

Fuller & Ors R (on the Application Of v Chief Constable of Dorset Police & Anor [2001] EWHC Admin 1039 (12th December, 2001)

Case No: CO/3458/2001

**IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL
12 December 2001

Before:

THE HONOURABLE MR JUSTICE STANLEY BURNTON

**THE QUEEN ON THE APPLICATION OF:
JOSETTE FULLER, AMANDA WRIGHT, TINA
TARR and JULIE BOOTH**

Claimants

- and -

CHIEF CONSTABLE OF DORSET POLICE

- and -

**THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

Interested Party

**Catrin Lewis (instructed by Community Law Partnership) for the Claimants
Andrew Fraser-Urquhart (instructed by the Head of Legal Services, Dorset County Council) for the
Defendant
Nathalie Lieven (instructed by the Treasury Solicitor) for the Interested Party**

**HTML VERSION OF JUDGMENT : APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO
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Mr Justice Stanley Burnton:

Introduction

1. Section 61 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) is one of the provisions of that Act creating special procedures for the eviction of trespassers from land. Apart from the supplementary powers conferred by section 62, the others are sections 77 to 79. Although the headings to those sections are in general terms, the provisions appear to be aimed at Gypsies and Travellers: persons with an unconventional nomadic life-style, living in caravans or trailers, moving from time to time in their vehicles from place to place, and sometimes encamping on open land without the permission of the landowner. These provisions do not apply to buildings other than, in the case of section 61, agricultural buildings and scheduled monuments; they make specific provision for the trespassers’ vehicles, and they apply to trespassers who reside or intend to reside on the land in question. They create unusual powers, backed by criminal sanctions.
2. In these proceedings the Claimants raise questions of general importance concerning:
 - (1) the effect of section 61 of the Act;
 - (2) whether section 61 is compatible with rights conferred by the European Convention on Human Rights and incorporated in the Human Rights Act 1998;
 - (3) if section 61 is compatible, the duties of police officers when implementing their powers under that provision in relation to the needs and welfare of those sought to be evicted.

The Facts: (a) the Public Authorities

3. On 11 July 2001 a group of Travellers arrived at Lodmoor rubbish tip site, Weymouth, Dorset (“the site”) and encamped there. The local authorities for the site are Weymouth and Portland Borough Council, to whom the land belongs, and Dorset County Council.
4. Both local authorities had in place policies and procedures relating to unauthorised Traveller encampments. The Borough Council had adopted the same approach as the County Council, and as a result was able to use the County’s Gypsy and Traveller Liaison Service. The Service includes a Liaison Officer who has developed good relationships with Gypsies and Travellers, who has the necessary skills and experience to carry out welfare enquiries. At the times material to these proceedings, she was Ms Nia Bailey. The Borough Council had also adopted a draft protocol for the management of unauthorised encampments, and suggested toleration criteria. The County Council’s policy was reflected in a draft statement of Gypsy and Traveller Policy. That document pointed out that the County Council had no official sites for new Travellers in Dorset or any official transit sites or temporary stopping places. It stated:

“Instead, the County Council has for several years implemented a policy of sensitive management which is consistent with the government’s good practice guidelines.”

It also stated that:

“Decisions on managing unauthorised encampments will be informed by an assessment of the specific health, education and welfare needs of the Travellers and their children. The education needs of children are an important consideration and will be taken into account in deciding whether encampments should be tolerated until half term of the end of term.”
5. The local authorities soon became aware of the Lodmoor encampment, and on 13 July 2001 Ms Bailey visited the site. She handed out copies of a document containing the Borough Council’s toleration criteria. In relation to behaviour, the document states:

“intimidatory behaviour, if substantiated, following complaint will not be tolerated. ...”
6. The document envisages that the written agreement of trespassers to their leaving the site may be obtained. No such agreement was obtained in this case.
7. She visited the site again on 16 July. She completed assessment forms, recording that there were then 13 “live-in” vehicles on the site, with 20 adults and 4 pre-school age children. There was then no record of a pregnant woman among them.

8. On 17 July 2001, a meeting was held between officers of the two local authorities to consider their response to the encampment. Liaison with Dorset Police had already taken place, and it had been agreed that the police would support a period of toleration of the encampment at the site. At the meeting of 17 July 2001, the local authorities agreed to seek to negotiate a leaving date for the Travellers, by which they would move on. The information available at the meeting was that the Travellers might be willing leave by the end of August 2001. The consensus at the meeting was that the encampment would be tolerated for a short period, subject to the good behaviour of the occupants. The recommendation of Mr Ayre, the officer of Dorset County Council responsible for the implementation of Gypsy Travellers Policy, to the Borough Council was that, in the light of the preliminary Human Needs Assessment, they should tolerate the encampment until the end of August 2001. Mr Ayre advised that it was inappropriate to evict the Travellers immediately because the encampment was not causing any particular nuisance and he considered it necessary for detailed welfare checks on them to be undertaken. It had already been noticed that a pregnant woman was living at the site. According to Mr Ayre's witness statement, his staff and those of the Borough Council made it clear that, subject to good behaviour, the encampment would be tolerated until the end of August. That date was an important date for the Borough Council, because a contract for the production of compost on the site was due to start in September (although later its start was postponed).
9. On 23 July 2001, Melanie Earnshaw, a solicitor employed by the Borough Council, and Mike Evans, of the County Council's Gypsy and Traveller Liaison Service, visited the site and spoke to a group of the Travellers. They discussed the end of August as the agreed leaving date, which seemed to be generally acceptable. More Travellers had joined the group, and Ms Earnshaw asked for Needs Audit Forms to be completed and told those present of the importance of informing the local authorities of their welfare needs. Ms Earnshaw had heard that there was a pregnant lady among the group and asked about her. She was told that she had left.
10. Ms Bailey visited the site again on 13 August 2001. She informed a group of the Travellers that there would be a possible alternative site for them at the end of August at White Horse Hill, Came Down in Dorset, about 2 miles from Weymouth Town Centre, and within reach of the educational and medical facilities accessible from the site. The Travellers stated that they wanted to stay in Weymouth Town Centre. In his third witness statement, Mr Johnson, the Claimants' solicitor, states that the Claimants were unwilling to move to White Horse Hill because of an incident of arson to a Travellers' bus that had taken place there.
11. However, on 14 August 2001 what was regarded by the Police as a serious incident took place at the encampment. It involved two police officers, who were forcibly detained at the site by Travellers. According to the officers involved, the main gates had been chained against them, preventing them from leaving. They were abused, suffered minor assaults and their vehicle was damaged, and had only been able to negotiate their release by agreeing that the land belonged to the Travellers and that they would not return. The Police evidence is that the officers found the incident traumatic and had been fearful for their safety.
12. As a result of that incident, a meeting was held on 21 August between representatives of the local authorities, including Mr Ayre, and Inspector Gillott of Dorset Police. They were disturbed by the incident of 14 August, the more so because Mr Ayre was aware of a similar incident when a dog handler employed by West Dorset District Council had been held captive by a group of Travellers some of whom might be at Lodmoor. Mr Ayre was concerned for the safety of his staff. He felt that behaviour such as that on 14 August required effective sanction. In addition, there was concern that the encampment had almost doubled in size.
13. Inspector Gillott stated that the Police proposed issuing a section 61 direction. The representatives of the local authorities agreed with that course of action. Mr Ayre informed Inspector Gillott of the results of the local authorities' welfare inquiries, which had been undertaken on visits on 13 July and 7 and 13 August, namely that there were a pregnant woman and a number of children on the site, and that arrangements had been made for the maternity care of the pregnant woman. He also informed him about mechanical problems with some of the travellers' vehicles. Inspector Gillott was satisfied that the Travellers' welfare considerations had been sufficiently taken into account.

14. In the result it was decided to give the travellers 48 hours' notice to vacate the site. Some of those at the meeting were concerned for the safety of the Enforcement Officer of the local authorities when he attended the site to post notices that the toleration criteria had been breached by the incident of 14 August and requiring the Travellers to quit the site. In consequence, it was agreed to abandon a previous plan to serve notices to quit on 25 August 2001, and instead to post the notices at the same time as the giving of the section 61 direction. In this way the local authorities and the Police would avoid two separate attendances at the site, the first for the giving of notices to quit by the Enforcement Officer, and the second subsequently for the giving of the section 61 notice. It should be noted, however, that the Gypsy Liaison Officer of the County Council disagreed. The minutes report her as saying:

“Nia felt that the Council Officers would be safe because the Travellers are aware that the Notices are to be posted at the end of the month as she had warned them of this happening. In the time Nia has been at Dorset County Council, nothing has ever happened to Officers posting notices on large encampments. ”

15. The minutes of the meeting make no mention of the pregnant woman at the site or the children. However, according to the witness statement of Richard Burgess, Director of Environmental Services for the Borough Council, they were discussed and the conclusion reached that there was no evidence that the proposed action would be detrimental to the wellbeing of the pregnant woman, and that any action should be taken before the beginning of the school term to avoid detriment to the children's education.

16. There was a gypsy encampment adjacent to the Travellers'. It was excluded from the proposed action under section 61, because the police were satisfied that they had not been involved in the incident of 14 August.

17. On 28 August, Ms Earnshaw returned from leave. She was informed of what had occurred and the action that had been agreed. She asked whether further welfare enquiries had been made since July. She was told that they had, that there was a pregnant woman and young children on the site, but that because of the breach of the toleration criteria, reports of criminal and intimidatory behaviour and excessive fouling in the vicinity of the site, it was considered appropriate to require the Travellers' immediate removal.

18. As a result of the meeting of 21 August, "Operation Veil" was planned and carried out on Wednesday 29 August 2001. By then there were about 30 Travellers' vehicles at the site, most of them inhabited. Mr Brock, the enforcement officer of the Borough Council, and Inspector Gillott approached several vehicles and spoke to the occupants. Mr Brock informed them that the Borough Council as owner of the land was treating the Travellers as trespassers. A written notice was given, informing those on the land that they were trespassers and requiring them to leave by 10.00 a.m. on 31 August 2001, "failing which appropriate proceedings will be taken to secure and enforce your removal", and stating:

“You should be aware that Weymouth and Portland Borough Council will if necessary support the Police in exercising their powers under Section 61 of the Criminal Justice and Public Order Act 1994.”

19. Inspector Gillott followed by giving a direction, purportedly under section 61 of the 1994 Act, and handed out written notices containing the direction. Other officers also handed out the written notices and placed them on vehicles. The direction required the Travellers on the site to leave it by 31 August 2001. According to the Police, there was considerable hostility on the part of the Travellers and shouting and screaming. Three Travellers were arrested in relation to the incident of 14 August. Two cannabis plants were seized, and a Traveller arrested for its possession. Public order trained officers in protective equipment were in attendance, and were brought forward to deter violence. In the event, the operation passed with hostility from the Travellers but without violence.

The facts: (b) the Claimants

20. The First Claimant, Mrs Josette Fuller, is aged 28 and has one son, aged 4. She arrived at the site at the end of July or the beginning of August. She has a caravan but no towing vehicle, and relies on other people to give her a tow. She has been travelling for some six years. She lived in a narrow boat for a year

and came back on the road in June 2001. She suffers from epilepsy. By the end of August 2001, she had arranged for her son to start school in the area in September. According to Ms Bailey, she offered herself as a point of contact for the mothers on the site and for Julie Booth.

21. Ms Amanda Wright has two children, aged 6 and 2½ respectively. The older child had been at a school until February 2000, when he had to leave as a result of evictions. She was concerned that his schooling should continue. By the end of August 2001, she had obtained a flat, but according to the Claimants' evidence she had not been able to move into it because she needed to obtain furniture for it.
22. Ms Tina Tarr has 3-year-old twins, whom she was trying to get into a local nursery. She stated that she wanted a period of stability for that purpose. By the end of August 2001, she had been on the site about a month.
23. Ms Julie Booth had moved on to the site at about the beginning of August 2001. At the end of August 2001 she was a few days over 9 months pregnant. She is the pregnant woman referred to by officers of the local authorities as mentioned above. She had had difficulty in obtaining a midwife and doctor. According to Ms Bailey, she discussed the arrangements for Ms Booth's confinement with her on 2 occasions during August. On the first occasion, Ms Bailey reminded her that all of the Travellers were expected to leave by the end of August. She asked her whether she had any family or friends with whom she could stay. She said she had not. Ms Bailey asked her if she wanted her to enquire about temporary accommodation for her. Ms Booth replied that her life was on the road, that she wished to remain on the road, and ideally would have a "home birth" in her vehicle. Mrs Fuller told Ms Bailey of Ms Booth's difficulties in finding a midwife, and Ms Bailey arranged a visit by a midwife to Ms Booth at the site. Ms Booth was booked into Dorchester Hospital for the birth. According to Ms Booth, at the end of August her vehicle needed repairs.
24. The Claimants' evidence as to the incident of 14 August 2001 conflicts with that of the Police. According to Mrs Fuller, it was "mainly" small children who surrounded the police car, and it was children who had locked the gate. She points out that ultimately no one was charged in relation to that incident. Ms Wright too thinks that it was a child who locked the gate, and that the incident was shorter than suggested by the Police.
25. I do not have to make a finding as to whose version of the incident of 14 August 2001 is true. I nonetheless cannot help but contrast the detail of the statements of the two police officers involved with the vagueness of the Claimants' statements. In addition, the Police reaction to the incident was curious indeed if it simply involved a number of children.
26. The Claimants' evidence is that the Travellers kept to the toleration criteria. They do not admit in terms that the Travellers received copies of the document setting out the toleration criteria, but that evidence seems to imply that they must have done so.
27. None of the Claimants admits having agreed to leave the site at the end of August. Equally, notwithstanding the evidence served on behalf of the Defendant, they did not deny knowing that an agreement to vacate the site at the end of August had been made. Mrs Fuller's evidence, set out in the second witness statement of her solicitor Mr Johnson, is as follows:

"She herself made no direct agreement to leave by the end of August 2001 and she believes that some of the people who might have come to that agreement are no longer on the site and certainly did not consult her."

Mr Johnson's statement of the evidence of Ms Tarr is:

"She did not enter into any agreement herself to leave by the end of August 2001."

As to Ms Wright, he states:

"She did not enter in to any direct agreement to leave by the end of August 2001."

Mr Johnson says nothing about Ms Booth's agreement to or knowledge of the departure date of 31 August 2001. In that connection I refer to the evidence of Ms Bailey summarised in paragraph 23 above.

28. I have to say that I consider the parts of Mr Johnson's second witness statement referred to in the previous paragraph of my judgment to be carefully drafted and apparently evasive. He does not explain what he means, in the cases of Mrs Fuller and Ms Wright, by a "direct agreement". There is no denial of an agreement having been made by some of the Travellers on the site, and if one was made it must surely have been discussed among them. In view of the above statements, the absence of any denial of knowledge of such an agreement, and the obvious probabilities, I can only conclude that all of the Claimants were aware that the local authorities had requested that the site be vacated by the end of August 2001, and that some Travellers at least had agreed to go.

29. I arrived at this conclusion without reference to the newspaper article in the Dorset Echo of 30 August 2001, headlined "Travellers ask for more time to leave site". The photograph accompanying the article, showing police in riot gear entering the site on 29 August, was exhibited to Mr Johnson's second witness statement, as evidence of the Police's over-reaction to the incident of 14 August and to the needs of the moment. In consequence, the Defendant showed me the complete text of the article. It included the following:

"Josett (sic), a 28-year-old mum, said: 'We have been in regular contact with the gypsy liaison people from Dorset County Council and it was agreed that we could stay until the end of August. We have filled in self-assessment forms and they are aware that some of us are not ready to leave just yet because there are things we need to do like fix our vehicles. ... (The Police) arrested our mechanic who fixes vehicles and without him we cannot do a lot. ... If we were given more time to prepare ourselves we would be happy. We have always intended to leave because we know there is work for us in other parts of the country.'

Russ, 29, who lives with his pregnant partner Julie, 20, said: 'We just need a couple more days and then we will go.

....

Julie added: 'I'm due to give birth any day now and I would prefer to stay here at least until after the weekend.'"

Josette Fuller was "a 28-year-old mum", and Julie Booth was, as mentioned above, due to give birth any day. However, Mrs Fuller states that she was misquoted by the journalist in question, and did not say that she had agreed to leave the site by the end of August.

30. The article also contained statements by Travellers accusing the Police of being unnecessarily heavy-handed when carrying out "Operation Veil".

The commencement of these proceedings

31. On 29 August 2001, the Claimants' solicitors sent a letter to the Police demanding the withdrawal of the section 61 notice and a reply by 5 p.m. that day. The letter referred to the duties of local authorities, and to the judgment of Sedley J in *R v Lincolnshire CC ex p Atkinson*, [1996] Admin LR 529 and to the DETR/Home Office Good Practice Guide "Managing Unauthorised Camping", and questioned whether the local authority had carried out their necessary enquiry process. No letter was sent to either local authority.

32. The Dorset Police replied the same day, stating:

"... the presence of this group of travellers has been the subject of ongoing dialogue, involving local and county authority agencies and the police. The County Council Gypsy and Traveller Liaison Officer has been fully involved.

We are satisfied that the actions taken today are compliant with current legislation and that it was appropriate to serve the S61 notices."

The letter also referred to "the occurrence of a serious criminal offence at the site", which was a reference to the incident of 14 August 2001.

33. These proceedings were commenced on 30 August 2001. The Claimants claim:

(1) A declaration that no valid direction under section 61 was given.

(2) An order quashing the Defendant's decision to issue the direction.

(3) A declaration that the provisions of section 61 are incompatible with the European Convention on Human Rights.

34. Neither local authority was made a Defendant or named as an Interested Party. The Borough Council, as landowner, was obviously an Interested Party, and it is difficult to see why they were not named as such, unless the Claimants' solicitors were unaware of the ownership of the site. In any event, however, given the suggestion that the local authorities had not carried out adequate enquiries of the Travellers, they should have been named as Interested Parties. Doubtless it was for this reason that Maurice Kay J, on 3 September 2001, when granting permission to apply for judicial review and a stay, ordered that the local authority (presumably the Borough Council) be served within 7 days.
35. The Claimants' evidence did not refer to the fact that some of the Travellers on the site had agreed to leave at the end of August, or any discussions with the Gypsy and Traveller Liaison Officer to that effect. Nor did their evidence give any indication as to the length of time the Claimants wished to remain on the site. In my judgment those were relevant facts that should have been put before the Court.

Events since the commencement of proceedings

36. After the end of August Mrs Fuller managed to get her son into a nearby school. At the date of the hearing before me, on 8 and 9 November 2001, her position was that she wanted to remain in the Weymouth area for the sake of her son's education. Amanda Wright's older son entered a local school. Ms Tarr's twins were found places in a nursery, where she wanted them to remain until Christmas. Ms Booth had a baby boy in September. Mr Johnson's second witness statement, dated 1 November 2001, said nothing about Ms Wright's flat or her need for furniture, and did not say where she was living at that date. The lacuna in the evidence was filled by Ms Bailey's witness statement of 8 November 2001, which stated that Ms Wright had received grants for furniture and that she had been told that Ms Wright would shortly move into the flat, and confirmed by Mr Johnson's third witness statement of the same date.
37. In response to my questions, I was told that the Claimants seek a further period of toleration, until after Christmas 2001. However, their position had not been communicated to the local authorities. All of the Claimants are concerned that, if their proceedings are unsuccessful, they would be evicted from the site at short notice.

Section 61 and the Human Rights Act

38. In order to decide whether a statutory provision is compatible with the European Convention on Human Rights, it is first necessary to construe it. However, its construction may be affected by section 3 of the Human Rights Act 1998, and as the decisions of the House of Lords in *R v A (No. 2)* [2001] 2 WLR 1546 and in *R v Lambert* [2001] 3 WLR 206 demonstrate, the effect of that section may be drastic. Only *in extremis* will a statutory provision be construed to be incompatible.
39. In the present case, I propose first to construe section 61 without reference to section 3 of the Human Rights Act; I shall then consider whether it is necessary to have recourse to section 3; I shall then be able to reach a conclusion on the issue of compatibility.
40. Sections 61 and 62 of the 1994 Act, so far as is relevant, are as follows:

"61 Power to remove trespassers on land

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

- (a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or
 - (b) that those persons have between them six or more vehicles on the land, he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.
- (2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.
- (3) a direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.
- (4) If a person knowing that a direction under subsection (1) above has been given which applies to him—
- (a) fails to leave the land as soon as reasonably practicable, or
 - (b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given, he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.
- (5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.
- (6) In proceedings for an offence under this section it is a defence for the accused to show—
- (a) that he was not trespassing on the land, or
 - (b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.
- (7)
- (8)
- (9) In this section—
- ...
- ‘land’ does not include—
- (a) buildings other than—
 - (i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988
 - (ii) scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;
 - (b) land forming part of—
 - (i) a highway unless it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000 or is a cycle track under the Highways Act 1980 or the Cycle Tracks Act 1984;
- ...
- ‘occupier’ (and in subsection (8) ‘the other occupier’) means—
- (a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; and
- ...
- ‘property’, in relation to damage to property on land, means—
- (a) in England and Wales, property within the meaning of section 10(1) of the Criminal Damage Act 1971; and
- ...
- and ‘damage’ includes the deposit of any substance capable of polluting the land;
- ‘trespass’ means, in the application of this section—
- (a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land;

(b) in Scotland, entering, or as the case may be remaining on, land without lawful authority and without the occupier's consent; and
'trespassing' and 'trespasser' shall be construed accordingly;
'vehicle' includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

62 Supplementary powers of seizure

(1) If a direction has been given under section 61 and a constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse—

(a) failed to remove any vehicle on the land which appears to the constable to belong to him or to be in his possession or under his control; or

(b) entered the land as a trespasser with a vehicle within the period of three months beginning with the day on which the direction was given,
the constable may seize and remove that vehicle.

(2) In this section, 'trespasser' and 'vehicle' have the same meaning as in section 61."

41. It is also necessary to consider section 67(1), (4), (7) and (8):

"(1) Any vehicles which have been seized and removed by a constable under section 62(1) or 64(4) may be retained in accordance with regulations made by the Secretary of State under subsection (3) below.

(4) An authority shall be entitled to recover from a person from whom a vehicle has been seized such charges as may be prescribed in respect of the removal, retention, disposal and destruction of the vehicle by the authority.

(7) Any authority having custody of vehicles under regulations under subsection (3) above shall be entitled to retain custody until any charges under subsection (4) are paid.

(8) The power to make regulations under subsection (3) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

42. In construing section 61 on the basis of common law principles, it is necessary to bear in mind that because it creates a criminal offence it is to be narrowly construed. Indeed, it creates a draconian procedure. I accept the Claimants' point that Travellers are likely to comply with a direction under section 61 through fear of arrest and the forcible removal and detention of their vehicles although they may have an arguable justification for remaining on the land. Section 61 must, I think, be all the more narrowly construed for that reason.
43. The Claimants submitted, with my encouragement, that section 61(1) assumes that the steps taken by the occupier to ask the trespassers to leave have been ineffective: i.e., they have refused to leave. Whereas section 61(1)(a) applies to persons who have already been guilty of criminal or other misconduct, section 61(1)(b) applies to persons who may have been perfectly well-behaved. It seems to me that Parliament was unlikely to have intended to bring the criminal law to bear on such trespassers who had not refused to leave when asked. On this basis, section 61(1) is to be read as impliedly requiring that the trespassers have not complied with the occupier's request that they leave as a condition of the making of a direction by the police under the section.
44. Having considered her position overnight, Miss Lieven, on behalf of the Secretary of State, accepted that section 61 is to be so construed. She referred me to an extract from Hansard, but she did not submit that it complied with the requirements laid down in *Pepper v Hart* [1993] AC 513. Mr Fraser-Urquhart, on behalf of the Dorset Police, submitted that there was no such implied restriction on the making of a direction under section 61. He submitted that the words are clear, and that the implication of a requirement into a statute is

inappropriate. He also submitted that section 61 permitted a valid direction to be given to leave at a future time.

45. I appreciate that in the present case, given the local authorities' and the Police fears of violence at the site, the requirement of a refusal or failure to comply with the Borough Council's request that the Travellers leave the site would have led to a duplication of visits to the site by public authorities with additional cost, diversion of resources and risk of violence. However, there was in the event no violence (although one does not know whether that was by reason of the overwhelming police presence or because the apprehensions of violence were exaggerated). In addition, Mr Johnson's evidence as to the rarity of Travellers refusing to leave land when faced with a direction under section 61 may be significant.
46. It is clear that legislative implication is not necessarily illegitimate: see the examples cited at pages 363 to 369 of *Bennion, Statutory Interpretation*, second edition. It is difficult to see why section 61 should require the occupier to take steps to ask the trespassers to leave if their compliance with that request is irrelevant to the power to give a direction. In my judgment, it is implicit in section 61 that the trespassers must have failed to comply with the steps taken by the occupier to ask them to leave before the power to give a direction can lawfully be exercised. I do not think that Parliament should be taken to have intended to introduce the possibility of criminal sanctions to trespassers who comply with requests to leave.
47. The second point on the construction of section 61 relates to the terms of a direction that may be given under it. The natural reading of section 61(1), read together with subsection (4), is that a direction is an order to the trespassers to leave with their vehicles immediately (i.e., as soon as reasonably practicable), rather than at a future time. In my judgment, the words in subsection (4) "as soon as reasonably practicable" mean "as soon as reasonably practicable after the giving of a direction". If a direction may be given to quit at some time sufficiently in the future, say 2 days after the giving of the direction, it would be inappropriate to provide for an offence of failing to leave as soon as reasonably practical: the offence would be a failure to leave by the time specified in the direction. Indeed, it would be quite wrong to render criminal a failure to leave as soon as reasonably practicable before the expiration of the time permitted by the direction. This interpretation of subsection (4)(a) is to some extent supported by the reference to "the day on which the direction was given" in paragraph (b): one would expect both paragraphs of the subsection to be referring to the same starting time.
48. This interpretation of the requirements of section 61 as to the content of a direction is consistent with my conclusion that a direction may only be given after the trespassers have failed to comply with the occupier's request that they leave. If the trespassers have failed to comply with the occupier's request, there is no reason for a direction not to take immediate effect. The occupier may ask the trespassers to leave by some future date. If they do so, no question of a section 61 direction arises. If they fail to do so, their departure may be enforced under section 61, in which event they must leave as soon as reasonably practicable.
49. It is worth mentioning that this conclusion is consistent with the Good Practice Guide:

"Reasonable steps to get Gypsies or Travellers to leave must always be taken by the occupier of the land (including a local authority) **before** the police can initiate action under section 61."
(Emphasis added.)
50. Having construed section 61, I turn to consider the question of its compatibility with the Convention.
51. The Claimants contend that the use of section 61 involves breaches of Articles 3, 6, and 8 of the Convention and Article 1 of the First Protocol. The Defendant disputes that there was any infringement of any Convention rights in this case, and the Secretary of State disputes that there is any incompatibility between section 61 and any Convention rights.
52. Section 61 confers a power on the Police. They have a discretion whether to make a direction or not. If they make a direction, they may apply it to some, and not necessarily all, of the persons whom they believe to be trespassers on the land in question. The Police, as a public authority, are under a duty to act

compatibly with Convention rights. It would be unlawful for the Police to give a direction if the result of doing so were to infringe Convention rights. Furthermore, section 61(6)(b) creates a defence for the accused to show that he had a reasonable excuse for failing to leave the land as soon as practicable, and I accept Mr Fraser-Urquhart's submission that the defence includes an infringement of Convention rights. In these circumstances, the question for me to determine is not whether section 61 is capable of being used so as to infringe Convention rights, but whether a direction under section 61 necessarily infringes such rights.

Article 3

53. Article 3 prohibits torture and inhuman or degrading treatment or punishment. A direction under section 61, if complied with, involves none of these things. If it is not complied with, a person is liable to arrest and his vehicle may be seized, and he may be prosecuted. Arrest is not of itself inhuman or degrading treatment, and it is not punishment. (That is not to say that brutality during arrest could not be within Article 3: but if so that is by reason of the brutality, not the arrest as such.) The seizure and removal of a vehicle belonging to a person is not the subject of Article 3: it may fall within Article 1 of the First Protocol, which I consider below. Prosecution, as such is not the subject of Article 3: it falls within Article 6. Neither imprisonment nor a fine, which may result from a successful prosecution, is inhuman or degrading treatment. Article 3 is not engaged.

Article 6

54. Article 6, headed "*The right to a fair trial*" is concerned with procedure, not with substantive law: see *R v Concannon* [2001] EWCA Crim 2607, and the decision of the Commission in *SK v United Kingdom*, Application No. 19599/92. Article 6 would not be infringed if Parliament introduced legislation making all trespass a criminal offence. A law making it a criminal offence to fail to comply with a direction by a police officer to leave certain land does not, in my judgment, engage Article 6.
55. No argument was addressed to me as to whether, in the light of *R v Lambert* [2001] 3 WLR 206, section 61(6) should be interpreted as imposing merely an evidential burden on the accused or a persuasive burden, and I express no concluded view on that question. It is possible to interpret section 61(4) as creating a criminal offence only in relation to persons who are trespassers. My provisional view is that section 61(6) should be interpreted as imposing an evidential burden only. This is particularly appropriate in the case of section 61(6)(a). If section 61(6) is interpreted as creating an evidential burden only, the argument for incompatibility is further weakened.
56. The charges that may be levied for the removal, retention, disposal or destruction of vehicles, under section 67 of the 1994 Act, are not a penalty: they must be reasonable charges for the matters mentioned, and may be avoided by due removal of the vehicle pursuant to a direction under section 61, and, if a vehicle is removed by the Police, the charges may be minimised by prompt collection of the vehicle. In addition, in my judgment, they are not payable as a result of the determination by the Police of a criminal charge within the meaning of Article 6. Section 67 creates a civil debt, and the lawfulness of any charge made under or pursuant to it, as well as the seizure and detention of any vehicle, may be challenged in a court of law. It was not argued before me that section 62 on its true construction is confined to the seizure and removal of vehicles of trespassers, and again I express no concluded view on this question, save that in my judgment it is possible so to construe it if it were necessary to do so to render it compatible with the Convention.
57. It follows that the fact that the procedure under section 61 is effective without the local authority having to give trespassers a previous opportunity to be heard before a Court does not mean that section 61 is incompatible with Article 6. A person who challenges his arrest or prosecution will do so before a court, and that process will comply with Article 6.

Article 8

58. There are two aspects of Article 8 that require consideration: the right to respect for private and family life and the right to respect for one's home.
59. As the recent judgment of the Court of Appeal in *South Bucks D C v Porter* [2001] EWCA Civ 1549 shows, a measure that prevents a Gypsy, and equally a Traveller, from residing in his vehicle on identified land may infringe Article 8 rights. But it will not necessarily do so. Interference with Article 8 rights may be justified on the grounds referred to in Article 8.2. Interference with an Article 8 right by a public authority must satisfy the tests of necessity and proportionality. The *South Bucks* case concerned the exercise by the Court of its power to grant injunctions in aid of planning controls under section 187B of the Town and Country Planning Act 1990. Simon Brown LJ said, at paragraphs 2 and 3 of his judgment:
- “2. The appellants in each case are gipsies (sic), living in mobile homes on land which they occupy in breach of planning control. In all four cases the court granted injunctive relief requiring them (whether immediately or otherwise) to move off site. At the heart of these appeals lies article 8 of the ECHR. It is not disputed that such removals constitute an interference with the gipsies' right to respect for their private life, family life and home within the meaning of article 8(1). But nor is it in dispute that the interference is “in accordance with the law” and is pursued “for the protection of the rights ... of others” within the meaning of article 8(2), namely through the preservation of the environment.
3. The question ultimately arising in these cases is, therefore, whether the interference is “necessary in a democratic society”, i.e. whether it answers to a “pressing social need” and in particular is proportionate to the legitimate aim pursued. That, however, as all parties agree, is not in these cases a question for us: ...”
60. It follows that the exercise of the power conferred by section 61 of the 1994 Act will not necessarily infringe Article 8 rights of the occupiers of the land they are required to vacate.

Article 1 of the First Protocol

61. It seems to me to be questionable whether a landowner who compels a trespasser to remove his possessions from his land interferes with the peaceful enjoyment by the trespasser of his possessions within the meaning of Article 1 of the First Protocol: the trespasser is free to enjoy his possessions elsewhere.
62. Be that as it may, the second paragraph of this Article preserves the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The decision of the European Court of Human Rights in *James v United Kingdom* (1986) 8 EHRR 123 shows that permanent deprivation of ownership of property may be justified under Article 1 of the First Protocol; far less is required to justify the temporary interference with possession involved in the forcible removal of a vehicle from land when the owner of that vehicle has no right for it to be on the land. In *James v United Kingdom*, the Court said, at paragraph 46:
- “Furthermore, the notion of ‘public interest’ is necessarily extensive. In particular, as the Commission noted, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is ‘in the public interest’ unless that judgment be manifestly without reasonable foundation.”
63. I see no reason why this statement does not apply to sections 61 and 62 of the 1994 Act. Parliament did deem it necessary in the general interest to create a summary procedure for the removal of the vehicles of persons reasonably thought to be trespassers on land within the meaning of section 61 who fail to quit the land when requested by the occupier and fail to comply with a Police direction under that section. I have no material before me to justify a conclusion that there is manifestly no reasonable foundation for the enactment of sections 61 and 62. It follows that sections 61 and 62 do not involve the infringement of Article 1 of the First Protocol.

64. In these circumstances it is unnecessary for me to consider the application of section 3 of the Human Rights Act to sections 61 and 62 of the 1994 Act.
65. The argument in the present case was concluded before the judgment of the Court of Appeal in *South Bucks D C v Porter* (and other cases) [2001] EWCA Civ 1549. That case concerned the power of the Court to grant an injunction under section 187B of the Town and Country Planning Act 1990 to restrain breaches by Gypsies of planning restrictions. It does not seem to have been argued on behalf of the Appellants in those cases that section 187B is incompatible with Convention rights: the argument was whether the grant of injunctions under that section resulted in an infringement of the appellants' rights under Article 8 on the facts of each individual case. The grant of an injunction of course carries with it the threat of contempt proceedings for its breach and possible imprisonment for contempt. I find it difficult to see how section 61, which is aimed at trespassers, could be incompatible with Convention rights if section 187B, which extends (but is not confined) to a person's use of his own land, is not.
66. I conclude that sections 61 and 62 of the 1994 Act are compatible with Convention rights.

The position of the Police

67. Mr Fraser-Urquhart sought to rely on the decision of Carnwath J in *R v Hillingdon London Borough Council, ex parte McDonagh* [1999] LGR 459, a decision that curiously (given the identity of the Defendant) was not cited to me in *Ward v London Borough of Hillingdon*. In *McDonagh*, Carnwath J held that a local authority was under no obligation to make enquiries to carry out investigations of the kind referred to in the Good Practice Guide, relevant to their obligations under homelessness, children's, education and social services legislation, when seeking possession of a caravan site owned by it from a traveller unlawfully on the site. I do not think it possible to distinguish that case from the present on the ground that in that case the local authority was proceeding by way of County Court proceedings rather than under section 61 or section 77 of the 1994 Act. If a local authority's failure to make such investigations is not a ground for judicial review of its decision to seek possession, it cannot be relevant in the County Court proceedings either. However, as far as I can see, the decision of the Court of Appeal in *R v Wolverhampton MBC, ex parte Dunne & Rafferty* (1996) 29 HLR 745 was in turn not cited to Carnwath J. Even assuming that *McDonagh* was correctly decided, it has been overtaken by the enactment of the Human Rights Act 1998. On the basis of the Human Rights Act, the Court of Appeal in the *South Bucks* case departed from previous decisions in which it had been held that the Court was bound to grant an injunction under the Town and Country Planning Act 1990 without reference to the needs of gypsies. The same applies to the position of local authorities seeking possession of their land from Gypsies and Travellers. In my judgment, a local authority must consider the Convention rights of trespassers living on their land and their human needs generally when deciding whether or not to enforce its right to possession of that land.
68. However, the Police are not in the same position as a local authority. The Police are a law enforcement authority. They do not have the responsibilities of social service or housing or education authorities, or the means of carrying out the welfare enquiries that may be required of those authorities. The Police must not act in breach of Convention rights; but in the absence of information to the contrary they are entitled to assume that a local authority seeking their assistance is not acting in breach of human rights.
69. In the present case, the decision to require the Travellers to vacate the site was made by the Borough Council whose land it was. No proceedings have been brought to challenge that decision. I accept Mr Fraser-Urquhart's submission that in these circumstances I must treat that decision as lawful and valid. Proceedings against the Police challenging a section 61 direction given to enforce a local authority's decision to seek possession of its land are not a proxy means of challenging the substantive decision of the local authority.
70. It follows that the present proceedings properly relate to the means chosen to enforce the Borough Council's decision rather than the decision itself. The decision of the Police whether to give a direction is very much an operational one. In my judgment, in circumstances such as the present, unless they have information to the contrary, they are entitled to assume that the local authority's decision has been lawfully

made, that all necessary welfare enquiries have been made, and that there is no reason why eviction should not be enforced.

71. It follows from my above conclusions that the only Convention right engaged when the decision was made to evict the Travellers from the site was that under Article 8: the right to respect for private and family life and one's home.
72. The function of the Court in the present context is a review function. It differs from the function of the Court on an application by a local authority for an injunction under section 187B of the Town and Country Planning Act 1990, when the Court is exercising an original jurisdiction: see the judgment of Simon Brown LJ in the *South Bucks* case at paragraph 35. The decision by the Police to make a direction under section 61 of the 1994 Act is subject to the usual tests for judicial review on human rights and other grounds.
73. I can dispose of the right to respect for the Claimants' home summarily. The concept of home in Article 8 involves a degree of continuity: see *Gillow v United Kingdom* (1986) 11 EHRR 335. That is absent in the present case. The Travellers had arrived only in July and knew from an early stage that their presence would be tolerated only until the end of August.
74. In *Chapman v United Kingdom* (Application no. 27238/95), the European Court of Human Rights stated, in a passage I cited in *Ward v London Borough of Hillingdon* [2001] EWHC Admin 91:

"... When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home in an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community."

In my view, the principle there set out is applicable to the right to respect for family life under Article 8, as well as to the right to respect for one's home, and apart from the penultimate sentence is applicable in the present case. The unlawfulness of the establishment of an encampment is a relevant and significant factor in determining whether its removal is justified under Article 8.2.
75. In considering the right of the Claimants to respect for their private and family life, one must bear in mind the nature of that life. It is a transient life, involving travel from time to time from encampment to encampment. They do not have or intend to create the long-term connections with an area, its people and its institutions of persons with a conventional, geographically more fixed, lifestyle. Their children will necessarily move from school to school, assuming that there are vacancies at schools in the vicinity of their encampments. The degree of interference, if there is such, with their family life will be significantly attenuated as compared with persons who have a stationary life-style.
76. Any eviction from an encampment may involve some interference with family life, and I see no distinction between section 61 and civil procedures in this regard.
77. Article 8 rights are qualified by the matters referred to in Article 8.2. A lawful direction under section 61 is by definition in accordance with the law. A justification for interference with an Article 8 right must be "necessary in a democratic society" in the interests specified. A democratic society should be tolerant of the unconventional way of life of minorities. Conversely, however, minorities with unconventional ways of life should be sensitive to the needs and values of the conventional majority. The removal of trespassers from land, when that land is privately owned, is justified as necessary for the protection of the rights and freedoms of others. Where the land belongs to a public authority, it may not be an "other". However, in the present case, the eviction of the Travellers was necessary in the interests of the economic well-being of the country, in that the Borough Council wished to have a contract for the conversion of compost carried out

there. In addition, there was concern for public safety, following and caused by the incident of 14 August and the growing size of the encampment. For the reason mentioned in paragraph 25 above, I should if necessary have accepted the Police account of that incident. That incident, as described by the Police, would have justified the making of a direction under section 61 in order to enforce the Borough Council's right to possession of the site.

78. Three factors weaken the case of the Claimants for the protection of their Article 8 rights: the temporary nature of their encampment, the illegality of its establishment and continuation, and the period of toleration that was to expire at the end of August 2001, as they had known for some considerable time before 31 August. In these circumstances, I would hold that the eviction of the Travellers was justified under Article 8.2. Interference with the school and nursery attendance of the children on the site was inevitable, and while I have sympathy with the families concerned, I bear in mind that the attendance of the children at their schools and nursery must have been arranged after the local authorities had made it clear that they wanted the site vacated at the end of August; and that disruption of the Travellers' children's education is inherent in their way of life.
79. In the present case, there was liaison and a sharing of information between the Police and the local authorities. At the meeting held between the Police and the local authorities, there was nothing to indicate that it was inappropriate for the local authority to obtain possession of the site at the end of August 2001. On the information before them, the Police were entitled to proceed on the basis that the decision of the local authorities to obtain possession of the site was lawful. There was nothing to indicate that, if the Travellers refused to leave the site, a section 61 direction would be inappropriate. The incident of 14 August, on the basis of the Police statements, justified proceeding by way of section 61. In my judgment, the Police were reasonably satisfied that it was lawful and appropriate to give a direction under section 61.
80. It may be that, had it been necessary to make a direction on 31 August, they would have found that Ms Booth should not be required to move; but that contingency did not occur. If her or her baby's health were at risk if she were evicted on 31 August, the Police should have excepted her from the direction as soon as they became aware of her condition. In any event, a refusal on her part to leave in such circumstances would not be a criminal offence, since she would have had a reasonable excuse for failing to leave; and a constable would not be entitled to arrest her, or to remove her vehicle under section 62, for the same reason.
81. I add that if the local authorities had been made parties to these proceedings, and judicial review sought of their decision to obtain vacant possession of the site, I should have wanted to investigate further the position of Julie Booth as at the end of August. I appreciate that the evidence is that at the meeting of 21 August there was an assurance that her maternity needs were catered for. However, I have no specific evidence other than that a booking had been made for her at Dorchester Hospital. On the evidence before me, I am not clear that, if she had been forced to leave the site, she could have gone to Dorchester Hospital for the birth, and I see no pressing need for her to quit the site before the birth. However, Ms Booth's situation should not have resulted in the retention of the encampment as a whole.

Conclusions

82. Section 61 is compatible with the Convention.
83. The Travellers on the site were not given an opportunity to comply with the Borough Council's request on 29 August 2001 that they leave by 31 August before the direction was given under section 61. For the reasons given above, the direction was premature. It was not a lawful or valid direction under that section.
84. The direction was also invalidated in that it was not a direction to the Travellers to leave immediately or as soon as reasonably practicable, but a direction to leave in 2 days' time, i.e., on 31 August 2001.
85. If, on 31 August 2001, the Travellers had failed to leave the site, in my judgment a direction under s 61 would have been lawful. It is however questionable whether it should have extended to Julie Booth.

Other matters

86. As I indicated above, if it is sought to challenge the decision of a local authority to obtain possession of land belonging to it, it is necessary to make the authority a defendant in the judicial review proceedings. An application for judicial review against the Police is liable to relate solely to the procedure proposed to obtain possession rather than the substantive issue whether the local authority lawfully decided to obtain possession of its own land.
87. Although I did not hear argument on the question of interim relief in cases such as the present, two matters are worth stating. First, if an application for interim relief is made in a case such as the present, the Claimants should in their evidence state for what period of time they seek to remain on the site in question and why. If interim relief is granted, it should not in general extend beyond that period.
88. Secondly, where interim relief is sought on the basis of the personal needs of some only of the Travellers on a site, such as those with young children or who are ill or in an advanced stage of pregnancy, the Court should consider whether, if interim relief is given, it should extend to all those on the site. The Claimants' evidence should if possible inform the Court of the numbers of persons and vehicles on the site and give some information about other persons on the site.
89. I shall hear counsel on the terms of the order to be made in the light of my above judgment.