

**A JOINT PROTOCOL FOR  
MANAGING UNAUTHORISED  
ENCAMPMENTS WITHIN THE  
BIRMINGHAM CITY COUNCIL  
BOUNDARY**



**March 2020**

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# Managing Unauthorised Encampments

## Foreword

Birmingham City Council and West Midlands Police first agreed a joint protocol in relation to the management of unauthorised encampments in 2000. The protocol sets out the procedures to be adopted by both agencies, including a process for formal review of the protocol. This was to ensure that the protocol remained current and reflected relevant changes in legislation and national policy thereby ensuring that the West Midlands Police and Birmingham City Council provide a fair, balanced and appropriate service. Each subsequent edition is numbered and carries the month and year of publication.

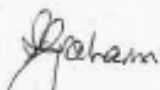
The joint protocol was created in the recognition that where people are camped on unauthorised sites as trespassers and/or cause nuisance, or indulge in anti-social or criminal behaviour, they should be subject to the force of law in the same way as those who behave in that manner from the settled community. Birmingham City Council and West Midlands Police both recognise the role that each authority has to play and will comply with the good practice guide, *'Managing Unauthorised Camping'* (and subsequent amendments, including *'Dealing with illegal and unauthorised encampments'*, March 2015), published by the Department for Communities and Local Government (DCLG).

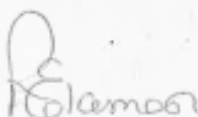
Appropriate enforcement of the law involves a significant degree of discretion as well as tolerance. Each encampment must be individually considered on its merits, before a decision in relation to a police response is made. Guidance, in this document, for these decisions should be considered; however blanket or prejudged decisions should not be made.

In the absence of specific welfare needs, a major consideration should be whether an encampment is interfering with the lawful rights of others. All breaches of the law should be investigated by the police in an appropriate manner. Similarly persons encamped are entitled to a life free from the fear of crime, harassment and intimidation and all reports of incidents against those people will be proactively investigated.

In November 2019 Birmingham City Council opened a new site for transit purposes. The aim of this site is to provide a location where travelling groups can lawfully camp whilst residing in Birmingham on a temporary basis. The site affords relevant agencies the opportunity to engage with members of the group in order to deliver welfare services without any overhanging concern around eviction or an uncertain length of residence.

Both the West Midlands Police and Birmingham City Council are committed to ensuring that the issue of persons camped on unauthorised encampments is dealt with in the most professional manner, taking into account the needs of all individuals concerned, and ensuring wherever practicable that their actions are reasonable and proportionate to any offence being committed.

  
**Steve Graham**  
Chief Superintendent  
West Midlands Police

  
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Birmingham City Council

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## 1. Introduction

- 1.1. The issue of unauthorised encampments is emotive and highly politicised. In the event of an encampment being established, local residents, politicians and landowners may seek to influence the actions of the Police and the Local Authority. As of July 2019, there were 23,125 traveller caravans in England, 13% of which were on unauthorised land (either owned by travellers without planning permission or unauthorised encampments on land not owned by travellers). *[Count of Traveller Caravans, July 2019 England - Department for Communities and Local Government]*<sup>1</sup>
- 1.2. Following consultation between West Midlands Police and Birmingham City Council, this joint protocol was agreed which contains guidance for dealing with unauthorised encampments and which incorporates guidance from both the DCLG and the National Police Chiefs' Council (NPCC).

A multi-agency approach can be very effective particularly in areas where encampments are a regular occurrence. This protocol is to be applied consistently across Birmingham to ensure a rationalised multi-agency response and appropriate management of unauthorised encampments.

- 1.3. Birmingham City Council and West Midlands Police recognise the importance of effective communication when managing what are potentially very sensitive issues. Effective communication is vital with those individuals and their families being required to move, as well as local residents and other interested parties. Effective communication and liaison should be maintained between Birmingham City Council and West Midlands Police at all levels.
- 1.4. Increasing trust and confidence in the police amongst minority ethnic groups is a priority to all police officers. The Equality Act 2010 makes it unlawful for public bodies such as Local Authorities and police forces to discriminate on the grounds of, amongst other things, ethnic origin. Case law has held that because of their shared history, geographical origin, distinct customs and language Romany Gypsies and Irish Travellers are distinct ethnic groups. This means that treating people in a particular way, solely because they come from a Traveller community is unlawful and it is important that all of the measures explained in this protocol are considered on an individual case-by case manner.

To facilitate effective communication this Protocol will be available on West Midlands Police and Birmingham City Council Internet web sites. A hard copy can also be obtained from Birmingham City Council and it can be provided in an accessible format on request.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/848868/TCC\\_November19\\_Stats\\_Release.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848868/TCC_November19_Stats_Release.pdf)

## 2. Safeguarding considerations and contacts

- 2.1. A child is anyone under the age of 18. It is very important that action is taken straight away if it appears that a child may be abused or neglected.
- 2.2. A vulnerable adult is someone over the age of 18 'who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation.' It is very important that action is taken straight away if it appears that a vulnerable adult may be abused or neglected.

**If there are concerns that a child or vulnerable adult is at immediate risk the Police should be alerted on 999.  
The non-emergency number is 101.**

If the risk is not immediate, concerns should be reported to:

Children's Advice & Support Services (CASS)	0121 303 1888 (children) 0121 675 4806 (out of hours)
Adults with care and support needs (ACAP)	0121 303 1234
Education / Schooling needs	
Birmingham City Council Schools Admission & Pupil Placements	0121 464 7215
Pupil Placements Support Teacher (GRT)	0121 303 9096
Birmingham Housing Needs Advice	0121 216 3030
<a href="https://www.birmingham.gov.uk/homepage/226/advice_and_support">https://www.birmingham.gov.uk/homepage/226/advice_and_support</a>	

## 3. Equality and discrimination

- 3.1. The Equality Act 2010 gives public authorities a general duty to eliminate unlawful discrimination and harassment, promote equality of opportunity, and foster good relations between those who share a protected characteristic and those who do not when carrying out their functions. This duty covers all racial groups, including Gypsies and Irish Travellers who are recognised ethnic groups.
- 3.2. This protocol is not a policy on Gypsies or Travellers; rather it is a protocol on the agreed response to reports of persons trespassing on land with the common purpose of residing there for any period. It is, however, recognised that many unauthorised encampments will contain Gypsies or Travellers.
- 3.3. Local Authorities and Police must always be able to show that they have properly considered the equalities implications of their policies/protocols and actions in relation to unauthorised encampments. They must be able to demonstrate that their policies/protocols and actions are proportionate bearing in mind all the circumstances of the case.

#### **4. Important developments since edition 8, November 2016**

- 4.1. Due to the adverse impact of unauthorised encampments in the city the City Council commenced to apply for injunctions to protect certain parks and public open space and these were granted from mid 2017. The current status with regards to injunctions is covered in Section 5 “Injunctions”.
- 4.2. In November 2019 Birmingham City Council opened a caravan site for transit purposes to provide short-term accommodation for members of the travelling community whilst in Birmingham. The current status with regards to the use of the transit site is covered in Section 6 “Transit Sites.
- 4.3. In November 2019 Birmingham City Council and West Midlands Police produced an addendum to edition 8 of the Joint Protocol (November 2016), to capture the primary changes outlined above.
- 4.4. This edition replaces the previous edition 8 dated November 2016 and the addendum to edition 8 dated November 2019.

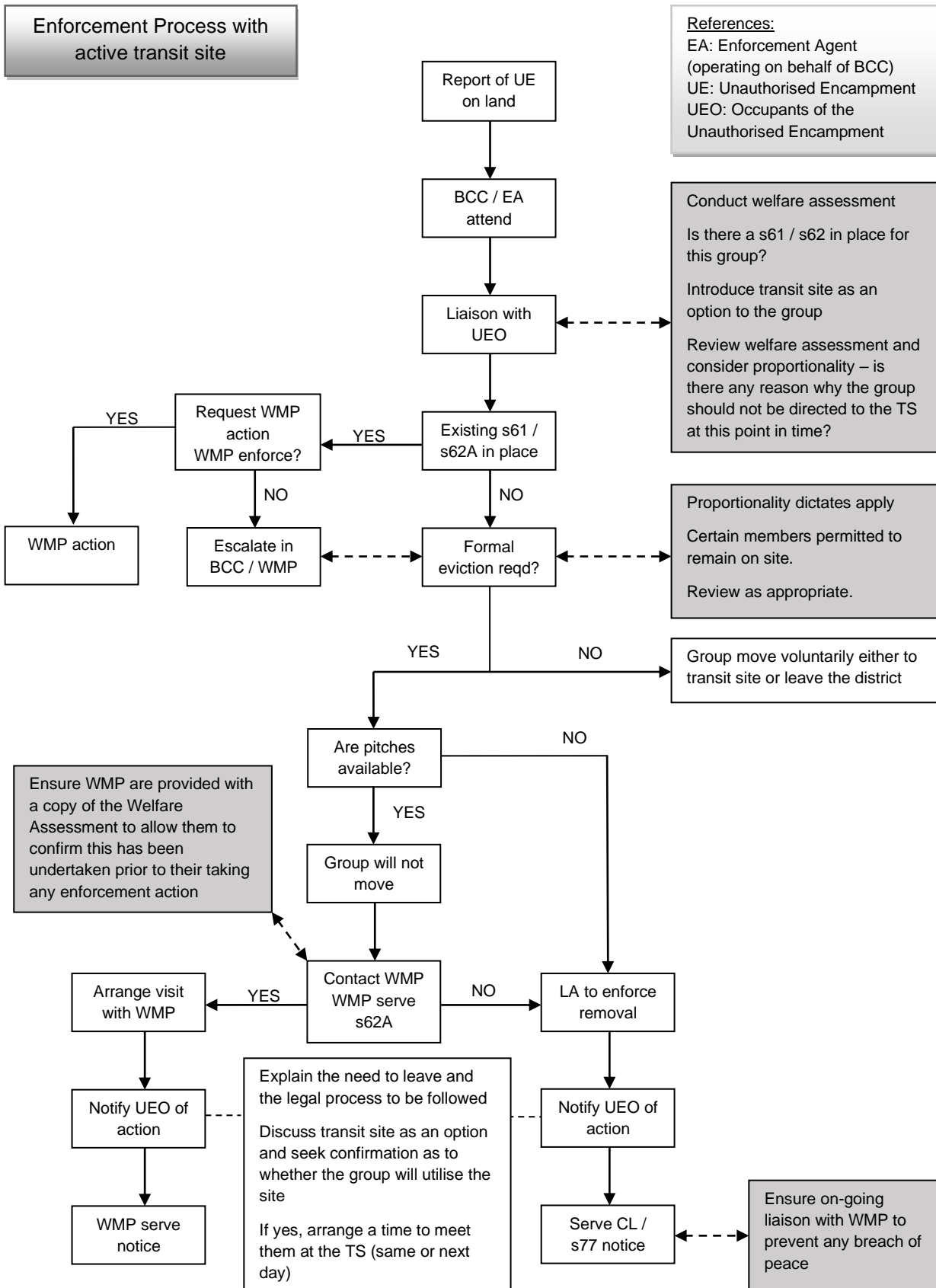
#### **5. Injunctions**

- 5.1. Due to the adverse impact of unauthorised encampments on certain public parks and open spaces, either as a result of repeated occupation on land within an area, or in response to specific occupations which have resulted in a clear negative effect on the pre-arranged use of the land, Birmingham City Council have applied to the Courts for injunctions to safeguard those parcels of land from unauthorised encampments. All injunctions granted to date have been in the **High Court**.
- 5.2. The land covered by these injunctions is detailed and updated on the Birmingham City Council website, along with copies of all injunctions, and may be viewed at: [https://www.birmingham.gov.uk/info/20095/antisocial\\_behaviour\\_and\\_neighbour\\_disputes/1305/view\\_encampment\\_injunctions](https://www.birmingham.gov.uk/info/20095/antisocial_behaviour_and_neighbour_disputes/1305/view_encampment_injunctions)
- 5.3. The injunctions ban people from entering or remaining on any part of the land covered by the injunction with regards to the establishment, the joining or being part of an unauthorised encampment.
- 5.4. Anyone who breaches the orders covering these parcels of land may be arrested, will be guilty of contempt of court and may be fined, have their assets seized or face imprisonment.
- 5.5. The City Council is responsible for the prosecution of the injunction, whilst West Midlands Police are responsible for arresting those in breach of the injunction to facilitate the prosecution of the injunction.
- 5.6. Where encampments are established upon land covered by an injunction, City Council officers (or appointed representatives), or West Midlands Police officers will inform the persons who are residing on the land that the land is covered by an injunction and will request they depart (in writing).
- 5.7. Where the recipients of a request from the Council have not taken notice of that request, or it does not appear that they are taking such notice, within a short timeframe (within a couple of hours) the Council will notify West Midlands Police and request that the Force intervene to assist in the enforcement of the injunction.

## **6. Transit Site**

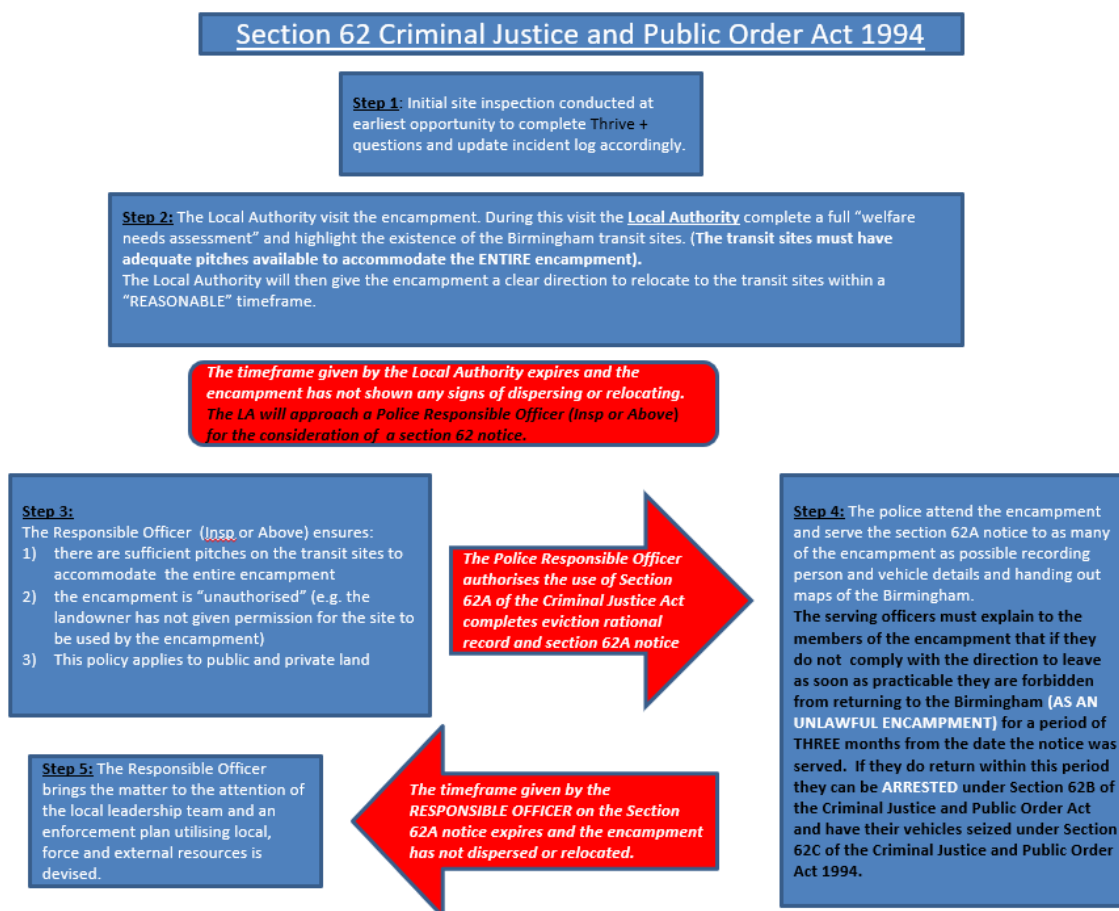
- 6.1. The City Council has commenced a programme to bring forward sites for development as transit sites in line with the Birmingham Development Plan (BDP). The BDP is the overarching development policy document for Birmingham and was subject to an equalities assessment.
- 6.2. There is a small parcel of land for a transit site with 4 pitches (Aston Brook Street) that was granted planning permission in August 2018 and a larger parcel of land for a transit site with 15 pitches (Proctor Street) that was granted planning permission in September 2018. Furthermore, the Council plans to bring back into operational use between 15-18 public transit pitches on the former transit site at Tameside Drive.
- 6.3. In 2018 Birmingham City Council commenced to undertake a review of the needs of the travelling community, known as a Gypsy and Traveller Accommodation Assessment (GTAA). This was concluded in February 2019.
- 6.4. The GTAA identified that the Council's proposed plans would provide a total of up to 37 transit pitches which more than exceeds the recommendations made by the previous GTAA (2014) for between 10-15 transit pitches.
- 6.5. The GTAA concluded that "...once delivered, these levels of transit provision should be sufficient to either deal with smaller groups of Travellers stopping off in Birmingham or as a means of requiring households to leave Birmingham. It is therefore recommended that priority is given to develop these sites and that the use of the sites either to provide short-term accommodation for transient households visiting Birmingham or used by the Police to move on households from Birmingham, is closely monitored for an initial period of 24 months. This will enable the Council to determine whether the potential available levels of transit provision are sufficient to deal with households on unauthorised encampments."
- 6.6. The Council have brought forward the site at Proctor Street into operational use. This permits the option for West Midlands Police to direct occupants of unauthorised encampments on both public and private land to the transit site through the use of s62A-E of the Criminal Justice and Public Order Act 1994.
- 6.7. The Proctor Street transit site (PSTS) has capacity for 15 pitches. To support the Council where a single or combination of encampments exceeds 15 caravans (the capacity of the PSTS) the Council are in the process of identifying alternate land where the overspill caravans can be directed, under similar terms as those which apply to residents of the transit site.
- 6.8. Use of the PSTS affords occupants a hard standing and toilet / showering facilities, as well as a stand pipe to draw clean potable water. There is a cost to occupants on a by pitch basis, this cost to cover one week's occupancy and this is non-refundable once paid. There is a maximum permitted period of occupancy of four weeks in order to retain the site for transit purposes.
- 6.9. The overarching process for directing occupants of unauthorised encampments to the transit site is shown in Figure 1. The operational process is shown in Figure 2.

**Figure 1 – Overarching process flow**





**Figure 2 – Operational process flow**



- 6.10. The process necessitates a consideration of the welfare of the individuals within the group, insofar as is communicated to the officers by the occupants of the group. This welfare check will be used to determine whether the group, or any members of the group, should be permitted to reside on their current unauthorised site and for how long pending review.
- 6.11. It should however be noted that the City Council and other welfare services including educational services can be better delivered from a fixed location and use of a transit site e.g. the PSTS, will improve in this delivery to the welfare benefit of the travelling community.
- 6.12. Once the welfare consideration has been considered the Council will advise the group about the transit site and seek to move them to the site voluntarily. Where the group elect to not move to the transit site then WMP will be requested to consider using their powers to serve a Direction under s62A. The outcome of the welfare assessment will be shared with WMP to facilitate their decision-making process.
- 6.13. The Direction under s62A will capture the vehicle registration number (VRN) and a description of the vehicle. This will be used to ascertain whether there is compliance with the Direction following service or at a later date.

## **7. Data Sharing**

- 7.1. Birmingham City Council and West Midlands Police agree to share relevant data to facilitate the approach taken in this document, specifically:
  - 7.1.1. Intelligence on the date and time of arrival of the UE
  - 7.1.2. Intelligence on numbers of caravans and general family names (where known)
  - 7.1.3. Intelligence on personal matters pertinent to the occupants of the UE (as appropriate) which may necessitate them being permitted to remain on a site
  - 7.1.4. Copies of S62A Directions

## **8. Initial actions on report of an unauthorised encampment**

- 8.1. In considering any unauthorised encampment a balance must be maintained between the rights of those encamped, of landowners and those lawfully entitled to use the land, and the local community. Each encampment must be considered on its own merits with police officers and Local Authority staff acting in a neutral, objective and open way. West Midlands Police officers will not proactively seek out encampments, but will wait until a landowner or the local authority contacts them.
- 8.2. The Council and West Midlands Police will assess if it is possible to undertake a joint initial visit but this won't always be possible or practicable and either agency may visit independently, the outcome of the visit communicated between the agencies to promote effective management of the unauthorised encampment.
- 8.3. The purpose of the initial visit is to make contact with the people on site, and undertake an assessment of the impact of its location, as well as the behaviour displayed by the occupants. The occupants should be spoken to in order to establish their identities and location of last site, and to ascertain their views on desired duration of stay as well as any pressing welfare needs.
- 8.4. Officers should identify any offences disclosed or apparent e.g. criminal damage caused to gain entry to land, obstruction of any footpaths or other highways, flytipping, any other anti-social behaviour.
- 8.5. Once the welfare considerations have been assessed the focus will turn to deciding how to respond to the unauthorised encampment. Assuming there are no specific welfare needs that necessitate the group remaining at their current site and the group is of a size to be directed to suitable pitches then the presumption will be that the group will be directed to the transit site.
- 8.6. Where West Midlands Police are unable to issue a direction then Birmingham City Council will consider whether to seek possession of the land through available powers or whether to tolerate the encampment.
- 8.7. The form presented in Appendix 1 will be used to capture the relevant details about the group including welfare needs, and the condition of the site, and combined this information will form the operational rationale for following action. This is the version of the form at issuance of this MoU edition and the form may be updated in-between editions.

## **9. If the decision is to tolerate the encampment**

- 9.1. It is important to appreciate that tolerating an encampment on a park or other public open space whilst there are pitches available on a local transit site will be an unusual position and the consequence of very special circumstances. It is expected that any welfare provision can be better provided from the transit site and that the facilities on the transit site significantly eclipse those likely to be found elsewhere.
- 9.2. Where an encampment is tolerated, a mutually acceptable date for leaving the site should be agreed. Some persons will indicate their unwillingness to enter into or honour agreements about their leaving date. It is important that these people understand that while there is no statutory obligation to provide information in order to make assessment, or to agree to a leaving date, it is in their interest to cooperate. Non-cooperation often stems from a mistrust of the motives of those involved, based on previous negative encounters.
- 9.3. When the decision is to tolerate the encampment, the reason for this decision should be recorded and will be determined by the specific circumstances of the site and any specific needs of those camping.
- 9.4. Encampments are to be kept under review and should be subject to regular visits; complaints should be monitored and logged by the Local Authority and the Police. Changed or deteriorating circumstances and/or behaviour is likely to lead to the initiation of eviction proceedings. Examples of 'change' include:
  - Increased levels of nuisance or environmental damage,
  - Expansion of the initial encampment group by the arrival of further people and caravans/mobile homes,
  - Anti-social or criminal activity.
- 9.5. Local planning authorities may also wish to consider that, by allowing camps to remain on an unauthorised site for a short period, public amenity or existing use of land or buildings may be unacceptably affected, meriting protection of the public interest. Depending on the circumstances however the effects of unauthorised use, for short periods may not be considered unacceptable. In this context the local authority should consider the length of time specified in Part 5 of Schedule 2 to the 1995 General Permitted Development Order (caravans staying on land without requiring specific planning permission).
- 9.6. Where it has been decided that, for the time being, an encampment is to be tolerated the Council should ensure that other relevant bodies / interested parties are kept informed e.g.:
  - Elected members and relevant ward members
  - The public, especially complainants,
  - Local education service and health and welfare agencies.
- 9.7. The City Council is empowered to initiate eviction proceedings in court in relation to unauthorised encampments on Council owned land, and will usually use Common Law, Part 55 of the Civil Procedure Rules or Section 77 of the Criminal Justice and Public Order Act 1994 (CJPOA).

## **10. Welfare services available**

- 10.1. The City Council has produced an Occupational Agreement Summary (OAS) leaflet outlining the health, housing and educational services available to members of the travelling community. This document will be made available when conducting the needs assessment and / or arranging accommodation for the group on the transit site.
- 10.2. The officer undertaking the needs assessment will not be a trained medical professional and as such will be unable to give in depth medical advice. Reference will be made to those facilities noted on the OAS or to the nearest known A&E Department.
- 10.3. The Council Enforcement Officer on visiting a site may find that the occupiers have children of school age who are in need of an education placement either through discussion with the occupiers or through his/her own judgement. In either case he/she will inform the Traveller Teacher for referral / information.

## **11. General strategy for dealing with unauthorised encampments**

- 11.1. The types of land upon which unauthorised encampments may be established are Birmingham City Council owned land, and privately owned land. A sub-set of either is land to which a High Court Injunction has been granted to prevent the establishment of unauthorised encampments.
- 11.2. The approach for dealing with unauthorised encampments is broadly the same irrespective of the type of land. The actual operational approach taken may vary depending on certain circumstances. The general presumption is that a group will be directed to the transit site where suitable pitches exist.
- 11.3. Where the unauthorised encampment is on Birmingham City Council land then the process identified in Figure 1 will be followed.
- 11.4. Where an unauthorised encampment is on injuncted land, whether City Council or privately owned then the process identified in Figure 1 will be followed with the following considerations:
  - Where the land is not BCC owned then either WMP will undertake the welfare assessment or BCC will do this at the request of WMP and advise as to the availability of suitable pitches.
  - If WMP undertake the welfare assessment they may use the form at Appendix 1 insofar as it applies to their considerations and they will need to liaise with BCC to ascertain whether suitable pitches exist on the transit site.
  - Where a suitable pitch exists then WMP may serve a s62A Direction to direct the group to the transit site instead of prosecuting the injunction.
  - Where suitable pitches do not exist then WMP will need to prosecute the conditions of the Injunction using other powers.
- 11.5. Where an unauthorised encampment is on privately owned land then the aim will be to direct the group to the transit site, failing that recourse may be had to WMP powers or landowner powers.
  - Where possible BCC will conduct a welfare assessment at the request of WMP and advise as to the availability of suitable pitches.
  - Where possible WMP will direct the group to the transit site.

- Where WMP cannot direct the group to the transit site then they may consider using s61 powers if the relevant conditions are met and depending on the availability of Force resources.
- Where WMP are unable to use any powers then the landowner will be advised to use powers available under common law.

## 12. Evictions undertaken by Birmingham City Council

- 12.1. Where it is necessary for Birmingham City Council to undertake the eviction a determination will be made as to whether the site in question constitutes a 'park or green / public open space' as these areas of land are deemed to have greatest public amenity use and as such are more sensitive to the presence of an unauthorised encampment.
- 12.2. Certain highways land also has greater need for protection, specifically those areas where there is a non-through route and which typically serves industrial areas where it is reasonable for heavy goods vehicles or support vehicles (e.g. fork lift trucks) to be manoeuvring and / or turning on the road. In these cases there is a strong emphasis on ensuring public safety including that of the travelling group where it may be reasonable to expect children or animals to be present around the caravans and by reason of such present a risk to themselves and others from their very presence. In these cases the land will be deemed 'sensitive' and expedited action taken to secure it's repossession.
- 12.3. In cases where there is an unauthorised encampment on 'sensitive land' as outlined in the paragraphs above, the Council will serve relevant notices on all persons camped on the land stating that the land is to be vacated within the following timescales:
- Two days where the land is considered to constitute an urban park or green / public open space;
  - Two days where the land constitutes a non-through highway which provides access to premises (residential or business) where the presence of the encamped persons is interfering with legitimate access, and / or where crime, disorder or nuisances (all in the broad sense) are arising or have arisen;
  - Seven days for any other site;
  - On another agreed date depending upon circumstances (a record of any such *agreements* shall be retained within BCC) e.g. extensions to facilitate hospital visit where there is continued good behaviour and respect for the site.

The Council will also issue a copy of the Local Authority's 'code of conduct' by which the occupiers will be expected to regulate their behaviour whilst occupying the site.

- 12.4. If the land has not been vacated at the elapse of the relevant period, the Council may instruct Enforcement Agents to remove the encamped persons from the land, generally with effect from the next working day. On the specified day of eviction, the Council may request Police assistance to prevent a breach of the peace if the circumstances suggest a breach of the peace is likely and in all cases will advise West Midlands Police of prospective evictions.
- 12.5. It should also be noted that it is prudent to visit the site on the day prior to the eviction which, where a notice would elapse on Friday, Saturday or Sunday, may mean the following Monday to provide for an eviction on the Tuesday. In these circumstances

the Council will liaise with the Police to see if there are sufficient grounds to warrant an eviction over the weekend.

- 12.6. The Council do not operate a formal eviction service over the weekend although the Duty Officer for Parks may be contacted by WMP where an encampment is on parks land. In these circumstances WMP will assist the Duty Officer for Parks to complete the welfare assessment.
- 12.7. The Duty Officer for Parks may be contacted via the Contact Centre on 0121 454 7810.

### **13. Unauthorised encampments on privately owned land in Birmingham**

- 13.1. West Midlands Police officers will not proactively seek out encampments but will wait until a landowner, affected resident or the Local Authority contacts them. Once WMP do become aware of encampments they will notify their existence to the owner of the land concerned and the Regulation and Enforcement Division for the information of the Council Enforcement Officer.
- 13.2. The Council and WMP will work collaboratively where a UE exists on privately owned land. The Council will conduct a welfare assessment (Appendix 1) thereby facilitating WMP to direct them group to the transit site should space be available. Where there is not enough space on the transit site then the landowner will be advised to employ enforcement agents to seek the removal of the group.
- 13.3. Circumstances may exist where it may be appropriate for the Police to exercise powers under section 61 Criminal Justice and Public Order Act 1994 (CJPOA). This is will be a legal / operational matter for the Police to consider on a case by case basis.
- 13.4. If it is not appropriate for the Police to use their powers under Sec 61 the owner of the land should be advised as to the reasons why; such reasons may include:
  - The persons have no intention to take up residence,
  - Insufficient number of vehicles,
  - Humanitarian grounds,
  - No instances of damage, nuisance or apparent criminal activity

The owner of the land can be directed to seek the issue of Court proceedings to secure possession of the land or seek the services of a reputable firm of bailiffs.

- 13.5. The Local Authority will not remove persons or property from private land. The Police may be called upon to assist either the County Court Bailiffs or the High Court Sheriff (with regard to a potential breach of the peace) in the event of an order resulting from a private application.

### **14. Police powers: Criminal Justice and Public Order Act 1994, ss61 and 62**

- 14.1. If it is appropriate for the Police to take the lead in enforcing removal, sections 61 and 62 of the CJPOA 1994 will be applied. Note, this section does not relate to action under s62A (where an alternative site is available) as that is covered in previous sections. In all instances there will be early consultation / involvement with the Local Authority.

14.2. The senior officer present should consider their powers under sections 61 and 62 of the Criminal Justice and Public Order Act 1994, taking all the circumstances into account with particular note of whether the following circumstances exist:

- There is a threat to public order, or
- There is obstruction of the highway, or
- When crime is, or has been, committed which can be linked to the unauthorised encampment.

14.3. Having regard to the criteria above, the decision to invoke Police powers will be made by the senior Police officer present, who must be satisfied that the unauthorised occupiers have;

- Been requested to leave, and
- That damage has been sustained to the property, or
- That the persons have used threatening, abusive or insulting words or behaviour towards the occupier or owner of the land, a member of his/her family or their employee or agent, or
- There are six or more vehicles on the land.

14.4. On each occasion, prior to invoking Police powers consideration must be given to humanitarian and welfare issues. Depending on the urgency of the particular circumstances the Local Authority will carry out enquiries in this regard. Such considerations should not cause an obstructive delay. However, the Local Authority may make an evaluation where issues such as a critical illness or treatment at hospital are valid reasons for not moving the persons present. Factors such as children attending school will not, generally, be regarded as being sufficient grounds for a delay.

14.5. Consideration may be given to the use of powers contained in alternative legislation e.g. wilful obstruction of the highway (Section 137 Highways Act 1980).

## **15. General Police action in relation to unauthorised encampments**

15.1. An incident log will be created in every instance and the Duty Officer will be informed. The incident log should include the following information:

- Date the occupiers arrived at the location,
- How the persons entered the land,
- Number of caravans and vehicles present and their registration numbers,
- The exact location of the encampment,
- Details of livestock (horses etc) and dogs present,
- What steps, if any, have been taken locally to request that they leave,
- The identity of the land owner and if they have been informed,
- What steps are being taken to secure the remainder of the property while they are present,
- Whether there is anything especially valuable, sensitive or dangerous on the site (toxic waste, powers or gas installations etc),
- Information of any immediate health or welfare needs, especially that of children and elderly people.
- What steps will be taken to secure the premises once they leave,

- All calls from the public and/or complaints concerning the conduct of the persons (including incidents of verbal-abuse and anti-social behaviour) will be recorded on the incident log, in order to create a 'running' and complete record,
  - The Council Officer contact details & any updates and developments reported by the Council Officer
- 15.2. Once the Local Authority (in respect of Council owned land) or the owner (in respect of privately owned land) has asked the occupiers to leave documentary evidence (a statement, site assessment or copy notice) must be obtained, to be kept at the appropriate NPU.
  - 15.3. A Police officer not below the rank of Inspector should attend the location to become the senior decision making officer present in order to complete the eviction rationale record and serve a notice under Sections 61 or 62A. This will be the relevant constituency Inspector, or if out of hours/unavailable the Duty Inspector.
  - 15.4. Police officers should use body worn video (BWV) devices during interactions. **BWV DEVICES WILL ONLY BE USED BY THOSE OFFICERS AND STAFF WHO HAVE BEEN FULLY TRAINED AND AUTHORISED IN THEIR USE AND WHO ARE WEARING OVERT POLICE UNIFORM AT THE TIME OF OPERATIONAL USE.** Officers to be aware of and follow the guidance set out in the Force Policy on the use of Body Worn Video.
  - 15.5. Inform any person who has expressed welfare needs that their situation is being considered. The police should liaise with the Local Authority and consider what options are available to alleviate any social/medical needs of the trespassers. Records of this process should be contained within police and Local Authority logs.
  - 15.6. When giving 'notice to leave' a reasonable time must be allowed. Those encamped should be consulted and logistical difficulties should be taken into account. It is not usually appropriate to require those encamped to leave in the middle of the night; the notice should specify that they should leave as soon as reasonably practicable, how long this will be will depend on the individual circumstances, as a guide for a section 61 notice 24 hours should be sufficient, whilst for section 62A the aim should be to direct the group to the transit site on the same day to allow the Council time to facilitate their reception at the site.
  - 15.7. Once notices have been served, solicitors representing the occupiers may become involved. Their involvement should not usually delay the police operation; a detailed log of all communications should be kept.
  - 15.8. On the day of the operation, consideration should be given to sending Officers to the site at an early stage to monitor any movements and ascertain the occupiers' intentions.
  - 15.9. Consideration should be given to video recording the operational briefing.
  - 15.10. Ensure vehicles that have tow and/or lift capability are available and that provision has been made for the secure storage of recovered or seized vehicles.
  - 15.11. Liaise with the Local Authority (in the case of Council owned land) or the owner (in the case of privately owned land) to ensure that the site can be made secure once removal has been effected.



15.12. WMP Resources to consider:

- Duty OSU (0800 x 0000hrs, requires duty FIM authority)
- On call OSU PSU (24 hours notice required, via DMM/Force Ops)
- Recovery Vehicles (Elvis)
- Proactive RPU
- EGT Officers (Force Control Room)
- Air Ops
- P40 Recovery Truck (24 hr notice)
- NHT Reassurance Patrols
- Corporate Communications Overview (KIN)

## 16. Summary of the Law

### **Section 61: Direction to Leave Land and Power to Arrest**

Direction to leave land: If the senior Police Officer (any rank) present at the scene reasonably believes that two or more persons are trespassing on land (other than the highway) and they are present there with the common purpose of residing there for any period, and that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and either:

- 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
- that those persons have between them six or more vehicles on the land,

He/she may direct those persons, or any of them, to leave the land, to remove any vehicles or other property they have with them on the land.

Where the senior Police Officer believes the persons were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions were satisfied after those persons became trespassers before he/she can direct them to leave.

Communications: a direction to leave may be communicated by any Constable at the scene. Although the Act does not specify it for Section 61, Section 63 states that persons shall be treated as having had a direction communicated to them if reasonable steps have been taken to bring it to their attention. The same process should apply to Section 61 although this has not been tested at law. No requirement for an officer to be in uniform, the direction can be written or verbal.

Offence failing to comply with direction or returning to land: if a person knowing that such direction has been given which applies to her/him

- fails to leave the land as soon as reasonably practicable, or
- having left again enters the land as a trespasser within the period of three months, beginning with the day on which the direction was given he/she commits an offence.

Penalty: summary offence, maximum penalty three months imprisonment and/or a fine.

Power: a Constable in uniform who reasonably suspects that a person is committing an offence under this Section may arrest him/her without a warrant.

Defence: that he/she was not trespassing on that land, or that he/she had reasonable excuse for failing to leave the land as soon as reasonably practicable, or as the case may be, for again entering the land as a trespasser.

## **Section 61: Practical Considerations:**

- The Act confers powers on the police, not a duty. It is a matter of discretion for the Police whether to exercise their powers or not. Each case must be looked at on its merits with the safety of the community and the potential for disorder or disruption to the life as major guiding factors.
- The discovery of an unauthorised encampment should lead to discussions between the Police, the Local Authority, and the occupier of the land, to determine the action to be taken. The law provides for a range of responses according to the seriousness of the nuisance. It may be appropriate for the landowner to apply for an order for re-possession. In other cases the Local Authority can use its powers under the Criminal Justice and Public Order Act (Section 77) but in circumstances where there are aggravating factors of crime, obstruction of the highway, or disorder, the Police may exercise powers given under Section 61.
- Exercise of the power under Section 61 does not require the landowner to have applied for an order for re-possession nor should it be used as a last resort.

There are occasions where immediate or prompt exercise of the power will be the most appropriate response. This requires the occupier, or his agent, to have taken reasonable steps to ask the trespassers to leave. The law does not define reasonable steps but Police Officers must be satisfied that action has been taken by the landowner, or his agent, to ensure that trespassers have been made aware of the request to leave. A verbal request accompanied by the serving of a notice to quit is 'good practice'. A Police officer must not act as agent for the landowner.

- The senior Police officer considering the use of Section 61 to deal with trespassers, in an area where such incursions may have become a local issue or a regular problem, will need to be aware of plans that may have been made by the local Community Safety Partnership to tackle the problem under the provisions of the Crime and Disorder Act (1998).
- Landowners may find it difficult to understand why the Police will not exercise powers contained within Section 61 immediately and at their request. Care needs to be taken by the officer in charge of the incident to ensure that, if the power is not to be exercised, adequate reasons are communicated to the owner of the land or other interested parties.
- When considering the issue of a direction to leave an established site (a site that may have been occupied for some time) the officer in charge should consider whether there has been a sudden escalation of trouble or other aggravating factors. Exercise of the power may result in further trespass nearby and it may be felt that a trespass on one site is less damaging to the community than a trespass on a more sensitive site nearby. A decision to allow a site to remain will need to be discussed with the owner of the land and other interested parties, including the trespassers. The local community should not, however, be expected to tolerate crime and disorder arising from encampments on any such site.
- A reason for non-exercise of the power may be a lack of Police resources to deal with a large incursion or concerns over the safety of officers. These are real concerns and may properly justify not exercising the power at once. The decision not to exercise the power under Section 61 should be referred to the officer in charge of the LPU for his/her

endorsement. This is not a requirement of the legislation but reflects Government concerns that the Police should, wherever appropriate, make use of the available enforcement legislation.

- Power under Section 61 is not unfettered; it must be exercised reasonably and the standard of reasonableness will vary according to the situation. The use of Section 61 is not restricted by the compulsory need for Local Authorities to consider welfare issues. Where the Local Authority use their powers under Section 77 they do have a duty to consider welfare implications (“The Wealden Case”). It was the intention of Parliament to separate the powers granted under Section 61 from those granted under Section 77. Local Authorities have other responsibilities under housing and education legislation as well as child care and social service considerations. These are not Police responsibilities. The duty of the Police is to enforce the criminal law; prevent crime, and maintain order. Case law however, (ex parte - Small 1998) confirms that the police MUST pay due regard to humanitarian issues prior to using Section 61. There should not be a lengthy delay in carrying out enquiries; people who have moved onto land only a short time before will not need the same consideration as people who have been settled on land for a considerable period of time and who may have children attending local schools.
- ‘Gypsies’ and ‘Irish Travellers’ are recognised as racial groups for the purposes of public order and anti-discrimination legislation. This means that Racially Aggravated public order/assault offences contrary to the Crime and Disorder Act or the Race Relations Act may be committed against them. The standard of behaviour expected from those trespassing should be the same as that expected from the settled community and officers will need to be aware of the responsibilities placed upon them to provide the same standard of service as would be expected to those living in settled communities. This applies to all groups of people who should not, for example, be subjected to their vehicles being stopped and searched without good reason or required to produce their documents just because they are recognisably from unauthorised encampments.
- It is suggested that a ‘direction to leave the land’, where practical, should be given both verbally and in writing. Providing uncooperative trespassers or a large gathering with both verbal and individual notices may however, be impossible. Although the issue of a documentary notice is not a statutory requirement it is good practice. When issuing a direction, the use of video evidence gathering facilities should be used to record both the verbal direction and the service of notices.

## **Section 62: Power to seize vehicles**

If a direction to leave the land has been given and a Constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse either:

- failed to remove any vehicle on the land which appears to the Constable to belong to him or to be in his possession or under his control: or
- entered the land as a trespasser with a vehicle within the period of three months beginning with the day on which the direction was given

the Constable may seize and remove the vehicle.

## **Section 62: Practical Considerations & Definitions**

Consideration may need to be given to the state of the persons vehicles before any direction to leave is given. Directing unfit vehicles onto the public highway is inappropriate and officers planning enforcement action under Section 61 will need to make practical arrangements for the removal of unfit vehicles to a safe place. This should be agreed with the Local Authority.

Vehicle: includes caravans, living vans, and vehicles, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by or attached to such a vehicle or caravan.

Note: as the definition of vehicles includes caravans and living vans, the seizure of such vehicles may render the owner and others homeless; welfare considerations need to be anticipated and catered for. The involvement of Local Authority Social Services in the planning stage is an important consideration.

'Damage': the Act does not define damage but makes reference to the Criminal Damage Act 1971 when defining property. A common sense approach is therefore necessary when defining damage to the land or to property on the land. It has included churned-up ground caused by heavy vehicles; diesel spillages; animal and human excrement; destroyed fencing and spoiled crops. The dumping of litter and rubbish by unauthorised campers is often the most frequent nuisance factor associated with trespass. This may fall within the legal category of damage dependent on the severity of the situation; each case will need to be judged on its merits. Other legislation may be considered.

Land: does not include –

- buildings other than agricultural buildings or scheduled monuments,
- a highway unless it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000 or is a cycle track under the Highways Act 1980 or the Cycle Tracks Act 1984.

Common Land: The legislation also applies to common land where persons act in a way in which is either a trespass against the occupier (any commoner or the local authority) or an infringement of the commoners' rights.

Residing: A person may be regarded as having a purpose of residing in a place notwithstanding that she/he has a home elsewhere.

## **Section 62A: Power to remove trespassers: alternative site available**

Direction to leave land: If the senior Police Officer (any rank) present at the scene reasonably believes that the following conditions are met:

- (a) that the person and one or more others (“the trespassers”) are trespassing on the land;
- (b) that the trespassers have between them at least one vehicle on the land;
- (c) that the trespassers are present on the land with the common purpose of residing there for any period;
- (d) if it appears to the officer that the person has one or more caravans in his possession or under his control on the land, and that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;
- (e) that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.

He/she may direct those persons, or any of them, to leave the land, to remove any vehicles or other property they have with them on the land.

Suitable pitch: Before issuing a direction the officer must consult every local authority within whose area the land is situated as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site which is situated in the local authority’s area.

A relevant caravan site means a caravan site which is within the same local authority area as the land under occupation and managed by a relevant site manager i.e. the local authority within who’s area the land under occupation is sited, a private registered provider of social housing, or a registered social landlord.

Where the senior Police Officer believes the persons were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions were satisfied after those persons became trespassers before he/she can direct them to leave.

Communications: a direction to leave may be communicated by any Constable at the scene. Although the Act does not specify it for Section 62A, Section 63 states that persons shall be treated as having had a direction communicated to them if reasonable steps have been taken to bring it to their attention. The same process should apply to Section 62A although this has not been tested at law. No requirement for an officer to be in uniform, the direction can be written or verbal.

**Section 62B: Failure to comply with direction under section 62A: offences**

Offence failing to comply with direction or returning to land: if a person knowing that such direction has been given which applies to her/him commits an offence if he/she

- fails to leave the land as soon as reasonably practicable, or
- having left he/she enters any land in the area of the relevant local authority as a trespasser within the period of three months, beginning with the day on which the direction was given.

Penalty: summary offence, maximum penalty three months imprisonment and/or a fine.

Power: a Constable in uniform who reasonably suspects that a person is committing an offence under this Section may arrest him/her without a warrant.

Defence: that he/she was not trespassing on that land, or that he/she had reasonable excuse for failing to leave the land as soon as reasonably practicable, or as the case may be, for again entering any land in the area of the relevant local authority as a trespasser with the intention of residing there, or that at the time the direction was given he/she was under the age of 18 years and was residing with his/her parent or guardian.

**Section 62B: Failure to comply with direction under section 62A: seizure**

If a direction to leave the land has been given and a Constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse either:

- failed to remove any vehicle on the land which appears to the Constable to belong to him or to be in his possession or under his control: or
- entered any land in the area of the relevant local authority as a trespasser with a vehicle within the period of three months beginning with the day on which the direction was given with the intention of residing there,

the Constable may seize and remove the vehicle.

## **Civil Injunctions and Criminal Behaviour Orders**

The Anti-social Behaviour, Crime and Policing Act 2014 reformed ASB powers for Police and partners. Applications can now be made for Civil Injunctions and Criminal Behaviour Orders.

Civil Injunctions replaced Anti-social Behaviour Orders (ASBOs) and provide a civil power to stop people engaging in (and prevent any escalation of) ASB. They are issued on the balance of probabilities to applicants from various partner agencies where it is 'just and convenient to grant it to prevent ASB.' Injunctions can include both prohibitions and requirements to address behavioural issues.

Criminal Behaviour Orders replaced CRASBOs and are issued after conviction to tackle individuals who commit crime and persistent ASB. They are issued where the courts are satisfied that the defendant engaged in behaviour which has caused (or likely to cause) harassment, alarm or distress and making the order will help prevent further behaviour. CPS apply for these orders on request of the Police or Local Authority.

Where appropriate, consideration should be given to the use of Civil Injunctions or Criminal Behaviour Orders to protect relevant individuals from ASB.

For more on the legislation, visit:

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>



**UNAUTHORISED ENCAMPMENT SITE ASSESSMENT FORM**

DATE:	TIME:
OCCUPANCY DETAILS: (Site name & location / arrival date & time / number of vans / family name / est. number of persons)	
LANDOWNER:	
ANY COMMENTS FROM WMP:  ANY COMPLAINTS (from settled community)?	
DAMAGE PRESENT: (Any damage to gain entry & caused whilst in occupation. Also damage that occurred prior to occupation should be identified)	
LITTER or WASTE or ASB: (Any flytipping / domestic waste / defecation / abusive behaviour / etc.)	
ANIMALS PRESENT: (Livestock and dangerous / aggressive dogs / dogs allowed to stray)	
WHAT IS THE IMPACT TO THE LAND? (Does the land have value or derelict / community facilities / leisure usage)	
WELFARE ISSUES: (Any medical / schooling / housing needs or any other needs requiring referral to another agency?)  Humanitarian issues (weddings/funerals etc.)	Sign Posting welfare form given out? <input type="checkbox"/>

<p>WELFARE ISSUES PROHIBITING EVICTION: (Detail specific van / people exempt from eviction at this time)</p> <p>Any Known illnesses / conditions / any information as to how this prevents moving.</p>	
<p>CONFIRM DISCUSSION WITH ENCAMPED PERSONS: (Attempt to generally identify an individual with whom discussions held)</p> <p>DISPLAYED ATTITUDE: ANY RELEVANT FACTORS –</p>	<p>Person(s) spoken to:</p> <p>If no discussion, explain why:</p> <p>Code of conduct issued: <input type="checkbox"/></p> <p>Co-operative / Dismissive/ Evasive / Abusive / Threatening</p>
<p>IS THERE A NEED TO EVICT NOW i.e. using non common-law powers?</p>	<p><input type="checkbox"/> NO <input type="checkbox"/> OBSTRUCTION</p> <p><input type="checkbox"/> YES <input type="checkbox"/> S62A CJPOA 1994</p> <p><input type="checkbox"/> S61 CJPOA 1994 requested on following grounds:</p> <p><input type="checkbox"/> DAMAGE <input type="checkbox"/> THREATS/ASB <input type="checkbox"/> &gt;6 VEHICLE</p>
<p>Proportionality Assessment</p>	<p>Assesment based on MOU Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If No then: Bespoke Assessment required</p> <p>If MOU was not relied upon for the proportionality assessment then name of officer completing the assessment: _____</p>
<p>DECISION: A decision has been made:</p> <ul style="list-style-type: none"> <li>• To request WMP serve a Direction under section 61 on the grounds above, or under section 62A CJPOA as there is a suitable pitch available on a transit site in Birmingham The land is BCC owned, and is not suitable for encampments, the presence of which is affecting the community and on balance of this assessment the above decision has been made. <span style="float: right;"><input type="checkbox"/></span></li> <li>• To serve notice giving <u>2</u> / <u>7</u> days occupancy [<del>delete</del> as appropriate] <span style="float: right;"><input type="checkbox"/></span> The land is BCC owned, and is not suitable for encampments, the presence of which is affecting the community and on balance of this assessment the above decision has been made. <u>There is not space on a transit site or WMP have refused to serve a Direction under section 62A</u> [<del>delete</del> as appropriate].</li> <li>• To tolerate the encampment <span style="float: right;"><input type="checkbox"/></span> The land is BCC owned and, having regards to the circumstances presented, is considered suitable to tolerate the encampment at this time, and on balance of this assessment the above decision has been made. (Where an encampment is tolerated then BCC reserve the right to reassess that decision at any time).</li> </ul>	

OFFICER NAME: .....



## UNAUTHORISED ENCAMPMENT EVICTION RATIONALE RECORD

<p><b>1. Location:</b></p> <p>Date first to notice of Police:</p> <p>Land Owner:</p> <p>Encampment Reference No:</p>	
<b>2. General Information / Summary:</b>	
<p><i>Where/what/when/why/how was the encampment established, who owns the land, how are they and others affected? Any previous history of the site and / or occupants?</i></p>	
<b>3. Factors relating to the unauthorised encampment:</b>	
<p><i>Record the number of caravans and vehicles present here, together with the factors that have been taken into account regarding the need to evict, such as anti-social behaviour and impact on other communities.</i></p>	
<i>Cont...</i>	

Cont...

**4. Mitigating Factors relating to the camp (including welfare issues):**

**Have welfare enquiries been carried out? Y / N** (if Y attach welfare enquiry record)

*If possible, the Local Authority Traveller Liaison Officer or local Health Visitor should attend to complete health and welfare assessments. Although the s61 legislation does not prevent eviction action by the Police where no formal welfare enquires have been completed, such enquiries should be made wherever practicable. In any event, police should complete welfare enquiries at the time of service of the s61 eviction order, with any issues noted on the eviction form.*

**5 Eviction decision:**

**POLICE POWERS USED:**

OBSTRUCTION OF THE HIGHWAY	<input type="checkbox"/>	_____
SECTION 61 CJPOA 1994 (ss 61 and 62)	<input type="checkbox"/>	_____
• DAMAGE	<input type="checkbox"/>	_____
• THREATS, ETC	<input type="checkbox"/>	_____
• 6 VEHICLES OR MORE	<input type="checkbox"/>	_____
Section 62A CJPOA 1994 (ss 62A, 62B and 62C)	<input type="checkbox"/>	_____

*A record of the grounds for the decision, including any action taken to resolve either aggravating factors or welfare issues that may have arisen. A summary of the impact on the human rights of all parties involved should be included, highlighting the legitimacy, proportionality and necessity of the eviction action.*

What date are notices to be served?:

When should the occupiers leave by: Time:

Date:

Signed:

**PRINT RANK/NO./SURNAME**

Date:

**\*\*IMPORTANT NOTICE - ALL SECTION 62 NOTICES and eviction rationale records FOR BIRMINGHAM THAT ARE SERVED MUST BE SENT TO: BIRMINGHAM PARTNERSHIPS: cp\_bhampartnerships@west-midlands.pnn.police.uk\*\***