

Eviction from unauthorised encampments

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Many Gypsies and Travellers continue to reside in caravans but have nowhere to lawfully station them and have resort to unauthorised encampments. This paper addresses the management of unauthorised encampments in England and the use of eviction powers.

Gypsies and Travellers

1. The term "Gypsies and Travellers" will be used throughout this paper to include: Romani Gypsies, Irish Travellers, Scottish Gypsy Travellers, Welsh Gypsy Travellers (or Kale), New Travellers and Travelling Showpeople (except where it is indicated otherwise).

Shortage of caravan sites

2. There is a significant shortage of caravan sites for Gypsies and Travellers in England and Wales and about 20% of those living in caravans are technically homeless (i.e. without a lawful place to station their caravans).
3. Gypsies and Travellers who camp on the highway or other public and privately owned land (known as "unauthorised encampments") will be liable to be moved on by the police and/or evicted by the landowner.

Highway land

4. Where Gypsies and Travellers camp on the public highway then they may be liable to prosecution by the police or local authority using their powers laid down by s.37 of the Highways Act 1980. If a person, without lawful authority or excuse, obstructs the highway they are guilty of an offence. It is also an offence to park a vehicle in such a position, condition or circumstances as to cause a danger to other road users: see s.22 of the Road Traffic Act 1988.

Police powers

5. The police have powers to direct that Gypsies and Travellers move off unauthorised encampments which are laid down in ss.61 - 62A of the Criminal Justice and Public Order Act 1994 (CJPOA) (as amended).
6. Section 61 of the CJPOA 1994 states:

"(1) 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 6 or more vehicles on the land He may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land."
7. If the Gypsies or Travellers concerned do not comply with a s.61 direction and leave the land in question by the given deadline, the police have powers of arrest and impoundment of vehicles. Additionally, the Gypsies or Travellers served with the s.61 direction must not return to the land within 3 months. Section 61 does not apply to highway land.
8. Section 62A of the CJPOA 1994 gives the police additional powers in circumstances where there is an available suitable alternative site:

"(1) If the Senior Police Officer present at a scene reasonably believes that the conditions in sub-section 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. (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."
9. The failure to comply with a s.62A direction is an offence and the police have powers of arrest and impoundment of vehicles. Guidance on the meaning of the term "a suitable pitch" is contained in the ODPM Guidance on Managing Unauthorised Camping (2004). A "relevant caravan site" is defined in s.62A(6) as a site which is located within the local authority's area and is managed by the local authority or a registered social landlord. Section 62A does apply to highway

land.

Local authority powers

10. The CJPOA 1994 also gave local authorities eviction powers. Section 77 of the CJPOA 1994 states:

"(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area - (a) On any land forming part of a highway; (b) On any other unoccupied land; or (c) On any occupied land without the consent of the occupier The authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land."

11. A local authority must serve a direction notice on Gypsies and Travellers by either giving it to them personally or attaching it to a vehicle and displaying it in a prominent place on the site.

12. Gypsies and Travellers will commit a criminal offence if they do not leave with their vehicle(s) as soon as "practicable" after receiving the direction. They will also commit a criminal offence if they return with a vehicle to the same land within 3 months and they can be fined for this offence. If they cannot leave or have to return to the land within 3 months due to "illness, mechanical breakdown or other immediate emergency" then they may have a defence to criminal proceedings.

13. Section 78 of the CJPOA 1994 gives Magistrates' Courts the power to make a removal order in circumstances where it is proved that persons and vehicles in which they are residing are present on land in contravention of a removal direction issued by a local authority. Such an order will give a local authority the power to take the necessary steps to remove vehicles and property on the land.

14. A removal direction and subsequent order will apply to people residing on the land at the time of the direction and not to anyone who arrives after the direction has been given.

Common Law Powers of Eviction

15. There are common law powers of eviction which landowners can use to remove trespassers from land. These powers involve the use of no more force than is "reasonably necessary" and can be applied even without a court order.

16. The ODPM Guidance on Managing Unauthorised Camping (2004) indicates that local authorities should not use their common law powers to evict unauthorised

encampments but should, instead, use eviction procedures which involve court action.

Possession proceedings

17. A local authority, other public authority or a private landowner can issue a claim for possession against the occupiers of an unauthorised encampment on their land in the County Court using the procedure laid down in the Civil Procedure Rules Pt 55. At least 2 clear days' notice of the hearing must be given to the Gypsies or Travellers concerned.

Humanitarian considerations and government guidance

18. Before any eviction action is taken against Gypsies and Travellers residing on unauthorised encampments by a local authority there is a requirement that welfare enquiries are undertaken and that the authority considers whether those enquiries have revealed circumstances which warrant further examination or lead to the conclusion that the eviction should be postponed.
19. The requirements stem from the decision of Sedley J in the case of *R. v Lincolnshire CC Ex p. Atkinson* (1996) 8 Admin. L.R. 529 and are detailed in ODPM Guidance on Managing Unauthorised Camping (February 2004); ODPM Guide to Effective Use of Enforcement Powers: Unauthorised Encampments (February 2006); and the Welsh Government Guidance on Managing Camping 2013.
20. Relying upon the decision in *R. (on the application of Casey) v Crawley BC* [2006] EWHC 301 (Admin); [2006] B.L.G.R. 239, the Welsh Government Guidance on Managing Camping 2013 advises local authorities in the following terms:

"Effectively, if an unauthorised encampment arises and there are no alternative authorised pitches in the area, local authorities have three clear paths relating to how they can resolve the encampment. Each option should be carefully considered: Path 1 - To seek and obtain possession of the occupied site (eviction proceedings). Path 2 - To 'tolerate' the Gypsy or Traveller occupiers, if only for a short time, until an alternative site can be found or the occupiers move on voluntarily. Path 3 - To find an alternative site, if only on a temporary basis, and offer the Gypsy or Traveller occupiers the chance to move onto it."
21. The police and other public authorities should also take account of welfare considerations. There is separate Guidance issued in 2011 by the Association of Chief Police Officers (ACPO) regarding police evictions and this stresses that any notices should be given in writing and that the police themselves should take account of welfare considerations before deciding whether to use their eviction

powers. The ACPO Guidance also states that the police should not use blanket policies of eviction and that the police should only use their powers in more serious cases, especially those cases involving anti-social behaviour or criminal activity.

22. If the police or a local authority or other public body fails to comply with the Government Guidance, and/or with the principles laid down in case law then a decision to evict may be susceptible to challenge by way of an application for judicial review.

Article 8

23. Article 8 of the European Convention on Human Rights (the Convention) gives everyone the right to respect for their private and family life and their home.

24. In *Chapman v United Kingdom* (27238/95) (2001) 33 E.H.R.R. 18, the European Court of Human Rights held that art.8 also imposed a positive obligation on the State to facilitate the Gypsy and Traveller way of life:

"96. ...The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases ... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way life."

25. Public bodies must take account of the rights protected by art.8 of the Convention when deciding whether or not to evict Gypsies and Travellers from an unauthorised encampment and must act proportionately. It follows that it is possible to rely upon an alleged breach of art.8 as a defence to a claim for possession action brought by a public body against Gypsies and Travellers or as a ground for seeking judicial review of a decision to evict, though there will be very few cases in which such an argument will succeed.

Best interests of the child

26. Numerous reports have demonstrated that Gypsies and Travellers suffer poor health when compared with the rest of society and that their children have the lowest levels of educational attainment in our schools. The shortage of authorised sites and the discrimination suffered by the Gypsy and Traveller communities has a direct bearing upon their health and the levels of educational achievement that their children can attain at school. Families living on unauthorised encampments often face considerable difficulties when trying to obtain appropriate healthcare provision and when attempting to admit their children into local schools; and any

success in either regard will be destroyed when families are needlessly evicted without being offered suitable alternative accommodation.

27. On an international level children are protected by art.3(1) of the United Nations Convention on the Rights of the Child ("UNCRC") which states that:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

28. The case of *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 A.C. 166 is the leading judgment on the way in which judges and decision-makers in the United Kingdom should treat the best interests of children likely to be affected by their decisions. In *ZH (Tanzania)* Baroness Hale referred to the UN Guidelines which explain that "best interests" are not just about health and education and she stated that when considering art.8 of the Convention in any case in which the rights of a child are involved, the best interests of the child must be "a primary consideration".

29. However, Baroness Hale said that treating the best interests of children as a primary consideration:

"... did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first."

30. Obviously, those principles should equally apply to Gypsy and Traveller cases where a decision is likely to affect a child. That point has been accepted in a number of cases concerned with the grant of planning permission for Gypsy and Travellers sites (see for example, *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin); [2013] 2 E.G.L.R. 145).

31. Those principles are just as relevant to decisions concerning the management of unauthorised encampments. Thus, public bodies must treat the best interests of children living on an unauthorised encampment as a primary consideration and no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature. Further, the best interests of any child must be kept at the forefront of the

decision-maker's mind as s/he examines all relevant considerations and when considering any decision that might be taken, s/he must assess whether the adverse impact of such a decision on the interests of the child is proportionate.

Unauthorised developments

32. Gypsies and Travellers living on caravan sites on land which has been developed without planning permission (known as "unauthorised developments") will be liable to face planning enforcement action brought by the LPA using its powers laid down by the Town and Country Planning Act 1990 (as amended).

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