

ADVICE ON

Blocked and difficult to use bridleways and byways

England and Wales

The
British
Horse
Society





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 proceed, or only with difficulty. Ultimately, the solution is with the highway authority (county council or unitary authority) to enforce against obstruction and to undertake maintenance. 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.

Obstructions

Obstructing a public right of way deliberately is a criminal offence. A bridleway or byway is a public highway, just like your local high street, and blocking public highways is against the law. A table of relevant law is on page 10. Most obstructions are the responsibility of the landholder.

Obstructions vary immensely and are anything which prevents your easy passage along a right of way (unless it is a maintenance matter). Examples of common obstructions are crops or cultivation, locked gates, overhanging vegetation, fallen trees, new fences or walls.

An obstruction may be only part of the width, but is still an obstruction; for instance, an arable path left too narrow by cultivation, or encroachment by fences or buildings, which is common around gardens, farms or developments.

An obstruction need not be physical – intimidating notices, threatening animals and ornate domestic gates or industrial type gates can be a form of obstruction if they cause you to doubt your right of way or to decide against using it. Gates with latching mechanisms which are not immediately obvious and possible for all users are also an obstruction, including ones with a keypad or other security feature.

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 farmer; the rider or carriage-driver is much safer without it and it 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.

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 have all been known and difficulties can usually be overcome with co-operation and familiarity training.

Where new stock is 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 both horses and stock to accept the presence of users on the right of way can reduce the stress on the stock as well as visiting horses.

Notices

Notices which mislead or discourage use are illegal. Common examples are Private Road, Bull In Field, Dangerous Dogs. It is common for a private vehicular road (to a property) to also be a public bridleway. To clarify the public’s right of way, the public bridleway 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.

Some obstructions are clearly difficult for anyone, but others may only be a problem for some people. 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.

Self-closing gates

Self-closing gates which close too sharply have been found to be 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 within it, and no overhanging vegetation which a rider would need to duck. To increase their own safety at gates, riders are strongly recommended to read the [‘BHS Advice on opening gates’](#) and watch [its video](#) to ensure they are using the safest method possible. The gate should be adjusted to have a closing time of at least eight seconds where the context is ideal. If there are additional hazards, such as uneven ground, the closing time should be increased.

See [‘BHS Advice on Installing Gates’](#).



Ploughing and Cropping

Cultivation of bridleways across fields is allowed to facilitate farming but they must be made convenient to use within 14 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 clear of crop.

Failing to reinstate after cultivation or to clear crops from a bridleway are 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.

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. Natural growth from the surface is the highway authority's responsibility but it is unlikely to have funds to mow them so this is a task which BHS volunteers and equestrian groups can undertake in consultation with the landholder and highway authority.

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, who forgot, 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-grazed horses may be tethered or loose and both may increase risk to equestrian users. Horses on bridleways and byways can be particularly dangerous for riders and carriage-drivers and may prevent them from using the way so are classed as an obstruction. For more information see BHS Advice on Fly-Grazing.

Alongside the bridleway

There can be conditions alongside a bridleway 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.

Sporting 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 they have obtained 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 put forward instances of disturbance or danger 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 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 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 by horses. The user of the way has priority and a drive or shoot should pause while users pass. However, in practice some tolerance is often appropriate, perhaps the shoot warning equestrians of planned 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 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](#)'.

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, 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 responsible. As local authorities have decreasing budgets available for such work, the number of routes which are difficult to use because of lack of maintenance may increase.

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 at 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. You can find it at www.gov.uk.

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 him or her amicably and request its removal. This depends on the landholder: some will welcome the courtesy, others should not be approached.
- 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.

Many highway authorities have specific helplines or forms or interactive maps on their websites on which you can report a problem on a public right of way but you can also send a letter or email. If you use an online form, copy the text to a document you can keep so that you have it for future reference.

Keep a record in case you need to refer to it later.

- 3 An offer of help to, for example, 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 can be covered by insurance for such work.
- 4 Sometimes an obstruction has been placed deliberately as a response to undesirable behaviour of users. You could offer to give the matter some publicity, perhaps in the local press, to persuade riders to behave responsibly.



- 5 Fly-tipping is an increasing problem, to major proportions in some areas. The district or unitary council's environmental health department should remove it if you inform them. 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.
- 6 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 path to report it if they also find it a problem.
- If you copy your report to your local BHS Access and Bridleways Officer, he or she 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 for 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 also take up the matter with the highway authority. You can find out whom to contact at www.ramblers.org.uk and www.oss.org.uk.
- 7 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. You may also seek advice from your local BHS Access and Bridleways Officer.



- 8 If a parish 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.
- Not all parts of England are covered by a parish council, particularly urban areas, and in sparsely populated rural areas you should contact the chairman of the parish meeting instead. In Wales, community councils replace parish councils.
- You may also wish to inform your county councillor (or in a unitary authority your councillor) of the problem, and ask for his or her assistance.
- 9 The highway authority is likely to start with its own approach to the landholder or occupier concerned. Highway authorities have many problems and the process to resolve each can be time-consuming. They may have a published policy of priorities for dealing with reports. Sometimes, lack of resources or even political stance 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 take action. You might ask the authority to:
- officially acknowledge the status of the path and that an obstruction exists;
 - state what steps will be taken;
 - give a reasonable time scale by which it expects each step to have been completed;
 - keep you informed of progress.
- 10 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 relatively 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 is unlikely to be effective. You may need to involve your Member of Parliament. If he or she is unable to achieve results, it is possible to 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.
- 11 If your approaches to the landholder and/or the highway authority are unsuccessful, you can undertake a Magistrates' Court procedure against the highway authority. Details are available in the Defra publication 'Removal of obstructions from highways: enforcement of local highway authorities' duty to prevent obstructions on rights of way'. This needs careful consideration as costs in the Magistrates' Court can be awarded against the losing party if the highway authority is shown to have acted reasonably. (This procedure cannot be used if the obstruction is a building or dwelling.) Court proceedings are made in the name of an individual; a corporate body such as the BHS can only be involved by formal approval.

It is to be hoped that all it takes is one report to have a path cleared, 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 founder the case early on so keeping a record of all correspondence, including a file note of any phone calls will be valuable. It is not possible to know 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 up.

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. In deciding whether a proposed diversion meets the statutory criteria for diversion, the highway authority is expected to consider the convenience of the existing path as if it were unobstructed. Some highway authorities require blocked paths to be open before they will consider a diversion, so you are strongly advised to consult your local BHS Access and Bridleways Officer before proposing or agreeing to the diversion of an obstructed path.

Finally, but importantly, when a problem is successfully resolved, a letter or email of thanks is strongly recommended and will be appreciated. Letters of thanks may also encourage both councils and landholders to deal sympathetically with any future problems you bring to their attention.

*Highways Act 1980 (HA80), National Parks and Access to the Countryside Act 1949 (NCPA49), Wildlife and Countryside Act 1981 (WCA81)

| Problem | Legislation* |
|--|---------------------|
| Gate unsafe or interfering with passage | HA80S146 |
| Disturbance of the surface | HA80S131A |
| Obstruction | HA80S137/143/149 |
| Excavation across path/damage to the highway | HA80S131 |
| Things deposited so as to cause a nuisance or damage | HA80S131/149 |
| Ploughed headland | HA80S131A |
| Non-reinstatement of cross field path or inadequate width | HA80S134 |
| Obstruction by crops | HA80S137A |
| Overhanging vegetation | HA80S154 |
| Barbed wire adjacent to a highway | HA80S164 |
| Removal of signs which mislead and likely to discourage use | NCPA49S57 |
| 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 | WCA81S59 |

If this advice note is a printed copy, please check for the latest version on
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The logo for The British Horse Society, featuring the text "The British Horse Society" in a serif font, with "The" in a smaller size above "British", and "Horse" and "Society" stacked below it. The text is white and set against a dark red rectangular background.

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