



Know your Housing Rights *Online Education Series*

KNOW YOUR HOUSING RIGHTS: TRAVELLER ACCOMMODATION

This guide looks at the key areas of law that impact on Traveller accommodation matters, including laws relating to culturally appropriate accommodation, evictions and discrimination protections.

NON-DISCRIMINATION

CONSTITUTIONAL AND HUMAN RIGHTS LAW

Arbitrary or unreasonable discrimination is prohibited by Article 40.1 of the Constitution. A Traveller should not be treated less favourably than a settled person simply on the basis of their ethnicity or characteristics associated with that identity. Human rights treaties such as Article 14 of the European Convention on Human Rights (**ECHR**) also promote principles of non-discrimination in relation to ECHR rights.

Any difference in treatment in law or in the actions of a public body must be based on an objective and reasonable justification which must pursue a legitimate aim and be proportionate.

Article 40.1, Constitution of Ireland

“All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”

PUBLIC SECTOR EQUALITY & HUMAN RIGHTS DUTY

The Public Sector Equality & Human Rights Duty (the **Duty**) stems from Section 42 of the Irish Human Rights and Equality Commission Act 2014. The Duty requires that public bodies, including local authorities and the Department of Housing, Local Government and Heritage have regard to the need to eliminate discrimination, promote equality and protect human rights when performing their functions.

EQUAL STATUS ACTS 2000-2018

The Equal Status Acts prohibit local authorities and other bodies which provide housing services discriminating against a person on the basis they are a member of the Traveller

community. Discrimination occurs where a person is treated less favourably than another person is, has been or would be treated in a comparable situation, because they are a Traveller. Redress for discrimination under the Equal Status Acts can be sought at the Workplace Relations Commission.

See our publication *Know your Housing Rights: The Public Sector Equality & Human Rights Duty* for more on the Duty and the Equal Status Acts.

COUNCIL DIRECTIVE 2000/43/EC (THE RACE DIRECTIVE)

The Race Directive, an instrument of the law of the European Union, prohibits discrimination based on racial or ethnic origin in the provision of goods and services which are available to the public, including housing. Where a breach of the Race Directive is claimed in legal proceedings, once a complainant establishes facts from which it may be presumed there has been discrimination, a service provider such as a local authority must prove there has not been a breach of the principle of equal treatment.

CONSTITUTIONAL AND HUMAN RIGHTS LAW PROTECTIONS

The Constitution and ECHR are two of the most important sources of rights in Irish law.

The Constitution, *Bunreacht na hÉireann*, is the fundamental law of Ireland. It recognises many basic human rights, some expressly written in the Constitution ('enumerated rights') and some which have been implied ('unenumerated rights').

The ECHR has force of law in Ireland under the ECHR Act 2003.

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

In the context of housing, the right to privacy and family life is very important. In the Constitution, the right to privacy is an 'unremunerated right' which includes the right to privacy in your home and in your family life. Article 40.5 of the Constitution also protects the home, by providing for the 'inviolability of the dwelling', in other words, that the home can't be invaded.

Article 8 of the ECHR expressly recognises the right to privacy. Article 8 protects against unlawful interference, for example, in respect of a person's home.

No right is absolute. Article 8 makes provision for interference with the right to privacy, but only where strict criteria are met, including that any interference must pursue a legitimate aim, be necessary in a democratic society, be proportionate and be prescribed by law. Similarly, Article 40.5 can be interfered with (such as entering a home on foot of a warrant) but interference with the right under is strictly limited.

LEGAL OBLIGATIONS IN RESPECT OF TRAVELLER ACCOMMODATION

There are laws that provide for specific accommodation needs of Travellers, in particular the Housing (Traveller Accommodation) Act 1998 (**The 1998 Act**). The key provisions of the 1998 Act include:

- an obligation to make an assessment of the accommodation needs of members of the Traveller community who have qualified for social housing supports, including:
 - the need for halting sites,
 - the distinct needs and family circumstances of Travellers;
 - the needs and patterns of movement of Travellers who live a nomadic lifestyle and require non-permanent halting sites;
- an obligation to adopt an accommodation programme for a five year period (with a review at least every three years), which is to outline the accommodation needs of Travellers and the provision of accommodation required to meet those needs (see below for more detail in respect of Traveller Accommodation Programmes);
- an obligation to take “[a]ny reasonable steps as are necessary” for the purpose of implementing the said accommodation programme;
- a power to make financial loans available to members of the Traveller community to purchase or repair caravans, to fund the acquisition of land for sites to place caravan accommodation and/or to finance associated construction works;
- a power and/or obligation to construct and provide halting sites, including sites which may not be permanent places of residence for those pursuing a nomadic lifestyle.

Halting site accommodation

The courts have made clear that the duties of local authorities to make provision for social housing and in particular the obligations imposed by section 13 of the Housing Act 1988 (brought in by section 29 of the 1998 Act) extends to providing halting sites and not only dwellings or houses. The duties imposed by that section must be performed in a rational and reasonable manner and there must be a coherent and fair system of allocating halting site units to Travellers.

Where a local authority can demonstrate that it has performed its obligations in this manner, even where it is not able to provide a halting site to a particular person or family, that person or family is likely to find it difficult to challenge a local authority’s failure or refusal to provide halting site accommodation.

However, the Courts have also made clear that when compiling plans in line with their duties under the 1998 Act, local authorities must be specific in their objectives with regard to the provision of halting sites for those who need them, and they must set out clear mechanisms through which to achieve those objectives. Where local authorities do not do so, they might

be guilty of failing in their duties under the legislation, and this may warrant pursuing litigation in respect of a failure to provide halting site accommodation.

Winterstein v France, application no. 27013/07, 17 October 2013, European Court of Human Rights:

“The Court observes that the present case also brings into play, in addition to the right to respect for one’s home, the applicant’s right to respect for their private family life...It reiterates that the occupation of a caravan is an integral part of the identity of travellers, even where they no longer live a wholly nomadic existence, and that measures affecting the stationing of caravans affect their ability to maintain their identity and to lead a private family life in accordance with that tradition.”

Caravans

Under the 1998 Act, local authorities have the power to provide financial loans to purchase or repair caravans, to fund the acquisition of land for sites to place caravan accommodation and/or to finance associated construction works.

Generally speaking, members of the Traveller community do not have a legal right to be provided with a caravan. However, exceptional circumstances may give rise to an obligation being placed on a local authority to provide a caravan, for example where a child with disabilities is living in inappropriate or unsafe conditions. If a person believes such circumstances exist, they should seek legal advice.

Living with or in the vicinity of family

Whether a local authority’s failure to make provision for a family to live with or in the vicinity of another family breaches their right to a private and family life under the Constitution or the ECHR will depend on the factual circumstances underpinning the situation. Generally speaking, the Irish courts have been slow to interfere with local authority’s refusals to provide for facilities where extended family members can live with or in close proximity to each other.

EVICCTIONS

Evictions have a serious impact on people removed from a property against their wishes and risk infringing fundamental rights, such as the right to privacy discussed above. Evictions must be carried out properly to be lawful.

OBLIGATION TO HAVE REGARD TO A PERSON’S HOUSING NEEDS PRIOR TO EVICTION

The Irish courts and the European Court of Human Rights have made clear that public bodies have an obligation to take account of a person’s housing needs and to provide them with an opportunity to be heard in respect of, for example, the impact an eviction may have on them prior to an eviction order being made or an eviction taking place. If a person has concerns in respect of the lawfulness of an eviction, they should seek legal advice.

Whether an eviction constitutes an unlawful interference with a person's right to privacy will depend on the factual situation. Of particular importance is whether procedural safeguards have been provided before an eviction takes place (e.g. court oversight) and whether the eviction is necessary and proportionate.

The fact that a dwelling or place is unlawfully occupied will only be relevant when considering whether an eviction is necessary in a democratic society, for example, in the interests of public safety, to prevent crime or disorder, and/or the protection of health, and in balancing the interests of the wider community over those of the individual in occupation.

There are a number of laws relating to squatting, unlawful development and trespassing which can have particular impact on members of the Traveller community, in particular in relation to eviction. An overview of the key laws in this area is set out below.

SECTIONS 19A-19H OF THE CRIMINAL JUSTICE (PUBLIC ORDER) ACT 1994

This legislation provides An Garda Síochána with significant and wide-ranging powers in respect of suspected unlawful occupation of land by a person or persons.

Under the legislation, without court oversight An Garda Síochána may summarily direct individuals occupying land to vacate it where those Gardaí have "*reason to believe*" that a person is occupying land without the consent of the owner. Despite a proportionality assessment being required by both the Constitution and the ECHR, on its face the legislation does not provide any mechanism of assessing the proportionality of such a direction and what the consequences of it might be for a person directed to leave land.

Failure to abide by the direction may result in an individual's property (including a caravan) being removed, stored or disposed of, the individual(s) in question being arrested without warrant, or even found guilty of a criminal offence *under this Act*.

SECTION 69 OF THE ROADS ACT 1993

This legislation provides An Garda Síochána and local authorities with significant powers in respect of temporary dwellings placed on national roads. Under Section 69, where a person erects, places or retains a temporary dwelling on a national road without lawful authority they will be guilty of an offence. The relevant minister may also prescribe specific roads that are not public as within scope of the Section.

An Garda Síochána and/or local authorities have the power to confiscate a person's home (for example, their caravan), without prior notice, to store it and/or destroy it in certain circumstances.



SECTION 10 OF THE HOUSING (MISCELLANEOUS PROVISIONS) ACT 1992

Under this legislation, a local authority has the power to evict members of the Traveller community living in caravans in a number of circumstances:

- if the caravan is located within 5 miles of an approved halting site that the housing authority believes could accommodate the person or persons;
- if the site is unfit for human habitation, obstructs a public or private amenity or constitutes a health and safety risk, but only if the person or persons can be appropriately accommodated on an official halting site;
- if the temporary dwelling is located within one mile of an approved halting site and the housing authority is of the opinion that occupants of the caravan are causing nuisance to, or a risk to water supplies or public facilities of, any dwellings within a one-mile radius, or are interfering with the use or enjoyment of private or public facilities within a one mile radius.

Prior to an eviction taking place, the housing authority must serve a notice requiring that a person remove their temporary dwelling where any of the conditions outlined above are satisfied. In order to be valid, the notice must contain specific information outlined in the Act and must provide 24 hours' notice prior to the eviction taking place.

SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000

Section 160 empowers the High Court and the Circuit Court to make any order necessary to restrain an unlawful development and to restore the land to its original condition.

SECTION 14, HOUSING (MISCELLANEOUS PROVISIONS) ACT 1997 ("THE 1997 ACT")

Section 14 of the 1997 Act provides local authorities with powers to refuse or delay allocating social housing to individuals who would normally be entitled to same based on their previous or current engagement with anti-social behaviour. Local authorities are provided with wide-ranging discretion to assess and determine what constitutes 'anti-social behaviour'.

REDRESS

CIVIL LITIGATION

Through the Courts individuals may seek to enforce their rights or seeking relief in respect of their rights having been breached through (i) judicial review, and (ii) plenary proceedings.

Judicial review is brought in relation to decisions of public bodies and litigants may seek the following types of orders:

- an order of *certiorari* – an order striking down a decision. If you succeed in getting an order of *certiorari*, it is not the case that the court will make a new decision for the public

body, but rather that the public body will be obliged to re-make the decision following a correct procedure, which could result in the same outcome;

- an order of *mandamus* – an order directing a public body to do something and/or fulfil a duty that it is failing to fulfil;
- an order of prohibition – an order preventing a public body from taking a certain action;
- a declaration – a judge’s declaration clarifying the rights of parties and/or declaring that a person or person(s) rights have been breached by the actions of a public body;
- an injunction – an order stopping a public body from taking a certain action or directing that it take a certain action.

Plenary cases have a wider range of available outcomes.

THE OMBUDSMAN

The Ombudsman is tasked with examining complaints from people who feel they have been unfairly treated by organisations that deliver public services, including local authorities. Before carrying out a full investigation, the Ombudsman must be satisfied that the action(s) of a local authority fall below a certain standard. This includes matters such as negligence or carelessness, discrimination and bad administrative practice.

Once the Ombudsman has carried out an investigation, he may make findings and recommendations in respect of the actions of the local authority. He has no enforcement powers but public bodies typically implement his decisions.

Generally speaking, a complaint should be submitted to the Ombudsman within 12 months of the issue. The Ombudsman generally cannot deal with a complaint if a court case has been brought about the same issue. See www.ombudsman.ie for further information.

THE OMBUDSMAN FOR CHILDREN

The Ombudsman for Children has the power to investigate the actions of public bodies in respect of their dealings with children. The Ombudsman for Children can make findings and recommendations. While he does not have any powers of enforcement, if he is not satisfied with the manner in which a local authority has dealt with his recommendations he can include this in a special report to the Oireachtas.



MERCY LAW RESOURCE CENTRE

Mercy Law Resource Centre (MLRC) is a registered charity and independent law centre. MLRC provides free legal advice and representation to people who are homeless or who are at risk of homelessness in relation to social housing and related social welfare law. MLRC also provides training and support to organisations that encounter issues in this area of law.

You can contact MLRC by phone at **(01) 453 7459** or by email to info@mercylaw.ie.

THE 'KNOW YOUR HOUSING RIGHTS' SERIES

This is Module 4 in the 4 part '*Know your Housing Rights*' legal training series. The topics in the series are:

1. *Know Your Housing Rights: Introduction to Social Housing Law*
2. *Know Your Housing Rights: The Public Sector Equality & Human Rights Duty*
3. *Know your Housing Rights: Housing Assistance Payment (HAP) and Homeless HAP*
4. *Know your Housing Rights: Traveller Accommodation and the Law*

Details of online training sessions for these modules, and copies of the other guides, are all available at www.mercylaw.ie/training/KYHR

