

Crown Office and Procurator Fiscal Service

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Dear Mr David

Thank you for your letter of the 13 January regarding public petition PE1364. You invited my views on whether, in light of submissions that there is a lack of authorised sites for Gypsy/Travellers, the general presumption not to prosecute the crime of trespass gives the police authorities sufficient operational discretion to deal with other matters arising in conjunction with the trespass.

I note that the submissions from ACPOS and Grampian police both refer to the prosecution policy and I think it would be helpful to outline the nature of the offence and COPFS policy.

In terms of section 3 of the Trespass (Scotland) Act 1865 the lodging in any premises or occupying or encamping on any land, being private property without the consent and permission of the owner or legal occupier of such premises is an offence. It is punishable by a fine not exceeding level 1 of the standard scale, currently £200.

The guidance issued by the Lord Advocate in relation to unlawful encampment by travelling people provides that there should be a presumption against prosecution of travellers for unauthorised encampment in terms of section 3 of the Trespass (Scotland) Act 1865. However the presumption may be overridden by other public interest considerations in favour of prosecution such as: in circumstances where a suitable alternative stopping place has been identified and the travellers have refused to relocate within a reasonable time; or where the use of a particular site by travellers, or the excessive size of the encampment, causes a Road Safety or public health hazard; or where the same travellers have been repeatedly moved from the same site only to return.

Every case is assessed on its own facts and circumstances. It is also our policy that such cases should be reported to Crown Office to ensure that a consistency of approach is maintained. As indicated in the response from ACPOS, COPFS would expect the local police to consult with the local Procurator Fiscal.

The prosecution policy has been formulated with regard to the Scottish Government policy that due regard must be given to humanitarian issues and COPFS should act in a way that is culturally sensitive, promotes equality of opportunity and is compatible with the European Convention on Human Rights .

As has been highlighted in the submission from ACPOS and Grampian police this would not prevent the police investigating and reporting other offences. It is explicit in the COPFS guidance that the policy in relation to the trespass offence refers only to physical occupation of land and not to contraventions of other statutes or the common law. The criminal law applies equally to all members of the public, including the travelling community. If a crime is reported to the police it will be investigated and if there is sufficient evidence, a report will be submitted to the Procurator Fiscal for consideration.

I hope that this information is of assistance.

Yours sincerely

Catherine Dyer
Crown Agent