

From: Peter Silverman
Sent: 07 July 2015 16:57
To: Colin Matthews Chairman of Highways England
Cc: Peter Antolik Office of Rail and Road; Barbara Keeley MP; Terr Dean; Andrew Gwynne MP
Subject: HE's Letter to Barbara Keeley - M60 Area 10

Dear Mr Matthews

Clean Highways supporter, Terry Dean, has passed on to me a copy of HE Executive Director [David Brewer's letter of 12th June to Barbara Keeley MP](#) concerning litter on the M60, and HE's approach to dealing with litter in general.

His letter nicely illustrates the fault lines in this process.

Downgrading HE's duty on litter

HE have a duty under [S89\(1\) of the Environmental Protection Act](#) to ensure, so far as is practicable, that the network is kept clear of litter and refuse.

However David Brewer, says in reference to the EPA "essentially we are responsible for **removing litter ...**"

If the duty was merely to remove litter then it would be acceptable to allow accumulations to build up provided they were eventually removed e.g. [just once a year](#). However, this would not constitute **ensuring that the land was kept clear of litter**.

The very same terminology is used in [your Delivery Plan](#). In 6.1.9 it says "Highways England will deliver its duties under the Environmental Protection Act by **removing litter** from our motorway network".

In [a letter](#) to another Clean Highways supporter, Linda McGeachie, your lead on litter, Bob Castleman, referred to: "a responsibility under the Environmental Protection Act 1990 to **collect litter** on motorways".

I cannot find any Highways England/Highways Agency [publication or other](#) document that [properly](#) spells out the EPA S89(1) duty.

It's not in your 19 page [Litter Strategy](#), published in 2014, or your earlier 13 page [Environment Strategy](#), or your 21 page [Managing our Approach to Environmental Performance](#) documents.

May I recommend that the phrase I have used in the first paragraph of this section is used in future documents and correspondence to describe your EPA Duty.

[Claiming that HE carry out routine litter inspections when they do not](#)

Mr Brewer says that "To comply with our obligations, **we undertake litter inspections... once a month..**" However the [monthly](#) inspections in Area 10 that do take place are carried out by your contractors. The contractor decides what grade to apply to each 100 metre section and what action to take. Also, no one from HE goes round with a clip board [routinely checking the work](#).

The contractor will inevitably take the opportunity this presents to minimise the resource he expends on litter picking. He would be failing in his duty to his shareholders if he did otherwise.

This has resulted in the accumulations unacceptable amounts of litter on the M60 and in other parts of Area10 and generally on your network. Please refer to:

[Area 10 – M60 J10 – Accessible litter allowed to accumulate](#)
[Area 10 – Manchester Evening News reports MP’s fury at cuts in cleaning](#)
[Area 10 – More evidence of non-compliance with EPA](#)
[Highways Agency Area 10 – Dramatic decline in litter collection](#)
[Dirty Dossier](#)

Selective use of the provisions of DEFRA’s Litter Code Of Practice (LCOP)

[EPA S89\(10\)](#) says that duty bodies should “have regard to the code of practice”. It’s provisions are not a set of mandatory instructions as implied by Mr Brewer.

LCOP 7.3 and 7.4 say that grassed areas, such as motorway verges, should be cleansed “on a regular basis”. LCOP 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. HE and their contractors do not set any cleansing schedules.

Instead HE / HA, as confirmed by Mr Brewers letter, have always focussed on LCOP’s “*last resort*” *response times*. LCOP 9.4 says “As a last resort, if acceptable standards of litter and refuse are not met, response times have been set for each of the four categories (of land) by which land must be returned to an acceptable standard”.

Only if your contractors were required to litter-pick the verges on a systematic and regular basis, and you checked that the work was being done, could you hope that, at least for the majority of the time, acceptable standards would be met.

Please refer to [EPA S89\(1\) and the Litter Code of Practice](#) and [How the Litter Code is misinterpreted \(1\)](#)

I hope these comments are of help to you and your new CEO as you continue to come to grips with the problem of litter on the HE network.

Kind regards

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