Briefing note for West Midlands MPs on strengthening powers to tackle unauthorised encampments

- Unauthorised encampments cost West Midlands taxpayers millions of pounds, with Birmingham and Sandwell councils alone estimating costs of £700,000 and £400,000 last year for evictions and clean-ups.
- There were an estimated 395 unauthorised encampments in the West Midlands metropolitan region in 2016. This has more than doubled from 189 in 2011.
- Transit sites crucially unlock policing powers that make it quicker and easier to evict people from unauthorised encampments. They are proven to reduce the number of unauthorised encampments in an area and allow the police to ban groups from entire council areas if they refuse to use an available transit site. A transit site can charge for rent and require a deposit, enabling it to pay for itself.
- Transit sites only work when there are spaces for caravans. MPs are asked to consider supporting legislative change that would allow councils, or the West Midlands Combined Authority area, to share the capacity of their transit sites. Importantly, police powers are strengthened if they can direct difficult groups to transit sites across borough boundaries.
- We estimate that at any one time, the West Midlands has an average of 101 more caravans travelling than there are spaces on permanent or transit sites. This further highlights the need for increasing and sharing transit site capacity.
- Businesses and private landowners are also affected by unauthorised encampments. MPs are asked to consider supporting legislative change that protects private landowners from repeat victimisation by unauthorised encampments, through making sanctions available for travelling groups that return to the same private land. Reducing the time taken for evictions would also improve the response.
- The possibility of a dedicated team and resource across the West Midlands to work with unauthorised encampments is currently being explored.
- Unauthorised Encampments cannot be tackled in isolation. The collaborative nature and far-reaching geography of the Combined Authority offers a unique opportunity to take a lead on this issue.
- ‘Negotiated stopping’, a tactic used in Leeds, found that there was better community cohesion and potential combined savings of £238,350 per year in that city. This tactic is not currently widely used across the West Midlands, but the regional action plan involves developing the option for a standardised process to negotiated stopping.
- Injunctions have been made in court both banning unauthorised encampments on pieces of land, as well as banning individuals from establishing encampments in a borough. So far, these injunctions have only been achieved by individual local councils, highlighting the risk of ‘displacement’ unless the Combined Authority could achieve regional injunctions.
- The issue of problematic unauthorised encampments should not be confused with assumptions of ethnicity such as Gypsy, Roma and Traveller (GRT). Any tensions regarding ethnicity stem from a failure to separate ethnicity from the activity of a problematic minority who may or may not identify as GRT. Not all persons in travelling groups are GRT, just as not all GRT people are part of travelling groups.
Introduction and contents

This briefing note outlines the two key legislative concerns (Legal issue 1 & 2) developed through cross-party and multi-agency discussion at the Unauthorised Encampments Summit called by David Jamieson, West Midlands Police and Crime Commissioner, in Birmingham on 10th February 2017. These are explained below in significant detail and will likely be the primary concern of MPs seeking changes to legislation. Fundamentally, the police would benefit from greater powers to expand their toolkit for tackling problematic unauthorised encampments. An unauthorised encampment is defined as a group of people with vehicles who are trespassing on land without the owner’s consent. The initial offence is a civil matter, not a criminal one.

Further to the two legal issues outlined below, there is also a summary of some of the best practice that is being developed in the West Midlands (Best Practice 1 – 6). While these best practice tactics require no changes to legislation, MPs may find them useful in giving a broad picture of the work already being undertaken. MPs may also benefit from sharing this best practice with parliamentary colleagues representing constituencies outside of the West Midlands.

There were an estimated 395 unauthorised encampments in the West Midlands metropolitan region in 2016, more than doubling from 189 in 2011. This has resulted in direct costs of millions of pounds to local authorities for evictions and clean-ups. Birmingham and Sandwell alone estimated their costs for last year at £700,000 and £400,000 respectively. There is a sense that these costs are being incurred despite neither the settled nor travelling community being content with the response by all agencies to unauthorised encampments.

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Legal issue 1 - Expanding s62A powers to allow police to direct unauthorised encampments to transit sites across local authority boundaries.

See below, ‘Best practice 1’, for a summary of the benefits of transit sites. s62A of the Criminal Justice and Public Order Act 1994 defines the conditions under which a police force can direct an unauthorised encampment to an appropriate site (transit site or permanent site with available pitches) within a local authority area. This is offers a crucial expansion of policing powers. In the statute, the following is outlined in subsection (5), and I have underlined for emphasis:

“(5) 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.”

We propose a change in legislation that allows for increased resilience across the West Midlands, by allowing s62A to direct unauthorised encampments across local authority boundaries. To maximise capacity this could be to a neighbouring local authority area, or as the collective of the West Midlands Combined Authority. Including ‘combined authorities’ alongside ‘local authorities’ would allow for this resilience, where an agreement was in place for a fair sharing of transit site capacity. The deployment of this power across a Combined Authority would of course have to be proportionate, and reserved for problematic groups. The PCC has previously called for the Combined Authority’s Land Commission to consider taking a role in developing a region-wide approach to transit site provision and planning.

Careful wording to legislative asks should ensure groups are not directed disproportionate distances (ie from the east side of Coventry to the north side of Wolverhampton). Meanwhile, to direct a group to a geographically neighbouring authority (where agreements and protocols are in place) would avoid the risk of increasing the volume of unauthorised encampments in areas in the immediate vicinity of combined authorities.

Legal issue 2 - Strengthening powers to protect private (business) premises from occupation by unauthorised encampments.

Unauthorised encampments are a matter of civil trespass between the landowner and the individual(s) illegally camped on the land. Private landowners are expected to deal with any encampments on their own land. The landowner can attempt to agree a leaving date with the representatives of the encampment, use common law powers to give a 48 hour notice of eviction, or obtain a Court Order under Part 55 of the Civil Procedure Rules 1998. Currently however, if a landowner recovers their land from an unauthorised occupation by any of these means, there is no sanction offence for the return of trespassers to the land. A change to the law to restrict the return of trespassers to land would prevent the repeat victimisation of private landowners and businesses.

A possession order may be used to recover land from trespassers, but a court hearing date is set with a minimum of two days’ notice for non-residential land, or five days’ notice for residential property. This not only delays recovery of the land but also burdens landowners to prove their case for eviction instead of an encampment proving their case for trespass. Reducing the time taken for eviction notices, or shifting the burden of proof from the landowner to the occupying encampment, as matters that could be considered in Parliament.
Costs borne by the private sector should not be underestimated. The unauthorised encampments summit in February 2017 revealed further anecdotal evidence of the business community having profits affected by this issue, leaving the West Midlands because of it, or even being deterred from investing in parts of the area in the first place.

West Midlands Police (WMP) and the seven local authorities are already working with private land representatives to develop a toolkit of interventions that can be used to help land owners protect against unauthorised encampments. Better legal protection for private landowners and business premises would assist in this work.

_Best Practice 1 - Development of transit sites to unlock s62A powers._

Transit sites could be viewed as the most important of the best practice suggestions, and are a prerequisite to the efficacy of Legal Issue 1. See the [bottom of this document](#) for a full summary of what the a transit site means for policing powers.

In brief, where there is no transit site, the police can only move on a group and ban them from returning to that exact same spot for three months. Too often, that group then pitches up on the next park or sports centre just a few hundred yards down the road. This is the limitation of section 61 of the Criminal Justice and Public Order Act 1994.

Where there is a transit site however, the police can direct an unauthorised encampment on to it. If the group refuses to go, they are expelled from the entire council area for three months. If they return to the borough, police can make arrests and seize vehicles. This is the advantage of section 62A of that same Act.

A major step towards improving our response to problematic unauthorised encampments is Sandwell Metropolitan Borough Council’s unveiling of a dedicated transit site on 1st September 2017. It is hoped that other local authorities will follow their example, with Birmingham City Council already preparing a site.

There is an associated cost with the establishment of transit sites, but this then allows for a form of rental income from those using the sites, as well as the unlocking of s62A powers for a quicker (and therefore more cost-effective) eviction of problematic unauthorised encampments.

The recommendation for transit sites is particularly significant to ensuring that local authorities can accommodate the travelling lifestyle. There has been a risk that if every encampment is considered ‘unauthorised’, then an assumption can emerge that every travelling group represents a problem to be tackled. West Midlands Police estimate that there are almost 2,700 more caravans travelling nationally than there are authorised spaces on encampments. Based on the average need for provision, the West Midlands is estimated to carry a deficit of 101 spaces. Without transit sites, some of those wishing to lead a travelling lifestyle currently have no option but to set up unauthorised encampments.

_Best Practice 2 - Joint protocols between police and local authorities._
Representatives from the seven Local Authorities and West Midlands Police have been working together for the past year in order to encourage the flow of intelligence, processes and knowledge. This joint working group is working to develop and implement a standardised welfare and needs assessment process. They are also completing a wider feasibility study of regional transit site provision, which would enable a more consistent response to unauthorised encampments across the region.

The cross-border working between Local Authorities, West Midlands Police and other agencies (e.g. West Midlands Fire Service) is supporting better alignment and greater support for each other. West Midlands Police provide a weekly information and intelligence report to all seven Local Authorities, the three regional border counties and the Fire Service.

**Best Practice 3 - Sharing staff.**

Staff expertise and availability significantly affects the West Midlands ability to tackle unauthorised encampments effectively. While West Midlands Police have relevant Gold, Silver and Bronze lead officers who have accrued the relevant expertise, there remains no team dedicated to respond to unauthorised encampments. This is also an issue as officers or staff across all agencies change roles or organisations, and a comprehensive handover of expertise and contacts appears rare.

The most effective team would be one that combines knowledge and the capacity to act on the ground. As such, an ideal team could combine the elements of police enforcement, local authority powers and responsibilities, alongside experts in negotiation and liaison. The joint working group of WMP and the seven local authorities is exploring a proposal for a shared UE response resource.

This team could identify current gaps in our response, build trust with travelling groups and improve intelligence. They would also be crucial to establishing consistency in our response. A crucial benefit would be encouraging the reporting of hidden crimes that may take place on unauthorised encampments, such as domestic abuse or modern slavery.

**Best Practice 4 - Cross-border working.**

The issue of unauthorised encampments cannot be tackled in isolation, as an effective response in one area can lead to an exacerbation of issues across a local authority border. It is therefore in the interests of the West Midlands region to develop a uniformly robust approach to tackling problematic unauthorised encampments. The collaborative nature and far-reaching geography of the WMCA offers a unique opportunity to take a lead on this issue. This would be improved if the above ‘Legal issue 1’ were addressed to increase the collective capacity of transit sites.

The objective of ongoing cross border working is to move beyond each organisation’s individual approaches and work more closely together to manage Unauthorised Encampments, to share information, to communicate effectively and to provide a better service to settled and nomadic communities. The following combined objectives and principles have been agreed across the wider West Midlands region:
We commit to a collaborative approach in how we respond to unauthorised encampments in the West Midlands, which impact on local people and places.

- We will work together to gain a better understanding of regional and local trends and use these trends to inform strategic responses.
- We will provide a regional coordinated response to learning, improving and implementing better solutions for managing unauthorised encampments.
- We will continue to explore opportunities where nomadic communities can settle on a permanent and temporary basis.
- To undertake proportionate enforcement.
- To support and balance the needs of different communities in exercising the powers available and to do so proportionately and without discrimination.
- To ensure there are clear and open lines of communication between each LA and WMP and that we share appropriate information when needed.
- To champion a culture of supporting and assisting each other whenever required.
- To foster good relations by responding to prejudice and promoting understanding.
- To communicate openly through the relevant media platforms to advise and update on specific unauthorised encampment situations.

Progress has been made around sharing practice and knowledge around the use of civil legislation, criminal law, common law, transit sites, tolerated stopping, security & prevention and court injunctions.

**Best Practice 5 - Negotiated stopping.**

Negotiated stopping, pioneered by ‘Leeds GATE’, offers an alternative to the traditional eviction approach, which expands our toolkit for working with unauthorised encampments that are not causing major issues. The families in a travelling group make an agreement with the local authority about acceptable behaviour, use of waste disposal, and agree when the camp will leave. The negotiations and agreements are carried out by and with the local community.

The evaluation of negotiated stopping in Leeds found that there was better community cohesion and potential combined savings of £238,350 per year in that city. This tactic is not currently widely used across the West Midlands, but the regional action plan involves developing the option for a standardised process to negotiated stopping.

**Best Practice 6 - Injunctions against persons and/or places.**

In July 2017, Birmingham City Council and West Midlands Police successfully achieved two injunction orders against persons unknown to protect four locations from unauthorised encampments. This bans anyone from establishing, joining or being a part of an encampment on Selly Oak Park, Selly Park Recreation Ground and Hazelwell Park (all in Selly Oak), and from Perry Park (in Perry Barr). The orders will remain in force for two years until July 2019. More recently, Birmingham City Council obtained a further injunction for Swanshurst Park (in Billesley).

The orders are ground-breaking nationally, having set a High Court precedent in their applicability to ‘persons unknown’. The orders were achieved following witness statements from officers in key
agencies as well as residents and their council representatives, which attested to the harm caused in these locations by a large number of unauthorised encampments. Police officers can arrest anyone breaching the order, which also includes further offences for anyone involved in an encampment including promoting such an encampment, threatening any other person, urinating or defecating other than in a lavatory, fly-tipping or dropping litter.

It is too early to determine if this order will lead to an uplift in unauthorised encampments in other locations nearby, but the distress to local residents and cost to the local council caused by encampments on these locations required swift action and a short-term protection. Transit sites continue to offer the best long-term remedy to such problematic unauthorised encampments.

A pre-emptive injunction can be made using s187B of the Town and Country Planning Act to prevent unauthorised encampments on vulnerable sites, or an injunction can be made banning named individuals from certain sites or areas under s1 of the Anti-social Behaviour, Crime and Policing Act 2014. The latter was achieved in Sandwell this year to ban problematic members of the Cassidy family from establishing unauthorised encampments in the borough. When granting an injunction, the Judge will need to be satisfied that the application is just and proportionate. Legal advice suggests this may be more difficult where a Council does not have a temporary site for travelling groups or cannot demonstrate plans for one.

Importantly, each of the seven local authorities of the metropolitan West Midlands must currently pursue separate injunctions, even if against the same individuals. The legal costs of this will be significant. There would be major advantages to injunctions being pursued and granted on the basis of the West Midlands Combined Authority geography, although this has not yet been attempted.
# What does a transit site mean for s61-s62 police powers?

Criminal Justice and Public Order Act 1994  
Part V Public Order: Collective Trespass or Nuisance on Land

<table>
<thead>
<tr>
<th>Criteria for removal:</th>
<th>NO TRANSIT SITE AVAILABLE</th>
<th>TRANSIT SITE AVAILABLE</th>
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<tbody>
<tr>
<td>s61</td>
<td>Any persons on the encampment have:</td>
<td>s62A</td>
</tr>
<tr>
<td></td>
<td>- Caused <strong>damage to the land or property</strong> on the land, or;</td>
<td>- There is a <strong>suitable pitch on a relevant caravan site</strong> for each of the caravans (ie a transit site), and;</td>
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<td></td>
<td>- Used <strong>threatening, abusive or insulting words or behaviour</strong> towards the occupier, a member of their family or an employee or agent of theirs, or;</td>
<td>- The persons on the encampment are <strong>trespassing</strong>, and;</td>
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<td>- Between them, <strong>more than six vehicles</strong> on the land.</td>
<td>- They have between them <strong>at least one vehicle</strong>, and;</td>
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<th>Powers of direction:</th>
<th>s61</th>
<th>s62A</th>
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<td>Direct persons to <strong>leave the land</strong> and to remove any of their vehicles or other property from the land.</td>
<td>Direct persons to <strong>leave the land</strong> and to remove any of their vehicles or other property from the land.</td>
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<tr>
<th>Failure to comply:</th>
<th>s62</th>
<th>s62B</th>
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<tr>
<td></td>
<td>Failure to leave the relevant land as soon as reasonably practicable.</td>
<td>Failure to leave the relevant land as soon as reasonably practicable.</td>
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<td></td>
<td><strong>Returning to the specific piece of land as a trespasser within three months</strong> with the intention of residing there.</td>
<td><strong>Entering any land in the area of the relevant local authority</strong> as a trespasser <strong>within three months</strong> with the intention of residing there (if the offer to use the transit site is refused).</td>
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<tr>
<th>Penalty for failure:</th>
<th>s61</th>
<th>s62B</th>
<th>s62C</th>
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<td></td>
<td>Up to <strong>three months imprisonment.</strong></td>
<td>Up to <strong>three months imprisonment.</strong></td>
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<td></td>
<td>A <strong>fine of up to £2,500.</strong></td>
<td>A <strong>fine of up to £2,500.</strong></td>
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<td></td>
<td>Police <strong>seizure of vehicles.</strong></td>
<td>Police <strong>seizure of vehicles.</strong></td>
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N.B. these are the key policing powers available when addressing problematic unauthorised encampments. Local authorities have other powers available to them which are sometimes considered the more proportionate response. This is particularly the case where there is no transit site, as s61 only allows the police to move on an encampment without any offer of where the people might go. This frequently results in the encampment reappearing nearby.