



BRIEFING PAPER

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Private, or 'unadopted' roads in England and Wales

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Summary

This paper explains what private or 'unadopted' roads are and the problems and issues associated with them. It also explains who is responsible for maintaining these roads and how highways authorities can 'adopt' such roads and make them public highways.

There are two main types of private or unadopted road: those on new developments such as housing estates and those which, usually by historic accident, have existed for a long time, often since the nineteenth century. A Department of Transport [survey in 1972](#) found that there were then approximately 40,000 unadopted roads in England and Wales, making up some 4,000 miles of road. No later survey has been undertaken but the figure is thought not to have changed much. The Labour Government [estimated](#) in 2009 that it would cost £3 billion to make up these roads to an adoptable standard.

The law on the maintenance and adoption of private roads in England and Wales is highly complex. It is largely contained in Part XI of the *Highways Act 1980*. Briefly, a private or unadopted road is by definition a highway not maintainable at public expense. The local highway authority is therefore under no obligation to pay for its maintenance. Responsibility for the cost of maintaining a private road rests with the frontagers (the owners of properties which front onto such roads).

Statutory provision does exist for unadopted roads to be adopted and thus become highways maintainable at public expense. Statutory provision also enables the street works authority to require frontagers to undertake repairs if there is a danger to traffic in a private street. Where the frontagers fail to act as required the authority may execute the repairs itself and recover the costs from the frontagers.

Andrew Barsby, [Private Roads: The Legal Framework \(5th ed.\)](#), 2013, contains a good description of the law.

There is separate legislation for Scotland and Northern Ireland, not covered in this paper.

Information on other roads-related matters can be found on the [Roads Briefings Page](#) of the Parliament website.

1. Legislative background

From early times the inhabitants of a parish were responsible for the maintenance of the highway. As *Halsbury's Laws* describes:

... at common law the inhabitants of a parish were bound to repair the highways within their area unless it could be shown that responsibility had attached to an individual or a corporate body by reason of tenure, inclosure or prescription.¹

The obligation was later transferred by a series of steps to local officers and bodies.

1.1 Once upon a time...

In a 2017 paper Dan Bogart, associate professor of Economics at the University of California, Irvine, gave a nice summary of the origins of the road network and obligations as to road maintenance:

A large network of roads and pathways was created in Britain during the Roman period and in the Middle Ages. By the mid-16th century this network was called the 'Kings Highway.' However, the English monarchy devoted few resources to road improvements. Responsibility for road maintenance was placed upon local governments known as 'parishes'. Parishes financed road improvements by forcing their residents to work without pay and by levying property taxes. The free labor was known as 'statute labor' in England and corvee labor in much of continental Europe. It was limited to a maximum of six days per year by a statute passed in 1555.²

The 1555 Act – the *Statute for the mending of Highways* (2 & 3 Ph. & M.) CAP VIII³ – formed for nearly 300 years the basis of a new organisation of road maintenance, and sought to place the obligation for the upkeep of public highways on the parish as a whole.⁴

The Barwick-in-Elmet Historical Society describe the effect of a subsequent act of 1691 – an *Act for the better repairing and amending the Highways, and for settling the Rates of Carriage of Goods* (3 Will. & Mar.) CAP XII – which:

... required each parish to appoint a Surveyor of Highways (or Waywarden) under the jurisdiction of the Justices and the County Quarter Sessions. The person nominated would be served with a warrant by the Parish Constable confirming his appointment as Surveyor of the Highways for the ensuing year, acceptance of this duty being compulsory.⁵

¹ *Halsbury's Laws of England: Highways, Streets and Bridges*, Volume 55, 2012, para 250

² [The Turnpike Roads of England and Wales](#), Dan Bogart, in *The Online Historical Atlas of Transport, Urbanization and Economic Development in England and Wales c. 1680-1911*. Eds. L. Shaw-Taylor, D. Bogart and A.E.M. Satchell, 2017

³ Introduced as being for "amending of Highways, being now both every noisom and tedious to travel in, and dangerous to all Passengers and Carriages"

⁴ "[The Parish Surveyor of the Highways](#)", *The Barwickian* No. 63, September 2001

⁵ *Ibid.*

The preamble to the Act explains why Parliament felt this step was necessary and it has the tone of a legislature which has reached the end of its patience with regards to the state of the roads:

...the free and easy Intercourse and Means of conveying and carrying Goods and Merchandizes from one Market-town to another, contributes very much to the Advancement of Trade, Increase of Wealth, and raising the Value of Lands, as well as to the Ease and Convenience of the Subject in general; for which Ends therefore divers good and necessary Laws have been heretofore made for the enlarging, repairing, and amending the Highways and common Roads of this Kingdom: Notwithstanding which Laws, the same are not in many Parts sufficiently amended and repaired, but remain almost impassible; all which is occasioned, not only by reason of some Ambiguities in the said Laws, but by want of a sufficient Provision to compel the Execution of the same

1.2 Highways Act 1835

By the nineteenth century this system faced criticism. For example, in a July 1834 report by the Select Committee on County Rates, the sub-committee on highways and public buildings stated:

... the general Management of Highways is exceedingly defective; partly owing to the incompetence of those persons who are usually selected as Surveyors, and partly because the present system of Statute Labour interposes practical difficulties, which the most experienced Surveyor cannot overcome.⁶

In order to “obviate these evils”, the Committee recommended that:

Parishes should be formed into Districts, with a view to the employment of permanent and salaried Officers, of sufficient skill to superintend the Management of the Highways; and that a Highway Rate should be substituted for the cumbrous and inconvenient machinery of Statute Labour.⁷

The [Highways Act 1835](#) provided that new roads were not to be the subject of the inhabitants' duty to repair highways unless a formal procedure for adoption was followed. This was eventually extended to public paths.⁸ There thus came into existence a class of highway which no one was liable to repair.

Highways which were constructed under statutory powers, however, usually became repairable by the inhabitants, and provision was made by the [Public Health Act 1875](#) and the [Private Street Works Act 1892](#) for the making up of 'private streets' at the expense of the frontagers, and for streets so made up to be repairable by the inhabitants.

Halsbury's Laws summarises the position as follows:

After 1835 it was possible for roads to be created which did not become the liability of any person or persons to repair. Apart from such roads as these, repair of highways by inhabitants at large remained the underlying principle of the law until the enactment of the Highways Act 1959 which provided that no

⁶ *Report from Select Committee on County Rates*, 542, 31 July 1834, p5

⁷ *Ibid.*, p5

⁸ By sections 47-50 of the [National Parks and Access to the Countryside Act 1949](#)

duty with respect to the maintenance of highways was to lie on the inhabitants at large of any area.⁹

1.3 Highways Act 1959

In January 1959 the Committee on Consolidation of Highway Law published its report. It had been appointed the previous year with a remit to examine, with a view to consolidation, existing highway law and to make recommendations as regards minor amendments that would tidy up said law. It made a number of observations and recommendations as regards the making up of private streets, but overall it concluded that:

We recognise that the making up of private streets by local authorities and the charging of the expenses thereof on frontagers is a highly controversial subject and we have been at pains to ensure that the draft Bill in reproducing the law relating to it departs as little as is reasonably practicable from the present position. The major points of controversy are clearly beyond the scope of a Consolidation Bill and the draft Bill does no more than correct some minor anomalies, leaving major changes to be made, if thought fit, by subsequent legislation.¹⁰

The resulting *Highways Bill* was what is generally called a '[consolidation bill](#)'. At Second Reading in the Commons the Minister, Richard Nugent, explained: "Consolidation will obviously be a boon to all concerned with highways administration. Although it will still be a formidable task to read through the 313 Clauses of the Bill, it will be a far lighter task than searching through 60 or 70 Acts, which has to be done now".¹¹

As explained above, the resulting [Highways Act 1959](#) superseded the 1835 Act and other legislation. As a result of the Act as regards liability to repair, highways were divided into three main classes:

- (1) highways repairable at the public expense;
- (2) highways repairable by private individuals or corporate bodies;
and
- (3) highways which no one is liable to repair.

It also replaced the concept of highways repairable by the inhabitants at large of an area by that of highways maintainable at the public expense.

⁹ *Halsbury's Laws of England*, para 250

¹⁰ *Report of the Committee on Consolidation of Highway Law*, Cmnd. 630, January 1959, para 109

¹¹ [HC Deb 16 April 1959, c1228](#)

1.4 Highways Act 1980

The current law as regards England and Wales is set out in the [Highways Act 1980](#), as amended. This is what the rest of this paper deals with.

Scotland and Northern Ireland

Legislation in this area is devolved in Scotland and Northern Ireland:

- In Scotland, the relevant legislation is Part II of the [Roads \(Scotland\) Act 1984](#), as amended.
- In Northern Ireland the relevant legislation is the Private Streets (Northern Ireland) Order 1980 ([NISI 1980/1086](#)), as amended.

In February 1980 the Law Commission published a report on the consolidation of the Highways Acts of 1959 to 1971 and related enactments. This was to be another consolidation bill, in light of which the committee made a number of recommendations for amendments to the law.¹²

Under what is now the 1980 Act the ownership of highways maintainable at the public expense rests with the local highways authority (usually the county or unitary council) or, if a trunk road, with the Department for Transport (in practice Highways England).

Most roads are thus subject to a public right of way, are publicly owned and publicly maintained. They are referred to in the 1980 Act and in other legislation as "highways maintainable at public expense". Local authorities must keep a list of all such roads. Those roads that are not maintainable at public expense are referred to as private or 'unadopted' roads. These can still be subject to a public right of way, but the public generally do not contribute to their upkeep.

¹² Law Commission, *Highways Bill: Report on the Consolidation of the Highways Acts 1959 to 1971 and related enactments* (Law Com. no. 100), Cmnd. 7828, February 1980

2. What is a highway?

There is no statutory definition of a highway, only a common law one.

Halsbury's Laws states:

A highway is a way over which there exists a public right of passage, that is to say a right for all Her Majesty's subjects at all seasons of the year freely and at their will to pass and repass without let or hindrance. A highway may be dedicated subject to certain restrictions or obstructions; and it may be limited to a recognised class of traffic, that is it need not be a way for vehicles, as, if they are open to the public generally, footpaths, bridleways and driftways are highways. It is, however, an essential characteristic of a highway that every member of the public should have a right to use it for the appropriate class of traffic; there can be no dedication to a limited section of the public, such as the inhabitants of a parish.¹³

A "highway maintainable at the public expense" is defined in [section 36](#) of the *Highways Act 1980*, as amended. It states that a highway:

... shall not ... become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either—

- (a) it was a highway before 31st August 1835; or
- (b) it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense;

and a highway shall not by virtue of that subsection cease to be a highway maintainable at the public expense if it is a highway which under any rule of law would become a highway maintainable by reason of enclosure but is prevented from becoming such a highway by section 51...

It further requires every local highway authority (unitary and county councils) "cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense".

Some private or unadopted roads are highways, but not all, and the position is not always easy to determine. In his 2013 book *Private Roads: The Legal Framework* (5th ed.), Andrew Barsby explains the difficulties of dealing with definitions in this area:

The courts have generally taken the view that the public has access to a road is members of the public actually use it and the use is tolerated, even if there is no actual right to use the road [...] a private road which was actually used by the public would be within the definition of a "road" ... even if it was not (or not yet) a highway...

This definition of "road" enables legislation to apply to all highways, including private roads which are highways, and to some other private roads which are in fact used by the public.¹⁴

¹³ *Halsbury's Laws of England: Highways, Streets and Bridges*, Volume 55, 2012, para 1

¹⁴ Andrew Barsby, *Private Roads: The Legal Framework* (5th ed.), 2013, para 1-21

In summary, Barsby posits that there are for legal purposes three main sorts of private or unadopted road:

- Private roads which are highways for one or more classes of traffic, and so “roads” for the purposes of the Road Traffic Act 1988 and some other legislation which uses the same definition.
- Private roads to which the public have access and so also “roads” for the purposes of such legislation, but not (or not yet) highways.
- Private roads which are not highways, nor subject to public access.¹⁵

A private or unadopted road can either become a highway through statutory procedures after which it becomes an adopted road (i.e. a highway maintainable at public expense), or through the common law process of dedication and acceptance.¹⁶ While the principle is straightforward, the law is more complex. The owner of a private or unadopted road can take action to prevent a road becoming a highway in this way.

One example of how the ‘dedication and acceptance’ process can happen is given in [section 31\(1\)](#) of the 1980 Act, which provides that after 20 years use as of right and without interruption the land is deemed to have been dedicated, unless there is evidence that there was no intention, on the part of the owner, to dedicate the land. However, it is important to note that Part 6 of the [Natural Environment and Rural Communities Act 2006](#) (NERC) extinguished rights of way for ‘mechanically propelled vehicles’ (MPVs) over:

... many roads and tracks which are not highways maintainable at the public expense and are not shown on the definitive map and statement, and it prevents the creation by dedication and acceptance of new rights of way for MPVs.¹⁷

In particular, Barsby notes that “While intended mainly for green lanes, these powers apply equally for unadopted roads in the suburbs and elsewhere”.¹⁸

¹⁵ Ibid., para 1-26

¹⁶ i.e. the owner dedicates it to the public as a highway, by allowing them to use it; and the public accepts the dedication, by using the way

¹⁷ op cit., *Private Roads: The Legal Framework* (5th ed.), para 4-2

¹⁸ Ibid., para 4-2; see also *Fortune v Wiltshire County Council* [2010] EWHC B33.

3. Maintenance

3.1 General responsibility

The local highway authority (the county council or unitary authority) is not responsible for maintaining a private or unadopted road although it can intervene under existing legislation to repair it.

Responsibility for the cost of maintenance of a private or unadopted road rests with the frontagers; that is, the owners of properties with frontages on such roads ("owners of the premises fronting the street").¹⁹ Under section 203 of the 1980 Act "fronting" includes adjoining.

Even if it is not the frontagers who 'own' the road but a third party such as a property company, it is the frontagers who are referred to in the legislation. The highway authority may therefore only deal with them and is not concerned with the owners of the road.

Tracing the owner

It is not uncommon for the owner of a private road to be unknown. Barsby explains: "a good deal of land remains unregistered, either because it has stayed in the same ownership over a long period, so that the requirement to register has never been triggered, or because the owner is unknown".²⁰

The first step to trace them is to search the [Land Registry](#) as, if the road is registered, the owner's name will be shown.

Failing this, it may be possible to trace the owner from the original developer of the road, by examining the deeds of the houses in the road or the deeds granting rights of way over the road.

Even if there is no information about the owner, the frontagers can take over the management of the road and will be protected by law from all but the true owner. For example, they will be able to maintain the road and regulate parking.

3.2 Urgent repairs & the Private Street Works Code

Section 230 of the 1980 Act empowers the 'street works authority' (i.e. the county council or unitary authority) to order the frontagers to carry out repairs to a private or unadopted road which are "needed to obviate danger to traffic".

The legislation also allows the authority to carry out the work itself if the order is ignored and to recover the expenses incurred from the frontagers.

Section 230 of the 1980 Act may only be invoked where repairs are needed to obviate danger to traffic. In other cases a highway authority may decide that a private or unadopted road should be made up under the Private Street Works Code (PSWC), set out in sections 205 to 218 of the 1980 Act.

¹⁹ e.g. under section 230 of the 1980 Act

²⁰ Op cit., *Private Roads: The Legal Framework* (5th ed.), para 2-22

Under section 205 a street works authority may resolve to make up a private street where it is not sewered, levelled, metalled etc. to the authority's satisfaction. 'Private street' has a specific definition in this context:

"private street" means a street that is not a highway maintainable at the public expense, and—

(a) includes any land that is deemed to be a private street by virtue of a declaration made under section 232 below, and

(b) for the purpose of the application of the advance payments code or section 229 below in relation to any building, includes—

(i) any land shown as a proposed street on plans deposited with respect to that building either under building regulations or on an application for planning permission under the Town and Country Planning Act 1990²¹

Subject to the Code, the expenses incurred by the authority in executing the works should be divided between the frontagers (section 205(1) of the 1980 Act).

The Code empowers a street works authority to make up a private street at any time. The Code is long and elaborate. It requires proposed work to be approved in advance by a council resolution and lays down detailed rules for the approval and apportionment of cost of the works. The street works authority is empowered to apportion the expenses of the scheme between the owners of the properties fronting the street in proportion to frontage length. There are also discretionary powers for the authority to take account of the greater or less benefit derived by each property from the works and adjust individual apportionment accordingly.

There are two apportionments of expenses:

- the first (provisional) is made when the scheme has been designed and costed; and
- the second (final) is made when the works are complete and the costs known.

The owners of the properties shown in the apportionment have the right of objection to the authority on specific grounds in each case. Unresolved objections are determined by a Magistrate's Court. After determination of objections to the final apportionment the authority may demand payment. There is a right of appeal to the Secretary of State for Transport against the demanded sum.

²¹ Section 203(2) of the 1980 Act

4. Adoption by the local highway authority

Provision exists for private or unadopted roads to be adopted at the instigation of the local highway authority or the frontagers, and thus to become “highways maintainable at public expense”. This requires a formal adoption by a resolution of the local authority.

It is generally the case that any local highway authority considering adopting a road will require that it is made up to an acceptable standard before doing so. This has become an increasing issue as local authorities have faced cuts to their budgets and have sought ways to ensure they are not taking on new liabilities. It is also something which has come increasingly to the fore with developers failing to make up new roads on housing developments to the standard required in their planning consent.

4.1 At the instigation of the highway authority

The highway authority itself can decide to adopt a private or unadopted road following the execution of repairs to it. Under section 228 of the 1980 Act, where a private street had been made up as required under the PSWC (see section 3.2, above), the street works authority may declare the street to be maintainable at public expense unless the majority of owners object and the Magistrate's Court does not overrule the objection.

There is a separate provision in section 38 of the 1980 Act whereby a highway authority and the landowner can agree an adoption. Barsby states that section 38 is “often used in preference to the complex procedures under Part XI of the Highways Act” (i.e. under section 228, following the PSWC). He further states that: “developers do often arrange for roads serving new developments to be adopted by the local authority under this provision, and hence to become maintainable at the public expense”.²² Section 38(3) states:

A local highway authority may agree with any person to undertake the maintenance of a way—

- (a) which that person is willing and has the necessary power to dedicate as a highway, or
- (b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway;

and where an agreement is made under this subsection the way to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense.

²² Op cit., *Private Roads: The Legal Framework* (5th ed.), para 3-48

This cannot be used by the frontagers to instigate adoption as only the landowner has the power to dedicate land as a highway.²³

4.2 At the instigation of the frontagers

The frontagers can require the adoption of a private or unadopted road under one of three statutory provisions in the 1980 Act. Two of these relate to the PSWC and one to another set of provisions called the Advance Payments Code (APC). Barsby explains the difference:

The PSWC gives local authorities powers to carry out work necessary to bring an **existing** private street up to an acceptable standard, the cost generally being apportioned between the premises fronting the street. The APC applies (though not in all areas) where a **new** private street is constructed, or where certain sorts of **development** take place in an existing private street, and its purpose is to see that the cost of constructing the street to an acceptable standard is provided for.²⁴

Section 228(7) states that, where all street works in a private street have been executed to the satisfaction of the street authority, the street authority shall declare adoption of the street if so requested by the owners of properties which together account for more than half the rateable value of the street:

If all street works (whether or not including lighting) have been executed in a private street to the satisfaction of the street works authority, then, on the application of the majority in rateable value of the owners of premises in the street, the street works authority shall, within the period of 3 months from the date of the application, by notice displayed in a prominent position in the street, declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense and thereupon the street shall become such a highway.

Section 230(5) provides further provision for adoption of a private road where owners require the highway authority to proceed with urgent repairs under the PSWC and adoption of the road follows immediately afterwards:

If, within the time so specified, the majority in number or rateable value of owners of premises in the street by notice require the street works authority to proceed in relation to the street under the private street works code, the street works authority shall so proceed, and on the completion of the necessary works shall forthwith declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense; and thereupon the street shall become such a highway.

Section 229 states that frontagers may require a road to be made up provided that at least one payment has been made or security given under the Advanced Payments Code (APC). Section 229(1) states:

Where a majority in number of the owners of land having a frontage on a built-up private street, or as many of those owners as have between them more than half the aggregate length of all the frontages on both sides of the street, by notice request the

²³ Ibid., paras 3-54 & 3-16

²⁴ Ibid., para 12-3 [emphasis added]

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street works authority to exercise their powers under the private street works code so as—

- (a) to secure the carrying out of such street works in that street as the street works authority require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense, and
- (b) to declare the street to be such a highway,

the street works authority shall proceed to exercise their powers accordingly.

The APC is contained in sections 219 to 225 of the 1980 Act. It requires, with some exceptions, a person before he may build on land fronting a private street, to deposit or secure with the street works authority the sum which the authority estimates would be recoverable under the PSWC if they were to make up the street for adoption and apportion the expenses incurred between the owners of premises fronting the street, in proportion to frontage length.

5. Other matters

5.1 Public utilities

Public utilities have the power to repair and maintain their equipment and they have to reinstate the road afterwards. This power applies to both highways maintained at public expense and to other 'streets'; this covers private or unadopted roads. Street works carried out by public utilities and by cable companies are undertaken by virtue of a statutory right or a licence granted under the [New Roads and Street Works Act 1991](#), as amended, and do not need the prior consent of the street authority.

Further information on public utilities and street works can be found in HC Library briefing paper [CBP 739](#).

The legislation refers to "street authorities". In the case of highways maintainable at public expense, this is the highway authority. It cannot prevent a statutory undertaking from digging up the road but it can decide when the works should be done, it can prohibit the digging up of resurfaced roads, except for emergencies, within a specified time frame, and it is responsible for co-ordinating the work.

Similarly, the frontagers on a private or unadopted road cannot prevent the utilities working in their road, but they do have powers as the "street authority". This is the "authority, body or person having control of the street", as specified in [section 49](#) of the 1991 Act, specifically:

if the street is not a maintainable highway, the street managers [...] the expression "street managers", used in relation to a street which is not a maintainable highway, means the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street.

Barsby summarises the position as follows:

- The street managers remain the person to whom advance notice and notice of starting dates must be given;
- The street managers remain responsible for granting street works licences, giving directions and co-ordinating the execution of street works; and
- The obligation to keep a register of street works remains with the local authority, but street managers have the obligation to ensure that relevant information is communicated to the authority.²⁵

5.2 Street lighting

Local highways authorities have the power to provide street lights (either themselves or by virtue of a contract with another body) under [section 97](#) of the 1980 Act. However, this only covers highways for which they are the highway authority and so would exclude private or unadopted roads.

There is a supplementary power under [section 161](#) of the *Public Health Act 1875* for any "urban authority" to "contract with any person for

²⁵ Ibid., para 11-15

the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, and may provide such lamps, lamp posts, and other materials and apparatus as they may think necessary for lighting the same". Barsby states that 'street' here "has a wide meaning and would include a private road, whether or not subject to public use or public rights of way".²⁶

However, while this power exists there is no *duty* on any local highway authority to provide lighting, whether on highways maintainable at public expense or on private or unadopted roads.

5.3 Nuisance and trespass

Interfering with a right of way is a civil wrong, namely a nuisance. As Barsby states, a person whose land has the benefit of a right of way may take action against any person interfering with his right, whether the owner of the road or a person who also enjoys a right of way, or someone unconnected with the road. For example, a right to take action might arise if the parking of cars in a narrow private road persistently interfered with the exercise of a right of way, such as in the case of *Horne and Horne v. Ball [1995] CLY 1841* in which the court had to deal with deliberate obstruction, accompanied by verbal abuse over a long period.²⁷

In the case of trespass, i.e. going onto land unlawfully or exceeding the scope of one's authority to go on to land, Barsby states that:

Any person in possession of land can take legal action for trespass, whether or not they are the owner of the land, since the policy of the law is to protect a person in that position against anyone other than the true owner of the land. This is particularly important where the ownership of a private road is unknown...²⁸

5.4 Parking

Generally, there is no general right to park in a private or unadopted road except for the owner of the road. In practice parking may be permitted or tolerated by the owner (in which case there is a licence to park) and in some cases a legal right may have been granted by the owner.²⁹ As Barsby explains, parking in a private or unadopted road without permission or a legal right to do so is trespassing, and is a civil wrong for which redress can be obtained. The wrong is done to the owner of the road or, if different, the person in possession of it:

That person can bring legal proceedings to obtain compensation, though the amount of harm done would typically be small and the compensation therefore very modest. The owner is also entitled to insist that trespassing ceases, and could if need be obtain an injunction against the person concerned.³⁰

Whether or not someone is trespassing by parking in a private road, if they obstruct the road and so interfere with its use by those with private

Anyone facing parking problems on private roads should consult a legal professional. Information on sources of legal assistance can be found in HC Library briefing paper [CBP 3207](#).

²⁶ Ibid., para 10-9

²⁷ Ibid., para 5-47

²⁸ Ibid., para 7-6

²⁹ Ibid., para 6-1

³⁰ Ibid., para 6-17

rights of way, a different civil wrong (nuisance) is committed. In this case, the civil wrong would be against the person whose land has the benefit of the right of way, probably the owners of the properties. The same would also be true if a parked car obstructed access to a private road. In a case of nuisance the civil courts may grant compensation and other remedies, such as an injunction.³¹

In some particular circumstances a criminal offence may be committed. Under section 34 of the [Road Traffic Act 1988](#), as amended, it is an offence to drive a motor vehicle without authority on land which is not a road (i.e. a road that is not a highway, or to which the public has access) save where a person goes no further than 15 yards from a public road, and does so in order to park. On a private road to which the public does not have access, drivers who come onto the road without authority are committing an offence unless they do so in order to park and go no further than 15 yards from a public road. If they park within 15 yards of a public road, they will merely be trespassing, not committing an offence.

³¹ Ibid., para 6-18

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