

Land Owner Guidance – Signposting Leaflet

This guidance is for anyone who has questions about illegal / unauthorised encampments within Rossendale, 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 Lancashire County Council. 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 – Rossendale Borough 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 and 62 (a-e) 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 a court summons
- Seeking a possession order in 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 District 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 and 62 (a-e) of the Criminal Justice and Public Order Act 1994. The Police are obliged to act in accordance with the Human Rights Act 1998 and Equality Act 2010, which constrains the use of powers under 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 District Council can be contacted on 01706 217777.