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Working together for a safer London

Metropolitan Police Service  
Directorate of Training and Development

Police Constable Foundation Course

# Civil Trespass

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You have all seen the sign 'Trespassers will be prosecuted'. What you have perhaps not realised is that in most cases this sign has no meaning in Law. This is because trespass, which in simple terms means being on someone else's property without permission, is not generally a criminal offence.

However, trespass may be a criminal offence in particular places or in certain circumstances. You will learn more about this at an Area Training Unit.

Trespass is a matter with which Police are frequently called on to deal. The parties are usually angry, and Police must act with firmness, be impartial, use tact and have a sound knowledge of the subject.

### **Objectives**

After you have studied and understood this written lesson, you should be able to:-

1. Explain what is meant by the term 'civil trespass'
2. Demonstrate police action in cases of civil trespass.

When you have achieved the objectives listed above and after your trainer has provided suitable learning experiences, you should be able to:-

1. Deal with allegations of civil trespass.

**A trespass is committed by a person who is improperly on someone else's property without permission.**

Trespass is not a criminal offence except in certain specified places or where it is accompanied by other acts which make it so.

Where there are no such considerations it is known as a civil trespass.

There can be no criminal proceedings for civil trespass. Therefore the familiar 'trespassers will be prosecuted' is an empty threat.



In spite of trespass not being an offence Police are regularly called upon to deal with such incidents and therefore you must be able to recognise whether or not a person is improperly on premises.

Let us, therefore, look at who is entitled to be on premises or land so that you will be in a better position to take action when called.

## Lawful Occupier

In the following types of premises some examples are given of those who may be considered to be the lawful occupier.

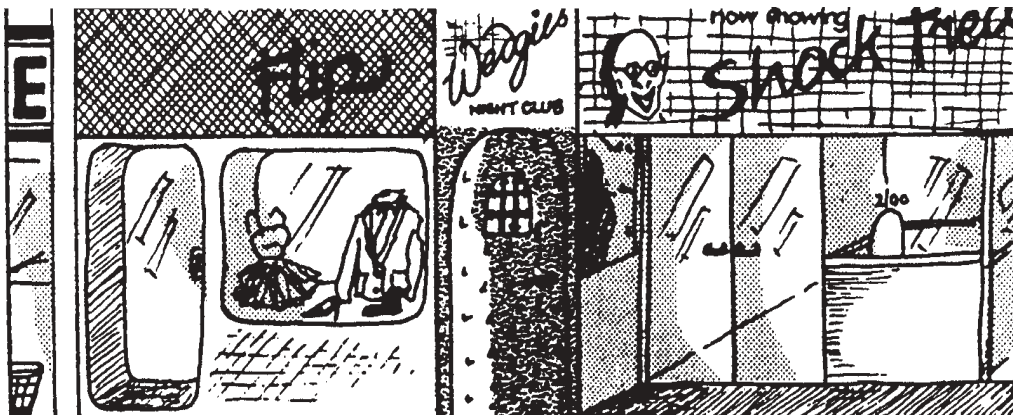
(a) Private dwellings (houses, flats, etc.) .....



### The owner or occupier.

“Occupier” will include a person renting the house or flat or part of it, as well as members of their family living with them or persons acting on their behalf.

(b) Shops, cinemas, and other commercial premises normally open to the public .....



The Owner, Manager or any employee acting on behalf of the Owner or Manager.

(c) Libraries, swimming pools, parks and other publicly owned places normally open to the public .....



Usually any employee of the Council, etc., responsible for maintaining the facility.

(d) Business premises, schools and other non-residential premises not open to the public .....



The Owner, Head Teacher, Manager, Secretary, or other responsible employee.

It is only at the request of such **lawful occupier** or representative that Police are entitled to act.

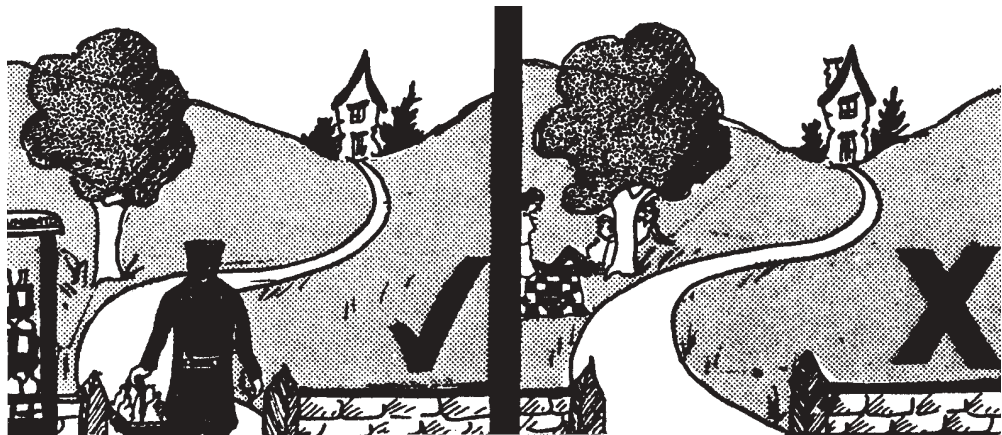
Let us now look at the position of a person who is not such a lawful occupier when they enter premises or land.

## Persons on Premises or Land

Many premises offer an open invitation to the public to enter. Shops and cinemas obviously depend on people entering or their business would fail, yet they are privately owned and the owner, manager or their representative can withdraw that invitation at any time.



If there are no locked gates or notices forbidding entry, there is an implied invitation for persons to enter the gateway of private premises for the purpose of carrying on business for lawful visiting. It does **not** mean the grounds are open for **any** purpose.



The lawful occupier has the right to exclude anyone from their premises who they do not wish to be there. Even those lawfully on premises can become trespassers if the invitation to remain is withdrawn.

People entering or remaining on premises against the lawful occupier's wishes are trespassers unless they have a legal right to be on premises. Therefore, a tenant refusing to leave because the landlord wants to re-let the premises to get a higher rent, is **not** a trespasser, nor is a wife living with her husband, who, having been told by him to go back to her mother, remains where she is.

Another type of legal right to enter and remain on premises applies to persons acting under authority of law, such as Court Bailiffs, Gas and Electricity Board Officers in certain emergencies, and of course, Police Officers, **provided they are legally entitled to do so.**

## Rights of Lawful Occupier

The lawful occupier is entitled not only to exclude unwanted persons from their premises or land but also to see that persons trespassing leave the property. They may eject anyone who refuses to leave, **provided no more force is used than is necessary to remove the trespasser.**



They are also entitled to call on anyone to assist them to eject a trespasser. Often the person asked to assist will be a Police Officer.

Civil Trespass is not a criminal offence and your power is confined to preventing a breach of the peace.



You will normally be called to deal with a trespasser only when the problem has become too great for the lawful occupier to handle.

Most cases of civil trespass also involve some sort of civil dispute between the trespasser and lawful occupier. Quite often the trespasser will take the stance that they will not leave until a solution to the dispute has been reached.

That's when you get called. You will frequently find that if you can assist in resolving the dispute, the trespasser will leave of their own accord.

The problems start arising where the trespasser refuses to leave. In the vast majority of cases you do not have any statutory powers to eject a trespasser.

What you, or any other ordinary person in the street, may do is assist the lawful occupier in ejecting the trespasser. Most times when you do this you are acting outside your capacity as a Police Officer and in such circumstances you have no more powers or privileges than a member of the Public.

Providing that there is no disturbance or breach of the peace, the trespasser must be released as soon as they reach the street.

If, however, their conduct at anytime is such that they commit another offence such as criminal damage or assault then they should be dealt with according to the circumstances.

In any of the above offence situations you revert to acting in your capacity as a Police Officer as soon as the need arises.

The Public Order Act does not apply in situations where all parties are in dwellings so you will have to use common law breach of the peace in such situations to deal with violent or disorderly behaviour which might otherwise have been dealt with under the Public Order Act.

Do remember that you must consider releasing the prisoner arrested for breach of the peace if you believe that they will not cause further trouble because, for instance, the other party has left the scene.

Remember too, that the Custody Officer may decide to release your prisoner without charging if there is no danger of a renewed disturbance. It should be stressed, however, that it is not your aim to arrest trespassers. You should only arrest for an offence as a last resort and not as a means to an end.

Quite a number of trespass situations arise from genuine grievances which may later be settled in favour of the trespasser at a Civil Court. It would be unfortunate if the trespasser found themselves at a Magistrates' Court, having been proved to be in the right at Civil Court.

### **Police Action**

The first thing to do is prevent a breach of the peace. Before deciding on the action to take, first consider the possible feelings of the participants of a dispute involving trespass.

Imagine you borrowed £10 from a friend several months ago which you repaid a short while later.

You are due to leave the Training School for the weekend and only have enough cash left to pay for the journey. Your friend, forgetting they were repaid, comes into your room demanding the £10 back and refuses to leave until they get it. They are getting angry and you are trying to get ready for your weekend.

Now make a few notes outlining how you would feel and, if the situation was not resolved, what you would want a third person, for example a Police Officer, to do to help you.


Next imagine that you are the friend. You genuinely believe the money is still owed to you. You are short of cash and you know the person who owes you the money is preparing to leave the Training School.

How would you feel in this position and what would you expect a Police Officer to do to help you?


Your task in such a situation should be to, as far as possible, achieve an acceptable solution to satisfy the needs of both parties.

Aim to send both people away having received, and feeling that they have received, a good, fair and impartial service from the Metropolitan Police.

Remember, you may identify a racial element or it may even be alleged to you as you are dealing with the incident. If this is the case, you may need to refer parties to the Commission for Racial Equality (CRE). To refresh your memory, check back to the lesson dealing with racial incidents.

**Step One:-**

The first thing to do is establish whether the complainant is the lawful occupier or, if not, are they acting on behalf of the lawful occupier. Then you should find out if the other person has any right to be on the premises.

Having done that, investigate the occupier's complaint fully, listen carefully, find out what they want, their reasons and problems etc.

## **Step Two:-**

Investigate the trespasser's situation. Listen carefully, find out why they are there and what problems they may have which led to the situation - for example, a vagrant trespassing in a launderette may well be there because they are cold and homeless.

## **Step Three:-**

Decide the best course of action for each party. If there are several solutions so much the better - if a person has choice of action it will be more acceptable to take one of them. For example, you may suggest to the vagrant:-

- \* A nearby refuge for homeless persons;
- \* The Salvation Army;
- \* Clothing from the Red Cross.

A word of caution here: the fact that a person is dirty and destitute should not affect the time and attention you afford them. A person in "uniform" does not demand more consideration than someone who is not. Consider the person, not the package they come in.

## **Step Four:-**

Try to resolve the situation by offering the choice or choices the parties may have. Work hard to bring about an agreement between them. Success will give you considerable satisfaction for having achieved a professional approach.

A word of warning, however. Avoid taking sides. This will cause a loss of confidence in the "other party" and may make it very difficult to resolve the original situation.

## Step Five:-

Step five should only be necessary if all else has failed, but remember:-

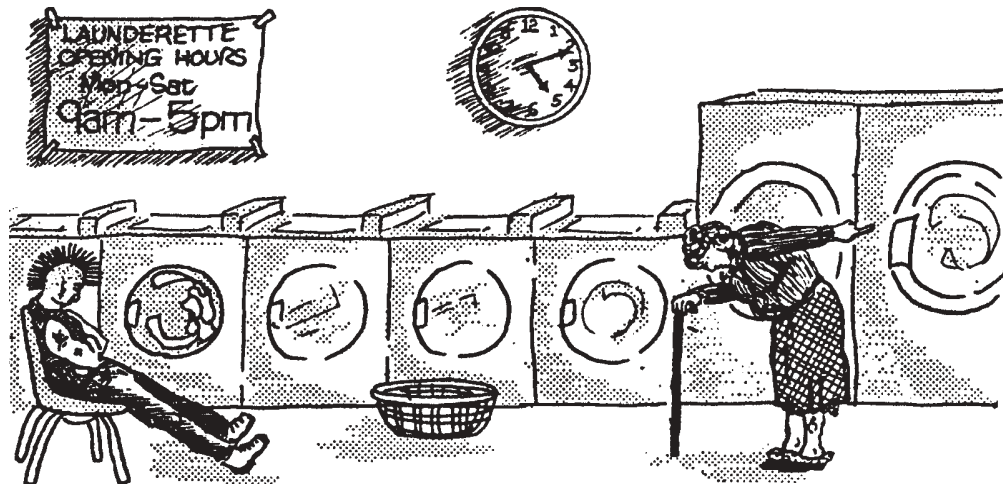
- Keep calm yourself.
- Be courteous and polite at all times.

Try and persuade the trespasser to leave. You may be able to do this by explaining that the lawful occupier has right to ask them to go.

Secondly, warn the trespasser that even if they refuse to leave voluntarily they may lawfully be put out of the premises. You might also point out that if they physically resist or become violent they may possibly be arrested for threatening behaviour or breach of the peace.

Thirdly, tell the lawful occupier that they may remove the trespasser from their land or premises using no more force than is necessary for that purpose. Your job is to stand by to prevent any breach of the peace.

However, if the lawful occupier is clearly physically incapable of removing the trespasser, you may assist but remember ..... you are then acting as a private citizen and not a Police Officer unless their conduct is violent or disorderly etc.



The lawful occupier should make the first move towards ejection by taking hold of the trespasser's arm. This makes it clear that you are assisting rather than starting the ejection.

Once the trespasser has left the land or premises the matter is over. Trespass is no offence and they are free to leave, unless their behaviour has necessitated arrest for another offence.

However, trespass is one of those incidents you are to record in your Report Book. Therefore, if it is possible to obtain the trespasser's name and address do so. If the original situation is calm, you may obtain these particulars at the outset, but normally it is better to get the trespasser off the premises first, even if they later refuse their particulars.

In many cases, identity will be known to the complainant, otherwise a brief description will suffice.

Finally, there are a few situations where the lawful occupier can call upon Police to eject a trespasser as part of their duty.

You will receive separate lessons on most of these situations but briefly they cover trespassers on London buses, licensed premises, Underground or British Rail stations and schools and colleges.

In the above cases, you should seek advice from a Supervising Officer.

### Summary of Police Action

