

Scottish Parliament Region: Highlands and Islands

Case 200700383: The Moray Council

Summary of Investigation

Category

Local government: Caravan Sites

Overview

The complainant (Mr C) considered that the Council had failed either to find a permanent campsite for gypsy/travellers in the Moray area or deal effectively with the environmental problems arising from an unauthorised campsite which is sited in proximity to his property.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) failure to provide an alternative (permanent) campsite for gypsy/travellers (*not upheld*); and
- (b) failure to deal effectively with the environmental problems arising from an unauthorised campsite (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) notify her when permanent facilities have been set up;
- (ii) consider taking appropriate enforcement action, where it is established that there is unacceptable behaviour on the unauthorised campsite contrary to their code of acceptable behaviour; and
- (iii) review their protocol to ensure that the rights of the settled community are given equal consideration to those of the gypsy/travellers.

The Council have accepted the recommendations and will act on them accordingly.

Investigation Report

Introduction

1. Mr C first complained to The Moray Council (the Council) in July 2006, shortly after moving into the area. He was aware that there was an unauthorised gypsy/travellers' campsite nearby, from his Estate Agent's property enquiry to the Council, but he understood from this that the Council's policy on unauthorised campsites was that only short-term parking was tolerated and numbers would be strictly limited until the Council could find a new permanent campsite. Mr C's complaint to the Council was that the unauthorised campsite was in almost constant use (approximately 13 to 15 encampments [group of caravans] at any given time) and there were problems from the site of excessive noise and anti-social behaviour. He was dissatisfied with the Council's response to his complaints and their advice that they were not obliged to provide a permanent campsite. Mr C was aggrieved because he considered that the Council were failing to take sufficient action to deal with the problems arising from the campsite and he wanted the Council to take urgent steps to find a permanent campsite in an alternative location.

2. The complaints from Mr C which I have investigated are:

- (a) failure to provide an alternative (permanent) campsite for gypsy/travellers; and
- (b) failure to deal effectively with the environmental problems arising from an unauthorised campsite.

Investigation

3. As part of my investigation, I made written enquiries of the Council and obtained their comments. Subsequently, I decided to carry out a site visit (at which I met with the complainant and his wife). I also interviewed the Chief Housing Officer at the Council's offices.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Guidelines and Policy

5. I have considered guidance issued by the Scottish Executive¹ (Guidelines for Managing Unauthorised Camping by Gypsy/travellers in Scotland) and Council protocol (Policy and Guidelines for the Management of Unauthorised Encampments). The Council informed me that their policy and guidelines should be read in conjunction with government guidelines.

6. The Scottish Executive guidelines, while identifying that unauthorised camping has been part of the way of life for gypsy/travellers for centuries, recognise that it can be a difficult issue to resolve, mainly because of different and often conflicting sets of rights, responsibilities and expectations. The guidelines advise that local authorities and the local police force need to be clear about their strategy and protocol and this must seek to balance the rights and responsibilities of the gypsy/travellers and settled communities. Various aims and objectives for managing unauthorised encampments are suggested, including:

- ensuring that the needs and legitimate expectations of all parties (gypsy/travellers, landowners and the settled community) are considered;
- setting a framework within which clear, consistent and appropriate decisions can be made in a transparent manner;
- ensuring that the policies and approaches reflect the human rights of both the settled and gypsy/traveller communities;
- ensuring the prevention of anti-social behaviour, regardless of who the perpetrators are, and effective enforcement against perpetrators.

7. Local authorities are advised that they may wish to set out a Code of Expected Behaviour on encampments and suggestions are given on the kinds of issues which should be covered by the Code to Expected Behaviour ensure that the same standards are applied to gypsy/traveller communities and to the settled community, including:

- large encampments, which by their very size can have a disproportionate effect on the immediate area;
- aggressive or threatening behaviour;
- failure to control dogs and other animals;
- persistent noise which disturbs others, particularly at night;

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

- littering or fly-tipping on or near the site, which causes a build up of rubbish which is unsightly, hazardous to health and expensive to clear;
- damage to the immediate or surrounding area;
- guidance to gypsy/travellers on reporting harassment experienced by them.

8. The guidelines advise that, wherever possible, an initial visit should be made by the Council to a new encampment (caravan) within two working days of them becoming aware of it, which will allow the gathering of basic information about the encampment (including the anticipated length of stay and reason for the stay) and to provide the gypsy/travellers with relevant information about welfare, health or educational needs. The visit will provide an opportunity to give information about the standard of behaviour which is expected by the Council. The guidelines advise Councils to record all information given and received to help form the basis of an audit trail for subsequent decisions if they are challenged.

9. Although the guidelines state there is a general presumption against prosecution for unauthorised camping by gypsy/travellers, it is noted that this may be over-ridden by public interest considerations, depending on the circumstances. One example is where a suitable alternative site has been identified and the gypsy/travellers have refused to re-locate within a reasonable time. The guidelines also state that the circumstances when removal will be deemed appropriate will be rare.

10. The Council's own policy and guidelines state that they have been developed with a view to providing the framework for a consistent, balanced approach towards unauthorised camping and to develop a multi-agency approach (the Council, Grampian Police and NHS Grampian) to address the needs and issues of gypsy/travellers. It is recognised by the Council in their guidelines that their previous approach to unauthorised campsites was ad-hoc and uncoordinated.

11. In principle, the Council state that they respect that people might wish to maintain a travelling way of life and that they should not be discriminated against because of their way of life and culture. The key principle to be considered when responding to unauthorised camping is that a nomadic way of life is legitimate. However, it is recognised in Section 5.3 of their policy and guidelines that 'Gypsy Travellers like other members of the community have a

responsibility to look after land they use, to dispose of rubbish properly and to keep animals tied up or under control at all times'. The Council's approach to unauthorised camping is that gypsy/travellers would not be evicted, without due cause, from land that the Council own or manage; and any eviction would take, equally, into account the desire and rights of gypsy/travellers for a nomadic life and the needs and rights of the settled community.

12. Procedures are set down for dealing with a complaint or report of an unauthorised campsite. This involves the Travellers' Liaison Officer (TLO) visiting the site within two working days; assessing the implications of the encampment remaining; and providing the gypsy/traveller with relevant information. The TLO's assessment of the implications of the encampment remaining is to consider not only length of stay (up to ten days where particular needs or subject to landowner permission) but welfare, education needs, roads safety, impact on the amenity of the area, anti-social behaviour emanating from the site, condition of the site and complaints from surrounding residents/owners. The TLO will check if the encampment has moved on in the agreed period and may, depending on circumstances, agree a longer stay. The document states that, where gypsy/travellers forming an unauthorised campsite do not move on and the campsite is not acceptable, eviction action will be taken. Mr C commented that, despite the problems with the site, there have been no evictions. The Council confirmed this but commented that such action would only be considered where it was a necessary and proportionate response to a situation.

(a) Failure to provide an alternative (permanent) campsite for gypsy/travellers

13. The thrust of Mr C's complaint under this head was based on his belief that the Council have an obligation to provide permanent facilities.

14. I noted from Mr C's correspondence with the Council that they informed him in August 2006 that they did not have a statutory duty to provide permanent facilities - although they accepted that it was good practice to do so - but that they had been seeking appropriate sites for such facilities.

15. When Mr C raised his formal complaint with this office in May 2007, he was concerned because the Council had informed him recently that they had not yet located suitable potential sites.

16. I made enquiries to the Social Housing Division in the Scottish Government about the Government's policy on provision of campsites and it was confirmed that there is no statutory requirement for Councils to provide sites in their area but that they are encouraged by the Scottish Government to do so. Funding was made available to local authorities to provide new campsites or improve their current sites and most who applied improved existing sites. I was informed by the Council that they could not apply for funding as the then Scottish Executive stipulated that any application made for funding had to be for site provision where planning consent had been obtained. At the time, the Council had various areas of land under investigation but had not yet identified any site to take forward for planning consent. Funding is no longer available.

17. The Council's response to my formal enquiry on the permanent pitch provision in the Moray area, and on their policy on provision of gypsy/travellers' campsites on both permanent pitches and unauthorised campsites, was that they do not have any permanent pitch provision for gypsy/travellers since the closure of the only permanent Council site (Chanonry) in November 2004. They commented that this was rarely used at the time. However, the Council stated that because they accepted that there was a need to provide an authorised campsite for gypsy/travellers, they set up a small working group in November 2004 to seek to identify potential sites. Having identified and investigated numerous possible sites, many had been found unsuitable. The Council commented that they are continuing to investigate potential sites but this is not proving an easy task. I asked the Council to show me evidence of their actions and I was provided with committee papers which confirm that this is an ongoing issue. The problems which the Council have experienced in finding a suitable site were referred to in the committee papers, as was the Council's commitment to find a suitable permanent site. Recent advice given to Mr C by the Council was that it was hoped to bring forward proposals for two alternative transit sites this year.

(a) Conclusion

18. The Council do not have a statutory duty to provide permanent facilities, although the guidance issued in 2004 by the Scottish Executive to local authorities states that it is good practice to do so. Currently, the Council do not have any permanent facilities in their area, having closed the Chanonry site four years ago. Although I can understand Mr C's concern at the absence of permanent facilities, there is no evidence that the Council have a duty to

provide permanent facilities for gypsy/travellers. The Council recognise the need for facilities and are working towards resolving this situation. In these circumstances, therefore, I have decided not to uphold the complaint. However, while it is clear that the Council have been endeavouring, albeit unsuccessfully, to identify suitable sites, I am concerned at the time taken and note that it is four years since the Council closed their only permanent site. I would, therefore, encourage the Council in their endeavours and ask them to notify the Ombudsman when permanent facilities have been set up.

(a) Recommendation

19. The Ombudsman asks the Council to notify her when permanent facilities have been set up.

(b) Failure to deal effectively with the environmental problems arising from an unauthorised campsite

20. Mr C complained that the unauthorised campsite was the source of many environmental problems: including fly-tipping; noise (portable generators operating day and night, dogs barking, loud music); burning of commercial waste on bonfires; and the harassment of pedestrians and cyclists on an adjacent cycle path by dogs not kept under control. He was aggrieved because he considered that the Council were not taking appropriate and effective action to restore his right to peace and quiet.

21. Within a few months of moving into the area (July 2006), Mr C contacted the Council to complain about the campsite (which is on land in the Council's ownership). The Council responded both in writing and with a visit to him by the Council's TLO. However, Mr C wrote again indicating that, while he appreciated the helpful advice given at the time, there had been further instances of environmental problems. He referred to a discussion he had had with the TLO about the possibility of moving the caravans to another location so that the problems he was experiencing would be alleviated and he asked for an update.

22. In October 2006, Mr C wrote to the Chief Executive of the Council referring to his previous correspondence with him and reiterating the problems he had continued to experience throughout the summer. He asked what steps would be taken by the Council to resolve the matter. In response, the Chief Executive informed Mr C that the Council had procedures agreed with Grampian Police for dealing with the management of unauthorised sites (the Interim Protocol for the Management of Unauthorised Encampments) and that his complaints had

been dealt with appropriately under this protocol. He was informed that his suggestion to move the caravans (which he had discussed with the TLO – see paragraph 21) was unsuitable (the land was prone to flooding).

23. The Chief Executive also advised Mr C that, although the Council were seeking to find alternative sites, they could not require the gypsy/travellers to use them. He explained that changes in Scottish Executive policy in 2002 meant that, regardless of the number of pitches that existed in any area, there was an expectation that gypsy/travellers would not be subject to harassment and eviction from unauthorised campsites. He commented that during 2006 there was a considerable increase in unauthorised campsites in many areas in Scotland.

24. The correspondence which Mr C provided when he submitted his complaint to me confirmed that he continued to report further problems to the Council. As I had noted that when he raised specific incidents, the Council had provided Mr C with a detailed response, I asked him where his dissatisfaction lay. He informed me that the Council had not taken sufficient action to deal with the problems and they were inconsistent. As an example of lack of action, he instanced the failure of the Council's Animal Services Officer to respond to him when he made representations about the nuisance caused by the gypsy/travellers' dogs. On inconsistency, he commented that the Council told him that they would not be putting portable toilets on site but the next day provided these facilities. In written comments to me, Mr C provided a copy of a letter dated 10 July 2007 from the Chief Housing Officer, which he considered supported his contention that the Council did not consider the unauthorised campsite problematic:

'Gypsy Travellers have used [the unauthorised campsite] for a number of years and at the present moment in time most encampments are peaceable and do not present significant problems.'

25. On 24 August 2007, the complainant's wife (Mrs C) wrote to the Chief Executive registering 'in the strongest possible terms' the unacceptable levels of noise which she and her family were having to endure from the dogs (six or seven) kennelled on site and asked for his assistance to resolve the problem. She stated that the noise levels had escalated in the last month and anyone using the public path was subjected to a barrage of aggressive barking. She and her husband had complained to the Animal Services Officer on many occasions but she said he often did not respond to them. She complained that

there was a lack of action by the Council and the noise problem was affecting her health and that of her husband.

26. The reply sent on behalf of the Chief Executive on 24 September 2007 informed Mrs C that the matters she raised had been investigated and that her complaints had been taken seriously. Seven visits had been made to the unauthorised campsite and the travellers had been spoken to concerning the dog barking complaints. The gypsy/travellers had been asked for their co-operation and they were asked to relocate their dogs and kennels away from the footpath. The Council confirmed that their Environmental Health Section would continue to investigate complaints of dog barking and would speak to the travellers who are dog owners. It gave advice also that formal enforcement action would not be taken by Environmental Health but it was open to Mrs C to raise an action under Section 49 of the Civic Government (Scotland) Act 1982 to apply to the District Court for an order against the owner to take steps to prevent a recurrence of the problem.

27. Mr C commented to me that the reply to his wife showed that the Council did not accept that there was a 'real inconvenience to local residents and the public generally' and it was not helpful to suggest they take legal action because the perpetrators were not permanent residents. The problem with the barking dogs remained unresolved and, at that time, there were 20 caravans and camper vans on site. The police had been notified by Mr C about other unacceptable and offensive actions (urinating in public, toxic fumes and dense smoke from the burning of commercial waste).

28. I invited the Council to comment on the complaint and to provide a copy of their Code of Practice for the management of unauthorised encampments (see paragraph 10). In his response, the Chief Executive sought to demonstrate that the Council were applying the guidelines, with the advice that the usage made of the site by gypsy/travellers is transient in nature and the numbers of encampments (caravans) parked at any one time fluctuates. He stated that checks are undertaken by the Unauthorised Encampments Officer, who visits any new encampment within two days. The police had reported that 15 complaints were made by members of the public to them in the period from February to October 2007 and the police had commented that the site was not 'out of the ordinary and do not consider it a hot spot'.

29. On the complaint that the Animal Services Officer failed to investigate complaints about dogs barking, the Chief Executive confirmed that the Council's Environmental Health Section received a complaint from Mr C at the end of July 2006, which was investigated by the Animal Services Officer, who spoke to the gypsy/travellers and identified that the owner of the barking dog was due to move on. Although he made a file note that recorded 'telephoned [Mrs C] re this' he did not follow up the advice with a letter.

30. During my investigation, Mr C continued to raise his concerns with the Chief Executive. At the end of January 2008, the Chief Housing Officer (the Officer) emailed Mr C with information about the action the Council had been taking over the preceding few months. This included a comprehensive site clean-up (October 2007) and regular visits to ensure that rubbish did not accumulate (with advice and encouragement to the gypsy/travellers to use the bins provided). She offered an assurance that fly-tipped debris would be removed promptly and confirmed that the Council's Animal Services Officer had visited the area but insufficient evidence had been found to prove that a statutory nuisance had occurred and no action was taken against a dog owner. She informed him also that the Council were considering restricting access to the area and senior managers from the Council had visited the site and were preparing plans to install parking restrictions.

31. When I visited the site in February 2008, Mr C informed me that this had coincided with a clean-up of the area. He explained that, despite the advice given to me by the Council about the actions they had taken in response to his complaints, he and his wife were frustrated because the Council were not looking at the situation from their point of view and had offered no compromises to try and make things better for them. For example, they asked for the portaloos to be moved to another location where they were not visible to the residents but they were told there was nowhere else suitable and their request to limit the size and sites where caravans could park on site was rejected. They believed that there was no one at the Council they could go to and were always the ones to make contact because the Council did not monitor if the situation had improved. He understood that it was Council policy to limit the length of stay for individual encampments but some caravans have been on site for ten months or more with no attempt to move them on. The Council have confirmed that the approach they take in managing the unauthorised campsite is that, provided there was no reason to move people on, it would be possible to

remain for 10 months. However, evidence has been provided that the average stay since 2007 has been three weeks.

32. Mr C commented that the Animal Services Officer did respond to a small percentage of the complaints about dog barking. However, the Animal Services Officer seemed to accept the dog owner's version of events and there was never a follow up or enforcement of his request.

33. Mr C complained also about Council delay in responding to his emails.

34. I discussed Mr C's complaint with the Officer and she advised me that there is a structure in place to visit the site on a regular basis and that the Council take a pro-active approach to its management, which is not necessarily in response to complaints from members of the public. Copies of records of visits to the site in question from mid-2007 to June 2008 were subsequently provided by the Council as evidence of recent monitoring. On Mr C's complaint about lack of contact, she understood that there has been informal contact with Mr C but she would check. I was subsequently provided with copies of four telephone notes of calls made by Mr and Mrs C during 2007 which were recorded by the Unauthorised Encampment Officers who held the post during this period, concerning various complaints about the unauthorised campsite which were dealt with at the time or advice given to the caller to report to the police. Although some reports recorded that there should be continued monitoring, no recommendations were made for further action beyond the original response.

35. I discussed with the Officer the problems with the campsite and the situation as described by Mr C, particularly the suggestions that he had discussed with me on how it could be improved. She advised that she would, as a priority, liaise with other services to see whether this could be achieved. A few days later, the Officer wrote to me with advice that, having agreed with me that it would be beneficial to ensure that direct face-to-face contact was firmly established with the complainants, immediately following our meeting she had asked the Senior Area Housing Manager to facilitate this. A visit had taken place to Mr C when proposals to 'block off' part of the site had been discussed with him in more detail and some alterations he had suggested had been agreed with the relevant Council Services who maintain this area of land.

36. Following my visit, Mr C informed me that he had been visited by two senior Housing Officers and, subsequently, that the Council had erected a barrier to restrict the areas for caravan parking and numbers on site. Though the problems of disturbance from noise and unacceptable actions from the gypsy/travellers had not diminished and remained problematic, Mr C informed me that there was an improvement in the reduction of the numbers of caravans. However, Mr C reported recently that the situation has deteriorated and he remains concerned about the continued use of the area as an unauthorised campsite, two years from when he first reported problems, and the effects on his wife's health from the ongoing stress caused by the noise and other nuisances associated with the site.

37. Recent actions by the Council are the erection of signs, advising that members of the public caught fly-tipping will be prosecuted and that vehicles will not be permitted beyond the restricted area. It has been confirmed that the Animal Services Officer will be asked to raise the problem of dog barking with the owners. The Council have informed Mr C that they do not regard the site as a permanent site for gypsy/travellers. However, to comply with existing legislation, they have to approach the matter of encampments with a measured and proportionate response. The Council have acknowledged that some caravans have been there longer than both the owners and the Council expected and steps are being taken to address their housing needs from which it is hoped some will move on. In the meantime, the Council have confirmed that they will continue to manage the site proactively.

(b) Conclusion

38. The unauthorised campsite pre-dates Mr C's move to the area. However, it was his expectation, given the advice provided by the Council at the time, that there would be limited numbers of encampments and usage of the site. Mr C and his wife have been unable to enjoy their home because of the problems associated with the unauthorised campsite and they looked to the Council to take action to resolve their complaints. Mr C perceived that his interests were not being taken into account. I can see that there is a dilemma for the Council in looking to the needs and welfare of the gypsy/travellers community and, equally, to the settled community given differences in lifestyle. However, the available evidence suggests that the Council were not managing the unauthorised campsite in accordance with the code of expected behaviour which sets out the procedure for dealing with a complaint or report of an unauthorised campsite. This includes the requirement for the TLO to visit,

assess and monitor the situation and keep a record of his/her actions. The procedure also places a responsibility on the gypsy/traveller to look after the land, dispose of rubbish properly and keep animals under control at all times. If this does not happen, the Council's procedures state that they can take eviction action albeit that the Council have made clear that they would have to decide whether this was an appropriate and proportionate way to deal with the matter.

39. Looking at the way the Council responded to Mr C's representations as a whole, I have concluded that this procedure was not adequately followed. Reports of unacceptable and anti-social behaviour were not being dealt with in a clear and cohesive manner, in accordance with their own and government guidelines. Further, I have seen no evidence that the TLO and Animal Services Officer properly followed up their actions in relation to the issue of barking dogs with Mr C. I am satisfied that the Council have now put in place more comprehensive monitoring of the site and that their formal and informal feedback to Mr C has, on the whole, improved, but this needs to be maintained. In all the circumstances, I must be critical of their failure to take action until recently and I, therefore, uphold this head of complaint.

40. The Council have adopted a more pro-active position in recent months and they have shown that they are prepared to listen and act on Mr C's complaints. Unfortunately, the changes carried out by the Council to the unauthorised campsite (to restrict the numbers of encampments) do not seem to have resolved many of the problems raised by Mr C. Until they are able to provide a permanent campsite, and for as long as the Council permit the continued use of the area as an unauthorised campsite, they should investigate and, if necessary, take formal action where it is established that their code on behaviour is being breached. Further, the Council, as landowner, should consider what further action they can reasonably take to ensure that the rights of the settled community and those of the gypsy/travellers are given equal consideration.

(b) Recommendations

41. The Ombudsman recommends that the Council:

- (i) consider taking appropriate enforcement action, where it is established that there is unacceptable behaviour on the unauthorised campsite contrary to their code of acceptable behaviour; and
- (ii) review their protocol to ensure that the rights of the settled community are given equal consideration to those of the gypsy/travellers.

42. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Council	The Moray Council
The TLO	Travellers' Liaison Officer
Mrs C	The complainant's wife
The Officer	Chief Housing Officer

Glossary of terms

Encampment	Site of a single caravan
Encampments	Group of caravans

List of legislation and policies considered

Guidance issued by the Scottish Executive	Guidelines for Managing Unauthorised Camping by Gypsy/travellers in Scotland
Council protocol	Policy and Guidelines for the Management of Unauthorised Encampments

