



# **Transport for London Streetworks Prosecution Policy**

Drafted by: Matthew Rock

Approved by: Mark Beasley

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## INTRODUCTION

Transport for London (TfL) is committed to a fair and proactive approach in carrying out its statutory duties under the New Roads and Street Works Act 1991 (NRSWA), the Traffic Management Act 2004 (TMA), the London Permit Scheme (LoPS), and the associated regulations and Codes of Practice. Part of this approach is to carry out enforcement action, including prosecutions where appropriate, for offences and non-compliances under the above legislations, on the Transport for London Road Network (TLRN).

TfL may prosecute for offences of non-compliance with the statutory duties established under the NRSWA and TMA and may share details of cases and convictions with other public authorities and organisations to assist in effective enforcement against persistent offenders.

TfL also operates a Fixed Penalty Notice (FPN) scheme in accordance with the The Street Works (Fixed Penalty) (England) Regulations 2007, and The Traffic Management Permit Scheme Regulations 2007 to be issued in appropriate cases.

This policy outlines the approach to be followed in the consideration and discharge of TfL's enforcement and prosecution processes and its commitment to have due regard to all relevant legislation, regulations and guidelines.

TfL recognises that the decision to prosecute is a serious one and will ensure all relevant mitigating factors are taken into consideration before any such decision is taken. The system of enforcement and prosecution of offences set out in this policy seeks to be robust, effective, consistent, and above all, fair and reasonable.

This policy is supported by procedural documents held within the Planned Interventions team in TfL, providing guidance to officers in reaching the decision to prosecute.

This policy applies to any streetworks activities on the TLRN and is operated by the Planned Interventions team within the Traffic Directorate.



## **1. General Principles**

- 1.1 Utilities have a statutory obligation to apply for streetworks permits and serve the appropriate subsequent notifications for their works on the TLRN by the registration of those notifications in the Transport for London (TfL) Local Street Works Register (LSWR). This is in accordance with relevant legislation such as the NRSWA, the TMA, the LoPS and the associated regulations and Codes of Practice. Failure to provide accurate information within the relevant notifications, and failure to serve notifications in a timely manner represent offences under the relevant sections of the legislation.
- 1.2 Utilities are required to ensure their works on the TLRN are carried out in a safe manner in accordance with the NRSWA and associated Codes of Practice. Failure to do so is an offence under the relevant section of the legislation.
- 1.3 Utilities are required to reinstate the road following their works on the TLRN in accordance with the NRSWA and the associated Code of Practice. Failure to do so is an offence under the relevant section of the legislation.
- 1.4 Utilities are required to use their best endeavours to co-operate with TfL as the street authority, in the interests of safety, to minimise inconvenience to people using the street and to protect the structure of the street and the integrity of the apparatus in the street. Failure to do so is an offence under the relevant section of the legislation.
- 1.5 The NRSWA and TMA place a number of other statutory duties and responsibilities on utilities with accompanying offences. Failure to comply with these duties and responsibilities are offences under the relevant sections of the legislation.
- 1.6 Each case will be considered on its own facts and merits. There are however, general principles that apply to the way in which TfL will investigate and consider proceedings for each case.
- 1.7 TfL will normally prosecute cases where a decision to prosecute has been made. TfL will also comply with the disclosures rules, in accordance with the provisions of the Criminal Procedure and Investigations Act 1996 (as amended by the Criminal Justice Act 2003) and the Attorney General's Guidelines on disclosure.



## 2. Types of Offences to be prosecuted

2.1 TfL may prosecute offences relating to streetworks activities on the TLRN, including but not limited to:-

- (a) All streetworks offences under the New Roads and Streetworks Act 1991 (NRSWA), the Traffic Management Act 2004 (TMA) and the London Permit Scheme (LoPS), committed on the Transport for London Road Network (TLRN).
- (b) All relevant Highway offences under the Highways Act 1980 where TfL is the Highway Authority
- (c) All other offences related or incidental to street or highway works where the TfL is Street, Highway or Traffic Authority.

2.2 The above list is not exhaustive and TfL may prosecute other offences relevant or incidental to streetworks on the TLRN, outside of the list of offences set out in this policy.



### **3. Who will prosecute?**

3.1 Offences listed in paragraph 2.1 above will normally be prosecuted by:

- a) Transport for London, or by
- b) Any other approved and designated person or agency acting for and on behalf of TfL.



## 4. The Prosecution Decision

4.1 It is recognised that the decision to prosecute an offence is an important and serious one. TfL will therefore only prosecute if it considers that an offence has been committed and if the evidence shows that there is a realistic prospect of conviction, or

- (a) It would be in the public interest and in the interest of justice to prosecute, or
- (b) Where the relevant offender has shown a previous poor history of compliance under its statutory obligations, or
- (c) The offender has failed to discharge it's liability under The Street Works (Fixed Penalty) (England) Regulations 2007 or the Traffic Management Permit Scheme Regulations 2007.

### 4.2 The Evidential Test

In deciding whether there is a realistic prospect of conviction, TfL will have regard to the following:

- (a) Relevance and admissibility of available evidence
- (b) Reliability of evidence relating to the offence
- (c) Reliability of any observation or comment made by the alleged offender
- (d) Reliability of any admissions and confessions including comments recorded by TfL or in a Works Inspection Report
- (e) Reliability of any information or records contained within the TfL Local Street Works Register
- (f) Reliability of Prosecution Witnesses
- (g) The general conduct and performance history of the particular utility

If TfL considers that there is insufficient evidence upon which to base a prosecution, a prosecution will not be brought. However, consideration may be given to other responses, such as issuing the relevant utility with a Non-Statutory Warning Letter.



## 4.3 Fixed Penalty Notices (FPN)

Section 95A of NRSWA allows TfL to dispose of certain offences under the NRSWA / TMA by issuing the offending utility with a FPN. The giving of the FPN allows the liability for prosecution to be discharged by payment of a penalty within a prescribed timeframe.

Failure to pay the FPN can result in prosecution for the original offence through the Magistrates' Courts.

TfL will operate the FPN scheme with due regard to the guidance given by the DfT in The Code of Practice for the Co-Ordination of Street Works and Works for Road Purposes and Related Matters, The Code of Practice for Permits and Highway Authorities and Utilities Committee (UK) Advice Note for Fixed Penalty Notices.

TfL will apply the relevant aspects of the Prosecution Criteria to any decision to give a FPN.

## 4.4 Public Interest and Interest of Justice

Even where the evidential test has been satisfied, the prosecution of an alleged offence should be in the public interest and in the interests of justice, i.e. must be seen to be appropriate, fair and properly brought. There can be no definitive guidance as to when it may not be in public interest or in the interest of justice to prosecute an alleged offence, as each case will turn on its own individual factors.



## **5. Prosecution Decision Criteria**

5.1 TfL will consider one or more of the criteria below, when making a decision to prosecute:-

- (a) Where the offence was avoidable on the part of the utility company or its agents or where the utility company has shown disregard for regulation and legislation
- (b) Where the offence has caused or could have caused health and safety issues to the person using the TLRN or the site operatives themselves
- (c) Where the offence has caused or could have caused avoidable traffic disruption on the TLRN or adjacent road
- (d) Where the offence has caused or may cause substantial damage to TfL assets
- (e) Where the utility company has failed to discharge the offence by way of a FPN issued for that purpose and within the statutory time limit.
- (f) Failure to heed to a previous Non-Statutory Warning Letter about other failures to comply with the legislation, regulations or the associated Codes of Practice.

5.2 In all other cases TfL will consider issuing a FPN



5.3 TfL will have regard to the following factors against prosecution:

- (a) Insufficient evidence.
- (b) Where it appears that, in TfL's opinion, there has been a genuine mistake of fact
- (c) Where, owing to circumstances beyond the offender's control, commission of the offence was unavoidable.
- (d) Where there is no realistic prospect of conviction.
- (e) Where, representation made following the issue of a FPN has been accepted by TfL.

5.4 TfL will have regard to the following factors in the decision to discontinue proceedings:

- (a) New evidence not previously available to TfL that undermines the original enforcement decision
- (b) It becomes evident that there is insufficient evidence to proceed with the enforcement action.
- (c) Where the continuance of proceedings is likely to lead to an abuse of the process of the courts.
- (d) Where continued enforcement is likely to be deemed malicious or prejudicial to TfL's interest.
- (e) Where the Head of Planned Interventions or the Operational Analysis Manager takes the decision to discontinue proceedings due to exceptional circumstances or to withdraw a FPN in accordance with both sets of 2007 Regulations.

Where the proceedings are ceased due to (e) above, the Head of Planned Interventions or the Operational Analysis Manager may set the terms and conditions for such withdrawal.

What constitutes 'exceptional circumstances' will be determined on the facts of individual cases and the decision to discontinue a case can only be taken by the Head of Planned Interventions or the Operational Analysis Manager.



- 5.5 Under no circumstances should a case be withdrawn for the purposes of seeking compensation from the defendant, except in proceedings for compensation for damages to TfL assets or recovery of costs.
- 5.6 Where a case is disposed of other than by prosecution, TfL may seek to recover any administrative costs incurred in processing the case file.



## 6. Investigations

- 6.1 TfL may investigate any offence relating to street works on the TLRN using the information contained within the LSWR, or any relevant information from the NRSWA / TMA officer reports and/or notebooks and any other relevant source.
- 6.2 The majority of prosecutions are expected to be evidence based and the likely need to carry out interviews in relation to offences to be minimal. However where there is a need to conduct criminal procedure interviews, TfL will have due regard to best practice guide on conducting criminal interviews, as set out in the Code of Practice to the Police and Criminal Evidence Act 1984 (PACE).



## **7. Disclosure**

- 7.1 TfL will have regard to the Criminal Procedure and Investigations Act 1996, as amended by the Criminal Justice Act 2003 and the associated Code of Practice in the disclosure of prosecution materials.
- 7.2 TfL will retain and preserve all evidence that may be relevant to a prosecution, whether or not that evidence is to form part of the prosecution case.
- 7.3 TfL will endeavour in all cases to adopt a consistent approach to disclosure by disclosing prosecution materials in advance of any hearing.



## **8. Owner/Custodian**

- 8.1 This policy is sponsored and owned by TfL's Traffic Manager or his delegated officer.
- 8.2 This policy will reside with the following TfL officials who will be responsible for responding to all policy related queries in the first instance:
  1. Head of Planned Interventions
  2. Operational Analysis Manager
  3. Works Compliance Team Leader



## **9. Policy Review**

- 9.1 This policy will be reviewed periodically to reflect any changes in the law, regulations, or any TfL policies in force at the time. Any amendments will be reflected in the policy and published as appropriate.
- 9.2 A copy of this policy will be published in the TfL website and in appropriate cases TfL will provide a copy of this policy on request.