



NFGLG
Offices 1-3
Ladygrove Mill
Ladygrove Road
Two Dales,
Nr Matlock
DE4 2FG

natlg@outlook.com

3rd March 2020

Strengthening police powers to tackle unauthorised encampments consultation – response from the National Federation of Gypsy Liaison Groups

We, the National Federation of Gypsy Liaison Groups (NFGLG), are writing in response to the Home Office's Consultation Paper "Strengthening police powers to tackle unauthorised encampments" of 5th November 2019. Founded in 2005 NFGLG is a national charity working specifically with Gypsy and Traveller people. We have some 17 member groups within the Federation drawn from across England, Scotland and Wales and from the Romany Gypsy, Irish Traveller, Welsh Gypsy, Scottish Gypsy Traveller and Roma communities.

We are putting our response in the form of a letter rather than use the form you provide as that form does not facilitate the responses we wish to give, neither does it contain the two key questions that need to be asked if the Government is effectively to address the issue of unauthorised encampments:

- i) What is the primary cause of unauthorised encampments?
- ii) Should the local authority duty to provide sites be restored?

With regard to the specific questions asked in the consultation paper we would like to point out that the wording of **questions 1-4** makes them impossible to answer accurately. For example, the journalist George Monbiot has noted, with regard to Question 1 that:

"It is pitched in such a way that; however, you might answer the questions, you are forced to agree with a profoundly illiberal idea...It's a perfect trap. If you agree, you consent to the curtailment of the traditional rights and lives of Roma and Travellers. If you disagree, you consent to the criminalisation of something much wider, which, throughout English history has been a civil matter: trespass on land"¹.

¹ <https://www.theguardian.com/commentisfree/2020/jan/15/tresspass-trap-law-land-travelling-people-rights>

The key issue here that the Government should be investigating here is not whether or not trespass should be criminalised (which we would strongly argue it should not) but rather what should be done to address the root cause of unauthorised encampments: the lack of sufficient sites (both permanent and temporary stopping places).

We are surprised that the Government should be presenting the “Irish Model” as an example of good practice as research (e.g. the RSM report of June 2017²) shows that far from leading to a reduction in Unauthorised Encampments the number of such encampments in Ireland has actually risen – by 20% over the period 2010-2015.

Further, the willingness to consider (at the very least) criminalising an entire way of life is somewhat baffling given:

- a) The fact that as of 6th June 2019 the Government has committed to delivering a “national strategy to tackle Gypsy, Roma and Traveller inequalities”³. We would very much like to hear from the Government how exactly criminalising trespass will help to address the fact that, as the former Communities Minister Lord Bourne said “members of Gypsy, Roma and Traveller communities continue to face some of the steepest challenges in society”.
- b) The fact that it would breach the rights of Gypsies and Travellers protected by Article 8 of the European Convention on Human Rights (ECHR) to respect for their traditional way of life and the positive obligation on the government to facilitate that way of life⁴.
- c) The fact that it would breach the government’s public sector equality duty under Equality Act 2010 s149 (given that the provisions would disproportionately impact Romany Gypsies and Irish Travellers who are recognised as ethnic groups).
- d) The fact that this is not supported by the Police. The overwhelming majority of Police Forces and Police and Crime Commissioners who responded to the 2018 unauthorised encampment consultation opposed the criminalisation of trespass, recognising the human rights implications this will have and seeing the issue as being closely linked to the lack of sites. The evidence for this is outlined in a November 2019 FOI request-based report⁵ produced by Friends Families and Travellers’ report which shows that: 84% of police responses did not support the criminalisation of unauthorised encampments ; 75% respondents felt current police powers were sufficient and/or proportionate; 65% said that lack of site provision was the real problem. Further, in their response to the current consultation the

² <http://www.housingagency.ie/sites/default/files/22.%2017-11-21-Independent-Review-of-Funding-for-Traveller-Specific-Accommodation.pdf>

³ <https://www.gov.uk/government/news/new-national-strategy-to-tackle-gypsy-roma-and-traveller-inequalities>

⁴ See *Chapman v UK* (2001) 33 EHRR 399 at para 96

⁵ <https://www.gypsy-traveller.org/wp-content/uploads/2019/11/FINAL-Police-oppose-criminalising-unauthorised-encampments-and-call-for-more-sites-to-be-published-9am-13.11.19.pdf>

National Police Chiefs' Council have stated that "the NPCC position is that trespass is a civil offence and it should remain so".

We would also refer you to the recent judgement (21 January 2020) in the case of *Mayor and Burgesses of London Borough of Bromley v Persons Unknown, London Gypsies and Travellers & ors* [2020] EWCA Civ 12⁶ which, we believe, means that any criminalisation of trespass or extreme increase in police powers (as proposed by the Government) would immediately amount to a breach of the ECHR and the Equality Act (as detailed above). We would particularly like to point out Lord Justice Coulson's statement that (paragraph 100):

"I consider that there is an inescapable tension between the article 8 rights of the Gypsy and Traveller community ... and the common law of trespass. The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community"

With regard to **questions 6-9** while there may be rare occasions where an Unauthorised Encampment is located in one Borough but a short distance from a transit site in another Borough this is not generally the case (not the least given the lack of transit sites generally and the lack of any apparent wish on the part of the Government to impose a duty on local authorities to provide such sites). Further we consider that "the power to direct trespassers to suitable authorised sites in a neighbouring local authority area proposal" would discourage local authorities from making site provision as they could simply rely on their neighbouring local authorities to do so. Concern has already been expressed by local authorities that this would indeed be the case. For example, in the West Midlands, Sandwell Council [who do have a transit site]'s cabinet member for regeneration and economic investment, has commented that⁷:

"There's potential for the police to be dispersing encampments from four other local authority areas into Sandwell, which is a real worry for us.

From the national perspective, there are relatively few of these transit sites around the country, so for many authorities this won't solve the problem as for many councils, there is not a bordering authority with a transit site anyway...

⁶ <http://www.statewatch.org/news/2020/jan/uk-gypsies-travellers-right-to-roam-judgment-1-20.pdf>

⁷ <https://www.expressandstar.com/news/local-hubs/sandwell/2019/02/13/council-boss-brands-government-traveller-plans-as-real-worry-for-sandwell/>

It would be unfair to leave Sandwell dealing with this issue on behalf of the whole Black Country just because we have been proactive in creating a transit site”.

We would, however, like to point out that there is a real danger that if they do provide transit sites, local authorities will simply provide “dummy” sites (as we would argue is the case in Sandwell), where sites are developed not to be used or to meet the needs of the travelling communities but rather so that Section 62 (of the Criminal Justice & Public Order Act 1994) powers can be used to remove them from the borough.

With regard to **question 10**, if the “period of time in which trespassers directed from land would be unable to return should be increased from three months to twelve months” this would, unless accompanied by a statutory duty on local authorities to provide sites, lead people being forced to be permanently mobile, never stopping as they are forced from one place to another. The question that this clearly poses is “if people are moved off of land and told they cannot return for twelve months, where exactly are they supposed to go?”

Question 11 asks “to what extent do you agree or disagree that the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised should be lowered from six to two vehicles?” As the legislation stands both a car and a caravan are defined as a vehicle. Accordingly, if the number of vehicles is reduced to two then any encampment with a caravan could be subject to a Section 61 direction to leave as a single caravan plus a towing vehicle will immediately reach the “two vehicle” threshold.

We strongly oppose the police being granted the power to remove trespassers from land that forms part of the highway (as per **question 12**). As the Community Law Partnership note in their response to this consultation:

“Gypsies and Travellers stopping for a short period on the verge of a highway is a commonplace and lawful use of the highway that has occurred for hundreds of years – see *DPP v Jones* [1999] 2 All ER 257”

We entirely concur with that view.

With regard to **questions 13 and 14**, we strongly oppose the seizure of property from trespassers. This could result in people having their homes (trailers) taken from them with the

consequent impact on their families (a potential breach of Article 3 of the UN Convention on the Rights of the Child⁸ as well as a clear breach of Article 8 of the Human Rights Act 1998⁹).

With regard to **question 15** we find the wording (as per questions 1-4) to be extremely ambiguous. We are also concerned with the use of the phrase “the public disorder issues which are associated with unauthorised encampments”. It is clear from our work with local authorities, Police forces, PCCs and local communities that only a small minority of unauthorised encampments create “public disorder issues” (however defined). Ample powers already exist to deal with the problems created by this small minority. For example, the Police already have significant powers under Sections 61, 62 and 62A of the Criminal Justice and Public Order Act of 1994. Increasing these powers would be using a very large hammer to crack a very small nut.

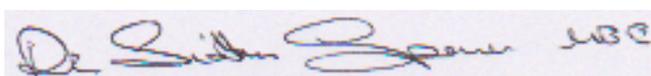
With regard to the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 and/or the criminalisation of trespass (**questions 17-18**) it is almost laughable that we are being asked to respond to the question “would [this] have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities” using a five point scale. As we have set out above the impact of the proposed changes will be entirely negative (leading to poorer outcomes for Gypsies and Travellers) while the changes themselves are unnecessary.

In summary, this consultation has missed a valuable opportunity to address the real cause of Unauthorised Encampments, namely the chronic lack of sites and stopping places. Consequently, we entirely endorse the words of the NPCC in their submission in response to this consultation:

“The solution to unauthorised encampments lies in the provision of sufficient lawful accommodation accompanied by closer working between the police, local authorities and all other public services”.

This is what the Government should be encouraging, rather than indulging in lazy “dog whistle” politics.

On behalf of NFGLG

A handwritten signature in blue ink, reading "Dr Susan Spence MBE". The signature is written in a cursive style and is positioned above a horizontal line.

⁸ <https://www.cypcs.org.uk/rights/uncrcarticles/article-3>

⁹ <https://www.equalityhumanrights.com/en/human-rights-act/article-8-respect-your-private-and-family-life>