

Blackburn with Darwen Borough Council

Managing Unauthorised Encampments / Sites Protocol

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About this Protocol

This Protocol sets out Blackburn with Darwen Borough Council's approach to dealing with any persons who trespass on land owned by someone else with an intention to reside, either on a temporary or permanent basis.

An unauthorised encampment occurs where any person camps (in vans, trailers or any other moveable accommodation) or moves on to land that they do not own and where they do not have permission to reside.

This document sets out the protocol for BWDBC officers. Relevant officers have been issued with a 'Managing Unauthorised Encampments Call-Out Pack', which contains a copy of the protocol, duplicate copies of the letters and forms required as set out in the Protocol Appendices and a personal alarm.

Principles

The Council has adopted a coordinated partnership approach to managing unauthorised encampments which is based on the following:

- Gypsies and Travellers are protected by the law from racial discrimination.
- The Borough accepts that the Gypsies and Travellers community have their own needs; however it will adopt a robust approach to managing unauthorised encampments.
- The Protocol is commenced when an unauthorised encampment is identified and this is co-ordinated by Capita Property Management and Development.
- The legal process is outside the Council's control and is dependent on the availability of Bailiffs and Court dates.
- The Council will always liaise with the police who do have more immediate powers available if the circumstances are correct and where it is appropriate to exercise them.
- The Council will consider other potential sites that the travellers may move to or be directed to, any security/property concerns, plans for future cleanup and security of the site once travellers have left.
- The Council is duty bound to undertake a welfare check, this will be under taken as part of a site visit assessment.
- Communication will take place with key officers, Switch Board, Councillors, the media etc.

The Protocol

Stage 1: Process of notification and initial decision on action

- Notification and/or complaint of unauthorised encampment within the Borough.
- All notifications received should be reported centrally to Capita Property Management and Development who will request various actions/support from service areas as required. For encampments on the Highway Highways Section should also be notified.
- Out of Hours - please note: If the notification is out of hours or on a weekend, the Police will notify a member of the Out of Hours Team¹ directly. The Out of Hours Team will then notify Capita Property Management and Development at the earliest opportunity. For encampments on the Highway they should also notify the Highways Section.
- Capita's Property Management and Development team lead officer must determine from the Land Registry the ownership of the encampment site. Do we own the land? Or is it public use land? (See section 'C' below).

a. The land is not owned by the Borough Council or public use land

The Borough Council is generally not responsible for this. Contact the owner where practicable and send advice and sign posting leaflet if required (Appendix 6). The Community Safety Team maintain a central register of illegal encampments, this should be updated accordingly. If the land owner is absent or fails to co-operate then the Council may take action to remove the trespassers itself or may choose to take enforcement action against the land owner for allowing the land to be used as a caravan site without the benefit of planning permission. If there is crime and disorder, the Police can use their powers under the Criminal Justice and Public Order Act, even if the land is private. This will be for the Police to determine.

End of process.

b. The land is owned by the Council

Capita Property Management and Development notify the Police and update the Legal Services Team. Capita Property Management and Development and / or the Highways Section, attended by the Police, will arrange a visit to undertake a site assessment. This includes:

- Serving a 24 hour notice to leave from the Council (Appendix 2). Legal Services to approve notices prior to service and advise on the method of service.
- Discussing the code of conduct with the encampment (Appendix 3).

¹ Out of Hours Team can be contacted on 07970 841192. The team may assist with what measures can/should be put in place/undertaken until formal action is taken by the Council on the first working day. They will work with the Police to utilise powers under the CJPOA to remove unauthorised encampments as quickly as possible in the first instances if the sites meet the criteria for use of such powers.

- Undertaking welfare checks including consideration of adult and children safeguarding support and interventions / reporting (Appendix 4).
- Gathering of any additional information and/or evidence including written records and photographic evidence as appropriate (Appendix 4 and 7 for specific guidance).
- Determination /offer of pre-emptive provisions to reduce damage and environmental health issues. (E.g. bins, skip, toilets etc. as appropriate) while the encampment is present.

Where land is not owned by the Council but is highway maintainable at the public expense for which the Council is the Highways Authority the highway land is vested in the Council as Highways Authority.

The visiting officer should inform /liaise with other agencies as appropriate:

- The Multi Agency Safeguarding Hub should be informed of any unauthorised encampments where there are safeguarding/welfare concerns relating to children.
- The Adult Safeguarding Team should be informed of any unauthorised encampments where there are safeguarding/welfare concerns relating to vulnerable adults.
- Inclusion Team should be informed of any unauthorised encampments where there are school attendance and/or school behaviour issues arising.
- Any other welfare issues arising from the site assessment should be directed to relevant departments as appropriate, or to other agencies directly – see Appendix 5 for key contacts signposting.

Any issues arising from the site visit/assessment should be reported and actioned appropriately.

The lead Capita Property Management and Development Officer should liaise with teams internally and/or other agencies as and where appropriate for actions arising from the site assessment visit including welfare issues. NB: An unauthorised encampment would not be moved on/evicted if there are significant welfare issues identified (until resolved).

If there are no welfare issues arising from the site assessment, the lead Capita Property Management and Development Officer, with approval from the Community Safety Team Manager in liaison with the Director of Adults, Neighbourhoods and Community Protection [or in his absence the Director of Environment and Leisure], should notify Legal Services to commence the eviction process application via the Court. Go to Stage 2 and 3.

c. The Land is deemed public use land/ recreational ground under the Criminal Justice and Public Order Act (CJPO Act).

The Police have powers to remove trespassers on land very quickly under the **Criminal Justice and Public Order Act 1994**. The Police can enact *Section 61* of the CJPO Act (covering land for public use, obstruction recreational grounds or public disorder) to remove the encampment. Liaison with the Police should determine this. Regardless of whether this power is utilised, the Council should still undertake a site visit complete a site assessment record, serve a code of conduct and notice to leave, as best practice, as above, in the event that the land is Council owned.

Land is vacated. Go to Stage 3.

Stage 2: Process for Eviction

- If the decision to evict has been authorised by the Community Safety Team Manager, in liaison with the Director of Adults, Neighbourhoods and Community Protection, Capita Property Management and Development / Highways Section should determine whether the encampment has moved on/vacated the land. If the land remains occupied Legal Services should be informed and will thereafter commence proceedings via the court for a possession order.
- As a general rule, the Council usually follows the County Court process, but the Magistrates Court procedure is also available for use. Timescale is dependent on court dates and whether the County Court or Magistrates' Court² procedure is used. This decision will be made by the Legal Team on a case by case basis and will be based on consideration of both cost and time (i.e. speed of court listings).

Magistrates' Court

- Legal Services will request the Direction to leave under S77 Criminal Justice and Public Order Act 1994. It is served on the encampment, by Capita Property Management and Development and the Police, this states the travellers must leave the land immediately.
- Failure to move on immediately results in the Council applying to the Magistrates' Court for an Order for the travellers' removal. The Council is in the Court's hands for listing.
- The summons is prepared by the Council and sent to the Court for approval and signature.
- Summons is returned and Capita Property Management and Development attends with the Police to serve it on the travellers.
- Council attends the Magistrates' Court and seeks an Order for removal
- The Order is served on the travellers by Capita Property Management and Development with Police assistance on the same day. They are usually given 24

² The Magistrates' Court Procedure is only available to local authorities.

hours notice to leave. Thereafter, Property Services and the Police arrange for effective removal and enforcement of the Order.

County Court

- Application for possession is lodged at Court and issued.
- Legal Services will request that Court proceeding papers are served on the encampment with the hearing date details by Capita Property Management and Development and Police and will advise on the method of service.
- Council attends the County Court on the hearing date and seeks a possession order.
- Once the possession order is granted by the Court, this should be served on the encampment on the same day by Capita Property Management and Development and the Police, usually giving 24 hours or a specified date by which to vacate the site.
- Capita Property Management and Development should follow up after 24 hours. If the land is still not vacated, Legal Services should be informed and they will apply for a Warrant of Possession. This will be served by Capita Property Management and Development and the Police giving 24 hours notice to vacate. Thereafter the Police and Bailiffs should be arranged for effective removal and enforcement of the court eviction order.

Stage 3: Following vacation of land / eviction

- Capita Property Management and Development / Highways Section to notify Community Safety Team of the outcome of action so that the central register can be updated accordingly.
- Once the land has been vacated Capita Property Management and Development / Highways Section should notify the Environment Section to arrange for site clean up (for fly tipping etc.). If there is hazardous waste the Environment Section will arrange for a specialist contractor to clear it.
- Capita Property Management and Development will notify the Asset Management Group to assist the relevant department to arrange for the site to be secured where appropriate.
- Capita Property Management and Development, Highways Section, Environment Section and Legal Services Section should update any costs they have incurred (pre and post vacation) element of the central register.
- Need to consider any appropriate arrangements to prevent further access to the site or land.

Checklist of people to keep informed / updated on incidents

Illegal encampments create a great deal of media interest. Councillors should be regularly informed of any actions / progress which is ongoing.

Switchboard should be kept updated so they can advise callers.

The principles of the Protocol must be applied in relation to all communication with illegal site/land occupants. In particular, Gypsies and Travellers are protected by law from racial discrimination.

The following must be kept informed:

- All Councillors – All Councillors email distribution list
- All Managers - Managers email distribution list
- Switch Board
- Website 'news' from home page for all residents – update in progress during incident. The Legal Services Section is responsible for requesting communications to update the website.

Monitoring, Evaluation and Review

This Protocol will be reviewed periodically as and when required.

Further Information

Key Contact Details:

- Capita Property Management and Development : 01254273820
- Highways Section: 01254 585024
- Head of Legal Services: 01254 585252
- Community Safety Manager: 01254 585513

The officers within Capita Property Management and Development / Highways Section that are responsible for undertaking site visit assessments can be contacted on the following numbers:

Capita Property Management and Development:

- 01254 27 3564 - Lead Officer - Senior G.I.S. Technician
- 01254 27 3576 - Senior Technician

Highways Section:

- 01254 58 5024 / 07766578007 – Lead Officer – Street Works Manager
- 01254 58 5036 – Street Works Team Leader

Note that these named officers and Capita Property Management and Development / Highways Section are aware of the Health and Safety and Risk Assessment procedures that must be followed when carrying out this task. See Appendix 7 for more details.

Appendix 1: Flowchart Process of Protocol

Stage 1: Process of notification and initial decision on action

Notification and/or complaint of unauthorised encampment within the Borough.
All notifications received should be reported centrally to Capita Property Management and Development / Highways Section. NB: if the notification is on a weekend, the Police will notify /call out a member of the Out of Hours Team] directly to respond.

Capita Property Management and Development must determine land ownership of the encampment site with the Land Registry

The land is **not** owned by the Borough Council or public use land

The Borough Council is generally not responsible for this. Contact the owner where practicable and send advice and sign posting leaflet if required (Appendix 6).

The land **is** owned by the Council

Capita Property Management and Development should notify the Police and instruct a lead officer to undertake a site visit assessment. The lead officer should inform /liaise with the Police as necessary.

The Land is deemed public use land/ recreational ground under the Criminal Justice and Public Order Act (CJPO Act)

The Police have powers to remove trespassers on land very quickly under the *Criminal Justice and Public Order Act 1994*. The Police can enact Section 61 of the CJPO Act to remove the encampment. Regardless of whether this power is utilised, the Council should still undertake a site visit complete a site & welfare assessment record, serve a code of conduct and notice to leave as best practice.

Lead officer should undertake a site visit assessment with the Police. This includes serving a 24hr notice to leave the site, a copy of the Code of Conduct and Site & Welfare Assessment Record to be completed and actioned as appropriate.

Stage 2: Process for Eviction

Capita Property Management and Development / Highways Section check encampment vacated the land, if not, Legal Services to be informed and will commence proceedings via Court for possession order. Legal Services will determine which Court process is appropriate on a case by case basis.

County Court

Once possession order granted should be served on encampment same day by Capita Property Management and Development and Police, usually giving 24 hours or specified date to vacate.

If land not vacated, Legal should be informed and will apply for Warrant of Possession. This can be served giving 24 hours notice to vacate. Police and Bailiffs should then be arranged for effective removal and enforcement of court eviction order.

Magistrates' Court

Legal draft direction to leave served by Capita Property Management and Development and Police. States the occupiers must leave immediately.

Failure to move results in application to Magistrates' Court for order for travellers' removal. Summons sent to Court for approve and signature.

Capita Property Management and Development and Police serve summons on occupiers.

Council attends Court and seeks Order for removal.

Order served same day on the occupiers by Capita Property Management and Development and Police. Usually required to vacate within 24 hours. Capita Property Management and Development / Highways Section and Police then arrange for effective enforcement of order and removal of the occupiers, if necessary.

Stage 3: Following vacation of land / eviction

Once the land has been vacated Community Safety Section should be notified to update the central register. Capita Property Management and Development / Highways Section will then instruct the Environment Section to arrange for site cleanup. Relevant Section to arrange for the site to be secured where appropriate. Each Section involved should update the 'cost' (pre and post vacation) element of the central register.

Please note that this flowchart is just an overview of the process and further information should be sought from the Protocol.

Appendix 2: 24 Hour Notice to Leave Letter Template

SAMPLE LETTER

Date:

**TO: PERSONS UNKNOWN IN OCCUPATION OF LAND AT
COUNCIL OWNED LAND AT**

I refer to your occupation of the above mentioned land for the purposes of parking caravans/vehicles.

The Council has not granted licence, consent or authority for any use of its land. The present use and occupation of the land is therefore unauthorised and trespass.

You are required to cease and desist your use of this land forthwith, removing all vehicles brought on to the land without Council permission.

Failure to ensure removal **no later than** _____ will result in the Council instigating legal proceedings for possession of the land without any further reference to yourselves.

You will be required to pay the Council's costs thereof.

Signed.....

Council Solicitor

Appendix 3: A Code of Conduct for Unauthorised Encampments

Standards of behaviour on unauthorised encampments should be the same as those expected of the wider settled community. We have produced a code of conduct which we will expect to be followed in unauthorised encampments. This code will be made available to both the settled and Traveller communities.

Intimidation from *and* towards the encampment will not be tolerated.

You are occupying this location illegally. You are requested to vacate it as soon as possible/within 24 hours. This council is considering what, if any, legal action to pursue in line with its protocol on unauthorised encampments.

Whilst you are on this location, please:

- Keep groups small and inconspicuous.
- Drive and park vehicles safely and consider your own and others health and safety.
- Do not engage in acts of vandalism or criminal damage.
- Do not create a hazard to road safety or health and safety.
- Look after the land on which you park and do not cause problems for nearby residents.
- Do not allow the site or surrounding areas to become polluted with household, human or trade waste.
- Consider the dangers of fire, electrical cables and generators and passing traffic.
- Do not dump or burn rubbish and leave the land clean and tidy.
- Keep animals, especially dogs, under control.
- Co-operate with those responsible for the land (e.g. Local Authority Officers) and do not park on land needed for another purpose i.e.; Parks and Country Parks, Playing Fields and Playgrounds and areas of special scientific or nature interest.
- Do not block Rights of Way with vehicles, property, clotheslines and cables or block the progress of walkers or riders in any way.
- Do not intimidate or threaten the landowner, his agents or any other persons having legitimate access to the land.
- Once any agreed period of occupation has run out the site must be vacated and not be reoccupied.
- When encamped within earshot of residential properties do not run generators after 10.00pm, or before 7.00am.

- Do not engage in noisy work activities during the hours of darkness.
- Do not go to the toilet in public view, and do clear up afterwards.
- Respect the local community.

If anyone causes a nuisance, or is anti social or abusive to anyone or identifiably involved in criminal activity or dumping of rubbish, in most cases we are likely to evict and we will always seek to prosecute as quickly as possible.

Any crime, disorder and criminal activity will always be reported to the Police.

Evidence of fly-tipping will always be reported to the Environment Agency or Council Environmental Health Services or other as appropriate.

Appendix 4: Unauthorised Encampment Site & Welfare Assessment Record

- 24 hour notice to leave letter from BwDBC served on encampment.
- Code of Conduct served and discussed with the encampment.
- Site & Welfare Assessment Record form completed.

* Welfare checklist information – must be completed

*Assessment Officer:			
*Location of Site:			
*General Description of Site:			
Land Owner Details (if not owned by the Borough Council)		Contact Number:	
Key Contact from Site:		Log Number:	
Agencies Present: e.g. Police (name and collar number)		Date:	
*Why have they parked on the site?		Intended length of stay?	

GENERAL

*Number of Households:			
*Number of Adults:		*Are there any pregnant women? If so, when are they due to give birth?	
*Number of Children:		Are any children of school age? If so, how many?	
*Are any children of school age enrolled in local schools?			
And/or are any children of school age served by travellers' education officers?			
*Number of Vehicles Present:			

* Living – * Towing -	
*Vehicle Details *(Make, model and reg, colour etc.)	

Are any of the following matters[in italics]reported?	Yes	No	Don't Know	Details
<i>*Do any of the adults have any health issues/problems?</i>				
<i>*Do any of the Children have any health issues/problems?</i>				
Are there arrangements with local doctors / health authority?				
<i>*Do the travellers require social services or education welfare services? (If yes please fully detail and forward to Traveller Liaison Officer /Traveller Education Services / Social Services as necessary.) Also consider any safeguarding issues.</i>				
<i>*Does anyone require medical services now/urgently? E.g. maternity services and vaccinations?</i>				
<i>*Are there any other relevant needs identified?</i>				
Any damage present? I.e. point of access?				
Is there any litter and/or waste present as a result of the encampment? Please detail.				

Are any of the following matters[in italics]reported?	Yes	No	Don't Know	Details
*Are there any animals on site and what condition are they in?				
*Has there been any impact on the local community? Please detail and use additional paper if necessary.				
Has there been any impact on the Land Owner? Please detail and use additional paper if necessary.				
Is the location suitable for habitation? I.e. are there any health and safety, fire safety risks, road obstructions or environmental such as a rising river?				
What is the attitude of those present and are they willing to abide by the code of conduct?				
*Do any of the travellers wish to be considered for housing under the homelessness legislation? If so please detail and signpost to Housing Needs Section on 01254 585444				
*Has there been any mechanical breakdown?				

OTHER

Any other relevant needs/issues identified not already recorded:	
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I certify that, having undertaken the appropriate enquiries and taking into account the details above:

- There is, in my view, no justifiable reason why those in occupation of the site should not be required to leave and an order for eviction processed. Proportionate consideration has been given in terms in terms of Human Rights.

- There are welfare considerations that make it inappropriate to require those that occupy the site to leave at the present time.

SIGNED:

NAME:

DESIGNATION:

DATE:

RECOMMENDATIONS & ACTIONS

Details of any recommendations, actions and referrals made to other agencies	
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Appendix 5: Key Agency Contacts / Signposting Details

Organisation Name	Contact numbers
Police	01254 353638
Housing Section (including homelessness service)	01254 585444
BwDBC	01254 585585
Environmental Health Services	01254 585397
Legal Services	01254 585252
Highways	01254 585024
Social Care	01254 666400
Safeguarding adults	01254 585949
Inclusion Team	01254 666676 – Lead Consultant New Arrivals and GRT – 01254 588954 – School Liaison GRT
Community Safety	01254 585513
Community Cohesion	01254 585454
Help Direct	0303 333 111
NHS Blackburn with Darwen Clinical Commissioning Group	01254 282000
NHS Direct / NHS Choices	0845 4647 (24 hours)
Environment Agency	General Enquiries: 03708 506 506** (Mon-Fri, 8am - 6pm) Incident hotline: 0800 807060 (Freephone, 24 hour service)
Animal Welfare – RSPCA Cruelty line	0300 1234 999

Appendix 6: Land Owner Guidance – Signposting Leaflet

This guidance is for anyone who has questions about illegal / unauthorised encampments within Blackburn with Darwen, but is primarily aimed at land owners.

Various people live in caravans, mobile homes or vehicles on land they do not own, and without the agreement of the owner. Many, but not all, are Gypsies or Travellers.

Those that choose to encamp illegally on others' land/sites can on occasion cause difficulties to other people, out of all proportion to their numbers. All people/communities should be judged by how they behave towards landowners and others in each instance, not by a stereotype or single view that others may have of the unauthorised occupants, in particular of Gypsies or Travellers generally. You are reminded that Gypsies and Travellers are protected by law from racial discrimination.

Encamping on someone's land without their consent is unlawful in itself. In certain circumstances, it is not just a breach of civil law, but also criminal law.

Does the Council have a duty to move Gypsies/Travellers when they are camped without the landowner's permission?

No. If Gypsies/Travellers are camped on Council land, the Council can evict them. If the encampment is on private land, there may be planning implications but the landowner's have the initial responsibility.

The powers given to Local Authorities and the Police Service are discretionary and can only be used when certain conditions exist. Our policy sets out those conditions and what you should expect of us. Lancashire Constabulary also has an unauthorised encampments policy. Both the Council and the Police do use their powers but have to ensure that the powers are used lawfully.

Failure to comply with both civil and criminal procedures would render Council and Police Officers liable to challenge in the Courts, proving very costly. **All landowners (including local authorities) can recover possession of their land via the County Court, if their land is occupied by someone without their consent.**

What do I do if Gypsies/Travellers come to my land?

The first thing to do is to talk to the Gypsies/Travellers to make it clear that this is actually your land. Ask why they are there and how long they are hoping to stay. Assess if they are causing a disturbance. If the encampment has spread onto a Right of Way or Highway you should contact the Highways Section. It is a good idea to inform your solicitor of the situation and to ask about likely legal costs. It is advisable to require that the Police are present when you talk to the Gypsies/Travellers.

What if the Gypsies/Travellers won't talk to me?

Most Gypsy and Traveller families welcome the opportunity to speak to other members of the community. Bear in mind that they may be suspicious of people from outside their community and may be cautious at first about talking openly. If you feel negotiations are not going well, leave the discussion for the time being and seek advice from your solicitor. If you feel intimidated at any stage then you should contact the Police.

If there are not any problems, is it okay to let them stay

Some landowners are happy to let small groups stay where good relations are established early and there are no major problems. If the group only intend to stay for a short time and a leaving date can be agreed, then there may be no need to take further action. Long term occupation will require planning

permission from your local Council.

What if I need to reclaim possession of my land?

There are various courses of action available to deal with incidents of unauthorised encampments. The best course of action to be taken depends upon the ownership of the land that is being trespassed on. It is worth remembering that trespass is a civil and not a criminal offence.

Unauthorised encampments on local authority land are dealt with in accordance with Central Government Guidance and recent case law. Decisions are made with regard to public duties and rights and responsibilities under the Human Rights Act 1998, the Equality Act 2010. Both Romany Gypsies and Irish Travellers are recognised as ethnic minorities against whom discrimination is unlawful.

Private landowners will still have to serve 24 hour notice to leave.

What are 'Common Law Powers'?

A landowner can obtain a possession order through the Civil Courts requiring the removal of trespassers from land/property.

Such action can normally be taken swiftly under Civil Procedure Rule 55 in the County Court. Common Law recognises the rights of a landowner to evict trespassers from their property. If a trespasser refuses to leave, after being requested to do so, the landowner (or an agent authorised to act on their behalf) may use only so much force as is reasonably necessary to evict them. It is important that excessive force is not used as this could result in the landowner committing an offence. Private bailiffs sometimes use this power to evict people from land.

If there is a risk of breach of the peace, the Police will need to consider whether the need for possession is sufficiently pressing for the landowner, or their agent, to continue without first obtaining a possession order. Furthermore, the Police will not exercise powers to deal with a breach of the peace in such a way as would be at variance with the execution of their own policy under section 61 of the Criminal Justice and Public Order Act 1994.

The Council is not recommending or endorsing any particular course of action. Landowners are advised to take their own legal advice on the action they should take in any individual situation.

Your solicitor will most likely advise that possession be sought in the Civil Courts under Part 55 of the Civil Procedure Rules. This will involve:

- Asking trespassers to leave (landowners responsibility)
- Issuing and serving an application for a possession order
- Seeking a possession order in County Court
- Serving the possession order, and, if necessary
- Executing a warrant for possession with County Court Bailiffs.

What will this cost me?

Your solicitor will charge their own fees so check costs first. Disposing of rubbish will be at your own cost but your Local Council may be able to offer you a quote for the work.

What about any rubbish/waste that is left?

Council, the Police and Environment Agency who have direct powers to deal with all aspects of unlawful waste disposal, are seeking ways of using existing legislation to deal with these anti-social and often expensive problems.

Private land owners are responsible for the removal of waste if on their land. Note: certain waste requires special treatment. If in doubt contact the Environment Agency Incident hotline: 0800 807060 (Freephone, 24 hour service).

What can the Police do?

The Police will visit all sites reported to them but trespass is a civil matter and not a criminal offence. Prevention of trespass and the removal of trespassers are the responsibilities of the landowner and not the Police.

Lancashire Police carefully assess each incident of unauthorised camping and, under Department for Communities and Local Government and Home Office guidelines, act proportionately.

The Police have powers to move Gypsies/Travellers off land where criminal activity by Gypsies/Travellers can be established in the same way as crime committed by the settled community has to be proven.

Police also have discretionary powers to direct Travellers off land where group behaviour is contravening to the Criminal Justice and Public Order Act 1994. In certain circumstances (for example, where the Gypsies/Travellers have with them six or more vehicles and damage has occurred), officers may use powers under Section 61 of the Criminal Justice and Public Order Act 1994. The Police are obliged to act in accordance with the Human Rights Act, which constrains the use of Section 61 of the Criminal Justice and Public Order Act 1994 in circumstances where it would stop welfare considerations from being taken account of by the civil courts.

If the Landowner fails to take the appropriate action to remove the Gypsies/Travellers, what will the Council do?

Unless you have obtained planning permission for a caravan site or you are a farmer and they are helping you with fruit picking etc, you could be breaching the planning regulations. If you are in breach of any planning or licence requirements then the council may choose to take proceedings against the landowner that require removal of the unauthorised encampment.

I own land and want to know what I can do to stop Gypsies/Travellers camping on it?

It is the primary responsibility of the land owner/user to protect his/her land. If an unauthorised encampment occurs then it is also that land owner/user who has to deal with any problems associated with that encampment. Where a site is used frequently for unauthorised encampments, preventative measures may become essential in order to avoid breaching planning and other rules.

The cost of securing the land needs to be balanced with the costs associated with legal action, the use of a bailiff, damage to the land, removal of waste, loss of business due to obstruction and possession, health and safety concerns and the effects on neighbouring businesses and residents. These costs could be substantial for each encampment.

If your premises are secure then the likelihood of an unauthorised encampment occurring on your land is reduced.

A number of preventative measures can be taken to reduce the risk of unauthorised encampments, although the following list is by no means exhaustive:

- Ploughing the land so that vehicles cannot enter
- Digging ditches and/or making earth embankments
- Reducing access width and/or headroom by the use of substantial barriers
- Placing securely locked substantial gates across the entrance
- Using the land for some purposes that make it unsuitable to live on
- Seldom used accesses could be closed using semi-permanent features such as concrete barriers, tree trunks or earth bunding that require specialist equipment to remove

Consideration should be given to the planning requirements and health and safety issues, in respect of these measures. The Council can be contacted on 01254 58 5585.

Appendix 7: Officer guidance for site visits, risk assessments and collection of evidence

Health & Safety Risk Assessment

A task based risk assessment has been undertaken on carrying out site visits and welfare assessments at unauthorised encampments. However, all officers involved in carrying out such visits must carry out their own personal risk assessment on a case by case basis, dependent upon the specific incident. This is not an area where lone working applies. No officer in or out of hours should attend site visits to unauthorised encampments alone, with no exceptions.

All officers that are required to carry out site visits should read and understand the Protocol and risk assessment requirements.

For further information please see the Corporate Health and Safety Policy (under Health and Safety Section on the intranet)

Collection of evidence during site and welfare assessment visits

Collection of written information from observations and obtaining information by speaking directly with the illegal occupants.

You must try to speak to either a representative of the encampment and/or individual residents of the encampment in order to complete the site and welfare assessment record. This should only be conducted in Police presence. If in doubt about the health and safety risks, the Health and Safety Advisor can be contacted on 01254 585573.

Photographic evidence

On occasions, it might be appropriate/necessary to take photographic evidence during a site assessment visit. The council may take photographs as necessary and proportionately as long as this is done overtly rather than covertly.

For evidence purposes, the council is mainly concerned with damage and environmental health hazards, property, caravans, car number plates etc.

It is advised that **photographs of children should not be taken**. Photographs of adults should only be taken if there is a valid reason. It may sometimes be difficult to take a photo of an object without an adult inadvertently being in the background.

Officers should judge each situation on its merits and should not take photos if it may inflame a situation and put them in any danger.

If in doubt, the Head of Legal Service can advise officers on any issues/circumstances they feel unsure about and can be contacted on 01254 585289.

Appendix 8: Summary of powers available to tackle unauthorised encampments

A summary of the powers available to local authorities and the police to tackle unauthorised encampments is set out below:

Local Authority Powers	
Power	When can the power be applied?
Licensing of caravan sites	The Caravan and Control of Development Act 1960 prohibits the use of land as a caravan site unless the occupier holds a site licence issued by the local authority. A caravan site includes anywhere a caravan (including mobile or 'park' home) is situated and occupied for human habitation including touring sites and single sites. However, it does not include sites where caravans are kept for storage only (driveways, retailers, storage parks) or where a caravan is used as additional accommodation for an existing dwelling. Violation of licensing terms brings a £100 fine for a first offence, and a £250 fine for any subsequent offence.
Possession Orders	A possession order under Part 55 of the Civil Procedure Rules can be obtained by both local authorities and private landowners who require the removal of trespassers from property including land. The claim must be issued in a County Court which has jurisdiction over the affected land/property. A claim can be issued in the High Court in exceptional circumstances where there is a risk of public disturbance and harm to persons or property that requires immediate determination. Local authorities should also be prepared to advise private landowners about their rights to recover land from trespassers through the courts or using common law powers. It is also possible that local authorities may be called upon to assist other Government bodies such as the Highways Agency. 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. The landlord may combine the application for the possession order with suing the squatter for damages and/or an occupation rent for the period of squatting as well as the court fees. A possession order may be secured quickly against trespassers (a minimum of 2 days' notice before a hearing can take place if the property is non-residential, or 5 days for residential property), but not as quickly as an interim possession order, and is not backed up by criminal sanctions, unlike the interim possession order (see below).
Interim Possession Order	If trespassers have occupied premises (rather than open land), a local authority or private landowner could also consider applying (under Section III of Civil Procedure Rules Part 55) for an interim possession order, an accelerated process for regaining possession of property. Once the Court has granted such an order and it has been served, trespassers who fail to leave within 24 hours of service of the order or return to the premises within the currency of the order are guilty of an offence under section 76 of the Criminal Justice and Public Order Act 1994. The interim possession order has the obvious advantages of speed and being backed up by the criminal law. It is, however, not a final order, and there is a return date at which the Court will decide whether to make the order final. If the Court decides that the interim order was not justified, the landlord may have to pay damages. The interim possession order is also more restricted in that it may only be used where the property is or includes

	a building, not open land, and may not be used where the landlord also wishes to claim damages and/or an occupation rent.
Local Byelaws	<p>Section 235 of the Local Government Act 1972 enables the local District Council or London Borough Council to make byelaws for the good rule and governance of the whole or any part of the district or borough and for the suppression and prevention of nuisances. Such byelaws include noise in streets and other public places, urinating in a public place etc.</p> <p>Section 150 (2) of the Police Reform and Social Responsibility Act 2011 enables local authorities to attach powers of seizure and retention of any property (which could include tents and sleeping equipment) in connection with any breach of a byelaw made under section 235 and enables the courts to order forfeiture of any such property on conviction for contravention of any byelaw.</p> <p>Local authorities could use this byelaw as a pre-emptive tool to prohibit encampments, if the local authority considers it has an area at risk of encampment protest. This will save having to go through costly injunctions after any encampments have been set up. Local Authorities should consider this option as part of their local risk assessment and mitigation plan; as such a byelaw would still be required to go through the normal processes for amending or introducing new byelaws. Westminster City Council has already introduced such a byelaw, which came into force for a specified area around Parliament Square on 30 March 2012.</p>
Power of local authority to direct unauthorised campers to leave land	<p>Where people are residing in vehicles (including caravans) on land the section 77 of the Criminal Justice and Public Order Act 1994 gives local authorities in England and Wales power to give a direction to leave the land.</p> <p>The power applies only to land forming part of a highway, any other unoccupied land or occupied land on which people are residing without the consent of the occupier.</p> <p>It is an offence to fail to comply with such a direction. If the direction is not complied with, the local authority can apply to a Magistrates' Court for an order requiring the removal of vehicles and any occupants from the land (section 78). Responsibility for eviction lies with the local authority. Officers or agents of the local authority may use reasonable force to evict. It is usually recommended that the police attend such evictions in order to prevent a breach of the peace. Please note this power does not apply to other campers i.e. those sleeping under canvas.</p>
Police Powers	
Power	When can the power be applied
Power of the Police to direct unauthorised campers to leave land	<p>Should trespassers refuse to adhere to a request to leave the land, sections 61- 62 of Criminal Justice and Public Order Act 1994 gives the police discretionary powers to direct trespassers to leave and remove any property or vehicles they have with them. The power applies where the senior police officer reasonably believes that two or more people are trespassing on land with the purpose of residing there, that the occupier has taken reasonable steps to ask them to leave, and any of the following:</p> <ol style="list-style-type: none"> 1. that any of the trespassers have caused damage to land or property; 2. that any of the trespassers have used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier; or 3. that the trespassers have between them six or more vehicles on the land.

	<p>Failure to comply with the direction by leaving the land as soon as reasonably practicable is an offence. Similarly it is an offence for a trespasser who has left the land in compliance with an order to re-enter it as a trespasser within three months of the direction being given.</p>
<p>Police Powers to direct trespassers to an alternative site</p>	<p>Police have powers under sections 62 A-E of Criminal Justice and Public Order Act 1994 to direct both trespassers and travellers to leave land and remove any vehicle and property from the land where there is a suitable pitch available on a caravan site elsewhere in the local authority area.</p>
<p>Offence of squatting in a residential building</p>	<p>The offence of squatting in a residential building, which came into force on 1 September 2012, was created by section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The offence will be committed where a person is in any residential building as a trespasser, having entered as a trespasser, knows or ought to know he or she is a trespasser, and is living in the building or intends to live there for any period.</p> <p>Although the new offence does not cover squatting in non-residential buildings or on land, squatters who have broken into those premises, removed items or caused damage might be guilty of other offences such as criminal damage or burglary and should be reported to the police.</p>
<p>Post Site Clean Up</p>	
<p>Power</p>	<p>When can the power be applied</p>
<p>To act in respect of Fly-tipping</p>	<p>Fly-tipping is the illegal deposit of waste on land that does not benefit from an appropriate environmental permit contrary to section 33 of the Environmental Protection Act 1990 and local authorities and the Environment Agency may prosecute for the offence. There is an associated offence relating to the unlawful deposit of waste from a motor vehicle whereby the person who controls or is in a position to control the vehicle shall be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.</p> <p>Prosecution may be taken by the local authority or in more serious cases by the Environment Agency where there is evidence that a person either deposited the waste or knowingly caused or permitted the deposit.</p> <p>This power is ineffective where it is uncertain whether the waste is controlled waste under Environmental Protection Act 1990. Such uncertainty might arise where the waste is not considered household, commercial or industrial.</p>
<p>Removal of waste from land</p>	<p>Local authorities are under an obligation to remove fly-tipped waste from public land, but on private land it is the responsibility of the landowner to remove the waste and dispose of it legally. Landowners are therefore often the victims of fly-tipping. Local authorities should advise landowners what local facilities are available to enable them to clear fly-tipped waste. Section 59 of the Environmental Protection Act 1990 allows local authorities and the Environment Agency to require owners or occupiers of land to remove waste they knowingly caused or permitted to be deposited illegally. If the waste is not removed, the local authority or the Environment Agency can enter onto the land to clean up the waste and can charge the landowner the costs incurred. This power is effective where a person is still in occupation of land or where a landowner has refused to take steps to prevent fly-tipping or</p>

	<p>has allowed fly-tipping to occur (in most cases the landowner is the victim). However, it cannot be used against the offender unless they are the occupier or landowner or where there is doubt whether the deposit is an illegal deposit.</p>
<p>Power to remove any thing abandoned without lawful authority</p>	<p>Section 6 of the Refuse Disposal (Amenity) Act 1978 provides a general power for local authorities to remove “anything in their area, other than a motor vehicle, [which] is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway”, provided that they have given notice to the occupier of the land and they have not objected within 15 days, in accordance with the Removal of Refuse Regulations 1967. The local authority may be entitled to recover the costs of removal from the person who deposited the articles.</p>
<p>Harm to public health</p>	<p>Local authorities have certain duties and powers to control “statutory nuisances” pursuant to sections 79 to 81 of the Environmental Protection Act 1990 (as amended). Various matters constitute “statutory nuisances” under this legislation. These include any premises and land that are in such a state as to be prejudicial to health or a nuisance. Something will be ‘prejudicial to health’ if it is ‘injurious or likely to cause injury to health.’ A ‘nuisance’ is unacceptable interference with the personal comfort or amenity of the nearby community.</p> <p>The statute requires local authorities to inspect their areas for statutory nuisances and to take such steps as are reasonably practicable to investigate complaints of statutory nuisance made by residents in their areas. A local authority has a duty to serve an abatement notice if it is satisfied that a statutory nuisance exists, or is likely to occur or recur. The abatement notice should generally be served on the person responsible for the statutory nuisance but can be served on the owner of the land if the person responsible (e.g. a tenant or leaseholder) cannot be found or if the nuisance has not yet occurred or recurred. If the abatement notice is not complied with, the local authority has the power to take further steps to deal with the nuisance (but it not obliged to take these steps). A local authority may abate the nuisance itself. In doing so the local authority may do whatever may be necessary in execution of the notice and may be able to recover expenses from the landowner, if necessary through a charge on the land. A local authority also has the power to take criminal proceedings against a person who fails to comply with an abatement notice if it considers that doing so is in the interests of the inhabitants in its area. If the local authority considers that the criminal procedure is inadequate (e.g. in an emergency) it has a power to seek an injunction in the High Court to deal with the statutory nuisance.</p> <p>Overall this power is effective in tackling statutory nuisance issues that may arise from illegal occupation (e.g., noise, smells, accumulation of material, fumes, dark smoke). The statutory nuisance regime cannot be used to require people who are responsible for a statutory nuisance to move from a site, even if they are occupying the site illegally.</p>
<p>Power to deal with accumulations of rubbish in the open air</p>	<p>The Public Health Act 1961 gives local authorities powers to deal with accumulations of rubbish in the open air. In particular, section 34 of the Public Health Act creates a power for local authorities to remove rubbish on land in open air which is seriously detrimental to the amenity of the neighbourhood. For the power to be exercised a number of conditions</p>

	<p>must be met:</p> <ol style="list-style-type: none"> 1. There must be rubbish. "Rubbish" is defined to mean "rubble, waste paper, crockery and metal, and any other kind of refuse (including organic matter)", however "any material accumulated for, or in the course of, any business" will not fall under this definition. 2. The rubbish must be on "land in the open air" in the local authority's area. 3. The presence of the rubbish must be "seriously detrimental to the amenities of the neighbourhood." 4. The local authority must have given 28 days prior notice to the owner and occupier of the land requiring the removal of the specified rubbish. 5. The recipient of a notice has the right to serve a counter-notice stating that they will remove the rubbish themselves. If a counter-notice is served the local authority must not remove the rubbish unless the person who served the counter-notice fails to take or complete the steps in the counter-notice within a reasonable time. 6. The recipient of a notice may appeal to the Magistrates' Court on the grounds that the authority should not take action under section 34 (for example, if they allege the rubbish is not seriously detrimental to the amenity of the neighbourhood) or the steps proposed in the notice are unreasonable. If an appeal is brought against the notice, the local authority must not remove the rubbish unless and until the appeal is finally determined its favour or withdrawn. <p>This power could be used to deal with the accumulation of rubbish on land resulting from illegal occupation. This power does not extend to removing "material accumulated, for or in the course of, any business." Therefore, where illegal occupants are carrying on a business careful consideration will need to be given to whether the items the local authority wishes to remove fall under this exclusion.</p> <p>This power could not be used to evict the occupants from the unauthorised encampment.</p>
<p>Power to seize a vehicle</p>	<p>Where a vehicle has been used in the commission of an offence relating to the illegal deposit of waste or other waste offences a local authority or the Environment Agency on application to a court may seize a vehicle and its contents in accordance with the provisions of the Control of Pollution (Amendment) Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991.</p> <p>This power is effective where a vehicle is known to have been involved in the commission of an offence e.g. fly-tipping, but there is insufficient information concerning who committed the offence. It can also be used to 'flush out' owners where it is unclear who is the registered keeper. This power is ineffective if there is no link between the vehicle and a waste offence.</p>