

Litter on the Highways England Network **Note prepared for Jesse Norman MP**

Misrepresentation / ignoring / dumbing down of the [statutory duty on litter](#)

[Governments Litter Strategy](#) – makes just one reference to the EPA S89(1) duty (do a word search on “protection”). Under 5.1.4 *Review and update the Code of Practice on Litter and Refuse* it says: “The statutory Code of Practice on Litter and Refuse describes the standards which councils and others are expected to be able to achieve in carrying out their legal duty to “keep their relevant land clear of litter and refuse” under the Environmental Protection Act 1990”. “Ensure that they” is omitted. HE not mentioned.

Consideration of why most councils and HE to have failed comply with the duty should have been the focus of the Strategy. Instead the only reference to it is tucked away on Page 60 in a discussion of the LCoP.

[HE's Litter Strategy](#) - says which roads the duty applies to but **not what the duty is**.

Nick Harris, HE's Operations Director, [wrote to Ms Crawford](#) saying “under the terms of the Environmental Protection Act we are responsible for **the management and removal of litter** on the motorway network and some trunk roads”.

Andrew Jones, Parliamentary Under-Secretary (Department for Transport) [said in the H of C](#) in reference to HE “It has **a duty to adhere to the code of practice on litter and refuse**, which is part of the Environmental Protection Act 1990..”

In a Ministerial briefing on litter provided to John Hayes MP when he became responsible for HE it was stated: “Highways England is responsible for **clearing litter** on all England's motorways.... “
[See my FOI request](#).

Jesse Norman, Under Sec of State at the DfT wrote [to Claire Perry MP](#) saying: “Highways England is responsible for **collecting litter** on motorways and a small number of trunk roads. Highways England complies with the gradings set out in the Code of Practice on Litter and Refuse 2006”. Reference is later made to a “Highways England commitment to keep the highways, for which they are responsible, clean”. But this is presented as a commitment not a statutory duty.

Jesse Norman, [H of C Jan 2018](#) “Highways England is responsible for complying with the mandatory legal requirements under the Environmental Protection Act 1990, which includes **removing litter** on England's motorways and some trunk roads”.

The duty is not mentioned in the current [Road Investment Strategy](#) for HE.

The RIS does not make any reference to “litter” or the EPA S89 duty in spite of making 130 references to “environment”, 31 to “biodiversity”, 35 to “noise”, 21 to “air quality”. “Clean” is only used in reference to air / fumes.

[DfT 17/12/17 \(page 3\)](#) “..the government will review the mechanism by which councils and other land managers can be held to account for **maintaining their land to the standards set out in the Code of Practice** ... “

No KPI for litter was included in DFT's Road Investment strategy for HE - see section below

No KPI for litter

The Environment KPIs are laid down in pages 22 -24 of Part 3 - Performance Specification of the [Road Investment Strategy](#) . The summary table is reproduced here:

Environment – summary table	
KPI	<i>Noise</i> : Number of Noise Important Areas mitigated. <i>Biodiversity</i> : Delivery of improved biodiversity, as set out in the Company's Biodiversity Action Plan.
Target	<i>Noise</i> : mitigate at least 1,150 Noise Important Areas over RP1. <i>Biodiversity</i> : The Company should publish its Biodiversity Action Plan by 30 June 2015 and report annually on how it has delivered against the Plan to reduce net biodiversity loss on an ongoing annual basis.
PI	Suite of PIs to provide additional information about environmental performance. These should, at a minimum, include: <ul style="list-style-type: none">• ●● Air quality; and• ●● Carbon dioxide, and other greenhouse gas emissions for the Company and its supply chain that occur as they carry out work on the SRN.
Requirements	Demonstrate what activities have been undertaken, and how effective they have been, to improve environmental outcomes. The Company should develop metrics covering broader environmental performance. These should include: <ul style="list-style-type: none">• ●● A new or improved biodiversity metric; and• ●● Carbon dioxide, and other greenhouse gas emissions arising from the use of the Network.

But the Litter Strategy implies there is one

The [Litter Strategy for England](#) says on p 59: “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 a KPI can be revised at any time

[Infrastructure Act S3 Road Investment Strategy](#) says (1) The Secretary of State may at any time—(a) set a Road Investment Strategy for a strategic highways company, or (b) vary a Strategy which has already been set.

No KPI means no obligation for ORR to monitor

The lack of a KPI for litter in the RIS means that the Office of Rail & Road consider monitoring HE’s compliance with their EPA S89 duty is outside the scope of its functions which, they say, are primarily to monitor HE’s compliance with the RIS. [Please refer to their e-mail of 30/01/17](#).

HE claim cleaning has taken place when it has not

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 there videos were taken on [15th September 2016](#) and [14th October 2016](#).

Excuse culture at HE / DfT – safety

Worker safety while litter picking is claimed to be a valid concern limiting the frequency and scope of litter picking. However, of the of the 12 HE network workers who had been killed in the last 10 years none were engaged in litter picking at the time. During the same period no worker had been hit by a motorist while litter picking. [Read more here](#).

Then we were told that putting out the traffic management (i.e. the cones) before litter picking was what was putting lives at risk. E.g. [Jesse Norman 12/09/17](#): “Sadly litter picking is wholly preventable and collecting it on motorways puts peoples’ lives at risk, **as it is necessary to install traffic management** in order to pick litter safely”. However, HE hold no information regarding injuries caused while putting out traffic management. [See e-mail from HE](#)

HE deny they have the powers to prosecute Waste Transport vehicle operators under EPA S34 – duty of care re waste

[Confusion over HE’s ability to prosecute](#)

[All CH posts on Waste Transporters](#)

DfT finally admitted in December 2017 that HE can prosecute such cases:

Prosecution of waste transporters who spill their loads onto the Highways England network

Highways England is not a litter authority and whilst it does have the power to bring a prosecution in an individual case it works collaboratively with other organisations like the Police or the Traffic Commissioner who have the required powers to issue a Fixed Penalty Notice.

[See letter from DFT bottom of page 2](#)

However at their Litter Conference in January 2018 [HE were still claiming they could not prosecute](#).

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

Please refer to [my post on the subject](#)

HE has failed to set up a Stakeholder Panel 3 yrs after it was required to do so in its License

- 5.22 The Licence holder **must** establish a stakeholder advisory panel to provide advice to the Licence holder's Board on issues directly affecting local authorities and communities, and ensure that:
- a. The membership of the panel includes representation from a credible range of local government and other stakeholders, including environmental and safety groups, as appropriate;
 - b. The Licence holder seeks advice from the panel on a regular basis.

License

HE Contacts are in total disarray

They fail to specify outputs and/or inputs in such a way that the HE could monitor performance against specification.

There is in any case no meaningful systematic regime of performance monitoring – only token monitoring in some areas.

In practice HE just lets its contractors get on with the job in the way they think fit. Complaints are even passed back to the them to deal with.

When I first enquired about the appalling condition of the M40 (now one of the cleanest motorways) I was told that the Highways Agency had **discharged it duties under EPA S89 to the contractor**. This is still the attitude.

The result is non-compliance by HE with its statutory duty as can be seen from the following video footage from:

[The A40 part of the Area 5 / DBFO / Connect Plus \(M25\) Ltd contract](#) and

[A section of the M6 which falls in Area 7 - the first Area to use the latest HE contract](#)

HE have lost control of their contractors.

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