 'right to sites', 'right to stop' or even 'right to housing' in the Act, but decisions such as the forthcoming Chapman decision may force the Government to take stronger steps to protect national minorities. It is important not to have false expectations of the Act – everything will not suddenly become perfect on 2nd October, and people must not be led to believe that it will. But the Act is an important and useful tool for everyone.

The interpretation of the Act will differ between different local authorities; it will take time for good practice in relation to the Act to spread nationally. But of course some interpretations will be open to challenge in the courts.

Do authorities need specific case law to guide them now? Authorities must ask themselves what is their aim, and are they pursuing a legitimate and proportionate means of meeting that aim, before they decide upon eviction. For example, if one person is causing trouble on a site, the authority may consider just evicting that one person rather than the whole group, or find other ways to tackle their behavior.

The Act may not make any difference to the provision of amenities to unauthorised encampments; there is already Good Practice guidance from the Government on that point.

FULL CONFERENCE RECONVENES

Remarks of workshop chairs:

Terry Green: Group Housing like they're starting to build for Travellers in Northern Ireland is an excellent idea. I'm sure that a lot of Gypsies in the UK would support such development. I am really happy about the agreed reforms, and just hope that some good comes of this process.
Peter Mercer: The Crime and Disorder Act is a cosmetic measure which doesn't actually work; doesn't achieve what it claims to. Eviction is not the answer to bad behaviour. We need to find a way to liaise i.e. specialist police officers, to tackle individual behaviours. We need to look at the fundaments of how society deals with *anyone* who flouts the rules.
Carol Waller: Simply moving people on is a waste of money, lives, resources and energy. People on both sides need educating. Between us all we have that ability. We need an access, a conduit, to enable this communication at all levels of society. It would help if local policies had a stronger lead from national bodies., and if good local practice were spread nationally.
Michael Jones (for Daniel Smith): Head teachers need to identify better with Travellers and their cultures. In some schools culture-related bullying is seen as acceptable. But some schools are accepting of all children. A good school for Travellers is a good school for everybody. Racist incidents experienced by Traveller children need to be recorded as well as those involving other children from minorities, and some schools / Local Education Authorities don't do this.
Kay Beard: Of course domestic violence is an issue within Travelling communities as it is for other communities. Some Gypsy and Traveller women need sensitive and informed help from agencies and refuges but aren't getting it. These bodies need to be aware of Gypsy and Traveller cultures. Refuges can be a foreign environment so they need to be made as welcoming an environment to all women and children in trouble as possible. Secondary education is still a problematic area for many Travelling families because of issues around sex education and other cultural matters. We want formal education but we still want our culture. We would love for our children to be lawyers, doctors and so on but we need culturally sensitive help for this to be achieved.
Frieda Schicker: A non-lawyers' guide to the implications of the new Race Relations Act would be welcomed. There should be better information for non-lawyer advocates to help them to help people gain access to services and to their rights. There is a huge gap in rural areas of advocacy support. Local authorities are restrained now in helping with access to rights. The Human Rights Act approach seems fairer than race-based approaches as it seems more accessible. Asylum-seekers only know what they see in the media, and their experience of trauma may be increased by poor media reporting of their situation. There is concern about the dispersal policy relating to them and the lack of follow-through of it, and detention of males. There is a lack of translators

and possibly prejudice held by some of those who do exist. The media might benefit Travellers but there is a very real risk of misrepresentation. Advice on proactive approaches to working with the media would be helpful. One useful approach is for Travellers themselves, with support if necessary, to produce their own representational materials, especially videos.

Delia Lomax (for Mary Lee): There was much discussion of Group Housing because we were fortunate to have on our group a man from Northern Ireland who has had involvement in this type of development for Travellers. There was little consensus as to whether site conditions are deteriorating – some are, some aren't. There were also differing opinions as to whether self-management of Gypsy Sites by residents is positive. Who manages the Sites may be less important than the fact that such management must be fair and impartial. Consultation should not be cosmetic – often people asked what they want and need and then actions are taken which completely ignore these expressions. Privacy was discussed only briefly but there certainly need to be minimum standards to ensure that it is respected on official and unofficial sites.

Tony Thomson: Because there is no Human Rights Commission being set up in the near future, monitoring of the effects of the Act will have to be undertaken by Travellers and their support groups when they are already over-stretched. There really should be a national body to oversee implementation of the Act. There was agreement that the Act is a positive thing that will hopefully improve the steps taken by public bodies in their decision-making and reinforce good practice.

LORD AVEBURY, CHAIR:

Great steps have been taken to agree and seek implementation of necessary and desirable law reforms for Gypsies and Travellers. But there is a long way still to go. The Traveller Law Research Unit Unit have applied for funding to research the effects of the Human Rights Act on local authority practice in relation to Gypsies and Travellers and hopefully this will be attained. Despite some concerns about the fate of the Act to date in Scotland, it is important to remember that the Act was in force in relation only to a narrow band of instances. I still believe that the Act will be a very effective tool for us all. Many influential lawyers attended a conference on the Act yesterday, and they believe that the Act will bring about seismological changes. It is only one mechanism, but a strong one, for improving conditions, eliminating discrimination and racism and promoting certainty of the consequences of public action and inaction. I hope one consequence will be to convince Gypsy and Traveller parents that their children can be formally educated in a manner which respects their culture; and that we can then keep this promise.

Rachel Morris: A special thank you to Lord Avebury for his time and commitment, not only in respect of these conferences but for his work overall to improve the lives of Gypsies and Travellers.