

***Sent on behalf of Nick Chard, Cabinet Member - Environment, Highways & Waste
Email to all District/Borough Councillors & Parish Clerks (cc. County Council Members)***

Dear All,

I thought it would be useful and timely to set out a statement of the essential law surrounding the clearance of snow and ice from public highways and pavements.

Duty of local highway authority

The local authority is responsible for clearing ice and snow from the public highway and pavement. Under Section 41(1A) of the Highways Act 1980, the authority must ensure that safe passage along the highway is not endangered by snow or ice. Section 41(1A) of the Act was inserted following the Railways and Transport Safety Act 2003 to clarify the law following the decision in *Goodes v East Sussex CC (2000)* in which it was held that the duty under section 41 to maintain the fabric of the road in good repair did not encompass a duty to prevent or remove the formation or accumulation of ice and snow. The local authority can prioritise the roads and pavements which they consider should be cleared first. This is a defence in law to a claim that personal injury occurred because the road or pavement had not been gritted. There are no reported cases apparently because of the relatively small amount of snow in England since the amendment to the Act came into force in late 2003.

Private individuals

Private landowners are not obliged to clear snow or ice from the highway, even if the road or pavement passes over their land. It is risky for an individual to clear these areas. Accordingly, KCC would be unwise to endorse or recommend to members of the public to go out and clear the pavement themselves. By moving snow from one part of the pavement it could create a danger in another area or the melting of the snow by using water could create black ice. In such circumstances if someone is injured the individual would be liable in negligence or nuisance. The snow should not be brushed onto the public pavement as it is a public nuisance to block the pavement or the road by sweeping snow from property onto the highway.

In many Northern European countries the public are obliged to clear snow and ice from the paths adjoining their land i.e. it an offence not to do so. There are arguments for such laws to be passed in Britain and several MP's websites for example John Redwood MP's blog discuss lobbying Parliament to pass such legislation and this has been raised in parliament from time to time.

Businesses

Unlike private individuals, businesses carry public liability insurance and have a duty of care to their employees. It is in their interests in terms of keeping open and less risky for them to help clear snow and ice from pavements outside their shops and businesses, although the principles of liability outlined above still apply and it would be wise for them to check the position with their insurers.

Overall, the good forward planning has put us in good stead; we have maintained adequate salt stocks and kept Kent moving in this exceptional weather.

There will be a report in March which will give more detail on how Kent has coped with this severe weather.

There will also be a review of KCC's winter maintenance programme in July which will be an opportunity to discuss, debate and make recommendations to KCC's policy.

Best regards

Nick Chard