CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

Title: Casework Protocols – dealing with case closure

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Purpose: The purpose of the paper is to involve the Forum in discussions about how the CNPA as Access Authority deals with case closure, with particular reference to cases where conclusive results have not been forthcoming in the process of resolving an access dispute. At the last LOAF meeting as part of the casework review, Fran highlighted that staff time and resources had occasionally been used up on somewhat marginal cases. It was felt that the casework protocol might need to be reconsidered to include thought about the decision making process in closing or escalating cases.

Advice Sought

The Forum is asked to advise on the proposal to seek LOAF advice on the closure of cases.

Background

1. Sections 14 and 15 give of the Land Reform (Scotland) Act 2003 specific powers to the Park Authority to take action against land managers who utilise prohibition signs, obstructions and dangerous impediments, etc for the main purpose of deterring or preventing the exercise of access rights.

2. The CNPA emphasises the need for dialogue, negotiation and informal solutions in most cases – only once has the Authority reverted to deploying its power to serve a Section 14 Notice[1] on a land manager and this was in the case of the Aviemore Highland Resort fence in Aviemore. Moreover the CNPA takes its responsibility towards land managers seriously and seeks to equally address matters raised by them concerning undesirable behaviour, the extent of access rights and interpretation of the Scottish Outdoor Access Code.

[1] If a S.14 Notice is appealed, it is determined in a Sheriff court and therefore is expensive and time-consuming for all parties.

Closing cases

3. Ideally a case is closed when specific action has been taken to redress a specific problem raised by a complainant, to the satisfaction of both the land owner and the recreational interest. However this is not always the case and the Authority has been giving some thought about how to manage a caseload where ambiguities present themselves. This is explored by way of some example cases:

4. **Example 1** – a long running dispute was conducted over a number of years about stiles on a private estate. We received a number of complaints from cyclists (at least half a dozen) in particular who desired easier access. The land owner proved extremely intransigent to deal with and the Park Authority made no headway in ever meeting with him, although a Board member and a local contractor did intervene on our behalf. After five years, the stiles had been replaced with narrow deer height kissing gates and the complaints had dried up although access by bike still remained extremely awkward. Based on the fact that the land owner had made *some* effort to address the problem and that complaints were no longer forthcoming, the Authority took the decision to close the case even though strictly speaking, access was not compliant with the provisions of the Land Reform Act.

5. **Example 2** – CNPA received a complaint from an individual about a non-Code compliant sign that was decrepit and illegible and in a remote location. Over the course of a few years no other person complained about the sign. We judged that the sign was unlikely to be deterring access, simply because it lacked credibility and the fact that it couldn't easily be read! We wrote to the estate to remind them of their responsibilities under the Act, and to suggest a replacement of the sign, offering to supply them with Easy Signage solutions. A reminder letter with a stronger suggestion that the sign should be replaced evoked no reaction. We took the view that the case was very low priority, that they had taken steps to notify the estate of their responsibilities and, even though the non-compliant sign remained, we closed it after two years

6. **Example 3** – CNPA received a number of complaints over the years from a single individual who claimed they had been challenged in exercising their access rights by a land manager. Even though the CNPA spoke to the land manager about their responsibilities towards access takers, the allegations continued to be made. Due to the hearsay nature of the complaints, it was difficult to establish whether the land manager had been *provoked* into an aggressive response, or had *instigated* an unreasonable challenge to someone peaceably exercising access rights. The Park Authority has little locus in the way of neighbour disputes and moreover there appears to be little legal redress in the Act to deal with interpersonal conflict – as opposed to obstructions due to infrastructure or land management practices. The Park Authority took the view that they had intervened to remind both parties of their responsibilities but suggested any

further incidents were referred to the Police. The complaint was not happy with this response but the case was nevertheless closed

7. In all these examples, cases were not resolved in the fullest sense in that obstructions remained or behaviour continued. In this sense, best practice did not prevail. However in each case a conscious decision was made by the Park Authority NOT to escalate the case to a more formal level as none of them were felt to merit more resources, and that it was not sufficiently in the public interest to do so, due to the extremely low number of complaints or the small scale impact of the issue.

The risks of instigating or refuting formal procedures

8. The instigation of more formal procedures sets the Park Authority along a route that it might be hard to turn back from. Given that a S14 is only issued as a last option, it commits the Authority to fight a case to full resolution. Such cases need to have a heavy weight of community support behind them and the backing of the CNP Board as well as LOAF endorsement. Success is never guaranteed, and court action is costly both in terms of staff resources and Authority expenditure. Attention also needs to be paid to the longer-term effects on land owner relationships, and the context of on-going work on other fronts between the land owner involved and the CNPA e.g. natural heritage, housing etc.

9. Alternatively, not deploying our full powers exposes the Authority to criticism that it is ineffectual and weak in dealing with difficult cases, and will not champion the cause of access takers. There is a suggestion that land managers will continue with bad practice knowing that little sanction will be taken against them. Moreover the Authority might be accused of not meeting its duty to uphold access rights under the Land Reform Act, and subject to formal complaints against it. Some of these can be mitigated by taking up alternative opportunities to influence behaviour e.g. exerting pressure through woodland grant scheme applications or SRDP programmes.

Proposal

10. We contend that each case must treated on its individual merits and that there is a complex mix of factors involved in making decisions about closing marginal, or partially resolved, cases. To a certain extent it involves a play off between a pragmatic approach, and a best practice approach. However as a Park Authority we must be able to justify our decisions, aim for consistency in approach and show willingness to re-visit closed cases if and when opportunities arise. **In the future we are minded to present the Forum with our thinking on case closure for these types of cases and ask for comment – not in ratifying a decision, but helping us come to one.**

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