

EAST AYRSHIRE COUNCIL

**SPECIAL LOCAL GOVERNMENT LICENSING PANEL
9 JUNE 2010**

APPLICATION FOR GRANT OF A PUBLIC ENTERTAINMENT LICENCE

Report by Executive Director of Finance and Corporate Support

1. PURPOSE OF REPORT

- 1.1 To invite the Panel to consider, by way of a Hearing, an application for the grant of a Public Entertainment Licence.

2. BACKGROUND

- 2.1 An application has been received from Robert Roberts, PO Box 13, Oundle, Peterborough (t/a Bobby Roberts Super Circus) in respect of a Circus to be held in Scott Ellis Playingfields, Kilmarnock, during the period 13 to 18 July 2010.
- 2.2 The covering letter with the application form provided confirmation that it was intended only domestic animals, namely horses, ponies and circus dogs would be on site during the visit to Kilmarnock. Further, it was also indicated that the elephant and camel which normally accompany the circus would be housed at the circus farm, which is outwith East Ayrshire local authority area, during this time.
- 2.3 In accordance with the agreed procedure, notice of the application for grant of licence was advertised in the Public Notices Section of the Kilmarnock Standard in the edition of 30 April 2010.
- 2.4 A letter of objection on animal welfare grounds dated 19 May 2010 has been received from Ms Maureen Rankin.
- 2.5 A joint letter of objection dated 19 May 2010 has been received from Advocates for Animals and The Captive Animals' Protection Society citing animal welfare grounds as the reason for the objection.
- 2.6 On 26 June 2008 East Ayrshire Council adopted a policy of refusing to let Council-owned sites to travelling circuses or any other organisations which utilised or travelled with wild and/or exotic animals. At that time It was remitted to the Head of Legal, Procurement and Regulatory Services to ensure the appropriate application of the policy to each future request for any let of a Council-owned site, with each case being determined on its own merits.

3. DISCUSSION

- 3.1 A letter of objection dated 19 May 2010 has been received from Ms Maureen Rankin (copy attached at Appendix 1 to this report).

- 3.2 A joint letter of objection dated 19 May 2010 has been received from Advocates for Animals and The Captive Animals Protection Society (copy attached at Appendix 2 to this report).
- 3.3 In accordance with Paragraph 4(1) of Schedule 1 to the Act a copy of the letters of objection have been forwarded to the applicant and he has been given the opportunity to notify the Panel, in writing, of his views on the contents of the letters.
- 3.4 A letter in response dated 31 May 2010 has been received from Moira Roberts on behalf of Bobby Roberts Super Circus (Copy attached at Appendix 3 to this report).
- 3.5 A letter in response dated 1 June 2010 has also been received from Antony Staines, Route Co-ordinator of Bobby Roberts Super Circus (Copy attached at Appendix 4 to this report).
- 3.6 The applicant and the objectors have been given an opportunity to attend this meeting and be heard by the Panel. To date, confirmation has been received from Mrs Moira Roberts that she will be able to attend.

4. FINANCIAL IMPLICATIONS

- 4.1 Nil.

5 LEGAL IMPLICATIONS

- 5.1 In terms of Paragraph 3(4) of Schedule 1 to the Civic Government (Scotland) Act 1982, copies of any relevant objections/representations have been forwarded to the applicant.
- 5.2 In terms of Paragraph 4(1) of Schedule 1 to the Civic Government (Scotland) Act 1982, a licensing authority may, in considering an application for the grant or renewal of a licence, make such reasonable enquiries as they think fit and include the results of their enquiries in matters they take into account. In accordance with this Paragraph, the applicant has been given the opportunity to notify the licensing authority, in writing, of his views.
- 5.3 In terms of Paragraph 4(2) of Schedule 1 to the Act, a Licensing Authority may, before reaching a final decision on an application, give the applicant and any person who has made a relevant objection or representation, an opportunity to be heard.
- 5.4 In accordance with Paragraph 4(2) of Schedule 1 to the Act, the applicant and/or his representative and the objectors have been invited to attend the Hearing.
- 5.5 A copy of this report has been forwarded to the applicant and the objectors.

6. POLICY IMPLICATIONS

- 6.1 In terms of the Community Plan, the Council are committed to the principles of eliminating public nuisance and ensuring public order and public safety in respect of any persons, premises or vehicles licensed by them in terms of the Civic Government (Scotland) Act 1982 or any other pertinent legislation

7. CONCLUSIONS

- 7.1 An application has been received from Robert Roberts, PO Box 12, Oundle, Peterborough, for the grant of a Public Entertainment Licence for his Circus to visit Kilmarnock during the period 13-18 July 2010.
- 7.2 Two letters of objection have been received in respect of the application.
- 7.3 The Licensing Panel may consider the letters of objection both dated 19 May 2010 from Maureen Rankin and the Advocates for Animals and The Captive Animals' Protection Society, received on 21 May 2010, response dated 31 May 2010 from Moira Roberts on behalf of Bobby Roberts Super Circus, response dated 1 June 2010 from Antony Staines on behalf of Bobby Roberts Super Circus and any information provided during the course of the Hearing, in reaching a decision on the application.

8. RECOMMENDATIONS

- 8.1 It is recommended that the Licensing Panel proceed to consider the application by way of a Hearing.

Alex McPhee
Executive Director of Finance and Corporate Support

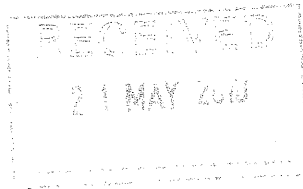
AMcP/GK
1 June 2010

LIST OF BACKGROUND PAPERS

1. Application form signed on 13 April 2010 and received on 14 April 2010.
2. Report dated 18 June 2008 submitted to Council Meeting held on 26 June 2008 regarding the Proposed Policy on Letting of Council-owned Sites.

Any person wishing to inspect any of the background papers listed above should telephone 01563 576061 and ask for Mr David Mitchell, Head of Legal, Procurement and Regulatory Services or e-mail on david.mitchell@east-ayrshire.gov.uk

APPENDIX 1



19th May 2010

Alex McPhee
Executive Director of Finance and Corporate Support
East Ayrshire Council
Licensing Unit
London Road
Kilmarnock
KA3 7BU

Dear Mr McPhee,

I wish to submit my objection to the application for a Public Entertainment Licence by Bobby Roberts' Circus, to be held in July in Kilmarnock. This objection is made on the grounds of animal welfare as stated in Section 24 of the Animal Health and Welfare (Scotland) Act 2004. The needs of an animal include a suitable environment, the ability to exhibit normal behaviour patterns, to be housed with (or apart from) other animals, and to be protected from suffering injury and disease. As a travelling circus cannot meet these needs, it would therefore be contravening the terms of the Act.

I am aware the application has been made in respect of horses, ponies and dogs as there is a ban on wild animal circuses on council land in East Ayrshire. Presumably the relevant authorities would be made aware of where this circus's wild animals, i.e. an elephant and a camel, would be stabled for inspection purposes. Although this information may not be freely available these animals could be housed only a few miles outside East Ayrshire's legislative boundary, and I would therefore find it hard to believe that the Council would have a total disregard for their welfare.

I am of the opinion that the welfare of all circus animals is paramount, and I would urge the board to show compassion and refuse the licence application on welfare grounds.

Yours sincerely,

Maureen Rankin

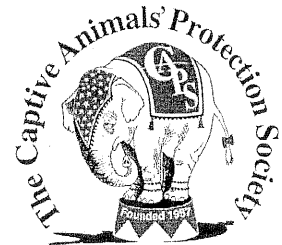
Maureen Rankin

APPENDIX 2



advocates
for animals

Alex McPhee
Executive Director of Finance and Corporate Support
East Ayrshire Council Licensing Unit
London Road
Kilmarnock
KA3 7BU



19 May 2010

Dear Mr McPhee

PUBLIC ENTERTAINMENT LICENCE – BOBBY ROBERTS' SUPER CIRCUS

We write on behalf of Advocates for Animals and the Captive Animals' Protection Society with regard to the application by Bobby Roberts' Super Circus for a public entertainment licence for the period of 13 to 18 July 2010 in Kilmarnock.

We have asked the Council before to consider refusing to issue a licence to this circus, on the grounds of animal welfare, and we wish to do so once more. Bobby Roberts Circus features animals including a camel, performing horses and dogs. The circus also tours with a 57-year old elephant, Anne, who suffers from arthritis and should not, in our view, be subjected to arduous travel, inadequate temporary accommodation, and public display.

We appreciate that the Council has a policy of not leasing its land to a circus using wild animals, and that the elephant and camel were not brought to Kilmarnock for the duration of the visit last year. However, whether or not the wild animals are brought to the location, we believe that the Council would also be justified and entitled to refuse a public entertainment licence on the grounds of animal welfare and public interest. These would constitute good reasons in terms of Schedule 1, s.5(3)(d) of the Civic Government (Scotland) Act 1982, which specifies that a local authority may refuse a licence where there is "other good reason" to do so (reasons other than public safety, nuisance etc).

When we asked the Council two years ago if it might formulate a policy of not granting licences to circuses using animals, or wild animals at least, we were referred to the case of *Gerry Cottle's Circus Ltd. v City of Edinburgh District Council* 1990 S.L.T. 235 as the basis for concluding that a Council would be acting *ultra vires* if it were to do so.

Two issues arise from this: 1. we are not now asking the Council to adopt a blanket policy but to consider whether it has "other good reason" to refuse this particular licence; 2. the court in the *Cottle* case found only that a council might not adopt a policy of refusing licences simply because it believed circuses with animals were wrong, not that it was not entitled to refuse an individual licence, nor indeed adopt such a policy, on the grounds of

animal welfare. The court held that a council could adopt such a policy as long as there was some statutory basis for it.

Per Lord Dervaird:

The most important question is whether the powers of the local authority to refuse a licence (for it is that, not their power to grant a licence, which is at issue) apply in the present circumstances. As the reasons stated by the respondents made clear, *no specific ground related to any statutory provision is put forward by them for their refusal in the present case ...*" (emphasis added)

There is now such statutory basis in the Animal Health and Welfare (Scotland) Act 2006 which places a greater onus on the owners of animals positively to ensure their welfare. Cruelty to animals was not alleged in the *Cottle* case and is not alleged now, but the standards for animal welfare are higher nowadays.

We believe that a travelling circus using wild animals cannot meet the requirements of s.24 of the Animal Health and Welfare (Scotland) Act 2006. S.24(1) of the Act states that a person commits an offence if the person does not take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which the person is responsible are met to the extent required by good practice. These needs include: a suitable environment; the ability to exhibit normal behaviour patterns; to be housed with (or apart from) other animals; and to be protected from suffering, injury and disease (s.24(3)). Clearly a travelling circus cannot provide for all of these needs and there is considerable scientific evidence to support this view (summarised in the attached report).

Last year, as this circus toured around southern and central Scotland, numerous complaints were made to our organisations regarding the inappropriateness of using an elderly elephant for performance. We also found that the circus was not complying with council policies regarding the use of land or with conditions attached to licences. We are aware that the circus complied with East Ayrshire's conditions for the use of land, but only by "parking" the elephant and camel for the duration of its visit to Kilmarnock. While this may have satisfied the Council's requirements at the time, in the longer term it cannot be a satisfactory solution in terms of animal welfare.

There is significant evidence to suggest that the distress and suffering of animals is inherent in travelling circuses. We would be very grateful if you would take this letter and the attached report covering last year's Scottish tour by Bobby Roberts' Super Circus into account when considering the licence application.

Yours sincerely



Libby Anderson
Policy Director, Advocates for Animals



Craig Redmond
Campaigns Director, CAPS

HumanKind. AnimalKind. OneKind.



**BOBBY ROBERTS' SUPER CIRCUS
TOUR OF SCOTLAND SUMMER 2009**

**Policies, legislation and circumvention – the case for a ban on travelling
circuses using wild animals**

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**Annex 1: Response by Advocates for Animals to the DEFRA consultation on the use of wild
animals in travelling circuses in England**

INTRODUCTION

In the summer of 2009, Bobby Roberts' Super Circus set out on a tour of southern and central Scotland.

Travelling with the circus were horses, ponies and dogs for use in the show, as well as two non-domesticated animals – Monty the camel and Anne the elephant. This report:

- describes how, as the circus went from location to location, it repeatedly ignored local authority leasing and licensing requirements;
- explains why, in the view of Advocates for Animals, Scottish councils are entitled to have a policy of refusing public entertainment licences to circuses with animals; and
- calls on the Scottish Government to introduce an outright ban on these outmoded and unnecessary displays, so that public policy can be properly enforced.

WILD ANIMALS USED IN BOBBY ROBERTS' SUPER CIRCUS

Monty the camel does not appear in the circus ring and is only seen by members of the public when they pay to visit the zoo tent where he is kept tethered when not travelling.

Anne the elephant, now aged 56, has come to symbolise the tragic plight of countless wild animals used in circuses around the world, including the UK. Taken from Sri Lanka over fifty years ago, her whole life has been one of confinement, constant travel and being made to perform meaningless tricks.

Elephants are herd animals, but since the death of the circus's other two elephants in 2001, Anne has had no companions of her own kind. She now suffers from arthritis and walks with difficulty, but she still appears in the circus ring to eat candy floss and be used as a photo prop.

A review of scientific research on animals in circuses, published in 2009, recommended that "non domesticated animals, suitable for circus life, should exhibit low space requirements, simple social structures, low cognitive function, non-specialist ecological requirements and an ability to be transported without adverse welfare effects."¹ The authors commented that elephants met none of these criteria. They were, in fact, among "the species of non-domesticated animals commonly kept in circuses [...] the least suited to circus life."

While there is no evidence that Anne is physically mistreated, recent investigations² in another British circus have shown elephants being subjected to routine beating, goading and abuse. Longstanding concerns about cruelty of this nature - as well as the general unsuitability of the travelling circus life for animals - have led a number of local authorities in Scotland to decide that they will not let their parks and playing fields to circuses that use wild animals.

¹ G Iossa, CD Soulsbury and S Harris *Are wild animals suited to a travelling circus life?* *Animal Welfare* 2009,18:129 - 140

² Animal Defenders International press release *Secret video exposes UK circus elephant suffering* 19 August 2009

LOCAL AUTHORITY REGULATION OF CIRCUSES

There are no travelling circuses with wild animals based in Scotland, but circuses from England tour Scotland most years, and there are occasional visits from further afield. Wherever they travel, they must obtain a public entertainment licence from the local authority.

A judicial review in 1989³ decided that a local authority could not refuse a public entertainment licence to an animal circus simply because it believed that such circuses were wrong. The licensing legislation⁴ does not permit refusal for policy reasons only. However, the court made it clear that councils can refuse licences for any relevant reason that can be justified and is not a blanket policy based ban: they are not limited to public safety or similar considerations.

Council legal officers have treated the 1989 case as creating a rule that councils are not permitted to consider animal welfare issues in relation to public entertainment licences - but that is not what the case lays down. Councils are entitled to refuse a public entertainment licence for well-founded animal welfare concerns, and Advocates for Animals believes that every council has a legal duty to take into account all relevant factors in considering the grant of such licences.

The latest scientific research (see Annex 1) demonstrates the problems which travelling circuses have in providing adequate welfare standards for animals in general and for wild animals in particular. In Advocates for Animals' view, councils must consider the welfare needs of circus animals in deciding whether or not to issue a licence for a travelling circus, and would be failing in their duties if they did not do so.

Advocates for Animals considers that most, if not all, travelling circuses would not be able to provide the conditions required to ensure the welfare of animals such as elephants, and a council would be justified in referring to these standards as grounds for refusing a licence.

Advocates for Animals believes that it would now be possible for a council to review its policy on licensing for circuses with animals, based on the latest scientific research (see Annex 1), and the creation of an animal welfare responsibility for owners, under recent animal welfare legislation⁵. In Advocates for Animals' view it is impossible for a circus to provide the conditions required under the new law⁶ to ensure the welfare of animals such as elephants, and a council would be justified in referring to these standards as grounds for refusing a licence.

The licensing regime also allows councils to place conditions on the licences that they issue, and as a rule circuses are asked to disclose which animals they intend to bring with them and use for performance. This report shows, however, that Bobby Roberts' Super Circus

³ *Gerry Cottle's Circus v City of Edinburgh District Council* 1990 SLT 235 DC

⁴ Civic Government (Scotland) Act 1982, Schedule 1, s. 5(3)(d)

⁵ Animal Health and Welfare (Scotland) Act

⁶ Animal Health and Welfare (Scotland) Act, s.24

did not always make accurate declarations on its licence applications regarding the elephant and the camel.

As landlords, however, councils can set conditions for the use of their property and following the *Cottle* case a number decided that they would not let their land to circuses using animals or, in a small number of cases, any animals. Advocates for Animals surveyed the 32 local authorities in Scotland in 2009 and found that the following councils have such a policy (some include domesticated animals as well, but most only cover wild animals):

Aberdeen

Angus

Dundee

East Ayrshire

East Lothian

East Renfrewshire

Edinburgh

Fife

Highland Council districts of: **Lochaber/Skye&Lochalsh/Sutherland/Inverness**

Perth & Kinross

Renfrewshire

South Ayrshire

West Lothian

Aberdeenshire animal welfare charter states that it will review applications on the basis of what animals are involved and their conditions.

Stirling has no in-house policy but contracts out site management to a company with a policy of not letting property to circuses with animals.

No circuses ever go to **Orkney, Shetland** or the **Western Isles**.

Local authorities have a right and a duty to require businesses operating in their areas to comply with the policies set by their democratically elected members. But they are ill-placed to do so when a circus is only in town for a short period, and it takes a few days for complaints to be received and investigated. Understandably, while local authority officers accustomed to carrying out inspections of livestock and companion animals, they may not necessarily be knowledgeable about the specialist needs of wild animals such as elephants and camels, and can only assess the temporary conditions and environment that they see, without considering the long-term effects of the circus lifestyle.

This is why it would be easier to reflect the views of the public by government legislation to prohibit the use of animals, or at least wild animals, in travelling circuses.

LEGISLATING TO BAN WILD ANIMAL CIRCUSES

In early 2010, the results of a public consultation on the use of wild animals in travelling circuses in England showed that more than 94% of those who responded backed a complete ban on their use⁷. As a result, the DEFRA Minister responsible for animal welfare, Jim Fitzpatrick MP, announced that he wished to ban the use of wild animals in circuses in England. Although any legislation was inevitably delayed for the 2010 general election, this announcement raised the long-awaited possibility of legislation that would finally reflect the public view that animals should be with their own species, in their own environment, and should behave in ways that are natural for them, rather than being confined in circus wagons and made to perform meaningless, unnatural tricks in the ring.

However, the potential ban in England raises the possibility that some circuses might relocate to Scotland if the laws are different on different sides of the border.

Advocates for Animals believes that the Scottish Government needs to reflect the views of people in Scotland by bringing in legislation to ban the use of wild animals in travelling circuses in Scotland. (An opinion poll carried out for Advocates for Animals in 2008⁸ indicated that 83% of the Scottish public supported a ban on the use of some or all animals in circuses.) By doing so, the government would assist local authorities in performing their functions and – even more importantly – would help to lead the UK towards consigning these outmoded, exploitative shows to history.

The two administrations tend to produce very similar legislation on animal welfare. In 2009, Richard Lochhead MSP, the Cabinet Secretary responsible for animal welfare, said that he could not use the Animal Health and Welfare Scotland Act 2006 to outlaw circuses using wild animals as there was no scientific evidence of welfare problems. Advocates for Animals disagrees: we believe that a government's duty to protect animal welfare goes beyond the technicalities of science, and included moral and ethical issues as well. There is precedent for this in, for example, the passage of the Fur Farming (Prohibition) (Scotland) Act 2002⁹. A prohibition on the use of all wild animals in circuses is achievable and proportionate under current Scottish legislation, and the moral imperative is loud and clear.

⁷ <http://www.defra.gov.uk/corporate/consult/circus-wild-animals/index.htm> accessed 23 April 2010

⁸ TNS System Three opinion survey carried out for Advocates for Animals January 2008

⁹ The Policy Memorandum for the Fur Farming (Prohibition) Scotland Bill states: "The Bill is grounded on a *moral objection* to the keeping of animals to exploit them solely or primarily for the value of their fur or for breeding progeny for such slaughter." (our italics)

BOBBY ROBERTS' TOUR OF SCOTLAND SUMMER 2009

This report sets out the manner in which Bobby Roberts' Super Circus repeatedly circumvented council land leasing policies and licensing conditions on its 2009 tour of Scotland.

Because animal circuses attract a good deal of opposition, tour schedules are not published in advance. Publicity materials are usually distributed in planned venues a week or two ahead of each stop. This makes it difficult for animal welfare organisations to visit and, in particular, to register objections to licence applications. In the early part of this tour, relatively little information was available, but as it went on we were grateful to volunteers who kindly contacted councils to ask whether an application had been received. In this way, we were able to build up knowledge of future movements as the itinerary proceeded.

GALASHIELS 2 – 7 June 2009

The first stop on the tour.

Council: Scottish Borders

Council policy: No written policy but the Council does let land to circuses with animals.¹⁰

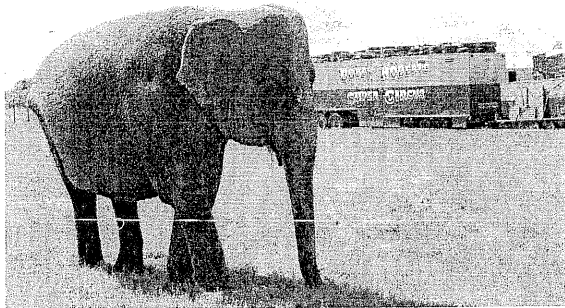
Council land or private land? Council - Public Park, Galashiels

Licence application: The circus informed the Council on its licence application that it would be using horses and dogs, and that an elephant and camel would also be travelling with it. No reference to any performance by the elephant.

Was the elephant used in performance? Likely, but not confirmed.

¹⁰ Email from Scottish Borders information officer, 9 June 2009

EDINBURGH 9 - 14 June 2009



*Anne the elephant at Ingliston
showground, Edinburgh
June 2009 © Advocates for Animals*

Council: The City of Edinburgh Council

Council policy: Since 1989, the Council's policy on performing animals has been that no land or premises under its control will be leased to circuses involving animals¹¹. Where applications for public entertainment or theatre licences are received in respect of land or premises outwith the control of the Council, such applications will be considered on their individual merits by the Council's licensing sub-Committee. Any licences granted by the sub-Committee as a result of such applications will be subject to standard conditions which include a condition that adequate arrangements must be made for the welfare of animals appearing in the performance, to the satisfaction of the Director of Environmental Health.

An earlier policy, which had been in force since 1986 and which effectively banned performances involving animals or exhibiting animals within the City of Edinburgh District, was ruled *ultra vires* by the Court of Session in 1989¹².

Council land or private land? Private

Licence application: Not seen

¹¹ Letter from Council Solicitor, City of Edinburgh Council, 11 May 2009

¹² *Gerry Cottle's Circus v City of Edinburgh District Council* 1990 SLT 235 DC

Was the elephant used in performance? Yes

Comments or complaints from public:

"...the Bobby Roberts Circus is at Ingliston Showground, beside Edinburgh Airport, and each night this week I have seen an elephant tied up outside.

"The road that the circus is on is extremely busy every evening [...] and I appreciate that they have her there for everyone to look at, but she is extremely unhappy, she has nowhere to walk as she is tied to the ground and she doesn't have any water or food available to her (bearing in mind the weather is very hot here at the moment and she has no shelter either)."¹³

"I recently visited Bobby Roberts' so-called 'super circus'. I had no idea there was animals performing, in fact I didn't even think this was allowed any more. So you can imagine my shock when out comes this poor looking elephant, who had to stand in the middle of the ring with a metal chain around its neck and cuffs around its feet, to have its picture with hundreds of kids during the interval. I can honestly say the elephant who apparently 'travels with the circus very happily in her retirement' looked sad, run down and totally depressed. Her eyes were vacant, like she wasn't there any more. It got to me so much I left the circus straight away."¹⁴

PERTH 16 – 21 June 2009

Council: Perth and Kinross Council

Council policy: In 1989, the Council decided that it would no longer lease land under its control to circuses with acts involving non-domestic animals. The Council had no objections to acts involving horses, ponies or dogs. Circuses without wild animal acts continued to use Council land, and the policy did not prevent circuses using wild animal acts from coming to the area and using private land. A public entertainment licence is required of circuses on both private and Council land, but applicants are not required to state if they are using animals¹⁵.

Council land or private land? South Inch, Perth – Council land

Licence application: Not seen

Was the elephant used in performance? Yes. Advocates for Animals informed Perth and Kinross Council on 18 June that the circus usually brought the elephant into the ring to pose for photographs with members of the audience. The Council responded that "The Council has received assurances from the circus that it does not include any wild animals in its performances. [...] The Council has additionally requested that no monies be taken from members of the public for photographs of them posing with the elephant, and has been

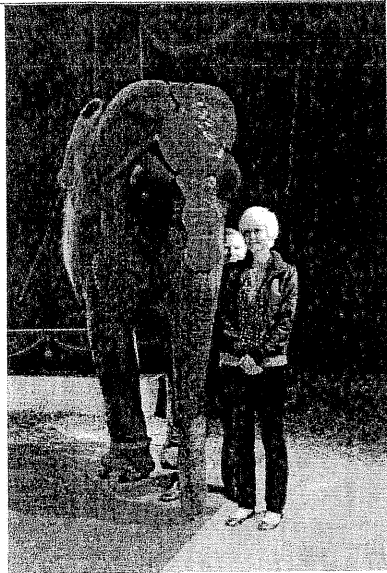
¹³ Email to Captive Animals' Protection Society, 12 June 2009

¹⁴ Email to Captive Animals' Protection Society,

¹⁵ Email from Freedom of Information Officer, Perth and Kinross Council, 12 May 2009

assured the elephant is a non-performing animal. As discussed, several Council officers have been to visit the site this week.”¹⁶

Despite these clear instructions from Council officials, the circus failed to comply with the local policy. Visitors to the circus on 18 June saw Anne brought out for photographs at a cost of £5 each.



“The Council has [...] requested that no monies be taken from members of the public for photographs of them posing with the elephant, and has been assured the elephant is a non-performing animal.”

The following day, Friday 19 June, Advocates for Animals informed the Council that its policy was being breached. The complaint stated:

“The elephant, Anne, was brought into the ring during the interval and spectators were encouraged to have their photographs taken with her for £5.00. She was also made to perform for the audience by picking up three pieces of candyfloss in the ring and eating them. Following the performance, spectators were invited to visit the circus animals, including the elephant and the camel, in the tent where they were kept. The charge for this was £1.00. I believe that these actions breached Perth and Kinross Council policy on performing animals, as well as the assurances that were given to the Council.

“The elephant appeared to be shackled by one leg while visitors were present in the animal tent, although straw placed round her legs made this difficult to see. She performed stereotypical head-bobbing movements which are a sign of captivity-related stress. Visitors were also concerned about the condition of the dogs being used in the circus, and these were seen to exhibit stereotypical behaviour.”¹⁷

The Council responded that officials would once again visit the circus to seek assurances that it would not bring the elephant into the arena during the interval. In addition, it would write to the circus “to express our disappointment that they have not abided by their stated intentions in relation to performing animals.”¹⁸

¹⁶ Email from Corporate Communications Manager, Perth and Kinross Council, 18 June 2009

¹⁷ Email from Policy Director, Advocates for Animals, to Perth and Kinross Council 19 June 2009

¹⁸ Email from Community Greenspace Manager, Perth and Kinross Council, 19 June 2009

However, as the complaint below – sent immediately after the Saturday performance - shows, the circus continued to use the elephant in defiance of council policy and instructions.

Comments and complaints from the public

“A friend won tickets for the circus and when we got there I was shocked it was an animal circus as I know my own region (Fife) has banned them [...]

“First Bobby came riding in on a brown horse, the horse looked in great condition, I'm no expert in horses but this one animal looked great and was muscular with a sleek coat.

“Then 6 small horses were brought out and made to run round in circles and put their front paws up on the ring and put their front legs on stools and do things like turn round in circles. At least one of these mini horses was not happy to be there and refused to jump over poles etc, Bobby was grimacing when the horses refused to perform. I'm not sure if this horse was pregnant or just very fat.

“Then a white horse was brought out with a little horse in tow and made to run around in circles etc, the big horse had to jump over a pole held over the little horse's head and I think I saw the pole go down and hit the little horse. The horse didn't lift its head once, my friend said it was because of a harness, I never saw this myself though.

“Then there was an act with the big brown horse and two little dogs. First the dog rode on the horse's back then the dogs went onto some kind of platform, the horse would run under platform 1 and dog 1 would jump on its back. When it got to platform 2 this dog would jump onto the platform and then the second dog jump onto its back.

“The elephant was brought out for photos which shocked me as I never knew there were still any performing. The elephant ate a candy floss (surely not good for it) and Bobby urged us all to write to the council to tell them his circus is traditional and the animals happy and moaned about animal rights activists. The animal did not look good at all, I understand she is elderly and it was so sad to see her.

“We left at the interval as we were not enjoying the show at all. Our teenagers stayed and saw the animals in a zoo bit at the end and said there was a camel there too.”¹⁹

MILNGAVIE 23 June - 5 July

Council: East Dunbartonshire

Council policy: No policy on letting land to circuses with animals; public entertainment licences required for circuses.²⁰

Council land or private land? Private land – West of Scotland Rugby Club

¹⁹ Email to Captive Animals' Protection Society, 20 June 2009

²⁰ Email from Director of Corporate and Customer Services, East Dunbartonshire Council, 11 May 2009

Licence application: Advocates for Animals and the Captive Animals' Protection Society wrote to East Dunbartonshire Council on 19 June to raise concerns about animal welfare and the non-compliance with instructions from Perth and Kinross Council. The Convener and Vice-Convener of the Civic Government Appeals Board met to discuss these issues and agreed to grant the licence, subject to checks of transport and welfare documentation. However, they specifically required that "the applicants be informed that they were not licensed to charge the public to view the elephant and/or camel, as these animals were not mentioned on the application form at all and were therefore not specified as part of the entertainment for the purposes of the public entertainment licence."²¹

Was the elephant used in performance? Yes. Despite the Council's condition, Anne was used for photographs during the interval of the show on 2 July, and given candy floss to eat in the ring. Advocates for Animals drew this to the attention of council officials but received no response.

Comments and complaints from the public

"The whole circus was disturbing! A total step back in time!"²²

CARDROSS 7 – 12 July 2009

Council: Argyll and Bute Council

Council policy: No response from Council to enquiries about policies

Council land or private land? Private land - Westerhill Farm, Cardross

Licence application: Advocates for Animals and the Captive Animals' Protection Society wrote to the Council to ask whether a licence application was being processed, and to lodge an objection if it was still possible to do so. This was acknowledged but no further correspondence was received from the Council. Once the elephant had been seen performing at Cardross, Advocates for Animals wrote to inquire whether the circus had been given a licence to charge the public to view the elephant or camel, but no reply was received.

Was the elephant used in performance? Yes. Anne was used in the ring to perform her usual trick of eating candy floss and to pose for photographs.

Comments or complaints from public

"[S]he (Anne) is repeatedly shifting the position and weight on her hind legs. When she leaves the tent it appears that she is scuffing both back feet. Such scuffing occurs when there are proprioceptive deficits (messages not getting to the brain properly about foot placement), but also secondary to weakness and/or pain from conditions such as

²¹ Email from Litigation and Licensing Manager, East Dunbartonshire Council, 26 June 2009

²² Email from Advocates for Animals supporter, 3 July 2009

osteoarthritis – it either hurts to lift the feet properly the muscles of the leg are too weak to lift the foot properly.”²³

“Monty the camel is housed in a stable which barely allows for proper turning and lying down but is beyond the access of the public, no doubt partly for safety reasons. He was engaged in non-productive oral behaviour and repeatedly stretching his neck forward over the stable door. He may have been straining to get to the wheelbarrows in front of him but these contained no food and he had hay in his stable, therefore one possibility is that this is stereotypic behaviour [...] Since this camel is not seen in the performances and is not claimed to be a family pet who would be distressed to be left behind, it is a mystery why he should be travelled around and housed in this unnecessary manner.”²⁴

“... they did bring poor old Anne out during the interval for £5 photographs and unfortunately there were lots and lots of people participating in that, so she worked long and hard for her feed that night [...] one of the horses was in a fairly poorly way, quite lame and obviously in discomfort throughout the show. They used really nasty pointed spurs too, something I’ve never had to do with a horse. [...] Strangely enough the human entertainers were actually the most enjoyable of the evening – fantastic what some folks can do with their bodies!”²⁵

KILMARNOCK 14 – 17 July 2009

Council: East Ayrshire Council

Council policy: Following a visit to Kilmarnock by Bobby Roberts’ Super Circus in 2007, which provoked strong local opposition and representations from Advocates for Animals and the Captive Animals’ Protection Society, East Ayrshire Council introduced a policy that it would not let its land to circuses with wild animals. In 2009, Bobby Roberts assured the council that he would not bring the elephant and camel into the area, but would leave them stabled at Cardross, the previous stop. Council officials visited the circus to check that all licence conditions had been complied with.

Council land or private land? Scott Ellis Playing Field, council land

Licence application: Not seen

Was the elephant used in performance? No. The trailers for the elephant and camel were brought to Kilmarnock during the night of Sunday 12 July but had disappeared by the morning of Monday 13 July. It is not known where these animals were kept, or how they were cared for and exercised, during the week that the circus stayed in the town, although it is clear that they were not left at Cardross.

²³ Message to Captive Animals’ Protection Society from a veterinary surgeon who observed Anne in the ring at Cardross

²⁴ ibid

²⁵ Email from Advocates for Animals supporter 13 July 2009

STEVENSTON 21 – 26 July 2009

Council: North Ayrshire Council

Council policy: No policy regarding use of land or licensing of circuses

Council land or private land? Beach Park - council land

Licence application: On its application dated 3 June 2009, the circus stated that it had eight horses, six ponies and two dogs. A note at the bottom of the page added "Their 56 year old elephant travels with the circus but no longer performs". Advocates for Animals and Captive Animals' Protection Society wrote to North Ayrshire Council to object to the licence being granted. A meeting of the licensing board was convened and attended by Libby Anderson of Advocates for Animals, and Moira Roberts of the circus. Mrs Roberts also told councillors that Anne no longer performed in the circus. The board ignored the evidence of non-compliance with licence conditions in previous locations, took the view that Anne was "a big pet", and unanimously approved the application.

Was the elephant used in performance? Yes

Comments or complaints from public

"... I went to Bobby Roberts this evening with my sister and my three children. I was actually rather concerned about the well being of not only Anne the elephant but his horses too as one of the horses in particular had rather a lot of saliva coming from its mouth as if the bit in its mouth was too tight for it, not only that but during photography with Anne I noticed Anne being poked and prodded by a cane to make her do what she was acted. Is this common practice as I was really concerned and so were my children ..."²⁶

AYR 28 July – 5 August

Council: South Ayrshire Council

Council policy: Council does not let land to circuses that use wild animals and places conditions on public entertainment licences.

Council land or private land? Private land - Ayr Racecourse. The Captive Animals' Protection Society contacted the racecourse management and was told: "I am aware that the horses and dogs travelling with the circus perform in the circus ring, however, Bobby Roberts Circus has assured us that there are no wild animals performing. I understand that Anne still travels with the circus but no longer performs."

"Therefore we are happy for the circus to visit the Racecourse on the basis that there are no wild animals performing in the ring."²⁷

²⁶ Email from Captive Animals' Protection Society supporter 22 July 2009

²⁷ Letter from Events Manager, Ayr Racecourse, to Captive Animals' Protection Society 20 July 2009

Licence application: Advocates for Animals and the Captive Animals' Protection Society wrote to the Council to object to the licence and a Regulatory Panel was convened on 24 July. Libby Anderson of Advocates for Animals attended, as did Bobby and Moira Roberts. Mrs Roberts described an incident where the elephant had escaped on a previous visit to Ayr as Anne "going for a little walk". Councillors appeared unconcerned by the evidence of previous licence breaches in other areas and the existence of their own policy regarding the use of council land. The licence was granted.

Was the elephant used in performance? Yes

DUMFRIES 7 – 16 August

Council: Dumfries and Galloway Council

Council policy: Council does not have a policy regarding the granting of public entertainment licences. It does require that current veterinary certificates are submitted for each animals named in the application that are participating in the circus. The Council also says that it attaches conditions to the licence regarding the maintenance and welfare of animals.

Council land or private land? Private land – Park Farm

Licence application: Advocates for Animals and the Captive Animals' Protection Society wrote to the Council on 28 July to object to the licence application, raising the same issues as in previous letters to councils, namely the animal welfare problems inherent in the circus regime and the non-compliance seen in other locations during the tour. In response, the circus stated that it had adhered to all licensing conditions in other locations. The council did not invite Advocates for Animals to respond to this. Had it done so, we would have pointed out that one of the breaches we complained of concerned council land leasing policies (Perth and Kinross), rather than licences which do not cover animal welfare; while another (East Dunbartonshire) concerned specific licence conditions preventing the use of Anne, and there was written evidence from the council that these had been imposed.

An animal health and welfare officer and a Scottish SPCA inspector visited the circus in Dumfries and stated: "There are no issues with either of us regarding the animals at the circus. The horses are stabled in appropriate sized stables, a grazing area behind the animal tent for them and they are exercised daily. Anne the elephant is kept within an agricultural electric fence, in an area suitable sized for her, and during the day, if outside, is in an electric fenced area. She is only tethered at night, for her own safety."²⁸

It is not known whether these officers had any specialist knowledge of the needs of wild animals or whether they enquired as to why it was necessary to tether Anne at night, or for how long.

²⁸ Email from Trainee Animal Health and Welfare Officer, Dumfries and Galloway Council, 6 August 2009

The licence was granted by an official in the licensing department and was not submitted to the local area committee although local Councillors were advised of the application. This licence had attached to it a special condition that Anne the elephant would not be “involved with the performance” but could be seen during intervals and the public could have photographs taken with her – in other words, the circus could proceed as normal.

Was the elephant used in performance? Yes

Comments or complaints from public? Local MSP Elaine Murray complained about misrepresentations made by the circus in order to have a poster put up in the constituency office:

“Posters advertising this circus were distributed under false pretences to businesses in Dumfries. Staff in our office asked specifically whether animals were involved in the circus before accepting a poster, and were told that there were only dogs and horses. Fortunately, Advocates for Animals had been in touch with me regarding Anne's plight and the poster was in the bin as soon as I saw it!”

CONCLUSION

As has been said, Scottish councils have taken the view for the last 20 years that they do not have the power to refuse a public entertainment licence to circuses with wild animals in their areas. We believe that they should revisit this position, taking into account modern animal welfare legislation which promotes positive welfare, as opposed to the absence of cruelty. As landlords, councils can and do exercise discretion as to who uses their land, but officials appear to find it difficult to enforce these policies. It can be done, as was seen in Kilmarnock (East Ayrshire) where Anne was not used for performance during the 2009 visit. Concern arose about how and where the elephant and camel were cared for during the week in question, but at least the council policy was observed. In some cases, however, it appears that there is a lack of will among officials to address the concerns of the public, and some appear to find the representations of animal welfare groups such as Advocates for Animals and the Captive Animals' Protection something of a nuisance. Regrettably too, some councillors make short-term decisions, such as the granting of a licence, without a full understanding of the animal welfare issues involved.

As far as legislation is concerned, a government's duty to protect animal welfare must include moral and ethical issues, and we believe that a prohibition on the use of all wild animals in circuses is achievable and proportionate under current Scottish legislation. The comments of the individuals who saw Bobby Roberts' Circus in Scotland in 2009 and took the trouble to write to Advocates for Animals or the Captive Animals' Protection Society speak for themselves, and they are not alone. Yet, frustratingly, the Scottish Government has still to address the concerns of so many compassionate members of the public.

ANNEX 1

Response by Advocates for Animals to the DEFRA consultation on the use of wild animals in travelling circuses in England

9 March 2010

1.0 Comments on Option 1 (complete ban)

Advocates for Animals believes that a complete ban on wild animals in travelling circuses (both terms as defined in the Impact Assessment) is overdue.

Our policy is based on two related points:

(i) A travelling circus is not an environment where the needs of wild animals can be met. A travelling circus combines a number of specific characteristics (including extreme confinement, frequent transport and relocation, training for performance). This combination is not found elsewhere, even in zoos where wild animals are kept captive. It makes it impossible fully to meet wild animals' needs, increases the risk of stress and, in some cases, ill-treatment of the animals, and makes effective inspection and regulation very difficult.

(ii) Travelling circuses that exhibit performing wild animals are fundamentally out of step with modern views on the proper way to treat animals and modern understanding of animals' environmental, behavioural and social needs. They are an inheritance from past ages that accepted the existence of dungeon menageries and the travelling showman with his dancing bear - but they should have no place in 21st century Britain.

These conclusions are based on evidence from scientific reviews, NGO investigations (including our own) and trends in public and parliamentary opinion over the last years.

1.1 Overall unsuitability of circus conditions

A 2009 review from Bristol University published in the journal *Animal Welfare* has highlighted the fundamental mismatch between what a travelling circus can provide and what wild animals need. This concluded that 'species commonly kept in circuses [such as highly social or wide-ranging species] appear the least suited to circus life' and suggested that the only wild species for which circuses might be suitable environments were those with 'low space requirements, simple social structures, low cognitive function, non-specialist ecological requirements and which are capable of being transported without adverse welfare effects.' These criteria clearly exclude the big cats, elephants, primates, camels, zebras and other exotic species that have been, or are currently, used in British circuses.¹

1.2. Space and environment

A travelling circus is inevitably limited as to the space and complexity of the environment that it can provide. When on tour, the animals are kept on 'beastwagons' (animal transport lorries), in tents or outside cages or in temporary outside enclosures, all small in size

compared to what would be provided even in a zoo.^{1,2,3} The space for animals outdoors is on average only 26% of the recommended size for zoo outdoor enclosures and the space on beastwagons is on average 27% of the recommended size for zoo indoor enclosures.¹

Animals used in circuses spend only 1-9% of the day performing or training,¹ and the remaining time in travelling or holding accommodation similar to that described above, typically bare of environmental enrichment.² An American black bear in Peter Jolly's circus was provided a small unfurnished cage on grass, open to view on all sides, with a small trailer for an indoor enclosure. Tigers and lions are kept in small cages on beastwagons (approximately 2 x 1 body lengths in area) or in small 'exercise' cages (4 x 4 body lengths). Zebras are kept tethered in stable tents. Camels are kept tethered in stable tents, or in small outdoor enclosures.² Circus animals, especially wild animals that are potentially dangerous, can spend almost the whole day, every day, with their movements severely restricted.⁴

Animals spend long periods tethered or chained when not performing. Circus elephants are chained for between 12 and 23 hours per day,¹ including the periods in outside enclosures. The elderly and arthritic elephant Anne, belonging to Bobby Roberts' Super circus, 'has been observed chained by a front and back foot in a temporary stable tent, spending many hours in her transport vehicle or in a small temporary paddock surrounded by a single electric wire.'²

Even when not travelling, conditions are inadequate. All-day video-recording by ADI during the 1990s of the winter quarters of a British circus company showed that circus elephants spent 60% of their time with a fore and back leg shackled with a chain in a barn and had no outdoor enclosure, some not leaving the barn between October and January. Lions and tigers were kept similarly in small bare cages inside truck containers or beastwagons. One beastwagon of total area 28 m² held 8 lionesses and 1 lion, in 3 groups in separate partitions⁵. There was also a free exercise paddock and a training ring and the big cats were observed to leave their containers at speed to enter the exercise paddock and were reluctant to return to their cages. On average, they spent over 23 hours out of 24 confined in their cages.⁵

Some typical requirements in modern guidelines for zoos internationally include the following², which are almost inevitably impossible to provide in the conditions of a travelling circus:

- Elephant indoor housing should allow access to outdoor enclosures overnight
- Female elephants should not be kept singly
- Elephants should be provided with access to water, bathing or showering facilities daily
- Elephants should be chained for only 3 hours per day / not for the majority of 24 hours / not overnight
- Bears should be provided with visual barriers or means of escape from view
- Tigers should be provided with pools
- Big cats should be provided with visual barriers

- Big cats should be provided with outdoor enclosure furniture such as platforms, wood for scratching, marking and climbing

Advocates for Animals believes that the long confinement in beastwagons, cages and small, bare enclosures that is a routine feature of life for animals in travelling circuses internationally⁶ is entirely unacceptable as a way of keeping wild animals. The conditions documented in circuses by NGOs, in comparison to regulated zoos, would shock most members of the public.

Advocates for Animals is opposed to the keeping of animals in zoos as well as circuses. Animals such as elephants are increasingly recognised as being unsuitable for keeping in zoo conditions, and fewer are being kept. However, our conclusion has to be that if travelling circuses were judged by the same standards as zoos they would be assessed as entirely unacceptable environments for captive wild animals.

1.3. Unnatural social groups

Circuses almost inevitably fail to provide animals with natural social groupings and thus frustrate natural social behaviour. Animals of social species (such as elephants or zebras) may be kept singly. The elephant Anne at the Bobby Roberts' Super Circus has been alone since 2002². Animals that have established relationships are often separated by sale or relocation¹.

Alternatively, animals that have evolved to be solitary (such as tigers or pythons) may be housed close to others of the same species, and animals of predator and prey species may be housed within sight of each other². All these forced situations are inconsistent with the natural behaviour of the species and are very likely to cause stress or distress.

1.4. Stress-related abnormal behaviour

Much of an animal's natural behaviour is impossible in the conditions of a travelling circus. Frustration of natural behaviour is a recognised cause of stress for all animal species, domesticated or wild. The range of behaviour that is restricted or prevented in the circus environment includes normal grazing or browsing behaviour, normal social behaviour, and normal exercise or ranging. Responses linked to stress in captive elephants^{7,8} and wide-ranging carnivores⁹ include increased infant mortality, breeding difficulties, and abnormal behaviour such as stereotypic pacing, trunk-swaying and head-bobbing. Many captive great apes studied (including those originating from circuses) show 'gross behavioral abnormalities such as stereotypies, self-mutilation, inappropriate aggression, fear and withdrawal,' due to 'adverse husbandry conditions', some developing conditions analogous to post-traumatic stress disorder^{10,11}.

Stereotypies are more likely when the animal's movement is more restrained and the environment is more barren, as has been documented for primates, elephants, bears and leopards, among others, and this behaviour is probably indicative of 'prolonged distress' and an impoverished environment¹.

All-day video recording of stereotypic behaviour among a group of circus elephants in England found that stereotypic behaviour accounted for 61-73% of the time budget of one elephant, 30-66% for another and up to 14% for a third elephant. For one elephant,

stereotypes seemed to be associated with being chained and with the presence of a particular stockman.¹² Video footage of travelling circuses internationally shows a wide range of species performing obviously stereotypic behaviour in their small bare cages or enclosures, including big cats, bears, giraffes, elephants, horses, monkeys and chimpanzees.⁶ Stereotypic trunk-swaying by 3 elephants imported in 2009 to tour with a British circus was also filmed in the 2009 touring season and shown on Sky News. One wild-caught African elephant performed stereotypic behaviour for 40% of the 11 hours during which she was observed, according to the investigators^{13,14}.

1.5 Stress related to exhibition and performance

Public exhibition and performance involve crowds, loud noise and bright lights and are known to cause stress to circus animals. Crowds of people cause obvious signs of nervousness and desire to hide or escape in primates, bears and wild ungulates. Circus tigers and elephants pace more when faced with crowds or before performances, possibly due to anxiety, and Bristol University scientists have concluded that, 'The majority of evidence available suggests that human audiences have stressful effects on non-domesticated animals.'¹ In a case reported in 2009 from a zoo in Sweden, a chimpanzee for years systematically and calmly collected and stored stones which he then used as missiles to throw at zoo visitors, apparently in a 'very agitated' state, and similar behaviour is not uncommon among zoo primates^{15,16}.

1.6. Effect of transport

Travelling is not a rare or exceptional event, but an intrinsic part of the animals' way of life during the touring season,. European circuses spend on average 8.5 days in one location and 100 miles between performance destinations¹. Constant travel contributes to the difficulty in providing a larger and more enriched environment and is in itself a known stressor for most animals, either domesticated or non-domesticated¹⁷.

Factors that contribute to stress are forced movement for loading and unloading, handling, noise, confinement, the motion of the cage and the vehicle, and unfamiliar external surroundings. Prodding, hitting and shouting may be used to get the animals to move in or out of cages and in some circuses internationally there is video evidence of routine violence being used to get animals to move⁶. On the day of travel, the animals will often spend the whole day on the vehicle in their small cages. Elephants are chained during transport.

Non-domesticated animals show behavioural and physiological signs of stress when transported. Zoo tigers have altered levels of stress hormones for up to 6 days even if they have travelled on previous occasions and for up to 12 days on the first occasion they are transported¹. In 2004 the Scientific Panel of the European Food Safety Authority (EFSA) reported on the welfare of both domestic and non-domestic animals in transport and concluded that 'many aspects of welfare assessment have not been included' in the existing scientific research on the transport of circus animals and that the statement that circus animals become habituated to transport (and therefore suffer no ill effects) 'has not been scientifically documented'¹⁸. In general, the panel concluded that transport can 'substantially affect' the welfare and health of animals and recommended that, 'Transport should therefore be avoided wherever possible and journeys should be as short as possible'¹⁷.

Circus animals are often dangerous animals and are being transported and exhibited in close proximity to the general public, using temporary facilities. This means that they have to be more severely restricted in their movement than would be the case even in a zoo, as well as being more frequently moved and handled.

1.7 Training and performance

Circus tricks are essentially unnatural behaviours of the animal, in the sense of being behaviour that the animal would not engage in without specific training, persuasion or, in some cases, intimidation or force. This is of course why the tricks were invented – to amaze the paying public. Elephants do not naturally balance with all four feet on a tub, perform ‘headstands’ or sit on a stool (see, for example, the photograph of elephant Anne in 2003 in Reference 2). Unlike training a companion dog to walk to heel in a busy street, circus training is not done for the benefit of the animal. We do not know of any justification for the view that training for up to a couple of hours per day is a useful compensation for the 90% of the time that the animal is confined, tethered or chained.

Circus trainers claim to use positive training methods for the most part, that is, to work with the natural behaviour of the animal and use reward rather than punishment, but they also admit to using ‘negative reinforcement’. Training normally takes place out of the sight of the public. Revelations by a retired trainer of elephant calves at Ringlings Circus, one of the largest elephant breeding and showing facilities in the United States, were published by the *Washington Post* in 2009. Photographs of what were described as classic professional elephant training methods showed a calf being encouraged to stand on his hind legs by using a bullhook (elephant hook), a stick incorporating a metal spike at one end. Calves were trained to lie down by being trussed with ropes and pulled off balance by several people so that they fell to the ground on their heads or sides, at the same time a bullhook being pressed to their skin. Forceful manipulation with ropes, and the use of bullhooks, was also used to train them to sit up, sit on a tub, stand on two legs, salute and do headstands. Electric prods were occasionally used, according to the report. Training also involved separating calves from their mothers at an early age (18 – 22 months old). In 2004 an 8-month old calf was destroyed after injuring a leg tumbling off a performance tub during ‘pre-training.’¹⁹

Because circus animals are being taught what are essentially unnatural tricks, training must be difficult and it is reasonable to suppose that this increases the likelihood that pain, fear or force will be used. In some zoos the use of violence and fear to control the animals may be standard practice. Video footage of circuses internationally has shown what appears to be casual and routine violence used in training and performance. Hooks and goads are used that may not be visible to the public during performances, as well as cracking whips which elicit a visible fear response from big cats and horses.⁶

Video evidence of instances of violence and cruelty towards animals that shocked the public resulted in convictions of experienced British circus owners and trainers in 1998-1999.²⁰ Film footage has shown elephants on tour in a British circus being beaten by staff member (who was dismissed after the footage was made public) and of the use of a goad during training and performance.^{13,14} The essential point is that violence and cruelty are a higher

risk in circuses than in the majority of zoos for a number of reasons: these include the need for constant movement to and from cages, training and performance in very *ad hoc* conditions and the fact that the circus's income depends on the animals performing unnatural tricks for the public as required.

1.7 Public opinion

We believe that public opinion is entirely ready to see a ban on wild animals in circuses and that a large majority would support this action. An opinion poll carried out for Advocates for Animals indicated that 83% of the Scottish public supported a ban on the use of some or all animals in circuses³⁰. Because the number of wild animal touring acts has decreased so much already since the 1990s, many people in Britain probably believe that wild animals are already banned from circuses and some are shocked when a wild animal makes an appearance in the ring²⁰. The decline in the popularity of wild animal tricks has coincided with hugely increased public interest in the conservation and natural behaviour of animals in the wild, as evidenced by the audience for wildlife documentaries. In this sense the public has voted with its feet and wild animal acts are, deservedly, a dying industry that would not be missed by most people in modern society.

As has been pointed out by other organisations, there were 6 Early Day Motions in the Westminster parliament between 1998 and 2006 calling for an end to wild animals in circuses, the last one obtaining 144 signatures. Of 318 local authorities surveyed by ADI, 39% prohibit circuses with animal acts performing on public land (17% banned only wild animals) and only 22.5% continued to allow animal circuses.²¹ These bans are clearly in response to public concern. In a MORI poll of 2005, 80% of respondents supported a ban on wild animals in circuses (and 65% supported a ban on all animal acts).²¹ In terms of moral weight, we believe that the disinterested view of the majority of the public deserves more attention than the views of the very few circuses still utilising wild animals.

1.9 Society's ethical views on animal welfare

In common with other animal protection organisations and some other scientists^{1, 21-23} we believe that the very limited evidence taken into consideration by the Circus Working Group (CWG) resulted in a flawed report and faulty conclusions, in particular that²⁴:

- 'There appears to be little evidence to demonstrate that the welfare of animals kept in travelling circuses is any better or worse than that of animals kept in other captive environments,' and
- 'such a decision [i.e. to ban wild animals in circuses] must be based on scientific evidence, and other considerations are extraneous, and therefore unlawful....'

On the first point, we believe there is ample evidence, both scientific, eye witness and photographic, that wild animals are more likely to suffer in travelling circuses than in, for example, most appropriately regulated zoos. But in fact the comparison with zoos is only partly relevant, since the remit given to the CWG by the Minister was simply to advise whether travelling circuses could 'readily' meet the welfare needs of wild animals (Ministerial statement cited in Radford Report, 2.2.1)²⁴. We believe the evidence that their needs are not and could not easily be met, even with the best intentions of circus owners, is overwhelming.

On the CWG's second conclusion, we emphasise that judgments about animal welfare involve public morality as well as scientific evidence (where that is available). Society today would not require scientific studies to be conducted to prove that bear-baiting is unacceptable. Society's views should be taken into account in the decision on whether it is appropriate to continue to allow wild animals in circuses.

Regarding the relationship between science and society's judgments, leading animal welfare scientists have commented that: 'Scientific research on 'animal welfare' began because of ethical concerns over the quality of life of animals, and the public looks to animal welfare research for guidance regarding these concerns. The conception of animal welfare used by scientists must relate closely to these ethical concerns if the orientation of the research and the interpretation of the findings is to address them successfully'²⁵.

Animal welfare scientists also accept that: 'When scientific evaluation of welfare has been carried out, there remains the moral question of how poor welfare should reach before it is regarded as unacceptable. This is an issue where the farmer [or, in this case, circus owner], the veterinary surgeon, the welfare research worker or the member of the general public are equally entitled to have an opinion'²⁶.

With this in mind, while we believe the evidence of unacceptably poor welfare is overwhelming, we agree with the conclusion of the CWG report that the decision on the future of wild animal circuses should be a 'political decision'²⁴ and one that is consistent with modern views on acceptable treatment of wild animals.

In support of this, we further suggest that using wild animals in circuses does not engender compassion towards, or understanding of, animals, but instead reinforces outmoded attitudes concerning the acceptability of exploiting or dominating other creatures for entertainment. These are not attitudes that can be beneficial for animals or for human society in the 21st century.

1.10 The international dimension

In many respects, Britain has been a pioneer and a standard-setter on animal welfare both in Europe and worldwide for several decades. In the present case, however, a number of countries including Sweden, Austria, Finland, New Zealand and Bolivia have already banned some or all wild animal species from circuses² while Britain has not yet taken action to end.

Investigations in the late 1990s of five foreign circuses that used animals supplied by UK circus businesses indicated that welfare standards were at least as bad outside the UK⁶. Animals originating in the UK have been found being used in Europe, the United States, Japan and elsewhere in the Far East²⁷.

The international dimension means that it is not sufficient to take decisions based on the number of wild animals and the training, performance and handling methods that are currently being used in the UK. European circuses using wild animals could choose to tour in Britain and more animals, of different species, could be imported by existing circuses at any time (3 performing elephants were imported to a British circus in 2009).

We would like to see the UK, as one of the European Union's most influential members, take a lead by banning wild animals in circuses and sending a clear message internationally that this type of animal exploitation is no longer acceptable.

1.11 The need to end all animal acts in British travelling circuses

While we accept that the suffering of wild animals in travelling circuses may be even greater than that of domesticated animals such as horses, we believe that the use of any animals in travelling circuses either for exhibition or performance puts their welfare at unacceptable risk and should be phased out.

2. Additional specific responses under Option 1

Q4. If a complete ban were introduced, what do you think should happen to the animals at the time the ban becomes effective?

Animals must be provided with a secure, long-term home, and not sold to other circuses or entertainments. Re-homing would be carefully planned by the relevant animal welfare organisations to ensure that the sanctuaries or zoos that took the animals were able to offer alternative placements that were likely to be permanent (lifetime) and had none of the characteristics (travel, public performance, inadequate space and environmental enrichment) that make circuses unsuitable places for wild animals. It is important that the re-homing of animals is under the control of animal welfare organisations and not the circuses themselves, and we understand that the RSPCA has already offered to facilitate this.

The history of what happened to some of the animals sold as a result of the Chipperfield circus cruelty allegations in 1998-1999 indicates that animals may be traded on more than once, each involving a stressful relocation. One elephant who was the subject of the 1998 criminal conviction was sold to Valwo Zoo in Spain and then transferred on to Wroclaw Zoo in Poland. Another elephant who was a subject of the 1999 conviction was originally sold to Dudley Zoo and in 2003 transferred on the Planet Sauvage, a zoo in Nantes, France²⁸.

Q3. If a complete ban were introduced, how much time do you think travelling circuses should be given to stop using their wild animals?

The main consideration from the point of view of animal welfare should be how long it would take for the relevant animal welfare organisations to set up arrangements for re-homing the animals. We understand that the RSPCA has recommended a 6-month period and we are happy to support their recommendation.

Q5. Do you think that travelling circuses should be prevented from obtaining any further wild animals?

Certainly it would be necessary to ban acquisition or breeding during the phase-out period.

Q6. If a complete ban were introduced, how often do you think travelling circuses should be inspected to ensure compliance?

This is a matter for law enforcement. It is also likely that members of the general public would become aware if wild animals were being used and would report this to the local authority or to animal protection organisations²⁰.

Q7. How do you think a complete ban on wild animals might affect the revenue of the travelling circuses affected?

Circuses that use wild animals have acquired an association with cruelty to animals in the minds of many members of the public. The fact that wild animals were guaranteed never to be used would probably increase a circus's popularity and revenue and there are, of course, many popular and successful circuses that do not use any animals.

3. Comments on Options 2 and 3 (self-regulation and statutory regulation)

We believe that the only way to prevent wild animals suffering in travelling circuses is to prohibit circuses from owning or using wild animals (Option 1). Statutory regulation would be tinkering around the edges of activities that are fundamentally inimical to animal welfare, therefore we would not encourage DEFRA to start looking at travelling times, space allowances, etc.

4. Comments on Option 2 (self-regulation)

We see no reason to think that self-regulation would be effective and do not consider this a viable option.

As an example of the potential for self-regulation to be ineffective, we cite the Advertising Standards Authority (ASA) adjudication of 8 November 2006. A claim that Bobby Roberts Super Circus had been 'Voted No.1 for Animal Care' was printed on the circus's leaflets and posters. The ASA upheld a complaint that the claim was misleading because it gave the impression that the award had been given by a body that was in a position to assess welfare, such as an animal welfare organisation. In fact the award had been given by a trade body five years previously, on the basis of an individual's opinion and without any vote. The ASA ruled that the claim breached the advertising Code's clauses on 'substantiation' and on 'truthfulness'²⁹ – but it had persisted for some time prior to the ruling.

5. Comments on Option 3 (Statutory regulation)

We cannot see how statutory regulation could remove the fundamental and inherent welfare problems of a travelling circus, listed and discussed above under Section 1 (confinement, travel, restriction of behaviour, performance stress, etc.).

Travelling circuses would be very difficult to regulate effectively, with the resources that are likely to be available. Regulators would need to monitor conditions of travel, housing,

handling, training and performance on a day-to-day basis during the touring season, which is unlikely to be practical. Indeed, most of the detailed information about animal welfare in circuses to date has been uncovered by patient, long-term investigations by animal protection NGOs rather than by regulators, veterinarians or scientists.

A case study is provided by our own monitoring of the use of wild animals by the Bobby Roberts circus on its tour of Scotland in 2009, which included performances at Galashiels, Edinburgh, Perth, Milngavie, Cardross, Kilmarnock, Stevenston, Ayr and Dumfries during June and July. The circus did not publish its tour schedule in advance, presumably because of increasing public opposition to animal circuses. We focused on the use of the single elephant Anne, who is now elderly and arthritic (and, as noted, keeping female elephants singly is contrary to international zoo guidelines). Anne was used for exhibition during the performance interval for members of the audience to photograph, usually at a charge of £5, and performed a trick of eating candyfloss.

Our major concern was that the circus appeared to interpret this use of Anne as 'non-performing', whereas on any reasonable interpretation she was being used as part of the circus act and was in close contact with the paying public. As a result, the circus on more than one occasion did not make it clear to the licensing local authority that an elephant would be part of the performance (as opposed to merely travelling with the circus).

The Bobby Roberts visit to Perth illustrates the difficulty that local authorities encounter in enforcing their own policies. Perth and Kinross Council does not lease its land to circuses with wild animals and informed Advocates for Animals that: "The Council has received assurances from the circus that it does not include any wild animals in its performances. [...] The Council has additionally requested that no monies be taken from members of the public for photographs of them posing with the elephant, and has been assured the elephant is a non-performing animal.' Despite this, visitors to the circus on 18 June 2009 saw Anne being exhibited for photographs at a charge of £5 each. The public were also charged to see animals, including Anne and a camel, in the tent after performances. These apparent breaches of lease conditions occurred even after Council officers had visited the circus during its stay in Perth²⁰.

If circuses continue to use wild animals, there may be a greater potential for statutory regulation of circus winter quarters. At present, winter quarters are not even required to meet the same standards as regulated zoos and should at least comply with the guidelines of the British and Irish Association of Zoos and Aquariums (BIAZA).

6. Additional specific responses under Options 2 and 3

Q10. Do you think that travelling circus employees undergoing training would be an appropriate measure to help raise the standard of welfare of wild animals in circuses?

As stated, we believe that the use of all wild animals in circuses should be banned. The welfare problems inherent in travelling circuses are too fundamental to be resolved by staff training.

In general, however, all stockpeople or others who have the care of animals in any commercial area should have undergone suitable training and certification. Training should always be delivered at least in part by advisers qualified specifically in animal welfare and who are entirely independent of the industry involved.

Q11. Do you think that circus owners should have to produce, on demand, veterinary records for the wild animals performing in their circus?

Yes. As in other commercial areas, independence is essential. It would be important that the veterinarians involved were not employed directly by the operators or the industry, in order to avoid conflicts of interest and to ensure their professional independence.

Q12. Do you think that visits from an appropriately trained inspector would safeguard the standard of welfare for wild animals in travelling circuses?

In any regulatory regime inspection is necessary, but we do not believe that this measure alone would safeguard the welfare of wild animals in travelling circuses. Understandably, at present, there is little specialist knowledge or expertise regarding wild animals among the local authority animal health officers who are normally tasked with carrying out inspections and we are aware that they tend to rely on information and assurances given them by the circus operators. Training would have to be very specific – and very costly – to provide the specialist knowledge required and we are concerned that in practice this would not occur.

We do believe that inspections should be carried out during the phase-out period to ensure that no additional wild animals were bred or acquired and that standards of care were not deteriorating.

Q14. Do you think that inspectors should undertake unannounced inspections of travelling circuses?

Yes, during the phase-out period. Announced inspections in any industry pose obvious questions as to whether the inspector sees the 'normal' conditions and handling of the animals. This would apply equally to the circus industry. In the case of travelling circuses, inspection would be particularly difficult because of the touring schedule- one of the main reasons why regulation would not be sufficient to safeguard animal welfare and a complete ban is required.

Q15. Do you think that a code of practice for keeping wild animals in travelling circuses could effectively safeguard their welfare? If yes, who do you think should write such a code?

Any industry that has the care of animals should have a code of practice, preferably one issued by an independent authority such as DEFRA. However, we do not believe that in the case of travelling circuses a code of practice would be sufficient to safeguard welfare. Codes of practice are generally based on best practice within an existing industry, rather than requiring substantial changes in existing practice. Travelling circuses by their nature involve confinement for long periods in unsuitable accommodation and severe restriction of

behaviour and we do not believe that these fundamental problems could be addressed by a code of practice.

Q16. Do you think that the hours and the environment in which circus animals travel should be restricted? If yes, what should these restrictions be?

In principle, travelling times should be reduced as much as possible. We are sceptical, however, that a journey limit would make a major improvement in the animals' lives. Investigations have shown that animals may be confined on beastwagons all day even if the circus is travelling for only a few hours⁶.

Q19. Do you think the use of no more than 50 wild animals in travelling circuses merits action? If yes, what action?

In view of the small numbers of wild animals currently touring in the UK, a complete ban would be more cost-effective from the point of view of public finances than the creation and running of an expert and effective regulatory and inspection system for the long term.

Animal welfare concerns the state of the individual as it attempts to cope with its environment. Each of these animals is a sentient individual whose welfare needs are not being met, and cannot be met, in a circus environment. It is therefore entirely proper, in our view, to legislate under the Animal Welfare Act (and we hope, in due course, also under the Animal Health and Welfare (Scotland) Act 2006) to end their use in circuses.

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Head of Legal, Procurement and Regulatory Services
East Ayrshire Council
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APPENDIX 3

31 May 2010

Your ref.: SMC/GK

Dear Sirs,

Civic Government (Scotland) Act 1982
Application for Grant of Public Entertainment Licence for Circus to Visit Scott Ellis Playing Fields,
Kilmarnock 13-18 July 2010

I refer to the above and your letter of 26 May 2010.

First of all, I will be attending the Licensing Panel meeting on Wednesday 9 June 2010 at 10.00 AM as a representative of Bobby Roberts Super Circus ("Circus") and would like to be heard. My submission will include the matters set out in this letter. I would be obliged if you could place this letter before the Panel, for it to be taken into account.

Second, my written response to the objections received is as follows:

- The objections make numerous references to the use of wild animals (an elephant and a camel) in the Circus. This licence application does not extend to the use of wild animals and wild animals will not be used by the Circus at this site. Consequently, any and all the references to wild animals are irrelevant and must be ignored by the Panel in reaching its decision. Indeed, if the Panel takes into consideration any of these facts, there is a risk that the decision will be one which is improperly reached.
- I can confirm that the only animals that will be used in the Circus will be horses, ponies, a mule and one dog. All of these animals hold current and valid passports and vets' certificates. All of them are and will be kept in good and appropriate conditions throughout their stay. All of the animals, and the stables in which they live, will be open to inspection by the relevant authorities and indeed, because there is nothing to hide, by the public following each show.
- The objections contain no evidence whatsoever of any previous licence breaches, merely unsubstantiated opinion and prejudice. I can confirm, on behalf of the Circus, that the terms and conditions of all relevant licences and permits have been complied with in full and that there has been no enforcement or other like action taken in Kilmarnock or in any other Scottish local authority in this regard.

I would like to add, that the Roberts family have always had good and close relations with all the Scottish local authorities, including East Ayrshire, which will be reflected in your records of previous applications and licences.



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Finally, I would like to thank you and the panel for your time and attention in dealing with this matter.

Yours faithfully,

A handwritten signature in cursive script that reads "M. Roberts". The signature is written in black ink and is positioned above the typed name.

Moira Roberts
for and on behalf of
Bobby Roberts Super Circus



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1st June 2010

Dear Sir /Madam

Re: Bobby Roberts Circus – Application Temporary Public Entertainments License

I would like to express my thoughts and opinions in relation to the circus application hearing. My role is home based and I support the Roberts family by booking the tour route and taking on some of the circus publicity.

As you are aware Bobby Roberts Circus has visited Kilmarnock, Scott Ellis Playing Fields on numerous occasions with our last visit in July 2009.

In June 2008 I was contacted by Derek Spence from the Council advising that they had to undertake a review of wild animals / circus animals on council land.

It was decided by the Council to no longer allow 'wild' or 'exotic' animals to be present on council owned land whether indeed these animals actually performed in the circus or not. I am aware that potentially pressure was put upon the council to reach this decision by the Animal Rights Charities looking at the amount of letters received during our 2008 application which I have copies of. As your report confirms dated 26 June 2008 the council had not received any letters of complaint regarding our circus from members of the public / local residents, only from Advocates for Animals.

I together with the Roberts family accepted and respected the decision from the council as we wished to maintain a good working relationship with East Ayrshire Council as we have enjoyed in the past.

Our reason for wishing to return again to Kilmarnock is the level of support we do indeed receive from the local residents and families. Naturally as you can imagine if the level of business was not sufficient then we would not be wishing to return. In fact our circus has always received excellent audience attendance, good support from the local press and a good working relationship with the Licensing Department, namely Gillian Kuhn, Derek Spence and Jessica Collins.

As you are aware, we applied correctly for our License we then submitted our Public Notice to the three newspaper titles and then awaited the 21 day period.

We were informed of two objections at the end of the period, one by a local resident Mrs Rankin of Kilmarnock concerning welfare issues and the second complaint by the Animal Welfare Group Advocates for Animals who are not based in the area and obviously have been contacted by Mrs Rankin of Kilmarnock to add their weight to her objection. This campaign group have been joined by CAPS who are based in Manchester to add further support.



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I question the objections as clearly the two animals in question will not be present on council owned land as per our contract and agreement, as indeed exactly the same as in 2009, so personally I fail to see why really this has to go to a hearing.

I fully appreciate that policies have to be carried through, but in all truth you have received one actual (local) resident objection along the lines of animal welfare issues, the other a 'campaign group' from another area and you are already aware that the 'offending' animals will not be present yet they make much reference to them in their documents..

As I said to Gillian during a telephone conversation, should you have received 5 plus local objections, then I fully understand the reason for the hearing.

You are also aware that at any time your Animal Welfare Officers are free to inspect and call upon the circus when in Kilmarnock together with other council officials, again proving that Mr Roberts has nothing to hide with his open door policy. He would actively encourage visits by Animal Welfare Officers.

Bobby Roberts Circus is a perfectly legal organisation and operates to strict guidelines and our own controls.

Our animals receive a well balanced diet with nutritional foods, are inspected regularly, exercised and extremely well cared for, Bobby Roberts are totally proud of their animal husbandry.

I certainly do not disagree with Campaign Groups such as the two mentioned but we would urge them to actually spend more time and resources available to those who do clearly neglect animals up and down the UK. I am sure you too have witnessed via the media some terrible reports of horse and pony neglect let alone house pets.

We respect that they have their right of opinion concerning animals in circuses and if there are protestors at the circus venue (in any town) we do stay back, let them do what they have to do and let the public make up their own mind.

What we do not appreciate though are lies being told. The documents that the group have sent you have been very carefully compiled to naturally paint a bad image, they contain many lies. The group admit to 'watching' the circus, following it during the touring season etc and hoping that they can capture probably an innocent image which of course could be turned into some kind of sensationalist abuse story.

I sincerely thank you for reading my personal views and hope that the license will be issued and any concerns can be inspected once on site. It would be a shame to deny the good people of Kilmarnock the chance to make up their own minds as previously they have indeed done and voted with their feet in support of traditional circus with excellent animal care.

Yours faithfully



Antony Staines
Route Co-ordinator