

# LINCOLNSHIRE COUNTY COUNCIL COMMUNITIES HIGHWAYS AND TRANSPORTATION

## RIGHTS OF WAY & COUNTRYSIDE ACCESS

### ENFORCEMENT POLICY OFFICER GUIDANCE MANUAL

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## Introduction

This guidance manual 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 the 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.

The manual should be read in conjunction with the Rights of Way & Countryside Access Enforcement Policy.

**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.

# Policy Advice & Guidance

## 1) Serving Notices:

Section 322 of the Highways Act 1980 sets out the options available for serving a notice under the Act, in that such a notice can be either:

- delivered to that person, or
- left at his proper address, or
- sent by post.

An initial warning letter should be sent by ordinary post whereas a 14 day Formal Notice should be sent by Recorded Delivery post and a final 24 hour Notice must be delivered by hand to the “proper address” of the offender.

If a person has already provided their address then this is considered to be their “proper address”. If no such address has been supplied then the delivery point is that person’s usual or last known place of abode. In the case of a secretary or clerk of a corporation then the registered or principal offices of the corporation are to be used.

It is possible for the Council to require an occupier to state in writing the interest they have in the land (i.e. freeholder, lessee, mortgagee etc) and to name any other person with such an interest using Local Government (Miscellaneous Provisions) Act 1976, Section 16 (see **Appendix D, Document 23**)

If after “reasonable inquiry” an address cannot be ascertained, a notice may be served by addressing it to the owner, occupier or lessee and describing the premises to which the notice relates. The notice can then be delivered to a responsible person resident, or appearing to be resident, on the premises or if no such person is present then the notice (or a copy of it) may be affixed to a conspicuous part of the premises.

It is good practice to take a witness when hand-delivering notices and to make signed file notes having done so. Photographs of any notices affixed at premises should also be taken.

The timing of the service of notice is also important; there is little point in serving a 24 hour notice on a Friday afternoon as it loses its effect. Always ensure you are in a position to carry out any works that you say you will in the timeframe that you have given. Section 323 of the Highways Act 1980 also sets out some stipulations regarding the reckoning of periods. If it is stated that a route must be reinstated within “fourteen days from the date of this letter/notice” then the date of the letter may not be included within that time period. The section also stipulates that if the reckoning period is eight days or less, Sundays, Christmas Day, Good Friday or bank holidays must also be excluded from the time period.

## **2) Standards of Reinstatement:**

The following is a basic guide to appropriate standards of reinstatement:

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### **Cross-field ploughing. (Highways Act 1980 section 134)**

Provided the occupier has a right to plough and the route is not conveniently avoidable it is the duty of the Highway Authority to ensure that the two considerations of Highways Act 1980 section 134 are accomplished.

- 1. That the route is made good to its minimum width and reasonably convenient for the exercise of the right of way.*

A drilled up field would be considered acceptable dependent on the crop as would any route that has been levelled to allow compliance.



UNACCEPTABLE



ACCEPTABLE

- 2. That the route is delineated so as to be apparent on the ground.*

For preference the Council will always promote the idea of “posting” routes using materials such as electric fence posts or bamboo cane to delineate both the direction and the width of the right of way.



Tractor wheelings will be considered acceptable *providing* that the right of way is considered to be the area of land between the wheelings and that the surface between the wheelings is convenient for the usage of the way (this may not be acceptable for bridleways due to the issue of the width required).

It is acceptable to suggest to landowners that double wheelings (i.e. wheelings adjacent to each other) may be used for footpaths although this depends on the quality of land being cultivated.

Exceptions to allowing wheelings would be:

- where the land between the wheelings is still inconvenient (and therefore the first part of the reinstatement has not been completed)
- where the wheelings could be confused with spraying lines
- where the cultivated land is hard and dry and the wheelings would be barely visible.



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## **Field-edge and cross-field carriageway disturbance (Highways Act 1980 section 131A)**

Following the ploughing out of a headland right of way, cross-field BOAT or cross-field Restricted Byway or the narrowing of a legal minimum width of one of these routes, then the Council will only accept the complete restoration of the way as an appropriate reinstatement. This will usually require that the way is levelled (particularly in cases where a “lip” has been created at the edge of the way), rolled and compacted and that where necessary that grass seed is sown across it. If for any reason the surface standard prior to disturbance was better than that which can be achieved by employing this method of reinstatement then the Council should ask that the way is restored to its previous state.

In addition to restoring the surface we suggest that the width should be marked out using posts or canes, the benefits being that this will provide a guide in future years for the occupier and their staff or contractors who may be unfamiliar with the location of the right of way.



EXAMPLE OF A COMPLETED REINSTATEMENT OF A FIELD EDGE ROUTE

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## **Obstruction by Crops (Highways Act 1980 section 137 and section 137A)**

This issue, on the face of it, should be relatively simple; if a crop is making the passage of a right of way inconvenient or its presence makes the line of the route unapparent then an offence is taking place. Different crops do however provide different circumstances. A six inch high cereal crop in a field where the route is delineated by posts or canes will not necessarily render the way inconvenient for the exercise of the public right of way and the posts and canes will adequately mark out the line and width of the route but the same cannot be said of all other crops, with examples such as oil seed rape or beet crops causing problems for users.

Occupiers should be given the freedom to choose how to reinstate a route through crops although should the Council have to undertake default action works it will be carried out by mechanically means, either by mowing down the crop or by rotovating and rolling the path depending on the height and type of crop involved in the obstruction.

The Authority does not advise that farmers apply herbicide to clear routes through emerging crops but should they inform us that this is the method they will be using we do ask that prior to doing so they contact the regional Health & Safety Executive office for advice.



ACCEPTABLE



UNACCEPTABLE



**Widths**

Unless there is a known width recorded in the Definitive Statement or in the case of previously bounded routes where the boundary has been removed or grubbed out then the width of a reinstated route should be as outlined in Highways Act 1980, Schedule 12A as per Table 1 below.

**Table 1 – Widths of Rights of Way as Applied by Highways Act 1980, Schedule 12A**

	<b>Minimum Width</b>	<b>Maximum Width</b>
<b>Cross Field Public Footpath</b>	1 metre	1.8 metres
<b>Field Edge Public Footpath</b>	1.5 metres	1.8 metres
<b>Cross Field Public Bridleway</b>	2 metres	3 metres
<b>Field Edge Public Bridleway</b>	3 metres	3 metres
<b>Any Carriageway</b>	3 metres	5 metres

### **3) Default Action:**

Where an occupier fails to make good a route after ploughing or allows the route to be obscured or made inconvenient by crop growth then the County Council has powers to enter onto land and to rectify the problem. The expenses for doing so are recoverable from the occupier of the land or the person who disturbed the surface to the right of way if appropriate.

Officers must consider whether the work is within the capabilities of the contractors employed to carry out the remedial work and that ground conditions will allow the correct method of reinstatement to be employed. If it is not possible to carry out the works immediately then they should be delayed until such a time as they may be carried out effectively. If in the meantime the offender resolves the problem themselves the preparation and officer time may still be recharged.

Prior to carrying out any default action works the authority has to give notice not less than 24 hours prior to entering onto the land. This notice must contain the following information:

- An indication of the highway to which the notice relates
- Information as to what work is to be carried out and what equipment will be being used
- An indication as to how the site of work is to be accessed
- An indication of the date and time at which the power to enter the land becomes exercisable.

This information is entered into the relevant paragraph of the 14 day and 24hr Formal Notices. A further proforma to calculate costs is also included at **Appendix D, Document 9** and this will be revised on an annual basis at the start of each new financial year by the Countryside Access Manager.

Aside from these statutory requirements there are various other considerations that should be made.

- Ensure that all concerned are aware of what work is being undertaken, the exact location of the route, the distance and width to be reinstated and the timing of the works.
- Ensure that all the machinery and tools that are to be used are available and in a condition fit to undertake the job required.
- Ensure that everyone knows how the right of way is to be accessed and ensure that they do adhere to the agreed route, it may be an option to meet those carrying out the works at a designated point away from the site to have a final run through of what is expected of each member of the team.
- Consider contacting the local police station to inform them of what is happening if there is any belief that the authority's presence on site might cause the landowner to become threatening or aggressive. Ask

that a police officer be present or at the least briefly visit the occupier beforehand to warn them not to intervene in the works.

- Inform the Countryside Access Manager of the intended works. This is to ensure that there is a consistency of approach and to enable dialogue with councillors should they become involved by the offender.
  - Let the Business Support section know when you are carrying out the works following DPD 12/5/09 “Rechargeable works” so that the recovery of costs can be carried out quickly. Ensure that you claim all reasonable costs such as officer time in carrying out initial inspections as well as organising and supervising the works, fuel and vehicle costs, contractor or works team time, the cost of any machinery hire or other materials and any other administrative costs as necessary.
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#### **4) Evidence Gathering & Case Presentation:**

Evidence can be defined as “information that may be presented to a court to help weigh up the probability of a fact asserted before it”. In law the term evidence is used to indicate the meaning by which any ‘fact’, ‘point in issue’ or question may be proved or disproved in a manner complying with the legal rules covering the subject.

Evidence can take a number of forms:

- Witness of Fact - This is where someone can give evidence of what they saw or heard as a first hand account of what took place. This has to always relate to what they have directly seen or heard and cannot be evidence of what a third party has told them, as this is known as ‘hearsay evidence’ and is generally not permitted in legal proceedings. A witness of fact will generally provide a statement of their evidence and may be called on to give that evidence before a court.
- Real Evidence – This is usually in the form of a material object produced for inspection in court and is generally known as an exhibit. real evidence is produced to prove the existence of the object or to allow the court to assess its value or condition.
- Documentary Evidence – These are a form of real evidence and documentary evidence of a fact can be produced as an exhibit to prove that fact.
- Photographic Evidence – Again these take the form of real evidence, which has to be capable of being authenticated and produced as an exhibit before the Court.

#### **Recording Evidence**

When carrying out an investigation the officers concerned should be careful to record and retain all evidence pertaining to their investigation, including such things as records of telephone conversation and any correspondence with third parties that may or may not eventually form part of a prosecution.

**It is essential that officers keep accurate notes of all their dealings in the matter if clear evidence is to be produced to support any legal actions that may be subsequently taken**

#### **Contemporaneous Notes:**

- A notebook should be used to contemporaneously record all dealings that the investigating officer has had with the case. For a note to be deemed to be contemporaneous it should have been prepared at the time of the event being recorded or as soon as reasonably practicable thereafter (i.e. within 24hrs)



- An example of its use would be where an officer first arrives on the scene of an alleged obstruction and records what he/she found at the scene, their observations on the scene and what action they then took.
- From this contemporaneous record the officer will be in a position to prepare an accurate statement of their dealings in the matter. Also where a court is satisfied that a proper contemporaneous note has been taken of events the officer may be allowed to refer to that note as an aide memoir when giving evidence.
- The concept behind a notebook is that each investigating officer should have a place to record his or her dealings in any investigation into an alleged breach of the law.
- The notebook should have lined and numbered pages and the officer should write on the lines, completing all lines and pages in a consecutive order. All entries in the note book should be in permanent ink and written in a clear and legible fashion.
- The start of each entry in the notebook should be dated and timed and a date and time made at the end of the entry also.
- To remember consider the '**ELBOWS**' model.
  - E** – No **E**rasures
  - L** – No **L**eaves torn out
  - B** – No **B**lank spaces
  - O** – No **O**verwriting
  - W** – No **W**riting in margins
  - S** – **S**tatements to be written in direct speech.

## Information to collate and record:

- The note should always record the time and date of your investigation into the incident and a description of what you found. You should also include the names and addresses of the persons present.
- Your next step is to try and ascertain who the person is who is responsible for the obstruction and ascertain their full name and address.
- The next step is to gather any evidence connected with the offence, which may include – Photographs and a sketch plan.
- Remember when you speak to someone about an obstruction for which you believe they are responsible you can only ask questions aimed at ascertaining whether an offence has been committed and not ones aimed at ascertaining whether the person is responsible for the offence without carrying out a formal PACE interview. However, there is

nothing to stop you recording unsolicited comments and these should be recorded verbatim.

- Notebooks MUST be maintained to a high standard and kept in a presentable condition. A failure to do so will hinder proper note taking

## Photographs:

If you decide to take photographs of the obstruction, and it is always advisable to do so, then ensure you make a timed and dated record in your note book when doing this.

If proceedings do arise out of the investigation there will need to be a statement from the person taking the photographs confirming that they took the same, the time they were taken, the location at which they were taken and a description of what they are intended to show.

Any photographs should be appended to the path or case file as soon as possible

Where the photographs require developing then a statement will be required from the person presenting and collecting them from developing and also from the person who developed them.

## Exhibits:

Any documentation, photographs or other items that are to form part of the evidence in the case must be given a unique reference number by the person who is to exhibit the item in their statement. This is usually done by using the statement makers initials followed a number indicating the number of that exhibit. For example CDM/1, CDM/2 and so on.

All exhibits should have a label attached displaying their unique reference number and be stored in a safe place. Exhibits should not be disposed of until it is clear that no court proceedings are to be taken or all court proceedings including any possible appeal has been exhausted.

## Surveillance – The Regulation of Investigatory Powers Act 2000 (RIPA)

RIPA came into force on 2<sup>nd</sup> October 2000 at the same time as the Human Rights Act 1998. The reason for RIPA's introduction was to allow for surveillance to take place that would otherwise breach Article 8 of the Human Rights Act 1998 which gives everyone a right to respect of private life and family life.

Where surveillance takes place overtly then there will be no need to obtain authorisation. Most surveillance carried out by the Authority is overt – there will be nothing secretive or hidden about it and either the officer will be behaving as a normal member of the public and/or will be going about

Highway's Authority business openly (e.g. an open inspection of highways). Alternatively the person concerned will have been informed that some form of inspection is to take place and the officer on attending for the inspection will identify him/herself before hand, such as an inspection to ascertain whether the conditions in a notice have been complied with.

- Covert Surveillance: There are two types of covert surveillance that do require consent to be obtained from an Authorised Officer before that surveillance can take place. Covert surveillance is any surveillance carried out in a manner calculated to ensure that the person subject to the surveillance is unaware it is taking place.
- Intrusive Surveillance: Involves surveillance on residential premises or a private vehicle. Such surveillance cannot be carried out by this Authority and is only permitted in the case of the most serious crimes. **This form of surveillance can only be carried out by the police and other designated law enforcement agencies. Fire Authority Officers must not carry out intrusive surveillance.**
- Directed Surveillance:
  - Is covert e.g. use of a hidden camera or observing a business as part of a specific investigation without their knowledge.
  - Is not intrusive surveillance.
  - Is not carried out as an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable, e.g. spotting something suspicious and continuing to observe it, and
  - It is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for the purposes of an investigation).

The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. If an officer is carrying out any form of specific investigation where some form of surveillance is to take place without the knowledge of those being observed then consideration should be given as to whether RIPA authorisation is required.

The rule of thumb should be that if you are not sure then get some advice (Legal Services will assist) and if in any doubt obtain authorisation. If the correct procedures are not followed, evidence may be disallowed by the court, a complaint of maladministration could be made to the ombudsman and the Authority could be ordered to pay compensation. On the other hand obtaining an authorisation when one was not strictly needed will have none of these repercussions, so err on the side of caution.

**Only those officers designated and certified to be 'Authorised Officers' for the purpose of RIPA can authorise 'Directed Surveillance'.**

It is considered highly unlikely that surveillance will be required regarding offences on public rights of way. Further advice should be sought from Legal Services Lincolnshire should any surveillance be deemed necessary.

For further guidance on this matter and before requesting a RIPA authorisation consult the 'Corporate Policy and Procedure Document' on RIPA.

## Interviewing and Witness Statements

Witness Statements should form part of the prosecution evidence in any proceedings. In essence, the Statement(s) would include details of the evidence upon which the prosecution is relying upon to prove the offence.

Attached at **Appendix D, Documents 28 & 29** are examples of statements for use in legal proceedings. If the statement is in the attached format, it can be served on the Defendant and may result in the officer not having to give oral evidence at a subsequent trial.

Ordinarily, the evidence of the officer will be sufficient to prove the offence(s). However, occasionally a complainant or other lay witness may be necessary. If they are willing to provide a Statement and attend Court, this should not pose a problem.

However, if they are unwilling to attend Court, an application can be made for a Witness Summons to compel them to attend. This course of action is not recommended as a reluctant witness is unlikely to be helpful to the prosecution case. In this situation, consideration should be given as to whether to continue with the prosecution if there is insufficient evidence without that witness.

## Interview of Alleged Offender

If sufficient evidence is obtained and the person responsible is identified, the next stage is to invite that person to attend an interview. A proforma letter is attached at **Appendix D, Document 24** for such purpose.

Also always consider whether you have sufficient evidence to prove that the defendant is the person who caused the obstruction and that they had no lawful excuse for so doing. It may well be that a productive interview can strengthen the evidence in your case.

An interview should be offered as this will allow the person an opportunity to explain their version of events. This will then allow an informed decision to be made as to whether a case should proceed to legal proceedings.

Furthermore, the interview could provide details of an offender's defence or mitigation that would assist the prosecution advocate in preparing the case for presentation to the Court.



Officers should note that a potential offender is not obliged to attend an interview. If the offer of interview is declined, a decision whether to institute proceedings should be made on the evidence already obtained.

- Best practice suggests that an interview should be conducted by two officers who are both conversant with the case. You might also want to consider involving a colleague who has experience in interviewing and whether there is access through another council department to tape recording equipment.
  - Decide on where and when the interview is to take place and that you have a venue where the interview can take place in private and without the likelihood of interruptions. A number of departments within the County Council have access to tape recording equipment and may be able to assist you if you are considering conducting an interview. Consider the PACE interview guidelines set out in **Appendix E**.
  - If no tape recording machinery is available then you can record the interview by the taking of contemporaneous notes. This means that a careful note in question and answer form must be taken of every thing said in the interview. A note of the date of the interview, start and finish times and all the persons present must also be recorded, much as it is on a taped interview, but now it must be written down. Contemporaneous note interviews can be slow and labour intensive and can stilt the flow of the interview.
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## **5) Formal Cautions:**

Prosecution will in general be restricted to those persons who consistently and blatantly disregard the law, or refuse to achieve basic minimum legal requirements.

The County Council accepts the principle that offences and breaches of Formal Notices should not automatically be the subject of prosecution and formal cautions should be considered where the criteria for a prosecution are satisfied and they may be appropriate in the following circumstances:

- The offender shows genuine remorse and a firm resolve not to offend again.
- The offence is not one that presents a serious risk to public health, safety or the environment.
- The offender has no previous history of similar offences.
- Where a caution presents a practical means to ensure future compliance.

**Remember:** A formal caution can be used in a court of law as evidence of previous offending if a later prosecution becomes necessary because of further offending and records of formal cautions should be carefully retained.

Where a formal caution is deemed to be an appropriate method of enforcement then:

- Authorisation for the use of a caution must be obtained from an appropriately authorised officer (see **Directorate Policy Document 5** for scheme of Authorisation)
  - The alleged offender should be written to and offered the opportunity to take up the option of a formal caution as a direct alternative to prosecution.
  - If this offer is taken up then a time and place should be arranged for the formal caution to take place.
  - The caution should be administered by a duly authorised officer using the appropriate cautioning form (See **Appendix D, Document 26**). This form should be signed by the offender and the officer administering the caution.
  - A copy of the caution should be handed to the offender and a copy retained for the authority's records.
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## **6) Prosecutions:**

### Considering Prosecution

Whilst it is perfectly acceptable to undertake enforcement through statutory notices and default action works, care should be taken that owners and occupiers do not merely view the Council's enforcement processes as a reminder or to allow them to just accept the yearly cost of the council doing the work for them. The Authority should always retain the option to prosecute.

Having served the appropriate letters and notices and possibly even undertaken default action, consideration should be made as to whether or not the authority should also prosecute the offender. In doing so it is worthwhile applying the code for Crown Prosecutors which, albeit not legally binding, does provide a starting point with regard to the decision to prosecute. Under the code, there are two stages in the decision making process.

#### *The Evidential Test*

There must be sufficient evidence to provide a realistic prospect of conviction. In order to ascertain whether the test is satisfied, carefully consider the points the prosecution have to prove for each offence, i.e. can the prosecution prove the existence of the right of way, land ownership and the specific element of the offence, for example, disturbance of the right of way? If this first test cannot be satisfied then the case cannot proceed any further.

#### *The Public Interest Test*

This element of the decision making process lists (though not exhaustively) a number of factors which should be considered. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. Such factors to consider include:

- whether a conviction is likely to result in a significant sentence;
- whether there is evidence that the offence was pre-meditated (wilful);
- whether the Defendant's previous convictions or cautions are relevant to the present offence;
- whether there are grounds for believing that the offence is likely to be continued or repeated;
- whether the offence, although not serious in itself, is widespread in the area where it was committed

It is unlikely that the Council will proceed with a case if:

- the Court is likely to impose a very small or nominal penalty;
- the offence was committed as a result of a genuine mistake or misunderstanding;
- the defendant is elderly

These lists are not exhaustive but if the case meets both the tests it is at this point that contact should be made with Legal Services Lincolnshire for further

advice on how to proceed and to agree that proceedings are warranted. At this point it is worthwhile to check the following:

- The Magistrates will expect the Authority to have acted in a reasonable manner at all times. Has the offender been made properly aware of the offences and been given an opportunity to rectify the situation?
- Check that you have sufficiently clear photographs, ensure that your evidence trail of notices and correspondence is clear and that at no time did you provide incorrect advice.
- If you have met with the defendant (and although this is not necessary it is often the case) ensure that any interview with them was conducted under the terms of the Police and Criminal Evidence Act 1984 (PACE) including the official caution and the signing of any contemporaneous notes.
- If acting on the receipt of a complaint from the public find out if that person is willing to act as a witness even if you decide that your case is strong enough without asking them to appear at Court

Having made the decision to prosecute contact Legal Services Lincolnshire who will assist in preparing a statement (samples of which can be found at **Appendix D, Documents 28 & 29**) which as noted above can be served on the defendant with the appropriate Notice (prepared by Legal Services Lincolnshire).

Should the defendant fail to notify the prosecutor within a certain time that he requires the attendance at Court of the statement maker, then the statement can be treated as unchallenged and read to the court rather than requiring the officer to present it as oral evidence.

With all the above concluded you should be confident that you will not lose your case and hopefully the Defendant will enter a guilty plea. Should they not do so you must be prepared to attend Court for a criminal trial with the associated cross-examination of witnesses.

## Preparing a Prosecution File

Before forwarding a file to the Legal Office for consideration of the question of prosecution consider whether it is ready and complete:

- Prepare a summary of the investigation and the findings.
- Ensure that a statement has been prepared by the investigating officer setting out your involvement and exhibiting any relevant evidence e.g. photographs, correspondence, notices, samples.
- Do you need a statement from any of your colleagues who may have accompanied you to a scene or taken photographs etc.. Remember it is only the person who undertook an action, such as the taking of photographs or the writing of a letter who can give evidence of the



same and you will need a statement from them exhibiting any items of evidence that they are responsible for.

- Where information has been obtained from members of the public a statement will be needed if this is to form part of the evidence in your case and you will need to check whether the witness is willing to attend court and give that evidence should the need arise.
- Attach copies of all paper exhibits to the file.
- Tape recording of any interview or copies of contemporaneous notes or a summary of the taped interview.
- Any previous cautions or information about previous relevant convictions.
- Where surveillance has taken place copies of the RIPA authorisation.
- Copies of any other relevant correspondence.
- A schedule of the costs incurred in respect of the investigation. This should show the hours involved on the matter by each officer at an hourly rate. Any administrative costs and disbursements that have been incurred.

## The Prosecution File

Once all the evidence has been gathered, the file should be first discussed with the officer's Line Manager to discuss whether the case is appropriate for prosecution. The completed file should then, if appropriate, be forwarded to Legal Services Lincolnshire for review to ensure that all elements of the offence can be proved beyond reasonable doubt. If they can, a decision will be made in conjunction with the officer regarding the Public Interest Test.

If both the above are satisfied, the Legal Office will draft and serve the Information. The Information contains details of the alleged offence(s), the requirements of which must be clear and provide the Defendant with sufficient information to be aware of what is being alleged.

## The Types of Offences

There are three types of criminal offence -

1. Summary Only Offences - these may only be tried in the Magistrates' Court.
2. Either Way Offences - these may be tried either in the Magistrates' Court or Crown Court.
3. Indictment Only Offences - these may only be tried in the Crown Court.

## Disclosure

The duty of the prosecution to disclose details of their case prior to the Court Hearing depends on the type of offence. Under the Magistrates' Courts (Advance Information) Rules 1985, for offences that are Either Way, there is a duty to disclose the evidence the prosecution seeks to rely upon. However, there is no such duty in proceedings that are Summary Only. This duty is likely to have been altered since the introduction of the Human Rights Act 1998. Therefore, relevant disclosure takes place in all proceedings.

The Criminal Procedure and Investigations Act 1996 describes a three stage process of disclosure -

- (a) Primary Disclosure - this is disclosure by the prosecutor. It is limited to previously undisclosed material which, in the prosecutor's opinion, might undermine the case for the prosecution against the accused. If no such material exists, the prosecution must give the accused a written statement to that effect.

The prosecutor must supply to the accused a schedule of unused material. This is prepared by the Disclosure Officer from the Legal Office. It is, in essence, simply a list of those items gathered during the investigation but are not necessary to prove the offence

- (b) Defence Statement - the Defence may then elect to provide a Defence Statement, but are only compelled to do so in Indictment Only offences. If no such Statement is provided, there is no duty of Secondary Disclosure
- (c) Secondary Disclosure - if a Defence Statement is served, the prosecutor must disclose any previously undisclosed material which might reasonably be expected to assist the accused defence, as disclosed in the Defence Statement. If none exists, a written statement confirming the same must be made.

The prosecutor is under a duty of continuing review in relation to prosecution material that might undermine his case or assist his Defendant. Therefore, any new material obtained may be subject to disclosure.

If everything is on your file and the case goes to a not guilty plea, the file can then be simply handed to Legal Services Lincolnshire and they will take on the role of Disclosure Officer and prepare the necessary schedules.

Two lists are produced of the material on the file known as the 'Unused Material Schedules' and these lists are disclosed to the defence. The material is looked at to decide if there is anything there that undermines the prosecution case. If anything does then copies of that material should be served with the list on the defence. If there is nothing that undermines the prosecution case then the lists are served on the defence and the prosecution certify that there is nothing in their view that undermines the prosecution case.

The defence then have the option, soon to be compulsory, of serving on us a written notice of their defence. Once they have done this the prosecution again have to look at the unused material list in light of the defence that has been disclosed and consider whether there is anything that would assist that defence. Again if there is then a copy should be provided and if there is not the prosecution again write to the defence telling them this.

From your point of view as the investigating officer in the case it is important when you make the decision to prosecute that you look at your file and ensure that it is in good order and that you have copies of any material you have referred to in the course of the case and any notes you have taken. This will make complying with CPIA a fairly straightforward matter without last minute scrambling around to try and rectify problems.

## **WHAT HAPPENS IN COURT**

### The Court Hearing

#### (a) A Guilty Plea

If the Defendant elects to plead guilty to the offence, the facts of the case based on the evidence previously supplied to the Defendant will be outlined to the Court. The Magistrates will then have an opportunity to ask any questions they may have of the prosecution. It is therefore beneficial to have the officer present at Court in the event that the Magistrates ask any practical or technical questions.

Once the facts have been outlined to the Court, the Defendant or his legal representative will then have the opportunity explain their side of the situation. This is known as a Plea in Mitigation.

A mitigation speech is likely to include the Defendant's reasons for doing or omitting to do what was alleged. The Magistrates will then proceed to sentence the Defendant on the information they have heard

#### (b) A Not Guilty Plea

If a Defendant pleads not guilty to an offence, the case will have to be adjourned for trial where evidence will be called. Prior to any trial the prosecution must, within 28 days of a not guilty plea, disclose any further information that has not already been disclosed to the Defendant under the provisions of the Criminal Procedure and Investigations Act 1996.

This evidence is material which has been collected during the investigation which is not required to prove the offence. It is therefore vital that all information gathered during the investigation is retained by the officer.

## **The Trial**

The prosecution goes first in a criminal trial. The prosecution advocate will make an opening speech to the Magistrates. This is their opportunity to outline the relevant legislation and the reasons for prosecution, and the facts of the case.

Following the opening speech, the prosecution will then proceed to call its first witness. The usual order of the witnesses is in chronological order so that the Magistrates may follow the sequence of events that has led to the charge(s) being brought.

The prosecutor will then take the prosecution witnesses through what is known as examination in chief. This should ensure that the evidence necessary to prove the offence is given. During the examination in chief, the prosecutor is not permitted to ask "leading questions". A leading question is defined as a question which directly or indirectly suggests to the witness the answer he/she is to give.

The Defendant or his/her legal representative will then have an opportunity to cross-examine the witness. This is the Defendant's opportunity to question any points already made and/or put their point of view to the witness. That witness must answer honestly even if it results in the prosecution's case being weakened. It is, however, advisable for any witness to say "they don't know" by way of answer, if that is the case, rather than constructing an answer.

The prosecuting advocate then has an opportunity to re-examine the witness. This is limited to matters raised by the defence in cross-examination. It is not an opportunity to glean information which has not been made during an examination in chief.

After all the prosecution witnesses have given evidence, the prosecution will rest. At this stage, the defence has an opportunity to make a submission of No Case to Answer, that is to say the prosecution has not made out the case against the Defendant.

If this application is successful the trial is over. If it is not successful, the defence has the opportunity if they wish to call evidence to rebut the prosecution case. It is usual for the Defendant to give evidence on his own behalf, though he/she is not required to do so. The procedure for dealing with defence witnesses is the same as for prosecution witnesses.

## Closing Speech

At the end of all evidence, the defence will make a closing speech which will consist of pointing out any inconsistencies in the prosecution case, and generally highlighting the strength of the defence's case.

The prosecutor may only interrupt if the defence advocate incorrectly explains the law or makes any patently incorrect statement about the evidence. The Magistrates are then likely to retire to reach their verdict.

## Post Verdict Action

In the event of a conviction, the prosecutor may then disclose any previous convictions or cautions to the Court. Previous convictions and cautions must not be disclosed prior to either a guilty verdict or guilty plea.

The prosecutor will then apply for prosecution costs, i.e. the cost of preparing the case. The award of costs is entirely discretionary and costs are unlikely to be awarded against a Defendant with limited financial means. In addition, costs are only awarded if a Court decides the Defendant can afford to pay them after any fine or Compensation Order has been made.

The outcome of the case should be referred to the Countryside Access Manager for consideration as to what media publicity should be given to the case, especially within the press local to the location of the offence.





## List of Appendices

Appendix A - Table of Statutes Applicable in Rights of Way Enforcement

Appendix B – Enforcement Concordat

Appendix C – Further Information on Various Acts of Legislation

Appendix D – Sample Enforcement Letters, Forms and Notices

Appendix E – PACE Interview Guidance

## **APPENDIX A**

### **TABLE OF STATUTES APPLICABLE IN RIGHTS OF WAY ENFORCEMENT**

- National parks & Access to the Countryside Act 1949
- Highways Act 1980
- Wildlife & Countryside Act 1981
- Police and Criminal Evidence Act 1984
- Rights of Way Act 1990
- Human Rights Act 1998
- Countryside & Rights of Way Act 2000
- Equalities Act 2010

## **APPENDIX B**

### **ENFORCEMENT CONCORDAT**

#### **THE PRINCIPLES OF GOOD ENFORCEMENT POLICY AND PROCEDURES**

##### **POLICY**

###### **STANDARDS**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

###### **OPENNESS**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting businesses, voluntary organisations, charities, consumers and workforce representative. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

###### **HELPFULNESS**

We believe that prevention is better than cure and that our role therefore involves actively working with businesses, especially small and medium sized businesses, to advise and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek further advice/information from us. Applications for approval for establishments, licences, registrations etc will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

###### **COMPLAINTS ABOUT SERVICE**

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

## PROPORTIONALITY

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

## CONSISTENCY

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordination Body on Food and Trading Standards (LACOTS) and the Local Authorities National Type Approval Confederation (LANTAC).

## PROCEDURES

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale and making sure those legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interest of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within five working days and, in all cases, within ten working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

## **APPENDIX C**

### **FURTHER INFORMATION ON VARIOUS ACTS OF LEGISLATION**

#### **The Human Rights Act 1998**

This is a piece of legislation that made the European Convention on Human Rights part of domestic law. The County Council, as a public authority, must apply the principles of the European Convention on Human Rights in accordance with the Act.

The fundamental principle of the Act is that it is unlawful under Section 6(1) of the Act for a public authority to act in any way which is incompatible with convention rights.

Inherent in the whole of the convention is the need to find a fair balance between the protection of individual rights and the interests of the community. The principle of proportionality is concerned with defining that balance.

When the Court is considering the proportionality of an interference with a convention right, it considers -

- (a) whether the interference complained of corresponds to a “pressing social need”
- (b) whether it was “proportionate to the legitimate aim pursued”
- (a) whether the reasons given by the national authority to justify it are “relevant and sufficient”.

**Article 6** states -

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial Tribunal, established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the Trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the party is so required, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights -*

- a) *to be informed promptly, in a language which he/she understands and in detail, of the nature and cause of the accusation against him*
- b) *to have adequate time and facilities for the preparation of a defence*
- c) *to defend himself/herself in person or through legal assistance of his/her own choosing, or if he/she has not sufficient means to pay for legal assistance, to be given this free when the interests of justice so require*
- d) *to examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him/her*
- e) *to have the free assistance of an interpreter if he/she cannot understand or speak the language used in Court*

**Article 8** states that -

1. *Everyone has the right to respect for his private and family life, his home and his correspondence*
2. *There should be no interference by a public authority with the exercise of this right, except such as in accordance with the law and is necessary in a democratic society, in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedoms of others.*

## **Equalities Act 2010**

This piece of legislation gives people with a disability a right of access to goods, facilities, services and premises. These rights were phased in over the period 1996 to 2004.

The County Council as a service provider must ensure that its policies are in line with the terms of the Equalities Act and in relation to the specific issue of obstruction of the highway there is a need to take into account the effect that any obstruction may have on the access available to people with a disability.

## **Police & Criminal Evidence Act 1984**

The Police and Criminal Evidence Act 1984 (PACE) was introduced to regulate the practices of the police when investigating crimes and dealing with suspects. However, it does affect anyone else who acts as an investigating officer in relation to an alleged criminal offence. It is not what the Act itself says but the Code of Practice that attaches to the Act that concerns us. Although the Code itself is not law, failure to comply with it can render evidence inadmissible in a court of law.



## **Does PACE Apply to Me?**

If you are acting as the enforcement or investigating officer in a case where you are considering bringing a prosecution for an offence then PACE **will** apply to you.

Section 67(9) PACE states:

*“Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provisions of such a code of practice”.*

This has been held by the courts to clearly apply to officers of a local authority.

## **Which bits of PACE do I Need to Know About?**

Much of PACE deals with the detention of suspects and other police matters. However, Codes C deals with the interviewing of suspects and Code E with the recording of interviews with suspects and it is these two codes that you need to be familiar with. The Codes of Practice are available on the Home Office Website and, as will be discussed later, there are instances where you may wish to consider interviewing a suspected offender.

**APPENDIX D****SAMPLE ENFORCEMENT LETTERS, FORMS & NOTICES**

<b>A) Ploughing &amp; Cropping</b>			
1.	Repeat Offender Covering Letter		
2.	Highways Act 1980, Section 131A	Field edge PF & PB and Carriageways	Warning Letter
3.	Highways Act 1980, Section 131A	Field edge PF & PB and Carriageways	Formal Notice
4.	Highways Act 1980, Section 134	Ploughing of Cross Field PFs & PBs	Warning Letter
5.	Highways Act 1980, Section 134	Ploughing of Cross Field PFs & PBs	Formal Notice
6.	Highways Act 1980, Section 137A	Obstruction of Highway by Crop	Warning Letter
7.	Highways Act 1980, Section 137A	Obstruction of Highway by Crop	Formal Notice
8.	Harvest Clearance Letter		
9.	Default Action Costs & Checklist		
10.	Referral to Rural Payments Agency		

<b>B) Other Offences</b>			
11.	National Parks & Access to the Countryside Act 1949, Section 57	Misleading Notices	Letter
12.	Highway Act 1980, Section 131	Damaging Highways	Letter
13.	Highway Act 1980, Section 132	Unauthorised Marks on Highways	Letter
14.	Highway Act 1980, Section 137	Obstruction of the Highway	Letter
15.	Highway Act 1980, Section 143	Power to remove certain Obstructions	Notice
16.	Highway Act 1980, Section 145	Bridlegates less than 5'	Notice
17.	Highway Act 1980, Section 146	Gate or Stile Out of Repair	Notice
18.	Highway Act 1980, Section 149	Removal of Things Deposited on Highways Causing a Nuisance	Notice
19.	Highway Act 1980, Section 154	Removal of Overhanging Vegetation	Notice
20.	Highway Act 1980, Section 161	Danger/Annoyance & Offensive Matter	Letter
21.	Highway Act 1980, Section 164	Removal of Barbed Wire	Notice
22.	Wildlife & Countryside Act 1981, Section 59	Keeping of Certain Bulls in Fields with Public Access	Letter

<b>C) Cautions &amp; Prosecutions Proforma</b>	
23.	Requisition of information on Landownership
24.	Invitation for interview
25.	Invitation for Caution
26.	Caution Form
27.	PACE - Notice to defendant about accessing a copy of the interview tape
28.	PACE - Draft Statement where dictated to interviewer
29.	PACE - Draft Statement where the interviewee wishes to write their own statement
30.	Officer Witness Statement

**Document 1 – Repeat Offender Covering Letter**



Please reply to:

Tel No: 01522 782070

Email: Highways@lincolnshire.gov.uk

Your Ref:

My Ref:

Date:

Dear .....

**PARISH – RIGHT OF WAY & No.**

I refer to the above Public Right of Way which crosses land in your occupancy.

Please find enclosed a Warning Letter / Formal notice\* requiring the reinstatement of the above named right of way. I would draw your attention to the procedures adopted by Lincolnshire County Council 16<sup>th</sup> July 2012 with regard to repeat offenders.

Under these procedures, for a first offence, a Warning Letter will be sent. For repeat offenders, following a second offence, a Formal Notice will be served without prior warning. For a third offence, a 24 hour Formal Notice will be served.

If the required works are not completed by this stage the County Council has a power to enter onto land to carry out the works itself and to recharge the cost to the offender. Consideration may also be given to prosecution.

The enclosed is being served in connection with a *first/second/third\** offence

A repeat offender is defined as an occupier of land who has already received a Warning Letter for a breach of the Highways Act 1980 on the same path as the current offence within the last 5 years

If you would like further advice or clarification on how you can meet these requirements, please contact ....., at the above address or telephone number.

Yours *faithfully / sincerely\**

For Executive Director for Communities

(\*Delete as appropriate)



Your Ref:  
My Ref:  
Date:

Please reply to:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

Dear .....

**HIGHWAYS ACT 1980 SECTION 131A  
ILLEGAL DISTURBANCE OF FIELD EDGE FOOTPATH OR BRIDLEWAY,  
BYWAY OPEN TO ALL TRAFFIC (BOAT) OR RESTRICTED BYWAY**

***PARISH – RIGHT OF WAY & No.***

A recent inspection has revealed that part of the above named right of way (as marked.....on the attached plan) has been disturbed in contravention of the above section of the Highways Act 1980.

As you may be aware, Lincolnshire County Council has the power under the Highways Act 1980 to enter onto this land to reinstate the above named right of way and recover the costs from the occupier.

On this occasion I will be satisfied if you reinstate the path yourself to a width of not less than ..... m within the next fourteen days . I must, however, stress that failure to reinstate the path now, or should there be any future lack of compliance, the County Council has powers to carry out the work and recover from you any costs incurred. Criminal proceedings may also be brought against you.

Reinstatement of this illegally disturbed public right of way by yourself should include removal of any crop growing within its width, reinstatement of the surface to a suitable condition (including compaction, if necessary), reseeding with an appropriate grass seed mix and marking out to its full width.

Yours *faithfully / sincerely\**







Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email:Highways@lincolnshire.gov.uk

**RECORDED DELIVERY / BY HAND\***

**WARNING: IGNORING THIS NOTICE COULD COST YOU MONEY**

Dear .....

**HIGHWAYS ACT 1980 SECTION 131A  
ILLEGAL DISTURBANCE OF FIELD EDGE FOOTPATH OR BRIDLEWAY,  
BYWAY OPEN TO ALL TRAFFIC (BOAT) OR RESTRICTED BYWAY**

**PARISH – RIGHT OF WAY & No.**

A recent inspection has revealed that part of the above named right of way (as marked.....on the attached plan) has been disturbed in contravention of the above section of the Highways Act 1980.

I hereby give you notice that Lincolnshire County Council, (or contractors authorised by them) in pursuance of the powers given to them under Schedule 12A of the Highways Act 1980, will enter onto the land occupied by you to reinstate the above named right of way.

Reinstatement will be carried out by .....the surface of the path to a maximum width of ..... m.

A ..... will be used to carry out this work. Access to the site of the work will be taken along the route (.....) shown on the attached plan. This power of entry will become exercisable at 9.00am on .....

The County Council will recover from you any expenses incurred in carrying out these works. It is estimated that expenses will be in the region of £.....

**On this occasion, I will be satisfied if you reinstate the path yourself but stress that any future disturbance of this path may result in the County Council taking criminal proceedings against you.**

**Document 3 – Highways Act 1980, Section 131A – Formal Notice**

Reinstatement of this illegally disturbed public right of way by yourself should include removal of any crop growing within its width, reinstatement of the surface to a suitable condition (including compaction, if necessary), reseeding with an appropriate grass seed mix and marking out to its full width.

If you choose to reinstate the path yourself, please telephone ..... immediately on the number at the top of this Notice to avoid any costs being incurred by yourself. If we do not hear from you by ..... , I will arrange for the work to be carried out soon afterwards.

\*You should also be aware that the County Council will also make a referral to the Rural Payments Agency regarding a lack of compliance with General Agricultural and Environmental Condition No. 8.

*\*(For 3<sup>rd</sup> offence Formal Notice only as applicable)*

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*

Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email:Highways@lincolnshire.gov.uk

Dear .....

**HIGHWAYS ACT 1980 SECTION 134  
REINSTATEMENT OF CROSSFIELD FOOTPATH OR BRIDLEWAY**

**PARISH – RIGHT OF WAY & No.**

An inspection on ..... showed that the surface of the above crossfield path has been disturbed (as marked .....on the attached plan).

You should be aware that legislation requires the surface of any crossfield path to be reinstated within fourteen days of the first disturbance (or 24 hours of any subsequent disturbance) so that:

1. the path is reasonably convenient for the exercise of the Right of Way (i.e. usable)
2. the course of the path is apparent on the ground. (i.e. visible)

At the time of the inspection *part 1 and part 2\** of such a reinstatement had not taken place. (*\* amend as appropriate*)

Would you please ensure that this right of way is reinstated to the width of ..... m within the next fourteen days. Should you choose not to do so Lincolnshire County Council, in accordance with Schedule 12A of the Highways Act 1980, has the power to enter onto land occupied by you to reinstate the above named right of way and recover from you any costs incurred.

Any future failure to reinstate a crossfield right of way after disturbance may also result in the County Council taking criminal proceedings against you.

If you would like further advice on the best method of reinstating the path, please contact ..... on the telephone number at the top of this letter.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*



Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email:Highways@lincolnshire.gov.uk

**RECORDED DELIVERY / BY HAND\***

**WARNING: IGNORING THIS NOTICE COULD COST YOU MONEY**

Dear .....

**HIGHWAYS ACT 1980 SECTION 134  
REINSTATEMENT OF CROSSFIELD FOOTPATH OR BRIDLEWAY**

**PARISH – RIGHT OF WAY & No.**

An inspection on ..... showed that the above named crossfield right of way had been disturbed. (as marked .....on the attached plan). At the time of a second inspection on ..... the path had not been satisfactorily reinstated in accordance with the above section of the Highways Act 1980 in that:

1. the surface of the path was not reasonably convenient for the exercise of the right of way **and/or**
2. the line of the path was not apparent on the ground.

During the period between the above inspections the County Council has not received an application from you for an extension of the “relevant period” as defined in the Highways Act 1980 S134(7).

I hereby give notice that Lincolnshire County Council, (or contractors authorised by them) in pursuance of the powers given to them under Schedule 12A of the Highways Act 1980, will enter onto the land occupied by you to reinstate the above path. Reinstatement will be carried out by ..... the surface of the path to a maximum width of ..... **m.**

A ..... will be used to carry out this work and access to the site of the work will be taken along the route (.....) shown on the attached plan. This power of entry will become exercisable at 9.00 am on .....

## Document 5 – Highways Act 1980, Section 134 Formal Notice

The County Council will also recover from you any expenses incurred in carrying out these works and it is estimated that expenses will be in the region of £.....

**On this occasion, I will be satisfied if you reinstate the path yourself but stress that any future failure to reinstate a crossfield path after disturbance within the relevant period may result in the County Council taking criminal proceedings against you.**

If you would like further advice on the best method to mark out the path, please contact ..... at the telephone number at the top of this Notice.

If you choose to reinstate the path yourself, please telephone immediately to avoid any costs being incurred by yourself. If we do not hear from you by 4.00 pm on ..... I will arrange for the work to be carried out soon afterwards.

\*You should also be aware that the County Council will also make a referral to the Rural Payments Agency regarding a lack of compliance with General Agricultural and Environmental Condition No. 8.

*\*(For 3<sup>rd</sup> offence Formal Notice only as applicable)*

*Yours faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*





Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email:Highways@lincolnshire.gov.uk

Dear .....

**HIGHWAYS ACT 1980 SECTION 137A  
INTERFERENCE BY CROPS ON A PUBLIC RIGHT OF WAY**

**PARISH – RIGHT OF WAY & No.**

An inspection on .....showed that the above path (marked ..... on the attached plan) had been encroached on by a crop, reducing the apparent width of the highway to less than the minimum statutory width of ..... m.

As you may be aware Lincolnshire County Council has the authority to enter onto land occupied by you to remove this encroachment. The County Council would then recover from you any expenses incurred in carrying out these works.

On this occasion I will be satisfied if you clear the path yourself within the next fourteen days. However, any future failure to;

1. ensure that the line of the path is indicated on the ground
2. prevent a crop from encroaching onto the path as to render it inconvenient for the exercise of the Public Right of Way

may result in the County Council taking action as outlined above. Criminal proceedings could also be brought against you.

If you would like further advice on the best way to ensure that the path is kept clear, please contact ..... on the telephone number at the top of this letter.

Yours *faithfully / sincerely*\*

For Executive Director for Communities

(\*Delete as appropriate)





Please reply to:

Tel No: 01522 782070

Email:Highways@lincolnshire.gov.uk

Your Ref:

My Ref:

Date:

**RECORDED DELIVERY / BY HAND\***

**WARNING: IGNORING THIS NOTICE COULD COST YOU MONEY**

Dear .....

**HIGHWAYS ACT 1980 SECTION 137A  
INTERFERENCE BY CROPS ON A PUBLIC RIGHT OF WAY**

**PARISH – RIGHT OF WAY & No.**

An inspection on ..... showed that the above named right of way (as marked ..... on the plan) has been encroached on by a crop in breach of section 137A of the above Act in that the apparent width of the highway was reduced to less than the minimum width of .....m.

I hereby give notice that Lincolnshire County Council, (or contractors authorised by them) in pursuance of the powers given to them under Schedule 12A of the Highways Act 1980, will enter onto the land occupied by you to remove the encroachment by ..... the surface of the path to a maximum width of ..... m.

A ..... will be used to carry out this work. Access to the site of the work will be taken along the route ( ..... ) shown on the attached plan. This power of entry will become exercisable at 9.00 am on .....

The County Council will recover from you any expenses incurred in carrying out these works. It is estimated that expenses will be in the region of £.....

**On this occasion, I will be satisfied if you reinstate the path yourself but stress that any future failure to ensure that the line of the right of way is indicated on the ground or to prevent a crop from encroaching onto the right of way as to render it may result in the County Council taking criminal proceedings against you.**

*Continued overleaf.....*

**Document 7 – Highways Act 1980, Section 137A – Formal Notice**

If you choose to clear the path yourself, please telephone ..... immediately on the telephone number at the top of this Notice to avoid any costs being incurred by yourself. If I do not hear from you by 4.00pm on ....., I will arrange for the work to be carried out soon afterwards.

\*You should also be aware that the County Council will also make a referral to the Rural Payments Agency regarding a lack of compliance with General Agricultural and Environmental Condition No. 8.

*\*(For 3<sup>rd</sup> offence Formal Notice only as applicable)*

*Yours faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*

Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email:Highways@lincolnshire.gov.uk

Dear .....

**HIGHWAYS ACT 1980 SECTION 137A  
INTERFERENCE BY CROPS ON A PUBLIC RIGHT OF WAY**

**PARISH – RIGHT OF WAY & No.**

The above named public right of way was inspected on ..... at which time, although the recent arable crop had been harvested, it was apparent that no attempt at reinstating the route had been made prior to this date as required under the above legislation.

Whilst no further action will be taken against you at this time, I should inform you of the procedures adopted by Lincolnshire County Council with regard to occupiers who repeatedly fail to comply with the requirements of the Highways Act 1980.

Under these procedures, for a first offence a Warning Letter will be sent. For repeat offenders, following a second offence, a Formal Notice will be served without prior warning. For a third offence, a 24 hour Notice will be served and consideration given to prosecution.

I should warn you, therefore, that any future failure to comply with the requirements of the Highways Act 1980 will be treated as a *first/second/third\** offence under the above procedures.

If you would like further advice or clarification on how you can meet these requirements, please contact ..... on the telephone number at the top of this letter.

Yours *faithfully / sincerely\**



**Highways Act 1980, Schedule 12A**  
**Default Action**  
**Reinstatement Costs (Estimated)**

PARISH & PRoW NUMBER	
OCCUPIER'S NAME	

Round trip from base (miles)	Miles
Reinstatement length (metres)	Metres
Reinstatement width (metres)	Metres

Item		Rate	Cost
Countryside AMT – Travel Time	Hrs	@£...../Hr	£
Countryside AMT – Reinstatement Time	Hrs	@£...../Hr	£
Countryside AMT – Vehicle Costs	Miles	@£...../Mile	£
Officer – Inspection Time	Hrs	@£...../Hr	£
Officer – Re-inspection Time	Hrs	@£...../Hr	£
Officer – Administration Time	Hrs	@£...../Hr	£
Officer – Supervision Time	Hrs	@£...../Hr	£
Officer Travel Time	Hrs	@£...../Hr x No. of trips	£
Officer Vehicle Costs	Miles	@£...../Mile	£
Equipment Costs (List)			
1)			1) £
2)			2) £
3)			3) £
Additional Costs (Specify)			£
<b>TOTAL ESTIMATED COST</b>			<b>£</b>

## Document 9 – Highways Act 1980, Schedule 12A – Default Action Checklist & Costs

### Notes:

- 1) Team travel time based on average speed of 25mph.
- 2) Reinstatement time based on 4 hours / km reinstated / metre width.
- 3) Team vehicle costs based on average annual mileage vehicle costs (contract cost/average mileage x mileage to site)
- 4) Officer travel time based on average speed of 30mph.
- 5) Officer vehicle costs based on HMRC mileage rates.
- 6) Officer administration time to include; preparation of all notices/letters, contact with contractors and Recorded Delivery postage costs.
- 7) Staff costs to be based on “Approved Charge-out Rates” (Standard Hourly Rate).
- 8) Hourly rates and vehicle costs are updated annually by the Countryside Access Manager at the start of the financial year.

### Checklist:

Before carrying out Default Action Works please use the following checklist:

- 1) Brief the contractor as to:
  - i) what work is being undertaken
  - ii) the equipment to be used
  - iii) the exact location, distance and width of the reinstatement
  - iv) the timings of the works
  - v) the route to be taken to the site

**COMPLETED**.....
- 2) Contact the local police if there is a belief the landowner may become aggressive or threatening with a view to being present on site or to visit the landowner beforehand.

**COMPLETED**.....
- 3) Contact the local Council Member if there has been prior or possible contact between the Offender and the Councillor.

**COMPLETED**.....
- 4) Contact Business Support in Lincoln – City Hall to inform them that the works are taking place and to prepare for the recharge.

**COMPLETED**.....
- 5) It is **ESSENTIAL** to record exact timings and mileages for an accurate recharge. The estimates are for guidance only.

**COMPLETED**.....



## Document 10 – Referral to Rural Payments Agency

### Cross Compliance Referral Form

#### Details of Referral Body

Name of Organisation	
Contact Name	
Telephone Number	
Date Notification Received	

---

#### Inspection Details

Location Details	
Map Reference (If known)	

#### If Farm, Details (If Known)

Name	
Address	
Contact Name	
Telephone Number	
Fax Number	
Mobile Number	
Single Business Identifier (SBI)	
County Parish Holding (CPH)	
Other Identifier	

## Document 10 – Referral to Rural Payments Agency

Which Regulation(s) were identified as having been potentially breached

GAEC Number	
SMR Number	
Description of Non-Compliance	
Action Taken (including recommendations, advice given, warning letter sent, etc.)	
Is this case being taken for prosecution? / Was this case taken to prosecution?	
<b>If yes, please provide the following details:-</b> <ol style="list-style-type: none"> <li>1. <b>Date of Action</b></li> <li>2. <b>Court Details</b></li> <li>3. <b>Current Status / Outcome</b></li> </ol>	

Official Use  Referral Number.....  Task Number..... 
--

**PLEASE RETURN TO THE FOLLOWING ADDRESS:**  
**Cross Compliance SMU,**  
**Rural Payments Agency,**  
**Lowther Street,**  
**Carlisle,**  
**CA3 8DX**

**Telephone: 01228 64028**



Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT 1949, SECTION 57  
DISPLAY OF NOTICES ON A PUBLIC PATH DETERRING PUBLIC USE**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way crossing land in your occupancy on ..... revealed that there is a misleading notice erected at point(s)..... as marked on the attached plan.

The notice is considered likely to deter the public from using the right of way and the County Council requests that it is removed within 14 days of the date of this letter.

A failure to comply with this request may lead to the County Council taking further action against you.

Should the notice not be one you are responsible for I would be grateful if you could inform ..... on the telephone number at the top of this letter as soon as possible.

Yours *faithfully / sincerely*\*

For Executive Director for Communities

(\*Delete as appropriate)





Please reply to:

Tel No: 01522 782070

Email: Highways@lincolnshire.gov.uk

Your Ref:

My Ref:

Date:

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 131  
ILLEGAL DAMAGE CAUSED TO A HIGHWAY**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on .....  
revealed that at/between\* point(s) ..... , as marked on the  
attached plan, the surface of the right of way had been damaged by

.....  
.....  
.....

In contravention of the Highways Act 1980.

Please contact .....on the telephone  
number at the top of this page to discuss how the surface of the right of way  
may be restored to its former condition.

A failure to comply with this request or a failure to carry out any agreed  
restorative works may lead to the County Council considering taking further  
action against you.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*





Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 132  
UNAUTHORISED MARKS ON THE HIGHWAY**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on .....  
revealed that at point(s) ....., as marked on the attached  
plan, the surface of the right of way had been marked or a notice, picture or  
other mark erected on a tree, structure or other works in contravention of the  
Highways Act 1980.

This should be rectified within 1 month of the date of this letter to avoid the  
County Council taking further action against you.

Please contact .....on the telephone  
number at the top of this page to discuss this matter.

A failure to comply with this request or a failure to carry out any agreed  
restorative works may lead to the County Council considering taking further  
action against you.

The County Council may also remove any such marking, sign or otherwise  
without further notice.

Yours *faithfully / sincerely\**

For Executive Director for Communities

(\*Delete as appropriate)







Please reply to:

Tel No: 01522 782070

Email: Highways@lincolnshire.gov.uk

Your Ref:

My Ref:

Date:

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 137  
WILFUL OBSTRUCTION OF A HIGHWAY**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on .....  
revealed that at/between\* point(s) ..... , as marked on the  
attached plan, the surface of the right of way had been obstructed by

.....  
.....  
.....

In contravention of the Highways Act 1980.

Please contact .....on the telephone  
number at the top of this page within 14 days of the date of this letter to  
discuss how this matter may be remedied.

A failure to comply with this request or a failure to carry out any agreed  
restorative works may lead to the County Council considering taking further  
action against you which may include the consideration of prosecution.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*





Your Ref:  
My Ref:  
Date:

Please reply to:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

**LINCOLNSHIRE COUNTY COUNCIL**

**HIGHWAYS ACT 1980 SECTION 143  
NOTICE TO REMOVE STRUCTURE FROM HIGHWAY**

Lincolnshire County Council as the competent authority for the highway known as....., hereby gives you notice under and in pursuance of the powers contained in the Highways Act 1980 Section 143 that requires you within one month after service of this notice upon you to remove a structure being the

.....  
erected or set up by you upon the highway at

.....  
, as marked on the attached plan.

If the structure is not removed within the time limit required by this Notice Lincolnshire County Council may remove the structure and recover from you the expense of doing so.

For Executive Director for Communities



Your Ref:  
My Ref:  
Date:

Please reply to:  
Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 145  
NOTICE TO WIDEN GATES CURRENTLY OF LESS THAN A MINIMUM  
WIDTH ON A BRIDLEWAY OR CARRIAGEWAY**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on .....  
revealed that at point(s) ....., as marked on the attached  
plan, the gate(s) on the bridleway were less than the minimum width of 5 feet  
between the hinges and the closing post.

Please ensure that the gate is either removed or widened to the correct width  
within 21 days of receipt of this letter.

Please contact .....on the telephone  
number at the top of this page as soon as possible to discuss how this matter  
may be remedied.

A failure to comply with this request or a failure to carry out any agreed  
restorative works may lead to the County Council considering taking further  
action against you.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*





Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

*Must go to Owner **AND** Occupier as necessary.*

Dear .....

**HIGHWAYS ACT 1980, SECTION 146  
STILE OR GATE OUT OF REPAIR ON A RIGHT OF WAY**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on ..... revealed that at point(s) ....., as marked on the attached plan, the stile(s) and/or gate(s)\* on the ..... were not in a condition or standard of repair required to prevent unreasonable interference with users of the footpath/bridleway/restricted byway\*.

These works are the responsibility of the owner of the land.

Please ensure that the stile(s) and/or gate(s)\* are either removed or repaired to a reasonable standard within 28 days of receipt of this letter.

Please contact .....on the telephone number at the top of this page as soon as possible to discuss how this matter may be remedied.

A failure to comply with this request or a failure to carry out any agreed restorative works may lead to the Council undertaking the works and **recovering any reasonable expenses in so doing.**

If you choose to remedy this matter yourself you may claim 25% of any reasonably incurred expenses from the Council.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*





**Document 18 –Highways Act 1980, Section 149 – Removal of Things Deposited on Highway Causing a Nuisance**



Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 149  
REMOVAL OF THINGS DEPOSITED ON HIGHWAY CAUSING A  
NUISANCE**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on .....  
revealed that at point(s) ..... , as marked on the attached  
plan, .....  
.....  
had been left on the footpath/bridleway/restricted byway/BOAT\* and this is  
causing a nuisance to users.

Please ensure that the .....  
.....  
is removed within 14 days of receipt of this letter.

Please contact .....on the telephone  
number at the top of this page as soon as possible to discuss how this matter  
may be remedied.

A failure to comply with this request or a failure to carry out any agreed works  
may lead to the County Council considering taking further action against you.

Yours *faithfully / sincerely*\*

For Executive Director for Communities

*(\*Delete as appropriate)*





Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 154  
NOTICE TO CUT OR FELL TREES/SHRUBS THAT OVERHANG A HIGHWAY**

**LINCOLNSHIRE COUNTY COUNCIL** ("The Council")

**PARISH – RIGHT OF WAY & No.**

A ..... situated at ..... belonging to you overhangs the above named footpath/bridleway/restricted byway/BOAT so as to endanger or obstruct the passage of users.

**NOW** the Council in pursuance of the Highways Act 1980 section 154 requires you as the owner of the ..... within 14 days from the date of service of this notice so to lop or cut the ..... as to remove the cause of danger, obstruction or interference.

If you fail to comply with this notice, the Council may carry out the work required by this notice and may recover from you the expenses reasonably incurred by it in so doing.

If you are aggrieved by the requirement of this notice you may appeal to the magistrates' court within 21 days from the date of the service of this notice on you.

For Executive Director for Communities

*(\*Delete as appropriate)*





Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 161  
OFFENSIVE MATTER ON THE HIGHWAY**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on .....  
revealed that at point(s) ....., as marked on the attached  
plan, you have allowed offensive matter to run or flow onto the above named  
highway from your premises.

Please ensure that, within 14 days of receipt of this letter, the offensive matter  
is cleansed from the highway and that the situation will not arise in future.

Please contact .....on the telephone  
number at the top of this page as soon as possible to discuss how this matter  
may be remedied.

A failure to comply with this request or a failure to carry out any agreed works  
may lead to the County Council considering taking further action against you.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*





Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**HIGHWAYS ACT 1980, SECTION 164  
NOTICE TO REMOVE BARBED WIRE**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on .....  
revealed that at point(s) ....., as marked on the attached  
plan, barbed wire has been erected on land adjoining the above named right  
of way and the County Council consider that the presence of this wiring is a  
nuisance to users of the highway.

Please ensure that, within 1 month of receipt of this letter, the barbed wire is  
removed or altered so as not to cause such a nuisance.

Please contact .....on the telephone  
number at the top of this page as soon as possible to discuss how this matter  
may be remedied.

A failure to comply with this request or a failure to carry out any agreed works  
may lead to the County Council considering taking further action against you.

Yours *faithfully / sincerely*\*

For Executive Director for Communities

(\*Delete as appropriate)





**Document 22 – Wildlife & Countryside Act 1981, Section 59  
Keeping of Certain Bulls in Fields with Public Access**



Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**WILDLIFE & COUNTRYSIDE ACT 1981, SECTION 59  
PROHIBITION OF KEEPING CERTAIN BREEDS OF BULL ON LAND CROOSED BY  
A PUBLIC RIGHT OF WAY**

**PARISH – RIGHT OF WAY & No.**

An inspection of the above numbered right of way on ..... revealed that in the enclosure highlighted on the attached plan, a bull was being kept in contravention of the above named legislation.

Please ensure that the bull is removed from the enclosure immediately.

A failure to comply with this request within 7 days will lead to the County Council considering taking further action against you.

If you need to discuss this matter with an officer of the County Council please contact .....on telephone number 01522 782070.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*



Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**LINCOLNSHIRE COUNTY COUNCIL  
RE: PARISH – RIGHT OF WAY & No.**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISION) ACT 1976 –  
SECTION 16**

**REQUISITION OF INFORMATION**

**TAKE NOTICE** that, pursuant to the provisions of section 16 of the Local Government (Miscellaneous Provisions) Act 1976, the above mentioned authority requires you to state in writing the nature of your interest in the above land or premises.

You are also required to state in writing the name and address of any other person known to you as having an interest in the said land or premises, as freeholder, mortgagee, lessee or otherwise, or who receives rent for the land.

A form is attached hereto on which the information required may be given by means of your replies to the questions set out therein. No covering letter is necessary.

As set out at the end of the attached form **IT IS A CRIMINAL OFFENCE TO FAIL TO COMPLY WITH THIS NOTICE.**

The purpose(s) for which such information is required is/are set out overleaf.

Yours *faithfully / sincerely*\*

For Executive Director for Communities

*(\*Delete as appropriate)*



Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**PARISH – RIGHT OF WAY & No.  
RE: ALLEGED BREACH OF SECTION (insert section) HIGHWAYS ACT 1980**

I am a ..... with the Highways Authority of Lincolnshire County Council and I am the officer responsible for rights of way in this area. As you are aware I have been recently investigating an alleged breach/alleged breaches by you of the above legislation.

As part of the investigation into the matter, so that we can ascertain all the relevant circumstances, we would be grateful if you could contact the department on the above number to arrange a date and time when it would be convenient for you to attend at our office for a formal interview. This interview will be under caution and will be governed by the Codes of Practice under the Police and Criminal Evidence Act 1984.

Your attendance at such an interview would be purely voluntary and you would be free to leave at any time.

Should you be willing to attend we would be grateful if you could notify our office, when making the appointment, if you have difficulty with understanding English as a spoken language or if you are deaf or hearing impaired, so that arrangements can be made in advance for a suitable interpreter to be present to assist you.

Further you have the right to take legal advice about this matter and to have a legal representative present during any interview that takes place.

I would be obliged if you could reply within 14 days of the date of this letter. If I do not hear from you within that time I will assume that you do not wish to comment on the allegation.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*



Please reply to:

Your Ref:  
My Ref:  
Date:

Tel No: 01522 782070  
Email: Highways@lincolnshire.gov.uk

**RECORDED DELIVERY**

Dear .....

**PARISH – RIGHT OF WAY & No.**

**RE: ALLEGED BREACH OF SECTION (insert section) HIGHWAYS ACT 1980**

As you are aware the Highways Authority of the Lincolnshire County Council have been investigating an alleged breach/alleged breaches by you of the above legislation. This investigation has now been completed and I am satisfied that a case suitable for prosecution has been made out.

Having reviewed the matter, on this occasion, the Authority is minded to offer you the opportunity of dealing with this matter by means of a formal caution(s). This is offered as a direct alternative to prosecution in the criminal courts. Should you wish to take up this method of disposing of the matter then you will need to contact my office on the above telephone number for arrangements to be made for the caution(s) to be formally administered. If a caution is given then there will be no prosecution on this occasion and this will be an end to the matter.

I must warn you that a formal caution can be cited in a criminal court should you be prosecuted in the future for similar matter. If you have not already done so, I would advise you to consider obtaining independent legal advice about this matter.

I enclose herewith draft copies of the proposed caution(s). I would be grateful if you could reply to this letter within 14 days. If I have not heard from you in that time I will assume that you do not wish to deal with the matter in this way and will forward the file to the County Council Legal Office for consideration of the commencing of criminal proceedings by way of prosecution.

Yours *faithfully / sincerely\**

For Executive Director for Communities

*(\*Delete as appropriate)*





## CAUTION

NAME:

ADDRESS:

DATE OF OFFENCE:

PLACE OF OFFENCE:

BRIEF CIRCUMSTANCES OF OFFENCE

### DECLARATION

I hereby declare that I admit the offence described above and agree to accept a caution in this case. I understand that a record will be kept of this caution and that it may influence a decision to institute proceedings should I be found to be infringing the law in the future. I further understand that this caution may be cited should I subsequently be found guilty of an offence by a court of law.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Head of Highways (xxxxxx)



**NOTICE TO PERSON WHO'S INTERVIEW HAS BEEN TAPE RECORDED**

This notice explains the use which will be made of the tape recording and the provision for access to it by the defence in the event of you being informed that you will be prosecuted. You will be required to sign this notice when it is handed to you.

**GENERAL**

The interview has been recorded on two tapes. One of these has been sealed in your presence and will be kept securely in case it is needed for court.

The other tape will be a working copy to which the interviewing officers and the defence may have access. Both tapes contain devices against tampering.

If you do not have a solicitor now, you may wish to consider whether you should seek legal representation. If you wish to remain unrepresented, you will be given access to a copy of this tape.

**COPY TAPES**

Your interview was recorded on      tape(s).

If your solicitor (or yourself if you do not seek legal advice or representation) wishes to obtain copies of the tape(s) send your application in writing to:

Legal Services Lincolnshire  
Lincolnshire County Council  
County Hall  
Newlands  
Lincoln

**Please quote the following reference number in any correspondence:**

Tape Ref. No.

Interviewing Officer

Name of Person Interviewed

Date

Signature

Copy tape(s) will be sent to your solicitor/you by means of recorded delivery if specifically requested.





**STATEMENT OF**

**ADDRESS**

**DATE OF BIRTH**

**DATE**

I,....., wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something that I later rely on in court. This statement may be given in evidence.

**Signed**.....

**Statement taken by**.....

**Signed**.....



**STATEMENT OF**

**ADDRESS**

**DATE OF BIRTH**

**DATE**

**I make this statement of my own free will. I understand that I do not have to say anything but it may harm my defence if I do not mention when questioned something that I later rely on in court. This statement may be given in evidence.**

**Signed.....**







**STATEMENT OF A WITNESS  
(CJ ACT 1967, S9; MC ACT 1980, S102; MC RULES 1981, R-70)**

**In the Norbury Magistrates Court**

**STATEMENT OF JOHN ANDREW SMITH**

**Age of witness: Over 21**

**Occupation of witness:**

**Address: Lincolnshire County Council, County Offices,  
Newland, Lincoln**

---

**This statement (consisting of ... pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.**

**Dated the ..... day of ..... 20xx**

**Signed.....**

---

1. I am employed as a \_\_\_\_\_ in the Communities Directorate of Lincolnshire County Council.
  
2. Public Footpath (PF) No. 73 in the Parish of Scarby is recorded on the Definitive Map and Statement held by Lincolnshire County Council. The County Council has a duty to keep such documents under section 53 of the Wildlife and Countryside Act 1981. Also by virtue of section 56 of this Act this is conclusive evidence of such a right of way in this location. A copy of an extract of the Definitive Map and Statement for the parish is exhibited hereto and marked "JAS 1". Public Footpath No. 73, Scarby is highlighted thereon. The Definitive Statement does not mention a given width and in such cases a public footpath is subject to the minimum width set out in Highways Act 1980 Schedule 12. For a cross-field footpath this is set at 1metre. The Council has a duty under section 130 of the Highways Act 1980 to assert and protect the rights of the public to their use and enjoyment of the highway.

Signed: .....

**STATEMENT OF A WITNESS - CONTINUATION SHEET**

**(CJ ACT 1967, S9; MC ACT 1980, S102; MC RULES 1981, R-70)**

**CONTINUING STATEMENT OF:            JOHN ANDREW SMITH**

3. Following a written report from a member of the public received on the 25<sup>th</sup> May 2011 I inspected PF73 on 4<sup>th</sup> June 2011 and found that the route was obstructed by a crop of wheat in contravention of section 137A of the Highways Act 1980.
  
4. A number of photographs were taken during my inspection of and these are exhibited hereto and marked "JAS 2". The individual photographs are numbered and an extracted of the Definitive Map displayed alongside so as to locate the approximate position and direction the photograph was taken.
  
5. From the southern end of the path from Corwell Road, Scarby photographs a-d relate to that section of PF73 affected by the crop in contravention of section 137A of the Highways Act 1980.
  - a) From Corwell Road looking in a northerly direction. Signpost located at the junction of PF73 and Corwell Road clearly indicating the presence and direction of the right of way. The line and minimum width of 1metre of the footpath is not evident through the crops.
  
  - b) From the middle of the field looking in a northerly direction showing the obstruction of the footpath by the crop.
  
  - c) From the middle of the field looking in a southerly direction showing the obstruction of the footpath by the crop.

Signed: .....

**STATEMENT OF A WITNESS - CONTINUATION SHEET**

**(CJ ACT 1967, S9; MC ACT 1980, S102; MC RULES 1981, R-70)**

**CONTINUING STATEMENT OF:                    JOHN ANDREW SMITH**

- d) From the northerly field boundary looking in a southerly direction. The waymarker post clearly indicates the definitive line of the footpath although it is not apparent across the field as the right of way is obstructed by crops.
6. On 5<sup>th</sup> June 2011 a Formal Notice was sent by Recorded Delivery to the landowner Mr. F. Armer outlining the offence committed under section 137A of the Highways Act 1980 and providing a timescale within which he may resolve the matter himself, being within 15 days of the date of the Notice. The Notice is exhibited as “OTW 3”.
7. On 21<sup>st</sup> June 2007 I re-inspected the public footpath but found that the situation remained as photographed on 4<sup>th</sup> June 2011.
8. On 25<sup>th</sup> June 2011 I delivered, by hand, a further notice requesting the removal of the crop from the line and width of the public right of way within 24 hours, also indicating that Lincolnshire County Council would undertake such works as necessary pursuant to Schedule 12A of the Highways Act 1980 to ensure the clearance of the crop from the line and maximum width of the public footpath (1.8 metres) should the work not be carried out by Mr. Armer. I was accompanied on this occasion by Mr. Walter Alker, a Senior Rights of Way Officer for Lincolnshire County Council. Mr. Armer accepted service of the notice whilst on his premises. Mr. Armer also signed a certificate acknowledging receipt of the notice which is countersigned by both myself and Mr. Alker. The Notice and certificate of receipt are exhibited as “OTW 4” and “OTW 5” respectively.

Signed: .....

**STATEMENT OF A WITNESS - CONTINUATION SHEET**

**(CJ ACT 1967, S9; MC ACT 1980, S102; MC RULES 1981, R-70)**

**CONTINUING STATEMENT OF:                    JOHN ANDREW SMITH**

9. Having had no confirmation of compliance from Mr. Armer I re-inspected the public footpath on 27<sup>th</sup> June 2011 but found that the situation remained as photographed on 4<sup>th</sup> June 2011.

10. I instructed the County Council's direct labour organisation to undertake clearance of the crop to the maximum width allowed under Schedule 12A of the Highways Act 1980, being 1.8m along the line of the public footpath and as laid out in the Definitive Map and Statement. This work was completed on 28<sup>th</sup> June 2011.

Signed: .....

## **APPENDIX E**

### **PACE INTERVIEW GUIDANCE**

#### **What Basics do I need in Place to conduct an Interview?**

- **Interview Room** – You need somewhere away from other people where a private interview can take place and you will not be interrupted.
- **Tape Machine** – Although interviews can be recorded by way of a contemporaneous note the consensus is that wherever possible interviews should be tape recorded. This removes any argument that the content of what was said has been changed by the interviewing officers.
- **Sealed Tapes** – The tape machine used is one into which two tapes are entered. These should be sealed tapes that are unwrapped in the presence of the interviewee. Take plenty of tapes into the interview with you to make sure you have spares should you need them.
- **A Copy of the PACE Code of Practice** – An up-to-date copy of the PACE code must be available at all offices where interviews take place and the interviewee must always be offered the opportunity to consult the code. This can be obtained from HMSO Stationers.
- **Your Paperwork** – Make sure you are aware of the facts of the case and have relevant information with you to refer to in the interview, such as any witness statements you have taken and any correspondence that have been sent. Also take an interview plan in with you (see later notes on interview technique).
- **Notice for the Interviewee re Accessing a copy of the Tape** – At the end of the interview the interviewee must be given a notice explaining how they can access a copy of the tape. Have one ready to hand over and a copy for our file (see Appendix G Doc 4).

#### **What to Consider before starting the Interview**

- If anyone appears to be under 17, they shall be treated as a juvenile for the purposes of the Code in the absence of clear evidence that they are older. In such cases the juvenile cannot be interviewed unless an **appropriate adult** is present in the interview.
- If an officer has a suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to the dispel that suspicion, the person

shall be treated as such for the purposes of the code and shall not be interviewed without an **appropriate adult** being present.

- If a person appears to be blind, seriously visually impaired, deaf, or unable to read or speak or has difficulty orally because of a speech impediment, they shall be treated as such for the purposes of this code. Such persons may require the help of an interpreter or the assistance of somebody who works with the visually impaired.
- If a person informs you that they do not speak any or much English, or it appears to you that this is the case, then it will be necessary to arrange for an interpreter to be present in interview.

## **Appropriate Adults**

*A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult.*

The Appropriate adult means in the case of a:

(a) Juvenile:

- The parent or guardian.
- PACE provides in the alternative for the presence of a social worker, but as it also provides that the appropriate adult should not be an employee of the interviewing body, this would not be an option as all social workers are going to be County Council employees.

(a) A person who is mentally disordered or vulnerable.

- A relative, guardian or other person responsible for their care or custody.
- Someone experienced in dealing with mentally disordered or mentally vulnerable people, who is not a County Council employee. The local police should have a list of people who are approved as appropriate adults in these circumstances.

The appropriate adult should be somebody who has no involvement whatsoever, in the investigation/proceedings that are the subject of the interview.

The appropriate adult should be present during all dealings with the interviewee and no interview should take place without the appropriate adult being present. The appropriate adult should be informed that they are not expected to act simply as an observer and the purpose of their presence is to:

- Advise the person being interviewed.
- Observe whether the interview is being conducted properly and fairly.
- Facilitate communication with the person being interviewed.

This should be said to them at the outset of their involvement and a written record made that this was said. They can also be reminded of this in your preamble to the taped interview.

## **Interpreters**

You as the interviewing officer are responsible for making sure that appropriate arrangements are in place for the provision of suitably qualified interpreters for people who do not understand English or are deaf.

*A person must not be interviewed in the absence of a person capable of interpreting if:*

- (a) They have difficulty understanding English;*
- (b) The interviewer cannot speak the persons own language;*
- (c) The person wants an interpreter present.*

If a person appears to be deaf or there is doubt about their hearing or speaking ability, they must not be interviewed in the absence of an interpreter unless they agree in writing to being interviewed without one.

Where a foreign language interpreter is used in a tape recorded interview then everything the interviewer says must be interpreted by the interpreter and the responses by the interviewee interpreted back into English by the interpreter.

Where a hand written record of interview is being taken then the language interpreter should be asked to take a written note of the interview at the time in the language of the interviewee and certify its accuracy. This should then be retained in case there is a need to call the interpreter to give evidence.

Where the interviewee is deaf or hearing impaired and the interview is being tape recorded then a written note of the interview must also be taken at the same time as the tape recording so that the person who is deaf or has impaired hearing has equivalent rights of access to the full interview as those without hearing impairment.

## **Right to Legal Advice**

*All persons must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone.*

*A person who asks for legal advice should be given an opportunity to consult a specific solicitor or another solicitor from that firm. An officer must not advise the suspect about any particular firm of solicitors.*

*Whenever a person exercises their right to legal advice by consulting or communicating with a solicitor, they must be allowed to do so in private. This right to consult or communicate in private is fundamental and this fundamental right to communicate in private should also be applied to telephone communications with the solicitor.*

## **Remember:**

- No officer should at any time, do or say anything with the intention of dissuading an interviewee from obtaining legal advice.
- A person who wants legal advice should not be interviewed or continue to be interviewed until they have received such advice.
- A person who has consulted a solicitor shall be entitled on request to have the solicitor present when they are interviewed.
- A person is not obliged to give reasons for declining legal advice and should not be pressed to do so.

The solicitor can be a solicitor holding a current practice certificate, a trainee solicitor or an accredited representative. Their role is to protect and advance the legal rights of their client and on occasion this may require the solicitor to give advice that has the effect of the client avoiding giving evidence that strengthens a prosecution case. The solicitor may intervene in order to seek clarification, challenge an improper question to their client or the manner in which it was put, advise their client not to reply to particular questions, or if they wish give their client further legal advice.

## **What to do when your Interviewee First Arrives for Interview**

Remind them that they are attending the interview voluntarily to assist with an investigation and may leave at will.

Remind them of their right to legal advice and note their response. Make a note that you have done this.

Make your assessment of your interviewee:

- Are they or do they appear to be a juvenile?
- Does the interviewee appear mentally impaired or vulnerable?
- Do they have a proper understanding of English?
- Are they deaf or hearing impaired?

## **The Interview**

An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences and must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of the offence that is under investigation.



## **Remember:**

- If you are interviewing more than one suspected offender they **must be interviewed separately**.
- Do not discuss anything to do with the case before the formal interview, during any breaks in the interview or after the interview. All discussion about the details and facts of the case must take place and be recorded as part of the formal interview.
- When conducting an interview do not say anything to the interviewee that can be viewed as an inducement for the interviewee to co-operate with you.
- Do not do or say anything that is oppressive or threatening.
- If during interview the interviewee decides they want legal advice stop the interview straightaway so that this can take place, even if this means arranging a further interview for another day.
- Do not attempt to conduct an interview with anyone who appears to be unfit to be interviewed because they are unwell, drunk, under the influence of drugs or mentally unfit to be interviewed. Record your reasons for refusing the interview and if appropriate offer an alternative appointment.
- If at any time during the interview the interviewee indicates that they want to stop the interview and leave, comply straightaway. The interviewee is not under arrest and free to leave at any time and any attempt to prevent this could be viewed as false imprisonment!

## **Interview Technique**

### **Purpose**

The purpose of the interview is the questioning of a person regarding their suspected involvement in a criminal offence or offences. This must be done under caution.

Remember that a suspect has a right to remain silent, but this does not prevent you from putting to the questions outlining the elements of the offence and any specific allegations.

No interviewer may try to obtain answers or elicit a statement by using oppression.

No interviewer shall indicate by word or deed (i.e. offer an inducement) the action likely to be taken by them if the interviewee co-operates with them.

The interview should cease once the interviewing officer is satisfied that:

- a) All the questions that they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect; this includes allowing the suspect to give an innocent explanation and asking questions to ascertain if the explanation is accurate and reliable.
- b) Has taken account of any other reliable evidence.
- c) The officer in the case reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for the offence if that person was prosecuted for it.

In other words do not ask the same question over and over again where a suspect has given you an answer and does not shift from it. You can point out any weakness or inconsistencies in that answer and ask them to comment, but you must then move on. To question someone at great length, by going back over the same questions repeatedly can be viewed as oppression.

## **How to Conduct a Good Interview**

Best practice suggests that there should be two interviewers. One as the main interviewing officer and the other making notes and raising questions about any anomalies that they spot in the interviewee's account.

Before the interview begins make sure you have a sound knowledge of the case you are interviewing about.

Gather together all the things you need for the interview:

- Blank tapes (including extra sets)
- Your crib sheet.
- Your plan for the interview
- Notice to the defendant about the tapes.
- Draft statement forms
- Writing paper and pens
- All documentation/evidence that you want to put to the interviewee.

**Plan** your interview.

- Think about what the elements of the offence are that you need to prove and what questions you need to ask to prove it.
- Look to see what possible issues there are in the case and think about what you want to ask.
- Look at the physical evidence you have such as witness statements and correspondence and decide what order to produce it to the interviewee in and what you want to ask.
- If you are aware of any explanation that the interviewee is likely to give, what are your concerns about this explanation and how can you couch your concerns in a question.
- Write down a rough draft of your interview and take it in with you and refer to it as an aide memoir.

- If you are the second interviewer, you also need a good knowledge of the case and to have discussed with your colleague how they intend to approach the interview. Go in with a pen and paper and listen and write down any additional pointers that you can use to interject as questions at an appropriate moment or to use to pass discrete notes to your colleague.

**Remember this is your interview and you need to take control. If the interview gets out of control or you feel that no thing of any further use can be achieved take control by bringing it to an end using the procedure on your crib sheet.**

### **The Caution**

A person who there are grounds to suspect of an offence must be cautioned before any questions about it are put to him/her regarding his/her involvement or suspected involvement in that offence, if his/her answers or his/her silence may be given in evidence to a Court in a prosecution.

A person need not be cautioned when questions are put simply to establish identity or ownership (e.g. of land)

The caution is as follows -

**“You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”**

### **The Interview**

An interview is the questioning of a person regarding his/her involvement in a criminal offence(s). Interview records must be maintained in accordance with Code C - 11.5, which states -

- (a) an accurate record must be made of each interview
- (b) the record must state the place of the interview, the time it begins and ends, details of all persons present and time of the caution
- (c) the record must be made during the course of the interview

## Tape Recorded Interviews:

- When the interviewee is brought into the interview room the interviewer shall without delay but in the interviewee's sight, take the wrapper off of two new tapes and load them into the tape machine and set it to record.
- State that the interview is being tape recorded.
- Introduce themselves for the tape (if two interviewers both should identify themselves) giving your name and what you are e.g. Waste Enforcement Officer for Lincolnshire County Council, based at the Lincoln Office.
- Ask everyone else present to identify themselves for the tape – do not identify them yourself, it is important from the point of voice recognition that they introduce themselves.
- State the date, time of commencement and place of the interview.
- State that the interviewee will be given a notice at the end of the interview about what will happen to the tapes.
- Remind the interviewee that they have attended the interview voluntarily and are free to leave at any time.
- Remind the interviewee of their right to obtain legal advice.
- **Caution the defendant: *'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.'***
- Ask the interviewee whether they understand the caution and if they do not explain it until they indicate they do understand.
- Explain what the interview is about e.g. this interview is being conducted in respect of an allegation that between the dates of you..... Again ensure the interviewee understands this.
- Again confirm the interviewees name, address and date of birth and conduct your interview.

**Note: The caution should be given on all occasions when a person is informed they may be prosecuted.**

## End of Interview – When you have concluded your taped interview:

- Indicate to the interviewee that you have finished your questions and give them the opportunity to add or clarify anything they want to say.
- Ask the interviewee if they wish to make a written statement and take that statement and read it back to the interviewee with the tape running (see post).
- Indicate on the tape that you are now bringing the interview to an end and give the time and state that you are switching off the tape and then do so.
- Remove both the tapes from the machine and seal them in the presence of the interviewee. One is sealed as a master copy and the other as a working copy.

- The seals should be completed with the name of the interviewee and an identifying number. Once the seals have been placed round the tapes they should be signed by all the persons present.
- Hand to the interviewee a copy of a notice explaining how they can obtain a copy of the tape and retain a copy of that notice for your file.
- Keep your own written note of all the times for commencing and finishing the interview.

**Tapes to be handed over to the Legal Office for preparation of tape summaries and accompanying statements and for retention and storage purposes.**

**Changing Tapes** – When the recorder shows that the tape only has a short time left, the interviewer should tell the interviewee that the tapes are coming to an end and round off that part of the interview. If you do need to leave the room to get fresh tapes do not leave the interviewee unattended. Remove the old tapes and seal them in the sight of the interviewee and sign them as you would at the end of the interview.

Then insert the new tapes after unwrapping them in front of the interviewee. Switch the tape on and explain that this is a continuation of a tape recorded interview with the interviewee and again outline the offence under investigation and remind the interviewee that they are still under caution and repeat the caution before recommencing the interview.

**Breaks in interview** – Try and avoid unnecessary breaks but if it is a short break where you remain in the interview room then:

- Explain on tape why you are breaking and give the time before switching off the tape.
- When you recommence again give the time and explain the reason for the break and ask all present to confirm their agreement.
- Before recommencing the interview remind the interviewee that they are still under caution and repeat the caution.

If the break involves the suspect leaving the room then follow the same procedure of explaining the break but then follow the procedure for the end of interview and remove and seal the tapes. The interview when recommenced will have to be on new tapes. You again follow the procedure for the start of a new interview and explain that this is a continuation of the preceding interview where a break took place and again give the reason for the break and get all parties to agree.

**Failure of Recording Equipment** – If there is an equipment failure which can be rectified quickly e.g. by inserting new tapes, the interviewer should follow the same procedure as when changing the tapes but explain on the old and new tapes (if possible) why this is being done. If, however, it is not possible to continue recording on the tape recorder and no replacement recorder is available my advice is that best practice would be to suspend the interview

until another date when equipment is available, unless this proves totally impractical and then consider proceeding by way of a written record.

If one of the tapes snaps during interview follow the procedure for changing tapes and seal the snapped tape as the master copy and retain the unbroken tape as the working copy.

**Remember that once the master copy has been sealed this cannot be opened unless done following set procedure in the presence of a County Council solicitor.**

## **Written Interview Records**

This is a less satisfactory way of recording an interview as it is slow and far more open to challenge than the interview that is tape recorded.

If you have to record an interview in writing remember:

- The record must state the time and place of interview and identify all persons present. You must also record all breaks and the time the interview ends.
- The interview procedure in terms of explaining the allegation to the interviewee, reminding them of their freedom to leave, right to legal advice and administering the caution are the same as in a taped interview.
- Any written record must be made and completed during the interview, unless this would not be practicable (I can think of no reason this would apply when we interview) and should still take place in a designated interview room at the offices of the County Council.
- Thus the written record should be a contemporaneous, verbatim account of the interview taking place.
- The interviewee should be given the opportunity, at the end of the interview, to read the record and sign it as correct or to indicate how they consider it inaccurate. If the interviewee cannot read it should be read to them and they should be then asked to sign it as correct. If they refuse to sign this should be recorded at the foot of the interview by the senior interviewer, as should any reason given for not signing.
- All other persons present should be given the opportunity to read and sign the record as being an accurate one. The interviewing officers should also sign it.
- Use words such as 'I agree this is a correct record of what was said' followed by a signature and indication of who the person signing is e.g. the interviewee Mr John Green or Mr Green's Solicitor etc...

- Everything said in the interview should be recorded verbatim, even if it is an unsolicited comment.

## **Written Statements Under Caution**

As stated earlier everyone who is interviewed must be offered the opportunity to make a written statement about the allegation they face and this can be done at the end of each interview and should be included on the tape or written record. This should be done in every interview, even if the interviewee has exercised their right to remain silent.

If the interview is tape recorded and the interviewee indicates that they wish to make a written statement this should be done with the tape running.

The statement can be dictated to the interviewing officer and this is preferable, but if the interviewee wishes to write their own statement this must be allowed. Have handy some blank standard form statements.

See Appendix G (Doc 6) – Standard form statement where statement dictated to interviewer

See Appendix G (Doc 7) – Standard form statement where statement written by the interviewee.

If the statement is dictated to the interviewer it must be take down as the exact words spoken by the person making the statement and must not be edited or paraphrased, although questions can be asked to make it more intelligible these and the answers given should be included in the statement.

When the statement is completed the maker should be asked to read it (or if they cannot read it should be read to them) and make any alterations or additions (which should be signed).

At the end of the statement they should then write or have written for them:

*'I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will'*

**PACE INTERVIEW DRAFT CRIB SHEET**

Unwrap new tapes in view of interviewee and insert in machine.

*'This interview is being tape recorded. The date is ..... and the time is..... and we are in an interview room at.....'*

*'I am (name) and job title and my colleague is.....'*

Second interviewer introduces themselves.

Ask everyone in the room to identify themselves for the tape.

*'You will be given a notice at the end of the interview which explains what the tapes are used for and how you can access a copy of the tape'.*

*'I must now remind you that you have attended this interview voluntarily and that you are free to leave at any time'.*

*'You have the right to access legal advice and to arrange to have a legal representative present during the interview'.*

If no legal representative present go on to say *'do you wish to exercise that right or are you happy for the interview to continue'?*

*'I am now going to caution you and it is important that you listen carefully'*

***'CAUTION 'You do not have to say anything. But it may harm your defence if you do not mention when questioned something you later rely on in court. Anything you do say may be given in evidence.' 'Do you understand'?***

If the answer to this is 'no' then explain the caution in simple terms until the interviewee intimates that they understand.

*'The purpose of today's interview is to discuss the allegation that between.... and.....you breached Section            of the Highways Act 1980 in that you.....'*

*13. Here is where you begin the body of your interview and establish the elements of the offence and put to the interviewee any correspondence or other physical evidence, such as photographs, that you wish to produce in the interview*



**END OF INTERVIEW** – *‘I have now asked all the questions I wish to put to you. Is there anything you (the interviewee) would like to add or clarify before the interview comes to an end’?*

*‘You may, if you wish, make a written statement about the allegations that have been put to you today. This can be dictated to us or if you prefer you can write it yourself. The tape would be left running whilst this is done. Do you wish to make a written statement?’*

If the interviewee wishes to make a statement this can be dictated to you or written by the interviewee using the appropriate statement form. Leave the tape running whilst this is done and invite the interviewee to read the statement (or read to them if they cannot) and make any corrections or alterations that they wish... The following words must appear at the end of the statement *‘I have read/had read to me the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will’*. Then get the interviewee to sign and date the statement.

*If nobody has anything they wish to add I intend to bring the interview to an end and switch off the tape. The time is now.....’*. Switch off the tape and remove the tapes. Seal the master tape and complete the labels on both tapes and ask everyone present to sign them.

Complete the notice re access to the tapes by filling in the relevant information, keeping a copy for our file and give a copy of the notice to the interviewee.