

PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY

STATEMENT

Introduction

There are over 7400km of Public Rights of Way within Cumbria made up of Public Footpaths, Public Bridleways and Byways Open to All Traffic. There is a statutory duty imposed under Section 130 of the Highways Act 1980 for the County Council to “*assert and protect the rights of the public to the use and enjoyment of*”, and “*prevent so far as possible, the unauthorised stopping up or obstruction of*” all these public rights of way.

The aim is to ensure that all Public Rights of Way remain in a safe and usable condition. When enforcement problems occur, the County Council will use advice, persuasion, direct action and/or prosecution proceedings to resolve them. Our intention is to ensure that advice and persuasion are the methods used in the vast majority of cases.

To avoid the occurrence of enforcement problems, advice will be given; practical assistance and guidance to help landowners and occupiers comply with the law.

This document gives an explanation of relevant concepts and background and concludes with a formal statement of the County Council’s Policy.

Enforcement action is the general term used in this document to cover the range of options including negotiation and advice, direct action to remove obstructions itself and the taking of other legal action up to and including prosecution.

Principles

There are four basic principles which underline this policy. These are:

- 1 **Extent** - relating the enforcement action to the seriousness of the breach. Some incidents have the potential to place the public's health and safety at risk, others interfere with people's enjoyment and rights and the service's ability to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach of the law.
- 2 **Incidence** - taking a similar approach in similar circumstances. This does not mean uniformity of action. When assessing a breach Officers will need to exercise their professional discretion taking into account all the relevant factors of the case. Such relevant factors might include the seriousness of the breach, the impact or potential impact on the public, the attitude of those responsible for the breach and the history of previous breaches.

- 3 **Transparency** - ensures that those against whom enforcement action is taken are aware of the legislative requirements and aware of the likely consequences of non-compliance. Distinction will need to be made between statutory requirements and what is good practice or desirable but not compulsory. Transparency should aid those being regulated in complying with statutory requirements and minimise the need for further enforcement action. Where enforcement action is required an explanation (usually in writing) will be given of why that action is necessary and when it must be carried out.
- 4 **Targeting** – ensuring that enforcement action is directed primarily to where the risks or impact on the public is greatest. Action will be focused on those directly responsible for the breach and who are best placed to control it. Prioritisation will be based on a number of factors including assessment of risk, impact on the public and complaints from the public.

Scope of the Policy

Enforcement will be considered wherever appropriate statutory powers exist to deal with actions or inactions that may lead to risks to the health and safety of the public or to their rights being infringed. The main areas to which this Policy applies are listed below.

- A. Obstruction or unauthorised stopping up of the public right of way
- B. Restoration of public rights of way lawfully ploughed but not reinstated
- C. Unlawful ploughing or disturbance of the public right of way
- D. Crops inconveniencing use of the public right of way
- E. Unlawful deposit of materials or structures in the public right of way
- F. Misleading notices on or near to a public right of way
- G. Vegetation overhanging a public right of way
- H. Barbed wire likely to cause a nuisance to users of a public right of way
- I. Inadequate or unauthorised stiles and gates on public rights of way

Other nuisances, obstructions and offences will be dealt with in a comparable manner according to the circumstances of the case.

Courses of Action

There are several possible courses of action available depending upon the nature of the offence.

- 1 **To Give Advice** - Advice may be given when it is considered that the infringement is of a minor nature, and the Council is confident the owner or occupier involved will take the required corrective action. The owner or occupier will be requested to take appropriate remedial action within a given time period depending upon the circumstances of the case.
- 2 **Written warning** - Given by Cumbria County Council, this may be appropriate for trivial matters, first offences and reminders where prosecution could result in adverse publicity or prove not to be effective use of officer time.
- 3 **Enforcement Notices** - A formal Notice may be served if an offence has been committed and where a request to take remedial action has failed. Such Notice may include provision for the Council to take direct action to remove obstructions or nuisances or to deal with the appropriate restoration of paths and to recover its costs.
- 4 **Caution** - A formal Legal Caution may be used where there is evidence of an offence having been committed and the person responsible for the offence has admitted it. They may be used where there is reason to believe that remedial works will be carried out. Where a formal caution is issued the offender will be required to sign the caution. As it entails an admission of guilt by the person responsible a record of the caution will be held on file, and may be referred to if the person is convicted at a later date of a further offence.
- 5 **Prosecution** - In some circumstances the Council in consultation with its partners will prosecute if it believes it to be in the public interest to do so. Certain offences require the service of a Notice, before an application can be made to the Magistrates Court for an order to remedy the problem.

Whilst the Council would normally commence an Enforcement Action by *Giving Advice* and only escalate to a more severe course of action if that was unsuccessful, it will reserve the right to issue an *Enforcement Notice* or instigate *prosecution proceedings* immediately where it is appropriate to do so. This may be considered justified if the breach was particularly serious or the offender had a history of similar offences.

Prosecutions will normally be a last resort but remain an important part of the enforcement process. In cases where there is sufficient evidence, the Council will prosecute suspected offenders if there are grounds for believing that the offence is likely to be continued or repeated and where it is appropriate to deter others.

Each case will be considered on its merits taking into account all the circumstances and in accordance with the Code of Practice for the Crown Prosecution Service.

Prosecution may be considered appropriate where there is sufficient evidence and prosecution is in the public interest. In addition prosecution may be more rather than less likely where one or more of the following applies:

- There is a significant risk to public safety
- There is a flagrant breach of the law, or if notice had been given that legal proceedings will be considered for future breaches.
- There has been a failure to heed advice or instructions or take corrective action.
- There is a history of infringements by the defendant.
- Is a conviction likely to result in a significant fine or other penalty?
- Is the Offence widespread within the Council area?

Each case will be subjected to an ongoing process of review to ensure the level of enforcement action continues to be appropriate. Once the Council decides to prosecute, it will proceed without undue delay.

Prioritising Enforcement Work

There are a significant number of unresolved obstructions to the Public Rights of Way network. Whilst only a small number seriously impact on the public's enjoyment of the network, it is important that all these issues are addressed so that users and landowners/occupiers have certainty about the extent of the public's rights. As a consequence it is necessary that a system of prioritising the enforcement work is in place.

In some cases, as time passes it may become progressively more difficult to secure the removal of an obstruction. Officers retain discretion to deal with "new" obstructions immediately, regardless of the above prioritisation, where it is considered an effective use of resources. This applies to all seasonal obstructions. Alternatively, "new" obstructions may be placed at the top of the "Routine Obstructions List" where that is more appropriate.

<p>Priority Obstructions</p>	<p>Obstructions where one or more of the criteria set out in Policy EP2 are met. These obstructions will be dealt with as a matter of urgency</p>
<p>Routine Obstructions</p>	<p>Obstructions which do not meet the criteria set out in Policy EP2 but which nonetheless may have a negative impact on the public trying to use the path. These obstructions will be added to a “Routine Obstructions” list and dealt with in chronological order of receipt as and when resources allow.</p>
<p>De Minimis Obstructions</p>	<p>Obstructions which appear negligible in their impact on the public. These will be recorded on file and actioned when resources are available. Resolution of the issue will be sought if an opportunity arises, for instance if the obstructed path is identified on a search in the process of the sale of the surrounding land, if development is proposed for the affected land.</p>

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POLICY EP1

Wherever obstructions or other breaches of relevant legislation are identified or notified, Cumbria County Council will utilise its various powers and where necessary its enforcement powers to remedy the problem.

POLICY EP2

In dealing with enforcement cases, priority will be given to cases where, one or more of the following criteria are met:

- 1 The continuation of the obstruction provides an unacceptable health and safety risk;
- 2 The resolution of the obstruction will provide a significantly enhanced Public Rights of Way network;
- 3 The obstruction adversely affects a promoted route or National Trail;
- 4 A significant number of valid complaints have been received about the obstruction from a variety of independent sources.

POLICY EP3

In pursuing an enforcement case, the Council will follow a fair and reasonable process to try to remove the obstruction(s), with the aim of resolving the problem at the earliest possible stage. The following sequence of steps will be adopted:

- (i) advice
- (ii) written warning
- (iii) enforcement notice
- (iv) legal caution
- (v) prosecution

The inspection of obstructions and the initial stages of advice and notification will follow an agreed stepped process as set out in Annex 1.

POLICY EP4

The Council will issue an Official Legal Caution where the process of inspection and notification fails and the obstruction(s) remains. The Council will take no further action where the landowner agrees to such a caution and clears the obstruction(s). The Council will consider the use of prosecution powers where the landowner refuses the caution, and consideration as to whether this is in the public interest.

Proceedings for a prosecution will follow an agreed process as set out in Annex 2

Annex 1 – Process for inspection and notification

- 1** On identifying the obstruction the landowner or occupier of the land will be contacted verbally within ten working days, and given a period of between five and twenty eight days to remove the obstruction.
- 2** The notice period given to remove the obstruction will be commensurate with its nature and scale (e.g. a locked gate would be required to be opened up within five days, whereas replacing / installing a new gate would be given twenty eight days). Determination of this period of notice will be made in a fair and reasonable manner by the inspecting officer.
- 3** The site will then be re-inspected within a further ten days of the expiry of the notice period in question to see if the obstruction has been removed.
- 4** If the obstruction is then cleared, a letter will be sent thanking the landowner or occupier of the land for their prompt action and seeking assurance it will not happen again.
- 5** If the obstruction is not cleared, a letter will be sent stating the nature of the offence and highlighting the time scale in which the obstruction must then be removed.
- 6** The timescale given for its removal will depend upon the nature of the obstruction, and will be assessed by the Countryside Access Manager in consultation with the inspecting officer. A building or structure across the Public Rights of Way for example would be given a greater period of time for removal than a lesser obstruction which could be removed quickly.
- 7** Re-inspection will be undertaken within twenty eight days after the timescale determined for removing the obstruction.
- 8** If the obstruction is cleared a letter will be sent to the landowner, as per action 3 above, and if not the matter will proceed to legal caution and possible prosecution as per policy EP4 and the procedure laid out in Annex 2.

Annex 2 - Process for Prosecution Procedures

- 1** The Council will issue an Official Legal Caution served by the Countryside Access Manager where the process of inspection and notification fails and the obstruction(s) remains. Instructions will be given to consider the case for a prosecution, and a case file assembled containing documented copies of the action taken so far.
- 2** The litigation lawyer will undertake a review of the file and law relating to the case. Potential offence(s) will be identified and reported to the client. The Countryside Access Manager will take legal advice as to whether to pursue the use of prosecution powers. This will be presented to the Head of Transport & Spatial Planning and the relevant Cabinet Member who will determine whether to go ahead with a prosecution. If a prosecution proceeds then the following steps 3, 4, 5 and 6 will be taken.
- 3** A letter will be sent to the potential defendant serving notice. Proofs of evidence will be taken from witnesses.
- 4** Relevant information will be laid in the Magistrates' Court. A summons and evidence will be served on the defendant.
- 5** Attending Court. If the defendant enters a plea of guilty the case will be disposed of by presentation of the facts, mitigation by defendant and decision on the penalty by the Magistrates. If a not guilty plea is entered the case will be adjourned to a Case Management Hearing when issues are disclosed between the parties, witnesses listed, time estimate agreed and trial date fixed.
- 6** Trial. It is envisaged a one-day trial would be dealt with in-house and that counsel would be instructed for lengthy trials