



# RIGHTS OF WAY

# ENFORCEMENT PROTOCOL



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## 1. INTRODUCTION

- 1.1 As highway authority, the county council has a statutory duty under the Highways Act 1980 to assert and protect the rights of the public to use and enjoy Staffordshire's 4,510 kilometres of public rights of way. Appendix 1 sets out the numerous pieces of legislation available to the council to enforce this.
- 1.2 Enforcement of the Highways Act 1980 is specifically governed by the Regulators' Compliance Code, issued by Central Government. This document has been written in compliance with this Code, which can be found in Appendix 2.
- 1.3 Legislation imposes certain responsibilities on land managers regarding the safety and availability of rights of way running across their land. The legislation<sup>1</sup> makes various types of actions to obstruct a right of way or deter the public from using it, a criminal offence.
- 1.4 On agricultural land from 1<sup>st</sup> January 2005, existing Common Agricultural Policy subsidy payments were replaced with one single payment scheme. To qualify for this payment, land managers must meet a range of 'Good Agricultural and Environmental Condition' standards, known as 'cross compliance', which includes protecting rights of way. Please see <https://www.gov.uk/guidance/guide-to-cross-compliance-in-england-2016/gaec-7b-public-rights-of-way>
- 1.5 The council recognises that most land managers want to comply with the law and it will endeavour to work with them to achieve this. But it will, where necessary, use its enforcement powers to ensure that rights of way are open and available.
- 1.6 While it will make all reasonable attempts to resolve problems without recourse to the courts, the council may make use of its legal powers appropriate to each case, including prosecution, serving notice or taking action under common law, to remedy rights of way offences.
- 1.7 Enforcement of public rights of way can be undertaken in a variety of different ways. No one way will suit all occasions and it is important the council retains the ability to select the most appropriate method depending on the nature of the offence.
- 1.8 The main objectives of this protocol are to:
  - Provide a fair and transparent service to the public in terms of dealing with breaches of legislation, thereby ensuring that rights of way remain open and available for public usage.
  - Ensure that complaints about such breaches are dealt with efficiently and effectively, and complement the existing route hierarchy.
  - Promote proactive compliance with the relevant legislation whilst retaining the ability to undertake appropriate enforcement action where necessary.
- 1.9 The purpose of this document is to set out how the county council will approach the enforcement of its duties, having due regard to the principles of good enforcement practice, set out in section 2.

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<sup>1</sup> Mainly under the Highways Act 1980, but also under the Rights of Way Act 1990, the Countryside and Rights of Way Act 2000, the Wildlife and Countryside Act 1981, and the National Parks and Access to the Countryside Act 1949.

- 1.10 This document applies to any land manager with rights of way running across their land. For the purpose of this document, land managers include farmers, landowners, tenants and occupiers, householders, businesses and developers.
- 1.11 It is the responsibility of land managers to ensure their agents and contractors understand and comply with rights of way law when working on their land.
- 1.12 Whilst the council will be the organisation that will ultimately take action, issues do not necessarily have to be verified by a council employee. Photographic evidence and a written statement (including measurements) from parish councils, user groups, volunteers and members of the public will be considered if this expedites the process.
- 1.13 This document and the methodology contained within it will be subject to periodic review and amendment.

## **2. GENERAL PRINCIPLES OF GOOD ENFORCEMENT**

### **2.1 Openness** – The council will:

- Make certain that those who are faced with enforcement action are fully informed of what is required of them to comply with the relevant law.
- Provide information and advice in plain language.
- Make the persons or body responsible aware of the potential consequences of their failure to comply with the law.
- Ensure that any deadlines are reasonable and clearly set out, what the action is intended to achieve and why it is necessary.

### **2.2 Helpfulness** – The council will:

- Take the view that prevention is better than cure and will work, as far as the law allows and where co-operation is given, with land managers so that they can meet their legal obligations without unnecessary expense.
- Aim to achieve compliance by being open and helpful, offering informal advice and providing the opportunity to discuss compliance matters.
- Offer both practical assistance and guidance wherever requested or needed.
- Work with organisations representing land managers to ensure that information is disseminated.
- Inform the users of the network of their responsibilities and rights. It will advise the public of good practice and appropriate guidance when using the rights of way network.

### **2.3 Consistency & Proportionality** – The council will:

- Carry out our duties in a fair, equitable and consistent manner as far as possible.
- Use its knowledge and judgement in assessing each case to determine the appropriate mechanism to reach a satisfactory conclusion. This will allow officers a degree of discretion, taking into account the facts particular to each case. This will include the offence's impact, the public's health and safety, the person or responsible body's stance or attitude, and any pertinent history of past offences.
- Take into account the costs of compliance, by ensuring that any enforcement action taken, or remedial action required, is proportional to the risks posed, the severity of the offence, the public benefit, and cost implications on the public purse.

2.4 **Prioritisation** – The council will:

- Target enforcement action in direct proportion to where the risk to, or impact on, the public is greatest or poses a more serious risk to health and safety (for more information – see below).

2.5 **Confidentiality** – The council will:

- Not inform enquirers regarding the action against a land manager nor will it reveal the identity of any enquirer to a land manager, unless required to do so by legislation or court order.

### 3. TYPES OF INFRINGEMENT

3.1 There are three main types of infringement committed on rights of way in Staffordshire. They are:

- a) Disturbance of the surface of a right of way without lawful authority or excuse.
- b) Obstructing a right of way.
- c) Failure to maintain a structure across a right of way which is the land manager's responsibility.

3.2 These infringements are reflected in the types of breaches of cross compliance outlined in Defra's Cross Compliance Handbook 2015 (Good Agricultural and Environmental Condition 7B) that is found in Appendix 3.

**a) Disturbance of the surface of a right of way without lawful authority or excuse, including interference by ploughing and crops**

3.3 It is an offence to disturb the surface of a right of way without lawful authority or excuse. The Highways Act 1980 (as amended by the Rights of Way Act 1990) allows the ploughing or other disturbance of the surface of a cross-field footpath or bridleway, but only if it cannot be reasonably avoided.

3.4 This right does not apply to:

- Cross-field paths that can be conveniently avoided.
- Any field edge (headland) paths.
- Any part of a byway or restricted byway, regardless of where it runs.

3.5 Where a land manager exercises this right, they must restore the surface to a condition 'reasonably convenient' for the designated use within 14 days of the initial disturbance or 24 hours of any subsequent disturbance.

3.6 The rights of way must be restored and made apparent on the ground to at least its minimum width, and remain convenient to use at all times. Unless the width is definitively known (i.e. it is included in the Definitive Map and Statement), the minimum width that must be restored is set out in the table below.

	<b>Footpath</b>	<b>Bridleway</b>
Cross-field	1m	2m
Field-edge	1.5m	3m

3.7 Land managers wishing to carry out works that would disturb the surface of a right of way other than by ploughing or certain other agricultural operations, must first seek consent from the council. Please be aware that the extent and type of work will need to be submitted, together with a specification of the proposed new surface. Any works may also require a temporary path closure.

#### **b) Obstructing a Right of Way**

3.8 There is no right to obstruct or otherwise deter the use of a right of way. Examples of rights of way infringements where the county council can take action include:

- Crops obstructing a right of way.
- Construction of ditches and other excavations which disturb or obstruct a right of way.
- Soil and other materials deposited on the right of way.
- Allowing overhanging vegetation or the planting of trees and hedges to restrict use of a right of way.
- Deterring use of a right of way by the public e.g. verbally or by misleading signs.
- Electric and other fences obstructing a right of way.
- Structures constructed across or affecting a right of way.
- Barbed wire alongside a right of way.
- If animals of certain breeds are kept in fields crossed by public rights of way.

3.9 Where a crop, other than grass, has been sown or planted on any agricultural land, the land manager must take steps, as and when necessary, to make sure that:

- The line of the right of way is apparent to anyone wishing to use it.
- The right of way remains convenient to use at all times.

3.10 Crops that 'fall-in', such as oil seed rape, should be cleared beyond the minimum width for the right of way (see table above) to ensure that the minimum width is clear at all times.

3.11 Land managers who need to clear ditches or carry out an engineering operation on agricultural land which affects a right of way must contact the county council.

3.12 The county council may authorise structures (e.g. gates) to control the movement of animals on agricultural land, and for the breeding and keeping of horses. Land managers should contact the county council for further details.

3.13 In order to meet requirements of disability legislation, the county council makes every effort to ensure that, as far as is reasonably practicable, rights of way are barrier free. When approving an application to install a new structure, the county council will try to authorise the least restrictive option whilst also taking into accounts the needs and concerns of the land manager.

#### **c) Failure to maintain a structure across a path which is the land manager's responsibility**

3.14 By law land managers are required to maintain any structure (e.g. stiles, gates, or kissing gates) that crosses a right of way in a safe condition, ensuring that they are easy to use.

3.15 Although the maintenance of stiles and gates is the responsibility of the land manager, for many years the council has provided (and if necessary, installed) free

stiles and gates as an incentive to remove unlawful obstructions. Once installed, the land manager assumes the responsibility for their future maintenance.

- 3.16 Footbridges and bridle bridges are normally the responsibility of the county council. Bridges that provide vehicular access are normally the responsibility of the land manager. Land managers should contact the county council for clarification on specific structures.

**Advisory note:**

Where land managers experience nuisance or anti-social activities (e.g. fly tipping or abandoned vehicles) on a right of way they should contact their borough or district council. For misuse of a right of way (e.g. motorbikes using bridleways), they should contact the local police.

#### **4. ENFORCEMENT POLICIES & PROCEDURES**

- 4.1 Each offence and the appropriate mechanism for dealing with the infringement will be considered having regard to the statutory provisions available to the council as well as its duties and powers under common law.

##### **Prevention through education**

- 4.2 The council will endeavour to provide free and relevant information to land managers through seasonally produced reminders, incorporating examples of best practice. It will also undertake media campaigns in both the local and trade press, and provide advice on the council's website.

##### **Phased Approach - Informal and Formal Action**

- 4.3 The council will adopt a phased approach to enforcement, involving both informal and formal action, but it reserves the right to take formal proceedings immediately where it is appropriate to do so.
- 4.4 The council reserves the right to report incidents to the Police and other bodies in order that they may take action. The type of enforcement action taken will primarily be a managerial decision in each case but factors which would influence our decisions are described below.

##### **Informal Action**

- 4.5 The council recognises that many cases of infringement result from a lack of knowledge about the law or the whereabouts of the line of the right of way on the part of the land manager. For these reasons, the council will always seek to resolve the majority of cases through conciliation rather than through more formal enforcement. However, conciliation may not be appropriate in certain cases and more formal enforcement, leading to prosecution, may be initiated immediately in these cases. It should also be noted that conciliation is not an opportunity for protracted discussion or negotiation.
- 4.6 In almost all situations, informal action will be considered in the first instance (other than ploughing and cropping offences). Informal action will normally be used in the following situations:

- a) Where the land manager should be given a reasonable opportunity to comply with the law. This usually, but not always, applies to people with whom the council has had no previous dealings.
  - b) Where the council considers the offence to be of a minor or “de minimis” nature and there is not likely to be any formal action taken. Officers will take into account recent case law and other appropriate guidance in their assessment.
  - c) Where the offence is not a deliberate action. For example, this may result from a misunderstanding or where the county council, itself, has “discovered” evidence that the route may have been erroneously recorded on the Definitive Map and Statement of Public Rights of Way.
  - d) Where the council considers the offence does not cause any real disruption, inconvenience or nuisance to the public’s usage and can be dealt with in a reasonable timescale and does not require immediate action.
- 4.7 In these situations and assuming the land manager is not previously known to have been an offender, the council will endeavour to make contact either in person, by telephone or by letter to discuss the most appropriate means of resolving an issue. This communication will involve, explaining what is wrong, what is required to put things right and the timescale for the work to be completed in accordance with the requirements of the legislation governing the offence. The letter will also make the land manager aware of the repercussions if they fail to comply, including a more formal approach being adopted.
- 4.8 The length of time specified for carrying out any remedial work will be dependent on a number of factors, including the nature of the offence, the ground conditions and the time of year.
- 4.9 Failure to carry out the works within the specified timescale may result in a more formal approach being taken.

**Formal Enforcement Action**

- 4.10 Unfortunately, despite the best efforts of officers, some land managers do not heed or respond to an informal approach. Also there may be certain circumstances where formal enforcement action may be initiated in the first instance. This will primarily be a managerial decision but will be made having regard to:
- a) Where the land manager has been given a reasonable opportunity to carry out the remedial works and has failed to do so.
  - b) Where the offence poses a risk to the public’s health and safety.
  - c) Where the offence is a deliberate action.
  - d) Where the offence is causing significant disruption, inconvenience or nuisance to the public’s usage.
  - e) Where there is a past history of offences.

## **Enforcement Notice**

- 4.11 In these situations and where the legislation permits the serving of a formal enforcement notice will be served by the council. The notice may be accompanied by a Notice served under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 to confirm the identity of the land manager. A copy of a Section 16 notice can be found in Appendix 4.
- 4.12 The formal enforcement notice will specify the work required to remedy the problem within a specified time limit. Deadlines will be in line with legislative requirements, but additional time may be given at the discretion of officers. A letter will accompany the notice, which will clearly explain why the notice is necessary and what action will be taken if it is not complied with, including a referral to the Rural Payments Agency regarding a lack of compliance with General Agricultural and Environmental Condition No. 7B. The letter will also explain the consequences of not returning any Section 16 Notice served. The letter and notices will be sent recorded delivery.
- 4.13 Failure to comply with the formal enforcement notice can result in the council carrying out the necessary works and recovering all the associated costs from the land manager. This will also be stated in the letter.

## **Prosecution**

- 4.14 Prosecution is usually viewed as a last resort and will only be considered when all other attempts to secure compliance have failed. The council reserves the right to take this action where it is considered appropriate to do so. Before deciding whether to pursue a prosecution, the council will consider several factors, including:
- The severity of the offence i.e. is the offence potentially dangerous and is there a significant risk to public safety?
  - Is there a history of repeat or similar offences?
  - Is the land manager willing to prevent a recurrence of the problem and co-operate with officers?
  - Is it in the public interest to prosecute?
  - Is it in the public interest to prosecute immediately?
  - Is there a realistic prospect of conviction?
  - Would any other action be more appropriate or effective?
  - Where a Notice has been served under Section 16 of the Local Government (Miscellaneous Provisions) Act 1972 requiring information as to land ownership and it has not been returned despite a reminder to do so.
  - Is a conviction likely to result in a significant fine or other penalty?
  - Is the offence widespread within Staffordshire?

## **Specific procedure for ploughing and cropping offences**

- 4.15 In order to develop and maintain good working relationships with land managers, the council will contact organisations, groups and bodies representing land managers and those land managers who have committed ploughing and cropping offences in the previous three years, on an annual basis to remind them about their legal obligations and statutory obligations.
- 4.16 A generic ploughing and cropping leaflet will be designed to assist land managers. It will explain the legal requirement to keep public rights of way open and available after ploughing and cropping. If followed, the guidelines contained in the leaflet will help prevent damage to crops and help create a good impression of the agricultural

community with the public. The council will ask the NFU and CLA to endorse and promote the leaflet amongst their membership.

4.17 The failure to reinstate paths following ploughing and cropping is a perennial problem, with some land managers being repeat offenders. With this in mind, the council has developed specific measures depending on whether it is:

- The first infringement
- The second infringement within three years
- A persistent offender

#### **First Infringement**

4.18 Where the council has not contacted a land manager previously or within the last three years regarding a ploughing or cropping offence, the council will contact them in writing immediately after the offence has been verified, providing a full explanation of their legal obligations and responsibilities, including the reinstatement works required and by when (i.e. 14 days).

4.19 On expiry of the 14 days, a re-inspection will be carried out and if it is found that the path has been satisfactorily reinstated, no further action will be taken for that season.

4.20 Failure to reinstate the path within 14 days will result in a formal notice being served. The notice may also be accompanied by a notice served under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 to confirm the identity of the land manager.

4.21 Failure to comply with either of these notices will be grounds for considering prosecution, after all of the circumstances outlined in paragraph 4.14 have been considered.

4.22 If following a first offence, a land manager commits no further infringements over the next three years, any subsequent infringement will be regarded as a first offence. For example, if a land manager commits an offence in May 2005 in year 1, then an offence committed in September 2008 would be treated as a first offence if there has been no interim infringement by that land manager. In the same situation, an offence committed in April 2008 would be treated as a second offence and dealt with accordingly.

#### **Second Infringement within Three Years**

4.23 Where a land manager has been contacted and committed an offence within the last three years, a formal enforcement notice may be served immediately after the offence has been verified, giving them 14 days for the necessary work to be carried out. This notice may be accompanied by a Notice served under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 to confirm the identity of the land manager.

4.24 On expiry of the 14 days, a re-inspection will be carried out and if it is found that the path has been satisfactorily reinstated, no further action will be taken for that season.

4.25 Failure to comply with either of these notices may be grounds for considering prosecution; after all of the circumstances outlined in paragraph 4.14 have been considered.

## **Persistent Infringements**

- 4.26 In the event of persistent infringements i.e. where a land manager has been contacted annually over the past three years, then a formal notice giving up to 14 days and no less than 24 hours will be served.
- 4.27 Failure to comply with this notice may lead to prosecution, after all of the circumstances outlined in paragraph 4.14 have been considered.

## **5. ALTERNATIVE COURSES OF ACTION**

### **Use of Public Path Orders**

- 5.1 Some obstructions on the right of way network may be longstanding and of such nature that enforcement action may be costly, inappropriate or of no public benefit if pursued. For example, where a building has been constructed over a right of way for many years and an alternative route has been used by the public without any detriment. In these cases, a diversion of the right of way may be a more appropriate and efficient course of action. This does not imply that the council intends to overlook such obstructions because it is too difficult to take direct action or prosecute offenders.
- 5.2 The use of public path diversion orders to overcome a longstanding obstruction problem will largely be a managerial decision in each case and will only be considered in the specific circumstances detailed below:
- The obstruction is longstanding for which the timescale will be judged on the circumstances of each case.
  - A suitable alternative route exists which meets the criteria laid down in the Highways Act 1980 for diverting public rights of way.
  - There is no alternative viable option.
- 5.3 In these circumstances and where a public path diversion order is considered to be the most acceptable way forward, then the council's normal Public Path Order procedures will apply, including the provisions for the recovery of the council's costs.
- 5.4 In the event of the Diversion Order being unsuccessful, the council will take the most action it deems fit to remedy the situation.

## **6. PRIORITISATION OF CASES**

- 6.1 Obstructions on the rights of way network vary in their level of impact. Whilst only a certain number of rights of way offences seriously impact on the public's enjoyment, the council recognises that all issues need to be addressed in time but prioritising them will result in a more effective use of finite resources, directing them to where need is the greatest.
- 6.2 With the exception of cases where the council has been served with a Form 1 Notice under Section 130A of the Highways Act 1980 to deal with an obstruction, the priority given to each case will primarily be a managerial decision and will be made in line with our agreed categorisation system where the timescales for dealing with issues varies according to the severity of the problem and the significance of the right of way in the wider path network. A Rights of Way Charter can be found in Appendix 5 and

details how the council will prioritise reported defects and subsequent enforcement action where required.

## **7. RECOVERY OF COSTS**

- 7.1 In the case of any enforcement action where the legislation permits the council to recover reasonable costs, those costs will be recovered to the fullest extent possible.

## **8. HOW WILL STAFFORDSHIRE COUNTY COUNCIL DEAL WITH CROSS COMPLIANCE?**

- 8.1 Where it is found that a cross compliance standard has not been met, and the breach is not of a technical or very minor nature, the Rural Payments Agency has a duty to apply a penalty to the single payment the land manager is receiving.
- 8.2 Where the council serves a legal notice, issues a conditional caution and/or commences a prosecution on a matter that is covered by cross compliance, the information will be copied to the Rural Payments Agency and further action may be taken by them.
- 8.3 Enforcement information copied to the Rural Payments Agency will include details of any action taken by the land manager to rectify the offence.
- 8.4 The Rural Payments Agency can apply flat-rate percentages of 1%, 3% or 5% for a first time negligent breach and a minimum of 15% for a first time intentional breach. A three and two times multiplier respectively is applied if a land manager repeats the same breach in a three year period. The penalties that would result from each of the various assessment permutations can be found in Appendix 6.
- 8.5 The flat-rate penalty is applied to Basic Payment Scheme and certain rural development payments claimed by the land manager in the year in which the non-compliance was found.
- 8.6 Where the Rural Payments Agency categorises the breach as 'Very Low', they will issue a warning letter.
- 8.7 It should be noted that not all land is subject to cross compliance.

## **9. HOW WILL THE COUNCIL DEAL WITH COMPLAINTS THAT ARE DEEMED VEXATIOUS, MALICIOUS, UNREASONABLE OR UNREASONABLY PERSISTENT?**

- 9.1 Issues identified on the network may not necessarily need to be verified by a council employee before the council takes information action. Photographic evidence and a written statement (including measurements) from trusted sources will be considered if this expedites the process.
- 9.2 This approach has the potential to being open to abuse by a small number of complainants with a grievance against the council or a particular land manager.

9.3 The council may decline to deal with complaints which it considered are vexatious, malicious or frivolous. A complaint may be considered to be vexatious when it may or may not be the latest in a series of requests and it:

- Clearly does not have any serious purpose or value.
- Is designed to cause disruption or annoyance, or gives rise to disproportionate inconvenience or expense.
- Makes excessive demands on the time and resources of staff whilst a complaint is being looked into e.g. excessive telephoning or sending emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses.
- Has the effect of harassing the council and/or its staff e.g. refusing to accept the council's decision – repeatedly arguing the point and complaining about the decision.
- Can otherwise fairly be characterised as obsessive or manifestly unreasonable.

A complaint may be considered to be malicious where:

- There is evidence of intention to do harm or mischief.
- It is reasonable to assume that the complainant intended to do harm or mischief.
- Malice may be implied where e.g. it is clear that no redress is sought.

A complaint may be considered to be frivolous where:

- It is clear that it is not serious or sensible in content, attitude or behaviour.
- There is an absence of clear desire for a sensible or reasonable form of redress.

9.4 The council may decline to deal with complaints from unreasonable and unreasonably persistent complainants. Whilst these complainants may have justified complaints or grievances, they are pursuing them in an inappropriate way. Alternatively, they may be intent on pursuing complaints which appear to have no substance or merit, or the Council will have already provided a full and final response to the concerns raised. The complainant's communication with the Council may be amicable but still place heavy demands on staff time.

9.5 The following identified actions and behaviours that can be demonstrated by an unreasonable or unreasonably persistent complaint are based on the Local Government Ombudsman Guidance Note on 'Unreasonably Persistent' complainants and 'Unreasonable Complainant Behaviour'.

- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Changing the substance of the complaint as the investigation proceeds or introducing trivial or irrelevant new information.
- Raising large numbers of detailed but unimportant questions and insisting that they are fully answered.
- Adopting a 'scattergun' approach: pursuing a complaint or complaints with the Council and, at the same time, with a Member of Parliament, a Council, the police, the Ombudsman, etc.
- Making unnecessarily excessive demands on the time and resources of staff whilst a complaint is being looked into.
- Submitting repeat complaints, after complaints processes have been completed, essentially about the same issues, with additions/variations which the

complainant insists make these 'new' complaints which should be put the full complaints procedure.

- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.

9.6 Where there is reason to believe that a complaint is vexatious, malicious or frivolous, or unreasonable or unreasonably persistent, the matter will be referred to Janene Cox, Commissioner of Culture and Communities who, with advice from the council's Complaints Manager and legal services where appropriate, may decide to reject the complaint without full consideration of its merits. Reasons will be given as to why the complaint is considered to be an abuse of process.

9.7 For further information, including how to appeal the above decisions, please refer to Staffordshire County Council's Corporate Complaints Procedure.

9.8 Other useful documents include:

- Staffordshire County Council's Policy on Unacceptable Behaviour
- Staffordshire County Council's Policy for Dealing with 'Unreasonably Persistent Complainants' and 'Unreasonable Complainant Behaviour'

## **10. FURTHER INFORMATION**

10.1 For more information, please email [rightsofway@staffordshire.gov.uk](mailto:rightsofway@staffordshire.gov.uk)