



Unauthorised Traveller Encampments Protocol between the London Borough of Lambeth and the Metropolitan Police (Lambeth Division)

Protective Marking Level: Not Protectively Marked.

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1. Introduction

1.1 The purpose of this Protocol is to ensure that unauthorised Traveller encampments within the London Borough of Lambeth are tackled consistently, effectively and fairly having regard to the interests of the Travellers, and the Local Authority's duties and responsibilities to the settled community and the Travellers. It will identify specific roles and responsibilities of the local authority and the Metropolitan Police Service in the management of unauthorised encampments.

1.2 The protocol has been agreed by the London Borough of Lambeth ("the Authority") and the Metropolitan Police Service (Lambeth Police Division) ("the Police"). It aims to identify the action to be taken by the individual partners, co-operating together, when Travellers establish or seek to establish an encampment without the licence or consent of the owner of land, or any other person entitled to give such permission. The Protocol identifies the powers for removing Travellers and how certain powers will be exercised once a decision to remove Travellers has been taken. This document

considers when the Police might use their express powers of removal. It does not however examine when the Authority might use its various powers given the numerous statutory duties and responsibilities placed on local authorities, the consideration of which would be beyond the scope of this document.

1.3 The expression “Travellers” is used throughout the Protocol to describe any persons who seek to establish an unauthorised encampment within the Borough and therefore includes ethnic English Gypsies, Roma, Irish Travellers or New Age Travellers.

1.4 The term “unauthorised encampment” is used in this protocol to describe any unauthorised traveller sites, protest camps and squatter sites (does not include unauthorised occupation of buildings). Whilst the Protocol seeks to set a common approach to tackle unauthorised encampments different considerations will obviously apply to each site. Accordingly each case will be considered on its own facts and the action taken by the partners will reflect the individual circumstances of the case. The partners however recognise from past experience that close co-operation between agencies can often resolve problems swiftly and effectively.

2. Powers to remove encampments

2.1 Police Powers: *The Police have a statutory duty to investigate offences and to enforce the law. In order to do so they have various powers of entry and arrest where criminal offences have been, or are suspected of being, committed by Travellers. There is also the general power to prevent a breach of the peace.*

In addition, under Section 61 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”), where the senior police officer present at the scene reasonably believes the conditions set out below apply, he may direct persons to leave land and remove any other vehicles or property they have with them on the land. The conditions are that:

- Two or more persons are trespassing on the land and are present there with the common purpose of residing there for any period;
- Reasonable steps have been taken by or on behalf of the occupier to ask them to leave; **and either that**
- Any of those persons has caused damage to the land or property on it or used threatening, abusive or insulting words or behave
- iour towards the occupier, a member of his family, an employee or agent of his (Note – not towards other members of the public); **or**
- those persons between them have 6 or more vehicles on the land.

The decision to issue a direction to leave is an operational decision for the Police alone to take in the light of all the circumstances of the particular case.

It is a criminal offence under Section 61(4) of the 1994 Act for a person to fail to leave the land as soon as reasonably practicable, or to return within three months of the date of the direction. Any person convicted of such an offence is liable to up to three months imprisonment or a fine not exceeding level 4 of the standard scale, currently £2,500. Moreover any person suspected of committing such an offence may be arrested without warrant.

2.2 Local Authority Powers: The Authority has a number of powers to require Travellers to leave land. The specific powers will depend upon whether the Authority is the owner of the land (or otherwise entitled to possession of it). The Authority's powers include:

2.2(i) Instituting proceedings for summary possession of the land in the County Court or in the High Court under Civil Procedure Rules 1998 (CPR), Part 55. This power may only be exercised where the Authority is the owner of the land or is otherwise entitled to possession of it.

2.2(ii) Serving a Notice under Section 77 of the 1994 Act directing them to leave the land and remove any other vehicles or property they have with them on the land. The Authority may issue such a direction where it appears to the Authority that persons are for the time being residing in a vehicle or vehicles within the Borough –

- (a) on any land forming part of a highway:
- (b) on any other unoccupied land: or
- (c) on any occupied land without the consent of the occupier.

2.2(iii) By taking action under the Highways Act 1980 and under local bylaws/traffic management orders which have provisions for evicting persons unlawfully using car parks and other areas.

Section 77 is the only direct power the Authority has to require Travellers to leave privately-owned land and which the Authority does not occupy under a lease or licence. If a person knowing that a direction has been given which applies to him fails to leave the land as soon as reasonably practicable, or returns within three months of the date of the direction he commits a criminal offence. Any person convicted of such an offence is liable to a fine not exceeding level 3 of the standard scale, currently £1,000. In the event of non-compliance with a direction the Authority may also apply to the Magistrates' Court for a removal order under Section 78 of the 1994 Act. An order may authorise the Authority to take such steps as are reasonably necessary to ensure that the order is complied with.

(Note: The preferred method of dealing with encampments in Lambeth has been the police Section 61 with the support of the authority, and this has proved very successful. However, the Section 77/78 Act will be considered in cases where the Police are unable or unwilling to use their powers under Section 61)

3. Lambeth's agreed course of action when an encampment comes onto land

3.1 It is agreed that both Police and the Authority will inform the other as soon as either is made aware that travellers have got onto land.

3.2 If Travellers are attempting to gain access to particular land, and the Police are first on scene they will as far as possible, prevent or dissuade them from entering the land, using whatever powers are appropriate at the time. This will include ensuring that there is no breach of the peace, preventing criminal damage and any public order offence that may become apparent.

3.3 The Council will make all reasonable efforts to establish who the owner of the affected land is and take action as specified at sections A and B below.

3.4 The first Officers on the scene should find out as much as they can regarding the Travellers including;

- How many are on the land,
- Where they have come from and where they are going,
- Their reasons for stopping,
- Whether others are expected,
- Whether there is any particular spokesperson and
- Note any vehicle registration numbers and names.

No suggestion will be given to the Travellers by the police that it is permissible for them to remain on this land for any period of time, as the police do not have the authority to do so.

3.5 All the details of the encampment will be circulated by the Area Crime Reduction Manager to the key contacts **(for a list of key contacts see Appendix 2)**. This information will include the number of vehicles, approximate number of Travellers and any concerns or issues at that time.

A. Encampments on Council owned land

A.1 On arrival the Council or Police (whichever is first on site) will announce their arrival at the site to the unauthorised campers and will seek to establish the name and contact telephone number of any encampment leader or spokesperson that may exist and immediately seek to speak with any such person.

A.2 The officers first on site will overtly take photographs and undertake video recording of the unauthorised encampment and surrounding land to record the numbers present and the physical state of that land. Travellers present will be informed that such photographs and video recordings are being taken/made.

A.3 The officers will undertake an Assessment Checklist (**Appendix 3**) that includes a welfare assessment (education, health and welfare needs) to determine whether there are any pressing needs presented by the travellers and will liaise with any other agencies as may be necessary as a result of that assessment.

As part of this assessment, to the extent that is reasonable in the circumstances, the following information will be noted regarding the unauthorised campers:

- overall numbers (make an estimate if actual numbers are not provided by the unauthorised campers);
- genders and age ranges, in particular, older people above 60 years old and children up to 18 years old;
- names and addresses of unauthorised campers, including vehicle/caravan registration numbers and type of vehicle (e.g. car, van, flatbed etc.);
- any illness, infirmity, disability or medical condition that might affect the unauthorised campers ability to leave;
- any reasons given by the unauthorised campers as to why they should be permitted to remain;
- access/attendance of children at local schools;
- arrangements to dispose of refuse;
- the views of local residents or those who may be affected by the encampment;
- the physical state of the land occupied and surrounding land, in particular, whether any fly-tipping has taken place;
- any animal welfare issues;
- any other information that the Council considers relevant regarding management of the unauthorised encampment.

A.4 The Council is responsible for ensuring that any action that it takes in response to the unauthorised encampment is necessary, proportionate and non-discriminatory. This will include consideration of all relevant issues identified through the welfare assessment and any other relevant information obtained at the Council's visit to the site. Having regard to the welfare assessment at paragraph A.3 above, the Council will decide which legal processes, if any, will be utilised to ensure that the unauthorised campers leave the site. If the Council is to request that they police use Section 61 then they must follow the guide set out in **Appendix 1**.

A.5 The following are some examples of circumstances in which unauthorised encampments will not be allowed to remain and prompt action will be taken to evict the unauthorised campers *this list is not exclusive*:

- damage, mess or littering of the site;
- problems of crime and disorder associated with the site;
- camping on unsuitable sites such as school playing fields, car parks or where the occupation restricts the amenity of the public;
- camping in parks and open spaces; and
- where highway hazards are created.

A.6 During the period of occupation the Council and/or Police will:

- monitor and record any incidents of crime, including incidents where the unauthorised campers are the victims of crime and any apparent increase/decrease in local crime and hate crime levels directly attributable to the encampment;
- monitor and record the physical state of the site and surrounding land, in particular, damage caused during the period of occupation and any incidents of fly-tipping that may occur;
- provide witness statements, photographs and video recording as evidence as and when required; and
- (the Council will) circulate a basic and informative email about the use of the protocol applied to the encampment on a regular basis to lead Council staff, the MPS and any other external agencies that it is deemed appropriate to notify.

B. Encampments on privately owned land

B.1 Where the Council or Police have been able to establish the owner of the land they will:

- notify them that their land is occupied;
- ascertain whether permission has been granted to occupy that land;
- establish whether the owner wishes to remove the travellers from the land;
- advise that they should seek independent advice concerning their powers to remove the unauthorised campers; and
- establish whether section 61 of the Criminal Justice and Public Order Act 1994 applies.

4. Responsibilities of the MPS

4.1 The contact details for the MPS in respect of all aspects of this protocol are
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4.2 The MPS will notify the Council of all unauthorised encampments in the borough which are reported to them as soon as is reasonably practicable. At this time the MPS will report of any action that they have already taken in respect of the occupation of the land.

4.3 The MPS will visit all unauthorised encampments in the borough at the request of the Council, or the owners of the land as soon as is reasonably practicable.

4.4 Where the MPS visit a site, whether at their own volition, or in response to a request under paragraph 4.3 above, they will assess whether section 61 of the Criminal Justice and Public Order Act 1994 (see section 5 below) applies and will notify their decision as soon as is reasonably practicable of visiting the site to:

- the Council in all cases; and
- the owner of the land (if different)

4.5 Where the MPS consider that section 61 of the Criminal Justice and Public Order Act 1994 can be applied, taking into account the circumstances of the unauthorised encampment and the unauthorised campers, they will use those powers at the request of the Council, or the owner of the land, where the MPS consider that this is a necessary and proportionate response to the unauthorised encampment.

4.6 Where, having visited the site, the MPS consider that section 61 of the Criminal Justice and Public Order Act 1994 cannot be used (either on the grounds that its provisions are not triggered, or because its use is not necessary and proportionate in the circumstances that apply), they will notify the parties concerned of their reasons for coming to that decision in accordance with paragraph 4.4 above. However, the default position will be that section 61 powers will be used by the MPS in all cases where they consider that the provisions are triggered and the use of these powers is a necessary and proportionate response.

4.7 The Council will consider use of powers under section 77 and 78 of the Criminal Justice and Public Order Act 1994 where section 61 powers under that Act cannot be used by the MPS in respect of its own land.

5. Section 61 of the Criminal Justice and Public Order Act 1994

5.1 Only the MPS may exercise these powers.

5.2 If the senior MPS officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and:

- that any of those persons caused damage to the land or to property on the land;

- used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his; or
- that those persons have between them six or more vehicles on the land, he may direct those persons, or any of them to leave the land and to remove any vehicles or other property they have with them on the land.

5.3 Section 61 powers can be used in respect of any land, regardless of ownership, but the powers cannot be used in respect of:

- buildings which are not agricultural buildings or scheduled monuments; and
- land forming part of a highway unless it is a footpath, bridleway or byway open to all traffic, a restricted byway or cycle track (see section 61(9) for full details)

6. The use of Section 61

6.1 In following the Traveller Guidance (Appendix 1) in considering whether to use Section 61 of the 1994 Act, and to issue a direction requiring the Travellers to leave land, the senior police officer at the scene will take into account the consequences of such action. This may involve the removal and security of the Travellers' vehicles and property, the provision of accommodation for vulnerable persons such as elderly persons, invalids, pregnant women and children etc. If any of the Travellers are rendered homeless by such action the Authority will be responsible for considering their housing needs under Part VII of the Housing Act 1996. The Police officer should also take into account the personal circumstances of the Travellers and, in particular, those vulnerable persons detailed above and whose well-being may be jeopardised by a precipitate move. **Further guidance in relation to the 'humanitarian' considerations is to be found in Appendix 4.**

6.2 These operational, logistical or humanitarian considerations should however, be balanced against the degree of nuisance, disruption and disorder that is occurring, or is likely to occur to the settled community, if the encampment remains. Where for example the Traveller encampment prevents the persons entitled to possession of the "occupied" land, or of neighbouring land, carrying out their lawful activities, or the public using public facilities, e.g. open space or parkland, there will clearly be greater nuisance, disruption and potential for disorder.

7. Risk Assessments/Health and Safety Considerations

7.1 There are no specific risks that arise from the implementation of this protocol. Each incident will have a degree of risk associated with the individual circumstances that are reported. Officers engaging with individuals who are part of an unauthorised encampment will be required to conduct a site assessment, part of which will include

the assessment of any risk associated with the safety and welfare needs of those who remain within the encampment.

7.2 Officers will be required to conduct a dynamic risk assessment concerning their own personal safety, whenever they engage with the occupants of an unauthorised encampment; this will include the implementation of standard working practices to protect the safety of operational staff.

7.3 Where a decision is made to enter an unauthorised encampment to enforce the lawful eviction of the inhabitants, a full operational risk assessment will be required.

8. Publicity

8.1 Following the agreement of action, a joint strategy will be developed to inform the public and media (and other interested parties such as ward councillors and relevant Executive Members) as to the current situation and proposed joint strategy to deal with this (see **Appendix 5**).

Appendix 1 Guide to Lambeth Council and Lambeth Police joint action to move travellers who are illegally occupying Lambeth Council Land

Step 1: Action to be taken by Lambeth Council: *the first step is for the Authority to give a direction to leave notice, giving “reasonable time” to leave the land. Reasonable will depend on any varying circumstances, such as the time of day or any welfare issues. However, If an encampment comes onto land during the daytime, and there are no obvious welfare concerns, then it is reasonable to give 2hours notice for them to leave. A Lambeth Council*

Officer will ask the travellers to leave the area, using the Lambeth Parks and Open Spaces byelaws 2005 and will serve the notice below (either verbally or in writing):

Notice requesting travellers to leave land

*"You are trespassing on Lambeth Council Land (name of location).....
.....You have no right or permission to be here, camp here, or leave cars, trucks, vans or caravans on this land"*

"We also have reason to believe that you have damaged Lambeth Council property by being here and using the land for a purpose which is not allowed and Lambeth Council have not given you written permission to be here"

"By being here you have broken one or more of the Council's Byelaws"

(Inform them of the appropriate byelaws, see below.)

Byelaw 9. Camping: "No person shall without consent of the Council erect a tent or use a vehicle, caravan or other structure for the purpose of camping"

Byelaw 16. Motor vehicles: "No person shall without reasonable excuse bring into or drive in the ground a motor cycle, motor vehicle or trailer except in any part of the ground where there is a right of way for that class of vehicle"

Byelaw 17. Overnight parking: "No person shall without the consent of the council leave or cause or permit to be left any motor cycle, motor vehicle or trailer in the ground between the hours of 12 midnight and 6 am"

Byelaw 47. Removal of offenders: "Any person offending against any Byelaws may be removed from the ground by a Council Officer or a constable

Byelaw 48. Penalty: "Any person offending against any of these Byelaws shall be liable on summary conviction to a fine.

"On behalf of Lambeth Council I am asking you to leave the land immediately. When you leave, you are required to take all vehicles and any other property you have. You are required to remove any rubbish you have brought on to the land"

I will be back in [state number of hours]. If you have failed to leave, Lambeth Council Officers will ask the Police to attend and remove you under Sec 61 of the Public Order Act 1994.

Lambeth Council Officer

Name:.....
Signed:.....
Date:.....

Witnessing Officer

Name:.....
Signed:.....
Date:.....

Step 2: Action to be taken by the Metropolitan Police: *If the encampment have not left within the given time then the police will consider using Section 61 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") where a senior police officer present at the scene reasonably believes the conditions set out below apply, he may direct persons to leave land and remove any other vehicles or property they have with them on the land. The conditions are that:*

- Two or more persons are trespassing on the land and are present there with the common purpose of residing there for any period;
- Reasonable steps have been taken by or on behalf of the landowner to task them to leave; **and either that**
- Any of those persons has caused damage to the land or property on it or used threatening, abusive or insulting words or behaviour towards the landowner, a member of his family, and employee or agent of his **or**
- Those persons between them have 6 or more vehicles on the land.

The decision to issue a direction to leave is an operational decision for the Police alone to take in all the circumstances of the particular case.

It is a criminal offence under Section 61 of the 1994 Act for a person to fail to leave the land as soon as reasonably practicable, or to return within three months of the date of the direction. Any person convicted of such an offence is liable to up to three months imprisonment or a fine not exceeding level 4 of the standards scale. Moreover any person suspected of committing such an offence may be arrested without warrant.

The Section 77/78 Act will be considered by the Council in cases where the Police are unable or unwilling to use their powers under Section 61

Section 1 – Police: Initial contact should always be with the duty officer (Inspector) via the Control Room on 101

NAME	BASE	JOB TITLE	OFFICE NUMBER	OUT OF HOURS NUMBER(S)
	Brixton	Duty Officers	101	Not applicable
	Streatham	South Cluster Inspector		
	Brixton	Central Cluster Inspector		
	Kennington	North Cluster Inspector		

Section 2 – Lambeth Officers

Out of Hours Parks Service – to be called if the encampment has arrived out of hours: 0207 926 1000

NAME	DIRECTORATE	JOB TITLE	OFFICE NUMBER	EMAIL
	Environment & Law	Head of Legal Services		
	Environment & Law	Senior Prosecutions Lawyer		
	Corporate Services	Head of Communication		
	Environment	Community Environment Officer		
	Environment	Principal Area Parks Officer		
	Community Safety	Programme Director: Community Safety		
	Community Safety	Delivery Lead, Community Safeguardin		
	Community Safety	Area Crime Reduction manager (South)		
	Community Safety	Area Crime Reduction Manager (Clapham)		
	Community Safety	Area Crime Reduction Manager (Brixton)		
	Community Safety	Area Crime Reduction Manager (North)		

	Corporate Resources	Civil Contingencies Planning Officer		
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Appendix 3

Assessment Checklist to be completed by the relevant officer on site

General Information:

1.	Address/Location/Grid Reference:	
2.	Ownership of land (if known):	
3.	Date of Arrival of Travellers:	
4.	No. of Living Units/Caravans:	
5.	No. of Other Vehicles:	
6.	Site information (details of any health and safety/hard standing/general description):	
7.	Previous Location of Group (if known):	
8.	Length of time group has indicated they wish to stay:	

B. Specific Information relating to Group

Name	Date of Birth	Relationship	Details inc. registration number of any vehicles

Details of health concerns, pregnancy, children at risk, details of doctor or hospital appointments:	
Name	Health Issue

Please give details of children attending an educational establishment:	
Name	Details

C. Details of Encampment

Location	
1. Is the encampment at or near to a Nature Reserve or other environmentally sensitive area? Give Details.	
2. Could significant damage occur as a result of the encampment?	
3. Is the encampment near a residential area?	
4. If so, what impact is it likely to have on the surrounding area?	
5. Is the encampment on public land?	
6. If so will it obstruct the operational use of that land to a significant effect?	
7. Has the site been occupied by Gypsies or Travellers in the preceding year?	
8. Does the encampment block any accesses?	
9. Is there a significant nuisance to adjacent landowners/ occupants because of this?	
10. Are there safety implications for the group or others due to the encampment?	
11. Is there a significant adverse affect on the amenity of the area?	

12. Does the land have planning permission by-law restrictions or other legal restrictions?	
13. Are there vacancies on any authorised sites within the area?	
The Encampment	
14. Is the group known historically to the authority?	
15. How long is the group likely to stay?	
16. Is the size of the encampment a legitimate concern for the local settled community?	
17. Are open fires being lit?	
18. Are noxious substances being burned?	
19. Has there been damage to property, fences or trees at the location or on adjacent land?	
20. Are all animals kept under control so as not to cause fear or potential hazard to Highway safety?	
21. Is the encampment a danger to public health due to the dumping of household, human or trade waste?	
Other Considerations	
22. How recently has the group been moved on?	
23. Are there medical concerns with group members that would prevent the group moving on or would create a risk to health?	
24. Are there any vulnerable, elderly or infirm members of the group?	
25. If so, have the welfare agencies been consulted and what is their view?	

26. Has any criminal or anti-social behaviour been witnessed or reported?	
27. Have the police been informed of such incidents?	
28. What are the views and proposed actions of the Police?	
29. If there is evidence of criminal or anti-social behaviour?	
30. If so, do the Police intend to use Section 61 or 62A Powers of Eviction?	
31. Have there been complaints to the lead or other authority? Are they verifiable? Are they reasonable?	
32. Are there any other issues that need to be considered?	

Assessment Checklist Completed on behalf of Lead Authority by:

Name/Organisation	Signature

Appendix 4

TRAVELLER ENCAMPMENTS: HUMANITARIAN/WELFARE CONSIDERATIONS

The following extracts from various publications set out some issues to which the Authority must have regard when addressing unauthorised traveller encampments.

1. DOE CIRCULAR 18/94 (AS AMENDED BY UNNUMBERED DETR CIRCULAR ISSUED ON 26.7.00)

Revision

Paragraphs **6-9** were substituted by unnumbered DETR circular issued on July 26, 2000. The introduction to the 2000 circular states that: "Paragraphs 6-9 of Circular 18/94 contain advice on the policy of toleration towards unauthorised Gypsy encampments. This advice about "toleration" has been wrongly interpreted by some local authorities to mean that they must tolerate all types of unauthorised camping, regardless of the amount of criminal or anti-social activity that might be associated with the encampment. Such behaviour should not be tolerated in any circumstances.

The revised paragraphs below draw a clear distinction between unauthorised camping where there are no problems and no criminal offence, and where there is anti-social or criminal behaviour."

Policy towards unauthorised encampments of gypsies

6. Whilst it is a matter for local discretion to decide whether it is appropriate to evict an unauthorised Gypsy encampment, the Secretary of State believes that local authorities should consider using their powers to do so wherever the Gypsies concerned are causing a level of nuisance which cannot be effectively controlled. They also consider that it would usually be legitimate for a local authority to exercise these powers wherever Gypsies who are camped unlawfully refuse to move onto an authorised local authority site....

9. The Secretary of State continues to consider that local authorities should not use their powers to evict Gypsies needlessly. He considers that local authorities should use their powers in a humane and compassionate way, taking account of the rights and needs of the Gypsies concerned, the owners of the land in question, and the wider community whose lives may be affected by the situation.]

Local authorities' obligations under other legislation

10. Social services departments and local housing authorities are reminded of their obligations under Part III of The Children Act 1989 (Local Authority Support for Children and Families); and [Part VII of the Housing Act 1996] (Housing the Homeless). The Secretaries of State expect authorities to take careful account of these obligations when taking decisions about the future maintenance of authorised gypsy caravan sites and the eviction of persons from unauthorised sites.

11. Local education authorities should bear in mind their statutory duty to make appropriate educational provision available for all school-age children in their area, whether resident temporarily or permanently... this duty embraces traveller children. Local education authorities should take careful account of the effects of an eviction on the education of children already enrolled, or in the process of being enrolled, at a school. Where an authority decides to proceed with an eviction, and any families concerned move elsewhere in the same area, alternative educational arrangements must be made in accordance with the requirements of the law appropriate to the children's ages, abilities and aptitudes.

12. The Secretaries of State also expect local authorities who decide to proceed with evictions to liaise with other local authorities who may have statutory responsibilities to discharge in respect of those persons who are being evicted.

13. Local authorities should also bear in mind that families camped unlawfully on land may need or may be receiving assistance from local health or welfare services. When they have decided to proceed with an eviction, they should liaise with the relevant statutory agencies, particularly where pregnant women or newly-born children are involved, to ensure that those agencies are not prevented from fulfilling their obligations towards these persons.

2. "MANAGING UNAUTHORISED CAMPING – A GOOD PRACTICE GUIDE" (DETR 1998) – REVISION OF CHAPTER 5

Chapter 5: Deciding not to proceed with eviction

- 5.1 The Government shares with local authorities and the police the belief that those camped on an unauthorised site and causing nuisance or indulging in anti-social or criminal behaviour should be subject to the force of law as are those in the settled community who behave in that way. The Good Practice Guidance on Managing Unauthorised Camping states plainly that **Standards of behaviour expected of Gypsies and Travellers should be those expected of the settled community.**
- 5.2 The research by the University of Birmingham in 1997 which led to the publication of the Good Practice found that the concept of toleration described in Government circulars was widely misunderstood by local authorities and the police. Chapter 5 of the Good Practice was intended to clarify the issue. But, the concern remains that some local authorities feel that the advice prevents them from dealing with unauthorised camping even where there is severe nuisance and disruption to the neighbourhood. This is not the case, and the revised chapter makes it quite clear that there will always be circumstances where it is not appropriate for an encampment to be allowed to remain and where prompt action should be taken to secure possession of the site.
- 5.3 Much enforcement of the law involves a significant degree of discretion in the hands of the police and local authorities. Enforcement in respect of Gypsies and Travellers is no different. In the absence of specific welfare needs (for example, a Gypsy or Traveller who has recently given birth) the major consideration must always be the degree to which any encampment is interfering with the lawful rights of others, be they local residents, farmers or businesses. All breaches of the law by Gypsies and Travellers should be investigated by the police and dealt with as they would be in relation to any other person.
- 5.4 This chapter gives some guidance as to how this discretion might be exercised and how to manage an encampment that is not being moved on so as to minimise any possibility of nuisance. The following chapter deals with the procedures for eviction.

Evaluating the case for eviction

- 5.5 There will always be circumstances where it is not possible for an unauthorised encampment to be allowed to remain and prompt action will be required. Examples include problems of crime and disorder associated with the site; damage, mess or littering; camping on unsuitable sites, such as school playing fields or private car parks, which deny amenities to local residents or which cause highway hazards. At the same time the police will need to consider enforcement action in respect of any lawbreaking associated with the encampment.
- 5.6 The criteria by which a local authority will judge whether an unauthorised encampment should be moved on should be set out clearly in policy statements... These local policies, agreed between the local authority and the police, should also make clear the circumstances in which Gypsies and Travellers may be permitted to stay without eviction being started.
- 5.7 Gypsies and Travellers should where possible be made aware of these criteria, and leaflets or codes should be prepared and made widely available.
- 5.8 In the absence of specific welfare needs, local authorities should consider the following, taking into account the criteria which they have set out in their code (see 5.7 above):
 - The nature, suitability or obtrusiveness of the encampment.

- The size of the group, their behaviour and the level of nuisance.
- The number, validity and seriousness of complaints....

Conclusion

5.18 Where there are unauthorised encampments where no difficulties are being caused to the landowner or the local community, immediate enforcement action may not need to be considered, other than the possibility of negotiating a mutually acceptable date for leaving the site.

5.19 It is recognised, however, that there will be groups of Gypsies and Travellers who, by the sites they settle on and/or their subsequent behaviour, will cause serious problems very quickly. Some Gypsies and Travellers are not willing to enter into and honour agreements about their leaving date. In these circumstances immediate moves to eviction may be justifiable.

3. “MANAGING UNAUTHORISED CAMPING: OPERATIONAL GUIDANCE” (CONSULTATION PAPER ISSUED BY ODPM IN APRIL 2003)

CHAPTER 5

Making Decisions on Unauthorised Encampments

5.1 This section deals with some of the considerations to be borne in mind by local authorities, police and others when making decisions about how to deal with unauthorised encampments as they occur. Its aim is to help:

- to make clear, consistent and appropriate decisions on unauthorised encampments;
- to ensure that a balance is struck between the needs of all parties; and
- to ensure that decisions taken will withstand challenge.

A Policy Statement

5.3 It is important that the local authority produces a policy statement which includes:

- a statement of which travelling people the policy relates to. Many policies relate to all travelling groups including non-traditional Travellers since the issues raised by encampments are similar and the education, welfare and homelessness duties owed are identical;
- identification of the action to be considered in respect of land not owned by the local authority;
- the responsibilities of different authorities and agencies. This should set out which authority will act in specified circumstances where county and district councils share responsibilities (on highways for example), and the circumstances in which the police might take the lead;
- the alternative courses of action to be taken. This should set out clearly the
- circumstances in which eviction processes would be instigated and the circumstances in which an encampment might remain for a short period;
- the characteristics of encampment sites which would normally trigger rapid eviction proceedings;
- the standards of behaviour expected from Gypsies and other Travellers on unauthorised encampments; and
- the circumstances in which an authority might provide rubbish storage and collection services, water supply or toilets to an encampment.

Unacceptable Encampment Locations

- 5.4** All unauthorised encampments are unlawful. However, while there are insufficient authorised sites, it is recognised that some unauthorised camping will continue. There are locations, however, where encampments will not be acceptable under any circumstances. Each encampment location must be considered on its merits against criteria such as health and safety considerations for the campers, traffic hazard, public health risks, serious environmental damage, genuine nuisance to neighbours and proximity to other sensitive land-uses. The list [below] of sites where an unauthorised encampment would not normally be acceptable is illustrative only and is not intended to be exhaustive.
- A Site of Special Scientific Interest where an encampment endangers a sensitive environment or wildlife
 - School car park or playing fields (especially in term time)
 - An urban park
 - Car parks, including supermarket or leisure facility car parks
 - An industrial estate
 - Recreation ground and public playing fields
 - A site where pollution from vehicles or dumping could damage ground water or water courses
 - A derelict area with toxic waste or other serious ground pollution
 - A village green or other open area within a residential area
 - The verge of a busy road where fast traffic is a danger to campers' children
- 5.5** Wherever possible, local authorities and/or police should seek to prevent Gypsies/Travellers from establishing an encampment in an unacceptable location. Where this proves impossible, they should attempt to encourage the Gypsies/Travellers to move to an authorised site where available. If the campers refuse to move, eviction processes should be commenced.
- 5.6** To be effective, such an approach requires a very swift response from the local authority and/or police, ideally within 24 hours of the encampment being established.

WELFARE ENQUIRIES

Requirements to make Welfare Enquiries

- 5.7** Local authorities may have obligations towards members of an encampment under other legislation (regarding children, homelessness and education). Authorities should, where necessary and appropriate, liaise with other local authorities, health and welfare services who might have responsibilities towards the families of unauthorised campers. Some form of welfare enquiry is necessary to identify whether needs exist which might trigger these duties. The police and other public bodies who might be involved in dealing with unauthorised encampments do not have comparable duties but must still, as public servants, show common humanity to those they meet.
- 5.8** The Human Rights Act (HRA) applies to all public authorities including local authorities (including town and parish councils), police, public bodies and the courts. With regard to eviction, the issue that must be determined is whether the interference with Gypsy/Traveller family life and home is justified and proportionate. Any particular welfare needs experienced by unauthorised campers are material in reaching a balanced and proportionate decision. The human rights of members of the settled community are also material if an authority fails to act to curb nuisance from an encampment.
- 5.9** Case law is still developing with regard to the sorts of welfare enquiries which the courts consider necessary to properly-taken decisions in relation to actions against unauthorised encampments. Cases are testing the requirements under different powers, and the

requirements placed on different agencies (authorities, police, other public landowners).

Very generally, the outcomes of cases suggest:

- All public authorities need to be able to demonstrate that they have taken into consideration any welfare needs of campers prior to making a decision to evict.
- The courts recognise that the police and other public bodies have different resources and welfare duties from local authorities. Generally the extent and detail of appropriate enquiries is less for police and non-local authority 'public authorities'.
- In the case of local authorities, the onus of making welfare enquiries appears to be greater when using Criminal Justice and Public Order Act 1994 s77, where the use of the section can result in criminal sanctions, than when using landowners' civil powers against trespass. Local authorities should, however, make thorough welfare enquiries whatever powers they intend to use.

5.10 Because local authorities have appropriate skills and resources to enable them to make (or to co-ordinate) welfare enquiries, it is considered good practice for local authorities to respond positively to requests for assistance in making enquiries from the police or other public bodies.

Procedures for making Enquiries

5.11 Speed of response is key to managing unauthorised encampments so as to minimise disruption. Arrangements should be put in place to ensure that all reports of new encampments reach the lead officer as quickly as possible. Passing on information rapidly should be part of protocols and joint working arrangements between agencies/departments (See paragraph 3.22); staff on local authority switchboards should know how to handle calls from the public and to whom they should be referred.

5.12 An initial visit should be made to a new encampment within 24 hours of the authority becoming aware of it. An encampment should always be visited very rapidly if initial reports indicate exceptional problems. The initial visit has several functions:

- To check the accuracy of initial reports/complaints of an encampment, and to gather basic information on its location and size. This information provides the basis for checking issues such as land ownership.
- Where an encampment location is likely to prove unacceptable (see paragraph 5.4), officers at the initial visit might try to encourage the campers to move to an authorised site where a place is available, or to a less immediately unacceptable location.
- To collect basic information from the campers about the families and vehicles involved, and about past and intended future movement, anticipated length of stay and reasons for stay.
- To collect initial information from campers on any perceived welfare, health or educational needs. Such information is the starting point for liaison with other relevant departments. Where school-age children are present, the Traveller Education Service should be notified. Similarly social services or health authorities should be notified where there seem to be social, welfare or health needs to be further assessed and met.
- The initial visit should note the state of the campsite in terms of damage, rubbish accumulation and so on. This will provide baseline information from which subsequent behaviour can be monitored. Photographs can provide a useful record of potential health and safety issues; people should not be photographed.

- Officers at an initial visit can also note any features of the encampment or its location which is likely to be particularly problematic or which might affect future decisions.
- The initial visit is also an opportunity for giving information to Gypsies/Travellers about:
 - the standard of behaviour expected of them where a Code of Expected Behaviour has been developed (see paragraph 7.3 et seq), Copies should be provided and explained clearly to avoid misunderstanding due to reading difficulties;
 - what is going to happen next,
 - what procedures the authority or police are likely to follow and what this means for the Gypsy/Travellers; and
 - names and addresses of local services and sources of advice

5.13 Where an initial visit reveals serious problems from an encampment, welfare enquiries should be carried out as swiftly as possible.

5.14 It is vital that all information given and received during visits and enquiries is clearly recorded. This is helpful to the local authority, especially if different officers are involved at a later date. It will also form the basis of an audit trail for subsequent decisions in case of challenge. Pro formas have been developed by many authorities ... to collect and record this initial information. Some authorities and police forces have developed scoring matrices as an aid to assessing risk and decision making.

Reaching decisions

5.19 Decisions about what action to take in connection with an unauthorised encampment must be made in the light of information gathered. Decisions must always be:

- 'Proper' – that is in line with local policy and procedures, taking into account relevant considerations and not taking into account the irrelevant.
- 'Reasonable' in the legal sense of not being perverse or irrational in the light of the evidence available.
- 'Balanced' in that they take account of the rights and needs of both the settled community and Gypsies and other Travellers.
- 'Proportionate' – what is proportionate will vary according to the precise circumstances of each encampment, including the nature of the location and the behaviour and needs of the campers.

Making decisions

5.20 In order to delay eviction, welfare needs must be exceptional. Welfare needs do not give an open-ended 'right' for Gypsies/Travellers to stay as long as they want in an area. For example, the presence of a pregnant woman or school-age children does not, *per se*, mean that an encampment must remain indefinitely. The need must be more immediate and/or of a fixed term. [Below are] some examples of welfare needs to be considered by local authorities, although the list is not intended to be exhaustive. Good practice suggests that eviction should be delayed while such acute welfare needs exist and are being met; during this period the encampment should be pro-actively managed (see Section 7).

Advanced pregnancy: a period shortly before and perhaps 6 weeks after birth in normal circumstances, longer on medical advice if there are complications.

Ill health: indicators might include a hospital appointment booked; in-patient treatment of a close

family member; period during which a condition can be diagnosed, stabilised and a course of treatment started.

Educational needs: children in school if within 4 weeks of the end of term or if access to special education has been gained.

CHAPTER 7

Managing Unauthorised Encampments

7.1 Although unauthorised camping is unlawful, it is likely to continue while there are insufficient spaces to accommodate Gypsies/Travellers on authorised sites. While more places are being provided it is vital that local authorities, with their police and other partners, pro-actively manage encampments to minimise the disruption caused. The principles involved are:

- to enforce the same standards of behaviour by Gypsies/Travellers as expected of the settled community. These standards may be set out in a Code of Expected Behaviour;
- to respond rapidly to any deterioration of behaviour and growing disruption;
- to facilitate access to services for Gypsy/Traveller campers; and
- to keep all parties informed of decisions and actions.

Gypsy/Traveller Behaviour at Encampments

7.3 Many local authorities have drawn up Codes for Gypsies/Travellers, detailing both locational and behaviour expectations. Unacceptable behaviour, in relation to Codes, might take the form of:

- Large encampments where Gypsies/Travellers refuse to split up into smaller groups which could be accommodated with less disruption.
- Aggressive and threatening behaviour towards local authority and/or police officers or members of the public.
- Failure to control dogs and other animals.
- Persistent noise which disturbs others, especially at night, for example from work on the camp, vehicles, generators, dogs or music.
- Littering and/or fly-tipping on or near the site so as to cause a build-up of rubbish which is unsightly, hazardous and/or expensive to clear.
- Damage either to the site encamped or the surrounding area or nearby property.
- Criminal activity on the part of campers.

Appendix 5: Publicity Protocol (to be revised)

Process Flowchart:

Unauthorised encampment identified: Police and Council liaise immediately – 101 to contact police (or the relevant Cluster Inspector) and 0207 926 1000 for Parks (or the relevant Area Crime reduction manager) Out of Hours: 0207 926 1000



First officer on site, make note of (and take photos if possible):

- How many are on the land,
- Where they have come from and where they are going,
- Their reasons for stopping,
- Whether others are expected,
- Whether there any particular spokesperson,
- Note any vehicle registration numbers and names.



Council Owned Land:

- Council or Police to complete Assessment Checklist

-If decision is made to move the encampment:

- Council Official to serve notice
- Police to enforce Section 61 if applicable
- If not applicable Council to look at



ACRM/Cluster Inspector to send out comms message to key contacts



If Privately Owned Land:

- Council/Police to identify and make contact with landowner

- Landowner to pursue own court action or Police to enforce Section 61 if applicable



ACRM/Cluster Inspector to send out comms message to key contacts

Note: that if there are any welfare or education needs identified during the Assessment Checklist, then the relevant agency will need to be contacted before action is taken to move the encampment off the land.