
From: Simon Jones, Corporate Director, Growth, Environment and Transport

To: Peter Osborne, Cabinet Member for Highways and Transport

Subject: Highways Enforcement Prosecution Policies

Decision no: 25/00088

Key Decision

- *It affects more than 2 Electoral Divisions*

Classification: Unrestricted

Past Pathway of report: N/A

Future Pathway of report: Cabinet Member Decision

Electoral Division: All

Is the decision eligible for call-in? Yes

Summary: KCC is responsible for ensuring safe public use of highways and coordinating utility works. The proposed policies will allow KCC to enforce compliance when landowners or utility companies break the law or disrupt road management.

Recommendation(s):

The Cabinet Member for Highways and Transport is asked to approve the proposed decision as detailed in the attached Proposed Record of Decision document (Appendix A).

1. Introduction

- 1.1 As the local Highway Authority, KCC has a statutory duty to ensure that the public can safely use and enjoy all highways under its responsibility, including any associated roadside waste.
- 1.2 KCC is also responsible for coordinating the activities of statutory utility companies on the road network. To meet these obligations, KCC must be kept informed about all works taking place on the roads. All works should be completed promptly, prioritising the safety and convenience of road users.
- 1.3 By enabling KCC to take enforcement action against landowners and utility companies that breach legal requirements or fail to comply with works orders, especially when such actions disrupt road management or compromise safety

these policies will improve compliance, reduce disruption and enhance safety on Kent's road network.

- 1.4 Two policies are being proposed. The first is a general enforcement policy and the second relates to street works.

2 Key Considerations

- 2.1 This proposal is aligned with the direction of the emerging 'Reforming Kent' agenda and will only be enacted subject to the adoption of the new Strategic Statement by the Council, specifically to improve the quality of the highways network and to reduce the delays caused by road works and to drive improved performance
- 2.2 Whilst there is no statutory requirement under legislation for a Highway Authority to have a prosecution policy and all actions undertaken by the Council are covered by statute, having specific Kent Enforcement Prosecution Policies can support any future prosecution process and offers all those that breach the legislation clarity on the council's actions and intentions with regards to prosecutions.
- 2.3 Enforcement and prosecution are measures of last resort. These actions will only be taken when all reasonable efforts to secure compliance have failed, or immediate intervention is required due to serious public safety concerns
- 2.4 Before issuing legal proceedings, the service will take advice from legal services to confirm a high likelihood of success with the final decision being confirmed by the Monitoring Officer.
- 2.5 All prosecutions will be documented and reported through KCC's enforcement governance framework.
- 2.6 Regular performance reviews will ensure enforcement remains proportionate and effective.
- 2.7 This approach ensures proportionality, fairness, value for money and alignment with KCC's statutory duties.
- 2.8 A copy of the policies will be published on the Kent County Council web pages for Highways and Transportation.

3 Background

- 3.1 Kent County Council (KCC), as the Highway Authority for Kent, has a statutory responsibility to ensure the safe and efficient operation of the public highway network. This responsibility is underpinned by several key pieces of legislation:
 - Highways Act 1980
 - New Roads and Street Works Act 1991
 - Traffic Management Act 2004
- 3.2 While KCC has existing powers to issue Fixed Penalty Notices (FPNs) in respect of street works, and encourage voluntary compliance, these measures

are not always sufficient to address repeated or serious non-compliance. In such cases, prosecution becomes necessary to uphold statutory duties and protect public safety.

- 3.3 The introduction of formal prosecution policies supports KCC's legal powers under the legislation and addresses the objectives in Reforming Kent (Strategic Statement) to drive driving operational improvements and reducing delays caused by non-compliant works.
- 3.4 Legal advice has been provided on the draft policies.

4 Options considered and dismissed, and associated risk

- 4.1 To not have a specific enforcement policy and rely on existing legislation and ad hoc measures. This option is rejected as there is greater risk of inconsistency in enforcement, weaker position should prosecution action be taken, reduced transparency and accountability pertaining to reputational and financial risk.

5 Financial Implications

- 5.1 Enforcement actions will be carried out within existing staffing and budget resources.
- 5.2 Cost including legal fees and officer time for taking prosecution action will be incurred on a case-by-case basis but a simple prosecution may cost from £2500 per prosecution, which is reflective of the relatively low level of preparatory and court hearing time associated with this type of proceeding.
- 5.3 Prosecutions are expected to be low in volume and will only be undertaken where there is a high chance of a successful outcome. As the county council is likely to recover some of the costs incurred for successful prosecutions the risk to the budget is considered to be minimal.

6 Legal implications

- 6.1 Kent County Council (KCC) is the Highway Authority for the purposes of the Highways Act 1980 (The Act).
- 6.2 Section 130 of The Highways Act (1980) places a duty upon 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.'
- 6.3 Under the New Roads and Street Works Act 1991 local highway authorities have a duty to coordinate the works of statutory utility companies.
- 6.4 Section 16 of the Traffic Management Act requires authorities to manage their road networks to ensure the expeditious movement of traffic and to facilitate traffic movement on networks managed by other authorities.
- 6.5 Adopting enforcement prosecution policies does not fetter the Council's discretion by committing the Council to taking or continuing with prosecution

action in all cases. All cases will be considered on their own merits and kept under continuous review.

7 Equalities implications

7.1 The equality implications have been reviewed, and no negative impacts have been identified for any Protected Characteristics.

8 Data Protection Implications

8.1 The Enforcement Policy will involve the processing of personal data of individuals and utility companies. The data for utility companies will be obtained via Department for Transport's national Street Manager IT system, with the DfT already having its own DPIA and privacy notice.

9 Other corporate implications

9.1 Not applicable.

10 Governance

10.1 Delegated authority rests with the Corporate Director of Growth, Environment and Transport; legal action requires Monitoring Officer approval.

11 Conclusions

11.1 KCC proposes two formal enforcement prosecution policies for highways, allowing action against those who break the law or disrupt road management.

11.2 This will improve compliance, safety, and reduce delays. Enforcement is a last resort, with legal and financial safeguards in place.

11.3 The policy supports transparency, fairness, and aligns with KCC's strategic goals.

Recommendation(s):

The Cabinet Member for Highways and Transport is asked to approve the proposed decision as detailed in the attached Proposed Record of Decision document (Appendix A).

10. Background Documents

- Equality Impact Assessment

11. Appendices

- Appendix A - Proposed Record of Decision
- Draft Enforcement Policies

12. Contact details (please insert details below)

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