

Whitlingham Charitable Trust Prosecution Policy Report
Report by Head of Ranger Services

Summary: The report outlines the Prosecution Policy as prepared by NP Law solicitors and its implications for the trust.

Recommendation: That the Authority accepts and adopts the prosecution policy.

1 Background

- 1.1 The Broads Authority on behalf of the Whitlingham Charitable Trust made byelaws to support the good management of the park. Defra formally approved the Byelaws on 9 August 2012 and the Broads Authority approved them on 21st September. They came into force on 1 January 2013.

2 Draft Prosecution Policy

- 2.1 The main item of note is that the Byelaws were made under the Broads Authority Byelaw making powers under the Norfolk and Suffolk Broads Act 1988. NP Law therefore regard them as Broads Authority byelaws and so decisions regarding the level of enforcement and any prosecutions should be made by an officer of the authority known as the Head of Enforcement.
- 2.2 A draft prosecution policy based on the Broads Authority standard enforcement policy has previously been proposed, and discussed with the Trust in general terms. However, when this was discussed with NP Law solicitors it was rejected and they have now drafted a new policy using the latest national policies, see Appendix 1.
- 2.3 It is expected that the Head of Enforcement role will be carried out by the Head of Ranger Services who acts as such for the Broads Authority's Navigation Byelaws.
- 2.4 The WCT will of course be informed of actions/decisions. Under the service level agreement, the WCT will be liable for the costs of any prosecutions taken as a result of the prosecutions policy.
- 2.5 The Broads Authority Rangers have been trained in the Whitlingham Byelaws and byelaw enforcement but will need to be updated with regard to this policy. Rangers will be issued with appropriate warning paperwork and byelaw boards will need to be exhibited in a prominent position.

Background papers: None

Author: Adrian Vernon
Date of Report: 5 June 2015

Broads Plan Objectives: None

Appendices: APPENDIX 1 – Whitlingham Country Park Byelaws

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WHITLINGHAM COUNTRY PARK BYELAWS

ENFORCEMENT POLICY

Date: February 2015

Authorised by _____ on _____ 2015

1. Introduction

1.1 Purpose of the policy

The purpose of the policy is to set out the guiding principles by which the Broads Authority (Whitlingham Country Park) Byelaws and other relevant legislation will be enforced by the Broads authority (“the Authority”) and its authorised officers. The key aims are to protect the health & safety of persons using Whitlingham Country Park as well as the environment and amenity there. The need for the byelaws has been demonstrated and the byelaws instituted correctly. In order to enforce the byelaws a policy must be in place.

1.2

This policy is to be agreed by the Authority with appropriate consultation with the Trustees of the Park.

1.3

This policy follows the “Principles of Good Regulation” as defined by the Local government Concordat on Good Enforcement. These principles operated by the Authority at Whitlingham Country Park are;

- Standards: the Authority will provide and/ or publish clear standards setting out the level of service to be expected by the public.
- Openness: the authority will provide information and advice in plain language and disseminate this information as widely as practicable, setting out how work is carried out and consulting others as necessary about changes in practice.
- Helpfulness: the Authority will provide advice and assistance on compliance with the byelaws in a courteous, efficient and prompt manner.
- Complaints about service: the Authority will provide a publicised, effective and timely complaints procedure.
- Proportionality: any action taken by the authority in its own capacity will be proportionate to the circumstances.
- Consistency: the Authority will carry out its duties in a fair and equitable and consistent manner.

Scope and Implementation

This document covers all enforcement activities including informal and formal actions in the exercise of the Authority's statutory powers at Whitlingham Country Park.

The policy is implemented by officers authorised by the Authority through a formal delegation scheme of its powers and authority.

All authorised officers will receive adequate training to ensure that the policy is delivered in a manner which is consistent with their authorisation and duties.

Publication, Consultation and Revision

The policy will be published by the Authority and made available through its website following consultation with stakeholders. Feedback from those stakeholders will be considered and, where appropriate, included in subsequent revisions of this policy. The policy will be reviewed and updated whenever there are changes to relevant legislation or when changes are required based on experience and / or feedback from interested parties.

Enforcement Action

All enforcement action will be carried out in accordance with the principles set out in this policy.

Action will be informal or formal based upon a graduated approach, commencing with informal action where appropriate. In deciding whether to take formal action, the following criteria will be considered by the Authority and its authorised officers;

- the seriousness of the offence;
- the consequences of non-compliance in terms of risk to persons, property or the environment;
- the offenders attitude and past history in terms of disregard or contempt for the byelaws;
- the likely effectiveness of various other alternative enforcement options;
- relevant case law and guidance;
- the public interest, public expectation and the importance of the case in setting a precedent as a deterrent to others;
- information received following liaison with other authorities or external agencies with enforcement powers;
- the personal circumstances of the offender.

Informal Enforcement action

Informal action will normally be taken in the first instance providing that the breach is a first occurrence and there is no risk to public health and safety, amenity or the environment and the authorised officer is confident that it will be effective.

Informal action may include one or more of the following (this is not an exhaustive list);

- verbal advice;
- verbal request for the behaviour/action to cease;
- written request for the behaviour/action to cease;
- written warning of formal action if a further breach occurs;

Formal Enforcement Action

Formal action will be taken if the offence presents a risk to public health or safety, amenity, the environment or in cases where informal action has been unsuccessful in preventing further breaches of the byelaws.

Formal action may include the following (this is not an exhaustive list);

- The issue of a formal caution;
- Criminal prosecution;
- Application for injunctions.

Simple Cautions

A simple (formal) caution can be given to anyone over the age of 10 years. It is used as an alternative to prosecution for first time minor offences. The aim is to deal with offences quickly and simply, to save court time, reduce unnecessary expense and reduce the likelihood of further offending.

The decision to offer a caution (or to proceed with a prosecution) will be made following discussions between the authority's Head of Enforcement and the investigating officer. (Legal advice will be sought if deemed necessary).

In deciding to offer a caution the following will be taken into consideration;

- whether a caution is appropriate for the offence and offender
- the likelihood of it being effective in preventing re-occurrence of the offending
- the public interest
- any damage suffered by a victim or the environment
- whether the offender has made any form of reparation or paid any compensation
- whether the offender has any known previous convictions or cautions.

Cost of Proceedings

The Authority will normally seek to recover the costs of enforcement action, remedial action and court proceedings.

Complaints Procedure/ Appeals Mechanism

In the first instance, most problems can be resolved with the officer dealing with the matter or their line manager.

The Authority complies with the Freedom of Information Act and the Data Protection Act as regards the release of information on enforcement activities.

For third party complaints the Authority will;

- respond within 10 days;
- carry out a preliminary investigation within 28 days;
- have a full investigation and forward the case papers, if appropriate, to the Authority's solicitor within 4 months of the alleged offence taking place; and
- keep the complainants informed as to progress with the investigation and any decisions taken relating to the complaint.