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**Discussion around the  
implications for Principal Litter  
Authorities of complying with  
Section 91(1) and (2) of the  
Environmental Protection Act  
1990**

APSE Scottish Parks, Grounds, Street Services  
Advisory Group  
27 February 2019



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# George McCallum Niblock v Aberdeenshire Council

Aberdeen Sheriff Court

*George McCallum Niblock as Convenor of Aberdeenshire Environmental Forum v Aberdeenshire Council*

Decided 31 October 2018

[2019] SC ABE 10

Note 19 December 2018 (expenses)

[2019] SC ABE 11



## ENVIRONMENT

# Clean-up campaigner loses litter court case

● Ex-council boss fails to convince Sheriff that authority was lax

BY STEPHEN WALSH

**A** former waste boss who accused Aberdeenshire Council of failing to keep streets clean has lost his court battle. George Niblock, convenor of Aberdeenshire Environment Forum, took the local authority to court with a litter abatement order.

The order allows a member of the public to force landowners to clean up litter blackspots.

Mr Niblock, who is a retired council waste boss, previously threatened to take the authority and the Scottish Government to court over the state of the streets, alleging years of neglect.

Solicitors acting on his behalf subsequently filed an order with the court, which focused on the condition of the A96 Aberdeen to Inverurie road.

The order is specific to a near seven-mile stretch of the road north of Inverurie.

Mr Niblock alleged the authority continually failed to clear rubbish from the route, and believed this mirrored findings elsewhere in the region.

A number of people gave evidence during the hearing, at Aberdeen Sheriff Court, including Mr Niblock and Philip McKay, the council's head of roads.

The court heard that Mr Niblock had been campaigning on the issue for eight years.

He presented 24 photographs which he



DIRTY PROTEST: George Niblock - pictured, right, with fellow campaigners - invoked a litter abatement order to get the A96 tidied up

claimed showed litter and rubbish piled up along the route, along with overgrown foliage covering adjacent footpaths.

Mr McKay said the authority complied with its statutory duties to clean streets but also said budgetary pressures prevented him from devoting any further resources to it.

It was also confirmed that the responsibility for cutting back verges was with Bear Scotland, which

manages Scotland's trunk roads network. Sheriff Andrew Miller, presiding ruled in favour of the authority, stating that the evidence did not show the problem was a "consistent one" along the route.

In his written decision, Sheriff Miller said: "A number of the photographs relied upon by him which show the presence of litter at particular locations along the road also appear to show, where the angle

permits, that such litter is localised rather than being, in any true sense, a consistent feature of this entire stretch of road.

Mr Niblock could not be reached for comment.

A spokesman for Aberdeenshire Council said: "We welcome the fact that the sheriff refused to make a litter abatement order and was of the view that Mr Niblock had failed to prove his case. "We were confident in our system of inspections

and the way we allocate limited resources in this area, and it is therefore unfortunate that public money had to be used to defend this case. "We would like to remind those travelling around the area to dispose of any litter responsibly.

"Our crews are subject to high levels of risk while litter-picking in such locations - which something which ideally would not have to happen at all."

## Bear echoes call for drivers to take more care with trash

### EVIDENCE

Bear Scotland was not formally part of the court case, but was mentioned several times in evidence.

Sheriff Andrew Miller said animal excrement on the road should be tackled by the trunk roads body as a "matter of urgency". At one point during

evidence, it was also suggested by the council's legal team that Bear does not give enough notice of planned roadworks, which enables any litter to be cleared.

Sheriff Miller said: "I recognise that Bear Scotland were not represented during these proceedings and that the court therefore did not

have the benefit of their response to the defenders' perspective.

"But it seems clear to me that if the defenders perceive there to be a problem with the notice given to them by Bear Scotland of planned roadworks, they should pursue dialogue with Bear Scotland with a view to ensuring Bear Scotland

are made fully aware of their concerns and that any issues are addressed by both agencies so far as possible."

A spokeswoman for Bear said: "Unfortunately, some people continue to think that it is acceptable to throw litter from their vehicles. "This not only tarnishes the appearance of

Scotland's roadsides and puts road workers' safety at risk, but it also puts an increased strain on the public purse.

"To help address this issue, we continue to provide Aberdeenshire Council with our grass cutting and general works programmes to help them plan and undertake their litter picking operations."

GARDEN M/ IN TIME FO



FOR EXPERT ADVICE,  
Jenni  
Anna  
104-108 A  
KEIT  
Tel. 01  
8825  
www.lames



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## Background

23<sup>rd</sup> Feb 2018 – Notice was served on Aberdeenshire Council under Section 91(5) of the EPA 1990.

‘Our client is aggrieved by the defacement by litter and refuse as well as the want of cleanliness of the section of the A96 trunk road (including its central reservation, verges and adjacent footpaths) between the Blackburn Junction and the port Elphinstone junction near Inverurie, which section is shown delineated in blue on the plan annexed to this Notice.’



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## 6.8 mile stretch of the A96







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**In January 2018 – Mr. Niblock took series of 24 photographs showing locations along the road, presence of litter at points along the road.**





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## Extension due to weather

### **Notice under Section 91(5) of the Environmental Protection Act 1990 A96: Blackburn Junction to Port Elphinstone Junction near Inverurie**

We refer to the notice dated 23 February 2018, sent on behalf of Aberdeenshire Environmental Forum, a copy of which is attached for reference.

Given the recent winter weather conditions, we are instructed to extend the 5 day notice period, referred to in section 91(5) of the Environmental Protection Act 1990, to Friday 16 March 2018, thereby allowing the Council further time to take remedial action before a complaint is lodged with the Sheriff Court.

If Aberdeenshire Council is in any doubt about these matters, we recommend that it seeks legal advice.



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**March 2018 – Council undertook cleaning works to various parts of the road including all bus stops and footpaths leading to those bus stops.**





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**Verges – Ongoing program of litter picking when required an safe to do so. Prior to this notice being served, the verges had been litter picked on the week commencing 19<sup>th</sup> Jan 2018**







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**Central Reservations – Monitored for debris that would cause a safety concern and levels of litter. If required to deploy staff to these areas, it would require lanes closures to ensure safety of staff.**





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## **George McCallum Niblock v Aberdeenshire Council**

- March & April 2018 – Mr. Niblock further inspected the road and took further photographs of various points along the road.
  - Photographs showed presence of litter on the road.
  - Photographs not disclosed to Council until lodged as productions.
- 11<sup>th</sup> April 2018 - Initial Writ presented to Aberdeen Sheriff Court.
- 29<sup>th</sup> August 2018 – Proof hearing.



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# George McCallum Niblock v Aberdeenshire Council

## Judgment

- Mr. Niblock failed to establish that the road was defaced by litter or refuse or was wanting in cleanliness within the meaning of section 91(6) of the 1990 Act when the proceedings were raised or at the date of the proof in the proceedings.
- The Council proved that it had complied with its duties under section 89(1) and (2) as respects the road, in terms of section 91(7) of the 1990 Act.
- The sheriff subsequently found Mr. Niblock liable to the Council in the expenses of the cause.





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## **George McCallum Niblock v Aberdeenshire Council**

### *Relevant provisions of the Environmental Protection Act 1990*

#### **Section 89— Duty to keep land and highways clear of litter etc.**

(1) It shall be the duty of - ...

(c) each principal litter authority, as respects its relevant land, ...

to ensure that the land is, so far as is practicable, kept clear of litter and refuse.

(2) ... it shall also be the duty of –

(a) each local authority, as respects any relevant highway or relevant road for which it is responsible, ...

to ensure that the highway or road is, so far as is practicable, kept clean.



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## **George McCallum Niblock v Aberdeenshire Council**

### *Relevant provisions of the Environmental Protection Act 1990*

#### **Section 91— Summary proceedings by persons aggrieved by litter.**

(1) A ... court may act under this section on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter or refuse, of —

(a) any relevant highway; ...

(c) any relevant land of a principal litter authority; ...

(2) A ... court may also act under this section on a complaint made by any person on the ground that he is aggrieved by the want of cleanliness of any relevant highway or any trunk road which is a special road.



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# **George McCallum Niblock v Aberdeenshire Council**

## *Relevant provisions of the Environmental Protection Act 1990*

### **Section 91— Summary proceedings by persons aggrieved by litter.**

(6) If the ... court is satisfied that the highway or land in question is defaced by litter or refuse or, in the case of a highway, is wanting in cleanliness, the court may, subject to subsection [ (7) ], make an order (“a litter abatement order”) requiring the defendant to clear the litter or refuse away or, as the case may be, clean the highway within a time specified in the order.

(7) The ... court shall not make a litter abatement order if the defendant proves that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.





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# George McCallum Niblock v Aberdeenshire Council

## Summary

- The sheriff accepted that the Council:
  - had in place systems which ensure the regular inspection of the stretch of road;
  - acted upon any issues noted by their supervisors during those inspections; and
  - undertook litter-picking of sections of the land adjoining the road on a regular basis.
- In addition, the sheriff accepted that the Council reacts to reports from third parties of litter accumulation at particular locations along the road.



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# George McCallum Niblock v Aberdeenshire Council

## Summary

- It is legitimate for the Council to take into account various factors in allocating resources to address their duties under section 89(1) and 89(2) of the 1990 Act.
- The sheriff accepted that the Council:
  - was fully cognisant of its duties under section 89(1) and 89(2) of the 1990 Act;
  - had due regard to those duties in the allocation of resources; and
  - generally performed those duties to an acceptable standard.



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# George McCallum Niblock v Aberdeenshire Council

## Summary

- The sheriff was satisfied that the Council had proved it had complied with its duties under section 89(1) and 89(2) of the 1990 Act, so far as practicable, and therefore that any such issues affecting particular sites along this stretch of road are not the result of breach by the Council of those duties.
- For all of the above reasons, the sheriff was satisfied that it was not appropriate to make a litter abatement order against the Council.



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## **George McCallum Niblock v Aberdeenshire Council**

### Further suggestions

- If there were any issues with the presence of animal carcasses on the carriageway of this road, the Council should liaise with BEAR Scotland as a matter of urgency so that appropriate arrangements could be made by the relevant agency for their safe removal.
- If the Council perceived there to be a problem with the lack of notice given to them by BEAR Scotland of planned road works, it should pursue a dialogue with BEAR Scotland with a view to ensuring that BEAR Scotland are made fully aware of their concerns and that any issues are addressed by both agencies in so far as possible.





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# **GEORGE McCALLUM NIBLOCK AS CONVENOR OF ABERDEENSHIRE ENVIRONMENTAL FORUM AGAINST ABERDEENSHIRE COUNCIL**

Sheriff Court Judgments published 15 February 2019

Judgment – [2019] SC ABE 10 (Date of Judgment 31 October 2018):

<http://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019scabe10.pdf?sfvrsn=0>

Note – [2019] SC ABE 11 (Date of Judgment 19 December 2018):

<http://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019scabe11.pdf?sfvrsn=0>



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# Discussion





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# Thank you

Andrew Sheridan, Team Manager –  
Collections and Cleansing, Waste Services

Martin Ingram, Senior Solicitor  
Legal and Governance

[andrew.sheridan@aberdeenshire.gov.uk](mailto:andrew.sheridan@aberdeenshire.gov.uk)

[martin.ingram@aberdeenshire.gov.uk](mailto:martin.ingram@aberdeenshire.gov.uk)