



GRAMPIAN
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Keeping our communities safe

*Force Executive
Police Headquarters
Queen Street
Aberdeen
AB10 1ZA*

Our Ref: ACC(T)/MW

Your Ref:

Date: 12 November 2010

Tel: 01224 306054

Fax: 01224 306001

executive@grampian.pnn.police.uk

www.grampian.police.uk

Franck David Esq
Assistant Clerk to the
Public Petitions Committee
T3.40
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Mr David

CONSIDERATION OF PETITION PE1364

I refer to the above petition, which seeks clarification on the guidelines relating to Gypsy/Traveller unauthorised encampments.

I thank you for the opportunity to provide a response on behalf of Grampian Police, which is attached for your information.

If I can be of any further assistance, please do not hesitate to contact me.

Yours sincerely

Colin D Menzies
Assistant Chief Constable
Territorial Operations

**GRAMPIAN POLICE RESPONSE TO QUESTIONS ARISING FROM
PUBLIC PETITIONS COMMITTEE REGARDING PE1364 - PHYLLIS
MCBAIN**

In responding to the question as to whether there is any indication that the legal definitions of, and guidelines relating to, the different groups of travellers could be clearer, it is important to first clarify the basis upon which Grampian Police define Gypsy/ Travellers.

In developing the Force's Standard Operating Procedure regarding unauthorised encampments, the term Gypsy/Traveller was adopted in accordance with the position of the Scottish Government in their 'Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland' document, published in 2004. It is held to include Romany Gypsies and Irish, English, Welsh and Scottish Travellers. For the purposes of legislation in Scotland, it recommended that all policies should be framed on the understanding that Gypsy/Travellers have distinct characteristics and should therefore be regarded as a minority ethnic group, a position adopted by Scottish Public Authorities and the Association of Chief Police Officers Scotland (ACPOS).

The guidelines also specified that the provisions did not apply to those who were regarded as fairground/show people, occupational travellers or New (Age) Travellers. It is the issue of what constitutes an 'occupational traveller' that has caused some concern in the Grampian area and is the basis on which several of the questions raised within the petition and by others have been posed. Principally, these concerns have asked how a group of people who travel to an area with an established business, seeking employment related to that business, cannot be regarded as occupational travellers and therefore exempt from the Scottish Government, ACPOS and Grampian Police guidelines

Clarification was sought from the Equality and Human Rights Commission (EHRC) on this matter. The EHRC advised that occupational travellers are those people who define themselves exclusively in terms of their businesses, for example Show People, Fairground People or Circus People, in essence, people whose work precedes them to our area, rather than those who travel for social or economic purposes. Those who travel to the Grampian area to seek work after arrival should therefore be regarded as Gypsy/Travellers and any unauthorised encampments dealt with as per the relevant guidelines. The EHRC position was that the term 'occupational traveller' caused confusion and should not be used within the guidelines relating to the management of unauthorised encampments.

Applying the above criteria, those who occupied Mrs McBain's land were dealt with as Gypsy/Travellers, as it would have been inappropriate for them to have been regarded as occupational travellers, in line with current definitions.

It is our position that the current legal definitions relating to the different groups of travellers are clear, but that there is perhaps a public misunderstanding of what constitutes an 'occupational traveller'. It may be of assistance if this was clarified within the Scottish Government guidelines or, as suggested by the EHRC, that the

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term is removed completely to avoid further confusion.

2.

In response to the question - **Do " occupational travellers" benefit from the same protection afforded to Gypsy/Travellers?** The guidelines are clear that this group are exempt from the provisions contained therein and they would be dealt with in accordance with routine policing procedures with regard to any trespass offence arising from their occupation of land. However, considerations under the Race Relations (Amendment) Act 2000, may have a bearing upon this, dependent on the individual circumstances and the nationality of those involved. Clearly, this does not apply to other matters which fall within the remit of the Police, where all communities are treated on an equitable basis.

When dealing with unauthorised encampments of Gypsy/Travellers, Grampian Police must take cognisance of their responsibilities in respect of the Human Rights Act 1998, the European Convention on Human Rights (Article 8 - The Right to Respect for Private and Family Life, and Article 14 - The Right of Prohibition of Discrimination), and the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000. As a public body, we are subject to the general duties to eliminate unlawful discrimination, promote equality of opportunity and to promote good relations between persons of different racial groups. Therefore, when considering our response to an unauthorised encampment, it is imperative that the Force can justify any action it takes in terms of legality, necessity and proportionality. To achieve this, we must take a balanced view that respects the rights of both the Gypsy/Travellers and the 'settled' communities.

Now turning to the question asking – **Are the guidelines used by Police and Local Authorities to manage unauthorised encampments clear, unambiguous and properly applied?** This question covers a number of additional aspects, which are detailed hereafter.

In terms of the guidelines used by the Police, it is important to note that no differentiation is drawn between private or public land, and that the actions of the Police are constant in both. We recognise the additional challenges a private land owner may feel they face when an unauthorised encampment is established on their land, but it remains our position that we must act only in accordance with the guidelines and legislative framework. Therefore, it would be inappropriate for a position to be adopted that allowed for a prosecution to be brought for encampments established on private land, but not on public land, as this in itself would be discriminatory. The management of the encampment remains a matter for the relevant Local Authority, but the Police will deal with any reported criminal matters associated with an unauthorised encampment, be that by or towards the residents.

Although the wider public interest is always considered, there is a general presumption against prosecution for offences in respect of unauthorised encampment by Gypsy/Travellers. This is in accordance with guidelines issued by the Lord Advocate for Scotland and is the position adopted by ACPOS. The presumption of non-prosecution does not extend to other crimes or offences, which will be investigated and dealt with in accordance with normal procedures.

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The key issue that serves to reinforce the presumption of non-prosecution for unauthorised encampment offences is the lack of authorised sites. This in turn leaves both the Local Authority and Police in a position where no alternative transit/halting site can be suggested, thereby hindering the options available. Failure to identify such a site leads to a position where the applicability of the relevant legislation is undermined.

3.

It is important to note that there is no specific legislation relating to unauthorised encampments of Gypsy/Travellers and that the Police have no authority to remove or clear sites, except where very specific legislation empowers them to do so. Nor do the Police have any power to direct Gypsy/Travellers on to any land. Therefore, despite the commonly held public belief that the Police can and should take action with regard to unauthorised encampments, it is generally the case that they have no legal authority to do so. It is the responsibility of the Local Authority to advise Gypsy/Travellers to move to an identified designated site, or stopover/stopgap or Transit site. However, at present, there are no such sites available in the Grampian area.

Our understanding is that the former policy of tolerance and non-harassment of travellers (as they were then known) was discontinued in 2001, on the recommendation of the Advisory Committee on Scotland's Travelling People. Therefore, in response to the question/suggestion – **"the Police do not take action for fear of breaching a Policy on non - harassment"**, this is not the position, but we take decisions based on our equality duties, human rights considerations and most importantly, the current legislative position within which we work. This includes the presumption of non-prosecution for unauthorised encampment offences only. It would clearly be inappropriate for the Force to act outwith these factors and to do so could be deemed to be discriminatory and beyond the parameters set in law.

The management of unauthorised encampments continues to be a sensitive issue. Some sections of the community believe the majority of encampments cause physical damage and are linked to a rise in crime in the area. Our analysis suggests this is only the case with a small minority of unauthorised encampments. The majority are left in a clean and tidy condition, and are not associated with any increase in crime. We acknowledge that this was not the case in Mrs McBain's particular circumstances, and Police were slow to respond to developing issues on the encampment relating to other offences, although we did provide advice and support in respect of matters relating to the encampment. This has been addressed internally by Grampian Police.

Unfortunately, it appears there is currently a 'vicious circle' in terms of unauthorised encampments and the impact they have on public attitudes to the creation of authorised sites. This situation is likely to exist until the debate moves on and some authorised sites are created to meet the needs of the Gypsy/Traveller community.

In conclusion, it is the view of Grampian Police that the current guidelines and legislation to address trespass issues with regard to unauthorised encampments are adequate, if suitable provision was made by the Local Authorities to meet the

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accommodation needs of Gypsy/Travellers in terms of official halting sites. The lack of such sites inhibits the ability of both the Police and the Local Authority to utilise the powers conferred by the legislation. We recognise that this is a difficult position, but feel that some mechanism developed by the Scottish Government, which both requires and facilitates the development of authorised sites in the Local Authority areas, is the key to resolving the issue in the medium and longer term.