

# Solving the litter problem

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## Summary (2pages)

Local Councils and the Highways England have a statutory duty to ensure they keep their land clear of litter yet the C&LG Select Committee recently described England as a “litter ridden country”.

Councils and the Highways England are failing (a) to remove litter and fly-tipping promptly enough and (b) to make adequate use of the enforcement remedies available to them.

This is not surprising as no one is charged with overseeing their compliance with this duty. We have policy makers but no policemen.

The citizen’s remedy against duty bodies who allow land to become defaced by litter (Litter Abatement Orders) is not fit for purpose.

Reliance on KBT campaigns is a failed strategy.

No research is being done on the source of litter by type of land or on the way the issue presents itself in other advanced countries.

DEFRA do not have the resources or information (e.g. number of litter fines issued by councils) to identify, disseminate and encourage good practice.

The statutory duty is dumbed down or ignored. It is not mentioned in the 19 page 2014 Highways Agency Litter Strategy.

The Litter Code of Practice’s *last resort response times* have created a debased standard for duty bodies to exploit.

On-the-spot fines are not used against juveniles as non-payment would result in their getting a criminal record.

Councils spend only 0.71% of of their budgets on street cleansing.

Many councils invite householders to illegally deposit waste for collection on the highway leading to it’s dispersal by the elements and vermin.

Unpopulated roads are being neglected by councils. In some cases they do not even realise that they are responsible for cleaning the Highways England trunk roads passing though their areas.

Contracts often fail to specify standards that can be monitored. Contractors are allowed to mark their own homework.

Waste transport operators who spill their loads onto the motorways are not prosecuted by Highways England.

Central London streets and London Underground demonstrate that when a duty body wants to comply with its statutory duty it can do so.

**This report recommends:**

The reform of the Litter Code of Practice.

The introduction of civil law on-the-spot fines to simplify the process and to enable juveniles to be fined.

Removing charges for small scale loads at waste collection centres to reduce the incentive for fly-tipping.

Encouraging councils to issue more on-the-spot fines

The level of fines and enforcement activity should be set so that a sufficient surplus would be generated to fund, say, a doubling of the current level of litter picking.

The introduction of regulations to ensure the robust sealing of skips and waste transport vehicles.

Making Highways England responsible for cleaning all of the trunk roads they otherwise maintain.

The policing of the statutory duty by DEFRA (or Parliament?)

The expansion of DEFRA's LEQ team

The collection of relevant data from councils (e.g number of fines issued) to allow DEFRA to disseminate best practice.

DEFRA to sponsor research into the source of litter by type of land and how the problem presents itself in other countries.

Support for Big Society voluntary post code champions to deal with local litter issues.

### **Duty to keep land clear of litter**

Under S89(1) of the Environmental Protection Act 1990 duty bodies are required to ensure, so far as is practicable, that their land is kept free of litter and refuse.

Duty bodies include local authorities (local roads & parks etc) and Highways England (motorways and some trunk roads).

In performing this duty they have to have regard to the Litter Code of Practice issued by DEFRA. [Read more.](#)

It is worth noting that “practicable” is a much more stringent requirement than “reasonably practicable” where cost considerations can come into play. “Practicable” is more akin to “physically possible”. [Read more.](#)

Parliament has laid down an onerous and exacting duty.

### **Exercising the duty**

Duty bodies should therefore be picking up litter promptly where it is practicable to do so.

A sensible approach would be to litter pick with sufficient frequency that an acceptable standard is maintained, say, 90% of the time. This could be supplemented by mobile patrols to identify and deal with one off events and known black spots.

The “broken window theory” predicts that clean well maintained areas will be subject to less deliberate littering and less anti-social behaviour in general. [Read more.](#)

Deterrence is equally important. Duty bodies have a panoply of legislation to assist them. They can prosecute those who drop litter, fly-tip or allow it to fall from their vehicles.

Local Authorities can also issue on-the-spot penalty notices in lieu of a prosecution. The revenue raised can be retained and used to cover the costs involved.

They can use Litter Clearing Notices to force private land owners to clear their land. They can serve Street Litter Control Notices on retail premises requiring them to prevent adjacent land becoming defaced by litter.

Residents who deposit household waste outside the curtilage of their properties, other than in an approved receptacle, can also be prosecuted (EPA S33).

Waste transport operators, including those operating skip lorries, whose loads spill onto the highway can be prosecuted under EPA S34 -Duty of care as respects waste.

Publicity and education programmes can be used to make potential litterers aware of the consequences of their actions.

**However the Communities & Local Government Select Committee recently described England as a “litter ridden country”. So, why aren’t duty bodies fulfilling their EPA S89 (1) duty? Why is this legislation not working?**

## Why the legislation is not working

### There is no scrutiny of Duty Bodies

DEFRA do not scrutinise compliance of duty bodies with their EPA S89(1). They have only two members of staff working on Local Environment Quality which includes litter, graffiti and dog fouling.

Neither do Keep Britain Tidy. They are funded by government and obtain income from carrying out surveys for local authorities. They are not in the business of criticising the hands that feeds them.

The citizen can take a duty body to Court under EPA S91- *Summary proceedings by persons aggrieved by litter* (Application for a Litter Abatement Order). However this process is not fit for purpose. It can take six months and involves two court appearances. The duty body will invariably employ a Barrister and if the citizen is unsuccessful he can easily find himself having to pay costs in excess of £10,000.

### DEFRA is flying blind

DEFRA have stopped collecting relevant data from local authorities including the number of litter fines they have issued and prosecutions made. Comparative Local Environment Quality scores by local authority are no longer available. This must make it very difficult for DEFRA to identify disseminate good practice.

There seems to be no research material on the sources of litter by type of land and about how the issue presents itself in other countries.

Taking the above two points together it is apparent that *no one is minding the shop*.

### The S89(1) duty is being dumbed down or written out of the record

Section 6.1.9 of [Highways England's Delivery Plan \(2015 -2020\)](#) says *Highways England will deliver its duties under the Environmental Protection Act by removing litter from our motorway network.*

HE do remove litter but often only after large accumulations have been allowed to build up. For example, 172 sacks worth were allowed to accumulate at [one junction on the M60](#).

The Highways Agency's [Litter Strategy](#), published in 2014 makes no mention of the S89(1) duty in its 19 pages. The section headed *Responsibility for cleaning litter from motorways and APTRs* deals with who is responsible not what that responsibility is.

Under [Section 3 of the Infrastructure Act](#) the Secretary of State for Transport was required to set up a Road Investment Strategy for Highways England. In so doing he had to have regard to the environment. The resulting [Road Investment Strategy](#) however does not make a single reference to "litter" in its 160 pages in spite of including sections headed "Delivering better environmental outcomes" (2 pages), "Keeping the Network in good condition" (1 page) and "Improving user satisfaction" (2 pages). In contrast it makes 35 references to "noise" and 31 to "bio-diversity".

DEFRA in its Guide, [Litter and refuse: council responsibilities to keep land clear](#), has dropped the important “ensure” qualifier. It merely says *District councils and some other authorities must keep land in their area clear of litter and refuse, as far as is practicable.*

#### DEFRA’ Litter Code of Practice offers a debased standard

DEFRA’s LCOP only encourages this process. 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, and highways clean.* That’s fine.

However, 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 by which land must be returned to an acceptable standard.*

The response time for a motorway verge is *28 days or a soon as is reasonably practicable.* This is interpreted to mean the duty body can take more than 28 days.

The introduction of “last resort response times” means that the Code effectively offers duty bodies two alternative standards, one consistent with EPA S89 (1) and one that is not. [Read more.](#)

LCOP 11.4.7 says: *On motorways, where safety issues are paramount, it is recommended that cleansing is always carried out alongside routine maintenance to aid maintenance standards.* This is frequently interpreted as meaning cleansing should “only” take place in these circumstances. [Read more.](#)

LCOP has become a book of excuses for duty bodies.

#### On-the spot fines are not effective against juveniles

Councils are reluctant to issue Fixed Penalty Notices to juveniles because of the extra requirement to comply with the Children’s’ Act 2004. Also, in the event of non-payment Magistrates are rightly reluctant to give the young person a criminal record for dropping what might be a minor item of litter. This has rendered the process ineffectual for one of the main groups of offenders.

#### Consequences

##### A decline in funding by Councils

In 2014/15 English councils budgeted to spend 19% less in real terms on street cleansing than they did in 2010/11. This now amounts to only 0.71% of budgeted expenditure i.e. less than 1p in every £. Looked at another way this is only £32 pa per household. [Read more](#)

### The acceptance of collateral littering from domestic waste collection

To reduce the time taken to collect domestic waste many councils act in breach of EPA S33 by tacitly encouraging residents to leave their bags of waste out in the street for collection. Their contents are often then dispersed by the elements and vermin. [Read more](#)



### Councils allowing businesses to obstruct the pavement with their waste

Many councils allow businesses to deposit their waste on the pavement for collection. This looks unsightly, obstructs the highway and encourages fly-tipping. [Read more](#).



### The neglect of unpopulated roads

Councils often neglect roads which have no one living on them to complain about the litter.

Some of the neglected roads are All Purpose Trunks Roads i.e. roads that are part of the strategic road network operated by Highways England. While the Highways England cuts the grass the local council has to pick up the litter. They are ill equipped to do this work on these high speed roads where the cost of providing traffic management is an exacerbating factor.



A parallel situation obtains in London where the Boroughs have to clean TfL maintained roads such as the North Circular.

As a result [the A41 through Aylesbury is only cleaned once every 3 months](#). [The A61 and A617 in Derbyshire is only cleaned once a year](#). [The A64 in York is only cleaned twice a year “where possible”](#). [Herefordshire Council only plan to litter pick the A40 twice a year](#).

Some councils were even unaware of their responsibility to clean trunk roads. North East Lincolnshire Council (A180), West Berkshire Council (A34), Basingstoke and Deane Borough Council (A34) and Durham County Council (A66) have all denied that they are responsible for cleaning sections of All Purpose Trunks Roads running through their areas. [Read more](#)

### Poor contract management

Where road cleansing is contracted out performance standards can fall. The contracts commonly fail to specify outputs and/or inputs in such a way that the duty body can monitor performance and manage the contractor. Duty body seem to just want to save costs and get the responsibility off their shoulders.

The London Borough of Hounslow's arrangements with Vinci-Ringway specifies performance targets but then says *Vinci-Ringway will be responsible for self reporting against service performance!* [Read more](#)

Highways England operate in a similar manner. There is no effective monitoring of the performance of their various area contractors. When a new contractor took over in Area 10 which includes the Manchester and Liverpool conurbations no litter picking took place for 2 months. The contractor incurred no financial penalty. Please refer to my report [Litter on motorways and trunk roads](#).

### Waste transport vehicle operators being allowed to get away with poorly secured loads

A considerable amount of the litter on high speed road arises from poorly netted, waste transport vehicles. Highways England never prosecute the operators of these vehicles. [Read more](#)



### **It's not all bad news**

#### Councils make good use of contractors to issue more on-the-spot-fines

One of the positive developments in combating litter in recent years has been the use by councils of contractors to issue on-the-spot Fixed Penalty Notices. Councils have been able to cover the contractors' costs with the revenue from the fines.

#### Central London and the Tube

Central London's streets (if one ignores the bags of commercial waste obstructing the pavements) and its underground are clean. The reason is apparent for all to see. The streets, platforms and trains are all cleaned with a sufficient frequency that accumulations are rarely allowed to build up.

When they put their mind to it duty bodies can comply with their EPA S89(1) duty.

### **What needs to be done**

#### Reform the Litter Code of Practice

The Code should be revised so that it gives clear unequivocal guidance with the emphasis on regular cleaning, supplemented by inspections to deal with major deposits / fly tipping / black spots etc. This should be combined with guidance on the use of the various legal powers available to deter offenders. The litter grades and last resort response times should be abandoned. Advice should be given on the management of contractors to ensure their work is monitored and penalties imposed for under-performance.

### Civil law on-the-spot fines

Legislation should be enacted to provide an option for Councils to issue On-The-Spot fines for littering under a civil law regime. If unpaid the offender would not get a criminal record. This will save court costs and mean that juveniles could be fined. A similar civil regime currently operates in London for litter dropped from vehicles. [Read more](#)

### Litter thrown from vehicles

Legislation has been in force in London since 2012 by which the registered keeper is liable if litter is seen being thrown from his vehicle. The experience of London Boroughs in applying this law should be reviewed so that an informed decision can be taken over extending it to the rest of the country. [Read more](#).

### Remove the financial incentive for fly-tipping

To combat the scourge of fly-tipping consideration should be given to making the depositing of all household waste at collection/ treatment centres free of charge. This should include building and refurbishment waste. The costs of processing it should be recovered via general taxation.

### Establish a virtuous circle – more fines > deters more offenders > funds more enforcement > which deters even more offenders

Surplus revenues could then be used to finance more litter picking.

To bring this about the government should encourage councils to issue massively more on-the-spot fines – using specialist contractors where they feel it is appropriate. In the past councils have been positively [discouraged by ministerial comments](#).

The level of fines and enforcement activity should be set so that a sufficient surplus would be generated to fund, say, a doubling of the current level of litter picking.

Enforcement officers should operate in plain clothes to maximise their effectiveness.

Legislation should be enacted to put more aspects of environmental enforcement onto a similar basis so that the enforcement costs are covered by the fines

We need to get away from the idea that practices such as littering, fly tipping and placing poorly secured plastic bags of waste in the street for collection are in any way acceptable in a civilised society.

### Skips and waste transport vehicles should be more adequately sealed

Legislation should be introduced requiring (a) these vehicles to be sealed to a robust standard, (b) that they should be subject to spot checks and (c) the operator fined if their vehicles are found not to be adequately sealed – regardless of whether waste was seen falling from them.



### Highways England and TfL should take over responsibility for cleaning all of the trunk roads in their respective networks

The same body would then be responsible for cutting the grass and picking the litter. My proposal to this end was accepted by the C&LG Select Committee. [Read more.](#)

### Compliance with EPA S89(1) should be policed

I am talking here about policing of duty bodies not of the public or businesses.

Compliance with EPA S89(1) should be policed by DEFRA (or a separate Compliance Authority responsible to Parliament?). They should make sure duty bodies are aware of their responsibilities, implement an adequate cleaning regime and deter offenders by making good use of the legislative tools available to them.

They should check that, where cleansing is contracted out, the work is specified in such a way that the contractor's performance can be monitored and penalties applied when necessary.

### Best Practice should be identified and disseminated

DEFRA's Local Environment Quality team needs to be expanded. DEFRA should collect data from local authorities e.g. on the number of fines issued / prosecutions made for littering and fly tipping etc. They should use the information to help identify and disseminate best practice.

Research should be funded looking at the sources of litter by type of land.

Research should also be undertaken to compare the UK with other advanced countries to see how the issue of litter presents itself in those countries.

### Big Society

In every neighbourhood there are local litter issues. A spot in a high street becomes used for dumping bags of rubbish. Waste outside a block of flats is left for collection without being properly secured. A business fails to keep its land clean. A road near a school is routinely littered by pupils. Someone parks up in the same quiet spot every Saturday to eat his fast food and dumps his rubbish in the road.

A national non governmental organisation is needed which supports volunteer street or post code champions who are prepared to investigate these incidents, resolve them locally or alert the local authority environmental enforcement team.

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This report will be periodically up dated.

It can be viewed at [www.cleanhighways.co.uk/solving-the-litter-problem](http://www.cleanhighways.co.uk/solving-the-litter-problem)