

Written response from Phyllis McBain to written replies to Petition PE1364

Occupational Traveller

The reason that I asked for clarification of "Occupational Traveller" in current Guidelines is because this was the only thing within Scottish Government Guidelines which had the possibility of giving my mother relief from the reality of one of the most devastating unauthorised Gypsy/Traveller site in recent history in the North East of Scotland. I firmly believe that the original intention of the Scottish Government was that this was a safeguard mechanism to protect Private Individuals and Local Authorities from such unofficial sites. To think otherwise would mean that in 2004 the Scottish Government did indeed show little respect or consideration for providing any such safeguards, and many Private Individuals, Business and Local Authorities have been caught in this trap over the past six years. I believe that once these Guidelines left the Scottish Government and then went through the self government process "Occupational Traveller" was thought to be too difficult to apply and was then removed but unfortunately no alternative safeguards were put in its place.

I feel that the response from Grampian Police and ACPOS adds weight to this point of view when they state they received clarification on this issue from Equality and Human Rights Commission (EHRC) which was not in existence in 2004 and only came into being in October 2007. EHRC also highlighted this negative response by the media in the North East of Scotland this summer. However they do not understand why local media picked up on this issue, it was after a meeting of Stonehaven Community Council in which a Chief Inspector and Inspector of Grampian Police were asked to explain why "Occupational Traveller" was not in their Guidelines, neither officer was able to give any explanation for this. Reading the Grampian Police response it is not difficult to see why they could not answer, they refer to the guideline they used when writing their own guidelines and they make no reference to Scottish Government Guideline but to those of Lord Advocate for Scotland and ACPOS. The Scottish Government response sidesteps the issue of "Occupational Traveller" altogether and does not answer the question of definition. The debate has moved forward. No one is saying that Gypsy/Traveller do not have right to work. What is being said is that they do not have the right to leave their work product behind.

For the following reasons I am concerned that this issue will override other issues raised within the Petition. If current Guidelines were more robust and Environmental Legislation more fit for purpose (Aberdeenshire Councils response supports revision of guidelines on these issue) in dealing with such bad conduct by "The Minority" who hide behind the false protection of current Guidelines then "Occupational Traveller" would actually become a mute issue, which in my opinion further strengthens my request for these guidelines to be reviewed.

Authorised Sites

Throughout the written responses it is clearly stated that the issue is not the Guidelines but the lack of authorised sites. This is sidestepping the issue. What is actually being said here is in fact that these Guidelines are not fit for purpose because they are dependent on such sites being in operation. All three Police responses clearly state that no provision within the term of the general presumption not to prosecute the crime of trespass can offer any relief to either a Local Authority or Private Landowner when no pitches are available. This is an unacceptable and unsustainable position, highlighting the short term concerns which can only be addressed with better management of unauthorised sites or a new approach to unauthorised sites altogether.

Not one response addressed this short term concern with any new suggestion or a fresh approach. Current Guidelines will only become fit for purpose when there are more authorised sites and the clarification and interpretation issues are addressed which is a medium to long term solution. Short term there is no solution and the lack of concern to this in the written responses in general is disappointing. Nor do any of the responses deal with the total number of sites which would be required to stop unauthorised sites, which highlights to me an unwillingness to address what is actually happening at grass roots. Which again highlight the need for a review as this is the only way to get everybody involved round the table to reassess current applications in 2010 and move forward into 2011 and beyond.

The General Presumption Not to Prosecute the Crime of Trespass

The general presumption not to prosecute the crime of trespass has been fully explained by the three Police bodies that responded to the Petitions Committee. I have never doubted the way the general presumption not to

prosecute the crime of trespass is applied or the way the police apply it what I question in the Petition and no one explained this is the law. The law says that when there is two or more trespasser on your land a Police Inspector or above can act to remove these trespassers. That police office does not require a warrant to do this; he does not have to seek advice from a procurator fiscal, civil eviction procedures do not have to be exhausted – these are restraints which have been put on the police by the general presumption not to prosecute the crime of trespass and the details of the Scottish Government Guidelines.

This is a political restraint based on a guideline not law. This is discriminatory to Private Landowners, to Business, to Local Authorities and therefore to Tax Payer, because it forces costly civil proceeding to be taken not once but several times before it is considered that civil proceeding has been exhausted. The fact that these Guidelines have no safeguards attached other than generic term such as “Public Interest” and “General Concerns of the Settled Communities” which have no clear definition or interpretation of these generic terms, coupled with the fact that as the Police are really not engaged in the process, no accountability occurs.

If you are caught in the trap of an unacceptable unauthorised site you cannot understand how the general presumption not to prosecute the crime of trespass can be allowed to remain in place. When you understand the difference between the law and government policy it makes you very uncomfortable and cannot but make you feel a second class citizen. As COLSA has said in their response a review is required to ensure Parity of Rights of all involved and this is one area where a review under this term is definitely required.

“The Minority”

“The Minority” defence, to ignore dealing with the issues and concerns which arise by the personal actions of the “The Minority” can no longer be ignored. The structure and application of current Guidelines allow this so called minority not being held to account, by the reliance in the civil eviction process which is enforced by the Courts and Sherriff Officers, and the general presumption allows the Police to have a passive role rather than in enforcement role, which allows this minority to remain unidentified and not dealt with appropriately (which the civil eviction process also allows to happen and is what happened in North East this summer): both Aberdeenshire Council and Grampian Police has confirmed this to me in meetings. A group of around 30 to 50 caravans moved around the North East repeating the kind of conduct complained about in the Petition - note how inaccurate the number of caravans is and also note that the response from Grampian Police regards reacting slowly to the incident on my Mother’s land allows the real problem to be lost in semantics. Grampian Police did not respond in Huntly, Drumoak, Stonehaven, Cove, Aberdeen Beach, Torry, Portlethen and other sites all the same individuals. Yes it is correct to say it was not all Gypsy/Traveller but one group repeatedly did it and nothing was done about it: the same thing happened in Fife. This Policy of prevention minimises the consequences follows this by eviction it becomes a failed policy. EHRG response shows no understanding of the process and then suggests the “The Minority” not being an issue.

Responses making those kinds of remarks - that it is not all Gypsy/Traveller and it is a minority of unauthorised sites - show a real lack of understanding of the effect such an unauthorised site has on those affected by this minority bad conduct. This type of response is far too often dismissive of the responsibility of the writer in dealing with “The Minority” effectively. Aberdeenshire has opened up this issue by explaining how difficult it is to do anything under current Legislative and Guideline restraints.

What I refuse to accept is that these Guidelines are six year old, and have been applied throughout Scotland for that length of time, and no one has come up with a solution to this issue of the conduct of “The Minority”. I disagree with the political restraints put on the Police by the General Presumption but even so it still begs this question: what efforts have the Police made in the past six years these guidelines have been in operation to find a strategy to deal with “The Minority”? - It is clear that no such effective strategy is in place so why are they not asking for a full review not only of Guidelines but also Legislation?

I believe the Police are quite happy with keeping the status quo, as this allows them not to engage in actual evictions and, because the police are not part of the eviction process, no one is identified and held to account. It gives the impression that, because it is a few and it does not happen that often, then it really is not that big an issue, only someone who has not been caught in the trap of the “The Minority” could ever think that way and anybody who has been caught in the trap of “The Minority” thinks very little of anybody who expresses such an opinion. “The Minority” excuse cannot be allowed to be ignored and not addressed. Is it a Guideline, Legislation,

or an Attitude Failing or, as I believe, all three, showing the need for a full review not only of Guidelines but Legislation.

“The Debate”

The comparison of debate within the written response deserves to be highlighted; too many of the response are still arguing from the old explanation for why the Guidelines were adopted and do not accept that was six years ago and the debate has moved forward. In 2004 there was a real need to address an imbalance and how difficult it was for the Gypsy/Traveller view to be heard within public bodies, much improvement has occurred since that time but, as with most organised mechanisms of despite, improvement can always be made. The debate is currently focused on the practical application in 2010 not the reason for the guidelines being written in 2004. I have chosen two responses to highlight these two approaches, COSLA and EHRC.

COSLA, right from the start, make their document inclusive of all concerns, give direct statements which explain reasons for failing, open debate up to alternative funding, leave alone the issues they have no control over, give direct response to the Petition by asking for a review, acknowledge that there is a short term issue and shows their concerns also in long term. By presenting their responses in this way they do not get the debate bogged down in the old issues of debate and make their position clear and straightforward. Yes, further detail is required, but should the Committee recommend the review of Guidelines that detail will come out then. The one thing that I really commend is this expressing “Parity of Rights” and it should be the standard of debate for the future; it is all right to complain but, as all human right legislation quite rightly says, no-one person’s concerns should be to the of determine to another’s.

The response from the EHRC is the complete opposite - it is long winded, answers from the debate of when the Guidelines were written and has not moved with the debate or to the practical application of the Guidelines, is completely conflicting and worst of all agenda set and does not show equally consideration to all within this issue. It gets bogged down with what has gone wrong in the North East and shows little understanding of what actually happened or why. By insisting in giving so much detail of what the legal definition and protection requirement which was justified to back up the new guidelines of 2004, but in doing so to only address the issue of “Occupational Traveller” and ignore the Petition’s concerns of the Settled Communities and Private Landowners making this an exclusive rather than inclusive response. Then it completely contradicts its positions as it discusses unauthorised sites, there are clarifications, interpretations and application issues none of which are explained and then says no wholesale review is required because the intent at time of writing in regards public bodies application in 2004 is fit for purpose, completely out of touch with the real debate of practical application in 2010. To then respond to the civil eviction process in code of paragraph this and paragraph that leading to cross reference requirements with the Scottish Government Guidelines to even know the subject matter of this section. Then to do a conclusion which totally ignores the majority of the petition in question with an agenda set response.

I do not necessary agree completely or disagree totally with these two responses point of view but the way in which COSLA removed the muddle from the issues and wrote strongly and without sentiment was a breath of fresh air.

I also have a personal comment on the response by EHRC and that is that throughout their response they constantly made reference to the negative debate in the North East and never at any stage did they give a clarification statement that negative debate was not all within the North East which was disrespectful and did nothing to move this debate forward. I have no concerns as to how the North East will respond as we will not be defected for our desire to find a long term and lasting solution. EHRC is out of touch with the progress which has been made in the North East. The debate has been opened up and all concerns are starting to be listened to, progress has still to be made I just wish they has been more willing to complement the progress. To preach better debate in the North East would have been ok if they had expressed this in a more measured way and actually really understood what went wrong (and that it was not just number of sites.)

CONCLUSION

I feel that sufficient replies have directly asked for the Scottish Government Guidelines and also Legislation to be reviewed or if they have not directly asked for the review they have highlighted area of clarification, interruption

or review of operation or intent issues along with parity of rights for both Gypsy/Travellers and Settled Communities and I would add Private Landowners, whom have specific concerns which can no longer be dismissed as “General Concerns of Settled Communities.”

The four responses which have not asked for review of Guideline are Scottish Government and the three Police responses, each of these have a vested interest in keeping the status quo. Scottish Government have openly said that they do not wish a review but are out of touch with this debate and show in previous correspondence no real understanding on how the general presumption not to persecute the crime of trespass is actually applied and interrupted by the Police. I believe that the Police do not want changes to the general presumption because this is currently applied by the Courts and Sheriff Officer’s and any changes would mean that the police will have to engage in this issue.

By working through the process of how these Guidelines are practically applied it is not one aspect of change which will improve the guidelines but several, all of which have interchangeable consequences so to try a quick fix will not be the most helpful way forward, there is legislation review also required which fully supports a detailed review of Scottish Government Guidelines and Legislations which affects this issue. Should the petitions committee support a review I urge that no one uses this review to call a victory or loss for anyone within this very difficult issue but what it is the process to improve and move forward with fairness and balance for all.