

The persecution of campers by the Loch Lomond and Trossachs National Park Authority

Description

From: [REDACTED]@gmail.com <[REDACTED]>
Sent: 18 March 2017 12:15
To: Anna MacLean
Subject: Re: a question!

Hi Anna,
I presume you have seen David Lintern's article on Walk Highlands. He seems to be suggesting her camped in a non permitted area but was still told this was not allowed by rangers. I am thoroughly confused. I thought that outside permit zones you could camp for free? What does he mean?
The rest of the article is a bit irritating although there are some interesting points.
I am surprised walk highlands have chosen to publish without seeking proper comment. Although David does suggest he did ask for park authority comment.
Best,

That someone who appears to have been one of the Park's own advisers was thoroughly confused and did not understand how the byelaws work, made me laugh. The serious issue is that the Park issued 828 warnings last year, which could lead to criminal prosecution, to people most of whom had done nothing wrong. Extract from David Lintern's subject access request.

The Loch Lomond and Trossachs National Park Authority's report for Ministers on the first year of the camping byelaws ([see here](#)) was a spin job based on assertions and half-truths rather than facts. This week I have obtained through Freedom of Information some of the facts I suggested almost six months ago should be included in that Report to Ministers. At the same time the campaigning journalist, David Lintern, who bravely broke the byelaws last year to test what would happen, has obtained information the Park held about him through a subject access request and published this in a fine blog piece ([see here](#)). This post considers what this information tells us about how the Park is enforcing the byelaws. I believe it shows that campers are being singled out and systematically victimised by the LLTNPA and this raises fundamental issues for our justice system.

The truth about enforcement of the camping byelaws

The section of the LLTNPA's report to Ministers which dealt with enforcement of the byelaws makes fairly anodyne reading:

5.15 Byelaws and the Environmental Protection Act Enforcement

When required, enforcement of the byelaws was carried out by Rangers or Police Scotland officers. The following figures summarises these actions:

? During the first operational season of the byelaws 828 individuals' details were taken and

warnings issued for alleged contraventions of Camping management byelaws.
? A total of 10 cases were reported to the Crown Office, three by National Park Rangers and seven were reported by Police Scotland. Byelaws that were contravened included Unauthorised Camping – Byelaw 6, Fire-lighting – Byelaws 8a & 8b, Provision of Details – Byelaw 9 and Removal from a Management Zone – Byelaw 13.
? During the same time period Park staff issued four Fixed Penalty Notices for camping related fly-tipping.

What [EIR 2018-001 Response](#) shows is that the LLTNPA does not know whether Police Scotland or the Forestry Commission, when enforcing the byelaws, issued any warnings:

The Park Authority does not hold information about warnings issued by Police Scotland or by Rangers employed by Forest Enterprise/Forestry Commission Scotland. Accordingly I have to advise under Regulation 10(4)(a) of the EIRs that this information is not held.

In other words the LLTNPA told Ministers that 828 warnings had been issued under the camping byelaws without knowing whether this figure was correct or not!

And if FCS and the Police are enforcing the byelaws without a warning system, what on earth is the justification for the Park having such a system and issuing warnings to 828 people? It also suggests that the LLTNPA's claims to be working in partnership with these bodies in bunkum.

The Information Response, although not 100% clear, also shows that very little attempt was made last year to enforce the byelaws against campervans/motorhomes:

Q *(of the 828 people warned) how many were warned for offences involving staying overnight in a campervan/caravan outwith the road system (if you stay overnight in a vehicle on a road you are exempt from the camping byelaws)*

R *Details were taken from 13 people in relation to staying in a campervan/caravan outwith the road system.*

Assuming “*details were taken from*” means a warning was issued, then out of 828 warnings, just 13 involved campervanners. It re-inforces the fact that the byelaw against staying overnight in a vehicle effectively collapsed last year. I have nothing against campervanners, like campers there are some who act responsibly and some who don't. I also welcome the fact they can now stop off where they always did, but the byelaws were supposed to tackle the (much exaggerated) problems associated with both. The way the LLTNPA has focussed its enforcement efforts on campers has been highly discriminatory since, to own a campervan generally you need to be better off, while if you camp you are more likely to be young or poorer. Again, the LLTNPA failed to mention this in their report to the Minister. She has apparently a keen interest in social justice and this itself should be sufficient reason for the byelaws to be abandoned.

Equally damning is this information, again which the LLTNPA withheld from Ministers:

Q: *The Board Report states 4 Fixed Penalty Notices [para 5.15 quoted above] were issued to campers for littering. How many other FPNs did the LLTNPA issue in 2017 for a) fly tipping and b) littering?*

LLTNPA Response: *There were four fixed penalty notices issued for camping related fly tipping. There was one additional Fixed Penalty notice issued in 2017 for fly tipping that was unrelated to*

camping.

There were no FPNs issued by the Park Authority in 2017 for littering

The last line is crucial. The ONLY people the Park has fined for littering are campers. So, in response to the detritus which is only too evident along every road and layby in the National Park, most of which has nothing to do with campers, in 2017 the LLTNPA did..... precisely nothing. This is not just about the LLTNPA getting its priorities wrong, yes there are some campers who leave rubbish but this is small in relation to the total amount of litter dropped in the National Park, it amounts to victimisation of one group of people. Fly tipping, which is difficult and costly to clean up, is an even greater problem than litter and yet the LLTNPA only issued one such notice in 2017. The people who fly tip though tend to own land, or be working on behalf of people who own land, while a high proportion of campers, as the Park's data shows, come from poorer areas and are likely to own very little.

In summary what the headline data shows is that the LLTNPA, rather than other public authorities, is driving the enforcement of the camping byelaws and its using almost all the resources of its paid Ranger Service to target campers, rather than people staying overnight in vehicles or addressing the wider litter problem. In effect there now appears to be one law for the richer, one for the poorer in a National Park which was meant to be for everybody.

The permit system and warnings

Each camping permit issued has terms and conditions attached and breach of these is a criminal offence under Clause 11 of the camping byelaws and may result in a referral to the Procurator Fiscal, hence the following question:

Q Of the 828 warnings issued, please provide me with the information you hold on how many of were to people who had a valid permit"

R "There were no warnings issued to people who had a valid permit. Accordingly I have to advise under Regulation 10(4)(a) of the EIRs that this information is not held."

The Response was unexpected. It defies belief that every single camper who paid the LLTNPA to camp did so responsibly. Indeed, if you look at the list of complaints the Park received last year about the camping byelaws (which is now on their website ([see here](#))) at least one appears to have been about the behaviour of a camper who had a permit:

Campers asked to leave permit area, complaint that noise caused by other campers

Moreover, anyone who has visited a number of the permit areas will know that conditions are now sometimes worse, not better than they were before the byelaws were introduced. This is due to the concentration of people into a few areas without facilities. Yet not a single camper with a permit was warned. Either the permit system is an ineffective and expensive waste of money or the LLTNPA is more interested in trying to force people to buy permits than in what actually happens on the ground. Its probably a mixture of both.

This is reinforced by the fact that of the 828 warnings there were just “21 warnings issued for a breach of camping byelaw 8 on the lighting of fires.” (though people warned for lighting fires appeared at high risk of being referred to the Procurator Fiscal). Anyone who looked round camping management areas last year will have noticed that there has been NO appreciable reduction in the number of fires, yet the damage caused by fires, including chopping of live trees, was one of the main justifications for why the Park wanted to ban camping.

In fact what the data appears to show that in the case of every single warning issued the main reason for this was the camper did not have a permit:

Q: *how many were camping within a permit zone without a permit*

R: *222 people were camping in a permit area without a permit.*

Q: *how many were warned for camping in a camping management zone outwith permit areas*

R: *606 people were camping outwith a permit area in a camping management zone.*

That comes to 828 which suggests that where people were warned about fires, this was in addition to their being without a permit. What the data doesn't show is how many of those warned for not having a permit in a permit area agreed to buy one when confronted by a Ranger and how many decided to move on.

All this tells you a lot about the priorities the LLTNPA. Camp responsibly, avoid lighting any fire, ensure there is no litter in sight of your tent and it appears there is a high chance you will get an official warning. Buy a permit, light fires, drop litter and.....not much is likely to happen to you. This effectively undermines everything which our access legislation was supposed to be about, you had access rights as long as used them responsibly. Now, if you have a permit, well that's fine! The permit systems is totally rotten and needs to go.

The information the LLTNPA is collecting on people

Record of Byelaw infringement warning

Date	Location / Permit area	CMZ	Time	First Names	Surname	Address	Town/City/Country	Post Code	DOB	Vehicle Reg	Make & Model	Ranger
11/03/17	3LD - Camped at fishing permit site @ Loch Achray	3LFD	10:45	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Warned Y/N	Complied	Compliance details	Permit purchased	Time Resolved
Y	Y - moved on	Journalists - Waking Highlands	[REDACTED]	[REDACTED]

Extract from David Lintern's subject access request

I was interested to see that David Lintern had been charged £10 for his subject access request, as they can do under law, because when I applied the LLTNPA, after initially insisting on the receipt of £10 before they would do anything, they then quite unexpectedly dropped the charge completely – very kind of them. Now they hold data on so many people though, I suspect there is a risk they get inundated with requests, hence the charge!

Camping byelaw 9 is on Provision of Details and states:

“It shall be an offence under these byelaws for any person to refuse to provide their correct full name, date and place of birth, address and the registration of any vehicle to an officer of the Authority, a police officer or any other person authorised in writing by the Authority who has reasonable grounds for believing that such person has committed an offence under these byelaws.”

Interestingly, the LLTNPA is not collecting information about a person's date of birth BUT IS collecting information about Make and Model of vehicle which is NOT authorised under the byelaws. In response to a question asking on what authority the LLTNPA had decided to hold information about campers for three years, a month ago I received this response [EIR 2018-002 Response enforcement](#). In it the LLTNPA state the byelaws provide authority for information to be held on people. The implication of this is the LLTNPA should not be holding the information on make and model of car, since this is not mentioned in the byelaws, and they are therefore doing this unlawfully.

In their response the LLTNPA failed to answer my question about which member of staff had authorised this information be kept for three years and for what purposes it was being kept – in which case the buck lies at the top, with the Chief Executive, Gordon Watson – but claimed that staff were authorised to do this under the Board's scheme of delegation for the byelaws. This appears to be wrong. The scheme of delegation allows staff to take decisions on permit areas, exempt groups and

authorise specific staff to take action under the byelaws, but says nothing staff being given authority to design a warnings systems. And nor should anyone expect this to be allowed to do this. The warnings system has fundamental implications for civil liberties and any decision should have been taken by the Board. In my view therefore the warnings system instigated by the LLTNPA is not lawful and I have written to them to say this. Anyone issued a warning by the LLTNPA should therefore in my view seek legal advice.

David Lintern's subject access information however also indicates that while he was warned, not everyone is (the Warning Y/N box).

3. At what point would a situation escalate to taking formal action?

This would depend on the exact circumstances of each situation but campers will be given every opportunity to comply with the byelaws before a judgement would be made by the rangers whether to escalate the issue and take details to report to the procurator fiscal.

Our approach is always to engage with visitors and discuss the byelaws with them including the implications of refusing to comply; giving them the options of how to change their behaviour to be compliant with the byelaws. For example, buying a permit and moving to a permit area, or choosing to leave the location they are in and camp outside a camping management zone.

Rangers will agree a timescale with them for returning to see if they have complied. If this hasn't happened and there are mitigating circumstances, for example not being able to get online to book a permit, the rangers could agree a further timescale for a retrospective payment to be made.

However if they are given several opportunities and are still refusing to comply consideration will be given as to whether a report should be made to the procurator fiscal.

4. Could we use the data we have collected to track patterns of repeated refusals to comply with the byelaws?

Each case has its own circumstances and will be considered on its own merit. Our approach to enforcing the byelaws aims to achieve behaviour change through education and awareness-raising. Taking formal action will always be a last resort. Individuals' details will be retained and could be used to identify patterns of persistent refusal to comply. Appropriate discretion will be used when deciding whether to report to the Procurator Fiscal. What happens from that point onwards, is at the discretion of the Procurator Fiscal Service.

What is "appropriate discretion"?

David did try to get some answers about this in subsequent correspondence with the LLTNPA (left) but the LLTNPA failed to explain what the difference was between collecting people's details and giving them a warning. Nor did they explain when they might refer people to the Procurator Fiscal if they failed to carry out instructions from Rangers. The internal emails around David's case shows that what happens is all being managed at the discretion of staff and their decision in his case was probably decided by media concerns, as a failure to take any action could have encouraged widespread flouting of the byelaws. It appears that in other cases where people agreed to leave, as David did, or buy a permit they may not always be issued with a warning at all (hence the no warning option in the warnings log!) This is wrong. Systems of discretionary justice end up being determined about whether your face fits, which reinforces the fact that these byelaws are highly discriminatory.

While I will continue to press the LLTNPA s to come clean about what legal authority it has to manage what appears to be a system of arbitrary justice and produce open and transparent procedures and data about how it is actually managing enforcement of the byelaws, it would be much easier if they just dropped them now. It might even save part of the LLTNPA's reputation.

Numbers prosecuted to date

The information request also tells us is that the byelaws are now turning campers into people with criminal records, despite the LLTNPA's claims it did not want to criminalise camping:

*Q: Any information the LLTNPA holds on the outcomes of the cases referred to the procurator fiscal
R: Police Scotland reported 7 cases to the Fiscal, of these; two were disposed of by issuing a Fiscal Fine. The Park Authority does not hold any information about the outcome of the other five cases. The Park Authority reported 3 cases to the Fiscal, two were disposed of by issuing a Fiscal Fine, the third case has not been concluded.*

Small numbers so far but I think we will see a lot more this year if people issued warnings return to camp.

The people who are being and who will be prosecuted of course are not the occasional tourists, not even the backpackers walking the West Highland Way – so what to them if they are issued with a warning? – but the people who used to fish and camp in the Loch Lomond and Trossachs year on year. The majority of those people of course are working class and from the Glasgow conurbation. The byelaws are not just about camping, they are a means of enforcing social exclusion.

Category

1. Loch Lomond and Trossachs

Tags

1. access rights
2. camping
3. Camping bye laws
4. Freedom of Information
5. Governance
6. Litter
7. LLTNPA
8. Minister Environment

Date Created

March 9, 2018

Author

nickkempe

default watermark