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Date: **2 September 2013**
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SUPPLEMENTARY CABINET AGENDA

12 SEPTEMBER 2013

A meeting of the Cabinet will be held at **7.00 pm on Thursday, 12 September 2013** in the Council Chamber, Cecil Street, Margate, Kent.

Membership:

Councillor C Hart (Chairman); Councillors: Everitt, Fenner, D Green, Johnston and Poole

A G E N D A

Item
No

Subject

11. **TRAVELLERS' PROTOCOL** (Pages 1 - 18)

This report replaces the report published in the original agenda.

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MANAGEMENT ARRANGEMENTS FOR TRAVELLER AND GYPSY INCURSIONS IN THE DISTRICT

To: **Cabinet**

Main Portfolio Area: **Community Services**

By: **Janice Wason**

Classification: **Unrestricted**

Ward: **All**

Summary: Following an incursion by Travellers in April this year, TDC officers have prepared a new protocol which sets out how these incursions and other illegal encampments can be managed and by whom.

For Information

1.0 Introduction and Background

- 1.1 Incursions by Travellers, Romanies or Gypsies are very rare in Thanet – only two or three have been noted in the last 5 years.
- 1.2 The incursion in April was the first time that many staff had been involved with such an event, and although it was well managed in general terms, Officers did agree at a subsequent debrief, that a protocol and decision-making flow-chart would be an appropriate document to ensure that roles and responsibilities were well understood.
- 1.3 This document therefore proposes how the Council should respond in the event of further incursions into the District, bearing in mind that the outcome will generally speaking be eviction, particularly where the community have set up an illegal encampment on TDC land.
- 1.4 Generally speaking, where an encampment is established on land **not owned** by TDC, then we would not seek to make an intervention. Instead TDC would advise and support the Landowner on how to manage that incursion in the first instance, if that was requested by the Landowner. The Police can still use Public Order powers if necessary.
- 1.5 Kent Police can evict at any time through the use of Section 61 of the Criminal Justice and Public Order Act 1994 (CJPOA). However, the Travellers must be showing Anti-Social Behaviour or Criminality to allow them to use this power.

2.0 Next Steps

- 2.1 A new draft protocol is attached including a Flow-Chart and a copy of the new Encampment Monitoring Form.

3.0 The Process in Outline

- 3.1 When an incursion takes place then notification should be made to the Community Safety Manager or their line-manager in the first instance. They will then liaise with Kent Police to confirm the authenticity of the report.

- 3.2 The Community Safety Manager will then notify the Housing Manager, Communications Manager and the Legal team, and meet to agree the legal eviction process. Other officers will then be brought in to begin the process of liaising with the required agencies (Police and Health) as well as ensuring that all legal requirements are met to proceed with action for an eviction. There are various legislative options which will apply in different places and Legal will play a vital role in making that determination and making arrangements for any Court hearings to take place.
- 3.3 It is a requirement of the Courts that we show that we have considered any welfare issues and have made suitable provision for them. First of all, a small team shall visit the encampment and hand over the first eviction notice. This is a simple request to leave within 24 hours, and notification that non-compliance will lead to a Court request for an eviction. An Encampment Monitoring Form will be completed by the visiting team and welfare issues considered with referrals being made as appropriate. In the recent incursion, a Health Visitor was required due to the late-stage pregnancies of two women.
- 3.4 If and when the first notice to leave is ignored, then the Legal Team can, if appropriate, issue a further legal notice which formally directs the “unauthorised campers” to leave the land. There is generally a time lag to this order – 24 or 48 hours for example – to allow the community to leave.
- 3.5 If and when the order is not complied with, then TDC can apply to the Courts for a hearing and a Court Order to evict. There must be clear evidence that we have met all the needs of the legislation to satisfy the Courts that an eviction can go ahead.
- 3.6 During this whole process, the Community Safety team, Communications team, Housing team and Legal team should be having a daily meeting to ensure that there is clarity of roles, actions and updates as required.
- 3.7 This team will be responsible for creating an eviction plan. It is usual that when planning an eviction, TDC officers would need to be in high-visibility clothing, have access to tow-trucks etc and be well briefed for the threat of any physical or verbal abuse that may be directed at them.
- 3.8 In practice, an eviction is unlikely – Gypsy, Roma and Traveller communities are very well aware of their rights and tend to move on before a formal eviction takes place. Engagement and negotiation with the encampment has a strong role to play in ensuring a swift removal of the encampment.
- 3.9 Throughout this process, the Police can still take action if required through their own powers (Section 61 of the 1994 Criminal Justice and Public Disorder Act). In practice they can be reluctant to use these, but should they establish clear evidence of criminal or anti-social behaviour, they can use this as a trigger to intervene.

4.0 Corporate Implications

4.1 Financial and VAT

- 4.1.1 When an incursion takes place, then there will be demands on staff time across the organisation. The likelihood is that the only direct budgetary spend could be with the Legal team should they require additional specialist advice or need to pay Court fees.
- 4.1.2 However, there may be a loss of income should an incursion take place on a car park as people would avoid using it whilst the travelling community were there. There would be additional resources required from Waste and Recycling for site cleansing, and potentially Maintenance teams should the site need restitution after the incursion.
- 4.1.3 Should an eviction actually be required, then staff and additional resources will have to be brought in. These potentially include towing vehicles, security staff etc. These costs can

be determined during the incursion period and would be dependent on the nature and extent of the incursion.

4.2 Legal

4.2.1 There are a range of Legal options to explore in managing an Incursion and subsequent eviction and these are outlined in the attached protocol. Although Section 77 is often quoted as the significant piece of legislation, it is not the only legal route available depending on land ownership and sensitivity – Part 55 of the Civil Procedure Rules which deals with trespass and eviction could be a more pertinent piece of legislation in meeting local needs.

4.3 Corporate

4.3.1 Traveller, Roma and Gypsy incursions can cause reputational damage for the District as they raise concerns with local residents particularly around community safety. The protocol has been written so that it can be used by Communications, Councillors and other agencies to establish the parameters, limitations and preparations that the Council must make in dealing with such a situation.

4.4 Equity and Equalities

4.4.1 We have a duty to protect the interests and rights of the Traveller, Roma and Gypsy community as minority groups, as well as local residents and these are outlined and provided for in the attached protocol.

5.0 Recommendation(s)

5.1 To note the Protocol

Future Meeting if applicable: Cabinet	Date: 12 September 2013
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Contact Officer:	Janice Wason, Strategic Community Manager,
Reporting to:	Madeline Homer, Director of Community Services

Annex List

Annex 1	Travellers Protocol
Annex 2	Flow Chart
Annex 3	Encampment Monitoring Form

Background Papers

Title	Details of where to access copy
None	

Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Services Manager and Deputy S.151 Officer
Legal	Harvey Patterson, Corporate and Regulatory Services Manager

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Protocol on Managing Incursions by Gypsy or Traveller Communities in Thanet

Prepared August 2013

To be reviewed in August 2015

Author: Janice Wason, Strategic Community Manager

1. Aims of the Protocol

- 1.1. The aim of this protocol is to address the need for an effective approach to the management of unauthorised Gypsy and Traveller encampments on Thanet District Council land, whilst ensuring that the rights of Thanet's local settled community and the Gypsy and Traveller communities are balanced.
- 1.2. It should clarify and agree internal working arrangements around unauthorised encampments across TDC departments and services so that any future incursions can be managed successfully, swiftly and without detriment to any group.
- 1.3. This is a protocol and not a strategy and as such can be used to provide information to other local agencies, particularly Kent Police, Health and Charitable organisations as well as to our own Councillors and their constituents, on how we will manage an incursion on our land including key officers and triggers for action or not.
- 1.4. The final aim is to achieve, where possible, a locally negotiated and agreed end to the unauthorised encampment that avoids a formal eviction process. However this Protocol sets out what the formal process for the eviction may be and the responsible officers from across TDC.

2. Roles and Responsibilities

- 2.1. The law is clear - managing unauthorised encampments must involve a balance between the rights of the landowner and/or wider community and the rights and welfare needs of the unauthorised encampment. Local authorities have a statutory duty to ensure that both sides are fairly represented when it comes to unauthorised encampments on public land.
- 2.2. Different agencies involved with unauthorised encampments have different roles and in dealing with encampments it is important that roles are clearly defined to minimise duplication and ensure that both the Travellers and the local settled community know who to contact for specific issues.
- 2.3. The Traveller Team at Kent County Council provides a strategic role on Gypsies and Travellers and manages the permanent public residential and transit sites across Kent. Districts and boroughs across Kent have a duty to identify appropriate Traveller Site provision through their Local Development Plans; in the longer term this should lead to a reduction in unauthorised encampments. There are no authorised camp sites in Thanet and it is unlikely that strategically we would need to provide a site in the near future.
- 2.4. Kent Police will and do work closely with local authorities during an incursion and assist and support the approach of partnership discussion and dialogue with Gypsy and Traveller groups. The Police must take account of the issues of behaviour, whether criminal, antisocial behaviour or nuisance by both Travellers and the settled community in combination with the impact on the landowner rather than simply because encampments are present at a specific location. Kent Police have powers to evict without recourse to the Courts should they have sufficient evidence of criminal or anti-social behaviour.
- 2.5. Remember that Gypsy and Traveller incursions in Thanet are rare – there have been only 2 in the last 6 years that have involved the Council in some way – the most recent at King George V Park in Ramsgate in April 2013.

3. Procedure for Managing an Incursion and Unauthorised Encampment

Please see attached flow-chart - Appendix 1

- 3.1. On receiving an initial notification of an unauthorised encampment all staff should be clear that the **Designated Officer** to deal with a Gypsy or Traveller incursion in Thanet is the **Community Safety Manager** and that Officer should be the first point of contact for all enquiries. If the Community Safety Manager is not available then their Line Manager, or direct deputy in the Community Safety team should be the next person to contact.
- 3.2. Customer Services, TDC staff and Councillors should be aware of who is the Designated Officer and make reports as necessary to them. This protocol should be reviewed and contact details updated as soon as practicable after any changes have been made.
- 3.3. The Community Safety Manager will undertake the following initial steps before taking any further action:
 - Establish that an incursion and illegal encampment is actually taking place. We are a coastal area and groups of caravans and motor-homes are not unusual.
 - Establish, if possible, the identity of the Landowner.
 - Contact Kent Police and the KCC Traveller Team to alert them to the incursion.
 - Notify Communications that an incursion is taking place.
 - Monitor the situation and reporting as required.
- 3.4. If the encampment is set up on TDC land then the Designated Officer shall:
 - Notify the relevant other TDC officers – Housing, Legal and Communications that we do have an incursion and set up the necessary meetings;
 - Inform SMT of the nature and location of the encampment
 - Inform the Traveller Team at Kent County Council.
 - Inform the appropriate Ward Councillors and Cabinet Members and provide a copy of this Protocol for their information.
- 3.5. At the first meeting the Lead Team shall consider:
 - Who owns the Land?
 - Determine the role of TDC on the basis of that ownership and considering the following
 - If the Land is in private ownership is it commercially sensitive?
 - Or does it belong to someone who is vulnerable and will need some support?
 - Determine
 - Inform the Traveller Team at Kent County Council.
 - Inform the appropriate Ward Councillors and Cabinet Members and provide a copy of this Protocol for their information.

4. Encampment Monitoring and Welfare Visits

- 4.1. The Designated Officer will consider the need for a joint visit to the encampment with the officers of any other principal partner agencies and will appoint a Lead Liaison Officer to undertake site visits with a small team as appropriate.

It is good practice to visit the site on the day of the encampment being established and certainly within one working day of that. Therefore the Monitoring Team must be given due freedoms from other duties by their line-manager to aid the legal process.

4.2. When a visit is made, the Lead Liaison Officer will complete an **Encampment Monitoring Form (Appendix 2)** and note the following;

- advise and liaise with individuals and families about ownership of land, and advise on where the nearest official Gypsy and Traveller sites are;
- ask the Travellers the purpose of their encampment and how long they are planning to stay;
- undertake a preliminary welfare check in co-operation with the Travellers making a note of any obvious needs;
- make general observations of the encampment, e.g. details noticed at the time of the visit, of which not orally advised (e.g. if there is a heavily pregnant woman on-site, or children not in education, or people with physical, learning or sensory disabilities);
- consider the possible impacts of the encampment on the local community i.e. are they impeding access to public facilities or in a high profile location
- if the encampment is close to a busy road, comment on the safety of the location from the Travellers and other road users' perspective;
- check the availability of any transit provision or emergency stopping place and advise the Travellers accordingly;
- advise the Travellers that partner agencies (e.g., the relevant Health Trust and Children & Young People's Services) may be contacted, and that they may also visit the site;
- consider what facilities may need to be put in place e.g. chemical toilets and household waste disposal.
- Where possible, the Visiting Officer should take note of any homes or businesses potentially impacted by the unauthorised encampment.
- On return to the office, ensure that the Encampment Monitoring Form is shared with the Designated Officer and the co-ordinating team for their information.

5. Communications

5.1 The Lead Team should agree when and how to manage information to local Councillors, the local community, local press and the best platforms for releasing that information – social media, website, formal press releases etc. If it is appropriate, that team can also determine and plan for the information needs of those who have been potentially impacted by the unauthorised encampment such as neighbouring houses and businesses.

6. Toleration of an Unauthorised Encampment

- 6.1. There are a number of legal routes to eviction, however before eviction is pursued toleration must be considered, due to the national lack of permanent provision for Gypsies and Travellers. Unauthorised encampments are almost always, by definition, unlawful. However, while there are insufficient authorised sites, it is recognised that some unauthorised camping will continue. Circular 18/94 and case law make clear that all encampments should be 'tolerated' while welfare enquiries are being carried out or where Gypsy and Traveller needs make immediate eviction unreasonable.
- 6.2. Toleration should be limited to 28 days. Extensions beyond 28 days may be considered in exceptional circumstances. A tolerated encampment should not be re-occupied by the same Gypsies/Travellers within six months, and preferably should not be used by any other Gypsies/ Travellers for at least 28 days.
- 6.3. In considering whether to tolerate an encampment, the first consideration must be the location and the immediate impact on the settled community. Consideration should also be given to the visual impact of the encampment; a discreet and unobtrusive location will be more suitable than one that can be seen by large numbers of the public.
- 6.4. Health and Welfare needs that might lead to consideration of formal toleration include: accessing urgent medical attention; i.e. a surgical procedure or other acute medical (but not chronic need); or a complication in pregnancy or post natal care. If there is an agreement to tolerate, consideration will need to be given as to whether it is appropriate to make provision for a water supply, toilet provision or rubbish clearance.

7. Unacceptable locations

- 7.1. There are locations, however, where an encampment will not normally be acceptable under any circumstances. Each encampment location must be considered on its own merits against criteria such as health and safety considerations for the unauthorised campers, traffic hazard, public health risks, serious environmental damage, and genuine nuisance to neighbours and proximity to other sensitive land-uses.
- 7.2. Set out below is a list of the types of site where unauthorised camping would not normally be acceptable:
 - A Site of Special Scientific Interest (SSSI) where an encampment endangers a sensitive environment or wildlife
 - School car park or playing fields (especially in term time)
 - A town centre public park
 - Car parks, including hospital, supermarket or leisure facility car parks
 - Land on an industrial estate or business park
 - Recreation ground and public playing fields
 - A site where pollution from vehicles or dumping could damage ground water or water courses
 - A derelict area with toxic waste or other serious ground pollution

- A village green or other open area within a residential area
- The verge of a busy road where fast traffic is a danger to unauthorised campers or their children

8. Costs

8.1 Each landowner (public or private) will be responsible for covering the costs of any legal action and the associated costs of managing the encampment including the provision of facilities such as chemical toilets, and ensuring the clearance of land that may be necessary after the encampment moves on.

9. Eviction

9.1. As the law stands, it is the **Landowner** who must apply for an eviction notice. The decision to request an eviction must be carefully documented in case of legal challenge. Such decisions must be:

- Lawful - taking into account legislation and policy;
- Reasonable - in the legal sense, not being perverse or irrational;
- Balanced - taking into account the needs and rights of both those on the encampment and the settled community affected; and
- Proportionate - in response to the prevailing circumstances that surround the encampment.

9.2. Where the Council is seeking to initiate an eviction, then it is good practice to ensure that the Police (normally the District Commander or Divisional Duty Inspector) has been consulted at an early stage to ensure an appropriate involvement in the planning process.

9.3. A summary of the legislation relating to eviction is detailed below but the involvement of TDC Legal Team is crucial to ensure that all legislation is being met.

10. Summary of Thanet District Council Powers

10.1 Legal will always advise on the best legal framework to use in an eviction scenario, based on the nature and type of incursion or encampment that has been established. However there are two pieces of legislation which can be particularly useful and which are often quoted in these situations.

10.2 First of these is Part 55 of the Civil Procedures Rules can be used by Local Authorities and private Landowners who require the removal of trespassers from property including land. The claim must be issued in a County Court (such as the one in Margate). The “ordinary” possession order may be used regardless of whether the property is a building or open land, and regardless of the type of squatter or trespasser. A possession order may be secured quickly – a minimum of 2 days notice is required - against trespassers on open land.

- 10.3 Section 77 of the Criminal Justice and Public Order Act 1994 deals with people residing in vehicles including caravans on land. It can be used on any land within the local authority regardless of ownership and seeks to remove named individuals from the land. It is an offence not to comply with such a direction, and if that happens, the Local Authority can apply to the Magistrates Court (Dover or Canterbury) to see the removal of vehicles and occupants from the land. Possession is enforced by local authority officers or private bailiffs and any return within 3 months carries criminal sanctions.

11. Police Powers (does not require recourse to Courts)

- 11.1 Kent Police have their own operational policy on unauthorised encampments - M133 Unlawful Encampments http://www.kent.police.uk/about_us/policies/m/m133.html. This outlines the role and process to be followed by Kent Police and their Officers in respect of powers exercised under Section 61, 62 and 62 A to E of the Criminal Justice and Public Order Act of 1994 (CJPOA 1994).

- 11.2 **Section 61 of CJPOA** allows the senior police officer attending the scene of an incident involving a trespass or nuisance on land to order trespassers to leave the land and to remove their vehicles as soon as reasonably practicable. If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are 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 six or more vehicles on the land.

Police will only use this power if there is no alternative site available and it is immediately necessary due to the unacceptable location of the encampment or because there is crime or anti-social behaviour that cannot be managed by normal policing. The mere fact of an encampment without any aggravating factors will not normally enable the Police to use this power.

- 11.3 **Section 62 of CJPOA** - Section 62A of the Criminal Justice and Public Order Act 1994 creates a power for a senior police officer to direct a person to leave land and remove any vehicle or other property with him on that land. It details how persons, vehicles and caravans etc can be moved when a senior police officer present believes that the conditions set out in Section 62 have been reasonably met.
- 11.4 If a travelling community fails to comply with directions given by police then there are powers of arrest and seizure of vehicles. If there is a Section 62(a) direction in force then this applies for three months and it is an offence to commit further trespass with the intention of residing during this period.

12. Privately owned land

- 12.1 Usually Councils will not take action to evict where there is an unauthorised encampment on privately owned land. It is the responsibility of the landowner to arrange for evictions when necessary, with the support of the police. On receipt of initial notification of an unauthorised encampment on private land where it is appropriate and possible, a welfare assessment may be undertaken by the relevant District or County Team. Government bodies such as the

Forestry Commission have a legal obligation to carry out welfare assessments before considering eviction; however this duty is not required by private landowners such as farmers.

- 12.2 Usually, the relevant District or County Team will notify the owner of the land of the encampment and advise on how to effectively manage unauthorised encampments, and the related powers available to recover possession of the land. Where there is an urgent need to remove the encampment, the police may use their powers. However the usual legislation for Private Landowners to use is **Part 55 of the Civil Procedure Rules** as noted above.
- 12.3 Welfare checks, any evidence relating to the encampment including photographs and witness statements and the relevant documentation must be presented to the Court Manager and a court date is set. The Court provides a claim form to serve on the defendants. This will be served by a process server which can be a Council Official if required. At the hearing, if the judge grants a possession a warrant is issued. Bailiffs visit the encampment and serve the warrant for eviction which must allow 24 hours before being enacted. Bailiffs will enact the eviction if necessary after which the landowner signs to say they have repossession of the land.
- 12.4 Where the owner does not take action to recover the land and the encampment is giving rise to serious disruption or nuisance, the police, the appropriate Traveller Team and the relevant council should discuss possible solutions. If action is to be taken, the procedure for council-owned land should be followed.
- 12.5 Where private landowners are using common law powers, or have obtained the relevant power via civil proceedings, Police Officers may be called upon to attend to prevent a breach of the peace or to prevent or detect crimes committed by either party during the eviction. In such instances the role of the Police will not be to assist bailiffs or landowners in the eviction itself. Such requests for Police attendance will be judged on a case by case basis, with attendance not being an automatic assumption.

13. Anti Social Behaviour

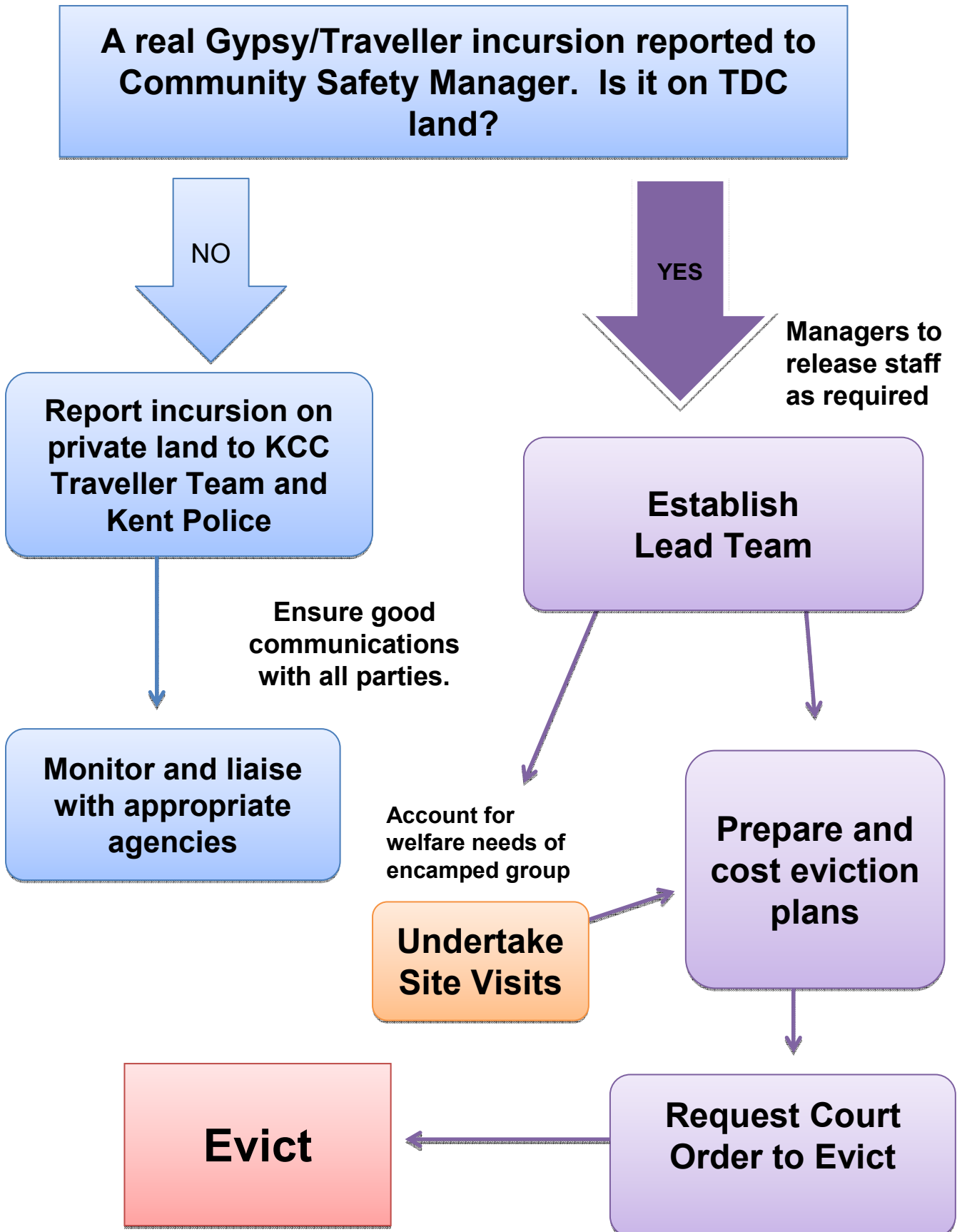
- 13.1 In April 2010 the Department for Communities and Local Government issued guidance on anti-social behaviour related to Gypsies and Travellers in an effort to ensure consistency among agencies in their approach to tackling anti-social behaviour associated with Gypsies and Travellers, whether they are victims or perpetrators. The guidance states that there needs to be good co-operation between local authorities and other agencies such as the police and the Environment Agency to address or prevent anti-social and also criminal behaviour on issues such as hate crime, untaxed vehicles, fly-tipping and unlicensed waste carriage.

14. Hate crime

- 14.1 Travellers and Gypsies will be encouraged to report any issues of hate crime to the Police for investigation. Relevant officers must ensure that the public are made aware that racist comments and language will not be tolerated and may be reported to the Police.
- 14.2 There should be a commitment on the part of agencies to apply the same approach to travelling communities as they would to the settled population; in terms of evidence gathering, prosecution where appropriate and payment of fines.

14.3 Other regulatory frameworks are available to combat anti-social behaviour including: Acceptable Behaviour Contracts (ABCs) and Anti-Social Behaviour Orders (ASBOs). Other sections of relevance include: noise and other statutory nuisance such as fly-tipping and straying livestock.

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ENCAMPMENT MONITORING FORM

Date of Visit

Visit No:	Lead Officer:	Names of other Officers and Agencies:
Purpose of Encampment:		Intended Duration of Stay:
Number and Names of Families on site:		Stated Welfare Needs:
Number and type of vehicles: <i>(Please record registrations)</i>		Other Welfare Needs:
General observations on safety of site: (gas bottles, livestock, entrance, exit to site etc)		
What additional facilities may be required (water, rubbish bags, portable toilets)		
Note impact on local residents and businesses:		

