



KENT COUNTY COUNCIL

STREET WORKS

ENFORCEMENT POLICY

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1. Introduction

Under the New Roads and Street Works Act 1991 (NRSWA) local highway authorities have a duty to coordinate the works of statutory utility companies.

Under section 16 of the Traffic Management Act 2004 (the Network Management Duty) an authority must manage their road network with a view to achieving two objectives so far as may be reasonably practicable having regard for their other obligations, policies and objectives. These two objectives are:

- a) To ensure the expeditious movement of traffic on that network, and
- (b) To facilitate the expeditious movement of traffic on road networks for which another authority is the traffic authority.

In order to comply with these obligations, it is essential that Kent County Council, as the highway authority, is fully aware of operations being undertaken on the road network and that information provided is timely and accurate and that those operations are undertaken having due regard to the safety and convenience of all road users.

This document sets out Kent County Council's policy for discharging its enforcement duty against statutory utility companies where infringement of a utility's legal requirements compromises the local authority's ability to coordinate and manage works or works are undertaken in an unsafe or unduly disruptive manner.

The Street Works Prosecution Policy covers all statutory offences under the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004 (TMA), the Highways Act 1980, the Kent County Council Permit Scheme, the relevant highway offences under the Highways Act 1980 and all other offences related or incidental to street or highway works where Kent County Council is the Street, Highway or Traffic Authority.

Prosecution will be considered when all other reasonable actions have been undertaken by Kent County Council's Street Works Team, such as the offer and payment of fixed penalty notices (FPN), or where the matter is so serious as to require immediate consideration of prosecution. If a street works promoter continues to breach legislation regardless of the offer of the FPNs offered, the authority will prosecute the continued flagrant breaches.

In rare cases safety concerns may dictate that a move straight to prosecution would be the appropriate reasonable step and this would have to be in extreme cases only; This being so as the authority is duty bound to undertake such actions to protect those using the public highways in Kent. An example of an extreme case will be classed as any unsafe practice that poses a serious threat to life or the travelling public.

2. General Principles

Utilities have a statutory obligation to apply for street works permits through Kent County Council (KCC) permit team. This is in accordance with relevant legislation including the NRSWA, the TMA, the Kent Permit Scheme and the associated regulations and Codes of Practice.

Failure to provide accurate information within the relevant notifications, and failure to serve notifications in a timely manner represent offences under the relevant sections of the legislation. Utilities are required to ensure their works are carried out in a safe manner in accordance with the NRSWA and associated Codes of Practice. Failure to do so is an offence under the relevant section of the legislation.

Utilities are required to reinstate the road following their works in accordance with the NRSWA and the associated Code of Practice. Failure to do so is an offence under the relevant section of legislation.

Utilities are required to use their best endeavours to co-operate with KCC as the street authority, in the interests of safety, to minimise inconvenience to people using the street and to protect the structure of the street and the integrity of the apparatus in the street. Failure to do so is an offence under the relevant section of the legislation.

The NRSWA and TMA place a number of other statutory duties and responsibilities on utilities with accompanying offences. Failure to comply with these duties and responsibilities are offences under the relevant sections of the legislation.

Each case will be considered on its own facts and merits. There are, however, general principles that apply to the way in which KCC will investigate and consider proceedings for each case.

3. Types of offences to be prosecuted

KCC may prosecute offences relating to street works activities including but not limited to: -

(a) All street works offences under the New Roads and Streetworks Act 1991 (NRSWA), the Traffic Management Act 2004 (TMA), the Kent Permit Scheme for Road Works and Street Works (KPS), Traffic Management Permit Scheme (England) Regulations 2007 and Safety at Street Works and Road Works Code of Practice 2013.

(b) All relevant highway offences under the Highways Act 1980 where KCC is the Highway Authority

(c) All other offences related or incidental to street or highway works where the KCC is Street, Highway or Traffic Authority.

The above list is not exhaustive and KCC may prosecute other offences relevant or incidental to street works outside the list of offences set out in this policy.

4. The prosecution decision

It is recognised that the decision to prosecute an offence is an important and serious one. KCC will therefore only prosecute if it considers that an offence has been committed and if the evidence shows that there is a realistic prospect of conviction and that prosecution is in the public interest. In making this determination consideration will be given to the Code for Crown Prosecutors

The following will also be taken into account in taking a decision whether to prosecute: -

- (a) Where the relevant offender has shown a previous poor history of compliance under its statutory obligations,
- (b) The offender has failed to discharge its liability under The Street Works (Fixed Penalty) (England) Regulations 2007 or the Traffic Management Permit Scheme Regulations 2007.

In deciding whether there is a realistic prospect of conviction, KCC will have regard to the following:

- (a) Relevance and admissibility of available evidence
- (b) Reliability of evidence relating to the offence
- (c) Reliability of any observation or comment made by the alleged offender
- (d) Reliability of any admissions and confessions including comments recorded by KCC or in a Works Inspection Report
- (e) Reliability of any information or records contained within the KCC Local Street Works Register
- (f) Reliability of prosecution witnesses and whether they are willing to attend court

If KCC considers that there is insufficient evidence upon which to base a prosecution, a prosecution will not be brought. However, consideration may be given to other responses, such as issuing the relevant utility with a Non-Statutory Warning Letter.

If KCC consider that there is sufficient evidence upon which to base a prosecution it will then consider whether it is in the public interest and in the interests of justice to do so. In so doing it will have regard to factors including the following:

- (a) the seriousness of the offence
- (b) the level of culpability of the offender, including the general conduct and performance history of the particular utility
- (c) the harm and/or impact caused by the breach
- (d) the prosecution would be seen as appropriate and proportionate

Section 95A of NRSWA allows KCC to dispose of certain offences under the NRSWA / TMA by issuing the offending utility with a FPN which allows the liability for prosecution to be discharged by payment of a penalty within a prescribed timeframe. Failure to pay the FPN can result in prosecution for the original offence through the Magistrates' Courts.

5. Prosecution decision criteria

The following criteria are examples of the factors which would favour a decision to prosecute-

- (a) Whether the offence was avoidable on the part of the utility company or its agents or where the utility company has shown disregard for regulation and legislation
- (b) Where the offence has caused or could have caused health and safety issues to the person using the public highway or the site operatives themselves
- (c) Where the offence has caused or could have caused avoidable traffic disruption
- (d) Where the offence has caused or may cause substantial damage to KCC assets
- (e) Where the utility company has failed to discharge the offence by way of a FPN issued for that purpose and within the statutory time limit.

(f) Failure to heed to a previous Non-Statutory Warning Letter about other failures to comply with the legislation, regulations or the associated Codes of Practice.

Please see **Appendix 1** for offences for which Kent County Council may prosecute.

In some cases KCC will consider issuing a FPN

KCC will have regard to the following factors against prosecution:

- (a) where there is insufficient evidence.
- (b) Where it appears that, in KCC's opinion, there has been a genuine mistake of fact
- (c) Where, owing to circumstances beyond the offender's control, commission of the offence was unavoidable.
- (d) Where there is no realistic prospect of conviction.
- (e) Where representation made following the issue of a FPN has been accepted by KCC.

KCC will have regard to the following factors in the decision to discontinue proceedings:

- (a) New evidence not previously available to KCC that undermines the original enforcement decision
- (b) It becomes evident that the evidence is no longer sufficient to proceed with the enforcement action.
- (c) Where the continuance of proceedings is likely to lead to an abuse of the process of the courts.
- (d) Where continued enforcement is likely to be deemed malicious or prejudicial to KCC's interest.

Where a case is disposed of other than by prosecution, KCC may seek to recover any administrative costs incurred in processing the case file.

6. Investigations

KCC may investigate any offence relating to street works on the Public Highway using the information contained within Street Manager, or any relevant information from the NRSWA / TMA officer reports and/or notebooks and any other relevant source. All prosecutions will be evidence based and it is possible that there will be a need to carry out interviews in relation to the offence. If this should be the case, such interviews will be in accordance with the Police and Criminal Evidence Act 1984 and the Codes of Practice made thereunder.

7. Disclosure

KCC will have regard to the Criminal Procedure and Investigations Act 1996 as amended by the Criminal Justice Act 2003, the Criminal Procedure Rules 2020 and the associated Code of Practice in the disclosure of prosecution materials. KCC will retain and preserve all evidence that may be relevant to a prosecution, whether or not that evidence is to form part of the prosecution case. KCC will endeavour in all cases to adopt a consistent approach to disclosure by disclosing prosecution materials in advance of any hearing.

8. Policy review

This policy will be reviewed periodically to reflect any changes in the law, regulations, or any KCC policies in force at the time. Any amendments will be reflected in the policy and published as appropriate

