

<b>Institution: University of Strathclyde</b>
<b>Unit of Assessment: 22</b>
<b>Title of case study:</b> <b>Delivering rights for Gypsy/Travellers in Scotland: ethnicity defined in law</b>
<b>1. Summary of the impact</b> Being recognised in law as an 'ethnic minority' has far-reaching consequences, including the right of access to welfare and protection from race discrimination. As part of an industrial tribunal case in September 2008, research conducted at Strathclyde was used as expert testimony that resulted in giving Gypsy/Travellers in Scotland such legal status. This judgment has meant that the entire population of this group now has access to protection under Race Relations legislation. As a result, the case has been cited to support other cases that challenge decisions which affect the everyday lives of Gypsy/Travellers. The research and case has also directly shaped public policy by the Scottish Government in relation to human rights, and in subsequent policy on equality, accommodation and employment. At the local level for individual Gypsy/Travellers, the ruling has implications for their access to services, with health care and social work organisations now explicitly including guidance on support for this ethnic group.
<b>2. Underpinning research</b> <b>Context:</b> Dr Colin Clark is an expert in ethnic minorities and identity, and has worked with and researched Romani and Gypsy/Traveller across Europe for the past 20 years. He has been an expert witness in several legal cases in 2000 and 2004. Clark's acknowledged expertise in relation to these groups meant that he was called as a leading international expert in an industrial tribunal case in Scotland in 2008 which centred on the legal and cultural definition of Gypsy/Travellers as an ethnic group.  <b>Key findings:</b> The meaning and use of ethnicity has been described as one of the most pressing issues to occupy the social sciences in contemporary times [1]. Across Europe the relationship between the identity and status of Romani and Gypsy/Traveller communities and ethnicity has been contested in government policy, legal systems and within the communities themselves. Research conducted at Strathclyde has made a distinctive contribution to this debate through its exploration of the social-legal identities of Romani, Gypsy/Traveller and other minority group within Europe [1, 2, 3], the UK [4] and Scotland specifically [5]. Clark's research has highlighted the challenges faced by Gypsy/Travellers to gain legal ethnic identity across different cultural and political contexts, and the consequences for them in terms of access to social and welfare services, and in securing accommodation and employment. It also interrogated the dangers and risks arising from 'matter of fact' assumptions within academic and public discourse that Gypsy/Travellers were an ethnic minority group under existing Race Relations legislation.  Drawing upon European experiences, Clark's research [5] found that the 'legal' identity of Gypsy/Traveller communities was actually unsubstantiated in law. Although the Scottish Parliament had stated in 2001 that Scottish Gypsy/Travellers were 'to be regarded' as an ethnic group in Scotland by public/state bodies this remained untested. Clark's research concluded that whilst Scottish Gypsy/Travellers are undoubtedly as much an 'ethnic group' as any other currently protected by the Race Relations Act 1976 (as amended 2000) – now replaced by the Equalities Act 2010 – Scottish Gypsy/Travellers generally lacked the substantive protection of the Act in the Scottish context. It further found that only when a test case comes before the Scottish courts and completes its journey through the legal system, would Gypsy/Travellers be assured of their rights and protection from discrimination. Although this group's ethnic identity had been defined in Europe [1] and in the UK [4] they continued to face social exclusion and thus needed to resort to legal status to challenge decisions and actions which affected their lives [2, 3].  In Scotland, although there was a widely accepted view that they were an ethnic group, the research concluded that in the absence of a legal basis this could be challenged under the law, and without this being tested Gypsy/Travellers remained open to potential discrimination and exclusion.

**Key researchers:** Dr Colin Clark, Lecturer in the School of Social Work and Social Policy University of Strathclyde from January 2005 to August 2013 led on all research referred to in this case study.

### 3. References to the research

- [1] Clark, C. and Titterton, M. (2000) 'Working with socially excluded Romani communities in central and eastern Europe: lessons from Bulgaria', *Social Work in Europe*, 7 (3): 38-45. ISSN: 13531670.
- [2] Clark, C. (2003) 'Ethnicity, the law and Gypsy-Travellers in Scotland: which way now?' in Salo, S. and Pronai, C. (eds.) *Ethnic Identities in Dynamic Perspective*. Budapest: Gondalot/Minority Research Institute of the Hungarian Academy of Sciences, Budapest, pp. 211-218. ISBN: 9639500992
- [3] Clark, C. and Cemlyn, S. (2005) 'The social exclusion of Gypsy and Traveller children' in G. Preston (ed.) *At Greatest Risk: the children most likely to be poor*, London: CPAG. pp.150-165. ISBN: 1901698785.
- [4] Clark, C. and Greenfields, M. (2006) *Here to Stay: the Gypsies and Travellers of Britain* Hatfield: University of Hertfordshire Press (382 pages). ISBN: 1902806336.
- [5] Clark, C. (2006) "Defining ethnicity in a cultural and socio-legal context: the case of Scottish Gypsy-Travellers", *Scottish Affairs*, No. 54, Winter, pp. 39-67. ([http://www.scottishaffairs.org/onlinepub/sa/clark\\_sa54\\_winter06.html](http://www.scottishaffairs.org/onlinepub/sa/clark_sa54_winter06.html))

**Notes on quality:** The research was published across peer-reviewed journals [1, 4] and in refereed international books [2, 3 and 5]. Each is widely cited as evidence of social exclusion of this community [1 - 3]. Reference 5 was included in RAE2008 and is a benchmark output for identity research on Gypsy/Travellers [5].

### 4. Details of the impact

#### Process from research to impact:

The Scottish Executive's Race Equality Scheme (RES) 2005 'Working Together for Race Equality' commented that, at that time, not all Gypsy/Traveller communities were recognised for the purposes of the race relations legislation but acknowledged the need for protection from discrimination and abuse. Plans for services for the traveller community in Scotland prior to 2008 were dealt with under the Equal Opportunities agenda.

In September 2008, an industrial tribunal case was brought in Aberdeen by Mr Ken MacLennan claiming that his employers at the Gypsy Traveller Education and Information Project (GTEIP) had dismissed him for "taking a stance on behalf of gypsy travellers". Dr Clark was called as an expert witness on behalf of the plaintiff, appearing before Judge Nicol Hosie and others to argue the case for Scottish Gypsy/Travellers having legal protection under the terms of the Race Relations Act of 1976 (as amended 2000).

Over a two day period (8<sup>th</sup>- 9<sup>th</sup> September), Clark presented as evidence his research findings from the 2006 study [5] and he was questioned by both the plaintiff's and defendant's legal teams as well as the Judge himself. At the heart of this case was a question over the legal ethnicity and standing of Scottish Gypsy/Travellers in regard to Race Relations legislation. Using his prior research, Clark indicated that in the absence of a 'protected' socio-legal status of Scottish Gypsy/Traveller ethnicity, this group would, if they were to experience social and cultural stigmatisation and discrimination, struggle to have the same legal redress that other ethnic minority groups had in Scotland. This hearing thus became the pivotal 'test case' that Clark (2006) had argued was required to provide legal clarification [5].

The judgement was in favour of the plaintiff, Mr MacLennan, with Judge Hosie concluding: "*Having satisfied ourselves, therefore, that the two main characteristics set out by Lord Fraser in Mandla were satisfied and that the other non-essential characteristics were satisfied in varying degrees, we arrived at the view that Scottish Gypsy-Travellers have "ethnic origins", with reference in particular, to Section 3(1) of the 1976 Act and that they therefore enjoy the protection of the Act*" (page 15,

point 49). Judge Hosie referred to Dr Clark's evidence throughout his judgement and determined him to be an "impressive and persuasive witness" (page 6, point 14). The unanimous judgment of the Tribunal is summed up in the conclusion on page 15 of the written judgment (dated 21 October, 2008). This judgment is all the more remarkable as the Judge admits a previous mistake he had made at an earlier industrial tribunal hearing in March 2008 which was conducted without consulting the available evidence base or asking for expert witness testimony: "*I think it is worthy of comment that, having now approached the issue in this manner, I was convinced that I had fallen into error by conducting the previous hearing in the way I did and not hearing evidence. I am satisfied that my decision to review that judgment, at my own instance, and to hear evidence, was the correct one.*"

## Types of Impact

### 1. Changes in public policy and law

Following entry of the judgment into the Registry on 21 October 2008, the test case had immediate and far-reaching impacts for all 20,000 to 22,000 Gypsy/Travellers in Scotland - in terms of their legal protection, support of future legal challenges, influence on public policy and in the approaches taken by service providers to Gypsy/Travellers (Sources 1 and 2). Further, as legal precedence, the judgment has in subsequent cases been used to support Gypsy/Travellers in challenging decisions which affect their everyday lives and their identity. The research in Clark (2006) [5] continues to be used by Scottish Gypsy/Traveller individuals and families to challenge discrimination in courts of laws.

The judgment officially granted legal protection as an ethnic minority group to rights enshrined with all Race Relations legislation (now superseded by the Equality Act 2010). Amnesty Scotland in their report 'On the Margins - Local authority service provision for Scottish Gypsy Travellers' April 2012, has noted that this has provided security of protection for the entire Gypsy/Travellers community and impacted on their confidence and ability to engage with local authorities and other communities (Source 2).

The Equal Opportunities Committee, Scottish Parliament 1<sup>st</sup> Report March 2013 (Source 5) acknowledges "A recent Tribunal judgement (Mr K MacLennan v Gypsy Traveller Education and Information Project 2009) held that Gypsy Travellers are a distinct ethnic group and therefore covered by the Race Relations Act 1976."

### 2. Improved social welfare and inclusion

The outcome of the judgement has impact on enhancement to policy and practice, improved social welfare, inclusion and access to justice for all Gypsy/Travellers in Scotland. The implications in relation to human rights were acknowledged immediately by the Scottish Government in their 'Race Equality Statement' published in December 2009, and in statements on their website including:

"Although it is not in our power to make change in relation to the legal recognition of Scottish Gypsies/Travellers as an ethnic group since legislation around equal opportunities is reserved, the Scottish Government continues to recognise Gypsies/Travellers as an ethnic group in its work and encourages others to do likewise. The Scottish Government acknowledges that Gypsy/Traveller communities have specific requirements and require the same level of protection from discrimination and abuse in common with all of Scotland's minority ethnic communities. A recent judgement in relation to an employment tribunal (K. MacLennan Vs. Gypsy Traveller Education and Information Project) has set a precedent in this regard, it concluded that "Scottish Gypsy/Travellers" is a group which can be defined by reference to its ethnic origins and therefore can be afforded the protection offered by section 2(1)(d) of the Race Relations Act 1976." (Source 3)

The Statement goes on to propose the provision of resources for education, transit sites and community development, with an unspecified number of transit sites in place by March 2011. It notes that these were priorities in the 2005 Equal Opportunity Committee Interim Report and from the Gypsy/Travellers Steering Group (from 2005-06).

BEMIS, the Black and Ethnic Minority Infrastructure in Scotland working group, is a network of ethnic minority organisations convened to address the gap that exists in support for the ethnic minority voluntary sector in Scotland. The BEMIS report 'Gypsy Travellers in Contemporary Scotland', 2011, (Source 1) cites Clark's research to support many of the points made in the report, including the argument that the Scottish Travellers are a distinct indigenous group. From Chapter 2 p.17 of this report – 'Clark (2006) argues that at various stages in Scottish history, dispossessed labourers and other marginalised people may have complemented the original Scottish nomadic. Hence, he argues that it is true that Scottish Gypsy/Travellers are quite distinct from recent Roma arrivals in Scotland, via government asylum dispersal schemes for example, because they are an indigenous nomadic group' (Source 1).

It continues to shape policy through debate in the Scottish Parliament, being part of the evidence drawn upon by the Equal Opportunities Committee of the Scottish Parliament in their 2013 hearings addressing where Gypsy/Travellers live (Source 5), and in the case made by the Equality and Human Rights Commission (Source 4) where a new tick box stating "Gypsy/traveller" has been incorporated into the census which will assist in monitoring accommodation needs for the Gypsy/Traveller community (Sources 5 and 6) and in relation to employment law (Source 7).

The ruling has had implications for service provision for all Gypsy/Travellers. Across service providers and local authorities, the outcomes of the legal case have been reflected in the guidance issued in relation to social inclusion and discrimination across professions including nursing and health care (Source 8) and social work (Source 9).

#### 5. Sources to corroborate the impact

1. BEMIS (2011) Gypsy Travellers in contemporary Scotland  
[http://bemis.org.uk/docs/gypsy\\_travellers\\_in\\_contemporary\\_scotland.pdf](http://bemis.org.uk/docs/gypsy_travellers_in_contemporary_scotland.pdf) p 20 -21
2. Document - Amnesty Scotland (2012) On the margins, Local Authority service provision for Scottish Gypsy Travellers (endnote 4, p16).
3. Scottish Government ethnic status statement  
<http://www.scotland.gov.uk/Topics/People/Equality/gypsiestravellers/ethnic> )
4. Equality and Human Rights Commission (2010) p21 (cites the legal status on the basis of this case and the research)  
[http://www.equalityhumanrights.com/uploaded\\_files/Scotland/Research/research\\_report\\_as\\_sessing\\_the\\_accomodation\\_needs\\_of\\_gypsy\\_traveller\\_in\\_scotland.pdf](http://www.equalityhumanrights.com/uploaded_files/Scotland/Research/research_report_as_sessing_the_accomodation_needs_of_gypsy_traveller_in_scotland.pdf)
5. Equal Opportunities Committee, Scottish Parliament 1<sup>st</sup> Report 2013 – Where Gypsy/Travellers Live (case cited to define ethnic group, p2)  
[http://www.scottish.parliament.uk/S4\\_EqualOpportunitiesCommittee/Reports/eor-13-01w.pdf](http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-13-01w.pdf) )
6. Race Equality Foundation 2009 "Gypsies, Travellers and accommodation  
<http://www.raceequalityfoundation.org.uk/publications/downloads/gypsies-travellers-and-accommodation> )
7. <http://www.casecheck.co.uk/Default.aspx?tabid=1184&EntryID=11243> (citing the case in relation to employment law)
8. Royal College of Nursing:  
[http://www.rcn.org.uk/development/practice/social\\_inclusion/gypsy\\_and\\_traveller\\_communities](http://www.rcn.org.uk/development/practice/social_inclusion/gypsy_and_traveller_communities) (revising the legal judgment for nursing and social exclusion)
9. British Association of Social Workers (BASW): [http://cdn.basw.co.uk/upload/basw\\_105656-9.pdf](http://cdn.basw.co.uk/upload/basw_105656-9.pdf) (p10-11) - implications of the judgment for Social Work practitioners in combatting discrimination again Scottish Gypsy/Travellers.