



GATE HERTS

Empowering people

**A preliminary report into the proposal to
criminalise trespass.**

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Introduction

In November 2019, The Home Office launched a consultation ‘Strengthening Police Powers to tackle unauthorised encampments’ to seek views on how they “*should strengthen police powers*”. They “*looked at how they could criminalise the act of trespass when setting up or residing on an unauthorised encampment and how we could amend the 1994 Act*”. This followed a consultation in 2018 in which views were sought on the effectiveness of enforcement against unauthorised developments and encampments and was led by Ministry of Housing, Community and Local Government (MHCLG) in partnership with the Home Office and the Ministry of Justice. The Government response to these consultations was published 8th March 2021, in which they outlined plans to introduce a new criminal offence of trespass with the intent to reside, and extend existing powers in the Criminal Justice and Public Order Act (CJPOA), which was introduced by way of the Police, Crime, Sentencing and Courts Bill (PCSCB) published on 9th March 2021. Part 4 of the PCSCB set out the details of the new offence, to be inserted into Part 5 of the CJPOA. The amendments are specifically to; Section 61 to broaden the types of harm that can be caught by the power to direct trespassers under that provision, to include damage, disruption and distress; Sections 61(4)(b), 62B(2) and 62(C) to increase the period in which trespassers directed away from the land under sections 61 and 62A must not return from 3 months to 12 months; Amend Section 61(9)(b) to enable police to direct trespassers with a common purpose of residing on land to leave land that forms part of a highway.

Defining Gypsies and Travellers

Defining the term ‘Gypsies, Roma and Travellers’ is problematic because it encompasses a diverse and complex range of groups. Each community has their own distinct histories, cultures, languages and beliefs. To further complicate matters, Gypsies are recognised as a recognised ethnic minority group under the Race Relations Act 1976 (amended 2000) and are defined as “*people with a culture of living in caravans and or nomadism (including those who have had to settle due to health or education and show people or circus people*”. However, they are also legally defined as “*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such*” under the Planning Act 2015. These two legal definitions have historically caused widespread confusion and have been a bone of contention for the communities. At the European level, the term ‘Roma’ also describes a diverse range of communities encompassing those who self-identify as Roma, Travellers, Manouch Gypsies, Boyash, Kalderdash, Ashkali and Sinti (EU Commission, 2018).

Irish Travellers are a diverse group of people who have their origins in Ireland, members born and bred in England still refer to themselves as Irish Travellers. They have a separate identity, culture and heritage to the Gypsy community. Some refer to themselves as Pavee or Mincier, they often speak “Cant” or “Gammon” and Gaelic. Unlike Gypsies, they are of Celtic descent. There is a large community of Irish Travellers who have established themselves in England and Wales, some but not all travel to and from Ireland throughout the year. Irish Travellers gained recognition

as a protected minority after a landmark verdict passed down in British court in 2000. Judge Simon Goldstein argued that Irish Travellers should be afforded the same protection under the UK's Race Relation Act as other ethnic minorities in Britain.

The Scottish Gypsy community constitutes a diverse group of peoples. Some identify as Scottish Travellers, some as Scottish Gypsies, they also have their names which are Nawkens or Nachins. Scottish Gypsies speak a language that is a mix of mostly ancient Scottish and Cant. They fall within the statutory definition of 'Gypsy' offered under the Planning Act 2015, as do traditional Travellers. Scottish Travellers, Welsh Travellers, English Travellers and French Manouche Gypsies.

'New' (Age) Travellers and Occupational Travellers (Showmen) and Waterway Travellers (Water Gypsies/Bargess), are a smaller subgroup of nomadic Travellers. These Traveller groups are commonly referred to as 'cultural' rather than 'ethnic' Travellers.

The pursuit of living nomadically is lawful, indeed it is a culture that is recognised and protected through both UK and European legislation. Romany Gypsies and Irish Travellers have been granted protection under the Race Relations Acts. The Public Sector Equality Duty applies to the police and places a duty on constabularies to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups. Article 8 of the European Convention on Human Rights offers protection to a private family life, and Article 23 is a protection offered to communities to follow their culture. The law provides a wide range of powers to remove people unlawfully on land. This juxtaposition is often problematic for authorities and nomadic communities to navigate.

Meeting unauthorised camps in welfare and practice (the current state of play)

Before local authorities can proceed with any action leading to eviction of Gypsies and Travellers residing on unauthorised encampments there is a requirement that welfare enquiries are undertaken and if it is considered that circumstances prevail which require further investigation the eviction should be postponed. These requirements were implicated in the precedent set out in the decision of Sedley J in the case of *R. v Lincolnshire CC Ex p. Atkinson* (1996) Admin. L.R. 529 (ODPM, 2004; OPDM, 2006). In 2013, the Welsh Government, citing the decision in *R. (on the application of Casey) v Crawley BC* [2006] EWHC 301 (Admin); [2006] B.L.G.R. 239, released *Guidance on Managing Camping*, in the following advice is given to local authorities:

"Effectively, if an unauthorised encampment arises and there are no alternative authorised pitches in the area, local authorities have three clear paths relating to how they can resolve the encampment. Each option should be carefully considered: Path 1 - To seek and obtain possession of the occupied site (eviction proceedings). Path 2 - To 'tolerate' the Gypsy or Traveller occupiers, if only for a short time, until an alternative site can be found, or the occupiers move on voluntarily. Path 3 - To find an alternative site, if only on a temporary basis, and offer the Gypsy or Traveller occupiers the chance to move onto it."

The Association of Police chiefs released guidance on managing unauthorised encampments in 2011, in which it was stated Police must take into account welfare considerations. The ACPO

Guidance cautions against the use of blanket policies of eviction, stating that police power should only be used where criminal activity or anti-social behaviour is evident. If it is considered that police or local authorities or any other public body, acts in a way which falls short of government guidance and/or case law then any subsequent eviction can be appealed in the form of a judicial review. Article.8 of the UN Convention of the Human Rights Act; the right to respect for private and family life; must be taken into consideration by all public bodies when deciding whether or not to evict Gypsies and Travellers from an unauthorised encampment, any decision must be proportionate. This precedent was set, In *Chapman v United Kingdom* (27238/95) (2001) 33 E.H.R.R. Furthermore, the European Court of Human Rights held that art.8 also imposed a positive obligation on the State to facilitate the Gypsy and Traveller way of life: "*...The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases ... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way life.*"

The welfare of Children is protected by art.3(1) of the United Nations Convention; the Rights of the Child which states that: "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*" *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 A.C. is the case which set the precedent for the way decision-makers should protect the best interests of children likely to be affected by their decisions. In *ZH (Tanzania)* Baroness Hale referred to the UN Guidelines which explain that "best interests" are not just about health and education and she stated that when considering Article 8 of the Convention in any case in which the rights of a child are involved, the best interests of the child must be "a primary consideration". However, Baroness Hale cautioned that treating the best interests of children as a primary consideration: "*... did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first.*" Understandably, those principles should be equally applied to decisions made in Gypsy and Traveller cases that is likely to affect a child. This point has been upheld in a number of appeals on planning decisions, such as *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin); [2013] 2 E.G.L.R. 145). Those principles are equally relevant to decisions involving the management of unauthorised encampments. Therefore, the primary consideration of any public body should be that of the best interest the children who live on those encampments. In other words, the best interests of any child must be kept at the forefront of the decision maker's mind when considering any decision that might be taken. Assessment must be made to decide if the adverse impact of such a decision on the interests of the child is proportionate.

Method

GATE Herts published a survey to gauge public response to the proposed PCSCB, using the notable online app survey monkey to conduct the survey. The survey ran for 28 days and was published on our social media platforms. The survey was shared across other NGOs platforms. A twitter poll was also conducted on GATEs twitter page, this poll focused on one question contained within the survey, the poll ran for seven days. The survey was analysed using the analytical tools within the survey monkey app.

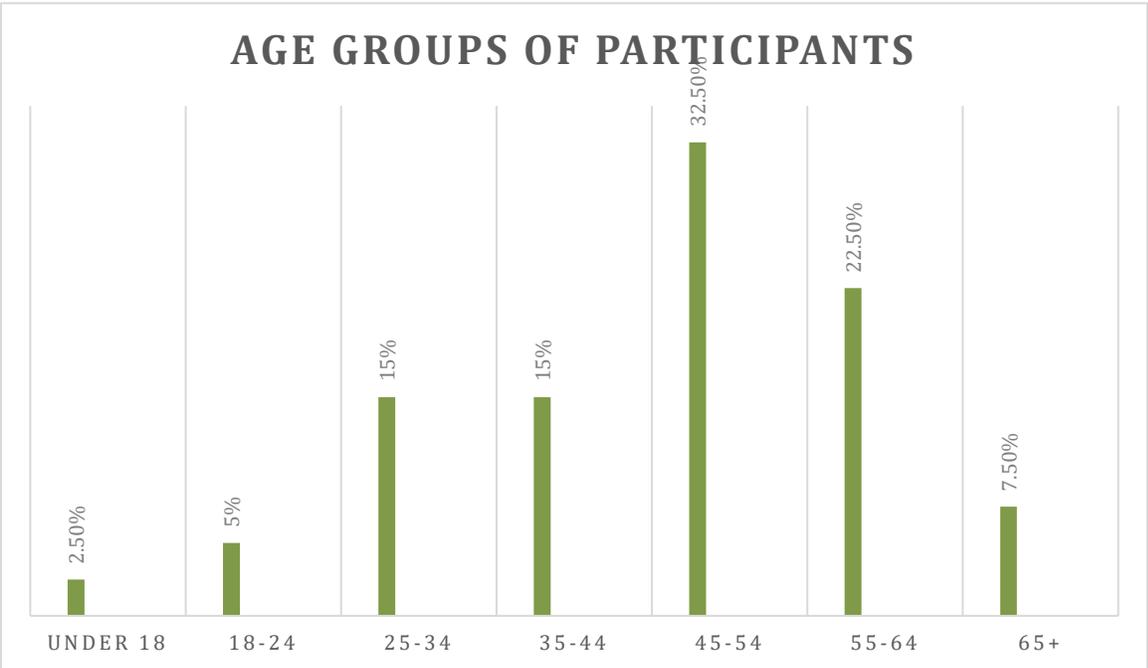
The survey asked the following ten questions:

- What age group do you fall into?
- How would you identify? (Ethnicity)
- Do you think it is necessary to criminalise trespass?
- Will the proposal to criminalise trespass impact you directly?
- How is the proposal affecting your mental health?

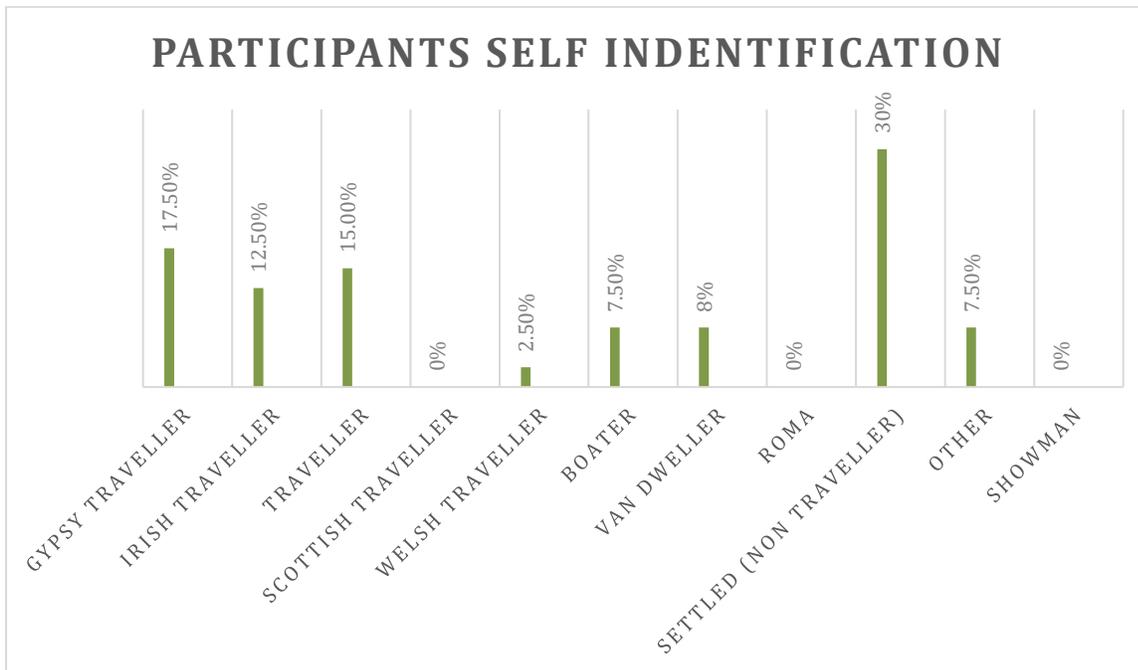
Please grade the following sanctions proposed by the Bill.

- Do you think there is enough provision on transit sites?
- If trespass becomes illegal do you think nomadism will...?
- How do you think these proposals are impacting on hate crime and hate speech?
- Would you support a negotiated stopping policy?

Results

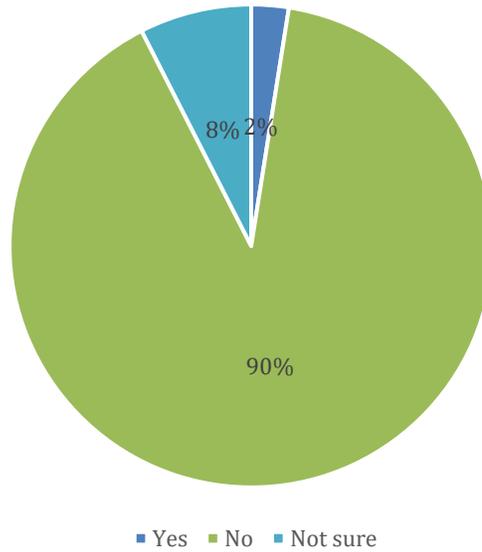


The above graph shows the age demographic of the 73 respondents', the graph indicates that data capture covered all our age demographics with the majority (32.5%) being within 45-54.



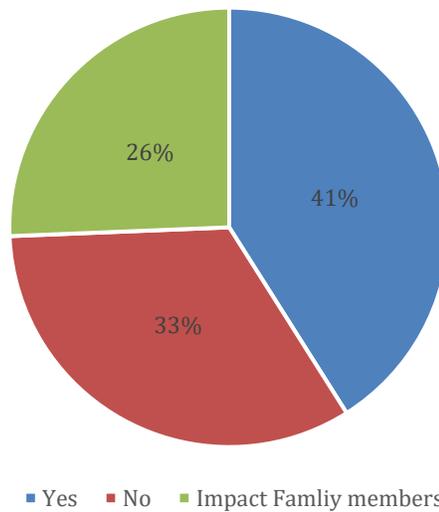
The participants were asked how they self-identify. Interestingly the majority of respondent's (30%) identified as Settled (Non Traveller). There were no respondent's identifying as either Scottish or Roma. The new trespass laws will not come into effect in Scotland as this is a devolved nation with its own legal framework, this could be a reason why this survey has no impact there. Showmen traditionally have winter sites where they reside along with their rides and stalls until spring when they begin travelling for work, Fairs and the like are often invited by Town Councils so rarely have to set up an unauthorised encampment, this may be why this survey has not had much interest in this community. As for Roma there may be several reasons this survey has had no impact, such as Brexit, language barriers and lack of interest. That said GATE is aware of some Roma who reside on Travellers sites and other who live a nomadic lifestyle.

Do you think it is necessary to criminalise trespass

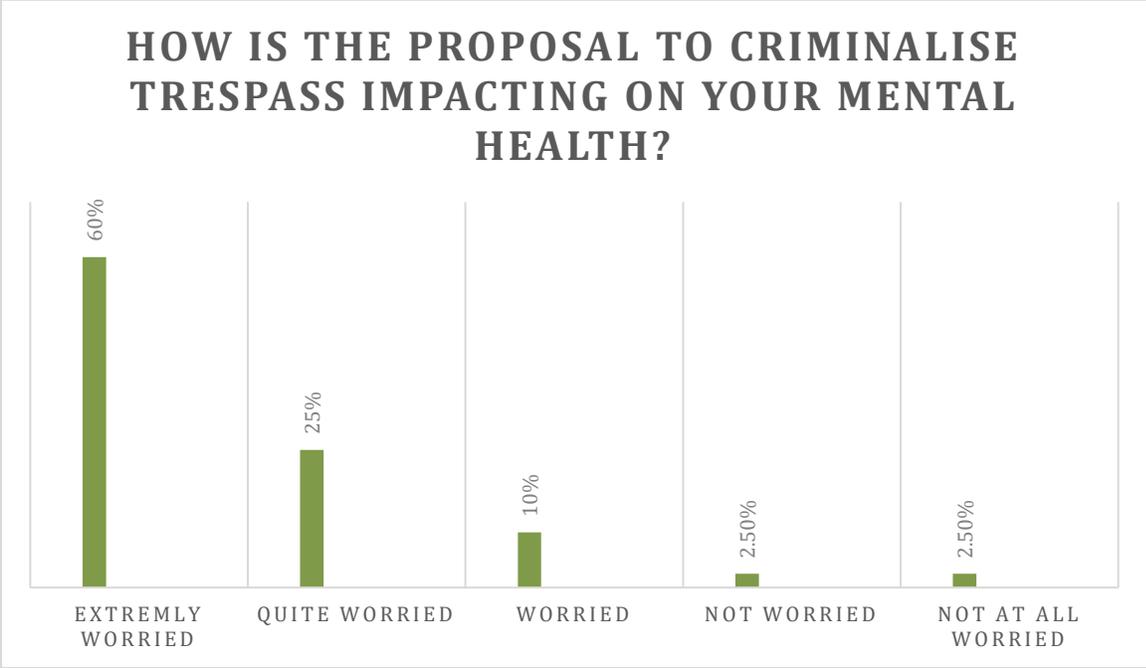


The above pie chart shows the responses to the question asked Do you think it is necessary to criminalise trespass, the responses clearly show that the majority of our respondent's (90%) believe that amendments to the trespass laws are unnecessary.

Will the proposal to criminalise trespass impact on you directly?

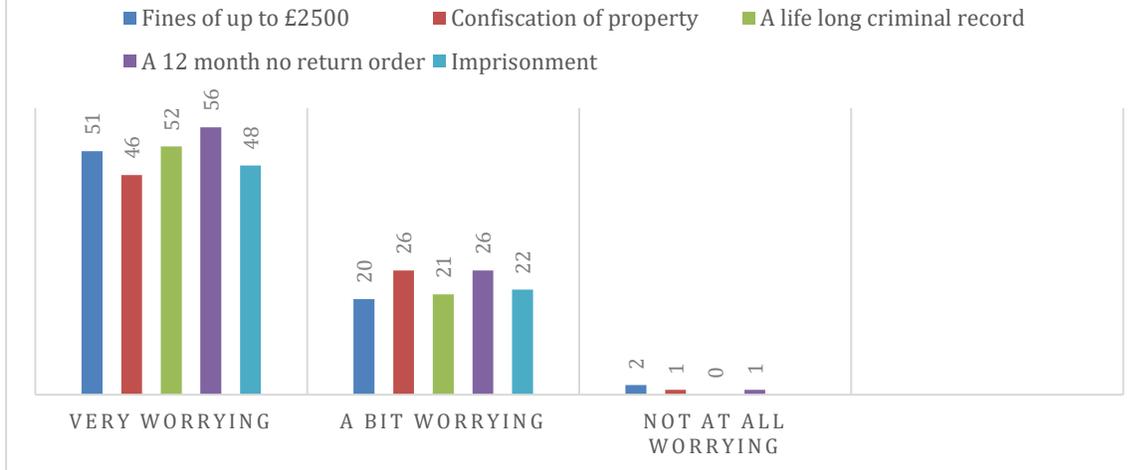


The above pie charts shows that 41% of the respondents to the survey will be directly impacted by any amendments to trespass legislation, and 26% will have family members who will be directly impacted. The 33% of those reporting no direct impact marries with the 32.5% who self-identified as Non-Traveller.



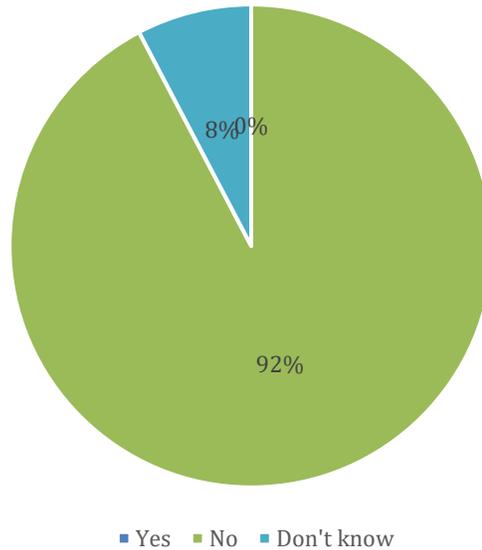
The question was posed how is the proposal to criminalise trespass impacting on your mental health? Alarmingly 60% of respondent’s reported that the proposal was making them extremely worried, a further 25% reported being quite worried and 10% said they were worried, 5% reported not being worried.

PLEASE GRADE THE FOLLOWING PROPOSED SANCTIONS IN ORDER OF CONCERN?



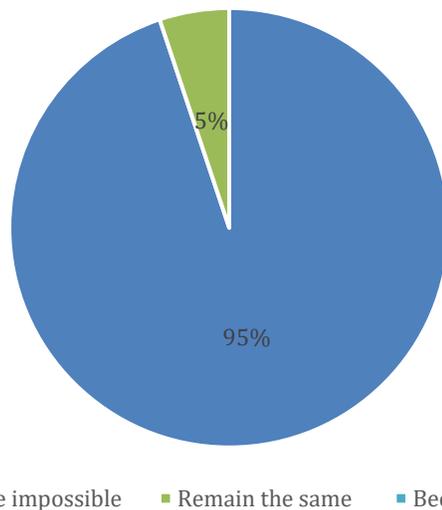
The participants were asked to grade the sanctions proposed in the new legislation in order of concern to them, most respondents (56) felt that the 12 months non return order was the most worrying sanction. The reason for this maybe that nomadic Travellers feel that at present the standard 'no return order' is for a period of three months. This means they can return to an area up to 4 times a year, giving them more stopping options throughout the year. Under the new proposals they will only be able to visit an area once a year limiting their options and giving them no where to go. A life long criminal record was the next highest level of concern, having a criminal record can impact on all aspects of life from gaining credit, employment, and even foreign travel.

Do you think there is enough provision on sites?

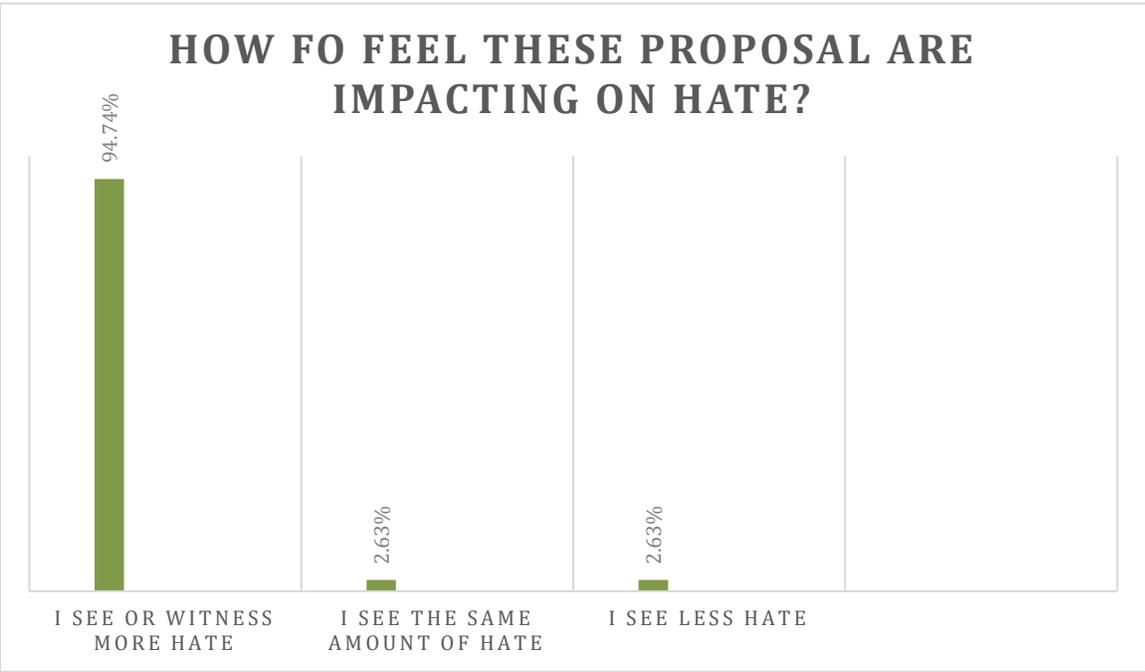


The above pie chart show that 92% of respondents feel there is insufficient provision available to nomadic Travellers on transit site, the remaining 8% did not know. None of our respondents felt that provision currently available is sufficient for the need.

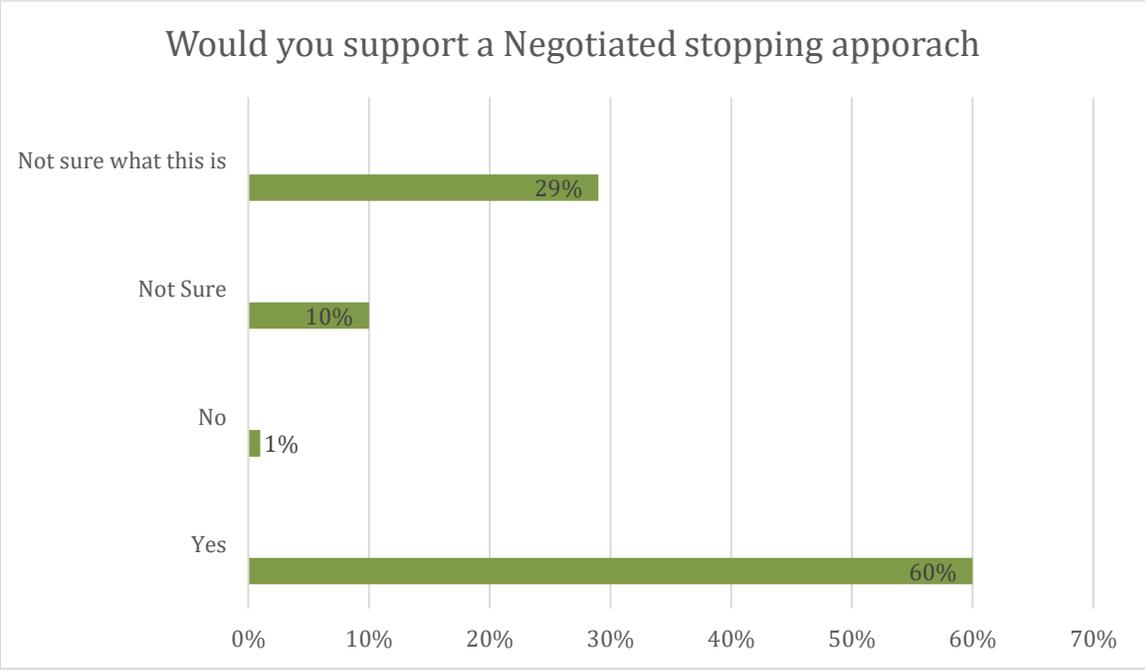
Do you think if trespass become illegal nomadism will become?



The above pie chart shows that 95% of those asked, think that nomadism will become impossible, 5% believe it will remain the same. It is quite clear that none of our respondents think nomadism will be easier under this proposed legislation.

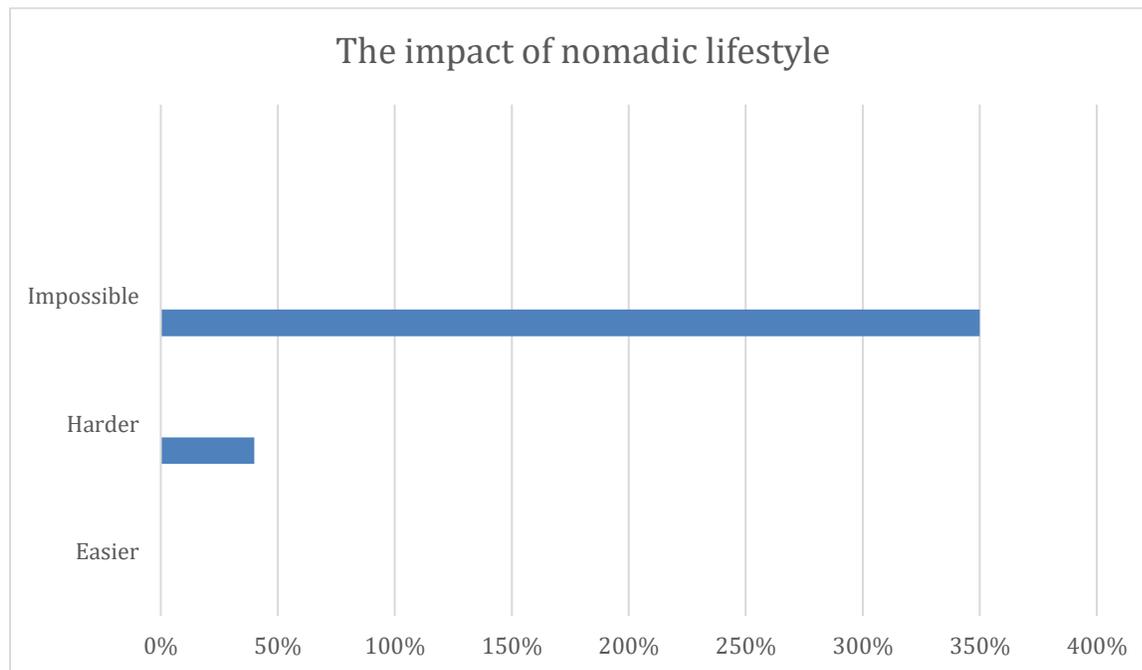


Worryingly 94.74% of respondents report witnessing more Hate crime/speech since the introduction of these proposals.



The final question posed enquired if respondents would support a negotiated stopping policy? The notion of negotiated stopping (NS) is an idea championed by Leeds GATE, an organisation we work closely with. NS policy is a social contract drawn up between Councils and residents of unauthorised encampments, whereby the council offers a preferred piece of land for the encampment to locate to, the encampment agree to stay for an agreed amount of time and abide by rules set out by the council, in return the council agrees to provide refuge services and to tolerate the encampment for the agreed amount of time. 60% of respondents were in support of this notion, 1 % were not, 10% were not sure and 29% said they did not know what this policy was.

The Twitter poll conducted posed the following question. Do you feel the new proposed trespass law will make living a nomadic lifestyle; easier, the same, harder or impossible? Fifteen people responded to the survey. This is not too surprising as twitter is a platform which is not widely used by GRT. The results showed that 60% of tweeters feel it will be impossible and 40% felt it would be harder, none felt it would get easier to maintain a nomadic lifestyle.



Discussion

GATE Herts believe that there is already an existence of a range of other eviction powers for encampments, and a range of alternative solutions which are grounded in common sense and have an equality approach, such as the provision of more sites and stopping places. There was a majority (82.7%) opposition to the introduction of more punitive powers in the consultation responses. Furthermore, The Equality and Human Rights Commission expressed their concern about more powers to evict or ban encampments, stating in their submission to the 2018 'powers for dealing with unauthorised development and encampments' consultation ; *'We would remind the Government that all powers to remove unauthorised encampments must be exercised with a*

full awareness of the occupiers' welfare needs, human rights, and, where applicable, their entitlement to protection under the Equality Act 2010. These cannot be circumvented by new powers.

Additionally, Police Forces, the bodies responsible for enforcing the legislation, do not support the criminalisation of trespass. Most of the Police Forces and Police and Crime Commissioners that responded to the Home Office consultation opposed the proposal to criminalise trespass. Just 21.7% of police bodies supported criminalisation or trespass, with 93.7% calling for site provision as the solution to unauthorised encampments. The views of the National Police Chiefs Council (NPCC) and the Association of Police and Crime Commissioners were made plain in their joint submission to the 2018 Government consultation submission: *'Trespass is a civil offence and our view is that it should remain so. The possibility of creating a new criminal offence of "intentional trespass" similar has been raised at various times over the years but the NPCC position has been – and remains – that no new criminal trespass offence is required. The coordinated use of the powers already available under the Criminal Justice and Public Order Act 1994 allows for a proportionate response to encampments based on the behaviour of the trespassers. Unauthorised encampments occupied by known individual families where there are small numbers in acceptable locations, not causing anti-social behaviour or crime, can be allowed to remain in that location longer than would otherwise be the case if the law were different. This approach leads to the Gypsies and Travellers having a real incentive to act in a responsible manner.'* Their submission refers to one of the numerous powers already available to the police, local authorities and private landowners wishing to evict an encampment. The survey conducted by GATE Herts shows that public support the Equality and Human Rights Commissions and The Police view, with 90% of participants declaring that criminalising is unnecessary.

GATE Herts asked respondents of its survey if they would be directly impacted by the proposed criminalisation of trespass. 41.03% said that would and a further 25.64% said they would have family members who would be directly impacted. GATE Herts feel the measures outlined in the PCSCB will further compound the inequalities experienced by Gypsy and Traveller people, needlessly pushing them into the criminal justice system. The powers will disproportionately affect specific minority and ethnic communities and is likely to be in conflict with equality and human rights legislation. There is extraordinarily little in the way of measures to mitigate harm from the proposals. What constitutes 'significant damage, disruption or distress' is subjective and could potentially capture all, particularly as there only needs to be one vehicle. This is of real concern for an individual or family who have no alternative place to live in their vehicle/caravan. The 'intends to' elements are also concerning. Powers to seize a vehicle/home, imprisonment and fines. This new offence will be accompanied by powers to seize a vehicle (which in real terms is someone's home and possessions) as well as imprisonment and fines, as outlined in 60C(5)/(6) and 60D PCSCB and in the Government's response;

- Where there is reasonable suspicion that a person has committed this offence [trespass with intent to reside as outlined in Section 60C PCSCB] confers power

on a constable to seize their vehicle/other property for up to three months from the date of seizure or, if criminal proceedings are commenced, until the conclusion of those proceedings.

- The maximum penalty will be three months' imprisonment or a fine not exceeding level 4 (£2,500) on the standard scale, or both.
- The arrest and vehicle/property seizure powers will be exercised where a constable has reasonable grounds to suspect (for arrest) or reasonably suspects (seizure power) that a person has met the conditions of the offence. The reasonable excuse 'defence' enables a person to escape liability where they can show they have a reasonable excuse for failing to comply as soon as reasonably practicable with a request to leave and remove their property or for entering or re-entering within 12 months of the request with an intention to reside without consent.

The ramifications of these measures will be catastrophic for an individual and a family – suddenly without a home or possessions and with family members forced into the criminal justice system. Furthermore, GATE Herts believe that the inclusion of the subjective categories 'damage, disruption and distress' could trigger use of these powers in instances where an encampment merely exists, not because of any particular behaviour. A question posed in the GATE Herts survey looked at the sanctions mentioned above and asked respondents to grade each one in order of concern; The non-return order was thought to be the most worrying sanction. It is thought by GATE Herts that this finding may reflect the fact that current guidelines state that a maximum three month non return order can be issued, meaning that encampments can visit the same area up to four times a year. Under the new proposal this order will be expire after 12 months meaning that encampments can only visit an area once a year, this will limit their options and make finding somewhere to stop nearly impossible. The proposal to impose a fine of up to £2500 on residents of encampments was thought by 52 respondents to be very worrying, we feel this sanction will impact further on the stark inequalities faced by the GRT communities recognised by the Government (Gov, 2019).

GATE Herts concludes that this enforcement approach to addressing the number of unauthorised encampments overlooks the issue of the lack of site provision. We asked respondents of its survey if they thought that there was enough site provision in transit sites in the UK 92.37% thought that there was not. There is a limited network of national transit sites, indeed the January 2020 Traveller Caravan Count showed that there were 356 transit pitches provided by Local Authorities and Private Registered Providers in England and Wales, these sites are specifically built sites, much like a permanent sites, with hard standing, electric hook up and a bathroom. On the transit site residents are provided with clearly marked pitches. Transit pitches are rented for defined time period normally somewhere between 28 days and 3 months. Users of transit pitches pay a returnable deposit, rent and utility charges. Some transit pitches have been built as part of an existing permanent site; in other words, they are extensions of permanent sites. Additionally, it is common for transit sites to be used by local authorities to cover the shortfall in permanent pitches. Therefore, gaining access to a vacant plot on a transit site is often difficult. It could be

argued that the misuse of these transit sites, has transferred their use from transit sites to temporary holding sites, in other words the transit sites are used as an overspill place for permanent sites, rather than places that nomadic communities can pull on to. Permanent and transit sites are commonly overcrowded. Therefore, it is recommended that more permanent sites and pitches are provided, or alternatively that transit sites be turned over to permanent places and that further negotiated stopping places and transit sites be created, support for this thought, can be found in the landmark ruling passed down by the Court of Appeal on the 21st of January 2020 in which the London Borough of Bromley were refused an application for an injunction banning Gypsies and Travellers from the borough. The judge points out that *“It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Human Rights Convention.”* Adding further, *“Finally, it must be recognised that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another...”*. Furthermore, it is GATE Herts opinion that any further site provision should be undertaken with consultation of the nomadic communities, local settled communities, local authorities and social welfare services. Finally it is prudent to point out that the definition of a Gypsy or Traveller in planning terms requires proof of travelling – without that you are not assessed as needing a pitch on a local authority site or have Gypsy status when applying for planning permission, however we feel that under this proposed legislation travelling will essentially be prohibited by law.

Access to culturally appropriate accommodation is a fundamental Human necessity. It is said that the accommodation status of one in four Gypsies and Travellers living in caravans in the UK, is statutorily homeless. This is because they do not have a legal piece of ground to pull their caravans onto (Richardson, 2007; Johnson & Willers, 2007, Greenfield, 2017). Although it is generally understood all ethnic minority communities often lack adequate access to homelessness services and are at increased risk of homelessness (Netto, 2006, Cromerty 2017), it is argued that Gypsies and Travellers are particularly excluded from local authorities' responses homelessness (Avebury, 2003; Commission for Racial Equality, 2006a; Cockersell et al 2017). In many ways the key to understanding the inequalities experienced by Gypsies and Travellers, is inadequate culturally appropriate accommodation (Greenfield 2017, Lane 2014). The Government acknowledged that; *“...accessing health and education services and the precarious nature of their homes can further exacerbate inequalities and stifle life chances.”* (MWG, 2012) Further stating: *‘One of the Government’s aims in respect of Traveller sites is to enable provision of suitable accommodation..... from which Travellers can access education, health, and welfare and employment infrastructure. Local planning authorities should ensure that Traveller sites are sustainable economically, socially and environmentally and ensure that their policies promote..... access to appropriate health services.’* Without decent accommodation, it is argued Gypsies and Travellers risk being pushed further and further into poverty, ‘cultural shock’ and social exclusion (Greenfield, 2017, Lane 2014; Car-Hill 2015; Lhussier, Carr Forster, 2015).

There are other solutions to managing unauthorised encampments, such as negotiated stopping. Negotiated Stopping is a term by Leeds GATE to examine an approach to stopping places for Gypsies and Travellers, which allows them to stay temporarily on a particular piece of land which is not an official site, as an alternative to repeated evictions. Negotiated Stopping, rests on a mutual, negotiated agreement. Residents of negotiated camps are incentivised to 'get on with' their neighbours if they wish to be offered a negotiated agreement with that local authority in the future. Particularly where unauthorised encampment is a result of insufficient provision of permanent pitches, families are going to wish to continue to remain roughly in the same local authority area and will be inclined to seek further agreements in the future. Therefore, they are motivated to behave in such a way as to make the offer of further agreements with the local authority likely" (2017). 92.31% of those participating in the survey declared that they would support a negotiated stopping policy, disappointingly 20% reported not knowing what this policy was, therefore, GATE Herts recommends more promotion and education regarding this policy developed by Leeds GATE, and that the enshrined right to roam afforded to Gypsy's and Travellers should be protected

Racism and discrimination against Gypsies and Travellers have been described as the last bastion of racism (Lane, 2014). This is evident when a discourse analysis is carried out, in the public comment section of media reports. Common phrases used are scum; do as you likey pikey; the Police are afraid to deal with them. More worrying there are often calls for racial violence, with comments such as burn them out, call in the air force, a nuke is what's needed, cut the gas pipes and feed them through the windows, and JCB would soon shift them. References to Hitler and the Roma Holocaust are also common, with comments such as 'the little-moustached commander had the right idea' 'the final solution should be applied here'. Anti-Semitism is high on the European and domestic political agenda, however, anti-gypsyism is often overlooked (Alt & Folts, 1996). GATE Herts commissioned a report "*As regular as rain*" which found that Gypsies and Travellers have been identified in the literature as the number one targets of online hate speech in the UK accounting for 15% of racist or discriminatory slurs overall. In part, this fairly widespread failure by members of the public to identify and challenge hate speech or offensive language uttered against the GTR population may be because there is limited awareness that many GTR communities are protected under the Equalities Act as ethnic minorities. Typically, instead, the populations are frequently presented as having selectively adopted a 'problematic' lifestyle often conflated with the negative tropes of criminality. The House of Commons Women and Equalities Committee Inquiry into inequalities experienced by Gypsies and Travellers (2019:51) recorded 420 hate incidents against Gypsy, Roma and Traveller people were reported to the police between 2016–18, with 284 reports relating to incidents that occurred online. With this in mind GATE Herts asked respondents how they felt the proposed introduction of the PCSCB had impacted on Hate and hate speech, 94.74% reported witnessing and seeing more hate, since the proposal came to light. We will analyse the results from the Report Racism GRT website, once the PCSCB has progressed through its political journey. The analysis will be released in the public sphere, and will compare before and after figures, and will look for reports that specifically mention the PCSCB.

Conclusion

Travelling and nomadism are seen by many Gypsies and Travellers as an essential part of their heritage and cultural identity. That said, many have 'settled' into bricks and mortar accommodation. Some have 'settled' in what is referred to as sites, sites are pieces of land which have plots where Gypsies and Travellers have caravans and chalets, these sites are a mix of publicly and privately owned. Many 'settled' Gypsies and Travellers traditionally travel for part of the year, normally only choosing to settle throughout the winter months. There is a group of nomadic Gypsies and Travellers who are permanently 'on the road', this group move around the country from site to site. Historically there has been a lack of robust data regarding Gypsy and Traveller communities. It is thought that a number of different factors have contributed to this such as: long-standing social exclusion; the fear of discrimination; low levels of literacy; recording of nationality rather than ethnicity; a mistrust of officials; and the complexities of collecting data from nomadic communities (Surdu, 2016). The 2011 Census attempted to capture data pertaining to Gypsies and Travellers as distinct ethnicities, however, The English and Welsh Census questionnaires offered a classification of Gypsy or Irish Traveller, in the Scottish Census the classification was Gypsy/Traveller and in Northern Ireland the classification was "Irish Traveller". However that said, 63,000 individuals in the UK identified themselves as members of these groups, of which it was calculated 58,000 resided in England and Wales, in Scotland the total was 4,000, and in Northern Ireland it was 1,000 (Census, 2014). There is some argument about these figures because other sources contend that these figures collated from the Census may be underestimates. The Traveller Movement for example estimates that there around 125,000 Gypsies and Travellers in England (2015), and a total UK population of between 150,000 and 310,000 has been estimated by the European Council (2012). That said, comparisons of these two estimates are not possible because of the different methodologies and definitions used. Data Collected from the last Caravan Count (2017), indicates that 1,402 caravans are camping on unauthorised sites.

GATE Herts believes that current powers are sufficient. They allow for discretionary use and for a proportionate response. The impact of the criminalisation of trespass on Gypsies and Traveller people and the harm created by this proposed legislation which may criminalises trespass will be felt immediately and for generations to come. It will force Gypsies and Travellers into the criminal justice system, merely for existing nomadically. It will put communities who have been widely recognised as being amongst the most marginalised and disadvantaged groups at further risk and compound the inequalities experienced. There is a direct correlation between accommodation insecurity and health outcomes. With Gypsy and Traveller communities having life expectancies between 10 and 25 years shorter than the general population, therefore, GATE Herts robustly argues that more needs to be done to improve these outcomes, not to exacerbate the inequalities. The constant cycle of being moved on, criminalised, and cut off from services

also limits the potential of those families wishing to secure education for their children and work for themselves.

It is important to note that, despite Government pushing forward with introducing a range of new measures, there was a majority opposition to many elements of the proposals in the 2019 consultation. Presentation of the percentage of views in the Government response does not make clear the whole picture and total view opposing the proposals. Both Liberty and Friends, Families and Travellers established a simplified form to submit views to the consultation, upon agreement with the Home Office. The combined percentages of expressed views were in opposition to the proposals in the consultation.

82% of respondents disagree or strongly disagreed to giving police the power to seize vehicles/homes

83% of respondents disagreed or strongly disagreed to extending the period in which trespassers should be unable to return from 3 months to 12 months: On the question as to whether police should be granted extended powers to remove trespassers from land that forms part of the highway: again, 83% of respondents disagreed or strongly disagreed. Many of the 26,337 respondents opposed the criminalisation of trespass in any form (a total of 15,351 of responses were submitted via Friends, Families and Travellers and Liberty alone).

The views on criminalising trespass were only in favour by a narrow margin in the 2018 consultation 'Powers for Dealing with Unauthorised Development and Encampments' - where only 52% of a mere 2,198 respondents were in favour of criminalising unauthorised encampments. Shortage of Gypsy and Traveller sites, support for more draconian enforcement powers and opposition to the existence of roadside camps is often coupled with opposition to the provision of permanent and transit sites in local areas. Gypsies and Travellers face hostility to their existence in either circumstance. This presents continual barriers to the provision of sites even though for many Gypsies and Travellers, living in a caravan as part of a community is an integral part of cultural identity. The existence of encampments needs to be understood not only in terms of the age-old cultural traditions of Gypsies and Travellers, but in terms of the historic failure of local authorities to properly assess and meet the accommodation needs of Gypsy and Traveller communities. The families that will be adversely affected by this legislation have been failed by the planning system. The scarcity of socially rented pitches and high demand for them is evidenced in a report published in January 2021, which provides a snapshot view with 1,696 households on waiting lists for pitches with only 59 vacant pitches on permanent sites and 42 vacant pitches on transit sites across the whole of England, showing demand far outstrips supply¹⁸. Furthermore, the MHCLG's Caravan Count shows a gross under-provision of transit sites across England with just 29 local authorities with transit provision. Only 354 transit pitches exist across the whole of England.

The importance of viewing those dwelling on both transit sites and unauthorised encampments through the lens of homelessness, will be laid out in this chapter. Homb's, declared in 1990 that the stereotypical homeless person was portrayed as a middle aged, white alcoholic male, from an urban neighborhood, and concluded that in order to understand who the homeless are there is a need for a clear definition. Although this statement is dated and the demographic of the

homeless community is diverse, homelessness is non-discriminatory, it makes no distinction between class, race or status. It is felt that the statement made by Hombs is a valuable point to make as homeless people do not necessarily engage in rough sleeping, some are living in hostels, some 'sofa surf' and some live in caravans and occupy unauthorised encampments.

Fitzpatrick and colleagues make the point that "*policy measures which are weakening the housing safety net previously available to those in greatest need may further exacerbate homelessness*" (Fitzpatrick *et al.*, 2012: 3). Their 2012 report found that rough sleeping and statutory homelessness rose by 23 per cent between Autumn 2010 and Autumn 2011 in England; and statutory homelessness had risen by 34 per cent between 2009 and 2012, they acknowledged a rise in temporary accommodation placements, concluding that forms of '*hidden homelessness*' are rising across Great Britain (Fitzpatrick *et al.*, 2012: 3-4).

The stereotypical image of homelessness matters because it can have implications for who is seen as homeless, how that person is received by the public as well as by people working in the field of homelessness. As Young (2012: p2) argues, "*How homelessness is defined is fundamental to making progress towards ending it*". Similarly, Swain (2011) contends that if a solution to homelessness is to be found it must first be understood who is homeless and the individual circumstances must be investigated and understood. Therefore, it is paramount that local authorities recognise nomadic Travellers residing on unauthorised encampments as statutory homeless, and recognise the lack of culturally appropriate accommodation as the cause of this homelessness. It is paramount that Gypsies and Travellers should be considered and referenced in local authorities' homeless strategies. There is some support to be found in the literature researched by the Author that, the lack of decent culturally appropriate accommodation, diminishes the ability of nomadic communities to live in a manner which supports communities through the transitions brought about by financial insecurities, globalisation, changing employment markets and altering gender roles (Greenfield, 2017, Lane 2014; Car-Hill 2015; Lhussier, & Carr Forster, 2015). Therefore, Gypsies and Travellers risk being pushed further and further into poverty, social exclusion and 'cultural shock'. Aspinall (2014) argues that if suitable cultural accommodation is made available, then communities are able to adapt to social changes in a positive manner, rather than reacting continually to insecurity and the need to struggle to access the necessities of life such as water, sanitation and emergency health care.

Clark and Greenfield (2006) highlight the impacts of eviction on Gypsies and Travellers, citing research and eye-witness accounts they report that communities are damaged and injuries are caused during the eviction of families from both unauthorised roadside and self-owned sites. The Commission for Racial Equality (CRE) (2006a, pp. 146-9) supported this research finding that at times council approaches to eviction was not appropriate, namely the decisions taken, and the time permitted for families to leave. They state that the timescales for families to leave were at times unreasonable and that social welfare concerns were unheeded and ignored. They also comment on the sometimes brutal behaviour of bailiffs when carrying out such work. The Children's Society's response to the consultation highlights the impact of evictions on children's wellbeing and its detrimental effect on access to services such as health care and education (2018). Children's fears about safety and security are most marked on unauthorised sites and many live under constant threat and fear of evictions (Warrington, 2006). "*Forced moves not only*

create fear and stress from the experience, they also compound a sense of alienation, as they impact on the ability to form friendships and increase a sense of low self-esteem” (Warrington, 2006: 69).

Furthermore, criminalising trespass, would render many homeless rough sleepers and nomadic Travellers and Gypsies, at risk of being criminalised. The net of judicial control would be widened if trespass reverts to an infringement of criminal law, rather than the infringement of civil law it is now. In a time of cuts to policing budgets, prison overcrowding and a heavy court workload, GATE Herts argues it is not a wise decision to place more responsibilities on the justice system. Additionally, as seen in the NPCC consultation submission (2018), there is a lack of appetite within this committee for trespass to become a matter of criminal law. Moreover, an amendment to existing trespass laws, it has been argued could be viewed as formal social control, legislation would effectively curtail the pursuit of residing in unauthorised encampments it will also work to contain Gypsies and Travellers to defined spaces. Criminalising trespass may also impact on the lifestyle of Bargees, this is because although the canals are controlled by the Water Authority, the banks which the Bargees moor up to, and use to access tow paths and rights of way are commonly the property of local authorities and Councils. Therefore, a Bargee moored without authorisation, could potentially face criminal charges of trespass. Peaceful protesters such as anti-frackers, could also fall foul of a change in trespass legislation, in the fact that they often peacefully occupy land that is due to be fracked, or grass verges close to the location. This land is commonly owned by Local Authorities or at times by private individuals, it is conceivable that trespass laws would be pursued to curtail peaceful protest.

The negotiated stopping concept may be viewed by some as a form of social control. In this paradigm it would be important that Gypsies and Travellers maintain a healthy relationship with local authorities, because residents that do not adhere to the behavioural requirements of a negotiated stopping contract, could be effectively black listed and they would not be offered the same opportunity in future. That said, negotiated stopping reportedly saved Leeds district councils nearly £230,000 in the first two years (Leeds GATE, 2018). GATE Herts feels a comparative study of policing costs in relation to unauthorised encampments would provide more insight into the cost effectiveness of negotiated stopping for local authorities. A policy of negotiated stopping would build better relations between the communities, local authorities and the wider local communities, especially in instances where the location of the encampment is the choice of the communities and not a space appointed by the local authority.

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