

From: HOLLINRAKE, Kevin
Sent: 15 January 2016 11:21
To: Reardon, Tim
Cc: Peter Silverman (Clean Highways); Allison Ogden-Newton (CEO Keep Britain Tidy); jim.o'sullivan(CEO Highways England)
Subject: RE: Litter - powers to prosecute

Dear Mr Reardon,

Thank you for your e-mail of 11th January. I have discussed it with Peter Silverman of [Clean Highways](#) who initially raised the matter with HE.

You say that Highways England is not a prosecuting authority in relation to criminal offences; nor is it a "litter authority" or "principal litter authority" as defined in EPA90 with power to issue fixed penalty notices ... and ... it is only an authorised officer of a litter authority who can issue a fixed penalty notice under section 88.

However this does not answer the point I originally raised with Jim O'Sullivan in my e-mail of 16th September about whether or not HE could prosecute the operators of waste transport vehicles, who allow their loads to spill onto the motorway, under EPA S34 – Duty of care as respects waste.

I say this as it is my understanding that you do not need to be a prosecuting authority to bring prosecutions as *"the common law power to instigate private prosecutions is preserved under section 6(1) of the Prosecution of Offences Act 1985 and it is used by a number of organisations who otherwise do not have the statutory power to prosecute"* (See [5 The Public Prosecution Landscape](#) and [Who can Prosecute](#)).

A good example is the [RSPCA who routinely prosecute](#) people under the Animal Welfare Act 2006.

Do you not agree therefore that HE does after all have the power to prosecute offences committed on its network under both EPA S34 (duty of care as respects waste) and EPA S87 (offence of leaving litter)?

I agree that only an authorised officer of a litter authority can issue a fixed penalty notice. However HE could with the agreement of a local authority / litter authority become their authorised officer and in turn appoint its employees as such. This would enable its patrol officers to issue FPNs on any motorway passing through the area of the local authority. Please refer to [EPA S88 \(10\)](#). Do you agree that this is the case?

Kind regards,

Kevin Hollinrake MP
Member of Parliament, Thirsk & Malton Constituency
House of Commons
London
SW1A 0AA
02072 194 746



From: Reardon, Tim ([Highways England](#))

Sent: 11 January 2016 10:16

To: HOLLINRAKE, Kevin

Cc: O'Sullivan, Jim; Wilson, Mike

Subject: Litter - powers to prosecute

Dear Mr Hollinrake

I apologise for the delay in replying to your email of 10th December to Jim O'Sullivan regarding Highways England's powers to prosecute, and its Traffic Officers' powers to take enforcement action against, those who litter the strategic road network.

Highways England fully recognises its duty under section 89 of the Environmental Protection Act 1990 to keep the strategic road network, so far as practicable, clear of litter and refuse. Mike Wilson's letter of 2nd November to you explains our strategy for doing this through influencing littering behaviour, improving operational delivery and asset maintenance and improving partnership working. That strategy, together with our powers (statutory and otherwise) for achieving it, is kept under review.

However, Highways England is not a prosecuting authority in relation to criminal offences; nor is it a "litter authority" or "principal litter authority" as defined in EPA90 with power to issue fixed penalty notices as a way of discharging the offence without being convicted. Thus, while it is an offence under section 87 of that Act to leave litter on (among other places) the strategic road network, it is only an authorised officer of a litter authority who can issue a fixed penalty notice under section 88. Highways England does not have that status; nor, interpreting section 86 of EPA90, would it seem intended that a national body such as Highways England should have that status.

Yours sincerely

Tim Reardon

Tim Reardon

General Counsel
Highways England | Bridge House | 1 Walnut Tree Close | Guildford | Surrey | GU1 4LZ

From: O'Sullivan, Jim
Sent: 11 December 2015 14:30
To: 'HOLLINRAKE, Kevin'
Cc: Reardon, Tim
Subject: RE: Litter - powers to prosecute

Dear Kevin,

Thank you for your note. I am surprised to be told that we have the authority to prosecute for litter since it was my understanding that we didn't. I have asked our General Counsel to check the matter thoroughly and he will respond to you in the next few days.

Kind regards
Jim

Jim O'Sullivan,
Chief Executive Officer

Highways England | The Cube | 199 Wharfside Street | Birmingham | B1 1RN
Web: <http://www.highways.gov.uk>

From: HOLLINRAKE, Kevin [<mailto:kevin.hollinrake.mp@parliament.uk>]
Sent: 10 December 2015 14:27
To: O'Sullivan, Jim
Cc: Peter Silverman
Subject: Litter - powers to prosecute

Dear Mr O'Sullivan,

Thank you for the letter received on 2nd November from Mike Wilson in reply to my email to you on 16th September.

In previous correspondence with Peter Silverman, he was told the Agency was not a litter Authority. Adding to this confusion, I understand that you received communications from Andrew Edgington in July reporting refuse falling from a waste transport vehicle and he was told that only the Police could prosecute.

I am pleased to note this is not the case and Highways England do indeed have the powers to prosecute, however, I would like to understand what strategy you will be implementing to ensure offenders are held to account? Would you be able to update me on a regular basis on the frequency and success of such protections?

Kind regards,

Kevin Hollinrake MP

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