

Strengthening police powers to tackle unauthorised encampments:

A response to the consultation by the New Policy Institute: 4th March 2020¹

The New Policy Institute ([NPI](#)) is an independent think tank researching and publishing on poverty and social exclusion for nearly 25 years. A shortage of data specific to the gypsy and traveller community means that evidence on the outcomes experienced by gypsies and travellers is patchy. Within the limits of what is available, however, they are unarguably the most disadvantaged identifiable group in the UK.

This response is in three parts, namely: the principle; the specific powers; some of the disadvantages experienced by members of the Gypsy and Traveller community.

The principle: criminalising unauthorised encampments (Q1-Q5)

The Government's proposal, to criminalise the act of trespassing when setting up an unauthorised encampment, would criminalise a nomadic way of life. In its recent [decision](#) upholding the High Court's refusal to grant the London Borough of Bromley an injunction to stop camping on public land, the Court of Appeal concluded that:

... the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the [European] Convention [on Human Rights] and the Equality Act ...

The Court of Appeal's grounds for opposing an injunction appear to us to be grounds for opposing the very principle on which the Government's proposal stands. In response to questions 1 to 5 of the consultation, we therefore urge the Government not to criminalise trespass in any form, citing the Appeal Court's judgement as sufficient reason not to do so.

The powers: amending the 1994 Act (Q6-Q15)

The Consultation (variously amending parts of sections 61 and 62 of the Criminal Justice and Public Order Act 1994) sets out four specific proposals for new powers to be conferred upon the police. They are:

¹ Dr Peter Kenway, Director, New Policy Institute, G03 Grayston Centre, 28 Charles Square, London, N1 6HT

- i. to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas;
- ii. to increase the period of time in which trespassers directed from land would be unable to return from 3 months to 12 months;
- iii. to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from six to two or more vehicles;
- iv. to enable the police to remove trespassers from land that forms part of the highway.

We understand that the National Police Chiefs' Council has said that trespass should remain a civil offence. Its [operational guidance](#) on unauthorised encampments explains that while there is no legal right to trespass, trespass is not a criminal offence and that the powers already available allow for a "proportionate response". Then crucially:

In managing unauthorised encampments officers must be sensitive to the fact that there is a lack of pitches on authorised sites across the country, making it difficult or even impossible for people to avoid setting up unauthorised pitches.

This implies that the problem is not the powers that the police have or lack, but the context in which they wield them, that is, a shortage of pitches or sites.

The Court of Appeal's judgement shows how serious this shortage can be. Unauthorised encampments were at the heart of Bromley's case – 11 in 2016, 12 in 2017 and 12 in 2018 up to the application for an injunction – with an average length of stay of up to two weeks. Transit sites, said the judgement, could meet this need but in actual fact, not only are there no such sites in Bromley, there are none anywhere across the whole of Greater London.

In this situation a lack of suitable sites means that both proposals (i) and (iv) provide the police with a power they cannot exercise. Proposal (ii) tells gypsies and travellers what they may not do but pays no regard to whether there is anything that they can do instead. Proposal (iii) denies gypsies and travellers the possibility of living as a community.

All these proposals are therefore both unsatisfactory and disproportionate, potentially interfering with the right to respect for private and family life. In response to questions 6 to 15, if the Government is intent on addressing the subject of unauthorised encampments, it must first address the shortage of suitable sites.

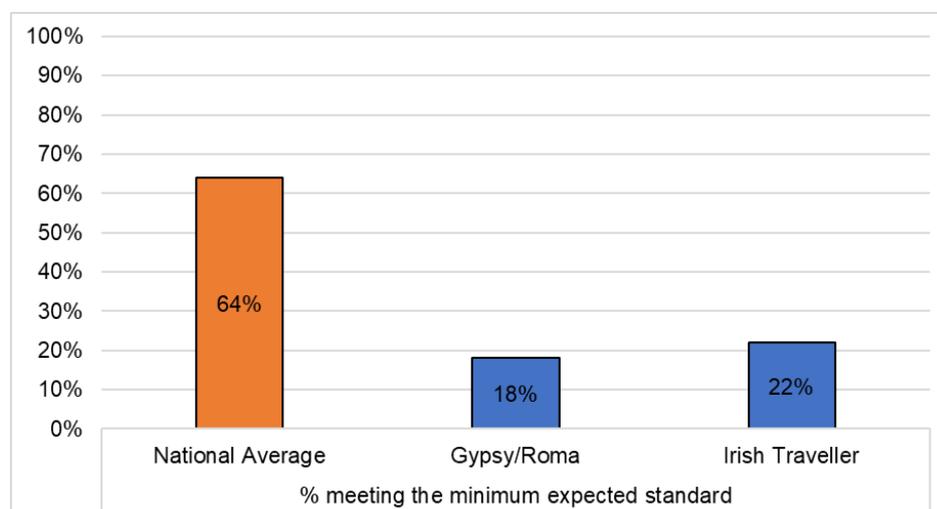
Disadvantage faced by Gypsy, Roma and Traveller Communities (Q16-18)

The [report](#) by the House of Commons Women's and Equalities Committee in 2019 summarised the evidence of the inequalities faced by Gypsy, Roma and Traveller communities. The report's opening words present the overall picture in these words:

Gypsy, Roma and Traveller people have the worst outcomes of any ethnic group across a huge range of areas, including education, health, employment, criminal justice and hate crime.

Examining the data ourselves, the assertion that these communities experience the “worst outcomes” is found to be no exaggeration. The graphs below present two aspects of this. Figure 1 shows the proportion of pupils at key stage 2 (age 10 or 11) reaching the minimum expected standard in writing, reading and maths in 2017/18. Compared with an all-England average of 64%, just 18% of Gypsy and Roma children, and 22% of Irish traveller children, reached this level. The ethnic group with the next lowest attainment rate was Black Caribbean at 55%. Not only are the levels of attainment of Gypsy, Roma and Traveller children the lowest of any identifiable group, they are far below even from the next lowest group.

Figure 1: pupils at key stage 2 with at least the minimum expected standard in writing, reading and maths in 2017/18 ([source](#) using key stage 2 statistics).



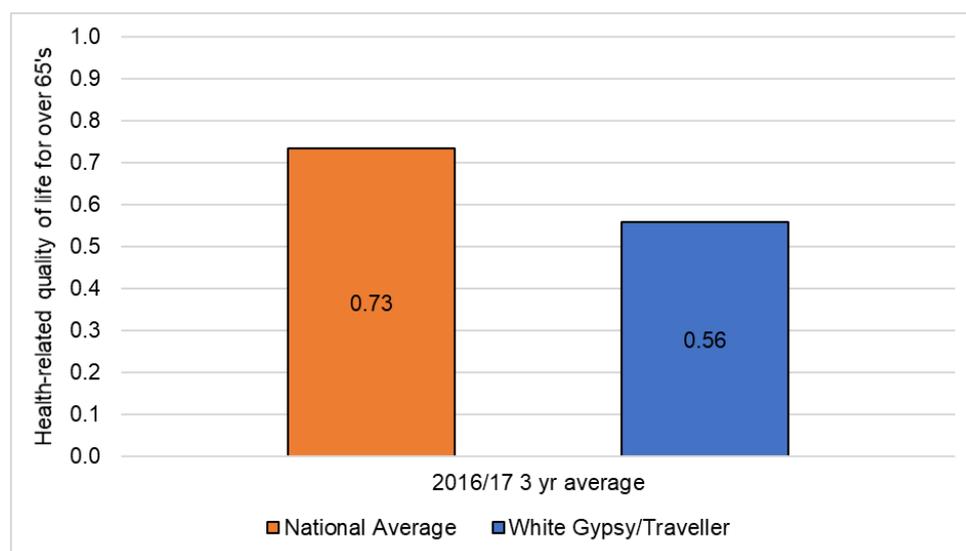
The same pattern can be seen at other ages. For example, compared with an all-England average of 43%, only 5% of Gypsy or Roma children and 10% of Irish traveller children gained a “strong pass” at age 16 in GCSE level. The next lowest attainment (again, children in the Black Caribbean group) was 27%. ([Source](#), using key stage 4 and multi-academy performance 2018).

And the same pattern can also be seen in other education statistics. For example, compared with an all-England average of 5%, the rate of temporary exclusions from

school among Gypsy, Roma or Irish traveller children stood at 17%, with the next highest group being Black Caribbean at 10% ([source](#)).²

Figure 2 is a rare instance of health data for the Gypsy and Traveller communities. Measuring the average health-related quality of life among those aged 65 and older, the Gypsy and Traveller community scored 0.56 compared with a national average of 0.73 (on a scale of 0 to 1, with 1 representing full health). The next lowest groups at 0.58 and 0.59 were the Pakistani and Bangladeshi ethnic groups.

Figure 2: average health-related quality of life score for people aged 65 and older ([source](#): using Public Health Outcomes Framework – Older People)



The consultation asks whether the proposed amendments contained in the consultation could be expected to have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities. Since there is nothing in the proposals designed to improve outcomes, or even justified as being intended to improve outcomes, the answer can only possibly be negative.

The consultation asserts that the “Government’s overarching aim is to ensure fair and equal treatment for Gypsy, Roma and Traveller communities, in a way that facilitates their traditional and nomadic way of life while also respecting the interests of the wider community”. If that was its aim, the consultation should have presented evidence to show why the Government believes its proposals achieve that balance. To bring forward proposals that directly affect by far the most disadvantaged group on all official measures without considering potential adverse impacts on them should have been unthinkable.

² Exclusion rates are calculated by dividing the total number of exclusions recorded across the whole academic year by the number of pupils on roll at January Census day. If a pupil receives multiple exclusions this is counted as two separate exclusions.