

## **HOW TO GET YOUR LOCAL ROAD FIXED**

The Highways Authority (Normally the County Council) has an absolute obligation to “maintain the highway at public expense” “in repair” under the Highways Act 1980. That particular expression means that they cannot claim a lack of funds as a defence for failing to maintain the roads. “Out of repair” could refer to potholes, missing road markings, an eroded surface, poor surface water drainage, etc.

It is free of charge for any member of the public to complain to the Highways Authority under Section 56 of the Act (Look it up in Google) which will force them to take action.

The way to do it is to send a letter (“Notice”) to the County Secretary at their headquarters (Probably best to send it Royal Mail Signed For delivery to prevent them saying they never received it!) in the format from the Act (see below) naming the road and the area that needs repair (Try avoid reporting any roads that might be privately owned). It is usually best to say between this junction and that junction. You don’t need to describe what’s wrong at this stage. It is best to do a separate letter for each road in question and send them all together.

### **NOTICE UNDER SECTION 56 OF THE HIGHWAYS ACT 1980**

I (the complainant) allege that **Name of Road** between its junctions with **Side Road and Side Road**:

- a) is a highway maintainable at the public expense, or a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription; and
- b) is out of repair

I hereby serve notice under Section 56 of the Highways Act 1980 upon **Whichever** County Council (the respondent), requiring that you state that you admit:

- a) that the portion of highway referred to above is maintainable at the public expense, and

b) that the County Council is the authority liable to maintain the said highway

The Highways Authority now has one calendar month from the date of receipt to respond and **if they do**, it should be in the form of an official "Counter-Notice", not a random e-mail. They will probably have to admit that the road is "maintainable at public expense" and is "out of repair" and if they do, you can then apply anytime within 6 months to the Magistrates Court for an order for the works to be carried out. In a recent Crown Court case the Highways Authority suggested to the judge that 20 working days was a 'reasonable' period to carry out the repair. Therefore, you could respond to the Counter Notice by telling the Highways Authority that you will allow them 20 working days to carry out the repairs, failing which you will make an application to the Magistrates Court for an order. That will get their undivided attention!

**If the Highways Authority don't respond** to your "Notice" within one month, you can apply to the Crown Court for an order to repair the road. This is free to do and in fact, you will probably be able to get an award for your costs in bringing the case. To make this application, you write to the Crown Court to apply for an order and list all the roads in question, including the locations, as before and this time, say what you think is wrong with the road (See below). It is best to include copies of the original "Notices" so the Court know what has been going on. You will also need to send a copy of this application to the Highways Authority. The Court will arrange a hearing that you will need to attend and the Highways Authority will need to send their lawyer to confirm that they did get your "Notices", they didn't serve the "Counter Notices", that the roads are "maintainable at public expense" and that they are "out of repair". They can't really argue these issues as they are matters of fact, although the lawyer will often have no idea if the road is "out of repair" or not.

Even the Judge at the Crown Court will probably be surprised that such a minor issue ends up there as they normally deal with murder

and rape, etc.! It is almost certain that the Judge will issue an order for the road to be repaired within a 'reasonable' period, normally 20 working days.

## **APPLICATION TO THE CROWN COURT FOR AN ORDER TO REPAIR THE ROAD**

### **RE: APPLICATION IN RESPECT OF HIGHWAYS ACT SECTION 56 NOTICE**

I (the complainant) served notice under Section 56, Sub-Section 1 of the Highways Act 1980 on **Whichever** County Council (the respondent) (See attached copies) on **Date** alleging that **Number of** roads, namely **List of Roads**, were:

- a) a highway maintainable at the public expense, or a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription; and
- b) out of repair

and required that they state that they admit:

- a) that the portion of highway referred to above is maintainable at the public expense, and
- b) that the County Council is the authority liable to maintain the said highway

**Whichever** County Council have failed to respond by service of the required Counter-Notice within the permitted one-month period and therefore I make application under Section 56, Sub-Section 2 to the Crown Court for an order that the Respondent put in repair the roads in question within whatever reasonable period the Court may determine.

I provide the following information for each road in question in compliance with Section 56, Sub-Section 3:

- (a) the situation of the way or bridge to which the application relates:

**Location of Roads (Junction to Junction)**

- (b) the name of the respondent: **Whichever** County Council.

- (c) the part of the way or bridge which is alleged to be out of repair:

**Carriageway**

- (d) the nature of the alleged disrepair: **Name of road – Describe defects such as potholes, flooding, surface degradation, lack of road markings, etc.**