



ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

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Your Ref:
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Franck David
Assistant Clerk to the Public Petitions Committee
Tower 2, T3.40
The Scottish Parliament
Holyrood
EH99 1SP

By e-mail: petitions@scottish.parliament.uk

Dear Mr David

CONSIDERATION OF PETITION PE1364

I refer to your correspondence dated 28 October 2010 in connection with the above subject, which has been considered by members of the Equality & Diversity Business Area, and can now offer the following by way of comment.

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 ACPOS define Gypsy/ Travellers. The definition contained within the ACPOS Operational Guidance regarding The Management of Unauthorised Gypsy/Traveller Encampments is as follows ' The term Gypsy/Traveller relates to Scottish, English, Welsh, Irish and Romani Travellers, however does not include Fairground/Show People or New (Age) Travellers.' The term Gypsy/Traveller is one that was adopted by the Scottish Executive during publication of their 'Guidelines for managing unauthorised camping by Gypsies/Travellers in Scotland' document in 2004. It is held to include Romany Gypsies and Irish, English, Welsh and Scottish Travellers. For the purposes of legislation in Scotland, the Parliament recommended that all legislation and 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 other Scottish public bodies, including all Scottish Police Forces.

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The 2004 guidelines also specified that the provisions did not apply to those who were regarded as Fairground/Show People, Occupational Travellers or New (Age) Travellers but do not expand on their definition of these groups. The Equality and Human Rights Commission Scotland (EHRCS) define an Occupational Travellers as being people who define themselves in terms of their businesses for example Show People, Fairground People and Circus people. The EHRCS also consider that it is misleading to refer to these groups as Travellers as this may cause confusion. It can be seen that this is reflected in the ACPOS definition, which refers to Fairground/Show People or New (Age) Travellers and does not use the term Occupational Traveller.

In essence, many Gypsy/Travellers move around Scotland seeking work but this does not mean that they can or should be classified as being Occupational Travellers. In the same vein, skilled and semi skilled people constantly move around Scotland seeking work, and also reside in caravans, but this does not make them either Gypsy/Travellers or Occupational Travellers. ACPOS would therefore consider that any group of people who travel to an area with an established business, and seeking employment related to that business, couldn't be regarded as being Occupational Travellers who would be exempt from the Scottish Government and ACPOS guidelines.

ACPOS would suggest that whilst 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 term is removed completely to avoid further confusion.

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, the Scottish Police Service 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 relevant 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.

In response to the question "Are the guidelines used by Police and Local Authorities to manage unauthorised encampments clear, unambiguous and properly applied?" this covers a number of additional aspects, which are detailed hereafter.

The Police role in the management of such encampments is clearly specified within the ACPOS guidance on this issue, which was founded on the 2004 guidance produced by the Scottish Executive. The key aspects of this guidance (revised in 2010), only in respect of offences relating to unauthorised encampment, are as follows:

There is a general presumption against prosecution for the unauthorised encampment of Gypsy/Travellers relating to trespass offences, although this presumption may be overridden by public interest considerations, dependent upon the circumstances. Enforcement in these circumstances will be a decision for the Duty Senior Officer (not below the rank of Inspector) responsible for the area in question. Discussions with the Procurator Fiscal and Local Authority representatives will normally take place at an early stage before enforcement decisions are made.

It is also important to note that the Police have no power to direct Gypsy/Travellers onto any land. It will be the responsibility of the Local Authority to advise Gypsy/Travellers to move to a designated site, or stopover/stopgap or transit site. In addition, the Police are not empowered to remove or clear sites except where legislation empowers them to do so and prosecution, in terms of Gypsy/Travellers encamped without authority, should only be considered as a last resort when all other options have been exhausted and after consultation with the Procurator Fiscal. (This presumption towards non-prosecution does not apply to other crimes or offences, which should be investigated and dealt with in accordance with normal procedures). Furthermore, all Scottish Forces have developed close working relationships with their respective Local Authorities in order to ensure that any response in relation to unauthorised Gypsy/Traveller encampments is proportionate, legal and necessary.

In addition, when dealing with unauthorised encampments of Gypsy/Travellers, it is important that officers take cognisance of their respective responsibilities detailed in the Human Rights Act 1988, 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 Act 2000. Any act by an officer, which is considered to be in breach of the legislation, may result in a claim for damages being made either against them as an individual or the relevant Force.

In response to the question/suggestion "the Police do not take action for fear of breaching a Policy on non - harassment", ACPOS consider that this is not the position, but rather that the Scottish Police Service take decisions based on our equality duties, human rights considerations and most importantly, the current legislative position within which Scottish Forces operate. This includes the presumption of non-prosecution for unauthorised encampment offences only. It would clearly be inappropriate for any Force to act out with these factors and to do so could be deemed to be discriminatory and beyond the parameters set in law.

In conclusion, the management of unauthorised encampments is an emotive issue, which can generate debate amongst the 'settled' community. This is often fuelled by adverse press coverage where the focus tends to be on the negative aspects of encampments, or on particular groups of Gypsy/Travellers who have caused problems with leaving specific sites in an untidy condition. It should be noted that such issues relate to a minority of encampments, albeit the public perception would be that all encampments cause problems. Furthermore, there is often a public perception that when an unauthorised encampment is established near homes, then crime rates will rise. Therefore, when an encampment is

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established in an area, or where there is a suggestion that one may be placed there, this can generate a sense of hostility or ill will towards Gypsy/Travellers, or those who seek to represent their interests. In this regard, the Scottish Police Service is committed to ensuring that all communities across Scotland, inclusive of the Gypsy/Traveling Community, receive a quality of service that is fair, accessible and meets the needs of everyone.

I trust that the foregoing is of assistance to you.

Yours sincerely

Cliff Anderson
Assistant Chief Constable
ACPOS General Secretary

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