

# LINCOLNSHIRE COUNTY COUNCIL COMMUNITIES HIGHWAYS AND TRANSPORTATION

## RIGHTS OF WAY & COUNTRYSIDE ACCESS

### ENFORCEMENT POLICY

DOCUMENT HISTORY	Revision	Date
Draft Versions 0.1 - 0.6	Initial Policy Development , Revisions & Inclusion of comments & Consultations	19/04/2012
Final Version 1.0	Final	06/06/2012

# 1. Introduction

This document is designed to assist officers of the County Council in undertaking effective and efficient enforcement action against those who interfere with the public's enjoyment of the rights of way network.

By following the guidelines within this document, enforcement of the rights of way network throughout Lincolnshire will be undertaken in a consistent, fair and balanced manner across all 4 of the Highways Divisions.

**NOTE:** References to "landowners" within this document is held to include those currently tenanted land or any other occupier of land as applicable to the various pieces of legislation involved.

## 2. Policy

As highway authority, Lincolnshire County Council has a duty under the **Highways Act 1980** to:

*“Assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it”.* **Section 130(1)** and,

*“To prevent, as far as possible, the stopping up or obstruction of:*

- (a) The highway for which they are the highway authority, and*
- (b) Any highway, for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area”.*

**Section 130(3).**

In undertaking these duties the County Council must consider the affects of various pieces of legislation. (See table of statutes – Table 1 at pg 11)

Enforcement of the Highways Act 1980 is specifically governed by the Regulators’ Compliance Code issued by Central Government. This policy and associated guidance manual have been written in compliance with this Code. (Appendix A)

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Enforcement of the rights of way network can be undertaken in a variety of different ways. Not one way will suit all occasions and it is important the County Council retains the ability to select the most appropriate method depending on the nature of the offence.

The main objectives of the enforcement policy are:

- To provide a high level of service to the public in terms of dealing with breaches of legislation to ensure that rights of way remain open and available for public usage.
- To ensure that complaints from the public about such breaches are dealt with promptly and effectively and in line with the existing prioritisation guidelines.
- To promote proactive compliance with the relevant legislation whilst retaining the ability to undertake appropriate enforcement action where necessary.

The County Council has formally adopted the Enforcement Concordat that provides an overarching policy document regarding powers of enforcement and this applies to all Council services.

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## **Infringements on the rights of way network can be resolved by one or more of the following approaches**

- **Prevention through education**

The County Council will endeavour to provide free and relevant information to landowners and their tenants through the provision of seasonally produced reminders incorporating examples of best practice, media campaigns in both the local and trade press and advice on the LCC Connects website.

- **Informal approaches to landowners and tenants**

It is recognised that offences may occur due to a lack of understanding as to the requirements of the law regarding rights of way. If a landowner or tenant is not previously known to have been an offender, officers will endeavour to make contact either in person, by telephone or by letter to discuss the most appropriate means of resolving an issue.

- **Formal Enforcement Action**

Unfortunately, despite the best efforts of officers, some landowners and tenants do not heed or respond to an informal approach.

In cases such as this the County Council will exercise its powers to undertake more formal action as laid out in the relevant legislation. (See table of statutes – Table 1 at pg 11)

Following the onset of formal action one of the following outcomes will apply

- Compliance following the service of notice
- The undertaking of the required works by the County Council, the costs of which are reclaimed from the offender (Default Action).
- A Formal Caution may be issued to the offender. If the offender does not accept the caution then the matter will be brought before the courts.
- Prosecution procedures are initiated if the offender has a history of non-compliance or if the offence is serious in nature.

- **Direct Action under Common Law Powers**

On rare occasions there may be a pressing need to remove an obstruction in a very short timeframe, for example to facilitate a pre-planned walk such as those undertaken during the Wolds Walking

Festival. In such cases officers will instruct the contractor to remove an obstruction, if practicable, to allow the public's right of passage to be exercised. In such instances no recharge can be made but landowners and/or occupiers must be informed of the proposed action. It is also essential that such action would be in the public's interest to undertake immediately rather than using the statutory enforcement powers.

Under no circumstances should an obstruction be removed that is in use for the control of livestock without first ensuring that the livestock is secure and will not escape following the removal of the obstruction. In such circumstances personal contact with the occupier must be made.

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## **Prioritisation of reports from the public**

The Council will investigate all reports received in respect of alleged offences regarding rights of way. A report may be made in writing (including electronically by e-mail), or verbally, both face to face and over the telephone. Anonymous reports will be investigated and dealt with on an equitable basis.

All reports about alleged offences will be treated confidentially and the anonymity of the person reporting respected as far as the law allows. However, at the appropriate stage in the process, persons reporting obstructions will be asked, to indicate whether or not they would be prepared to provide a statement and give evidence in court (should the need arise) in any subsequent proceedings.

Verbal Reports – These will be logged within the Council's Customer Relationship Management System (CRM) and passed to the relevant officer to deal with.

All written correspondence where there is a service request, and reports on obstructions would fall into this category, will also be entered into CRM and passed to the relevant officer to deal with.

Generally the Council will provide a response to the complainant based on the Prioritisation Policy adopted by the County Council in 2012.

PRIORITY	Rights of Way Act Infringements (Ploughing & Cropping)	Grass Cutting & Vegetation Clearance (Subject to cyclical programme)	Path Furniture Repair and Minor Obstructions	New or Replacement Bridges	Essential Surfacing Works
1	3 Months	2 Months	3 Months	Subject to size, location and resource availability	Works Subject to Finance and Availability of Workforce
2	4 Months	2 Months	6 Months		
3	Works Subject to Finance and Availability of Workforce				
4	Works only to be undertaken when major issues are resolved.				
<b>Any report which is a Health and Safety consideration will be dealt with in a timescale dependent on an appropriate risk analysis</b>					

These timescales are **for guidance only** and there may be times when it may be possible to resolve matters more quickly.

This only applies where the report is considered to be standard in nature. For reports of non-compliance where there are other non-standard issues present on the path, a separate letter outlining the course of action the Council intends to take with an approximate timescale, will be issued.

### **Further Considerations**

In undertaking investigations and enforcement action of any kind County Council officers must also bear in mind the provisions of the following legislation:

- Police and Criminal Evidence Act 1984 (PACE)
- Human Rights Act 1998 (specifically Articles 6 & 8)
- Disability Discrimination Act 1995 (DDA)

For further information on this legislation see the Officer Guidance Manual.

## 3. Enforcement Procedures

### Stage 1

On the receipt of a report from a member of the public or following the discovery of an offence during a proactive inspection the relevant path file should be inspected to ascertain the history of any previous incidents on that right of way.

### Stage 2

If the site of the alleged offence has not been visited by an officer of the County Council then an initial visit should be undertaken to establish if an offence has been committed and to ascertain any relevant facts. In doing so it is considered prudent to take photographs and any required measurements at this time.

Comprehensive notes regarding the obstruction must be made and attached to the path file.

### Stage 3

For ploughing and cropping offences, if the landowner is not known to the County Council as a previous offender, officers will take the opportunity to make an informal approach either in person, on the telephone or by way of a brief letter. In each case it is important that officers ensure that:

- The landowner is aware of the nature of the offence and accepts that an offence has been committed.
- The appropriate method of rectifying the problem is conveyed to the landowner.
- A reasonable and binding timescale is given for the landowner to act.
- That the landowner/tenant is made aware of what further action is available to the County Council should there be a continued lack of compliance.
- A brief summary of the meeting/discussion is added to the relevant path file.

Following the agreed timescale the right of way will be re-inspected and either the matter closed and noted in the path file or action is escalated to Stage 4.

For all other offences the appropriate form of correspondence and action is outlined in **Table 1** on page 11.

## Stage 4

For ploughing and cropping offences, if the landowner is known to the County Council as a previous offender in the past five years or if after an informal approach, there is continued non-compliance, then the appropriate letter or formal notice will be issued in line with the following:

### Highways Act 1980 – Ploughing & Cropping Offences

- Section 131A**      Disturbance of the surface of headland footpaths & bridleways and any other unmade carriageways (i.e. Restricted Byways or Byways Open to All Traffic)
- Section 134**      Ploughing of cross-field footpaths and bridleways without reinstatement
- Section 137A**     Obstruction of any right of way by crops

<b>1<sup>st</sup> Offence</b>	Issue the offender with a <b>Warning Letter</b> for compliance within <b>14 days</b> .
<b>2<sup>nd</sup> Offence</b> within a five year period or following non-compliance after issuing a Warning Letter	Issue the offender with a <b>Formal Notice</b> for compliance within <b>14 days</b> .
<b>3<sup>rd</sup> Offence</b> within a five year period or following non-compliance after issuing a 14 day Formal Notice	Issue the offender with a <b>Formal Notice</b> for compliance within <b>24hrs</b> and if appropriate refer the offender to the Rural Payments Agency regarding cross compliance.

Officers will also include a “**Repeat Offender**” letter to demonstrate at what point in the process and individual offence is being progressed at.

At all stages of inspection officers should make a photographic record of the condition of the right of way and make file notes on the relevant path file.

Proforma notices and letters covering enforcement work on rights of way can be found in the Officer Guidance Manual.

## Stage 5

Should there still be a lack of compliance after the 24hr Formal Notice stage then, in consultation with the appropriate line manager responsible for rights



of way within the Highways Division and the Countryside Access Manager, consideration should be given to the following:

- **Default Action:** The pursuit of default action under schedule 12A of the Highways Act 1980 whereby the County Council will carry out the reinstatement of the right of way and recharge the offender for so doing.
- **Formal Caution:** Where the offender had shown a complete disregard for the law in either this offence or offences in previous years, consideration should be given to administering a formal caution. This is a formal record of the offence and an admission by the offender that they are guilty. If the caution is declined then the matter must be referred to the courts.
- **Prosecution:** If it is felt that the offender is persistently and blatantly disregarding the relevant legislation then consideration should be given to prosecution of that offender. Officers should use the proforma available in the Guidance Manual to assist in decision making and should it be decided that prosecution is appropriate then the matter must be referred to Legal Services Lincolnshire for further advice. Prosecution will not be a punitive response to minor breaches of legislation.

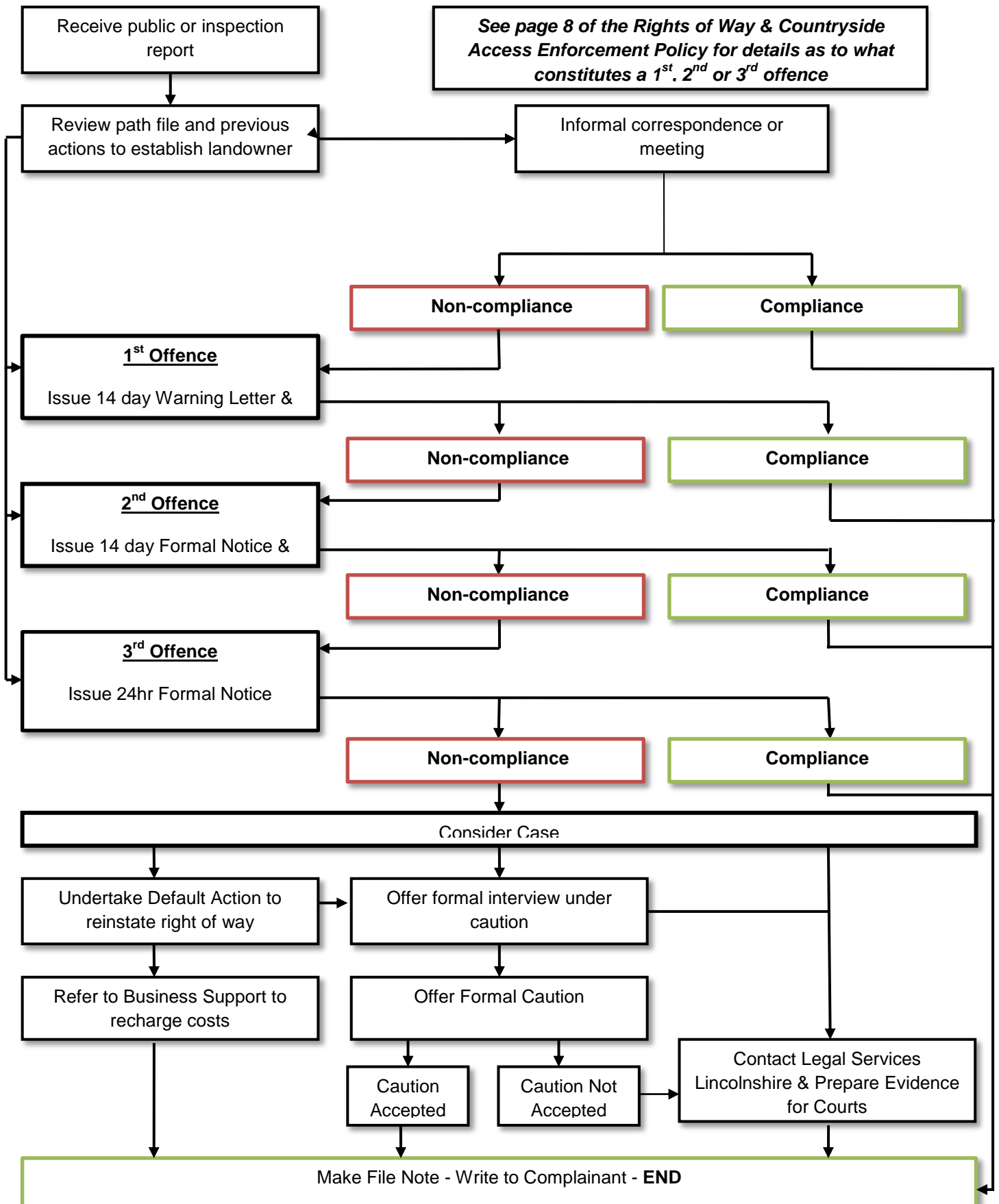
Guidance on procedures for each of these actions can be found in Parts 3-6 of the Officer Guidance Manual

## **Stage 6**

Following the conclusion of any matter the transaction must be finally closed down and the original correspondent(s) informed of the outcome.

For prosecution cases and if not having done so already the Countryside Access Manager should be informed to assess what media and other reports should be made.

# Ploughing & Cropping Enforcement Procedure Flowchart



## Other Offences on Rights of Way

The following table indicates the correct form of action to taken dependent on the nature of the offence committed. Proforma notices and letters covering enforcement work on rights of way can be found in the Officer Guidance Manual.

**Table 1**

Legislation	Brief Description of Offence	Appropriate Action	Intended Outcome
<b>National Parks &amp; Access to the Countryside Act</b>			
Section 57	Misleading Notices	Letter then Court	Up to Level 1 fine on the Standard Scale in magistrates' court
<b>Highways Act 1980</b>			
Section 131	Damaging highways including ditches and excavations on restricted byways & BOATs and the removal of signposts or waymarkers	Letter then Court	Up to Level 3 fine on the Standard Scale in magistrates' court
Section 132	Unauthorised marks on highways	Letter then Court	Up to fine of £100 (1 <sup>st</sup> offence) or £200 (2 <sup>nd</sup> offence) in magistrates' court. Council may also remove markings at any time as well.
Section 137	Obstruction of the highway (to be used when the Council is unable to remove the obstruction itself or for an obstruction to which the provisions of Section 143 do not apply)	Letter then Court	Up to Level 3 fine on the Standard Scale in magistrates' court. The Court may also order the removal of the obstruction(s) through Section 137ZA. A failure to comply is liable to a fine up to Level 5 on the standards scale

Section 143	Power to remove certain structures causing obstruction.	Notice	After the expiration of one calendar month from the date of the service of the Notice the Council can remove the obstructing item(s) and recharge the cost to the person "in control" of the item(s)
Section 145	Bridlegates less than 5' in width	21 day Notice	No power to remove but magistrates' court can impose a fine of 50p per day after the expiration of the Notice.
Section 146	Gate or stile out of repair	14day Notice	Council can repair item after 14 days and recharge the cost to the offender
Section 148	Depositing things on the highway	Letter then Court	Up to Level 3 fine on the Standard Scale in magistrates' court
Section 149	Removal of things deposited on the highway causing a "nuisance"	Notice	A failure to comply allows the Council to apply for a removal and disposal order from the magistrates' court. If the "thing" is considered dangerous then the Council can remove it immediately before obtaining a disposal order
Section 154	Removal of overhanging vegetation constituting an obstruction or danger on the right of way	14 day Notice	After 21 days (period of appeal) the Council may carry out the work required and recharge the offender.
Section 161	Causing certain kinds of danger or annoyance – covers firearms near carriageways and allowing filth, dirt, lime or other offensive matter onto any highway.	Letter then Court	Up to Level 3 fine on the Standard Scale in magistrates' court for firearms and up to Level 1 fine on the Standard Scale for offensive matter, both in the magistrates' court

Section 162	Placing a rope, wire etc. over the highway	Letter then Court	Up to Level 3 fine on the Standard Scale in magistrates' court
Section 164	Removal of barbed wire	1-6 Month Notice	A failure to comply leads to an order from the magistrates' court. A further failure allows the Council to remove the wire and recharge the costs
<b>Wildlife &amp; Countryside Act 1981</b>			
Section 59	Keeping of certain bulls in fields with public access	Letter then Court	Up to Level 3 fine on the Standard Scale in magistrates' court