

From: Peter Silverman - Clean Highways

Sent: 08 August 2017 13:23

To: Bernadette Kelly - Perm Sec DfT ; Clare Moriarty (Permanent Secretary - DEFRA); Melanie Dawes - Perm Sec DC&LG

Cc: John Read – Clean Up Britain; Kevin Hollinrake MP ; John Hayes - Minister of State DfT ; Jesse Norman - Minister of State DfT; Chris Grayling - Sec of State DfT; Chris Preston - Dep. Dir. Waste & Recycling DEFRA; Andrew Gwynne MP; Hilary Tanner - Local Gov Assoc

Subject: Litter on the Highways England Network

Dear Ms Kelly,

Belated congratulations on your appointment as Permanent Secretary at the Department For Transport.

The aim of the [Clean Highways](#) campaign is to persuade duty bodies, such as Highways England and Local Councils, to comply with Environmental Protection Act [Section 89 - Duty to keep land and highways clear of litter](#) under which they are required **to ensure, so far as is practicable, that their highways are kept clear of litter and refuse**. I would welcome your help.

Please refer to my e-mail to your predecessor, Philip Rutnam, of [1st March 2017](#) and your departmental replies of the [27th March](#) and [6th April](#) .

The purpose of this e-mail is to develop some of the points raised in this correspondence and to draw other concerns to your attention.

I have addressed it jointly to you and your opposite numbers at DEFRA and the DC&LC as I understand litter policy is handled as an interdepartmental matter.

Complaints about roadside litter

Here is a link to the 194 [complaints about roadside litter](#) made via the Clean Highways web site so far this year. Jacqueline Taylor wrote. *"I've just returned from the Calais and Boulogne areas of Franceyou realise just how disgusting and dirty our roadsides are"*.

Minister [Lord Gardiner has referred to our filthy motorways](#). During his tenure as Roads Minister [John Hayes stated that HE's strategy on litter did not appear to be working](#) as the amounts of litter he had seen on roads was "quite appalling".

M40 J1 / A40 Denham Bucks

[This video demonstrates further evidence of non-compliance by Highways England \(HE\)](#). This junction was not included in [HE's list of 25 litter hotspots](#).

Steps being taken to ensure HE fulfills its duty

The Departmental reply of 6th April said that “*the Department is taking a number of steps to ensure that Highways England fulfils its duty. For instance, Highways England have recently been asked to identify the worst spots on the network – and these have been targeted for cleaning*”.

However if no addition resources are being made available how do we know that this effort will not be at the expense of other areas?

Please let me have details of the others steps that are being taken.

HE dumbs down its EPA S89 duty

I had expressed concern that HE’s Litter Strategy did not mention the EPA S89 duty and that HE had referred to it as being “to remove litter”. Your Departmental response of 6th April only addresses my first concern by saying that the HE Strategy was a high level document and not intended to spell out the legislative duty.

A strategy of misinformation?

I suspect that the real reason it is not spelt out is that anyone reading it would immediately realise that HE was acting in breach of the duty.

This would also explain why it is not spelt out in the government’s new Litter Strategy for England (when numerous other pieces of legislation are discussed), why it is not mentioned in your department’s [Road Investment Strategy](#) (RIS) and why your Department did not set HE a Key Performance indicator for litter (see page 22 of the RIS).

Where it is mentioned it is invariably misrepresented. [Fly-tipping responsibilities: Guide for local authorities and land managers](#) produced by the [National Fly-tipping Prevention Group](#) (contact address flytipping@defra.gsi.gov.uk) says on page 9 that *authorities must ensure, so far as is practicable, clearance of litter and refuse from relevant land* – presumably as and when they feel like getting round to it.

On 30th March this year [Andrew Jones Parliamentary Under-Secretary \(Department for Transport\)](#) [described the duty](#) as being “to adhere to the code of practice on litter and refuse, which is part of the Environmental Protection Act 1990”. The Code is something duty bodies have to have regard to. It is a consideration. What they have to adhere to is EPA S89(1).

On page 58 of the [Litter Strategy for England](#) it says: We will also consider how Highways England’s Performance Specification can drive better litter cleaning, and will consider developing a revised litter cleaning KPI for the next Performance Specification period. However there is no litter cleaning KPI to revise! Your Department did not set one.

A KPI can be set at any time. You do not have to wait for the next Performance Specification period.

The C&LG Select Committee had proposed that the cleansing of all those trunk roads on the HE network for which HE did not already have that responsibility should be transferred to HE. In

paragraph 36 of [their response](#) the Government's stated that this would require "primary legislation". This is simply not the case.

This is all very disquieting as was the manner in which HE responded to the points raised by the then Roads Minister, John Hayes MP about litter on the HE network. At his 27th Feb progress meeting with HE CEO, Jim O'Sullivan it was minuted: "JO to provide JH with note outlining what is being done to ameliorate HE's approach/strategy". However [no note was ever provided](#).

One must wonder if Mr Hayes was ever properly briefed by officials on HE's statutory duty with regard to litter. Maybe he was just given a copy of HE's Litter Strategy. If he wasn't specifically briefed on this how would he have found out about it? It is seemingly not spelt out in any official documents apart from the Infrastructure Act itself where it is buried in [Section 111 of Schedule I](#). [See my new FOI enquiries](#).

HE claim that areas of their network have been cleaned when they have not been. They [claimed that the Bricket Wood crossing](#) of the A405 in Hertfordshire had been litter-picked on 18th April and 24th July this year. However [photo evidence provided by Peter Tiffany](#) shows that this is incorrect.

[HE claimed](#) that the Grays lay-by on the A13 in Essex had been cleaned the very day before videos of it were taken on [15th September 2016](#) and [14th October 2016](#). They both showed it to be grossly defaced by large quantities of refuse.

HE Stakeholder Advisory Panel

HE have been established for over 2 years yet I understand they have still to set up a Stakeholder Advisory Panel as specified in their License. Have they been given a deadline to comply on this matter? I would like to be considered as a member of the panel.

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

I have yet to receive a reply to my [e-mail to HE of 10th November 2016](#) in spite of asking Mr Rutnam to expedite one. HE's EPA S89 duty implies that they should use all practicable means to ensure that their motorways are kept clear of litter. This could include prosecuting the operators of [these vehicles](#). Yet they deny, wrongly, that they do not have the powers to do so.

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

I flatter myself that my campaigning on this issue has at least partly contributed to the developments announced in the [Litter Strategy for England](#). This says on page 58:

We also propose to reallocate responsibility for managing relevant cleaning activities from any local authority that is not fulfilling its statutory duties on the road network. We will consider how to provide a mechanism to recover the cost of these activities from local authorities, and if needed, will put in place powers for the Secretary of State to make this transfer of responsibility and funding.

As alluded to previously the government already have powers to transfer cleansing duties from a local authority to a highways authority (e.g. Highways England) under [EPA86 \(11\)](#). Funding is a different matter. The obvious approach would be to leave local government funding alone and to find new money (lots of new money) to fund more litter picking on the HE network.

The Strategy was published during the last Parliament and was not mentioned in the Conservative manifesto. Is the government therefore still committed to this policy for APTRs?

If so, when it says “We propose to reallocate” does this mean you will so act if a local authority is not doing its job, or does it mean you are going to put a proposal forward for approval and, only if this is approved, would you be able to act in such cases? Please clarify.

Why has it taken so long to get to this point? The transfer of ATPR (All Purpose Trunk Road) cleansing to the Highways Agency was recommended in a report by Atkins commissioned by the Agency in 2009. They said it would provide cost savings, enhance safety as more suitably trained operatives would be available, improve congestion and be of benefit to the environment.

I agree with their view. The cleansing of every such ATPR should be allocated to HE so that the same contractor cuts the grass and picks up the litter – a proverbial no-brainer if ever there was one. However if you are going to consider them on a piecemeal basis how will you assess their ongoing cleanliness? Are you open to representations from the public on this?

A13 Essex – closure of Grays lay-by

This is the second lay-by to have been closed down on the London bound carriageway of this HE road. I had asked Mr Rutnam to tell me what process has to be gone through before a lay-by can be closed down and whether it had been adhered and who made the decision?

I was told that the decision was approved by HE, Essex Police and Thurrock Council as the only option to combat the problems associated with waste, including human waste, and there was ample alternative provision within Thurrock.

To my way of thinking a better alternative would have been to fence off the open hinterland of scrub and hillocks behind the lay-by and to clean the metaled area, and what would then be a more restricted narrow strip of grass alongside it, on a daily basis. However I would like to study all of the documents relating to this decision to see if I can make some more considered proposals. Hopefully these valuable facilities can be reinstated. [See my new FOI enquiries.](#)

I look forward to hearing from you in due course.

Kind regards

Peter Silverman
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