

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Executive Member for Recreation, Heritage, Countryside and Rural Affairs
<b>Date:</b>	12 January 2021
<b>Title:</b>	HCC Public Rights of Way Enforcement Policy
<b>Report From:</b>	Director of Culture, Communities and Business Services

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#### **Purpose of this Report**

1. To seek approval from the Executive Member for Recreation, Heritage, Countryside and Rural Affairs for the adoption of the Public Rights of Way Enforcement Policy.
2. The Policy will come into immediate effect following adoption and will be reviewed on an annual basis.

#### **Recommendation**

3. It is recommended that the Executive Member for Recreation, Heritage, Countryside and Rural Affairs approves the Public Rights of Way Enforcement Policy (Appendix 1).

#### **Executive Summary**

4. This report seeks approval of the Public Rights of Way Enforcement Policy for Hampshire County Council. This will ensure that officers fulfil their duty to safeguard the right of the public to use and enjoy the public rights of way network. It will allow officers to carry out that duty to enforce the provisions within current legislation in respect of public rights of way on behalf of Hampshire County Council.
5. Recent enforcement action has highlighted the need for a robust Enforcement Policy to provide a visible and transparent approach to protecting the public rights of way network. Some other authorities have adopted such a policy and these have provided the basis for the development of this proposal.

6. Consultation was carried out with the Hampshire Countryside Access Forum and other key stakeholders prior to submission of this report.

### Contextual information

7. Hampshire County Council has statutory duties regarding the management and maintenance of over 4600 km of rights of way. Section 130 of the Highways Act 1980, sets out the duties of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority.
8. The Countryside Access Management System (CAMS) holds a record of all the issues that have been reported on the county's public rights of way network, often by members of the public. A large number of reports that are reported on CAMS can be identified as offences under the various legislation pertaining to rights of way. These issues include obstructions such as fencing, cropping/ploughing, and fallen trees as well as reports of nuisance, such as illegal vehicle use or intimidation. Whilst 2020 is likely to be a slightly different profile of reporting due to the issues experienced by users and landowners on the network during the Covid 19 pandemic, the table below does indicate an increase in the number of reports that can be attributed to obstructions and nuisance.

	2020 (ytd)	2019	2018
<b>Total number of Issues reported on CAMS</b>	<b>3111</b>	<b>4102</b>	<b>3562</b>
Obstructions (No.)	1159	1049	861
Obstructions % of total	37%	26%	24%
Nuisance (No.)	129	93	76
Nuisance % of total	4%	2%	2%

9. Wherever possible, officers attempt to resolve the issue through standard letters and guidance documents rather than resort to legal action and /or prosecution.
10. The adoption of an Enforcement Policy will support officers in taking the appropriate course of action and to provide a policy that is publicly available for reference.
11. Hampshire County Council officers have used the legislative framework to assert and protect the rights of the public. This has resulted in 13 notices served to resolve obstructions and nuisances over the past 3 years with 2 cases requiring court action in the past two years.

12. The Enforcement Policy will ensure all decisions are transparent and aims to ensure that the County Council acts in a fair, reasonable and proportionate manner, to ensure that the County Council duty under Highways Act 1980 section 130 is achieved. The intention remains to ensure that advice, guidance and persuasion is the initial course of action taken by officers in all cases.

### **Finance**

13. There are no direct financial implications resulting from the adoption of the Enforcement Policy, however there may be an avoidance of costs occurred through legal action.

### **Consultation and Equalities**

14. In preparing the Enforcement Policy, officers have consulted with the County Council's Legal Team, who have supported the service in the development of the document. The draft policy was presented to the Hampshire Countryside Access Forum (a statutory advisory body established under the Countryside and Rights of Way Act 2000).
15. Key stakeholders including the New Forest Access Forum, the South Downs Local Access Forum, the Ramblers Association, and the British Horse Society have been given the opportunity to comment. Appendix 2 details the comments received, and the amendments made in the policy.

### **Other Key Issues**

16. Officers have dealt with issues where landowners have challenged the lack of an enforcement policy and this has generated unreasonably large volumes of additional work to justify why certain courses of action are being taken.
17. In dealing with issues that have been reported via CAMs officers assign a priority based on the following:-
  - the level of danger to the public;
  - the level of use, or likely use, of the path and the type of path (e.g. strategically important, route to school, etc.);
  - inclusion as part of a recognised and promoted recreational route;
  - the volume of complaints received from different sources;
  - the degree of obstruction, encroachment, or inconvenience;
  - likely duration of problem;
  - the cause of problem – whether it is within Hampshire County Council powers to rectify.
18. The following risks and consequences of no Enforcement Policy have been identified:

- *Risk of notices being served to compel the Council to act:* the Highways Act notice under s.130a can compel the Highway Authority to act to open a highway. Notice has been served on the County Council before and it is likely this could occur again, as a number of user groups are intimately familiar with the legislation governing the management of rights of way and have the resources to pursue action;
- *Risk of reputational damage:* Failure to take action will lead to a fragmented and impassable network. This will have a negative impact on people's perception of Hampshire as a place and the County Council more widely;
- *Failure to secure benefit from the asset:* the network delivers benefit in terms of health, wellbeing, travel and the rural economy. Closure as a result of obstructed routes deprives the public of use and the local economy of the value associated with that use.

### **Future direction**

19. The policy will be reviewed annually to ensure a consistent and current approach to enforcement is maintained.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	

## **EQUALITIES IMPACT ASSESSMENT:**

### **1. Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard to:

- The need to remove or minimize disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### **2. Equalities Impact Assessment:**

An EIA has been prepared to complement this report - The proposed policy should not raise any equality or diversity issues. The decision to take enforcement action will be implemented in a non-discriminatory manner. Members of the Countryside Access Group 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.