

## Equality And Diversity Business Area (Gypsy/ Travellers Reference Group)

**Chair:** Alex Duncan, Superintendent, Specialist Services Division, Fife Constabulary **Secretary:** PS Jim Duncan, Community Planning and Equalities Unit, Fife Constabulary

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Your  
Ref:  
Our Ref: ACPOS GTRG –  
PE1364.  
E&D/008/10  
Date: 24<sup>th</sup> January 2011

**Franck David**  
**Assistant Clerk to the Public Petitions Committee**  
**Scottish Parliament**  
**EDINBURGH**  
**EH99 1SP**

Dear Mr David,

### **CONSIDERATION OF PETITION PE1364**

I refer to your letter dated 13th January 2011, relative to the above, and forward the following observations for your information and consideration.

Firstly, in relation to the points made by the Equality and Human Rights Commission (EHRC) and what action ACPOS will take to address these? In general terms, ACPOS agree with the EHRC response, which provided a balanced and helpful assessment of the current position in Scotland, in relation to a number of issues concerning Gypsy/Traveller communities.

In relation to the specific points highlighted in the EHRC response, the ACPOS position is as follows:

1. *'The Commission feels that a network of halting sites across the North East, augmented by a network of permanent, properly resourced and managed sites would contribute greatly to easing the pressure of unlawful encampments in high profile areas.'* Whilst recognising the fact that the establishment of authorised sites is a Local Authority issue, ACPOS recognises the need to meet the accommodation requirements of the Gypsy/Traveller communities. Not only does this assist all public bodies to meet their duties as specified by the Race Relations (Amendment) Act 2000, but should, in the longer term, alleviate some of the tensions that arise within communities with regard to unauthorised encampments. As unauthorised encampments become fewer, this would in turn reduce the pressure on Police and Local Authority resources and address some of the negative perceptions that can arise within the settled community. Furthermore, the establishment of such sites may also negate the negative media coverage that arises from unauthorised encampments, provided they are well managed, thereby helping to promote good relations amongst all communities.

However, ACPOS also acknowledge that there is already work ongoing, in various Local Authority areas, in relation to the provision of additional permanent and temporary stopover sites for Gypsy/Travellers and will continue to support this work.

2. *'We (EHRC) feel that for the avoidance of doubt, the scope of the intended application of the guidance should be clarified as in its current form (paragraph 2) its references to Occupational Travellers could be misinterpreted.'* ACPOS would suggest that whilst the current legal definitions relating to the different groups of Travellers are clear, 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.

3. *'Where there has been unauthorised encampment on a private landowner's land, local authorities can request that the Police intervene where criminal acts are believed to have been committed. We (EHRC) therefore feel that the guidance could be revised in this respect to reflect the full range of remedies available to different factors.'* In relation to allegations of criminality, the Police response is clearly specified within the ACPOS guidance on this issue, which states that *'The Guidance is based on a presumption against prosecution and applies only to the physical occupation of land and does not give Gypsy/Travellers any other protection against contravention of statute or common law.'* However, when investigating any allegation of criminality or anti-social behaviour, the ACPOS expectation would be that Gypsy/Travellers should also receive the benefit of measures, which protect the wider community, and those believed to be responsible should therefore be targeted individually, without targeting whole communities.

In relation to the second question posed in the communication, namely *'Do you (ACPOS) consider, in view of the lack of authorised sites for Gypsy/Traveller in Scotland, that the current instructions from the Crown Office and Procurator Fiscal Service on the general presumption not to prosecute the crime of trespass, give police authorities sufficient operational discretion to deal with other matter arising in conjunction with the trespass?'* Firstly although there is a general presumption against prosecution for the unauthorised encampment of Gypsy/Travellers, relating to trespass offences, this presumption may be overridden by public interest considerations, dependent upon the circumstances. In addition, this presumption towards non-prosecution does not apply to other crimes or offences, which as previously mentioned 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.

ACPOS accepts that the legislation in relation to trespass offences is obviously dated, but we consider that the above guidance already ensures that due consideration is given before enforcement of this Police power would be deemed appropriate and necessary. ACPOS also considers that the existing guidance provides individual forces with sufficient operational discretion to deal with any other issues arising from any trespass. However, there are additional powers available, to both the Police Forces and Local Authorities, in England and Wales, which are not available in Scotland. Specifically, sections 77-78 of the Criminal Justice and Public Order Act 1994 provides Local Authorities south of the border the power to direct individuals to remove their vehicles and belongings and to leave highway land, or any land occupied without the consent of the landowner, whether owned by the Local Authority itself or by any other public or private landowner. In addition, section 62A-E of this Act provides Police Forces in England & Wales the power to direct trespassers to remove themselves, and their vehicles and property, from land where a suitable pitch on a relevant caravan site is available, within the same Local Authority area, in certain circumstances.

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 local 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 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/Traveller Community, receive a quality of service that is fair, accessible and meets the needs of everyone.

I trust the foregoing will be of assistance.

**Yours Sincerely**

**Alex Duncan**  
**Superintendent**  
**Chair of the ACPOS Gypsy/Traveller Reference Group**