



FRIENDS, FAMILIES AND TRAVELLERS

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Response to ODPM/Home Office Framework Guidance on Managing Unauthorised Camping Draft Consultation.

Thank you for inviting us to comment on the Framework Guidance on Managing Unauthorised Camping.

Although we welcome some of the points put forward within the document, we are extremely disappointed and concerned by the tone of the Framework Guidance as a whole. We feel that it is predominantly negative and pejorative towards a travelling way of life and appears to signify a clear u-turn in government policy. It also places inadequate emphasis on the findings and recommendations of past and recent government funded research into the needs of the Traveller community in the UK and fails to incorporate relevant existing duties such as those imposed under the Race Relations Amendment Act 2000, the Homelessness Act 2002 and the Children's Act 1989. Our comments are as follows:

Overall comments

1. Other than one sentence in paragraph 5.8, there is nothing within the document to indicate how central government intends to address the issue of site provision. There is no question that this is the **primary** cause of unauthorised encampments and all the associated issues. In this respect, we view the Framework as ill-timed and premature.

2. Paragraph 5.8 under 'Proposed Approach' states:

"In the case of site provision, how these sites could be provided is a matter for the local authority."

This statement is seen as an insult to Travellers and those who have worked and campaigned for the Traveller community in the UK. For the past forty years, the government has attempted to place the responsibility of site provision onto local authorities and this policy can only succeed if a duty is re-imposed, funding is provided and central government enforcement powers (this time around) are used effectively. Until the government issues realistic and workable guidance to address the clear and acute accommodation needs of the Traveller community in the UK, any further policy documents on managing unauthorised encampments will only serve to propagate the failings of earlier policies. The ODPM's own research clearly states that over 4000 pitches (both on authorised sites and temporary stopping places) need to be provided over the next five years to meet the existing needs of the community. Unless these issues are clearly linked, there seems little point in developing documents to tackle the effects of the government's own failure to ensure the delivery of adequate accommodation provision, when the root cause of the problem is left un-addressed. Unless this document is linked to a pre-existing policy document on how accommodation provision for Travellers is to be provided and improved, the document, as it stands, can only be seen as unworkable. Unauthorised camping will continue without proper recognition of its effects and realistic and sustainable measure to address the cause.

3. As a document in itself, the tone of the Framework Guide is extremely negative and imbalanced, concentrating on the anti-social and criminal behaviour of Travellers, when only a minority of Travellers behave in such a way. The Traveller community in the UK already suffers extreme

discrimination and social exclusion from both the general public and statutory agencies. The ODPM has a clear duty to combat racism under the Race Relations Amendment Act and **must** take a lead in prompting good race relations. Great care must therefore be taken when publishing policy documents so as not to promote negative stereotypes and incite further racial hatred.

5. Travellers are probably the most deprived and socially excluded group in British society. Travellers are the most at risk health group, according to the British Medical Association, and have the highest infant mortality rates, the lowest life expectancy, the highest illiteracy rates, the lowest educational achievement, the most racist press coverage and generate the most complaints to the Commission for Racial Equality. There is no question that these appalling figures are a direct result of the lack of safe, secure, suitable and adequate accommodation provision. There is no mention within the Framework Guidance of the very real and tragic consequence for the Traveller community that results from a lack of adequate accommodation provision and this **must** be emphasised and included.
6. Likewise, there is no mention of the findings of recent research which indicates that local authorities spend £18 million every year on unauthorised camping, and that this is equivalent to the cost of providing sites (*'At What Cost? The economics of Gypsy and Traveller encampments'*, Morris and Clements, 2002). The Framework Guidance should be focusing on ways to address this misuse of public money in line with Best Value legislation and to ensure that all members of the community are provided with shelter with at least a modicum of security.
7. Although we welcome the concept of a requirement for adequate provision of sites within an area before police powers to evict can be enacted, this issue highlights a general failing within the document with regards to the qualification of terminology. Terms such as 'adequate' and 'suitable' are open to wide interpretation and will be unworkable in practice unless clearly qualified. History has already shown that a 'designation' policy, such as that put forward under the Caravan Sites Act 1968 is open to abuse and measures must be implemented to ensure that this does not happen again. It is also essential that the actual definition of terminology must be developed through real and sensitive consultation to ensure that those directly affected by such policies are in agreement with their use. Furthermore, despite a brief reference in 8.7, there is nothing to indicate how the 'test of adequacy' is to be assessed, who will be responsible for such assessment and what penalties will be implemented for a failure to provide adequate provision. There is also no indication that any consultation will be carried out when the test of adequacy is 'worked up in detail.' These issues must be addressed and we strongly recommend that the department look closely at the proposals put forward in the Traveller Law Reform Bill, which outlines the development of an independent Gypsy and Traveller Accommodation Commission. This commission would seem ideally placed to carry out many of the independent functions necessary to ensure that any 'test of adequacy' is workable.
8. We have grave concerns about the proposed 'new stronger enforcement powers to evict unauthorised campers.' There is nothing within the guidance to indicate what these 'stronger enforcement powers' will be and how they are meant to compliment existing powers. It is therefore impossible to participate in proper consultation if adequate knowledge of proposed powers is not made available. Secondly, existing powers, such as the use of Section 61 of the Criminal Justice and Public Order Act 1994, are already extremely severe, to such an extent that they have been described as 'draconian' by *Lord Justice Sedley (in the case of *R v Wealden ex parte Atkinson*). We feel it is ill advised to introduce further enforcement powers when overly severe ones already exist.
9. We also note mention of a detailed Operational Guidance (1.2), but alarmingly, no mention of any consultation on that guidance. There is an implicit duty under the Race Relations Amendment Act to ensure that proper account is taken of the views, needs and aspirations of ethnic minority

groups potentially affected. A lack of proper consultation and well-thought out strategies will inevitably lead to an increase in the already substantial levels of legal challenges brought against authorities trying to implement ineffective and discriminatory policies.

10. Although we welcome the challenge fund, which now exists for local authorities to access to set up new transit sites, we are certain that without firmer direction from central government, local authorities will not have the necessary incentive to do so.
11. Although there is repeated mention of inter-agency working, which we welcome, there is nothing in the document to illustrate ‘joined-up’ working practices by government. There is no mention of how the document links up to the Good Practice Guide to Managing Unauthorised Camping (published jointly by the Home Office and the DETR in 1998), the Homelessness Act 2002 and only fleeting reference to the Race Relations Amendment Act 2000.
12. The Race Relations Amendment Act 2000 imposes clear duties on all bodies to eliminate unlawful racial discrimination, promote equality of opportunity; and promote good relations between people of different racial groups. It is essential that the RRAA is incorporated throughout the document. Furthermore, there are clear duties under the Homelessness Act 2002, which must also be incorporated within the document. The Traveller Law Research Unit at Cardiff University estimates that a third of Travellers in the UK lack an authorised pitch on which to station their caravan and are therefore, under the law, homeless. Local authorities are now required to draw up Homelessness Strategies by July of this year, detailing how the issue will be addressed. This is without question an integral element when considering how to address unauthorised encampments.
13. We would also bring to your attention the fact that there is no mention of the significant fear, disruption and nuisance experienced by the Travelling community as a result of having insufficient authorised stopping places. We have worked with many families who have been firebombed, violently attacked, had bricks through caravan windows, and so forth, whilst camped on the roadside. The unacceptability of such incidents needs to be emphasised. Travellers on the roadside are extremely vulnerable to attack, and often travel in large groups as a form of protection through safety in numbers. Their needs and concerns are not adequately addressed within the Framework Guidance.
14. In particular, there is no explanation nor justification for the apparent change in government policy from that expressed in the Foreword to the Good Practice Guide, which it states:

“Unauthorised camping is not a criminal offence, and we have no plans to make it so. This is not a charter for eviction.”

And further, in chapter 5, ‘Tolerating Unauthorised Encampments’ which states:

“A nomadic way of life is legitimate. In this context, Gypsies and Travellers should be accommodated and ‘tolerated’ wherever practicable, and wherever serious problems do not arise from the encampment.”

This view is not reflected in the Framework Guidance and can be viewed as conflicting. This is extremely unhelpful and confusing and illustrates a lack of cohesion and ‘joined-up’ working practices between government departments.

Specific comments

1.1– The final sentence in this paragraph should be re-phrased to read:

*The intended audience for this framework are all those who have an interest in the issues, including **members of travelling communities, local authority staff, Councillors, police and local residents.***

1.2– Comment already made above (General comments . para 4/5)

1.3 - The bullet points in this section should be re-phrased and re-organised to read:

- *The introduction of a challenge fund to develop a network of new transit sites and emergency stopping places. The grant to refurbish existing sites will remain.*
- ***Where the local authorities has made adequate provision for Gypsy and Traveller sites in their area, police will be able to use enforcement powers to evict unauthorised encampments.*** (this statement being conditional to the accepted qualification of such terms as ‘adequate’)
- *New guidance to deal with unauthorised encampments*

2.1, 2.2 & 2.3 – Background information should incorporate a range of other relevant information such as outlined above under General Comments, paragraphs 1,3,4,10 & 11.

2.4 – The listing of the bullet points in this section and the lack of balancing factors is unacceptable. This section places far more emphasis on inconvenience to the settled community, than to the effects on the main sufferers of this situation - Travellers. The bullet points in this section should be re-prioritised beginning with bullet point 4 and expanded to include issues highlighted in paragraphs 3, 4 & 11 in the General Comments above.

2.5 – This paragraph should be moved to follow on from 2.3.

2.6 – This paragraph reads:

‘The approach proposed here...aims to be reasonable and fair, and recognises that a distinctive lifestyle is not an excuse for indulging in behaviour which is not acceptable to the wider community’

We feel that this sentence is neither reasonable nor fair, and should be taken out. The sentence is starting from an extremely prejudiced standpoint and can be seen to be racist. If the term ‘distinctive lifestyle’ were to be replaced with ‘being a Pakistani or a Jew’ or any other ethnic minority group, it would be seen as extremely insulting, derogatory and racist. We suggest that the sentence is replaced with something along the lines of:

‘recognises that a nomadic lifestyle needs to be facilitated with adequate numbers of stopping places’.

3.1 – Again, this paragraph starts with a negative and potentially racist slant, reading:

‘unauthorised camping is wrong, particularly when it is associated with anti-social behaviour etc.’

The terminology used here is completely unacceptable, reflects a **moral** judgement, directly contradicts earlier government policy and can again be construed as racist. As a result of the government’s own failure to ensure adequate and suitable accommodation provision for Travellers in the UK, this ethnic minority group are forced to camp in an unauthorised manner in order to preserve their cultural and ethnic heritage. Furthermore, as can be seen from the reference to ‘The Good Practice Guide’ above, government policy has not been based on the view that unauthorised camping is wrong. For central government to be issuing a statement to the effect that behaviour in pursuit of maintaining a recognised ethnic way of life is ‘wrong’, is equivalent to stating that being a Gypsy is ‘wrong’.

Again, we are alarmed by the fact that the ODPM is prepared to issue statements that can be construed as inciting racial hatred and we urgently request that this position be reconsidered. We strongly feel the issue needs to be approached from a different starting premise. Something more constructive would be:

'unauthorised camping needs to be addressed and authorised by local authorities wherever possible'.

This can be by way of allowing encampments to stay for a period of 'days, weeks, months or years' (as recommended in the 1998 Good Practice Guide). Additionally, local authorities should do everything in their power to facilitate site provision, such as provide permanent sites, transit sites and temporary stopping places and ensure that criteria set for securing planning permission for private sites is, in practice, realistic and realizable.

3.2 – This paragraph again lays undue emphasis on the minority of disruptive campers rather than on the majority of law-abiding Travellers suffering the lack of an authorised pitch. It would be more appropriate to rephrase the sentence in a less judgemental way such as:

'Following the approach detailed below should reduce the numbers of unauthorised campers'.

We would prefer to see the provision of sites as the first point listed, and for the point to be expanded on, in order to emphasise the importance of this point. This provision of sites is the **only** way the issue will be progressed, and only when this provision occurs can all other issues, such as anti-social behaviour, low educational achievement, social exclusion, etc, be addressed.

4. -In the table in section four, which lays out the interested parties to be involved in developing a strategy for managing unauthorised camping, we are concerned to see that Gypsies and other Travellers are listed half way through the table after local authorities, police and local residents. They should be listed first on the table as it is they who will be most affected by any strategy. We also note that other than Travellers themselves, no interested parties such as NGO's and other agencies working closely with Travellers are included in the table, which creates a clear imbalance in the consultation and development process around strategies.

We are also concerned to see site protection mentioned several times. We were invited to a meeting last October with the Commission for Racial Equality (CRE) where they expressed concern about the practice of local authorities blocking off their land so that Travellers could not access it. They felt that this could be contrary to the Race Relations Amendment Act, and suggested that if we became aware of any decisions by local authorities to carry out such works, we should refer them to the CRE.

4.2 – Yet again, in the listing of bullet points under this paragraph, we note that Gypsies and Traveller health, welfare and education is bottom of the list. This is unacceptable and must be placed as the **foremost priority**.

4.3, through 4.6 – Although we welcome the general points in this section, we note that no mention has been made of the clear conflict of interest that exists in the current role of Gypsy/Traveller liaison officers. In our experience, it is extremely difficult, if not impossible for officers to act effectively as both an enforcement officer and a liaison officer. The role of assessing the needs of Travellers must be separate and distinct from that of enforcement (4.4).

5.1 through 5.7 – This section would be better placed at the beginning of the Framework Guidance as opposed to at the end. With reference to the Gypsy Sites Refurbishment Grant in paragraph 5.4, the money available should be increased as the demand for the grant has been so high. In the first year's round of bidding, bids for £9.75 million were received from local authorities for a grant of only £2.8 million, and in the second year bids of £12.9 million were received for a grant of £6.1 million.

5.8 – already discussed in paragraph 1/ General Comments.

5.9 – Once again, the listing of bullet points in this paragraph does not accurately reflect the views and aspirations of the Traveller community and their priority should be revised. Permanent housing is, in our experience, the very last resort of any Traveller and is most often only considered in the most extreme of circumstances.

5.10 through 5.17 – We have no issue with these particular points other than that expressed above, i.e., that this policy must be linked to **a pre-existing policy document on how accommodation provision for Travellers is to be provided and improved.**

6.1 –Not only is this statement misleading, it is also false. Firstly, the use of the term unlawful implies a criminal activity. This directly conflicts with the Good Practice Guide, which as already mentioned above, states:

“Unauthorised camping is not a criminal offence, and we have no plans to make it so.”

There is only a breach of the law when persons camped in an unauthorised manner refuse to comply with a standing repossession order. Secondly, only a limited number of unauthorised encampments cause ‘disruption, fear and nuisance to the settled community.’ We have dealt with innumerable cases where this has simply not been true, and there has been no disruption, fear or nuisance caused.

Yet again, we respectfully remind the ODPM that such inaccurate and misleading statement can be construed as racist and respectfully remind you of the Race Relations Amendment Act, which places a duty on public authorities to promote positive race relations. The tone of much of the document can be viewed as discriminatory and pejorative and, if left unaltered, could be seen, in itself as a contravention of the Act. Consequently, we would respectfully suggest that the language in the Framework Guide be urgently reviewed.

6.2 through 6.9 – In this section, we feel emphasis needs to be made on the point that local authorities should wherever possible allow encampments to stop on their land. This is an acknowledgment of the shortage of authorised stopping places, and a recognition that hounding Travellers around the country is beneficial to no-one, least of all to Travellers. As the Chartered Institute of Environmental health stated in a press release in 1998:

“Besides being an attack on the lifestyle of a minority group, the Criminal Justice Act has created a ‘merry –go-round’ of evictions, moving the travelling community from one local authority to another. It is in everybody’s interests – Travellers, local residents and the Government – that we take a more compassionate approach.”

At the moment the emphasis of this section is on eviction action.

6.10 through 6.14 - We welcome the idea of a pro-active approach to managing unauthorised encampment and the need for research and consultation. However, we feel that the overall tone of the Framework Guidance does not reflect this.

6.15 through 6.18 - With reference to codes of behaviour, it should be noted that some Travellers travel in a large group as a safety measure; Travellers are very vulnerable on the roadside. Travellers can also travel in large groups in order for them to remain with extended family. A larger group is not necessarily problematic per se.

Surely anyone, Traveller or non-Traveller, would expect to be penalised for unacceptable behaviour such as fly-tipping and aggressive or intimidating behaviour. Are members of the settle community who, for example face prosecution for fly-tip or intimidating or aggressive behaviour, also to be evicted and moved on swiftly if they practice such behaviour? (6.16)

Domestic refuse collection facilities should be provided by local authorities to Traveller encampments, so domestic waste would not be 'dumped', but would be collected.

With regard to point 6.18, we do not agree that a rapid response is necessarily needed when Travellers come to an area intending to stop. Facilitating a nomadic life could mean that on many occasions no response is needed. In bullet point three of this paragraph we would prefer to see 'what enforcement action is needed' amended. Enforcement action may well not be needed, and the immediate presumption should not be towards enforcement.

6.19 -We do not feel that it is a productive use of public money for local authorities to assist landowners by taking action on their behalf against Travellers. Such public resources would be better spent on site provision, and thus attempt to actually resolve the issue.

6.20 – Again, this paragraph starts from a negative and stereotyped presumption and we strongly advise the ODPM to reconsider the wording of this paragraph. There is no acknowledgement here of the disruption and costs to Travellers or to health risks they face on ill equipped and potentially dangerous sites. We would again refer you to paragraph 5 of the General Comments above. We suggest that the focus should be on ensuring that local authorities provide encampments with basic services such as water, refuse collection and temporary toilets so as to minimise the risk to Travellers and potential clean up costs to the local authority. Again, there is no mention here of the clear lack of 'best value' impact which results through a failure to provide suitable authorised accommodation provision and instead divert public money to a continuous round of evictions.

Furthermore, bullet point 1 should be urgently reviewed. The current wording implies that 'any deterioration' will result in 'enforcement taken'. This is extremely simplistic and in no way equitable. Every situation must be properly assessed, contributing factors analysed and real attempts made to resolve any potential deterioration before any enforcement action is considered. The same measures must be implemented in the case of Travellers as is with any other section of the community.

Bullet point 4 should make the provision of water and toilets mandatory when requested by Travellers, irrespective of whether they are children or elderly. With regards to children in particular, we would remind the ODPM that under Section 17 of the Children's Act 1989, all local authorities have a duty to safeguard and promote the interest of 'children in need'. Traveller children living on unauthorised encampments can be viewed as 'children in need' under the terms of the Act.

6.21 – We do not understand why the Race Relations Amendment Act is mentioned here and no where else. As stated above, it should be an integral element throughout the Framework Guidance and it is essential that the Framework Guidance itself also complies with the Race Relations Amendment Act.

7.1 through 7.7 – We have no particular comments on this section.

7.8 - We have **always** found local authorities to be willing to take enforcement action against non-law abiding campers and those who refuse to stop on authorised sites. Indeed, such behaviour by Travellers usually invalidate any legal challenge they might wish to bring against enforcement. Thus this does not need to be the focus of the paragraph; it is current practice. The focus needed is **how is central government going to ensure that sites are provided?**

7.9 – This paragraph states:

'within this approach the use of s61, in circumstances where rapid removal of the encampment is merited, is entirely legitimate.'

Yet, once again, we have not seen how the approach proposes to ensure that more sites are provided. It would also be useful to explain here in what circumstances the use of s61 is legitimate. For example, is it only legitimate if there are sites to which officers can direct Travellers? We do not believe s61 should be used, unless there are sites to which Travellers can be directed, and many police officers we have worked with are uncomfortable using these powers when they have nowhere to direct Travellers. The final line of 7.9 should be reworded, as the consequences of using s61 also need to be considered. This is recognised by current Association of Chief Police Officers (ACPO) guidance on the use of Section 61, which states that “the power is not unfettered – it must be exercised reasonably” and “officers dealing with incidents should consider whether exercise of the power may result in a further trespass nearby. It may be felt that a trespass on one site is less damaging to the community than a trespass on a more sensitive site nearby.”

7.12 - In the fourth bullet point of this paragraph, we suggest the sentence ‘Fly tipping...is a common problem’ is deleted. Fly-tipping is equally significant a problem in the settled community as it is in the Travelling community. In our experience, current practice is always to evict fly-tippers and rubbish dumpers, so clear evidence of determination to act is already in place. What is needed to actually address the problem is the provision of authorised sites; then the situation can be more clearly monitored and any persons who fly-tip on authorised, managed sites can be more easily prosecuted.

We would like to note that we are aware of a number of cases of (non-Traveller) building firms fly-tipping on Traveller sites, both authorised and non-authorised, and of being prosecuted for this. Thus it can be seen that it can be very difficult to ascertain who is actually doing the fly-tipping. Fly-tipping as a national problem has increased greatly in recent years, following increased costs of waste disposal.

7.13 - We note that whilst unauthorised mass gatherings are portrayed as problematic, legitimate mass gatherings that have taken place for hundreds of years, such as the Horsmonden horse fair in Kent, or Stow fair in Cumbria, have been banned, or are under threat, by local authorities. Thus if local authorities do not allow ancient fairs to continue, it is highly unlikely that they will respond favourably to advance requests to allow other gatherings. Additionally, where Travellers try to negotiate for accommodation they are usually refused. For example, the field at Stow, which is used to accommodate Travellers, and is owned by a Traveller, has an injunction on it. Powys County Council also continues to obstruct Travellers in their attempts to find an accommodation field for the Royal Welsh Show. How are local authorities going to be required to, wherever possible, allow gatherings, rather than refuse them and then apply for a banning order?

8 - In paragraph eight, the point needs to be reiterated that the cost of providing sites would be equal to the current cost of non-provision. (Morris and Clements).

Closing comments

It would also be useful if government policy on Travellers addressed some of the important issues raised in the ODPM report ‘The Provision and Condition of Local Authority Gypsy/Traveller sites in England’. In particular, how the 1,000-2,000 additional residential pitches, and the 2,000-2,500 additional transit pitches needed in the next five years will be provided. The report noted that:

“One of the clearest conclusions from the research is the lack of any clear, widely understood national policy towards accommodation for Gypsies and other Travellers in England, and a general feeling that such a policy is needed.”

There is also the obligation for the government to implement the Framework Convention for the Protection of National Minorities (FCPNM) through national legislation and appropriate governmental policies. The Advisory Committee, evaluating the adequacy of implementation of the FCPNM by member states, concluded with regard to the UK:

“Despite some commendable efforts, the implementation of the Framework Convention has not been fully successful as concerns Roma/Gypsies and Irish Travellers, inter alia, due to the lack of adequate stopping places as well as the significant socio-economic differences, and differences in educational levels, between Roma/Gypsies and Irish Travellers and the remaining populations.”

And:

“The Advisory Committee considers that the lack of available sites throughout the UK is problematic from the point of view of Article 5 of the Framework Convention...The Advisory Committee therefore considers that the Government and the devolved Executives should take further steps to ensure the availability of additional adequate stopping places for Roma/Gypsies and Irish Travellers.”

Gypsies and Travellers are the **only** ethnic group mentioned in the report on the UK.

The Framework Guide is an ideal opportunity for the government to address the issues raised by the Advisory Committee, and present policies and legislation to increase authorised site provision. We hope the department will take on board the serious concerns raised during this consultation.

Conclusion

We have grave anxieties that the draft Framework Guide is not in accordance with the Race Relations Amendment Act, and does not set out a realistic strategy on how more sites will be provided and thus unauthorised camping be reduced. We respectfully suggest that the Framework Guidance is in need of significant redrafting and rewording.

Yours sincerely

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