



Northern Ireland
Assembly

**COMMITTEE FOR
ENTERPRISE, TRADE AND
INVESTMENT**

**OFFICIAL REPORT
(Hansard)**

Caravans Bill

30 September 2010

NORTHERN IRELAND ASSEMBLY

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INVESTMENT**

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Members present for all or part of the proceedings:

Mr Alban Maginness (Chairperson)

Mr Leslie Cree

Mr Paul Frew

Mr William Irwin

Ms Jennifer McCann

Dr Alasdair McDonnell

Mrs Claire McGill

Mr Sean Neeson

Witnesses:

Mr John McCallister MLA) Ulster Unionist Party

Ms Annette Holden)

Mr John Hinds) Department of Enterprise, Trade and Investment

Mr David Livingstone)

The Chairperson (Mr A Maginness):

I welcome Mr McCallister to the Committee and look forward to hearing from him. Mr McCallister, would you like to present your views now?

Mr John McCallister:

I thank the Chairperson and members for providing this further opportunity to brief the

Committee on the Caravans Bill, particularly in light of the proposed amendment regarding the creation of a provision to allow caravan owners on seasonal sites to set up some form of association, which, provided that it meets certain criteria, must be recognised by a site owner.

It is widely accepted that a residents' association should be formally constituted and recognised on permanent residential sites because they are the main or only residence for such occupiers. There is an argument against a similar provision for seasonal sites because caravans on such sites are akin to holiday homes and are not the occupiers' main or only residence. However, many caravan owners on seasonal sites move in for the duration of the summer season, spending anything between four and six months at a time in situ; it is not just a week or a weekend here and there. They should not be denied a simple right just because they live on sites part-time.

I am aware that Minister Foster, although supporting the principle of my proposal, feels that this legislative change is unnecessary and will not, therefore, support this amendment at Executive level. I am also aware of the National Caravan Council's (NCC) submission to oppose the amendment, in which they put forward arguments to support their opposition, which I will attempt to address.

To give the Committee some perspective on the issue, I will explain my rationale for bringing forward the proposal. I want the provision included to recognise a qualifying association on seasonal sites, to address the imbalance whereby caravan owners on seasonal sites feel that they have no voice. The provision is necessary to shore up the provisions in Part 2 of the Bill. Indeed, the Bill has been criticised for not going far enough to protect the seasonal sector, which is the larger of the two sectors in Northern Ireland.

The amendment arose from listening to Members discuss the Bill's Second Stage in May, when much of the debate focused on protection in the holiday sector. Members will be all too familiar with the horror stories recounted by unfortunate holiday caravan owners who have been forced to endure the introduction of an unexpected rise in fees, often at an exorbitant rate and without any explanation or freedom of choice. Sadly, it is not uncommon for seasonal site owners to attempt to set fees unilaterally, despite the guidance published by the Office of Fair Trading (OFT) in 2005.

It should also be noted that the OFT was clearly of the opinion that it is only fair for caravan owners as a group to be involved in discussing fees and any other issues that may affect them directly or indirectly; however, that is still to happen. More than 300 groups have been involved in drawing up the OFT's guidance, including not only caravan owners but site owners and members' organisations such as the NCC and the British Holiday and Home Parks Association (BH&HPA). If included, this provision will ensure that that happens; it will give association members a voice in the management of the sites that they occupy. A collective voice achieves results, as I have witnessed in my own constituency. By creating an effective communication link between the site owner and caravan owners, potential problems can be resolved at a low level, without the requirement of involving the trading standards service or, worse still, lengthy and expensive legal action.

Although the amendment is modelled on the provision contained in paragraph 28(1) of the schedule, that schedule relates to permanent residential caravans. The provision of seasonal sites will be less burdensome for seasonal site owners and there will be no obligation on the part of site owners to take into account any representations made by the qualifying association; the site owner will merely have to advise them of any matters relating to the operation of and improvements to the seasonal site that may affect the seasonal owner occupier directly or indirectly.

Chairman, you remarked on the press cuttings about the recent landmark case in England. That illustrates perfectly my point about the benefits for both the site owner and the caravan owner in recognising an association. In that case, the owners of the holiday park proposed a major works on the site and tried to pass on the cost to the caravan owners through increased service fees. The lack of consultation and limited choice prompted the holiday home owners to take legal action. They won their case, and the site owner was ordered to pay back a substantial sum dating back six years, to cover the excessive increase.

The judgment goes further than reinforcing the OFT's guidance; it makes it compulsory for site owners to recognise associations that are set up by holiday home owners on holiday sites. Although that case dealt with holiday chalets, the principle must be recognised. It dealt with a situation that was not dissimilar to that which many holiday caravan owners have found themselves in. The caravans in question are static and are not easily removed from the site. Removing them is expensive, and many site owners will not allow a caravan owner to bring their

caravan to a new site unless it was purchased from them. The caravan owner is then left with a caravan that they cannot re-site and is, consequently, of no use. Although the judgement was made outside the jurisdiction of Northern Ireland, it should be recognised as a persuasive element in support of the argument for the need to have the OFT's guidance enshrined in law. If that is done, it will give greater protection to the holiday caravan owner without overburdening site owners and causing severe detriment to an important industry here.

Paragraph two of the NCC's submission argues that there is no provision in the rest of the UK such as the one that I am proposing. I find that a strange argument for the NCC to use to show its opposition. There is no provision that gives caravan owners in the rest of the UK the statutory right to receive a written agreement on seasonal sites anywhere in the UK, and that is one of the issues that we, with the Committee's support, will change with the Bill. If there is a need to afford protection, we must not ignore it. There is no reason why this part of the UK cannot take the lead on something that improves protection for holiday home owners.

In the same paragraph, the NCC argues that:

"The 'population' on a holiday park is transient."

The NCC has written that on the basis of the nature of caravan parks in England, Scotland and Wales. We heard from every quarter that the users of seasonal sites in Northern Ireland tend to be generational, with caravans handed down through families and remaining on sites for many decades. That could not, at any level, be classed as transient.

I agree with the NCC that communication between site and caravan owners should be standard and expected; however, sufficient evidence has been brought before the Committees to confirm that that simply does not happen. Indeed, if any Committee members have dealt with the issue in their constituencies, I am sure that that they will have found that to be the case. If accepted, the amendment will ensure that that communication occurs, which will change relationships.

In paragraph three of its submission the NCC refers to its code of practice for caravan holiday parks. Although that code is welcome, it is, like the OFT's guide, voluntary. It is also meaningless unless the park owner is a member of the NCC, and a vast number of the seasonal sites in Northern Ireland are not.

In paragraph four, the NCC outlined a hypothetical scenario relating to a recognised

association voting on park management issues. That appears to be based on a misunderstanding by the NCC on what powers the associations will have under the proposed provision. The purpose of the provision is to give seasonal caravan owners the right to form an association should they wish to do so and to be recognised by the site owner as a legitimate association. Under the proposed provision, the site owner will only be required to advise the association of certain activities that may directly or indirectly affect the caravan owners; he is not obliged to take any notice of the representations made to him.

The NCC also referred to the setting of pitch fees and suggested that that is a matter for individual negotiation. I do not disagree with that view; it is necessary to give site owners the appropriate freedom and flexibility to suit their business needs. The proposed provision will not affect the practice of individual negotiation, but the process could be less bureaucratic if owners were dealing with one representative body rather than undertaking 300 individual negotiations.

In summary, I believe that the proposed provision could be a positive one that will benefit both the seasonal site owner and the owners of caravans on those sites. It will make communication on relevant issues easier for the site owner, by dealing with a small number of individuals representing the interest of all the caravan owners on the site. In turn, providing that all the necessary criteria are met, it will give caravan owners the right to form a legitimate association if they so desire. If drafted properly, it will further reduce the number of complaints to the trading standards service, of which it still receives an unacceptably high number. I hope that that information is useful to the Committee. We are still working on the draft with the Bill Office; as soon as a draft is available, we will forward it to the Committee and will welcome members' input. I am happy to take questions.

The Chairperson:

Thank you very much, Mr McCallister. Feel free to come in at any point, Ms Holden. I hear what you have said; I, personally, have a very open mind on the issue. Persons in the permanent residential sector can form an association to make representations, and so on. You said that that should be mirrored in the seasonal sector. However, you also said that there will be no obligation on the site owner to take into account any representations made to him by the qualifying association. I wonder about that. Why bother with an association that makes representations if the site owner can simply ignore it? It seems to me that there is no added value in the association. There may be some value in the sense that people can get their points across to the owner;

however, without some obligation on the owner, it seems to be an almost futile exercise.

Mr McCallister:

We have always argued that the permanent residential sector must have a higher level of protection, because caravans are those people's main and only residence. The problems that people face on many seasonal sites could be less burdensome if there were an association.

The Chairperson:

I take your point. It is much better for one body to approach an owner to ask him to address problems, rather than various individuals doing it.

Mr McCallister:

You talked about associations having no added value. Yes, there is no obligation on a site owner to take notice. However, on a site with 200 caravans and 150 members in an association, only a very brave site owner would pay absolutely no heed. As the case in England demonstrated, although the site owner is not obliged to pay any attention, he has to consider the threat of the residents collectively going to court to challenge what he did or challenge the fact that he did not consult or pay any attention to them when he raised fees. They still can revert to the provisions of a written contract and contractual law. There is added value in making sure that people have a collective voice, because the examples that we have seen in the industry show that, when approached with a problem, site owners tend to try to weed out the troublemakers. It is much better to have a collective voice, as that puts people in a much stronger position to tell the site owner that they think that he is wrong and that they can pursue the matter through a court.

The Chairperson:

If an association were to go to court and say that the site owner had ignored the points that it had made, I am not convinced that the court would deem it relevant, because there is no obligation on a site owner to pay heed to what an association says. That would not have much value in court. I am only presenting that as an argument.

Mr McCallister:

In the English example, the court came out strongly in favour of the association. One could also refer to contractual law, once a written agreement is in place. The most contentious issue is likely to be rises in site fees without consultation. Individuals could pursue a case, but it would be

unlikely to succeed; an association would give them a stronger voice.

The Chairperson:

How does one form an association? People go to caravan sites and want to get on with their holidays, relax and enjoy themselves. People will not be terribly interested in associations, so you may have difficulties in forming effective ones. That is a practical problem, but it is also relevant to the framing of the legislation.

Mr McCallister:

I agree, which is why I am surprised that some of the trade bodies, such as the NCC, are so against it. I see the provision being more relevant to sites where there have traditionally been problems. I take the point entirely that if people go on holiday and want to read a book or relax, the last thing that they want to do is join an association. If members of the Committee were caravanners, the last thing that they would want to do is join another committee when they went on holiday.

The Chairperson:

There are some sad individuals. *[Laughter.]*

Mr McCallister:

I am sure that you will not name names.

The Chairperson:

No; I will just look at them. *[Laughter.]*

Mr McCallister:

This will create a mechanism to help people to act if things are not right on a site. For example, in my constituency, a protest group was started against rises in site fees. That has revolutionised the communication between the site owner and the caravan owners, with joint events being run for charity and money being raised for the local lifeboat. Establishing an association has changed the relationship between the two parties dramatically, and nobody feels threatened.

We have a chance to do something that will not be overly burdensome to the industry; it will save time by helping communication on a site. It is about giving people the right to be a member

of an association and is no different to having the right to join a trade union; one has the right to join even if one is the only person in the workplace who does.

There are practical problems with setting up an association, but that only relates to sites where there are issues that make people feel that an association is needed. On a well-run site, there may be a lack of interest. However, the provision gives a legal footing to those who want to establish an association to improve their rights or to challenge something unfair that evokes strong feelings.

People make considerable investments in caravanning holidays. One could spend £30,000 or £40,000 on a caravan and £1,500 to £1,600 a year on pitch fees; that is a considerable investment for a family to make. The rules are set out so that three large families could not pack a site in order to start an association.

Ms J McCann:

Thank you for your presentation. You have already answered one of my questions through the Chairperson. I agree that people's rights need to be protected when they have made a substantial investment in a caravan or mobile home. We have seen how residents' association interaction with the Housing Executive has benefited both parties.

I am concerned that the Bill does not go far enough, as it does not compel site owners to recognise residents' associations. There were problems when residents' associations first started operating with the Housing Executive; there were forums and charters, but things developed. Is that how you see caravan park residents' associations developing? They would need some sort of clout when raising genuine concerns with site owners. Could a charter be devised to which residents' associations could sign up?

Would each individual site operate its own residents' organisation? That is how it works with Housing Executive residents' associations; each estate has its own organisation. Would individual associations filter into an overall forum? I wish you well with the legislation. People have a right to join an association to have their rights protected. However, how will it work in practice, without residents' charters, for example?

Mr McCallister:

I agree that it is important to protect rights. We foresee there being individual groups. If 50% plus one of the residents on a site wanted to form a caravan owners' association, they could do so; the site owner would have a right to say whether all the residents qualify to join. An association's clout would come from its numbers. If an individual, particularly on a seasonal site, makes a complaint, it is easy for the site owner to say to that individual at the end of the season, "You have been a troublemaker all year; I am not renewing your licence." Where does that individual go? A collective group would have more strength.

Housing Executive residents' associations have been a powerful force and an excellent example of how relationships and understanding between two parties can be improved. If caravan park residents' associations operate properly, they could cut down the number of complaints to the trading standards service.

A difficulty faced by the trading standards service is trying to disseminate information to caravan owners or groups that it needs to reach; it has no way of doing that. Its only option is to leave information with site owners and ask them to pass it out among caravan owners, which is like my handing you my election literature and asking you to pass it out.

Mr Irwin:

It is not going to happen. *[Laughter.]*

Mr McCallister:

I was not going to be nearly so blunt. Forming residents' associations would create groups with which the trading standards service could deal. For example, people from the trading standards service spoke to Cranfield caravan owners' association and looked at contracts to see what works. It can be a very positive development, as it is about improving communication between the two groups and it will be predominantly about issues that need to be addressed.

Mr Irwin:

I represent the neighbouring constituency to John's, and I know the problems that caravan owners face. In my experience, caravan owners, having signed a contract when they entered a site, find that the small print leaves them in difficulties when problems arise.

I agree that residents' associations have strength in numbers: a site owner cannot tell all the residents to get off a site; it is easier to tell one or two people to leave, and that has happened in the past. I wish you well with your Bill.

Mr McCallister:

Thank you. I am quite sure that Mr Irwin would have been lobbied by the residents at Cranfield. Many people only sign a yearly licence and that is what we want to change through the Bill: there should be a written agreement, as that will strengthen residents' positions. I agree with what Mr Irwin said about strength in numbers. It is easy for site owners to pick off a few troublemakers from opposite ends of a site; that is how, traditionally, it has been done.

Mr Cree:

It seems to me that the amendment is designed to create a consultative forum; it would apply where normally one would have hoped that good relations would have applied. Would there be an association on each site or would it be a national association? Would it have a consultative role only? Would a duty be placed on a site owner to do anything about matters raised, or would it be merely a consultative forum on the site? Is that too simplified a view? I accept the benefit of such a body.

Mr McCallister:

That is probably very close to what we are trying to do. An association would be set up on each site, and each association would have to meet the same 50% criterion that applies to permanent residential associations: two caravan owners could not call themselves an association. Legislating for such associations will make sure that site owners recognise them.

One of the difficulties that I faced in trying to solve some of the problems at a constituency level was that a site owner would not recognise an association; thankfully, that has changed as relationships have improved. Residents' associations can be a powerful force for good in the industry without overburdening it.

If associations on various sites wanted to form a Northern Ireland-wide body and meet the trading standards service or members of the Committee to tell them what is happening, that would be entirely up to them. That could be a very positive example for the industry, and it goes back to Mr Irwin's point about strength in numbers.

Mrs McGill:

You are welcome here, John; I wish you well with the Bill. Some of my questions have been answered. Do you envisage that everyone on a site will have to agree to the formation of an association? That was touched on in the previous question, from Mr Cree. If everyone does not agree to be part of an association and issues affect a minority — two or three people, for example — who want to form a separate association, how would that work out? Could a small number form an association, elect officers and do whatever is necessary in those circumstances? Will the others not be part of that? How will that work? Is everybody required to participate?

I have a final point. I am looking for clarification on what John said about there being flexibility in the amendment. If people do not want to form an association on a site, they do not have to. Is that definitely within your thinking on that amendment?

Mr McCallister:

I thank Mrs McGill for her supportive comments. Everyone on the site does not have to agree to form an association; only 50% must agree. We use the same basic criterion that is used in the permanent sector. Mrs McGill's colleague Ms McCann mentioned residents' committees for Housing Executive properties: they still have to reach 50%. It is done on a democratic basis; three people in a 200-pitch caravan park could not form an association and demand x, y and z. That safeguards the site owner somewhat from people causing difficulties where there are none. We have lifted that stipulation straight from the permanent sector. Therefore, 50% of registered owners must agree. For example, on a site with 200 owners, 100 people are needed. It is whomever the caravan is registered to who joins that group. That provides a safeguard to ensure that people cannot go off on solo runs and call themselves everything.

It is very much about giving people the right to be in an association and the same right not to be in it. I am not into imposing anything on anybody. If a person has no interest or no issues about their caravan park and they are happy to read a book and not be involved, there is absolutely no need to be involved. There should be no suggestion that anybody goes round twisting arms to try to get others to join an association. If someone has no interest, there is no compulsion to join.

Mr Frew:

I will try to elaborate on Claire's point. I have come to know you, John, over the past couple of months, and I class you as a friend. I wish you well with your Bill because I see merit in it, and I see that it is essential. I am nervous about the new clause. You said that 50% of the registered caravan owners have to be involved. Can you give me more detail about the actual function of the residents' group? You talk about one voice going to the caravan owner; that is all well and good. However, when I was employed — some may say in real work— if I had a dispute or saw a problem, whether with work conditions, pay or initiatives being implemented, I took it upon myself to go and speak for myself and only myself. If I was negotiating new rates of pay or conditions or anything, I spoke for myself and nobody else, and I am a great believer in doing that.

How will this proposal assist the caravan site owner who may be in severe financial difficulties, perhaps because the recession is hitting hard or things are just not going the way they should? What if he then has a residents' group, that perhaps only 50% of caravan owners belong to, and at a meeting attended by only so many of the tenants, only a slight majority votes in favour of a particular opinion? The one voice that goes to the caravan site owner is not really the collective will of the caravan owners. How do you safeguard the caravan park owner, the businessman who is trying to make a living in the midst of a recession, against something landing on his plate from the residents' group, which is one voice but is not necessarily the right voice?

Mr McCallister:

Thank you, Mr Frew, for your opening remarks. You are back to what the Chairperson asked initially, about getting the balance right. The Chairman's criticism was that if the site owner does not have to listen, what good is the group? We are trying to get the balance between not overburdening the site owner or putting him in a difficult position and saying that he has to recognise the group and hear some of the issues involved.

I very much believe in business and want to see successful businesses, but we should not use the recession to ride roughshod over people's rights in any sector. I accept your point, Mr Frew, about speaking up for yourself, but a lot of people on caravan sites do not speak up for themselves and may even find speaking to the site owner slightly intimidating. So it is a question of how you get a voice for them. It could be argued that it is easier for a site owner to speak to a collective group than speak to, for example, 200 people individually.

Getting that balance is what we sought to do with this proposal. When we get a draft done we will share it and welcome feedback from both sides of the debate: those who think that it does not go far enough and those who think that it goes too far. We are trying to balance the need to not put overly onerous demands on the site owner with ensuring that he bears in mind his duties to consult. It would be beneficial to both parties to consult and listen to advice.

Mr Frew talked about a vote involving 50% of caravan owners, of whom only, say, 52% vote for a particular option. I do not always like the way votes go: I did not always enjoy the 6 May general election. But that is democracy; there is no absolutely perfect form of it, but if you have a group comprising 50% of residents and there is a majority vote, that has to be recognised.

The Chairperson:

That ends the contributions by colleagues. Thank you very much, Mr McCallister. We will consider everything that you have said extremely carefully.

Mr McCallister:

Thank you very much.

The Chairperson:

We will now move on to evidence from Mr David Livingstone and Mr John Hinds from the Department of Enterprise, Trade and Investment's (DETI) trading standards service. You are very welcome.

Mr John Hinds (Department of Enterprise, Trade and Investment):

Thank you for inviting back me and my colleague David Livingstone from the trading standard service to give further evidence on the provisions of the Caravans Bill that affect the holiday sector. The Department is aware that Committee members received a copy of the Minister's reply to the Minister for Social Development on the proposed amendment by Mr McCallister, which would require holiday caravan site owners to consult with residents' associations of holiday owners on changes in operations and management of sites. It is also aware of the evidence that was given by Mr McCallister to the Committee for Social Development on that issue at its meeting of 16 September.

The Department's objective in the Bill was to stamp out unfairness in dealings between park owners and caravan owners on their sites. It considers that the provision that requires written agreements to be given to holiday caravan owners will address that matter comprehensively, when combined with effective enforcement of existing consumer protection legislation that the measure is designed to complement. Therefore, the Department's ambitions have already been met in the Bill.

There is no evidence, at least in the form of complaints received by the Department, of the existence of a problem for which the proposed amendment would represent a solution. The Department is unaware of evidence of the problem and, if it does exist, we are unaware of its nature, extent and impact. As far as we know, the problem has not been quantified, which is in contrast to the considerable body of evidence supporting the need for written contracts.

The proposed measure also goes well beyond the boundaries set by the Minister when outlining the limit of her support for a holiday caravan sector provision. The Minister has received a raft of opposition from those in the industry who, although recognising the undoubted benefits of transparency in contracts, strongly oppose the introduction of prescriptive and burdensome regulation.

Members will be aware that as well as having responsibility for the economy, the Minister is also the Minister for better regulation. As recently as July, the Executive endorsed the better regulation forward work programme for all Departments, to cover the next three years. One of the key principles of that strategy is to introduce regulation only as a matter of last resort. The strategy exhorts all policymakers to find an alternative approach to regulation that will deliver their policy objectives without burdening businesses unnecessarily. The better regulation strategy requires that any new law must be evidence-based, proportionate, a measure of last resort and offer extensive engagement with all relevant stakeholders. It stresses that stakeholders must be engaged with effectively, evidence properly reviewed and alternatives thoroughly assessed before beginning to consider regulation as the preferred solution. The Department is not aware that those necessary conditions have been met in considering the proposed amendment.

The Minister does not support a burdensome complex measure and does not see the need to go any further than the existing measure for the holiday sector. The Minister indicated clearly that her support would end at a simple requirement to have written agreements since that requirement,

if fulfilled, would meet the Department's policy objective in relation to the well-documented problems that have been identified in the holiday caravan sector.

There is virtually unanimous opposition to the proposed measure among holiday caravan park owners and their industry associations. They see it as disproportionate, potentially burdensome on businesses in the sector and, above all, unnecessary. They believe that this is really a matter of good communication and good customer care, which can be achieved through dialogue and engagement with the sector.

One of the difficulties that the Department has with the proposal is how the provision would be enforced. We consider that, for it to be meaningful and have teeth, the provision will necessarily have to be lengthy and quite prescriptive. Without a compliance mechanism for the proposal, it is likely to have little or no effect on the situation that it is designed to address. Currently, residents' associations exist successfully and operate without the Bill. They are entirely free to set themselves up, conduct business and communicate with park owners on any issue that they feel is relevant.

We view residents' associations as useful conduits for communication between caravan owners and park owners and as useful contacts for bodies such as the trading standards service. We do not, however, believe that it is necessary to create prescriptive statute law to deal with a matter that is really about good practice and good, open communication. Members are already aware that the draft Bill replicates for Northern Ireland the existing provisions for the residential sector in GB but goes further in legislating for the holiday sector. The proposal would impose a further obligation on businesses in Northern Ireland that is not replicated in GB.

The issue appears to the Department to be simply a matter of customer care and good practice, which we believe can be achieved more effectively through dialogue and engagement with caravan park owners. Education and awareness-raising in the sector would represent an effective and much more proportionate approach to the issue and would almost certainly receive the support of the sector. Education involves advice, encouragement, direction and help. In that vein, the Department is committed to engaging proactively with the sector to raise awareness among park owners of what constitutes best practice, including the importance and considerable benefits of good, ongoing communication with their customers.

To kick-start the process of engagement, the Department has written to every holiday caravan site owner in Northern Ireland to invite them to a series of awareness-raising seminars in October. The seminars will help to raise compliance with consumer protection legislation in general and raise awareness of Mr McCallister's Bill and the proposed requirements that will flow from it. Those who do not attend will be visited to ensure that the important issues are communicated clearly to all site owners. We will also work in co-ordination with our colleagues in the Department for Social Development, the Department of the Environment, local councils and all other stakeholders to offer a wide range of advice and guidance to everyone in the sector so that they have the support that is necessary to comply with the Bill.

The Department feels that it is more appropriate to engage with site owners collaboratively and voluntarily rather than through regulation. We are happy to take questions.

The Chairperson:

There is provision for a caravan owners' association in the permanent residential sector, is there not?

Mr Hinds:

That is correct.

The Chairperson:

You do not regard that as burdensome or disproportionate; is that right?

Mr Hinds:

We think that that is an appropriate level of protection for permanent residents who live in those caravans on a permanent basis.

The Chairperson:

Is that evidence-based?

Mr Hinds:

The trading standards service's experience of the number of complaints and instances of residents being exploited or not having their rights properly recognised indicates that it is an appropriate and proportionate response.

The Chairperson:

Therefore, you do not think that it necessary to have a caravan owners' association mirrored in the holiday sector.

Mr Hinds:

Residents' associations exist and operate successfully on many sites across Northern Ireland without the Caravans Bill; there is no legal prohibition on their existence or on how they operate. Therefore, we do not see the need to legislate to recognise them specifically, as there is no barrier to their existing, operating successfully and representing the views of residents.

The Chairperson:

The legislation acknowledges that there are, de facto, caravan owners' associations in the permanent residential sector. If, say, there were numerous similar organisations throughout the holiday sector, would there not be a deficiency in the law if they were not acknowledged in the Bill?

Mr Hinds:

The difficulty in transferring that provision to the holiday sector is that the amendment leaves residents' associations hanging without much context. As you say, if one is to mirror the representative role intended for the residential sector, one has to be prescriptive about the constitution of a residents' association, the time for which it can operate and its office bearers. One would have to prescribe in some detail how associations would operate, and that goes against the grain of the Minister's thinking, which is that the legislation should not be burdensome and over-regulatory and stifle businesses' operations.

The Chairperson:

You are not really answering my point: if there were such associations, why should they not be acknowledged in the law as representing holiday site occupiers?

Mr Livingstone (Department of Enterprise, Trade and Investment):

Perhaps I can help. There is no legal relationship between a residents' association and a park owner; there are no obligations or responsibilities on a park owner for them.

The Chairperson:

You mean at the moment?

Mr Livingstone:

Yes.

The Chairperson:

The Bill recognises associations for permanent residents.

Mr Livingstone:

There is a recognition that the circumstances of permanent residents whose caravans are their only place to live are very different from those who have a holiday caravan. There is a recognition that permanent residents need an active voice on all issues relevant to them. Without such a voice, they could end up without a home or having the enjoyment of their primary residence prejudiced if something bad were to happen. There is a recognition that the two scenarios are very different.

The Chairperson:

I think that Mr McCallister recognises that difference in the Bill. I do not understand why the Department is so exercised by the issue. It seems to be simply a recognition; there is no obligation on an owner to act on the representations of a residents' association. Indeed, it may be a weakness that there is no obligation. Without it, the provision would seem to have no added value. Why is the Department so exercised in its opposition, apart from the volume of opposition to it from the site owners?

Mr Livingstone:

Principally, it is because the Department's ambitions for the holiday sector part of the Bill centred on preventing unfairness in the relationship between caravan owners and caravan park owners.

We commend the work that John and Annette have done to get the provision requiring written contracts into the Bill. We totally support that. I should add that we are also supporters of residents' associations, which are a really good conduit for good communication and good engagement between park owners and caravan owners and between caravan owners and people like me.

The problem that we identified was unfairness. Our concerns, the Minister's concerns and the trading standards service's concerns were all about the unfair and one-sided relationship that has existed for many years in the sector. There have been two sets of players, but only one set has got to know the rules. The manifestation of that lack of transparency and openness was a situation in which we got many complaints. Caravan owners complained that they were being confronted with situations that they had not known would develop. For example, they were being told that they would have to sell their caravans back to the park owners; that they were not allowed to bring people on to the site; and that were not allowed to assign ownership to an uncle or a brother. Those were the sorts of problems that exercised the Department, and we wanted a solution to them. That solution came with the transparency that was afforded to the Bill when John McCallister's provision on written contracts was included.

You made the point that we see the provision as probably being unnecessary, which I agree with. That does not mean that we do not recognise the issue. If I were a caravan owner and we were all motivated to try to make the park a better place and work with the park owner, it would be frustrating, irritating and annoying to run up against a brick wall and be dismissed when we tried to put our views to the caravan park owner. That would be extraordinarily frustrating. It would also be extraordinarily short-sighted, counterproductive and rather unenlightened of an owner. It is hard to believe that in the twenty-first century, a businessperson would wilfully ignore the views of the very people whose goodwill and further support his or her livelihood depends upon.

Dr McDonnell:

Do you want a bet?

Mr Livingstone:

No; I do believe it.

Mr Cree:

You need to get out more. *[Laughter.]*

Mr Livingstone:

I probably do.

Dr McDonnell has rightly brought us into the real world. It is not envisaged that there will be any enforcement of the provision, so the law will outline what people should do but allow them to ignore it if they so wish.

The Chairperson:

That is not an argument against the provision; it is an argument against the lack of power or capacity in the provision.

Mr Livingstone:

That is right.

The Chairperson:

So, would the Department prefer a stronger provision, which recognises the associations and obliges site owners to pay heed to their representations?

Mr Livingstone:

No; the Department would strongly oppose such a provision, because it would be overly prescriptive and disproportionate to the perceived problem.

I will give an example of why the Department's policy people have taken that view. Imagine one of my officers going to a caravan park when the Bill comes into law, as we hope that it does. When they talk to that site owner, they will not ask whether the site owner has consulted. However, they will ask to see the contract. If that contract is really good, the terms are fair, it is transparent, clear and open and does everything that a good contract should, why would we care whether or not they have consulted? If, on the other hand, the contract is appalling, one-sided and oppressive, what comfort will we get from the fact that they consulted copiously?

Therefore, to give an explanation in answer to your valid point, Chairman, we do not see the consultation as a bottom-line issue. We see the contract as a bottom-line issue. The consultation is a step along the way. It is a process issue and, although it would be nice if they consult because it would be good practice and we would commend them for it, ultimately, it does not matter whether they consult or not, because we have a backstop measure that will stop unfairness. As a result of the contracts being flushed out into the open, we will see those contracts and be

able to take action on them regardless of whether there has been consultation. It would be good if they consult, but it would not be fatal or even a matter of great concern if they do not. We want to work with the sector proactively on that and encourage it.

If there is no enforcement, two things will happen with consultation: those who are doing it well will continue to do it because they see the sense and benefit in it; those who are not doing it will definitely continue not to do it because they do not have the sense to see why they should. It is our job to educate, persuade and cajole them, and we believe that it is right and proper to give them that chance before we ask the parliamentary draftsmen to legislate.

The Chairperson:

You make your point strongly.

Mr Cree:

I have two or three questions, gentlemen. First, are you aware of the OFT document entitled ‘Guidance on unfair terms in holiday caravan agreements’?

Mr Livingstone:

Yes.

Mr Cree:

Is that guidance enforced? How often is it utilised? How many enquiries or complaints have you received? Are those complaints because of the nature of a problem, or do you not get complaints because people do not know that you exist? Could you differentiate between those scenarios? Are you aware of a landmark case in England this year, Phillips and Goddard v Francis, which was on recognising an association? Does the Bill not need to do more to take on board its ramifications? Although we are a separate jurisdiction, there is still a persuasive element for using that in our Caravans Bill.

The Chairperson:

There are half a dozen questions there. *[Laughter.]*

Mr Livingstone:

I will try to cover those questions today for Mr Cree. To go through those questions in order, I

am well aware of that document, and I should underline that I have read it.

The Chairperson:

What document?

Mr Livingstone:

The OFT document, 'Guidance on unfair terms in holiday caravan agreements'. It contains some 72 pages and is the bible for fairness or unfairness, what to do and what not to do and what is good and bad in holiday caravan agreements. I am aware of it, and it is used a lot. It is used as our template for good and bad practice and to judge complaints that come to us, which are all based on perceived unfairness.

People feel that they have been hard done by, that they have been the subject of the term in a contract that they did not know existed prior to it being raised and they feel that they have been given a raw deal by the caravan park owner. That view is sometimes justified and is sometimes not justified. We continue to get a lot of complaints about that, and, as I said previously to either this Committee or the Committee for Social Development, those complaints are nearly all about the lack of transparency in the process, particularly in relation to the contract. The things that they complain about generally arise as the result of what could be described as a nasty surprise that they had not seen coming. The guidance is more than useful in establishing what we take into account when working out whether a contract term is fair and whether to take action.

I am broadly aware of the case that Mr Cree mentioned. However, it is not particularly relevant to the holiday caravan sector. The case was taken in Cornwall about a settlement of holiday chalets, which are fixed structures, like little homes —

Mr Cree:

Do you not accept that the principle involved is not dissimilar in both cases?

Mr Livingstone:

I do not accept that for a couple of reasons. Holiday chalets are a different product and that is important because the case was taken under landlord and tenant legislation. It was held that those who live in holiday chalets should have the same protections as tenants who live in ordinary houses when it comes to be protected from the imposition of unfair terms by landlords,

particularly about matters such as service charges and fee reviews. What makes that ruling different is that holiday chalets are deemed to be dwellings under the landlord and tenant legislation, and a dwelling must be a building or part of a building. A holiday caravan is called a chattel in law and it would probably fall outwith that legislation. Therefore, the decision in that case does not really impact on the holiday caravan sector.

The recent *Charles Simpson Organisation Limited v Renshaw and others* case in June of this year related to a residential park and the issue of a qualifying residents' association not being consulted on proposed changes to pitch fees. That case dealt with the residential rather than the holiday sector, but there is a parallel. It was held that there is no obligation on a park owner to consult with a qualifying residents' association about any proposed change to the pitch fee. It was also held that that fee is a matter for individual and not collective negotiation and that a pitch fee review is not a matter that relates to the operation and management of the site, but one that relates to the operation of the park owner's business.

As I alluded to earlier, the legal relationship that exists between park owner and caravan owner is an individual relationship, and the rights and obligations are individual rights and obligations between those parties. There is no collective obligation or responsibilities whatsoever, nor is there any legal recognition of caravan holiday park residents' associations, and it is probably right that that is the case.

If the proposed amendment became law, there would be a legal requirement on the park owner to correspond, communicate and consult with a body with which he has no legal relationship. However, he could, at the same time, happily ignore a caravan owner with whom he has a legal, contractual relationship. That would lead the caravan owner to be disenfranchised because, even though that person has a legal relationship with the site owner, there is a legal requirement on the site owner to correspond and communicate with a body with which there is no legal relationship. Furthermore, some caravan sites may not have a residents' association: why should their residents not have the same level of communication and consultation as everyone else?

Mr Cree:

That is up to them.

Mr Livingstone:

Our position is that it would be better if caravan park owners communicate, correspond, engage and consult with everybody, as the good ones already do.

Ms J McCann:

Thank you for your presentation. I have a couple of points and questions. I know what you are saying about communicating and corresponding. However, with the best will in the world, that does not compel anybody to treat people fairly. In your opening statement, you mentioned protecting the rights of caravan owners, who are sometimes thrown off a site on the whim of a site owner, although that is probably quite rare. I have heard during other evidence sessions that this proposal is almost an add-on to the protection around communicating and corresponding and all those alternatives. If the relationship between site owners and caravan owners were firmed up more, it would be more beneficial to both parties. Therefore, I cannot understand why the Department is, as the Chairperson said, so exercised about this, because it is an add-on. For instance, it does not dilute the written contract that you are talking about and does not, in any way, dilute what your organisation is doing. Therefore, why is DETI so opposed to it?

The submission mentions that the Minister met the site owners to discuss their concerns. What is their main concern around the setting-up of associations? Furthermore, has the Minister or the Department met caravan owners to listen to their concerns?

Mr Livingstone:

I will deal with those issues in turn because at my age it is easier to deal with one thing at a time. We do not accept that the amendment will add anything to the existing provision in the Bill, which we support and are very happy about. Ms McCann is right; the issue is all about fairness. Fairness in the contract is the bottom-line issue. We already have measures that will conclusively and robustly address any unfairness. That backstop measure is there; therefore, the amendment does not add anything.

The people who do not consult now will not be compelled to do it. If they do not consult now, there will be nothing in the amendment to make them take any heed of what the caravan owners say. The caravan residents' associations can go along now in their numbers and do everything that they want to do. The amendment will not change anything. They can go along, write and make representations. We are aware that they do that, and some of them are working really well.

Therefore, the Bill will not make a blind bit of difference. Those who are doing it will continue to do it well; those not doing it will continue not to do it, believe me.

Your second question is, if I can paraphrase a little: why not force them? The answer is that it does not matter that much. We would be creating a very draconian, prescriptive legal provision when there is already a backstop measure that we can take. I refer to the example earlier: if we went along to a caravan park owner who had not bothered consulting but who offered a fair contract, where is the problem? The contract is at the core; it will be the guardian of fairness, propriety, honesty and integrity in the relationship between the park owner and the caravan owner. All the rest of the stuff, including whether or not there is consultation, is just part of that journey, that process; it is not mission critical. Even if site owners do not consult, if they have a fair contract, we are happy. If they do consult and there is an unfair contract, what good is that?

The Department is not opposed to residents' associations; in fact, the Department welcomes and supports the activities of well-run residents' associations, we think that they can really add value to sites. Speaking personally, I think that it would spoil the relationship between caravan park associations and caravan park owners if government were to weigh in with a legal provision, a big stick to make them recognise the associations and observe their decisions. That is something that can and should be achieved voluntarily, through co-operation and dialogue.

The other reason that we are concerned is that we are proposing legislation, yet, as John has indicated, we are not aware of how many residents' associations there are out there. Of those, I am not aware of how many are facing a situation in which the park owner is refusing to speak to them. It could be one or two, so is it really something that we want to be writing prescriptive statute law for, when maybe it just needs a quiet word in one or two people's ears?

Of those who are resisting that process of communication, I do not necessarily think that they are bad people or have bad motives. I suspect that part of their resistance is based on ignorance and perhaps a little fear; they are not quite sure what they might let themselves in for if they start communicating with caravan owners. If we are able to put them straight and explain that it is a win-win situation and there is something in it for them, they might be a lot less inclined to resist those communications.

For example, I know of one case in John's constituency where there was resistance but from

speaking to one of the officers of the association only a few days ago, I understand that they are now talking to the park owner. That shows me that it can happen without law, through people getting involved. There is the example of the Northern Ireland peace process, and all around us are examples of the benefits of the people concerned sitting round a table and talking things through without government intervening or trading standards people enforcing and prosecuting.

Mr Hinds:

You also asked about whether the Minister and the Department had met residents of caravan sites. We have been doing that over a significant period.

Ms J McCann:

What is the site owners' main objection to this?

Mr Livingstone:

Their main objection is that it is not necessary. We can achieve it in a better way.

Ms J McCann:

Their objection is that it is not necessary?

Mr Livingstone:

To write law about something that can be achieved without writing law is disproportionate to the problem. It is like using a sledgehammer to crack a walnut. The policy position of the Department is that you have to try dialogue before you go in with a more heavy-handed approach, and you have to first identify whether it is really a problem, what evidence there is, to what extent it applies and what impact it is having.

We have had lots of anecdotal evidence that it would be a good thing, but the Department does not have any evidence of the extent of the problem and its impact. Even if we did, we believe that the very good and robust provision that requires written contracts will deal with all of the unfairness issues. This is a symptom rather than a problem in itself. The lack of willingness to communicate is part of a culture that has been there for years, probably generations.

Ms J McCann:

The same view was expressed when residents' associations were set up years ago in housing

estates. It was said then that there was no need for them, but it was proved that there was.

The Chairperson:

Mr Livingstone has made his point very well. We will move on to Mr Irwin's question.

Mr Irwin:

I live in a constituency that neighbours one where there have been a lot of grievances with caravan owners. The vast majority of those grievances have been due to caravan owners signing unfair contracts. As you said, hopefully the legislation will deal with that.

I think that I am clear about what you said: you have no problems with residents' associations per se, but you feel that if they do not need to be legislated for. That is where the difference is. None of us has a problem with residents' associations, but you do not feel that they should be legislated for, which is where there is some confusion.

Mr Livingstone:

We would go further and say that we support them and have seen them working exceptionally well.

Mr Irwin:

If caravan owners want to set up residents' associations, you have no problem.

The Chairperson:

The Department just does not want them legislated for in the Bill.

Mr Livingstone:

They are working fine. There are a few wrinkles; I am not saying that there are not. However, there are less burdensome and less onerous ways of addressing the situation. We feel obliged to explore those before we look at legislation.

The Chairperson:

How are unfair contracts dealt with?

Mr Livingstone:

If we get a complaint from someone on a caravan site who claims to have been at the receiving end of an unfair term, we will look at the term and assess whether we agree. If the term is unfair, and there have been many examples of that, we will initially go to the park owner and get him to remove the term from the contract. That is probably easier said than done, because there probably is no contract, but an oral term is a term that does not have to be written down.

The Chairperson:

In the Bill, it is clear that a written contract is an obligation. In that context, what happens if a contract turns out to be unfair?

Mr Livingstone:

We will take action. Initially, we will work with the park owner to remove the unfair terms. First, the term is unenforceable and has no effect in law, so it cannot be enforced against the caravan owner. Secondly, we intervene so that nobody else falls foul of the same term. So, we would look at the park owner's contract and weed out the particular term, along with all of the others that are likely to be in it, so that we can work together towards a fair contract.

Mr Cree:

You seem to be saying that the contract is sufficient for all purposes. That presupposes the contract covering issues that may happen in the future, which we know is not the case. For example, changes in the operation and management of the site are not necessarily covered by the contract. What happens in those cases?

Mr Livingstone:

If those changes impact on the caravan owner and alter the way that they enjoy their holiday caravan experience, they should be written down and be explicit in the agreement. It is the challenge for the park owners to make sure that all of the issues that they think are likely to happen are covered in the contract. If the issues are not covered and they happen, the park owners will not be able to enforce them against the caravan owners.

Mr Cree:

Have you been involved in any such circumstances?

Mr Livingstone:

We have had lots of complaints from caravan owners about allegedly unfair terms. The difficulty is that we have not had much engagement with park owners, simply because caravan owners are too scared to come forward and give statements. Without that way in, we cannot get to work with the caravan park owners, which is why we are so supportive of the work that John McCallister and Annette Holden have done to flush out those contracts through this very important provision. It will lead to the transparency that we believe will address the root causes of all the problems that you have talked about. It will also remove a lot of the symptoms that are still in the system. I honestly believe that, as Mr Hinds said, when that provision kicks in, in conjunction with proper robust enforcement, all the other minor problems will eventually disappear.

The Chairperson:

I will call a halt there. If colleagues agree, we will take a period to reflect on what we have heard today and come back next week.

The Committee Clerk:

If members wish, the Committee office can summarise the points that have been made.

The Chairperson:

That would be very helpful. We can then come back, either next week or the week after, and consider our position on the matter as a Committee. Thank you very much, gentlemen; that was very helpful.