



Litter Abatement Orders: Taking action to deal with persistent litter problems

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Introduction

'A tidy countryside should be a right, not a surprise. It's possible. It's worth it'

Bill Bryson, President, Campaign to Protect Rural England

This guide has been written for people who are fed up with persistent litter problems in England. It is well known that litter often breeds litter; a few crisp packets and drinks containers can attract more rubbish and fly-tipping. Over time the litter accumulates into a larger, unsightly and potentially hazardous problem. These problems are usually dealt with when they are reported by the public, or picked up under regular monitoring procedures.

Unfortunately it is sometimes the case that it can take much longer for litter problems to be sorted out. This guide outlines how you can take action, via the Magistrates' Court if necessary, against those organisations that are failing in their responsibility to keep land clear of litter.

Background

What is a Litter Abatement Order?

Despite some people repeatedly ignoring it, most know that littering is a crime. Less well known is that for those who have a responsibility to keep our public spaces clean it is also an offence to leave litter lying on the ground for long periods of time. A Litter Abatement Order is handed out by a court if a written complaint about litter to the landowner has been ignored.

Put simply, a Litter Abatement Order allows any person to serve a notice (via a Magistrates' Court) to get a long-standing litter problem cleared up.

This guide outlines how you can get areas of land where you live cleaned up. Knowing your rights to a clean environment should help you press your case, even if you decide not to take court action.

What the law says

Section 89 of the Environmental Protection Act 1990 (EPA 1990¹) places a legal responsibility (a 'duty') on certain organisations to ensure that land, as far as is practicable, is kept clear of litter. Section 91 of the EPA 1990 goes on to state that a person who is fed up with a long-standing litter problem can use a Litter Abatement Order against those organisations listed under Section 89 (the 'duty bodies') if they are failing in their duty to keep that land clean.

Who can apply for a Litter Abatement Order?

Litter Abatement Orders are intended to be used by the public to improve the cleanliness of local environments. Any individual who is fed up with litter spoiling an area can seek a Litter Abatement Order.² You might be a local resident, someone who works nearby, a regular visitor or just have an interest in the area. You can also apply as an individual representing a local voluntary or community group.

¹ <http://www.legislation.gov.uk/ukpga/1990/43/section/89>

² EPA 1990 Section 91 (1)

Can I take any landowner to court?

No. As previously mentioned, Section 89 of the Environmental Protection Act instructs certain organisations and institutions to make sure that land under their control and to which the public has access is kept free from litter, and that certain highways under their control are kept clean, as far as is practicably possible. Privately owned land which is not open to public access does not qualify for a Litter Abatement Order. Instead we suggest you write to your local council urging it to investigate the litter problem and issue a notice requiring the landowner to clear it up. In order to serve a Litter Abatement Order, the site that is littered must be 'relevant land'³ (this is land which is open to the air,⁴ as opposed to inside a building) and under the control of one of the duty bodies. There are six duty bodies which have a duty to keep relevant land under their control clear of litter; these are listed on the next page.

³ EPA 1990 86 (6)

⁴ EPA 1990 86 (13): 'A place on land shall be treated as "open to the air" notwithstanding that it is covered if it is open to the air on at least one side. It is intended that this should apply to any covered significant, permanent opening on at least one side such as a bus shelter, railway platform or garage forecourt.'

The six litter duty bodies

1) Principal litter authorities

These are county councils, district councils, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly.

2) Designated statutory undertakers

These include persons authorised to operate transport related infrastructure, such as: railways, light railways, tramways, road transport (other than taxi or hire cars), canals, inland waterways, docks, ports, harbours, piers and airports.

3) Crown authorities

Land occupied by the Crown Estate Commissioners as part of the Crown Estate, occupied for the purpose of a Government department or for naval, military or air force purposes or occupied or managed by any body acting on behalf of the Crown.

4) Governing bodies of designated educational institutions

Any university (including the Open University), any institution which provides fulltime further education, any city college or college of arts, any county or voluntary school, maintained special school and any grant-maintained school.

5) Local authorities in relation to any relevant highway for which they are responsible

Roads maintainable at public expense are the responsibility of the relevant local authority where a section of that road runs through its boundary.

6) The Secretary of State in relation to any trunk road that is a special road and any other relevant highway or road for which he/she is responsible

These are roads and motorways which are managed by the Highways Agency. They are termed 'special roads' and include motorways and major trunk (A) roads.

What constitutes a litter problem?

The Government's *Code of Practice on Litter and Refuse*⁵ (CPLR) outlines to the above duty bodies what constitutes a litter problem. It also gives maximum response times for clearing up the litter problem once it has been reported.

The CPLR is an important document; it assigns land into different grades and specifies how much litter is acceptable. It is expected that these acceptable standards should be maintained and adhered to by those who have the responsibility to keep public land free of litter. If an area falls below acceptable standards, it provides a timetable for getting the area cleaned once the owner/manager of the land has been notified of the problem, or the problem has been picked up by regular monitoring. If that duty body fails to clean up the area within the time specified by the CPLR, the process of seeking a Litter Abatement Order can begin.

The CPLR classifies land under four grades of cleanliness. These standards can be applied to any site be it a railway station, a high street, a rural road or an industrial estate. Although the nature and characteristics of the land may vary, the principles on which the litter is graded remain the same. The four grades are:

Grade A: No litter is present in the area.

Grade B: Predominately free of litter apart from some small items. The presence of even one small item of litter downgrades the environment to B.

Grade C: Widespread distribution of litter with minor accumulations.

Grade D: Heavily affected by litter with significant accumulations.

The presence of litter that is significant enough to form a few minor accumulations (grade C) or significant accumulations (grade D) is regarded as unacceptable in any situation.

Find out more: We suggest reading Part 1 of the CPLR to get a fuller picture of the considerations placed on the duty bodies:

<http://www.defra.gov.uk/environment/quality/local/litter/code/index.htm>

⁵ <http://www.defra.gov.uk/environment/quality/local/litter/code/index.htm>

How much litter warrants a Litter Abatement Order?

As long as the area you have in mind for a Litter Abatement Order is littered to a 'grade C' standard and hasn't been cleaned up for some time then you can press on with seeking a Litter Abatement Order, if that is necessary. A Litter Abatement Order would be appropriate in all of the following circumstances:



CPRE's experience

Remember that duty bodies are expected to keep land under their control clear of litter to within acceptable standards at all times. If the litter problem that you have in mind has been around for a long time then the chances are that you are well within your rights to make a complaint and begin the Litter Abatement Order process.

It has been CPRE's experience that in the vast majority of Litter Abatement Order cases the litter is cleared after the complaint has been made, long before it gets to a court stage. **Usually the threat of a Litter Abatement Order is sufficient to clear the problem.**

Seeking a Litter Abatement Order: a step-by-step guide

Before you begin make sure you keep a record of all costs in seeking a Litter Abatement Order. This may become important later on in the process.

Step 1: Find out who owns the littered land

Identify the owner of the land. Is it, for example, a statutory undertaker or principal litter authority? It will be the landowner's responsibility under Section 89 of the Environmental Protection Act 1990 to clear the litter and this is who your Litter Abatement Order will be aimed at.

Tips for identifying the landowner:

Principal litter authority (district or county council)

If the land is public land in a town centre or residential area then it is likely to be managed by the local district council. Any road which is not one of the major A-roads or motorways is also likely to be that of a principal litter authority. A map or list should be available from your local authority of all the land which it is responsible for cleansing. Most local authorities will also list or produce a map displaying the litter zones into which streets have been classified.

Major roads and motorways

A network map of Highways Agency managed roads is available from its website: <http://www.highways.gov.uk/aboutus/139.aspx>. It is sometimes the case that the Highways Agency contracts cleansing duties back to local authorities for some roads. So if the area you want to get cleaned up is a major trunk road you will need to check this.

Railway stations and other rail land

Network Rail manages 18 major stations (for a list go to: <http://www.networkrail.co.uk/asp/765.aspx>) and the majority of the track network including litter on tracks and embankments. Individual rail operating companies are responsible for litter at other stations. You should be able to find out who is responsible for managing your railway station by asking at the ticket office, or from checking the National Rail website: (http://www.nationalrail.co.uk/stations_destinations/)

Step 2: Consider the character and intensity of use of the land or road

How busy an area is (its intensity of use), and what the land is used for (its character), usually determine how regularly the duty body clears the land of litter. These factors, the CPLR states, are two important considerations duty bodies must consider when deciding and analysing their cleansing strategies. This is because they have the biggest impact on how quickly litter builds up. Along with health and safety considerations they provide the basis from which cleansing schedules are decided. It is for these reasons that high streets are cleaned more regularly than rural villages.

Visit the site and consider its character, the intensity of its use and also look at any possible health and safety considerations. You are trying to build a strong case that the area should have been cleared sooner and if it got to a court stage all these issues would be considered, so it is important that you build your case now. Take some dated supporting photographs of the area, trying to capture its character and intensity of use. If it is a busy area document this by writing what you observe as an evidence log and/or capture it in your photographs. Recognise any obvious health and safety issues that might have prevented litter picking and make a note of them.

Remember that you are trying to prove that there should be no reason why this area shouldn't have been litter picked sooner. If there are health and safety considerations or other issues of practicality this could be the reason for the area not being cleaned recently. Has severe weather prevented recent cleaning, or a special event taken place which has made access difficult?

If you identify an obvious issue you may need to allow more time for the area to be cleaned but you can still go on to the next steps.

Example: This picture shows a busy railway station in an urban environment with a litter problem.

Although there are health and safety considerations (the proximity to the track and moving trains) the same litter has been photographed and documented as being present for months. In accordance with the CPLR (section 1, 11.5.6) this type of litter problem should have been picked up within 14 days despite the possible delays due to health and safety considerations.



Step 3: Build your case and document the litter problem

Document the litter problem. You will need clear evidence that the duty body is failing to take any action, or if litter on the site is/becomes a recurrent problem. This evidence will be required in the magistrates' court should it reach that stage.

As well as evidence of both the character and intensity of use of the land or road (see step 2) you also need evidence of the degree of the problem. Use dated photographs of the area and preferably diary logs and witness statements (if possible) to illustrate your case.

Throughout the process always try to photograph the same patch of land over time to prove that it has not been cleaned over a long period of time. The more you can prove that the area has been littered for a long time and that no action has been taken, the stronger your case will be.

Tip: Although not essential, it might be useful to contact the duty body and request a copy of cleansing records for the area covering the last six months. If they subcontract the work then ask who the contractor is that carries out work on their behalf and contact them for cleansing records. This information will enable you to demonstrate that the current cleansing regime is not sufficient to clear the litter problem or that the area has not been cleaned for some time.

Example: Peter Silverman from Clean Highways



These pictures by Peter Silverman of Clean Highways were enough to get huge sections of the M40 motorway cleared of litter. Peter was able to demonstrate with these pictures and others taken of the same locations over time that not enough was being done. Peter confirmed this by obtaining cleaning records that showed the cleaning contractor for the relevant section of the motorway had done little for months. After Peter applied for a Litter Abatement Order huge sections of the M40 were cleared.

Find out more: See Peter's website for more details: <http://www.cleanhighways.co.uk/>.

Step 4: Make a complaint

Once you have documented the problem and have some evidence it is time to make a formal complaint. If you do not want to write a letter, a complaint by email will also be acceptable. [See page 17 for a sample complaint letter.](#)

The letter should be polite with no indication of what might follow. Do not make references to the law, Litter Abatement Orders or the CPLR; the duty body should treat all complaints seriously, not just those with clear knowledge of the litter laws. You could also ask a few questions, such as when was the area last cleaned, and if they are not able to clean up the area next week (for example) can they please tell you when they will be able to do so. If you do send an email, perhaps attach a few of the pictures to demonstrate the scale of the problem.

Address the letter or email to wherever it suggests complaints should be addressed to on the website of that duty body, e.g. complaints department at xx borough council. **Remember to keep copies of all correspondence (letters and emails) between you and the duty body.**

Once you have submitted your complaint you will need to wait to see if the area gets cleared of litter in accordance with the Code of Practice on Litter and Refuse. Check the timings referred to in table 1 on page 21 of the CPLR.⁶ These timings refer to the maximum amount of time the duty body has to clear the litter once a problem has been reported.

⁶ <http://www.defra.gov.uk/environment/quality/local/litter/code/documents/cop-litter.pdf>

Step 5: Give the duty body notice of an application for a Litter

Abatement Order

It is at this stage that most litter problems are resolved. However, if nothing has been done about your formal complaint, the area still hasn't been cleaned and there's no obvious reason why the litter picking would not have gone ahead then it's time to submit a formal notice of your intention to take your complaint to a court.

You will need to write to the Chief Executive at the duty body giving a **five day Notice of Application for a Litter Abatement Order** to be issued against them, under Section 91 of the EPA 1990. Refer to our [sample letter on page 18](#) for more information.

Methods of serving this notice include delivering it personally to the secretary or clerk of the body, or by leaving it at the registered address of the principal office, or by sending it by post to the head office address. You can also send an email to the Chief Executive if you have their email address. Remember to take a few more dated photos of the land to prove that no cleansing action has taken place.

Step 6: Apply for an abatement order

After the five day notice period elapses (this will start from when the Chief Executive receives the letter or email, so do allow for the delivery time), if there is no practicable reason for the litter not to have been cleared you are now eligible to apply for a Litter Abatement Order. You can take as long as you like to make the complaint to the court; you can give the duty body a bit more time to clear up the litter and allow yourself some time to take a few more photographs and to build up your case, or you can get started right away.

You will need to draft your formal complaint to the court ([you can refer to our draft formal complaint on page 19](#)) accompanied by a personal statement. Describe your actions to date and why you are submitting the evidence. Compile your dossier of evidence for submission to the magistrates' court and make three copies of all documents – the reason for this is explained in the next step.

Your dossier should include all previous letters (with evidence of when and how the Notice in Step 5 was served), all the photos (with date and time), maps showing where photographs were taken and any other supporting evidence that you have gathered such as witness statements from members of the public. Leave this undated until the day you submit your dossier to the court. When you are ready to do so, proceed to the next step.

Find out more: If you would like more information on either your personal statement or compiling your dossier of evidence then we suggest you take a look at the Clean Highways website mentioned earlier. Peter is one of the few people in the country who has submitted a dossier of evidence to the court. Most people find they have the issue resolved before this stage. On Peter's website you will find his personal statement, which he made to Wycombe Magistrates' Court, and a copy of his formal complaint: www.cleanhighways.co.uk.

Step 7: Submit your evidence to the court

Please note: You will be required to pay a fee to the court upon application. There will be a fee for making the complaint and issuing a summons to the duty body. You will be refunded if your application is successful. It has been our experience that there is some variability in cost between different courts. Even if the litter is cleared after you have submitted your application you will still be refunded by the duty body.

Now you will need to submit your dossier of evidence to the Magistrates' Court that covers the area with the litter problem. You can do this in writing or by taking your dossier along to the court. Find the local court relevant to the land you are complaining about by visiting: <http://www.hmcourts-service.gov.uk/HMCSCourtFinder/>.

The Clerk will help you fill out the relevant forms. It is likely that the court staff will not have heard of a Litter Abatement Order. To get around this you can phone up in advance and ask to speak to one of the legal advisers at the court. Tell them you have prepared a Litter Abatement Order under Section 91 of the Environmental

Protection Act 1990. Explain that you want to make an appointment with the legal adviser or another court official to submit the complaint. Also say that at the appointment you want to get it signed by the Justice's Clerk and pay any fees by cheque. It has been CPRE's experience that costs can vary between different Courts, with fees usually between £50 – 200.

Take your complaint, attached to your accompanying evidence and photographs, along to your appointment. As mentioned previously you will need three copies of all the documentation. The court will require two copies and you will need to keep the third. Also take your diary as they will need to know when it will be convenient for you to attend a preliminary hearing.

Step 8: Prior to the court hearing

After you have submitted your complaint take a further set of photographs; these along with others taken shortly before submitting your complaint will establish that the land in question was defaced by litter at the time the complaint was made.

This is important because if the land gets cleared after you have submitted your evidence, you will need to write to the court and the duty body saying that because the litter has been cleared there is no longer any need to issue a Litter Abatement Order, but you will apply for your costs under section 91(12) of the Environmental Protection Act 1990. This says that if the court is satisfied that, at the time the complaint was made, the land in question was defaced by litter it must award costs to the person who made the complaint.

If the litter isn't cleared and you do not hear anything for a while check to make sure that your cheque has been cashed and ring the court to chase if necessary. You will receive a copy of a summons from the court to the duty body which will give a date for the hearing.

Step 9: The hearing and outcome

The hearing will be in front of three Magistrates and a clerk. The duty body will probably be represented by a solicitor or barrister.

If the land has already been cleared and you are only seeking your costs then make sure you have details of all your costs associated with pursuing the Litter Abatement Order, including the court fee, travel, photographs and printing. If the Magistrates' Court is satisfied that when the complaint was made, the land was defaced with litter and there were reasonable grounds for bringing the complaint, the court shall also order the duty body to pay expenses.

If the court is satisfied that the land is defaced by litter it will make a Litter Abatement Order requiring the duty body (now the defendant) to clear the litter within a specified time. If the duty body then fails to comply with the order to clear the litter they can be fined up to £2,500 and £125 for each day thereafter that the offence continues.

Remember, in the overwhelming majority of cases land is cleared before the case reaches court. However, the duty body has the right to prove they fulfilled their duty in keeping the land clear of litter⁷ and could defend their position. This is unlikely if you have a well prepared case, but if this does happen another hearing date may be set to give time for both parties to prepare their cases.

If there is a contested hearing, as with any legal proceedings, you will need to be prepared for the process being longer and more complicated than with a straightforward admission of guilt. You should assume that a duty body opposing a complaint will have access to professional legal advice to argue their case. You should assess the further costs and if necessary seek professional legal advice.

A contested hearing for a Litter Abatement Order has never happened before so this guide cannot advise beyond this step. If the hearing isn't contested the land will be cleaned by the guilty duty body.

Remember, there has never been a case where the duty body hasn't cleaned the land following the application for a litter abatement order. If your case does go to court we would be extremely interested to hear about your experience, as getting this far is very rare. Please email Will Gates at CPRE: willg@cpre.org.uk, or telephone on 020 7981 2810 – your experience could be incorporated into this guide.

⁷ EPA 1990 89 (1) (2)

Sample complaint letters

DRAFT litter complaint letter

[Name and address of complaints department at the duty body]

[date]

Dear Sir/Madam,

I am writing to complain about the amount of litter that has built up at..... [identify the location – be very specific]. This is a [character and intensity of use of land] (e.g. an embankment by a busy roadside with lots of through traffic and a high level of pedestrian activity). The area has become very defaced by litter and I am concerned that this area has not been cleaned for..... [X days/weeks/months]. Attached are a few pictures that I have recently taken.

I am a [resident, visitor to the area, employee who works in the area, acting on behalf of a local action group] and am very concerned about the appearance of the area. I would appreciate it if you could send a team to pick up the litter and let me know when this will be done.

I look forward to a speedy response, with details of the action you propose to take.

Yours faithfully,

[Your name]

[Don't forget to attach a few photographs of the littered area. Try to capture a little of the character of the area rather than taking detailed pictures of the litter]

DRAFT notice of application for a litter abatement order

The Chief Executive

[name and address of duty body]

[date]

Dear Sir/Madam,

I wrote to/emailed your organisation/local authority [delete as appropriate] on [date] asking for attention to be given to cleaning litter at [state specific location].

I have received no response/an inadequate response [delete as appropriate] **OR** No action has been taken on my complaint **OR** Following my complaint, the action taken has not resulted in all the litter being cleared away to the extent necessary to comply with your duty under Section 89 of the Environmental Protection Act 1990.

Accordingly, I am aggrieved by the defacement by litter of this land and I am now giving you written notice as required by Section 91 (5) of the Environmental Protection Act 1990 of my intention to make a complaint to [name of the relevant Magistrates' Court] for an order to require you to clean the land/highway.

The complaint will relate to your failure to keep [identify piece of land] clear of litter as far as is practicably possible as required by Section 89 of the Act.

I hope that you will take the necessary action to meet your legal duties. Failing that, I shall go ahead and make an application for a summons.

Yours faithfully,

[Your name]

[Your address]

DRAFT complaint for litter abatement order

Address of the local Magistrates' Court:

Date:

Chief executive of duty body:

Duty body address:

Matter of complaint: That the complainant is aggrieved by the defacement by litter and refuse of [describe the land you are complaining about. Be as specific as possible.]

That the defendant has a duty to keep the said land clear of litter, under Section 89 (1)/the said highway clear of litter, under Section 89 (2) [delete as appropriate] of the Environmental Protection Act 1990; And the complainant (having duly notified the Defendant) now therefore makes application to the Court to make a Litter Abatement Order under section 91 (6) of the Environmental Protection Act 1990 requiring the defendant to clear the litter away/clean the said highway [delete as appropriate].

The complaint of: [your name]

Address: [your address]

Telephone number: [your number]

who (upon oath) states that the defendant was responsible for the matter of complaint of which particulars are given above taken (and sworn) before me

[Justice's Clerk]

More information and links

For further information on Litter Abatement Orders we suggest that your first stop should be reading Part 1 of the Code of Practice on Litter and Refuse. This can be found at: <http://www.defra.gov.uk/environment/quality/local/litter/code/>

The Department for Environment, Food and Rural Affairs (DEFRA) has a very useful guide to part 4 of the Environmental Protection Act 1990. This includes the litter laws and the relevant section concerning Litter Abatement Orders (Section 91).

<http://www.defra.gov.uk/environment/quality/local/legislation/cnea/documents/litterrefuse.pdf>

As mentioned in this guide, an invaluable source of information and inspiration is Peter Silverman who runs the Clean Highways website. Peter is one of the few people who have successfully used a Litter Abatement Order to clear litter from huge areas of land. Peter's website features his case studies, copies of all of his correspondence with duty bodies and his knowledge on Section 91 of the Environmental Protection Act 1990. His website is: www.cleanhighways.co.uk

More information on other litter laws can be found on Keep Britain Tidy's website: www.keepbritaintidy.org and on the DEFRA website: www2.defra.gov.uk. This *Litter and the Law* page on the DEFRA website is a good place to start:

<http://www.defra.gov.uk/environment/quality/local/litter/law/index.htm>

LitterAction is a website run by the Campaign to Protect Rural England and CleanupUK. It is for people who want to take action against litter problems where they live: www.litteraction.org.uk.

The Campaign to Protect Rural England (CPRE) is an environmental charity campaigning to ensure future generations have tranquil landscapes and beautiful countryside to enjoy.

Formed in 1926, CPRE is a powerful combination of effective local action and strong national campaigning. We have over 57,000 members and supporters and a network of over 200 local groups. There's a branch of CPRE in every county and a group in

every region, as well as a national office in London. Our patron is Her Majesty the Queen; our president is Bill Bryson.

Much of what CPRE has achieved has only been possible due to financial support from people who care about our natural environment and quality of life in town and country. To find out how to support CPRE, including information on donating, becoming a member, leaving a legacy or volunteering, please contact our supporter services team: 020 7981 2870, supporterservices@cpre.org.uk.

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