



Executive

1 March 2005

Report of the Acting Director of Environment and Development Service

Policy the Adoption of Unadopted Highways

Summary

- 1 This report seeks approval to a change in the establishment of the Network Management Section and to the establishment of a policy on the adoption of unadopted highways

Background

- 2 A Highway is an area of land over which the public at large have the absolute right to use to 'Pass and Repass without let or hindrance'. Any area of land over which this right exists therefore have equal status irrespective of the use made of it or the superficial appearance. The status of Parliament Street is identical to that of a public footpath across a field for example.

- 3 Highway rights arise through either use or as a result of the Highway Authority creating them.

Use:-

- In common law by as little as use over 3 years
- Under the Highway Act 1980 20 years

Creation:-

- By being constructed by a body that is a Highway Authority
- By 'adoption' by a Highway Authority under the Highways Act 1980
- By being maintained by a Highway Authority

- 4 If a new path or road is constructed by the City Council then irrespective of why that path or road was constructed and which part of the Council's budget funded it, the law deems this path or road to have been constructed by the Highway Authority and as such that path or road automatically becomes a Highway maintainable at public

expense. If any part of a privately maintainable highway is maintained regularly by the City Council irrespective which part of the Council's budget funded it, the law deems this path or road to have been maintained by the Highway Authority and as such that path or road automatically becomes a Highway maintainable at public expense. In law the City Council cannot act so as to separate its responsibilities as a Highway Authority from its other responsibilities.

5 Roads/footways and footpaths can ONLY exist in one of three distinct legal types:-

1. A highway maintainable at the public expense
2. A highway maintainable at private expense
3. A private road/footway or footpath

No 3 is one which the public at large have no rights to use unless permission is given by the owner. ie these have the same status as a path or drive at someone's home.

Where a private path (normally as roads seldom are involved) is useful as a means of getting from A to B by the general public, the landowner may recognise this fact by granting the public permission to use it under certain conditions. These paths are commonly referred to as 'permissive paths'. If an individual uses the path but does not abide by the conditions then he or she can be asked to leave and if they refuse to do so the Police could become involved as the individual is then committing a trespass.

The difference between 1 and 2 is the maintenance aspect. In all other respects they are identical.

6 The above considerations lead to an important point:-

- It is the RIGHT of the public to use a road/footway/footpath that is critical, not who maintains it

7 With regard to this, as Highway Authority, the City of York Council have a Statutory duty to protect those rights even if the Council are not responsible for maintaining the highway in question. This means:-

- ❖ The Council must act against anyone who tries to prevent an individual either on foot, on horseback or in a vehicle (if appropriate) from travelling through the particular highway concerned. If the Council does not then it can be taken to Court and fined a substantial sum. It is immaterial if the person interfering with the highway rights is the owner of the land. (NB Vehicle includes cycles)

- ❖ The Council must ensure that the highway can be used in safety and therefore the Council have powers to require the owner to undertake the necessary repairs to the minimum standard necessary to provide the absolute minimum level of safety. If the Council are unable to secure these repairs – because the owner cannot be traced for example – then the Council have a Statutory duty to undertake the work. A legal charge can be put on the land so that if it the owner ever can be traced or the land is sold these costs can be recovered.
- 8 On a highway that is not maintainable at public expense the full weight of the highway law applies and therefore the Police can prosecute drivers for speeding, not having lights, etc.
- 9 A highway becomes maintainable at public expense by virtue of:
- Age
 - Being maintained by the Highway Authority on a regular basis
 - By a deliberate action under the Highway Act 1980

Age

- ❖ Any carriageway that existed on or before 1835 is automatically a highway maintainable
 - ❖ Any footpath that existed on or before 1959 is automatically a highway maintainable
- 10 With very few exceptions highways that the City of York Council (and all other Highway Authorities) maintain out of the public purse are not actually owned by the Council. The only exception is where a piece of land was specifically purchased or was previously owned the council in order to build a road, etc. The Title of the land over which a highway runs is almost invariably therefore vested in someone other than the Highway Authority. The law assumes – unless there is evidence to the contrary that a highway is owned by the frontagers on each side up to the centre line of the highway.
- 11 The presence of highway rights automatically negates the rights of a landowner to use the land he/she owns other than as a member of the public. However in the case of a privately maintained highway, he/she retains rights to determine who may enter that land for the purpose of laying pipes, etc and other non highway related activities.
- 12 Within York there are some 98 highways which fall within the category 2 of paragraph 5 – ie they are highways which the public have a right to use, the council a duty to ensure that they can use but are the responsibility of others to maintain. In almost all cases this third party is the individual who owns the property that has a boundary to the highway concerned. Invariably these individuals are unaware of their

liability and the highways concerned fall into disrepair leading to considerable difficulties for those who have the right to use them.

Adoption of Highways

- 13 Owners of unadopted roads can, through the Private Streetworks Act, seek the adoption of that road by the City Council. This Act sets out the process that needs to be followed to ensure that the highway is constructed properly and also deals with the payment for the necessary works. This latter has to be met by the owners themselves.
14. Many years ago our predecessor authorities did have a programme of actively seeking to assist in the conversion of these unadopted streets into ones maintained from the public purse. That programme, however, did not fund the conversion, merely identifying which streets and in what priority order, residents would be assisted to use the Private Streetworks Act procedures and setting aside a small sum of money to cover the Council's financial costs. Streets on this list were known as 'prospectively maintainable'.
15. There are several ways that the costs of "making-up" the street are recovered and usually involves a "charge" being put on the deeds of the houses. This means that the council can recover the money due in the future from the sale or leasing of the houses, or if a receiver is appointed. Paying for the works and having to wait for the recovery of this money from the householders was becoming a large long-term debt. Our predecessor council simply could not afford to go on with the programme in the 1990's and resolved to stop doing it.
16. The Streetworks procedure briefly is as follows:-
 - Firstly it will be necessary for a majority of residents to agree to the change in maintenance status – and accept the financial implications.
 - A suitable Consultant Engineer would then be appointed by the road owners
 - The necessary physical works would then be identified to bring the road to a standard acceptable to the Highway Authority.
 - All of the costs of the work, the fees of the Engineer and any legal costs would be apportioned between the frontagers by the City Council as the council has legal powers under the Act to ensure that all owners, in favour of the change or not, pay their fair share of the total cost.

It is possible, with the full agreement of the City Council, for the works to be paid for initially by the City Council and by a Legal Charge being attached to the property, these costs recovered when that property is

sold. (Clearly, however, this would effectively mean the Council using a significant amount of its own money over a period which could extend into decades)

17. It will be appreciated from the above that the process is complex, lengthy and likely not to be readily understood by lay people. The prospect of individuals committing themselves to apparently open ended financial implications is also likely to be of significant concern. It is probable that for these reasons the number of unadopted streets that have been converted to ones maintained by the Highway Authority within York over the past decade has been minimal. Records suggest that only 2 out of a possible 100 privately maintained highways in the city have been changed in that period.
18. At its meeting on the 7 July 2004 the Planning and Transport EMAP considered a report on this topic and resolved to appoint an Adoptions Engineer to move forward the process of writing a Policy and then commencing the process of adopting unadopted highways. A sum of £30,000 annually has been set aside to both fund that post and facilitate adoptions. Regrettably the funding was such that only the new post could be funded leaving nothing to undertake the actual adoption. A Growth Bid was therefore planned for 2005/06 to seek additional funds.
19. The new post has been advertised on two occasions but has attracted little interest and remains unfilled. However, in order to attain some progress a member of the existing establishment has been seconded into the role as an Adoptions technician. Funding this post requires less than the approved Engineer post and does allow for sufficient money to facilitate the work. It is therefore suggested that this arrangement be made a permanent change to the network management establishment. The duties and grade proposed are identical to those of the established Traffic technicians within the Network Management team. Annex A is the relevant Job description.

Proposed Policy

20. Any policy needs to have two elements:-
 - A means of prioritising candidates for adoption
 - A methodology for undertaking any adoption which is fair and reasonable

Priority

21. With regard to the former there are two considerations:-
 - The condition of the unadopted highway

- The willingness of the owners of that unadopted highway to help themselves
22. As Highway Authority the city council has a duty of care to those that use any highway. Equally the landowners over which an unadopted highway runs have the same duty of care. The law is thus clear that a highway must be safe to use and in recognition of that fact includes various penalties applicable to landowners and powers that can be used by Highway Authorities, to secure a safe highway . It therefore follows that if a highway is not safe CyC, as Highway Authority, cannot ignore its condition but must exercise its powers to secure improvements.
 23. The use of those powers is such that the owners need to be effectively compelled to undertake repairs – which are, of course at their own expense. The total cost of the repair falls directly upon the landowner who owns the damaged/unsafe portion and thus often individuals with limited financial means. This level of work is therefore often carried out with the cheapest of materials, is very superficial and leaves the underlying problem unresolved. In essence all that happens is that a ‘sticking plaster’ is placed on the problem. Like ordinary sticking plasters the repair often fails to last leading to the cycle repeating itself after a few years, or indeed, months.
 24. Landowners caught in this situation have no choice but to repair their highway but are more often than not reluctant to spend sufficient money to solve the problem permanently. In some instances they are willing but adjacent landowners are reluctant meaning that a permanent repair is impractical. In such circumstances the result is a highway that is barely safe and one that has little realistic prospect of a permanent solution. In these circumstances the use of the Private Streetworks Act can provide a remedy as it allows those who do wish to contribute adequately to maintaining their portion of the highway to do so, knowing that the necessary works will be undertaken irrespective of who actually owns the land and secure in the knowledge that their ongoing liability is eliminated. The Act also ensures that those who would not voluntarily contribute to repairs are obliged to recognise their responsibilities.
 25. With the above considerations in mind it is suggested that all of the privately maintained highways be ranked according to condition based upon the key criteria of being safe to use. In this regard the council’s own established criteria – condition of footway, condition of carriageway, number and height of trips, etc. should be used.
 26. The Private Streetworks Act includes provisions for ensuring that contributions towards repairs are made by all landowners responsible irrespective of their willingness to make such contributions. Clearly in a case where 100% of the landowners wish to contribute the use of the relevant powers would be inappropriate. In like vein if 100% were opposed then any use of the powers would fail should the mater

progress to a Magistrates Court. In common with all matters of law the overriding principle has thus got to be that there is a consensus that action should be taken and an understanding that there is a majority support.

27. It is therefore clear that there does need to be a measure of the support for commencing the process of adoption. Such measure needs to be set such that there is a reasonable prospect of completing the process without undue difficulty. It is suggested that no action be initiated where support is below 75% of applicable landowners. Between 76% and 100% priority should be awarded according to the greatest degree of support.
28. To tie the safety consideration and the support element together to produce an overall ranking it is suggested that a points system be adopted. The tables below propose a suitable methodology:-

Safety

Condition	Points
Good	0
Satisfactory	2
Poor	6
Bordering upon dangerous	10

Support

Support level from eligible landowners	Points
Under 75%	0
76% - 80%	2
81% - 90%	6
91% - 100%	10

Given that support can vary over time it is suggested that the views of landowners be canvassed at least every five years.

Ranking

Based upon multiplying the Safety points and the Support points together with the highest rank being awarded to the greatest number of points. The maximum score would be 100 and represent the top priority

Methodology

29. The process laid out in the Private Streetworks Act is complex but has three key elements:-
- ❑ Formal approval of the adoption of an unadopted highway by the Highway Authority
 - ❑ Design and construction of the required works to the satisfaction of the Highway Authority
 - ❑ Apportionment of the costs

The first named requires that the council passes the appropriate resolutions as the process unfolds. It is suggested that this is best undertaken at Planning and Transport Area Sub Committee level recognising that the conclusion of the process is the acceptance of a additional maintenance liability for the community.

Members are therefore invited to adopt the following 10 step process for each scheme on the ranked priority list:-

Ten Steps Guide.

1. Report to the relevant Planning and Transport Area Sub Committee seeking a resolution to “execute the street works.”
2. Landowners are assisted to design a scheme and an estimate is prepared.
3. The scheme is submitted to the relevant Planning and Transport Area Sub Committee for a resolution to approve the scheme. At this point the highway would be designated ‘Prospectively maintainable at public expense’
4. Notices of the resolution to approve the scheme are published in local newspapers and on the street affected by the works and each landowner notified of the estimated cost they will have to pay. This cost is based upon the proportion of frontage each landowner has to the highway
5. Objections from landowners who do not accept the scheme can then be lodged. These need to be based upon 6 specific points set out in the Highways Act. (These grounds will be advised in the advertisement at 4 above)
6. Objections are then reported to the relevant Planning and Transport Area Sub Committee with recommendations for action. The Sub Committee does not have the power to overrule these objections but can modify the scheme so as to take into account objectors views. If the objections cannot be resolved then a magistrate’s court hearing is convened.

7. If the magistrate does not uphold the objections then the works can start and after it is finished the total final costs of the works are calculated. These are then divided between the landowners. In the event that the objections are upheld the process stops and the designation of the highway as 'prospectively maintainable' lapses. The road is then removed from the priority list
 8. A notice is served on the householders stating the part of the total costs they have to pay.
 9. Objections to payment can be made by those who do not wish to pay (based on the 6 points as before) and these objections are heard at the magistrate's court for resolution.
 10. The scheme can now be implemented, the highway brought up to standard and adopted.
30. With regard to step 2 it is suggested that the council may wish to assist the landowners in undertaking this work subject to:-
- a. The work being undertaken by the councils in house Engineering Consultancy
 - b. 50% of the cost being met by the landowners (the balance coming from the Adoptions works budget)
31. Engineering expertise is also required at steps 7 – to undertake the final design and finalise costs – and 10 – to obtain contractors and supervise the works. The council also needs to be satisfied at step 7 that the final design is suitable for adoption and this would involve checking proposals for conformity with the councils Highway Design Standards. There is also an involvement at step 10 with the council undertaking periodic checks on the construction to ensure that the specified materials are being used and in accordance with the requirements of the detailed design. This combined involvement is normally covered by a fee of 1.0% of the estimated works costs plus £500 for the checking process and 7% of the estimated works costs for approving the proposed design and supervision of the works. Clearly these costs are in addition to the costs of actually doing the design work.
32. It is suggested that council may wish to assist the landowners in undertaking this work by waiving both fees subject to:-
- a. The work being undertaken by the councils in house Engineering Consultancy
 - b. An all inclusive fee of 15% of the estimated cost of the works being met by the landowners
33. With regard to this latter Members may wish to recognise that that in effect the landowners are obtaining a design, approvable and build service for a cost of 7% of the estimated works cost – a sum that in reality would be exceeded significantly were the work to be sourced in the private sector.

Financial Implications

34. The proposed substitution of an Adoptions Technician for the Adoptions Engineer post is suggested at the grade of Scale 4 – 6, the midpoint cost to the council of which is £21,630 in a full year. A recurring growth bid for £30,000 was approved as part of the budget process and thus funding this post would allow £8,370 to be allocated to a works budget. There would be no net change in the overall council budget position.
35. As this work has not been done previously it is not possible to estimate how many adoptions the works budget will be able to support but based upon costs involved in the adoption of newly constructed highways possibly 2 or 3 adoptions may be possible per year.

HR Implications

36. HR have benchmarked this post with other similarly graded posts across the council.

Recommendation

37. It is recommended that:-
- a. Approval be granted to amending the establishment of the Network Management Section by deleting the post of Adoptions Engineer and adding the post of Adoptions Technician in accordance with the job description contained in Annex A
 - b. The policy outlined in paragraphs 28 to 33 inclusive be approved in respect of the adoption by this council of unadopted highways

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For further information please contact the author of the report

Background Papers

None

Annex 3

Legal	✓
Financial	✓
Human Resources	✓
Crime and Disorder	
Sustainability	
Equalities	
Other	



Environment and Development Services

Network Management Section

Adoptions Technician: Highway Development

Post Number:

Salary : The salary will be in the career grade range of Scale 4 – Scale 6

Reporting Structure

See attached Figure - The Postholder is highlighted.

Job Purpose

Responsible for:

1. Assisting in the provision of a customer responsive service for the adoption of unadopted highways.

Job Dimensions

- (1) The postholder will have no responsibility for the supervision staff.
- (2) The postholder will be accountable to the Section 38 Engineer who reports to the Area Engineer Highway development

Job Tasks

In carrying out any or all of the following tasks, the postholder will be expected to pay due regard at all times to the Council's stated policies relating to customer service, and equal and fair treatment for all customers and employees.

The postholder will be expected to carry out any reasonable task required which falls within the scope of the purpose of the post. The main tasks, which may change through the natural development of the post, are to:

- 1) Assist the Area Engineer Highway Development in:-
 - i. the delivery of the councils policy in respect of the adoption of unadopted highways. The work areas will include assisting landowners understand the policy and assisting in facilitating the achievement of an adopted highway by landowners in accordance with the policy
 - ii. pre-application discussions on proposals with landowners.
 - iii. the assessment and evaluation of potential prospectively maintainable highways in accordance with the procedure set out in the policy.
 - iv. the preparation and presentation as necessary of reports on landowners proposals to other Council Officers, Members and representative bodies.
 - v. Liaison with the councils Engineering Consultancy in support of landowners aspirations under the policy
- 2) Establish and maintain good internal and external relationships with customers, Members and colleagues.

- 3) Contribute to and promote good practice to help establish a flagship authority.
- 4) Communicate the work of the Directorate to the Council and members of the public, including attending meetings when required and Committee meetings, as appropriate.
- 5) Provide support and cover as required for the Section 38 Engineer commensurate with the grade of post
- 6) Undertake tasks as indicated by the Head of Network Management commensurate with the grade

Person Specification

This is a career graded post. Appointment and progression will be in accordance with the Council's Job Appraisal Scheme.

The Postholder will preferably be educated to BETEC (ordinary) (or similar) in a relevant subject. The Postholder will preferably be wishing to work towards becoming Chartered and have:

- Experience in Municipal Engineering, Traffic Engineering, Transport Planning or other appropriate discipline.
- Experience of working in and with a team of professional and technical officers
- The ability to work as part of a team.
- A commitment to the development and delivery of customer centred services.
- The ability to work to the disciplines necessary to succeed in a commercially orientated environment.

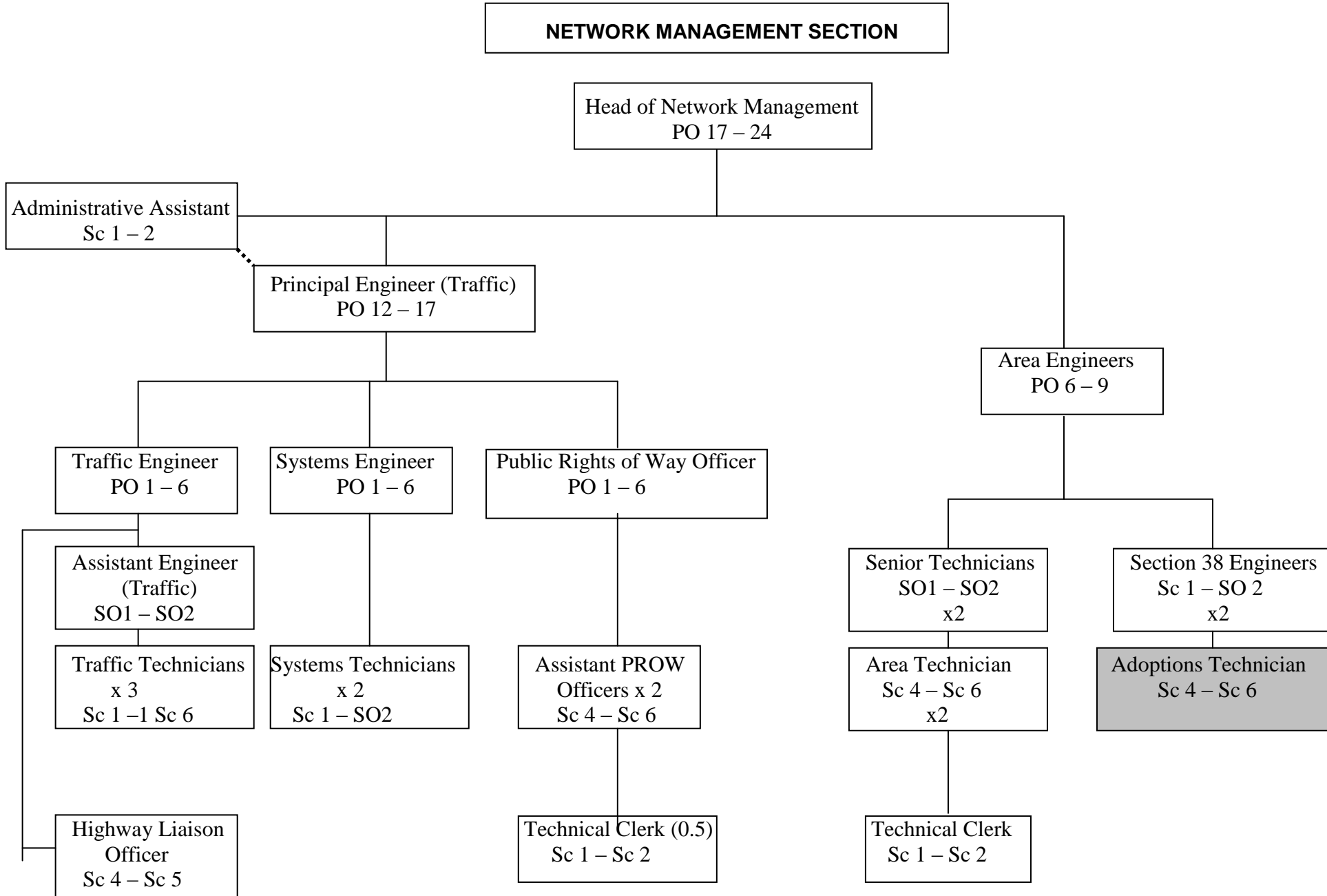
Specific Skills and Experience

The following skills and experience are essential for the post:

1. Inter-personal skills and an attitude capable of operating within a multi-disciplinary, commercially orientated environment.
2. The ability to communicate effectively both written and orally.
3. The ability to work within a multi-disciplinary team environment.
4. Be computer literate
5. A current Driving Licence
6. Be physically capable of undertaking site inspections of developments at all stages of the planning and development process

Further skills which are desirable include:

- 1) Experience of working within a commercial environment.
- 2) Experience of working with members of the public in a front facing environment
- 3) Experience in public speaking



TRAFFIC

SYSTEMS

PROW

HIGHWAY DEVELOPMENT CONTROL