

From: Peter Silverman **Clean Highways**

Sent: 01 March 2017 18:11

To: Philip Rutnam - Perm Sec DfT

Cc: Jim O'Sullivan - CEO Highways England; Colin Matthews Chairman of Highways England; **Nick Harris - Ops. Dir. Highways England**; Chris Preston - Dep. Dir. Waste & Recycling DEFRA; Clare Moriarty (Permanent Secretary - DEFRA); Sajid Javid - Sec of State Communities & Local Gov ; Marcus Jones - U/s State Local Government ; Kevin Hollinrake MP; Andrew Gwynne MP; Andrew Jones - Under Secretary of State for Transport; transcom@parliament.uk; Louise Ellman Chair Transport Select Committee

Subject: Litter on the Highways England network

Dear Mr Rutnam,

Complaints about roadside litter

The main reason for writing to you is to draw your attention to the schedule of 119 [complaints about roadside litter](#) made via the Clean Highways so far this year.

They are primarily about litter on the Highways England network and provide evidence of HE's continuing failure to comply with S89 of the Environmental Protection Act – *Duty to keep land and highways clear of litter.*

I would urge you, and all of the people to whom this e-mail is copied, to take 5 minutes to read what is being said by these tax payers.

In the rest of this note, after spelling out what the EPA Duty says, I would like to take up a number of current issues relating to Highways England with you.

EPA S89 Duty

Under [Section 89 Duty to keep land and highways clear of litter](#) HE are required **to ensure, so far as is practicable, that their land and highways were kept clear of litter and refuse.**

Parliament's use of the term "practicable" as opposed to "reasonably practicable" is significant. Only with the latter [cost is a relevant consideration](#).

HE dumbs down its EPA S89 duty

Remarkably the duty is not spelt out in HE's 6 page [Litter Strategy](#). It says which roads the duty applies to without saying what the duty is. In a recent [e-mail to a complainant](#) HE stated that under the EPA they are responsible for the "removal of litter" and that their Litter Strategy sets out a vision for keeping motorways free of litter as far as is "reasonably possible". A duty to "remove litter" could be satisfied by a clearance every two years. "Practicable" has morphed into "reasonably possible".

New contract specifies cleansing some roads only to be cleaned once a year

HE's new area service provider contract was launched in Area 7, the East Midlands last year and is being rolled out across the country. For the first time cleansing frequencies have been specified. However this only exposes the lack of funding available. The verges of the M45 and parts of the M1 are only scheduled to be cleaned once a year. Emergency funding should be made available to HE asap if, what [Lord Gardiner described as our "filthy motorways"](#), are to be brought up to the standard of those across the channel.

HE's Statutory Watchdog and Monitor

These are respectively Transport Focus and the Office of Rail & Road. Collectively they receive funding from your department of £4.3 million pa to monitor HE. I had thought, as did HE, that these bodies would make Clean Highways redundant.

No such luck. Transport Focus do not made a single reference to "litter" in the context of roads on their web site or in their 57 road related publications. This, they say, is because "*relative to the many other things that determine a road users' satisfaction with their journey the problem doesn't feature highly*".

The ORR have stated that assessing HE's compliance with EPA S89 is outside the scope of their functions. They interpret S10(1) of the Infrastructure Act, which says they must monitor how HE exercises its functions, as relating primarily to monitoring compliance with your Road Investment Strategy. In the RIS under *Delivering better environmental outcomes* you have set Key Performance Indicators for "noise" and "biodiversity" but not for "litter".

It is difficult not to conclude that "litter" has been written out of the monitoring process as it would expose the underfunding and poor contract management regime inherited by HE from Highways England / DfT.

In your view is compliance with EPA S89 a *function* of HE for the purposes of S10(1) of the Infrastructure Act?

If it is not will you advise the Secretary of State to vary the current Road Investment Strategy to include, as an objective for HE, compliance with EPA S89?

HE Stakeholder Advisory Panel

HE's License states that they must establish a stakeholder advisory panel. No such panel has, as far as I know, been set up. I raised this with the ORR on 22nd September 2016 but they have yet to respond on this point. Has such a panel been established and, if not, will you instruct HE to set one up? I would welcome the opportunity to participate in it.

Prosecution of waste transporters who spill their loads onto the HE network

There is [growing evidence](#) that waste from vehicles such as the one shown in this [30 second video](#) are a major source of litter on the HE network. HE could and, in my opinion, should prosecute the offending operators under [EPA S34 – Duty of care as respects waste](#).

I would be most grateful if you could expedite a reply to my [e-mail to HE of 10th November 2016](#) on this subject.

Cleansing of HE trunk roads (APTRs) – transfer of responsibility to HE

As you know most of the trunk roads on the HE network have to be cleansed by the various local authorities through which they pass. So before the HE contractor can cut the grass the council's contractor has to pick up the litter. The C&LG Select Committee recommended that responsibility for cleansing these roads should be transferred to HE. One local authority had described co-ordinating activities with the Highways Agency as a "nightmare". Chichester Council have said – *this would generate obvious logistical and financial efficiencies*.

In their response to the report the government stated that this would require primary legislation which is incorrect. Will you please recommend to the Secretary of State for Transport that he issues an order under EPA S86(11) to transfer the cleansing of the remaining all-purpose trunk roads from the respective local authorities to Highways England?

For more information please refer to [Cleansing of HE trunk roads \(APTRs\) – transfer of responsibility to HE](#)

A13 Essex

The section of the A13 from inside the M25 to the turn off for Tilbury is an HE trunk road where HE also has the responsibility for cleansing. The road seems to be permanently and grossly littered. Recent events expose the defective nature of HE's management of their contractor. Please refer to [my e-mail to HE of 11th November 2016](#).

As you will see the cleansing of a lay-by did not take place when HE were told it had. It was only cleansed after my threat of court action. It was then closed down.

The contractor, it would seem, is left to his own devices to work out how much cleansing they carry out. HE has not been able to provide copies of any reports of inspections they have carried out to monitor the cleanliness or otherwise of this road. I can only assume that they do not monitor this aspect of their contractors work on this road.

Can you please tell me what process has to be gone through before a lay-by can be closed down and was it adhered to in this case and who made the decision?

I hope this is of help and look forward to hearing back from you in due course.

Kind regards

Peter Silverman

www.cleanhighways.co.uk

01895 625770

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