

Response to second round of questions for Petition PE1364 by Phyllis McBain

Progress

This response will, similar to the original petition, be based on actual experiences and a desire to find a long term practical solutions; it is no way dismisses the progress made via the questions and answer responses. However, I cannot but feel that this petition has gone round the full circle of discussion and has landed right back at the starting point: lack of practical solutions which is a direct result of concentrating on the solution rather than the symptoms.

Positives:

- Attitude changes, e.g. the Scottish Government response at long last now says “Legitimate Concerns of the Settled Community”.
- Awareness of the short term issue of lack of sites.
- Working Groups being set up to address this issue by the Scottish Government and Aberdeenshire Council.
- Acknowledgment of last year’s failures and efforts being made to address these.

Negatives:

- Even after review of guidelines and a more focused approach from Aberdeenshire Council and Grampian Police, both are still highlighting requirement for review and showing concerns of operation decisions making being undermined due to lack of sites.
- Too much emphasis on authorised sites being the only solution.
- Working Groups set up without landowner representation; work is still required on the inclusion of all concerns.
- Practical application issues within the Guidelines have not been fully discussed.
- Fairness of the General Presumption not to prosecute the crime of trespass (General Presumption) has not been fully discussed within the Petition’s process.
- It does not appear to have been taken on board that the legitimate concerns of the settled communities and private landowner, although similar, are different, and that these have been directly caused by a lack of full consideration within the Guidelines. It is not acceptable that the Scottish Government is still saying that landowners should seek their own legal advice.

Steps to Achieve Long Term Solutions

The role of the of the Scottish Government Working Group along with the local Working Groups set up by Aberdeenshire Council will hopefully address the short term issues. However, these Groups cannot be expected to produce all the practical solutions required long term.

Practical issues are still not being fully discussed to work out real solutions: for example the inability of the current Guidelines to deal with the “The Minority Issue”; yes, assurances have been given that more efforts will be made to address the issues in and around unauthorised sites but this is without one change to the Guidelines or legislation.

- It can no longer be accepted that it is ok to say yes, legally as a group you can trespass as per the General Presumption and then say no, legally the bad conduct of that group can only be addressed by individual accountability. Failure to address this type of double standard serves only to increase tension between both communities and therefore fails to safeguard respectful

Gypsy/Travellers especially; a review of the effectiveness of the current Guidelines and legislation will help to avoid this and show a wiliness to find a long term solutions.

- No one has worked out how to provide toilets on an unauthorised site on privately owned land; this issue gets bogged down with questions such as who will pay for the toilets, what the legal implications are and the consequence is: no toilets. Deal with this fairly and appropriately with clear instructions from the Scottish Government and one point of tension is avoided.
- A review would allow the Scottish Government to set acceptable standards which have appropriate penalties attached; this would challenge the passive acceptance by public bodies of the bad conduct of “the Minority”.

Authorised sites are one way to address the concerns of the Petition; however this requires buy-in by the settled community; such buy-in will never be achieved until:

- Public bodies realise that they have jumped ahead to the solutions without addressing the concerns and the buy-in is lost right away. Equality and Human Rights Commission (EHRC) hold the most persistent stance on this approach which will keep everyone in the never ending circle of counter claim and accusation which has to be discouraged.
- Lack of trust of public bodies to face and address the realities of both communities’ concerns in and around unauthorised sites and, until this trust is rebuilt with good management which has been seen in practice, the buy-in will always fail.
- The majority of the population of Scotland fully understand that it is a few within the Gypsy/Travelling Community who behave inappropriately, however current Guidelines enable those few to remain anonymous and when pitches become available these few will simply be asked to move to authorised sites without question - this is a legitimate concern.
- A more realistic understanding of the effects of “The Minority Conduct” is required.
- For example, the site on my family’s land lasted 23 days; had pitches become available at any time during that period those individuals would have been moved to an authorised site. There is a lack of proactive discussion and openness as to how authorised sites will be managed, how problems will be resolved and what workable mechanisms are available to public bodies through which to address these issues.
- If these concerns are not realistically addressed the consequence will be no progress and then what you would be left with would be compulsory purchase - this is a legitimate concern.



Working to create buy-in has to be done with both communities working together, not separately, to find a workable long term solution. The effect of the photographs shown above has to be acknowledged and addressed - these photographs explain why this Petition was written; this Petition is my way of expressing “enough is enough” and that something must be done to prevent this experience happening to anybody else.

- It can come across that the individuals on such a site do not have choices; they do. They can choose to behave in a certain way or not; they can choose to repeat this kind of conduct or not; they can choose to travel with those who do this or not; they can choose to help to resolve this issue or not. The role of all is to encourage this choice to be perceived as being a positive choice.
- This cannot be achieved with current tactics of producing leaflets such as “Myth Buster” which attempt to dismiss the Settled Community’s concerns. The leaflets fail because they argue from extreme points of view and tell people what to think rather than show understanding of the concerns and expressing workable solutions - they fail because they only address the concerns of one community rather than both communities together.
- All initiatives set up in the past six years should be looked at for fully inclusive representation of both communities’ involvement, a mistake which is still being made now; none of the aforementioned Working Groups in their responses to the Petitions Committee have a landowner’s representative or, as far as I know, have even have asked for presentations by this group.
- One of the advantages of a full review of these Guidelines will be the opportunity to involve individuals with experience on both sides of this issue being listened to together. When considering experiences good and bad, the one group who are clearly missing are those who allow unauthorised sites on their land - these individuals should be asked how this came about.

Recording concerns and addressing these concerns at a local level is an area which requires improvement; this equally applies to both communities and last year there was a loss in confidence.

- Grampian Police and Aberdeenshire Council have addressed in their responses what changes are being made within each organisation to improve this situation.
- What has not been aired is why individuals do not make reports to the police and local authorities and what can be done to improve this state of affairs, something which affects both communities equally.

The following ‘Charter of Conduct’ is an idea which I got from reading the Shelter Scotland website which gives advice for Gypsy/Travellers being evicted under different circumstances; it is basic factual advice given with no frills and offering clear step by step advice.

“Charter of Conduct for all”

This is a document which should provide access to help and information as to how to address individual concerns; it should be produced by the Scottish Government and be part of these Guidelines. Importantly the Charter of Conduct should be inclusive of both communities and it would be a mistake to produce two separate documents.

Many agencies provide good practical advice for the Gypsy/Travelling Communities which is right and proper; it is, however, not so easy to find information if you are a private landowner or member of settled communities as was my own family experience last year - the intention of this Charter is to redress this imbalance.

The aim of the Charter would be a one stop source of information and advice given in a step by step approach of who to contact, how to gather evidence if required and whom to report it to. This step by step approach should follow through and include advice on how to address any lack of response to your concern.

The advantage of this being a fully inclusive document will hopefully encourage better understanding of each community’s concerns, lead to legitimate concerns being fully investigated, enable public bodies to better understand these concerns and develop strategies to address these concerns appropriately.

A measured approach to this Charter will assist in setting standards of conduct for both communities, encourage individual responsibility and hopefully curtail 'complaint for complaint sake'.

Conclusion:

- Progress is being made but there is still a long way to go to achieve a resolution to both communities' concerns.
- Full review of Guidelines:
 - Parity of rights is the main aim of the proposed review.
 - Clarification and interpretation issues previously addressed within the Petition.
 - Acknowledgement that these Guidelines are dependent on authorised sites being in place, a reality which is possibly years away in sufficient numbers.
 - A full review will enable examples of good practice throughout Scotland to be fully discussed and used to develop improvements to the Guidelines.
 - Lack of inclusiveness of both communities' concerns being fully addressed within these Guidelines.
 - The dependency on civil proceedings which lacks accountability of "the Minority".
 - A quick fix with these Guidelines would be very difficult, as one change will have a ripple effect for both communities and such amendments should not be done in isolation.
- General Presumption discussion is not complete:
 - A review of Guidelines without taken into consideration the faults within the General Presumption would be pointless.
 - The General Presumption actually stops the individual choice to say no. My Mother was prevented for just saying NO she did not want trespasser on her land. It has effectively created eviction by Cheque Book whether this is private landowner of local authorities. Aberdeenshire in preparation documentation to their new reviewed guideline say that to date of writing no Gypsy/Traveller has ever taken the legal course of action which is available to them to challenge the eviction. Why?
 - Is it fair to both communities?
 - Are its safeguards robust and fair? Safeguards of authorised sites have to be challenged when they do not exist and the timescale for these being in place could take years; to date it has not been ascertained as to the total number of sites required.
 - Care should be taken in this proposed review; although the powers south of the border make it easier to remove unauthorised sites, it has created another issue - site on private land without planning permission; a full review would give an informed response on how to address the faults with the general presumption and created a balanced approach which does not lead to new consequences such a has occurred south of the border.

Concentrating on the solution without fully addressing the symptoms is a flawed approach which will neither help development of good relations between both communities nor help provide authorised sites, nor reduce tension. Tension between both communities is far too often wrongly interpreted as prejudice when, in fact, it is more often directed at the constraints put on local authorities and police by the Guidelines and how ineffective these Guidelines are to address both communities concerns.