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**IS THIS THE END OF THE WIDE INJUNCTION?**

Since 2015, 38 local authorities in England have obtained wide injunctions against Gypsies and Travellers effectively banning them from large swathes of land in the local authority area. We believe that most of the land identified would be the only land that Gypsies and Travellers would be likely to be able to stop on if they were resorting to the area or passing through the area. Obviously this is in the context where there remains a totally inadequate supply of stopping places for Gypsies and Travellers who are exercising their nomadic way of life whether that be permanent pitches, temporary pitches or the use of land subject to ‘negotiated stopping agreements’. For many, many years Gypsy and Traveller organisations have argued that the answer to unauthorised encampments is the provision of sites and stopping places. If every local authority in England obtained such a wide injunction, where would Gypsies and Travellers go to?

Following a hearing in October 2020 involving the attempt by the London Borough of Enfield to extend the final wide injunction they had previously obtained, Nicklin J joined in all the 38 local authorities to the action and the matter proceeded to a final hearing on January 27th and 28th 2021 to decide on the principles that should be applied in such injunction actions. By the date of the hearing, many of the existing interim or final injunctions had either been discharged by the Court of its own motion or following an application to discharge them by the local authority in question. By the time of the final hearing, 13 local authorities remained to make representations to the Court.

Today the final Judgment of Nicklin J has been handed down in this case, *London Borough of Barking and Dagenham and Others -v- Persons Unknown and Others* [2021] EWHC 1201 (QB)

Nicklin J has made it clear that, when it comes to a final hearing in such a case, only those parties who have either been named or who have been properly identified (perhaps by way of photographs, for example) would be bound by any final order that was made (if a final order was made). In order to become parties to the proceedings, the Defendants would need to be served either by direct service (if they were a named Defendant) or by what is known as ‘alternative service’. For alternative service (e.g. by making the Claim Form and other court papers available elsewhere or perhaps by attaching them to the land in question) it must be shown that it could be reasonably expected that this method of service would bring the proceedings to the attention of the Defendants. In those circumstances, it is unlikely that attaching the Claim Form and other court papers to a tree or a post or a fence on the land in question would bring it to the attention of anyone other than any Gypsies and Travellers who might happen to be on the land at that time. At para. 230 of the Judgment, Nicklin J states: ‘If these established principles and limits they impose on civil litigation are not observed, the Court risks moving from its proper role in adjudicating upon disputes between parties into, effectively, legislating to prohibit behaviour generally by use of a combination of injunctions and the Court’s powers of enforcement’.

The Judgment makes it clear that any wide injunction order granted at the final hearing only applies to those who have become parties to the proceedings. It does not apply to ‘newcomers’ i.e. Gypsies or Travellers on the land who were not parties to the proceedings and who have come onto the land in question at a later date.

There is a type of injunction known as a contra mundum (‘against the whole world’) injunction. This kind of injunction can be obtained even though the proceedings have not been served on all the possible Defendants. However, this is a very exceptional type of injunction and it does **not** apply to the kind of Gypsy and Traveller injunctions in question here. At para. 234 of his Judgment, Nicklin J states: ‘On the basis of evidence of the worst examples of historic wrongdoing by some unidentified persons, the Court is asked to impose an injunction to restrain future conduct of unidentified (and unlimited) newcomers who were not guilty of any of the acts of wrongdoing relied upon to support the injunction application. If the Court cannot identify the individuals who will be restrained by the injunction, it cannot begin to assess the particular circumstances of each person to be restrained, whether an injunction is necessary in that person’s case and whether the terms of the injunction are proportionate’.

Nicklin J is extremely critical of those local authorities who had obtained interim injunctions against Persons Unknown but had done nothing about getting those injunctions listed for a final hearing. (see paras 99 – 101 of his Judgment).

Following this Judgment, the matter has been listed for a consequential steps hearing on 24 May 2021 when Nicklin J will decide what will happen to all of the existing wide injunctions. We will report back further then.

Three Traveller organisations formally intervened in the matter: London Gypsies and Travellers; Friends, Families and Travellers; and the National Federation of Gypsy Liaison Groups. They instructed Community Law Partnership as their solicitors and at the final hearing they were represented by Marc Willers QC, Tessa Buchanan and Owen Greenhall of Garden Court Chambers.

Marc Willers QC said ‘Mr Justice Nicklin’s judgment is a tour de force and will be required reading for any lawyer practising in this field. The decision reaffirms the fundamental principle that final injunctions do not bind non-parties. The Judge rejected the submission that injunctions against Gypsies and Travellers were an exception to this rule. The decision also emphasises the need for rigorous compliance with the rules of civil procedure, with the Judge concluding that there were grounds to suspect that there had been material and serious breaches of procedure in a significant number of cases brought by local authorities. The judgment also recognises the right of Romani Gypsies and Irish Travellers to respect for their cultural traditions, including their enshrined right to travel, as emphasised by Lord Justice Coulson in the Bromley case in 2020.’

You can find the Judgment here: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2021/1201.html&query=(london)+AND+(borough)+AND+(of)+AND+(barking)+AND+(dagenham)+AND+(v)+AND+(persons)+AND+(unknown)>

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