

Proposed Procedure for the Management of Fly Grazing, Loose or Abandoned Horses in Hertfordshire

1. Introduction

- 1.1 This procedure has been written to deal with the increasing problem, complaints and incidents relating to horses fly- grazing, loose and abandoned. The horses are on local authority owned and private land, straying onto highways, Rights of Way and open spaces, causing a danger to the public, nuisance and horse welfare issues. Other Counties are also having problems and this procedure is similar to that adopted in Norfolk and Suffolk following meetings with various Hertfordshire agencies.
- 1.2 The aim of this procedure is to document how Hertfordshire County Council and its partners can help to manage horse related problems. The procedure explains the various roles and responsibilities of the agencies involved and the processes that should be followed.

2. Issues and Concerns

- 2.1 Horse-related problems can be divided into the following categories:
- Loose or stray horses which pose a risk of danger to the public or highway users
 - Unlawful grazing on public or private land (fly-grazing)
 - Welfare concerns
 - Abandonment
 - Tethering

- 2.2 These concerns may arise individually, but often they are in combination and require a multi-agency approach to deal with them effectively. This procedure seeks to provide a framework for effective communication and partnership working to ensure a joined-up approach to both preventing problems arising in the first instance and being able to respond to reported incidents as and when they arise.

3. Stakeholders and Partners

- 3.1 The key stakeholders and partners that have a role to play in effective horse management include: horse owners, land owners, local authority staff, Hertfordshire Constabulary, Councillors, Welfare agencies, the British Horse Society and the public. Experience has shown that a significant majority of the horses which are found to be unlawfully kept on public or private land, or found to be straying or loose on a highway are owned by members of the Gypsy and Traveller community, who have a long association of horse ownership and trading. Effective engagement with representatives of the Travelling community will be beneficial in tackling horse-related problems in Hertfordshire.
- 3.2 Land owners need to be clear about land which they make available for grazing horses and conditions and controls that are applied to manage the horses which they permit to be on their land. Land owners also need to understand the measures that are available to deal with unlawful use of their land and how they effectively apply those controls.
- 3.3 There are a number of potential agencies that can become involved in tackling horse related problems, including the Police, Fire and Rescue, Trading Standards, Gypsy Section, Local Authorities and the RSPCA and other welfare agencies. This procedure aims to provide clarity around the respective roles and responsibilities of these agencies and aid effective communication between them
- 3.4 When the public have horse related issues it is important that they clearly understand how and who to report problems to, and, after an incident has been logged, are informed of what steps have been/are to be undertaken and the appropriate time scales involved.

4. The Law

4.1 There are a number of options available to deal with horse related problems some in the capacity of an enforcing authority and others as a landowner.

The two most applicable legal powers available for dealing with loose or straying horses are:

4.2 The Animals Act 1971 (Section 7)

This Act allows the owner or occupier of land to detain horses (livestock) which stray onto their land and to claim expenses for damage done by the livestock to the land and the costs of keeping the livestock until such time as the horses are restored to the owner, or sold at a market or auction (after detaining the horses for no less than 14 days). The land owner/occupier becomes responsible for the reasonable care of the horses while being detained. Although horses may have been put on land deliberately rather than straying onto it, this is the principle tool used for removing horses which are on public or private land without permission.

4.3 The Highways Act 1980 (Section 155)

This Act makes it an offence for horses to stray or lay on or at the side of a highway. This does not apply to highways which cross common land, waste or unenclosed ground. The Police have powers to remove horses straying on the highway and either to return them to the confirmed horse owner or to remove them to a pound. They must not put them back into a field from which they have strayed. A person found guilty of an offence can be liable for paying the expenses incurred in removing and impounding the horses. This is likely to be the principal tool used to remove horses straying on a highway.

There are a number other legal powers which might also be appropriate for dealing with horse related issues:

4.4 The Animal Welfare Act 2006

This Act creates an offence if a person with responsibility for an animal causes it suffering or fails to ensure its welfare. Allowing a horse to stray and potentially suffer harm and failing to secure adequate welfare is likely to be an offence under the Act. The power is one of prosecution and potential additional powers to deprive or disqualify a convicted person from keeping animals. These powers are therefore useful as a deterrent and for potential longer term solutions for persistent offenders, but they do not offer relief to urgent situations. Although local authorities, including the Boroughs and Districts have a responsibility and power to enforce the Animal Welfare Act, it is common practice for this to be carried out by the RSPCA.

4.5 The Town Police Clauses Act 1847 (Sections 21, 29)

A similar power to that contained in the Highways Act, which provides powers to the Police to seize and impound horses that are found at large in any street and provides the power to recover reasonable expenses incurred in keeping the horses. The Act also creates a range of specific offences, including a number relating to horses and horse-drawn carriages in streets which cause obstruction, annoyance, or danger to residents or passengers. A person found guilty of an offence may be fined or imprisoned for up to fourteen days.

4.6 The Environmental Protection Act 1990 Part III

The provisions in this Act provide powers to a local authority to investigate and deal with statutory nuisance, which includes any animal kept in such a place or manner as to be prejudicial to health or a nuisance. The powers are primarily used by environmental health practitioners and allow the service of a legal notice (an abatement notice) on the person(s) responsible for the nuisance requiring it to be abated. Failure to comply with the notice can result in prosecution with a fine of up to £5,000. This provision might be best used if horses, by virtue of the way they are being kept, cause nuisance to local residents. However, proving a nuisance may be difficult.

4.7 Horse Passport Regulations 2009

These regulations require horses to have an identification document (passport) and micro-chip which are issued by and registered with an authorised Passport Issuing Organisation. The only exception to this is if the horse already had a passport prior to the regulations coming into force in 2009. Foals must be pass ported and micro-chipped by the 31 December in the year of birth or within six months of being born, whichever is the later. The passport system aims to prevent horse meat, which may have been treated with veterinary medicine, from entering the human food chain, and helps prevent the sale of stolen horses. Local Authority inspectors have powers to request passport information and can prosecute people who do not comply. Although, in theory, this should be a useful tool for identifying horses that have strayed, or left in fields it is often the case that these horses are not micro-chipped and so identifying the owner is extremely difficult. One consequence of the legislation is that if a horse is seized and impounded it cannot be subsequently sold unless it has a passport and is micro-chipped, which places an additional cost onto the Council.

4.8 The Anti-Social Behaviour, Crime and Policing Act 2014

A new Act which includes the provision to issue a Community Protection Notice. Authorised persons can issue a Community Protection Notice in relation to behaviour which "is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality" (s 43 of the Act). The Notice can include a requirement to stop doing specified things, a requirement to do specified things or a requirement to take reasonable steps to achieve specified results. Sections 50 and 51 provide for the forfeiture and seizure of any "item used in the commission of the offence". It is unclear from the Act and the Explanatory Notes to the Act whether the description 'item' will also include livestock.

4.9 Future Legislation? - The Control of Horses Bill 2014-15

A Private members Bill submitted by Julian Sturdy MP, just having passed second reading in Parliament. This is a Bill to make provision for the taking of action in relation to horses which are in public places, and for connected purposes.

5. Licensing the Use of Land

5.1 Hertfordshire County Council own or manage areas of land, which could be licensed out to individuals directly, allowing them to use the land, for example to graze horses. The Council would have discretion whether or not to issue a licence, whether to set appropriate charges and to apply any conditions on the use of the land. Licenses would usually last for a set period. The relevant Council Department would have responsibility for issuing and managing compliance with the licenses granted for using their land.

5.2 Before any licence is issued, checks should be made to ensure the applicant is not disqualified from keeping animals, or has any convictions for animal cruelty or welfare offences. As a minimum requirement, the following conditions should be applied to any licence:

- All horses must have a passport and be micro-chipped.
- The requirements of DEFRA's Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids must be followed. This includes:
 - Limiting the number of horses allowed on the land.*
 - Horses should be kept so as not to cause a nuisance or danger to others.
- The horse owner/tenant should have adequate public liability insurance and indemnify the Council against any loss or damage resulting from keeping the horse on the land.
- Any waste arising from the keeping of horses must be properly disposed of.
- Any damage to the land, including fencing etc., must be repaired at the horse owner/tenants cost.
- Ragwort or other noxious weeds must be removed.
- The horse owner, or their representative, must provide contact details in case of an emergency (full-time 24 hour contact, including cover when on holiday etc.).

*Generally this should be a minimum of one acre per animal (Equine Industry Welfare Guidelines Compendium for Horses, Ponies and Donkeys, 3rd Edition, 2009; British Horse Society Guide to Grassland Management for Horse and Pony Owners, 2000.

6. Roles & Responsibilities

6.1 There are a number of different agencies and Council departments that can become involved in responding to and dealing with horse related issues, it is therefore important to identify clear roles and responsibilities and lines of communication. The sections which follow identify who is responsible for what and the reporting mechanisms that are involved. However the roles and responsibilities of each of the key agencies and Council departments involved are summarised below:

6.1 Hertfordshire County Council

To be the single point of contact and the co-ordinating body for the public, councillors and others to report horse related problems. To direct those problems to the most appropriate agency / department and to record all inquiries and incidents. To liaise with internal departments, private land owners, the RSPCA, the Police, Fire and Rescue, District, Borough and Parish Councils and other internal and external agencies to make sure all aspects of reported incidents are recorded and followed up.

6.2 Police

To respond to reports of horses causing a danger on highways and at other locations. To effect the removal of loose horses or to ensure that horse or landowner secures or removes to a place of safety. To support the council in serving any appropriate notices where there is a likelihood of a breach of the peace and engaging the Green Yard Policy as and when required. To provide support to other agencies if there is a likelihood of a breach of the peace or public disorder.

To respond to requests from the co-ordinating body (HCC) and assistance to remove horses from the highway or other public land. To remove the horses to a safe place and keep them there, looking after their health and welfare, until the owner is identified or the notice has expired. After that the horse can be sold at auction / market.

To report actions taken to Hertfordshire County Council (HCC) and liaise with other agencies as deemed appropriate.

6.3 Police and Crime Commissioners Department

To promote this procedure through the police and crime plan, and assist with resourcing by way of a Local scheme/ Partnership Project.

Council Departments:

6.4 Gypsy Section, Rural Estates, Land Management

To effectively manage their land and if appropriate, the permissions given to graze horses. To put arrangements in place to monitor land for illegal use / trespass and to respond to reports. To take the necessary action to secure removal of horses to a place of safety, serving any appropriate notices where applicable and engaging the Police or a Horse Bailiff as and when required. To liaise with DEFRA to arrange for the disposal of dead animals (Inc. horses) from their land.

6.5 Trading Standards

To carry out routine inspections in compliance with the Horse Passport Regulations 2009. To ensure accurate data kept on compliance and non-compliance.

6.6 Hertfordshire Fire and Rescue Service

To assist in large animal rescue, including horses involved in accidents.

Welfare:

6.7 RSPCA

To investigate any reports or concerns regarding horse welfare or cruelty. The RSPCA may also refer issues to the World Horse Welfare, Redwings or other welfare charity to investigate.

6.8 Councillors

To monitor and ensure this procedure is used. To advise the general public and make them aware of this procedure and how to use it. To publicise and promote the importance of this procedure in Local Authority meetings, literature etcetera. To assist in the securing of financial support.

7. Process for the Public in Reporting Horse Related Problems

Refer to the attached flow-chart*. The main points of this process are:

7.1 Problems with horses on the highway causing an immediate risk to the public/motorists should be referred to the police by telephoning 999.

7.2 Non- urgent horse related issues should be referred to HCC by email or telephone [contact details (email address and telephone number) to be inserted here]. HCC will link up with the appropriate agency and local council.

7.3 Should you require advice regarding fly-grazed horses on private land, please contact HCC via the contact details given in the above paragraph. However, it is the private land owner's responsibility to deal with this and remove the horses if required.

7.4 All horse welfare issues should be reported to the RSPCA.

8. Process for Dealing with Horses on Highways

Refer to the attached flow-chart*. The main points of this process are:

- 8.1 Loose horses on the highway causing a risk to public/motorists will be dealt with by the Police. The primary concern is the risk of danger for both highway users and the horses and therefore the priority is to remove that danger. All officers should have regard to the Health & Safety Risk Assessment.
- 8.2 Horses can be removed from the highway, or from the side of a highway, under the Highways Act 1980. The Highways Act can be used for most situations with horses straying onto roads, but there are exemptions if the horses are on common land, waste or unenclosed land, in which case action under the Animals Act 1971 should be considered.
- 8.3 The costs incurred in dealing with horses which stray onto the highway can be recovered from the horse owner, which includes damage done to the highway, officer time, costs incurred by the Green Yard / Horse Bailiff, passport and micro-chipping, feed, transport costs etc.
- 8.4 A person who allows their horse to stray onto the highway can also be prosecuted under the Highways Act and this should be a consideration, particularly for repeat offences, in accordance with the council's enforcement policy.
- 8.5 Horses should be checked for a micro-chip and passport details obtained.
- 8.6 Any concerns regarding animal welfare should be reported to the RSPCA.

9. Process for Dealing with Horses on Council Land

Refer to the attached flow chart*. The main points of this process are:

- 9.1 Horses on Council land will be dealt with by contacting HCC. They will inform the local Police so that a CAD can be opened and any action taken recorded.
- 9.2 The Act allows horses to be detained on the land, but in practice this may require removal of the horse. This can be done immediately, and should be done immediately if there is a clear risk that the horse will escape or cause a risk of danger to the public. However, if there is no foreseeable risk then it would be more appropriate to leave the horse on the land, having secured the field first and a legal notice placed on the land near to the horse requiring the owner to remove it within 7 days.
- 9.3 If a notice is served, the RSPCA will be informed and will undertake welfare checks
- 9.4 If the horse(s) are to be removed immediately due to horse welfare issues, then an Immediate Removal Notice must be placed on the land by HCC, in conjunction with the local Council, Police and RSPCA
- 9.5 In accordance with the policy, if the horse(s) have not been removed after the expiry of the notice period, bailiffs will be contacted to remove any horses remaining on the land and taken to one of their sites. If this happens, again an Immediate Removal Notice will be posted.
- 9.6 If details of the horse owner are known then notice must be given to the owner within 48hrs of the horses being removed or subject to a removal notice.
- 9.7 If there are any concerns during the removal process that there may be a breach of the peace, the police should be contacted and asked to attend.

- 9.8 The Green yard / Horse Bailiff cannot dispose of the animals until 14 days after the initial notice was served. After this the horse(s) can be disposed of by selling at a market or auction.
- 9.9 There will be an agreement with the Green Yard / Bailiffs to cover the costs of the animal's welfare whilst in their care which may also include Passport and micro-chipping. If the owners are found then the costs must be paid by the owners prior to the return of their horses.
- 9.10 If a horse owner collects the horse they must be able to prove identity and ownership before it is released. The owner must also pay a release fee, which includes all the costs incurred before the horse is returned.
- 9.11 The Green yard / Bailiffs will have a duty to update HCC of the outcome/disposal of the horses.

10. Process for Dealing with Horses on Private Land

Refer to the attached flow chart*. The main points of this process are:

- 10.1 The Council or other agency does not have a legal duty to deal with horses on private land. It is the responsibility of, and a decision for, the landowner as to whether action should be taken to remove horses from their land.
- 10.2 Private land owners can use the Animals Act 1971 to detain or remove horses from land and to recover expenses for damage etc., in the same way that the Council uses these powers for horses on its land.
- 10.3 The Council or other agencies may become involved with dealing with horses on private land if there is a breach of legislation, for example:

- Animal Welfare
- Horse Passport requirements
- Potential escape of horses from the land
- Nuisance or damage caused to Council or other peoples land

10.4 The private landowner, whether they have permitted horses on their land or not, may become liable for any damage or nuisance caused by horses on their land, if they fail to take action to prevent such damage or nuisance, and should be advised as such.

10.5 As before, any animal welfare issues or concerns should be reported to the RSPCA.

10.6 The serving of notices and removal of horses from private land, if provided by HCC, is subject to a separate agreement with the land owner with regards to the costs.

* Flow-chart provided separately.