

“Motorway Cleansing”

The mismanagement of maintenance contracts
by the Highways Agency

A report prepared by

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For the National Audit Office

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Summary

The Highways Agency is failing to properly manage contracts with their motorway service providers. As a result they are paying for cleansing work which is not being carried out to specification (compliance with the EPA). I therefore recommend that the matter be investigated by the Audit Office.

Legislative Requirements

The Highways Agency are responsible for carrying out the duty of the Secretary of State for Transport under the [Environmental Protection Act](#) s 89(1) (b) to ensure that our motorways (aka special roads) are, so far as is [practicable](#), kept clear of litter and refuse“. S89 (7) says the Secretary of State shall prepare and issue a [code of practice](#) for the purpose of providing practical guidance on the discharge of these duties.

Litter code (LC) 9.1 says *duty bodies are expected to set their [cleansing schedules](#) so that they meet the duty to [keep their relevant land clear of litter and refuse](#)..*

LC7.3 says *..It is expected that managers of land should through monitoring and the appropriate use of resources, [keep their land clear of litter and refuse](#) so that it does not fall below grade B and is cleansed to grade A on a [regular basis](#). (Grade A is no litter or refuse. Grade B is predominantly free of litter apart from some small items).*

LC7.4 says *it may not be practicable to remove all litter from grass and sand and in such cases grade B would be acceptable. Motorway verges fall into this category.*

The EPA and the Code are therefore saying that motorway verges should be kept clear of litter and cleansed on a regular basis.

LC 9.4 says *as a [last resort](#), if acceptable standards... are not met response times have been set ... by which land must be returned to an acceptable standard. Otherwise, (LC 9.5) the duty body may be subject to a Litter Abatement Order under EPA S 91. LC 6.5 says these (recovery times) should be regarded as a [last resort](#) as the levels should be maintained above an acceptable standard at all times.*

The last resort response time for motorways are “14 days” for slip roads and “28 days or as soon as practicable” for main carriageways.

A “reactive” cleansing strategy based solely on taking action within the “last resort” parameters, without regular cleansing, would not therefore be consistent with the requirements of the EPA and the Litter Code of Practice. The significance of this statement will become clear later.

What level of service are we paying for?

The Highways Agency has entered into contracts with various Service Providers, often as part of a DBFO arrangement, to maintain and clean our motorways. The [contracts](#) say the Service Provider is responsible for discharging the Secretary of State's duties under the EPA S89 and the Litter Code of Practice.

The Highways Agency is therefore paying its contractors to keep our motorway verges clear of litter and cleansed on a regular basis.

What level of service are we getting

In March 2010 Mike Penning MP, now the Undersecretary of State for Transport with responsibility for the Highways Agency and hence our motorway network said in a [speech](#):

"Our road networks, in particular our motorways are blighted by rubbish....I am aware that there is legislation in place however it is frankly not workingtravel up the M1 from Brent Cross and you are driving through a rubbish tip"

Further evidence of the failure of the Agency to comply with EPA S89 (1) (b) is demonstrated by case studies presented on my web site www.cleanhighways.co.uk. Please refer in particular to the [M40](#), [M40 J8A](#) and [M40 J1](#) case studies.

The contractors are clearly failing to deliver. There is therefore an unwarranted transfer of money from the taxpayer to them. I estimate this to be of the order of £5 - 15 million pa.

Why is this happening?

The Office of Government Commerce's (OGC's) publication "*Contract management - Principles for service contracts*" says "*When an organisation has awarded a contract, it must monitor whether the service is being delivered to specification*".

This raises a number of questions. Is there a meaningful cleansing specification? Is actual performance against specification being properly monitored? Are deviations from contract reviewed with the contractor and corrective action taken?

Cleansing Specification

The Code assumes that each duty body i.e. local authorities, educational institutions, rail operators etc will draw up a [cleansing strategy](#) to provide a *consistent and effective means of managing levels of litter above an acceptable standard*. The implication is that each duty body should define a cleansing strategy in the context of its own particular circumstances. The strategy / specification for a university would be very different from one for a local authority or a rail operator.

The Highways Agency has not done this. [Section 3.14](#) of the HA Network Management Manual - Sweeping and Cleaning – is a poor substitute. It does not specify any quantifiable standards against which performance could be measured.

In the absence of a consistent nationwide cleansing strategy each contractor has had to draw up its own procedures. I understand these are all "reactive" procedures under which periodic inspections are made and remedial work carried out within the Litter Code's last resort response times. I have shown in a [web article](#) how this can lead to it taking 6 months to deal with a deposit of litter.

Monitoring

When I ask the Agency for copies of their [litter inspection reports](#) I am invariably informed that they did not hold the information "*as all such reports are produced by our contractors*".

While it would be acceptable for monitoring to be contracted out, it is a clear breach of all the principles espoused by the OGC for the Agency to contract this work out to the very organisations whose service levels they are supposed to monitor.

Corrective Action

You will see from the [M40](#) case study that this motorway had gotten into a terrible state in the winter of 2009/10. However, when I asked for copies of correspondence, including minutes of meetings, between the Highways Agency and their M40 contractor for the 6 months to 31/03/2010 which referred to its cleanliness, or lack of cleanliness, none were available. I was told, this was because the subject had not been discussed.

Conclusion

Ineffective management of its contracts with its motorway maintenance service providers has led to payments being made to them for cleansing work which has not been carried out in anywhere near a satisfactory manner.

I would therefore ask that the Audit Office carry out an investigation.

I have no insights into the management of other aspects of these contracts but if the same attitudes prevail on a broader front then the losses to the tax payer would be considerably higher than I have indicated in respect to cleansing alone.

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Please also refer to:

[Our Littered Motorways](#) a report prepared for Mike Penning MP, Under-secretary of State for Transport.

Subsequent [correspondence](#) with Mr Penning