

APPENDIX 1

Management of Unauthorised Gypsy/Traveller Encampments Policy & Procedures

1 Purpose

- 1.1 The purpose of this document is to give clear guidelines on the procedures to be followed by Aberdeenshire Council and its partner organisations when responding to unauthorised camping of Gypsy/Travellers in Aberdeenshire. These guidelines provide the framework for a consistent and balanced approach towards unauthorised camping. These guidelines apply to those who consider themselves to be part of those ethnic communities known as Roma/Romany (Gypsies of Eastern European origin), English, Irish, Welsh and Scottish Travellers. They do not apply to New Age Travellers nor to Travelling (Fairground) Showmen (i.e. Occupational Travellers), as other legislation is applicable.

Background

- 2.1 The Equal Opportunities Committee of the Scottish Government produced a report in the summer of 2001 on Gypsy/Travellers and public sector policies.
- 2.2 In its report, the Equal Opportunities Committee recognised the lack of awareness of the Gypsy/Travellers' lifestyle/culture and the discrimination, at both an individual and institutional level, faced by many Gypsy/Travellers families. The report also looked at how public sector policies related to Gypsy/Travellers. The aim of that inquiry was to provide the basis for practical proposals and examples of best practice. One of the Committee's recommendations was that national guidelines should be prepared on the management of unauthorised camping. The Scottish Government issued national guidelines in 2004.
- 2.3 This document has been produced to provide a co-ordinated and coherent approach to unauthorised encampments which takes into account relevant guidance on this subject.
- 2.4 Unauthorised encampments can sometimes give rise to friction with local communities if the site is in an inappropriate location or is not being maintained in an orderly manner. Gypsy/Travellers have a responsibility to behave in a responsible way in the same way that the settled community is expected to behave. Unauthorised camping requires sensitive and proportionate handling by all concerned and can be a difficult issue to resolve.

3 The Aberdeenshire Context

- 3.1 This document reflects the particular challenges which exist in Aberdeenshire in the context of provision for Gypsy/Travellers. The report published in 2009: Accommodation Needs Assessment of Gypsies/Travellers in Grampian, highlighted the inadequate provision of accommodation for Gypsy/Travellers in Aberdeenshire. Aberdeenshire Council subsequently produced an Action Plan which aims to increase the amount of accommodation available in

Aberdeenshire by at least 12 pitches. Steps are being taken to identify suitable land and through the Local Development Plan. There is one Council owned Gypsy/Traveller site in Aberdeenshire; Greenbanks, Banff. When new authorised Gypsy/ Traveller Sites are developed, this policy will be reviewed.

- 3.2 A number of different agencies i.e. the Council, Police Scotland, Scottish Fire & Rescue Service and NHS Grampian are involved with Gypsy/Travellers on unauthorised camps.
- 3.3 The Aberdeenshire Council's Gypsy/Traveller Sub-Committee meets on a quarterly basis and comprises of Elected Members and officers from Services within the Council. A Council Gypsy/Traveller Officer Group (GTOG) also meets on a quarterly basis which includes representation from Police Scotland and NHS Grampian.
- 3.4 The Council employs a Gypsy/Traveller Liaison Officer (GTLO) who assess the needs of the Gypsy/Travellers – health, housing, education and welfare and also liaises with the Gypsy/Travellers with regard to public health and environmental issues.

4 The Legal Framework

4.1 The legal framework consists principally of:

- The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000.
- The European Convention on Human Rights
- The Human Rights Act 1998
- The Trespass (Scotland) Act 1865
- The Criminal Justice and Public Order Act 1994
- Equality Act 2010
- Children (Scotland) Act 1995

5 Roles and Responsibilities

- 5.1 Aberdeenshire Council and partner agencies all have wide ranging roles. Each of these agencies will be required to monitor, update and share relevant information as necessary, subject to the constraints of the data protection legislation and any professional codes of conduct. Aberdeenshire Council and NHS Grampian will ensure that they provide appropriate services to Gypsy/Travellers, whilst at the same time fulfilling their statutory duties, including in the case of the Council the use of enforcement powers where appropriate. The GTLO has an important role to play in terms of liaising between Gypsy/Travellers and other agencies and in terms of training, awareness raising and consultation on Gypsy/Travellers issues.
- 5.2 Gypsy/Travellers can experience difficulties in gaining access to education, health and community services. A multi-agency approach adopted in Aberdeenshire provides an opportunity to work in partnership to minimise these difficulties.

5.3 Gypsy/Travellers, like other members of the community, have a responsibility to look after land they use and respect the rights of others. Gypsy/Travellers require to abide by the **Code of Conduct**.

5.4 If the **Code of Conduct** is being persistently breached or a particular breach is deemed serious or significant by the Council's GTLO, a **Multi-Agency Emergency Management Procedure** will come in to force.

6 Principles of the Approach to Unauthorised Camping

6.1 It is important to recognise that until such time as authorised sites are established in Aberdeenshire, all camps in Aberdeenshire will be considered to be unauthorised (other than the Council site at Greenbanks, Banff or where Planning Permission is in place). It is the Council's intention, in conjunction with private landowners and developers, to provide a network of sites in Aberdeenshire.

6.2 Aberdeenshire Council recognises Gypsy/Travellers right to a nomadic life and respects the fact that Gypsy/Travellers may wish to maintain a travelling way of life. Camping is seen as an expression of the Gypsy/Travellers' cultural identity. Public agencies acknowledge that there should be no discrimination against Gypsy/Travellers because of their way of life and culture. However, the Council acknowledges the concerns and anxieties of the settled community in relation to some unauthorised encampments. The same standards of behaviour should be expected from all members of the community.

6.3 Aberdeenshire Council is a major landowner in the Aberdeenshire area. The Council will not evict Gypsy/Travellers without due cause from the land that it owns or manages. Any eviction will be pursued in accordance with these guidelines and will take into account the needs and rights of the settled community and the rights of Gypsy/Travellers for a nomadic life. The Council will ensure that it fulfils its statutory duties in respect of both the settled community and Gypsy/Travellers.

6.4 In considering whether a particular course of enforcement action should be taken against an encampment, the roles of Police Scotland and the Procurator Fiscal need to be borne in mind, in addition to the role of Aberdeenshire Council.

6.5 In 2004, the Lord Advocate issued an instruction to Procurators Fiscal stating that there is a presumption against prosecution where the sole issue in relation to an encampment is the physical occupation of land by Gypsy/Travellers, rather than activities which are always regarded as criminal irrespective of the context. It is important to note that Police Scotland has indicated that a failure by a Local Authority to make provision for the needs of Gypsy/Travellers will reinforce this presumption. This presumption has a significant bearing on the options available to deal with encampments. The presumption can however be overridden in certain circumstances and action may be taken:

- Where a suitable alternative stopping place has been identified and Gypsy/Travellers have refused to relocate within a reasonable time. (Police Scotland considers it to be the responsibility of the Local Authority to identify a suitable alternative stopping place, e.g. an approved Stopover or Transit Site)
- Where the use of a particular site by Gypsy/Travellers involves:
 - a road safety or public health hazard;
 - severe public disruption;
 - criminal activity;
 - the same Gypsy/Travellers who have been repeatedly moved on from the same site only to return.

6.6 Generally, action or prosecution for trespass offences by Police Scotland will be considered only as a last resort, when all other options including civil enforcement have been exhausted.

7 Procedure for dealing with Unauthorised Encampments

7.1 Communication is a key issue when dealing with unauthorised encampments. In order to facilitate communications and to promote consistency of approach, each relevant agency has named contacts for dealing with unauthorised camps. Within the Council there are named contacts who are responsible for a range of issues associated with Gypsy/Travellers.

7.2 Good working relations between agencies are essential. Officers must be aware of the problems that encampments can cause to local communities whilst at the same time recognising the difficulties that Gypsy/Travellers can experience when residing in unauthorised camps which may limit their access to services such as education, health and community services.

7.3 Reports regarding unauthorised encampments are distinguished from complaints. Reports will simply advise of the existence of an encampment, whereas complaints will raise an issue regarding the conduct of those encamped or of the impact of the encampment. When a complaint or report of an unauthorised camp is received, the following procedure will be followed (Note: items a) to d) apply to Council and privately owned land):

- a) **Logging the Report/Complaint** – The staff member who receives the report/complaint will advise the Gypsy/Traveller Liaison Officer (GTLO) of the report/complaint. This communication should be by email so that a permanent record is created, which can be logged and referred to at a later date if required. However, if the issue is urgent, communication will be by phone. Staff will also pass on any information they may have regarding the ownership of the area of land where the camp is located. The GTLO will subsequently complete an Encampment Assessment Form.
- b) **Determining Ownership** – If there is doubt over the ownership of the land, the GTLO will investigate and where necessary confirm with Legal & Governance or Infrastructure Services with regard to ownership.

- c) **Initial Visit** – The GTLO will visit the camp within 2 working days of receiving the report/complaint. The GTLO will explain to the Gypsy/Travellers the procedure for dealing with unauthorised camps and provide them with a copy of the Code of Conduct. The GTLO will explain the Code of Conduct to the Gypsy/Travellers, and will also advise that breach of the Code will result in enforcement action, including where appropriate, eviction. The GTLO will also advise that where Gypsy/Travellers are moved on for a breach of the Code of Conduct, they will not be permitted to return to that encampment. The Gypsy/Travellers will be advised of the availability of pitches at Clinterty Travelling Persons' site in Aberdeen City and Greenbanks in Banff.
- d) **Assessment** – After visiting, the GTLO will circulate an encampment assessment form to all relevant agencies and local Councillors. Updated information will be distributed to the same recipients as necessary. In preparing the Encampment Assessment, the GTLO will obtain information as necessary on those living in the camp and, together with other appropriate agencies will consider the nature of the encampment, and the implications of it remaining.

The following issues will be considered (***not in any order of priority or concern***):

- Impact on the environment and the amenity of the area;
- Impact of the camp on the normal operational use of the land and on the Community (e.g. does it prevent the proper use of a layby or is the provision of services affected);
- Compliance with the Code of Conduct including any complaints from the surrounding residents/owners and any police involvement regarding criminality on the site;
- The conditions of the site (e.g. rubbish or health impact).
- The location of the camp;
- The number of vehicles included in the camp in relation to the capacity of the area. Special consideration will be given to mass gatherings, which are usually of limited duration and bring together Gypsy/Travellers families for specific events such as weddings, births and funerals;
- The intended length of stay;
- Road Safety (i.e. the Road Traffic Act);
- Any special needs (e.g. health);
- Any other relevant information such as the welfare and educational needs of children, physical or mental health needs;

Legitimate concerns expressed to the Council by members of the public will be taken into account as part of the assessment process.

No maximum number of caravans per encampment nor maximum length of stay is specified. Each site will be considered on its impact, individual capacity, location, ground conditions, safety issues, the number of caravans present and any other relevant issues. Issues can

arise irrespective of the size and duration of an encampment and any action taken by the Council will depend upon consideration of all relevant issues.

Where the encampment may lead to a potentially dangerous situations e.g. serious tensions between the communities, the Police will be advised immediately.

- e) **Council Land:** The GTLO will contact the section of the Council which manages the land by telephone or e-mail after the initial visit has been made to advise them of the encampment. The GTLO will ascertain if the camp is considered to be on a site which is wholly unsuitable because of its location. This would include for instance, Sites of Special Scientific Interest; sites where pollution could damage water courses/the water supply, sites affected by land contamination and sites which present a serious threat to road safety or the safety of other users. In addition, the following sites are deemed as unsuitable locations for encampments in Aberdeenshire:

- Operational Council premises such as Park & Ride facilities and civic amenity/recycling centres
- Country Parks and Public Parks (and immediately adjacent access/exit roads)
- Playing fields (and immediate access/exit roads)

Action will be taken by Aberdeenshire Council to move on camps established in unsuitable locations on land owned by the Council.

Lay-bys

If an encampment occupies a lay-by, the Council can serve a notice under the Roads (Scotland) Act 1984 to remove the encampment; the Council often does not own the solum below the lay-by and cannot therefore pursue civil eviction. Should the Gypsy/Travellers not move following service of the notice the Council then has the power to move them. The Trespass (Scotland) Act 1865 cannot be used if the land in question is on the list of public highways.

- f) **Private Land:** The GTLO will contact the private landowner by telephone if there is an encampment on his/her land after the initial visit has been made. If requested, the GTLO will provide the private landowner with a copy of this policy. The landowner will be given a guidance note regarding powers available to deal with the encampment. Eviction from private land is the responsibility of the landowner. Similarly, if the encampment is on land not owned by the Council, although it may be controlled or maintained by them, civil eviction action can only be taken by the landowner.

Aberdeenshire Council and Police Scotland can take enforcement action related to particular behaviours e.g. fly-tipping, should there be sufficient evidence to identify the individual culprits. If the landowner

permits the Gypsy/Travellers to remain on site he/she needs to be aware of the requirements under Planning legislation and the Caravan Sites and Control of Development Act 1960.

The GTLO will continue to visit and monitor the encampment and liaise with owners and occupiers of the land. The responsibility for removing any flytipped material/litter left on site lies with the landowner but the Council will provide as much support and advice as it can and where appropriate provide assistance in ensuring the site is cleaned after the site is vacated.

- g) **Advice and Information** – The GTLO will advise the Gypsy/Travellers of relevant information, e.g. waste disposal facilities, and will advise on service provision such as refuse collection. Contacts for information on services, e.g. education, health, and where possible information on the location of authorised sites in the Northeast area will be supplied. The GTLO will identify the needs of the Gypsy/Travellers and thereafter try to address those needs. They will also give information on housing and contact details for the Council's Minority Ethnic Outreach Worker.
- h) **Managing Information Obtained about an Encampment** – Using the Encampment Assessment form, the GTLO will report the details obtained on the visit and give recommendations on future actions to the owning service and other interested parties and relevant agencies. The form will be emailed to all relevant parties who will comply with obligations concerning confidentiality and data protection.
- i) **Facilities** – When it has been agreed initially that the camp will not face eviction action (on Council land), the GTLO will assess whether refuse facilities and portable toilet facilities should be provided. Advice is also provided on the location of the nearest waste recycling centres. Factors such as length of stay and size of encampment must be considered in this assessment. Payment for the facilities will be sought from the Gypsy/Travellers. The GTLO will offer to provide facilities on private land but this would be at the landowner's expense. Facilities will not be provided if the landowner objects.
- j) **Enforcement Action** - Decisions with regard to eviction action to be taken in connection with an unauthorised encampment on Council owned land must be:
- Proper – in line with legislation and local policy and procedures;
 - Reasonable – in light of the information available;
 - Balanced – taking into account the respective needs of Gypsy/Travellers and the settled community;
 - Proportionate – taking into account the location of the camp, the needs/behaviour of the Gypsy/Travellers and the settled community.

Eviction action will be considered in the following circumstances:

The encampment is on land deemed not to be acceptable (as per paragraph 7.3e)

The encampment is having, or likely to have, a significant adverse impact on the local community or the environment.

The Code of Conduct has been breached.

Breaches of the Code of Conduct on Council owned/controlled land will be brought to the attention of the Gypsy/Travellers advising that should matters not be resolved or improved immediately eviction action will be taken; should there be a serious breach of the Code, immediate eviction action would be taken.

The full range of possible enforcement powers will be considered with regard to encampments on Council and private land, e.g. as regards fly-tipping under the Environmental Protection Act 1990, the Refuse Disposal Amenity Act 1978, and the other applicable legislation.

Where appropriate, the **Multi-Agency Management Procedure** will come in to force to deal with the encampment and/or particular unacceptable behaviours. Criminal behaviour on the part of the Gypsy/Travellers can be reported to Police Scotland who will deal with such complaints in accordance with standard operating procedures.

The GTLO will take account of all relevant information and will liaise with the Environmental Health Team Manager (Public Health) before any enforcement action is taken.

- k) **Communication of Decisions** – All actions to be taken through the **Multi-Agency Management Procedure** will be recorded. Once a decision has been taken on the agreed actions, officers will make the Gypsy/Travellers on the encampment of the decision and the reasons for the ensuing actions.
 - l) **Inspection of Vacated Camp** – When a site is vacated, the site will be inspected by the GTLO. Where remedial action (on Council owned/controlled land) is necessary as a result of the encampment, photographs will be taken and the cost of remedial work noted in order to consider whether recharging the cost is possible/practicable. A written record of the composition of each unauthorised camp will be kept by the GTLO, including information on any damage caused by the camp. Waste Management will immediately be contacted to arrange for the land to be cleaned (on Council owned/controlled land). The GTLO will liaise with the landowner if the encampment has been on private land, and support and advice will be offered in order to clean up the site.
- 7.4 Equality and Impact Assessment: The Council has completed an Equalities Impact Assessment on this policy to ensure that it meets its

statutory obligations and ensure that it promotes equality and prevents discrimination towards Gypsy/Travellers.

- 7.5 Links with Other Policies: The Council will ensure that appropriate links are made with other Council policies and strategies to assist in the delivery of a service to Gypsy/Travellers and the settled community.
- 7.6 Monitoring, Evaluation and Review: This policy will be reviewed annually by the Council's Gypsy/Travellers Sub-Committee.