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Issue	1
Date	June 2007

Level 3

Managing complaints about pigeons

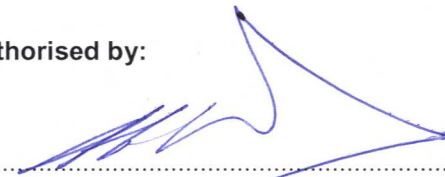
Endorsement & Authorisation

Endorsed by:



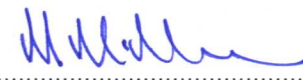
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Issue record

Issue	Date	Comments
1	June 2007	New Work Instruction

Compliance

This Work Instruction is mandatory and must be complied with by Network Rail and its Contractors from 2nd June 2007. However, authority not to comply with any particular requirement of this Work Instruction can be sought using the appropriate non-compliance authority processes defined in [NR/L2/STP/001](#): Network Rail standards management.

Reference documentation

NR/SP/CPR/008	Network Rail contract requirements - safety.
RT/LS/P/043	Health and safety management of third party works.
NR/L2/STP/001	Network Rail standards management.
	Defra Rural Development Series Technical Advisory Note 13: Birds and their control in non-agricultural environments. 13 April 2006.
	Environmental Protection Act 1990.
	London Local Authorities Act 2004.
	Wildlife and Countryside Act 1981.

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1 Purpose

The purpose of this Work Instruction is to define:

- 1 The procedure for managing complaints and Legal Notices concerning the nuisance caused by pigeons.
- 2 The roles and responsibilities of Network Rail employees in managing such complaints and Notices.

The procedure is designed to deliver an amicable, timely and cost-effective solution that satisfies all legal obligations.

2 Scope

This Work Instruction applies to the management of complaints and Legal Notices regarding the nuisance caused by pigeons on Network Rail owned structures, buildings and property. The document covers the engagement of an Independent Assessor through the National Framework call-off contract for appointing Consultant Specialists.

3 Roles and responsibilities

The roles and responsibilities of posts and teams defined in this Work Instruction are summarised below.

<i>Post/team</i>	
Text	Responsibilities
<i>Community Relations Manager (CRM)</i>	
6, 9	Prompt and appropriate response to complaints and Legal Notices.
7, 9	Provide the TLCA with details of a complaint or Legal Notice, of any previous complaints and other relevant activities at the site.
6, 8, 12, 13	Establish and maintain an up to date Corporate Complaints Database of complaints and Legal Notices.
<i>Company Secretary</i>	
9	Verify the validity of a Legal Notice served on the Company.
<i>Company Solicitor</i>	
13.3	Retain records of Legal Notices, Counter-Notices and Actions.
<i>Deed Room (Gillingham)</i>	
13.3	Retain records of DEFRA general licences.
<i>Legal Services (LS)</i>	
9	Forward copy of validated Legal Notice to CRM.
10	Decide to accept or appeal against a Legal Notice: where necessary, appoint solicitors to prepare a challenge to a possible Court Action.
10	Ensure sufficient funds are available to meet the provisions of a Legal Notice.

<i>Project Manager (PM)</i>	
12	Manage Minor Works Contractor: obtain an estimate of the cost for the mitigation works; authorise and issue instructions for the work; check quality of the finished works.
12	Prioritise mitigation works.
12	Provide information to the CRM and the NPM.
12.1	Provide the Senior Project Accountant with the total AFC for mitigation works.
<i>National Programme Manager (NPM)</i>	
11	Administer budget for call-off contract for appointing Consultant Specialists.
13	Maintain database of completed assessments.
<i>Territory Civil Engineer (TCE)</i>	
8.3	Approve the undertaking of an Independent Assessment at a site.
8.1, 8.3, 12	Agree and arrange for mitigation works to be undertaken; prepare and approve the remit and approve the expenditure for the works.
9	Provide advice to Legal Services on the acceptance of the provisions of a Legal Notice or recommend that an appeal/challenge be issued.
12.1	Approve expenditure associated with a challenge to a Legal Notice.
13.3	Retain records of physical proofing works.
<i>Territory Liability and Clearance Advisor (TLCA)</i>	
7, 9	For the site in question, investigate whether (a) an assessment has been undertaken, (b) mitigation works have been undertaken, and (c) there is an existing agreement for proofing works.
7, 8, 9, 12	Act as the focal point for liaising with the LA: confirm that a reported complaint will be investigated, request evidence supporting a complaint or Legal Notice, arrange a site meeting, discuss options for sharing the costs of the mitigation works, agree details of mitigation works, and confirm completion of works.
8, 9	Where possible, agree with the LA the need for mitigation works and the responsibility for undertaking such works. Where agreement is not reached, propose the use of Network Rail's protocol for resolving the situation.
8, 9	Provide information to the TCE on the need for mitigation works and on any cost-sharing agreement with the LA.
8	Provide information to the CRM to update Corporate Complaints Database of complaints and Legal Notices.
10	Request PM to procure an Independent Assessment where a challenge to a Legal Notice or a Counter-Notice is to be served.
10	Liaise with Legal Services for additional information and/or resources required to meet the timetable defined in a Legal Notice.
11	Devise and forward a copy of the remit, along with letter of appointment, to the Independent Assessor.
11	Provide information to the NPM of assessments undertaken via the call-off contract.
13.3	Maintain Liability and Clearance File.

4 Definitions and abbreviations

Outside Party

An organisation intending to undertake works that will not enhance the operation or physical assets of the railway, but which will interface with the railway.

AFC	Anticipated Final Cost
CCD	Corporate Complaints Database

CRM	Community Relations Manager
Defra	Department for Environment, Food and Rural Affairs
LA	Local Authority (or Local Council, District Council, London Borough etc.)
LS	Legal Services
MP	Member of Parliament
MP&I	Major Projects and Investment
NPM	National Programme Manager (MP&I) for appointing Consultant Specialists
PM	Project Manager, MP&I (responsible for minor works on a Territory)
TCE	Territory Civil Engineer
TLCA	(Territory) Liability and Clearance Advisor

5 Procedure

The sequence of the stages making up the procedures for dealing with complaints and Legal Notices about pigeons is shown in Appendix A: details of each of the stages are provided in Sections 6 to 12.

6 Receipt and response to a complaint

The responsibility for responding to a complaint about the nuisance caused by pigeons lies with the Community Relations Manager (CRM) in the relevant Territory: complaints received by other Network Rail staff shall be referred to the relevant CRM.

The CRM shall respond promptly to the receipt of a complaint: the response varies according to the complainant.

- a) For a complaint submitted by a member of the public, the CRM shall reply using the appropriate standard letter. Because of differences in case law (see Appendix B), the reply to complaints about a *site* in England or Wales is different to that for a *site* in Scotland: standard letters are reproduced in Appendix C and D respectively.
- b) The CRM shall acknowledge the receipt of a complaint submitted by a Local Authority/Council (LA) or a Member of Parliament (MP), and advise that the issue will be progressed by the Liability Clearance Advisor in the relevant Territory (TLCA). The acknowledgement to an MP shall also state that Network Rail will, whilst investigating the complaint, liaise with the relevant LA.

Details of all complaints shall be logged by the CRM in the Corporate Complaints Database (CCD).

7 Initial investigation of a complaint

The CRM shall pass to the TLCA:

- 1 All relevant details of a complaint from a LA (or MP).
- 2 Information, derived from the various databases, on previous complaints and other relevant activities at the site referred to in the complaint.

The TLCA shall:

- 1 Ascertain if any mitigation works have already been undertaken at the site and, if so, by whom.
- 2 Ascertain if an assessment of a nuisance caused by pigeons has been undertaken, or is planned to be undertaken, at the site.
- 3 Check if any agreements are in place with the LA (or other party) for the site: such an agreement may discharge Network Rail's liability for the repair of proofing or for re-proofing.
- 4 Confirm to the LA, (a) Network Rail's policy on dealing with complaints about pigeons, and (b) that Network Rail will investigate the reported problem at the site.
- 5 Request the LA to provide copies of the evidence that supports their (or an MP's) complaint.
- 6 Arrange a meeting at the site with representatives of the LA.

8 Resolution of a complaint

8.1 Where mitigation works are to be implemented by Network Rail

Where, following the initial investigation and site meeting, the TLCA and LA agree that Network Rail are responsible for implementing some form of mitigation. The TLCA shall discuss the receipt of financial support from the LA in the form of sharing the costs of the mitigation works and/or for providing a road closure(s) at no cost to Network Rail.

A statutory nuisance should only arise where pigeons are roosting or perching directly over areas open to pedestrians. Where Network Rail has agreed to fund proofing works the LA shall be advised that this will generally only be provided to seal against pigeon access over footpaths: this may amount to only 25 to 30% of the span of a bridge. This is in line with the policy of undertaking reasonably practicable works to mitigate rather than eliminate the nuisance.

The TLCA shall:

- 1 Advise the Territory Civil Engineer (TCE) that Network Rail should undertake the appropriate mitigation works.
- 2 Provide information to the TCE on any agreement over cost-sharing and road closures.

Where the advice is accepted, the TCE shall arrange for the mitigation works to be put in place to mitigate the nuisance.

8.2 Where mitigation works are not to be implemented by Network Rail

Where, following the initial investigation and site meeting, the TLCA and LA agree that Network Rail are not responsible for implementing mitigation works, the TLCA shall inform the LA (and where appropriate the MP) that Network Rail propose to take no further action and on what grounds this decision was reached.

The CRM shall close the complaint down and update the CCD accordingly.

8.3 Independent Assessment

Where, following the initial investigation and site meeting, the TLCA and LA cannot agree on the need for mitigation works and/or whether or not Network Rail is responsible for implementing such works, the TLCA shall propose the adoption of Network Rail's protocol for resolving the situation¹. The protocol involves an independent assessment of whether or not a statutory nuisance (as defined by the Environmental Protection Act 1990) probably exists at the site referred to in the complaint.

The TLCA shall seek, in writing, confirmation that the LA accepts the protocol as the means of resolving the situation. In agreeing to adopt the protocol, both parties are making a commitment to abide by the conclusions of the Independent Assessor as to whether or not a statutory nuisance probably exists at the site and, if so, on the responsibility for implementing measures to mitigate the nuisance.

Where the Independent Assessor concludes that the conditions at the site probably do not represent a statutory nuisance the LA should accept that there is no obligation upon Network Rail to implement any mitigation works. On the other hand, where it is established that a statutory nuisance probably does exist at the site and the responsibility for the mitigation works lies with Network Rail, the TCE shall, taking account of the recommendations of the Independent Assessor and advice from the TLCA, arrange for appropriate measures to be put in place to mitigate the nuisance to an acceptable level.

¹ The protocol has been accepted for use by the London Boroughs.