

Report of the Strategic Director - Place to the meeting of Executive to be held on 3rd April 2018.

Subject:

BM

Highway Policy Documents

Summary statement:

This report details revised policies and procedures that are to be adopted by the Network Resilience and Management Team in relation to Highway Enforcement and Operational Matters from 1st April 2018

Steve Hartley
Strategic Director - Place

Portfolio:

Regeneration, Planning and Transport

Report Contact: Darren Badrock
Phone: (01274) 437420
E-mail: Darren.badrock@bradford.gov.uk

Overview & Scrutiny Area:

Environment & Waste Management

1. SUMMARY

- 1.1 This report details revised policies and procedures that are to be adopted by the Network Resilience and Management Team of the Councils Planning Highways and Transportation service in relation to highway enforcement and operational matters from 1st April 2018

2. BACKGROUND

- 2.1 The responsibility for highway enforcement issues was fully transferred to the Network Resilience and Management (NRM) Team in April 2017, following the restructure of the Planning, Transportation and Highways Service.
- 2.2 As a result of this transfer a comprehensive review of enforcement and operational policies and procedures has been undertaken during the 2017-2018 financial year.
- 2.3 This review has been undertaken to ensure that staff resources are managed in line with current operating practices.
- 2.4 Revised policies are being developed in line with existing and new legislation and the Councils approved Scheme of Delegation.
- 2.5 Documents are being developed that outline the case for each policy, relevant legislation and clear transparent guidance for the operation of that policy within the legislative frame. Four policies are outlined in Appendix 1, with further documents to be added at a later date.
- 2.6 Each policy is written as a standalone document within, forming the overall operating procedures of the enforcement arm of the NRM team.
- 2.7 Approved documents are to be available to officers, members and the general public (via the Council's website) to increase understanding of the need for enforcement and the operational procedures.
- 2.8 Policy Documentation will be reviewed annually.

3. OTHER CONSIDERATIONS

- 3.1 Each area of policy is to be reported on annually so that trends in enforcement issues may be considered as a part of the annual budget setting process for the Councils highways teams.
- 3.2 Each policy includes an informal procedure to follow before formal enforcement action is undertaken.
- 3.3 Major enforcement actions – those involving significant legal processes, communications and/or reputational risks - will be briefed to the Portfolio Holder for Regeneration, Housing, Planning and Transport on a fortnightly basis.
- 3.4 Local Ward Councillors will be briefed on major enforcement actions within their wards.

3.5 Policies may be reviewed as legislation changes.

4. FINANCIAL & RESOURCE APPRAISAL

4.1 The cost of enforcement actions is initially borne by the Council with costs recovered from the relevant party if they have the means to pay and ordered by the Magistrates Court. Such costs will not wholly be recoverable

4.2 Fines levied from criminal prosecutions are collected by the Court and are paid to the treasury. The Council may only recover costs as part of any criminal prosecution if the defendant has the means to pay.

4.3 The Highways Act 1980 (the 1980 Act) is specific in stating that any recovered charge or fee is to be retained and used to pay for the administration of the enforcement, the cost of works and the betterment of the highway network, in that order.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

5.1 Effective communications are essential when dealing with enforcement actions as they represent a reputational risk to the Authority.

6. LEGAL APPRAISAL

6.1 Any enforcement action can only be undertaken in accordance with existing statutory provisions and where sufficient evidence exists to pursue either civil enforcement action i.e. the issue of statutory notices requiring a person to act in accordance with the notice OR a criminal prosecution for failing to comply with a notice or a particular statutory provision.

6.2 In any event the Councils legal service will be consulted to establish the sufficiency of evidence and in relation to a proposed criminal prosecution if it is in the public interest to prosecute.

6.3 It is worthy of note notwithstanding the Council has power to prosecute criminal offences under the Local Government Act 1972 it is not obliged to do so. An out of court disposal by way of a Fixed Penalty, Simple Caution, written warning are all possible legitimate alternative courses of action.

6.4 It is the case that in certain circumstances where enforcement action can be taken by the issue of notices to " a person " (which includes an incorporated or unincorporated body) an appeal lays to the Magistrates court which will require additional departmental and legal resource (see paragraph 4 above).

6.5 The policy documents at appendix A refer to amongst other Acts possible enforcement action under the Highways Act 1980, the Local Government (Miscellaneous Provisions) Act 1982, the New Roads and Street Works Act 1991, the Traffic Management Act 2004, and the Antisocial Behaviour, Crime and Policing Act 2014.

- 6.6 The majority of criminal offences in relation to highways enforcement matters carry a penalty of a fine and are triable only before the Magistrates Court. In any event all criminal offences must be proved beyond reasonable doubt.
- 6.7 Notwithstanding the offences will be viewed by the Court as less serious criminal offences nevertheless some are legally complex.
- 6.8 Careful marshalling and presentation of evidence will be required in accordance with the existing statutory provisions namely the Magistrates Court Act 1980, the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigation Act 1996 (disclosure duties), the Human Rights Act 1998 and the Criminal Justice Act 2003.
- 6.7 Criminal investigations and presentation in court is a complex area of law and enforcement officers are likely to require additional training.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

- 7.1.1 Equality impact assessments have been undertaken for enforcement policies and are included in Appendix B.

7.2 SUSTAINABILITY IMPLICATIONS

- 7.2.1 There are no sustainability implications arising from this matter.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

- 7.3.1 There are no greenhouse gas emission implications from this matter.

7.4 COMMUNITY SAFETY IMPLICATIONS

- 7.4.1 Effective enforcement of Highway policy has positive benefits for the safety of the local community.

7.5 HUMAN RIGHTS ACT 1998

- 7.5.1 With regard to the Events Policy, Bradford MDC has a duty to facilitate peaceful process and will cooperate with event organisers in conjunction with the Police.
- 7.5.2 The HRA1998 creates a series of absolute and conditional rights to all citizens. Given the absolute right to a fair trial, the investigation and presentation of criminal offences before the Criminal courts must be in accordance with existing statutory provisions as mentioned in Para.6 above.

7.6 TRADE UNION

- 7.6.1 There are no trade union issues arising from this matter.

7.7 WARD IMPLICATIONS

7.7.1 Ward members will be advised of significant enforcement issues in their areas

8. NOT FOR PUBLICATION DOCUMENTS

8.1 None

9. OPTIONS

9.1 Executive may wish to offer advice and guidance to officers with regard to policy documentation and implementation and request changes as deemed necessary

9.2 Executive may wish to defer individual policies to enable further briefings as necessary.

9.3 Executive may decide to adopt the proposed policies and details of their implementation and operation.

9.4 Alternatively, Executive may decide not to approve the policies and details of operation and recommend an alternative approach to Highway Enforcement.

10. RECOMMENDATIONS

10.1 That Executive approves the initial Highway Enforcement Policy Documents with effect from the proposed implementation date of 1st April 2018

10.2 That responsibility for the determination and adoption of additional future enforcement policies and the alteration/adaptation of previously approved policies is delegated to the Strategic Director of Place, in consultation with the Portfolio Holder for Regeneration, Planning and Transport and the City Solicitor.

11. APPENDICES

11.1 Appendix A - Highway Enforcement Operational Policies.

11.2 Appendix B – Equality Impact Assessment.

11.3 Appendix C – Typical Examples of Enforcement Issues.

12. BACKGROUND DOCUMENTS

12.1 Highway Policy Equalities Impact Assessments.

12.2 Town Police Clauses Act 1847

12.3 Local Government Act 1972

12.4 Health and Safety at Work Act 1974

- 12.5 Highways Act 1980
- 12.6 Local Government (Miscellaneous Provisions) Act 1982
- 12.7 The Town and Country Planning Act 1990
- 12.8 The New Roads and Street Works Act 1991
- 12.9. The Human Right Act 1998
- 12.10 The Antisocial Behaviour Act 2003
- 12.11 Traffic Management Act 2004
- 12.12 The Clean Neighbourhood and Environment Act 2005
- 12.13 Antisocial Behaviour, Crime and Policing Act 2014

Appendix A

City of Bradford Metropolitan District Council

Highway Enforcement Operational Policies



Contents

Page

Highway Enforcement Protocols/Customer Service Pledge	3
Community Protection Notices	6
Clothing Banks	9
Nuisance Vehicles on the Public Highway	13

Planning Transportation and Highways – Policy Document Highway Enforcement Protocols/Customer Service Pledge

Author Lindsey Greenwood
Revision Number 1
Date of Last Revision
Review Date

1 Background

A major part of the work that the Network Resilience team deals with is based on issues/complaints received by Councillors, members of the public and colleagues. Bearing this in mind it is imperative that we have a fair, consistent and transparent approach to such matters whilst ensuring we maintain a high level of professional conduct at all times.

2 Council Position

The Council has numerous policies, frameworks and codes of conduct in place for staff representing the Authority.

As such, the stated position of the Authority is that all employees should adhere to these incorporating the following standards of conduct and best practice.

Relevant Authority Policies, Procedures and Frameworks

Employee Code of Conduct

Councils Equal Rights and Diversity Statement

Data Protection Act

Information Security Policy

Lone Working Framework

Health and Safety at Work Policy - which is in line with the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999

Bradford Council Plan

4 Guidance for Officers

All members of the Network Resilience must apply the principals of the Councils Employee Code of Conduct whilst carrying out the duties of their role. Failure to do so may result in further action being taken.

All employees will adhere to the agreed policies and procedures of the Network Resilience team, ensuring a fair and consistent approach is followed.

The Network Resilience team will endeavour to deal with all issues and complaints as soon as is reasonably possible in line with the team policies and procedures.

All issues/complaints are considered serious and are a priority in terms of a resolve however; in certain situations priority will be given to cases which impose an immediate danger to members of the public or raise serious safety concerns.

Whilst investigating issues/complaints the Network Resilience team will obtain and collate evidence, keep an accurate log of all actions taken and record all interactions with Councillors, members of the public and colleagues which are relevant to the case (e.g. names/dates/time/details of telephone conversations, meetings, actions of members of the public when out on site, emails, copy letters, photographs etc.) as this may form evidence for future enforcement action.

Whilst investigating complaints the Network Resilience team will endeavour to take a proactive approach to other possible enforcement actions/issues within the same vicinity and deal with them accordingly so as to prevent future issues.

All information and data will be retained securely in line with the Authorities Information Security Policy.

In the event of a conflict of interest (e.g. an employee having a personal/vested interest in a case) the said employee will notify the Network Resilience Principal Engineer immediately so the situation can be risk assessed and if appropriate, reassigned to another member of the team.

Due to the nature of our business we fully expect to have unsatisfied parties when dealing with complaints/issues and not all outcomes will necessarily be in favour of the complainant however; any decision made will be impartial and based on the relevant legislation, laws, policies and procedures and supported by the evidence collated.

Feedback to the majority of complainants will be provided via updates on the Councils Insight system. On occasions, if deemed appropriate, a member of the team may speak to the customer directly in which case notes of the conversation should be recorded.

Information recorded or relayed to other parties will be sympathetic to the principles of the Data Protection Act.

The Network Resilience team will welcome and react positively to customer feedback in order to improve its services.

No prosecutions or legal proceedings should commence without the consent of the Network Resilience Principal Engineer who will scrutinise the facts and supporting evidence. If necessary further information/evidence may be required to strengthen the case. The final decision on how such cases are moved forward is that of the Principal Engineer in conjunction with the Councils Executive Member for Regeneration, Planning and Transport.

We will brief and update the Councils Executive Member for Regeneration, Planning and Transport as well as local Members on cases of interest as and when deemed necessary (either directly or via the Network Resilience Principal Engineer); especially when dealing with more contentious and/or politically sensitive cases.

All employees should adhere to the principles of the Councils Equal Rights and Diversity Statement; being sympathetic to and recognising the diversity of the people and communities we are committed to support (in line with the priorities, principles and behaviours of the Bradford Council Plan).

In the event of abusive, persistent or vexatious complainants the case should be referred to the Network Resilience Principal Engineer. The Network Resilience Principal Manager will try to resolve the matter however; in some instances the matter may be referred to the Councils Complaints Manager and Assistant Director. If appropriate the complainant will be informed that there is no information or further evidence that can be obtained to affect the Councils position on the matter therefore the complaint cannot be pursued further.

Employee health and safety is paramount therefore all employees should be conscious of and adhere to the principals of the lone working framework and health and safety policy.

All working times should be logged on your outlook calendars when not in the office (start, lunch, finish) and when in the office the signing in book must be used. This is in line with the Councils Flexible Working policy, Lone Working framework and Health and Safety Policy.

In the event of being approached directly by a complainant whilst on a site visit a record must be made. If it is felt an employee's safety is compromised the employee should walk away and contact the police if necessary. In some instances it is advised that site visits are only conducted if two members of the team are present.

Planning Transportation and Highways – Policy Document

Community Protection Notices - Highway Enforcement

Author Darren Badrock
Revision Number 1
Date of Last Revision
Review Date

1 Background

This document sets out information relating to Community Protection Notices (CPN), and how they are applied to Highway Enforcement Issues.

2 Council Position

Persistent nuisances and anti social behaviour relating to Highways Issues can have significant effect on the local population in terms of both health and safety matters as well as overall quality of life.

Whilst the primary legislation for Highway Issues is the Highways Act (1980), enforcement can be supplemented by the use of Community Protection Notices which give further tools to officers to deal with more persistent issues should an initial informal/informative approach fail.

3 Legislation

- Highways Act (1980)
- Antisocial Behaviour, Crime and Policing Act 2014 (Part 4)

4 Guidance for Officers

Before a CPN is considered, the relevant procedures to resolve the issues defined in the Authority's highway policies should be completed.

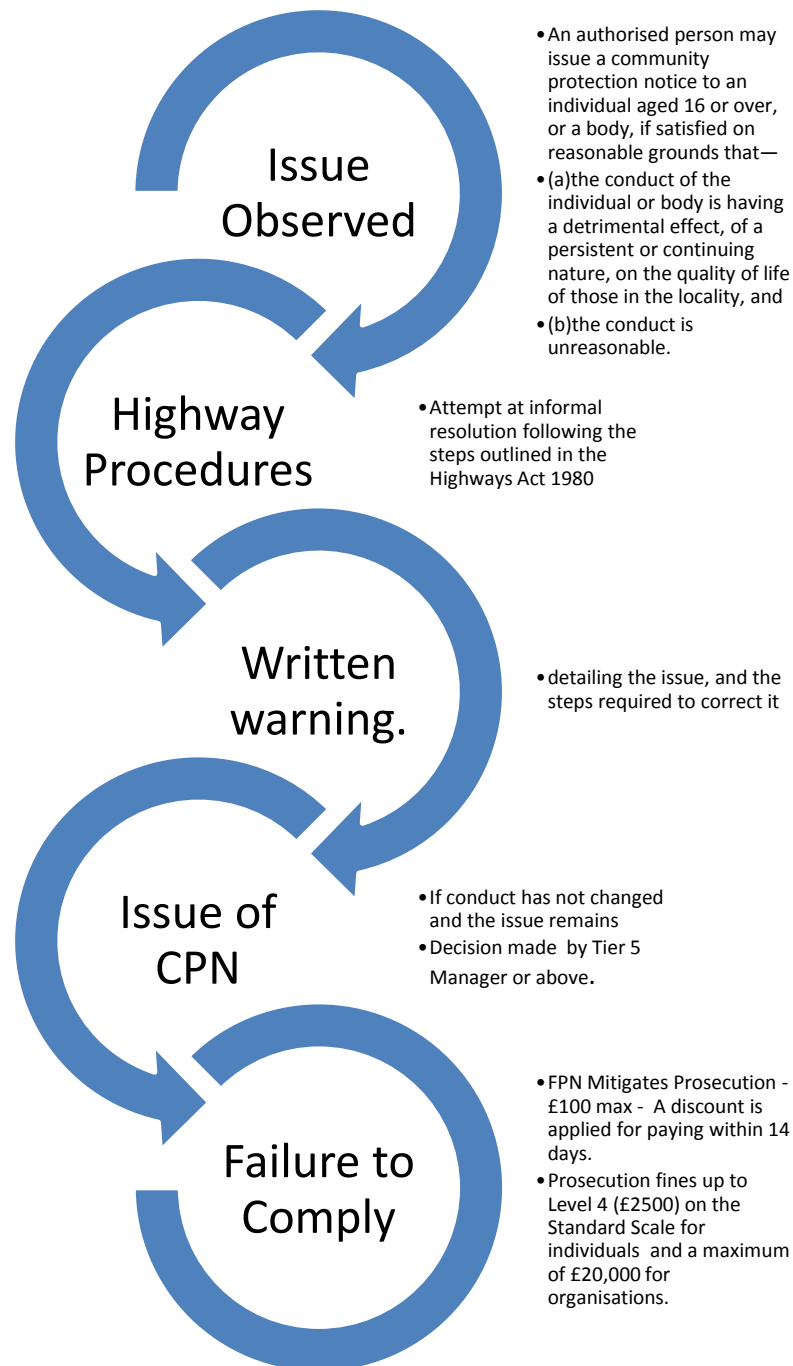
The case for a CPN must include the following

- Clear details of the observed issue, and evidence to support it, including complaints received.
- The issue of a clearly written warning letter to the individual, or organisation, defining the problem, the appropriate solution and a timescale for implementation
- An observation of the period of time given to resolve the issue, to confirm that the matter is continuing.

These must be presented to the Principal Engineer (NRM) - or appropriate substitute Tier 5 officer or above - who will make the final decision as to whether a CPN is issued or not, and record the reason why.

A simplified chart of the procedure is shown below;

Community Protection Notice Procedure (Simplified Procedure)



The decision to issue a fixed penalty notice, or prosecute will be made by the Principal Engineer (NRM) - or appropriate substitute Tier 5 officer or above.

Details of prosecutions will be discussed with the Portfolio Holder – Regeneration, Housing, Planning & Transport at the fortnightly enforcement briefing.

5 Financial Aspects/Costs to the Authority

Staff time and other associated costs relating to highway enforcement is to be recorded per case.

Fixed Penalty Notice fines recovered under the CPN process are to be retained by the Network Resilience Team and used for the cost of administering enforcement and the betterment of the Highway Network as necessary.

8 Notes

- i. This policy is to be reviewed annually following introduction.
- ii. The discounted level of FPN charges (for payment in less than 14 days) are set at the Authority's discretion, but cannot exceed £100
- iii. Mitigation of prosecution via FPN is the preferred method of resolution, however prosecution may be considered for serious persistent offences.
- iv. Prosecutions are criminal in nature and fines levied are not returned to the Authority, however costs may be recovered.

Planning Transportation and Highways – Policy Document

Clothing Banks

Author Darren Badrock
Revision Number 1
Date of Last Revision
Review Date

1 Background

The Highways Act 1980 mandates that items should not be placed on the public highway without obtaining a relevant licence from the Highway Authority.

2 Council Position

The licencing of items on the highway is a statutory power exercised by the Authority, delegated to Highway Enforcement Officer/Traffic Officer level and above.

Due to instances of anti-social behaviour, fly tipping and obstruction, Bradford MDC does not licence clothing banks or other similar charity collection facilities on the public highway.

3 Relevant Legislation

The following list details the main relevant legislative powers that may be used by the Authority in the context of enforcing this policy. This list is non inclusive and legislation is to be implied on a case by case basis.

Due consideration as to whether an item presents a nuisance or a danger should be clearly recorded when applying legislative procedure.

In all cases the procedures set out in the relevant sections of the respective act should be carefully followed.

Highways Act 1980	S.137	Penalty for wilful obstruction
	S.143	Power to remove structures from highways
	S.149	Removal of things so deposited on highways as to be a nuisance etc.

4 Guidance for Officers

Definition of Highway

“Highway” in this instance is defined as either;

- Footway, verge and carriageway maintained at public expense
- The surface layers of any area considered to be a public right of way (including un-adopted streets) but *not* any areas of private land or private road that do not form a right of way.

A public right of way is determined as any roadway or footpath that is not maintained at public expense, is not designated as Private and – under common law - is defined as follows;

“A highway is a way over which all members of the public have the right to pass and re-pass.

Their use of the way must be as of right, not on sufferance or by licence”.

A private road is considered to be one signed as such or one that is closed to public by means of barrier or gate (or possibly simply by the presence of a barrier or gate). The onus on proof of a highway being classed as private lies with the landowner making the claim

The definitive record of Highway Maintained at Public expense is held by The City of Bradford MDC Highway Records Officer - Anisah Naz — 01274 433707 – anisah.naz@bradford.gov.uk

We cannot act to remove clothing banks placed on private land, but if by their placement they cause a problem on the highway we will attempt to contact the owner and ask for them to be moved to prevent a problem occurring.

Any issue of fly tipping around clothing banks is a matter of environmental enforcement – highways holds no budget for cleansing operations.

Legislative interpretation

- S.137 makes it an offence to block free passage along a highway
- S.143 allows the Authority to give notices to remove structures from highways.
- S.149 allows the Highway Authority to remove items that are deemed to be a nuisance.

Clothing banks placed on the Highway are to be treated as either a nuisance or danger depending on officer assessment. Assessment may include, but is not limited to the following;

- Obstruction of walkways forcing pedestrians onto the main carriageway.
- Interference with sight lines and/or distraction to road users.
- Associated fly-tipping and the subsequent presence / likelihood of vermin.

Notice periods for removal under S.143 will be applied if the Clothing bank is considered to be a nuisance.

Removal of Clothing Banks considered to be dangerous will be undertaken under the auspices of S.149.

Any decision to remove a Clothing Bank on the grounds of it presenting a danger will be recorded.

5 Removal Procedure

- Check the bank and obtain the details, including the charity number where possible.
- Check the charity number against the registered database.
- In the case of banks placed by registered charities, put a notice on them, contact the charity and ask for them to be removed in 7 days.
- In the case of non-registered charities, attempt to contact the owner to get them removed as soon as possible and no later than 2 days from notification. No exemptions to this timescale are to be given.
- In both cases, should the clothing bank not be moved within the set timescale enforcement procedures should be undertaken.
- Where a Clothing Bank is considered to present a danger - **interpreted at officer's discretion) regardless of ownership** - it is to be removed as soon as possible and stored, and the owner notified that it is available for collection within 28 days.
- Where a Clothing Bank is considered to be a nuisance, the relevant 28 day notice must be served before removal can take place.
- The clothing bank will be released back to the owner on receipt of a £500 storage and administration fee.
- If the clothing bank is not collected within 28 days, it is to be disposed of following the obtaining of an appropriate magistrates order and the contents are to be donated to a registered charity.

6 Financial Aspects/Costs to the Authority

Costs may be accrued due to the removal and disposal of clothing banks. S.149 (3) makes provision for the recovery of costs from the relevant third party.

Staff time and other associated costs relating to Clothing Bank Enforcement is to be recorded per case, so that appropriate charges may be levied as necessary.

7 Enforcement Timescales

- i. Given staff resources, no set inspection/enforcement schedule for clothing banks is to be introduced. Cases will be judged on an individual basis.
- ii. This policy relates to items either specifically reported to the Authority by the public or those directly encountered by officers on site in the course of their duties.
- iii. Initial responses to Clothing Bank complaints should be undertaken within 10 working days where possible. This may take the form of noting for action when visiting a particular area.
- iv. Where multiple complaints are received from a single source enforcement will be undertaken at officers discretion to allow time for other issues to be dealt with proportionately.

8 Notes

- v. This policy is to be reviewed annually following introduction.
- vi. Charges may be subject to inflation, or other operating costs.

Planning Transportation and Highways – Policy Document

Nuisance Vehicles on the Public Highway

Author Lindsey Greenwood
Revision Number 1
Date of Last Revision
Review Date

1 Background

The Clean Neighbourhoods and Environment Act 2005 mandates that vehicles should not cause a nuisance on the public highway therefore this policy sets out our procedures in dealing with such vehicles.

2 Council Position

The prevention of nuisance vehicles on the highway is a statutory power exercised by the Authority, delegated to Highway Enforcement Officer/Traffic Officer level and above.

Due to vehicles being a nuisance, causing an obstruction and causing possible problems to residents who live within its vicinity; Bradford MDC does not facilitate them on the public highway.

3 Relevant Enforcement Legislation

Clean Neighbourhoods & Environment Act	S.3	Exposing vehicles for sale on a road
Clean Neighbourhoods & Environment Act	S.4	Repairing vehicles on a road
Clean Neighbourhoods & Environment Act	S.105	Offences relating to pollution
Highways Act 1980	S.131	Penalty for damaging highways etc.
Highways Act 1980	S.137	Penalty for wilful obstruction
Highways Act 1980	S.149	Removal of things so deposited on highways as to be a nuisance etc.

4 Guidance for Officers

Definition of Highway

“Highway” in this instance is defined as either;

- Footway, verge and carriageway maintained at public expense
- The surface layers of any area considered to be a public right of way (including un-adopted streets) but *not* any areas of private land or private road that do not form a right of way.

A public right of way is determined as any roadway or footpath that is not maintained at public expense, is not designated as Private and – under common law - is defined as follows;

“A highway is a way over which all members of the public have the right to pass and re-pass.

Their use of the way must be as of right, not on sufferance or by licence”.

A private road is considered to be one signed as such or one that is closed to public by means of barrier or gate (or possibly simply by the presence of a barrier or gate). The onus on proof of a highway being classed as private lies with the landowner making the claim

The definitive record of Highway Maintained at Public expense is held by The City of Bradford MDC Highway Records Officer - Anisah Naz — 01274 433707 – anisah.naz@bradford.gov.uk

We cannot act to remove caravans or trailers placed on private land, but if by their placement they cause a problem on the highway we will attempt to contact the owner and ask for them to be moved to prevent a problem occurring.

Definition of a vehicle

A mechanically propelled vehicle intended for or adapted for use on the roads e.g. a car, motorbike, motorhome, bus, lorry, wagon etc.

Legislative interpretation

Exposing vehicles for sale on a road

Vehicles for sale on the Highway are a nuisance as they can obstruct walkways and roads and prevent others from parking their vehicle(s).

The Clean Neighbourhoods and Environment Act states that it is an offence to have two or more vehicles for sale from the same seller within 500 metres of each other at any one time on the highway.

A person guilty of such an offence will be liable to a fine usually undertaken under the auspices of the Clean Neighbourhoods and Environment Act 2005, Part 2, S.3

Repairing vehicles on a road

Vehicles being repaired on the Highway are a nuisance as they can obstruct walkways and roads and prevent others from parking their vehicle(s).

The Clean Neighbourhoods and Environment Act states it is an offence for a person to carry out restricted works to a vehicle on the highway if carried out ***for the purpose of a business or for gain/a reward.***

However, there is a 72 hour exemption to such works if they arise from an accident or breakdown (in certain circumstance a longer timeframe may be granted with prior permission from the local authority).

For the purpose of this policy restricted works is defined as repair, maintenance, servicing, improvement or dismantling any part of motor vehicle/accessory to a motor vehicle or, the installation, replacement or renewal of any such part or accessory or, the commercial cleaning, polishing and washing of vehicles.

A person guilty of such an offence will be liable to a fine usually undertaken under the auspices of the Clean Neighbourhoods and Environment Act 2005, Part 2, S.4

Other Considerations

An obstruction contravening parking restrictions (for example parking on double yellow lines or in an area where there is a permit scheme) should be referred to Parking Services/Council Wardens who will be able to issue a fixed penalty notice.

In relation to vehicles parked dangerously or causing an obstruction; the Authority has no powers to remove them. The application of laws for these offences is a Police matter and they are assessed at the discretion of the individual officer who attends the site. The Authority has no power of influence over Police decisions.

Vehicles that are believed to be untaxed and/or without an MOT situated on the highway can be checked and reported to the DVLA directly by members of the public (via the DVLA website).

However; if, in the course of our investigations, we encounter a vehicle that is untaxed and/or without an MOT we will place a sticker on the windscreen to advise removal and report it ourselves to the DVLA. Unfortunately we do not have the powers to remove these vehicles.

If we believe a vehicle to be abandoned we will pass the vehicles details to the Councils Abandoned Vehicles Team.

If a vehicle is contravening parking restrictions this should be referred to the Council Parking Services team.

Vehicles crossing the highway to access a property shall fall under the Councils '*Vehicle Crossings*' policy and procedure (this includes damage to the highway as a result of the vehicle crossing).

Vehicles persistently and inconsiderately parking on a grass verge and/or damaging it shall fall under the Councils '*Grass Verge*' policy and procedure.

Highways that have been damaged as a result of vehicles (and is not as a result of a vehicle crossing or persistent inconsiderate parking on a grass verge) shall fall under the Councils '*Damage to the Highway*' policy and procedure.

Caravans/trailers causing problems on the highway shall fall under the Councils '*Caravans & Trailers*' policy and procedure.

Motorised trailers used for advertising purposes shall fall under the Councils '*Fly Posting/Advertising on Street Furniture/Highway Land*' policy and procedure. However if the vehicle is untaxed or without an MOT these will be reported to the DVLA.

Motorised trailers used to sell food/for catering purposes shall fall under the Councils '*Food/Catering Trailers and Vehicles*' policy and procedure. However if the vehicle is untaxed or without an MOT these will be reported to the DVLA.

In exceptional circumstances and dependant on the nature of the complaint, there may be an opportunity to work collaboratively with other agencies to try and resolve an issue (such as the Police or DVLA).

5 Removal Procedure

Exposing vehicles for sale on a road

- We must be provided with the make, model and registration number of each vehicle that has been reported as being for sale on the highway. We are unable to take a complaint further without this information.
- We must be provided with details regarding how the vehicle is being advertised, for example a 'for sale' sign in the car window, a website (for which we would need details) or a business name etc. It would not be deemed reasonable for Council Officers with limited resources to scour all possible means of advertising in order to identify vehicles for sale on the highway.
- We are unable to take the case further if we cannot find the vehicles being advertised. Hearsay and suspicion alone is not sufficient evidence of vehicles being sold on the public highway and this would stand in a Court of Law.
- Check the details of the vehicles on the DVLA website to see if they are taxed or have a valid MOT.
- If the vehicles for sale have been advertised on a website we will investigate the relevant web page(s), cross reference the reported vehicles and if found we will take screen shots as evidence. A site visit will then be conducted.
- If it has been reported that there is 'for sale' signage in the vehicles we will conduct a site visit and take date stamped photographs as evidence.
- At the site visit we will also ensure there are two or more vehicles for sale within 500 meters and, if not evidenced by our previous investigations, we will check that the vehicles are being sold by the same seller. This may be the same contact number, the same style of for sale sign (font, size, layout etc.), the same dealership details or the vehicles for sale are parked in close proximity to a garage/business forecourt. Again, date stamped photographs will be taken for evidence.
- If the vehicles are for sale on the highway and meet the criteria as stated above we will place a notice sticker on each vehicle requesting that they are removed. Date stamped photographs will be taken of the sticker and in situ on the vehicle.
- Where possible we will discuss the matter with the seller and/or formalise this in writing.
- If the seller fails to remove the vehicles and continues to place them on the highway we, as the Highways Authority, will serve notice.
- If, over time, different vehicles are persistently found for sale on the highway which we can identify as belonging to the same seller (and we have evidence in support of this), legal proceedings will commence against them.
- ***If the vehicles are placed in a dangerous position on the highway (interpreted at an officers discretion) regardless of ownership – we will liaise with the police to remove them as soon as reasonably possible.***

Repairing vehicles on a road

- Repairing vehicles on a road may be as a result of business who do not have a suitable forecourt (such as a mechanics or a parts shop) or a lone worker running a business from their own home; regardless it is an offence for a person to carry out restricted works to a vehicle on the highway if carried out for the purpose of a business or for gain/a reward.
- Upon receipt of a complaint we must be provided with the details of the business/person who they believe to be carrying out repairs.
- We will investigate the site, take date stamped photographs of the area where work is being carried out, assess any potential damage to the highway caused by such works and collate the evidence.
- If we cannot obtain sufficient evidence to support the claim that vehicles are being repaired on the highway for the purpose of a business or for gain/a reward we are unable to take the complaint further.
- Where applicable will liaise with colleagues to ensure the business is registered as a trading company and if not we will highlight the issue with the relevant authorities.
- If there are vehicles present which are not taxed or without an MOT we will report these to the DVLA.
- If the person responsible for the work on the vehicles is present we will discuss the matter with them and request that they cease to operate from the area.
- Regardless on whether or not we have discussed the matter with the person responsible; we will put our finding in writing in the form of a letter which will also outline the course of action to be taken.
- If the person responsible does not refrain from repairing vehicles on the highway we, as the Highways Authority, will serve notice.
- If, over time, it becomes apparent that vehicles are persistently repaired on the highway and we can identify the same person as being responsible (and we have evidence in support of this), legal proceedings will commence against them.
- ***If the vehicles being repaired are placed in a dangerous positioned on the highway (interpreted at an officers discretion) regardless of ownership – we will liaise with the police to remove them as soon as reasonably possible.***

Use of Community Protection Notices (CPN)

CPN's are intended to be served in cases of antisocial behaviour. It is suggested that in order for a CPN to be issued a definitive pattern of repeat offences needs to be established.

In this instance it is suggested that after 5 separate repeat instances of enforcement issues relating to a person, sole trader or separate business, a CPN is considered as an additional enforcement tool.

The issuing of a CPN is a formal process that requires a consistent evidence base and a caution to be issued PRIOR to moving to formal stage.

The issuing of CPN's is covered in a separate policy document.

6 Financial Aspects/Costs to the Authority

Fixed Penalty notices issued as part of this process are to set at the following levels

- £75 per item

Staff time and other associated costs relating to nuisance vehicle enforcement is to be recorded separately at the following cost centre : **[to be determined for April 2018]**

7 Enforcement Timescales

- v. Given staff resources, no set inspection/enforcement schedule for caravans/trailers is to be introduced.
- vi. This policy relates to items either specifically reported to the Authority by the public or those directly encountered by officers on site in the course of their duties.
- vii. Initial responses to caravan/trailer complaints should be undertaken within 10 working days where reasonably possible. This may take the form of noting for action when visiting a particular area.
- viii. Where multiple complaints are received from a single source enforcement will be undertaken at officers discretion to allow time for other issues to be dealt with proportionately.

8 Notes

- vii. This policy is to be reviewed annually following introduction.

Revision Number

1

Date

March 2018

Author

Darren Badrock

darren.badrock@bradford.gov.uk

01274 437420

07582 101408



Appendix B

Equality Impact Assessment Form

Reference – NRM/Enf/EIA

Department	Place	Version no	1
Assessed by	Lindsey Greenwood	Date created	28/02/2018
Approved by	Darren Badrock	Date approved	28/02/2018
Updated by	N/A – Initial Assessment	Date updated	N/A
Final approval	Richard Gelder	Date signed off	08/03/2018

The Equality Act 2010 requires the Council to have due regard to the need to

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups

Section 1: What is being assessed?

1.1 Name of proposal to be assessed.

Highway Enforcement Policy Documentation

(Network Resilience & Management - Department of Place, Planning, Transportation and Highways)

1.2 Describe the proposal under assessment and what change it would result in if implemented.

Implementing the policies will ensure that the Network Resilience and Management Team - in relation to Highway Enforcement and operational matters - has an efficient, effective, consistent, fair, equitable and transparent approach to the legislative framework.

It will therefore have positive benefits for the safety of all highways users across the district and the local community as well as supporting us in dealing with counter accusations regarding enforcement and operational matters

Section 2: What the impact of the proposal is likely to be

- 2.1 Will this proposal advance equality of opportunity for people who share a protected characteristic and/or foster good relations between people who share a protected characteristic and those that do not? If yes, please explain further.**

In line with the Equalities Act 2010 and the relevant highways law(s) and legislation; this proposal will make sure that the Network Resilience and Management team gives due regard to enhancing equality of opportunity by ensuring the safety of all highways users across the district and allow them equal access to Council services which in turn will foster good relations between people with protected characteristics and those that do not.

Unfortunately; the nature of enforcement action and the implementation of operational matters naturally means that there will be disgruntled parties therefore applying the same procedures will protect us in the event of receiving counter accusations of enforcement/operational matters being carried out unfairly or without due regard.

- 2.2 Will this proposal have a positive impact and help to eliminate discrimination and harassment against, or the victimisation of people who share a protected characteristic? If yes, please explain further.**

The aim of this proposal is to achieve a positive impact and help eliminate discrimination and harassment by making sure we apply highways law and legislation equally and consistently to all. In doing so we will apply the same enforcement/operational procedures whilst giving due regard to the protected characteristics and this will ensure the safety of all highways users across the district and allow them equal access to Council services.

- 2.3 Will this proposal potentially have a negative or disproportionate impact on people who share a protected characteristic? If yes, please explain further.**

The nature of enforcement action – based on Highway Law – is a complex matter and we are aware that members of the public may not understand the reason for the application of legislation. As such there may be disgruntled parties who will be of the belief that any action taken will have a negative or disproportionate impact on them and/or, if applicable, a protected characteristic.

This is obviously not the case, and the application of consistent standards is key to maintaining a high standard of public engagement.

Where reasonably possible we will work with all parties in an attempt to achieve a satisfactory outcome in order to eliminate or reduce a negative or disproportionate impact on those with protective characteristics.

2.4 Please indicate the level of negative impact on each of the protected characteristics?

(Please indicate high (H), medium (M), low (L), no effect (N) for each)

Protected Characteristics:	<u>ENFORCEMENT</u> Impact: (H, M, L, N)	<u>OPERATIONAL MATTERS</u> Impact: (H, M, L, N)
Age	L	L
Disability	L	L
Gender reassignment	N	N
Race	N	N
Religion/Belief	N	N
Pregnancy and maternity	L	L
Sexual Orientation	N	N
Sex	N	N
Marriage and civil partnership	N	N
Additional Consideration:	Impact: (H, M, L, N)	Impact: (H, M, L, N)
Low income/low wage	M	N

2.5 How could the disproportionate negative impacts be mitigated or eliminated?

ENFORCEMENT

Enforcement action is applied to all those in breach of relevant highways laws and legislation regardless of age, disability, gender reassignment, race, religion/belief, pregnancy/maternity, sexual orientation, sex and marriage/civil partnership.

Bearing this in mind, any enforcement action should have a positive impact on those with protected characteristics as it will allow them equal rights to pass and re-pass on the public highway which in turn will ensure equal access to Council services.

As enforcement action is being carried out it may come to light that the reason for the breach of highways laws and legislation is as a result of a protected characteristic

Examples of this may include;

- An illegal vehicle crossing for disabled access
- Problems cutting back overhanging vegetation due to disability or low income/wage

When such an instance occurs we will (where reasonably possible) give due regard to individuals in order to mitigate the impact (for example multi agency working, making reasonable adjustments, giving alternative solutions and a number of opportunities throughout the process to rectify an issue prior to us taking action).

However; this will not deter from the fact that highways law needs to be adhered and by applying the policy and following the procedures set out we will ensure equality and safety for all highways users across the district.

OPERATIONAL MATTERS

Because of the nature of enforcement issues, any operational matters affecting those with protected characteristics will only be undertaken after informal methods have failed.

As such, initial mitigation measures will have already been put in place, lowering the impact of the necessary operation.

Section 3: Dependencies from other proposals

3.1 Please consider which other services would need to know about your proposal and the impacts you have identified. Identify below which services you have consulted, and any consequent additional equality impacts that have been identified.

ENFORCEMENT

No direct impact to other services.

OPERATIONAL MATTERS

We liaise with colleagues and partner organisations in order to cause the least disruption to highways users; including those with a protected characteristic.

Section 4: What evidence you have used?

4.1 What evidence do you hold to back up this assessment?

The evidence is based on extensive knowledge of past cases and team member experiences however; due to the format of these policies with set procedures laid out, the full impact cannot be determined or measured until they have been put into practice.

4.2 Do you need further evidence?

Moving forward, as these policies are implemented we will keep records of all complaints relating to a protected characteristic which has either come to us via the initial reporting of the issue or as a result of an enforcement action/operational matter. This will provide us with effective data to enable us to continuously re-evaluate this equality impact assessment in the future.

Section 5: Consultation Feedback

5.1 Results from any previous consultations prior to the proposal development.

As the proposals are new and relate to defined legislation, no consultation has been undertaken.

5.2 The departmental feedback you provided on the previous consultation (as at 5.1).

N/A

5.3 Feedback from current consultation following the proposal development (e.g. following approval by Executive for budget consultation).

The policies have been approved by:

- Strategic Director (Place)
- Assistant Director (Place)
- Portfolio Holder – Regeneration, Planning and Transport
- Legal Services
- Financial Services

5.4 Your departmental response to the feedback on the current consultation (as at 5.3) – include any changes made to the proposal as a result of the feedback.

No changes made to this EIA.

Appendix C

Typical Examples – Clothing Banks



Clothing bank sited on footway causing obstruction (less than 1.2m width to kerb)



Clothing bank on Highway verge attracting adjacent fly tipping.



Fly tipping around clothing bank adjacent to Highway



Dangerous clothing bank sited in sight line, on unstable base.

Typical Examples – Nuisance Vehicles



Commercial Vehicle Body obstructing Footway



Vehicle stored/being repaired on the highway by commercial business



Vehicle stored on footway for repairs by private individual



Vehicles parked on verge/footway waiting servicing and/or repair by commercial business