

Risk insight - EV charging cables

Introduction

The growth of electric vehicles (EVs) for both cars and vans, is continuing unabated.

The Society of Motor Manufacturers and Traders (SMMT) says that the UK's transition to electric cars has emerged from the "early adopter" phase, and that more than 800,000 electric cars have been registered since 2018¹. Its figures show the market share for new battery electric cars in the UK rising from 0.7 per cent in 2018 to an anticipated 17.8 per cent by the end of 2023.

Increasing numbers of both private and corporate fleets, are making the switch, in preparation for the ban on the sale of petrol and diesel cars which has been extended to 2035, from the original government commitment of 2030.

The growing demand has created a number of additional considerations which includes the lack of EV charging infrastructure. In June 2022, it became mandatory in England for all new private and commercial buildings to have EV charging points installed, with the other devolved nations expected to follow suit. Yet for existing properties it is estimated that a third of households² in England do not have access to off-street parking, whilst four out of five still charge at home. This has resulted in householders creating a number of non-conventional ways to charge their vehicle, with many solutions involving an electric cable being placed across a footpath, or hanging a cable out of a window.

Liability

There is clearly a potential risk posed by electric cables being run over footpaths, even with cable protectors. The risk may be increased for the elderly, infirm, and those with mobility issues and / or poor eyesight. The safety of the pedestrian may well be challenged by having to navigate a high number of electric cables trailing across busy pathways. At night, the challenge may be even greater.

Some Local Authorities prohibit running cables across their pavements³, even with a cable protector and insist that express permission be sought from them before doing so. Others illustrate that it is illegal to cause an obstruction on roads, pavements and footpaths and that the householder may be liable for any resulting damage or injury. They go further by not permitting the installation of pavement channels⁴ by householders to accommodate the laying of charging cables.

Yet other Local Authorities do allow the laying of cables across a footpath⁵ and issue guidance for householders: 'Cables should be laid flat and never be extended from an upper storey to a vehicle, nor should they be hung from any street furniture including lamp columns or trees. A cable should only be placed over the footway when the vehicle is charging and should always be removed when not in use'. They do make it clear that responsibility lays with the householder.

This shows that householders need to consult their own Local Authority as there are large differences in approach across the country.

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The Local Government Association (LGA) states that there is no known legislation that would make the inconsiderate use of a cable an offence. However, should someone trip over a cable then liability could rest with the owner or controller of the vehicle (with implications for their home or car insurers).

However, **the Highways Act 1980** (section 178 (1))⁶ states:

'No person shall fix or place any overhead beam, rail, pipe, cable, wire or other similar apparatus over, along or across a highway without the consent of the highway authority for the highway, and the highway authority may attach to their consent such reasonable terms and conditions as they think fit.'

In addition to the above, section 137 of the Highways Act 1980 creates an offence of wilful obstruction of the highway, whilst section 137 (a) provides powers to the courts to order the removal of the obstruction.

Of course, it is to be established whether an electrical cable placed across a footpath would be considered as an obstruction by the courts.

We must also give consideration to section 149 of the Highways Act 1980 which provides Highway Authorities with the power to request by notice the removal of things so deposited on the highways that cause a nuisance. Where the notice is not complied with, a removal order may be obtained from a magistrates' court. Whether this power can be utilised to assist in the removal of nuisance cables from the highway has not been established.

What seems fairly certain from the above is that Highway Authorities can insist that their consent is received prior to the placing of electric cables across the highway. What is not specified is what criteria they should use when considering applications for consent, and how they will enforce non-compliance of the requirement. This approach could potentially be challenged by households if licences aren't granted in a consistent manner.

Fire Safety

Another method of EV charging householders are adopting is the use of a standard 3 point pin plug, often from an upstairs window to avoid the pavement issue. Charging cables supplied with the vehicle are often not long enough so householders may use extension cables. A survey by the Electrical Safety First Charity found that 90% of respondents knew these cables were not authorised for outside use, and 74% were 'daisy-chaining'⁷. This is where several cables are linked together but can increase the risk of both electric shocks and fires.

Organisations

For those that have the ability to allow employees to charge their vehicles on site a number of considerations should be made:

- 1 Charging points situated away from walkways and passing traffic.
- 2 Signage in place to advise pedestrians of the risk of tripping. If possible access should be restricted at either end of the charging area.
- 3 Adequate training for employees on how to charge safely.

For those looking to offer the ability for employees to charge at home then additional considerations exist around funding and tax benefits. Planning consent is not required for a home charger provided the building is not listed and it is within an off-street area or garage. However, grants have disappeared in recent years so those wishing to install a charger would be required to pay for it themselves or rely on the generosity of their employer. There is currently no benefit in kind or P11d burden at present should they do so⁸ but only if the vehicle supplied is a company vehicle.

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Insurance

A question often asked is whether using an incorrect cable would invalidate the insurance cover should an incident occur such as a fire. The broad answer is that it wouldn't, provided that comprehensive coverage, including 'accidental damage', is in place.

EV policies should now cover customers tripping over their own cables but what if someone else trips over it? Many contain a clause around liability to others should a claim be made but there would be a consideration of contributory negligence such as being distracted by a phone.

Conclusion

Whilst every authority is different, companies who provide EVs to their employees should exercise a duty of care and provide advice and guidance on safe charging and whether consent is required. It may be the case that alternatives are available such as on street charging within lamp posts, and even retractable charges that rise from the ground when required but research is required beforehand to minimise any risks.

References

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