



PUBLIC PETITION NO.

PE01364

Name of petitioner

Phyllis M. McBain

Petition title

Clarifying guidelines on Gypsy Traveller encampments

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review all guidelines relating to trespass and encampments for Gypsies and Travellers to ensure their intent is clear and that they are being applied.

Action taken to resolve issues of concern before submitting the petition

I have written this petition after a particularly dreadful gypsies/travellers encampment on my mother's land this summer. I am not asking the Public Petitions Committee to comment directly on this event; my family's experience of this encampment has led us to question the effectiveness of current guidelines on gypsies/travellers encampments throughout Scotland. What has happened to our family has been repeated throughout Scotland and similar press reports can be found in areas such as Tayside, Fife and Edinburgh, to mention a few, in which the guidelines are being called into question.

Scottish Government Guidelines for managing unauthorised camping by gypsies/travellers in Scotland

As a private individual seeking help on this issue of trespassers on one's own land, it would be natural to go to the police and rightly expect their assistance; no help was given to my family. The general presumption not to prosecute Gypsies/Travellers for crime of trespass prevents us from getting help:

- the only course of action is a civil eviction at your own cost.
- the police operate a non-harassment policy with regard to Gypsies/Travellers
- In our case crimes of fly tipping and defecating in public were ignored for 23 days.
- The only exception to this general presumption is public interest. What is public interest?
- An inflexible attitude and an unwillingness to find a solution.

Go to local authority for help. This was equally ineffective:

- the encampment is on private land and has nothing to do with us
- your only course of action is a civil eviction at your own cost
- we operate a non-harassment policy with regard to Gypsies/Travellers
- an inflexible attitude and an unwillingness to find a solution

Environmental Health inspected the encampment on the second day. We were asked if we wanted toilets. We said no for the following reasons:

- if we allow toilets it is interpreted that we therefore accept the encampment and the

cost for these toilets would be ours as would the cost of emptying the waste etc. Further, caravan site legislation then comes into effect and my mother risked being fined for the conduct of her trespassers

- in our case the Environmental Health Officer was also the Gypsy/Traveller liaison officer – a direct conflict of interests?

So, unable to obtain any support from the above-mentioned agencies, the only other recourse is to refer to the guidelines and investigate any other possible solutions:

- private landowners are hardly mentioned and there is no practical help, advice, guidance or support within any guideline we researched
- the parameters for action to evict Gypsies/Travellers are based on the roles of police and local authorities; they include such things as public health, education, housing and social requirements of the Gypsies/Travellers. This is a burden which private landowners cannot be held accountable for
- private landowners are prevented from protection of property by these guidelines and are penalised if their local authority has no places available in official encampments.

Fly tipping. Our land was left in the most deplorable condition, a combination of household and human waste and rubble from occupational work. We contacted SEPA who told us to report it to Dumb Dumpers Helpline who said they would speak to our local authority (which we had already tried). They also said that they would tell Scotland is Beautiful. We were given a different number to call within our local authority. We called that number and it is that phone call which gave me the determination to write this petition. The person on the phone said the following:

- we cannot help you; it is private land and your responsibility
- we operate a non-harassment policy with regard to Gypsies/Travellers
- no point in you complaining to anybody in Aberdeenshire Council, you need to go to the Scottish Government.

During and especially after the encampment on our land I spoke to several MSPs. I wrote an e-mail to the First Minister. I have had several replies back both from the efforts of these MSPs and my own; combine this with press coverage and the impression is given that private landowners do have protection with trespass laws and that the police should have acted on fly tipping.

Reply from Aberdeenshire Council to Richard Baker MSP :-

‘Unauthorised encampments will continue to arise until adequate accommodation is provided for Travellers. A number of possible areas for small transit sites have been identified through the Draft Local Development Plan but it will clearly take some time before any of these sites would become operational. In conclusion, Aberdeenshire Council provided your constituent with as much support and advice as it could, operating within current legislation and Scottish Government guidelines but if you have any suggestions about specific legislation or procedures that the Council should have followed I would be grateful to hear from you.’

- small transit sites are attached to housing development schemes – you can build x number of houses as long as you build a transit site nearby – would question if any developer will be that keen to take this up until gypsies/travellers’ conduct is addressed
- clear blame game to say Aberdeenshire has done all it can do within the restraints of Scottish Government guidelines and legislation
- why does Aberdeenshire Council not question its own guidelines?
- what representation has Aberdeenshire Council made to the Scottish Government expressing any difficulties or concerns with the original guidelines?

Reply from Grampian Police to Richard Baker MSP:-

- Yes, my mother was happy with increased police presence around her home, and the reassurance. This was all that Grampian Police could offer
- This encampment was on her land beside her home for 23 days; it was up to 21 caravans and residents; it was an aggressive encampment with excessive fly tipping and waste products left behind, family members tailgated (including my 76 year old mother), harassed, verbally abused and had stones thrown at vehicles

- It was not the “wider authorities” we were unhappy with, it was the police for not acting on the above. My mother made it clear that local PC’s with whom we had contact were very helpful as far as they were allowed. It was the high ranking officers who were of no support and who blindly blamed the guidelines showing little interest in finding a solution.

- this is part of the police reply which is directly taken out of Grampian Police guidelines on Gypsy/Traveller encampments

- hardly a full or complete list of grounds on which the police may act, but it was firmly and arrogantly defended by Grampian Police.

- again a local official blames legal and policy restriction as to why they were ineffective

- we were not just a member of the settled community; my mother was a private landowner with a serious trespassing issue

- the expectations of a private landowner are clearly far too high

- why does Grampian Police not question the application of its own guidelines?

- what representation has Grampian Police made to the Scottish Government expressing any difficulties or concerns with the original guidelines?

The following is in reference to a reply from Sarah Laidlaw, Social Housing Division on behalf of the First Minister detailing advice for a private landowner in our circumstances to follow in order to gain the support of the police and local authority. In fact we had already tried each suggested course of action contained in her letter.

‘I understand that you have raised concerns about the lack of action from the Police and that they are operating a presumption against prosecution which has not helped your family in this case. All Forces act in accordance with the ACPOS Guidelines on the Management of Unauthorised Encampments (see under Equality & Diversity), ensuring a standard approach to traveller encampments. Information on how the police deal with unauthorised encampments on private land is contained in this document.’

- this is where what the Scottish Government says is available to private landowners differs from what the police guidelines say

- Police guidelines have parameters for Gypsy/Traveller requirements and will only take this type of legal action as a final result and after civil action has failed and even then it is not guaranteed that the police will act.

There are powers available to the police to remove trespassers if it is clear that the group has caused damage to land or property. Provision is contained in s61 and s62 of the Criminal Justice and Public Order Act 1994, which deals with trespass and the removal of vehicles (s61 deals with police powers to remove trespassers on land and s62 provides supplementary powers of seizure and imposes criminal sanctions).

It is important to note that s61 and s62 apply to situations in which two or more "trespassers" are involved. Section 61 allows the police to direct trespassers to leave the land and to remove vehicles or property on the land where the senior police officer present at the scene has a reasonable belief that (a) two or more persons are present with the intention of staying there for a period of time, and (b) reasonable steps have been taken, by, or on behalf of, the occupier to ask them to leave. In addition, the senior police officer must have a reasonable belief that either (a) the group have caused damage to the land or property, or threatened, abused or insulted the occupier or representative of the occupier or, (b) the group have six or more vehicles between them on the land. Enforcement action taken by the police in specific cases is for individual Chief Constables to determine. While these sections extend to Scotland, this is a devolved issue and the Scottish Ministers have no plans to change either criminal or civil law in this area at present. Law enforcement in relation to evictions does involve a significant amount of discretion by the police who also need to take into account the rights and welfare of the Gypsies/ Travellers. However, it is important to stress that criminal behaviour on encampments and any reported offences, such as theft or causing damage to property, is a matter for the police to deal with and will be considered for prosecution in the usual way.

I ask you to look at different area guidelines:-

- Compare Aberdeenshire Council Guidelines with, say, Fife Council's Guidelines – you will find a marked difference in tone of content, standard of writing and guidance of application
- Compare Aberdeenshire Council's Good Neighbour Code with Angus Council's Code for gypsies/travellers - again tone, choice of words and expectations of good conduct are markedly different.

Petition background information

Scottish Government Guidelines for managing unauthorised camping by gypsies/travellers in Scotland

The above guidelines are the basis for all police and local authority guidelines throughout Scotland regarding the issue of gypsies/travellers encampment. I question whether these guidelines are sufficiently robust and balanced and that the intent of them has been applied fairly and evenly across Scotland for all citizens.

The role of the police and local authorities regarding their approach to encampments is fully explained with regard to Gypsies/Travellers. However there is a staggering lack of clarity for the following:

- Insufficient information addressing the concerns of settled communities who are dealing with Gypsy/Traveller encampments
- What help, support, advice and guidance can be offered to the settled communities or private landowners when encampments encroach on their daily lives?
- Clear definitions of roles of police and local authorities towards settled communities and private landowners
- These guidelines should be far more inclusive of both communities and should not appear to be only concerned with Gypsies/Travellers
- They lack fair and balanced safeguards – public interest is the only real safeguard mentioned currently. The definition and parameters of 'public interest' requires to be more fully expressed'
- Both communities have issues but the guidelines fail to address this fact; acknowledgement of this and advice on conflict resolution would be helpful'
- Because the guidelines lack this inclusiveness they actually hinder trust, communication and conflict resolution; by addressing this issue trust and respect can be rebuilt between the communities.

The type of concerns which both communities have must be honestly and forthrightly expressed. By failing to address these issues fully and in a balanced way within the above-mentioned guidelines, the impression is given that the concerns of Gypsies/Travellers take precedence.

- Lack of police action on harassment towards both communities
- Use of unsuitable sites for encampments e.g. beside leisure areas and playing fields etc
- Lack of action against anti-social behaviour with regard to toilet activities in public etc
- Fly tipping which is not prosecuted
- Rogue traders operating business from encampments and leaving their work product behind in the form of fly tipping
- All Gypsies/Travellers being tarred with same brush
- Lack practical help, advice and information on how to deal with rogue traders who turn up at door, ask for cash payments etc
- Impression given that the law is not applied equally
- Impression given that Gypsy/Traveller concerns prevail over those of the settled communities.

Because the guidelines lack this type of inclusiveness they actually hinder trust and respect: by addressing these issues trust and respect can be rebuilt between the two communities.

The laws of Scotland should be applied to everyone fairly and equally. The general

presumption not to prosecute Gypsies/Travellers for the crime of trespass is one example of how the settled communities see inequality in these guidelines. I can understand the guidelines are an attempt to enable Gypsies/Travellers to follow their life style choices. However I question the following:

- This “general presumption” should be understood to be a privilege not a right. This privilege should be withdrawn for bad conduct, unsuitable encampment, fly tipping etc.
- A presumption against prosecution of Gypsies/Travellers for the act of trespass in itself should not be interpreted by the police to mean a presumption against prosecutions for acts of damage, threatening or abusive behaviour, of preventing the lawful use of public recreational or sporting facilities, or lawful cultivation of agricultural land or other husbandry requirements
- Within the guidelines there is no limit to the trespass
- Within the above guidelines there are exceptions to the general presumption not to prosecute the crime of trespass for example occupational travellers. However this exception is not included in ACPOS and local authority guidelines. This differentiation requires explanation
- It should not ever be classed as harassment of an individual or group of people within an encampment, if they are investigated for crimes such as fly tipping etc. A legal solution is required to deal with fly tipping etc within an encampment
- Non Harassment policies are repeatedly quoted by police and local authorities when asked for advice, guidance and action in relation to crimes of public urination, fly tipping etc. I question whether this is an excuse to take no action
- This general presumption leads to apathy by the police and local authorities, which in turn leads to other crimes and indiscretions, such as fly tipping, urinating and defecating in public being ignored
- For any agency to say there is nothing they can do about defecating and urinating freely in public is completely unacceptable.

Because the law is applied unfairly this leads to a lack of trust and respect of all involved – police, local authority, individuals in an encampment.

Private landowners are treated as an irrelevance in the guidelines. It is fundamentally unfair that, due to the general presumption not to prosecute Gypsies/Travellers for the crime of trespass, the protection of trespass laws is effectively withdrawn from private landowners. The fact that land cannot be fully protected from the risk of trespassing (even a chain and padlock on a gate is not sufficient protection) means that private landowners have no real protection to prevent or remove trespassers.

- This “general presumption” has been given for political reasons and should only apply to government or local authority land; it is not the responsibility of a private landowner to provide encampments for Gypsies/Travellers
- It is unacceptable that private landowners are expected to take out civil action at a four figure cost to them because protection within Scottish law has been withdrawn from them by these guidelines
- The parameters that local authorities and police apply when making the decision to move an encampment on is based on social, health, education etc needs of Gypsies/Travellers and whether the local authority has places in an authorised Gypsy/Traveller site. This is a burden which private landowner cannot meet
- This unfairness requires to be reviewed; the general presumption not to prosecute the crime of trespass should not be applied when an encampment is on private land
- The human rights of private landowners are just as important as those of Gypsies/Travellers.

The effects of a Gypsy/Traveller encampment on private land cannot be ignored. It is an intimidating experience to have a mass of caravans and individuals descend on your property. The aftermath of an encampment is difficult to deal with; the human waste products is the most distressing, household waste and fly tipping etc It is a costly experience and stressful. I question the following;

- Trespass law must be allowed to be enforced by the police when dealing with an encampment on private land
- The crime of trespass is the only crime which the police are meant to ignore. However

they also seem to ignore the crimes of fly tipping and urinating and defecation in public etc

- Local authorities cannot say this has nothing to do with them when the encampment is on private land and shirk their responsibilities regards environmental health, fly tipping, toilet facilities etc
- Why can it be considered acceptable that a private landowner is asked to pay for toilet facilities and rubbish facilities for trespassers?
- Once the encampment is clear of the trespasser, local authority officials arrive on site and explain the landowner's responsibility and the timescale they have in which to reinstate the land, entirely at their own cost (mentally, physically and financially)
- In this day and age the Gypsy/Travelling community has no excuse for not providing their own toilet facilities. It should be their responsibility to do this at their own cost, including when the local authority provides them
- Gypsies/travellers have their own transport (it is how they move around). They have no excuse not to do their own recycling and take this to local dumps as the settled communities do
- These issues require to be addressed in order to rebuild trust and respect between the communities.

A swift solution to instantly make progress in re-building trust and respect would be to alter the roles of Gypsy/Traveller liaison officers.

- Currently the local authorities and police each have Gypsy/Traveller liaison officers whose role is to assess encampments for suitability, address the social needs and safety requirements of an encampment and ensure that Gypsy/Travellers are protected
- Make the roles of the liaison officers inclusive of the needs of both communities and instantly a double standard has been removed.

To assist in the fair application of these guidelines across Scotland I recommend that the Scottish Government produces a document called "Charter of Conduct" addressing all the concerns of both communities. The document should aim to produce a minimum standard of acceptable behaviour and an honest and forthright assessment of all issues and solutions.

Summary of points raised within this petition

1. The inequality of the guidelines
2. The need to reassess the issues and concerns of both communities and find manageable solutions
3. Review the legal responsibilities
4. Review the general presumption not to prosecute the crime of trespass
5. Address the issues raised regarding encampments on private land
6. Develop a more honest and constructive approach
7. Produce a fair and balanced "charter of conduct."

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01364>

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