

Public Rights of Way - An A to Z of frequently asked questions and issues.

INTRODUCTION

This is a guide to various issues and problems associated with the Rights of Way network that commonly occur. It is hoped that it will assist members of the public, landowners, path users and other interested parties to understand more easily some of the legislation, which applies to Public Rights of Way and how we apply the legislation.

Bolton Council undertakes enforcement work to ensure the rights of way network is protected for use by the public and is safe to use.

We believe that prevention is better than cure, we actively engage with both landowners and users to advise on and assist with issues and compliance with legislation.

TYPES OF PUBLIC RIGHT OF WAY

There are three types of public rights of way in Bolton.

1. **footpaths** - for walking or running
2. **bridleways** - for walking, horse riding, or cycling
3. **restricted byways** - for walking, horse riding, cycling, or horse-drawn carriage riding.

Public Rights of Way are generally sign posted or waymarked with coloured arrows; yellow for footpaths, blue for bridleways, and plum coloured for restricted byways. There are two legal records of where Public Rights of Way are located; they are recorded in a Definitive Map and in a Definitive Statement.

Where you can find the routes of public rights of way:

- on Ordnance Survey and other maps
- on our council website <http://maps.bolton.gov.uk/residents/mybolton.aspx>

Report problems with a right of way

If you have had a problem using a right of way (eg an obstruction, poor maintenance or a misleading sign) you can report it by contacting us by email at

prow@bolton.gov.uk or by telephone to 01204 333333

Contents – left click on heading to be taken to relevant section

A

[ACCESS LAND](#)
[ACCESS FOR PEOPLE WITH
DISABILITIES](#)

B

[BARBED WIRE](#)
[BRIDGES](#)
[BULLS](#)

C

[CLAIMING A RIGHT OF WAY](#)
[CONTRYSIDE CODE](#)
[CROPS GROWING ON PUBLIC RIGHTS
OF WAY](#)

D

[DANGEROUS ANIMALS](#)
[DANGERS](#)
[DEFINITIVE MAP](#)
[DEFINITIVE STATEMENT](#)
[DIVERSIONS, CREATIONS AND
EXTINGUISHMENTS](#)
[DOGS](#)

TAKING ONE ON A WALK
INTIMIDATING DOGS

[DRAINAGE](#)

E

[ELECTRIC FENCES](#)
[EROSION](#)
[EVENTS ON A PATH](#)

F

[FENCES](#)
[FIREARMS](#)

G

[GATES](#)
[GATING OF RIGHTS OF WAY](#)

H

[HEDGES](#)

I

[INTIMIDATION](#)

[IMPROVEMENT WORKS](#)

L

[LIABILITY](#)
[LITTER & FLYTIPPING](#)
[LIVESTOCK](#)

M

[MAINTENANCE](#)

O

[OBSTRUCTIONS AND ENCROACHMENT](#)

P

[PERMISSIVE PATHS](#)
[PESTICIDES & HERBICIDES](#)
[PLOUGHING](#)
[PRIVATE RIGHTS](#)
[PRIVATE TRACK MAINTENANCE](#)

R

[RIGHT TO ROAM](#)

S

[SIGNS](#)
OFFICIAL SIGNS
MISLEADING SIGNS

[STILES AND GATES](#)

[SURFACES](#)

T

[TREES AND BRANCHES](#)
[TRESSPASSERS](#)

V

[VEGETATION](#)
[VEHICLES ON RIGHTS OF WAY](#)

W

[WAYMARKING](#)
[WET WOODLAND & MOSSLAND](#)
[WIDTH OF RIGHTS OF WAY](#)

ACCESS LAND

You can access some land across England without having to use paths - this land is known as 'open access land' or 'access land'.

Access land includes mountains, moors, heaths and downs that are privately owned. It also includes common land registered with the local council.

Your right to access this land is called the 'right to roam', or 'freedom to roam'. But there are some things you cannot do.

What you can and can't do

You can use access land for walking, running, watching wildlife and climbing.

There are certain activities you can't usually do on open access land, including:

- horse-riding, cycling, camping, taking animals other than dogs on to the land, driving a vehicle (except mobility scooters and powered wheelchairs), water sports

But you can use access land for horse-riding and cycling if:

- the landowner allows it
- public bridleways or byways cross the land – horse riders and cyclists can ride along these
- there are local traditions, or rights, of access

Dogs on open access land

You must keep your dog on a lead no more than 2 metres long on open access land:

- between 1 March and 31 July - to protect ground-nesting birds
- at all times around livestock

There may be other local or seasonal restrictions. These don't apply to Public Rights of Way or assistance dogs.

Find open access land

Search for open access land in England and find out about land that's currently closed to walkers.

<http://www.openaccess.naturalengland.org.uk/wps/portal/oasys/maps/MapSearch>

Report problems with open access land

You can report problems by contacting us at prow@bolton.gov.uk

The main open access land in Bolton is around Smithills Moor and Winter Hill. Within the Smithills Moor open access area, access to the area around Bolton Gun Club off Scout Road is restricted for land management and public safety every Wednesday, Friday and Sunday from dawn to dusk throughout the year and on other days when red flags are flying. A path leading from the layby on Scout Road onto Horrocks Moor will remain open at all times.

ACCESS FOR PEOPLE WITH DISABILITIES

A simple stile can often prove to be a major obstacle for some people. The Countryside & Rights of Way Act¹, Equality Act² and the Highways Act³ requires Bolton Council to have regard for the needs of people with mobility and sight problems.

We operate a 'minimum barrier' policy, with respect to new and diverted Public Rights of Way. Wherever maintenance issues arise to replace, repair or install new items of furniture on Public Rights of Way the opportunity will be taken to place the least restrictive barrier possible on site. The Rights of Way Officer will individually assess each case and the need for furniture to be installed taking into account:

- the right of way status;
- current historical furniture on site;
- topography;
- nature of farming and land use;
- what would be the least restrictive access in that particular location; and
- the landowners / land managers wishes.

Gaps are preferred to stiles, unless farm animals need to be restricted, in which case either a gate, self-closing gate, or kissing gates will be installed in preference to stiles.

Stiles will only be installed where it has not been possible for Bolton Council to negotiate a change in structure or it is not possible to use an alternative barrier.

At some locations more restrictive barriers have to be installed to prevent or deter use which damages rights of way and their surrounding land, such as by vehicles or motorbikes.

BARBED WIRE

ACROSS A PUBLIC RIGHT OF WAY

A barbed wire fence or exposed barbed wire, erected across a Public Right of Way without an adequate means of crossing, is an offence. It is an obstruction to the right of way and a nuisance and a danger to members of the public wishing to use the right of way.

We firstly to ask the owner of the fence to remove it immediately or, if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the right of way, such as the installation of a stile. The installation of a stile will require authorisation by Bolton Council. If the owner fails to agree to either of these courses of action, Bolton Council will remove the barbed wire where it affects the right of way, without further notice. If the owner continues to commit further offences of this nature, we will consider prosecution for obstruction⁴.

ALONGSIDE A PUBLIC RIGHT OF WAY

Where a barbed wire fence is situated alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If in the opinion of Bolton Council the barbed wire does represent a danger to the public, we first ask the owner / manager to make the fence safe for

¹ Countryside and Rights of Way Act 2000 - Section 69

² Equality Act 2010 – Section 20

³ Highways Act 1980 – Section 147

⁴ Highways Act 1980 section 137 and 149

members of the public using the right of way. If the owner / manager refuses or fails to do so, Bolton Council will serve a legal notice requiring the owner to remove the source of danger within a specified time⁵.

BRIDGES

Responsibility for the provision, repair and maintenance of bridges may be different in each case. Bolton Council is responsible for most footbridges, but where a right of way crosses a bridge over which there are private vehicular rights then maintenance of the bridge is likely to be the responsibility of the landowner.

The Rail Authority is responsible for the structure of most bridges over railway lines.

The Highways Agency is responsible for the structure of bridges over motorways.

Bolton Council is responsible for the surfaces of any right of way over these bridges⁶.

INSTALLING A BRIDGE OVER NEW DITCHES, PONDS AND CHANNELS

Where a landowner or occupier creates a new ditch, pond or channel etc. that crosses an existing right of way a suitable bridge or structure must be provided which can accommodate all legitimate users safely and without restriction. The absence of a suitable bridge or other structure can be construed as “wilful obstruction” on behalf of the landowner or occupier.

This policy is designed to ensure that landowners or occupiers, who intentionally obstruct rights of way, by creating ditches or water features, are required to provide a bridge or other suitable structure on the definitive line of the right of way. Diverting the path retrospectively is not normally an acceptable solution and the feature will normally be considered an obstruction.

BULLS

Bulls that are over 10 months old are not allowed in fields crossed by a public right of way unless they are of a recognised beef breed and are with cows or heifers. Dairy breed bulls over 10 months old are not allowed even if they are with cows or heifers.⁷

We deal with this problem by approaching the landowner and requesting that they move the bull(s). A failure on the part of the landowner to comply with such a request may result in prosecution.

CLAIMING A RIGHT OF WAY

If you wish to claim a new Public Right of Way you are advised to discuss the matter in the first instance with our Public Rights of Way team. Public Rights of Way can only be claimed if certain conditions are met. There is guidance on making a claim in a separate document you can obtain by contacting the Public Rights of Way team.

⁵ Highways Act 1980 - section 164

⁶ Transport Act 1968 - section 116

⁷ Wildlife and Countryside Act 1981 – Section 59

COUNTRYSIDE CODE

The Countryside Code is statutory guidance produced by Natural England and applies to all parts of the countryside in England and Wales, aiming to help everyone respect, protect and enjoy the outdoors. We ask that all users of rights of way follow the code.

<https://www.gov.uk/government/publications/the-countryside-code/the-countryside-code>

The basis of the code is: Respect – Protect - Enjoy

In summary the code asks that visitors to the countryside:

Respect other people:

Please respect the local community and other people using the outdoors. Remember your actions can affect people's lives and livelihoods.

- consider the local community and other people enjoying the outdoors
- leave gates and property as you find them and follow paths unless wider access is available

Protect the natural environment:

We all have a responsibility to protect the countryside now and for future generations, so make sure you don't harm animals, birds, plants or trees and try to leave no trace of your visit. When out with your dog make sure it is not a danger or nuisance to farm animals, horses, wildlife or other people.

- leave no trace of your visit and take your litter home
- keep dogs under effective control

Enjoy the outdoors:

Even when going out locally, it's best to get the latest information about where and when you can go. For example, your rights to go onto some areas of open access land may be restricted in particular places at particular times. Find out as much as you can about where you are going, plan ahead and follow advice and local signs.

- plan ahead and be prepared
- follow advice and local signs

Fire Safety in the Countryside

Crops, and in particular in Bolton the moorland areas, are susceptible to fires after prolonged dry periods. Such fires can get out of hand very quickly, cause extensive damage and put lives at risk. Fires can be very destructive to wildlife habitat with some fires lasting several days or even weeks.

To prevent grass fires:

- Avoid using open fires in the countryside
- Keep young children and ball games away from barbecues
- Extinguish cigarettes and other smoking materials properly
- Only use barbecues in suitable and safe areas and never leave them unattended
- Never throw cigarette ends out of car windows - they can ruin whole fields of crops
- Ensure that your barbecue is fully extinguished and cold before disposing of the contents
- Sunlight shining through glass can start large fires - take glass bottles/jars home or put them in a waste or recycling bin

Please take care when in the countryside and alert the Fire and Rescue Service to fires as early as possible via 999 calls. An early call could mean the difference between a small, easily controllable fire and a widespread, devastating fire.

CROPS

Crops when grown due to their height can block or interfere with the use of a route. Where a crop (other than grass) has been planted or sown on land crossed by a Public Right of Way, the occupier must ensure that the line of a path is kept clear of growing crops to a minimum width. This should be done by; not sowing on the line of the path, or cutting the crop as soon as it is practical, generally after the crop reaches a height of 10cm.

The minimum width to be kept clear is 1 metre for a footpath, 2 metres for a bridleway and 3m for restricted byways (unless a different width is recorded on the Definitive Statement).

Additionally, the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season. Failure to fulfil this duty is a criminal offence.⁸

DANGEROUS ANIMALS

If any animal which is known to be dangerous by the keeper of the animal, causes injury to a member of the public using a Public Right of Way, an offence may be committed and the occupier could be sued by the injured party. We advise complainants to report any incidents to the police and contact the keeper of the animal directly. An incident involving livestock that results in death or injury needs to be reported to the Health and Safety Executive.

Bolton Council should be made aware of any problems on a highway where an animal is causing unreasonable interference with the user of the Public Right of Way.

DANGERS ADJOINING A PUBLIC RIGHT OF WAY

From time to time dangers on land adjoining a Public Right of Way occur which present hazards to users, such as defective walls or structures. Bolton Council as the Highway Authority has a duty to protect path or way users from such dangers and we will in the first instance assess the risk and if necessary talk to the owner of the adjacent land and urge them to remove, repair or adequately fence the danger. Bolton Council can require the owner of the dangerous land or structure to carry out the necessary works by service of notice. If the owner does not comply with the notice, we may carry out the work and recover the costs from the owner⁹.

DEFINITIVE MAP

The location and routes of formal Public Rights of Way are recorded by Bolton Council in two ways; a map which shows the route and a statement which describes the route. The map is called the "Definitive Map".

Not all paths and ways that are open for public use are shown on the map, some routes that are not formally recorded may form part of a highway, be through public open space or in a public park.

Notwithstanding the Definitive Map, unregistered public rights may exist over any route, either by its historic status or the establishment of a right through use. Private rights may also exist over a route, which has public access rights.

⁸ Rights of Way Act 1990 - section 137A

⁹ Highways Act 1980 - sections 165, 167 & Building Act 1984 sections 77, 78

Public Rights of Way have the same legal protection provided by the Highways Act as the streets forming the public highway network of carriageways and footways.

The definitive map showing the location of Public Rights of Way can be found:

<http://maps.bolton.gov.uk/residents/mybolton.aspx>

DEFINITIVE STATEMENT

The Definitive Statement records the location of Public Rights of Way in a descriptive format. It also records the presence of features, such as gates or stiles on the route, where they occur and information such as the type of surface and the width of the route.

DIVERSION, CREATION AND EXTINGUISHMENTS

The alteration, closure, or creation of a Public Right of Way can only be made by a legal order. This can be a lengthy process and all orders are open to public consultation and certain legal criteria have to be met. Bolton Council therefore cannot guarantee that all orders will be made or completed. Guidance on amending routes can be found on our website.

DOGS

TAKING ONE FOR A WALK ON PUBLIC RIGHTS OF WAY

Dogs are allowed on Public Rights of Way, but they must be kept under close control at all times. There is no requirement in law for a dog to be on a lead. A path or way user who allows a dog to wander off the right of way becomes a trespasser and owners and occupiers have a right to ask them to leave the land. If a dog is likely to wander off the line of the path or way, or to worry livestock, the owners are advised to keep the dog on a lead.

It is an offence to allow a dog that is not under close control or on a lead to be at large in a field or enclosure with sheep. A farmer is allowed to shoot a dog, which is attacking or chasing livestock.

Where a stile is constructed on a footpath there is no requirement for a landowner to provide a facility for the passage of dogs such as a dog gate.

On open access land you must keep your dog on a lead no more than 2 metres long between 1st March and 31st July – (to protect ground-nesting birds) and at all times around livestock. There may be other local or seasonal restrictions. These don't apply to Public Rights of Way or assistance dogs.

The Fouling of Land by Dogs (the Borough Council of Bolton) Order 2007 designates land throughout the whole of Bolton Council where dog owners must clean up if their dog fouls the ground. It includes all public rights of way, public land, thoroughfares and areas adjoining or granting access to public buildings. Only land which is used as farmland, woodland, marshland, moor or heath land and common land is excluded from the control order.

We operate a zero tolerance approach to dog fouling offences. Failure to clean up after your dog is an offence for which you may receive either a fixed penalty fine of £80 or you may be prosecuted in the magistrates' court. This can result in a fine of up to £1,000.

INTIMIDATING DOGS

Dog owners have a duty to ensure that their animal doesn't threaten or harm other people.

If you're bitten or intimidated by a dog when using a Public Right of Way; always report the problem to the police. We also advise that you report the incident to Bolton Council as we should be made aware of any problems on a highway, particularly where a dog is impeding free passage along the way.

DRAINAGE

Most Public Rights of Way exist in their natural environment and do not generally have a means of drainage installed, so quite often they can be muddy or flooded. Drainage is installed in some paths or ways where water crosses under the path or way. These can often block up with leaves or debris, if you see this can you report this to the Public Rights of Way team.

We do not generally do improvement works to address paths or ways which are occasionally flooded or muddy. We may undertake work to areas that are identified as suffering from long term flooding. However, these will be prioritised for action along with other works and within budget constraints.

See also 'Wet Woodland and Mossland' (below).

ELECTRIC FENCES

ACROSS A PUBLIC RIGHT OF WAY

An electric fence erected across a Public Right of Way without a safe means of crossing is an offence. It is an obstruction of the right of way and a nuisance and a danger to members of the public wishing to use the right of way. We will deal with the problem by asking the owner of the electric fence to remove it immediately or, if it is necessary for agriculture, to provide an adequate means of crossing it on the line of the path or way. The latter will require authorisation by Bolton Council, as it would constitute a new stile or gate. If the owner fails to agree to either of these courses of action, we will remove the electric fence where it affects the path without further notice. If the owner continues to commit further offences of this nature Bolton Council will consider prosecution for obstruction.

ALONGSIDE A PUBLIC RIGHT OF WAY

Where an electric fence runs alongside a Public Right of Way it may be a danger and a nuisance to members of the public. If, in our opinion the fence is a danger or nuisance, then we will ask the owner to make the fence safe for members of the public. If the owner refuses or fails to do so, Bolton Council will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice will result in Bolton Council removing the fence and recovering costs from the owner.

EROSION

Erosion to Public Rights of Way occurs naturally as a result of water damage or through use. We do not have a duty to repair problems that are the result of erosion. Erosion will be addressed by

preventative maintenance wherever possible. Areas which are identified as suffering from erosion will be prioritised for action according to public safety and budget constraints.

EVENTS ON A PROW

It is generally regarded as acceptable to use public footpaths, bridleways and restricted byways for organised sponsored walks, cross-country running challenges and similar events. Well managed events reduce the risk of disruption to communities, environmental impacts and conflict with other users.

Organisers should satisfy themselves as to the suitability of the route and should always consult with the owners of the land over which the Public Rights of Way run. Check-points may need to be established and arrangements made for vehicular access to certain points for emergencies, feeding stations and tidying-up operations. Organisers should also ensure all participants are clear about the route of the Public Right of Way and properly aware of the public's rights and responsibilities when using them as set out in the Countryside Code.

Further recommended information can be found in the code for "Outdoor UK Challenge Events" on the website of the Institute of Fundraising.

Though walking and running are unrestricted, cycle races on Roads and Byways require prior permission from the Police.

It is an offence to drive a motor vehicle on a public right of way without lawful authority.¹⁰

FENCES

Maintenance of fencing on or adjacent to a right of way is the responsibility of the adjacent land owner and not the Council (unless they are the landowner) or there is a formal agreement in place in which the Council is responsible for maintenance.

FIREARMS

It is not an offence to shoot across a Public Right of Way, although to do so may amount to a common law nuisance or intimidation, wilful obstruction of the Highway under the Highways Act 1980, a breach of Health and Safety at Work Act 1974 or intimidation, depending on the circumstances.

It is, however, an offence to discharge a firearm within 50 feet of the centre of a byway (carriageway carrying public vehicular rights) if it injures, interrupts or endangers any user of the byway¹¹

Section 19 of the Firearms Act 1968 also makes it an offence for a person to have a loaded air-weapon, or any other firearm whether loaded or not, together with ammunition in a public place, including any Public Right of Way, unless the person has lawful authority or a reasonable excuse, such as a landowner or tenant shooting vermin on his own land.

¹⁰ Road Traffic Act 1988, Section 34

¹¹ Highways Act 1980 section 161

In respect of Firearms complaints or enquiries, we advise complainants to notify the police directly.

GATES - See also 'Stiles'

Gates and Stiles are generally owned and maintained by landowners and not Bolton Council. It is the duty of the landowner / occupier to ensure that gates and stiles are kept in a good state of repair.

Our duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures.

GATING OF RIGHTS OF WAY

Bolton Council has the power to authorise the placing of gates or barriers to restrict public access to public rights of way to assist in the reduction of crime or anti-social behaviour. Previously called Gating Orders they were replaced with Public Spaces Protection Orders by the Anti-social Behaviour, Crime and Policing Act 2014.

An Order will only be undertaken in specific circumstances and before making an Order, the Council must be satisfied that the activity subject to an Order:

- has a detrimental effect on the quality of life of those in the locality (or it is likely that activities will take place and have such an effect)
- is (or is likely to be) persistent or continuing in nature
- is (or is likely to be) unreasonable
- justifies the restrictions being imposed.

Additionally for rights of way, we must also consider a number of issues, including the impact of restricting use on those living nearby and the availability of alternative routes.

The making of an Order does not permanently extinguish any existing rights of way (unlike a stopping up order where underlying highway status is removed) and the Order can be revoked or varied once made if circumstances warrant it. An Order can last for up to three years, after which it must be reviewed. If the review supports an extension and other requirements are satisfied, it may be extended for up to a further three years.

HEDGES AND TREES - OVERHANGING

In most circumstances, the responsibilities of Bolton Council do not extend to the maintenance of hedges and trees at the side of Public Rights of Way. The landowner is responsible for ensuring that a hedge, or tree does not overhang a Public Right of Way so as to obstruct it or endanger path or way users.¹²

Where a hedge, or tree overhangs or obstructs a Public Right of Way, Bolton Council as Highway Authority has a right to remove so much of the overgrowth to prevent obstruction to pedestrians and equestrians. Additionally, Bolton Council has the power to require that the owners of overhanging hedges lop or cut back the hedge within a period of 14 days.

¹² Highways Act 1980 section 154

INTIMIDATION - Or Threatening Behaviour Intended To Deter Use Of A Public Right Of Way

The use of intimidating behaviour with the intention of deterring the use of a Public Right of Way is possibly an offence and may amount to obstruction of the path. In these circumstances, we endeavour to address the issues with the landowner. We may then involve the police as appropriate.

IMPROVEMENT WORKS

We regularly undertake improvement works where it is considered necessary, this might be to enable safe access for the public such as replacing deteriorated surfacing or to prevent erosion that would lead to loss of a route.

Routes that are critical links, commuter routes or cycleways are our priorities. We record where improvement works are required, however, due to the size of the network, budget constraints and competing priorities some works may not be immediately undertaken.

LIABILITY

LANDOWNERS LIABILITY

Owners and occupiers of land crossed by Public Rights of Way can be liable for injuries caused to users by their negligence. For example, if a stile were to collapse under a walker, or if a user were to be injured by an electric fence or barbed wire placed across or to the side of a path or way, then the injured party may pursue a claim against the occupier of the land.¹³

LIABILITY OF THE HIGHWAY AUTHORITY

Many paths and ways exist in their natural environment and are to be used by the public at their own risk, users are expected to look out for uneven surfaces, tree roots and other minor hazards. In most cases, the Highway Authority would not be liable for any injuries on a Public Right of Way.

In certain circumstances, such as a highly modified path in an urban area, the Highway Authority may be liable for injury caused to persons using a Public Right of Way if the injury is due to a negligent act with regards to the surface of the path or way.

LITTER AND FLY-TIPPING

Bolton Council as the Litter Authority is responsible for keeping rights of way in their area, which are publicly maintainable, clean and clear of litter and refuse, so far as is practicable.¹⁴

If there is sufficient litter to amount to an obstruction, then Bolton Council has powers to instruct the landowner to remove the obstruction.

¹³ Occupiers Liability Act 1957

¹⁴ Environmental Protection Act 1990 sub sections 86(9) & 89 (1) & (2))

LIVESTOCK

When using a public right of way crossing a field containing livestock you should be mindful that it is a working environment where animals graze. You should be vigilant, especially on entering a field or where you cannot see the whole field, and try to stay away from animals and to be aware of their movements. In the spring it's especially important to be sympathetic to farm animals rearing their young and give them adequate clear space.

When walking with dogs in fields with cattle, the advice is to avoid getting between cows and their calves; to keep your dog under close and effective control on a lead around cows and sheep, but not to hang onto your dog if you are threatened by cattle - let it go and allow the dog to run to safety. This offers the best chance of a safe outcome to both you and your dog.

If you feel threatened by animals protecting their territory or young, do not run. Move to the edge of the field and, if possible, find another way round and please remember to close gates to stop livestock escaping.

If dead livestock is encountered, generally the owner of the land is responsible for removing and disposing of the carcass.

MAINTENANCE

Most Rights of Way are maintainable at public expense, but there are some paths maintained by landowners. Liability for maintenance is often determined by a site specific assessment. In most cases, the primary responsibility to maintain public paths lies with the Council acting as the Highway Authority. In general, the Council is responsible for the condition of the surface of the path, and the landowner is responsible for the condition of any structures, such as stiles or gates, and for the cutting back of overhanging vegetation.

The Council does not generally accept maintenance liability for surface of rights of way where they are used for private vehicular access.

See also 'Surfaces' and 'Liability'

OBSTRUCTIONS - and Encroachments

Bolton Council as the Highway Authority has a statutory duty to remove all obstructions and encroachments to Public Rights of Way¹⁵. The Highway Authority also has a common law right to remove anything that it believes constitutes an obstruction, danger or encroachment without consultation with any other party.

Each instance will be separately judged, in some cases an obstruction may be so minor as to warrant no further action. In others it may lead to prosecution at a magistrate's court.

ENCROACHMENT

An encroachment into a Public Right of Way is defined as any intrusion, irrespective of height or size and includes, but is not limited to, fill material, retaining walls, rockeries, plants either deliberately planted or growing from adjacent property, or any other material or structures. Encroachment can be an unlawful obstruction of the highway.

¹⁵ Highways Act 1980 - section 130

When an encroachment is alleged to have occurred, Bolton Council will investigate. This may require considerable research, including historical research to establish the legitimate width of the highway. If an encroachment has occurred, but it is not affecting the path or the rights of users, the Highway Authority may regard it so minor as to warrant no further action.

PERMISSIVE PATHS

A permissive path, permitted path or concessionary path is a path (which could be for walkers, riders, cyclists, or any combination) whose use is allowed by the landowner but is not recorded on the definitive map. Generally it is a route that the landowner allows the public to use but with the intention it does not become a Public Right of Way. Unofficial diversions of Public Rights of Way made by landowners, can be deemed as permissive paths and if certain precautions are not taken, the new route could in time become a Public Right of Way. Usually, permissive paths are closed by landowners one day a year in order to interrupt the period of use.

PESTICIDES AND HERBICIDES

The Health and Safety Executive has issued advice to farmers regarding the spraying of pesticides and herbicides on Rights of Way and how they should manage any risk to the public. This includes creating temporary closures or diversions, displaying warning notices where rights of way join or cross the treated area, and using an appropriate product for the location applied in accordance with the manufacturer's instructions.¹⁶

Bolton Council does use herbicides on Public Rights of Way for the control of invasive plant species such as Japanese Knotweed and Giant Hogweed and vegetation growing within the surface of some Public Rights of Way.

PLOUGHING AND CROPS

In some circumstances occupiers of land are entitled to plough Public Rights of Way, if it is not reasonably convenient to avoid them. This only applies to footpaths and bridleways that cross fields. Footpaths and bridleways that are along the edge of a field should never be ploughed. 'Restricted byways' should never be ploughed, whatever their location.

Where a footpath or bridleway that crosses a field is ploughed, it must be reinstated within a time limit otherwise a criminal offence is committed. Reinstatement means indicating it on the ground and making the surface reasonably convenient for public use, to not less than the statutory minimum width. In respect of footpaths the minimum width is 1m, and 2m for bridleways. The time limit is 14 days for the first disturbance of the cropping cycle and 24 hours for any further disturbance such as harrowing and drilling.¹⁷

PRIVATE RIGHTS

The landowner or occupier of land can exercise private rights over a Public Right of Way. For instance, a farmer can drive an agricultural vehicle along Public Rights of Way or a landowner

¹⁶ DeFRA (2006) "Code of Practice for using plant protection products"

¹⁷ Rights of Way Act 1990 - section 134

exercise horses along rights of way. If you see this happening, do not assume you also have the same rights.

PRIVATE TRACK MAINTENANCE

Many public rights of way run along routes such as drives and farm tracks that are also subject to private vehicular access rights. Landowners and occupiers using their vehicles on such rights of way under their private rights are responsible for the wear and tear caused by their vehicles.

Any maintenance requirements on private track will be assessed as to whether the surface is to a standard required for the exercise of the public rights and not to a standard to enable private vehicular access.

RIGHT TO ROAM

See 'Access Land'

ROPE or WIRE - ACROSS A PUBLIC RIGHT OF WAY

It is an offence to stretch a rope or similar object across a Public Right of Way. In some circumstances, a temporary rope or wire to restrain farm animals may be authorised across a public footpath (but no other class of right of way), provided that it is readily visible and can be easily and safely removed and replaced by path users.

SIGNS

OFFICIAL SIGNS

Bolton Council as the Highway Authority is required to erect a sign at the point that each public footpath, bridleway or restricted byway leaves a surfaced road.¹⁸ This is usually in the form of a wooden or metal fingerpost. The fingerpost will often indicate the status of the right of way. Some tarmac surfaced paths in urban areas may not be signed.

We can also erect signs where in the opinion of the Highway Authority they are required to assist persons unfamiliar with the locality to follow the course of a footpath.

It is an offence under the Highways Act to remove or obliterate a direction post or sign erected by the Highway Authority.¹⁹

MISLEADING SIGNS AND NOTICES ON PUBLIC RIGHTS OF WAY

Misleading notices and signs on Public Rights of Way are illegal. It is an offence to erect notices saying 'Beware of the Dog' or 'Bull in field' if they are untrue. Notices saying 'Public footpath only – Private drive' or 'Private Land – keep to public footpath' are acceptable. Misleading and unlawful signs can deter people from lawfully exercising their right to use paths or ways, and we have a duty to prevent such occurrences. We can remove such signs erected on a Public Right of Way.

¹⁸ Countryside Act 1968 – Section 27

¹⁹ Highways Act 1980 – section 131(2)

STILES AND GATES

Generally stiles and gates are not owned or maintained by Bolton Council. It is the duty of the landowner or occupier to ensure that any stiles or gates are kept in a good state of repair. Our duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures.

If an occupier of land wishes to install additional stiles or gates on footpaths or bridleways, they must apply in writing to Bolton Council for authority to do so.

To erect stiles or gates without this authority is an unlawful obstruction and is a criminal offence. The only circumstance for which we can provide authorisation for the erection of new stiles or gates is that the structures are required for stock control purposes or forestry.²⁰

Stiles and gates cannot be erected for security or other purposes, and will be regarded as obstructions to the highway.

It is the landowner or occupier's duty to ensure that livestock do not escape enclosure onto highways and cause an accident. We take a sympathetic approach to farmers who padlock their gates to prevent livestock from getting on to main highways provided a stile or kissing gate is installed alongside the field gate through which the right of way passes. This approach will continue only where there is the possibility of livestock getting onto main roads if a member of the public leaves the gate open.

However, it should also be remembered that to lock a gate through which a Public Right of Way runs is an offence and we may have no choice but to deal with the matter as an obstruction if complaints from the public are received.

SURFACES

Bolton Council as the highway authority has an interest in the surface of all Public Rights of Way. It is an offence to interfere with the surface of a Public Right of Way to the detriment of users and we have a duty to protect the interests of users and the Public Right of Way. We can take enforcement action to ensure the surface of Public Rights of Way unlawfully disturbed is reinstated.

Occupiers of land can disturb the surface of a right of way by special licence if they first apply to us to do so, and by statutory licence in respect of ploughing. Landowners and occupiers who wish to upgrade the surface of a Public Right of Way on which there are also private vehicle rights must apply to us to do so.

We are also responsible for ensuring that (undergrowth) vegetation growing in the surface of the Public Right of Way is kept under control and does not make the route difficult to use. Overgrowth - plants growing across the path from beside it - is the responsibility of the landowner.

TREES AND BRANCHES - FALLEN ACROSS PUBLIC RIGHTS OF WAY

If a tree or large branch falls across a Public Right of Way, such that the way is obstructed Bolton Council as Highway Authority has adopted the following protocol. It will contact the owner of the tree and request that the tree or branch is removed within a specified time. If the owner fails to

²⁰ Highways Act 1980 - section 147

comply with this request, Bolton Council will serve notice on the owner of its intention to remove the branch and may recover from the person the costs incurred.

TRESPASSERS

Landowners may from time to time experience trespass on their land. This is a matter between the trespasser and the landowner in certain circumstances it may be a crime. Bolton Council is unable to intervene in this matter. Our advice is landowners should ensure Public Rights of Way are adequate signed and waymarked to ensure the public keep to rights of way. We can help and advise landowners on signage.

To protect use by members of the public creating new rights of way across their land, landowners can depositing with the council a map, statement and statutory declaration showing which public rights of way exist, if any, over their land. This is known as a "Section 31 Deposit" as it is made under section 31(6) of the Highways Act 1980. From the date of the deposit it will not be possible for any additional public rights of way over the land to be claimed through public use. More detailed guidance on making such a deposit is available on our website.

VEGETATION

Bolton Council is responsible for ensuring that vegetation growing in the surface of the Public Right of Way is kept under control and does not make the route difficult to use. Overgrowth, that is, plants growing across the path from beside it, is the responsibility of the landowner.

We maintain a list of paths to be kept clear of vegetation and undertake one, or two cuts on all of those paths that appear on the list. Maintenance of vegetation of rights of way are done according to resource availability, so sometimes they may not be cut back every year. Popular and publicised routes will have the highest priority in the maintenance programme.

VEHICLES ON RIGHTS OF WAY

Drivers can be prosecuted for driving a motor vehicle without lawful authority on a public path, bridleway, restricted byway or any land that isn't a highway²¹. However, where the land owner has private vehicular rights such as along a private access road to property that is also a right of way, then the landowner has the lawful authority to drive along the route. Lawful authority may also arise by permission from the owner, or through the rights of some statutory undertakers.

At some locations physical barriers are needed to restrict access by vehicles, but do not unduly interfere with legitimate users. The most problematic situation is where use by off-road motorcyclists is the main problem. No barriers have yet been made that are completely effective at keeping out motorcycles while allowing passage to horses and cyclists. Step-over barriers and Squeeze barriers are generally successful in reducing motorcycle traffic.

WAYMARKING

Waymarking is the marking of routes, usually with small plastic discs, to supplement signposting. Bolton Council has the power to waymark routes where, in its opinion, it is necessary to help someone unfamiliar with the locality to follow a route, particularly when the line of the route is

²¹ Road Traffic Act 1988 – Section 34

unclear. Waymarking is recognised to be important for land management and to be beneficial to both landowners and walkers. Landowners can arrange for waymarking by contacting the rights of way team who will undertake it if it is appropriate.

WET WOODLAND AND MOSSLAND

Wet Woodland and Mossland are important habitats for animals and plants of both woodlands and wetlands. They are extremely rich in insects, supporting a large number of species like beetles, many of which are now rare in the UK.

Where rights of way pass through Wet Woodland or Mossland we do not undertake works such as installing drainage that will have an impact on the habitat. In some cases we may install boardwalks to span very wet land, but in some cases the land will remain poorly drained and prone to being seasonally flooded.

WIDTH OF PUBLIC RIGHTS OF WAY

There is no general rule applying to the width of a Public Rights of Way. The written statement for each path, which accompanies the Definitive Map, may refer to the path's width which is then its legal width. Otherwise it is the width that the public are accustomed to using. Often, it is the width of the way between natural boundaries such as hedges or fences. Where a path runs between hedges or fences the width of the highway will normally be the full width between the boundaries, even where the worn route is much narrower.

In the absence of the above information Bolton Council will require a reasonable width to be made available which would be sufficient for two users to pass and be convenient for cutting machinery. In the case of a new footpath, this will be regarded as 1.5 metres if it's not enclosed and 2 metres if it's enclosed. In the case of a bridleway and restricted byway, 3 metres if it's not enclosed and 4 metres if it's enclosed. An encroachment into the width of a Public Right of Way can be an obstruction and a criminal offence (see above).

CONTACT DETAILS FOR ENQUIRIES:

Public Rights of Way Officer,
Bolton Council,
3rd Floor, Paderborn House,
Bolton,
BL1 1UA
Tel: 01204 333333
Email : prow@bolton.gov.uk