

OXFORDSHIRE GYPSY AND TRAVELLER SERVICES (OGTS)

POLICY ON UNAUTHORISED ENCAMPMENTS

INTRODUCTION

- 1.1 The County of Oxfordshire has two-tier local government, with responsibilities divided between Oxfordshire County Council and the District Councils of Cherwell, Vale of the White Horse, South Oxfordshire, West Oxfordshire and Oxford City. Policing is provided in Oxfordshire by Cherwell, West, South, Vale and the City Local Police Areas (LPA's).
- 1.2 The Equalities Act (EA) 2010 makes it unlawful to treat someone less favourably on the grounds of colour, race, nationality or ethnic or national origins. The following of a nomadic lifestyle is lawful, indeed it is a culture that is recognised and protected through the legislation. There is a growing number of Travellers in England made up of primarily Romany Gypsies. Romany Gypsies are themselves a protected group under the EA as are Irish Travellers. Additionally, the EA puts a General Duty on the police to have due regard to the need to: eliminate unlawful racial discrimination; promote equality of opportunity and good relations between persons of different racial groups. However, there is no legal right to trespass and the law provides a wide range of powers to remove such trespassers.
- 1.3 The establishment of an unauthorised encampment can raise many concerns with the landowner and neighbouring members of the settled community. Some of these concerns are perceptual and unfounded, others based on ignorance and discrimination; however there remains a sufficient number of encampments that cause high levels of anti-social behaviour and disproportionate disruption to the community into which they move.
- 1.4 The successful management of unauthorised encampments requires a partnership approach between landowners, members and officers of local government and the Police as well as co-operation from the Travelling community.
- 1.5 Nominated officers of Oxfordshire County Council will form the OGTS. The OGTS will be the focal point for all unauthorised encampment related issues in Oxfordshire. Contact can be made via either agency or through local district councils.

INTENTION

2.1 To provide a strategic policy embracing all issues surrounding the unauthorised encampment of members of the Travelling community within the county of Oxfordshire. To ensure that all policies and working practices are consistent with Government guidance and comply with specified legislation, including, the Equalities Act 2010, the Housing Act 2004 and the Human Rights Act 2000.

POLICY STATEMENT

3.1 This document is **not** a policy on Gypsies or Travellers; rather it is a policy covering the process of dealing with any individuals who trespass on land owned by another with an intention to reside.

3.2 This document explains the framework within which partnership staff are expected to act, recognising the requirement to balance the needs of a range of interested parties. Each unauthorised encampment will present several issues, many of which may be in conflict, the decision to use police powers remains at the discretion of the senior officer present. His/her decision however, must be made in accordance with this policy, and the grounds for any action/inaction fully recorded.

3.3 Proportionate enforcement action should be taken where appropriate against unauthorised encampments. Acknowledging the Government's guidance on local discretion, the Council, the Police and other Key Partners will

- make every effort to encourage use of authorised sites.
- evaluate each unauthorised encampment balancing the impact on the landscape and community against the legitimate rights and needs of Travellers
- shall take appropriate action against unauthorised encampments where necessary
- shall ensure that actions taken because of this policy will be applied fairly and impartially having *due* regard for natural justice and human rights

SUMMARY

4.1 The Partnership accepts:

- Our legal responsibilities to the settled community and Travellers in Oxfordshire and will work together within the current Government guidelines.
- The need to provide an OGTS where both the settled community and Travellers can give and receive information.
- The need to ensure ongoing consultation with stakeholders.
- The need to provide Traveller site provision in Oxfordshire including potential future requirements at either local or regional level.
- The need to set standards of behaviour to be followed by all Travellers when occupying sites in Oxfordshire.
- The necessity to consider the needs of both the settled community and Travellers before taking any action on unauthorised encampments.
- The necessity to consider the impact on either the settled or travelling community of not acting on unauthorised encampments.

THE LAW AND GOVERNMENT GUIDELINES

5.1 Unauthorised encampments are a civil law matter and individual landowners have legal rights and remedies available. The Council and the Police powers supplement landowner remedies. They do not replace them.

5.2 The powers available to both the Police and the Council when dealing with unauthorised encampments are well documented in the **Home Office and DETR Good Practice Guide on Managing Unauthorised Camping**. Any enforcement policy on unauthorised camping should balance the needs of the settled community and Travellers; in particular, the expected standards of behaviour should be the same. Attached at Appendix A is a summary of the legal powers and responsibilities of the Police and the Council.

5.3 This policy has been drafted and audited in accordance with the **Human Rights Act 2000**.

It is acknowledged that this policy has the potential to engage the following Articles: -

Article 5	Right to Liberty
Article 8	Right to Respect for Private and Family Life
Article 11	Right to Freedom of Assembly and Association

If an Article of the Convention is engaged, then the legitimacy for the engagement is provided within the text of the Article: -

Article 5(c) of the Convention (Right to Liberty) states ‘...the lawful arrest or detention of a person effected for the purposes of bringing him before a competent authority on reasonable suspicion of having committed an offence, or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so....’

Article 8 (Right to Respect for Private and Family Life) and Article 11 (Right to Freedom of Assembly and Association) provides the following limitations: -

- public safety
- prevention of disorder or crime
- protection and rights and freedoms of others

The legal basis for this policy document is derived from:

Section 61 of the Criminal Justice and Public Order Act 1994
Section 77 of the Criminal Justice and Public Order Act 1994
Common Law power of landlord in relation to trespassers on land

Prohibition on Discrimination

By engaging any of the Articles, there is the potential to engage Article 14 of the Convention. The enjoyments of the Rights and Freedoms set forth in the European Convention of Human Rights shall be secured without discrimination on any grounds, such as social origin, association with national minority, and/or status. Actions taken because of this policy will be applied fairly and impartially, having due regard for natural justice and human rights.

WIDER ENFORCEMENT ISSUES

6.1 Where issues arise on unauthorised encampments that fall outside the remit of the OGTS staff, then liaison with other agencies such as Local Planning Authorities; Customs and Excise; Department of Work and Pensions; Trading Standards; Environment Agency, Broadcast Licence Authority and Inland Revenue may be undertaken. The OGTS will develop a close working relationship with each agency to ensure they support the actions approved by the Partnership.

EVALUATION OF UNAUTHORISED ENCAMPMENTS

7.1 Members of the OGTS will attend every new site at their earliest opportunity to contact the Travellers and to complete an initial site assessment. The assessment will include details of the location, the size and behaviour of the group, any damage and litter present and the current impact of the site on the settled community (Appendix B). Each Traveller will be handed a Code of Conduct (Appendix C), which will be explained to those who are unable to read. Advice and guidance will be given to ensure that the Traveller group can co-exist with the settled community. Upon completion of the initial site assessment, OGTS Officers will complete welfare, health and educational enquiries, referring any issues to the relevant health and education services.

7.2 Each subsequent visit to the site by members of the OGTS will include a continuing assessment of welfare and aggravating factors relating to the encampment. Advice will be given where appropriate to negate issue that may result in eviction; this will be recorded within the site file. A record will be made of any changes in the level of impact on the settled community as well as requests made to the group to reduce this impact; together with any requests made by the Travellers to improve their welfare or conditions.

OPERATIONAL REVIEWS

8.1 The process to decide whether to evict an unauthorised encampment begins with the initial site assessment. Decisions to evict will be based on a combination of factors including location, size, behaviour and history of the group, impact on the settled community as well as mitigating welfare and educational needs. Each individual family will be viewed independently from the group where possible to ensure that eviction decisions are only made against those who breach the Code of Conduct and not against those who are compliant. The decision, as to which powers provided under CJPOA 94 to use, rests with the OGTS.

8.2 Any forced eviction will be co-ordinated by the OGTS with the support of the Police where necessary.

8.3 Where Travellers move from site to site within Oxfordshire appropriate evidence, such as waste left or damage caused, will be gathered to enable action to be taken to recover costs e.g. clearing site or reinstating landscaping. Visits to site should identify changes to site condition and where necessary advice to the Travellers to abide by the code of conduct will be given.

INFORMATION REQUIREMENTS

9.1 Assessment can only begin once the OGTS are made aware of an unauthorised encampment. It is important to gather intelligence on unlawful activity. Residents, Parish and neighbourhood representatives etc will be encouraged to gather such information on unauthorised encampments and report this to the OGTS.

9.2 The OGTS will provide information to each area's Crime and Disorder Reduction Partnership via nominated contacts.

SENSITIVE AREAS

10.1 The provision of authorised sites in Oxfordshire to meet the needs of Travellers brings with it the need to identify areas where unauthorised encampments will interfere with the legitimate rights of the settled community.

10.2 Sensitive areas that may lead to increased community tension include:

- parks
- schools
- recreation or sports grounds
- vehicle parking areas
- business premises
- footpaths
- bridleways
- within proximity of housing

10.3 Travellers should be discouraged from parking in these areas of Oxfordshire. If they do camp in these areas immediate action should be considered to prevent community conflict.

CODE OF CONDUCT FOR TRAVELLERS

11.1 A **Code of Conduct** will apply to all unauthorised encampments in Oxfordshire as attached at Appendix C.

11.2 Any violation of these conditions may result in OGTS Officers seeking an immediate eviction. A leaflet including these criteria will be given to each Traveller on site, and read to those when applicable.

AGREEMENT BY PARTNERS ON ACTION

12.1 To enable effective and speedy action, landowners including County, District, Town and Parish Councils can engage the services of the OGTS to deal with an unauthorised encampment. Agency status, which allows the OGTS to act on behalf of landowners, can be established either before or after occupation

of a site.

COMMUNICATION STRATEGY

13.1 **This Policy shall be published and made available to the public.** It should be considered a 'living' document where changes in law or Government guidance can be implemented quickly. Clear concise information shall be provided at unauthorised encampments detailing this policy as well as identifying the responsibilities of Travellers including the code of conduct.

13.2 This policy will be posted on the OGTS website and will be available via Freedom of Information Act enquiries. Copies will be made available to Traveller advisory and support groups.

REPRESENTATIONS AND REVIEWS

14.1 This policy will be reviewed annually.

14.2 Any person directly affected by this policy may make representations in relation to this document and/or any decision taken in consequence of it, to:

Head of Community Protection Services
Oxfordshire County Council
Graham Hill House
Electric Avenue
Ferry Hinksey Road
Oxford OX2 0BY



GM Brewer.

On behalf of Oxfordshire County Council

Legal Powers & Responsibilities

Eviction of Unauthorised Encampments

Currently, there are three legal processes to seek the eviction of unauthorised encampments:

- The Civil Law of **Trespass** (*a landowner's remedy*)
- Section 77 and 78 of the **Criminal Justice and Public Order Act 1994 (CJPOA 94)** (*Local Authority powers*).
- Section 61 and 62 A of the **CJPOA 94** (*Police powers*).

1. Civil Trespass

1.1 The **common-law** remedy of **trespass**:
is available to any landowner or occupier;
against any trespasser of whatever status, even if names are not known;
covers land, water and buildings;
may under some circumstances be used for land threatened by trespass.

1.2 Before it can be used, **the Plaintiff must prove**:
entitlement to possession (*not merely ownership*);
that the land is occupied solely by persons without consent;
that the trespassers are not tenants holding on after the end of a tenancy.

1.3 **Evidence** must be given by **affidavit** made by somebody with proper authority from the Plaintiff.

The case may be heard in either:

High Court - usually faster but more expensive *or . . .*

County Court - cheaper, but court bailiffs often have a heavy workload so the actual eviction may be delayed.

1.4 Using **court orders** in this way can be very expensive and not particularly fast.

In practice, issuing a **Direction to Leave** using Local Authority **Section 77** powers under the Criminal Justice and Public Order Act 1994 (*and relying on a certain amount of trust and goodwill from the travelling community*) is cheaper and faster.

If the circumstances fall within Police **Section 61** powers (*and the relevant ACPO guidelines governing how these powers should be used*), an eviction under these powers could be considered.

When **landowners** carry out their own civil evictions, the process inevitably takes much longer compared to our current average move-on time using Section 77 and Section 61 powers.

1.5 **Civil Procedures Rules (CPR) Part 55**

This can be used by anyone with sufficient interest in the land including, potentially, a licensee.

The CPR Part 55 has taken the place of County Court Rules Order 24 (in the County Court) and Rules of the Supreme Court Order 113 (in the High Court), both of which had previously provided the procedure for the eviction of trespassers.

Private landowners **do not** have to consider family **welfare needs** or the **educational needs of children**. However, should LA's choose to use CPR then Government Circular 18/94 comes into force and the needs must be addressed.

- 1.6 **Injunctions:** In certain circumstances, an **injunction** can be used to prevent trespass taking place (*for example: where one family has caused substantial damage over an extended period*).

Seeking an injunction can be costly and lengthy.

2. **Section 77 - 79 CJPOA 94**

- 2.1 Only Local Authorities and the Police can act under the **CJPOA 94**.

- 2.2 Section 77 of the 94 Act gives **local authorities** the power to direct individuals living in vehicles on:

highways land;

unoccupied land;

occupied land without the consent of the occupier . . .

to leave and remove vehicles and other property.

These situations are referred to as unauthorised encampments and local authorities can issue a **Direction to Leave**. Failure to leave (*or having left, returning within 3 months*) constitutes an offence.

- 2.3 If the **Direction to Leave** is ignored, local authorities can apply to the Magistrates Court for an **Order for Removal of Persons and Vehicles** under **Section 78** of the CJPOA 94 to permit the Council to enter the site and remove the encampment.

When an application is made, the court issues a **summons** requiring

the person(s) in charge of the caravan(s) to appear before the court to answer the complaint.

If the Travellers contest the eviction, the case is usually adjourned to allow enough time to hear all the evidence. Depending on how busy the Court is, this can cause delays.

- 2.4 The CJPOA 94 does not deal with the encampment only the people and vehicles within it.
- 2.5 If land is occupied but *with the consent of the owner*, after 28 days' local authorities can take action using **Planning** enforcement powers.

3. Section 61 - 62 a-e CJPOA 94

- 3.1 Section 61 of the CJPOA 94 gives the **Police** powers to direct trespassers to leave if:
 - reasonable steps have been taken by or on behalf of the occupier to ask them to leave, and . . .
 - there are two or more people intending to reside on the land in question *and they* . . .
 - are using threatening behaviour, etc.,
and/or . . .
 - are causing damage to land or property on the land,
and/or . . .
 - have 6 or more vehicles (*and/or caravans*)

Failure to comply (*or having left, returning within 3 months*) constitutes an offence.
- 3.2 Section 61 powers can be invoked for **any land** including commons or 'green lanes', but not classified roads (the highway).
- 3.3 Section 61 can also be used against anybody who may have been **lawfully on land** but have become trespassers because, for example, they have gone beyond the terms under which they were let on to or allowed to remain on the land
- 3.4 Neither the Police nor the Council have statutory obligations on when to use their powers. If eviction powers are to be used, then the Police should consider welfare matters, whilst the Council are obliged to consult other parties on welfare issues.

Circular 45/94 provides government guidance

The Police have their own internal ACPO guidelines.

There appears to be different views in different police forces about to what extent **humanitarian considerations** must be considered before using Section 61 powers, this policy complies with the policy of Thames Valley Police.

3.5 The Anti-Social Behaviour Act 2003 introduced a new **Section 62A** to the **CJPOA 94**. **Section 62A** exists alongside the **Section 61 CJPOA 94**, that is, the Police can use either power provided, of course, the necessary criteria are met. **Section 62A**, which is entitled "Power to remove trespassers: alternative site available" states as follows:

(1). If the senior Police officer present at a scene reasonably believes that the conditions in subsection (2) are satisfied in relation to a person and land, he may direct the person –

- (a) to leave the land;
- (b) to remove any vehicle and other property he has with him on the land;

(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.

(3). A direction under subsection (1) may be communicated to the person to whom it applies by any constable at the scene.

(4). Subsection (5) applies if-

- (a) a Police officer proposes to give a direction under subsection (1) in relation to a person and land, and
- (b) it appears to him that the person has one or more caravans in his possession or under his control on the land.

(5). The officer must consult every local authority within whose

area the land is situated as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site which is situated in the local authority's area.

- 3.6 Although the provisions in Section 62A are very like those in Section 61 there are some subtle and important differences.

INITIAL SITE ASSESSMENT FORM

DATE:		TIME:	
SITE NUMBER:			
LOCATION:			
LANDOWNER:			
DAMAGE PRESENT:	(Damage to gain entry & that caused whilst in situ. Also damage that had occupied prior to occupation)		
LITTER or WASTE PRESENT:			
ANIMALS PRESENT:	(Numbers tied-up/untied. Have group been advised to tie up animals? What is the risk to the public?)		
WHAT IS THE IMPACT TO THE PUBLIC / LANDOWNER?	Unacceptable/Significant/Minimal (give reasons)		
IS THERE A NEED TO EVICT NOW?	<input type="checkbox"/> NO <input type="checkbox"/> OBSTRUCTION <input type="checkbox"/> YES <input type="checkbox"/> s77 CJPOA 1994 <input type="checkbox"/> s61 CJPOA 1994 <input type="checkbox"/> Damage / <input type="checkbox"/> Threats / <input type="checkbox"/> 6 Vehicles		
WELFARE ISSUES: (This is to be completed within 24 hours of attendance)	See Welfare, Health & Educational Reporting Form (Are there any issues that would prevent eviction of all or some of the occupants? Were these issues present before this site was occupied?)		
TRAVELLERS SPOKEN TO:	<input type="checkbox"/> NO CODE OF CONDUCT ISSUED <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> YES		
ETHNIC STATUS:	Romany Gypsy / Irish Traveller / New Age Traveller / Scottish Gypsy		
ATTITUDE:	Pleasant / Dismissive / Defensive / Evasive / Abusive / Threatening		
OFFICERS NAME:			
Waste on site at initial site assessment (basic details where necessary)			

Appendix C

Code of Conduct for Travellers on Unauthorised Sites within the Oxfordshire Area.

To ensure that members of both the Settled and Travelling Communities can live together in a peaceful and unprejudiced way we expect you to comply with this code of practice and to inform us of any breaches that result from individuals who are not from your group or site. We expect you to treat the land you have occupied with respect, and to respect the rights of other people who also wish to use the area.

Behaviour that may result in your eviction from a site includes the following:

- Forcing entry to land, by causing damage to any fixtures, fittings or landscaping (including planted areas). This includes digging away of earthwork defences, which have been placed at landowner's expense to prevent trespass.
- Causing any other damage to the land itself, or property on it. Care should be taken not to cause damage to those features provided as a public amenity.
- Driving vehicles along any footpath or other right of way not specifically designed for road vehicles. This practice is not only illegal but is also highly dangerous.
- Parking vehicles or caravans on any road or footpath that causes an obstruction to other people wanting to pass by. This includes parking immediately next to footpaths.
- Dumping, burning or tipping rubbish, waste materials or trade waste such as tree cuttings, rubble, etc. You will be provided with plastic refuse bags that will be collected during or after your stay at the site. It is your responsibility to keep the site clean and tidy. Traveller Liaison Officers can direct you to Civic Amenity Sites (Council tips) where you will be able to pay to dispose of trade waste.
- Use of the area as a toilet. You must not deposit or leave human waste openly in public areas.
- Abuse, intimidation or harassment of any person who is lawfully using the area.
- Excessive noise or other forms of anti-social behaviour.
- Animals that are not kept under control or that attack persons lawfully on the land, or nearby.
- Interference with electrical, water or gas supplies. Any person(s) found abstracting electricity, or wasting quantities of water may be subject of criminal proceedings.

These codes are the same standards of behaviour that are expected of the settled community. The Oxfordshire Gypsy and Traveller Services (OGTS) is committed to ensuring that all issues that effect your stay in Oxfordshire are balanced and attended to in the most appropriate manner, however behaviour that is deemed unacceptable within society will not be tolerated.