

Aberdeen City Division, Police Scotland
Response to consultation request from Aberdeen City Council regarding
introduction of bye-law to address unauthorised camping in Aberdeen

We refer to the above and the draft report 'Proposed Byelaw for Gypsies/Travellers' (H&E/12/102) prepared by Pete Leonard for presentation to Aberdeen City Council on 1 May 2013. We thank you for the opportunity to comment on behalf of Police Scotland.

We also note that the emails dated 17 and 18 April 2013 from Martin Smith, Housing Manager, to Inspector Jim Hume advising of Aberdeen City Council's 'intention to introduce a byelaw to prevent overnight camping of caravans in council owned parks and other designated sensitive areas.'

As you will be aware, in 2004, the Scottish Government in their 'Guidelines for Managing Unauthorised Encampments by Gypsies/Travellers in Scotland' document held that Gypsy/Travellers have distinct characteristics, primarily based upon ethnicity, culture and/or a nomadic lifestyle and should therefore be regarded as a minority ethnic group. Furthermore, for the purpose of legislation, it was recommended that all policies relating to this group should be framed on this understanding and this position was adopted by all Scottish Public Authorities.

In October 2010, the Equality Act 2010 was enacted. As a consequence of this, all Public Authorities have a central role to play in improving the lives of all people in Scotland, which includes tackling disadvantage and inequality wherever they exist. The act established the public sector equality duties, known as General and Specific Duties. The General Duty requires Aberdeen City Council, in the exercise of their functions (i.e. everything they do) to have due regard to the need to:

- Eliminate unlawful discrimination and harassment and victimisation and other prohibited conduct,
- Advance equality of opportunity between people who share a relevant characteristic and those who do not, and
- Foster good relations between people who share a protected characteristic and those who do not.

To comply with the General Duty, Aberdeen City Council must have due regard to all three of these elements.

Aberdeen City Council recently published its Equality Outcomes and Mainstreaming Report 2013 - 2017, which was approved by full Council and details the obligations on the authority. We note that there are several specific references to Gypsy/Travellers in this report, particularly in respect of Outcomes 7 and 16.

Taking cognisance of the above, we wish to express our concern that in its current format, the proposal to introduce the byelaw and the report presenting this may be interpreted by some as an intention on the part of Aberdeen City Council to directly discriminate against Gypsy/Travellers. This is affirmed by the title of the report 'Proposed Byelaw for Gypsies/Travellers' and the title of the emails submitted by Mr Smith, 'Byelaw for GT's'. Therefore, the proposal may be construed by others as being contrary to the

Equality Act 2010, which could lead to Aberdeen City Council being challenged in respect of failing to comply with their General Duties.

Whilst we appreciate that it may be the case that Aberdeen City council wishes to widen the byelaw to cover all communities, rather than limit it to Gypsy/Travellers only, our understanding is that the evidence base used to inform the proposal is based exclusively on evidence of Gypsy/Traveller unauthorised encampments. Given this, it is likely that introduction of the byelaw will have a disproportionate impact on this particular minority community under the auspices of the protected characteristic of race.

We welcome the comments within Section 5 with regard to the on-going work by the Council to establish Short-term Halting Sites to alleviate the difficulties arising from Gypsy/Travellers unauthorised encampments and the recognition of the duty upon the Council to respond to the needs of Gypsy/Travellers who come in to the local authority area. We recognise the challenges associated to this and both support and endorse this on-going area of work. Police Scotland will continue to work with our partners to find long-term sustainable solutions to this sensitive area.

However, we note with concern the comments within paragraph 3 of this section, specifically the reference to '.....the very presence of Gypsies/Travellers on sensitive areas.....' and the position presented regarding the '.....fly tipping generated'. It is our belief that not all Gypsy/Traveller encampments result in fly-tipping activity, although we recognise that a number do. We also believe that both examples could be construed as discriminatory, potentially reinforce stereotypes and the terminology should be adjusted.

Furthermore, paragraph 4 again suggests that this byelaw is intended to impact specifically on Gypsy/Travellers and our comments as per above remain applicable.

In terms of the Draft Proposed Byelaw, we note that it refers specifically to

- (a) Set up, use or occupy a caravan
- (b) Sleep overnight outdoors or in a vehicle

within the restricted zone (Public Park, deemed sensitive)

We also note that the byelaw specifically applies to public land, owned or managed by the Local Authority.

This raises significant questions with regard to private land. Introduction of the byelaw does not in itself offer a solution to the challenges associated to Gypsy/Traveller unauthorised encampments within Aberdeen as a whole, but potentially displaces many of these challenges to private landowners. We recognise that it would remain the case that Aberdeen City Council would retain a degree of responsibility in the monitoring of encampments. However, civil eviction processes would defer almost exclusively to private land owners.

Additionally, if the byelaw applied only to public land, this creates inconsistency in the service Police Scotland could provide to our communities. The police could potentially take action with regard to some unauthorised encampments on public land, but would have limited powers with regard to those on private land, which could be damaging to

public confidence. However, we recognise the challenges associated to creating a byelaw which would be applicable to all areas within the boundaries of Aberdeen City for both public and private land, particularly in terms of the Equality Act 2010.

Returning to the Aberdeen City Council Equality Outcomes and Mainstreaming Report 2013 - 2017, we highlight the following Outcomes:

- Outcome 7 - Improved opportunities for people with protected characteristics to participate in public life. We note that this outcome details that the Council will ensure 'Increased participation from the Gypsy/Traveller Community.....' and would recommend that members of this community are involved in the development of this proposal. This is particularly relevant to those likely to be directly affected, predominantly English/Irish Travellers, or their representatives.
- Outcome 15 - Accommodation that meets the needs, culture and lifestyle of Gypsy/Travellers normally resident in, and visiting, the city of Aberdeen. Again, we acknowledge the efforts being made by Aberdeen City Council to identify suitable Short-term Halting Sites, but would suggest that, in the absence of these, the proposed byelaw undermines the commitment made in this recently published Equality Outcome.

Finally, we would wish to clarify what would be defined as 'sensitive areas' and how introduction of the proposed byelaw will impact on the current Aberdeen City Council policy for the management of unauthorised encampments?

Our understanding of Aberdeen City Council's current policy is that the authorities default position is that they will not evict Gypsy/Travellers without due cause from land that they own or manage, although the emphasis placed on this statement varies dependent upon the location.

In keeping with current and past policies, there are a variety of locations that Aberdeen City Council have deemed to be unsuitable to allow an unauthorised encampment to remain, where it would be anticipated that they would instigate immediate action to move the encampment on. This could include sites of special scientific interest, sites where pollution could damage water courses/the water supply, sites affected by land contamination, sites which present a serious threat to road safety or the safety of other users, operational council premises such as park & ride facilities and civic amenity/recycling centres, country parks, public parks and playing fields.

We note that, although the above list is extensive and would encompass most areas where an encampment would be most likely to be established on public land, the Council does not specify what may be deemed to be a 'suitable' location in the absence of adequate site provision.

In conclusion, the proposal to introduce the byelaw in its current format and the evidence used to support it requires further consideration. We recommend that before any decision is taken to progress this matter further, a full and robust Equality and Human Rights Impact Assessment is conducted with appropriate consultation undertaken.

This will ensure that decisions taken by the council in this regard can be justified in terms

of legality, proportionality and necessity, supported by a strong evidence base. Failure to do so, or to disregard appropriate evidence, could potentially render the Council liable to future legal challenge and reputational damage.