

Obstructions and 'out of repair' Rights of Way (England and Wales)

THIS BRIEFING COVERS

Obstructions and disrepair - the problem for cyclists; law and practice; advice for cyclists; good practice for local authorities.

HEADLINE MESSAGE

- Obstructions, poor surfaces, bad drainage and rank vegetation often make the bridleway and byway network in lowland England and Wales difficult for cyclists to use and can even force them to abandon rides. It also puts people off the healthy and enjoyable activity of riding in the countryside.

KEY FACTS

- Rights of way (RoW) include footpaths, bridleways, byways, restricted byways and byways open to all traffic (BOATs).
- By law, highway authorities must ensure that their RoW are maintained in a state appropriate for the sort of traffic reasonably expected to use them. If they fail to do this, members of the public can use section 56 of the *Highways Act 1980* (HA1980) to force them to act.
- Landowners must remove unlawful obstructions, and highway authorities have to ensure that RoW are not obstructed. If an authority fails to do this, members of the public can use sections 130A-D (HA1980) to compel them to take action.
- If an authority can prove that it has taken reasonable care to "*secure that the part of the highway to which the action relates was not dangerous to traffic*", it has a statutory defence under section 58 (HA1980) in the event of claims made against them.
- Highway authorities do not have to do anything to facilitate the use of bridleways by cyclists. Byways and restricted byways, however, should be maintained for cycle use.

Cycling UK VIEW

- Highway authorities should prioritise bridleways, byways, restricted byways and unclassified roads in their rights of way management and maintenance regimes. This is because these are multi-user routes, available to cyclists, horse riders and walkers.
- Hedgerow legislation should be strengthened to prevent the removal of field boundaries alongside bridleways, as the bridleway then becomes 'cross field' and may be ploughed.
- Where cross field paths are regularly ploughed, an uncultivated 'headland' (i.e. round the edge) alternative should be made available.
- Highway authorities should make sure that rights of way that go through fields are clearly signed to stop users encountering any obstructions that are not on the path.



BACKGROUND INFORMATION

1. The problem

- **Out of repair highways**

Paths may be 'out of repair' because, for example, they are badly drained, rutted or slippery, if bridges along them are unusable/hazardous or surface vegetation impedes the progress of people who want to use them (note: dense undergrowth is not normally classed as an obstruction). Paths are often made unusable by deep ruts caused by agricultural or forestry vehicles in wet conditions, and this damage is rarely repaired by either the landowner or by the local authority.

- **Obstructions**

Typical obstructions are fallen fences or trees, crops grown over the path, overgrown hedges, blockages formed by farm implements or machinery, barns or buildings built across the path, or locked gates. Not reinstating the land after ploughing and cultivation can also block off rights of way.

However, there is no legal definition of an obstruction. This means that when a case comes before them, it is up to the courts to decide whether the 'obstruction' in question is actually unlawful. When deciding, they have to look at all circumstances, e.g.: why the obstruction is there, how long it's been there, if it is temporary and where it is.

Note: While local authorities have improved the signage onto rights of way from tarred roads, waymarking through fields is often inadequate, and can lead users to 'obstructions' which, on checking, are not actually on paths shown on the definitive map (i.e. the map that local authorities have to maintain of rights of way in their area).

2. Responsibilities and the law

Cycling UK view: Highway authorities should prioritise bridleways, byways, restricted byways and unsurfaced unclassified roads in their rights of way management and maintenance regimes. This is because these are multi-user routes, available to cyclists, horse riders and walkers.

Highway authorities have a legal duty to make sure that the public can enjoy their right to use the highway, which includes all rights of way (footpaths, bridleways, byways and restricted byways). They have to maintain the surface of public paths at public expense, and ensure that they are not obstructed. They can take people who do obstruct them to court, if need be.

Each authority largely fulfils its maintenance obligations through its own guidelines and inspection regime, which are usually published on their website. There are some paths, of course, that are private and privately maintainable by the landowner.



a. The Highways Act 1980

Maintenance, and the duty to maintain, is separate from the duty to keep the highway free of obstructions. The *Highways Act 1980* (HA1980)¹ sets out the following duties/powers:

Maintenance and repair:

- **S41(1)** says “*The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty [...] to maintain the highway.*”
- **S56** gives any member of the public the right to serve an order on a highway authority requiring them to maintain a public path. The authority has six months to restore the surface, and if this fails to happen, the complainant may apply to the magistrate’s court for an Order to compel them to do so.
- **S58** provides a statutory defence against claims where the authority can establish that reasonable care has been taken to “*secure that the part of the highway to which the action relates was not dangerous to traffic*”. A systematic process of highway safety inspections, intervention and repairs applied in accordance with the authority’s policy is necessary for the statutory defence.
- **S58** also says that, when deciding whether a highway has failed in its duty, the court should include in its considerations “*the character of the highway, and the traffic which was reasonably to be expected to use it*”; “*the standard of maintenance appropriate for a highway of that character and used by such traffic*”; and “*the state of repair in which a reasonable person would have expected to find the highway*”.
- **S130(1)** makes it a highway authority’s duty to “*assert and protect the rights of the public to the use and enjoyment*” of the highways in their authority’s area.

Obstructions:

- **S130(3)** requires highway authorities to prevent as far as possible the stopping-up or obstruction of highways.
- **S130(5)** gives them the power to institute legal proceedings against offenders (i.e. to take offenders to court, where they may be fined).
- **S130A - D** provide a process for users to require highway authorities to remedy obstructions.
- **S137** makes it an offence for any person, without lawful authority or excuse, to wilfully obstruct the free passage along a public highway. Authorities have the power to prosecute offenders, who may be fined and the courts can order anyone convicted to remove the obstruction. Further fines can be imposed if the matter is not resolved.
- **S143** gives highway authorities the power to remove ‘structures’ from highways.

Also, the *1990 Rights of Way Act* provided clarification on ploughing issues (see below), together with a duty for local authorities to ensure that ploughed bridleways are correctly reinstated.

b. Bridleways

The 1968 *Countryside Act* s30 allowed cyclists to use bridleways, but did not create any obligation for a highway authority “*to do anything to facilitate the use of the bridleway by cyclists*”.² Nevertheless, bridleways are still ‘highways maintainable at public expense’ (s36, HA1980), so authorities are obliged to enforce the legislation on surface disturbance and obstructions. Byways and restricted byways, however, should be maintained for cycle use.

See our briefing on bridleways, restricted byways and cycle tracks:
www.cyclinguk.org/campaignsbriefings

c. Stiles and gates

These are unlawful obstructions unless they are recorded on the definitive statement³; or it can be shown that the way was dedicated with such a structure (i.e. which means that the statement requires updating); or that the structure has been authorised by the highway authority.

d. Ploughing

Cycling UK view:

- Hedgerow legislation should be strengthened to prevent removal of field boundaries alongside bridleways, as the bridleway then becomes 'cross field' and may be ploughed.
- Where cross field paths are regularly ploughed, an uncultivated headland alternative should be made available.

It is illegal to plough a footpath or bridleway unless it runs across a field ('cross field') rather than round the edge ('headland'). Headland bridleways, therefore, are legally protected from the disturbance of ploughing. If, however, the boundary of the field is removed, the route becomes cross field, meaning that it then becomes legal to plough it. Even though cross field bridleways must be reinstated within 14 days to a minimum width of 2m, even after reinstatement the path will often be unpleasant for cycling. Providing for an uncultivated headland as an alternative to regularly ploughed cross field paths avoids the problem.

Although it is illegal to plough byways and restricted byways or headland bridleways, it does occur. Their width must be maintained at a minimum of 3m.

e. Vegetation and hedge trimming

S154 HA1980 enables highway authorities to require landowners to trim overhanging vegetation and hedges.

For more, see Cycling UK's briefing on vegetation and hedge trimmings:
www.cyclinguk.org/campaignsbriefings.

f. Signage

Cycling UK view: Highway authorities should make sure that rights of way that go through fields are clearly signed to stop users encountering any obstructions that are not on the path.

Highway authorities have a duty to erect and maintain a signpost at every point where a right of way leaves a tarred road (s27 of the *Countryside Act 1968*). This practice has improved, but waymarking⁴ along the line or direction of paths themselves may be inadequate. This is a particular problem when a path goes through a field that is difficult to navigate. Users might come across an 'obstruction' which, on checking, is not actually on the definitive path.





ADVICE FOR CYCLISTS

What do about out of repair paths:

- Report the problem to the Rights of Way section at the relevant highway authority as soon as possible (if the problem relates to a National Park, contact the authority for that Park). An online reporting system may be available. Supply a photograph if you can, and ask them about the timescale for tackling the problem and to update you when resolved. If possible, revisit the path in question to review progress.
- Where, following extensive discussions, the authority fails to maintain an 'out of repair' public path, any member of the public can serve them with a s56 HA1980 notice (*'Enforcement of liability for maintenance'*). This gives them six months to restore the surface, and if this fails to happen, the complainant may apply to the magistrate's court for an Order to compel them to do so.

What to do about obstructions:

- Rights of way users are entitled to take reasonable steps to remove an obstacle along the public highway. Overdoing it, however, could lead to being sued for criminal damages.
- If it is impossible to deal with an obstruction at the time, it should be reported either to the landowner, or to the Rights of Way section at the relevant highway authority as soon as possible (many councils now have online reporting systems). If the problem relates to a National Park, contact the authority for that Park. Supply a photograph if you can, and ask them about the timescale for tackling the problem and to update you when resolved. If possible, revisit the path in question to review progress.
- Direct approaches to the landowner are best kept friendly and non-confrontational, but as a minority of them can be aggressive, take local advice or go through the council instead.
- Contact with highway authorities should be friendly but firm, resorting to legal processes only after other communications have failed.
- A number of legal remedies are available when cases are not resolved within a reasonable timescale and the most powerful are covered by HA1980 s130 & s56 (see above). In fact, any member of the public can apply for an order to force a highway authority to remove an obstruction if they fail to act. See Ramblers' webpage for more on the procedure:
<http://www.ramblers.org.uk/advice/improve-the-path-network/how-to-get-an-obstruction-removed.aspx>

- ***!Caution:*** be aware that courts can now claim full cost recovery from applicants.

- More generally, cyclists can work with their Local Access Forum (LAF) to ensure that the highway authority has a robust policy on path maintenance.

See our briefing on LAFs – www.cyclinguk.org/campaignsbriefings

Contact Cycling UK's Campaigns Department if you need detailed advice: 0844 736 8450.

CASE STUDY: Cyclists using Bridleway 4 near Bellingham in Northumberland National Park needed to lift their bikes over an awkward and illegal stile in a high stone wall. Both cyclists and equestrians had asked Northumberland National Park on numerous occasions to remove this obstruction, but the authority continued to prevaricate. A s130a notice was served, and a date for a magistrate's court hearing set. Faced with this, the authority finally succumbed and the stile was replaced by a gate.

GOOD PRACTICE FOR HIGHWAY AUTHORITIES

- Prioritise multi-user paths in management and maintenance regimes
- Develop a robust paths maintenance policy, in conjunction with the Local Access Forum
- Act quickly on reports of obstructions or disrepair and update complainants about progress

FURTHER READING

- Cycling UK briefings on: Bridleways, Restricted Byways and Cycle Tracks; Vegetation and Hedge Trimmings; Rights of Way Improvement Plans (RoWIPS); Local Access Forums (LAFs) – www.cyclinguk.org/campaignsbriefings
- *Out in the Country* CA9. (Natural England, Nov. 2007). <http://publications.naturalengland.org.uk/publication/9027>
- *Rights of Way. A Guide to Law & Practice*. 4th Edition (the 'Blue Book'). Riddall & Trevelyan. (Ramblers' Association and the Open Spaces Society, May 2007).
- *An Introduction to Highway Law*. By Michael Orlik. (Shaw and Sons, 2007)
- *Open access land: management, rights and responsibilities*. (Natural England, May 2016). www.gov.uk/guidance/open-access-land-management-rights-and-responsibilities
- *Rights of Way Circular 1/09*. Guidance for Local Authorities. (Defra, 2009) www.gov.uk/government/publications/rights-of-way-circular-1-09
- The Ramblers' rights of way and access policy and information pages – www.ramblers.org.uk/policy.aspx

¹ Highways Act 1980. www.legislation.gov.uk/ukpga/1980/66

² The Act says (section 30): "The rights conferred by this section shall not affect the obligations of the highway authority, or of any other person, as respects the maintenance of the bridleway, and this section shall not create any obligation to do anything to facilitate the use of the bridleway by cyclists."

³ The 'definitive statement' describes each right of way and accompanies the 'definitive map', a statutory document that must be produced and kept up to date by every county council or unitary authority (except Inner London Boroughs). Every single right of way in an authority's area should be recorded on it. The map can be modified via Definitive Map Modification Orders (DMMOs), as long as there is evidence to support the application.

⁴ 'Waymarking' is a means of indicating the line or direction of a path away from metalled roads at points where it may be difficult to follow