

Advice on Blocked and difficult to use bridleways and byways

The law and management of public access rights vary widely between the four countries of the United Kingdom. Practical elements of the following advice apply in all of them but the legal requirements in Scotland and Northern Ireland may differ from those in England and Wales.

More advice is available on www.bhs.org.uk/accessadvice.

IMPORTANT This guidance is general and does not aim to cover every variation in circumstances. Where it is being relied upon, The Society strongly recommends seeking its advice specific to the site.

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Introduction

In law, there is a difference between an obstruction and lack of maintenance, even though the difference to the users of a bridleway or byway is the same — they cannot use the route easily.

Ultimately, the solution is with the highway authority (county council or unitary authority) to enforce against obstruction and to undertake maintenance of the surface, but sometimes progress can be made locally or through the parish or community council if the landholder is known or if a group of volunteers is prepared to help with maintenance where lack of council funds is the problem.

Unfortunately, lack of resources in the council is the most common reason for rights of way being difficult to use; it is a public service which is very low priority compared with other council functions. However, the county council has a statutory duty, that is, the law requires them to act to *"assert and protect the rights of the public to the use and enjoyment of any highway"* under Section 130 of the Highways Act 1980. A public bridleway or byway is a highway.

Obstructions

Obstructing a public right of way deliberately is a criminal offence, which can be prosecuted with a custodial sentence of up to 51 weeks because a bridleway or byway is a highway, like your local street or any road, and blocking highways is against the law. Most obstructions are the responsibility of the landholder, although sometimes the council may become involved to ensure a route is cleared.

Obstructions vary immensely and are anything which block your easy passage along a right of way. Examples of common obstructions are crops or cultivation, unopenable gates (locked or broken), overhanging vegetation from above or the side, fallen trees, new fences or walls or width restrictions.

An obstruction may be only part of the width, but it is still an obstruction; for instance an arable path left too narrow by cultivation, or encroachment by fences or buildings; or a gap which is less than the width of the right of way (unless authorised by the council). Part of the width being available does not mean there is less of an obstruction: the public has a right to use the full width throughout.

An obstruction need not be physical. Intimidating notices, threatening animal or human behaviour, and fancy gates are common forms of obstruction which may cause you to doubt your right of way or to decide against using it. Gates with latching mechanisms which are not immediately obvious and may not be possible for all users are an obstruction, including ones with a keypad or electronic lock.

The law permits you to remove enough of an obstruction for you to pass if you can reasonably do so (although you should ensure the safety of livestock) and to go round the obstruction on land in the same ownership.

Gates are primarily for the security of livestock and where there are no animals, such as between permanent arable fields or along an enclosed track, they should be removed or secured open to leave a gap. This saves wear and tear on the gate for the landholder and the rider or carriage-driver is much safer with a gap. This complies with the “least restrictive option” principle of the Equality Act 2010.

Intimidating animals

Livestock, horses or dogs can sometimes prevent people using a right of way if the behaviour of the animals is threatening or dangerous. A highway authority has various legal means to have threatening animals removed from a right of way but users may need to provide good evidence of dangerous behaviour in order for the authority to take action as, unfortunately, the law does not always provide a straightforward power under which the authority may act, which is frustrating for both users and the council.

Often horses will react to animals they are unfamiliar with, even if the behaviour of the animals is not threatening. Incidents with llamas, alpacas, emus, ostriches, deer, water buffalo, turkeys and geese — even guinea pigs! — have all been known, and difficulties may need to be overcome with co-operation and familiarity training rather than relying on the inadequacy of the law.

Where new stock are present on or by a bridleway or byway, it may be worth a few riders asking the animals’ owner for an opportunity to introduce horses to the animals in a safe environment, perhaps the next field, or when the owner is present. Teaching the horses to accept the livestock and stock to accept users on the right of way can reduce the stress on all the animals (and their owners/riders!). It is a common problem that animals are not frequently handled and, with feeding and checking from a quad bike or other vehicle, they are

Notices

Notices which mislead or discourage use are illegal. Common examples are Private Road or Private Property, Dangerous dogs enter at your own risk.

It is common for a private vehicular road to a property to also be a public bridleway or restricted byway. To clarify the public’s right of way, the public bridleway or byway should be signed if there is a notice saying Private Road. The local authority can undertake this task.

Gates which are difficult to use may be an obstruction

New gates must be authorised by the highway authority and are only permitted where considered essential for control of livestock. They should be easy to operate from horseback. The BHS provides guidance on installation of gates where they have been authorised by the council.

Some awkward gates are clearly difficult for anyone, but others may only be a problem for some users. Whether or not any action is taken is likely to be dependent on the proportion of people adversely affected and sometimes finding a solution that suits all is not possible, so a degree of compromise is necessary. Sometimes an 'obstruction' is simply a challenge to riding or horsemanship skills and may need some practice to give satisfaction to horse and rider or driver at being able to proceed. The council can require the owner of the gate to improve it and if this is above the deemed need for maintenance, it may be something a local group could fundraise towards for a better installation, an improvement, with the owner's agreement.

Self-closing gates

Self-closing gates which close too sharply have been found dangerous by many riders. The BHS strongly recommends that self-closing gates are used **ONLY** where the security of livestock is essential. They are **NOT** to be considered the standard gate for all situations.

If the situation justifies a self-closing gate, then its surroundings should ensure there is plenty of manoeuvring space, with level even ground, and no overhanging vegetation which a rider would need to duck. The gate should be adjusted to have a closing time of **at least eight seconds** where the site is ideal. If there are additional hazards, such as uneven ground, the closing time should be increased. See BHS Advice on Installing Gates.

To increase their own safety at gates, riders are strongly recommended to read the BHS Advice on Opening Gates (on bhs.org.uk/accessadvice) and watch its [video on opening gates](#) to ensure they are using the safest method possible.

Ploughing and Crops

Bridleways across fields

Cultivation of bridleways across fields is allowed to facilitate farming but they must be made convenient to use within fourteen days. Flattening and firming the surface across the width of the path with a tractor or quad bike is usually accepted as reasonable. This also helps define the line of the bridleway.

The bridleway must be kept free of crops to a minimum width of two metres, including free of crops falling into them which may mean that the cleared way through such as oil seed rape or maize is wider by the height of the mature crop. Crops are permitted up to a height of 150mm. Crops are all agricultural and horticultural products, including flowers, and trees grown for timber, amenity or Christmas trees.

Byways and unsurfaced roads across fields must never be cultivated. A minimum width of three metres must be left uncultivated and clear of a crop on these routes.

Field edge bridleways

Bridleways and byways along the edges of arable fields must not be cultivated, leaving a useable width of at least three metres between boundary and crop. Unfortunately, they tend to become overgrown as natural growth from the surface is the highway authority's responsibility, but it is unlikely to have funds to mow. This is a task which BHS volunteers and equestrian groups can undertake in consultation with the landholder and highway authority, or a parish council may be persuaded to undertake maintenance.

Cultivating a byway or field edge bridleway, failing to reinstate a cross-field bridleway after cultivation and failing to clear crops from a bridleway are all criminal offences. You are within your rights to continue along the line of the path, and it is best to do so to avoid trespassing unless the crop is such that it is safer to go round the obstruction within the same field. Mature oil seed rape tends to tangle round a horse's legs and can cause a horse to fall or stumble.

Using rights of way across arable fields all year round helps to ensure that they do not become obstructed by crops. Failure to reinstate is not always deliberate as farmers may rely on a contractor, so you or your bridleways group may be able to help, and this can be a good way of improving relationships with landholders. Bridleways across a field which are parallel to the normal pattern of cultivation can be left uncultivated if it is convenient although the natural vegetation may then need cutting.

Fly-grazing

Fly-grazing is the illegal grazing of horses (or other animals) on land without permission of the landowner. Such land may include the verges of surfaced roads and on byways, bridleways, commons and public open space. Fly-grazing horses may be tethered or loose on a bridleway or byway, posing a risk to equestrian users, and may prevent them from using the way. In that case they may be deemed an obstruction but this not an easy case for the council to enforce. For more information see BHS Advice on Fly-Grazing www.bhs.org.uk/accessadvice.

Overhanging trees and encroaching hedges

Trees which extend over a bridleway or byway can “endanger or obstruct the passage of horse-riders”¹ and must be cleared to allow their safe passage. The BHS considers having that a rider having to bend down to avoid branches is obstructed and quite possibly endangered as such movement can upset the balance of horse and rider. A driver of a horsedrawn vehicle may also be affected.

The height to which trees are cleared must allow for the legal user of the way, so including equestrians on bridleways and byways. The BHS’s recommendation is cutting to 3.7m clearance, to allow for the tallest riders with plenty of room for branches brought lower through weight of water or wind and to avoid the need for frequent cutting.

Hedges alongside a bridleway or byway can encroach on the width of the way. It is difficult for councils to decide exactly where is the width of the right of way relative to the hedge – is it measured from the root of the plants, or from the normally maintained face of the hedge. The user may be able to assist by pointing out the previous extent of the bridleway or byway. The width should always be adequate for two users to pass in comfort, though this may differ for a specific site depending on its historical boundaries.

Cutting in bird-nesting season should be avoided for both trees and hedges, however, growth can obviously be anticipated and cutting timed outside that season.

Alongside a bridleway or byway

There can be conditions alongside a bridleway or byway which make the way difficult to use such as barbed wire, electric fencing or bird scarers. Frequently such hazards result from ignorance of their potential impact or simple lack of thought so, if you know the landholder or can find out, perhaps through the parish council, an explanation of the hazard and request to remove it may be successful, but it can be better left to the highway authority.

Recreational activities can be a hazard. Examples are clay pigeon shooting, paintball events, sphere rolling, hang gliding, hot air balloons, archery and many others both noisy and quiet. If activities have planning consent, this should have taken account of the existence of the public access and effect on users. If this does not appear to be the case, representation should be made to the planning authority. Permission may have been granted on a temporary basis, so it is important to report instances of nuisance if it occurs. If the activity is not subject to planning consent, then it is still recommended to advise the planning authority in case application is made to increase the frequency. If the activity does not require permission, then it may be possible to discuss problems with the

¹ Highways Act 1980 Section 154(1)

activity holders and agree notification of events and appropriate times, duration and signs to reduce impact. A parish council may be able to assist.

Shooting (usually of pheasant or grouse) can be very disturbing for horses but most shoots are responsible and abide by the [Code of Good Shooting Practice](#) which emphasises care near routes used with horses. The user of the public right of way has priority, and a drive or shoot should pause while users pass. In practice, some tolerance is often appropriate, perhaps the shoot warning equestrians of future events so that they may choose to avoid the area at that time, so long as the way is not the only equestrian route available in an area and the shoots are not over-frequent.

Situations which have a serious effect on users can be dealt with by the highway authority or Health and Safety Executive (HSE) if they are judged to be 'a nuisance' to the rider or carriage-driver or a "danger on land adjacent to" the bridleway or byway. Electric fencing is a common hazard; see BHS Advice on Electric Fencing. In practice, HSE is currently unlikely to act except in a case of death or serious injury, however, an incident should always be reported as past instances can be important.

Apart from the law, such situations may be improved by making the landholder aware of their liability for any injury occurring to someone (or their horse) affected by the hazard. Such liability may not be covered by normal insurance once the owner has been made aware of the hazard. It is recommended that a record is kept of a conversation or letter about a hazard.

Out of repair

If the situation could be resolved by some sort of maintenance work — such as it is boggy, badly rutted or has a slippery surface; if a bridge is collapsing; or it is overgrown from surface vegetation — technically the problem is that it is 'out of repair' rather than obstructed. For the user the result is the same, it is difficult to use, but usually the highway authority rather than the landholder is directly responsible. As local authorities have decreasing budgets available for such work, the number of ways which are difficult to use because of lack of maintenance is increasing.

Help from groups of volunteers is often welcome in mowing or strimming, or organising enough use to keep vegetation in check.

Whether or not a surface is out of repair can be a matter of interpretation and not all users, or the highway authority, may agree that there is a problem. Especially given the low budgets of highway authorities, some improvements may not be possible to fund and compromise may be necessary, or local users may choose to raise funds or contribute labour to a solution.

The BHS recommends that riders and carriage drivers form Equestrian Access Groups affiliated to the BHS so that they can undertake maintenance tasks to help keep their

local bridleways and byways useable. You can find out more about Equestrian Access Groups on www.bhs.org.uk.

Government advice

Defra's Rights of Way Circular 1/09 includes details of what is an obstruction or out of repair, whose responsibility it is to clear it and what the Government expects from highway authorities in managing rights of way. Circular 1/09 is still current in Wales but withdrawn in England, although its principles hold because it has not yet been replaced. It is a reasonable explanation of the law.

BHS advice

The following action is recommended in dealing with bridleways, restricted byways, byways open to all traffic and unsurfaced roads which are blocked or difficult to use.

1. If you know the person responsible for the obstruction, you could approach them amicably and request its removal if you are happy to do so. Some landholders will welcome this action, but it is at your discretion.
2. Inform the highway authority of the problem. The highway authority will be the county or unitary council.

The council will need a description of the problem and its location with a grid reference if possible. If you are uncertain about the grid reference, a clear description is needed, such as 'a stack of straw bales on the public bridleway between X Lane and Y Road, 100 metres from the bridge over Z river towards Y Road' which will enable the council's officer to find the location easily. If you use a smartphone or GPS which can give an accurate location, that could be helpful, as could the app 'What Three Words' to pinpoint the location while on site. Do provide clear photographs, if possible, ideally with an object to show the scale of the problem (e.g. that a cultivated route has not been cleared and is only half a metre wide). Increasingly, councils can be reluctant to log a problem without photographs as they receive many false reports which waste time.

Many highway authorities have specific helplines, forms or interactive maps on their websites on which you can report a problem on a public right of way. You can also send a letter or email or use their website Contact function. If you use any online form, you are recommended to copy the text and save it for future reference.

Keep a record of your report, however you make it, in case you need to refer to it later.

Working parties

3. An offer of help to, for example, to cut overgrown vegetation, might be welcomed by a landholder and by a highway authority. They may not have the resources to keep paths clear in the growing season when so much else also needs doing and the type of clearance that can be done with hand tools or a brush cutter may be all that is needed if anyone is willing. BHS affiliated Equestrian Access Groups or working parties organised through BHS County Committees can be covered by insurance for such work. A council will require insurance and risk assessment to authorise a task.

On routes which you use frequently, you can help keep them clear by riding with secateurs to snip twigs before they grow into a problem.

Obstructions to prevent illegal access

4. Sometimes an obstruction has been placed deliberately as a response to undesirable behaviour of users. If the antisocial use has been by riders, you may be able to give the matter some publicity locally or in social media, to persuade users to behave responsibly.

Fly-tipping is an increasing problem, to major proportions in some areas. The district or unitary council's environmental health department should remove waste if you report it. If you explain that it is obstructing a public highway and that it is a hazard (especially if it includes glass or metal) some councils will remove it within 48 hours. You will need to give a clear description of the rubbish and its exact location.

Barriers to prevent fly-tipping are common as openings to bridleways or byways from a road are an attractive spot to fly-tippers, however, barriers must not prevent riders (or carriage-drivers on a byway) from accessing the route, although some compromise may be required as fly-tipping affects equestrians as well as the landholder so it is in everyone's interest to prevent it, but not to the extent of making the route too difficult for equestrians to use.

Common land

5. If the obstruction is on a registered common and not a bridleway or byway, the law is different, but it is still likely to be the responsibility of the local authority.

Council's actions from report of an obstruction

6. The highway authority is likely to start with its own approach to the landholder or occupier concerned. Highway authorities have many problems reported and the

process to resolve each can be time-consuming. The more accurate information you can provide when reporting the problem, the better.

Frequently, lack of resources or even political wish prevents early resolution of a problem, so it is helpful to build a file of evidence, including photographs, in case legal action is eventually required to force the authority to act. You might ask the authority to:

- a) acknowledge the status of the route and that an obstruction exists
 - b) state what action will be taken and when
 - c) give a reasonable time scale in which it expects the problem to be resolved
 - d) keep you informed of progress
7. The attitude of authorities to enforcement varies considerably. Some are robust, with prompt action to assert and protect users' rights, with the result that there are few obstructions — word soon gets around! — and efficient and economical action taken against new obstructions. At the other extreme, there are authorities that are very reluctant to take enforcement action.

If your authority does not enforce against rights of way offences, approach to a councillor may be effective if you can persuade them of the benefit of public rights of way to the health and wellbeing of voters. You may need to educate them on the law, which states a council *has a duty to assert and protect the public's rights* —it is not a discretion or a choice (Highways Act 1980 Section 130). You may need to involve your Member of Parliament, and similarly explain the law.

Escalating a problem

8. Some authorities may give a problem greater priority if they know it is causing difficulty for more people because several people report it, so encourage other riders who want to use the route to report it if they also find it a problem.

If you copy your report to your local BHS Access and Bridleways Officer, they may be able to give you support and advice, and it will help them to monitor the authority's performance. If it is a serious, long-standing or recurrent problem, it may also be helpful if you copy your report to local representatives of The Ramblers and the Open Spaces Society (it does not matter whether you are a member), as they may have had reports from their members and may also take up the matter with the highway authority. You can find out who to contact at ramblers.org.uk and oss.org.uk.

9. It can be helpful to tell the parish council (England) or community council (Wales) about an obstruction and to ask for its help. If a parish/community council reports it to the highway authority, the authority does not have a greater duty to act but it is assured that the problem is recognised locally and of sufficient concern for the parish council to be involved.

In England, sparsely populated rural areas may not have a parish council, there may be a 'parish meeting' instead, but it can still assist.

You may also wish to inform your county councillor (or in a unitary authority your councillor) of the problem and ask for their assistance.

10. If the council's response is inadequate or a refusal to act, you may need to make a formal complaint. Check the council's website for how this should be undertaken; there is usually a specific email postal address to be used.
11. If a formal complaint does not achieve a reasonable response, you can approach the Local Government Ombudsman on behalf of the path users if it can be shown that the council's action (or inaction) amounts to maladministration and that the public has been deprived as a result.

Court Order

12. If all these actions are unsuccessful, you can serve notice on the highway authority under the Highways Act 1980 Section 56 for surfaces out of repair or Section 130A for obstructions. Serving notice is often enough in itself to trigger action, but if not, the next step is a Magistrates' Court procedure against the highway authority. There is little point serving notice unless you are prepared to go to Court, however, the process is simple, and set out in the government's publication '[Removal of obstructions from highways: enforcement of local highway authorities' duty to prevent obstructions on rights of way](#)'.

Costs in the Magistrates' Court can be awarded against the losing party if the highway authority is shown to have acted reasonably, so first check that the obstruction is of a type covered by the legislation, e.g. this procedure cannot be used if the obstruction is a building or dwelling or authorised gate. Court proceedings are made in the name of an individual; a corporate body such as the BHS can only be involved with its formal approval therefore, no one may serve notice in the name of the BHS without its authority.

Keeping records

It is to be hoped that all it takes is one report to have a public right of way restored, but if not, the more lengthy the case becomes, the more important it is to have good records of what was reported and when, and all subsequent actions, to support a case for Court or the Ombudsman. Vague oral recollections will quickly hinder the case so keeping a record of all correspondence, including any phone calls, will be valuable. It is not possible to know at the start which cases will be easily resolved, and which protracted, so it is best to keep a record of all reports you make to help you if you need to chase any up.

Diverting a problem path

Very occasionally it may be appropriate to divert a right of way to resolve an obstruction, particularly if this is a natural phenomenon which cannot be easily resolved, such as a change in course of a river, or unstable ground. In deciding whether a proposed diversion meets the statutory criteria for diversion, the highway authority is expected to consider the convenience of the existing right of way as if it were unobstructed.

Giving thanks

Finally, but importantly, when a problem is successfully resolved, a letter or email of thanks is likely to be appreciated and may also encourage both councils and landholders to deal sympathetically with any future problems you bring to their attention. In cases where a longstanding or difficult problem has been resolved with lots of effort and cooperation by various parties, involving local councillors and the MP provides an opportunity to show the importance of public rights of way to local people.

Commonly used legislation

Problem	Legislation*
Gate unsafe or interfering with passage	HA80s.146
Disturbance of the surface	HA80s.131A
Obstruction	HA80s.137/143/149
Excavation across path/ damage to the highway	HA80s.131
Things deposited so as to cause a nuisance or damage	HA80s.131/149
Ploughed headland	HA80s.131A
Non-reinstatement of cross field path or inadequate width	HA80s.134
Obstruction by crops	HA80s.137A
Overhanging vegetation	HA80s.154
Barbed wire adjacent to a highway	HA80s.164
Removal of signs which mislead and likely to discourage use	NPACA49s.57
Bulls over 10 months of age unaccompanied by cows or heifers, or dairy bulls over 10 months of age in a field crossed by a public right of way	WCA81s.59

*Highways Act 1980 (HA80), National Parks and Access to the Countryside Act 1949 (NPACA49), Wildlife and Countryside Act 1981 (WCA81)

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