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PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY & PROCEDURE 2013

“Our duty is to protect and assert the right of the public to use and enjoy the Public Rights of Way network.”

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Equality and Diversity Statement

North East Lincolnshire Council is committed to the principles of equality and diversity as well as the elimination of discriminatory practices. These principles apply to the treatment of all individuals whether members of the public, PROW officers, other Council staff or volunteers.

This document together with any supporting procedures should be implemented in a non-discriminatory manner. Highways Officers administering the policy are responsible for ensuring that in its application, those to whom the policy applies shall not receive less favourable treatment because of their age, colour, disability, ethnic or national origin, gender re-assignment, marital status, nationality, race, religion, sex or sexual orientation.

Responsibility & Performance Reporting

North East Lincolnshire Council is the owner of the Public Rights of Way (PROW) Enforcement Policy and Procedure and the Strategic Director for Environment, Economy & Housing is responsible for ensuring it is implemented and for referring any proposed changes to the Procedure through the corporate decision making process for agreement.

This document links directly to the Rights of Way Improvement Plan (RoWIP) and the Key Actions contained therein, which can be viewed via North East Lincolnshire Council's website;

<http://www.nelincs.gov.uk/resident/transport--streets-and-parking/public-rights-of-way/public-rights-improvement-plan/>

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1 ABOUT THIS DOCUMENT

- 1.1 This document and its operational amendments serve to update the 2004 Enforcement Policy Document
- 1.2 **This document provides the primary source of guidance for officers pursuing enforcement action and any subsequent case referrals; and will ensure that Public Rights of Way enforcement is carried out in a fair and consistent manner across the Borough.**

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2 PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY

2.1 Public Rights of Way Officers carry out their duty to enforce the provisions within current legislation in respect of public rights of way on behalf of North East Lincolnshire Council.

2.2 The overarching duty is to safeguard the right of the public to the use and enjoyment of the public rights of way network that is of value:

- For utilitarian purposes, important in allowing people to go about their every day business;
- Recreational purposes, benefiting the health and well being of the public and of value to the tourist industry in North East Lincolnshire; being an important element in the support of many small local businesses.

2.3 Enforcement is carried out in a number of ways:

- Provision of advice for landowners/occupiers.
- Investigation of reports of obstruction, encroachment and nuisance in line with statutory duties and stated priorities for action.
- Working with partner organisations in the provision of information / evidence which allows for the effective delivery of their duties e.g. Police, Health and Safety Executive, Planning Authorities.
- Targeted enforcement campaigns, based on a need to deal with common breaches of specific legislation within a local area.

2.4 In our enforcement work we recognise the need for:

- **Courtesy:** towards all those we deal with
- **Consistency:** in our investigation of cases and interpretation of the law
- **Confidentiality:** both to those reporting offences and those who are subject to investigation, as described under the Data Protection Act 1998.
- **Impartiality:** in dealing with all our customers
- **Balance:** between the infringement and the course of enforcement action chosen.

2.5 **Protection of the PROW network and the resolution of infringements demand a four pronged approach; Prevention, Provision of Advice, Conciliation and Formal Enforcement.**

- **Prevention:** By far the most effective means of protecting the PROW network for public use is by the prevention of transgressions. This is achieved in several ways
- **Provision of free advice for landowners:** An advice document has been produced in conjunction with this policy (*“Landowners and Farmers Guide to*

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Public Rights of Way”) and is available as a PDF document for viewing on the Council’s website.

- **Conciliation:** Land ownership and use can change rapidly. It is recognised that many cases of infringement occur as a result of ignorance of the requirements of the law or the whereabouts of Public Rights of Way on the part of the landowner / occupier. The workload of individual officers may also demand a pragmatic approach be taken. For these reasons, officers initially seek to resolve the majority of cases through conciliation prior to formal enforcement being pursued.
- **Formal Enforcement:** Enforcement matters may be concluded in a number of ways. The decision to pursue enforcement and the nature of the action to be pursued should be made after two key elements have been considered:
 - Can the evidential requirements of the legislation covering the reported offence be met in full?
 - How the public interest is best served? The primary aim of enforcement is to have the public right of way open and freely available for the public.

2.6 The proportionality principle set out within the Government’s Enforcement Concordat will be taken into account when deciding which course of action to pursue: **“The action pursued should be balanced, reasonable and commensurate to the scale of the offence.”** The Enforcement Concordat was signed in 1998 by all local and national enforcers.

2.7 Consideration will be taken of the following factors when determining the appropriate course of action:

- **Provision of free advice for landowners.** An advice document has been produced in conjunction with this policy (*“Landowners and Farmers Guide to Public Rights of Way”*) and is available as a PDF document for viewing on the Council’s website.
- Whether the person committing the offence had any previous warnings or criminal record.
- Whether the evidential requirements of the legislation breached can be met in full
- The likelihood of the Courts to fine on conviction at the **upper end of the scale** for the offence.

2.8 Decisions taken in enforcement cases should be balanced, rational and robust in the face of scrutiny.

2.9 The following avenues are available when pursuing formal enforcement:

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- **Formal Notice:** This should be served as a prerequisite of enforcement action in all cases where conciliation has failed to resolve any infringement of PROW legislation.
- **Warning:** Where a matter is resolved on receipt of a Notice the responsible person may be warned as to their future conduct and responsibilities in respect of PROW.
- **Caution:** Where the evidential requirements can be met for a particular piece of legislation but it is not considered that it is appropriate to bring a prosecution the offender may be offered the option of a caution by the Enforcement Officer. Non acceptance of the offer of a caution will lead to the matter being placed before the courts.
- **Prosecution:** Where an infringement is serious in nature, the offender has previously been prosecuted or cautioned; or the offence is commonplace and the focus of enforcement action, prosecution will be pursued. Prosecution will be pursued in accordance with the code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985. The investigation of PROW offences will be conducted within the spirit of the Police and Criminal Evidence Act 1984, as amended 2007, and with due regard to the Human Rights Act 1998.
- **Direct Action:** In many cases of PROW infringement direct action should be considered along with other forms of enforcement action. This way, the path is made available to the public without the inevitable delays associated with court action. In all cases where direct action is pursued the full costs of that action should be reclaimed.

2.8 Path Re-instatement issues

- 2.8.1 The failure to reinstate paths following agricultural or other land management operations is a perennial issue, with some land owners being repeat offenders. This leads to disruption of availability of the network for legitimate users, and to valuable resources being re-deployed to undertake the necessary enforcement action. With this in mind the following measures have been introduced specifically to address this issue, and it should be recognised that conciliation is not considered appropriate in the case of repeat offences.
- 2.8.2 Following the formal adoption of this Public Rights of Way Enforcement Policy, on the discovery of an initial re-instatement offence (disregarding any previous offences prior to the above), officers will issue a warning letter enclosing an advice brochure (*“Landowners and Farmers Guide to Public Rights of Way”*) requesting that the right of way be reinstated within 14 days of the date of that letter.
- 2.8.3 Upon expiry of the 14 days, a re-inspection of path will be undertaken and if it is found that the path has been restored to a satisfactory standard, no further action will be taken for that season. However, if there is a continuation of the offence, or **if the landowner or occupier offends again within a five year period**, the Highways Authority will serve **a formal notice** giving 7 days for the situation to be rectified.

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- 2.8.4 A further continuation or a third offence within five years will result in a **second formal notice**, delivered by hand, **giving just 1 working day** in which to resolve the offence. This notice will stipulate that if by 3pm the next working day the serving officer has not been contacted, the Highway Authority will take the necessary steps to undertake default action and will recover any costs associated in doing so. At this time, the offence will also be brought to the attention of the Rural Payments Agency. The Highways Authority will also consider prosecution of the offender.
- 2.8.5 **For information:** Sections 131A, 134 and 137A of the Highways Act 1980 (as amended by the Rights of Way Act 1990) relate to the ploughing of headland paths, failure to reinstate and obstruction by crops.

There is an ongoing commitment within the Council, and its partner organisation Balfour Beatty, to the provision of training for officers to enable them to fulfill their roles in respect of the protection of the PROW network

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3 ENFORCEMENT PROCEDURE

3.1 Enforcement is a key element in the role of Public Rights of Way Officers. The prosecution of an individual is a serious business and demands the same level of professionalism as would be expected of other enforcement agencies such as Trading Standards, Environmental Health or the Police. It is also important that PROW Officers achieve the same levels of professionalism as other groups carrying out enforcement within the Council.

3.2 Stage 1: Review the path file

On investigating any report, however generated, the path file should be reviewed as a first step. The key elements officers should be seeking to establish are:

- Any Health and Safety Issues (violent offender, construction site etc);
- History of obstruction, nuisance or other offence; and
- In the case of an obstruction that is of longstanding and deeply involved, a review of the case file should be undertaken at an early stage and an objective decision reached as to how to progress the case.

3.3 Stage 2: Establish the offence

It is essential that in all cases a site inspection be carried out. A written record of the site inspection must be made in the officer's notebook either at site or as soon after leaving site as is possible. Best practice for the keeping of enforcement notes must be followed.

3.4 Stage 3: Conciliation

Conciliation is an opportunity to rectify a situation without recourse to the Courts or Direct Action. It is not an opportunity for negotiation or protracted discussion.

3.4.1 The following elements must be established and agreed with the landowner / occupier:

- An offence has been committed, and the nature of the offence.
- The action required to bring the highway back to the required standard.
- The time scale within which the landowner must act.
- That in the event that the action requested is not completed within the timescale given, that the matter will be pursued by appropriate legal action.

3.4.2 Conciliation would usually involve a face to face meeting with the landowner/occupier. (However, where a good relationship exists between officer and landowner a telephone conversation may well suffice). This must be followed up in writing to state the nature of the offence and the action required by the landowner to rectify the matter, and the timescale within which this action must be undertaken.

3.4.3 It must be borne in mind throughout the process that an Officer may have to provide evidence at subsequent Court or other Inquiry proceedings if Conciliation is unsuccessful.

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3.4.4 Accurate records of any contact must be made at the time of that contact (ideally in the PROW Officers note book).

3.5 Stage 4: Re-inspection

On re-inspection, if the offence is found to be continuing, a further note and evidence should be gathered as at stage 2.

3.5.1 If the requested action has been taken contact should be made to confirm the necessary work has been completed and to offer any advice that may be relevant in respect of future conduct, farming practice etc.

3.6 Stage 5: Case Review

The Mapping Officer and the Rights of Way Officer will review the case file. Where records are poor or incomplete or the evidential requirements of the appropriate Statute have not been met, the matter must be addressed quickly by the Rights of Way Officer. Guidance will be given by the Mapping Officer as to which elements need to be strengthened or what evidence needs to be gathered before the case may be progressed further.

3.6.1 Where the case review indicates an intractable or involved problem the Mapping Officer will place the matter on the Enforcement Schedule for resolution. Given the complex and therefore time consuming nature of the work involved in such cases, consideration should be given to the possibility of additional resources being deployed to avoid unduly protracted timescales for resolution of the case.

3.6.2 Where a case is accepted for further action it may be appropriate at this stage to make the person responsible for the offence aware that the matter is being referred to Legal Services with a view to taking further enforcement action. Where a case is to be added to the Enforcement Schedule, both the responsible landowner and local land charges office will be informed by the Mapping Officer.

3.7 Stage 6: Formal Notice and Further Evidence

Where it is considered necessary to bring a case before the Magistrates Court further evidence may be required to underpin the case. This will be gathered in line with stages 2 and 4, and, if required, any formal Notice(s) served requiring removal of the obstruction/cessation of the nuisance. Where there is compliance with the Notice, and further legal action is not deemed necessary, a warning/advisory letter will be issued in respect of future conduct.

3.8 Stage 7: Interview

Before proceeding further it may be appropriate to interview the party responsible for the offence. If this is required they will be contacted in writing and offered an interview (written or taped) under caution. The aim of the interview is to further establish that the evidence gathered is correct, and the relevant legislation therefore satisfied as well as drawing out any pertinent mitigating factors which will further guide the action taken next. The Mapping Officer, and another appropriately trained officer, will conduct

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interviews. If declined a series of written questions may be sent to the party responsible, under caution by the Mapping Officer.

3.9 Stage 8: Form of Action

At this point a decision is reached, by taking into account the enforcement policy, as to the appropriate course of action, which may include obtaining legal advice.

3.9.1 The options at this stage are:

- **Written warning.** This may be appropriate for trivial matters, first offences, where prosecution could result in adverse publicity etc.
- **Administer a formal caution** to the offender. If a caution is to be issued by the Rights of Way Officer then the same evidential requirements must be met as if the case were to be placed before the courts. A caution is a formal record of the offence and an admission on the part of the offender that they are guilty. If a caution is offered and declined then the matter must be placed before the courts.
- **Action through the Magistrates' Court** and/or
- **Direct action:** This may be appropriate where the strict evidential requirements demanded by the Court can not be met or the offence is in essence trivial and unlikely to draw a fine towards the top end of the applicable scale in the event of a prosecution. Direct action should also be considered alongside prosecution to ensure that the Public Right of Way is made available for public use. If it is not possible to reclaim the costs of direct action as part of any Court case then details of the full costs incurred should be passed to Finance for recharging, along with detailed reference to the files relating to the case by the case officer.

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4 IDENTIFYING LANDOWNERS AND OCCUPIERS

4.1 Ascertaining the identity of landowners and occupiers may be possible through the following means:

Confirming landowner/occupier details

To confirm the identity of the landowner/occupier it may be necessary to serve either/or:

- Notice requiring information under the provisions of Section 297 of the Highways Act 1980 regarding the ownership of the land (Appendix A1)
- Notice to obtain particulars of persons interested in land under S.16 of the Local Government (Miscellaneous Provisions) Act 1976 (Appendix A2)

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5 REFERRAL TO THE RURAL PAYMENTS AGENCY

- 5.1 The introduction of the Single Payment Scheme in January 2005 places a further onus on farmers to ensure Public Rights of Way (PROW) passing over land in their ownership or control are kept open and unobstructed to their full width. This requirement further reinforces existing legislation. **GAEC8 (Good Agricultural and Environmental Condition)**.
- 5.2 Cross compliance rules apply to landowners who receive direct payments under Common Agricultural Policy (CAP) support schemes or payments under certain Rural Development Programmes for England (RDPE) schemes. Payments may be reduced if landowners do not meet these rules.
- 5.3 Where reports of obstruction/nuisance have been investigated and substantiated by officers and evidence has been gathered (photographic and pocket book as a minimum), which results in a Notice being served, then the offence will be reported to the Counter Fraud & Compliance Unit at the Rural Payments Agency.
- 5.4 Landowners who do not meet a cross compliance rule through negligence, will generally receive reduced payments by 3% for each non-compliance. This may be reduced to 1% or increased to 5% depending on the extent, severity and permanence of the non-compliance. In limited circumstances a warning letter may be issued. Guidance on how a decision is made upon the extent, severity and permanence of a non-compliance can be found in the Cross Compliance Verifiable Standards For England document on the Rural Payments Agency website at rpa.defra.gov.uk/crosscompliance/inspectionprocess.

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6 REQUIREMENTS OF STATUTORY PROVISIONS

The table below sets out the Statutory Provisions available for commonly encountered issues.

Requirements Of Statutory Provisions		
Identified problem	Possible Remedy	Note!
Excavation across path/ damage to the highway,	Prosecution under HA 1980 section 131	No provision for the serving of a Notice. Not Required.
Things deposited so as to cause a nuisance or damage	Prosecution for damage under HA1980 section 131. Notice under HA1980 section 149	Section 149 HA1980 allows for the removal of things deposited without Notice if it ought to be removed without delay. If Notice is served and the thing not removed application must be made to the Magistrates' Court for a removal and disposal order.
Disturbance of the surface of a footpath/ bridleway or any other highway not comprising a carriageway	Prosecution under HA 1980 section 131A, Reinstatement utilising schedule 12A provisions within the same Act.	Check the provisions within HA1980 sec 134 & schedule 12A that would permit direct action, as they may be more relevant.
Ploughing of a headland	Prosecution under HA1980 section 131A Reinstatement under HA1980 section 131A & schedule 12A	Both courses of action are available and may be used in conjunction. The main consideration prior to serving Notice is how practical will direct action be? Access is available over land in the same occupation. Don't threaten direct action if it will be physically difficult to achieve.
Non-reinstatement of cross field paths	Prosecution under HA1980 section 134 Reinstatement under HA1980 section 134	Both courses of action are available and may be used in conjunction. The main consideration prior to serving Notice is how practical will direct action be? Access is available over land in the same occupation. Don't threaten direct action if it will be physically difficult to achieve
Obstruction of a Public Right of Way	Prosecution under HA1980 section 137 Notice to remove a structure under Highways Act 1980. (Min of 7 days Notice) section 143. (Min of 1 month Notice)	Section 137 HA 1980 no Notice period is required. However, we have to demonstrate reasonableness so a min of 7 days should be given, from the date of the Notice. Section 143 HA1980 requires a period of one month to be given if the cost of removal is to be recharged. Access is available only over the route of the PROW.

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Requirements Of Statutory Provisions		
Identified problem	Possible Remedy	Note!
Obstruction of a Public Right of Way (continued)	Notice to remove things deposited so as to be a nuisance (Highways Act 1980 section 149.)	Section 149 HA1980 allows for the removal of things deposited without Notice if it ought to be removed without delay. If Notice is served and the thing not removed application must be made to the Magistrates' Court for a removal and disposal order.
Obstruction by crops	Prosecution and or Notice under HA1980 section 137A	Direct action to remove the obstructing crop is available at expiry of the Notice within the provisions of HA1980 schedule 12A. Access is possible across land in the same occupation but requires Notice to be given 24 hours in advance stating the PROW, access route, machinery to be used and the date and time at which the power to enter becomes exercisable.
Bridlegates of less than 5 feet width	Notice under HA1980 section 145 (21 days)	There is no provision for taking direct action in default under section 145. Failure to comply with the Notice is reportable to the Magistrates' Court who may fine the person up to 50p/day there after.
Gate or stile out of repair	Notice under HA1980 section 146 (14 days)	Repair can be undertaken at the landowner's expense after the expiry of 14 days. As a matter of policy any repairs should comply with the British Standard.
Overhanging vegetation	Notice under HA1980 section 154, as amended by CROW 2000. (14 days)	Removal of overhanging vegetation is possible after the expiry of the Notice.
Barbed wire adjacent to a highway	Notice under HA1980 section 164 (1 month minimum 6 months maximum.)	There is no power of removal in the event a Notice is not complied with. Complaint must be made to the Magistrates' Court who may order the removal by the Authority. Consider at the outset the likelihood of persuading Magistrates that barbed wire is a nuisance.
Removal of signs which are both misleading and likely to discourage use.	Prosecution under NCPA 1949 section 57 National Parks Act.	The Magistrates' have the power to fine, order removal of the sign or both.
Bulls over 10 months of age unaccompanied by cows or heifers, or	Prosecution under WCA1981 section 59.	See Page 553 ROW A Guide to Law and Practice. 4th Edition.

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Requirements Of Statutory Provisions		
Identified problem	Possible Remedy	Note!
dairy bulls over 10 months of age in a field crossed by a PROW.		

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7 TAKING DIRECT ACTION

- 7.1 Within the Highways Act 1980 are a number of provisions which allow the Council, as highway authority, to take direct action to remedy problems on Public Rights of Way. In some cases these powers can be used in addition to a prosecution for an offence under the Act, but in other cases the relevant section contains only a direct action power, without a prosecutable offence being provided.
- 7.2 In all these cases, there also exists a power to recharge the reasonable expenses incurred in carrying out the direct action, or a proportion of them, to the occupier of the land concerned. In the event that the occupier fails to settle an invoice for such expenses, the Council is entitled to take action in the civil court for recovery of the amount as a civil debt.

7.3 Powers to take direct action

The Highways Act 1980 powers most likely to be required in PROW work are:

- S.131A Disturbing surface (power in Schedule 12A);
- S.134 Ploughing, etc (power in Schedule 12A);
- S.135 Works disturbing surface (power in Schedule 12A);
- S.137A Crop obstruction (power in Schedule 12A);
- S.143 Removal of structures;
- S.146(2) Repair of stiles;
- S.149 Removal of things deposited on highways;
- S.154 Cutting trees, etc overhanging or causing danger;
- S.165 Dangerous land adjoining street.

- 7.3.1 These powers vary in terms of: procedure, length of Notice required and conditions which need to be satisfied -- so it is important to read and carefully check the relevant section in each case to ensure that the proposed action is being taken in accordance with the law.

7.3.2 Preparation for direct action

Risk Assessment

- When Direct Action is contemplated, the situation must be carefully assessed to determine the level of risk likely to be incurred in dealing with the matter.
- The assessment could range from a firm belief that no difficulties are likely to be encountered to a well-founded expectation of violence or obstruction by a person opposing the proposed works. However, carrying out work against the wishes of a landowner always has the capacity for being contentious, and experience shows that it is unwise to assume that nothing untoward will occur. Precautionary steps should therefore always be taken to cater for any problems which might arise.

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Contractor

- The contractor should be selected carefully, and made fully aware beforehand of the work required, the location of the site and the identity of the landowner.
- Difficulties could arise if there is any kind of pre-existing business or other relationship between the contractor and the landowner concerned, or where the contractor might suffer loss of future business with other landowners in the area as a result of carrying out the Direct Action work. In appropriate cases, it may be desirable to engage a contractor from outside the area.
- The contractor should make a site visit with the officer beforehand, so that he can properly assess the work and the equipment required to carry it out. If a problem arose during an operation it would be unfortunate if the contractor needed to send for other equipment in order to carry out the work properly.
- Consideration should also be given to the contractor providing extra staff so that the work can be carried out as quickly as possible, so as to lessen the possibility of confrontation.
- Two Rights of Way Officers must be in attendance on site throughout the course of the Direct Action works.

Police Involvement

- The police should always be informed when direct action is to be carried out.
- Even in most circumstances, where serious difficulty is not anticipated and the attendance of police during works is not expected to be needed, a telephone call must be placed to Humberside Police (on 0845 6060222) in advance of attendance on site to inform them of the action to be taken.
- An incident reference number will be provided with advice to dial 999 if urgent assistance is required (the incident reference number must be quoted).
- On completion of the direct action Humberside Police should again be contacted, quoting the incident number so that they can close their records.
- It should be remembered that the police are not under any duty to ensure that the Council and its contractors can carry out the proposed direct action. However, if they are alerted to the possibility of a Breach of the Peace they can take action to maintain the peace, prevent a breach, or deal with a breach after it has occurred. In some circumstances, however, this could result in the Council and its Officers being advised not to carry out the proposed work, if, for example, the police could not be certain of containing the situation.
- For this reason, in any case where serious opposition is anticipated, detailed planning and consultation with police is essential.

*7.3.3 The guiding principle in all such planning must be that **nothing** the Highway Authority needs to do in respect of Public Rights of Way can justify the risk of officers, contractors or anyone else being subject to assault or other serious danger.*

7.3.4 General

- If necessary, a visit to the site should be made a day or two before the direct works are to be carried out, to ensure that access is available for vehicles and personnel.

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- A copy of the Formal Notice must be available on site when Direct Action works are undertaken.
- **It is essential that two officers attend any enforcement action**

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8. RECHARGING DIRECT WORKS

8.1 RECHARGING OF DIRECT ACTION AND OFFICER TIME IN PROW ENFORCEMENT CASES.

8.1.1 Direct action, as either part of a prosecution for the obstruction of a PROW or simply to open up the definitive route of the highway for public use where a prosecution has been discounted, is often the most appropriate and effective method of asserting the public's rights.

8.1.2 It is the policy of the Council to seek the full cost of any direct action taken, in pursuance of its duties and powers under the Highways Act and powers at Common Law, to remove obstructions from Public Rights of Way.

8.2 PROW Officer Rates.

8.2.1 The rate to be charged for officer time is to be determined from hourly rates current at the time, with parts of an hour calculated on a pro rata basis.

8.2.2 Time to be charged within any recharge is to include:

- the time required to produce the requisite Notices,
- **postage of Notices by special delivery,**
- time required for a site visit (in the event that the necessary work had not been undertaken),
- time required to arrange the direct action,
- all time required to supervise the direct action including travel time and travel expenses to and from site,
- time necessary to complete the paperwork to enable the costs of the action to be recharged plus,
- any other reasonable officer time or expenses accrued in pursuing the direct action. Officer time should be recorded in pocket books.

8.3 Contractor Rates

The full costs, including VAT of the contractor carrying out the work, are to be recharged (this should not include any work that would fall in the normal course of events to the Highway Authority).

8.4 Administration

A 12.5% administration charge will be added to the bill up to a cost of £125 to cover work in raising the necessary invoice and pursuing the debt.

8.5 Finance recovery

Invoice is raised via Ash Debtor System including breakdown of costs and applicable legislation used for enforcement action taken, and first reminder is issued giving 14 days to pay. These costs will include all costs associated with Direct Action taken such as contractor costings, police time (if applicable) etc.

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- 8.5.1 Should no monies be received, a second reminder is sent giving a further 14 days to pay. If debt continues, matter is passed to Court Enforcement Officer who then requests case file and forwards Pre-CCJ (County Court Judgment) letter to offender giving him / her 1 month to contact officer.
- 8.5.2 Further, non-payment will result in the completion of a Consideration Form by the Court Enforcement Officer, detailing any information gathered on offender and Court costs involved, with a recommendation from him/her as to whether the Council should or should not pursue the debt through the Courts.

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9. POCKET NOTE BOOKS

9.1 POCKET NOTE BOOK PROCEDURE

This section has been drafted in accordance with the Human Rights Act 1998 and the principles underpinning it. This section has also been drafted in accordance with the Race Relations (Amendment) Act 2000.

9.2 CONTENTS

- 9.3 Introduction
- 9.4 Procedure Details
 - 9.4.1 Possession of Pocket Note Books
 - 9.4.2 Purpose of Pocket Note Book
 - 9.4.3 Administration
 - 9.4.4 Responsibility

9.3 INTRODUCTION

This Policy and the supporting procedures set out the requirements for the issue, use, storage and disposal of Pocket Note Books (PNB).

9.3.1 The aims of this Procedure are to ensure:

- Members of the Rights of Way team are aware of their responsibilities in respect of the use of PNBs.
- Consistent standards are applied across the team.
- The information contained in PNBs is not compromised and that ethical recording standards are maintained.

9.3.2 The purpose of this procedure is to ensure that details of PROW officers' site observations, actions and conversations with landowners and others are clearly and accurately recorded, and can be readily retrieved.

9.4 PROCEDURE DETAILS

9.4.1 Possession of Pocket Note Books

- All rights of way officers when on duty.

9.4.2 Purpose of Pocket Note Book

- **Details required:**
 - a) The start of each duty should show DAY and DATE in BLOCK CAPITALS and underlined.
 - b) The full width of the page must be ruled off immediately after the last entry on a day of duty.
 - c) No erasures should be used, and any incorrect entry should be struck out by pen and initialled.

9.4.2.1 PNB's should be used:

- To record, at the earliest point, evidence and details of any incident that may result in criminal or civil proceedings. Entries in a PNB should be made at the time the event occurs or as soon as practicable afterwards.

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- As the first record of evidence. Officers must not use their own statements as the first record of evidence but should record the key points of any incident and any other details they feel may assist them to recall the circumstances of the event at a later date, in particular when they are giving evidence in court.
- To record information about an occurrence or event which the officer considers to be significant.
- As an aid to memory to assist officers to recall the circumstances surrounding events.
- By Operational officers to record their precise tours of duty.
- By officers to record details of incidental expenses.

9.4.3 Administration

Officers will retain their current and last two completed PNBs (if less than 2 years old). All other PNBs should be submitted to PROW Central Administration, where they will be stored until 2 years old. PNBs that are over 2 years old will be stored in alphabetical order at the central archive facility. Once the PNB's are over seven years old, they will be destroyed as confidential waste.

To ensure continuity throughout the PNB, officers should note rest days, leave or sickness

9.3 Responsibility

It is the responsibility of all officers to keep their PNBs updated.

Not Protectively Marked

Appendix A1 - SECTION 297 HIGHWAYS ACT 1980

Section 297 of the Highways Act 1980 states:

Power of Highway Authority or Council to require information as to ownership of land.

- (1) A Highway Authority or Council, may for the purpose of enabling them to discharge or exercise any of their functions under this Act, require the occupier of any premises any person who, either directly or indirectly, receives rent in respect of any premises, to state in writing the nature of his own interest therein and the name and address of any other person known to him as having an interest therein whether as freeholder, mortgagee, lessee or otherwise.
- (2) Any person who, having been required in pursuance of this section to give any information, fails to give that information, is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.
- (3) Any person who, having been so required to give any information, knowingly makes any mis-statement in respect thereof is guilty of an offence and liable:-
 - (a) on summary conviction to a fine not exceeding the prescribed sum within the meaning of Section 32 (9) of the Magistrates' Courts Act 1980 (£1,000 or such other sum as may be fixed by order under Section 143 (1) of that Act; or
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both.

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NORTH EAST LINCOLNSHIRE COUNCIL

PUBLIC RIGHTS OF WAY TEAM, HIGHWAYS & TRANSPORT DIVISION

To:

REQUISITION FOR INFORMATION

TAKE NOTICE THAT, pursuant to the provisions of Section 297 of the Highways Act 1980, NORTH EAST LINCOLNSHIRE COUNCIL (the Highways Authority) hereby require you WITHIN 21 DAYS of the date of Service of this Notice upon you, to state in writing the nature of your interest in the following premises:-**

Field outlined in red on the attached map extract; situated at

You are also required to state in writing the name of any other person known to you as having an interest in the said premises, whether freeholder, mortgagee, lessee or otherwise.**

Dated theday of200

Signed.....

For and on behalf of the Highways Authority

**** The word “premises” is defined as “indicated land and buildings” under Section 329 of the Highways Act 1980.**

A form is enclosed which may be used to supply the information required.

A copy of the full text of the relevant Act and Section is also enclosed for your information.

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INFORMATION REQUIRED

To: North East Lincolnshire Council

For the attention ofPublic Rights of Way Officer

In reply to your Notice, dated.....and pursuant to Section 297 of the Highways Act 1980 requiring me to give you certain information as to my interest of any other person regarding:

(14)

I hereby state that the answers to the questions set out in the Schedule hereto, comprise a true and correct statement of all the information required by the said Notice so far as the same is within my knowledge.

Date thisday of20

Signed:
Addressed:
.....
.....

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QUESTION	ANSWER
1. Full name and address of the occupier	
Full name and address of freeholder.	
Full name and address of any lessee or tenant	
If the premises are occupied under a lease or tenancy, please state for what period.	
(a) Full name and address of any person to whom rent is paid. (b) Is he the agent for another person? If so, state full name and address of that person.	
Full name and address of any mortgagee.	
Full names and addresses of any other persons having an interest in the premises. Please state nature of interest.	

Not Protectively Marked

Appendix A2 - LOCAL GOVERNMENT (Misc Prov) 1976 (includes Cross-Compliance Referral form)

Section 16, Local Government (Miscellaneous Provisions) Act 1976
Information required by North East Lincolnshire Council

To: [Enter Recipient's Name]

Date:

Re: [Enter Short Description Of Property]

TAKE NOTICE that, pursuant to the provisions of Section 16, Local Government (Miscellaneous Provisions) Act 1976 (as set out below), North East Lincolnshire Council hereby requires you to give in writing, within 14 days after the date on which this Notice is served, information relating to the above land or premises by means of your replies to the questions set out overleaf.

Strategic Director Environment, Economy and Housing

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976

Power of local authorities to obtain particulars of persons interested in land

16.(1) Where, with a view to performing a function conferred on a local authority by any enactment, the authority considers that it ought to have information connected with any land, the authority may serve on one or more of the following persons, namely –

- (a) the occupier of the land;
- (b) any person who has an interest in the land either as freeholder, mortgagee or lessee or who directly or indirectly receives rent for the land; and
- (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it,

a Notice specifying the land and the function and the enactment which confers the function and requiring the recipient of the Notice to furnish to the authority, within a period specified in the Notice (which shall not be less than fourteen days beginning with the day on which the Notice is served), the nature of his interest in the land and the name and address of each person whom he believes is, as respects the land, such a person as is mentioned in the provisions of paragraphs (b) and (c) of this subsection.

Any person who –

fails to comply with the requirements of a Notice served on him in pursuance of the preceding subsection; or

in furnishing any information in compliance with such a Notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. †

Not Protectively Marked

† The fine is currently £5,000. These are the fines specified by the Criminal Justice Act 1982 (as amended by the Criminal Justice Act 1991) effective at 1 January 1996. The standard scale of fines is liable to be increased by Order.

QUESTIONS

ANSWERS

<p>What are the name(s) (in full) and address(es) of the current occupier(s) of the land/site?</p>	
<p>Please confirm in what connection you deal with the above land?</p> <p>What is the nature of his/her/their/its interest in the premises? For example: freeholder, tenant, etc.</p>	
<p>What is the name and address of any person (other than the occupier) having an interest in the premises?</p> <p>This will include the name(s) in full and address of any mortgage lender, freeholder, leaseholder, contractual purchaser, etc.</p>	

I hereby state that the answers to the above questions comprise a true and correct statement of all the information required by the said Notice, so far as the same is within my knowledge.

Signed: _____

Capacity (if signed on behalf of company, _____

Address _____

This form is to be returned to:

Ref: [Enter Our Reference]