

Cyclists, Vegetation and Hedge Trimmings

THIS BRIEFING COVERS:

Legal background; duties of highway authorities; enforcement; legislation; hedge trimming good practice; advice for cyclists.

HEADLINE MESSAGES

- Cyclists encounter problems if vegetation along the routes they use is not well trimmed. Overgrown branches can obscure visibility and road signs, or get in the way, for instance.
- Cyclists also suffer when debris is left strewn about following careless or incompetent hedge trimming practices.
- Debris has the potential to cause punctures or – worse – it may get caught in wheels sometimes with serious, even fatal, consequences.

KEY FACTS

- It is illegal to obstruct the public highway without legal authority/excuse, or leave debris on it.
- Trimming back vegetation is usually the duty of the landowner or occupier, although sometimes the local highways authority is responsible for it.
- As a work activity, hedge trimming is subject to the provisions of the *Health and Safety at Work Act 1974*.
- A highway authority in England and Wales has a legal duty to assert and protect the public's right to use and enjoy any highway for which it is responsible; and it must ensure that it is safe for users. As such, authorities have powers to oblige landowners/occupiers to remove obstructions/debris etc.

Cycling UK VIEW

- Those responsible for trimming vegetation should do so regularly and in accordance with best practice.
- Local authorities and the police should actively pursue and, as necessary, prosecute offenders.
- Overhanging vegetation and debris along routes used by cyclists, both on and off-road, should be regularly and attentively cleared.



BACKGROUND INFORMATION

1. Legal duties and responsibilities

a. Responsibilities in general

There is a legal duty, under the **Highways Act 1980**, not to obstruct the public highway without legal authority or excuse; and not to leave debris on it (see 'The Highways Act 1980 in more detail' below). This Act largely applies to England and Wales, but legislation in Scotland makes similar/equivalent provisions, mainly under the **Roads (Scotland) Act 1984**.

In England and Wales, the public highway network includes public roads, cycle lanes, cycle tracks/paths, footways, grass verges and public rights of way (i.e. footpaths, bridleways, restricted byways etc.).

Trimming vegetation is usually the responsibility of the landowner or occupier (e.g. farmer, householder, company etc.). Less often, it falls within the remit of the highway authority ¹ (grass verges are usually its responsibility, for example).

In principle, anyone who cuts a hedge or a verge beside the carriageway is liable for the reasonably foreseeable consequences of doing so; and anyone who works unsafely and/or fails to clear up afterwards may be held liable for any damage caused by their negligence. The *Highways Act* (or equivalent) requires people who are executing works in streets to put up barriers and warning signs to prevent danger to traffic.

As a work activity, hedge trimming is subject to the provisions of the **Health and Safety at Work Act 1974** (England, Wales, Scotland & Northern Ireland), so those undertaking the work are expected to manage the risks they create. Farmers are not exempt.

b. The duties of a highway authority

Under the *Highways Act 1980*, a Highways Authority in England and Wales has a duty to assert and protect the public's right to use and enjoy any highway for which it is responsible; and it must ensure that it is safe for users. As such, authorities have powers to oblige landowners/occupiers to remove obstructions/debris etc. (see 'Enforcement' below) through enforcement notices and legal action etc.

Each authority largely fulfils its maintenance duties through its own guidelines and inspection regime. Most authorities publish their maintenance guidelines on their websites.

How regularly an authority inspects a route depends on its importance. A busy main road and footpath may be inspected monthly, while a minor estate road or rural lane may only be looked at annually. It goes without saying, therefore, that a scheduled inspection is more likely to pick up on longer term problems (e.g. branches obscuring visibility) than on the more transient debris left by a hedge trimmer. As a result, trimmings that are causing a nuisance tend to be reported by passing road users.

Where an authority is responsible for hedge, tree or verge cutting, it will follow its good practice guidelines, inspection regime and a system for keeping records. Its insurers usually recommend sticking to all of these closely.

Local highway/roads authorities in the UK should refer to the national guidance, *Well-maintained Highways: Code of Practice for Highway Maintenance Management* (UK Roads Liaison Group, October 2016). Although not statutory, the Code is backed by central and local government. It takes a 'risk-based' approach, and helps local authorities develop their own levels of service to reflect local needs, priorities and affordability. It includes advice on maintaining/managing cycle routes specifically, and on the need to keep them in mind more generally.

2. Enforcement

The following agencies may be able to act against people who cause potential or actual hazard by trimming (or not trimming) vegetation, failing to remove debris or other nuisances on the road/highway. The public also has a role to play.

a. The Police

If trimmings or other debris deposited on the highway are identified as a serious obstacle or danger, the police may be persuaded to take action. Unfortunately, they may not view the matter as a priority (and they may well tell you to contact the local highway authority).

b. Highway authority

Under the *Highways Act 1980* (or equivalent), highway authorities have various powers in respect of obliging landowners/occupiers to remove things that are causing nuisance, including vegetation, on the public highway. This applies whether the authority has noticed the problem itself, or whether someone has notified them of it. The authority is also responsible for checking that works they have asked to be done have been carried out and to proper standards.

Usually, council officers will try to resolve problems amicably, but take firm, formal action if that approach does not work. Should an offender fail to act, the authority may make a complaint to a magistrates court (England & Wales) for a removal and disposal order. In situations of immediate danger, the authority is empowered to remove the object(s) and recover costs from the offender.

Most authorities publish details of their enforcement duties and associated policies on the web.

c. Health and Safety Executive (HSE)

The HSE may be able to take action in cases where the work activity itself gives rise to risk, e.g. where an operator continues to cut when vulnerable people are passing. (Note, however, that if the problem relates directly to the deposition of material on the road, enforcement by the police and highway authorities under the *Highways Act* (or equivalent) might be more appropriate).

HSE has several options open to them when dealing with hedge cutting complaints, ranging from verbal/written advice to 'Improvement' or 'Prohibition' notices. They may prosecute as a last resort for more serious breaches. Inspectors act in accordance with the HSE *Enforcement Policy Statement* www.hse.gov.uk/enforce/index.htm.

For HSE guidance, see its *Safe use of rotary flail hedge cutters*, www.hse.gov.uk/pubns/ais21.pdf. This is the basis upon which HSE inspectors make judgements about enforcement action.

d. Members of the public

Anyone can take out a prosecution against those who obstruct a highway, but it's wise to take legal advice first.

In the case of footpaths, bridleways, or restricted byways, or ways shown on a definitive map and statement as a restricted byway or a byway open to all traffic, Sections 130A-130D of the *Highways Act* (see below) enable any person to serve a notice on a local highway authority in England and Wales, requesting it to secure the removal of an obstruction. Should the authority refuse or fail to take action, the applicant can seek a magistrates court order compelling it to act.

See www.ramblers.org.uk/advice/improve-the-path-network/how-to-get-an-obstruction-removed.aspx for more.

3. The Highways Act 1980 in more detail

Depending on the individual case, the following provisions of the *Highways Act 1980* may apply.

Note: the *Highways Act* applies largely to England and Wales, but a couple of the provisions listed below do cover Scotland (as noted). Otherwise, Scotland has similar legislation, mostly covered in the *Roads (Scotland) Act 1984*.

a. Maintenance in general:

- **Section 41, subsection (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.” (Snow and ice, however, get a special mention: the relatively new section (1A) says: “In particular, a highway authority are under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.”)
- **Section 58** 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. **Scotland:** according to the UK Roads Liaison Group: “A key difference in Scotland is that there is no equivalent defence against alleged failure to maintain, although case law will have established some basis for this.”ⁱⁱ
- **Section 174** sets out the “Precautions to be taken by persons executing works in streets.” Amongst such precautions, subsection (1) says that persons “(a) shall erect such barriers and traffic signs for preventing danger to traffic, for regulating traffic, and for warning traffic of danger, as may be necessary and remove them as soon as they cease to be needed for any of those purposes;” and “(b) shall cause the works to be properly guarded and lighted during the hours of darkness”. If a person fails to do this they are guilty of an offence and liable to a fine (subsection (2)).

b. Obligations to cut vegetation

- **Section 154, subsection (1)** indicates that “where a hedge, tree or shrub overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians, or obstructs or interferes with the view of drivers of vehicles or the light from a public lamp, or overhangs a highway so as to endanger or obstruct the passage of horse-riders, a competent authority [...] may, by notice either to the owner of hedge, tree or shrub or to the occupier of the land on which it is growing, require him within 14 days from the date of service of the notice so to lop or cut it as to remove the cause of the danger, obstruction or interference.”
- **Subsection (2) of section 154** indicates that “where it appears to a competent authority for any highway, or for any other road or footpath to which the public has access that any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted, and that by reason of its condition it, or part of it, is likely to cause danger by falling on the highway, road or footpath, the authority may, by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is situated, require him within 14 days from the date of service of the notice so to cut or fell it as to remove the likelihood of danger.”
- **Subsection (3) of section 154** says, “A person aggrieved by a requirement under subsection (1) or (2) above may appeal to a magistrates’ court.”
- **Subsection (4) of section 154** indicates that if the work is not done by a notified landowner/occupier, the highway authority may do it and recover costs from the defaulter.

c. Free passage, rights and enjoyment, and things on the highway:

- **Section 130** indicates at subsection (1) that *“it is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it”* and subsection (2) indicates that *“any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.”*
- **Section 130A** indicates that, in the case of a footpath, bridleway, or restricted byway, a way shown in a definitive map and statement as a restricted byway or a byway open to all traffic, a person *“... may serve on the highway authority notice requesting them to secure the removal of the obstruction from the highway.”*
- **Section 137** indicates that *“if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.”*
- **Section 148** indicates that if *“a person deposits anything whatsoever on a highway to the interruption of any user of the highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale”*. (This section applies to England, Wales, Scotland & Northern Ireland).
- **Section 149** indicates at subsection (1) that *“if anything is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith and if he fails to comply with the notice the authority may make a complaint to a magistrates' court for a removal and disposal order under this section.”*
- **Subsection (2) of Section 149** indicates that *“if the highway authority for any highway have reasonable grounds for considering that anything unlawfully deposited on the highway constitutes a danger (including a danger caused by obstructing the view) to users of the highway, and that the thing in question ought to be removed without the delay involved in giving notice or obtaining a removal and disposal order from a magistrates' court under this section, the authority may remove the thing forthwith”;* and (subsection 5) *“...may recover from the person who deposited it on the highway the expenses, or the balance of the expenses, reasonably incurred by them in removing it.”*
- **Section 161** subsection (1) indicates that *“if a person, without lawful authority or excuse, deposits anything whatsoever on a highway in consequence of which a user of the highway is injured or endangered, that person is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.”* (This section applies to England, Wales, Scotland & Northern Ireland).

You can view the *Highways Act 1980* in full, and amendments to it at:

www.legislation.gov.uk/ukpga/1980/66

View the *Roads (Scotland) Act 1984* at:

www.legislation.gov.uk/ukpga/1984/54/contents

4. Good hedge trimming practice

Negligent and dangerous use of hedge trimmers can cause serious risk and disruption to cyclists. Good practice is the best way of avoiding this:

- Small hedges should be trimmed by hand whenever possible, because this tends to allow cuttings to fall straight downwards rather than ejecting them into the roadway.
- Larger hedges should be trimmed using machinery that does not throw cuttings great distances and ensures that they are directed into the base of the hedge or removed.
- A good quality machine with all guards intact and fitted with a blower to clear the road of any bits that escape the guard can leave the road almost clear of debris. The problem is mainly caused by the use of substandard equipment with damaged guards, which results in debris flying in every direction.
- The problem is compounded by operators continuing to use machinery while people are passing within the danger area. This is a hazard not just for cyclists, but also for pedestrians and the occupants of open cars, who could all easily be injured by the large lumps of thorny wood shot out by some machines.
- Roadside hedges should not be cut from the field side, because operators cannot properly monitor what is happening on the road on the other side, and it is not clear to approaching road users what is happening.
- Whenever hedge trimming intrudes onto a road or cycleway, temporary signs should be erected to warn of the hazard. They should be placed well in advance of the danger, in both directions, and identify the nature of the hazard.
- Cuttings (and any mud) should be cleared up as the works proceed so that the surface is left clear. If this does not happen, cuttings are often spread by traffic and wind.
- All cycleways and footways should be cleared with equal vigilance. Wheelchairs, both hand and powered, are especially vulnerable to punctures.



The following illustrates and explains both good and bad practice:



a. A hedge trimmer that is not causing a problem

This trimmer is in good condition, its blower is working and it is being used by a skilled operator. It is cutting nearly half a mile of hedge and there are hardly any bits left on the road. The heavy black rubber flap guard immediately behind the flail head deflects most of the flailings back down into the hedge. There is a similar flap at the front. The large blower on the back of the unit blows any bits that do end up on the road back onto the verge.

b. Another view of the same hedge trimmer, showing the flail head and blower.



c. Poor practice

This trimmer is leaving debris on the road. A close look at the flail head shows a clear gap between the rear roller and the metal top guard. The rubber guard flap is completely missing, leaving a gap that allows trimmings to shoot out, many flying right across the road and out of range of the blower (if it is being used).

d. Hedge trimmer, similar to the above, parked

This shows just a small remnant of the rear flap guard and an even smaller remnant of the front flap. Clearly this has not been properly maintained. Essential safety guards are missing.



e. An even more dangerous situation ...

The operator is cutting the hedge from within the field. They cannot see what is happening on the road and approaching road users can't see what's going on either. Flailings are raining down onto the road and will pelt any cyclists or the occupants of any open cars that pass.



f. Common results of the negligent use of hedge trimmers ...





5. Advice for cyclists

For problems with hedge cuttings or obstructing vegetation, including injury and/or damage suffered, Cycling UK recommends that cyclists take the following action. Don't put yourself at risk, though (e.g. watch out for traffic if taking photos, beware of hostile reactions from operators etc.).

- Note exactly where and when you encountered the obstruction or debris, and its extent.
- If you can, take photographs of the offending material and any damage/injury it has caused.
- Note the names and addresses of any witnesses.
- If the person responsible for the hedge is present, ask politely for his/her contact details and those of the landowner.
- If you witness hedge trimming in progress and are unhappy about the way it's being done, record details of the machinery/vehicle in use and take a photo of it. Without getting into danger from flying debris, try to note if any guards are missing or faulty (the heavy flaps in front and behind to rotors are frequently damaged or missing). Also note if there is a blower and if it is working.
- If a hedge or debris is identified as a serious obstacle or danger, the first step is to inform the local police. Try persuading them to take prompt action to have the problem rectified. However, it may be difficult to convince them that a nuisance is serious enough to warrant action, particularly prosecution.
- Contact your highway/roads authority or local council. Ask them to take prompt action and to keep you informed of progress. This is essential if the police haven't leapt into action. You can also report debris on the road via Cycling UK's on-line reporting system: www.fillthathole.org.uk. The council itself may well have its own on-line reporting system as well.
- Search the authority's website for their highway maintenance guidelines and policies on enforcement. You can then measure what they've actually done in your case against their stated commitments.
- In the case of a footpath, bridleway, restricted byway and some byways open to all traffic (BOATS) in England and Wales, it may be possible to force a highway authority to take action, but this could involve legal proceedings (see 'Highways Act', Section 130A above). See Cycling UK's briefing on obstructed or 'out of repair' rights of way: www.cycling.uk/campaigning/views-and-briefings/obstructions-and-out-of-repair-rights-of-way-england-wales
- It may also be worth making a complaint to your local Health and Safety (HSE) Office, which normally has the responsibility for enforcement where the work activity itself gives rise to risk.

Injury / Damage:

If a protruding, dead or diseased hedge, or a failure to clear debris, results in damage to property or personal injury, the injured party can claim for damages.

- First, determine who owns/is responsible for the vegetation in question.
- Prove that it is the vegetation or the hedge trimming operation which has resulted in the damage or injury.
- Follow the relevant recommendations listed above.
- **Cycling UK members should seek legal advice relating to a particular incident by telephoning 0844 736 8452.**

Some things to bear in mind about claims ...

- If the person responsible for the hedge is able to show that s/he took all reasonable precautions to prevent an obstruction, or clear debris, s/he could still escape liability. However, claims for damages have been successful despite these obstacles.
- If someone makes a claim against the council relating to maintenance, it may not succeed if the council can prove that it has taken reasonable care to make sure that the highway in question was not dangerous to traffic (N.B. "Traffic" includes pedestrians and cyclists). It may be that the council needs only to prove that it has abided by its own inspection regime.
- There may be a minimum below which the courts are not likely to make an award even though it is reasonably foreseeable, for instance, that a cyclist would suffer a puncture.

Case Study:

Wheelchair user Andy Ebben was cycling along a lane when both tyres of his recumbent cycle were punctured by thorny debris.

Mr Ebben was thrown from his cycle onto the road, suffering severe cuts, bruises and grazes and his £2,500 bike was badly damaged. Mr Ebben's spinal injury meant he was unable to get up and was forced to call for help from the roadside.

As a Cycling UK member, Mr Ebben decided to use Cycling UK's incident line. Action was taken against the landowner and in September 2008, he won compensation for his injuries and damage to his cycle.

He said: *"I work from home but go out every day on my bike. On the day of the accident I came around a blind corner and immediately saw the debris. The tractor was on the opposite side of the road and drove past me; debris was flying everywhere and although I slowed down I felt the tyres go and I hit the ground hard. If there had been warning signs, I would have taken an alternative route that day."*

Christian Shotton from the legal firm that represented Mr Ebben, said: *"This is a common problem in rural areas and this case should act as a warning to anyone who carries out works on or near to a road."*

"The Highways Act is clear that if you are carrying out works that will create a hazard you must use barriers or signs to prevent danger and warn of its existence. If you don't, and a third party suffers an injury or losses, you could be liable and negligent."



6. Summary

The law: The *Highways Act 1980*, *Roads (Scotland) Act 1984* and the *Health and Safety Act 1974* are most relevant.

Enforcement:

- The Police – for dangers/obstructions deposited on the road/highway
- The Council – for dangers/obstructions deposited on the road/highway
- Health and Safety Executive – for dangerous hedge trimming practices
- The public – anyone can take out a prosecution against those who obstruct a highway

What cyclists can do:

- Record details of date, time, location, witnesses, perpetrators etc.
- Determine ownership of hedge etc., if possible
- Take photographs, if possible
- Report problem/incident to police
- Report problem/incident to relevant council
- Report problem/incident to your local Health and Safety Executive Office (if it relates to the way in which the work is being undertaken)
- In the case of damage to your cycle and/or personal injury, seek legal advice from Cycling UK

Best practice on hedge trimming:

Farmers and contractors should:

- Trim small hedges by hand
- Ensure that hedge trimmers are well-maintained and work properly
- Ensure the operator is trained
- Deploy warning signs
- Avoid cutting roadside hedges from the field side
- Clear up both the road way and any cycleway as the work proceeds

Cycling UK would like to thank Paul Kitson (Slater & Gordon) and Matt Hodges (Cycling UK's local representative in Cumbria and Lancashire) for their help and advice in compiling this briefing. Matt Hodges also supplied the photographs.

¹ The local highway authority is the unitary, metropolitan or county council. In England, a county council is usually the highways authority for the local district/borough councils located within its boundaries. In London, each borough is the local highway authority, while Transport for London is responsible for major roads. Motorways and major A roads in England are the responsibility of Highways England. In Scotland, local roads are the responsibility of roads authorities, while the trunk road network comes under the remit of Transport Scotland. In Wales, all councils are county councils, who look after local roads, while the Welsh Government are responsible for motorways and trunk roads.

ⁱⁱ UK Roads Liaison Group. *Well-managed highway infrastructure*. October 2016.
<http://www.ukroadsliasongroup.org/en/codes/index.cfm>