

# **Protocol on Managing Unauthorised Encampments across Sussex**

## **1. Aims**

1.1 The aims of this protocol are to:

- Address the need for an effective, approach to the management of unauthorised Gypsy and Traveller encampments, whilst ensuring that the rights of Gypsies and Travellers and the settled community are balanced.
- Clarify and agree working arrangements around unauthorised encampments amongst the local authorities, health and the police.

1.2 All local authorities in Sussex, the police and the health service, have statutory responsibilities to Gypsies and Travellers as well as the settled communities. This protocol seeks to ensure that the rights of all communities are addressed in a fair and equitable way.

1.3 Responding to the needs of Gypsies, Travellers and the settled communities cannot be achieved by any one organisation in isolation and this protocol sits within the context of multi agency Traveller Strategies covering Sussex.

## **2. Roles and Responsibilities**

2.1 Managing unauthorised encampments must involve a balance between the rights of the landowner and/ or wider community and the rights and welfare needs of the unauthorised encampment. Local authorities have a statutory duty to ensure that both sides are fairly represented when it comes to unauthorised encampments on public land.

2.2 Different agencies involved with unauthorised encampments have different roles and in dealing with encampments it is important that roles are clearly defined to minimise duplication and ensure that both the Travellers and the local settled community know who to contact for specific issues.

### **Local Authorities**

#### 2.3 East Sussex County Council

The Traveller Team at the County Council provides a strategic role on Gypsies and Travellers and manages the permanent public residential and transit sites across East Sussex; it is predominately funded by the County Council but contributions are also received from each of the Districts and Borough councils and Sussex Police for a liaison post and from the districts and boroughs towards the transit site and co-ordinating the management of unauthorised encampments.

2.4 Where the encampment is high profile and involves more than one agency, the County Council Traveller Team will take the lead in co-ordinating communication between agencies, with elected members and with the media as appropriate. Where

the encampment is on district and borough land, officers from that authority will liaise with their own elected members and also with the Traveller Team at the County Council.

2.5 The Traveller Team is responsible for the management of the Traveller transit site at Bridie's tan

#### 2.6 West Sussex County Council

The Traveller Team at the County Council provides a strategic role on Gypsies and Travellers and currently manages some permanent residential sites across West Sussex. The County Council will act as lead authority in respect of unauthorised camping on the highway or on other County Council owned land. Each District and Borough Council within West Sussex will act as lead authority in respect of unauthorised camping on land owned by that authority.

#### 2.7 Brighton and Hove City Council

Brighton and Hove city council as a unitary authority provides both a strategic and operational role on Gypsies Travellers and others living a nomadic lifestyle within the city boundaries. The Traveller liaison team provides direct support to those living a nomadic lifestyle within the city and signposts Travellers to other support services available.

2.8 The Traveller liaison team coordinate the work of a multiagency group dealing with Traveller issues in the city including police and trading standards. The Traveller liaison team deals with all aspects of managing unauthorised encampments within the city working jointly with the police and also gives advice to owners and occupiers of private land with unauthorised encampments present within the city.

2.9 The Traveller liaison team is responsible for the management of the Traveller transit site at Horsdean.

#### 2.10 Districts and Borough Councils

The districts and boroughs across East and West Sussex have the duty to identify appropriate Traveller Site provision through their Local Development Plans; in the longer term this should lead to a reduction in unauthorised encampments.

#### 2.11 Parish and Town Councils

Parish and town councils are crucial in building community cohesion within their localities. They have a significant role to play, both in identifying short-stay stopping places, and in helping to manage short-stay encampments in conjunction with the County Councils. In addition to this, they also have a duty to represent and act upon the concerns of all communities within their areas. In appropriate circumstances, local councillor(s) will be invited to attend Community Impact Assessment meetings to represent these views.

### **Sussex Police**

2.12 The Police in Sussex work closely with local authorities, and support the

approach of involving partnership discussion, and dialogue with Gypsy and Traveller groups, to achieve a negotiated solution, where possible. The Police must take account of the issues of behaviour, whether criminal, antisocial behaviour or nuisance by both Travellers and the settled community in combination with the impact on the landowner rather than simply because encampments are present at a specific location.

### **3. Procedures for all Local Authorities**

3.1 The organisation receiving initial notification of an unauthorised encampment should advise the relevant Traveller Team. In the event that land ownership is unclear, the organization in receipt of the notification should take the lead until ownership is established.

3.2 Each landowner (public or private) will be responsible for covering the costs of any legal action and the associated costs of managing the encampment including the provision of facilities such as chemical toilets, and ensuring the clearance of land that may be necessary after the encampment moves on.

3.3 The lead officer will consider the need for a joint visit to the encampment with the officers of any other principal partner agencies. It is good practice to visit the site on the day of notification and certainly within one working day of notification.

3.4 When a visit is made, the lead officer will:

- advise and liaise with individuals and families about ownership of land, and give them a copy of the code of practice produced jointly by the local authorities (see Appendix 1);
- ask the Travellers the purpose of their encampment and how long they are planning to stay;
- undertake a preliminary welfare check (see Appendix 2) in cooperation with the Travellers making a note of any obvious needs;
- make general observations of the encampment, e.g. details noticed at the time of the visit, of which not orally advised (e.g. if there is a heavily pregnant woman on-site, or children not in education, or people with physical, learning or sensory disabilities);
- consider the possible impacts of the encampment on the local community i.e. are they impeding access to public facilities or in a high profile location
- if the encampment is close to a busy road, comment on the safety of the location from the Travellers and other road users' perspective;
- check the availability of any transit provision or emergency stopping place and advise the Travellers accordingly;
- advise the Travellers that partner agencies (e.g., the relevant Health Trust and Children & Young People's Services) may be contacted, and that they may also visit the site;
- consider what facilities may need to be put in place e.g. chemical toilets and household waste disposal.

3.5 In addition, where possible, the lead officer should take note of any homes or businesses potentially impacted by the unauthorised encampment. As soon as

possible after the initial visit the homes and businesses should be given a copy of the multi agency Unauthorised Encampments leaflet (see Appendix 3), together with a letter outlining who to contact for general enquiries and who to contact for specific issues e.g. environmental health for noise nuisance. In some circumstances it may be possible and appropriate for Police Community Support Officers to deliver these communications on behalf of the Council to reassure local residents.

3.6 Following the initial visit and preliminary welfare assessment the lead officer will ensure the encampment is logged on the unauthorised encampments database held by each of the Councils.

### 3.7 Decision Making

Decisions on action to evict or tolerate will be made by the appropriate local authority or landowner. The decision will take into account all relevant factors including the need to be as consistent as possible in decision making across the whole of Sussex. The rationale behind the outcome will be carefully documented in case of legal challenge. Such decisions must be:

- lawful - taking into account legislation and policy;
- reasonable - in the legal sense, not being perverse or irrational;
- balanced - taking into account the needs and rights of both those on the encampment and the settled community affected; and
- proportionate - in response to the prevailing circumstances that surround the encampment.

## **4. Privately owned land**

4.1 Usually the Councils will not take action to evict where there is an unauthorised encampment on privately owned land. It is the responsibility of the landowner to arrange for evictions when necessary, with the support of the police. On receipt of initial notification of an unauthorised encampment on private land where appropriate and possible, a welfare assessment may be undertaken by the relevant Traveller Team. Government bodies such as the Forestry Commission have a legal obligation to carry out welfare assessments before considering eviction; however this duty is not required by private landowners such as farmers.

4.2 The relevant Traveller Team will notify the owner of the land of the encampment and advise on how to effectively manage unauthorised encampments, and the related powers available to recover possession of the land. Where there is an urgent need to remove the encampment, the police may use their powers.

4.3 Where the owner does not take action to recover the land and the encampment is giving rise to serious disruption or nuisance, the police, the appropriate Traveller Team and the relevant council should discuss possible solutions. If action is to be taken, the procedure for council-owned land should be followed.

4.4 Where private landowners are using common law powers, or have obtained the relevant power via civil proceedings, Police Officers may be called upon to attend to prevent a breach of the peace or to prevent or detect crimes committed by either party during the eviction. In such instances the role of the

Police will not be to assist bailiffs or landowners in the eviction itself. Such requests for Police attendance will be judged on a case by case basis, with attendance not being an automatic assumption.

## **5. Toleration**

5.1 Unauthorised encampments are almost always, by definition, unlawful. However, while there are insufficient authorised sites, it is recognised that some unauthorised camping will continue. Circular 18/94 and case law make clear that all encampments should be 'tolerated' while welfare enquiries are being carried out or where Gypsy and Traveller needs make immediate eviction unreasonable. However it is often possible and desirable to consider toleration for a period of time.

### 5.2 Location

In considering whether to tolerate an encampment, the first consideration must be the location and the immediate impact on the settled community. Consideration should also be given to the visual impact of the encampment; a discreet and unobtrusive location will be more suitable than one that can be seen by large numbers of the public.

### 5.3 Health and Welfare

Health and Welfare needs that might lead to consideration of formal toleration include: accessing urgent medical attention; i.e. a surgical procedure or other acute medical (but not chronic need); or a complication in pregnancy or post natal care. If there is an agreement to tolerate, consideration will need to be given as to whether it is appropriate to make provision for a water supply, toilet provision or rubbish clearance.

### 5.4 Time limits

Toleration should be limited to 28 days. Extensions beyond 28 days may be considered in exceptional circumstances. A tolerated encampment should not be re-occupied by the same Gypsies/Travellers within six months, and preferably should not be used by any other Gypsies/ Travellers for at least 28 days.

### 5.5 Unacceptable locations

There are locations, however, where an encampment will not normally be acceptable under any circumstances. Each encampment location must be considered on its own merits against criteria such as health and safety considerations for the unauthorised campers, traffic hazard, public health risks, serious environmental damage, and genuine nuisance to neighbours and proximity to other sensitive land-uses.

5.6 Set out below is a list of the types of site where unauthorised camping would not normally be acceptable:

- A Site of Special Scientific Interest (SSSI) where an encampment endangers a sensitive environment or wildlife
- School car park or playing fields (especially in term time)
- A town centre public park
- Car parks, including hospital, supermarket or leisure facility car parks
- Land on an industrial estate or business park
- 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 unauthorised campers or their children

## 6. Eviction

6.1 There are a number of legal routes to eviction, however before eviction is pursued toleration must be considered, due to the national lack of permanent provision for Gypsies and Travellers.

6.2 Where the Council is seeking to initiate an eviction, then in the absence of an existing point of contact the Divisional Duty Inspector for the respective police area must be consulted at an early stage to ensure an appropriate involvement in the planning process.

6.3 A summary of the legislation relating to eviction is detailed below, for more information refer to the legal team within the local authority and the Government Guidance on [Guide to effective use of enforcement powers – Part 1 unauthorised encampments](#)

### 6.4 Summary of Police Powers

Sussex Police have their own operational policy on unauthorised encampments, it outlines the role and process to be followed by the decision maker (Superintendents and Chief Superintendents) in respect of powers exercised under Section 61, 62 and 62 A to E of the Criminal Justice and Public Order Act of 1994 (CJPOA 1994). The policy acknowledges compliance with the European Convention on Human Rights, Race Relations (Amendment) Act 2000 and the Equality Act 2010 when dealing with unauthorised encampments. In this respect the actions of Sussex Police closely follow the various guidance published by the former Office of the Deputy Prime Minister now Communities and Local Government (CLG) and the Association of Chief Police Officers (ACPO).

6.5 *Section 61 of CJPOA* allows the senior police officer attending the scene of an incident involving a trespass or nuisance on land to order trespassers to leave the land and to remove their vehicles as soon as reasonably practicable. If the senior police 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 (a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, OR (b) that those persons have between them six or more vehicles on the land.

6.6 Police will only use this power if there is no alternative site available and it is immediately necessary due to the unacceptable location of the encampment or

because there is crime or anti-social behaviour that cannot be managed by normal policing.

6.7 The mere fact of an encampment without any aggravating factors will not normally enable the Police to use this power. Decisions to use the power in Sussex are taken by a Superintendent following a request and detailed information from the Divisional Duty Inspector for the relevant area.

6.8 *Section 62 of CJPOA* - Section 62A of the Criminal Justice and Public Order Act 1994 creates a power for a senior police officer to direct a person to leave land and remove any vehicle or other property with him on that land.

62A (1) If the senior police officer present at a scene reasonably believes that the conditions in subsection (2) are satisfied in relation to a person and land, he may direct the person (a) to leave the land; (b) to remove any vehicle and other property he has with him on the land.

62A (2) The conditions are: (a) that the person and one or more others (the trespassers) are trespassing on the land;  
(b) that the trespassers have between them at least one vehicle on the land;  
(c) that the trespassers are present on the land with the common purpose of residing there for any period;  
(d) if it appears to the officer that the person has one or more caravans in his possession or under his control on the land, that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;  
(e) that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.

6.9 This power can be used where a suitable location is identified by a local authority for Police to direct the Travellers to, such as a transit site or an emergency stopping place.

6.10 If the encampment cannot be tolerated and is larger than the available vacancies at a transit site. It may be possible for the Police to direct certain individuals/caravans with specific health and welfare needs to the transit site or emergency stopping place, with eviction procedures being pursued for the rest of the encampment. This approach needs to be considered sensitively so as not to split up family groups and support available to more vulnerable Travellers.

6.11 If the Travellers fail to comply with directions given by police then there are powers of arrest and seizure of vehicles. If there is a Section 62(a) direction in force then this applies for three months and it is an offence to commit further trespass with the intention of residing during this period.

6.12 [Sussex Police Force Policy on Unauthorised Camping](#)

6.13 Civil Powers

*Part 55*

- Can only be used by the landowner or its agent



- Is used to regain possession of the land
- Requires civil court procedure
- Possession is enforced by county court bailiffs if necessary
- Does not provide any sanctions for the return of trespassers

6.14 Welfare checks, any evidence relating to the encampment including photographs and witness statements and the relevant documentation must be presented to the Court Manager and a court date is set. The Court provides a claim form to serve on the defendants. This may be served either by a council official or using a process server. At the hearing, if the judge grants a possession a warrant is issued. Bailiffs visit the encampment and serve the warrant for eviction which must allow 24 hours before being enacted. Bailiffs will enact the eviction if necessary after which the landowner signs to say they have repossession of the land.

## 6.14 Statutory Powers

### *Section 77 -78 CJPOA*

- Can only be used by a local authority
- Can be used on any land within the local authority regardless of ownership
- Removes named individuals from the land
- Only requires the involvement of the court if the Travellers fail to move.
- Possession is enforced by local authority officers or private bailiffs
- Return within 3 months carries criminal sanctions

## **7 Anti Social Behaviour**

7.1 In April 2010 Communities and Local Government issued guidance on anti-social behaviour related to Gypsies and Travellers in an effort to ensure consistency among agencies in their approach to tackling anti-social behaviour associated with Gypsies and Travellers, whether they are victims or perpetrators. The guidance states that there needs to be good co-operation between local authorities and other agencies such as the police and the Environment Agency to address or prevent anti-social and also criminal behaviour on issues such as hate crime, untaxed vehicles, flytipping and unlicensed waste carriage.

### 7.2 Hate crime

Travellers will be encouraged to report any issues of hate crime to the Police for investigation. The relevant Traveller Team will ensure that the public are made aware that racist comments and language will not be tolerated and may be reported to the Police.

7.3 There should be a commitment on the part of agencies to apply the same approach to Gypsies and Travellers as they would to the settled population; in terms of evidence gathering, prosecution where appropriate and payment of fines (para 2.2).



7.4 Sections in the guidance cover the range of procedures available to combat anti-social behaviour including: Acceptable Behaviour Contracts (ABCs) and Anti-Social Behaviour Orders (ASBOs). Other sections of relevance include: noise and other statutory nuisance and straying livestock; however the section likely to be of greatest relevance in relation to unauthorised encampments is:

#### 7.5 Fly Tipping

Gypsies and Travellers are sometimes involved in business activities such as waste collection, building work, or hard landscaping that generates waste. As with anyone involved in these business activities, if they are not registered as waste carriers with the Environment Agency, and do not have agreements in place with local waste disposal facilities, there is a risk that waste generated as part of their activities will be flytipped.

7.6 Powers to deal with offences under the Control of Pollution (Amendment) Act allow enforcement authorities to prosecute, issue a fixed penalty notice or seize the vehicle of anyone who carries controlled waste as part of a business or with a view to profit without registering with the Environment Agency as a waste carrier (para 3.9).

7.7 From April 2010 the requirement to obtain a magistrates warrant to seize a vehicle on suspicion of involvement waste offences has been removed, to allow the Environment Agency or a waste collection authority to seize a vehicle on suspicion of various waste offences (a breach of the duty of care, carrying controlled waste when not registered as a waste carrier, fly tipping and operating an illegal waste operation).

7.8 The relevant Traveller Team will liaise with the local authority waste team, Police, DVLA, Environment Agency and where relevant Trading Standards in dealing with issues of flytipping on unauthorised encampments.

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