

Gypsy and Traveller Protocol

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Summary:

The joint agency protocol for responding to unauthorised gypsy and traveller encampments is attached. It is recommended that the protocol and policy statement are agreed.

1. INTRODUCTION

1.1 One of the actions for the Cumbria Housing group was to revisit the protocol for responding to gypsy and traveller encampments.

1.2 This work was undertaken by the County wide research and information group.

2. Aims

2.1 The aims of the protocol are:

- To manage unauthorised encampments in an efficient and effective way taking account of the potential level of nuisance for local residents and the rights and responsibilities of Gypsies and Travellers.
- To establish effective communication between partners, the settled community and Gypsies and Travellers.
- To help strike an appropriate balance between the needs and legitimate expectations of members of the settled community, local businesses and other landowners, and Gypsies and Travellers.
- To set out recommended courses of action which local authorities, the police and other partner agencies should follow to provide an effective response to unauthorised camping in their areas.
- To develop a more consistent approach to unauthorised encampments across the county.

- To involve the settled and Gypsy/Traveller communities in the development of the Protocol.
- To improve records of unauthorised encampments.

3. Accommodation Assessment

3.1 One of the objectives in the Copeland Borough Council Housing Strategy is to 'respond to the recommendations made by the Cumbria Gypsy and traveller Accommodation Assessment and forthcoming further research into the need for transit pitches within Copeland, ensuring the provision of additional residential and transit pitches as required.

3.2 National planning policy requires for each local authority to prepare detailed assessment about the housing requirements of gypsies and travellers. The current Gypsy and traveller accommodation assessment (GTAA) is now out of date and would fail to reflect the longer term plan period local planning authorities need to adhere to.

3.3 The Cumbria Research and Information Group are currently developing an assessment for each district.

4. Conclusion

4.1 The joint agency approach to unauthorised encampments in Cumbria will balance the needs of Gypsies and travellers and the settled community, reflect compliance with applicable law and take account of Government guidance and the Equality and the Human Rights Commission.

Joint Agency Protocol for responding to unauthorised Gypsy and Traveller Encampments

Policy Statement

- 1. It is recognised that Gypsies and Travellers are not the only groups to be involved in unauthorised camping. The intention of focusing this protocol on the Travelling community is to ensure that their needs are part of the solution to any problems arising from unauthorised encampment.**
- 2. There will be a joint agency approach to unauthorised encampment in Cumbria that will balance the needs of Gypsies and Travellers and the settled community, reflect compliance with applicable law and take account of Government guidance and the Equality and the Human Rights Commission.**
- 3. There will be county wide Joint Agency Gypsy and Traveller Group at practitioner level. This group will meet quarterly (subject to review).**
- 4. Each agency signing this document has or will develop their own policies and practices which will sit beneath this protocol.**

The Parties undersigned agree to the policy statement and the attached guidelines. The Policy and Guidelines apply to all unauthorised encampments by Gypsies and Travellers, including New Travellers, and to authorised encampments, whether temporary or permanent, where problems are identified.

| Agency | Signature | Full name | Date | email | Web link |
|--|------------------|------------------|-------------|--------------|-----------------|
| Cumbria Constabulary | | | | | |
| Children's Services Cumbria County Council | | | | | |
| Cumbria County Council Highways | | | | | |
| Cumbria Fire Service | | | | | |
| Copeland BC | | | | | |
| Allerdale BC | | | | | |
| Barrow BC | | | | | |
| South Lakeland DC | | | | | |
| Eden D C | | | | | |
| Carlisle City C. | | | | | |
| Cumbria PCT | | | | | |
| RSPCA | | | | | |

Contents:

Aims

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1. Who does the protocol relate to?

1.1 This protocol relates to all travelling groups and all unauthorised encampments in Cumbria outside of Appleby Fair.¹

Consideration should be given to the choice of name for any particular group of travellers. Some would prefer to be called Gypsies and others Travellers. The Equal Opportunities Commission recommends the terms Travellers or Gypsy, as an overarching title for all traditional, indigenous, hereditary Travellers (Equal Opportunities Committee 1st Report 2001). The Protocol also relates to New Travellers as the issues raised by encampments are similar and the education welfare and homelessness duties are identical.

Unauthorised Encampments are considered to be those where a group of Gypsies or Travellers have established themselves:

- a) on any land forming part of the public road or
- b) on any unoccupied land without the consent of the landowner.
- c) Anywhere where an encampment is established with out planning permission.

Unauthorised developments are outside the scope of this document.

¹ The Multi Agency Co-ordinating group (MACG) works to resolve the issues regarding unauthorised encampments associated with Appleby Fair.

1.2. Terms and definitions

Main Groups of Gypsies and Travellers

Travellers themselves have difficulty in providing an appropriate name for their whole group. The main groups are:

- The Romanies or 'Romany chals' of England and Wales;
- The Kale of North Wales;
- The Romanies who have come to the UK from Europe in the last hundred years;
- Irish Travellers;
- Scottish Travellers;
- Show and Fairground Travellers;
- Bargees and other families living in boats;
- New Travellers;

In most cases and in communication it will be reasonable to use the term Traveller. In written communications the terms should be capitalised.

Officer. In this document the word officer, unless qualified, is used to refer to an official from one of the co-operating agencies.

Unauthorised encampment: Government definition: trespassing by people on land which they do not own.

Local Authority: There is a two tier arrangement in Cumbria: The County Council and six district Councils. For the service considerations relevant to this document: the district councils have responsibility for assessing and meeting housing/site needs and waste collection. The County Council have responsibility for strategic planning, adult and children's services and highways

2.0 Five key principles to be considered when responding to unauthorised encampments:

- The Joint Agency group recognises their statutory and moral responsibility to work together for the safety and well being of Gypsies and Travellers and the settled community.
- Gypsies and Travellers and the settled community are entitled to live free from crime, harassment and intimidation.
- Gypsies and Travellers should have equitable access to Services.
- A nomadic way of life is legitimate.
- Gypsies and Travellers who offend will be treated in the same manner as any one else who challenges the rule of law.

2. Who takes the lead for each unauthorised encampment?

In line with the Government 'Guidance on Managing Unauthorised Camping guidelines', the 'local authority' will be the lead agency in managing unauthorised camping in its area and this will be taken to mean the District Councils. There will be circumstances where other agencies will take the lead.

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The police will take the lead where urgent action is needed e.g. in the use of the Criminal Justice and Public Order Act (CJPOA) s61.

Who ever leads this work, all agencies carry their own responsibility to respond appropriately to unauthorised encampments.

Each encampment location will 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, genuine nuisance to neighbours and proximity to other sensitive land-uses.

Wherever possible, local authorities and/or police will seek to prevent Gypsies and Travellers from establishing an encampment in an unacceptable location.

2. 2. Background Information

2.2.1 Accommodation available for Gypsies and Travellers in Cumbria:

Types of provision

- Residential sites providing long-term settled accommodation.
- Transit sites, with varying levels of amenities, formal to informal, providing for Gypsies and Travellers who want to stay for a period of up to about three months in an area.
- Emergency stopping places would be locations where families have stopped which are judged suitable for a short stay. Facilities might be temporarily provided at such locations.

Private authorised sites with both permanent and transit provision:

- Fair Hill Penrith: 34 residential pitches, 10 pitches transit. .
- Schneider Road, Barrow, 17 residential pitches
- Hadrians Park near Carlisle: 40 residential pitches, 30 transit
- Lower Harker Dene - 10 residential

There is a local authority permanent site at Lower Harker Dene (formerly Ghyll Bank) near Carlisle: 15 residential pitches, (planning permission submitted for 7 transit sites).

No sites have been identified as allowed or tolerated.

2.2. Patterns of travel:

Associated with Appleby:

Appleby Fair is always in the second week of June. It is one of the largest horse Fairs in Europe and a very important event in the Gypsy calendar. The Royal charter for the fair dates back to 1685. There are in excess of 96,000 visitors over the fair week end and an estimated 30,000 – 52, 000 vehicles go to Appleby on the Saturday of the Fair

Associated with Brough Fair:

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Brough Fair has grown in the last few years, but is still fairly small. It lasts for a week and takes place at the end of September. There are very few unauthorised encampments associated with this event which is held in a private field.

Other patterns:

There is some evidence to suggest that unauthorised encampments in the west of the county are by people from the North east and Lancashire visiting relatives. Some Travellers, notably Irish Travellers appear to be en-route through the county using the M6 corridor.

2.2.3. Local support for Travellers in Cumbria

Children's Services and Children Missing from Education (CME)

Children's Services have a statutory responsibility to look for children who may be out of education or at risk of missing from education. The Children Missing from Education Officers will support parents to look for education provision or a place in a local school. The officers will offer support to complete school admission forms and assist with school appeals.

If you have any *immediate* concerns about a child or young person's safety, please contact the police.

If you wish to discuss any further concerns about a child protection matter, please telephone:

- **0333 240 1727** and anybody with a concern about a child in Cumbria can contact Children's Services on this single number.

Calls between 9am to 5pm Monday to Thursday and 9am to 4:30pm Friday will go direct to the new central triage team for action.

Emergency calls during evenings and weekends will be answered by the emergency duty team that can be contacted on the same number.

- Or visit Cumbria Local Safeguarding Children's Board website

Supporting People, Cumbria County Council

Supporting people can provide housing related support that may include referrals to appropriate agencies, direct support from a housing related support provider or advice and signposting. Access to support is through the Central Access Point on 01228 221548. Following receipt of a referral an initial assessment will take place either face to face or via the phone. Referrals can be made by individuals or agencies acting on behalf of the person/ family.

Fire safety

Advice to Travellers in an unauthorised encampment is available from the Cumbria Fire and Rescue Service.

Please contact:

- Suzanne Wainwright - 07500950846

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- Gloria Warwick/Simone Garnett - 07795686482

Health PCT

NHS Cumbria exists to improve the health and wellbeing of the whole population of Cumbria by finding out what local people need and commissioning the right health services for them. NHS Cumbria recognises that Travellers on unauthorised encampments in Cumbria may have specific and urgent health needs.

Key contacts for support, advice and referral are:

- South Cumbria (9am-5pm) - Ian Twiselton 01539 797867
- North Cumbria (9am-5pm) - Fiona McCredie 07826 910747
- Cumbria Health on Call (CHOC, GP out-of-hours service, 6.30pm-8am) - 03000 247247
- NHS Direct - 0845 4647

Best Life Independent Advocacy Service:

Best Life is an independent advocacy service that supports people who to have a say in access to services. Best Life will work with members of the Gypsy Roma and Traveller community if they have a concern about the way they are being treated. This can include education, health services, community relations, accommodation, roadside encampments and policing.

The service is available countywide and an advocate is available to answer calls on: 03003 038 037

Alternatively you could check their website which has some very accessible leaflets in readable language.

<http://www.cumbria.gov.uk/equalities/cmcs/default.asp>

3.0. Recording Decisions and Sharing Information

Record:

- All complaints and comments as to their validity.
- All decisions and rational behind any decision to allow or not allow an encampment.
- Where encampments are unproblematic and do *not* cause a nuisance.
- Any damage and nuisance in writing with photographs where possible.
- Information and assistance given to unauthorised campers

Information about Gypsy and Traveller unauthorised encampments will be shared at least bi-annually at joint agency meetings: before Appleby Fair in April/May, and at the end of the summer after Brough Fair September /October.

Local co-operation to share data between all agencies should enable partners to better understand the travelling patterns and service delivery needs of Travellers visiting Cumbria.

Local authority and police officers dealing with unauthorised encampments should have information about vacancies on local authority sites within their area, and ideally in neighbouring areas. Ideally, local authority officers should also be prepared to assist unauthorised campers without local accommodation to find places on privately-owned sites and in permanent housing if this is requested. Family compatibility must be taken into account when allocating pitches.

Where police are seeking to use the new powers under s62A of the Criminal Justice and Public Order Act 1994 (inserted by the Anti-social Behaviour Act 2003), a police officer must consult the local authorities in whose area the encamped land lies about the availability of suitable pitches on relevant sites.

5. What to do when unauthorised encampments occur

The relevant agencies should talk to each other as soon as an unauthorised encampment occurs

5.1. Graded response

There will be a graded response and these responses will involve consultation with all partners.

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| 1. | If a report is received by any agency the relevant police or local authority representative should be contacted. An agreement should be made as to the most appropriate person to be deployed to the site. |
| 2. | The attending person should conduct an initial risk assessment (see appendix XXX). If there is a child at risk of <i>immediate</i> harm the police should be informed if they are not present at the visit. The purpose of the site visit is to: <ul style="list-style-type: none">• Confirm the location.• Determine the number of vehicles and living units (photos if possible/practical).• Establish contact and determine how long the group intend to stay. An 'Information and code of conduct' leaflet should be given and discussed. |
| 3. | If the site is deemed as 'temporarily allowed', no further action needs to be taken other than monitoring that the situation remains the same and reassurance of the local community may be necessary. |
| 4. | If the site is deemed as 'not allowed', negotiations need to begin for the occupiers to leave the site. |
| 5. | If negotiations fail, court action or the use of police powers should be |

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| | considered. |
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5.2. Initial response to Unauthorised camping

On the public highway

If the encampment is on a public highway the district or police representative should contact Cumbria County Council and arrange a site visit arranged.

At the County Council all complaints or enquiries will be handled by the Cumbria Highways Hotline Call Centre:

Tel: 0845 609 6609

The Hotline Call Centre should inform the appropriate Engineer of the County Council's Area Highways & Transport Office.

It is anticipated that all encampments on the highway will be unauthorised or 'not allowed'. There are no powers to authorise them and they are technically an obstruction although in most cases they pose little or no danger to vehicular, pedestrian or other traffic. Each encampment will be considered on its own merits.

If in the judgement of the Engineer and the Police representative the site is an obstruction then the Police Communication Centre (Tel: 101) should be informed and formally requested to take appropriate action. If children are involved decide who will notify Children's services. All agencies need to know if action is to be taken otherwise plans to manage the encampment will be disrupted.

The Call Centre should be informed of the involvement of the Joint Liaison Group and all subsequent calls or correspondence from the public passed to the Council's representative. It is the responsibility of the Joint Liaison Group which includes County Council representatives to co-ordinate a response to the encampment. They will do this through site meetings, assessing the needs of the Travellers, monitoring the encampment as set out below. This group will determine if or when a 'Direction to Leave' notice or letter requiring them to leave and warning of civil proceedings should be served. The Engineer should attend if road safety or obstruction is identified as an issue.

Other unauthorised encampments

Encampments *not* on a public highway should be reported to either the police or district council who should then liaise with each other. If children are on site who are not in education the police and district council should agree who will contact Children Missing from Education.

- **A decision will be made as to whether a joint site visit and risk assessment is necessary.**

The response will be proportionate to the information reported i.e. has there been any wrong doing, how many people or vehicles are involved, are there people trespassing or engaged in any form of anti-social behaviour etc.

- If necessary and practicable there will be an **initial joint visit** involving the police, local district and, if appropriate, other agencies² and the landowner. A Risk Assessment (appendix XXX) will be completed.
- When approaching the site, partner agencies present should engage in constructive discussion with all those involved in the unauthorised encampment and the landowner. Care should be taken to ensure those involved are treated with dignity and respect.
- It should be explained that in Cumbria the problems of unauthorised camping are managed through a co-ordinated approach from interested agencies. At no time should it be suggested that unauthorised encampment is the sole responsibility of a particular agency.
- It should be made clear to all concerned that police/agency attendance in this first instance is simply to carry out an initial assessment of the circumstances of the encampment.
- Those involved in the encampment should not feel that the police/local authority have already made decisions to take action, nor should it be intimated this is the case. The officers attending should explain the process that will take place.

5.2.1. The initial risk assessment visit (see appendix (XXX for form)

The purpose of the visit is to check the accuracy of initial reports/complaints of an encampment, and to make an initial risk assessment.

The aim of the assessment is to gather basic information on the encampment without being intrusive:

- Location, size and suitability for habitation e.g. danger of traffic
- Who owns the land, and is the landowner aware or given consent,
- Is there any damage to the area, litter or waste present and as a result of the encampment?
- Are there any children on the site? What age are they?
- Are there any animals and what condition are they in?
- What is the likely impact on the local community – unacceptable/significant or minimal?
- Is there any need for them to leave immediately – why?
- Past and intended future movement and anticipated length of stay
- Reasons for the stay.
- Do any of the group have any health or welfare needs?

Attending officers should set out clearly what is expected of the Travellers. The Useful Information and Code of Conduct leaflet should be given out (**see Appendix XXX**). Where possible the needs of the group should be facilitated. It may be appropriate to sign post to Supporting People, Children's Services, the Health PCT or advice agencies with the permission of the families.

5.2.2. Making a decision to 'temporarily allow' or 'not allow'

² If information has been received, or it is known from previous involvement with a particular family that there are other issues it may be appropriate a partner agency, e.g. Children's Services, Animal Welfare, fire services.

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Once an initial risk assessment has been carried out a decision needs to be made regarding the site. Is it one that will be 'temporally allowed' or 'not allowed'? It may be necessary to negotiate a period of time after which the Travellers will leave, for the site to be 'allowed'.

Consideration will be given to longer stays on the following grounds:

- Medical, educational and welfare issues.
- Special circumstances.
- Where the landowner permits.

This decision to 'allow' or 'not allow' should not be made before consulting partner agencies and the local Neighbourhood Policing Team.

If the media are involved, there should be a joint media strategy to ensure the message to the community is consistent and factually correct.

5.3. If the decision is to 'temporally to allow'

If the site is deemed as one which will be 'temporally allowed', there will be no need for the police to use any legislative powers concerning the site.

Cumbria Constabulary has a commitment to police all communities and this will be considered in deciding what monitoring and service provision should be made available.

There will need to be regular review/risk assessment of the site to ensure that conditions do not change. Regular visits should be made by both the local authority and police supervisors to engage with those present on the site and facilitate needs.

Children Missing from Education officers should be contacted if there are school age children on the site, who are not attending school.

If a site is 'temporarily allowed' because of a negotiated time period and that period has been breached or the Code of Conduct is broken, a review should be made of the initial risk assessment. On the basis of that review, a decision should be made as whether the site should continue to be 'temporally allowed' or be deemed 'not allowed'.

Rubbish: Local authority officers will discuss keeping the site clean and tidy and the disposal of household refuse as part of the agreement that a site is 'allowed'.

- If appropriate plastic sacks will be made available and arrangements made for regular collection of bagged refuse. Regular removal of domestic refuse should deter tipping by members of the settled community.
- Some groups of Gypsies and Travellers are willing to use skips for domestic waste. Again, provision and removal may be cost-effective if the alternative is a build-up of refuse acting as a magnet for other fly tipping by members of the settled community. Local authorities will check that skips would be used before providing them and to seek to recover costs from the unauthorised campers.

Sanitation: One of the common complaints about unauthorised encampments is of people urinating and defecating in public. The practice is a nuisance and a health hazard. However, Gypsies and Travellers have strict cultural codes about hygiene and consider it unclean to use toilet facilities in a caravan or to share facilities. Local authorities will liaise with unauthorised campers and make plain

that public defecation is not acceptable behaviour, and discuss what form of toilet provision the local authority can assist with to prevent it and any arrangements for payment for that service.

5.4. If the decision is to 'not allow'

A site may be deemed 'not allowed' for a number of reasons. For example:

- Local amenities are deprived to communities. This could include forming an encampment on school car parks or playing fields, public recreation grounds and parks, village greens or public car parks, hospital car parks or at leisure facilities.
- There is local disruption to the economy. This would include forming an encampment on a shopping centre car park or in an industrial estate where it disrupts workers and customers. It could include agricultural land if this results in the loss of use for its normal purpose.
- There is other significant disruption to the local community, or there is a need to take preventative action. This might include where a group have persistently displayed criminal and anti-social behaviour at a previous site, and there is evidence that such conduct is continuing.
- Where access to the Public Rights of Way network and public open space is compromised.

Wherever possible, local authorities and/or police should attempt to encourage the unauthorised campers to move to an authorised site where available. In addition Identification of possible acceptable 'tolerated' sites could assist local authorities and the police in the management of unauthorised encampments in circumstances where there are no available pitches on authorised sites.

When a site is deemed 'not allowed' the relevant agencies should be consulted on the needs of the families and how they can be facilitated. If the families plan to move to another district then the relevant officer should be contacted to discuss any on going support that the families may need and plan a continuity of service.

5.4.1. Measures to assist in the removal of a group from a 'Not Allowed' site

It is the responsibility of the landowner, including the District Council where it is the landowner, to secure, protect and reclaim their land. The landowner must inform trespassers that they are encamped without authority. It is preferable that eviction from a site is achieved through negotiation with those trespassing. Where children are involved at an encampment where eviction is due to take place, they should be given adequate time to be prepared for moving.

The process of negotiation is predominantly the responsibility of the landowner; however as part of a multi-agency response officers may engage in this process.

Where negotiation fails the landowner may decide to take court action. If required police officers may assist in this process and provide any information the court may require.

If bailiffs are used, consideration should be given for police officers to be present in order to ensure there is no breach of the peace. Police Officers should note they are to play no part in the eviction of trespassers unless police powers are used.

5.4.2. Removal of a group from a public highway

If a 'Direction to Leave' notice or a letter requiring the Travellers to leave an encampment on highway land is served then responsibility will rest with the County Council as Highway Authority (subject to claimed rights and whether the highway is a trunk road).

The Highways Engineer will arrange arranging for Legal Services to produce the documentation. The Engineer should then arrange for the notice or letter to be served on the occupants of each caravan. If a 'Direction to Leave' notice is to be served, the visit to do this must include the Engineer, a representative from Legal Services and the Police. If a letter is being served, Legal Services need not be in attendance. However, a Certificate of Service will be prepared by Legal Services for completion by the person serving the letters. If any caravan is unoccupied or no response received then the notice or letter must be fixed to it. Suitable records must be made of the caravans that the notice or letter has been served on.

The Direction to Leave Notice or letter will include a reasonable time, normally 48 hours, for occupants to leave. At the end of this period the Engineer should check if those caravans which had notice served on them have left the site. If not, Legal Services should be informed.

5.4.2 Removal of a group from land owned by the District Council

The District Council may decide to serve a 'Direction to Leave' notice (a Section 77 of the Criminal Justice and Public Order Act 1994). This can take immediate effect however officers can use their discretion to give a reasonable time period to leave. This should be handed over in person and the contents of the letter explained or posted through the door if possible.

At the end of this period the officer should check if those caravans which had notice served on them have left the site. If not, the police and Legal Services should be informed and further action discussed.

5.4.3 Use of Police Powers

Police Powers will only be used in exceptional circumstances.

Police have powers granted to them to move unauthorised encampments under sections 61 and 62 of the Criminal Justice and Public Order Act 1994. There are also powers of removing obstructions on a highway such as *A Wilful Obstruction of the Highway* (under Section 137(1) Highways Act 1980), *Unnecessary Obstruction* (under Section 42 Road Traffic Act 1988 & Section 103 Road Vehicles (Construction & Use) Regulations 1986)

Although there will likely be strong pressure exerted for the police to move unauthorised 'not allowed' encampments, it is essential that all alternative methods should have been explored before the use of police powers are considered. Police officers should work with partner agencies and those involved in the encampment to negate the need for such powers to be used.

Officers considering the use of police powers should ensure that all the implications have been considered e.g. human rights, resource commitments, and public / media reaction. They should also revisit the risk assessment carried out at the start of the process to ensure there is no change in circumstance. Officers also need to consider where it is they would like the occupiers to move

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to and should look to the local authority to assist in this. It could be that if a site is deemed 'not allowed' because of the land owner's resistance to it, the local authority may be able to suggest a 'temporarily allowed site'.

Police powers will not be used unless authorised by a Superintendent or above or in an emergency an officer of at least Inspector Rank. Detailed guidance on the use of these powers is contained on the police national legal database.

5.4.4. Enforcement Action regarding waste

Dealing with illicit waste disposal and fly tipping is difficult - whether the culprits are Gypsy/Traveller unauthorised campers or members of the settled community. Local authorities, police and the Environment Agency all have roles to play and co-ordinated action is necessary. Gypsy/Traveller unauthorised campers should be clearly informed that everyone who produces, treats, carries or disposes of controlled waste has a 'duty of care' under s34 of the Environment Protection Act 1990. Licensed carriers should take trade waste to appropriately licensed facilities in accordance with this duty of care. Information leaflets provided to unauthorised campers should identify nearby licensed waste facilities.

District council policies with regard to size of van or trailers visiting waste disposal sites need to be checked to ensure that the good intention to dispose of waste does not result in Travellers being turned away.

Enforcement measures are available. Collecting sufficient evidence for successful prosecution requires determination and partnership working from the agencies involved.

Measures for Enforcing against Pollution, Littering and Fly-tipping

Water Resources Act 1991 (as amended by the Environment Act 1995) gives the Environment Agency powers to prosecute those found illegally depositing waste into controlled waters and causing a pollution offence.

Environmental Protection Act 1990 (as amended by the Clean Neighbourhoods and Environment Act 2005) makes fly-tipping a criminal offence with a maximum penalty of a £20,000 fine and/or imprisonment up to 6 months (unlimited fine or imprisonment of up to 5 years if convicted at a Crown Court). The Government has asked the Environment Agency to vigorously prosecute any person found to be illegally disposing of waste, where they have evidence. The waste collection authority and the Environment Agency may remove fly-tipped waste and recover costs from those responsible for causing the offence. The Environment Agency has set up an emergency telephone hotline (0800 807060) for members of the public to notify them of fly tipping (and water pollution incidents). The National Fly-Tipping Prevention Group includes a number of national organisations.

Clean Neighbourhoods and Environment Act 2005. Extends the offence of dropping litter on all types of land, including water, which is open to the air and to which the public have access.

Environment Protection Act 1990 (Part III) gives local authorities powers to act against statutory nuisances (prejudicial to health or a nuisance). Local authorities can serve an abatement notice, which can be appealed. Failure to

comply with an abatement notice is an offence.

Anti-social Behaviour Act 2003 extends the range of powers available to local authorities for dealing with fly tipping, for instance, by giving them powers to search and seize vehicles suspected of being used for fly tipping and to investigate incidents.

5.5. Post eviction or voluntary evacuation of the Site

The practice of following Travellers or those evicted from a site will only be tolerated at the families request e.g. if they are fearful for their own safety.

5.6. The Media

Conflicting press releases coming from different agencies should be avoided.

The Local authority and the Police are likely to be the lead agencies. It would be beneficial for them to make a joint press release, if appropriate, to inform the local community and other interested parties. Other agencies could add to, or give separate releases specific to their area of responsibility.

5.7. Reassuring local communities

The key to reassurance is ensuring that the settled community are kept informed and made aware of what is or is likely to happen as a result of an unauthorised encampment in the community. This will help prevent an increase in tension that could lead to confrontation. However the rights and needs of the settled community should be balanced with those involved in an unauthorised encampment.

Tactics that could be considered to aid reassurance:

- High visibility patrols in the immediate vicinity of the unauthorised encampment, especially patrols carried out on foot.
- The Police Community Support Officers/district council to carry out a leaflet drop of premises in the immediate vicinity. The leaflet might provide information about what is happening that the relevant agencies are aware and providing appropriate services, the Code of Conduct and contact details of police and partner agencies.
- Involvement of local Councillors. The Equality Act 2010 'to foster good relationships' between different groups of people extends to all councillors. Consider attendance at local meetings e.g. parish council meetings.
- The holding of a community meeting to address any concerns and allow officers to dispel any misconceptions that may arise and challenging unacceptable behaviour/comments thereby promoting good community relations and social cohesion.
- Press releases by police and the district council. Considerations may include:
 - Summary of police powers and those of other agencies.
 - Identification of a central point of contact for the enquiries, rather than every agency issuing its own information.

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- Selection of staff for this point of contact could include an officer specifically detailed to address public perception of both the incursion and police action.
- Regular updates

6.0 Roles and Responsibilities.

Each agency needs to disseminate the Protocol to all relevant staff including initial call handlers.

Cumbria Constabulary

- Identify a named officer in each local authority area (Operation Command Unit)
- Identify and respond to public safety concerns
- Inform all relevant agencies of location and number of Travellers.
- Monitor, update and share relevant information to other agencies.
- Provision of policing services to the Gypsy and Traveller community
- Maintenance of public order
- Prevention and detection of crime
- Work with partners to address road safety concerns

Cumbria PCT

- Identify key contacts in each district council area and develop care pathways for Gypsies and Travellers.
- Assess health needs and advise accordingly.
- Monitor, update and share relevant information to other agencies.
- Identify and respond to public health concerns

Cumbria County Council: Children's Services, CME officers, Highways and other relevant departments

- Identify key contacts in each district council area
- Assess education needs and access to education provision and provide information on how to access education provision.
- Identify and respond to road safety concerns.
- Sign post and provide information on service provision (adult and child social care services, community, library etc.)
- Monitor, update and share relevant information to other agencies.

District Councils: Copeland BC, Allerdale BC, Barrow BC, South Lakeland DC, Eden DC, Carlisle City Council

- Identify a named officer to take responsibility for the protocol and its dissemination to relevant officers from different relevant departments within the council.
- Ensuring that elected members are fully aware of policies on managing unauthorised encampments including, including race relations responsibilities.
- Identify and respond to public safety concerns.
- Provide information on service provision
- Monitor, update and share relevant information to other agencies.
- Assess and provide necessary site provision to meet the needs of Gypsies and Travellers

Appendix 1 Legislative background

1. Site Provision

- The Caravan Sites and Control of Development Act 1960 s24 gives local authorities discretionary powers to provide caravan sites.
- While there is no duty on local authorities to provide Gypsy sites, DoE Circular 18/94 makes clear that authorities should maintain their existing Gypsy caravan sites, and should continue to consider whether it is appropriate to provide further permanent caravan sites for Gypsies in their areas.
- Planning Policy for Gypsy Site, published in March 2012 Planning requires and comprehensive systematic approach to be taken to the assessment of housing needs and site provision.
- The 'Assessment of Gypsy and Traveller Accommodation Need' is a statutory requirement under the Housing Act 2004 which came into force on Jan 2nd 2007. The needs of Gypsies and Travellers identified by the assessment will inform the preparation of local strategies, including the Local Plans which must set out policies to address those needs.
- Gypsy Sites Refurbishment Grant makes limited funding available for provision of transit and emergency stopping places.
- Private site provision is governed by planning legislation. Planning Policy for traveller sites (2012) sets out the Government's policy on Gypsy site provision and includes criteria against which local planning authorities should consider applications for Gypsy sites and development control.

2. Dealing with Unauthorised Encampments

- There is no specific legislative duty placed on local authorities to deal with unauthorised encampments by Gypsies and Travellers.
- Local authorities can take action as landowners through civil actions against trespass using Civil Procedure Rules Part 55, heard in a County Court.
- Local authorities have powers given by the Criminal Justice and Public Order 1994 ss77 and 78 (see Chapter 6). These require cases to be brought in the Magistrates' Court.
- Common law rights to recover land from trespassers are also available to local authorities over land they occupy. Authorities are, however, advised not to use such powers unless there is exceptional justification for doing so and, for example, the police are unable to use their powers under s61 of the CJPOA (see 6.5 above).
- DoE Circular 18/94 provides guidance to local authorities on the exercise of s77 powers, and reminds them of their other duties towards Travellers in terms of education, children and homelessness legislation.

- Case law (starting with the judgement of Sedley J in *R v Wealden District Council ex parte Wales*) has developed and clarified the courts' expectations of the welfare enquiries and decision-making processes local authorities should adopt in making evictions under 1994 Act and other powers.
- Where Travellers camp on land which they own or on other private land with the consent of the landowner, district councils may take planning enforcement action, or prosecute for running a caravan site without a site license.
- The Police have parallel powers granted by s61 of the CJPOA (see Chapter 6). Action under s61 is normally much quicker than under s77, and the welfare considerations less onerous although there are certain conditions in the legislation which have to be fulfilled before eviction can take place.
- The Anti-social Behaviour Act 2003 added s61A and 62A into the CJPOA which give police enhanced eviction powers in circumstances where there are suitable pitches on relevant Gypsy sites to accommodate the caravans affected.

3. Other Enforcement Measures

- District authorities have powers to deal with statutory nuisance (which could include, for example, rubbish accumulation at unauthorised encampments) and noise.
- The Crime and Disorder Act 1998 places a duty on chief police officers and local authorities to work together to develop and implement a strategy for reducing crime and disorder. Section 17 imposes a duty on all local authorities (and others) to '*without prejudice to any other obligation imposed upon it . . . exercise its functions with due regard to . . . the need to do all it reasonably can to prevent crime and disorder in its area*'.

4. Service Provision for Gypsies and Travel

- Gypsies and Travellers are entitled to access health, housing, education and welfare services as citizens in the same way as members of the settled community.
- There is specific recognition of the needs of Traveller children in accessing education, with a Traveller Grant payable under s488 of the Education Act 1996.

5. Human Rights

The Human Rights Act 1998 incorporates the European Convention on Human Rights into British law. Several Convention rights are relevant in dealing with unauthorised camping. The main relevant rights are:

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or

the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Case law has established that, while neither eviction action against trespassers nor planning enforcement is incompatible with HRA, either could potentially breach Article 8 rights if not properly used. Authorities, and other public bodies covered by the HRA, must be able to demonstrate that all eviction and enforcement decisions are 'proportionate' in weighing individual harm (in the loss of 'home' for the Gypsy or Traveller) against the wider public interest. Potential challenge under the HRA means that all decision-making must be fully recorded and evidenced to withstand scrutiny.

First Protocol, Article 1: Protection of property

Every natural and legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

This Article might be seen as protecting the settled community's right to quiet enjoyment of their possessions, which might be threatened by nuisance, noise or anti-social behaviour from a problematic unauthorised encampment. This should be one of the considerations to be borne in mind by local authorities and police when considering eviction action. To date there is no relevant case law.

First Protocol, Article 2: Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Education of Gypsy/Traveller children is frequently raised in cases dealing with eviction proceedings, and particularly with planning enforcement actions against unauthorised development. In such cases the question resolves itself to one of the balance between the individual harm to Gypsy/Traveller children's educational needs and the public interest harm in allowing unauthorised development to persist. To date there is no specific case law on arguments relying on this Article in this context.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status.

While Article 14 rights, are potentially engaged in any action concerning Gypsies and Travellers (as ethnic groups and national minorities), the Article can only be

successfully argued if another Article is found to be breached. Where a claim under any Article is rejected, it follows that any claim under Article 14 also falls.

3.6. Race Relations and Equalities

Under the Equality Act (2010) Gypsy Roma and Travellers would constitute a protected group on the grounds of race and ethnicity. Additionally under Section 149 of the Equality Act, all statutory bodies have to abide by the Public Sector Equality Duty, which means that any actions undertaken have to pay due regard to the principles of preventing discrimination, harassment and victimisation; advancing equality of opportunity and fostering good relations. The application of this protocol supports all public bodies to demonstrate that they have paid due regard to the Public Sector Equality Duty in making decisions relating to unauthorised encampments.

Under the Public Sector Equality Duty public authorities using this protocol would need to ensure that their actions do not create or exacerbate community tensions. This would involve mediation or two way communication if members of the public are raising concerns or complaints about unauthorised encampments.

Policies for managing unauthorised camping are likely to affect Gypsies and Travellers significantly. This means that local authorities and police must assess the impact of proposed policies on Gypsies and Irish Travellers and must consult on them. If the policies are likely to have a disproportionately negative impact on Gypsies and Irish Travellers, authorities must ensure that this impact is not disproportionate to the aims and importance of the policies. If it is, it is important to take measures to reduce this adverse impact or consider other ways to achieve the aims, which would mitigate its negative effect.

When evicting and enforcing, authorities need to ensure that they act in a way which meets the three elements of the general duty and so as to have the minimum negative impact on the Gypsies and Travellers involved.

Local authorities and police must always be able to show that they have properly considered the race and equalities implications of their policies and actions in relation to unauthorised encampments and unauthorised development by Gypsies and Irish Travellers. They must be able to demonstrate their policies and actions are proportionate, bearing in mind all the circumstances of the case.

Under the Equality Act (2010) Gypsy Roma and Travellers would constitute a protected group on the grounds of race and ethnicity. Additionally under Section 149 of the Equality Act, all statutory bodies have to abide by the Public Sector Equality Duty, which means that any actions undertaken have to pay due regard to the principles of preventing discrimination, harassment and victimisation; advancing equality of opportunity and fostering good relations. The application of this protocol supports all public bodies to demonstrate that they have paid due regard to the Public Sector Equality Duty in making decisions relating to unauthorised encampments.

Appendix 2 Risk Assessment

It is impossible to anticipate the precise risks involved at locations used for unauthorised encampments, as it will depend on the particular circumstances relating to each encampment.

It is suggested that the following Risk Assessment provides a methodology to ensure as far as possible a similar response to all unauthorised encampments across the County.

Risk is normally assessed by the level or seriousness of the threat, on a scale of 1-3 and by multiplying this by the likelihood of the threat actually happening, again on a basis of 1-3. For these purposes, in terms of seriousness, 1 is minimal; perhaps the presence of a single family or small group of Travellers while 3 would be appropriate for a much larger gathering, where problems could be anticipated due to the sheer number of people present, regardless of their background or origin. Likelihood follows a similar scale, where 1 is unlikely to occur, 2 will happen sooner or later, and 3 are likely to happen today, or possibly has already occurred. The result gives scores between 1 and 9, where 1 is very low overall risk and 9 is very high.

For unauthorised encampments examples of how this could operate is set out below: -

Threat could be interpreted as follows: -

- 1- Low**, located in a remote location, not environmentally sensitive, unlikely to interfere with settled community.
- 2- Medium**, located away from centres of population but where disruption may occur to population or premises nearby. (For example potential problems at a nearby public house)
- 3 - High**, located close to a centre of population, environmentally sensitive area, or other area giving particular cause for concern (e.g. school playground, city centre car park)

Likelihood could be interpreted as follows: -

- 1 - Low** - small numbers intending to stay for short period. No known intelligence indicating likely criminal activity or disorder
- 2 - Medium** - a larger group with a longer stay planned (say over 3 nights?) - some evidence of minor disorder or confrontation
- 3- High** - large group with indefinite stay planned. Specific intelligence exists to suggest criminal activity or serious disorder. Evidence of serious disorder/confrontation having already occurred with settled community

Specific examples using this system would be: -

- 1) Small group of caravans stop overnight on a section of old road at Stainmore: Threat = 1 (Low), Likelihood = 1 (Low) so **Risk = 1x1 = 1 Low**
- 2) Small group of vans pull up close to a school for a few nights: Threat = 2 (medium), Likelihood = 1 (Low) **Risk = 2x1 = 2 (Low)**
- 3) A large group take up residence on the outskirts of a small village. They indicate that they will be staying for two weeks until a wedding takes place. Intelligence exists to indicate that members of this same group were involved in

disorder and criminality in another force area prior to coming to Penrith. Threat = 3 (High), Likelihood = 3 High, **Risk = 3x3 = 9 (High)**

In the examples given a proportionate response would probably be to monitor the first two groups and take more positive action with the third. Applying a risk assessment assists us to objectively justify the course of action we take, and the risk can be reassessed at any time if circumstances change.

Site Classification Risk Assessment

| | High | Medium | Low |
|--------------------------|--|---|---|
| <u>Threat</u> | - Large group with indefinite stay planned. Specific intelligence exists to suggest criminal activity or serious disorder. Evidence of serious disorder/confrontation having already occurred with settled community | Located away from centres of population but where disruption may occur to population or premises nearby. (For example potential problems at a nearby public house | Located in a remote location, not environmentally sensitive, unlikely to interfere with settled community. |
| <u>Likelihood</u> | large group with indefinite stay planned. Specific intelligence exists to suggest criminal activity or serious disorder. Evidence of serious disorder/confrontation having already occurred with settled community | A larger group with a longer stay planned (say over 3 nights?) - some evidence of minor disorder or confrontation | Small numbers intending to stay for short period. No known intelligence indicating likely criminal activity or disorder |

Gypsy and Traveller unauthorised encampment Initial risk assessment

Agency:

District Area:

Person completing the form.....

Location/postcode of encampment.....

Date arrived.....

Expected duration..... **Actual duration**.....

Number of caravans**Number of vehicles**.....

Visible number of adults..... **5-16 year olds**..... **under 5's**.....

Family Name(s)

Vehicle Reg. (cont. over)

RISK ASSESSMENT

Scoring on a basis of 1 to 3 (1=Low Risk) (2 = Medium) (3= High Risk)

| | |
|---|--|
| <u>1.</u> The locations suitability | |
| <u>2.</u> Traveller numbers (larger no. greater risk) | |
| <u>3.</u> Number of corroborated complaints received (Larger no greater risk) | |
| <u>4.</u> Length of intended stay | |
| <u>5.</u> Co-operation between authorities and Travellers | |

Needs identified and action taken

Useful information and code of conduct

Gypsies and Travellers and the settled community are entitled to live free from crime, harassment, intimidation and discrimination.

The stay on land will depend on your co-operation.

Please keep groups small and away from built up areas.

Please space yourselves out, park vehicles safely and park away from other groups.

Please look after the land you park on and don't cause problems for nearby residents.

Please use black plastic bags for rubbish and official refuse tips

Please keep animals under control

Gypsies and Travellers can expect:

- Officers from all agencies to be courteous and supportive of any needs.
- To be asked about which services you might need.
- That information about the camp will be shared with others to help plan support.
- The police and the local authority will monitor the camp. You will be asked to look after the land on which you are camped and **if necessary** when you plan to leave.
- The Police to investigate any racist or other crimes committed against Gypsies or Travellers.
- The Police to investigate crimes involving Gypsies and Travellers in same way as they would with the settled community.

Useful information and contacts

CONTACTS

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Cumbria police www.cumbria.police.uk/ tel: 101

Children's Services www.cumbria.gov.uk/childrensservices/aboutus.asp

Cumbria Primary Health Trust www.cumbria.nhs.uk/Home.aspx

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